


DEVELOPMENTS IN THE FIELD

Vietnam Marine Life Disaster: A Test Case of a Home State's Jurisdiction in Taiwan

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I. Introduction

Victims of transnational human rights violations caused by multinational corporations (MNCs) are often confronted with substantial impediments to effective remedies. While justice is *de facto* unattainable in host state courts, due to weak government or the absence of judicial independence, barriers that prevent victims from litigating in home states are no less insurmountable. Transnational litigation in home states has faced jurisdictional challenges. Defendant corporations have argued that home state courts are not the most appropriate forum to hear a case involving foreign torts.¹

More and more states that are home to large MNCs have allowed transnational lawsuits concerning their MNCs' human rights abuses abroad to proceed, including in the UK, Canada and the Netherlands.² In Asia, a similar breakthrough occurred when the Taiwan High Court weighed in this issue by its recent decision on the tort suit filed against Formosa Ha Tinh Steel Corporation and its major shareholders (FHS Decision) in April 2021.³

The FHS Decision arose from the 2016 Vietnam Marine Life Disaster (Marine Life Disaster), where Formosa Ha Tinh Steel (FHS), a Vietnamese subsidiary of a Taiwan-based Formosa Plastics Group, illegally discharged toxic factory waste into riverways in Ha Tinh Province, Vietnam, which led to immense fish fatalities in four provinces, and affected over 40,000 locals. The victims have alleged that FHS violated their right to life, right to health, and right to work, and tried to file a collective tort suit against FHS in the Vietnam Court.⁴

¹ Axel Marx et al, 'Access to Legal Remedies for Victims of Corporate Human Rights Abuses in Third Countries', European Parliament Think Tank (1 February 2019), [http://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU\(2019\)603475](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU(2019)603475) (accessed 12 September 2021).

² *Four Nigerian Farmers and Stichting Milieudéfense v Royal Dutch Shell plc and another* [2021] ECLI:NL:GHDHA:2021:132 (Oruma), ECLI:NL:GHDHA:2021:133 (Goi) and ECLI:NL:GHDHA:2021:134 (Ikot Ada Udo); *Okpabi and others v Royal Dutch Shell plc and Another* [2021] UKSC 3.

³ Taiwan High Court, Decision (31 March 2021), <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPHV%2c109%2c%e6%8a%97%e6%9b%b4%e4%b8%80%2c39%2c20210331%2c1>.

⁴ 'Formosa Pollution Acted Upon', *Viet Nam News* (18 July 2016), <http://vietnamnews.vn/environment/299689/formosa-pollution-acted-upon.html#YJ0TBZFYil3dfq2L97> (accessed 12 September 2021).

Unfortunately, justice was not served in Vietnam. Not only did the Vietnamese government suppress the victims' protest on the marine life disaster, but the Vietnamese Court also rejected hearing the victims' suits against FHS.⁵ To victims of the marine life disaster, the Taiwanese Court is their last resort for justice.

In 2018, helped by clergy and lawyers from both countries, 7875 Vietnamese victims managed to file a transnational tort suit against FHS and its major shareholders in the Taipei District Court. The victims asked the FHS, its directors, and its major shareholders domiciled in Taiwan to compensate the victims for the damages resulting from FHS's pollution in the marine life disaster. Initially, this lawsuit faced a swift denial from Taipei District Court for *forum non-conveniens*,⁶ and another rejection subsequently followed by the Taiwan High Court on the same grounds.⁷

However, the Supreme Court of Taiwan reversed the dismissal of the Taiwan High Court and remanded this case.⁸ In the remand procedure, the Taiwan High Court in an unprecedented ruling, held that the Taiwanese Court has jurisdiction to entertain this suit. The defendants' residences in Taiwan were the key to establishing the jurisdiction of Taiwanese Court.

This article analyses the jurisdictional breakthrough of the Taiwan High Court, and elucidates the success of case making achieved by the transnational cooperation between Catholic Churches in Taiwan and Vietnam. This article also summarizes the history of global pollution allegations against Formosa Plastic Group. It concludes that courts of MNCs' home states can and should adjudicate cases against their MNCs' human rights violations abroad, and plaintiffs in similar situations can also look to the jurisdictional innovation of the Taiwan High Court in the FHS Decision.

II. Vietnam Marine Life Disaster

The Marine Life Disaster is just the tip of the iceberg. Formosa has engaged in global contamination for decades.⁹ The section below summarizes Formosa's formation and the long history of allegation of pollution.

Formosa: A Serial Offender

The genesis of Formosa's petrochemical empire started from the military and economic support of the U.S. to Taiwan under the Mutual Security Act in the 1950s. Prior to the four-year economic plans of the government of the Republic of China (R.O.C.), Taiwan had already established the technology to manufacture chlorine, the main ingredient of

⁵ Angel L Martínez Cantera, 'We are Jobless Because of Fish Poisoning: Vietnamese Fishermen Battle for Justice', *The Guardian* (14 August 2017), <https://www.theguardian.com/global-development/2017/aug/14/vietnamese-fishermen-jobless-fish-poisoning-battle-justice> (accessed 12 September 2021).

⁶ Taipei District Court, Decision (5 October 2019), <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPDV%2c108%2c%e9%87%8d%e8%a8%b4%2c674%2c20191005%2c1> (accessed 12 September 2021).

⁷ Taiwan High Court, Decision (16 March 2020), <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPHV%2c108%2c%e6%8a%97%2c1466%2c20200316%2c1> (accessed 12 September 2021).

⁸ Supreme Court, Decision (11 November 2020), <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPSV%2c109%2c%e5%8f%b0%e6%8a%97%2c1084%2c20201111%2c1> (accessed 12 September 2021).

⁹ Brian Hioe, 'Formosa Plastics Group's Long History of Wrongdoing in Taiwan and Elsewhere', *New Bloom* (9 September 2016), <https://newbloommag.net/2016/09/09/formosa-plastics-history/> (accessed 12 September 2021).

Formosa's preliminary product, polyvinyl chloride, under Japan's military policy of Nanshin-ron (南進論 Southward Expansion Policy)¹⁰ in the wake of the Japanese colonial period.¹¹

Based on the Japanese colonial legacy in the chemical sector, the R.O.C. Council for U.S. Aid, the U.S. Economic Cooperation Administration's Mission to China, and the private partner, J. G. White Engineering Corporation, decided to fund plastics manufacturing as one of the major U.S. aid offered to support the industrialization of Taiwan. By receiving foreign aid, Formosa's founder, Wang Yung-Ching, founded Formosa Plastics Corporation in 1954.¹²

Formosa Plastics Group started with plastic manufacturing in its infancy. After more than 60 years of expansion and diversification, Formosa's business spans from plastics, oil refining, petrochemicals, fibres, textiles, electronics, energy, transportation, heavy industry, biotechnology, medical care and education. It has established subsidiaries and affiliates in Taiwan, the United States, Mainland China, Vietnam, the Philippines and Indonesia. Today, Formosa Plastic Group is the second-largest multinational enterprise in Taiwan and the sixth-largest petrochemical conglomeration in the world.¹³ As the manufacturing centres of Formosa Plastics Group have proliferated outside of Taiwan since the 1980s, its pollution went global, from Cambodia, to the U.S. and Vietnam.

In 1992, four villagers in Sihanoukville, Cambodia, died the day after touching plastic shipping packages containing some of Formosa's 3000 tons of mercury-laden concrete waste shipped from Formosa's chemical plant in southern Taiwan to Cambodia. Formosa never apologized. It blamed the rising environmental awareness in Taiwan that forced it to export the toxic waste to the Global South.¹⁴

In the United States, Formosa has constructed oil refinery complexes in two States, Texas and Louisiana. In Texas, Formosa's subsidiary illegally discharged huge amounts of plastic pellets into the San Antonio River, which led to serious contamination and local opposition. It ultimately settled and paid the highest Clean Water Act fine in the U.S. history.¹⁵ In Louisiana, Formosa is planning to construct the world's largest polyvinyl chloride plant in the already notoriously polluted area between Baton Rouge and New Orleans – known as Cancer Alley. This construction project has been repudiated by the UN Human Rights High Commissioner as 'Environmental Racism', seeing that the full operations of Formosa's

¹⁰ H Shimizu, 'Nanshin-ron: its Turning Point in World War I' (1987) 25:4 *The Developing Economies* 386, 388. Nanshin-ron is an ideology, invented in the period between 1937 and the end of World War II, advocating for Japan's territorial expansion in the South Seas. The empire of Japan's ambition to expand its influence in the South Seas has grown since the end of World War I. After Japan invaded China in 1937, the initial trade-oriented foreign policy of Southward Advancement turned into military aggression and annexation in the South Seas. Nanshin-ron provided a theoretical foundation for the territorial expansion of the Empire of Japan.

¹¹ Wang Yufeng, 'Tai Wan Shi Hua Wang Guo De Qi Dian Gao Xiong Xi Shi Jia Yu Tai Su' [The Origin of Taiwan's Petrochemical Giant, Kaohsiung and the Birth of Formosa Plastics], Gu Shi [Story] (19 November 2018), <https://storystudio.tw/article/gushi/taiwan-plastic-industry/> (accessed 12 September 2021).

¹² Ibid.

¹³ Alexander H Tullo, 'C&EN's Global Top 50 Chemical Companies of 2017', C&EN (30 July 2018), <https://cen.acs.org/business/finance/CENs-Global-Top-50-chemical/96/i31> (accessed 12 September 2021).

¹⁴ Rone Tempest, 'Asia's Toxic Formula for Waste', *Los Angeles Times* (4 March 1992), <https://www.latimes.com/archives/la-xpm-1999-mar-04-mn-13867-story.html> (accessed 12 September 2021).

¹⁵ DeSmog, 'Formosa Plant May Still Be Releasing Plastic Pollution in Texas After \$50M Settlement, Activists Find', *EcoWatch* (21 January 2021), <https://www.ecowatch.com/formosa-plastics-texas-pollution-2644880831.html> (accessed 12 September 2021).

petrochemical complex will double the total toxic emission in St. James Parish, and would expose the majority of African American residents to an even higher cancer rate.¹⁶

The Marine Life Disaster

Formosa established its Vietnamese subsidiary FHS to operate a steel manufacturing business in Vietnam, Ha Tinh Province, in 1993. Initially, Formosa intended to construct a massive steel-manufacturing complex in Yunlin County, Taiwan, but the construction plan aroused intense opposition among local residents.¹⁷

Contrary to the opposition and reluctance in Yunlin, the Government of Vietnam gave red-carpet treatment to Formosa Plastics Group.¹⁸ The construction of Formosa Ha Tinh Steel complex has been the biggest investment since the Đổi Mới Economic Reform started in 1980.¹⁹

In April 2016 Vietnam, the Formosa Ha Tinh Steel plant discharged toxic factory waste, a lethal cocktail of cyanide and phenol, into the ocean, causing a mass fatality of marine life in the waterways. Over 100 tons of fish carcasses washed up along the 200 km coastline shore of Ha Tinh and three adjacent provinces (Quang Binh, Quang Tri, and Thua Thien Hue).²⁰ Several local fishermen complained about the aftermath of the fatal discharge in an interview conducted by Taiwan Public Television. One reported, 'The sea has three colors – black, red, and purple. When I pulled out the fishing net, it had sticky, yellow, and muddy toxins'. Another fisherman said: 'I did not feel uncomfortable right after I had eaten the fish I caught during the first week of the accident. Then I got abdominal pain, and my body felt pain too.' One diver experienced suffocation and itchiness after diving into the water near the FHS plant and subsequently died.²¹ The pollution devastated local fisheries and agriculture as well; up to 44,000 families were affected, and unemployment rate skyrocketed 15 times in the four affected provinces after the Marine Life Disaster.²² Local people protested on the street, demanding compensation and an independent investigation into the causes of the pollution.

However, instead of taking responsibility for this disaster, FHS threatened to divest from Vietnam, asking the public to 'choose between steel factory and fish'.²³ In response, 'I Choose

¹⁶ Tristan Baurick, 'Welcome to "Cancer Alley," Where Toxic Air is About to Get Worse', *Propublica* (30 October 2019), <https://www.propublica.org/article/welcome-to-cancer-alley-where-toxic-air-is-about-to-get-worse> (accessed 12 September 2021).

¹⁷ Tai Su Da Lian Gang Chang (Tai Gang) Zen Me Cong Tai Wan Dao Yue Nan Qu De? [How "Taiwan Steel Complex" Left Taiwan to Vietnam?], Jiao Dian Shi Jian [Event in Focus], <https://eventsinfocus.org/issues/738>.

¹⁸ Au Thi Tam Minh, 'Challenges in Implementing Decentralization of Foreign Direct Investment Management in Viet Nam – Case Study of the Hung Nghiep Formosa Ha Tinh Steel Project in Ha Tinh Province' (2019) 2 *Asia-Pacific Sustainable Development Journal* 83–105.

¹⁹ J Revilla Diez, 'Vietnam 30 Years after Doi Moi: Achievements and Challenges' (2016) 60:3 *Zeitschrift für Wirtschaftsgeographie* 121–133.

²⁰ Reuters Staff, 'Taiwan Activists Press Formosa Plastics over Dead Fish in Vietnam', *Reuters* (17 June 2016), <http://www.reuters.com/article/us-vietnam-formosa-plastics-idUSKCN0Z30Y2> (accessed 12 September 2021).

²¹ Interview of Local Fisherman, Taiwan Public Television Service (2016), Our Island Documentary No. 862 – The Fish Deaths in Vietnam, <https://www.youtube.com/watch?v=48Y4ijMIIJY> (accessed 22 May 2022). For those who need an English translation of this interview, see Mei-Fang Fan et al, 'Environmental Justice and the Politics of Pollution: The Case of the Formosa Ha Tinh Steel Pollution Incident in Vietnam', *Environment and Planning E: Nature and Space* (19 November 2020), 8.

²² 'Formosa Pollution Acted Upon', *Viet Nam News* (18 July 2016), <http://vietnamnews.vn/environment/299689/formosa-pollution-acted-upon.html#YJ0TBZFYil3dfq2I.97> (accessed 29 March 2022).

²³ Philip Charlier, 'Mass Protests in Vietnam as Citizens Choose Fish over Steel', *Taiwan English News* (1 May 2016), <https://taiwanenglishnews.com/mass-protests-in-vietnam-as-citizens-choose-fish-over-steel/> (accessed 29 March 2022).

Fish' became a social media slogan to mobilize the opposition against FHS.²⁴ The far-reaching outrages against FHS and widespread distrust of the Vietnam government have eventually culminated in the largest-scale protests in Vietnam since the 1980s.²⁵

The Vietnam government soon suppressed the protest, strengthened police patrol around FHS, and arrested major organizers and activists of this protest.²⁶ Although FHS finally admitted the responsibility of the pollution and paid a 500 million USD fine to the Vietnam government, only four victims' families received 650 USD in compensation for each, victim far less than the damages they suffered.²⁷ Subsequently, 7875 victims filed a tort suit against FHS in the Vietnam Court, but the Court refused to hear the case, ruling that the disputed damages had already been settled.²⁸

After the Vietnam Court's dismissal, 7875 victims decided to file a tort suit against FHS and its major shareholders in the Taiwanese Court, alleging that FHS had violated Vietnam Civil Code article 172, article 584, and article 601, Law on Fisheries article 13, Law on Environmental Protection article 112 and article 160, Law on Water Resources article 34 and article 38, and Law on Marine and Island Resources article 61. The victims claimed that FHS and its major shareholders should pay them \$48.717 million to compensate the plaintiffs for the entirety of the damages caused by the Marine Life Disaster.

Transnational Cooperation of Catholic Churches

After the Vietnam Court refused to hear the case, the Catholic churches in Taiwan and Vietnam played a pivotal role in publicizing this transnational lawsuit in the Taiwanese Court. Bishops and priests in the devastated areas started to look for support from Catholic Parishes in Taiwan, where Formosa's headquarter is located.²⁹ The close connection between the Catholic Church in Taiwan and Vietnam has been built upon the Vietnamese labour migration to Taiwan since the 1960s. Diocese Hsinchuensis is the major Catholic Church that serves Vietnamese migrant workers in Taiwan, and in this case, it is also the essential fundraiser and coordinator to form the alliance between Catholic churches from both countries, and Taiwan's environmental protection groups.

Bishops and priests of four affected provinces in Vietnam came to Taiwan's Congress, and held a series of press conferences with Taiwanese environmental NGOs to advocate for Vietnamese victims.³⁰ This gave more visibility to the case. These advocacy efforts may have put pressure on the Taiwanese Court to reverse its previous ruling.

²⁴ Ibid.

²⁵ Vu Trong Khanh, 'Vietnam Protesters Seek Answers Over Mass Fish Death', Wall Street Journal (8 May, 2016) <https://www.wsj.com/articles/vietnam-protesters-seek-answers-over-mass-fish-deaths-1462088637> (accessed 29 March, 2022)

²⁶ Reuters Staff, 'Vietnam Police Stop Fishermen Marching to Make Claims at Steel Firm', Reuters (14Feb, 2017)<https://www.reuters.com/article/us-vietnam-protest-formosa-plastics-idUKKBN15T1MK> (accessed 29 March, 2022).

²⁷ Refworld, 'Catholic Villagers in Vietnam Protest Lack of Compensation for Formosa Disaster'(3 July, 2017) <https://www.refworld.org/docid/5971a87913.html> (accessed 29 March, 2022).

²⁸ 'Formosa Plastics Lawsuit (re marine pollution in Vietnam, filed in Taiwan), Business and Human Rights Resource Center, <https://www.business-humanrights.org/en/latest-news/group-applauds-taiwan-supreme-court-ruling-in-favor-of-vietnam-victims-of-toxic-spill/> (accessed 12 September 2021).

²⁹ 'Vietnamese Church Brings Formosa Victims' Protests to Taiwan', *AsianNewsIt* (16 August 2017), <http://www.asia-news.it/news-en/Vietnamese-Church-brings-Formosa-victims'-protests-to-Taiwan-41534.html> (accessed 12 September 2021).

³⁰ 'Vietnamese Protesters Target Taipei Company', *YouTube* (17 November 2016), <https://www.youtube.com/watch?v=-8FcWLF2RBY> (accessed 31 March 2022).

III. Jurisdictional Breakthrough of Taiwanese Courts

The defendant's residence in Taiwan was the key factor to save this case from jurisdictional death. Taiwanese Courts initially refused to hear this case. According to the Taiwan Code of Civil Procedure article 15, a tort suit shall be initiated to the court where the tortious act occurred,³¹ and thus this case ordinarily should have been filed in the Vietnamese Court.

The Appeal and the FHS Decision

However, the Supreme Court unexpectedly excluded the application of article 15 from a transnational tort suit, and reversed the lower court's dismissal for lack of jurisdiction, and remanded this case back to the Taiwan High Court.³² Subsequently, for the first time, the Taiwan High Court grounded its jurisdiction in this case on the fact that 13 defendants of this case habitually reside in Taiwan.³³ This jurisdictional breakthrough paves the way for more foreign victims to seek justice in Taiwanese Courts for Taiwan-based MNCs' human rights violations in the future.

The Taiwan High Court held that the defendants' residences in Taiwan form a strong jurisdictional connection, comparing with the previously jurisdictional ruling that depended on the location where the disaster took place. The Taiwan High Court found that among the defendants, two major shareholders – Formosa Plastics Corporation and China Steel Corporation, whose holdings account for 90% shares of FHS – have based their headquarters in Taiwan. In addition, the court noted that the directors of FHS, Formosa Plastics Corporation and China Steel Corporation, also sued by the victims, are all Taiwanese nationals and habitually reside in Taiwan.³⁴

Most importantly, the Taiwan High Court held that in terms of the convenience for the defendants, the Taiwanese courts would be a better forum than the Vietnamese courts to prevent the defendants from excessive commuting to litigate. As a result, the Taiwan High Court issued the *FHS Decision*. In its decision, it established jurisdiction on one part of this case for the defendants that are domiciled in Taiwan and dismissed the other part where the defendants are not domiciled in the country. The Taiwan High Court ruled that this case should enter Taipei District Court for its first trial on the merits.

Analysis

The *FHS Decision* is a novel example of civil procedure. Not only does the decision align with the direction of travel in other jurisdictions, such as Canada, New Zealand and the U.S.,³⁵ but it also demonstrates a bolder and more dynamic jurisdictional approach than the most-discussed recent decisions of the UK Supreme Court in *Okpabi v Royal Dutch Shell* (hereinafter *Okpabi*)³⁶ and the Court of Appeal of The Hague in the *Four Nigerian Farmers and Stichting Milieudefensie v Royal Dutch Shell plc and another* (hereinafter *Milieudefensie*).³⁷ The jurisdictional connection of the defendants' residences, in this case, can provide guidance in cases involving MNCs' human rights violations abroad, especially in the circumstances in which the victims cannot seek effective remedies in the host states.

³¹ Taiwan Code of Civil Procedure 2018, article 15, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010001> (accessed 12 September 2021).

³² Supreme Court, note 8.

³³ Taiwan High Court, note 3.

³⁴ *Ibid.*

³⁵ *James Hardie Industries plc v White* [2018] NZCA 580 and *James Hardie Industries plc v White* [2019] NZSC 39

³⁶ Note 2.

³⁷ *Ibid.*

The jurisdiction of *Okpabi* and the *Milieudefensie* is pre-conditioned on the duty of care that the home-state-based parent company owes to the victims overseas.³⁸ In both decisions, the home-state courts' jurisdictions to adjudicate Shell's human rights violations abroad are pre-conditioned on the assumption that the British- or Dutch-registered parent company could owe a duty of care towards the victims affected by their subsidiaries overseas.

However, plaintiffs have challenges in meeting the burden of proof to establish the parent company's duty of care to third parties. In both cases, parent companies do not owe a duty of care to the victims solely on account of their positions as parent companies. On the contrary, it is the plaintiffs who have to prove that the parent company does 'avail itself of the opportunity to take over, intervene in, control, supervise, or advise the management of the relevant operation of the subsidiary'.³⁹ The plaintiffs would have to present the court the supervising structure between the parent and the subsidiary or even within a whole conglomerate. It also requires detailed evidence such as email or private correspondence between the parent and the subsidiary to persuade the courts that the former did supervise the latter.⁴⁰ Parent companies do not always owe a duty of care to the third parties, which explains why the Courts of both cases apply a case-by-case approach to the question of jurisdiction. Hence, the jurisdictional advances made by the Court of *Okpabi* and *Milieudefensie* may be limited.

IV. Conclusion

Alongside *Okpabi* and *Milieudefensie*, which have been heralded as significant decisions in transnational human rights litigation, the *FHS Decision* may also be significant for two reasons. First, jurisdiction based on the defendant's residence lends higher predictability and more opportunities for foreign victims to sue in the court of an MNC's home state. In transnational litigation involving powerful MNCs, the difference of laws and the asymmetry of power between parties will always aggravate the vulnerabilities of victims. The jurisdiction based on the defendant's residence helps to keep the jurisdictional issue simple, because the location of the defendant's residence is an obvious fact. It will greatly enhance the chance for a case to go to court.

As the Taiwan High Court noted, jurisdiction based on the defendant's residence also saves the defendants from unnecessary travel to litigate in a foreign court where the tortious action happened. Most defendants in cases concerning MNCs' human rights violations abroad reside or at least have their business centres in the home states.

Second, jurisdiction based on the defendant's residence resonates with the emerging States' extraterritorial obligation to protect human rights. The UN human rights treaty bodies such as the Committee of Economic, Social and Cultural Rights and the Committee of the Rights of the Child have made several General Comments to reiterate that states should regulate MNCs that have business centres in their national territories.⁴¹ It is consistent with UN recommendations that the Taiwan High Court based its jurisdiction on the headquarters of Formosa Plastics Corporation and China Steel Corporation in Taiwan. The *FHS Decision* staves off the fears that States' extraterritorial obligations to

³⁸ UKSC, note 2, para 160; The Court of Appeal of The Hague, note 2, paras 1–5.

³⁹ UKSC, note 2, para 25.

⁴⁰ The Court of Appeal of The Hague, note 2, para 7.

⁴¹ UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities' (10 August 2017), para 31; UN Committee on the Rights of the Child, 'General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector' (17 April 2013), para 43.

protect human rights are only theoretically possible, but will never be officially recognized in a domestic courtroom. The *FHS Decision* signifies that the home state can fulfil States' extraterritorial obligations to protect human rights by adjudicating suits against their MNCs' human rights violations abroad as an important step in providing access to effective remedy.

Conflicts of interest. The author declares none.