

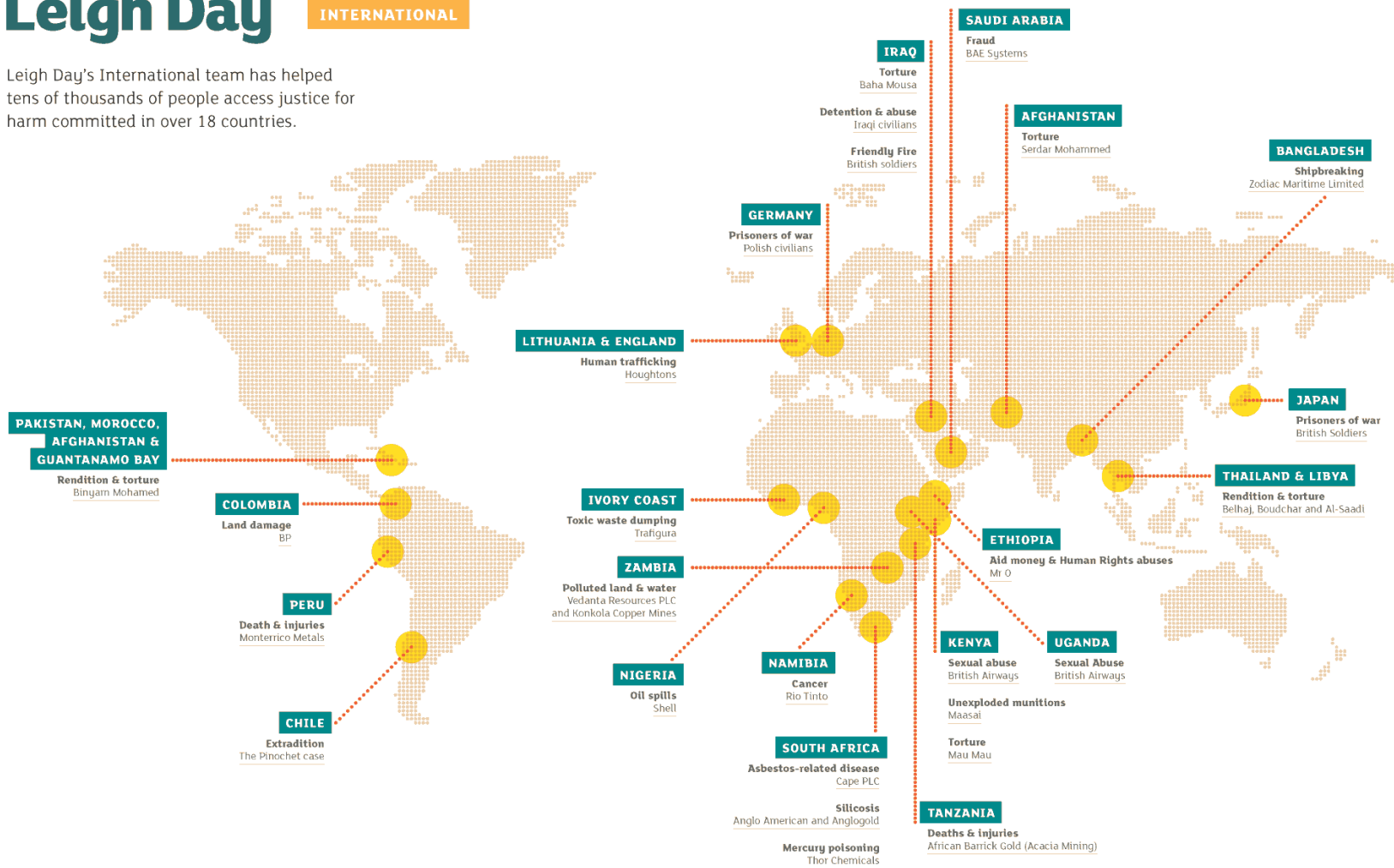
Leigh Day

*Parent Company Liability
– the emerging jurisprudence*

Leigh Day

INTERNATIONAL

Leigh Day's International team has helped tens of thousands of people access justice for harm committed in over 18 countries.



Key Parent Company Cases

Connelly v RTZ Corporation Plc [1998] AC 854.

Lubbe & Ors v Cape plc [2000] 1WLR 1545.

Chandler v Cape plc [2012] 1 WLR 3111.

Lungowe v Vedanta plc [2018]

Chandler - Guidance

Potential liability could arise if:

- 1) Businesses are in a relevant respect the same.
- 2) Parent has superior expertise.
- 3) Subsidiary's system is known to be unsafe.
- 4) Subsidiary relied upon parent's superior expertise.

Extra-territorial Jurisdiction?

- *Forum non conveniens* (*Spiliada Maritime Corp v Cansulex Ltd* [1987])
- Article 4 of the Brussels I Regulation. (*Owusu v. Jackson* [2005]) Mandatory jurisdiction.
- Service out CPR 6.36 – “necessary and proper party”

Current Parent Company Cases.

Vedanta plc – Zambia Copper Mine

Royal Dutch Shell plc – Oil spill clean-up

Unilever plc – Kenyan Tea Plantations

Lungowe v. Vedanta Plc



Leigh Day

Vedanta - Parent Company Liability

1. PCL is not a novel extension of the tort of negligence/a distinct category of liability.
2. It is “blindingly obvious” that the proof will depend upon internal documents and disclosure.
3. Liability apply to parties who have been directly impacted by subsidiaries operations, not just their employees.

Polices and Guidelines – three routes to liability

Group policies could give rise to a duty in three ways:

1. Defective/inadequate guidance.
2. Active training, supervision and enforcement.
3. Parent holds itself out as exercising supervision and control but fails to do so.

Omission

“Similarly it seems to me that the parent may incur the relevant responsibility to third parties if, in published materials, it hold itself out as exercising that degree of supervision and control of its subsidiaries, even if it does not in fact do so. In such circumstances its very omission may constitute the abdication of a responsibility which it has publicly undertaken” [Para 53]

Court of Appeal – Okpbai v Royal Dutch Shell plc

- Issuing mandatory polices/standards cannot give rise to a duty.
- Must establish control / joint control of subsidiary in “*much more direct and substantial way*”.
- There would need to be evidence of enforcement of standards.
- Majority Decision - Concern about floodgates.

Okpabi – permission to appeal

- Inadequate global policies which are relied upon can give rise to a duty.
- Sufficient to have superior expertise upon which subsidiary relies. No need for control.
- Indeterminate liability – size is no defence.
- Should not shut out case prior to disclosure.
- International standards highly relevant.

Court of Appeal – AAA v. Unilever

- Shoehorned categories into “control and advice”.
- Parent would have to actively enforce advice provided.
- No consideration of whether crisis management policy framework was defective.
- Assessment made prior to disclosure.