

## The European Union, Emerging Global Business and Human Rights

Emerging and developing states are home to powerful corporations capable of deploying economic activities on all over the world through the rapid pace of technological change and globalisation. But such corporations have to date been largely overlooked in the field of business and human rights. Treatment of such corporations has typically been in the context of supply chain studies, as subsidiaries of corporations from economically developed Western states. This book takes a radically different approach. It aims to investigate the conditions under which the European Union and its Member States regulate and remedy human rights violations by corporations from emerging and developing states. Stemming from the hypothesis that the EU intends to play a central role, Aleydis Nissen explores how the EU and its Member States attempt to ensure that EU-based businesses are not undercut by emerging competition, drawing on global examples to illustrate this developing phenomenon.

**Aleydis Nissen** is a researcher at Leiden University and the Research Foundation – Flanders (FWO). She received the 2020 Best Thesis Prize of the European Group of Public Law, the 2021 Thesis Prize of the Strasbourg-based Fondation René Cassin International Institute of Human Rights and the Andrés Bello (J.B. Scott) Prize of the Geneva-based Institute of International Law.

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# The European Union, Emerging Global Business and Human Rights

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Aleydis Nissen

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Aleydis Nissen

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*To Gaëlle*

De menschen gaan zoover vaneen  
wanneer de schemering is nabij;  
ze worden er niet triestig om  
of ook niet blij

Alice Nahon — “Maskers,” 1929

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## Foreword

It is with pleasure that I present this work by Aleydis Nissen, *The European Union, Emerging Global Business and Human Rights*. The monograph is a revised version of Nissen's PhD thesis, for which she was co-awarded the Institute of International Law's Andres Bello Prize 2021, instituted by James Brown Scott.

James Brown Scott was a renowned American professor of international law and an active member of the Institute of International Law. It was within the framework of our Institute that he instituted this prize, which was to bear in turn the names of thirteen eminent internationalists from different eras, including the South American professor and diplomat Andrés Bello. The Institute organizes this prize every two years, on the occasion of its plenary sessions, and selects a specific topic or area for each one. For the 2021 edition, the issue was 'North-South Relations and International Law'. Eighteen manuscripts were received by the jury, which was made up of Professors Pierre-Marie Dupuy, Jeannette Irigoien-Barrenne and Dire Tladi.

Nissen's thesis focuses on the inclusion of private transnational corporations from developing and emerging countries in the sphere of business and human rights to address the global collective action problem that appears to exist due to the lack of attention to the growing influence of corporate non-state actors from these countries and their accountability for human rights violations abroad. It assesses whether the EU can create an artificial level playing field to enforce the same human rights standards across national and foreign corporations, including private transnational corporations from developing and emerging countries. Having taken an in-depth multilingual, comparative approach to the sources used, the International Labour Organization and World Trade Organization regimes, European Union (EU) law

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and that of its Member States, developing and emerging country case studies are discussed in light of extraterritorial implications and access to effective remedies.

This book is a welcome and much-needed contribution to the discussion on the accountability of private transnational corporations from developing and emerging countries for human rights violations abroad. It provides illuminating perspectives on how to strengthen corporate social responsibility by all stakeholders in a highly competitive global arena.

Professor Marcelo Kohen

*Geneva, 14 April 2022*

*Secretary-General Institute of International Law*

## Series Preface

The field of business and human rights is an increasingly important domain within legal scholarship. Power in twenty-first century society is increasingly held by private actors, who may be shielded from rights-based accountability by the very nature of human rights law. As Aleydis Nissen's book shows, however, this debate suffers from a number of potentially dangerous blind spots. First, like much scholarship, it suffers from the bias of being developed with the economies and corporations of the developed 'West' in mind. Transnational corporations from the emerging and developing world wield, however, increasing economic power and may carry a quite different set of challenges from a human rights point of view.

Second, we often miss a complete understanding of the role of the European Union in the shifting terrain of the global economy. Many are familiar with the increasing extraterritorial reach of EU law – as Nissen's book tells us, the fight against corporate human rights violations is also an important test case for how far and how effectively the EU's most foundational commitments reach. By attempting to establish a level playing field in which private transnational corporations from developing and emerging states can equally be held accountable for human rights violations abroad, the EU is flexing its regulatory muscles in a global environment in which its power is increasingly contested by other states.

An admirable quality of the book is its ability to work seamlessly between numerous complex legal and regulatory orders. By its nature, business and human rights is a truly transnational field of law in which the dividing lines between jurisdictions and levels of law are blurred. For scholars and practitioners working in the field, Nissen's book offers a comprehensive picture, analysing the international regulatory



framework, the web of EU regulation establishing obligations for corporations from within and outside the EU, and national practice from two member states (France and the Netherlands) which are producing novel legal frameworks in the field.

Finally, the book adds an important comparative dimension by tracking the EU's regulatory influence in agreements negotiated with third states, focusing on two case studies: Kenyan floriculture and the South Korean electronics industries. Nissen's interviews and field research provide not just empirical depth but also normative insights, illustrating the difficulties faced by workers in these industries to make use of legal remedies and emphasising the importance Member States of civil society as a connecting point between the individual and international human rights standards.

Aleydis Nissen's book addresses compelling challenges for global, as well as European, public policy, and is of relevance to scholars working both within and outside the EU context. It deserves to be widely read both by lawyers and policy-makers. We are very pleased to welcome it to the *Cambridge Studies in European Law and Policy* series.

Mark Dawson  
Laurence Gormley  
Jo Shaw

## Acknowledgements

Thank you for picking up this book. Please enjoy skimming or reading it. You can always contact me to talk about its content. I would love that. You can reach me at [aleydis@live.be](mailto:aleydis@live.be).

Thanks to Theo. I simply wish that everyone knew him. Furthermore, I am grateful to many people and institutions. Various experts gave input regarding the writing and structuring of this book. Among them are Urfan Khaliq, Jiří Přibáň, Bernadette Rainey, Sigrun Skogly, Stijn Smismans and the anonymous reviewers. Two institutions provided the necessary resources. Cardiff University supported this research from its inception in 2016, and the Pascal Decroos Fund provided a grant for the fieldwork in Kenya and the Republic of Korea in 2017. The Kenyan Commission for Science Technology and Innovation and Cardiff University's School of Law and Politics Research Ethics Committee granted approval for these field studies (Nacosti/P/18/59629/22158, SREC/051217/07 and SREC/090118/06). In a way, it is a pity that I have to keep the names of the 24 interviewed experts confidential, but I can credit some of those who facilitated the interviews: James Thuo Gathii, Lyla Latif, Lee Anselmo and Faith Simuyu. Ludger Kühnhardt (Bonn University), Lee Joo-Young and Moon Woo-Sik (Seoul National University), Attiya Waris (University of Nairobi) and the British Institute in Eastern Africa in Nairobi hosted me during visiting research stays. In 2020 and 2021, I added more research and updates while working at Leiden University, Fonds Wetenschappelijk Onderzoek – FWO (postdoc grant 12Z8921N, affiliated with VUB) and Fonds de la Recherche Scientifique – F.R.S.-FNRS (chargé de recherches grant FC38129, affiliated with ULB).

This book builds upon a PhD thesis that was awarded the 2020 Best Thesis Prize by the European Group of Public Law, the scientific advisory body of the European Public Law Organization, the 2021 Thesis

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Prize of the Strasbourg-based Fondation René Cassin International Institute of Human Rights (co-winner) and the Andrés Bello Prize instituted by the James B. Scott Competition of the Geneva-based Institute of International Law (co-winner).

This book contains, or closely follows, works I have previously published. These works are referred to in the footnotes and the selected bibliography. References to interviews in the text without footnotes have been anonymised. This book follows the convention of putting the Korean family name first, followed by the given name, with the exception of references. For reasons of consistency, all references indicate the given name (as spelt by the author) followed by the family name.

Frida Baranek and her gallery Raquel Arnaud gave permission to publish her collagraphy on handmade paper with bronze wool 'The numbers tell the story' (2018) on the cover of this book. The law, facts and analysis stated in the text, to the best of my knowledge, are current as of 1 January 2022.

## Tables of Treaties and Cases

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- ILO Convention C029: Forced Labour Convention (1930) (ILO Convention 29) and Protocol P029 (2013).  
Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16 (UN Charter).  
General Agreement on Tariffs and Trade (adopted 30 October 1947, entered into force 1 January 1948) 55 UNTS 194.  
ILO Convention C087: Freedom of Association and Protection of the Right to Organise Convention (1948) (ILO Convention 87).  
ILO Convention C098: Right to Organise and Collective Bargaining (1949) (ILO Convention 98).  
Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 222 (ECHR).  
ILO, Convention C100: Equal Remuneration Convention (1951) (ILO Convention 100).  
ILO, Convention C105: Abolition of Forced Labour Convention (Convention concerning the Abolition of Forced Labour) (1957) (ILO Convention 105).  
ILO, Convention C111: Discrimination (Employment and Occupation) Convention (1958) (ILO Convention 111).  
International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969) 660 UNTS 195 (ICERD).  
International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).  
International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

- Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.
- American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 114 UNTS 123.
- ILO, Convention C138: Minimum Age Convention (1973) (ILO Convention 138).
- Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (UNCEDAW).
- African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 26.
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1464 UNTS 85 (CAT).
- Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1989) 1577 UNTS 3 (UNCRC).
- Fourth ACP-European Economic Community Convention (signed 15 December 1989, entered into force 1 September 1991) *The Courier No 120*.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) General Assembly Res 45/158 (ICPRM).
- Agreement on Technical Barriers to Trade (adopted 15 April 1994, entered into force 1 January 1995) 1868 UNTS 120 (TBT Agreement).
- Agreement on Trade-Related Aspects of Intellectual Property Rights (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 154.
- General Agreement on Tariffs and Trade (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 154 (GATT).
- General Agreement on Trade in Services (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 154 (GATS)
- Framework Agreement for Trade and Cooperation between the European Community and its Member States, on the one hand, and the Republic of Korea, on the other hand (signed 28 October 1996, entered into force 1 April 2001) BOE 113.
- ILO Convention C182: Worst Forms of Child Labour Convention (1999) (ILO Convention 182).
- Treaty Establishing the East African Community (adopted 30 November 1999, entered into force 7 July 2000) 2144 UNTS 255.
- Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States of the other part (signed 22 June 2000, revised 25 June 2005 and 22 June 2010) OJ L 287 (Cotonou Agreement).
- Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 993 UNTS 3 (CRPD).

- International Convention for the Protection of all Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3 (CED).
- ILO, Convention C187: Promotional Framework for Occupational Safety and Health Convention (2006) (ILO Convention 187).
- Framework Agreement for Trade and Cooperation between the European Community and its Member States, on the one hand, and the Republic of Korea, on the other hand (signed 10 May 2010, entered into force 1 June 2014) L20 p 2 (EU-Korea Framework Agreement).
- Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (signed 6 October 2010, entered into force 13 December 2014) L127 6 (EU-Korea FTA).
- Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure 1930 (adopted 19 December 2011, entered into force 14 April 2014).
- Consolidated Version of the Treaty on European Union [2012] OJ C 326/13 (TEU).
- Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C 326 (TFEU).
- Charter of Fundamental Rights of the European Union [2012] OJ C 326.
- Economic Partnership Agreement between the East African Community Partner States, of the one Part, and the European Union and its Member States of the Other Part (2014) <http://trade.ec.europa.eu> (EAC-EU EPA).
- Draft Partnership Agreement Between [the EU / the EU and its Member States], of the One Part, and Members of the Organisation of African, Caribbean and Pacific States, of the Other Part (2021) <https://ec.europa.eu> (post-Cotonou agreement).

## 2 TABLE OF CASES

### International Court of Justice

- Legal Consequences for States on the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276* [1971] ICJ Rep 16.
- Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* [1986] ICJ Rep 14.
- Arrest Warrant (Democratic Republic of the Congo v Belgium)* [2000] ICJ Rep 3 (Van Den Wyngaert, dissenting).
- Legal Consequences of the Construction of a Wall (Advisory Opinion)* [2004] ICJ Rep 4.

*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* [2005] ICJ Rep 116.

### Inter-American Commission on Human Rights

*Armando Alejandro Jr et al. v Cuba* Report Nr 86/99 Case Nr 11.589 (Inter-American Commission on Human Rights, 1999).

### European Court of Human Rights

*Tugar v Italy* App Nr 22869/93 (Commission Decision, 1995).  
*Banković and others v Belgium and others* (2001) ECHR 2001-XII.  
*Kovačić and others v Slovenia* App Nrs 44574/98, 45133/98 and 48316/99 (ECtHR, 2003 and 2004) Admissibility decision.  
*Ilașcu and others v Moldova and Russia* (2004) ECHR 2004-VII.  
*Al-Skeini and others v United Kingdom* App Nr 55721/07 (ECtHR, 2011).  
*Ivanjoc and others v Moldova and Russia* App Nr 23687/05 (ECtHR, 2011).  
*Catan and others v The Republic of Moldova and Russia* App Nrs 43370/04, 18454/06 and 8252/05 (ECtHR, 2012).  
*Issa v Turkey* App Nr 31821/96 (ECtHR, 2014).  
*Jaloud v the Netherlands* App Nr 47708/08 (ECtHR, 2014).  
*Mozer v Moldova and Russia* App Nr 11138/10 (ECtHR, 2016).

### Court of Justice of the EU

14/76 *De Bloos SPRL v Société en Commandite par Actions Bouyer* (1976) ECR-1497.  
 139/80 *Blanckaert et Willems PVBA v Luise Trost* (1981) ECR-819.  
 33/78 *Somafer SA v Saar-Ferngas AG* (1981) ECR-2138.  
 C-58/08 *Vodafone v Secretary of State for Business, Enterprise and Regulatory Reform* (2010) ECR I-4999.  
 C-366/10 *Air Transport Association of America and others v Secretary of State for Energy and Climate Change* (2011) ECR I-13755.  
 C-145/10 *Eva-Maria Painer v Standard VerlagsGmbH and others* (2011) ECR I-12533.  
 C-592/14 *European Federation for Cosmetics Ingredients v Secretary of State for Business, Innovation and Skills* (2016) EU:C:2016:703.

### Decisions of Domestic Courts

#### United States

*Filartiga v Pena-Irala* 630 F.2d 876 (2nd Cir 1980).  
*Kadic v Karadzic* 70 F.3d 232 (2nd Cir 1995).  
*Doe v Unocal Corp* 963 F Supp 880 (CD Cal 1997).  
*Wiwa v Royal Dutch Petroleum (Shell)* 266 F.3d 88 (2nd Cir 2000).  
*Doe v Qi*, 349 F Supp 2d 1258 (ND Cal 2004), 1300.

*Khulumani v Barclay National Bank Ltd*, 504 F 3d 254 (2nd Cir 2007).  
*Lungisile Ntsbeza et al. v Daimler AG et al., and Khulumani et al. v Barclay National Bank et al.*, 617 FSupp 2d 228 (SDNY 2009).  
*Kiobel v Royal Dutch Petroleum Co et al.*, Nr 06- 4800, 2010 US App Lexis 19382, \*1 (2nd Cir 2010).  
*Kiobel v Royal Dutch Petroleum Co*, 133 SCt 1659 (2013).  
*American Petroleum Institute v US SEC* 953 F. Supp 2d 5 (DDC 2013).  
*National Association of Manufacturers et al. v US SEC* 800 F.3d 518, 530 (DC Cir. 2015).  
*National Association of Manufacturers et al. v US SEC*, Nr 13-CF-000635 (DDC 2017).  
*Jesner v Arab Bank*, 137 SCt 1432 (2018).

### United Kingdom

*Vava v Anglo American South Africa Ltd (No 2)* (2013) EWHC 2131 (UK QB).  
*Delos Megacore Ltd v Omega Investments Ltd and another* (2017) EWHC 2724 (UK QB).

### France

Cour de Cassation (28 June 1989) *Rev crit DIP* 1990 reported by Pierre Raoul-Duval and Marie Stoyanov, ‘Comparative Study of “Residual Jurisdiction” in Civil and Commercial Disputes in the EU National Report for: France’ (2010) <http://ec.europa.eu>.  
 Cour d’Appel Paris (13 February 2004) reported by Hervé Ascencio, ‘Extraterritoriality as an Instrument – Contribution to the Work of the UN Secretary-General’s Special Representative on Human Rights and Transnational Corporations and other Businesses’ (2010) [www .business-humanrights.org](http://www.business-humanrights.org).  
 Cour d’Appel Versailles (2005) Nr 2004/01/600.  
 Cour de Cassation (2012) Nr 11-18.169. D. 2012. 2974.  
 Cour d’Appel Paris (2015) Nrs 11/05955 and 11/05959.  
 Conseil Constitutionnel (2016) Nr 2016-741.  
 Conseil Constitutionnel (2017) Nr 2017-750.  
 Cour de Cassation (2017) Nrs 15-26, 737 and 15-26, 738.

### The Netherlands

[*eiser 1*], [*eiser 2*] en *Milieudefensie v Royal Dutch Shell en SPDC* (2009) Nr ECLI:NL:RBSGR:2009:BK8616 (Rechtbank Den Haag, 2009).  
 [*eiser 1*] en *Milieudefensie v Royal Dutch Shell en SPDC* (2009) Nr ECLI:NL:RBSGR:2010:BM1470 (Rechtbank Den Haag, 2009).  
 [*eiser 1*] en *Milieudefensie v Royal Dutch Shell en SPDC* (2010) Nr 337050 / HA ZA 09-1580 (ECLI:NL:RBSGR:2010:BM1469) (Rechtbank ’s Gravenhage, 2010).  
*Solvochem Holland v Rasheed Bank* (2010) Nr 179770 / HA ZA 02-1524 (ECLI:NL:GHSGR:2010:BP3078.) (Gerechtshof ’s Gravenhage, 2010).



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- El-Hojouj v Unnamed Libyan Officials* (2012) Nr 400882/HA ZA 11-2252 (ECLI:NL:RBSGR:2012:BV9748) (Rechtbank Den Haag, 2012).  
*Friday Alfred Akpan en Milieudéfense v Royal Dutch Shell en SPDC* (2013) Nr C/09/337050 / HA ZA 09-1580 (ECLI:NL:RBDHA:2013:BY9854) (Rechtbank Den Haag, 2013).  
*Fidelis Ayoro Oguru, Alali Efanga en Milieudéfense v Royal Dutch Shell en SPDC* (2015) Nr C/09/365498 / HA ZA 10-1677 (zaak a) + C/09/330891 / HA ZA 09-0579 (zaak b) (ECLI:NL:GHDHA:2015:3588) (Gerechtshof Den Haag, 2015).  
*Eric Barizaa Doh en Milieudéfense v Royal Dutch Shell en SPDC* (2015) Nr C/09/337058 / HA ZA 09-1581 (zaak c) + C/09/365482 / HA ZA 10-1665 (zaak d) ECLI:NL:GHDHA:2015:3586 (Gerechtshof Den Haag, 2015).  
*Milieudéfense v Royal Dutch Shell en SPDC; SPDC v Friday Alfred Akpan* (2015) Nr 200.126.849 (zaak e) + 200.127.813 (zaak f) (ECLI:NL:GHDHA:2015:3587) (Gerechtshof Den Haag, 2015).

Kenya

- Sylvia C Endere v Karen Roses LTD* (2010) 298/2005 High Court (Nakuru).  
*Grace Gacheri Muriithi v Kenya Literature Bureau* (2011) 44/2011 Industrial Court (Nairobi).  
*Daniel Karari v Bigot Flowers* (2012) 101/2008 High Court (Nakuru).  
*KPAWU v Expressions Flora Limited* (2012) 11/2012 Industrial Court (Nakuru).  
*Moses Lubakwa v Bigot Flowers* (2012) 100/2008 High Court (Nakuru).  
*William Wagura Maigua v Elbur Flora* (2012) 248/2011 High Court (Nakuru).  
*KPAWU v Bilashaka Flowers* (2013) 25/2012 Industrial Court (Nairobi).  
*KPAWU v Roseto Flowers* (2013) 44/2013 Industrial Court (Nakuru).  
*KPAWU v Sirgoek Flowers Limited* (2013) 34/2013 Industrial Court (Nakuru).  
*David Benedict Omulama and others v the Registrar of Trade Unions* (2014) 7/2011 Court of Appeal (Nairobi).  
*Elgon Orchards v Doris Gerizo Agote* (2014) 25/2008 High Court (Kitale).  
*James Okeyo v Maskant Flower Limited* (2014) 244/2014 Employment and Labour Relations Court (Nakuru).  
*Kenya Union of Commercial, Food and Allied Workers v Meru Central Dairy Co-Operative Union Ltd* (2014) 147/2014 Employment and Labour Relations Court (Nyeri).  
*KPAWU v Unilever Tea Kenya* (2014) 13/2014 Employment and Labour Relations Court (Kericho).  
*P O v Board of Trustees AF, BLH and RJKC* (2014) 927/2010 Industrial Court (Nairobi).  
*JMK v MWM and MFS* (2015) 15/2015 Court of Appeal (Mombasa).

- NML v Peter Petrausch* (2015) 441/2013 Employment and Labour Relations Court (Mombasa).  
*Bigot Flower v Julius Mwaniki Wachiri* (2016) 12/2015 Employment and Labour Relations Court (Nakuru).  
*BWK v EK and Conservation Corporation of Kenya Limited* (2017) 443/2003 High Court (Nairobi).  
*David Gaiho Ndungu v Timaflo Limited* (2017) 132/2016 Employment and Labour Relations Court (Nyeri).  
*Esther Wavinya Mulwa v Redland Roses* (2017) 548/2009 High Court (Milimani).  
*Kenya National Private Security Workers Union v G4S Kenya Limited* (2017) 2326/2017 Employment and Labour Relations Court (Nairobi).  
*KPAWU v David Benedict Omulama and others* (2017) 141/2014 Court of Appeal (Nairobi).  
*KPAWU v Kongoni River Farm (Star Division)* (2017) 124/2017 Employment and Labour Relations Court (Nakuru).  
*KPAWU v KEFHAU represented by David Benedict Omulama and others and the Registrar of Trade Unions* (2018) 5/2017 Court of Appeal (Nairobi).  
*KPAWU v The Hon Cabinet Secretary, Labour & Social Protection and Kenya Export Floriculture, Horticulture & Allied Workers Union* (2018) 22/2018 Employment and Labour Relations Court of Kenya (Nakuru).  
*Bigot Flowers (K) Limited v Livingstone Oramis Ekirapa* (2019) 3/2016 Employment and Labour Relations Court (Nakuru).  
*Bigot Flowers Limited v Peter Jakoyo Anyango* (2019) 60/2017 Employment and Labour Relations Court (Nakuru).  
*Bigot Flowers Limited v Zakiah Kairuthi Shaban* (2019) 61/2017 Employment and Labour Relations Court (Nakuru).  
*KPAWU v KEFHAU and the Registrar of Trade Unions* (2020) 4/2018 Supreme Court.  
*KEFHAU v KPAWU et al.* (2021) E6451/2020 Employment and Labour Relations Court (Nakuru).  
*David Ndii et al. v Attorney General et al.* (2021) E282/2020 High Court (Nairobi).  
*Independent Electoral and Boundaries Commission v David Ndii et al.* (2021) E291/2021 Court of Appeal (Nairobi).

## South Korea

- Constitutional Court Case 99Hun-Ma139.142.156.160 3.Ka (2001) reported by Nohyoung Park, 'Application of International Law in Korean Courts' (2004) 1 *Asia Law Review*.

## xxviii TABLES OF TREATIES AND CASES

*Sanggi Hwang, Seonwon Lee, Aejeong Jeong, Eungyeong Kim and Changho Song v COMWEL* (2011) Administrative Court (Seoul) <http://humanrights.or.kr>.

Case (2012) Administrative Court (Seoul) reported by 'Court Allows Union Rally in Front of Headquarters' (23 July 2012) Korea Times.

Case (2017) Supreme Court reported by Cho Il-Jun, 'Semi-conductor Workers Seek Acknowledgement of Industrial Accident Status' (1 November 2017) The Hankyoreh.

## Abbreviations

|            |  |
|------------|--|
| 3TG        | tin, tantalum, tungsten and gold   |
| ACP states | African, Caribbean and Pacific Group of States   |
| AFEP       | <i>Association française des entreprises privées</i> ('French association of private enterprises') |
| ATAA       | Air Transport Association of America   |
| ATS        | Alien Tort Statute (US), 1789  |
| BRICS      | Brazil, Russia, India, China and South Africa  |
| CAT        | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984     |
| CBCR       | country-by-country reporting   |
| CBP        | Customs and Border Protection (US)   |
| CED        | International Convention for the Protection of all Persons from Enforced Disappearance, 2006       |
| CEDAW      | UN Committee on the Elimination of Discrimination against Women                                    |
| CESCR      | UN Committee on Social, Economic and Cultural Rights   |
| COMWEL     | Korea Workers' Compensation and Welfare Service Commission   |
| CORSIA     | Carbon Offsetting and Reduction Scheme for International Aviation                                  |
| COTU-K     | Central Organization of Trade Unions (Kenya)   |
| COVID-19   | Coronavirus SARS-CoV-2 disease   |
| CRC        | UN Committee on the Rights of the Child  |
| CRPD       | Convention on the Rights of Persons with Disabilities, 2006  |
| CSR        | corporate social responsibility  |

## xxx LIST OF ABBREVIATIONS

|                      |   |
|----------------------|---|
| DAG                  | Domestic Advisory Group under the EU–Korea FTA  |
| EAC                  | East African Community  |
| ECHR                 | European Convention on Human Rights   |
| ECtHR                | European Court of Human Rights  |
| EEA                  | European Economic Area  |
| EEAS                 | European External Action Service  |
| EFRAG                | European Financial Reporting Advisory Group   |
| EITI                 | Extractive Industries Transparency Initiative   |
| ELR Court            | Employment and Labour Relations Court (Kenya)   |
| EPA                  | economic partnership agreement  |
| EU                   | European Union  |
| EUR                  | euro  |
| FLEGT<br>Action Plan | Forest Law Enforcement, Governance and Trade<br>Action Plan (EU)  |
| FRA                  | Fundamental Rights Agency (EU)  |
| FTA                  | free trade agreement  |
| GATS                 | General Agreement Trade in Services, 1994   |
| GATT                 | General Agreement on Tariffs and Trade, 1994  |
| GDP                  | gross domestic product  |
| GNI                  | gross national income   |
| HRC                  | UN Human Rights Council   |
| IASB                 | International Accounting Standards Board  |
| ICAO                 | International Civil Aviation Organization   |
| ICCPR                | International Covenant on Civil and Political<br>Rights, 1966   |
| ICERD                | International Convention on the Elimination of<br>All Forms of Racial Discrimination, 1966                                |
| ICESCR               | International Covenant on Economic, Social and<br>Cultural Rights, 1966   |
| ICJ                  | International Court of Justice  |
| ICPRM                | International Convention on the Protection of the<br>Rights of All Migrant Workers and Members of<br>Their Families, 1990 |
| ILC                  | International Labour Conference   |
| ILO                  | International Labour Organization   |
| IMF                  | International Monetary Fund   |
| KEFHAU               | Kenya Export Floriculture, Horticulture and<br>Allied Workers Union   |
| KES                  | Kenyan shilling   |

|                          |   |
|--------------------------|---|
| KNCHR                    | Kenya National Commission on Human Rights   |
| KNCP                     | Korean National Contact Point   |
| Korea                    | Republic of Korea   |
| KOSHA                    | Korea Occupational Safety and Health Agency   |
| KPAWU                    | Kenya Plantation and Agricultural Workers Union   |
| KRW                      | Korean won  |
| Maastricht<br>Principles | Maastricht Principles on Extraterritorial<br>Obligations of States in the area of Economic,<br>Social and Cultural Rights, 2011 |
| NAP                      | National Action Plan on Business and Human Rights   |
| NGO                      | non-governmental organisation   |
| NHRCK                    | National Human Rights Commission of Korea   |
| OACPS                    | Organisation of the African, Caribbean and Pacific<br>Group of States   |
| OECD                     | Organisation for Economic Co-operation and<br>Development   |
| OHCHR                    | UN Office of the High Commissioner for Human<br>Rights  |
| SEC                      | Securities and Exchange Commission (US)   |
| SME                      | small and medium-sized enterprises  |
| SPDC                     | Shell Petroleum Development Company of Nigeria  |
| TBT                      | technical barriers to trade   |
| TEU                      | Consolidated Treaty on European Union, 2012   |
| TFEU                     | Consolidated Treaty on the Functioning of the<br>EU, 2012   |
| TNC-DEC                  | transnational corporation from a developing or<br>emerging state  |
| Toxic Principles         | UN Principles on Human Rights and the<br>Protection of Workers from Exposure to Toxic<br>Substances, 2019                       |
| TULRAA                   | Trade Union and Relations Adjustment Act, 1997<br>(Korea)   |
| UN                       | United Nations  |
| UNCEDAW                  | Convention on the Elimination of All Forms of<br>Discrimination against Women, 1979   |
| UNCRC                    | Convention on the Rights of the Child, 1989   |
| UN Guiding<br>Principles | UN Guiding Principles on Business and Human<br>Rights, 2011   |
| WTO                      | World Trade Organization  |
| WTO DSM                  | WTO Dispute Settlement Mechanism  |