

RESPONSIBILITY OF HUMAN RIGHTS VIOLATIONS BY TRANSNATIONAL CORPORATIONS UNDER INTERNATIONAL LAW*

Abstract

The rapid expansion of transnational economic activity and corresponding growth in power of transnational corporations and other business entities have prompted renewed international discourse and action over the past decade to address the human rights abuses committed by businesses. This manuscript elucidated the responsibility that transnational corporations have and the extent at which they can be held accountable to human rights abuses. The doctrinal research method was adopted and the data collected were both primary and secondary comprising of both hard copies and online source materials. It was discovered that due to the weak nature of some States and their reluctance to enforce human rights obligations on transnational corporations, they do not respect minimum international human rights standards and can thus be implicated in abuses such as employing child labourers, discriminating against certain groups of employees, failing to provide safe and healthy working conditions, and discouraging the right to bargain collectively amongst others. It is recommended that the nature and scope of responsibilities of transnational corporations with regard to human rights should be clearly defined by a single international document within the framework of the United Nations and a strong enforcement mechanism should be adopted.

Keywords: *Responsibility, international law, human rights and Transnational Corporations*

1. Introduction

Transnational Corporations (TNCs) are increasingly powerful in our globalized world. Within a transnational context, TNCs challenge the power and duties that historically belong to states, and their often-unregulated conduct affects public interests. Arguably, the most pressing cases are those in which TNCs infringe upon the ability of individuals to enjoy the content of their human rights. The conduct of a TNC may affect either the human rights of individuals involved within the business networks of that TNC (for example, the workers employed by a supplier of the TNC), or the human rights of individuals not involved within those networks (for example, through environmentally degrading practices), or both. Consequently, a growing number of academics, international institutions, non-governmental organizations (NGOs) and courts have sought ways to hold TNCs accountable for violations of human rights.¹ In this context, human rights has been broadly described as rights to control one's own body and actions, and rights to be free from discriminatory or persecutorial state interference. Some particular rights as expressed under the Universal Declaration of Human Rights (UDHR) include the right to human dignity and non-discrimination on a variety of bases: life, liberty and personal security; freedom from slavery; the right to work and for equal pay for equal work; the right to equal protection; marriage rights; and the right to own property. TNCs often find themselves faced directly and indirectly with issues involving the human rights defined in the UDHR.

A transnational corporation is an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries - whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively.² International law is the law formulated by sovereign states to guide and regulate their conducts with one another at the global level.

2. The Roles and Significance of Transnational Corporations in International Human Rights Law

Historically, TNCs have not acted as moral agents in the countries in which they do business. In the past there had been no significant detrimental consequences when a TNC refrained from acting in

*By **Eric Chigozie IBE**, Secretary, Nigerian Bar Association, Abuja Branch (Unity Bar), Suite B-59, Efab Mall, Off Ahmadu Bello Way, Area 11 Garki, Abuja. Email: *ericibe.c@gmail.com*. Phone No.:08161304100.

¹ LJ Hazenberg, 'Transnational Corporations and Human Rights Duties: Perfect and Imperfect' (2016) (17) *Hum Rights Rev*, 480.

² UN Sub-Commission on the Promotion and Protection of Human Rights, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, 20, UN Doc E/CN.4/Sub2/2003/12/Rev2 (August 26, 2003) [Norms].

response to a host government's violation of the fundamental human rights of the corporation's workers, or other widespread human rights abuses. As TNCs become publicly linked to grave human rights abuses either through direct involvement or tacit support of governmental violations, the theoretical separation between maximizing profits and responsible corporate activity collapses.³ On one hand, the financial strength of most transnational corporations and the desire of less developed countries to attract foreign investment give TNCs the impetus to be able to promote the economy of receiving countries. Transnational corporations organize modern, high-technological production, provide new work places, promote export and import, and train local staff in the use of up-to-date technology and manufacturing methods. In doing so, many TNCs have also taken steps to help promote public understanding of human rights. For example, it is widely known that a decade ago the Italian clothing retailer Benetton launched a successful public advertising campaign to mark the 50th anniversary of the Universal Declaration of Human Rights. Likewise, there is the annual award to young human rights activists given by Reebok International Ltd. Other TNCs have chosen to help raise awareness of human rights by creating sections on their web sites devoted to human rights, many of which offer links to human rights organizations.⁴

On the other hand, the larger the investment of transnational corporation in a given country is, the greater the economic dependence of the host State becomes. In this respect, powerful TNCs may demand from weaker States favourable concessions regarding minimum wages, security measures, limitations in technology transfers, taxation, and others. Similarly, the larger the democratic deficit of less developed countries public governance, the more likely it is that corruption will be rife and pressure to sustain the particular investment status will be maintained. The transnational corporation will likewise apply significant pressure to the home State in order to achieve the same results at an intergovernmental level,⁵ to win contracts, and/or to promote a political regime that will safeguard the interests of the subsidiary in the host State. On a more global level, it has been transnational corporations that have persistently lobbied industrialized States toward trade liberalization through the lifting of tariffs and domestic subsidies.⁶

The framework for determining what human rights issues are linked to transnational corporations is addressed through the UN Secretary-General's Global Compact launched in Davos in 1999. Some authors call these scopes as the core Corporate Social Responsibility Principles.⁷ The Global Compact has identified responsibilities of transnational corporations related to human rights in broad aspect in connection with two principles. The first principle requires transnational corporations to support and respect the protection of internationally proclaimed human rights and the second principle creates and obligation on transnational corporations to make sure that they are not complicit in human rights abuses. The first two responsibilities – to 'respect' and to 'support' human rights – relate to the acts and omissions of transnational corporation itself, while the third responsibility – to 'make sure they are not complicit' in human rights abuses – concerns the relationship between transnational corporations and third parties. Going into details, the responsibility to 'respect' human rights requires transnational corporations to refrain from acts that could interfere with the enjoyment of human rights. As for the responsibility to 'support' human rights, more complex issues arise. For example, the responsibility 'to support' human rights suggest that transnational corporations carry positive responsibilities to promote human rights. On the one hand, transnational corporations have a great and sometimes untapped potential to promote human rights through investment, and promotion of economic growth and the underlying conditions required for the enjoyment of human rights. The responsibility to 'support' human rights could help channel this. On the other hand, accepting that transnational corporations have positive responsibilities to use its influence to promote human rights could sit uneasily with the

³ BA Frey, 'The Legal and Ethical Responsibilities of Transnational Corporations in the Protection of International Human Rights' [1997] *Minnesota Journal of International Law*, 157.

⁴ UN High Commissioner for Human Rights, *Business and Human Rights: A Progress Report* (UNHCHR, January 2000) 15.

⁵ A Ganesan, 'Human Rights, the Energy Industry, and the Relationship with Home Governments' in A Eide, HO Bergesen and PR Goyer (eds), *Human Rights and the Oil Industry* (Intersentia, 2000) 15.

⁶ VA Schmidt, 'The New World Order, Incorporated: The Rise of Business and the Decline of the Nation State', [1995] (124) (2) *Daedalus*, 3.

⁷ I Bantekas, 'Corporate Social Responsibility in International Law' [2004] (309) *Boston University International Law Journal*, 25.

traditional discretion of States to make appropriate choices and exercise balance in designing policies to fulfil human rights.⁸

3. Human Rights and Corresponding Duties of Corporations: The Scope

As pointed earlier, under international human rights law in the traditional era, the State bears responsibility for the protection of human rights within its jurisdiction.⁹ However, international law must evolve in recognition of the changing dynamic between human rights and non-State actors. The development of TNCs as entities in possession of international legal personality and their capacity to bear duties indicates that State sovereignty is becoming ‘pluralistic and limited.’¹⁰ States no longer hold an exclusive role in the realisation of human rights; TNCs share in this responsibility.

Limiting the Scope of Liability

With this expansion of the distribution of human rights duties amongst international players, where States no longer bear sole responsibility for these duties, it is ‘neither necessary nor desirable for TNCs to possess full legal personality on a par with States.’¹¹ As stated by the ICJ in the *Reparations for Injuries case*, ‘the subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community.’ In recognition of this, the UN Global Compact stipulated that corporations bear moral obligations to promote and protect the human rights within their respective ‘spheres of influence.’¹² Designed to assist companies to support and respect human rights within and beyond the workplace, this concept of the ‘sphere of influence’ seeks to establish the scope of corporate responsibility for human rights issues. This scope is based on the extent of the corporation’s influence, depending on factors such as the human right at issue, the size of the company, and the proximity between the company and the potential victims.¹³ The concept implies that the more control or influence a corporation holds over a particular situation involving human rights abuses, the greater the business responsibility to act.

The Tripartite Duties to Respect, Protect, and Fulfil Human Rights

Under the tripartite typology,¹⁴ the fulfilment of any human right involves the performance of multiple types of obligations. Within this framework, human rights entail three distinct levels of obligations, structured as the obligations to respect, protect, and fulfil human rights. The obligation to respect imposes a negative duty upon the State to do no harm, requiring it to abstain from interfering with the rights of an individual.¹⁵ The State must refrain from acts that would deprive individuals of their rights. The obligation to protect imposes a positive duty upon the State to protect the individual from interference by third parties. Lastly, the obligation to fulfil is central to the realisation of economic, social, and cultural rights. It imposes a positive duty upon the State, requiring the State to actively take necessary measures, such as implementing legislation or social policies, to ensure the satisfaction of an individual’s needs.¹⁶ This tripartite framework was developed to structure the responsibility of States, with specific references being made to the State obligations. However, despite the fact that this approach aligns with traditional human rights theory where only States bear obligations regarding human rights, this does not prevent corporations from sharing in the responsibility to perform these obligations, as all members of society share responsibility for the realisation of human rights. Thus, the tripartite typology may be applied as an analytical tool to determine the human rights obligations of TNCs.

⁸ KM Yunusov, O Valeriya and H Ochilidiev, *The Roles and Responsibilities of Transnational Corporations with Regard to Human Rights* (University of World Economy and Diplomacy, Tashkent, Uzbekistan 2005) 192.

⁹ *Velásquez Rodríguez Case*, Inter-American Court of Human Rights Series C No 4 (29 July 1988) doc 13, para 174.

¹⁰ T Voon, ‘Multinational Enterprises and State Sovereignty under International Law’ [1999] (21) *Adel L Rev*, 246.

¹¹ D Kinley and J Tadako, ‘From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law’ (2004) (44) (931) *Va J Int’l L*, 944-45.

¹² ICJ *Reparations for Injuries Case*.

¹³ OHCHR and UN Global Compact, *Briefing Paper on the Global Compact and Human Rights: Understanding Sphere of Influence and Complicity* in *Embedding Human Rights into Business Practice* (2004) 18.

¹⁴ H Shue, *Basic Rights – Subsistence, Affluence and US Foreign Policy* (Princeton 1980) 52.

¹⁵ S Prochazka, ‘Did You Ever Expect a Corporation to Have a Conscience? Human Rights Obligations of Transnational Corporations’ [2015] (2) (1) *QMHR*, 103.

¹⁶ *Ibid*.

Applying the Tripartite Typology to Human Rights within the Sphere of Influence of Transnational Corporations

To determine the viability of corporate human rights obligations under the tripartite typology to respect, protect, and fulfil, it is helpful to apply the framework to specific human rights with which corporations have a troubled relationship. History has established that TNCs can have especially egregious influences upon the right to life and the right to be free from slavery. The ‘respect, protect, and fulfil’ schema highlights the failures of TNCs to abide by international human rights law in these areas under their sphere of influence. Furthermore, the tripartite typology assists in the development of a framework that may prevent future abuses by corporations.

Corporations and the Right to Life

The right to life is one of the most fundamental human rights, from which no derogation is permitted.¹⁷ Under the duty to respect the right to life, a corporation must refrain from any action that infringes on this right and causes loss of life. Blatant examples where corporations have failed to respect the right to life range from catastrophic environmental pollution, to the alleged use of death squads in Colombia.¹⁸ Evidently, TNCs are capable of violating the duty to respect the right to life.

Corporations and the Right to be Free from Slavery

Freedom from slavery is one of the most fundamental human rights, considered a *jus cogens* norm and guaranteed by many international instruments.¹⁹ Under the obligation to respect the prohibition of slavery and forced labour, a TNC cannot make use of or enjoy the benefits of forced labour or slavery. Abusive corporate practices reaping the benefits of forced child labour are frequent in the apparel industry. Additional failures to respect the right to be free from slavery occur in the agricultural industry, with, for example, the exposure of the use of child-slaves on cocoa plantations in Côte d'Ivoire.²⁰

The obligation to protect mandates TNCs to avoid being complicit in violation of this right. Thus, a corporation must take measures to ensure that its business partners do not employ slave labour. A complex supply chain, however, can make it difficult to determine if one of a corporation's many subcontractors or distant business partners is employing slave labour. Thus, corporations must implement monitoring and investigative mechanisms to provide assurance that business partners are not in violation. In addition, to minimize the risk in working with business partners, a corporation should take steps to condense the supply chain, instead contracting directly with a partner that it knows abides by the prohibition against slavery and forced labour. Applying the tripartite typology of ‘respect, protect, and fulfil’ to two of the most common corporate human rights abuses, the violation of the right to life and the right to be free from slavery, demonstrates the ability of corporations to impact human rights within their spheres of influence. Thus, a focused reinterpretation of international law, where corporations are now considered subjects of international law, is an effective means of proving that human rights obligations may be binding upon corporations.

4. Legal Aspects of the Human Rights Responsibilities of Transnational Corporations

Initiatives and standards relevant to the responsibility of transnational corporations with regard to human rights have increased rapidly over the last two decades. Both governmental bodies and non-governmental organizations have done a great deal of work in this respect. In this context, it is a challenge for transnational corporations to implement these standards in practice, and to establish credible systems of public accountability.²¹ Some of the international laws and norms that regulate the responsibility of TNCs with respect to human rights are discussed below.

¹⁷ See UNCHR (1981) GAOR, 36th Session, Supp No 40, Annex VII, General Comment 5/13, UN Doc A/36/40, para 1; UNCHR General Comment 29 (2001) State of Emergency, Article 4, UN Doc CCPR/C/21/Rev1/Add11 para 7.

¹⁸ *Sinal Trainal v The Coca Cola Company, et al*, US District Court for the Southern District of Florida, 256 F Supp 2d 1345 (2003).

¹⁹ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Adopted 7 September 1956, Entered into Force 30 April 1957) 226 UNTS 3.

²⁰ H Hawksley, ‘Ivory Coast Cocoa Farms Child Labour: Little Change’ *BBC* (London 10 November 2001) <<http://www.bbc.co.uk/news/world-africa-15681986>> accessed 02 December 2020.

²¹ KM Yunusov, O Valeriya and H Ochildiyev (n-8) 194.

Universal Declaration of Human Rights of 1948 (UDHR)

The aim of this Declaration was to set basic minimum international standards for the protection of the rights and freedoms of the individual. The fundamental nature of these provisions means that they are now widely regarded as forming a foundation of International law. In particular, the principles of the UDHR are considered to be international customary law and do not require signature or ratification by the states to be recognized as a legal standard. However, while not all principles in the Declaration are directly relevant to business, practices that are inconsistent with the Universal Declaration will be viewed as violating human rights. A small but growing number of corporations have explicitly recognized this in recent years as they have publicly stated their commitment to support the Universal Declaration, either in their global business principles, codes of conduct, or by endorsing the Global Compact with business. A statement of commitment is one step in developing a long-term sustainable process that leads to greater transparency and accountability of corporate actions.

UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights

On August 13 2003, the United Nations Sub-Commission on the Promotion and Protection of Human Rights approved the ‘Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’ (the Norms) in its Resolution 2003/16. The Norms represent a landmark step in holding businesses accountable for their human rights abuses and constitute a succinct, but comprehensive, restatement of the international legal principles applicable to transnational corporations with regard to human rights, humanitarian law, international labour law, environmental law, consumer law, anticorruption law, and so forth. In fact, the Norms are the first non-voluntary initiative accepted at the international level. The Norms attempt to impose direct responsibilities on transnational corporations as a means of reaching comprehensive protection of all human rights – civil, cultural, economic, political and social. Thus these Norms constitute an attempt in filling the gap in understanding the expectations on transnational corporations in relation to human rights.²² The Norms not only reflect and restate a wide range of human rights, labour, humanitarian, environmental, consumer protection, and anticorruption legal principles, but also incorporate best practices for corporate social responsibility. Besides, the Norms do not endeavour to freeze standards by drawing on past drafting efforts and present practices; they incorporate and encourage further evolution. The Norms appear to be more comprehensive and more focused on human rights than any of the international legal or voluntary codes of conduct drawn up by the International Labour Organization, the Organization for Economic Cooperation and Development (OECD), the European Parliament, the UN Global Compact, trade groups, individual companies, unions, NGOs, and others.²³ The Norms and Commentary provide for the right to equality of opportunity and treatment; the right to security of persons; the rights of workers, including a safe and healthy work environment and the right to collective bargaining; respect for international, national, and local laws and the rule of law; a balanced approach to intellectual property rights and responsibilities; transparency and avoidance of corruption; respect for the right to health, as well as other economic, social, and cultural rights; other civil and political rights, such as freedom of movement; consumer protection; and environmental protection. With respect to each of these subjects, the Norms largely reflect, restate, and refer to existing international norms, in addition to specifying some basic methods for implementation.

General Obligations

The UN Norms begin by laying down general obligations in paragraph 1. The obligations are two-fold: primary responsibility of states and ‘within their respective spheres of activity and influence’ the obligation of TNCs to ‘promote, secure the fulfilment of, respect, ensure respect of and protect human rights.’²⁴ The general obligations assume more significance because all the Norms that follow are to be interpreted in the light of these general obligations.²⁵ Second, the appended commentary clarifies that

²² Report of the Sub-Commission on the Promotion and Protection of Human Rights.

²³ KM Yunusov, O Valeriya and H Ochildiyev (n-8) 194.

²⁴ UN Norms.

²⁵ Commentary on UN Norms.

the obligations apply to corporations and other business enterprises irrespective of the fact where they operate, whether in home or at Rome, that is, the host country.

Right to Equal Opportunity and Non-Discriminatory Treatment

The UN Norms mandates TNCs to ‘ensure equality of opportunity and treatment’ in order to eliminate discrimination based on race, colour, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability or age.²⁶

Security of Persons

The third Norm states that transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law.

Workers: The Use of Force and Compulsory Labour

The fifth Norm states that transnational corporations and other business enterprises shall not use forced or compulsory labour as forbidden by the relevant international instruments and national legislation as well as international human rights and humanitarian law.

Respect for National Sovereignty and Human Rights

Under the umbrella of ‘respect for national sovereignty and human rights’, the Norms stipulate obligations on a wide range of issues – from adherence to rule of law to abstaining from corruption; from promoting right to development to respect for national laws/regulation; from promoting social, economic and cultural rights to positive contribution for human rights realization generally.²⁷

Consumer Protection

The thirteenth Norm states that transnational corporations and other business enterprises shall act in accordance with fair business, marketing and advertising practices and shall take all necessary steps to ensure the safety and quality of the goods and services they provide, including observance of the precautionary principle. Nor shall they produce, distribute, market, or advertise harmful or potentially harmful products for use by consumers.

Environmental Protection

The fourteenth Norm states that businesses should respect the environment, and shall generally conduct their activities in a manner contributing to the wider goal of sustainable development.²⁸

The OECD Guidelines for Multinational Enterprises

One of the most influential public international legal instruments that regulate the responsibilities of transnational corporations with regard to human rights is the ‘OECD Guidelines for Multinational Enterprises’. Unlike other soft law that is addressed by particular bodies of international organizations to their member States, the OECD Guidelines are recommendations addressed by governments to TNCs. The list of Governments includes those of thirty OECD member States and eight adhering non-member States.²⁹ The revised document covers a rather broad spectrum of issues ranging from compliance with local laws and regulations, refraining from anti-competitive practices, safeguarding of consumer interests and meeting host country tax liabilities.

²⁶ UN Norms.

²⁷ 10th Norm of the UN Norms.

²⁸ 14th Norm of the UN Norms.

²⁹ These eight countries are: Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania and Slovenia.

The International Labour Organization Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

Adopted in 1977, the International Labor Organization Tripartite Declaration contains a set of recommendations concerning basic labour practices, based on ILO principles. It is a universally applicable and comprehensive document, which is proved by the fact that it was worked out by governments, employer associations and employee associations. The interdependent aims of the Tripartite Declaration are, on one hand, to encourage the positive contribution that investment by transnational corporations can make to economic and social progress, and on the other hand, to minimize and resolve the difficulties to which such investment may give rise. The importance of the ILO Tripartite Declaration is that it identified a long list of conventions and recommendations that contain principles that are appropriate to apply to transnational corporations as well. In that sense, it is a significant and historic document.

4. Impediments to the Enforcement of the TNC Obligation to Respect International Human Rights Law

Recent years have shown an increase in debates concerning human rights duties of private actors. Questions concerning possible duties of TNCs have had a particularly prominent position. It has been argued that TNCs violate human rights, assuming that at least some perfect human rights duties can be assigned to them, and that they have duties to protect and provide for human rights, assuming that special perfect human rights duties can be assigned to them.³⁰ Whatever the position may be, it is evident that the enforcement of this obligation is far from being realised due to certain challenges like wealth influence of TNCs over states and the reluctance of states to regulate TNCs' conduct, TNCs complicity in human rights violations by states, evasion of responsibilities by TNCs and the lack of special international court.

Weak and Unwilling Governance by States and TNCs Complicity in Human Rights Violations by States

The increasing power and resources of TNCs often exceed those of states. This not only makes TNCs powerful on the global level, but it also makes states increasingly reluctant to regulating TNCs' conduct. TNCs participate in state conduct that violates human rights. This is the case, for instance, when a tech-company turns over information concerning the identity of social media users to authoritarian governments. Moreover, TNCs have been said to directly violate human rights in zones of weak governance where the state is unable or unwilling to perform its legal human rights duties. For example, it has been argued that Shell has participated in human rights violations in the Niger Delta.³¹ Operating in a context of weak governance as the *de facto* principal authoritative actor, it can be said that Shell was not merely complicit in state violations but actively violated human rights themselves. Furthermore, TNCs producing goods in Southeast Asia under degrading work conditions have been said to harm and violate workers' human rights.³²

TNCs Evasion of their Responsibilities Regarding Human Rights

Transnational corporations, as economic agents, are in theory, subject to the law of a country to the jurisdiction of its courts. The transnational group has not, as such, a distinct individual personality for each of the entities that constitute it, with the result that these entities can be held accountable for their acts only in a diffused manner, thus exploiting the different interests of the various countries within which they operate. In order to evade their responsibilities, the TNCs recur to diverse abusive practices. These abusive practices are: the transfer of activities prohibited in one country to another with less stringent regulations and/or the obtaining of the least constraining regulations possible by threatening government and workers with relocation to another country; relocation of very dangerous industries and other activities to places where they will not be subject to strict regulation; relocation to countries with cheap labour and the least social security protection in order to reduce production costs and the

³⁰ LJ Hazenberg, 'Transnational Corporations and Human Rights Duties: Perfect and Imperfect' (2016) (17) *Human Rights Review*, 485.

³¹ *Ibid.*

³² G Teubner, 'The Anonymous Matrix: Human Rights Violations by Private Transnational Actors' [2006] (69) (3) *Modern Law Review*, 328.

use of front companies set up in such a way as to be deliberately complex; fraud; artificial competition; influence networks; etc.³³ It goes without saying that, if this list is representative, it is far from exhaustive. The phenomenon of maquiladoras (located in free trade zones), where human rights violations (worker and trade union rights as well as the right to life) are frequently cited, is another example. These ‘zones without rights’ could be the subject of an entire chapter. Other issues, such as privatized prisons in certain countries, where inhumane treatment and detention conditions are rampant, could also be cited.³⁴

Lack of International Courts with Jurisdiction to Oversee TNC Compliance

There are no international courts with jurisdiction to oversee TNC compliance with international human rights norms. Regional human rights courts and international criminal courts and tribunals are capable of only indirectly enforcing international human rights standards against TNCs. This is done, respectively, by holding states responsible for violations carried out in the private legal relations and holding business people responsible for crimes that involve serious violations of human rights. Criminal law in particular should not be taken as a panacea for solving theoretical and practical obstacles surrounding the debate on corporate human rights obligations because it only sanctions the ‘most serious’ violations of fundamental human rights norms, all having the character of *jus cogens*.³⁵ As there is no perception that any of the above will change in the near future, attention naturally turns to the role of national courts, notably those in countries where the TNCs are incorporated or have an established presence. In this regard, the US federal courts have been unique in holding TNCs civilly liable for violations of international human rights standards.

5. Instances in which International Law Can Create Liability for Corporations And Individuals

It is clear from the findings contained in the UN Special Representative's February 2007 Report to the Human Rights Commission that the primary obligation to uphold international law remains with States. The State duty to protect against non-State abuses is the very foundation of the international human rights regime. The duty requires the State to play a key role in regulating and adjudicating abuses by business enterprises or risk breaching their international obligations.³⁶ Stated simply, no general set of international law rules exists which governs the conduct of corporations. However, there are a number of ways in which international law can create liability for corporations and individuals, including corporate officers and employees. This requires an understanding of the relationship between international law and domestic law, international criminal law and the extraterritorial application of international law standards. It also requires an understanding of how voluntary standards and industry codes fit within the international law structure and reflect international law standards.

6. Conclusion

The growing independence of the world community, to which the liberalization of international investment and trade regimes has contributed significantly, has great potential for enhancing the living standards of people throughout the world. As the core responsibility for human rights violations is taken upon states, insufficient attention is paid to some of the most powerful non-state actors in the world, that is, transnational corporations. However, with power should come responsibility, and International Human Rights Law needs to focus adequately on these extremely potent international non-state actors. Without adequate remedies available, businesses cannot be held accountable for their human rights abuses in a practical sense. Transnational corporations considerably outstrip less developed countries in financial and technological terms, and as a result they are able to influence the policy and practice of less developed countries. On one hand, TNCs have an enormous potential to provide an enabling environment for the enjoyment of human rights through investment, employment creation and stimulation of economic growth. On the other hand, the activities of TNCs have also threatened human rights in some situations and individual companies have been complicit in human rights violations. Hence the roles of TNCs with regard to human rights are of twofold character: positive

³³ M Özden, *Transnational Corporations and Human Rights* (Europe-Third World Centre, 2005) 10.

³⁴ *Ibid.*

³⁵ S Droubi, ‘Transnational Corporations and International Human Rights Law’ [2016] (6) (1) *Notre Dame Journal of International & Comparative Law*, 140.

³⁶ A/HRC/4/035 paragraph 18.

and negative. Many actors—from states to international institutions, academia, media and civil society organs are engaged in a search for evolving an effective as well as efficient regulatory framework of TNCs' accountability for human rights violations. The UN initiatives hold a prominent, if not central, place in such a quest; the Norms being the most recent, and also to date most promising, effort on the part of the UN.

In order to address the *inter alia* identified challenges the following proposals should be considered: firstly, the nature and scope of responsibilities of TNCs with regard to human rights should be clearly defined. Secondly, it is necessary to adopt a single international document within the framework of the United Nations that would give a clear definition of TNCs and provide a common set of standards for all TNCs with regard to human rights as well as monitoring and implementation provisions. Going further, TNC social responsibility activities have to be effectively addressed within a framework that provides for the broadest possible involvement of all relevant parties. Lastly, an international court should be established with specific jurisdiction to oversee cases of human rights abuses by TNCs.