

## ISSUE FOCUS

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# Corporate Accountability in Southeast Asia: National Action Plans for Responsible Business Conduct under International Law

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Mahdev Mohan\*

*Beyond transnational litigation which seeks to hold corporations accountable for their misconduct overseas through judicial recourse, the risk of human rights abuses should be mitigated by embedding good practices locally through domestic laws and policies. The United Nations proposed Guiding Principles for transnational and other businesses for this purpose in 2011. It has been suggested that National Actions Plans should give effect, or at the very least policy coherence, to the international standards enshrined in the Guiding Principles. This article argues that, properly devised, such plans are invaluable, and can help to reinforce regional imperatives under international law. In Southeast Asia, particularly, the prospect of corporate accountability should be measured by existing or emergent regulatory norms in ASEAN, a regional bloc that aims to achieve parity of rules and regulations across the ten countries through economic integration.*

### Keywords

UNGPs, Corporate Social Responsibility, Human Rights, NAPs, Transnational Litigation, ASEAN.

\* Assistant Professor of Law and Director of Asian Business and Rule of Law initiative at Singapore Management University. LL.B.(NUS), JSM(Stanford). ORCID: <http://orcid.org/0000-0002-8214-4256>. The author may be contacted at: [mahdevm@smu.edu.sg](mailto:mahdevm@smu.edu.sg) / Address: 60 Stamford Road, Level 4, Singapore 178900  
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## I. Introduction

Corporate accountability for human rights is often discussed in the light of transnational tort cases in the US Courts concerning allegations of corporate misconduct overseas. It has been referred to as “transnational human rights litigation”<sup>1</sup> or ‘plaintiff’s diplomacy’<sup>2</sup> pursuant to statutes such as the US Alien Torts Claim Act (“ATCA”). The ATCA case of *Doe v Unocal*,<sup>3</sup> which was filed in 1996 and was subsequently settled out-of-court, is regarded as giving rise to the trend of such litigation, and having “expanded the tactical repertoires of grass-roots activists as well as those of litigators.”<sup>4</sup> In the past, these cases have been cited by international lawyers to illustrate that corporate responsibility for transnational companies to respect human rights extends beyond the domestic legal and regulatory sphere so that they can be adjudicated by international and foreign courts.<sup>5</sup>

Legal barriers, however, can deter legitimate cases involving corporate human rights violations from being addressed. This occurs when, *e.g.*, “the way in which legal responsibility is attributed among members of a corporate group under domestic criminal and civil laws facilitates the avoidance of appropriate accountability; when claimants are denied justice in both their home and host States; and where certain groups are excluded from the same level of legal protection of human rights as others.”<sup>6</sup> In his speech to the UN Human Rights Council in 2011, Professor John Ruggie, former UN Special Representative for Business and Human Rights, remarked that multilateralism works in finding common ground rules for global action.<sup>7</sup>

<sup>1</sup> S. JOSEPH, CORPORATIONS AND TRANSNATIONAL HUMAN RIGHTS LITIGATION (2004). *See also* Alien Tort Claims Act, 28 USC, § 1350 (2001). The statute reads: “The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”

<sup>2</sup> A.-M. Slaughter & D. Bosco, *Plaintiff’s Diplomacy*, FOREIGN AFF. 102 (2002).

<sup>3</sup> *Doe v. Unocal Corp.*, 963 F. Supp. 883-4 (C.D. Cal. 1997), vacated, 403 F.3d 708 (9th Cir. 2005). The European Union has also encouraged encouraging similar routes for access to justice and remedy thorough the courts of its Member States. *See* I. Wuerth, *Kiobel v. Royal Dutch PetroleumCo: The Supreme Court and the Alien Tort Statute*, 107 AM. J. INT’L L. 601-3 (2013).

<sup>4</sup> C. Holzmeyer, *Human Rights in an Era of Neoliberal Globalization: The Alien Tort Claims Act and Grassroots Mobilization in Doe v. Unocal*, 43 L. & Soc’y REV. 291 (2009).

<sup>5</sup> J. Drimmer, & S. Lamoree, *Think Globally, Sue Locally: Trends and Out-of-Court Tactics in Transnational Tort Actions*, 29 BERKELEY J. INT’L L. 488(2011).

<sup>6</sup> J. Ruggie, *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, U.N. Doc. A/HRC/17/31 (Mar. 21 2011), available at <http://daccess-ods.un.org/TMP/13405.2243083715.html> (last visited on Apr. 17, 2015).

<sup>7</sup> *Id.*