



HL

SAFEGUARDING

Addressing the Impact of Human Rights Related Claims on Multi-National Operations and Supply Chains

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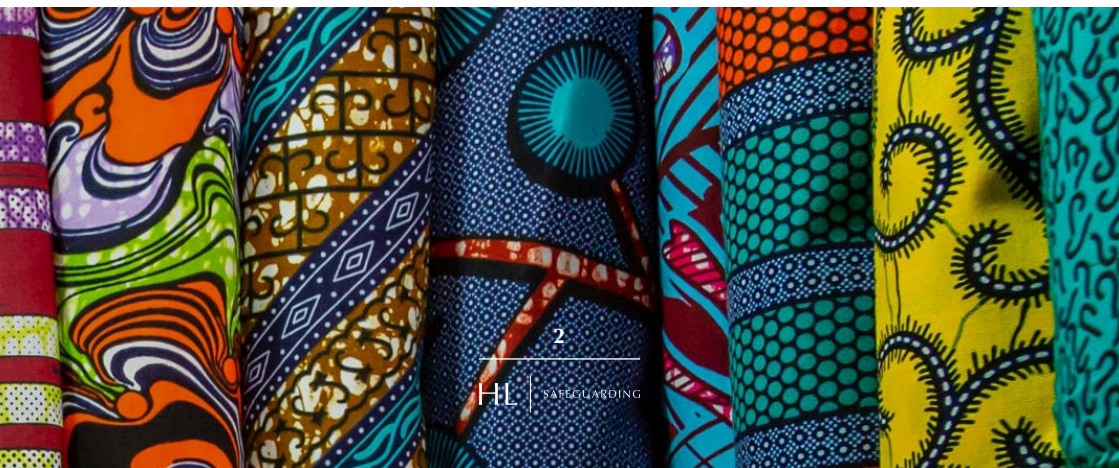
Scenario A - Energy and Mining Sector

- You are the Managing Director of a mining and processing company operating across Africa. Your company is a subsidiary of a multinational corporation with its headquarters in the UK. Your parent company has some control and supervision of the management of the operations of your business which operates in line with group policies.
- An incident occurs at one of your sites – sadly, surrounding farmlands and villages have been polluted by toxic emissions, affecting thousands of local people and the environment. This incident is attracting the attention of the international press and state regulators. If not rectified quickly, this could undermine the hitherto good relationship and trust built over many years with local communities in addition to the viability of your operations in this area.



- You want to put matters right quickly for those who have suffered and for this to be done in the country where the harm occurred, where the aggrieved reside. You want to ensure that those affected by this unfortunate incident are provided not only with adequate support to address any immediate hardship, but also with free access to justice and redress, for their voices to be heard and respected in a meaningful way.
- Unfortunately, legal representatives acting for a large number of those affected are seeking to bring untold claims against your UK parent company (as an 'anchor defendant') in the English Courts, for substantial damages and costs. These representatives also want to tie your company to these proceedings.
- This approach goes against your company's values as well as its corporate human rights policies developed in-country in order to respond effectively to situations such as this. You are concerned about the ability of genuine victims and their witnesses having proper access to and understanding of these proceedings in the UK, along with the difficulties with language and cultural issues this presents. You also have practical concerns regarding the risk of multiple proceedings about this situation in the UK and the African state in question where the harm occurred; as well as the length of time this process could take for those currently suffering hardship.
- Unfortunately, to complicate matters, your ability to ensure that all claimants are provided with free access to justice and redress in-country (instead of the proposed proceedings in the UK), is potentially more limited following the recent judgement of the Supreme Court in the case of [Vedanta Resources PLC and anor. v Lungowe and others \[2019\]](#). This leading judgement concerns the liability of a parent company and the jurisdiction of English Courts over international civil claims brought from outside of the UK. It merely increases the potential exposure of your parent company in the UK to claims such as these with underlying human rights impacts, originating from countries across Africa where your subsidiaries operate.

What do you do next?





Scenario B – International Charities/ NGOs/Not-for-profit Organisations

- You are a Trustee of an international charity registered in the UK. Your charity operates throughout the developing world, including Africa. All your African operations and activities are co-ordinated from your office in Nairobi Kenya.
- The UK branch of your charity, receives allegations of abuse at a number of schools in a particular region of Africa, which your charity funds and supports. The allegations are against a member of your UK branch who at the time was assigned to work at these schools under the supervision and control of your Nairobi office.
- Your charity has worked hard to create a safe and caring environment for children in its care. You are treating these allegations seriously and with priority to establish what has happened and to support survivors.
- This situation is becoming a matter of great concern to your international donors and is attracting considerable adverse local and international press coverage. It is also attracting the attention of the relevant authorities in-country together with the Charity Commission of England and Wales.
- You want justice and accountability for any victims, their families and their local community, to show them that that you do not tolerate this kind of behaviour in anyway. You do not want the acts of the few to undermine the great work of the many.
- Regaining the trust of those within the community whose lives have been affected and rebuilding the trust of your donors and other stakeholders is crucial in maintaining your ability to continue to provide much needed educational services in these schools, situated within impoverished communities.
- However, these allegations soon turn into multiple claims that are issued in the English Courts, rather than the country in Africa where the alleged acts took place.
- The decision to bring these claims to the UK would prevent your charity and the relevant authorities in-country from being able to deliver effective justice to genuine claimants in a more appropriate way and ensure proper accountability. This would also undermine your efforts to reassure the local communities where these schools are situated, that these sort acts will never occur again and to rebuild the hard earned faith and trust in vitally important work that your charity does.

What do you do?





The Solution – Our International Justice & Redress Toolkit

Through years of experience in operating on the ground in Africa, we have developed the practical know-how in the form of a sustainable solution which can be adapted in any particular developing country. This versatile solution allows for effective and empathetic handling of allegations and/or claims ranging from human rights abuses to damage caused by industrial/environmental pollution. Our toolkit has been designed to strengthen your ability to deal with such matters within locally aggrieved communities directly.

Our approach:-

- i. is a victim focused model delivered in the country where the alleged harm occurred;
- ii. it is an effective and objective means of providing free access to meaningful justice and redress for those in local communities who have been adversely affected – in country where the wrongful act(s) took place, avoiding the necessity or expense incurred in such claims being brought to the UK Courts;
- iii. ensures proper representation for claimants in a language and format that victims may understand providing a less intimidating environment, being an inquisitorial (rather than adversarial) process;
- iv. avoids the uncertainty and hardship that may inevitably be endured by genuine victims through lengthy delays and expensive UK Court processes;
- v. provides a broader range of satisfactory remedies for genuine victims in a more meaningful, cultural context;
- vi. helps to identify and substantially reduce false and fraudulent claims at an early stage;
- vii. assists in promoting the rule of law and justice systems in local countries and at the same time, actively promotes the UN's Social Development Goal 16 (the promotion of peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels);
- viii. facilitating proper accountability with the relevant authorities whether in country or the UK;



- ix. has also been designed to provide a legacy outcome, by ensuring that the internal policies and practices of the organisation concerned are 'up to scratch' and aligned in accordance with international standards of human rights;
- x. helps to maintain and strengthen the reputation, standing and trust of the organisation in the eyes of national and international governments, regulators and the media;
- xi. provides a valuable and sustainable toolkit for any genuine corporate social responsibility policy in making an immediate impact where things can and do go wrong.
- xii. serves as a future template that can be redeployed in a similar way by the same organisation to tackle unfortunate incidents with confidence and integrity as or when they occur.

For further information or to discuss how we can help,
please contact us:



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