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CURRENT DEVELOPMENTS: CASE COMMENT

Parent liability after *Mariana v BHP*: control, vigilance, and the need for structural reform

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The *Mariana* case

On 14 November 2025, the High Court of England and Wales handed down judgment in the largest environmental mass tort in UK history: the group claim by more than 600,000 Brazilian victims of the 2015 collapse of the Fundão tailings dam against the mining giant BHP Group. In *Município de Mariana v BHP Group*, the Court found BHP (through its UK and Australian-listed parent companies) liable on both strict liability and negligence grounds under Brazilian law.[1]

This ruling is not only a landmark for the hundreds of thousands of individuals affected by the disaster; it also serves as a stress test for existing tort doctrines governing parent–subsidiary liability. This case comment uses the *Mariana* judgment to examine the traditional, control-based foundations of parent company responsibility and to highlight their conceptual and practical limitations. It argues that these shortcomings reveal the need for a new paradigm, either through the adoption of a statutory duty of vigilance, as articulated in recent EU human rights and environmental due diligence legislation, or, more ambitiously, through an enterprise-based model of liability. Such approaches, this piece contends, offer more coherent and effective foundations for attributing liability to parent corporations in cases of cross-border human rights and environmental harm.

1. Facts, findings and legal bases

On 5 November 2015, the Fundão Dam operated by Samarco Mineração SA collapsed, releasing more than 40 million cubic metres of iron-ore tailings. The disaster destroyed the village of Bento Rodrigues, killed 19 people, and caused extensive environmental damage along over 600 km of waterways to the Atlantic Ocean. Samarco was at the time jointly owned (50/50) by BHP Brasil Ltd and another mining company, with BHP Brasil itself being part of BHP Group. Between 2001 and 2022, the parent companies BHP Group (UK) Limited and BHP Group Limited (hereafter referred as BHP) operated as a single economic entity under a dual-listed company structure. More than 600,000 claimants brought group proceedings in England relying on Brazilian environmental and civil law (paras 1–7).

At first instance, the High Court struck out the claims as an abuse of process, finding the litigation 'irredeemably unmanageable' given its scale and parallel proceedings in Brazil.[2] The Court of Appeal overturned that decision, holding that English courts may hear the case where claimants face real

[1] *Municipio de Mariana v BHP Group* [2025] EWHC 3001 (TCC).
[2] *Municipio de Mariana v BHP Group plc* [2020] EWHC 2930 (TCC) at [165]–[172].

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obstacles to obtaining effective redress abroad.[3] Following extensive hearings between October 2024 and March 2025, the High Court ultimately held BHP liable on two alternative grounds: strict liability under Brazilian environmental law; and fault-based liability under Article 186 of the Brazilian Civil Code (paras 1113, 1115).

(a) Strict liability ground

According to Brazilian environmental law, a company incurs strict liability for environmental destruction whenever it carries out an activity that poses risks to health and the environment,[4] and the company is directly or indirectly responsible for the pollution. In such cases, companies are classified as 'polluters' for the purposes of the law, while there is no conceptual distinction between direct or indirect polluters.[5] A company may qualify as a polluter based on a non-exhaustive set of factors, including its control over the activity, its role in creating or contributing to the risk, its participation in operations, its financing of the activity, or the economic benefit derived from it. Liability may also be joint and can extend within corporate groups (paras 377–385). Applying this framework in *Mariana*, Judge O'Farrell held that BHP could incur strict liability, as a direct or indirect polluter, for the environmental damage caused by Samarco (para 523).

The Court's reasoning centred on the degree of control exercised by BHP over Samarco. The claimants demonstrated that BHP functioned as Samarco's ultimate owner, controlling shareholder, and 'directing mind', exercising influence over strategy, investments, production decisions, risk management, audits, and funding arrangements (paras 425, 426, 524, 528). Much of this control derived from BHP's dominance within Samarco's governance structure. The Court rejected BHP's argument that the actions of affiliated directors on Samarco's board could not be attributed to the parent company. Instead, Judge O'Farrell held that BHP had delegated authority through its own board and management structures in a way that ensured effective oversight of Samarco: appointments to the Samarco Board were determined by BHP; almost all board decisions required BHP's approval; and BHP was involved in Samarco's activities at every level, from strategic planning and dividend policy to detailed operational matters (paras 525–526).

In addition, BHP assumed responsibility for group-wide risk management and conducted financial and technical audits of Samarco, the results of which were reviewed by senior management. These integrated governance and reporting systems meant that BHP knew, or ought to have known, of the relevant operational risks (paras 527, 653). The Court therefore concluded that BHP exercised sufficient factual control over the subsidiary's activities to qualify as a polluter under Brazilian environmental law.

The judgment nevertheless illustrates the demanding evidentiary burden associated with such claims. Liability was established only after a lengthy first-stage trial involving extensive documentary and expert evidence on Samarco's operations, governance arrangements, and risk-management processes. Even within Brazil's strict environmental liability regime, parent-company responsibility is not automatic: claimants must still demonstrate that the parent exercised sufficient control or involvement in the polluting activity. Thus, when the Court referred to BHP and Samarco as a 'single enterprise', this characterisation rested on demonstrated control rather than the mere economic reality of group structure.

(b) Fault-based liability (negligence) ground

Alternatively, the claimants argued that BHP incurred direct fault-based civil liability under Article 186 of the Brazilian Civil Code because it exercised control over Samarco. They alleged that BHP

[3]*Municipio de Mariana v BHP Group plc* [2022] EWCA Civ 951.

[4]Under the full risk theory, which bars typical causation-breaking defences such as force majeure or third-party acts. See Petrobras REsp 1.114.398/PR; Cataguases REsp 1.374.284/MG.

[5]Jacupiranga REsp 1.071.741/SP; Vicuña REsp 1.596.081/PR & 1.602.106/PR.

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negligently: (a) ignored advice and warnings about the risk of collapse; and/or (b) failed to take adequate steps to address those risks (para 7(ii)).

The central issue was whether BHP owed a pre-existing duty of vigilance at the parent level. Relying on Brazilian case law,[6] the Court confirmed that liability for omissions requires a prior legal duty, which may arise not only from statute but also from conduct that creates or assumes responsibility for risk (para 643). Applying this approach in the parent-subsidiary relationship, the Court examined BHP's involvement in Samarco's operations. It found that BHP exercised extensive oversight through group governance structures, including participation in risk assessment and management processes, monitoring of operational and technical issues, and involvement in strategic decisions concerning dam safety and the continued raising of the Fundão dam. Through these mechanisms, BHP actively participated in identifying and managing the risks associated with Samarco's activities (para 653).

The Court therefore concluded that BHP had assumed responsibility for overseeing those risks and owed a duty to take reasonable steps to prevent harm. The same factual matrix (governance involvement, risk-management oversight, and technical monitoring) thus served two functions: establishing BHP's status as an indirect polluter under environmental law and demonstrating the assumption of a duty of vigilance under general tort principles. Because BHP's own governance and reporting systems were designed to monitor safety risks within the group, the Court held that BHP knew or ought to have known of the dam's vulnerabilities yet failed to take adequate remedial measures (paras 801–807). Even if strict environmental liability had not applied, BHP would have been liable under Article 186 (read with Articles 927 and 942) for fault-based civil liability (para 808).

The Court's reasoning is notable because Brazilian case law has traditionally applied this approach to actors directly engaged in harmful activities, such as manufacturers, medical professionals, or public authorities (paras 552–560). The *Mariana* judgment extends this logic to a parent company within a multinational corporate group by grounding the duty in the parent's governance involvement and risk-management role in the subsidiary's operations. By contrast, the Court rejected the argument that BHP owed a duty under Brazilian corporate law as Samarco's controlling shareholder, finding that no such obligation arises under Articles 116 and 117 of the Brazilian Corporate Law (paras 636–639, 645).

2. What the case reveals: the limits of control-based liability

The *Mariana* judgment exposes two limitations in the existing framework for parent-company liability. First, the control requirement imposes a demanding evidentiary burden. The Court's reasoning depended on extensive factual reconstruction, including months of hearings and large volumes of technical and internal corporate documents concerning engineering processes, risk management, and group governance (paras 432–522). Such evidence is difficult for claimants to obtain, particularly before disclosure, when they must already plead plausible theories of control and knowledge. *Mariana* therefore illustrates that, even under a strict environmental liability regime, parent liability does not arise automatically but still depends on demonstrating sufficiently deep control or involvement.

Secondly, the case highlights the limits of tort law in grounding a duty of vigilance. In the absence of an explicit statutory duty in Brazilian law, the Court relied on case law allowing liability for omissions where a defendant assumes responsibility for a risk. While Professor Tepedino argued that such duties must derive from written law or contract (para 550), the Court followed Professor Rosenvald's broader interpretation, under which a duty may arise from conduct that creates or manages risk (paras 563–569).

This reasoning resembles UK decisions such as *Vedanta* and *Okpabi*,[7] where a parent's assumed responsibility may ground a duty, although those cases concerned jurisdiction rather than liability on the merits. Unlike orthodox common law doctrine, however, the *Mariana* Court did not apply elevated

[6]Tobacco Case STJ Special Appeal 1.113.804 (2010); Wire Fence case STJ Special Appeal 1.860.324 (2021); Negligent Birth Case STJ 1.698.726 (2021).

[7]*Vedanta Resources plc v Lungowe* [2019] UKSC 20; *Okpabi and Others v Royal Dutch Shell plc* [2021] UKSC 3.

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knowledge thresholds similar to those suggested in *Chandler*.[8] The case therefore illustrates both the contingency of fault-based liability in cross-border corporate harm cases and the practical need for clearer statutory duties or enterprise-liability models to ensure effective parental accountability.

3. Adjusting the liablity framework

Introducing a statutory duty of vigilance would address the weaknesses of the current control-based framework by lowering the evidentiary threshold and creating a presumption of oversight at parent company level. Rather than asking whether the parent exercised operational control over a subsidiary's harmful activities, the inquiry would shift to whether the parent fulfilled legally mandated obligations to identify, monitor, and address foreseeable risks within the corporate group.[9]

Recent European developments point in this direction. The EU Corporate Sustainability Due Diligence Directive requires large companies to implement due diligence processes across their operations, subsidiaries, and parts of their value chains.[10] Its underlying logic is that parent companies occupy a structurally responsible position within corporate groups and should therefore be presumed to have oversight of group-level risks.[11] In principle, this model could significantly reduce the evidentiary burden on claimants, who would no longer need to prove detailed operational control but only a failure to comply with statutory vigilance obligations. However, as the Directive will apply only from 2028 and the Omnibus I amendment[12] removed the EU-wide civil liability clause, it remains uncertain how Member States will connect due diligence obligations to private liability, risking renewed fragmentation across jurisdictions.

This uncertainty makes national reforms particularly important. Domestic legislation should not only introduce duties of vigilance but also link their breach to civil liability or at least enable courts to presume parental knowledge and responsibility for subsidiary risks. A comparable logic can be seen in the UK 'failure to prevent' model, which attaches corporate liability to the breach of preventive organisational duties.[13] Although currently confined to criminal law and not directly applicable to the parent–subsidiary context, the model has featured in policy debates. A parliamentary briefing of November 2022 called for a Business, Human Rights and Environment Act introducing a 'failure to prevent' offence,[14] and in 2023 Baroness Young of Hornsey proposed related due diligence legislation in the House of Lords.[15]

4. The enterprise-liability approach

A more far-reaching reform would be for national laws to recognise strict liability grounded in the economic reality of corporate groups. Under an enterprise-liability model, the parent company could incur responsibility because the parent and subsidiary together operate as a single economic unity.[16] This

[8]*Chandler v Cape plc* [2012] EWCA Civ 525.

[9]For a similar argument based on presumed rather than actual control see C van Dam and F Gregor 'Corporate responsibility to respect human rights vis-á-vis legal duty of care' in JJÁ Rubio and K Yiannibas (eds) *Human Rights in Business: Removal of Barriers to Access to Justice in the European Union* (London: Routledge, 2017) pp 119, 128–129.

[10]EU Directive 2024/1760 (13 June 2024).

[11]Similarly, Palombo argues that a parent's duty of care may arise from its close and ongoing relationship with its subsidiary: D Palombo 'The duty of care of the parent company: a comparison between French law, UK precedents and the Swiss proposals' (2019) 4(2) Business and Human Rights Journal 265.

[12]Council of the EU, 2025/0045/COD (10 December 2025).

[13]L Campbell 'Corporate liability and the criminalisation of failure' (2018) 12 Law and Financial Markets Review 57.

[14]Business and Human Rights Centre 'Parliamentary briefing: a UK Business, Human Rights and Environment Act' (14 November 2022), available at https://www.business-humanrights.org/en/latest-news/parliamentary-briefing-a-uk-business-human-rights-and-environment-act/.

[15]Business and Human Rights Centre 'Baroness Young of Hornsey introduces groundbreaking Private Member's Bill in the House of Lords' (28 November 2023), available at https://www.business-humanrights.org/en/latest-news/baroness-young-of-hornsey-introduces-groundbreaking-private-members-bill-in-the-house-of-lords/.

[16]G Skinner 'Rethinking limited liability of parent corporations for foreign subsidiaries' violations of international human rights law' (2015) 72 Washington and Lee Law Review 1769.

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approach moves beyond both existing models: the control-based framework, which requires proof of detailed operational involvement, and the duty-of-vigilance model, which still relies on presumptions of knowledge and fault. This logic is not purely theoretical. Brazilian labour law, for example, imposes strict joint and several liability on companies within an 'economic group', reflecting a functional understanding of enterprise organisation, while Indian courts have recognised enterprise liability for mass harm caused by hazardous activities.[17]

Elements of this reasoning were visible even in the *Mariana* litigation. Although the claimants relied primarily on control, they also emphasised the economic integration of the group and the benefits BHP derived from Samarco's operations (para 386(iv)). While the Court ultimately adopted the prevailing control-based reasoning, the case demonstrates that enterprise-liability arguments are not only conceptually sound but also increasingly visible in litigation strategy. It is also noteworthy that, in assessing control, Judge O'Farrell considered the economic benefits BHP derived from Samarco's operations, although she acknowledged that a parent company's controlling shareholder powers in strategic decision-making do not, on their own, create responsibility for a subsidiary's activities (paras 449, 530).

5. Significance for the future of transnational corporate accountability

The *Mariana* judgment marks an important moment in the development of transnational corporate accountability and provides a significant precedent for cross-border claims in England and Wales. The litigation, however, is far from complete. A second phase addressing causation and quantum is scheduled for October 2026, potentially followed by a third phase requiring individual claimants to prove their specific losses.[18] BHP has already indicated its intention to seek permission to appeal,[19] and the case illustrates the considerable time, resources, and evidentiary reconstruction required for claims of this scale.

At the same time, *Mariana* raises broader policy questions about the growing practice of litigating Global South harms before courts in Global North jurisdictions, particularly as part of the expanding body of transnational climate and environmental litigation against corporations.[20] While such proceedings may offer access to procedural tools, funding, and enforcement mechanisms otherwise unavailable to victims, they may also reproduce structural power imbalances or create tensions where claims are driven by foreign law firms or litigation funders.[21] Although these concerns lie beyond the scope of this case note, they highlight that transnational litigation cannot substitute for effective domestic regulation and accountability mechanisms in the jurisdictions where harm occurs. *Mariana* is therefore both a breakthrough and a reminder: meaningful redress is possible, but sustainable justice requires deeper structural reform.

[17]M Pargendler 'Corporate law in the Global South: heterodox stakeholderism' in KE Davis and M Pargendler (eds) *Legal Heterodoxy in the Global South* (Cambridge: Cambridge University Press, 2025) pp 306–313.

[18]Business and Human Rights Centre 'Legal commentary: High Court in London finds BHP strictly liable over Brazil's Mariana dam disaster; analysis of cross-border implications' (19 November 2025), available at https://www.business-humanrights.org/en/latest-news/legal-commentary-high-court-in-london-finds-bhp-strictly-liable-over-brazils-mariana-dam-disaster-analysis-of-cross-border-implications/.

[19]Available at https://www.bhp.com/news/media-centre/releases/2025/11/update-united-kingdom-group-action.

[20]Eg *Friends of the Earth v TotalEnergies* Cour d'appel de Paris, n° 24/05193, 17 June 2025 (France); The Hague Court of Appeal, *Milieudefensie v Royal Dutch Shell*, n° 200.302.332/01, English translation, 12 November 2024 (the Netherlands); see further details in I Alogna et al (eds) *Climate Change Litigation : Global Perspectives* (Leiden: Koninklijke Brill NV, 2021).

[21]For further details see K Bouwer 'Substantial justice?: Transnational torts as climate litigation' (2021) 15(2) Carbon & Climate Law Review 188; S Seck 'Transnational business and environmental harm: a TWAIL analysis of home state obligations' (2011) 3 Trade, Law & Development 164.

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