Bridging the Business-Human Rights Divide: The Multi-Dimensional Dynamics of Transnational Access to Justice in Mass Tort Litigation

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ABSTRACT

In response to the paradigm shift from territorial corporations to globalised businesses, calls for access to justice increasingly transcend national borders, exacerbated by a substantial inequality of arms in mass tort litigation. Recognising its interdisciplinary significance and complexity, this article engages in a multi-dimensional analysis of access to justice within the business and human rights framework, examining international initiatives, regional developments, and mass tort litigation against multinational corporations. Focussing on judicial innovations by English courts while highlighting the enduring barriers faced by claimants, it anticipates a potential 'siphon effect' in forum competition, with implications for victims, multinational businesses, and courts in both home and host states. By integrating doctrinal, normative, and pragmatic perspectives, the article frames access to justice both as a constellation of rights to fair dispute resolution and remedies expressly protected under human rights law, and as a core element of the evolving business and human rights landscape.

KEYWORDS: transnational access to justice, business and human rights, mass tort litigation, multinational corporations, conflict of laws, corporate accountability

1. INTRODUCTION

Things are often easier said than done, and access to justice is no exception. While it is widely held that both rich and poor, weak and powerful alike, should have equal access to justice, many believe that this fundamental ideal is now 'under threat as never before',[1] with challenges emerging from both conceptual texts and social contexts. Conceptually, access to justice, like other related rights and institutions that constitute 'the modern legal and political imagination',[2] is widely cherished yet deeply contested.[3] On a descriptive level, there is rich discussion surrounding the components necessary for

[1] Baroness Hale, *Equal Access to Justice in the Big Society* (Sir Henry Hodge Memorial Lecture, 2011) at 2, available at: supremecourt.uk/speeches/lady-hale-at-sir-henry-hodge-memorial-lecture-2011 [last accessed 09 February 2026]; *Griffin v Illinois* 351 US 12 (1956).

[2] Maldonado, 'The Right to Access to Justice: Its Conceptual Architecture' (2020) 27 *Indiana Journal of Global Legal Studies* 15 at 15.

[3] 'Access to justice is…a feel-good concept—one that everyone can sign up with uncritical examination.' Paterson, *Lawyers and the Public Good: Democracy in Actions?* (2011) at 60; McDonald, 'Accessing Access to Justice: How Much "Legal" Do

individuals to access justice.[4] From a normative perspective, such conceptual contestation extends to the intrinsic tenets of equality,[5] and the diverse values that shape interpretations of this notion,[6] such as how parties' equality in civil procedure should be understood.[7] The controversies become more pronounced when viewed from a sociological lens, revealing a stark gap between the formal recognition of socio-economic rights and their practical enforcement.[8] Research shows that the enforcement of rights is profoundly influenced by contextual factors such as legal institutions,[9] legal cultures,[10] and disparities between parties, including ethnicity, race, gender, economic status,[11] and disability.[12] This compels us to move beyond abstract texts and confront the social and political entanglements among stakeholders across different societal levels.[13] This challenge is particularly acute in the transnational context in which multinational corporations (MNCs) operate, where access to justice has become a multi-dimensional challenge, amplifying the difficulties already present in domestic settings.

In the absence of supranational enforcement mechanisms,[14] safeguarding access to justice in mass tort litigation against MNCs is like solving a multi-faceted Rubik's Cube—a complexly contextualised operation, with every move affecting multiple dimensions. The first dimension is where international and domestic laws meet, marked by the clash between the globalised operations of business and the domestic nature of corporate laws. When a single corporate entity within a multinational group is involved in misconduct, the domestic focus of corporate law and the doctrine of separate legal personality shield other group members from litigation or accountability, even though in business practice they often function as one unit.[15] This controversy has led to diverse legal approaches to transnational corporate liability, particularly over who should be held accountable within a corporate

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People Need and How Can We Know' (2021) 11 *UC Irvine Law Review* 693 at 706. Viewed more broadly, this conceptual debate feeds into the wider controversy over the universality of human rights. Dembour, 'What Are Human Rights? Four Schools of Thought' (2010) 32 *Human Rights Quarterly* 1; Brems, *Human Rights: Universality and Diversity* (2001); Schilling, 'The Recognition of Human Rights: A Threefold Myth' (2020) 20 *Human Rights Law Review* 210.

[4] Infra n 36-44 and relevant texts.

[5] Peters, 'Equality Revisited' (1996) 110 *Harvard Law Review* 1210; Atrey, 'Equality Law: A Structural Turn' (2025) 26 *German Law Journal* 171.

[6] Maldonado, supra n 2 at 17.

[7] Rubenstein, 'The Concept of Equality in Civil Procedure' (2002) 23 *Cardozo Law Review* 1865.

[8] De Londras, 'Response: On Some Problems with Rights' in Bedford and Herring (eds), *Embracing Vulnerability: The Challenges and Implications for Law* (2020) at Part 5.

[9] Crawford and Maldonado, 'Access to Justice and Liberal Democracies: Global, Regional and National Solutions to a Worldwide Problem' (2020) 27 *Indiana Journal of Global Legal Studies* 1 at 4.

[10] Nelken, 'Using the Concept of Legal Culture' in Mar and Giudice (eds) *Legal Theory and the Social Sciences* (2010) at chapter 11.

[11] Sandefur, 'Access to Civil Justice and Race, Class, and Gender Inequality' (2008) 34 *Annual Review of Sociology* 339.

[12] Lawson, 'Accessibility and the Limits of the Equality Act 2010: Time for a UK Accessibility Act?' (2025) XX *Current Legal Problems* 1.

[13] Perry-Kessaris, 'Approaching the Econo-Socio-Legal' (2015) 11 *Annual Review of Law and Social Science* 57 at 61.

[14] See below at sections 3A & B. Non-judicial mechanisms have also been largely ineffective in offering remedies to victims of transnational business-related human rights abuses. Otteburn, 'Reaching the Limit: Access to Remedy through Non-judicial Mechanisms for Victims of Business-related Human Rights Abuses' (2024) 28(2) *The International Journal of Human Rights* 220.

[15] E.g. *VTB Capital plc v Nutritek International Corp and Others* [2013] UKSC 5, [2013] 2 AC 337; *Prest v Petrodel Resources Ltd* [2013] UKSC 34, [2013] 2 AC 415; both illustrating the English courts' reluctance to set aside the separate legal personality of a company, as established in *Salomon v Salomon & Co Ltd* [1897] AC 22. In corporate group contexts, the separate legal status of individual companies will only be disregarded in very limited circumstances, if ever. *Adams v Cape Industries plc* [1990] Ch 433.

group, a question central to the substantive right to remedy.[16] A second dimension involves regulatory conflicts between an MNC's home state, where the parent company is based, and the host state, where its subsidiary operates and litigation is likely to arise. These conflicts often take the form of jurisdictional contests over the appropriate forum to hear a case, an issue fundamental to the procedural dimension of access to justice.[17] Recent UK Supreme Court judgments in *Vedanta Resources PLC and another v Lungowe and others*[18] and *Okpabi and others v Royal Dutch Shell Plc and another*[19] illustrate how home state courts may assert jurisdiction over corporate activities beyond borders, effectively reflecting an expanded 'sphere of influence'[20] of their domestic parent companies. In contrast, host states assert sovereignty over local business operations and jurisdiction over related disputes, implicating the inherent tension between home-host state policies and interests. Adding further complexity is the sociological dimension, where MNCs' global expansion often creates informational and power asymmetries between these business giants, claimants and other stakeholders, resulting in varying tangible outcomes when seeking justice against them. While nearly every body of law emphasises and strives to ensure, to the greatest extent possible, the equality and uniformity of rights and obligations of the persons concerned,[21] achieving equality in judicial practice remains a formidable task.

The inequalities we are concerned with are not difficult to see. The *Vedanta* and *Okpabi* judgments, both addressing environmental harm caused by the operations of subsidiaries in developing countries,[22] illuminate the stark socio-economic disparities between parties in mass tort litigation involving MNCs. The plaintiffs in both cases were 'very poor members of rural farming communities'[23] from some of 'the world's poorest countries'.[24] Yet the defendants were multinational corporate giants. *Vedanta'*s anchor defendant was a parent company listed on the London Stock Exchange, with operations across four continents.[25] The anchor defendant in *Okpabi* was Royal Dutch Shell Plc, one of the world's largest oil and gas companies listed on the London Stock Exchange.[26] These socio-economic disparities constrain vulnerable parties' abilities to access justice. They struggle to secure legal representation with the necessary skills and willingness to engage in costly and time-consuming litigation across borders, to overcome cultural barriers and find jurisdictions with favourable legal frameworks, and to gather evidence and establish causation in complex transnational claims.[27]

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[16] Article 8 Universal Declaration of Human Rights 1948 (UDHR), GA Res 217/A (III), A/810 (1948); Article 2(3) International Covenant on Civil and Political Rights 1966 (ICCPR), 999 UNTS 171.

[17] Article 2 United Nations (UN), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Principles and Guidelines), 16 December 2005, GA Res 60/147.

[18] [2019] UKSC 20; [2020] AC 1045.

[19] [2021] UKSC 3; [2021] 1 WLR 1294.

[20] The term 'sphere of influence' was initially put forward in the UN Global Compact, requiring corporate participants to 'embrace, support and enact, within their sphere of influence' principles of human rights protection. UN, The Ten Principles of the UN Global Compact, available at: unglobalcompact.org/what-is-gc/mission/principles [last accessed 09 February 2026].

[21] Article 7 UDHR supra n 16.

[22] *Vedanta*, supra n 18 at para 1; *Okpabi*, supra n 19 at para 4.

[23] *Vedanta*, ibid. at para 1.

[24] *Lungowe & Ors v Vedanta Resources Plc & Anor* [2016] EWHC 975 (TCC); [2016] BCC 774 at para 176. Similarly, plaintiffs in *Okpabi* are individuals of Nigerian farming and fishing communities. Supra n 19 at para 6.

[25] Supra n 18 at para 2.

[26] Supra n 19 at para 6.

[27] Infra n 76-87 & 228 and relevant texts.

The above factors highlight the *raison d'être* of transnational access to justice—access to justice for persons in transnational litigation targeting MNCs, which inherently epitomises socio-legal reality.[28] Legal instruments tend to use this term as labels and within singular dimensions, rather than bringing to life a wider pragmatic usage in the multi-dimensional, cross-border regulatory taxonomy targeting MNCs, as explicated above. While scholarly attention to transnational access to justice has grown alongside business and human rights (BHR) developments, the field remains fast-evolving and calls for further wide-ranging inquiry.[29] This provides compelling reasons to explore the doctrinal, normative implications and pragmatic dynamics of transnational access to justice in the BHR context, an analysis to which this paper turns.

Moreover, mass tort litigation carries profound social and human rights ramifications. In cases like *Vedanta* and *Okpabi*, environmental disasters caused by corporate operations have affected communities across regions and decades, threatening rights to life,[30] health,[31] an adequate standard of living,[32] and the increasingly important 'human right to the environment'.[33] The global impacts of these judgments are also becoming increasingly evident. In January 2021, the Hague Court of Appeal delivered a judgment concerning the Shell group's activities in Nigeria, drawing on English precedent, particularly *Vedanta*.[34] As *Okpabi* proceedings remain in progress, the growing socio-legal significance of these mass tort judgments merits further study.

Building on existing research, this article explores the multi-dimensional dynamics of transnational access to justice through a comparative analysis of legal developments at different levels. It focuses on UK Supreme Court judgments in *Vedanta* and *Okpabi*, as UK jurisprudence in this area represents a more progressive approach that seeks to extend jurisdictional reach to a corporation's sphere of influence. The article highlights the tensions between the basic needs and expectations of stakeholders in cross-border litigation and considers how recent BHR regulatory initiatives attempt to bridge these gaps. The analysis reflects the growing awareness and apprehension among policymakers in home and host states, scholars working on business and human rights, as well as business leaders, investors and other stakeholders directly affected by MNCs' operations.

The article is structured as follows: Part 2 explores the multifaceted nature of transnational access to justice and the entrenched conflicts of interests among stakeholders involved in MNC disputes. Part 3 adopts a comparative law lens and critically examines international, regional and state-level legal responses. Part 4 evaluates the doctrinal and normative contributions of recent mass tort litigation

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[28] Cappelletti, 'Alternative Dispute Resolution Processes within the Framework of the World-Wide Access-to-Justice Movement' (1993) 56 *Modern Law Review* 282 at 282-3.

[29] Transnational access to justice has been remarked as 'an aspect of access to justice that so far has largely escaped systematic analysis'. Whytock, 'Transnational Access to Justice' (2020) 38 *Berkeley Journal of International Law* 154 at 156; Karayanni, 'The Extraterritorial Application of Access to Justice Rights: on the Availability of Israeli Courts to Palestinian Plaintiffs', in Watt and Arroyo (eds), *Private International Law and Global Governance* (2014) 212.

[30] Article 6(1) ICCPR supra n 16.

[31] Article 12 International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), 993 UNTS 3.

[32] Article 11 ICESCR, ibid.; Nygh, 'The Liability of Multinational Corporations for the Torts of Their Subsidiaries' (2002) 3 *European Business Organisation Law Review* 51.

[33] McGoldrick, 'Sustainable Development and Human Rights: An Integrated Conception' (1996) 45 *International & Comparative Law Quarterly* 796 at 810.

[34] *Four Nigerian Farmers and Milieudefensie v. Shell*, The Hague Court of Appeal, 29 January 2021, ECLI:NL:GHDHA:2021:132 (Oruma), ECLI:NL:GHDHA:2021:133 (Goi), and ECLI:NL:GHDHA:2021:134 (Ikot Ada Udo).

decisions in complementing the international normative framework, expanding avenues of redress for victims, and strengthening corporate accountability. Part 5 turns to the persistent evidentiary and procedural hurdles faced by socio-economically disadvantaged parties. Part 6 anticipates future trends, particularly the potential 'siphon effect' in forum competition. This highlights the multifaceted ramifications of transnational access to justice from the sociological perspective. Part 7 concludes.

2. UNPACKING THE COMPLEXITIES OF TRANSNATIONAL ACCESS TO JUSTICE

A. Connotations of Access to Justice

The term 'access to justice' is prominently featured in discussions, official documents, and practices in the modern world. Meanwhile, its implications are often assumed in legal instruments as a catch-all term, rarely thoroughly interpreted due to its contested connotations.[35] However, the debate over its precise meaning should not obscure the broad consensus on its implications in key dimensions.

On a descriptive level, the term 'access to justice' embraces the substantive and procedural mechanisms by which rights are effectively realised.[36] It characterises the design and evaluation of modern legal systems that can be relied on by all, and emphasises individuals' abilities to seek 'individually and socially just'[37] dispute resolution and effective remedies to vindicate their legal rights. For example, the United Nations Development Programme (UNDP) defines access to justice as 'the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards'.[38] Conventional uses of the term tend to focus on procedural aspects. From a broader perspective, access to justice encompasses the availability of dispute resolution mechanisms when parties' substantive rights are compromised, involving not only formal litigation but also arbitration and other alternative methods.[39] Cornford defines it as 'the general subject of the extent to which citizens are able to gain access to the legal services necessary'.[40] The narrower vision centres on 'a party's ability to effectively argue for its legal rights before a competent and impartial court'.[41] This view acknowledges that formal litigation remains one of the most important avenues for victims to pursue remedies, with outcomes binding on all parties.[42] Even within this narrow view, access to justice embraces various elements, such as adequate choices of means for action, the provision or suspension of limitation periods, appeal and judicial review mechanisms, and special arrangements for

[35] For instance, the UK Access to Justice Act 1999 (c 22) comprehensively addresses legal issues related to access to justice but does not provide a precise definition of the term, possibly due to its complex connotations.
[36] Cappelletti and Garth, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) 27 *Buffalo Law Review* 181 at 185.
[37] Ibid. at 182.
[38] UNDP, *Programming for Justice: Access for All* (2005) at 5, available at: www.undp.org/asia-pacific/publications/programming-justice-access-all [last accessed 09 February 2026].
[39] Deason et al., 'ADR and Access to Justice: Current Perspectives' (2018) 22 *Ohio State Journal on Dispute Resolution* 303.
[40] Cornford, 'The Meaning of Access to Justice', in Palmer et al. (eds) *Access to Justice: Beyond the Policies and Politics of Austerity* (2016) 27 at 27.
[41] Karayanni, supra n 29 at 217.
[42] Häusler, Lukas and Planitzer, *Non-Judicial Remedies: Company-based Grievance Mechanisms and International Arbitration* (2017) at 78.

weaker parties' litigation needs.[43] The right of access to justice is therefore often articulated as a collection of freestanding rights.[44]

Normatively, interpretations of access to justice connect to the universal ideal of equality before the law,[45] and are often framed in two categories: equal access to legal services and equal access to remedies, both of which emphasise embedding justice within the parties' social context.[46] In this vein, Moorhead and Pleasence argue that access to justice is rooted in notions of legality and legitimacy, and centres on 'delivering substantial benefits to the poor'.[47] Segatti posits the three facets of equal access to justice: equal legal protection, equal standing before the courts and equal agency in legal affairs.[48] The UNDP likewise highlights the normative significance of the subject, stating that access to justice must be defined 'in terms of ensuring that legal and judicial outcomes are just and equitable'.[49]

In pluralistic societies, the normative importance of access to justice increasingly takes on a sociological dimension: while the principle of equality was once viewed as neutral within the *laissez-faire* framework, practice reveals it to be profoundly shaped by socio-economic factors.[50] Access to justice, informed by legal realism, is now widely regarded as a core component of the human rights architecture in civil proceedings.[51] Central to this understanding is the call to make the judicial process accessible to a broader portion of the population, 'or in theory … to the entire population'.[52] The underlying premise is that the respect and protection of human rights, whether in international or domestic law, can only be realised through effective judicial remedies.[53] The multifaceted values enshrined in access to justice have also become more evident. Chief among these are neutral adjudication to minimise the risk of prejudice and the affirmation of human dignity.[54] The access-to-justice movement, supported by theoretical developments and legal reforms worldwide, has thus evolved beyond its original literal interpretation, moving towards a vision that is 'most faithful to the complexity of human society',[55] with justice for weaker parties as an integral component. After all, emphasising the 'majestic equality of the law'[56] without accounting for socio-economic disparities can result in absurdities, such as 'the rich as well as the poor (are forbidden) to sleep under the bridges, to

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[43] Storskrubb and Ziller, 'Access to Justice in European Comparative Law' in Francioni (ed.), *Access to Justice as a Human Right* (2007) 177 at 187–8.

[44] Byrnes et al., *Access to Justice*, a discussing paper for the 11th session of the United Nations General Assembly Open-ended Working Group of Aging (2020) at 2.

[45] Byrnes et al., ibid. at 2.

[46] Salles and Cruz, 'Access to Justice: Legal Concept and Characterisation' in Dal Ri et al. (eds), *Perspectives of Law in the 21st Century* (2020) 87 at 93.

[47] Moorhead and Pleasence, 'Access to Justice after Universalism: Introduction' (2003) 30 *Journal of Law and Society* 1 at 1.

[48] Segatti, *Equal Access to Justice* (2024) at 25-38.

[49] UNDP, *Access to Justice: Practice Note* (2004) at 6, available at: www.undp.org/sites/g/files/zskgke326/files/publications/Justice_PN_En.pdf [last accessed 09 February 2026].

[50] Heywood and Hassim, 'The Personal, Political and Constitutional Imperatives for Improved Access to Justice' (2008) 24 *South African Journal of Human Rights* 263 at 263-5.

[51] Francioni, 'The Right of Access to Justice under Customary International Law' in Francioni (ed.), *Access to Justice as a Human Right* (2007) at 1-56.

[52] Cappelletti, supra n 28 at 287.

[53] Francioni, supra n 51.

[54] Rhode, 'Access to Justice' (2001) 69 *Fordham Law Review* 1785 at 1799.

[55] Cappelletti, supra n 28 at 282.

[56] Anatole France, *Le Lys Rouge (The Red Lily)* (1894) at 91.

beg in the streets, and to steal bread'.[57]

The modern 'human rights-based approach to access to justice'[58] therefore centres on identifying and addressing the capacity gaps between parties arising from their socio-economic disparities, often reflected in their unequal bargaining power in commercial legal relationships and unequal access to legal representation, particularly in mass tort litigation involving MNCs. Increasing scholarship explores various aspects of access to justice within the BHR context, including procedural barriers,[59] developments in domestic and international accountability frameworks,[60] adaptations in conflict of laws,[61] the evolution of tort and corporate law mechanisms,[62] the effects of corporate models,[63] CSR practices[64] and industry standards,[65] cross-border cooperation,[66] the socio-legal significance of mass tort litigation,[67] and comparative regulatory developments in key jurisdictions.[68]

Meanwhile, one cannot overlook the broader theoretical currents in transnational law. Although not always explicitly directed at BHR, they play a significant role in shaping business-connected rather than territorially bound regulations. These include transnational pluralism that addresses the fragmentation and interaction of multiple legal orders beyond nation states,[69] transnational constitutionalism that supports the worldwide validity of fundamental rights,[70] theories of global governance[71] and transitional

[57] Ibid.
[58] UNDP, supra n 49 at 5.
[59] Budzinski, 'Reforming Service of Process: An Access to Justice Framework' (2019) 90 *University of Colorado Law View* 167.
[60] Stephens, 'Translating Filártiga: A Comparative and International Law Analysis of Domestic Remedies for International Human Rights Violations' (2002) 27 *Yale Journal of International Law* 1; Meeran and Meeran (eds), *Human Rights Litigation against Multinationals in Practice* (2021); Augenstein, 'Towards a New Legal Consensus on Business and Human Rights: A 10th Anniversary Essay' (2022) 40 *Netherlands Quarterly of Human Rights* 35.
[61] Scott, *Torture as Tort: Comparative Perspectives on the Development of Transnational Human Rights Litigation* (2001); Aristova, 'The Future of Tort Litigation against Transnational Corporations in the English Courts: Is Forum [Non] Conveniens Back?' (2021) 6 *Business and Human Rights Journal* 399.
[62] Palombo, 'The Duty of Care of the Parent Company: A Comparison between French Law, UK Precedents and the Swiss Proposal' (2019) 4 *Business and Human Rights Journal* 265; Meeran, 'Tort Litigation against Multinational Corporations for Violation of Human Rights' (2011) 3 *City University of Hong Kong Law Review* 1; Roorda and Leader, 'Okpabi v Shell and Fourt Nigerian Farmers v Shell: Parent Company Liability Back in Court' (2021) 6 *Business and Human Rights Journal* 368.
[63] Hadfield, 'The Cost of Law: Promoting Access to Justice through the (Un)corporate Practice of Law' (2014) 38 *International Review of Law and Economics* 43.
[64] Mares, 'Global Corporate Social Responsibility, Human Rights and Law: An Interactive Regulatory Perspective on the Voluntary-Mandatory Dichotomy' (2010) 1 *Transnational Legal Theory* 221.
[65] Baumann-Pauly and Nolan (eds) *Business and Human Rights: From Principle to Standards* (2016).
[66] Zerk, 'Justice without Borders: Models of Cross-Border Legal Cooperation and What They Can Teach Us', in Enneking et al. (eds) *Accountability, International Business Operations and the Law* (2019) at chapter 6.
[67] Kinley, *In a Rain of Dust: Death, Deceit, and the Lawyer Who Busted Big Asbestos* (2025).
[68] Rouas, *Achieving Access to Justice in a Business and Human Rights Context: An Assessment of Litigation and Regulatory Responses in European Civil Law Countries* (2022); Meeran & Meeran, supra n 60; Rubio and Yiannibas, *Human Rights in Business: Removal of Barriers to Access to Justice in the European Union* (2017).
[69] Zumbansen, 'Transnational Legal Pluralism' (2010) 1 *Transnational Legal Theory* 141.
[70] Teubner, 'Transnational Fundamental Rights: Horizontal Effect?' (2011) 40 *Rechtsfilosofie & Rechtstheorie* 191.
[71] Ruggie, 'Global Governance and "New Governance Theory": Lessons from Business and Human Rights' (2014) 20 *Global Governance* 5.

justice[72] contributing to global reconciliation, and emerging international human rights norms.[73] These perspectives on transnational legal ordering critique conventional territorially-based law as being static and ill-equipped to regulate the fluid and complex social spheres such as transnational businesses.[74] Notably, Ruggie's intellectual account on a corporation's 'sphere of influence', visualised as a set of concentric circles extending from the workplace at the core, outward to supply chains, the market place, and the community,[75] has inspired recent context-transcending BHR initiatives, as discussed in Part 3. Meanwhile, this body of work highlights the need for practical gateways to realise normative ideals and balance the intertwined interests of stakeholders in transnational practice, with mass tort litigation emerging as a key mechanism, as discussed below.

B. Disparities and Competing Interests in Seeking Transnational Access to Justice

Building on this theoretical backdrop, the realities of transnational litigation against MNCs reveal stark disparities and competing interests among stakeholders. Fuelled by neoliberal globalisation, major MNCs span operations across multiple countries and wield substantial economic power, sometimes even having leverage over emerging economies.[76] By contrast, victims of corporate abuse often come from marginalised communities in developing countries. Mass tort harms frequently arise during claimants' employment, or from residence in the contaminated area.[77] Poverty in these regions, combined with pronounced socio-economic disparities, often leads to imbalances in access to legal representation, diverse abilities in legal system navigation, as well as unequal bargaining power in negotiations and settlements. These disparities are most visible in jurisdictional choices and approaches to corporate liability, making them central to any effort to address transnational access to justice, as this section examines.

i. Conflicts of Interests in Jurisdictional Selection

The first and foremost consideration for both group claimants and MNC defendants in pursuing transnational access to justice is the choice of jurisdiction, i.e., where to initiate proceedings. This choice often exposes sharp conflicts of interests and produces a 'doctrinal bar' against the development of

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[72] Forst, 'A Critical Theory of Transnational Justice', in Brooks (ed.), *The Oxford Handbook of Global Justice* (2020) at chapter 22; Payne, Bernal-Bermúdez and Pereira (eds), *Economic Actors and the Limits of Transitional Justice* (2022).

[73] Hannum, 'Reinvigourating Human Rights for the Twenty-First Century' (2016) 16 *Human Rights Law Review* 409; McNeilly, 'Are Rights Out of Time? International Human Rights Law, Temporality and Radical Social Change' (2019) 28 *Social & Legal Studies* 817; Mégret, 'International Human Rights Law Theory' in Orakhelashvili (ed.), *Research Handbook on the Theory and History of International Law* (2020) 164; Moechli, Shah and Sivakumaran (eds), *International Human Rights Law*, 3rd edn (2018); Skogly, 'Global Responsibility for Human Rights' (2009) 29 *Oxford Journal of Legal Studies* 827; Bernaz, *Business and Human Rights: History, Law and Policy* (2016).

[74] Teubner, 'Substantive and Reflexive Elements in Modern Law' (1983) 17 *Law & Society Review* 239, at 239–40 & 274; Shaffer, 'Theorising Transnational Legal Ordering' (2016) 12 *Annual Review of Law and Social Science* 231; McCorquodale, *Business and Human Rights* (2024) at chapters 2-3.

[75] Ruggie, *Clarifying the Concepts of 'Sphere of Influence' and 'Complicity'*, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, A/HRC/8/16 (2008) at para 8.

[76] Abelvik-Lawson, 'Sustainable Development for Whose Benefit? Brazil's Economic Power and Human Rights Violations in the Amazon and Mozambique' (2014) 18(7) *The International Journal of Human Rights* 795 at 798; Wen and Zhao, 'The Bumpy Road of Home States' Regulation of Globalised Businesses—Legal and Institutional Disruptions to Supply Chain Disclosure under the Modern Slavery Act' (2020) 69 *Catholic University Law Review* 125 at 135.

[77] *E.g., Lubbe and Others and Cape Plc and Related Appeals* [2000] UKHL 41; [2000] WLR 1545, involving claims of both types.

cross-border corporate accountability.[78] Claimants typically prioritise forums offering greater legal resources, funding support, and streamlined procedures to mitigate the high costs and complexities of transnational litigation. In reality, even when the subsidiary's host state has the closest connection to the dispute, many claimants from economically disadvantaged jurisdictions still turn to the parent company's home forum due to limited local access to legal resources and financial support.[79]

Beyond resource disparities, claimants may face 'insurmountable' systemic and practical obstacles to securing remedies in certain host states,[80] making home state courts the only viable avenue for justice.[81] Research to date has identified multiple hurdles, including 'fragmented, poorly designed or incomplete' legal systems,[82] inadequate protection for victims and their representatives,[83] corruption,[84] a regulatory 'race to the bottom' driven by competition for foreign investment,[85] and the considerable socio-economic influence of powerful foreign firms,[86] all of which contribute to 'patchy, unpredictable, often ineffective… remedies'.[87] Conversely, MNC defendants frequently challenge the jurisdiction of home state courts by stressing the legal separation between parent and subsidiary entities, arguing that it would be unfair to subject a company to litigation in a country where it has little or no presence.

These jurisdictional battles also reveal deeper tensions between home and host states. As MNCs expand their reach beyond borders, home states increasingly seek to oversee their global operations, expanding jurisdictional and regulatory reach through measures such as transparency[88] and due diligence requirements.[89] Conversely, host states tend to prioritise national sovereignty and retain control over corporate activities within their territories. This inherent tension complicates litigation and generates further frictions between claimants and MNCs. MNCs' successful operations in host countries depend heavily on local approval and support. Robust evidence suggests that MNC subsidiaries often

[78] Hackett and Moffett, 'Mapping the Public/Private-Law Divide: A Hybrid Approach to Corporate Accountability' (2016) 12 *International Journal of Law in Context* 312.

[79] *Tyne Improvement Commissioners v Armement Anversois SA (The Brabo)* [1949] AC 326 at 338; *Connelly v RTZ Corporation Plc and Others* [1997] UKHL 30; [1998] AC 854 at para 30.

[80] Zerk, *Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies*, A report prepared for the Office of the UN High Commissioner for Human Rights (OHCHR) (2013) at 7.

[81] Skinner et al., *The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Businesses* (2013) at 5.

[82] UN Human Rights Council (HRC), *Improving Accountability and Access to Remedy for Victims of Business-related Human Rights Abuse*, A/HRC/32/19 (2016) at para 4.

[83] Turner and Bright, 'From "Due Diligence" to "Adequate Redress". Towards Compulsory Human Rights and Environmental Insurance for Companies?' (2022) 24 *International Community Law Review* 145 at 149.

[84] The Global Initiative for Economic, Social and Cultural Rights, *Submission to the UN OHCHR on the Zerk Report on Corporate Liability for Gross Human Rights Abuses* (2014) at 10.

[85] Olney, 'A Race to the Bottom? Employment Protection and Foreign Direct Investment' (2013) 91 *Journal of International Economics* 191.

[86] Ahmed, 'Private International Law and Substantive Liability Issues in Tort Litigation against Multinational Companies in the English Courts' (2022)18 *Journal of Private International Law* 56 at 59.

[87] Zerk, supra n 80 at 7; UN HRC, supra n 82 at para 4.

[88] For example, Part 6 of the UK Modern Slavery Act 2015 (c 30).

[89] For example, Act on Corporate Due Diligence Obligations in Supply Chains 2021 (Germany). For this article, extraterritorial jurisdiction refers to adjudicative jurisdiction where courts declare themselves competent to adjudicate in proceedings relating to extraterritorial situations. Colangelo, 'What is Extraterritorial Jurisdiction?' (2014) 99 *Cornell Law Review* 1303 at 1304; De Schutter, *Extraterritorial Jurisdiction as a Tool for Improving the Human Rights Accountability of Transnational Corporations*, Report prepared for the seminar organised in collaboration with the Office of the UN High Commissioner for Human Rights (2006) at 9.

cultivate close ties with local governments, as seen in *Vedanta* and *Okpabi*.[90] These ties not only facilitate compliance with local regulations and trade customs but also consolidate MNCs' key roles in local economic growth. However, the combination of MNCs' economic strength and local governments' political influence can generate risks of power abuse, exacerbating asymmetries between parties in litigation.[91] Host states may also hesitate to impose liability on MNC subsidiaries, worrying about driving away foreign investment.[92] Combined with the legal sophistication and resources of MNCs,[93] this environment often leaves victims struggling to seek redress in their own countries.

Tensions arising from close connections between MNCs and local governments were evident in recent lawsuits. In *Okpabi*, the foreign respondent SPDC operated pipelines in host Nigeria on behalf of a joint venture dominated by the state-owned Nigerian National Petroleum Corporation.[94] In *Vedanta*, Vedanta Resources Holding Ltd (a subsidiary of the parent company Vedanta) and a Zambia State-owned company jointly owned the foreign subsidiary defendant KCM,[95] which was reportedly shielded from criminal prosecution in the host state 'by political connection and financial influence'.[96] In those circumstances, the extension of home states' extraterritorial initiatives might be crucial for vulnerable victims to seek transnational access to justice, particularly when obtaining justice in host states is difficult. However, a unilateral recognition of home states' jurisdiction over corporate activities abroad risks straining home-host state relations, potentially reducing comity to an 'amorphous never-never land whose borders are marked by fuzzy lines of politics, courtesy, and good faith'.[97]

ii. Organisational Complications and Implications for Corporate Liability

Cross-border litigation against MNCs further reveals organisational complexities on two levels, calling for legal responses to transnational corporate liability. First, there is a stark contrast between the legal recognition of MNCs and their business realities. While subsidiaries are formally distinct to the parent based on the separate legal personality principle established in *Salomon v Salomon Ltd*,[98] parent companies frequently exercise significant control over their operations, prompting claimants to pursue liability claims against both.[99] Decisions and policies involving subsidiaries are also often made by the parent to serve the interests of the entire corporate group, rather than the subsidiary alone.[100] This discrepancy between the legal and business realities of MNCs often turns subsidiary companies into risk-diversion tools for the parent. As Staughton LJ critically observed in *Atlas Maritime co SA v Avalon*

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[90] Infra n 94-96 and relevant texts.
[91] Ahmed, supra n 86 at 59.
[92] Whytock, supra n 29 at 167.
[93] Pigrau and Cardesa-Salzmann, *Seeking Justice in a Multipolar World*, 2nd Research Forum of the American Society of International Law (2012) at 25.
[94] Supra n 19 at para 5.
[95] *Lungowe*, supra n 24 at paras 13-14.
[96] *Nyasulu and Others v Konkola Cooper Mines Plc and Others* (2007/HP/1286) [2011] ZMHC 86 at para J21.
[97] Maier, 'Extraterritorial Jurisdiction at a Crossroads: An Intersection between Public and Private International Law' (1982) 76 *American Journal of International Law* 280 at 281.
[98] [1897] AC 22.
[99] Ruggie, 'Business and Human Rights: The Evolving International Agenda' (2007) 101 *American Journal of International Law* 819 at 823.
[100] Pargendler, 'The New Corporate Law of Corporate Groups' (2024) 14 *Harvard Business Law Review* 339; Witting, 'The Corporate Group: System, Design and Responsibility' (2021) 80 *Cambridge Law Journal* 581.

Maritime Ltd (The 'Coral Rose'):[101] 'The creation or purchase of a subsidiary company with minimal liability, which will operate with the parent's funds and on the parent's directions but not expose the parent to liability, may not seem to some the most honest way of trading'. Recent cases exemplify this organisational complexity and the challenges it creates for transnational access to justice, highlighting how MNC structures can be leveraged in litigation to the group's advantage.[102]

Secondly, as discussed above, mass tort litigation often involves numerous claimants from deprived regions, who face significant obstacles in coordinating collective action due to their dispersed rights and interests. Establishing causation is particularly challenging in transnational environmental claims involving multiple pollution events and long-lasting environmental damage. As demonstrated in *Okpabi*, there was an 'obvious disparity' between the limited quantities of oil recorded in spillages and the extensive harmful effects alleged.[103] These difficulties are compounded by inconsistent corporate duties and regulatory standards across jurisdictions,[104] highlighting the need for clearer and more robust rules governing transnational corporate liability.

The multi-dimensional conflicts of interest in mass tort litigation and legal reflections are illustrated in Diagram 1.

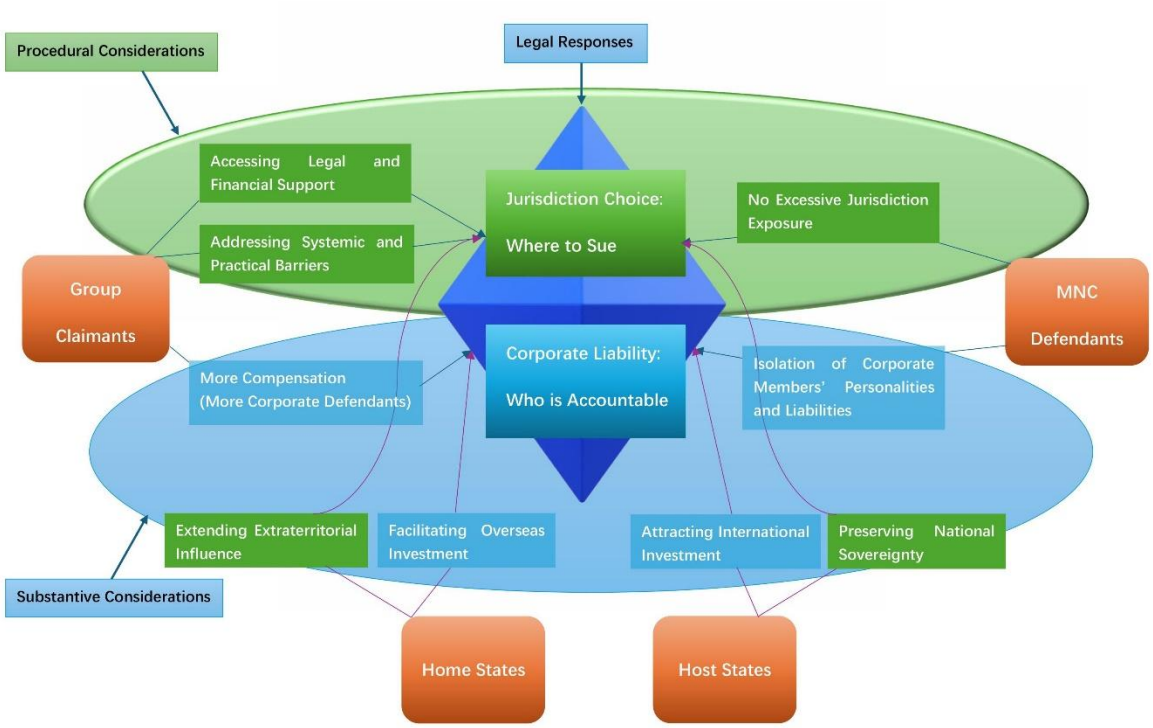

Diagram 1: Multidimensional Conflicts of Interests in Mass Tort Litigation and Legal Responses

[101] [1991] 1 Lloyd's Rep 563 at 571.
[102] KCM, the foreign subsidiary defendant in *Vedanta*, has a history of being obstinate in similar cases and prolonging proceedings 'if at all possible'. If the defendant is solely this subsidiary company, the risk that claimants may not receive financial compensation even if successful would significantly increase. *Lungowe*, supra n 24 at para 196.
[103] *Alame & Ors v Shell PLC & Anor* [2024] EWCA Civ 1500 at paras 8, 10 & 14.
[104] Olney, supra n 85; UN HRC, supra n 82 at para 4.

3. LEGAL APPROACHES TO TRANSNATIONAL ACCESS TO JUSTICE

A. Developments in International Initiatives

Access to justice has long been recognised in major international conventions and treaties as a core pillar of the human rights framework, encompassing both procedural and substantive guarantees for fair dispute resolution and effective remedies.[105] Yet its specific articulation within international BHR instruments only gained momentum following the UN Global Compact's endorsement of the concept of 'a corporation's sphere of influence'.[106] This concept emphasises responsible business conduct and corporate accountability based on business relationships rather than territorial connections.[107] Several international normative frameworks and standards have since emerged to promote responsible business conduct across transnational value chains. Notable examples include the UN Guiding Principles on Business and Human Rights,[108] the Organisation for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Business Conduct,[109] and the draft Legally Binding Instrument to regulate the activities of transnational corporations and other business enterprises.[110]

While these international initiatives have challenged the conventional notion of businesses' arm's-length relationships with human rights, regulating cross-border corporate activities continue to pose significant challenges to existing rules of the game, as discussed below.

i. Direct Applicability of International Initiatives

A doctrinal challenge concerns the direct applicability of international laws to MNCs. While major international human rights conventions recognise individuals and states as possible perpetrators of violations, they do not provide victims with a direct cause of action against corporations. Corporate accountability is primarily framed as a matter of state obligation.[111] Consequently, victims of corporate abuse cannot directly invoke international human rights instruments to seek remedy against MNCs,[112] leaving their prospects largely dependent on domestic legal systems, which vary significantly across

[105] Article 14 ICCPR, supra n 16, guaranteeing individuals equal rights before the courts and tribunals; Article 8 UDHR, supra n 16, emphasising that everyone has the right to an effective remedy by the competent national tribunals.
[106] Supra n 20.
[107] Turner, 'Transnational Supply Chain Regulation: Extraterritorial Regulation as Corporate Law's New Frontier' (2016) 17 *Melbourne Journal of International Law* 188, at 203.
[108] UN Human Rights Office of the High Commissioner, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect, and Remedy' Framework (UNGPs), HR/PUB/11/04 (2011).
[109] OECD, OECD Due Diligence Guidance for Responsible Business Conduct (2018).
[110] UN HRC, The Updated Draft Legally Binding Instrument with the Text Proposals Submitted by States, A/HRC55/59/Add.1 (2023).
[111] Kohl, 'Corporate Human Rights Accountability: The Objections of Western Governments to the Alien Tort Statute' (2014) 63 *International & Comparative Law Quarterly* 665 at 670.
[112] UN High Commissioner for Human Rights, *Report of the United Nations High Commissioner on Human Rights on the Responsibilities of Transnational Corporations and Related Business Enterprises with regard to Human Rights* E/CN.4/2005/91 (2005) at 5-8; Weissbrodt and Kruger, 'Norms on the Responsibilities of Transnational Corporations' (2003) 97 *American Journal of International Law* 901 at 914-5.

jurisdictions.[113]

Some may draw on the UN Basic Principles and Guidelines and argue that the most serious human rights violations fall within customary universal jurisdiction, obliging any state to extradite or prosecute offenders regardless of their connection to the case.[114] Yet this position is contested[115] and of limited practical effect. For instance, the Rome Statute expressly restricts the International Criminal Court's jurisdiction to natural persons, excluding corporate entities.[116] For these reasons, MNCs are often viewed as operating in a 'legal vacuum' at the international level, particularly in relation to cross-border human rights abuses.[117]

ii. Corporate Accountability under International Initiatives

Contrasting frameworks on corporate accountability also shape tangible outcomes, reflecting a deep divide between human rights advocates and business interests at international law level.[118] Hard law instruments like the 2003 UN Norms sought to impose substantive duties on corporations.[119] In contrast, the prevailing soft law approach views a company's responsibility to protect human rights as a social norm that transcends legal compliance, represented by the UN 'Protect, Respect, and Remedy' Framework.[120] In practice, the hard law approach faced fierce resistance from the business community, leading the UN Commission on Human Rights to eventually declare the Norms as a 'draft proposal (with) no legal standing'. [121] After the failure of the 2003 Norms, many international BHR initiatives remain non-binding, with enforcement reliant on States as intermediaries. While these frameworks contribute to shaping overarching normative orders on transnational corporate responsibility, and have influenced regional and national laws,[122] they fall short of achieving the corrective function of legal accountability,[123] and thus face criticism for being 'ineffective and toothless', failing to guarantee 'access to justice for affected peoples, individuals, and communities'.[124]

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[113] Griffith, Smit and McCorquodale, 'Responsible Business Conduct and State Laws: Addressing Human Rights Conflicts' (2020) 20 *Human Rights Law Review* 641.

[114] Articles 4 & 5 supra n 17.

[115] The force of universal jurisdiction arguments is doubtful, not least because they sit uneasily with the foundational principles of sovereign equality enshrined in Article 2(1) of the UN Charter (1945), and non-intervention in matters within a state's domestic jurisdiction, as reflected in Article 2(7) of the Charter.

[116] Article 25(1) Rome Statute of the International Criminal Court 1998, 2187 UNTS 3.

[117] Kinley and Tadaki, 'From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law' (2003-04) 44 *Virginia Journal of International Law* 931 at 934; Wen, 'The Cogs and Wheels of Reflexive Law—Business Disclosure under the Modern Slavery Act' (2016) 43 *Journal of Law and Society* 327 at 336-7.

[118] Ruggie, *Just Business: Multinational Corporations and Human Rights* (2013) at xvi–xvii, 68 &76.

[119] UN Subcommission on the Promotion and Protection of Human Rights, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, UN Doc E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003.

[120] UNGPs, supra n 108 at 13.

[121] Ruggie, 'Business and Human Rights: The Evolving International Agenda' (2007)101 *American Journal of International Law* 819 at 821.

[122] Mares, 'Regulating Transnational Corporations at the United Nations—The Negotiations of a Treaty on Business and Human Rights' (2022) 26(1) *The International Journal of Human Rights* 1522.

[123] O'Cinneide, 'Legal Accountability and Social Justice' (2012), available at: ssrn.com/abstract=2017027 [last accessed 09 February 2026].

[124] Global Campaign, *Binding Treaty: Revised Third Draft Is Ineffectual in Regulating Human Rights Violations by Companies*, statement of the Global Campaign on the Third Revised Draft of the Binding Treaty on Transnational Corporations and Human Rights, 9 September 2021.

B. Regional Developments: The Corporate Sustainability Due Diligence Directive (CSDDD)

On 15 March 2024, a milestone was reached in advancing transnational corporate accountability and cross-border access to justice, as a majority of European Union (EU) member states voted in favour of the CSDDD.[125] This binding legal instrument imposes a due diligence duty on large companies to identify and address adverse human rights and environmental impacts across their operations, subsidiaries and value chains, with significant implications for corporate group liability.[126]

As a mandatory act of the 'most developed model of regional integration',[127] the CSDDD seeks to ensure that companies active in the EU 'ensure that those affected by a failure to respect this duty have access to justice and legal remedies'.[128] The Directive's concept of human rights due diligence aligns with the UN Sustainable Development Goals, the OECD Due Diligence Guidance for Responsible Business Conduct, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy,[129] aiming to consolidate an overarching normative framework for transnational corporate accountability.

Although the CSDDD marks a significant advance in transnational access to justice, its regulatory ambition has been scaled back through the Omnibus reforms. In December 2025, the European Parliament approved a provisional agreement on amendments designed to streamline sustainability reporting and due diligence legislation,[130] including postponing the CSDDD's transposition,[131] narrowing the scope of due diligence,[132] and removing all provisions on companies' climate transition plans.[133] While these reforms introduced by the Omnibus Packages aim to reduce business burdens,[134] they are widely expected to limit the Directive's reach and moderate its anticipated impact on transnational corporate accountability.

Several aspects of the CSDDD in its revised form warrant closer examination, particularly regarding how mass tort litigation could complement its implementation. First, the CSDDD sets only a minimum framework for due diligence obligations. Member States have until 26 July 2027 to transpose the Directive into domestic law,[135] and application of the full set of due diligence obligations under the

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[125] 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, [2024] OJ L 2024/1760.
[126] It requires parent companies to conduct due diligence throughout the group. Articles 2(1)(b) & 3 ibid.
[127] Cameron, *The European Union as a Model for Regional Integration* (Report from International Institutions and Global Governance Programme, 2010).
[128] Recital 16 supra n 125.
[129] Recitals 6-7 ibid.
[130] European Parliament, Simplified Sustainability Reporting and Due Diligence Rules for Businesses (Press Release, 16 December 2025).
[131] European Commission, Proposal for a Directive on the European Parliament and of the Council amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements, COM (2025) 80 final, 26 February 2025 at 6.
[132] European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements, COM (2025) 81 final, 26 February 2025 at 6-7.
[133] European Coalition for Corporate Justice, EU's 'Deregulation' Agenda Claims Its First Victim: Corporate Sustainability Due Diligence Directive Gutted (Press Release, 16 December 2025).
[134] Supra n 131 at 6; supra n 132 at 6-7.
[135] Supra n 131 at 6-7.

Omnibus agreement, pending formal publication and adoption, is scheduled to begin on 26 July 2029.[136] This flexibility allows national adaptation of Union-level standards but also leaves room for divergence and potential regulatory arbitrage, as companies might structure operations to avoid jurisdictions that impose more stringent requirements than the Directive's baseline.[137]

Secondly, the thresholds for in-scope companies have been substantially reduced through political compromise. Under the original proposal, the Directive would have applied to all large companies, all publicly listed companies and high-risk small and medium-size companies.[138] Following initial political negotiations, coverage was narrowed to companies with over 1000 employees and a net global turnover exceeding €450 million.[139] The Omnibus thresholds further restrict the Directive to large companies with over 5,000 employees and a net annual turnover exceeding €1.5 billion,[140] leaving only around 1,600 large EU companies in scope,[141] down from the 16,000 originally envisaged.[142] Critics have described this outcome as the product of '*high-wire political drama*'.[143] By contrast, mass tort litigation imposes no such thresholds, enabling claims against companies beyond the Directive's reach.

Thirdly, while the CSDDD seeks to harmonise corporate due diligence across the Union, it does not prescribe detailed implementation mechanisms, such as integrating due diligence into directors' duties.[144] There is no EU-level enforcement body to guarantee victims' consistent access to remedies.[145] Under the Omnibus proposals, liability for non-compliance would be established at the national rather than the EU level,[146] potentially resulting in further divergence and legal uncertainty across Member States. In contrast, mass tort litigation offers a direct, court-based route to compensation, which could serve as reference in closing the CSDDD's enforcement gaps.

C. Divergence across Home States

In addressing conflicts of interest among stakeholders seeking transnational access to justice, regulatory approaches of home states also reveal sharp divergence. At one end of the spectrum are courts reluctant to hear extraterritorial claims related to corporate activities outside their territory, citing concerns that

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[136] Supra n 130.
[137] Sørensen, 'Applying CSDDD in Corporate Groups' (2025) 22 *European Company and Financial Law Review* 129.
[138] Article 2 European Parliament, Recommendations to the Commission on Corporate Due Diligence and Corporate Accountability 2020/2129/(INL), 10 March 2021.
[139] Article 2(1)(a) supra n 125.
[140] Supra n 130.
[141] Quick and Hannegan, 'EU Omnibus: Challenges and Opportunities of the Parliament's Proposed Changes to the CSDDD' BSR, October 2025, available at: https://www.bsr.org/en/blog/eu-omnibus-challenges-and-opportunities-of-the-parliaments-proposed-changes-to-the-csddd [last accessed 09 February 2026]
[142] 'CSDDD Milestone Reached: EU Agrees on Less Ambitious Version of Directive' *ECOVADIS*, March 2024.
[143] Mariani, 'What is the Corporate Sustainability Due Diligence Directive?' *Z2data*, 16 July 2024, available at: www.z2data.com/insights/what-is-the-corporate-sustainability-due-diligence-directive [last accessed 09 February 2026].
[144] The European Commission's February 2022 proposal initially included an article setting standards for corporate directors' conduct, but it was later removed due to the strong concerns expressed by Member States '…(for) inappropriate interference with national provisions'. Council of the European Union, Permanent Representation Committee, Council Doc 15024/1/22 REV 1, 30 November 2022 at paras 30-32; Groot, 'The CSDDD, Oversight Liability and Risk Management Systems' (2024) 24 *European Company Law* 4.
[145] Articles 24(1), 28(1) & 29 supra n 125.
[146] European Parliament, Deal on Updated Sustainability Reporting and Due Diligence Rules (Press Release, 09 December 2025).

unwarranted judicial interference could unduly impose one nation's sovereign will on another.[147] At the other end is a more progressive approach attempting to extend jurisdictional reach to a corporation's sphere of influence, as demonstrated in the UK *Vedanta* and *Okpabi* judgments.

The United States exemplifies the former, more cautious approach in transnational liability claims against foreign corporations. Despite being home to a large number of MNCs, the idea of the US being 'a lucrative jurisdiction' for adjudicating transnational liability claims against corporations 'rarely materialise in reality'.[148] The general presumption is that '[w]hen a statute gives no clear indication of an extraterritorial application, it has none'.[149] This presumption is not rebutted by '…generic terms like "any" or "every"',[150] and cannot be refuted by the text, history, or purposes of a specific Act.[151] While the Alien Tort Statute (ATS),[152] in the view of some scholars, 'fill(s) an extremely important and broad legislative gap'[153] by granting US courts jurisdiction to hear civil cases brought by non-US nationals for torts committed in violation of customary international law or treaties ratified by the US, its jurisdictional reach has been significantly narrowed through a series of Supreme Court judgments.[154] In *Kiobel*, the US Supreme Court concluded that '(c)orporations are often present in many countries, and it would reach too far to say that mere corporate presence suffices (for extraterritorial application)'.[155] In 2018, the Supreme Court further restricted the application of the ATS in *Jesner v Arab Bank*, declaring that 'foreign corporations may not be defendants in suits brought under the ATS'.[156] In 2021, in *Nestié USA, Inc v Doe,*[157] the Supreme Court rejected the plaintiff's allegations that the corporate defendants, despite being among the world's largest corporations, made 'major operational decisions' in the US,[158] further narrowing access to justice against MNC defendants.[159]

The cautious judicial approach as regards the liability of MNCs for activities abroad is also evident

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[147] As Justice Story put it, "*No nation has ever yet pretended to be the custos morum of the whole world…*" *United States v The La Jeune Eugenie*, 26 F Cas 832 (1822) at 847.

[148] Varvastian and Kalunga, 'Transnational Corporate Liability for Environmental Damage and Climate Change: Reassessing Access to Justice after Vedanta v Lungowe' (2020) 9 *Transnational Environmental Law* 323 at 335-6.

[149] *Morrison v National Australia Bank Ltd* 561 US 247 (2010) at 248.

[150] *Small v United States* 544 US 385 (2005) at 388; *Kiobel et al v Royal Dutch Petroleum Co et al.* 133 S Ct 1659 (2013).

[151] *Kiobel*, ibid. at 1669.

[152] 28 US Code § 1350.

[153] Varvastian and Kalunga, supra n 148 at 335-6.

[154] *Kiobel*, supra n 150; *Jesner v Arab Bank Plc* 138 S Ct 1386 (2018); *Nestié USA, Inc v Doe* 141 S Ct 1931 (2021).

[155] Ibid.

[156] *Jesner*, supra n 154 at 1403.

[157] 141 S Ct 1931 (2021).

[158] *Nestié*, supra n 154 at 1936-7; Ewell, Hathaway and Nohle, 'Has the Alien Tort Statute Made a Difference? A Historical, Empirical, and Normative Assessment' (2022)107 *Cornell Law Review* 1205 at 1208-9.

[159] Pollman, 'The Supreme Court and the Pro-Business Paradox' (2021)135(1) *Harvard Law Review* 220 at 241. Recently, in *Doe v Cisco Systems* 113 F4th 1230 (9th Cir 2024) (Bumatay J dissenting), the US Court of Appeals for the Ninth Circuit denied rehear *en banc*, leaving intact a divided panel ruling that allowed non-US citizens' claims against domestic companies under the ATS to proceed beyond the pleading stage. It potentially conflicts with US Supreme Court precedents limiting new causes of action under the ATS, including *Sosa v Alvarez-Machain* 542 US 692 (2004); *Kiobel*, supra n 150; *Jesner*, supra n 154; *Nestié*, supra n 154. The judgment has also drawn considerable attention from the business community for its possible implications on business operations, overseas investment and foreign policy. *Brief of the Chamber of Commerce of the United States of America, Business Roundtable, the National Association of Manufacturers, and Technet as Amici Curiae in Support of Petitioners*, No.24-856, 13 March 2025. As of this writing, the impact of this Ninth Circuit's ruling remains uncertain, as the US Supreme Court has granted certiorari on the petition filed by Cisco Systems. Details are available at: www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/24-856.html [last accessed 09 February 2026].

in the judicial application of the *forum non conveniens* doctrine, which allows US courts to dismiss a case on the ground that it may be more appropriately tried in a foreign forum.[160] In a line of cases involving foreign plaintiffs pursuing claims for personal injury, death, and products liability against US corporations,[161] US courts dismissed the claims on *forum non conveniens* grounds despite 'compelling evidence that the courts in (alternative forums) were inadequately prepared to process the claims'.[162]

In terms of transnational corporate liability, the general principle reiterated by federal courts is that 'a parent corporation… is not liable for the acts of its subsidiaries'.[163] Upholding the sanctity of the separate legal personality principle, courts in the US have been generally reluctant to pierce the corporate veil within corporate groups.[164] Admittedly, there are exceptions. For instance, if the parent company exercises an 'eccentric'[165] or unusually high level of control over the subsidiary or is directly involved in the wrongdoing, liability may be more likely under certain legal theories, such as agency or alter ego.[166] However, proving the existence of an agency or alter ego relationship is pragmatically challenging. To determine whether an alter ego relationship exists for the purpose of personal jurisdiction under US federal common law, the controlling corporation must have either used the entity to perpetrate a fraud or so dominated and disregarded its separate form that the entity primarily conducted the personal business of the controlling party rather than its own corporate affairs—a demanding threshold to satisfy.[167]

Admittedly, there are multi-faceted rationales behind this cautious approach to jurisdiction and transnational corporate liability. From a legal standpoint, laws and judgments that extend extraterritorial reach commonly face three criticisms: they are too sweeping in scope, inconsistent across fields of law, and ill-defined in extent.[168] A cautious approach could help mitigate potential conflicts between national legal systems, thereby avoiding international discord.[169] From a political perspective, unwarranted judicial interference may be seen as the imposition of one nation's sovereign will on another, risking diplomatic tension.[170] However, as discussed above, while this conventional wisdom on territorially-based jurisdiction and corporate legal isolation remains valid, globalised practice and theoretical

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[160] *Gulf Oil Corp v Gilbert* 330 US 501 (1947) at 506-9; Miller, 'Forum Non Conveniens and State Control of Foreign Plaintiff Access to US Courts in International Tort Actions' (1991) 58 *The University of Chicago Law Review* 1369 at 1372.

[161] E.g., *Piper Aircraft Co v Reyno* 454 US 235 (1981); *In re Union Carbide Corp Gas Plant Disaster at Bhopal* 809 F2d 195 (2d Cir 1987); *Sibaja v Dow Chemical Co* 757 F2d 1215 (11th Cir 1985); *Aguinda v Texaco, Inc* 303 F3d 470 (2d Cir 2002); *In re Factor VIII or IX Concentrate Blood Prods* 531 FSupp2d 957 (2008); *In re Air Crash Disaster over Makassar Strait, Sulawesi,* No 09-cv-3805, MDL 2037, 2011 WL 91037 (ND III 2011).

[162] Varvastian and Kalunga, supra n 148 at 337.

[163] *United States v Bestfoods* 524 US 51 (1998) at 61.

[164] *Balintulo v Ford Motor Co* 796 F3d 160 (2d Cir 2015) at 168.

[165] *United States v Bestfoods* supra n 163 at 72.

[166] *Daimler AG v Bauman* 571 US 117 (2014) at 135; *Charles Schwab Corp v Bank of America Corp* 883 F3d 68 (2d Cir 2018) at 84.

[167] *Dow Chemical Pacific Ltd v Rascator Maritime SA* 782 F2d 329 (2d Cir 1986) at 342.

[168] 'Predictability and Comity: Toward Common Principles of Extraterritorial Jurisdiction' (1985) 98 *Harvard Law Review* 1310 at 1329.

[169] *EEOC v Arabian American Oil Co* 499 US 244 (1991) at 248; *Benz v Compania Naviera Hidalgo, SA* 353 US 138 (1957) at 147.

[170] Not least for this reason, while UK courts have adopted a more favourable stance towards transnational corporate accountability claims, claimants often choose to frame the liability issue as a violation of the English parent's own duty of care, i.e., on a territorial basis. Reinisch, 'Human Rights Extraterritoriality: Controlling Companies Abroad', in Benvenisti and Nolte (eds), *Community Interests Across International Law* (2018) 396 at 403.

developments demand a reassessment of stakeholder dynamics within a wider scope of corporate accountability.[171]

Recent UK Supreme Court rulings in *Vedanta* and *Okpabi* have advanced this agenda by allowing victims from host communities to sue both parent and subsidiaries in home state courts. These judgments are significant for their comparative law value, clarifying elements of the 'necessary and proper party' gateway and affirming the potential extraterritorial accountability of parent companies within multinational groups. As enforcement challenges persist at international and regional levels, mass tort litigation also provides victims with additional avenues for redress, offering practical pathways for operationalising transnational BHR frameworks. From a sociological perspective, these cases highlight the delicate balance courts must strike between various stakeholders' interests: vulnerable plaintiffs seeking justice abroad despite all the barriers, parent companies drawn into lengthy lawsuits for actions of legally-isolated subsidiaries, and courts striving to utilise legal resources most efficiently, pursue goals of justice and respect national sovereignty. The next section turns to *Vedanta* and *Okpabi*, leading examples of mass tort litigation against MNCs.

4. DOCTRINAL INSIGHTS FROM RECENT UK JUDGMENTS ON TRANSNATIONAL ACCESS TO JUSTICE

Vedanta and *Okpabi* judgments share several notable features with direct relevance to transnational access to justice. First, the causes of action are almost identical—foreign villagers/farmers suing both the domestic parent and foreign subsidiary companies for environmental harm occurred in the foreign host nation. Second, their importance has been repeatedly acknowledged—the UK Supreme Court emphasised that they might 'equally have been treated as the lead case(s)'.[172] Third, both cases demonstrate significant socio-economic disparity between the parties, as previously discussed. Fourth, in both cases, foreign claimants sought justice before the English courts, which are the domestic courts of the anchor defendant—the parent company of an MNC. The litigation processes were lengthy, eventually reaching the final court of appeal—the Supreme Court. Fifth, the Supreme Court held in both cases that the English courts have jurisdiction to hear the legal claims against both the English parent company and the foreign subsidiary, thereby supporting the foreign claimants' jurisdictional claims. Lastly, in making the jurisdictional decision, the Supreme Court affirmed in both cases that a parent company might be held directly accountable if it breaches a duty of care concerning environmental, sustainability, or human rights harms caused by its foreign subsidiary.[173] Specifically, they illuminate both substantive and procedural legal developments that help balance interests between vulnerable claimants and powerful corporate defendants, thereby contributing to the clarification and enforcement of business-related human rights norms, as discussed below.

A. Jurisdiction Determination: Realising the Right to Access Justice

In *Vedanta* and *Okpabi*, the jurisdiction of English courts over the globalised activities of MNCs has

[171] Pollman, supra n 159 at 220-1; Meyersfeld, 'Corporations and Positive Duties to Fulfil Socio-Economic Rights: Developing International Human Rights Law' (2025) 29 *The International Journal of Human Rights* 240.
[172] *Okpabi*, supra n 19 at para 19.
[173] *Vedanta*, supra n 18 at paras 42-65; *Okpabi*, ibid. at para 25.

been asserted from two perspectives: first, as of right on parent companies domiciled in the UK;[174] secondly, by joining overseas subsidiaries as co-defendants under the 'necessary or proper party' gateway outlined in paragraph 3.1(3) of Practice Direction 6B.[175] Foreign claimants had to establish a real triable issue against the English parent based on a potential duty of care in the context of parent-subsidiary relationships, before the foreign subsidiary could be treated as a proper party to be joined.[176] Only then did the court assess the proper forum[177] and the substantive justice inquiry: whether there was 'cogent evidence' of 'a real risk that substantial justice will be unobtainable (in the foreign jurisdiction)', even if that jurisdiction would otherwise have been the proper place for the claim.[178] In this way, access to justice became integral to the jurisdictional analysis: the English courts would retain jurisdiction where barriers in the foreign forum create a real risk of justice being denied in practice.

This inquiry has direct human rights significance. Under the third pillar of the UN Guiding Principles on Business and Human Rights, it is necessary to reduce barriers that could lead to a denial of access to remedy, particularly for affected stakeholders with 'much less access' in a dispute with enterprises.[179] The UN HRC[180] and the UN draft Legally Binding Instrument similarly require States to ensure victims' access to effective remedy and to overcome obstacles faced by vulnerable groups.[181] If claimants cannot obtain justice in the host state, home state courts may be critical venues for their enforcement of rights, otherwise the corporate responsibility to respect human rights risks becoming hollow.

Yet courts must tread carefully. After all, declaring that justice would not be done in a foreign country based on perceived inadequacies of the foreign system, such as the risk of endemic corruption or a lack of independence, could raise accusations of disrespecting international comity and colonial condescension.[182] Conventionally, courts judgments have held that courts are precluded from reaching such decisions, viewing themselves as constrained by the act of state doctrine or the related principle of judicial restraint.[183] However, *Vedanta* and *Okpabi*, in line with recent case law, suggest a gradual shift in English jurisprudence, considering the availability of 'positive and cogent evidence'[184] that justice could not be done in the foreign jurisdiction, rather than debating whether English courts have the authority to assess this. The appropriate forum for the trial is where 'the case may be tried more suitably for the interests of all the parties, and the ends of justice'.[185] This shift from a simple 'yes or no' question to one of 'how to prove' is understandable: the notion that one nation's court must refrain from

[174] The claimants in both cases relied on Article 4 of the Recast Brussels Regulation to bring claims against the anchor defendants—English parent companies. *Vedanta*, ibid. at para 20; *Okpabi*, ibid. at para 14.
[175] *Vedanta*, ibid. at para 20; *Okpabi*, ibid. at para 10.
[176] *Vedanta,* ibid. at paras 20-22 & 44-54; *Okpabi*, ibid. at paras 10 & 24-26. Fentiman, *International Commercial Litigation* (2010) at para 8.56.
[177] *Vedanta,* ibid. at paras 66-87.
[178] *Vedanta,* ibid. at paras 88-101.
[179] UNGPs, supra n 108 at 29 & 34; Hansen and Pillay, 'Filling the Accountability Gap: Misleading Conduct Law in Business and Human Rights' (2024) 24 *Human Rights Law Review* ngae022, exploring the mechanisms available under misleading conduct law to address the access gap.
[180] UN HRC, supra n 82 at para 3.
[181] Article 7 supra n 110.
[182] *Vedanta* described this head of jurisdiction as "*the most difficult issue*". *Vedanta*, supra n 18 at para 66.
[183] E.g. *Buttes Gas & Oil Co v Hammer* [1982] AC 888; *Jeyaretnam v Mahmood* [1991] 1 WLUK 625; Times, 21 May 1992.
[184] *Pacific International Sports Club v Surkis* [2009] EWHC 1839 (Ch) at paras 31-38, affirmed by the Court of Appeal.
[185] *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 at 476.

evaluating the quality of justice in another would lead to a paradox—no matter how deficient the foreign justice system, it would be impermissible to make adverse findings regarding it.[186]

Having said this, a decision that justice would not be served in a foreign country should not be taken lightly and must be based on cogent evidence and clear standards in order to uphold international comity.[187] Judicial divergence has emerged over the standard of 'cogent evidence': some courts demand proof that justice will in fact be denied,[188] while others accept evidence of an adequate risk that justice may not be done.[189] *Vedanta* helped clarify the picture by upholding the latter approach, potentially easing the burden of proof for foreign claimants.[190] Further progress has also been made in fact-sensitive inquiries into the practical accessibility of justice for claimants. In *Vedanta*, the unavailability of adequate legal representation,[191] the novelty of such litigation in the alternative forum (i.e., procedural fairness/novelty),[192] the claimants' lack of funding support,[193] and the foreign subsidiary's unhealthy financial status[194] all weighed in favour of English jurisdiction. By asserting jurisdiction, English courts offered a procedural gateway for foreign claimants to exercise their right of access to a fair trial, helping to level the playing field for socio-economically disadvantaged parties in litigation. In this way, the jurisdictional gateway analysis has significance beyond conflict of laws, functioning as a potential tool for transnational human rights protection.

B. Overcoming Funding Barriers for Vulnerable Parties

As put by Lord Neuberger, reducing the financial burden borne by parties in litigation is 'a fundamental pillar of civilised societies'.[195] Ensuring cost-effective access to courts is central to the human right of access to justice, allowing all individuals, irrespective of economic status, to exercise their right to seek redress.[196] In cases involving MNCs, profound financial disparities between the parties make this imperative even more crucial. For claimants from economically deprived regions, limited legal aid and the absence of contingency fee agreements (CFAs) in host states can effectively bar them from vindicating their rights, accentuating the link between pursuing transnational access to justice and human rights protection. Consequently, claimants seeking to sue an MNC in the parent company's home state often invoke the limited funding available to them in the host state.[197] This however leads to a further question regarding jurisdiction: whether stark socio-economic disparities between the parties, in particular the lack of funding support in foreign jurisdictions, constitute 'positive and cogent

[186] *AK Investment CJSC v Kyrgyz Mobil Tel Ltd and Others (Isle of Man) (Rev 2)* [2011] UKPC 7; [2011] 4 All ER 1027 at para 101.
[187] *Al-Koronky v Time-Life Entertainment Group Ltd* [2006] EWCA Civ 1123 at para 43.
[188] *Connelly*, supra n 79 at para 30.
[189] *Deripaska v Cherney* [2009] EWCA Civ 849 at paras 28-29; *Pacific International Sports Clubs Ltd v Surkis* [2010] EWCA Civ 753 at paras 34-35; *AK Investment*, supra n 186 at para 95.
[190] Supra n 18 at para 88.
[191] Ibid. at paras 89 & 95.
[192] Ibid. at para 91. See below at section 6A for further discussions.
[193] Ibid. at para 89.
[194] *Lungowe*, supra n 24 at para 24.
[195] Lord Neuberger, *Developing Equity – A View from the Court of Appeal* (Chancery Bar Association Conference, 20 January 2012) at 1, available at: www.judiciary.uk/wp-content/uploads/JCO/Documents/Speeches/mr-speech-chancery-bar-assoc-lecture-jan12.pdf [last accessed 09 February 2026].
[196] Cost-effectiveness of litigation thus can make sure that 'access to justice does not wither away'. Lord Neuberger, ibid. at 2.
[197] *Lubbe*, supra n 77 at para 24.

evidence'[198] that effective access to justice would be unattainable abroad?

Conventional English law has taken a cautious approach, holding that it is not enough for claimants merely to show that legal aid or other financial assistance is available in England 'but not in the most connected foreign forum'.[199] After all, litigation funding is often not available in smaller jurisdictions, and may not be considered essential 'even in sophisticated legal systems'.[200] However, given the stark disparities between the parties in MNC cases, one should no longer assume that the lack of financial resources is irrelevant, as it directly affects the vulnerable party's ability to access justice. Recent years have also seen growing judiciary attempts to address economic disparities and resulting capacity gaps between parties. In *Connelly*, Lord Goff, with whom the majority of the House of Lords agreed, concluded that 'the availability of financial assistance in this country, coupled with its non-availability in the appropriate forum, may exceptionally be a relevant factor' justifying the refusal of a stay.[201] In *Lubbe*, attorneys' statements asserting that the plaintiffs would have no means of obtaining the professional representation and the expert evidence in South Africa, in the eyes of the House of Lords, constituted one aspect of 'a denial of justice'.[202]

The *Vedanta* judgment further clarified this issue: while the availability of funding is not the sole factor of consideration, it can carry significant weight in ensuring parties' access to justice. In *Vedanta*, the alternative forum, Zambia, is 'one of the world's poorest countries' with a shortage of lawyers, and the claimants are 'considerably below the average income earners' in that country.[203] Additionally, CFAs and legal aid are not available in Zambia, further restricting the plaintiffs' ability to seek legal representation.[204] In the eyes of the UK Supreme Court, whilst the lack of financial assistance was not the single determining factor, when combined with other considerations—such as whether limited funding sources 'would… attract a legal team… with the requisite resources and experience', the notion that the claims could be properly litigated in Zambia was hardly supportable.[205] In this sense, *Vedanta* and *Okpabi* illuminate the practical significance of greater jurisdictional availability in supporting disadvantaged litigants from deprived or marginalised areas. This isn't about vilifying wealth or penalising the affluent; rather, it is about fostering equity within the legal system and ensuring that all parties, regardless of their financial status, have an equal footing in legal proceedings, as guaranteed under Article 14(1) of the ICCPR.[206]

C. Substantive Law Developments: Reinforcing the Right to Remedy

Beyond procedural law developments, recent judgments contribute to substantive law progression by recognising potential corporate extraterritorial accountability in the MNC context. This reinforces vulnerable claimants' effective access to remedies under Article 2(3) of the ICCPR[207] and aligns with

[198] *Pacific*, supra n 184 at paras 31-38.
[199] *Lubbe*, supra n 77 at para 18; *Connelly*, supra n 79 at para 30.
[200] *Lubbe*, ibid. at para 18.
[201] Supra n 79 at para 30.
[202] Supra n 77 at para 28.
[203] *Lungowe*, supra n 24 at paras 176 & 178.
[204] *Lungowe*, ibid. at para 184.
[205] *Vedanta*, supra n 18 at para 93.
[206] Supra n 16.
[207] Ibid.

CERD[208] and CESCR[209] guidance on enhancing the accountability of UK-registered multinational corporations for human rights harms committed abroad. In *Vedanta* and *Okpabi*, the substantive law issue of whether the parent owed a duty of care in common law to the foreign claimants became relevant, when assessing if there is a real issue to try between the claimants and the parent company, referring to the 'necessary and proper party' gateway contained in paragraph 3.1(3) of Practice Direction 6B.[210]

Acknowledging the possibility of a duty of care in the group company context is not new in English law; the scope and reach of such a duty have been continuously developing over the past few decades. The scope of claimants has expanded from corporate insiders, typically the employees of subsidiaries,[211] to outsiders such as third parties affected by the operations of subsidiaries.[212] The setting has broadened from purely domestic claims[213] to claims from abroad.[214] While it becomes clear that corporate group liability in such cases does not arise from veil-piercing[215] or vicarious liability for the subsidiary's misconduct,[216] complications remain as to the circumstances under which a parent company might owe a duty of care to parties affected by its subsidiaries.

In early judgments, both the parties and the courts tended to focus on the degree and manifestation of control the parent company had over the subsidiary.[217] This was also witnessed in *Vedanta* and *Okpabi*, where the initial point of consideration at both the High Court and Court of Appeal was the three-fold test set out in *Caparo Industries Plc v Dickman*: [218] foreseeability, proximity and reasonableness. However, the UK Supreme Court in both cases rejected this approach, clarifying that 'the liability of parent companies in relation to the activities of their subsidiaries... raises no novel issues of law and is to be determined on ordinary, general principles of the law of tort regarding the imposition of a duty of care.'[219] Lord Briggs in *Vedanta*, later cited by Lord Hamblen in *Okpabi*, clarified how a parent company's activities may create liability absent actual control: '…[T]he parent may incur the relevant responsibility to third parties if, in published materials, it holds itself out as exercising that degree of supervision and control of its subsidiaries, even if it does not in fact do so.' [220]

The direct effect of these holdings is that the difficulty for foreign claimants in pleading and presenting evidence against an MNC is significantly reduced. While the role a parent plays in controlling its subsidiaries and the entire group remains an important factor, the claimants no longer

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[208] UN Committee on the Elimination of Racial Discrimination (CERD), Concluding Observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Irelands, 14 September 2011, CERD/C/GBR/CO/18-20 at para 29.

[209] UN Committee on Economic, Social and Cultural Rights (CESCR), Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland, 12 March 2025, E/C12/GRB/CO/7 at paras 10-11.

[210] *Vedanta*, supra n 18 at paras 43-44.

[211] *Ngcobo and others v Thor Chemicals Holdings Ltd* (November 1996, Maurice Kay J, unreported), cited in *Lungowe* supra n 24 at para 108; *Chandler v Cape Plc* [2012] EWCA Civ 525; [2012] WLR 3111.

[212] *Vedanta*, supra n 18; *Okpabi*, supra n 19.

[213] *Chandler*, supra n 211.

[214] *Lubbe*, supra n 77; *Vedanta*, supra n 18; *Okpabi*, supra n 19.

[215] Supra n 15.

[216] Goudkamp, 'Duties of Care and Corporate Groups' (2017) *Law Quarterly Review* 133 at 134.

[217] *Lubbe*, supra n 77 at para 6.

[218] [1990] 2 AC 605.

[219] *Vedanta*, supra n 18 at para 49; *Okpabi*, supra n 19 at para 25.

[220] *Vedanta*, ibid. at para 53; cited in *Okpabi*, ibid. at para 148.

need to solely focus on asserting the degree of control between the parent and its subsidiaries, which is often challenging from an outsider's perspective.[221] Given the dynamically varying types of operational structures of MNCs, this clarification is friendly to potential litigants against MNCs and will likely prompt more overseas third parties to bring legal proceedings before English courts.

By recognising that a parent company can owe a duty of care directly to its subsidiaries' stakeholders,[222] English courts have also been able to acknowledge the true organisational reality of corporate groups while still upholding the separate legal personality of individual corporate members—a foundational principle of modern company law. [223] Although the possibility of such a direct duty has thus far been considered primarily in the context of jurisdictional claims, these decisions provide valuable guidance for balancing the interests of claimants and global businesses. Future judgments on parent company liability will likely adopt such a balanced approach, considering 'the extent to which, and the way in which, the parent availed itself of the opportunity to take over, intervene in, control, supervise or advise the management of the relevant operations (including land use) of the subsidiary',[224] rather than focusing solely on the factor of control.

5. REMAINING HURDLES FOR VULNERABLE PARTIES

Although recent case law developments enhance transnational access to justice by broadening claimants' access to a proper fair trial in mass tort litigation, there remain legal and practical obstacles for vulnerable parties, particularly the availability of mechanisms for collective redress—another area where national rules vary widely. The choice between opt-in and opt-out mechanisms, for instance, has significantly different implications for parties. Both *Okpabi* and *Vedanta* operated under an opt-in mechanism, specifically the Group Litigation Order, which requires claimants to take proactive steps to participate, such as authorising representation or formally joining the proceedings. By contrast, the opt-out system under the United States Federal Rules of Civil Procedure (Rule 23(b)(3)) automatically includes all potential class members unless they choose to opt out. The opt-in system presents several potential challenges, including the difficulties of involving a large number of claimants individually, isolating each person's claim, and submitting separate evidence.[225] In contrast, an opt-out system allows the class to remain 'widely-drawn for the duration of the action',[226] largely eliminating the need for class members to actively prove their individual right to monetary recovery.

Observing the increasing availability of opt-out class actions in other common law jurisdictions, the first opt-out mechanism appeared in the UK Consumer Rights Act 2015 (Sch. 8) for antitrust damages claims. This legislative advancement significantly streamlines class actions, allowing for collective damages without an assessment of the amount of damages recoverable in respect of the claim

[221] *Lubbe*, supra n 77 at para 20.
[222] *AAA v Unilever plc* [2018] EWCA Civ 1532; *Vedanta*, supra n 18; *Okpabi*, supra n 19.
[223] Supra n 15; *Chandler*, supra n 211 at para 69.
[224] *Vedanta*, supra n 18 at para 49.
[225] Mulheron, 'Opting in, Opting Out, and Closing the Class: Some Dilemmas for England's Class Action Lawmakers' (2010) 50 *Canadian Business Law Journal* 376 at 383; Skinner et al. supra n 81 at 56.
[226] Mulheron, ibid. at 384.

of each represented person.[227] However, the limited reach of this opt-out mechanism constrains its impacts: it is primarily utilised in antitrust damages claims, with no analogous application yet for claims involving MNCs' cross-border activities. Even if an opt-out system were introduced in future tort litigation against MNCs, adapting it to existing procedural frameworks would be no easy task, particularly in assessing the total measure of damages where the number of claimants or the scope of harm remains uncertain.

Another difficulty for large groups of plaintiffs lies in representing their dispersed rights and interests. Personal injury claims require individualised proof of diagnosis, prognosis, causation, and special damage, demanding a detailed and lengthy factual inquiry that socio-economically-disadvantaged parties often cannot undertake without legal support. As demonstrated in *Okpabi*, overseas claimants face formidable logistical and evidential difficulties under conventional causation principles, stemming not only from the 'illiterate and innumerate' status of many but also from the 'time-consuming and expensive' process of information gathering.[228] These challenges in identifying the particulars of individual claims and proving causation continue to pose significant barriers for disadvantaged claimants, even after jurisdictional hurdles are cleared. In practice, these obstacles often lead to settlement after jurisdiction is confirmed.[229] For example, *Vedanta* settled in 2021 after the Supreme Court affirmed jurisdiction,[230] and two earlier cases indicating a potential parent company duty of care likewise settled prior to trial on the merits.[231] Such settlements provide timely redress for claimants, mitigate the risk of losing at trial, and contribute to 'a legal and international environment that has important wider value for the victims'.[232] However, because settlements do not establish judicial precedent, calls persist for further legal developments to advance transnational corporate accountability.

6. THE SIPHON EFFECT OF JUDICIAL DEVELOPMENTS

Beyond the progression and ongoing challenges to transnational access to justice discussed in Parts 4 and 5, the *Vedanta* and *Okpabi* judgments bring to light key factors that may either facilitate or impede this progress, depending on their resolution. Notably, a 'siphon effect' in forum competition is likely to emerge, with implications for foreign courts and globalised business entities. This section addresses these issues.

A. Procedural Fairness and Novelty: The Potential Siphon Effect

A key concern surfaced in *Vedanta* and *Okpabi* is the assessment of procedural fairness and the novelty of claims in foreign jurisdictions in mass tort litigation against MNCs. Both cases reveal the relative scarcity of financial and legal resources, along with systemic barriers faced by socio-economically

[227] Bass and Henderson, 'UK: A New Dawn for Antitrust Class Actions' (2015) 6 *Journal of European Competition Law & Practice* 716 at 716.
[228] *Alame & Ors v Royal Dutch Shell Plc & Anor* [2022] EWHC 989 (TCC) at paras 44-45.
[229] Meeran, 'Perspectives on the Development and Significance of Tort Litigation against Multinational Parent Companies', in Meeran & Meeran (eds) supra n 60 at 41-3.
[230] 'Vedanta Mine Settles Zambian Villagers' Pollution Claim', *BBC News*, 19 January 2021.
[231] *Ngcobo*, supra n 211, settled for £1.3 million; *Lubbe*, supra n 77, settled for £21 million.
[232] Meeran, 'Multinational Human Rights Litigation in the UK: A Retrospective' (2021) 6 *Business and Human Rights Journal* 255 at 267.

weaker parties in certain host states, compared with the procedural advantages offered by English law, as discussed above. Where such disparities are significant, English courts may be more inclined to assume jurisdiction on the basis that adequate justice may not be attainable in host nations with limited legal capacity. While these decisions constitute an incremental evolution in English law rather than a wholesale transformation of transnational litigation, they could over time contribute to a 'siphon effect' in forum competition—attracting more mass tort litigation to England and reinforcing its position as a preferred venue for such cases. As English courts develop a growing body of case law, their influence on the global regulation of MNCs may expand, further amplifying this effect. While this may promote the development of norms and legal frameworks in the convoluted area of MNC regulation, it could also exacerbate regulatory gaps between jurisdictions, potentially generating new transnational access-to-justice challenges, where individually states may meet access-to-justice requirements, but collectively produce regulatory tensions that complicate the pursuit of justice on a global scale.[233]

To be fair, English courts generally avoid comparing the merits and shortcomings of their own legal system with those of foreign sovereigns.[234] Courts are also reluctant to treat procedural differences between nations as a decisive factor when deciding whether to stay proceeding.[235] However, in cases involving MNCs, if a fair trial is unlikely in the alternative forum, foreign plaintiffs may have a greater chance of success in their jurisdictional claims before English courts.[236] The unavailability of procedural fairness in the alternative forum might stem from political, racial or religious reasons.[237] Likewise, procedural novelty in the alternative forum could lead to similar decisions. As explicated by the House of Lords in *Lubbe*, "It is one thing to embark on and fund a heavy group action where the procedures governing the conduct of the proceedings are known to and understood by experienced judges and practitioners. It may be quite another where the exercise is novel and untried."[238]

In *Vedanta*, Coulson J assessed the likelihood of procedural fairness in the alternative jurisdiction (Zambia), noting that some claimants had failed in similar cases and that the subsidiary defendant KCM had previously evaded from criminal proceedings in the host state through 'political connections and financial influence'.[239] In the views of Coulson J, these findings 'hardly … support the idea that these sorts of claims could be properly litigated in Zambia',[240] making procedural fairness an important factor in deciding whether to serve out of jurisdiction. While judicial consideration of procedural fairness/novelty might benefit foreign litigants in MNC cases, it once again highlights the potential 'siphon effect', with implications for both foreign courts and business entities. This effect is likely to be felt most acutely by developing nations, whose legal systems have evolved over shorter timeframes and often lack experienced legal practitioners and funding mechanisms for large-scale transnational litigation.

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[233] There are three main types of transnational access-to-justice conflicts: jurisdictional conflicts, applicable law conflicts, and judgment conflicts. Whytock, supra n 29 at 170-3.
[234] *Amin Rasheed Shipping Corporation v Kuwait Insurance Co* [1984] AC 50 at 67; *Vedanta*, supra n 18 at para 89. Hill and Chong, *International Commercial Disputes: Commercial Conflict of Laws in English Courts* (2010) at 312-4.
[235] *Spiliada*, supra n 185 at 482; *Connelly*, supra n 79 at para 27.
[236] Jaffe, *Judicial Control of Administrative Action* (1965) at 567.
[237] *Carvalho v Hull, Blyth (Angola) Ltd* [1979] 1 WLR 1228.
[238] *Lubbe*, supra n 77 at para 30.
[239] *Lungowe*, supra n 24 at paras 190-193 & 197.
[240] *Lungowe*, ibid. at para 193; affirmed in *Vedanta*, supra n 18 at paras 98-100.

The actual influence of this potential 'siphon effect' remains open and context-dependent, as it is likely shaped by multiple factors, including the outcomes of ongoing or future substantive litigation, the likelihood of settlements and the timeliness of compensation following jurisdictional success, the practical capacity of alternative courts to handle such claims, political and economic considerations affecting host states' receptivity, the willingness of foreign courts to adopt similar approaches, and the international reception of English jurisprudence. Courts in Canada and the Netherlands have recently delivered judgments recognising the possibility of corporate liability for human rights violations abroad,[241] indicating some cross-jurisdictional resonance. Meanwhile, given the lengthy nature of litigation against MNCs and the complexity of the issues involved, the 'guiding behaviour effect'[242] of these judicial decisions warrants further examination.

B. Implications for International Legal Services and Investment

Another seldom-discussed yet important implication of these judgments is the enhancement of the UK's standing in international legal services and investment. Scholars in the legal field sometimes hesitate to explore how changes in domestic rules relating to international litigation can secure success in the global market for legal services and, in turn, promote international investment. This reluctance probably stems from concerns that such discussions might commodify the law, diminishing its revered status. However, in a world embraced by international trade, the economic impact of the legal sector, notably a nation's reputation for upholding the rule of law and global legal openness, can no longer be overlooked. Against the backdrop of globalisation, it becomes routine practice for many industrialised states to support domestic corporate nationals in global trade and investment,[243] and legal initiatives enhancing oversight of overseas corporate affiliates naturally follow.

In the UK, the appeal of being a centre for commercial dispute resolution is long acknowledged. London remains a leading hub of dispute resolution for centuries, in part due to the widespread influence of common law and commercial courts.[244] The legal service sector in the UK contributes greatly to the national economy, totalling up to £37bn in 2024, ranking second globally for legal services fee revenue.[245] Continual legal evolution and reasonable expansion of jurisdiction thus emerge as crucial in upholding international preference in the English legal system. Recent case law developments, particularly the *Okpabi* judgment on MNC accountability, were highlighted by the Supreme Court judge Lord Reed as an important and 'innovative' contribution made by English courts in fostering international commerce and enabling the development of laws.[246]

From an operational perspective, these legal developments likely trigger a double-edged sword effect on MNCs. On the one hand, they prompt MNCs to be more aware of and proactively address diverse societal demands. Advancements in English law, including the courts' willingness to hear claims against foreign subsidiaries, may help UK-based MNCs maintain their social licence to operate within

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[241] *Nevsun Resources Ltd v Araya* [2020] SCC 5; *Four* supra n 34.
[242] Cappelletti, supra n 28 at 287.
[243] UK Foreign and Commonwealth Office, *UK International Priorities: A Strategy for the FCO* (2003) at 38.
[244] The City UK, *Legal Excellence, Internationally Renowned: UK Legal Services 2022* (2022) at 9 & 52.
[245] The City UK, *UK Legal Services 2024* (2024) at 4-6.
[246] Lord Reed, *London Disputes Week: Keynote Address* (11 May 2022) at 7, available at: supremecourt.uk/uploads/london_international_disputes_week_fe6e9d0725.pdf [last accessed 09 February 2026].

foreign host communities.[247] An MNC's global expansion relies on trust and social acceptance from host communities, which is difficult to sustain without the assurance that access to justice will be available, should an MNC's performance be detrimental to stakeholders in these communities. Extraterritorial initiatives therefore signify a nation's commitment to high ethical and social standards for its companies, backed by strong accountability mechanisms and litigation risks. On the other hand, these developments may increase compliance challenges and potential litigation risks for global businesses, particularly those domiciled outside the UK. Such risks result not only from rising expectations and standards but also from exposure to a complex array of legal rules across multiple jurisdictions.[248]

Issues involved in seeking transnational access to justice are far from being conclusive at this stage. While Vedanta settled the claims with villagers in 2021 following the judgment,[249] the *Okpabi* case continues to be addressed substantively.[250] The success of weaker claimants in choosing the jurisdiction is only a start; the outcome at the substantive law stage will hinge on the facts, particularly the documents evidencing the nature, scope, and extent of the parent company's influence over the subsidiary.[251] Follow-up judgments on substantive law matters might generate further concerns relevant to transnational access to justice. For instance, if it is determined that the domestic parent company (anchor defendant) is not liable for compensation, yet the foreign subsidiary (foreign defendant) is responsible for remedy to overseas victims, this would in effect place unrelated foreign entities solely under the jurisdiction of English courts, raising concerns about disrupting the sanctity of foreign sovereignty. In extreme circumstances, retaliatory measures from the host community or strategic responses by MNCs to such judgments might disrupt claimants' access to practical justice.[252] The fight for ensuring proper transnational access to justice while sustaining global commerce thus remains ongoing. It calls for greater harmonisation of norms, laws and implementation at the international level, so as to balance adequate access to justice with the facilitation of business operation and the enhancement of international comity.

7. CONCLUDING REMARKS

While the late Lord Goff's remarks—we are there to oil the wheels of commerce, not to put a spanner in the works, or even grit in the oil[253]—continues to resonate in the modern global business landscape,

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[247] The term 'Social Licence to Operate' emerged in the mid-1990s in response to the socio-legal complexities of MNCs' cross-border operations. It generally refers to the societal expectations and demands of local stakeholders. When a business meets these expectations, it is considered socially acceptable in the host community, and a 'social licence' is metaphorically granted. Hurst, Johnston and Lane, 'Engaging for a Social Licence to Operate' (2020) 46 *Public Relations Review* 101931.

[248] Douglas-Scott, *Law after Modernity* (2013) at 104-6.

[249] Supra n 230.

[250] 'Breakthrough for Nigerian Community in Shell Pollution Case as High Court Orders the Oil Giant to Disclose Documents It Has Been Withholding for More Than Two Years', *Leigh Day News*, 8 March 2024.

[251] *Tesco Stores Ltd v Mastercard Inc* [2015] EWHC 1145(Ch) at 73.

[252] There is a risk that host state courts might decline to recognise or enforce English court judgments, undermining claimants' access to remedies. Goddard, 'The Judgments Convention – The Current State of Play' (2019) 29 *Duke Journal of Comparative & International Law* 473 at 476.

[253] Sir Goff, 'Commercial Contracts and the Commercial Court' (1984) *Lloyd's Maritime and Commercial Law Quarterly* 382 at 391.

socio-legal complexities surrounding business operations are mounting, particularly in transnational disputes where stakeholders' circumstances, interests and expectations vary widely. These challenges complicate efforts to secure effective remedies across borders.

In response, decades of theoretical development have shaped an overarching BHR framework at both international and regional levels, redefining corporate responsibility in functional rather than purely territorial terms, as examined in Part 3. This emerging transnational normative order also calls for practical gateways to translate abstract norms into practical access to justice, with mass tort litigation serving as a key mechanism. The UK Supreme Courts' recent rulings in *Vedanta* and *Okpabi* illustrate ongoing efforts to safeguard transnational access to justice, a concept widely valued but still debated, as highlighted in Part 2. These rulings account for the socio-economically disadvantages of claimants vis-à-vis the legitimate concerns of MNCs, helping to level the playing field in transnational mass tort litigation. As discussed in Part 4, they reflect dynamic stakeholder interactions, align with the expanding BHR discourse, and add 'a social dimension to the Rule of Law state',[254] paving the way towards a more balanced paradigm for human right protection in global business.

Despite these developments, barriers remain. As explained in Part 5, vulnerable claimants often face formidable financial and logistical challenges in gathering and presenting evidence to support their individual claims. The availability of collective redress mechanisms also plays a crucial role in addressing the inequality of arms in mass tort litigation.

Access to justice is not merely a legal term; it carries rich social implications. Beyond judicial innovations and persistent practical hurdles, recent judgments illuminate important socio-legal considerations, as explored in Part 6. Given the procedural advantages English law offers to foreign claimants, coupled with the capacity of English courts to handle mass tort cases, a potential 'siphon effect' might emerge: similar disputes are likely to be increasingly drawn to the UK, further enhancing the courts' experience and the influence of the English legal system in regulating MNCs. On a positive note, this could compel MNCs, especially those with core operations in the UK, to exercise greater responsibility abroad, thereby securing a 'social licence to operate' in host states. At the same time, the siphon effect may intensify tensions between states with differing jurisdictional grounds and development levels, potentially widening the regulatory gap and creating new transnational access-to-justice conflicts. How far this siphon effect will actually materialise depends on a range of factors, including substantive case outcomes, the likelihood of settlements, economic and political conditions affecting host states' receptivity, the capacity of alternative courts to handle such claims, and the extent to which English jurisprudence is received internationally.

As Lady Hale remarks, 'equality sounds a simple concept but the reality is very complicated.'[255] Providing equal access to justice remains a persistent challenge in global business settings. Realising this goal requires greater attention to the distinctive challenges faced by parties in transnational litigation, more coordinated norms and regulations in the global arena, and a careful balance of interests among states, MNCs and diverse stakeholder groups.

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[254] Cappelletti, supra n 28 at 295.

[255] Baroness Hale, *Equality and Human Rights* (Oxford Equality Lecture, 2018) at 1, available at: supremecourt.uk/speeches/lady-hale-at-the-oxford-equality-lecture-2018 [last accessed 09 February 2026].