

Human Rights Violations by Multinational Corporations: Corruption, Lawlessness and The “Global Value Chain”

Analysis and Review

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Introduction

The debate on human rights violations is invariably limited to those committed by governments and other public institutions.

We seldom discuss human rights violations committed by large corporations, especially multinational corporations (MNCs). Moreover, in many cases, the violation of human rights by host country governments is motivated as a means to cover up MNCs’ human rights abuse.

There is another phenomenon which does not help our resolve to acquire a solution to the issue of corporate human rights abuse; it is the biased attitude of the Western media regarding these corporate violations.

The media seldom report the incidence of corporate human rights violations, most likely due to the fact that they themselves are owned by large corporations.

Public debate on the issues of corporate human rights violations is vitally important not only in relation of global justice but also for the health of the global economy, especially for the survival of the economies of developing countries.

We need also to conduct an ideology-neutral and unbiased debate on the long-run impact of MNCs’ human rights violations on the developing countries.

This article deals with the following issues.

1. First, this paper will show how large, rich and powerful the MNCs are and how they can easily abuse human rights, damage the environment and destroy the economies of developing countries.
2. Second, this paper will discuss the types of human rights violated by MNCs. It will be shown that in many cases, the MNC violates both the economic, social and cultural rights (ESCR) and the civil and political rights (CPR).
3. Third, in this section, this paper will discuss how and why the current national and international judiciary regimes are not equipped for dealing effectively human rights violations by MNCs.

Wealth and Power of MNCs

One of the significant phenomena of the last half a century has been the rise of huge global corporations called, multinational corporations (MNCs), which have impacted deeply not only the global economic system but also the global political dynamics.

[The financial assets of 200 largest MNCs](#) is larger than the combined assets of all countries of the world excluding 10 largest economies. According to data of the Amnesty International, of 100 largest economies in the world, 51 are corporations, namely MNCs, while 49 are Nation States.

What is more surprising is the fact that, despite their huge size, they grew fast; their profit rose between 1983 and 1999 by 36% as against the profit of the global economy which rose by 25%.

According to UNCTAD data, MNCs account for 70 % of the world trade.

Given the sheer size of MNCs, it is not difficult to imagine the huge impact of their human rights violations on social and economic justice and the well-being of the people.

This is particularly so in developing countries whose economy is tightly integrated into the global value chain (GVC) controlled by the MNCs.

The Global Value Chain (GVC)

The GVC has created a tightly knit global division of labour. Some countries are specialized in the extraction of raw materials; some countries have comparative advantage in labour intensive industries; some countries are excellent producers of knowledge-intensive products.

The following table provides some ideas about the MNCs

Table. Ten Largest MNC in terms of Revenue (USD billion)



Company	Nationality	Number of Employees	Revenue	Business
Walmart	U.S.	2,200,000	599	Retail
Amazon	U.S.	1.200,000	386	Retail
Royal Dutch Shell	Netherlands	86,000	344	Petroleum
Volkswagen	Germany	304,000	282	Automobile
BP Plc	UK	70,000	282	Oil /Gas
Toyota	Japan	364,445	275	Automobile
Apple	U.S.	147,000	274	Electronics
ExxonMobil	U.S.	74,900	264	Oil/Gas
Berkshire Hathaway	U.S.	391,500	254	Finance
Glencore	Switzerland	145,000	215	Commodities

Note: These are data of 2019, or 2020

Source: Listbay.org/multinational-corporation/

There are value chains for agricultural products;

- there are value chains for automobiles;
- there are value chains for IT products;
- there are value chains for textile products.

In fact, every product has a value chain which can be national, regional or global.

The value chains play crucial role in the world economy. The number of workers hired by the GVC increased from 297 million in 1995 to 453 million in 2013 representing 20% of all workers in the world. In short, the GVC is one of the important devises invented by man.

It is true that GVC has been a major factor of the growth of the global economy and job creation. On the other hand, it is also true that they are the significant human rights violators.

Typology of Human Rights Violations by MNC

There are three generations of human rights recognized by international covenants.

We have the civil and political rights (CPR) which is the first generation of human rights.

We have the economic, social and cultural rights (ESCR), called as the second generation human rights.

Then, we have the collective rights (CR) known as the third generation human rights. All these human rights are inspired from the Universal Declaration on Human Rights of 1948 (UDHR).

- The CPR refers to the freedom of thought and actions such as freedom of speech, freedom of assembly and freedom of religion.
- The ESCR refers to the right to a decent and dignified life such as the rights to housing, foods, clothing, education and public health.
- The CR refers to the right to differentiated or specialized care rights of the native

people, the elders, the women, the children, the disabled and the immigrants.

Violation of ESCR and CPR by MNCs

MNC's violation of ESCR may be grouped into the violation of labour rights and the environmental rights abuse. In many cases, MNCs violate both labour rights and environmental rights.

In addition, MNCs may violate the CPR, in an indirect way. Suppose that the MNCs violate ESCR. The victims will protest. The host country government may oppress the movements of protest, which is the violation of CPR.

Labour rights include:

- the right to labour unionization,
- decent wages, reasonable working hours,
- no forced labour,
- absence of discrimination by gender/race and other healthy work conditions needed for decent and dignified living of workers.

Environmental rights include

- the rights to safe environment and,
- the right to use natural resources for the benefit of residents.

The following is a list of the cases of violations of ESCR and CPR:

- According to the International Trade Union Confederation (ITUC) report, of fifty GVCs' employees, 94% is low wage only 6% represents regular jobs.
- As much as 60% of jobs under MNC control represents the informal sector of the economy.
- In 2006, Brazil workers of sugar plants worked 10 to 12 hours a day. More than 10,000 were freed by the Brazilian government from forced labour
- [Child labour is frequent in cobalt mines](#) in Haut Katanga and Lualaba Province of the Republic of Congo and other places.

Notorious Cases of ESCR and CPR Violations

Ali Enterprise Textile: On September 11, 2012, there was disastrous fire at the Ali Enterprise Textile factory in Karachi, Pakistan killing 262 due to the inadequate security measures provided by the head Company, in Germany, KiK. (Violation of ESCR)

Rana Plaza Building: [In April 2013, the collapse of the Rana Plaza Building](#). Dhaka, Bangladesh killed 1,132 and injured 2,500. (Violation of ESCR)

[Union Carbide India \(UCI\): In the Bhopal disaster of 1984](#), 24,000 died and 16,000 were injured due to the leakage of pesticide. The amount of the settlement was USD 470 million, only USD 40 per victim. The tragedy occurred in Bhopal Madhya Pradesh, India. (Violation of ESCR)



Nestlé: In 1970, it introduced a formula of baby food requiring clean water leading to the production of bottled water for which it pumped underground water in many countries. For example, in Serra Da Matiqueira, Brazil, due to the Company's pumping water, local residents had to suffer from the shortage of water.

Moreover, [the Company was accused of hiring children younger than 15 in their Ivory Coast cocoa plantations.](#) (Violation of ESCR)

Child labour on Nestlé farms: chocolate giant's problems continue

Auditors completing their annual report continue to find evidence of child labour on Ivory Coast farms supplying Nestlé

- **Meet Terry Collingsworth: the lawyer taking on Nestlé and ExxonMobil**



KitKat chocolate bar made by Nestlé Photograph: Roger Tooth

Children younger than 15 continue to work at cocoa farms connected to [Nestlé](#), more than a decade after the food company promised to end the use

[Screenshot: The Guardian](#)

TTY Corporation Co. Ltd: On January 18, 2012, in Kratie Province, Cambodia, the security guard of the Company shot the protesters. The dispute was about the land use for rubber plantation vs. cassava plantation. The Company wanted to transform the cassava field into rubber plants. The cassava field was the lifeline of the local people. As many as 23 villagers were injured. (Violation of ESCR and CPR)

Timbergreen Co. Ltd (2011.04.26): Chut Wutty, founder/Director of Nature/Resource Protection Group was shot to death, on April 26, 2011, in Koh Kong Province, Cambodia, during the protest against the environmental damage caused by the company. (Violation of ESCR and CPR)

Unocal/COSO: The Company was a US gas/oil company operating in partnership with Myanmar military and it was building the Pipeline Yandana in the 1990s, the Myanmar military committed murder, rapes and displacement of a great number of people. (Violation of ESCR and CPR)

Image left: Senior Traditional Owner Yvonne Margarula was “deeply saddened” that uranium from Rio Tinto’s Ranger mine on Mirarr country in the Northern Territory was exported to Japanese nuclear companies including TEPCO. Source: Photo by Dominic O’Brien



Rio Tinto, a mining company: The Company had an agreement with the Papua New Guinea government to [operate copper mine in Bougainville Island](#) in East New Guinea. During the Company’s operation in the period, 1972-1988, the Company dumped one billion tons of wastes into the Jaba River causing the environmental damage.

The damage was so bad that the citizens of Bougainville sabotaged the Company’s operation. Huge protest demonstrations took place and 15,000 people were killed and 70,000 people were dislocated. (Violation of ESCR and CPR)

There are numerous unknown cases of human rights violations by MNCs. Nobody knows how widely spread these human rights violations are, because many cases are not reported for various reasons. But, it is possible that the extent of the corporate human rights abuses could be beyond our imagination.

Framework for the Prosecution of MNCs Which Violate Human Rights

One of the challenges which the world has to devise is a proper judiciary system capable of preventing the MNCs from committing human rights violations and punishing them, when they abuse human rights.

At present, though limited in scope and effectiveness, we have the following mechanisms designed to prevent human rights violations by MNCs and punish them when they do violate human rights.

- The anti-bribery law
- The Court Rulings on human rights violations by MNCs
- The Corporate Social Responsibility Program
- International Efforts to cope with MNCs Human Rights Violations

The Anti-Bribery Law

It appears that bribery is an integral part of humanity. It is reported that 25% of humanity has had bribe experiences. [In 2011, the amount of bribes paid was as much as 5% of global](#)

Global Cost of Corruption at Least 5 Per Cent of World Gross Domestic Product, Secretary-General Tells Security Council, Citing World Economic Forum Data

In First-Ever Meeting on Corruption, Briefer Says War Has Been 'Very Lucrative' for Small Groups of Conflict Profiteers

In its first-ever meeting to address the links between corruption and conflict, the Security Council today considered ways to effectively disrupt the illicit siphoning of money by leaders and other practices that weaken State institutions, thereby making a country susceptible to conflict.

It seems that, due to bribery, many honest and competent companies are excluded from business contracts. Don John State of Anti-Corruption survey with 300 major companies showed that 40% of the respondents lost contracts because of bribes; they did not pay bribes.

There can be many complex determinants of human rights violations by MNCs. But, perhaps, the culture of bribes is the most important determinant. Because of bribes paid by MNCs to the host country leaders, MNCs can abuse easily human rights.

The transaction of bribes takes place within the global value chains which closely integrate the economies of national, especially those of developing countries.

The bribe involves the collusion between MNCs and the government of the host country, which leads to a situation where the host country overlooks the violations of the ESCR by MNCs.

As pointed out above, this invites citizens to undertake demonstration of protests which the host country government oppress because of bribe money received. This is the violation of CPR. Thus, bribes are the roots of violation of both ESCR and CPR.

It is scandalous to see that many of the famous MNCs are involved in bribes transactions.

The following is the list of the most notorious bribe donors. I will identify the MNCs their nationality, and the amount of settlement for the bribery.

As we will see it later, it is more than difficult to make MNCs accountable for their violation of human rights through international judiciary system.

However, it is fortunate that some developed countries have anti-bribery laws which punish corporation which are involved in bribery. In this way, MNCs human rights violations can be discouraged to some extent. Here is the list of bribe givers:

- Siemens, Germany, (USD 899 million);
- KBR Halliburton, U.S.A., (USD 539 million);
- BAE, the UK, (USD 400 million);
- Total SA, France, (USD398 million);
- Lucent, France, (USD 137 million);
- Snamprogetti, the Netherlands, (USD 365million);
- JCG, Japan, (USD 136 million);

- Alcatel S.A. France, (USD 95 million).

These MNCs are operating throughout the world.

The amount of court settlement represents the amount of fine imposed on the MNCs which are involved in bribery transactions. The important question is whether or not the host countries which are victims of the corruption are compensated for the social cost caused by the bribery.

The bribery imposes several types of social cost. The bribery may end up with the wrong legislations made for the benefit of MNC at the expense of the interests of the host country. The bribery may produce a situation in which the local citizens suffer from the infrastructure facilities of inferior quality, low wage, long hour of work, misallocation of resources and poor economic development.

It is common sense that the host countries which are targets of bribery should be compensated, but, it is rare that they are compensated. Fortunately, in recent years, there have been some movements for the compensation for the bribery led by the UK, France and the U.S.

For instance, in the past decade, in the UK, Tanzania received €41 million for the damage caused by bribery paid by UK MNCs. The Global Forum for Assets Recovery is promoting the sharing of the court settlement money with the host countries which are the victims of bribery.

In the U.S., under the Foreign Corruption Practice Act (FCPA), Thailand was compensated in 2008 and Haiti in 2009 for corruption practice by American Companies operating in these countries.

I had an occasion of helping a Canadian media agent to solve a case of corruption committed by a Canadian MNC in South Korea. The Canadian MNC had a contract with a suburban town near Seoul City for the construction of light railway connecting the town to Seoul City downtown.

The Canadian company supplied a bribe of millions of dollars to the town mayor and others. One of the conditions of the bribe was, among others, the production of a false project-feasibility study in which the estimation of the demand for the railway-traffic was twice the realistic estimate. It appears that the Company was not punished.

Court Rulings on Violations of Human Rights by MNCs

The great majority of cases of MNC human rights violations do not come from court hearing. Some are ignored; some settle the dispute outside the court. There are reasons for this.

1. First the court litigation is expensive.
2. Second, the host governments tend to avoid court battle, because it is often involved in the corruption. Furthermore, their judiciary systems are underdeveloped to handle the case of MNCs' human rights violations.
3. Third, the home country of MNCs is also reluctant to bring its MNCs to the court, because it does not want to hurt the profit of its MNCs.
4. Fourth, it is difficult to prove human rights violations. The human rights

violations are committed by subsidiaries of MNCs, but the responsibility to protect human rights belongs to MNCs.

5. Fifth, the defendant (MNC) can choose the court by virtue of so-called the Forum of Non-Conveniences (FNC). If it finds itself in unfavourable situation; it can choose another court poorly organized in developing countries which are likely to dismiss the case.

Some of the MNCs have several thousand subsidiaries. For example, the Samsung Group has more than 8,000 subsidiaries spread in 80 countries.

Thus, even if the case is brought to the court, the probability of final ruling is low.

According to the EU Parliament, in 2019, there were 35 cases of MNC human rights violations heard at the courts. Of these 35 cases, 12 were dismissed for lack of evidence, 17 were on-going and 4 had extra-judiciary settlements.

Court Hearings

In fact, the following cases have succeeded in having court hearings, but none has led to legal settlement for lack of evidence or for the use of FNC.

Thor Chemical Holding Ltd. UK Company: The plaintiff, Ngcobo sued on November 10, 1995 the Company for being exposed to hazardous mercury vapour in Kuazulu Natal Province, South Africa. [Thor was recognized as responsible for its failure of providing proper safety design for the operation.](#)

The plaintiff appealed to US courts. But, the defendant preferred to have it heard in South Africa, where the case was dismissed.

This is another case of the application of the FNC. Thor chose a South African court which was not equipped to handle the case.

[Combior Inc. a Quebec Company: The Company belongs to a Quebec company, Omai Gold Mines Ltd of Guyana. Combior Inc, was sued in 2003 by Guyana residents](#) for spilling toxic water polluting the River Essequibo. The Supreme Court of Canada allowed defendant's use of FNC saying that the Guyana forum (court) is better suited, which was in a state of collapse.

Cape plc, a UK Company: In 2000, the Company was sued by Lubbe for making the plaintiff to be inhaling to asbestos dust causing cancer. The case was heard at a UK court, which found that the parent company had the duty to compensate the victim by virtue of the Tort Law

But, the parent company has too many subsidiaries and it claimed that it was not easy to verify the safety measures taken by all subsidiaries. The case was dismissed.

The Royal Dutch Petroleum, the Netherlands Company: The Company was sued by Wiwa family for Company's environmental damage. The citizen of the Ogoni region in Nigeria protested. The Nigeria government in complicity with the Company committed torture, cruel treatment and summary execution of the protesters. Ken Saro-Wiwa, leader of the civic movement was hanged on November 10, 1996.

The case was heard in the US District Court and it was dismissed by virtue of FNC.

BHP: an Australia Company: The Company was sued by Rex Dagi on September 22, 1995 for having ruined a River. Dagi was representing 7,500 villagers. The river was OKTedi Fly River of 200 km long from Fly River to the Gulf of Papua. The company dumped since 1984, 100,000 tons of finely crushed rocks into the river. The River died. The Supreme Court of Victoria ruled guilty and the dispute was settle out of court in 1996

Freeport McMorgan and the Freeport McMorgan Copper and Gold, US company: The defendants were sued by Beanal for environmental damage, human right abuse and cultural genocide through the occupation of an area of 26,400 km². Beanal was representing the community of Tamika Jaya, Indonesia. The case was handled by the District Court of Louisiana. The case was dismissed.

Company Social Responsibility (CSR)

There is one way for the national government to prevent MNCs from violating human rights. It is the system of the Company Social Responsibility (CSR). But, the vast majority of MNCs do not have the CSR program. For instance, by 2014, only 272 out of 80,000 MNCs had social policy as a result of the National Action Plan.

In some countries, large companies are obligated by law or encouraged to undertake Company Social Responsibility (CSR) programs.

For instance, in China, the Government-Owned Enterprises (GOE) and the listed enterprises in the Shanghai stock market have the legal obligation to apply CSR.

In India, by virtue of the Company Act of 2013, major companies have the duty to allocate 2% o profit to CSR projects.

Similarly, Cambodia and Japan also have measures to encourage major enterprises to do something for CSR.

But, as pointed above, CSR is not adopted by most companies, and even if they do, it is not known to what extent these measures have contributed to the prevention of human rights violations.

International Efforts to Cope with MNCs Human Rights Violations

In the 1970s and 1980s, there were the Sullivan Principles and the MacBride Principles.

The Sullivan Principle was adopted in the 1970 in South Africa in order to protect labour rights under the Apartheid and later, in 1999, it was unveiled by Rev Sullivan and the Secretary General of the UN, Kofi Annan.

On the other hand, the McBride Principles were proposed by New York City controller and endorsed by 4 religious people including Rev. McBride. The principles were intended to induce the US companies in Northern Ireland to protect labour rights.

[In 1976, the established Guidelines for MNC](#) related to labour rights, environment and consumer protection.

In Europe, there is the Council of Europe (COE) which is the principal organization of human rights protection. It has 47 member countries of which 28 are European countries.

The European Court of human rights (ECtHR) handles human rights violations; what it tries to accomplish is a proper balance market freedom and human rights.

[In 1977, the ILO made the Tripartite Declaration](#) (government, employer, employee) of Principles concerning MNC's social policy in accordance with the Universal Declaration of Human Rights of 1948 (UNDHR), the International Covenant in Civil and Political Rights of 1978 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights of 1978 (ICESCR)

The principles include conditions regarding employment (no forced labour, no child labour), work conditions (wage, safety) and industrial relations (collective negotiation).

In 1972 the UN Assembly warned the coming conflict between MNCs and national governments.

In 1998, the UN Working Group was created by the Sub-Commission on Human Rights with the function of observing the activities of MNCs and protecting human rights.

In 2005, the UN Human Rights Commission asked the UN Secretary General to appoint a special representative of the Secretary General (SRSG) to study the issues related to human rights. Professor John Ruggie was appointed as SRSG.

Professor Ruggie proposed three pillars:

- The State has the duty to protect human rights abuses by MNCs
- MNCs should avoid violation of human rights
- Both State and businesses should have access to judicial and non-judicial remedies.

In 2011, the SRSG was given the second mandate to further examine the issue. The UN accepted his recommendation as guiding principles.

As a result of these guiding principles, the UNHRC visited various countries and members of the Global Compact.

The Global Compact

[The Global Compact was created in 2000](#) and it is composed of 170 countries and 13,000 enterprises and 5,332 NGOs. It has proposed 10 principles related to human rights and business conducts.

- Businesses should support and respect the protection of internationally claimed human rights.
- Business should not become complicit in human rights violations.
- Business should uphold labour organization.
- There should be no forced labour.
- There should be no child labour.
- There should be no discrimination of employment and occupation.
- Business should adopt precautionary approach to environment support.

- Businesses should take initiatives to promote greater environmental responsibility.
- Businesses should promote and diffuse environment-friendly technologies.
- Businesses should work against corruption.

The efforts of the UNHRC has led to the establishment of several initiatives to better handle MNCs human rights violations including the Global Reporting Initiative, the International Finance Corporation Standard and the OECD Due Diligence Guidelines.

Moreover, some countries including France, the UK and the U.S. are enacting Due Diligence Law imposed on the parent companies so that the operation of subsidiaries be better monitored and controlled.

Despite the efforts of some MNCs, national governments, international institutions and especially the devotion of the UNHRC, the violation of human rights by MNC is continuing without proper punishment. Why?

1. First, there are no international laws. What are called international laws of human rights are just a set of guidelines with no judicial power; there are no real human rights courts. Laws with no courts to manage, they are not laws.
2. Second, neither the home country nor the host country is really interested in prosecuting MNCs which violate human rights for different reasons. The host country is reluctant to persecute MNCs either due to its collusion with the MNCs or inability to so, or both. The home country is not keen on punishing its MNCs operating in foreign countries.
3. Third, even if MNCs are brought to the courts in the home country or the host country, it is quasi impossible to persecute MNCs due to the lack of proof of human rights violations, because of the complexity of MNC-subsidiaries relations and, especially, due to the use of the bizarre system of Forum of Non-Conveniences (FNC) which allows the defendant to choose the courts which are likely to dismiss the case.

The interesting question is the future prospect of human rights violations of MNCs. It appears that the present state of human rights violations by MNCs is likely to get worse in the future due to the difficulty of establishing binding international law of human rights on the one hand and, on the other, the possibility of increasing power and wealth of MNCs as a result of the pandemic.

What is worrisome is the long-run impact of MNCs' human rights abuse on the developing economies.

The presence of MNCs in developing countries are supposed to be beneficial in the long run, for they would contribute to the long-run economic development of these countries through FDI, creation of jobs, transfer of technology, promotion of exports, workers training, development of free market and other constructive programs.

However, in many cases, developing countries are caught in the trap of cheap labour and low-cost natural resources partly due to their collusion with MNCs which violate human rights.

But, as long as developing countries remain the victims of MNCs human rights violations and

as long as the host country leaders collide with MNCs for their own greed at the expense of the interest of the people, it would be difficult for them to free themselves from poverty and become “developed countries” They may remain “developing countries” forever.

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