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SYMPOSIUM ON THE CHALLENGES AND PROSPECTS OF NOVEL TYPES OF BUSINESS AND HUMAN RIGHTS LITIGATION

INTRODUCTION

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Business and human rights (BHR) litigation has developed as a distinct form of legal engagement within broader efforts to regulate the human rights and environmental impacts of business activity. From its early emergence in the late twentieth century, litigation has been understood as one of the principal strategies through which individuals and communities seek redress for business-related human rights harm, and through which legal norms governing responsible business conduct are progressively shaped.[1] The first notable and highly visible instances of such litigation were pursued in the Western states where parent companies of TNCs are incorporated or domiciled.[2] These included cases brought under the U.S. Alien Tort Statute and as conventional tort law claims across both common and civil law jurisdictions. Prominent examples include litigation arising from a chemical gas leak in Bhopal, the use of forced labor in the construction of the Yadana pipeline in Burma, the destruction of the surrounding environment at the Ok Tedi mine in Papua New Guinea and long-term environmental pollution in Nigeria caused by oil spills. Consequently, BHR litigation has often been conceived in narrow terms: as claims brought by Global South victims against parent companies of Western TNCs in Global North courts, frequently framed through civil liability doctrines.[3]

This *AJIL Unbound* symposium starts from the premise that this dominant framing no longer captures the reality. The contemporary landscape of BHR litigation is both broader and more complex, reflecting the evolution of BHR as a field itself that now engages directly with shifting economic structures, political dynamics, and global crises.[4] The United Nations Guiding Principles on Business and Human Rights (UNGPs), adopted in 2011, have been particularly influential in this regard.[5] By articulating a framework structured around the state duty to protect, the corporate responsibility to respect human rights, and access to remedy, the UNGPs have helped to reorient BHR debates. This reorientation goes beyond isolated instances of corporate abuse toward the

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[1] Ekaterina Aristova, *Strategic Business and Human Rights Litigation: It Is a Marathon, Not a Sprint*, 10 Bus. & Hum. Rts. J. 379 (2025).

[2] Sarah Joseph, Corporations and Transnational Human Rights Litigation (2004).

[3] Human Rights Litigation Against Multinationals in Practice (Richard Meeran & Jahan Meeran eds., 2021).

[4] Surya Deva, Anita Ramasastry, Florian Wettstein & Michael Santoro, *Editorial: Business and Human Rights Scholarship: Past Trends and Future Directions*, 4 Bus. & Hum. Rts. J. 201 (2019).

[5] UN Guiding Principles on Business and Human Rights, UN Doc. HRC/17/4 (June 16, 2011).

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systemic conditions that enable harm, including regulatory gaps, power asymmetries, and entrenched economic inequalities.

At the same time, contemporary developments ranging from the expansion of global value chains and digital business models to climate change and the COVID-19 pandemic have exposed the extent to which business-related human rights harms are embedded in broader economic and political arrangements. These shifts have reshaped both the subjects and objectives of BHR litigation. Litigation increasingly operates as a strategic practice aimed at structural and transformative change, rather than solely as a mechanism for resolving individual disputes or securing compensation for claimants. It is pursued not only to provide redress for harm that has already occurred, but also to contest business models, challenge regulatory failures, and reconfigure relationships between states, corporations, and rights-holders.[6]

Moreover, litigation in the BHR field is no longer used exclusively as a tool to hold businesses accountable. Businesses themselves increasingly deploy litigation as a strategic instrument, including through actions that seek to silence critics or constrain civic space. This dual use of litigation both as a means of accountability and as a mechanism of power further complicates conventional understandings of BHR litigation and underscores the need for a more expansive and nuanced account of its contemporary forms.

Against this backdrop, this *AJIL Unbound* symposium examines novel and underexplored forms of BHR litigation. Rather than revisiting the most familiar paradigms, the contributions from scholars and practitioners collectively seek to unpack the expanding and shifting landscape of BHR litigation, and to illuminate how legal strategies are being reconfigured in response to new economic models, regulatory pressures, and social movements.

The essays that follow engage these themes along several dimensions. First, they center new actors in BHR litigation. Georgia Greville and Jean-Pierre Gauci from the British Institute of International and Comparative Law examine the role of trade unions in strategic litigation against digital labor platforms like Uber, Lyft, and Deliveroo. Their contribution demonstrates how collective worker organizations are reshaping accountability in the platform economy by exposing regulatory and legal gaps relating to labor rights, occupational health and safety, privacy and data protection, and the use of artificial intelligence and algorithmic systems to make decisions about matters affecting workers. Rather than treating litigation as a narrow dispute-resolution mechanism, the authors show how trade unions strategically leverage their institutional resources to initiate and intervene in claims, mobilize workers, and embed litigation within broader campaigns for systemic reform.

In their contribution, Christopher Patz, an independent BHR practitioner based in Australia, and Sekar Banjaran Aji of Greenpeace Indonesia examine the central role played by civil society organizations (CSOs) in driving transnational BHR litigation, focusing on cases such as the litigation against the German retailer KiK following a 2012 factory fire in Pakistan. The authors show how civil society actors initiate claims that would otherwise be economically unviable, mobilize affected communities across borders, and sustain complex litigation alongside broader strategies of public campaigning and political advocacy. At the same time, the authors identify key vulnerabilities and ethical tensions inherent in this model.

Second, the symposium addresses new and underexamined industries within BHR litigation. Arturo Carrillo from the George Washington University, Jonathan Lowy from Global Action on Gun Violence, and Emily Fallin from McDermott Will & Shuttle turn to the firearms industry—an economic sector that has remained largely insulated from conventional BHR debate despite its profound and well-documented human rights impacts. Focusing primarily on litigation connected to the United States—based firearms industry and its transnational

[6] The Cambridge Handbook on Business and Human Rights Litigation (Hassan Ahmad, Ekaterina Aristova & Rachel Chambers eds., forthcoming 2026).

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effects, the authors analyze Mexico's litigation strategy. This strategy includes a set of innovative domestic, transnational, and regional proceedings developed to confront what they describe as entrenched structural impunity. These include civil proceedings brought by the government of Mexico against U.S. gun manufacturers for their alleged role in facilitating cross-border gun violence, as well as efforts to invoke the Inter-American human rights system to challenge the United States' regulatory failures and the lack availability of a remedy for victims. Rather than relying on traditional models of corporate civil liability, the contribution examines how strategic litigation is being used to navigate industry-specific legal shields, reframe gun violence as a human rights issue, and link corporate conduct to state obligations under international human rights law.

Third, the symposium engages with new configurations of litigation itself, shifting attention from cases in which businesses are defendants to those in which businesses deploy litigation as a strategic tool. Bridget Mafusire, a Zimbabwean lawyer, examines the rise of strategic lawsuits against public participation (SLAPPs). Focusing primarily on developments in South Africa, while situating them within a broader regional context that includes Zimbabwe and Zambia, the contribution traces how corporations have used civil and criminal proceedings (often framed as defamation or reputational claims) to intimidate journalists, activists, and CSOs. Mafusire analyses the emergence of anti-SLAPP jurisprudence in South African courts, including the recognition of SLAPPs as an abuse of process and the growing willingness of courts to entertain SLAPP defenses at a preliminary stage, while also highlighting the absence of comparable protections in much of the region. By foregrounding the role of CSOs in shaping these doctrinal developments through strategic litigation, amicus interventions, and public advocacy, the essay exposes how litigation can simultaneously function as a mechanism of accountability and as a tool of repression.

Fourth, the symposium examines a case study that has received comparatively little attention in the BHR scholarship. Florence Shako, the Founder and Executive Director at the Centre for Education Policy and Climate Justice and Vice Chairperson at Women in Alternative Dispute Resolution, discusses the Solai Dam Tragedy in Kenya. By focusing on litigation arising from a large-scale infrastructure disaster in a Global South context, the contribution moves beyond the paradigmatic focus on Global North courts and parent-company liability. It offers an account of how strategic litigation operates in practice, illuminating both its potential and its limitations as a tool for accountability, remediation, and structural change in settings where regulatory failure, power asymmetries, and resource constraints are particularly acute.

Taken together, the essays demonstrate that BHR litigation cannot be understood through a single model or geography. Instead, it is a dynamic and contested practice, shaped by evolving economic structures, regulatory environments, and struggles over power and voice. While this symposium does not aim to be exhaustive, it seeks to be generative: to broaden how BHR litigation is conceptualized, to surface less examined forms of legal contestation, and to encourage further scholarly and practical engagement with the expanding boundaries of the field.

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