

Domestic Litigation of International Workplace Claims

National Academy of Arbitrators
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Charity Ryerson
Executive Director, Founder
t. @CorpAcctLab
www.corpaccountabilitylab.org

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**CORPORATE
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LAB UNLEASHES
THE CREATIVE
POTENTIAL OF THE
LAW TO PROTECT
PEOPLE AND THE
PLANET FROM
CORPORATE ABUSE.**

Legal Options

Civil claims

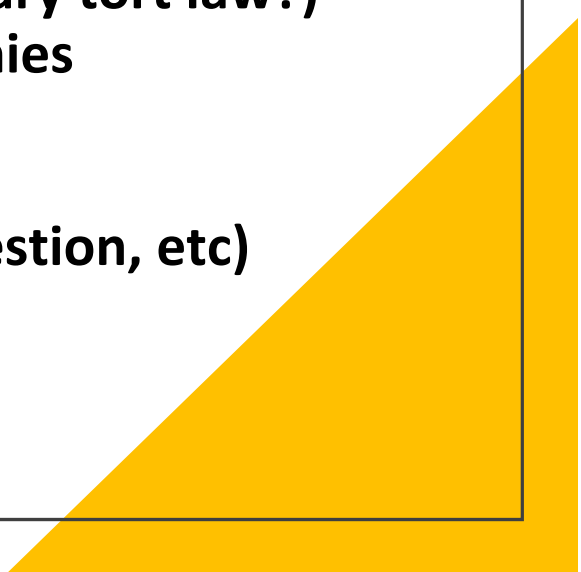
Criminal prosecution

Administrative and Labor Courts

Non judicial mechanisms



Issues at Play

- **Forum non conveniens**
 - **Choice of Law**
 - **Substantive norms (international law? ordinary tort law?)**
 - **Personal jurisdiction over defendant companies**
 - **Parent company liability/vicarious liability**
 - **Statute of limitations**
 - **Separation of powers doctrines (political question, etc)**
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What's working and what's not: a Quick and Dirty Guide





US Supreme Court decisions
gutting the ATS:

Kiobel v. Royal Dutch Shell
(2013)

Jesner v. Arab Bank (2018)

Doe v. Nestle (2021)

The Alien Tort Statute in the United States

What's left in the US?

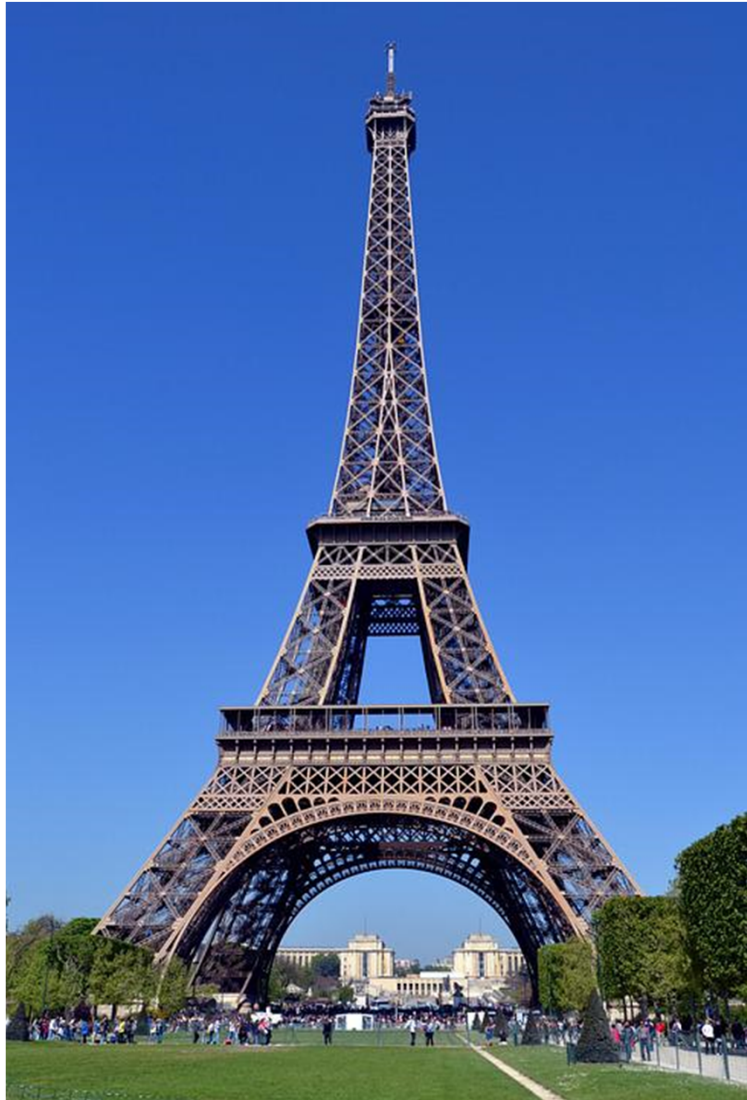
- Trafficking Statute (TVPRA)--Best game in town?
- State tort claims--BUT forum non, SoL, choice of law, etc.
- Consumer protection actions--but no remedy for victims
- Section 307 of the 1930 Tariff Act (forced labor import ban)





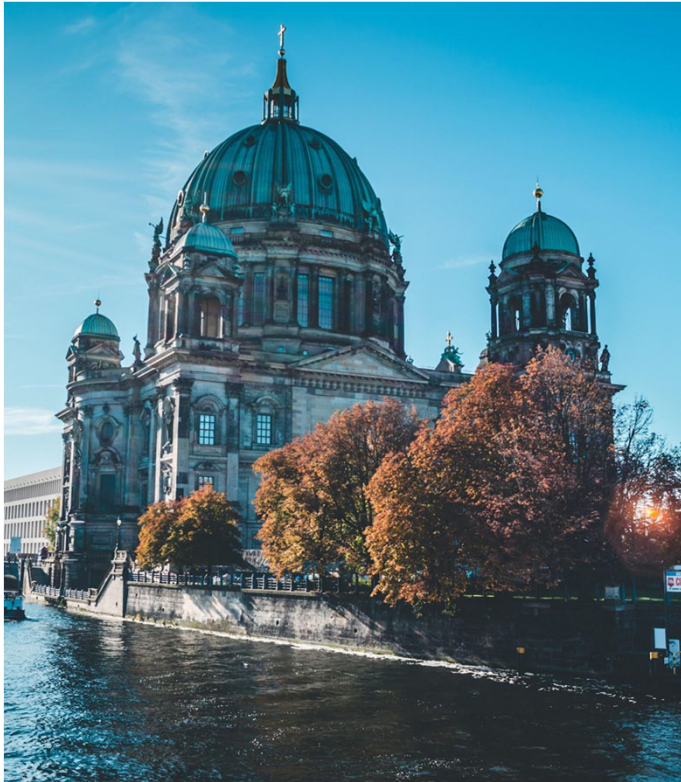
UK law

- Litigating under ordinary tort law
- Historically *forum non conveniens* not applicable
- *Vedanta Resources Plc and Konkola Copper Mines Plc (Appellants) v Lungowe and Ors.* (UK Supreme Court, 2019)



French Law

- *LaFarge*: In 2016, Sherpa and ECCHR filed a criminal complaint with a French prosecutor on behalf of former Syrian Lafarge employees against Lafarge, former CEO, and directors.
- Duty of Vigilance law (2017)
- *Total*: ongoing civil case against French company for alleged failure to comply with duty of vigilance law re mining project in Uganda




German Law

- *Kik*: civil case against German retailer for 2012 factory fire at Ali Enterprises in Pakistan; dismissed on Statute of Limitations grounds
- 2021 Supply Chain Act: requires companies that sell their products in Germany to apply human rights and environmental standards.



Interplay between litigation and
other strategies

Emerging International Standards: Soft Law

- Organisation for Economic Cooperation and Development (OECD)
Guidelines for Multinational Enterprises
 - Most comprehensive international standard set on responsible business conduct
 - 50 governments adhere to the Guidelines and have set up National Contact
 - NCPs promote the Guidelines and handle specific instance complaints regarding harms in their jurisdiction and against companies based in their jurisdiction operating elsewhere
 - United Nations Guiding Principles on Business and Human Rights
 - Set of guidelines for States and companies to prevent, address & remedy corporate abuse of human rights
 - Proposed by John Ruggie (UN Special Representative on BHR)
 - Human Rights Council endorsed the UNGPs in 2011 at the same time it established the UN working group on business & human rights
 - 3 pillars: Protect, Respect, Remedy
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Emerging International Standards: Hard Law?

- Binding Treaty on Transnational Corporations & Other Business Entities with respect to Human Rights
 - In 2014, the UN Human Rights Council established an intergovernmental working group to develop a binding treaty on business and human rights
 - 7 sessions of the intergovernmental working group have been held since 2014
 - Negotiations currently on the Third Revised Draft of the treaty
 - Major push back from United State and other Member States where many transnational companies are based

