Proceedings of ICSPHS 2026 Symposium:Ethics, Law, and Psychology: Interdisciplinary Reconstruction of Humanities in Medicine
DOI: 10.54254/2753-7048/2026.ZJU31547

The International Criminal Liability of Parent Companies for Overseas Atrocities Committed by Subsidiaries: Attribution Pathways and Institutional Construction

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Abstract. In the context of global business operations, it has become a common practice for parent companies to manage overseas activities through their subsidiaries. Industries such as energy and financial services, due to their particular features, are more likely to be involved in overseas atrocities including human rights violations. Using the Rome Statute of the International Criminal Court relevant court decisions and United Nations conventions as the main analytical framework, this paper examines how parent companies might face criminal liability through case studies. It explains the conditions and practical limitations of different liability pathways such as derivative responsibility, joint criminal enterprise liability, and command responsibility. Building on this information, the paper suggests concrete institutional recommendations from three aspects: improving international legal norms, enhancing domestic law adjustments, and strengthening internal company governance. Specific suggestions include making rules clearer about corporate legal responsibility, improving how international standards become part of domestic law, and legally requiring compliance duties. These proposals aim to provide theoretical support and practical solutions for addressing the accountability gap concerning parent companies' overseas operations.

Keywords: International Criminal Law, subjects of international criminal responsibility, parent company liability, subsidiary atrocities, attribution pathways

1. Introduction

In the context of global operations, multinational companies have spread their networks across the entire world. Parent companies achieve cross-border allocation of resources by setting up subsidiaries and branch offices. But this way of parent-subsidiary operations, while it improves efficiency, has also created a problem of fragmented accountability. Horrible actions such as massacres, environmental destruction, and plundering that are done by overseas subsidiaries can often be directly linked to the strategic choices, financial backing, and management control of their parent companies. However, parent companies frequently dodge responsibility by pointing to the "separate legal personality" idea, which is to say, the legal separation principle [1].

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Historical practice, for instance, offers significant contemporary examples of this problematic situation. The ongoing environmental lawsuit involving the Shell Group in Nigeria demonstrates the civil law approach for holding parent companies responsible for lapses in a duty of care concerning environment and human rights matters, showing also the limitations involved. At the same time, the criminal allegations faced by Toronto-Dominion Bank, that is TD Bank, due to the complete breakdown of anti-money laundering internal checks within its US subsidiary, illustrate how regulators can effectively lift the corporate veil by claiming conspiracy and organizational failure, making it possible to seek criminal and also major civil responsibility against the parent company and its related entities [2].

In international criminal law, while the Rome Statute set up the International Criminal Court (ICC), it only deals with the criminal responsibility of individuals, lacking proper rules for companies. The practice of the International Court of Justice (ICJ) has mostly focused on state responsibility, meaning there aren't certain standards for assigning liability within big corporate groups. Although the UN Guiding Principles on Business and Human Rights (called the "Guiding Principles" from now on) suggest a "protect, respect, and remedy" approach, they don't have legal force. Given this situation, building a way to hold parent companies responsible under international criminal law for bad acts done by their overseas branches has become a central problem in tackling transnational human rights issues.

This study uses a combined method involving case study analysis, looking at norms, and comparative research. It examines key disagreements in how corporate legal responsibility gets assigned through real cases, checks gaps in international rules and how they might be understood, and compares parent company liability rules in countries like the United States, the United Kingdom, and Germany. The goal is to find useful ideas that could work elsewhere.

The importance of this work lies in its cross-area and cross-border approach, offering a theoretical model and possible solutions for prosecuting big companies. It tries to help international and domestic law work better together on corporate responsibility matters.

2. Case analysis

2.1. Shell Nigeria environmental and human rights litigation

Since the 1950s, the oil activities carried out by Shell and its local Nigerian branch in the Niger Delta area have caused long-lasting and widespread crude oil leaks. This has led to serious contamination of the land and water sources for communities such as Ogale and Bille, that is to say. Over in the Netherlands, following more than ten years of legal proceedings, the Hague Court of Appeal decided in 2021 that Shell's Dutch parent company had certain legal responsibilities concerning some spills from its Nigerian operations. To put it simply, they were required to install a system for detecting leaks. The case ended in 2022 with Shell paying a settlement of 15 million euros. Meanwhile, in the United Kingdom, the Ogale and Bille communities directly took legal action against Shell's UK parent company starting in the year 2015. Their main legal argument focused on trying to show the parent company should oversee overseas operations. This particular case achieved an important win at the UK Supreme Court in 2021. The court decided that a parent company could have a duty of care under common law towards affected communities, if it showed enough control over or made relevant promises about the subsidiary's activities. This meant the case could continue within the UK legal system. This decision created a vital pathway for similar legal cases around the world, opening doors to other communities seeking justice.

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The core dispute in this case revolves around liability attribution. Shell has long argued that the vast majority of spills were caused by third-party theft and sabotage, and that it had taken reasonable measures. Communities and critics, however, allege that Shell's infrastructure is aging, poorly maintained, and that its emergency response and clean-up efforts are slow. They further accuse the parent company of systemic supervisory failure. Although there have been individual settlements, including a £55 million settlement for the Bodo community, many victims still lack adequate redress, and compensation amounts are often criticized as being disproportionate to the long-term ecological damage and health impacts. Currently, the Ogale and Bille communities' case continues in the London High Court, with a full trial scheduled for 2026 to finally determine liability and compensation.

2.2. Toronto-dominion bank money laundering case

Between 2014 and 2023, spanning nearly a decade, the anti-money laundering (AML) internal controls at TD Bank's US subsidiary were characterized by "longstanding, pervasive, and systemic deficiencies." The core issue lay in the bank's senior management enforcing a budget policy known as the "fixed cost paradigm" in pursuit of profits, which refused to increase investment in the compliance department despite business growth and rising risks. This led to the severe failure of its transaction monitoring systems. Between 2018 and 2024, these vulnerabilities were exploited by at least three criminal networks to launder approximately $671 million in illicit funds through the bank's accounts. More alarmingly, staff from branch level to senior management, including a future Chief AML Officer, were aware of internal control issues. Internal emails even jokingly referred to the bank as an "easy target" for criminals, yet no effective action was taken.

In October 2024, Toronto-Dominion Bank reached a historic settlement with the U.S. Department of Justice, the Financial Crimes Enforcement Network (FinCEN), the Office of the Comptroller of the Currency (OCC), and the Federal Reserve. The bank pleaded guilty to conspiracy charges brought against its US subsidiary and its direct parent holding company, including failing to maintain an effective AML program, filing inaccurate currency transaction reports, and money laundering. This marked the first time a major bank in U.S. history admitted guilt to conspiracy to commit money laundering. The bank agreed to pay total penalties exceeding $3.1 billion, including about $1.89 billion in criminal penalties and forfeiture. Furthermore, the settlement included severe non-monetary penalties: the bank was subjected to an asset growth cap, must undergo three to four years of independent compliance monitoring, and is required to comprehensively overhaul its AML system.

This case demonstrates that when a subsidiary's illegal conduct is proven to be rooted in the overall strategy, culture, or control failures of the multinational corporate group, U.S. regulators are willing to pierce the legal veil, holding the parent company substantively liable and imposing stringent remedial obligations. It provides a powerful judicial precedent for pursuing the vicarious liability of multinational corporations globally.

3. The challenges of attributing international criminal liability to parent companies

3.1. Normative obstacles

The core challenge in holding multinational parent companies internationally criminally liable is fundamentally about a significant gap in the way international criminal law is currently set up. The issue is really about the Rome Statute, which is a key part of international criminal law, clearly

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saying it can only deal with actual people, meaning individuals. This completely leaves things like companies from being directly responsible for really serious international crimes, such as war crimes or crimes against humanity. That is to say, this creates a big missing space in accountability at the international level, meaning efforts to hold people accountable have to depend on national laws instead.

However, there's a huge difference between countries when it comes to their laws about whether companies can be criminally liable and how that works. This leads to legal clashes and situations where different places claim authority over the same case, resulting in different outcomes for things that are basically the same. Even in places where companies can be held criminally responsible, like the United States for example, trying to connect the criminal actions of a foreign child company back to the overseas main company faces a very steep climb. To put it simply, people need very strong proof showing the main company had total control or intended the crime itself. The old idea of the "corporate veil" acts as a powerful barrier in the way procedurally.

This forces those bringing charges to look for other paths. Strategies might include going after top individuals in the parent company for helping the crime or being in charge, or treating bad company behavior as something that just makes the punishment worse. But these roundabout methods don't establish the main company itself as the criminal subject, which weakens the scary and corrective power of criminal punishment. Therefore, the root of this problem is the clash between international criminal law not recognizing corporate liabilities and the messy patchwork of national laws, letting multinational parent companies operate where the risk of facing criminal responsibility is low under current rules [3].

3.2. Theoretical obstacles

The principles about company independence and protection from responsibility in business law don't match well with how important human rights protection should be in international law. This gives big companies a kind of excuse to avoid being held responsible [4]. Since each company is its own legal thing, the smaller company usually takes the blame by itself under business law, meaning the main company only risks what it put in. But when companies work across countries, the main company often controls the smaller one's big choices through things like owning most of it, controlling the money, and picking the leaders. In these cases, the "separate thing" idea can become twisted into a way to dodge blame.

The talk in law schools about "seeing through the company structure" makes figuring out blame even harder. One idea, the "real control" idea, says people should decide based on how much the main company actually controls the small company's big choices, which fits with protecting human rights. It's really hard to measure exactly how much control there is. On the other hand, the "direct order" idea needs proof that the main company clearly told the small company to do the bad things before people can blame them. While this makes proving it a bit easier, it makes the blame too narrow, meaning lots of ways companies help bad things indirectly, like providing information or features, can't be punished. The difference between these ideas is really a problem about balancing business freedom against protecting people's rights, and people haven't really agreed on one way yet.

3.3. Practical obstacles

In the practical pursuit of holding parent companies accountable across borders, three interconnected problems create a kind of closed loop of difficulties, that is to say, problems with evidence, conflicts over which court has authority, and the weakness of actually making rulings stick. All of these things

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together make it hard to effectively achieve parent company liability. Regarding the evidence part, proving important things like a "control relationship" or what the company intended to do often depends on getting hold of key internal documents, for instance, records of parent company decisions and financial books. Parent companies frequently will not share these, saying they are "trade secrets," while the people affected and groups trying to help them usually lack the ability and the legal right to gather evidence in different countries.

Conflicts over jurisdiction add another layer of uncertainty to the whole accountability process. The country where the parent company is based, the country where the subsidiary actually does its work, and the countries where the people harmed live might all try to claim the right to handle the case. This is based on different ideas like nationality, where things happened, or protecting their own interests. Often, the home country of the parent company will insist it has the main right, arguing it needs to "protect its own businesses," which usually leads to results that are better for the parent company.

The problem of actually enforcing a decision across different countries further undermines the effort to hold companies responsible. To put it simply, even if a court somewhere does make a ruling saying the parent company is liable, the parent company's money and property are usually spread out in many different places. The people who won the case then have to go through complicated international legal help procedures to try and freeze assets or get money. Differences in how countries run their courts and the lack of strong international systems for cooperation on enforcement often mean these rulings just stay on paper, unenforced [5].

4. Institutional construction

4.1. Enhancing norms on corporate criminal liability

Add a dedicated chapter on corporate criminal liability [6]. A new Article 25bis titled "Criminal Responsibility of Legal Persons" shall be added after Article 25 of the Rome Statute. It shall explicitly state that "A legal person may be held responsible for committing, instigating, or assisting international crimes, including war crimes, crimes against humanity, and related atrocity crimes. The determination of responsibility of a legal person shall be without prejudice to the criminal responsibility of natural persons." Concurrently, penalties for legal persons shall be added to Article 77 (Penalties): Fines (minimum fine set between one to three times the "proceeds derived from the atrocity," which shall explicitly include both direct proceeds gained by the subsidiary and dividends received by the parent company); Operational Restrictions (prohibition from participating in UN procurement and financing from international financial institutions, lasting 5-10 years); Mandatory Remediation (reconstruction of the compliance system under the supervision of an independent monitor appointed by the ICC, with costs borne by the legal person) [7].

Supporting implementation rules. Establish an ICC "Chamber for Legal Person Liability," composed of experts in international criminal law and multinational corporate governance, specifically to adjudicate cases involving parent company liability. Formulate "Guidelines on the Standard of Proof for Legal Person Liability," clarifying the evidence required to establish "substantive control" (e.g., written documentation of parent company approval for significant subsidiary projects, bank statements demonstrating financial control, official personnel appointment/removal letters), designating authority over financial approvals and the setting of operational targets as core evidence of control.

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4.2. Strengthening the transformation of domestic law

To address the core issue of parent companies evading liability by invoking the principle of "separate legal personality," actionable legislative clauses should be designed according to different legal systems, clarifying the triggering conditions and evidentiary rules for "piercing the corporate veil" [8].

For Civil Law systems (using the amendment of the German Administrative Offenses Act as an example), introduce a new provision on "Liability of Associated Enterprises in Multinational Corporations." The triggering conditions would be the parent company holding more than 50% of the subsidiary's shares or meeting any one of the following criteria: more than two-thirds of the subsidiary's directors are appointed by the parent company, or significant decisions require the parent company's approval. Implement a reversal of the burden of proof. Victims would only need to prove the "subsidiary's atrocity" and the existence of a "control relationship." The parent company would then be required to submit certified compliance documents and other evidence to prove that its compliance system was effective and unrelated to the atrocity; otherwise, liability would be presumed established.

For Common Law systems, using the amendment of the U.S. Alien Tort Claims Act (ATCA) and Canadian legal system as example, add a "Parent Company Liability Clause" [9]. It would specify a judicial checklist for determining "substantive control," including specific scenarios such as the parent company setting performance targets for the subsidiary, controlling the subsidiary's financial accounts, and formulating the subsidiary's operational protocols. Judges could directly refer to this checklist for determination. Provisions on joint and several liability would be established, requiring the parent company to assume "primary liability for compensation" for the subsidiary's atrocities. The parent company could seek recourse from the subsidiary after payment but could not be exempted from liability due to the subsidiary's bankruptcy.

Regarding the integration into China's legal framework, put a "Special Provision on Unit Crime" after Article 30 of the Criminal Law. It says that "if a multinational parent company exercises actual control over a subsidiary involved in overseas acts of crimes against humanity or war crimes, the parent company shall be liable as a unit crime.". Concurrently, change the Anti-Foreign Sanctions Law to place "enterprises linked to overseas atrocities" on the sanctions list, restricting their financing and business in China's market.

The important elements of this legal transformation are as follows. First of all, clarify the standards for judging "substantive control", for example shareholding ratio (e.g. (exceeding half), financial control measures, and right to appoint/dismiss employees. Second, establish the "reversal of the burden of proof" rule, demanding that the parent company prove it has no control or that it fulfilled its duty of prevention [10]. Third, lay out "joint and several liability". The parent and subsidiary jointly assume responsibility for losses caused by atrocities, ensuring victims receive proper compensation.

4.3. Making corporate compliance mandatory

Parent companies must set up an all-around compliance system including "pre-action prevention, in-process monitoring, and post-action rectification". In the pre-prevention phase, human rights risk evaluations must be done for setting up overseas subsidiaries and investment projects. Investments are not allowed in high-risk regions or sectors. During the in-process monitoring stage, an independent compliance department is supposed to be established to supervise how subsidiaries work, perform periodic human rights compliance investigations, and detect violations in a timely

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way. In the ex-post rectification phase, once a subsidiary is found to have atrocity risks, immediate measures including ceasing financial support, changing the management, or shutting down the subsidiary should be carried out, and full cooperation with accountability proceedings is needed [11].

A Chief Human Rights Compliance Officer (CHCO) system should be put in place. Parent companies are required to choose a CHCO reporting directly to the board, and the pay depends on compliance-related performance metrics. It falls to the CHCO to approve risk assessment reports of subsidiaries, perform quarterly compliance audits on subsidiaries, start internal investigations within 48 hours of getting risk reports, and send annual compliance reports to regulatory authorities. Specifically, "atrocity-related liability clauses" ought to be inserted into the employment contracts of management in parent and subsidiary firms. If managerial decisions cause subsidiary atrocities, relevant decision makers are to take "joint and several liability for compensation". If a crime is established, they will be held criminally liable as natural people.

5. Conclusion

The international-law-related criminal liability of parent companies for the atrocities of their overseas subsidiaries is a major problem where human rights protection and corporate accountability clash in the age of globalization. Due to the different natures of the financial and energy sectors, the tracing of responsibility shows differences. An accountability framework centered on "substantive control" and structured by derivative liability, joint criminal enterprise liability, and command responsibility should be developed. This multi-factor system is vital for correctly allocating blame for different sorts of atrocities.

The crucial point in building this institutional framework is to bridge the chasm between international and domestic law and put an end to the separation between seeking accountability and enforcing prevention. On a global level, the corporate liability clauses in the Rome Statute have to be strengthened, and mechanisms for jurisdictional cooperation put in place. At the national level, countries have to adopt these international standards into their laws and actively use their jurisdiction. In the corporate world, compliance duties need to be legally binding, requiring companies to put in place thorough, start-to-finish human rights compliance systems. This integrated way of doing things matches the direction of international criminal law and conforms to the judicial practices of many states. It can properly deal with the existing "accountability vacuum" of parent companies and tighten the legal protection of human rights in a globalized world.

Future research should place emphasis on determining liability in the digital economy. With the evolution of financial and defense technology, parent companies are using algorithms, remote control, and related approaches to put indirect pressure on their subsidiaries more a great deal. Determining precisely the responsibility for "algorithmic control" and "technical support" will then become an important new area of study about parent company accountability.

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