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Environmental Harm and Human Rights Violations by Multinational Corporations: Legal and Institutional Perspectives under the Revised Binding Treaty

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ABSTRACT

This paper undertakes a critical appraisal of the legal and institutional frameworks designed to address human rights violations perpetrated by multinational corporations (MNCs), with a particular focus on environmental degradation and its implications for affected communities. Drawing on the Revised Draft Legally Binding Instrument (2020), the work interrogates whether the existing global governance architecture is equipped to respond effectively to the complex challenges posed by transnational business operations. The analysis situates MNCs within the broader discourse on corporate impunity, extraterritorial jurisdiction, and the increasing demand for accountability in cases of environmental harm and socio-economic disruption. While acknowledging the treaty's progressive elements—particularly its recognition of victims' rights, environmental remediation, and corporate liability—the paper also highlights structural gaps, especially regarding enforcement mechanisms and state-centric obligations. Ultimately, the study calls for a recalibration of international legal tools to ensure that human rights, including those linked to environmental integrity, are not subordinated to commercial interests in an increasingly globalized economy.

Keywords: Multinational Corporations (MNCs), Human Rights Violations, Environmental Justice, International Law, Legally Binding Treaty

Introduction

This paper will critically consider the institutional frameworks that pursue and monitor the compliance by Business/MNCs with essential human rights standards and obligations especially in the light of the Revised Draft Legally Binding Instrument to Regulate in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises 2019 (as revised on the 6th of August 2020). It is important at this juncture to appreciate what actually constitutes Businesses/MNCs for the purpose of this research. This is pertinent because research has shown that the major historical documents that tend to regulate the activities of these companies (that is the Global Compact, the Norm and the Guiding Principles) appear not to contain an explicit definition of these bodies [1].

In this connection, although J. G. Ruggie (the UN Special Representative on Business and Human Rights, whose report formed the basis of the Guiding Principles, 2011) did not explicitly define the 'MNCs' in the UNGPs, the scholar apparently remedied the situation when he defined 'Multinational Companies (MNCs) or Transnational Companies (TNCs)' in his research work, as comprising companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another [1]. It is apposite to note that the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure [2].

One of the major challenges for human rights and governance today is the general regulation of businesses in the global

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economy and more particularly as it relates to the protection, respect and fulfilment of human rights in the context of corporate activity and to ensure accountability for violations [3]. For instance, apart from the environmental degrading activities of Shell (Nigeria) which has its own far-reaching effects on the human rights of the people, Shell has also been accused of gross violation and abuse of the labour rights of its workers [4]. Also, MNCs producing goods in Southeast Asia under degrading work conditions have also been indicted for harming and violating the workers' human rights [5].

It has also been reported that there is need for human rights intervention and extra-territorial control of multinational mining companies in developing countries – mineral exploitation leaves negative impact on the environment and further affects the human rights of the indigenes living in those areas [6]. The increasing realization of the capacity and tendency of MNCs to violate their powers and to infringe human rights standards forms the bedrock that supports the need for institutional regulation of the activities of these companies at the global level. As rightly pointed out by a scholar, this recourse to international institutional measures stems from the perceived weakness in the ability of hosts States to address the human rights challenges posed by the MNCs [7].

Therefore, the fulcrum of this paper would be a critical assessment as to whether the existing global governance structures under the treaty as regards the protection of human rights are capable of effectively responding to the intensified cross border human rights violations of businesses/MNCs. In final analysis, notable recommendations/improvements shall be submitted, the implementation of which would allow these global governance structures to respond better to the human rights globalisation challenges and to be better equipped to help realise the 2030 Agenda and its target SDGs.

Applicable Rules

The paper will hinge on the Revised Draft Legally Binding Instrument to Regulate in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises, 2019 (as revised on the 6th of August 2020) as the rules system for discussion. The Revised Draft Legally Binding Instrument, spirited in its preamble, is founded upon existing international treaties such as UN Declaration of Human Rights, ILO Conventions, UN Declaration of Rights of Indigenous Peoples, etc [8]. It also remains a product of the UN Human Rights Council. At its 26th Session, on 26 June 2014, the UN Human Rights Council resolved to establish an Open-Ended Intergovernmental Working Group (OEIGWG) on Transnational Corporations and Other Business Enterprises with Respect to Human Rights whose mandate culminated in the preparation of the Draft Legally Binding Instrument to Regulate in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (as revised on the 6th day of August, 2020) [9]. While negotiations on the draft are still ongoing, the draft in its content is presumed to provide a strong regulatory and institutional framework for the protection of human rights against violations by Businesses/MNCs. The draft contains three broad sections and a total of twenty-four articles. The main purpose of the instrument is to strengthen the respect, promotion, protection and fulfilment of human rights in the context of business activities, prevent the occurrence of such violations and abuses, and to ensure effective access to justice and remedy for victims of human rights violations and abuses in the context of business activities [10]. The core elements of the Draft Treaty are discussed as follows:

a. Scope of the Treaty:

As provided under article 3 of the Treaty, the scope applies to all business activities (including particularly but not limited to those of a transnational character) and covers all human rights. Although the scope of the Treaty appears to target TNCs, domestic firms are not exempted from the application of the treaty. This broader application is hinged on the fact that both domestic and transnational firms can be responsible for human rights violations or abuses, and that peoples whose rights have been violated are unlikely to distinguish whether the business enterprise that causes them harm has transnational ownership or operations [11].

b. Rights of Victims:

Article 4 of the Treaty recognizes and enshrines several rights for the victims of human rights violations in the context of business activities and these include the rights to be treated with humanity and respect for their dignity and human rights, and their safety, physical and psychological well-being and privacy, rights to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement; right to be protected from any unlawful interference against their privacy and from intimidation, and retaliation, before, during and after any proceedings have been instituted; right to benefit from special consideration and care to avoid re-victimization in the course of proceedings for access to justice and remedies, right to fair, effective, prompt and non-discriminatory access to justice and adequate, effective and prompt remedies, etc.

c. Access to Remedy for Victims:

As can be gleaned from the preamble and statement of purpose of the treaty, provision of avenues to seek access to effective remedies for victims of human rights violations or abuses as a result of business activities is a fundamental premise of the treaty. These remedies include but are not limited to the provision of restitution, compensation, rehabilitation, satisfaction and guaranteeing non-repetition for the victims, environmental remediation and ecological restoration where applicable, including covering of expenses for relocation of victims and replacement of community facilities [12]. The remedies envisaged under the treaty are quite broad and can be especially important in cases of large-scale disasters such as the Bhopal gas tragedy in 1984, which affected thousands of people [13].

d. Liability of TNCs/Businesses:

The treaty recognizes the possibility for a direct, vicarious or strict liability (as the case may be) of TNCs/Businesses for violations of human rights in the course of their business activities and thus engaged the State parties to enact laws that provide for a comprehensive and adequate system of liability. The treaty recognizes the distinction between the individual liability of natural persons and the liability of legal persons and also maintains the distinct nature of civil and criminal liabilities. Under article 8 (9) of the revised draft treaty, State parties are required to ensure that their domestic laws provide for the criminal or functionally equivalent liability of legal persons for human rights abuses that amount to criminal offences under international human rights law binding on the State Party,

customary international law, or their domestic law. Drawing from an array of existing international legal instruments such as the Rome Statute, UN Conventions, ILO Conventions, some of these offences which States parties are engaged to prohibit by way of domestic statute will include offences such as inhuman or degrading treatment, torture, slavery, forced displacement of people, human trafficking, sexual and gender-based violence, and forced labour, etc.

e. Adjudicative Jurisdiction of Courts:

Article 9 (1) of the Treaty gives more clarity and accuracy to the issue of which courts would be competent to hear claims on human rights violations or abuses due to business activities. It provides three distinct grounds for the courts to claim jurisdiction, namely the place where: (i) the human rights abuse occurred; or (ii) an act or omission contributing to the human rights abuse occurred; or (iii) the legal or natural persons alleged to have committed an act or omission causing or contributing to such human rights abuse in the context of business activities, including those of a transnational character, are domiciled. Given the possibility that in certain situations, these may be simultaneously applicable, this provision seems to provide the victims with the choice to approach the court that is most convenient to them for accessing effective remedies and the courts are obliged not to decline jurisdiction on the ground of forum non conveniens [14]. Further, article 9 (2) provides criteria to determine the domicile of the entity which is alleged to have committed human rights violations or abuses. This entity can be a 'natural or legal person conducting business activities of a transnational character, including through their contractual relationships'. It lists four criteria which can be used, namely the place of incorporation; statutory seat; central administration; or principal place of business. Of these, the first would be applicable only to legal persons, while the rest may be applicable to both natural and legal persons.

The need for having these detailed criteria for determining the domicile of commercial enterprises stems from the reality that corporations, especially transnational corporations, have business activities and assets in several territories, while their management is conducted from one territory, and they are governed by the laws of yet another State. The Treaty therefore establishes a solid basis for victims to have recourse to the courts which have competence to hear their claims and provide remedies for violations or abuses of human rights due to business activities, irrespective of the domicile or nationality of the victims. It focuses on where the alleged acts or omissions were committed or where the actors are located. Such a formulation therefore strengthens the ability of victims to bring appropriate claims and that of the courts to hear them.

f. Mutual Legal Assistance:

It is pertinent at this point to state that the responsibility to protect Human rights hinges towards the actions and mechanisms of the States and as such the provision for mutual legal assistance is an important element of the Treaty. Under article 12 (1) of the Treaty, State parties are engaged to provide the widest measure of mutual legal assistance especially with respect to investigations, prosecutions and judicial and other proceedings in relation to the claims covered by the Treaty. These include access to information and supply of all evidence at their disposal that are necessary for the proceedings in order to allow effective, prompt thorough and impartial investigations. Article 12 (3) contains an open list of what constitutes "mutual legal assistance" The list includes: taking evidence or statements from persons; effecting service of judicial documents; executing searches and seizures; examining objects and sites; providing information, evidentiary items and expert evaluations; providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records; identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes; facilitating the voluntary appearance of persons in the requesting State Party; etc.

There are only two grounds upon which a State party may refuse to provide mutual assistance: (i) if the violation to which the request relates is not covered by the Treaty or (ii) if it would be contrary to the legal system of the requested State party [15].

From the forgoing, the treaty integrates mutual legal assistance as a mechanism for ensuring efficient investigation and prosecution of violations of human rights due to business activities, as well as the effective enforcement of judgments. This integration seeks to guarantee access to information for investigations and prosecutions, adoption of rules for mutual judicial cooperation, adequate standards of due process of law and enforcement of effective remedies through cooperation.

Implementation and Enforcement of the Treaty

Generally, the tenor of the treaty adopts a traditional treaty making approach whereby implementation and enforcement of the treaty is to be done by State parties to the instrument. The treaty focuses on advancing national systems in a way that addresses practices by business enterprises and their implications on the State's ability to fulfil state obligations under international human rights law [16].

Pursuant to article 16 of the Treaty, implementation of the treaty is by legislative, administrative and other measures by State parties and these include ensuring that adequate monitoring mechanisms are put in place. Article 16 (4) enjoins State parties while implementing the treaty to address the specific impacts of business activities on especially those facing heightened risks of violations of human rights within the context of business activities, such as women, children, persons with disabilities, indigenous peoples, migrants, refugees and internal displaced persons.

Under the provisions on the rights of victims (i.e. article 4), the treaty engages States parties to provide effective mechanisms for the enforcement of remedies for violations of human rights, including through prompt execution of national or foreign judgements or awards, in accordance with the treaty, as well as their domestic law and international legal obligations [17]. The issue of recognition and enforcement of foreign judgments is also considered in Article 12 (8), which provides for the procedural requirements. It requires that for any judgment to be enforceable, it should no longer be subject to ordinary forms of review in its State of origin. Further, such action is required to be taken in the country where it is sought to be enforced as soon as the requisite formalities have been completed. These formalities cannot be more onerous and the attendant fees and charges should not be higher than those required for the enforcement of domestic judgments. In other words, the provision does not

allow for the possibility of a reconsideration of the merits of the case.

Although the treaty imposes on States parties a positive duty to recognize and enforce the judgment, the duty is however not absolute as there are grounds for refusal of recognition and enforcement. These grounds are contained in article 12 (9) of the treaty and reflect those commonly seen in other legal instruments that deal with the matter. Thus, it provides three grounds for such refusal by a court or the competent authority These grounds are (a) that the defendant was not given reasonable notice and a fair opportunity to present their case; (b) that the judgement is irreconcilable with an earlier judgement validly pronounced in another country with regard to the same cause of action and between the same parties; or (c) where the judgement is likely to prejudice the sovereignty, security, ordre public or other essential interests of the country where its recognition and enforcement is sought. Interestingly, the above grounds can only be activated at the request of the defendant and the defendant who seeks to rely on any of the grounds must furnish enough proof before the court can exercise its discretion of refusing to recognize or enforce the judgment.

The Role of International Cooperation in the Implementation of the Treaty

In recognizing the importance of international cooperation for the implementation of the treaty, the treaty enjoins States Parties to cooperate in good faith to enable the implementation of commitments undertaken in the treaty and the fulfilment of the purposes of the treaty [18]. In general, international human rights law requires international cooperation for the protection and promotion of human rights. International cooperation does not have to be multi-lateral. It can involve two or three countries. There is a long history of bilateral cooperation for human rights in this region. In recent years, bilateral cooperation has taken on a more explicit focus on human rights. First, cooperation is directed towards promoting human rights capacity, law and mechanisms in countries in the region. It provides legal and institutional expertise. Second, cooperation involves the exchange of experience and expertise. There is a particular focus on training programs to provide education, information and practical skills for human rights work. Third, technical assistance in other fields also has human rights components [19]. In this connection, article 13 (2) of the treaty encourages bilateral and multi-lateral relations between and amongst states parties to the instrument as well as cooperation with international and regional organizations in the implementation and enforcement of the treaty. State parties are specifically required to adopt measures that will ensure the following:

a. Promote effective technical cooperation and capacity-building among policy makers, operators and users of domestic, regional and international grievance mechanisms;
b. Share experiences, good practices, challenges, information and training programs on the implementation of the treaty;
c. Facilitate cooperation in research and studies on the challenges and good practices and experiences for preventing violations of human rights in the context of business activities, including those of a transitional character.

From the foregoing, the treaty provides platform for the States to work hand in hand with institutional frameworks envisaged in the treaty (and beyond) including international and regional non-governmental organizations that promote the protection and enforcement of human rights against violations by TNCs/ Businesses.

Institutional Framework for the Protection of Human Rights in the Context of Business Activities under the Treaty

Under this subheading, the researcher will briefly consider the institutional arrangement envisaged under the treaty for the implementation and enforcement of the treaty. They are as follows:

The Committee

The treaty sets up a committee for the purposes of the implementation and enforcement of its provisions. The Committee is to be comprised of 12 experts of high moral standing and recognized competence in the field of human rights, public international law or other relevant fields. Members of the Committee are to serve for a term of 4 years and can be re-elected for another term [20]. Article 15 (4) (a) to (e) of the treaty clearly spells out the functions of the Committee as follows:

a. To make general comments and normative recommendations on the understanding and implementation of the treaty based on the examination of reports and information received from the State Parties and other stakeholders;
b. To consider and provide concluding observations and recommendations on reports submitted by State Parties as it may consider appropriate and forward these to the State Party concerned that may respond with any observations it chooses to the Committee;
c. To provide support to the State Parties in the compilation and communication of information required for the implementation of the provisions of the treaty;
d. To submit an annual report on its activities under the treaty to the State Parties and to the General Assembly of the United Nations;
e. To recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the treaty.

The principal task of the Committee is the review of the progress in implementation of the treaty. States Parties are obliged to submit to the Committee an initial report on measures taken to implement the treaty one year after the entry into force of the treaty. Thereafter, periodic reports must be submitted every four years. On the basis of the State reports, complemented with information from other sources, including the international organizations, the Committee will assess the country's progress and issue concluding observations to the State Party.

The Secretary General of the United Nations

The functions of the UN Secretary General start off with overseeing the nominations of the members of the Committee so as to ensure that the individuals meet the requirements stipulated under the treaty. It is the UN Secretary General that has the duty of providing all the necessary staff and facilities for the effective performance of the Committee under the treaty [21]. In as much as the treaty envisages some level of independence for the Committee, the UN Secretary General is arguably an integral part of the Committee. After the Committee has concluded its reports, it is the UN Secretary General that shall transmit those

reports to the relevant States [22]. States parties to the treaty are also obliged to submit copies of their laws and regulations (or any amendments or changes thereto) that give effect to the provisions of the treaty to the UN Secretary General [23]. It appears that the purpose of the submission is to enable the UN Secretary General to implement article 16 (1) of the treaty which requires States parties to take all necessary legislative actions to ensure effective implementation of the treaty. It is submitted that the inclusion of the UN Secretary General in the implementation of the treaty is a welcome development as he can use his influence as the chief administrative officer of the United Nations to ensure the effective implementation of the treaty and can include his human rights violations findings into his annual report to the UN General Assembly and where such violations touch on international peace and security, he may also report the violations to the UN Security Council [24].

Conference of State Parties

This is a meeting of the State parties to the treaty whose major function will be to consider matters affecting the implementation of the treaty [25]. It is submitted that this Conference of States parties will provide a strong institutional force for a synergy amongst States parties especially on issues of international cooperation and mutual legal assistance both of which are key to effective implementation of the treaty. The first meeting of the conference will be convened by the UN Secretary General 6 months after the entry into force of the treaty and subsequently biannually subject to the decision of the Conference. The Conference of States parties shall also regulate the application of the International Fund to be set up by the States parties, in order to ensure that the funds are well applied within the purpose of its establishment under the treaty, that is, to provide legal and financial aids to victims of human rights violations in the context of business activities.

International Court of Justice

The treaty under article 18 grants jurisdiction to the International Court of Justice with respect to the settlement of disputes between two or more State parties which border on the interpretation and application of the provisions of the treaty. However, resort to the ICJ is not mandatory as parties have the discretion to settle their disputes through arbitration.

Domestic Courts

The treaty has a major focus on judicial mechanisms. Empowering the domestic courts and enhancing the effectiveness of the national judiciary systems in order to be able to deal with cases arising from violations of human rights in the context of transnational economic practices is a central focus in the treaty [26]. State Parties should be ready to empower their domestic courts to assert jurisdiction over cases arising from the conduct that results in violations of human rights by actors acting in their territory, or having their statutory seat, central administration or place of primary business there [27]. Domestic courts of the place of 'subsidiary, agency, instrumentality, branch, representative office of the like shall as well be able to assert jurisdiction over such cases. Jurisdiction by the domestic courts seems to be posed broadly in a way that could enable them to respond to the ever-changing practices and legal restructuring by transnational enterprises [28].

Strengths, Weaknesses and Recommendations

Under this unit, the researcher will consider the various strengths and weaknesses of the treaty and further submit some recommendations geared towards a more effective institutional framework.

Strengths

1. Unlike other treaties that are couched in a general language, the treaty under discussion is arguably more specific and direct in scope as regards the protection of human rights in the context of business activities. Article 1 (3) of the treaty defines "Business activities" to mean any economic activity of transnational corporations and other business enterprises, including but not limited to productive or commercial activity, undertaken by a natural or legal person, including activities undertaken by electronic means. The treaty will serve as the first major binding international treaty to regulate the economic activities of TNCs/Businesses vis-à-vis the protection of human rights and will provide a strong basis for national and international NGOs to litigate and press against human rights violations by TNCs/Businesses.
2. The treaty tackles the issue of attack on human rights defenders and activities when enforcing the rights of the victims [29]. This is particularly important because human rights defenders working in the business activities context commonly face threats, harassment, intimidation, criminalization and physical attacks. In many cases, defenders are labelled as 'enemies of the State', 'anti-government' or 'against development' if they oppose business and development projects [30]. Therefore, State parties are required to ensure that these persons are well protected before, during and after the institution of actions in enforcement of the rights contained in the treaty.
3. The treaty also contains a broader definition of the term "victims" for the purposes of enforcing the rights contained in the treaty. It envisages both individual or collective actions and where appropriate, the expression shall also include the immediate family or dependants of the direct victim. This broader definition is designed to ensure that, in the case of death of the victim, his/her family or defendants will still be entitled to enforce or benefit from the provisions of the treaty.
4. The treaty attempts to address the problem of liability of parent companies for human rights violations committed by their subsidiaries. Multinational companies are normally structured in parent-subsidiary relationships for a variety of managerial, regulatory, and tax reasons. Due to the financial strength and stability of parent companies, most litigants would always prefer to sue them either jointly or severally with their subsidiaries. However, based on international private law the applicable law is in most cases derived from the occurrence that gave rise to the litigation (lex loci actus) and, therefore, the law at the domicile of the subsidiary will often be the applicable law. Consequently, if jurisdiction is assumed by a court, in principle, such a claim must then be assessed under the foreign local laws of the country where the subsidiary is domiciled and operating [31]. Article 9 (2) of the treaty broadens the scope by allowing courts situated where the act or omission contributing to the human rights abuse occurred or wherever the defaulting transnational company is domiciled to assume jurisdiction over the

case. Article 8 (7) specifically recognizes and envisages the liability of a parent company for its failure to prevent another natural or legal person with whom it has a business relationship (i.e. the subsidiaries, agents, etc.), from causing harm to third parties when the former sufficiently controls or supervises the relevant activity that caused the harm or should foresee or should have foreseen risks of human rights violations or abuses in the conduct of their business activities [32]. This is a welcome development because it attempts to address the difficulty of suing TNCs in their home states [33].

5. Given that access to information is fundamental for victims to present a claim against business enterprises based on violations of human rights, the treaty in article 6 (2) and (3) engages States parties to adopt measures necessary to ensure that business enterprises conduct their operations under the principle of transparency to ensure oversight by competent authorities [34]. This includes requiring the TNCs to report publicly and periodically on financial and non-financial matters, including policies, risks, outcomes and indicators on human rights, environment and labour standards concerning the conduct of their business activities, including those of their contractual relationships. Requiring companies to submit mandatory human rights reports to national authorities will go a long way to ensure corporate due diligence and access to information for victims of human rights violations by TNCs/Businesses. Transparency is perceived as a key factor in ensuring that corporations respect human rights. Civil procedure, like criminal procedure and administrative legal procedure, plays an important role in ensuring and enforcing corporate transparency [35]. In this connection, the treaty not only encourages accessibility of relevant information relating to the TNCs/Businesses for the purposes of civil actions but also allows for alternative dispute resolution mechanisms in case the victims do not wish to explore the option of litigation [36].
6. Article 7 (3) (e) and (4) of the treaty invariably prohibits the application of the "loser pays rule" which has been a hurdle for victims seeking to sue transnational companies for the violation of their human rights. Thus, where an action brought against TNC s/Businesses for violations of human rights in the context of business activities is unsuccessful, the victim will not be required to reimburse the defendant company for the costs incurred in defence of the action provided the victim shall demonstrate that the inability to reimburse is due to lack or insufficiency of economic resources.

Weaknesses

1. Although the treaty in its preamble underlines that business enterprises have the responsibility to respect all human rights, its general language shows that it is addressed to only sovereign State parties as there is no binding commitment to comply with human rights for companies or individuals. In other words, the treaty only establishes a binding component for the States, but companies are not given responsibility. Therefore, not only does it not make them obliged subjects, which was the initial idea, but they will respond before the laws that the States implement in this matter [37].
2. It also appears that the effective implementation of the treaty will depend on the strength of the domestic laws of the State parties. For instance, under article 12 (10) of the treaty, a state party may refuse to provide mutual legal assistance to another State party in the enforcement of the treaty, if doing so will be contrary to its own legal system.
3. The institutional framework envisaged under the treaty are arguably toothless particularly the Committee which is not empowered to do much for the purpose of implementing the treaty. The Committee's functions are apparently limited to monitoring compliance and making comments. It has no powers to penalize erring State parties or TNCs/Businesses.
4. The treaty places primary emphasis on host-states' obligations without a corresponding attention to a possible liability or obligation for the home states where the defaulting MNCs are headquartered. This strategic focus on host- states may have a negative impact on home states accountability as regards the duty to ensure that their corporate nationals do not commit acts injurious to the human rights of people abroad and also deflect attention from the fact that human rights violations through corporate practices take place in a global context of impunity in which home countries with presumably strong governance fail in their state duty to protect human rights by providing the necessary regulations to hold their corporate nationals to account at home for abuses perpetrated overseas [38,39].
5. Finally, another weakness of the treaty is that it has not yet come into force as negotiations are still ongoing. The implication is that until it comes into force, all the advantages discussed above are not enforceable.

Recommendations

The draft treaty discussed in this paper provides a new legal and institutional framework for the protection of human rights against violations by TNCs/Businesses in the context of business activities. If the treaty comes into force, it will become the first major binding treaty on the issue at hand and will serve as a strong platform for a new and positive approach by States to the protection of human rights against violations by TNCs/businesses. However, given the attendant weaknesses of the treaty as discussed above, it is recommended first, that the institutional frameworks envisaged under the treaty especially "the Committee" should be given a biting force in order to enable them to properly implement the provisions of the treaty against erring States. This is more so because it has been the concern of researchers that, even though there were authoritative principles such as United Nations Guiding Principles on Business and Human rights to control multinational corporations and, even though there exists United Nations, the giant in the international human rights protection, TNCs/Businesses still continue their ruthless human rights violations all over the world as no authority has been able to prevent them from doing so. Thus, there is need for a specialized institutional framework which will be given the authority to strategically engage TNCs/Businesses on the issue of human rights violations. Similarly, States which default in complying with the obligations contained in the treaty should be required to face some sanctions. Secondly, in as much as there is no general consensus yet as to the obligations of companies to protect or fulfil human rights, the treaty, having recognized that these corporate entities/businesses do have the duty to respect all human rights, should devote some of its provisions to

specifically holding the companies/businesses liable for acts that undermine their duty to respect human rights. Thirdly, there is need to directing attention to the need to end corporate impunity through mechanisms that do not depend on first creating strong governance in the states where harm has been done. In this connection, home states should be able to face some liabilities for acts of their corporate citizens which affect the human rights of people living in another country.

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