



NEWSLETTER

KEY ESG DEVELOPMENTS



JANUARY

VEDANTA RESOURCES SETTLED THE CLAIMS BROUGHT IN THE ENGLISH COURTS BY ZAMBIAN VILLAGERS OVER ALLEGED COPPER MINE POLLUTION:



In this case, over 1,800 Zambian villagers had brought a claim against the UK parent company, Vedanta, and its Zambian subsidiary, KCM, on the basis of the alleged pollution from discharges of effluent from the Nchanga Copper mine in Zambia owned and operated by KCM. In April 2019, the UK Supreme Court had allowed the claims to proceed and affirmed that a parent company may incur a duty of care in respect of the activities of a subsidiary in determined situations.

A DUTCH COURT ORDERED SHELL NIGERIA TO COMPENSATE NIGERIAN FARMERS:

In this case, separate proceedings had been filed by 4 Nigerian farmers in the Netherlands against parent company Royal Dutch Shell (RDS) and its Nigerian subsidiary, SPDC, on the grounds of the environmental damage allegedly caused by oil leaks from pipelines and associated infrastructures operated by SPDC. On the 29th of January 2021, the Court of Appeal of the Hague delivered three judgments finding SPDC strictly liable for the oil spills in the villages of Oruma and Goi (Nigeria).

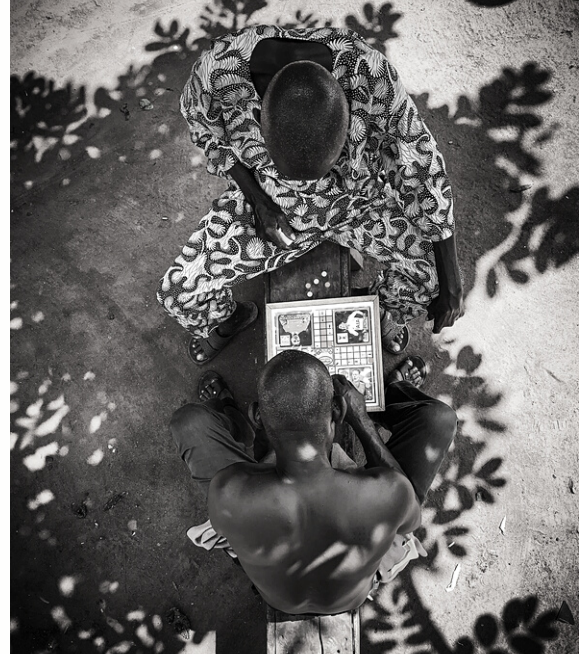
The court stated that Shell could not prove, beyond any reasonable doubt, that the leakages resulted from sabotage. The court also found that RDS owed a duty of care to the communities in the vicinity of the pipeline to ensure that a leak detection system was installed and ordered the company to ensure the Oruma pipeline was equipped with one.



FEBRUARY

UK SUPREME COURT CLAIMS THAT NIGERIAN FARMERS CAN BRING CLAIMS AGAINST SHELL IN ENGLISH COURTS:

On the 12th of February 2021, the UK Supreme Court held that the proceedings filed in the UK by approximately 42,500 Nigerian residents against parent company Royal Dutch Shell and its Nigerian subsidiary, SPDC, could proceed in English courts. The court reaffirmed, following the Vedanta decision, that a parent company may incur a duty of care in respect of the activities of a subsidiary in determined situations.



UK SUPREME COURT RULED THAT UBER DRIVERS ARE WORKERS:

On the 19th of February 2021, the UK supreme Court unanimously held that Uber drivers are to be classified as 'workers' and not self-employed under employment law, meaning that they will now be entitled to associated worker rights such as minimum wage and holiday pay.



MARCH

An English Court ruled that a shipping company can be sued over shipbreaker's death in Bangladesh:

The case had been filed in the UK against UK shipping company, Maran, who had acted as an agent to sell a defunct vessel to a 'demolition buyer' who, in turn, had conveyed it to a ship breaking yard in Bangladesh to perform the demolition of the vessel in spite of the international concern regarding the dangerous working practices in the Bangladesh shipbreaking yards which have been raised over the past few years. In the process of the demolition of the vessel, the worker fell to his death and his widow brought proceedings against Maran in the English courts in negligence and unjust enrichment for damages. On the 10th of March 2021, an English Court of Appeal held that Maran could be found to incur a duty of care to the shipbreaking worker on the basis that the company knowingly exposed him to significant dangers.

THE EUROPEAN PARLIAMENT ADOPTED A RESOLUTION ON CORPORATE DUE DILIGENCE AND ACCOUNTABILITY:

On the 10th of March 2021, The European Parliament approved a resolution with recommendations to the Commission on corporate due diligence and corporate accountability which includes a draft directive. The draft directive provides that Member States shall lay down rules to ensure that companies carry out due diligence with respect to potential or actual adverse impacts on human rights, the environment and good governance in their operations and throughout their value chain. In terms of scope, it would cover EU-domiciled large companies, publicly listed small and medium-sized companies and SMEs operating in high risk sectors as well as non-EU domiciled companies selling good or providing services in the internal market.

The draft directive provides for a public enforcement mechanism through a national competent authority responsible for the supervision of the application of the directive, as well as for a civil liability mechanism for harms caused or contributed to by acts or omissions of a company subjected to the directive or another entity under its control.



NEW BILL ON RESPONSIBLE AND SUSTAINABLE INTERNATIONAL BUSINESS BEING CONSIDERED IN THE NETHERLANDS:



In March 2021, four Dutch political parties submitted a draft law on responsible and sustainable international business to the Dutch Parliament. The draft law imposes a duty of care on all the companies registered in the Netherlands or selling goods or providing services to the Dutch market to prevent adverse human rights and environmental impacts arising out for their activities and value chains. It also imposes on large companies human rights and environmental due diligence obligations. In terms of enforcement, it provides for a public regulator which can issue binding instructions and financial sanctions in case of non-compliance.

APRIL

LEGISLATIVE PROPOSAL FOR A DIRECTIVE ON SUSTAINABILITY DISCLOSURES FOR COMPANIES:

On the 21st of April 2021, the European Commission presented a legislative proposal for a Corporate Sustainability Reporting Directive (CSRD) , aiming to amend four existing pieces of legislation: the EU Non-Financial Reporting Directive (NFRD), the Audit Directive and the Audit Regulation as well as the Transparency Directive . The proposal introduces significant changes to the NFRD, which include, inter alia:

- The extension of the scope of reporting companies: whilst the NFRD was applicable to large 'public interest entities' (i.e., listed companies, banks and insurance companies) with more than 500 employees, the proposal seeks to extend the scope to include all large (1) as well as all listed companies, with the exception of listed micro-enterprises;
- The introduction of a general EU-wide audit requirement for the sustainability reports;
- The inclusion of new sustainability reporting requirements; and,
- The obligation for the companies to digitally tag the reported sustainability information.

(1) Defined as companies that have, on their balance sheet date, more than 250 employees on average during the financial year, and a balance sheet total in excess of €20m or a net turnover in excess of €40m.

PROVISIONAL AGREEMENT ON THE EUROPEAN CLIMATE LAW:

The European Parliament and the European Council presented a provisional agreement for the European Climate Law. This Regulation is part of the European Green Deal and represents a deep commitment to reach, by 2050, climate neutrality. It foresees, inter alia:

- A climate target for 2030: a reduction of at least 55% in the net emissions of green-houses gas, when compared to 1990;
- A commitment to prepare, with the different sectors of the economy, sector-specific plans to pursue climate neutrality;
- Provisions directed to the adaptation to climate change; and
- Coherent and efficient policies in the European Union that have climate neutrality as an objective.



MAY

SPAIN APPROVED A CLIMATE LAW:

On the 15th of May 2021, Spain's Parliament approved a Climate Law that intends to set out climate targets and goals for the future of Spain. It establishes ambitious commitments like:



- The reduction of 23% of Spain's emission, by 2030, compared with the levels of 1990;
- A goal to generate 74% of the country's electricity with renewables by 2030;
- The end of fossil fuels' production on Spain by the 31th of December 2042;
- A prohibition of the technique of hydraulic fracturing (fracking) and also radioactive mining, such as uranium;
- A prohibition for new exploration and production of coal, gas and oil; and,
- A prohibition to sell vehicles that use fossil fuel, by 2040.

U.S. DISTRICT COURT JUDGED IN FAVOUR OF 7 EX-IPI WORKERS:

In the US, Chief Judge Ramona V. Manglona decided in favour of 7 Chinese construction workers from the casino-resort project of Imperial Pacific International (IPI), in Saipan, and awarded them \$5.91 million over allegations of force labour and human trafficking by IPI's former contractors and subcontractors.

THE DISTRICT COURT OF THE HAGUE RULED SHELL MUST CUT ITS CO2 EMISSIONS:

On the 26th of May 2021, the District Court of the Hague ordered Royal Dutch Shell (RDS) to reduce its CO2 emissions by 45% relative to 2019 levels, in its global operations (including customers and suppliers) by the end of 2030. The case had been filed in 2019 by the Friends of the Earth Netherlands (Milieudefensie), over 17,000 co-plaintiffs and six other NGOs. The Court considered that the CO2 emissions represent a threat for human rights, especially the right to life and the right to respect for family life. The court found that RDS, as the parent company which sets out the corporate policy for the Shell group, has a legal obligation which derives from an 'unwritten standard of care' under Dutch tort law to 'contribute to the prevention of dangerous climate change through the corporate policy it determines for the Shell group'. The court made an explicit reference to soft law instruments that had been endorsed by RDS, such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises a 'universally endorsed' and 'authoritative' soft law instruments suitable as guidelines in the interpretation of the unwritten standard of care, regardless of whether or not RDS had committed to the UNGPs.



JUNE

Germany adopts the Supply Chain Due Diligence Act:

On the 11th of June 2021, the German parliament adopted the Supply Chain Due Diligence Act which requires large German companies to exercise due diligence in relation to a defined list of human rights and certain environmental standards in their own operations and the activities of 'direct' suppliers.

With respect to “indirect” suppliers, a due diligence obligation exists only to the extent that the company obtains 'substantiated knowledge' of a possible violation or is otherwise prompted by other circumstances. In terms of enforcement, the law provides that the German Federal Office for Economic Affairs and Export Control is responsible for enforcing the law. Public authorities can investigate cases of non-compliance and issue fines.



NORWEGIAN PARLIAMENT ADOPTED THE TRANSPARENCY ACT:

On 10 June 2021, Norway adopted the Act on business transparency and work with fundamental human rights and decent work ('Transparency Act') which is set to enter into force in January 2022 (2). The law creates a corporate duty for large and medium-sized companies domiciled in Norway as well as foreign companies selling products and services in Norway, to conduct due diligence in relation to human rights and decent work throughout all their supply chain, and to provide or cooperate to ensure remedy. The law also requires companies to report on their due diligence exercise and grants a 'right to information' to any interested stakeholder the right to request information from companies in this respect. As for the enforcement, the law provides that the Norwegian consumer authority shall be responsible for monitoring compliance with the law and providing guidance to company, and may issue injunctions and impose fines in case of non-compliance.

(2) Act on business transparency and work with fundamental human rights and decent work (also known as the 'Transparency Law'), Proposition 150 L (2020-2021), available (in Norwegian) at: <https://www.regjeringen.no/contentassets/c33c3faf340441faa7388331a735f9d9/no/pdfs/prp202020210150000dddpdfs.pdf>

U.S. SUPREME COURT DECIDES IN FAVOUR OF NESTLÉ AND CARGILL IN CHILD SLAVERY CASE:

The lawsuit had been filed under the Alien Tort Statute (ATS) - an 18th century statute which provides US federal courts jurisdiction to hear claims against non-US defendants - by six Malian nationals against Cargill Inc and Nestle SA over claims that they were trafficked as child slaves to Ivory Coast and forced to work on cocoa farms.

On the 17th of June 2021, the Supreme Court reversed the decision from the Court of Appeals for the 9th Circuit - which had allowed the claim to proceed - and rejected the claim on the grounds that nearly all conduct had taken place outside of the US and that there was no basis for such extraterritorial application of the ATS.



EUROPEAN CLIMATE LAW WAS APPROVED:

On the 24th of June 2021, the European Council approved the European Climate Law, which aimed to write into law the goal set out in the European Green Deal to achieve climate-neutrality by 2050. The Climate Law requires EU Institutions and Member States to take the necessary measures to meet the zero greenhouse gas emissions target by 2050, and includes measures to keep track of progress and adjust actions as well as a review of progress every 5 years.



ABOUT NOVA BHRE:

The NOVA Centre on Business, Human Rights and the Environment (NOVA BHRE) is an academic centre within the Nova School of Law. The main goal of the centre is to contribute to fostering responsible business conduct that upholds respect for human rights, decent work and environmental standards throughout their entire global value chains, thereby also advancing the UN Sustainable Development Goals.

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