CORPORATE RESPONSIBILITY AND ACCOUNTABILITY OF MULTINATIONAL CORPORATIONS FOR HUMAN RIGHTS VIOLATIONS: THE NEED FOR INTERNATIONAL BINDING INSTRUMENT*

Abstract

The international human rights regime has imposed on the States the responsibility to protect the human rights of those living within their spheres of jurisdiction against infractions by third parties including multinational corporations. There are wanton violations of human rights by multinational corporations bringing into question the effectiveness or otherwise of this approach. This article examined the States' duty to protect human rights in relation to multinational corporations' infractions by critically analyzing the human rights regimes of selected States, namely, United States, United Kingdom and Nigeria with the aim of ascertaining the effectiveness or otherwise of their various approaches. The doctrinal research methodology was adopted in collection and analysis of data from primary and secondary sources. The primary sources were national constitutions, statutes and case law while the secondary sources included text books, journal articles, dictionaries, and law reports. Critical and analytical approaches were ready to hand. This article discovered that there are inconsistencies in the domestic jurisdictions in holding multinational corporations liable for human rights violations and that the State parties as instruments have failed to uphold universality of human rights as multinational corporations evade liability for violations of human rights. This article recommended the creation of a new human rights convention and enforcement mechanism in the United Nations level stipulating the human rights obligations of multinational corporations.

Keywords: Multinational Corporation, Human Rights, Jurisdiction, *Forum Non-Conveniens*

1. Introduction

The multinational corporations in courses of their operations have engaged in wanton violations of human rights of those living close to natural resources. The extant international human rights regime has placed the protection of human rights squarely on States. This article critically analyzed and evaluated the performance of this function by States by studying the United States, United Kingdom and Nigeria as to ascertain how effective this formula is and where the need arises, this article will make recommendations that will lead to holding multinational corporations liable for their human rights violations.

2. State's Duty to Promote and Protect Human Rights

The state's duty to respect, promote and protect human rights of those living within its jurisdiction against violations by a third party is both hard law and soft law obligation of the state in the International Human Rights Law. All the human rights conventions provide for the State's duty to protect the human rights of citizens from violation by third party. For instant, Article 2 of the International Covenant on Civil and Political Rights in stipulating the state's duty to protect human rights from abuse by third party provides thus:

> 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
> 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
> 3. Each State Party to the present Covenant undertakes:
> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;[1]

The International human rights law enshrines an obligation that State parties to human rights' conventions are bound to respect and protect human rights. This obligation arises once a state becomes a party to human rights treaties. By ratification, a state party to human rights convention assumes the obligations and duties under international law to respect, to protect and to fulfill human rights of third parties living within the sphere of its jurisdiction.[2]

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[1] Art 2, International Covenant on Civil and Political Rights 1966

[2] United Nations 'The Foundation International Human Rights Law' < https://www.un.org/en/about-us/udhr/> accessed on 12th December 2023

The obligation to protect human rights by state parties requires state parties to protect individuals and groups against human rights violations. The hard law obligation of the state duty to protect human rights and promote the enjoyment of human rights within its territorial competence appears to be a general provision and may be deemed to have excluded multinational corporations' violations since the activities of multinational corporations transcends national boundaries. To buttress the pivotal nature of this obligation as it relates to violations by multinational corporations and other business enterprises, the United Nations promulgated a soft law called the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.[3] The application of the Norms to the multinational corporations, their contractors, suppliers and other business associates was expatiated in one of the commentary thus:

> Transnational corporations and other business enterprises shall ensure that they only do business with (including purchasing from and selling to) contractors, subcontractors, suppliers, licensees, distributors, and natural or other legal persons that follow these or substantially similar Norms. Transnational corporations and other business enterprises using or considering entering into business relationships with contractors, subcontractors, suppliers, licensees, distributors, or natural or other legal persons that do not comply with the Norms shall initially work with them to reform or decrease violations, but if they will not change, the enterprise shall cease doing business with them.[4]

The Norms appear to be more comprehensive and focused on human rights than any of the international legal or voluntary codes of conduct drafted prior to it. According to Weissbrodt and Kruger, 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 fight 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 those subjects, the Norms largely reflect, restate, and refer to existing international norms, in addition to specifying some basic methods for implementation.[5]

As clearly provided by the very first principle of the Norms entitled 'General Obligations,' the Norms are in no manner intended to reduce the obligations of governments to promote, secure the fulfillment of, respect, ensure respect for, or protect human rights.[6] The implication of this provision is that while multinational corporations have the duty to respect the human rights of others, it is the mandatory obligation of the state to promote and protect the human rights of other persons living within its sphere of jurisdiction from gross abuses by multinational corporations. In reinforcing the responsibility of the states, the Norms enjoin states to participate in their implementation of the Norms by using it to establish and reinforce their legal or administrative framework as regards the operations of each business within its jurisdictional competence.[7] The Norms equally encourage the national courts to consider its provision in determination of damages and criminal sanctions as established by national and international law with regard to established legal standards.[8] In furtherance of its international obligation to ensure the protection of universal human rights by multinational corporations and other business enterprises, the United Nations in 2005 appointed Professor John Ruggie as the United Nations Secretary-General's Special Representative on the issue of 'human rights and transnational corporations and other business enterprises. He was mandated among other things to identifying and clarifying standards of responsibility and accountability for businesses with regard to human rights.[9] In discharge of his assignment, Ruggie in 2008 forwarded a Framework on transnational corporations and human rights and the Framework is rested on three pillars namely:

> The state duty to protect against human rights abuses by third parties, including business;
> The corporate responsibility duty to respect human rights; and Provision of greater access to victims to effective remedy both judicial and non-judicial.[10]

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[3]'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights' http://hrlibrary.umn.edu>links> accessed on 12th December 2023

[4]Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights note 29 para 15(c).

[5]David Weissbrodt and Muria Kruger, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, 97 *AM. J. INT'L L.* 901 (2003) <https://scholarship.law.umn.edu/faculty_articles/243> accessed on 14th December, 2023

[6]*Ibid*

[7]Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights note 1 para 17.

[8]*Ibid*

[9]*'The UN Framework and Guiding Principles on Business and Human Rights' <https://www.unepfi.org/humanrightstoolkit/framework.php> accessed on 14th December 2023*

[10]*Ibid*

Ruggie in 2011 issued the 'Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework' which contains 31 Guiding Principles and it was unanimously endorsed by the UN Human Rights Council. In application of the Framework and its Guiding Principles, the states are to work to promote and protect human rights from abuses by multinational corporations. The multinational corporations and other business enterprises are to respect and observe due diligence in ensuring that human rights of those living within area of operations is not abuse and where abuse occurs as a result of multinational corporations' activities, the states are under obligation to ensure that those affected have access to effective remedy through judicial, administrative or legislative means.[11]

3. Implementation of the State's Duty to Protect and Promote Human Rights

The critical assessment of the International Human Rights obligations of States parties' duty to promote and protect human rights against third parties' infractions will reveal the effectiveness or otherwise of relying on States against the wanton abuses of human rights by multinational corporations. It may be helpful to examine what obtains in United States, United Kingdom and Nigeria.

United States

The United States jurisprudence is very important to this study because of the surge witnessed by it on civil litigations to hold multinational corporations liable for wanton violations of human rights. The United States immediately after its independence in 1789 enacted the Alien Torts Statute (ATS) that vested the federal courts jurisdictions to entertain any civil action by an alien for a tort only, committed in violation of the law of the nations or a treaty of the United States.[12] The ATS was not used for close to two centuries after its enactment. The first action commenced in United States under the ATS for the enforcement of the violation of human rights was the case of *Filártiga v Peña-Irala*[13] in 1980 wherein the Second Circuit Court ruled that the statute establishes federal court subject matter jurisdiction over tort claims brought by aliens based on violations of the customary international law of human rights. This decision opened the flood gate of litigations worthy of examination as to ascertain to what extent the multinational corporations can be held liable in United States for the violations of human rights committed outside its shore.

The renditions of the provisions of the ATS and the Torture Victim Protection Act will enhance the appreciations of the United States judiciary's pronouncements based on these statutes. The ATS provides that 'the district courts ... shall have cognizance, concurrent with the courts of the several States, or the circuit courts, as the case may be, of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States.'[14] And the Torture Victim Protection Act also provides thus '(a)n individual who, under actual or apparent authority, or color of law, of any foreign nation-(1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or(2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death.'[15] However, no action will be commenced under the Torture Victim Protection Act unless the victim has exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred.[16]

In *Filártiga v. Peña-Irala*[17] case, two Paraguayan citizens brought action against the former Inspector General of Asuncion, Paraguay, alleging that he kidnapped, tortured, and killed their relative in retaliation for their family's support of a political opposition party. The defendant, Peña-Irala, was also a citizen of Paraguayan who was living in New York. The plaintiffs relied on the ATS in contending that Peña-Irala's actions constituted a tort in violation of the law of nations. The district court dismissed their case on the ground that the law of nations actionable under the ATS did not include modern provisions in international law that govern how a nation treats its own citizens. In a landmark decision, the Second Circuit reversed the district court and held that torture by a state official against its own citizen violates established norms of the international law of human rights and therefore becomes an actionable claim under the ATS. It was the court's reasoning that in the application of the ATS, courts must interpret international law not as it was in 1789 but as it has evolved and existed among the nations of the world today.

The case of *Filártiga* did not reach the Supreme Court; however, it highly influenced decisions that caused the ATS to skyrocket into the prominence vehicle for filing civil claims in United States federal courts for human rights violations

[11] *Ibid*
[12] P Verdier & PB Stephan, 'International Human Rights and Multinational Corporations: An FCPA Approach' <file:///C:/Users/User/Downloads/VERDIER-STEPHAN.pdf> accessed on 22nd December 2023
[13] 630 F.2d 876, 878 (2d Cir. 1980)
[14] Alien Tort Statute, 28 USC § 1350 (2004)
[15] s 2 Torture Victim Protection Act 1992
[16] *Ibid*
[17] 630 F.2d 876, 878 (2d Cir. 1980)

that occurred outside the United States.[18] In *Balintulo v Daimler AG*,[19] the Second Circuit Court described the ATS as 'a statute, passed in 1789, that was rediscovered and revitalized by the courts in recent decades to permit aliens to sue for alleged serious violations of human rights occurring abroad'. However, as time progresses courts began to identify some limits on ATS jurisdiction that were not addressed in the case of *Filártiga*. One of the prominent discoveries was in the case of *Tel-Oren v Libyan Arab Republic*,[20] by the United States Court of Appeal for the District of Columbia Circuit framing some thought provoking questions related to the ATS: Is the statute solely jurisdictional in nature, or does it also create a cause of action for plaintiffs? As a general rule, plaintiffs pursuing a civil claim in federal court must both (1) identify a court that possesses jurisdiction over the subject matter of the case and (2) have a cause of action that allows them to seek the relief requested, such as compensatory relief for monetary damages. This was the observation made *as obiter dictum* as the court did not resolve whether the ATS satisfies both requirements. It is of interest to note that before this case gets to the Circuit Court, the district court had dismissed it for both lack of subject matter jurisdiction and as barred by the applicable statute of limitations.[21]

In *Sosa v Alvarez-Machain*,[22] the Supreme Court took a more restrictive approach. Without expressly addressing the propriety of the party alignment, the Court rejected a claim by a Mexican citizen suing another Mexican citizen as outside the scope of the ATS. Specifically, the Court concluded that Jose Francisco Sosa's claim for arbitrary detention did not constitute a violation of the law of nations within the meaning of the statute. In departing from the reasoning of the Second Circuit court in *Filártiga v. Peña-Irala*[23] the Supreme Court concluded that the ATS should be interpreted in accordance with the views of the First Congress. Under this approach it held that 'federal courts should not recognize private claims under federal common law for violations of any international law norm with less definite content and acceptance among civilized nations than the historical paradigms familiar when [the ATS] was enacted.'[24] Based on this the court held a cause of action for violations of international law that are specific, universal, and obligatory and corresponding to Blackstone's three primary offenses against the law of nations which are violation of safe conducts, infringement of the rights of ambassadors, and piracy as envisaged by the ATS.[25] The Supreme Court continues to narrow the application of the ATS. The Court in the case of *Kiobel v. Royal Dutch Petroleum*[26], using the canon of interpretation of statute known as presumption of extraterritorial jurisdiction, the court hold that ATS did not expressly vest the federal courts with extraterritorial jurisdiction. In *Jesner v Arab Bank, Plc*[27] the Court held that the ATS cause of action does not apply to foreign corporations. Most recently, in *Nestle v Doe*,[28] the Court said that to plead facts sufficient to support a domestic application of the ATS, plaintiffs must allege more domestic conduct than general corporate activity. The combination of these three judicial pronouncements shows that under the ATS, the United States federal district courts have jurisdiction to redress the violations of international recognized human rights however, the poser is to what extent will the district courts exercise jurisdiction over violation committed outside its territorial jurisdictional sphere in violation of the laws of the nations?

The recent judicial pronouncements clearly capture the state of the law in United States in respect to the issue of multinational corporations' accountability for violations of human rights. In *Doe I v Cisco Systems,*[29] the Plaintiffs, Chinese practitioners brought an action against Cisco, a United States' multinational corporation for aiding and abetting human rights violations by designing and building the 'Golden Shield,' a vast surveillance system used by the People's Republic of China for arrest, detention, and torture of the plaintiffs, including that they were placed in forced labor camps, beaten with steel rods, shocked with electric batons, and made to endure sleep deprivation and force-feeding. The Ninth Circuit court in rejecting the application to decline jurisdiction held that 'when a defendant acts with knowledge that the defendant's actions will assist in the commission of a crime or with awareness of a substantial likelihood that the defendant's acts would assist the commission of a crime. . . . An accuser's statements regarding the purposes and goals of the project for which they are providing assistance can establish awareness that crimes are likely to be committed. And when ongoing abuses are common knowledge knowing action may be imputed to the defendant.'[30] In respect of the application of the Torture Victim Protection Act, the court further held that the Torture Victim Protection Act permits claims against corporate officers for aiding and abetting torture.[31]The implication of this decision is that United States' multinational corporations who aid either its subsidiary or contractor or business partners abroad in the infractions of human rights will be held liable by the United States for human rights violation under the ATS and the Torture Victim Protection Act. In the same vein, the district court for the Eastern District of Virginia in

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[18]Congressional Research Service, 'The Alien Tort Statute: Primer' <https://sgp.fas.org/crs/misc/R44947.pdf> accessed on 30th December 2023
[19]727 F3d 174, 179 (2d Cir 2013)
[20]726 F2d 775 (DC Cir 1984)
[21]*Ibid*
[22]542 US 692 (2004)
[23]630 F.2d 876, 878 (2d Cir. 1980)
[24]*Sosa v Alvarez-Machain* 542 US 692 (2004)
[25]*Ibid*
[26]569 US 108 (2013)
[27]138 S Ct 1386, 1394 (2018)
[28]19-416 593 US (2021)
[29]*Doe I v Cisco Systems*, WL 4386005 (9th Cir. July 7, 2023)
[30]*Ibid*
[31]*Ibid*

the case of *Al Shimari v. CACI* [32]rejected application to decline jurisdiction against a United States multinational corporation on the ground that the violations alleged occurred in Iraq outside the shore of the United States. In that case, the Plaintiffs who endured torture at Abu Ghraib prison during the United States occupation of Iraq, brought an action against CACI, a Virginia-based company hired by the United States' government to provide interrogation services at the prison. The plaintiffs alleged that CACI employees conspired with and aided and abetted United States' military personnel in subjecting them to cruel, inhumane, or degrading treatment, torture, and war crimes. The court held that the purpose of the ATS would be defeated if a United States defendant could avoid liability for injuries merely on the ground that the alleged harms occurred abroad.

In the case of Doe I v ExxonMobil[33] *ExxonMobil brought an application for summary judgment on the ground that the United States courts do not have jurisdiction to entertain the plaintiffs claim. The fact of this case is instructive. In Doe I v ExxonMobil, the plaintiffs alleged that they and their love ones in Indonesia endured human rights abuses at the hands of Indonesian soldiers hired by ExxonMobil to guard its Aceh province in the Arun field, one of the largest natural gas fields in the globe. The plaintiffs detailed how soldiers tortured, sexually abused, murdered and kidnapped them and their relatives and that those atrocities were committed close to ExxonMobil operation field. In August, 2022 the District Court of Columbia rejected the motion of ExxonMobil for summary judgment. Sequel to the rejection, ExxonMobil in May, 2023 at the eve of the trial settled with the plaintiffs out of court.*

The implication of all the judicial pronouncements by the United States courts is that multinational corporations are accountable for infractions of human rights committed abroad if it is established that the multinational corporation conspired and aided and abetted the infractions of human rights by their subsidiary abroad. However, for multinational corporations to be subjected to the jurisdiction of United States district federal courts under the ATS and the Torture Victim Protection Act for human rights violations committed abroad, the multinational corporation must be a citizen of United States.[34]

United Kingdom

Another country worthy of evaluation is the United Kingdom. In fulfillment of her international human rights obligation to promote and protect the human rights of her citizens from multinational corporations' violation the United Kingdom in 1985 enacted the Companies Act 1985, which mandated companies carrying on business in United Kingdom to disclose information about their subsidiaries and their activities abroad.[35] Also in 2015, the United Kingdom government enacted the Modern Slavery Act 2015 that requires companies with a turnover of £36 million and above to produce a slavery and human trafficking statement. This statement is required to outline the steps taken by the multinational corporations to ensure that modern slavery and human trafficking are not committed in their subsidiaries and in their chains of supply.[36] In addition to legislative endeavour in holding multinational corporations accountable in United Kingdom for human rights violation, the United Kingdoms' courts have established a legal precedent in tort in holding multinational corporations accountable for human rights violations. The case of *Lubbe & Ors v Cape*[37] was a claim in tort against a United Kingdom multinational corporation for injuries suffered in South Africa. At the time the action was brought in England, the relevant subsidiary in South Africa had been closed for close to a decade and the United Kingdom's company no longer exist in South Africa. The company pleas *forum non conveniens* and the lower court granted the plea and dismissed the claim.

A plea of *forum non conveniens* is predicated on the ground that a court that does have jurisdiction over a matter can decline jurisdiction in the event that there is another forum that also has jurisdiction, and that the other forum would be a more appropriate and convenient forum to entertain the matter. So, it behooves on the defendant raising the plea to satisfy the court that there are two competing jurisdictions and that the other forum would be actually convenient than the forum in which the action was commenced and once the defendant satisfied these conditions, the matter would be dismissed and the dismissal is equivalent to striking out as it does not bar the complainant from instituting action on the same subject matter in the other forum.[38] When an appeal was filed, the Court of Appeal on its volition considered the fact that the South African civil procedure legislation and the rules vesting the South African courts with jurisdiction over foreign defendants, even when the injury arose in South Africa will only be activated when the foreign corporation has assets in South Africa and *motion ex-perte* has been commenced to attach those property. While the Court of Appeal was in this personal inquiry, the defendant company entered an undertaken to submit to the jurisdiction of the United Kingdom's courts.[39]

The decisions of the United Kingdom's Supreme Court have established the common law doctrine of duty of care as the perimeter to holding the home state of multinational corporations liable for the human rights abuses committed by their subsidiaries abroad. In the case of *Vedanta v Lungowe*[40]an action was commenced against the home corporation in United

[32]*Al Shimari v CACI Premier Tech*, 1:08-cv-827 (LMB/JFA) (ED Va Jul 31 2023)

[33]1-1357 DC Circuit (2023)

[34]SH Farbstein, 'A Good Summer for Human Rights Cases in US Courts: Alien Tort Statute Update' <file:///C:/Users/User/Downloads/A%20Good%20Summer%20for%20Human%20Rights%20Cases%20in%20U.S.%20Courts_%20Alien%20Tort%20Statute%20Update%20_%20International%20Human%20Rights%20Clinic.html> accessed on 1st January 2024

[35]Ss 72-79, UK Companies Act 1985

[36]S 54 Modern Slavery Act 2015

[37][2000] UKHL 41

[38]*Lubbe & Ors v Cape* (Supra)

[39]*Lubbe & Ors v Cape* (Supra)

[40][2019] UKSC 20

Kingdom for the pollution of waterways by its subsidiary in Zambia. This action was fought to the Supreme Court. The court held that the complainant has the right to bring an action in United Kingdom against the United Kingdom parent company and its subsidiary in Zambia. This is because the parent company owes a duty of care to the Zambians because there is evidence of proclamation of oversight and control over its subsidiary in Zambia. This case enshrined the principle that a company domiciled in United Kingdom can be held liable for the wrong of its subsidiary outside the United Kingdom if there is a proclaimed control and oversight not withstanding whether the control is real or not.

Another matter that clarified the magnitude of the duty of care or when it arises is the case of *Okpabi & Bille v Royal Dutch Shell*[41] that also reached the United Kingdom's Supreme Court. In that case, the complainants alleged that Royal Dutch Shell is jointly responsible with its Nigerian subsidiary company for oil spills that have devastated their communities. The Supreme Court affirmed the principles in Vedanta's case and found that Royal Dutch Shell could owe a duty of care to the complainants and therefore liable to the damages caused by the oil spills. In setting straight the common law doctrine of duty of care the court rejected the argument that because a company has a complicated corporate structure, a duty of care is not likely to exist. The court further held that once there is oversight and an element of control, there is an established duty of care.[42]

The United Kingdom courts have demonstrated that victims of multinational corporations' violation of human rights all over the world can get justice if the multinational corporation resides in United Kingdom. In the case of *Begum v Maran*[43] the court shows that once there is oversight and an element of control, the multinational corporation owes a duty of care to anyone who is within the foreseeable risk of harm due to the operations of the multinational corporation. In *Begum v Maran,*[44]Mrs. Hamida Begum, the widow of Mr. Khalil Mollah, a Bangladesh shipyard worker who died while dismantling Maran Ltd ship in Bangladesh brought an action in United Kingdom to redress the violation of her husband right to life against Maran Ltd, a United Kingdom multinational company. It was her case that Maran Ltd has been instrumental in sending the ship to Bangladesh where Maran Ltd knew or ought to know that her husband will die or is likely to die while dismantling the huge vessel. On the part of the company, it defense was that it has sold the ship to a third party who was responsible for the dismantling and sales of the vessel. Further, that due to the complex nature of the transaction, it is unlikely for the duty of care to arise against it. The court rejected the defense of Maran Ltd and held that once there is oversight and element of control, the multinational corporation owes a duty of care to anyone at the foreseeable risk of the multinational corporation's operations or activities. In application of this rule, the court found Maran Ltd liable on the ground that the company owes the claimant a duty of care because it created the danger by sending and selling the vessel to the seashore in Bangladesh.

The United Kingdom by virtue of her recent judgments on the accountability of multinational corporations for human rights violations committed abroad by the subsidiaries of her home corporations has become a haven for all victims of human rights abuses. The workers, communities or villagers living close to natural resources can approach the United Kingdom's courts for effective remedy. These decisions demonstrate that a state party to human rights treaties can exercise jurisdiction against her corporate or juristic person for violations of human rights committed outside its shore. The caveat to the exercise of jurisdiction is that the multinational corporation must have its business operation in the United Kingdom and the corporation in United Kingdom must have oversight and element of control over the subsidiary's activities abroad that constitutes the human rights violation.

The recent decision of English High Court may be construed as defeating the gains made by English courts in holding multinational corporations liable for human rights violations committed abroad by their subsidiaries. This decision was taken in the case of *Limbu & Ors v Dyson Technology Ltd & Ors*[45]wherein the English High Court declined jurisdiction to entertain an action brought by Nepalese and Bangladesh migrant workers against companies in Dyson Group which two of it are United Kingdom companies asserting forced labour and abusive employment in Dyson supply chains in Malaysia. The fact of this case was that migrant workers from Bangladesh and Nepal filed an action in England against three companies in Dyson Group. Two of these companies were in England while one was resident in Malaysia. The three defendants raise the plea of *forum non conveniens* against the English court on the grounds that Malaysia court will be the appropriate forum because the employment of the workers was done in Malaysia and that the Malaysia's law govern the contract of employment between the companies and the workers. While on the part of the workers, it was their claim that the defendants were negligent and enrich themselves to the detriment of the workers and therefore owe them the duty of care. The court agreed with the defendants and dismissed the claim on the ground that Malaysia is the appropriate forum for the action. One determining factor that influenced the decision of the court was the undertaken by the three defendants prior to the hearing of their motion for dismissal on the ground of *forum non conveniens*. The three defendants assured the court that Malaysia will be the appropriate forum as they are willing to pay reasonable cost to enable the claimants give evidence, bear the cost of litigation for the claimants and that they would not

[41][2021] UKSC 3
[42]*Okpabi & Bille v Royal Dutch Shell (Supra)*
[43]*Begum v Maran* (2021) EWCA Civ 326
[44]*Begum v Maran* (*supra*)
[45](2023) EWHC 2595 (KB)

challenge the unlawfulness of any funding agreed between the claimants and their counsel.[46] The two companies of the Dyson Group domicile in England undertook also to submit to the jurisdiction of the Malaysia courts over the dispute.[47]

Although the plea of *forum non conveniens* succeeded in the case of *Limbu & Ors v Dyson Technology Ltd & Ors*[48], the decision of the English High Court does in any way undermined the gains made by United Kingdom on the enforcement of human rights against multinational corporations. The plea of *forum non conveniens* is a common law doctrine that posits that there is an alternative forum more appropriate for the action. Further, the fact that the court was persuaded by the corporate defendants undertaken to submit to the jurisdiction of the Malaysia court made it possible for whatever judgment that will be secured in the foreign jurisdiction to be enforced against the multinational corporation in United Kingdom not withstanding that the judgment was not delivered by the United Kingdom's court.

Nigeria

In the same vein, Nigeria can be evaluated as to ascertain to what extent the developing countries have been equipped to hold multinational corporations liable for their involvements in violations of human rights. Nigeria in its efforts to redress multinational corporations' involvements in violation of the human rights of third parties enacted the Nigerian Oil and Gas Industry Content Development Act 2010. This law makes it mandatory that multinational companies working through their Nigerian subsidiaries shall demonstrate that a minimum of 50% (fifty percent) of the equipment deployed for execution of work are owned by the Nigerian subsidiaries. Notwithstanding this provision, the quantum of damages suffered by the victims of multinational corporations' wanton violation of human rights cannot be assuaged by the assets of the subsidiaries in Nigeria. For instant, the environmental ruin inflicted by Shell BP to Ogoni Land in Niger Delta cannot be commensurately assuage by the subsidiary of the multinational corporation in Nigeria which was the reason action was commenced in the United States of America against the parent corporation Royal Dutch Petroleum Co.[49]

Nigeria practises the common law doctrine of separate legal personality of an incorporated company and its shareholders. Flowing from this doctrine, the plethora of judicial pronouncement from Nigeria shows that multinational corporations cannot be subjected to the jurisdiction of the Nigerian courts merely because it subsidiary or agent is in violation of human rights in Nigeria. For the Nigerian court to exercise jurisdiction over multinational corporation, it must be established that the multinational corporation carries on business in any part of Nigeria.[50] The trite position of the law is that even a holding company cannot even be held to be liable in an action brought against its subsidiary. In other words, a parent corporation is not a proper party in an action brought against its subsidiary.[51] The Supreme Court in *Veepee Industries Ltd v. Ocean Fisheries (Nig) Ltd & Anor*[52] held that the High Court has no extraterritorial jurisdiction. By this pronouncement, it is crystal that the Nigerian courts lack the capacity to entertain the wanton violations of human rights by multinational corporations.

4. Conclusion

One cardinal principle of international human rights law is 'universality'.[53] Universality implies that all humans are endowed with equal human rights by virtue of their being human notwithstanding wherever they live and whoever they are and regardless of their status or any particular characteristics.[54] The evaluation of the corporate responsibility and accountability of multinational corporations in these three countries and three continents shows that the cardinal principle of human rights law is being defeated as multinational corporations evade accountability in one country and are held accountable in the other country. There are conflicting decisions in some countries where multinational corporations are held accountable for their human rights infractions. In one country, one court will assume jurisdiction over multinational corporations' human rights violation and another court in the same country will decline the jurisdiction to hold a multinational corporation accountable for human rights violation committed abroad on the plea of *forum non-conveniens.*[55]These scenarios demonstrate the inefficiency of using the States parties as instrument of protection of human rights against multinational corporations. To maintain the universality of human rights, it is recommended that international legal binding instrument in form of a Convention be created in the United Nations level stipulating the human rights obligations of multinational corporations. The Convention should create an enforcement mechanism and the mechanism should be the final recourse after the exhaustion of domestic remedies or where the remedy to be provided by the domestic jurisdiction is inadequate in consideration of the quantum of damages occasioned by human rights infractions.

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[46]A Brownrigg, 'Dyson Group Wins Jurisdictional Battle in the English Court over Migrant Workers ESG Claim: What Next for Supply Chain Liability? < https://enyolaw.com/news/dyson-group-wins-jurisdictional-battle-in-the-english-court-over-migrant-worker-esg-claims-what-next-for-supply-chain-liability/> accessed on 11th January, 2024

[47]*Ibid*

[48](*Supra*)

[49]*Kiobel v Royal Dutch Shell Petroleum*10-1491 (US 2012)

[50]*Gresham Life Assurance Society (Nig) Ltd v Registrar of Companies & Anor* (1973) LPELR-1339(SC)

[51]*Musa & Anor v Ehidiamhen* (1994) LPELR-14514(CA); *Aso Motel Ltd & Anor v. Suleiman & Ors* LPELR-51306(CA)

[52](2023) LPELR-59878(SC)

[53]United Nations, 'Universality and Diversity' <https://www.ohchr.org/en/special-procedures/sr-cultural-rights/universality-and-diversity> accessed on 15th February 2024

[54]*Ibid*

[55]*Limbu & Ors v Dyson Technology Ltd & Ors* (2023) EWHC 2595 (KB)