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When foreign ventures violate human rights, parent companies are responsible

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The oil and gas and mining industries have some of the highest environmental, social, and governance (ESG) risk profiles in the world. These risks expose corporations to potential liability in the locations they operate around the world. However, an increasing number of legal decisions open the door to litigation closer to home and, specifically, potential parent company liability for overseas human rights violations by a foreign subsidiary or joint venture. These legal decisions change the calculus as companies balance reputational risks, commercial realities, evolving legislation, and investor expectations regarding ESG performance.



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Recent cases

In 2019, the UK Supreme Court allowed claims to go forward against Vedanta Resources and its majority-owned Zambian joint venture, Konkola Copper Mines (KCM). KCM, which is partially owned by the Zambian government, is the operator of the Nchanga copper mine.^[1] The case was brought by 1,826 Zambian citizens who claim their health and farming activities were damaged by toxic discharges from the Nchanga mine into surrounding waterways. Despite Vedanta not being the operator of the mine and just a majority owner, the court found that Vedanta may have exercised a sufficiently high level of supervision and control of the mining activities at Nchanga to have assumed a duty of care to the Zambian community surrounding the mine.^[2]

In this case, the court noted four types of parent company actions that could give rise to a duty of care on the part of the parent company:

1. Taking over the management or joint management of the relevant activity;
2. Providing defective advice or issuing group-wide policies that were implemented by the entity;
3. Adopting group-wide policies and taking active steps to ensure their implementation; or
4. Holding itself out as exercising a particular degree of supervisory control over the subsidiary or JV, whether or not it exercised that control.

Following the Supreme Court's decision to allow the case to proceed, and before a decision on potential liability,

Vedanta entered into a settlement with the Zambian claimants for an undisclosed amount.^[3]

In 2020, the Supreme Court of Canada ruled that Nevsun Resources, a Canadian corporation, may be sued for violations of international human rights law that occurred at the Bisha mine in Eritrea. Bisha Mining is a joint venture formed for the development and operation of the Bisha mine in western Eritrea and, at the time of the alleged violations, was owned by Nevsun (60%) and the Eritrean National Mining Corporation (40%). Nevsun held a majority of the Bisha Mining board seats, and its CEO served as chair of the board. The plaintiffs alleged that they were subject to forced labor, torture, and other human rights abuses at the mine by the Eritrean military. An earlier court decision found that Nevsun had operational control of Bisha Mining and was actively involved in all aspects of mine operations. After the Canadian Supreme Court allowed the human rights lawsuit to proceed in Canadian courts, Nevsun settled the case for an undisclosed amount.^[4]

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