

Multinational Corporations and Human Rights: Challenges in Emerging Countries

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Abstract. The relationship between Multinational Corporations (MNCs) and human rights is a contentious issue that demands attention. While many developed countries have stringent legislation to combat human rights abuses domestically, the operations of their MNCs in foreign territories pose significant challenges. MNCs often exploit legal loopholes and jurisdictional complexities, choosing to operate in regions with weak regulatory frameworks or where governments turn a blind eye to corporate malpractice. This perpetuates a cycle of impunity, where violations go unpunished, and victims are left without recourse. International Human Rights Treaties and Instruments, along with local legal systems, are inadequate in regulating the behavior of MNCs effectively. Despite efforts by International Organizations to promote Corporate Social Responsibility (CSR) through guidelines and recommendations, these measures lack enforceability, allowing MNCs to disregard their responsibilities. Moreover, governments in host countries may be complicit in human rights violations, often due to corruption and bribery. Addressing these challenges requires a multifaceted approach. Combining self-regulation with robust national legislation, such as a Corporate Criminal Act, could enhance accountability for MNCs operating abroad. However, voluntary commitments alone are insufficient. There is an urgent need for stronger regulatory mechanisms to protect human rights and hold MNCs accountable for their actions. Furthermore, the failure of many MNCs to comply with CSR standards exacerbates the problem. Despite the efforts of International Organizations to define and promote CSR, violations persist. This highlights the need for greater transparency and oversight in corporate operations. In conclusion, the complex relationship between MNCs and human rights demands immediate action. By adopting comprehensive regulatory frameworks and promoting greater transparency, we can strive towards a future where MNCs uphold human rights standards in all aspects of their operations.

Keywords. Multinational Corporations (MNCs), Human Rights Violations, Corporate Social Responsibility (CSR), Emerging countries, Regulatory Frameworks.

1. Introduction

Multinational Corporations (MNCs) represent companies that operate internationally through their subsidiaries or affiliates, seeking to optimize global-scale production and supply chains. These enterprises, increasingly prevalent in contemporary society as a result of globalization, play a significant role in the world economy [1].

The power of MNCs in global trade exceeds that of many countries, leading less developed countries to often accept and even incentivize the presence of these companies in their territories, regardless of the potential humanitarian and environmental implications of their operations. Such a scenario raises questions about the application and regulation

of laws in different jurisdictions, which can lead to issues when host countries are unable to apply their own legislation to MNCs, or when home countries do not adequately regulate the activities of these companies under their jurisdiction [2].

In this context, host countries often prefer to protect MNCs, even if they are causing harm to the local population or committing human rights or environmental abuses, due to financial incentives, to the detriment of support and protection for complaints against the companies. An example of this is the relationship between Shell's subsidiary and the Nigerian government [3]. This often results in the impossibility of the local population receiving adequate legal or state protection. Thus, large multinational corporations can evade national

regulatory control and local jurisdictions by relocating their operations to countries with more favorable terms, taking advantage of loopholes in the legal system or inadequate local legal systems for effective corporate regulation [2].

In light of the above, the aim of this research was to analyze the role of MNCs in the economies of the global South, observing how these companies handle human rights and often take advantage of their economic position to obtain state protection or to operate in countries with weak national legislation, neglecting human rights. Additionally, the study sought to investigate impunity in cases of violations.

2. Research Methods

The research methodology employed a multifaceted approach to data collection, drawing from diverse sources to ensure comprehensiveness. This included exhaustive website searches, thorough examination of academic literature, scrutiny of national and international legislations pertaining to human rights and corporate conduct – as can be seen in Figure 1 –, and review of manuals and reports issued by esteemed organizations such as the United Nations and the OECD.

In addition to these primary sources, the research delved into key concepts such as Corporate Social Responsibility (CSR), due diligence practices, Environmental, Social, and Governance (ESG) principles, and the functions of OECD National Contact Points (NCPs). By exploring these dimensions, the study aimed to achieve a holistic understanding of human rights violations perpetrated by multinational corporations (MNCs).



Fig. 1 - Cartogram showing countries analysed for ESG National Legislation. Own elaboration.

Furthermore, this comprehensive approach sought to shed light on the inadequacies of existing frameworks in addressing these violations, as well as the limitations of international law in effectively regulating MNCs' conduct in this regard. Through this meticulous methodology, the research endeavors to contribute valuable insights into the activities of MNCs in emerging economies.

3. Understanding MNCs' Effects on Host Developing Countries

Multinational Corporations (MNCs) tend to commit more human rights abuses when established in

peripheral and impoverished regions. Indeed, cases of violations within countries considered "developed" also occur in deprived areas and racially segregated communities [4]. The victims of these violations are predominantly the poor and vulnerable, including women, children, and other marginalized groups [4].

Similarly, environmental disasters caused by these companies tend to affect poorer countries more, and within them, the most vulnerable people. This contributes to increased social inequality, as these groups are more vulnerable and have fewer resources to protect themselves and recover [5]. This underscores the urgency of addressing not only human rights but also the relationship between human rights and socio-environmental rights.

The results reveal that the majority of human rights violations are perpetrated by MNCs from highly industrialized nations, including Canada, Japan, Germany, France, the United Kingdom, and the United States [4]. Additionally, traditional sectors tend to have a more negative impact on human rights, while high-tech sectors are less associated with violations [6]. This is because low-tech industries often employ low-skilled workers who are more vulnerable to abuse. However, this relationship is not absolute, as even high-tech industries can be involved in human rights scandals [6].

Nevertheless, it is crucial to recognize that the dynamic of human rights violations by multinational corporations (MNCs) is not always straightforward. While it's true that instances often involve developed nations and their subsidiaries or branches in emerging economies, there are exceptions to this pattern. Some emerging countries themselves have been implicated in human rights abuses within their own borders or in neighboring nations. Take, for instance, the case of Brazil, where certain Brazilian MNCs like JBS [7] and Vale [8] have faced accusations of human rights violations domestically. However, they have also been embroiled in legal actions abroad for similar transgressions.

This underscores the complexity of the issue and the need for a nuanced understanding of the various factors at play in the realm of corporate accountability and human rights.

Considering these factors, we delve into several critical aspects regarding the perpetration of these abuses through the following subtopics.

3.1 International Recommendation

International Organizations have been striving to address the issue of human rights violations and corporate responsibility by creating guides and recommendations. Notable examples include the "Declaration on International Investment and Multinational Enterprises" from the Organization for Economic Cooperation and Development (OECD) [12] and the "United Nations Guiding Principles on Business and Human Rights" [13].

Both initiatives aim to define and promote the implementation of key concepts, such as Corporate Social Responsibility (CSR), Due Diligence (DD), and Environmental, Social and Governance (ESG). For example, the OECD defines CSR as a corporate contribution to sustainable development, emphasizing its holistic and evolutionary nature [9]. Due Diligence, on the other hand, is highlighted as the process by which companies must identify, prevent, mitigate, and account for adverse impacts in their operations, supply chain, and other business relationships, as advocated by the OECD Guidelines for Multinational Enterprises [10]. ESG encompasses environmental, social, and governance factors considered in sustainable investment strategies and financing [11].

However, it is important to note that such guidelines are considered "soft law," meaning they lack legal enforceability. This implies that MNCs are not legally obligated to follow them, often resulting in failures in their implementation. Even in countries that are signatories or members of associations promoting these concepts, such as the OECD National Contact Points, there are still numerous cases of violations. This highlights the inadequacy of corporate voluntarism to effectively combat human rights violations and other related issues.

3.2 Jurisdictional Complexities and Regulatory Deficiencies

Even though most developed countries have robust legislation within their own borders to combat human rights abuses, when their Multinational Corporations (MNCs) operate in foreign countries, they are subject to the laws of the host nation [2]. Consequently, many companies strategically choose to establish themselves in countries with lax legal standards or in nations where the government incentivizes corporate activity to the extent that it turns a blind eye to potential atrocities. In some cases, governmental leaders attract Foreign Direct Investment (FDI) to serve their selfish interests, with little concern for advancing their country's development, effectively adopting a capitalist exploitation model [6].

In this vein, while some countries may attempt to hold MNCs accountable for human rights violations, legal recourse is often limited. Episodes of violation may go unpunished due to jurisdictional challenges. Courts in the home country of the corporation typically claim they lack jurisdiction over cases occurring outside their territory. Meanwhile, courts in host countries, even when rendering judgments against MNCs, may find the companies uncooperative, as they argue the decision does not apply to their context.

Beyond national jurisdictions, international Human Rights Treaties and Instruments, alongside local legal systems, may seem adequate for regulating corporate activity. However, MNCs effectively circumvent these regulations, as these treaties primarily target enforcement by states, neglecting

MNCs as legal actors [2].

Both the enforcement of universal human rights laws and national laws for corporations are highly complex, particularly due to the principle of extraterritoriality. Perhaps a potential solution lies in combining self-regulation with the creation of a Corporate Criminal Act at the national level [2]. Voluntary commitments by companies to refrain from human rights violations are insufficient; robust regulation is necessary.

In this scenario, in the absence of effective international legislation to protect host countries, many rely on the voluntary actions of MNCs. However, a notable proportion of these corporations do not comply with their own Corporate Social Responsibility (CSR) regulations and corporate accountability standards [4]. Furthermore, in numerous cases, governments in host countries where human rights violations take place fail to hold MNCs accountable for these infractions, often due to corruption and bribery involving local politicians [4].

Therefore, the widespread failure of MNCs to adhere to Corporate Social Responsibility (CSR) standards, coupled with the reluctance of host country governments to hold them accountable, highlights the urgent need for more robust and enforceable regulations to combat human rights violations in the corporate sector.

4. Conclusion

In conclusion, the issue of human rights abuses by Multinational Corporations (MNCs) is intricate and demands a nuanced approach. While it's evident that MNCs often exploit marginalized regions and communities worldwide, the dynamics of these violations are not always straightforward. The involvement of highly industrialized nations underscores the global nature of the problem, emphasizing the need for tailored approaches to address human rights issues across different sectors.

Moreover, exceptions to the typical pattern, such as emerging countries implicated in human rights violations, further complicate the narrative. Cases like those involving Brazilian MNCs JBS and Vale highlight the complex nature of corporate accountability concerning human rights.

Therefore, gaining a comprehensive understanding of the interaction between MNCs, host countries, and various socio-economic factors is crucial to effectively addressing human rights abuses in the corporate sector. Through thorough analysis of these complexities, we aim to shed light on key aspects of this critical issue and contribute to ongoing discussions on corporate responsibility and human rights.

Despite efforts by International Organizations to address human rights violations through guidelines and recommendations, their voluntary nature limits their effectiveness. Stronger regulatory mechanisms

are needed to ensure corporate accountability and mitigate human rights violations globally.

In summary, the challenges in holding MNCs accountable for human rights violations require a multifaceted approach, combining international cooperation, strengthened legal mechanisms, and enhanced corporate oversight. It is essential to ensure that MNCs uphold human rights standards in all facets of their operations to promote a more just and sustainable global business environment.

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