

Extraterritorial Human Rights Obligations of Multinational Corporations' Home Countries

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Abstract. As multinational corporations pursue profits as organizations with significant influence, It is unavoidable that during their development process, they will infringe upon the human rights of the host country. To prevent such violations, certain scholars have suggested that multinational corporations should have human rights obligations in their home countries. This article will analyze whether the home country has a certain obligation to constrain the actions of multinational corporations that violate human rights from international treaties and past cases, and draw on some practical experience to propose suggestions for future development.

Keywords: Human rights; Home country obligations; Extraterritorial human rights obligations.

1. Introduction

While multinational corporations contribute to the global economy, they also bring about human rights issues. Currently, there are three approaches to solving this problem: direct regulation by the host country, direct assumption of human rights obligations by multinational corporations, and the approach detailed in this article, in which the home country assumes a defined obligation to regulate. However, all of these approaches face different levels of problems.

This article argues that it is a better option to establish human rights obligations for home countries of multinational corporations. For the home country, this will enhance its international image. For the multinational corporation, this can dispel doubts from host countries. For the host country, due to the existence of the "regulatory chill" effect and its own incomplete legal system, it is difficult to form effective regulation, and this can protect the human rights of local people [1].

2. The Necessity of Establishing Home State Extraterritorial Jurisdictional Obligations

As the process of economic globalization, the multinational corporations are important members in promoting Economic Globalization and global integration. However, many social issues have arisen due to unordered expansion, human rights issues are one of them. The human rights issue has always been a hot topic in the international community. There are enormous controversies among different countries, organizations, and scholars in various fields. However, there is no doubt that the starting point of these controversies is to try to solve these problems. Currently, there are three solutions: the host country directly regulates the multinational corporations, multinational corporations directly take responsibility for human rights issues, and the home country undertakes jurisdictional obligations to regulate the multinational corporations. This section will start from the case of Coca-Cola Company violating human rights in Colombia to illustrate the human rights harms caused by multinational corporations. Afterwards, the passage examines the difficulties involved in tackling human rights abuses committed by multinational corporations.

2.1. Human Rights Issues Caused by Multinational Corporations: A Case Study of Coca-Cola in Colombia

The potential impact of transnational corporations is quite broad, including but not limited to the right to life, health, work, freedom from forced labor, the right to organize or participate in labor

unions, environmental rights, and the rights of special groups such as women, children, people with disabilities, and minority groups. Among these, the right to life, health, and a healthy environment, as well as basic labor rights, are especially important for residents of host countries. However, the human rights issues caused by Coca-Cola in Colombia encompass all of these issues. In this case, Coca-Cola and its bottling partners in Colombia have been accused of committing human rights violations, particularly with regards to labor rights and trade unions.

The allegations of human rights violations include the murder, intimidation, and harassment of trade union leaders, as well as the use of paramilitary forces to suppress labor organizing and promote anti-union violence. The trade unions and their members in Colombia have been targeted for violence and harassment, including murder and forced disappearances. This violence has been attributed to paramilitary groups and has been linked to Coca-Cola's bottling plants in the country.

Human rights organizations and trade unions have accused Coca-Cola of failing to provide adequate protection for its workers and not doing enough to investigate or prevent the violence. These groups have also called for Coca-Cola to be held accountable for the human rights violations in Colombia and to take measures to ensure that its bottling partners in Colombia respect workers' rights.

The violence against trade unions in Colombia has been ongoing for many years, and the role of Coca-Cola in these human rights violations has been the subject of much debate and controversy. Some argue that Coca-Cola has directly contributed to the violence by supporting paramilitary groups, while others claim that Coca-Cola has failed to take responsibility for the actions of its bottling partners in Colombia.

Despite these allegations, Coca-Cola has denied any wrongdoing and has maintained that it operates in compliance with all applicable laws and regulations in Colombia. The company has also stated that it takes the issue of human rights very seriously and is committed to respecting workers' rights and promoting safe and healthy working conditions.

In subsequent litigation (see *Sinaltrainal v. Coca-Cola Co.*). The labor union in Colombia has initiated four legal actions against Coca Cola, all of which are connected to accusations of consistent harassment, abduction, confinement, maltreatment, and homicide of Colombian labor union members by paramilitary groups, purportedly operating as representatives of the accused party. The plaintiff attempted to use Torture Victim Protection Act (TVPA) and Alien Tort Statute (ATS) to assert their rights. But due to lack of subject matter jurisdiction, the court rejected their request.

As per the Alien Tort Statute (ATS), federal subject matter jurisdiction applies to an ATS claim when the following three criteria are met: (1) an alien; (2) sues for a tort; (3) committed in violation of the law of nations. The first and second points are easy to determine, but it is difficult to confirm whether the third point has been violated. There is no conclusive evidence of a relationship between Coca-Cola Company and the quasi-military organization, so the court found that Coca-Cola Company's conduct did not violate general international law. As a result, this case does not apply to this law.

How about Torture Victim Protection Act? Well, The TVPA is more expansive than the ATS as it permits not only citizens but also aliens to pursue legal redress in a federal court for instances of official torture. But there's an important condition here, the court has summarized from practice that to fulfill the state action requirement, evidence of a symbiotic relationship between a private entity and the government, linked to the alleged torture or killing in question, must be presented. The plaintiff claims that they are deeply involved in an internal war, in which one side is a left-wing armed organization, and the other includes the Colombian military and right-wing armed organizations. The defendant, Coca-Cola, colluded with paramilitary groups to eliminate their union. They cannot prove the symbiotic relationship between paramilitaries, Coca-Cola and the government, so they failed in this field.

After failing to establish a link between the paramilitary forces and the Colombian government, the plaintiffs put forward a second argument. They assert that the alleged acts of torture and murder took place during an armed civil conflict, which qualifies as war crimes and thus, removes the requirement of demonstrating state action. The plaintiffs contend that the war crimes exception should

be applicable to their case as they were non-combatants in a civil war and were targeted for violence to promote the Defendants' business interests of being union-free. However, the court disagreed with this argument, stating that the civil war may have provided the context for the unfortunate incidents that occurred, but it did not trigger the violence experienced by the plaintiffs.

The case of Coca-Cola violating human rights in Colombia demonstrates the inadequacy of relying solely on the host country's human rights remedies to address the harm caused by multinational corporations. Firstly, Colombia was in the midst of an internal conflict and lacked the ability to regulate human rights violations. Secondly, the multinational corporation's parent company was unwilling to provide compensation and only paid approximately \$150,000 several years after the lawsuit. Finally, due to the plaintiff's unfamiliarity with the laws of other countries, even though ATS is a relatively mature law that provides remedies for extraterritorial human rights issues, they still could not protect their rights through it.

2.2. The Challenges of Solving Human Rights Problems by Multinational Corporations

The multinational corporation that relies on massive assets, advanced technology, and intricate division of labor, it is extremely difficult to regulate them. Currently, there are three solutions: the host country directly regulates multinational corporations, multinational corporations directly take responsibility for human rights issues, or the home country assumes the obligation to regulate multinational corporations. Undoubtedly, all of these solutions encounter varying degrees of obstacles.

2.2.1 The power of multinational corporations versus the weakness of host countries

Multinational corporations typically have enormous economic power, and compared to developing countries, they are more like a "state" with a well-established system and clear goals. The reason why these host countries are chosen as the location for subsidiary companies of multinational corporations is usually due to the local favorable tax rates, cheap labor costs, and sacrificeable environment. This means that the host countries need to sacrifice their environmental rights, labor rights, and human rights. If the host country wants to modify its policies to protect human rights, the multinational corporation will withdraw from the country and choose other countries that are more friendly to foreign investment policies, or even worse, it will encounter retaliation from the multinational corporation to force the host country to restore its original policies. In fact, many host countries have the phenomenon of the government and multinational corporations jointly violating human rights for their own interests. For example, in the "Bowoto v. Chevron" case, Chevron's Nigerian subsidiary was accused of violently suppressing local people's protest activities with the Nigerian military. In such nations, the authorities have no plans to oversee the transgressions of multinational corporations when it comes to human rights. This lack of regulation can make it challenging for individuals within the country to seek redress for any harm they have experienced. This puts the host countries in a dilemma: if they choose to develop, they must tolerate the multinational corporations' violations of human rights; if they want to protect their own human rights, they will not get investment from multinational corporations.

This is only from an economic perspective. For many more host countries, they do not have the ability to regulate multinational corporations themselves. Most of the host countries of multinational corporations are developing countries with backward economies. These countries' own legal systems and policies are not sound, and their judicial, administrative, and other relief forms are not sufficient. Under the political pressure brought by the multinational corporations' strong economic power and their close ties with their home countries, they do not have enough ability to regulate and punish the multinational corporations' behaviors. In the Chevron Ecuador environmental pollution case, the relevant laws and policies in Ecuador were insufficient to deal with such a complex environmental pollution and human rights infringement problem. On the other hand, as an energy corporation of significant size on a global scale, Chevron relied on its strong economic power and deep foundation in Ecuador to prolong the case for years through various means. By the time the Ecuadorian Supreme Court made its ruling in 2013, 20 years had passed since the initial lawsuit. However, Chevron did

not comply with its commitment to comply with the Ecuadorian court's ruling and still refused to compensate in various ways after the ruling was made.

2.2.2 The home country is unwilling to let go of the "cheese" in their hands

Multinational corporations have brought huge benefits to their home country, including but not limited to technological innovation, high-tech talents, a large number of job opportunities, and tax revenue (although no multinational corporation in the United States pays taxes on the full amount). For example, Royal Dutch Shell plc, commonly referred to as Shell, is a multinational oil and gas company headquartered in the United Kingdom and the Netherlands. It had a significant impact on the economies of both the UK and the Netherlands. The company's success has helped to create jobs, drive economic growth, and increase tax revenues in both countries. Shell has also been a significant contributor to technological advancements in the energy sector, which has helped to reduce the environmental impact of oil and gas production. But at the same time, it has also been accused by the Nigerian people of violating their environmental rights. On the other hand, even if a court in a certain country has jurisdiction, it may reject a case based on the principle of *forum non conveniens*.

2.2.3 Weak soft law and difficult-to-implement hard law

It is undeniable that the Human Rights Council has contributed a rich theoretical basis to the promotion of soft law, but only in theory. Some of the guiding principles and recommendations were originally intended to create mandatory obligations, but they have encountered varying degrees of obstacles and failed. After decades of effort and evolution, they have been transformed into the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," which although did not create a treaty with binding efficiency, provided a foundation for the development and compilation of subsequent mandatory treaties. As early as 1974, the ECOSOC established the Transnational Corporations Committee, which was responsible for formulating guidelines to regulate the actions of transnational corporations and submitted a draft of the "Code of Conduct for Transnational Corporations" in 1982, which was then submitted to the Republic in 1990. Due to significant differences, the agreement was not passed, as the document attempted to make transnational corporations directly accountable for human rights obligations. At almost the same period, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy adopted by the International Labour Organization (ILO) in 1977, this document remains important as it reflects a fair balance among the interests of governments, industry, and labor. The document puts forth a range of guidelines for both governments and corporations. It encourages corporations to collaborate with government development policies, implement a hiring policy that benefits local citizens, prioritize the health and safety of employees, and acknowledge the rights of workers to unionize and engage in collective bargaining.

Another equally important document is the various sets of guidelines for multinational enterprises developed by the OECD. The initial set of guidelines, released in 1976, contained relatively mild statements regarding the responsibility of corporations to comply with the policies of the country in which they operate. However, the OECD released a more comprehensive set of guidelines in 2000, focusing specifically on human rights. The guidelines outline a comprehensive set of policies for corporations, which includes the responsibility to uphold the human rights of individuals impacted by their business activities. Nevertheless, the guidelines do not specify which rights are included, nor do they define the extent of the group of individuals affected by the corporations' activities [2].

The OHCHR's 2014 Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights is a noteworthy attempt to establish mandatory obligations. The document received 20 affirmative votes, 14 negative votes, and 13 abstentions, and thus was approved. With most affirmative votes coming from developing countries and most negative votes from developed countries. The document asserts that states have the primary responsibility for promoting and safeguarding human rights, including protecting against human rights abuses committed by third parties such as transnational corporations within their territory or jurisdiction. Furthermore, it highlights that corporations have a duty to respect human

rights. If the document can be implemented in the future, it could become the most effective solution for addressing human rights violations, but significant obstacles are likely to arise.

3. The Origin of Human Rights Obligations for Transnational Corporations in Their Home Country

The previous argument has fully illustrated the serious human rights harm caused by transnational corporations and the obstacles encountered in attempting to resolve them. This section will explain the obligation of home countries to regulate transnational corporations in terms of human rights from several aspects. The content of these parts may have overlapping parts, because they all belong to the major category of human rights and can have a clearer classification.

3.1. In the Field of ESCR

Compared to other human rights covenants, ESCR-type human rights covenants lack jurisdictional clauses. The obligation of states of the ICESCR covenant is only refers to the obligation of states to take measures, both on their own and through international cooperation and support, including economic and technical assistance, to the fullest extent possible within their resources, to gradually achieve the complete realization of the rights acknowledged in the Covenant. This leads to two views. The first is to directly consider the treaties that does not include jurisdictional clauses as including jurisdictional clauses. The second is that the creation of extraterritorial obligations is not premised on jurisdiction.

For the first view, the jurisdictional description in the American Declaration of the Rights and Duties of Man is also similar to that of the ICESCR covenant. However, when dealing with cases, the jurisdictional clauses in the declaration are assumed. Similarly, in the case of "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", Israel rejected the jurisdiction of the International Court of Justice and contended that the International Covenant on ESCR, which it had signed, were only applicable to the occupied territory because human rights law is limited to areas of peace. However, the court held that it also applies to armed conflict areas and further explained that human rights covenants apply to a country's actions outside its territory. The reason why the ICJ took over this case at the beginning was not a human rights treaty, but Article 65(1) of the Statute of the ICJ. In other words, the ICJ can only issue advisory opinions, and through further clarification through jurisdiction, it affirmed Israel's extraterritorial human rights obligations due to the serious violation of Pakistan's human rights caused by Israel's deviation from the Green Line through negotiation. For the second view, in the Georgia v. Russia case, the ICJ held that the "International Convention on the Elimination of All Forms of Racial Discrimination" does not include general jurisdictional clauses and therefore applies to a state's actions outside its territory. Both practices are reasonable. The first is based on the right to request extraterritorial jurisdiction by establishing extraterritorial obligations from the perspective of jurisdiction, while the second directly recognizes a state's human rights obligations [3].

We can break down Article 2, Clause 1 of the Social and Economic Rights Covenant into two parts: doing our utmost and cooperating with other countries. It's clear that Israel's construction of the separation wall was not their maximum effort, and there are many other treaties that also mention cooperation between nations, such as the United Nations Charter and the Universal Declaration of Human Rights. Some scholars believe that the true focus of Article 2, Clause 1 of the Social and Economic Rights Covenant is on international aid and cooperation, and from this, it can be inferred that states have an obligation to at least not harm the ESCR of other people through their international cooperation, which is the obligation of respect among the three levels of extraterritorial obligations.

In 2011, international legal experts and the University of Maastricht discussed the Maastricht Principles, which further clarified the field of ESCR. The Maastricht Principles stipulate three situations in which states have extraterritorial obligations: (1) when a state has a formal or effective control authority in response to a request, regardless of whether the control itself is in accordance

with international law; (2) whether or not within the territory of the state or outside of it, the enjoyment of economic, social, and cultural rights has a foreseeable impact on acts and omissions; 3. a state, whether alone or jointly, whether through administrative, legislative, or judicial institutions, can, according to international law, exercise its influence or take measures to realize ESCR abroad. Although the extraterritorial obligations of ESCR are recognized, to what extent are these obligations? At least recognition can be obtained in terms of respect and protection, which will be explained later.

3.2. In the Field of CPR

Unlike the ESCR, treaties regarding the CPR usually have explicit provisions that specify the obligations of the contracting parties. For example, the first article of the ECHR that the parties that have entered into the agreement are mandated to guarantee the rights and freedoms outlined therein to every individual within their jurisdiction. As per Article 2(1) of the ICCPR, each State Party commits to honoring and safeguarding the rights recognized in the present Covenant for all individuals present within its borders and under its authority. The interpretation of jurisdiction in these treaties has become an important issue. In the early theories of extraterritoriality, advocates espoused a amplified interpretation of jurisdiction within the context of human rights law, as it diverges from that in general international law. The purpose of jurisdiction in human rights law is to ascertain whether a state has an obligation whereas the goal of jurisdiction in general international law is to determine whether a state is authorized to perform certain acts [4].

The early viewpoints were influenced by the "*Bankovic and Others v. Belgium and Others*", in which the plaintiffs argued that the extent of a state's human rights responsibilities depends on the level of authority the state has over individuals. The European Court of Human Rights rejected this viewpoint, stating that jurisdiction was a prerequisite for the applicability of the Convention, and that the obligations arising from the Convention were either present or absent. In the "*Issa and Others v. Turkey*", the Court reiterated that jurisdiction was a necessary condition or prerequisite for a state to assume obligations or abstain from action. Scholars have provided further explanations regarding the Court's expansion of jurisdiction in human rights cases, which have been supported by the court, except for two exceptions where jurisdiction was limited to the state's territory.

There are two views on jurisdiction in this context. The first is effective control over foreign territory, where in the "*Sejdic and Finci v. Bosnia and Herzegovina*" case, the European Court of Human Rights held that individuals within a foreign territory subject to the effective control of a contracting state were under the jurisdiction of that state, and therefore the contracting state had human rights obligations towards those individuals [5]. The second view is that jurisdiction is established as long as the individual is under the control of the state, regardless of their location. In the *Boumediene v. Bush* case, the US Supreme Court held that individuals detained by the US military in the Guantanamo Bay detention camp (located in Cuba) were entitled to constitutional habeas corpus protections and safeguards because they were under the absolute and indefinite control of the United States.

Recent viewpoints suggest that negative obligations are not limited by jurisdiction, and that jurisdiction only limits positive obligations. Some scholars argue that the European Court of Human Rights should not consider jurisdiction as a prerequisite for all types of state obligations. The threshold for effective control is too high and very few countries can gain effective control over another country's territory. In the context of modern society, the effective control that can be achieved is usually accompanied by war, which makes the application of human rights law somewhat difficult. On the other hand, the threshold for jurisdiction is too low and may impose heavy obligations on countries. Milanovic argues that a state has a positive obligation towards persons over whom it exercises effective control and a negative obligation towards all other persons [6]. In any case, both early and recent viewpoints have their limitations and advantages, and they both need further improvement.

3.3. Human rights treaties

In terms of promoting the protection of human rights, it is generally analyzed at three levels: respect, protection, and fulfillment. Human rights activities around the world are deeply influenced by this framework. This division into three levels was proposed by Henry Shue, who believed that these three levels corresponded to three levels of obligations: to avoid harm, to protect against deprivation, and to provide assistance to those who have been deprived [7].

Although this tripartite approach was initially only used to analyze ESCR, as early as 1999, CESCR pointed out in General Comment No.12 on the right to food, it is stated that the duty to protect obligates states to implement measures that prevent corporations from denying individuals access to food. However, due to its concise viewpoint and strong persuasiveness, it has gradually been used to analyze all types of human rights obligations.

Respect is the first pillar of the human rights framework and refers to the idea that individuals and institutions should not cause harm to others through their actions or decisions. This means that they should respect the dignity, autonomy, and agency of all individuals. Respect is based on the negative formulation of "do no harm" and is a fundamental aspect of human rights. Some scholars further believe that for the pillar of "respect", all moral subjects need to consider human rights as an important and usable basis for decision-making and action in today's world. The concept of respect encompasses the recognition and safeguarding of individual rights, including freedom of expression, religion, and association. It also entails preventing discrimination against individuals based on their race, gender, sexual orientation, or any other inherent traits.

The second one of the human rights framework is "protect," which pertains to the duty of individuals and institutions to prevent and respond to human rights violations perpetrated by third parties. This includes taking measures such as creating laws, policies, and procedures that protect individuals from harm. Protecting human rights requires addressing systemic issues such as poverty, inequality, discrimination, violence against women and children, torture, genocide or war crimes. It also involves ensuring that people have access to justice when their rights are violated.

Fulfill is the last one of the human rights framework and refers to the obligation of individuals and institutions to provide direct access to the objects of human rights such as education, healthcare, food, water, housing etc. This involves allocating resources in a way that ensures everyone has access to these basic needs. "Fulfill" human rights necessitates addressing social disparities by offering equal opportunities to all individuals, irrespective of their background or societal standing. Furthermore, it requires guaranteeing that people have access to fundamental necessities that are indispensable for a life of dignity [8].

So, the obligation of "respect" is a negative obligation and the obligation of "protect" and "fulfill" is a positive obligation. Furthermore, "respect" and "protect" has extraterritorial characteristics while "fulfill" does not. In modern society, it is impossible to expect the state to pay for the well-being of other people. Based on this, if residents of the host country pursue regulation of multinational corporations, it can be understood that residents demand protection of human rights that may be violated, and then the home country has jurisdiction and an obligation to protect.

4. Practice Based on National Human Rights Obligations

In this section, an analysis will be conducted on the practice based on national human rights obligations. Although there are significant differences in the scope and extent of obligations that a country has towards its citizens, many countries have already put into practice national human rights obligations, despite remaining issues. These countries are still worth learning from.

4.1. More Targeted Legislation

In fact, some countries have already attempted to regulate their multinational corporations, such as France's Law "Duty of Care of Parent Companies and Entrusted Companies". It was born out of a tragedy in Bangladesh and provides detailed provisions on the responsibilities of companies to

conduct due diligence, stipulating that multinational corporations should be responsible for human rights and should be sensitive to potential human rights risks in their business operations. However, due to its comprehensive provisions, this law sparked controversy in France, and undoubtedly, it would undermine the competitiveness of French multinational corporations in the international arena. As a result, the fine aspect was removed, and it became a soft law [9]. Nevertheless, it cannot be denied that this was a crucial step.

The EU Conflict Minerals Regulation was adopted in 2017 and officially came into effect on January 1, 2021. Under this legislation, companies operating within the European Union are mandated to avoid purchasing or utilizing four specific minerals (tungsten, tin, tantalum, and gold - commonly referred to as 3TG) and their derivatives from regions that are considered high-risk or impacted by conflict. According to the information provided by the European Union, 28 regions are currently restricted, and this list is subject to change based on the situation on the ground. The purpose of this regulation is to prevent the flow of funds from the 3TG supply chain to illegal armed groups during the mining, smelting, transportation, and other stages. In fragile countries, illegal armed groups gain substantial funds through 3TG trade, which leads to the escalation of armed conflicts and the proliferation of violent crimes and human rights violations. Therefore, the purpose of the regulation is to cut off the channel through which these armed groups obtain funds through 3TG trade, making their illegal activities more difficult and promoting the resolution of human rights violations.

This law underwent a major transformation from Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. It was expected to change the conflict in Congo, but some scholars believe that Section 1502 is a "bad law". The first point being made is that Section 1502 is regarded as bad law because it changed a pillar of securities law, even though the provision has no connection to securities, investor protection, or any financial-related information that could impact investment health. This means that it is not relevant to the core purpose of securities law and does not contribute to its goals. Second, Section 1502 mandates disclosure of immaterial information. This means that it requires companies to disclose information that is not relevant or significant to investors or financial markets. This undermines the purpose of securities law and creates unnecessary burdens for companies. Ultimately, the ineffectiveness of Section 1502 has been attributed to inadequate enforcement measures and insufficient resources. The SEC lacks the necessary expertise and resources to effectively enforce the regulation, which aims to reduce violence in the Democratic Republic of Congo. Additionally, there are no clear guidelines for how companies should comply with this regulation, which makes it difficult for them to do so effectively [10].

However, the EU has made it even pure. In contrast to Section 1502, which only applied to publicly traded companies, the EU will regulate all downstream mineral suppliers in the supply chain. The EU has also established a series of steps, including tracing minerals in five steps, identifying suspicious supply chains, designing compliance strategies, conducting third-party audits, and preparing annual supply chain reports.

When a country is attempting to fulfill its extraterritorial human rights obligations and construct laws, it is inevitable that various obstacles will be encountered. Therefore, legislation and protection should focus on vulnerable areas and people who are susceptible to human rights violations. Compared to hastily enacting comprehensive legislation, it seems that targeting aspects that are easily harmed and areas and people that are vulnerable to human rights violations and providing legislative protection for them is a better choice.

4.2. Judicial Relief Based on Duty of Care

The commercial activities of transnational corporations rely on the establishment of subsidiaries in foreign countries and control or cooperation with local capital. If the subsidiary's behavior violates human rights, should we Piercing the Corporate Veil in providing relief to the victim? If we don't, the parent company and subsidiary are two separate legal entities. According to the principle of self-responsibility, the parent company is not responsible and the subsidiary should be responsible for providing relief to the victim [11]. However, in many cases, the victim cannot receive the necessary

relief. For example, the subsidiary may cause such a large amount of damage that its assets are insufficient to repair the harm caused, or the harm suffered by the victim may not be evident until many years later (occupational disease), by which time the subsidiary has already been dissolved, and the legal regulations in the host country may be inadequate, making it impossible for the victim to obtain relief through litigation in that country [1]. In such situations, should the parent company assume some form of responsibility? According to judicial practice, the parent company should have a duty of care towards the subsidiary.

In the UK, a court assesses whether a duty of care exists by considering several factors. Firstly, the level of the parent company's involvement in its subsidiary's operations is examined since greater involvement may increase the likelihood of liability. Secondly, the degree of knowledge or awareness by the parent company of its subsidiary's activities is evaluated since the parent company may be more likely to be held responsible if it had knowledge of or should have been aware of its subsidiary's actions. Finally, the court also looks at any benefit received by the parent company from its subsidiary's activities, as the parent company may be more likely to be held liable if it has benefited financially or otherwise from its subsidiary's actions.

But, the court needs to confirm whether it has jurisdiction and the applicable law. It depends on the location of the harm, the nationality of the parties involved, the place where the contract was formed or performed and whether there are any relevant international treaties or conventions. Unfortunately, we still do not know whether the relevant precedents of this obligation can be applied to multinational corporations.

Under French law, parent companies are required to establish a vigilance plan that identifies and prevents risks related to violations, environmental damage, and corruption within their supply chains. The plan must be made public and updated annually. Failure to comply with this obligation can result in civil liability for damages caused by the subsidiary.

Switzerland is contemplating two legislative proposals aimed at obligating Swiss multinational corporations to respect and conduct due diligence regarding human and environmental rights abuses committed extraterritorially. The "duty to respect" involves the responsibility of parent companies to ensure that their corporate group adheres to environmental and human rights regulations. On the other hand, the "due diligence obligation" requires parent companies to oversee the activities of their subsidiaries worldwide, with the aim of preventing any breaches of environmental and human rights laws [12]. Both of these concepts make parent companies directly answerable for specific violations of environmental and human rights laws committed by their foreign subsidiaries, unless they can demonstrate compliance with their due diligence obligation. As a result, if Swiss corporations are found to have failed in their duty of care, they will be accountable for any harm caused by their subsidiaries [13].

4.3. Based on Home Country's Administrative Measures

Administrative measures have proven to be an effective means of regulating multinational corporations. At present, 29 countries have implemented national action plans (NAPS) on business and human rights, based on the United Nations Guiding Principles. These plans include countries with significant multinational corporations. Despite this progress, some common issues still exist, and potential solutions are being proposed.

Public programs' definitions of effectiveness may vary considerably due to political variances, competing viewpoints, and multiple objectives. Consequently, policy statements frequently leave desired outcomes purposefully ambiguous to afford political protection and enable localized assessments and interpretations of effectiveness. This lack of specificity can also be seen in many NAPs. So, NAPs lack clear goals and objectives, and those that do exist are often vague and non-binding. To make up for this, the NAPs should be more specific in their language and include measurable targets. For example, NAPs have the potential to make specific promises to enhance the ability of individuals who have been harmed by business-related human rights violations to seek redress. They can also aim to bolster regulatory structures for holding corporations accountable.

Additionally, the author argues that NAPs should be accompanied by effective monitoring mechanisms to ensure accountability and progress towards achieving their goals. This could involve regular reporting on progress towards meeting targets or establishing independent oversight bodies to monitor implementation of the NAP.

In addition, some NAPs lack effective accountability mechanisms. While NAPs can be useful tools for raising awareness and promoting policy coherence, they are often voluntary and non-binding, which can limit their effectiveness in promoting corporate accountability for human rights abuses. In this point, NAPs should be accompanied by effective monitoring mechanisms to ensure accountability and progress towards achieving their goals. This could involve regular reporting on progress towards meeting targets or establishing independent oversight bodies to monitor implementation of the NAP. Furthermore, it is important to involve civil society organizations and other stakeholders in the process of developing and implementing NAPs to ensure that the plans take into account the needs and perspectives of the communities affected by business-related human rights abuses. Also, NAPs should be integrated into broader national human rights frameworks to ensure that they are not seen as separate from existing legal obligations but rather as part of a comprehensive approach to promoting corporate accountability for human rights abuses.

Finally, many NAPs lack meaningful participation from affected communities. While some NAPs include consultation processes with civil society organizations or affected communities, these are often limited in scope or do not result in meaningful input into the development of the plan. The scope of NAPs can be restricted to those most impacted by human rights violations related to businesses. Therefore, the involvement of civil society organizations and other stakeholders in the creation and execution of NAPs is essential to ensure they reflect the needs and viewpoints of affected communities [14].

5. Summary

In the pursuit of maximizing profits, multinational corporations may infringe upon cause various harms to local residents. Although the global community has attempted to tackle this issue through various ways, a lack of relevant mandatory treaties, inadequate rule of law in host countries, and reluctance by home countries to regulate multinational corporations have created a dilemma. However, from past treaties and precedents, regardless of jurisdiction, home countries have a negative obligation to respect the rights of all people. Several nations have already established regulations to address human rights violations committed extraterritorially by multinational corporations. Including impressive measures. The EU Conflict Minerals Regulation targets industries and regions that are more likely to violate human rights, and has achieved good results by bypassing the dilemma of mandatory legislation. This provides a new legislative approach. By invoking the parent company's duty of care towards its subsidiary, victims can receive redress without the need to pierce the corporate veil. The National Action Plan that originated in Germany now has 29 participating countries, including the home countries of major multinational corporations. Although there are still issues, it is still a good measure to solve human rights caused by multinational corporations. In the future, by constructing human rights obligations of home countries of multinational corporations, multinational corporations can act as bridges and develop more mutually beneficial and benign models of development in host countries under the constraints of their home countries.

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