

# Schoemaker-Sustainalytics Student Competition Business & Human Rights

**Business & Human Rights - research proposal by Remco Slim MSc. LL.B.**

*How can corporations cope with the increasing uncertainty regarding their accountability in a fragmented judicial Human Rights system?*

## Background

Over the time companies increasingly cooperated in developing non-binding standards for corporate social responsibility and committed themselves often during those developments to quasi-binding standards.<sup>1</sup> However, when you observe the developments of business and human rights you can assert that businesses face a lot of (potential costly) uncertainty regarding their obligations and accountability due to the fast moving developments taking place.

## Research questions

Looking at the recent developments in courts<sup>2</sup> where businesses were faced with accountability, one can expect that businesses have to cope more and more with uncertainty regarding their accountability in a fragmented judicial system. How can business adapt do these developments? Further, what can businesses do in order to streamline and prevent costly accountability in courts? Another element lies in the question on the jurisdiction of judicial mechanisms that businesses are faced with nowadays: especially when it concerns business-related human rights abuses where it is difficult to establish who is responsible for which issue.

## Solutions

Solutions that this research is aiming for are to be found in a more coherent overview on standards that enables businesses to focus more on problem saving mechanisms and/or fora, moving courts to an instance of last resort. By doing this businesses might face more (legal)certainty (and thereby more certainty on costs) and Human Rights might be better protected.

## Relevance

The relevance of this proposal for business and Human Rights lies in the need for more knowledge on the various principles and standard that are applied by various judicial institutions. This is needed while the lack of coherence creates a lot of uncertainty for businesses and the protection of Human Rights itself. The recent developments in de cases against Shell plc. in both the US and the Netherlands show that there is a high level of ambiguity regarding the accountability for businesses but visible is that distant

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<sup>1</sup> The most known standards containing principles regarding business and Human Rights are for example: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 23 May 2011, A/HRC/17/31/Add.2 and 'The UN Global Compact'.

<sup>2</sup> This is recently described by: Curran, Vivian Grosswald. "Extraterritoriality, Universal Jurisdiction, and the Challenge of Kiobel v. Royal Dutch Petroleum Co." *Maryland Journal of International Law* 28.1 (2013): 76.

issues are turning to very nearby domestic courts and binding Human Rights mechanisms.<sup>3</sup>

#### Research method

Regarding the research method it can be relevant to assess the case law involving businesses of various regional Human Rights courts on accountability for businesses (empirically) and the development of the principles that are applied (substantially). Combining information from these proliferated and fragmented courts could give more insight for business and academics in how to cope with more uncertainty regarding their accountability.

#### Provisional literature list

Curran, Vivian Grosswald. "Extraterritoriality, Universal Jurisdiction, and the Challenge of *Kiobel v. Royal Dutch Petroleum Co.*" *Maryland Journal of International Law* 28.1 (2013): 76.

Eluyode, Jide James. 'The notion of collective human rights and corporate social responsibility: issues and trends in international law', I.C.C.L.R. 2013, 24(5), 209-218.

Williams, Cynthia A., and John M. Conley. "Trends in the Social [Ir] Responsibility of American Multinational Corporations: Increased Power, Diminished Accountability?." *Diminished Accountability* (2013)

Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 23 May 2011, A/HRC/17/31/Add.2

The UN Global Compact regulations.

OHCHR 'Interpretive guide to the corporate responsibility to respect human rights', HR/PUB/12/02 (2012).

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<sup>3</sup>Williams, Cynthia A., and John M. Conley. "Trends in the Social [Ir] Responsibility of American Multinational Corporations: Increased Power, Diminished Accountability?." *Diminished Accountability* (2013) p.3.