

**Leigh Day**

**Access to Justice and Liability of Mining Industry**

**May 2014**

**Richard Meeran**



## COMMUNITY PROTEST ACTION PHOTO

WHILE CAPE DELAYS FACING TRIAL IN BRITISH COURTS, MANY OF THE CLAIMANTS ARE DYING IN SOUTH AFRICA.  
ACTSA

**Leigh Day**

# Mining firm tries to change law to block £100m claims

David Hencke  
Westminster Correspondent

**A** BRITISH company defending one of the biggest damages claims since the Thirlidomide scandal is campaigning to change the law to prevent the case being brought. Documents leaked to the Guardian show that it has sought the support of senior civil servants in four Whitehall departments.

Cape plc, which has substantial foreign mining interests, is defending claims in the British courts that could cost it up to £100 million, from more than 1,500 South African former workers with asbestosis and fatal lung cancers. The cases can only be brought if the workers are awarded legal aid.

The company is trying through the courts and Whitehall to persuade Lord Irvine, the Lord Chancellor, to reverse a House of Lords ruling which allowed a Namibian worker to get legal aid to bring a case in the UK against another company.

Cape hired Will Weeks, a partner in the lobbying firm

GJW, and Charles Lewington, John Major's former media adviser, to lobby Whitehall and Downing Street to influence Lord Irvine to introduce amendments to the Access to Justice Bill going through Parliament. The aim is to ban foreign workers of British companies getting legal aid.

Lord Irvine is poised to make a decision this month but is expected to keep legal aid in cases involving basic human rights.

The documents, leaked from GJW, reveal that Mr Weeks claims to have elicited support from civil servants in the Treasury, Foreign Office, Department of Trade and Industry, Cabinet Office and the Society of Labour Lawyers to influence the Lord Chancellor.

The papers detail off-the-record briefings with civil servants and advisers who are quoted expressing sympathy for the company's case. "Officials continually emphasised the arguments that the taxpayer will end up footing the bill are of critical importance."

Tony Rogers, head of legal aid spending in the Treasury, is quoted as saying: "The



The company is trying to persuade Lord Irvine (left) to reverse a House of Lords ruling

implications of such a multiple claim by foreign nationals on the public purse would be a matter of serious concern."

Foreign Office officials Jill Barrett and Tom Hoskins are quoted as saying: "The decision to pursue the case in the UK courts rather than South Africa would be seen as displaying a lack of faith in the South African legal system."

Department of Trade and Industry officials Michael

Colgan and Bob Manning reportedly said they would not be keen to see any developments which discouraged multinationals from locating their headquarters in the UK.

Jonathan Cowper, head of the Better Government Unit in the Cabinet Office, is reportedly prepared to co-ordinate issues over the matter. Stuart Bell MP, of the Society of Labour Lawyers, is quoted as agreeing that a

very select briefing of parliamentarians would be sensible to ensure that the Lord Chancellor was aware of the wide-ranging implications".

The Cape workers were denied the right to sue in South Africa by a compulsory "no-fault" system of compensation funded by mining companies. Injury claims can only be paid if employees waived the right to sue in South Africa.

In 1997 solicitor Richard Meeran won legal aid for five South Africans to sue Cape in Britain. Since then he has consolidated more than 1,500 claims for dead and dying former employees.

The first plaintiff is Hendrik Afrika, who started working for Cape in 1960 aged 17. He claims there were no warnings and no protective clothing was supplied. He was diagnosed as suffering from asbestosis a year ago.

Mr Meeran said: "Large numbers of people have been fatally or seriously injured and the company which failed to protect them should be accountable here, where they are based and where they took their profits."

Ann Clwyd, chair of the all party Parliamentary Human Rights Committee, who has also received the GJW documents, said yesterday: "I was absolutely appalled when I read the company's strategy... The workers have right on their side, not the company."

GJW last night said its relationship with Cape had ended after supplying the strategy Mr Lewington said: "I have a practice of never talking about confidential advice."

David McIntosh, a senior partner of Davies Arnold Cooper, the lawyers for Cape, distanced his firm from the strategy: "GJW is no longer working for Cape. We are also, as their lawyers, determined to act in a *prima facie* and proper way and are going back to the courts to challenge this judgment because we believe it was not made clear when the House of Lords allowed this case to be brought in the United Kingdom that possibly 2,000 people could be involved. So it is correct to say we are challenging the grounds of the original case but through the courts."

Cape declined to speak directly to the Guardian.

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# Brussels I Regulation on jurisdiction and the recognition of judgments in civil and commercial matters

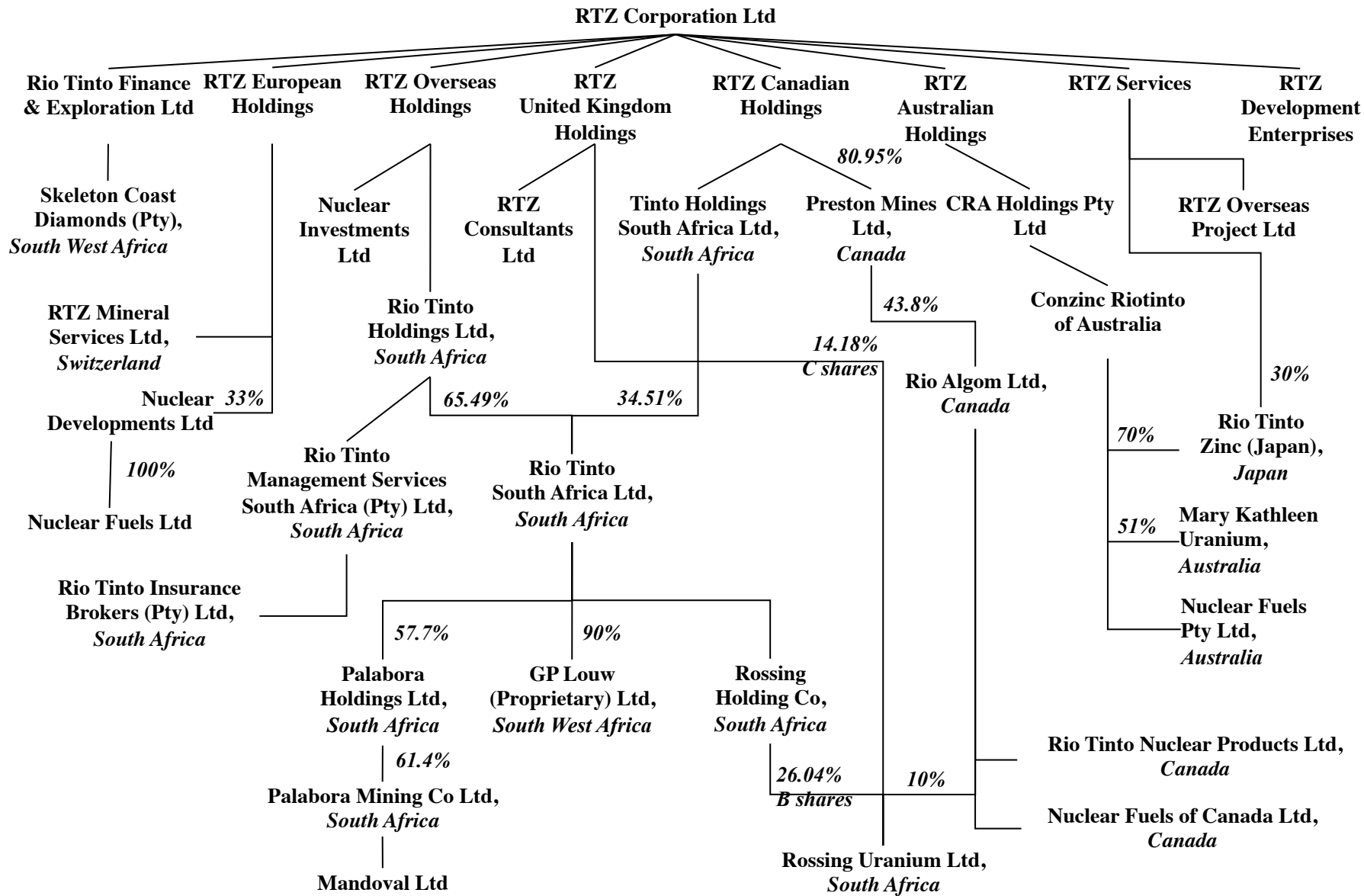
## Article 2

1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State

## Article 60

1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:

- (a) statutory seat, or
- (b) central administration, or
- (c) principal place of business



## Corporate liability

# The sins of the sons

### A little-noticed court case with big implications

May 26th 2012 | From the print edition

THE limited-liability company is the building-block of capitalism, mobilising resources for investment. But its central tenet, that investors are not generally responsible for the liabilities of the firms they invest in, faces growing challenge. A decision by the Court of Appeal stretches almost to breaking point the “corporate veil” that has protected parent companies from the sins of their subsidiaries.

David Chandler loaded bricks for Cape Building Products in Uxbridge off and on between 1959 and 1962. A fireproof boarding containing asbestos was made in an open-sided factory on the same site. In 2007 he discovered that he had asbestosis. Cape Building Products no longer existed, and the insurance for its employees excluded his condition. So Mr Chandler sued the company's parent, Cape PLC.

There was no dispute over the fact that Mr Chandler's direct employer had breached its duty of care to him. But Cape PLC maintained that, as a separate legal entity, it was not responsible for its dead subsidiary's failings towards its workforce.

The High Court found for Mr Chandler in 2011, ordering Cape to pay him £120,000 (\$196,000). In April the Court of Appeal upheld the judgment. It also laid down general criteria under which a parent could be held responsible for the health and safety of its subsidiary's employees. Their essence is that the parent must be in the same line of business, aware of the actual safety risks, more knowledgeable than its subsidiary about safety in the industry and accustomed to intervene in its trading operations, though not necessarily in matters relating to welfare.

Judge Arden was careful to say that the decision did not “pierce” the corporate veil, as liability would always depend on facts. Its importance, says Richard Meeran, a partner with Leigh Day, the solicitors who acted for Mr Chandler, is that there is no longer an objection in principle to a parent having a legal duty of care to its subsidiaries' employees. Cape has applied for the right to appeal to the Supreme Court.

The judgment is not going to break Cape, a FTSE-250 company with a market capitalisation of around £400m and about the same in net assets. But the potential impact on other firms, including multinationals with offshoots in countries that permit rough and ready workplace standards, could be substantial. Since 2005 English courts have been obliged to accept jurisdiction when the parent is domiciled in England. Unlike courts in America, for example, they may not decline to hear a case in favour of a victim's local court. A case in the works now, brought by goldminers against Anglo-American South Africa, may extend the definition of domicile. Establishing that a parent may owe a duty of care to its subsidiaries' workers moves matters on.

This worries some, who fear that multinationals will think twice about incorporating in Britain. Fans of the limited-liability concept also fret that lifting the curtain between parent and subsidiary could lead to over-centralised corporate control and reduced investment.

But others argue that it will improve the competitive position of firms that want to maintain high standards abroad yet do not want to sacrifice the privileged access to capital markets that British domicile gives them. Large companies have a moral responsibility, if not a legal one, to level upwards, says Sir Robert Wilson, once chairman of RTZ, a mining multinational that has had its share of legal problems (and also a former chairman of The Economist Group). The courts, it seems, are leaving nothing to chance.

From the print edition: Britain



**Leigh Day**

# African Barrick Gold

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**LAWSUIT** ABG says it is committed to addressing 'legitimate grievances in an open and transparent way'

## Tanzanian villagers sue Barrick Gold in UK court

The plaintiffs are demanding reparation for the death of six people who were shot by police

By The Citizen Reporter

Dar es Salaam. Twelve villagers living in the neighbourhood of North Mara Gold Mine have sued African

Barrick Gold (ABG) in the UK High Court for the death of six of their relatives, who were shot by police in 2011. A London law firm, Leigh Day, filed the case on behalf of the villagers and yesterday served ABG and North Mara Gold Mine Limited with the legal papers. The ABG office in Dar es Salaam

said it was aware of the case and is committed to "addressing legitimate grievances in an open and transparent way". The firm was quick to assert, though, that it will not compensate illegitimate claims or lawsuits. ABG, whose gold mining activities are all in Tanzania, is registered as a

2011  
Year police shot dead six people at the North Mara Gold Mine.

Continued on page 2

**Leigh Day**



## Multinationals will profit from the government's civil litigation shakeup

These proposals will make claimant lawyers' willingness to tackle UK multinational human rights violations financially unviable



**Richard Meeran**  
guardian.co.uk, Tuesday 24 May 2011 16.30 BST

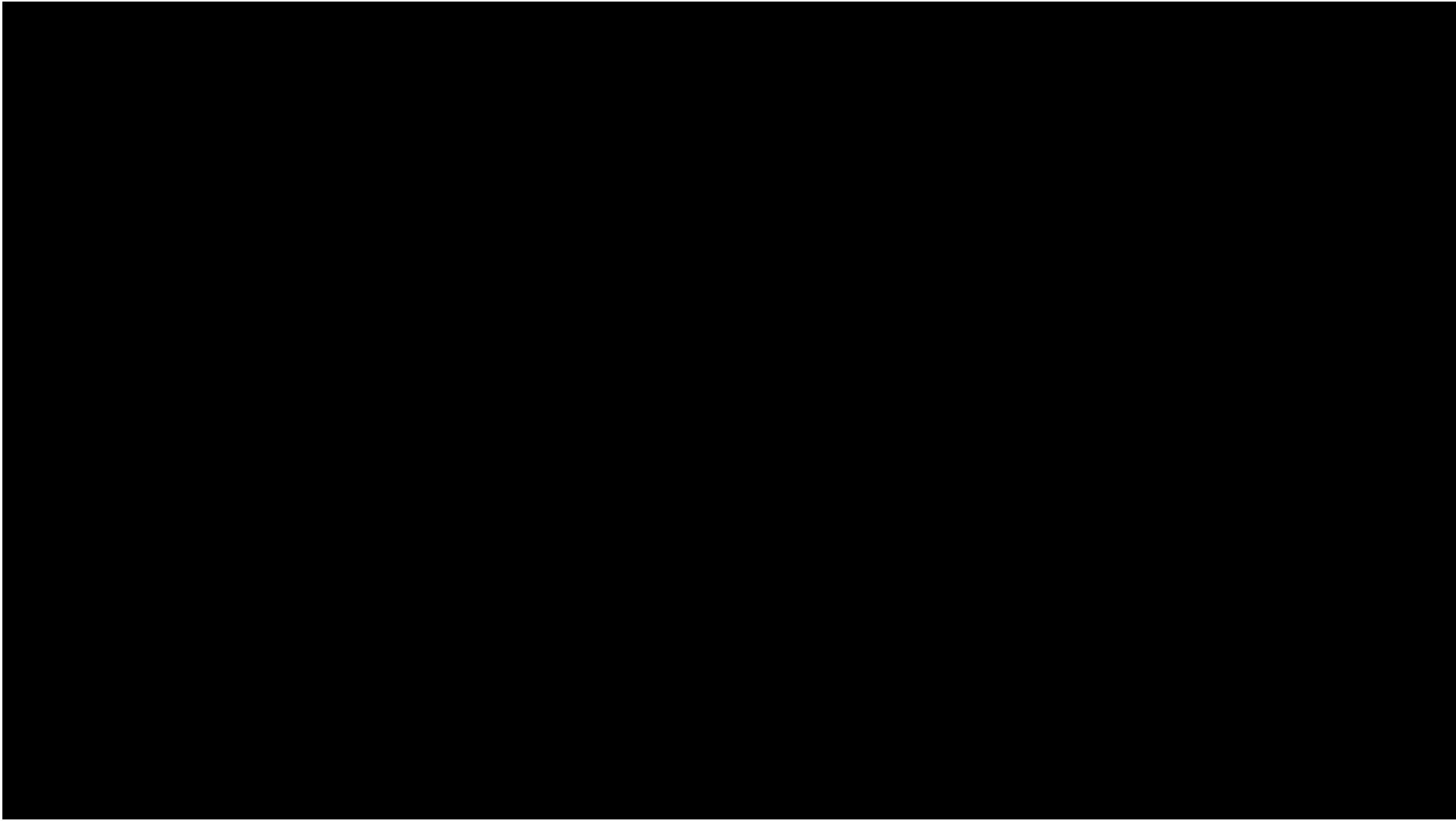
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Experts work to remove toxic waste at a contaminated site near Akuedo village, Ivory Coast. Photograph: Legnan Koula/EPA

The government's proposed changes to the civil litigation costs regime, which will severely restrict access to justice for many vulnerable individuals, have so far passed relatively unnoticed. However, those adversely affected will include victims of UK multinational human rights violations in developing countries.

Recent history has shown much multinational misconduct overseas, especially among extractive and chemical industries. But in developing countries there has usually been impunity due to ineffective enforcement of local laws, state suppression of opposition to multinational operations, and difficulties in accessing justice locally.



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