

Navigating the Impact of Multinational Enterprises on Labor Rights: Barriers to Justice in Developing Countries

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Abstract: The rise of multinational enterprises (MNEs) presents both economic opportunities and significant challenges, particularly in developing countries. This essay examines the adverse effects of MNEs on labor markets in these regions, focusing on redressing corporate rights violations and the barriers to justice for affected workers. The legal frameworks in both host and home countries often fail to hold MNEs accountable due to weak regulatory mechanisms and the corporate veil doctrine. International regulations, such as the UN Guiding Principles on Business and Human Rights, provide some guidance but lack enforceability. Recent due diligence laws in Europe offer promising steps toward corporate accountability, yet they fall short by excluding meaningful participation from stakeholders in the Global South, whose socio-economic realities are crucial to addressing MNE-related issues. The essay advocates an integrated approach that involves Global South governments, civil society, and local communities in decision-making, risk assessments, and enforcement processes to ensure justice and equitable protection for affected workers.

Keywords: Multinational Enterprises (MNEs), Labor Rights, International Law, Regulatory Mechanisms.

1. Introduction

Several threats posed to developing countries by the rise of multinational enterprises (MNEs) are now new international matters. As Judge Padilla correctly observed, “it is not the shareholders in those huge corporations who are in need of diplomatic protection; it is rather the poorer or weaker States, where the investments take place, who need to be protected against encroachment by powerful financial groups.” [1] Among the various impacts exerted by MNEs, their significant influence on labour markets in developing countries leads to some of the most serious consequences. While the MNEs’ operations can bring economic benefits, they often come with considerable challenges to labour rights. Workers employed by MNEs frequently endure human rights violations while facing considerable barriers to justice in the host countries. These obstacles include inadequate regulatory frameworks in host countries, legal and financial difficulties in pursuing claims against MNEs, and the significant influence that these corporations exert on local policies. These challenges are not just theoretical but are reflected in the real-world consequences of MNE operations in developing countries. While MNEs bring investment and opportunities, they also create environments where labor rights are often compromised, with workers facing harsh conditions and limited access to justice.

The regulatory gaps in many of these countries further exacerbate the problem, allowing multinational corporations to operate with relative impunity.

Recent global statistics highlight the magnitude of these issues. In 2021, the International Labour Organization (ILO) estimated that over 24.9 million people worldwide were victims of forced labour, with a substantial proportion of them employed in sectors dominated by MNEs, particularly in developing countries. Furthermore, a 2022 report by Amnesty International revealed that in some sectors, such as garment manufacturing, workers in countries like Bangladesh, India, and Vietnam earn less than 30% of a living wage, highlighting the persistence of exploitative labour practices despite the economic benefits claimed by MNEs.

These statistics underscore the urgent need for stronger protections and regulatory mechanisms to safeguard workers' rights, particularly in developing nations where MNEs often wield significant power. The persistence of exploitative labor practices in sectors such as garment manufacturing further highlights the inadequacy of existing frameworks in protecting vulnerable workers from human rights abuses. Against this backdrop, it becomes crucial to examine the legal barriers that prevent effective justice for victims of these violations.

This essay aims to critically examine the barriers to justice under the current international law regime and assess the effectiveness of existing national and extraterritorial regulations. By analysing the legal processes in contemporary case in Bangladesh, this essay will highlight potential solutions to overcome the obstacles in current regulations that hinder the protection of victims of human rights violations. It will argue that a more robust mechanism, alongside state practices, is essential to address emerging challenges. These challenges may arise when implementing solutions within the complex socio-economic landscape influenced by multinational enterprises, especially in the Global South. The involvement of stakeholders from the Global South is crucial, as their perspectives and interests are often underrepresented, despite the significant impact of multinational enterprises on national agendas in these regions.

2. The Weakness of Law of the Host Country

Host countries, particularly those with weaker legal systems, often face significant challenges in regulating MNE. These countries may lack robust legal mechanisms to adequately protect workers' rights, and the economic and political influence of MNEs can further exacerbate this imbalance. MNEs, with their vast resources and local dominance, are often able to exert pressure on host country governments, shaping policies in their favor. As a result, host countries' legal frameworks frequently fail to address labor rights violations effectively, leaving local workers vulnerable to exploitation and without access to justice in cases of misconduct or abuse.

A significant example is the Rana Plaza disaster in Bangladesh, where a garment factory collapsed, killing hundreds of workers while producing for Western brands like Zara and Walmart. It features a historical pattern of labor exploitation in the global garment industry which commonly appears in the Global South, tracing back to U.S. sweatshops until the 1950s, characterized by low wages and unsafe conditions [2].

After the collapse of Rana Plaza, labour movements, like unions, are fragmented and face challenges such as low registration rates and political corruptions [3]. Similarly, legal actions primarily target local actors rather than MNEs, complicating accountability efforts. Although some progress has been made, such as the conviction of the building owner Sohel Rana, many criminal and labor cases face significant delays, underscoring the issues of governance and regulatory failure [4]. As in the case of Bangladesh, host countries generally lack powerful mechanisms to address the challenges posed by transnational exploitation. The inadequacy of legal and compensatory measures remains a significant barrier to justice. Court-ordered compensation is unresolved after 11 years and

such failure of corporate accountability has not been resolved until now [5]. Garment workers continue to face poor wages and violence, particularly when protesting for better conditions [6].

3. The Weakness of the Law of the Home Country

Given the minimal protection offered by host countries, victims must seek alternative avenues for redress. This section examines the judicial procedures available in the home countries of multinational companies and highlights some of the key challenges victims face when pursuing justice through these mechanisms.

3.1. Piercing the Corporate Veil

Victims' difficulties in accessing local justice have led to efforts to seek remedies in the home courts of MNEs by targeting parent companies. However, this strategy faces challenges due to the "corporate veil" principle, which maintains that a parent company is not automatically liable for its subsidiary's actions [7]. Courts are typically reluctant to pierce this veil, as seen in cases like *Chandler v Cape Plc*, where liability depends on whether the parent company directly assumes a duty of care [8].

However, the courts have been more cautious in determining that the home State has not fulfilled its duty of care, and the majority of cases have been dismissed because the courts have found that the home State did not have a duty of care. In *Das v. George Weston Limited*, a Canadian court dismissed a \$2 billion class action for Rana Plaza disaster, ruling that Loblaw's did not owe a duty of care as it had no control over the working conditions [9]. Here, it emphasized the principle of separate corporate personality, which distinguishes between a parent company and its suppliers or subsidiaries, and noted that the harm occurred in Bangladesh, making the connection to Ontario insufficient to establish liability under Canadian or Bangladeshi law [10].

Similarly, in *Abdur Rahaman v. JC Penney Corporation, Inc.* that brought in America, the court found no duty of care because the defendant companies (JC Penney, The Children's Place, and Walmart) did not have a "special relationship" with the workers at Rana Plaza, as they were buyers, not employers, and had no direct connection to the workers. The plaintiffs also failed to show that the sourcing agreements involved "peculiar risks" that would trigger an exception to the general rule. Even when the companies had made ethical sourcing statements, the court ruled that these did not create a legal obligation to ensure worker safety, leading to the dismissal of the claims [11].

Meanwhile, although this approach has been applied in subsequent cases, many are settled before trial, frustrating efforts to establish clear legal precedents. Settlements often occur due to the financial risks and reputational concerns for MNEs, but this legal separation can unfairly shift the risks from MNEs to victims, who lack the power to negotiate preventive or compensatory measures [12].

3.2. The Doctrine of Forum Non-Convenience

The doctrine of forum non convenience often obstructs workers' access to justice in cases involving multinational corporations. U.S. courts typically dismiss lawsuits from foreign plaintiffs, favoring forums in their home countries. For example, in the Rana Plaza litigation, U.S. courts ruled Bangladeshi law applied, dismissing the case due to the one-year statute of limitations, even though the suit was filed two years post-tragedy. It shown an common phenomenon that in the U.S., courts are less likely to accept jurisdiction over cases involving foreign plaintiffs when the relevant events occurred in the plaintiff's home country based on a consideration of "public interest" [13]. This rule is partly based on concerns about a flood of foreign litigation overwhelming already crowded U.S. courts. Foreign plaintiffs are given "less deference" than U.S. plaintiffs in such cases.

In the EU, under Article 4 of the Brussels Ia Regulation, EU-domiciled defendants must be sued where they are domiciled, and courts in other Member States must stay proceedings until the first

court seized determines jurisdiction[14] .For example, in the Shell Nigeria case, Dutch courts maintained jurisdiction over Royal Dutch Shell for events in Nigeria, forcing plaintiffs to navigate foreign legal barriers[15].

The UK applies a two-stage test, known as the Connelly principle, for forum non conveniens, permitting dismissal only if a "clearly and distinctly more appropriate" forum is available [16] .In Vedanta Resources PLC v. Lungowe, the UK Supreme Court retained jurisdiction due to inadequate Zambian resources, but courts generally dismiss cases when alternative forums provide reasonable but less favorable outcomes[17].

Canada follows a similar approach, as seen in Recherches Internationales Quebec v. Cambior Inc., where a lawsuit against a Canadian mining company was dismissed in favor of Guyana. This can leave plaintiffs from countries with weak legal systems without effective remedies [18].

Australia has a more claimant-friendly stance, requiring defendants to demonstrate that Australian courts are "clearly inappropriate [19]. " However, neither Australia nor Canada has implemented the Connelly principle, which would enable claimants to pursue litigation in a foreign court despite local financial barriers. As a result, claimants in these countries still lack a straightforward path to seek compensation.

3.3. Cost and Legal Resources

When considering the potential for legal action in the home courts of MNEs, the role of financial resources, constraints, and incentives for claimants' lawyers is critical. Victims seeking justice face not only legal obstacles created by complex supply chains and multiple layers of corporate relationships but also significant financial barriers. The high costs of litigation and limited access to legal funding prevent many low-wage workers and their families from pursuing their claims further [20].

With a few exceptions, lawyers in home states have shown limited interest in these cases. This reluctance is due to several factors: these cases are complex, high-risk, and fiercely contested by MNEs. They require substantial resources, are expensive to fund, and often have uncertain durations and outcomes, creating major cash flow challenges for claimants' lawyers. In contrast, MNEs' lawyers are funded continuously, regardless of the result, placing claimants at a significant disadvantage. Only experienced lawyers, confident enough to assume the financial risks, tend to take on these cases, as the risk is even greater for those new to this area of law.

While successful cases can be highly profitable, offering financial incentives for experienced and well-resourced lawyers, these incentives are diminished when courts impose strict cost rulings. For example, in the lawsuit against Loblaw, the Court of Appeal ordered the plaintiffs to pay nearly \$1 million in legal costs, a decision upheld by the Supreme Court. Such outcomes severely diminish the confidence of appellate lawyers, making victims more hesitant to bear the risks of high legal costs and compensation when considering an appeal[21].

4. International Regulation as Soft Law

4.1. The Current State of International Legal Mechanisms

Since victims often struggle to seek redress under the laws of both the host country and the MNEs' home country, it is crucial to assess how current international law mechanisms can offer a meaningful path to justice. Although relevant international treaties exist for transnational labor protection, their effectiveness is constrained by their "soft law" status. The following paragraphs profile the current international regulatory frameworks like the UN Guiding Principles on Business and Human Rights, the ILO Conventions, and the OECD Guidelines which all offer important insights on a global scale.

They have established several normative guiding orientations in this regime, although practical problems remain within international mechanisms when accessing justice.

4.1.1. UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by the UN Human Rights Council in 2011, provides a global framework for addressing human rights abuses related to business activities. John Ruggie, the architect of the UNGPs, described them as consisting of three pillars: the state duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy for victims of human rights violation [22]. While the UNGPs are not legally binding, they have significantly influenced corporate behavior and have been incorporated into national laws and regulations, as well as voluntary corporate codes of conduct [23].

Despite their non-binding nature, the UNGPs have established a normative expectation that companies should conduct human rights due diligence to identify, prevent, and mitigate adverse impacts. They have been referenced in various national and regional regulatory frameworks, such as the European Union's Non-Financial Reporting Directive [24]. Yet, the application of the UNGPs remains open to interpretation. For example, it's uncertain whether a subcontractor's operations in Bangladesh can be "directly linked" to its U.S. buyer in case of Rana Plaza [25]. They also failed to specify penalties for breaches of corporate responsibility to respect human rights or provide third-party oversight. Instead, they recommend that states manage adjudication of such failures or that corporations and industries create their own governance [26].

4.1.2. ILO Conventions

The International Labour Organization (ILO) Conventions play a central role in shaping global labor rights, establishing standards for fundamental workplace rights and protections. While ILO Conventions are legally binding for member states that ratify them, their application is often limited by national enforcement mechanisms and political will [27]. Despite these challenges, the ILO's tripartite structure, involving governments, employers, and workers' representatives, provides a platform for dialogue and has been influential in driving corporate social responsibility (CSR) initiatives [28].

However, the Declaration does not specify consequences for breaches of its provisions, nor does it include enforcement mechanisms [29]. It only as a soft law instrument that guides MNEs in adopting fair labor practices, influencing corporate policies even in the absence of ratification by member states [30]. While ILO Conventions set legally binding labor standards for member states that ratify them, their impact on MNEs in host countries is often diluted by weak national enforcement mechanisms and political inertia. Although the ILO's tripartite structure involving governments, employers, and workers' representatives promotes dialogue and shapes CSR initiatives, the conventions lack specific enforcement tools for breaches. In practice, this means that workers in host countries are dependent on the effectiveness of national governments to implement and enforce these standards, which can vary greatly. For example, in countries with weak labor regulations or limited political will to protect workers' rights, ILO conventions may provide little actual protection, leaving workers vulnerable.

4.1.3. OECD Guideline

The OECD Guidelines for MNEs are a set of voluntary principles and standards intended to promote responsible business conduct in areas such as human rights, labor rights, environment, and anti-corruption. Although the Guidelines are non-binding, they have become a valuable tool in labor disputes, providing a framework for addressing grievances against multinational corporations

[31] .The unique aspect of the Guidelines is the establishment of National Contact Points (NCPs) in each adhering country, which serve as mediation and conciliation platforms for resolving disputes involving MNEs [32] .The NCP mechanism has been used in numerous labor disputes, allowing stakeholders, including trade unions and NGOs, to file complaints concerning issues like workers' rights violations, inadequate working conditions, and freedom of association [33] .

Although not legally binding, they are political commitments on participating countries. These countries, including 30 OECD members and six non-members, must establish NCPs to address compliance issues. Companies can be subject to complaints to NCPs even without their consent, as the NCP process seeks to promote dialogue and conciliation. All companies operating in adhering countries are expected to follow the Guidelines without selective application.

4.2. International Treaties Remain Insufficiently Effective.

International frameworks remain very few legal obligations that provide practical enforcement mechanisms binding MNEs practice. Most human rights instruments are non-binding, focusing on encouraging compliance rather than mandating it. As most of the human rights instruments lack clear legal liability. Some treaties, such as ILO conventions, are binding for states that have ratified them. But these obligations are usually on states, not corporations directly.

As such, international standards offer insightful advice. Yet, there are several issues remaining while they are unpredictable and overly optimistic. On the one hand, without legal mandates, companies are not compelled to follow these guidelines, making compliance largely voluntary. The problem with this is the lack of political and legal incentives to comply, especially when additional costs are involved. While these soft laws serve as meaningful references, there are no consistent, enforceable international mechanisms to hold corporations accountable for violations beyond mere condemnation. Additionally, the responsibility for regulating corporate behavior is largely placed on states in these mechanisms, which often have varying capacities and political will to enforce international standards in different states. In countries with weak legal systems or governance, this results in limited or no recourse for affected workers, leaving them without effective avenues to seek justice or compensation for rights violations. As a result, the gap between principles and practice remains at current stage, making the framework difficult for workers to address fair outcomes when their rights are infringed by MNEs.

Meanwhile, the aspirational approach of converting these soft laws into hard laws would also be unrealistic. Attempts to establish them as hard law have failed several times, particularly when trying to achieve consensus among member states. Countries that lack the capacity to comply after adopting international human rights agendas are especially hesitant to join these regulatory frameworks.

In order to improve the international cognitive level, soft law initiatives remain one of the few options for securing broader participation from these countries, even though the process is notoriously slow and complex. Non-binding declarations can take years or even decades to finalize, as seen with the Declaration on the Rights of Indigenous Peoples, which required over 20 years of negotiation. Likewise, the International Covenants that followed the Universal Declaration of Human Rights took 18 years to be adopted and another decade to come into force [34]. As globalization progresses and political and economic systems become more aligned, implementing binding international human rights laws may become less challenging, as demonstrated by regional examples like the European Court of Human Rights (ECHR).

5. Move towards Hard law Initiatives

Beyond international soft law, a more practically effective transnational mechanism for protection to embed in the national and regional context could be national legislation aligned with international

due diligence standards, such as those articulated by the UNGPs. Theoretically, international law may require states to take steps to protect human rights from abuse by private actors at the most basic level of involvement. The creation of the International Covenant on Civil and Political Rights (ICCPR) legally obliges each state party to respect and to ensure all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant [35]. States could strengthen mechanisms for fulfilling the provisions of international conventions, and it is appropriate for them to carry out such due diligence by legislating.

Most MNEs are headquartered in Global North countries, where states generally have the capacity to uphold international rules and enforce corporate accountability in their governance, unlike countries with limited governance capabilities. Meanwhile, the formalization of hard law will raise awareness and promote international issues, enhancing the credibility and effectiveness of the global framework for corporate accountability. States could impose obligations that hold parent companies accountable for harm caused by their subsidiaries in global supply chains, potentially making such accountability a condition for operating in their jurisdiction.

Currently, due diligence laws in European countries provide valuable examples of reform. For instance, the French Duty of Vigilance Law, the German Supply Chain Due Diligence Act, and the Dutch Child Labour Due Diligence Act. These acts mandate corporations to carry out human rights and environmental assessments to identify and prevent harm because they often extend the subjects to subsidiaries and supply chains.

For example, the EU directive on corporate sustainability due diligence establishes a legal framework requiring large EU companies, medium-sized firms in high-risk sectors, and non-EU companies operating within the EU to integrate human rights and environmental due diligence into their operations and supply chains. Companies must identify, prevent, and mitigate adverse impacts, engage stakeholders, and implement remediation when harm occurs. The proposal includes mandatory due diligence plans, civil liability for failure to meet obligations, and oversight by national authorities, who can impose sanctions. The directive allows victims to seek legal redress in the home courts of MNEs and amends whistleblower protections to safeguard those reporting violations [36]. Companies are expected to integrate due diligence into their corporate policies, conduct regular impact assessments, establish grievance mechanisms, and take corrective actions when violations are identified. Notably, the directive introduces the potential for civil liability, allowing victims of corporate abuse to seek damages in EU courts if companies fail to comply with their due diligence obligations [37].

However, when due diligence laws appear to be robustly addressing several issues that are untouchable in international legislation, their effectiveness is not necessarily guaranteed. Most extraterritorial regulations are merely preventions, which do not resolve the deeper issue of unequal bargaining power between corporations and affected communities in Global South. Shifts from a state governed to a business-centered focus in human resource development raise concerns about corporate obligations. This change could transfer power from state regulators to private companies, allowing them to outsource regulatory duties to subsidiaries, suppliers, or third-party actors. Workers, farmers, and communities may end up shouldering the financial burden of due diligence processes, potentially reinforcing colonial-era power imbalances. Moreover, many grievance mechanisms, even those designed according to the effectiveness criteria outlined in Principle 31 of the UNGPs, fail to deliver substantive justice.

Therefore, although the European approach offers some hard law mechanisms, it is more formalistic than practical and largely ignores the experience of the Global South, which should play a pivotal role. To ensure genuine participation of Global South stakeholders in mandatory human rights and environmental due diligence frameworks, several measures must be implemented. One of the most crucial recommendations is the inclusion of Global South governments, civil society

organizations, and affected communities in decision-making processes. This inclusion means that these stakeholders should not be passive recipients of laws created in the Global North but rather active participants in shaping the formulation and implementation of related regulations.

Historically, decision-making regarding international corporate accountability has been dominated by Global North states and multinational corporations, often ignoring the realities faced by communities in the Global South, where much of the corporate harm occurs. Effective participation requires creating avenues for direct input from these communities through international dialogues, consultations, and cooperative frameworks between Global North and Global South States. It also means that representatives from the workers in Global South need to have a meaningful presence in global governance institutions that address corporate responsibility and human rights. Although this is difficult due to the invisible prejudiced system of the international community, states can still incorporate the experience of the Global South into relevant stakeholder interpretations in domestic law to a certain extent. For instance, by implementing a more just and effective approach that allows affected communities from Global South to actively participate in the oversight processes, the local communities should have direct channels through which they can monitor corporate compliance with due diligence obligations which ensure that communities can file complaints when violations occur and have direct access to remedies.

Another critical component of genuine participation is ensuring robust consultation during risk assessments. Corporations must be required to engage with communities in the Global South when assessing potential human rights and environmental risks associated with their operations, particularly during the development of prevention and mitigation plans. These consultations with local inhabitants cannot be token gestures but must be deeply integrated into the due diligence process, involving free, prior, and informed consent. It can grant local communities the right to give or withhold consent to projects that may affect their lands, resources, and rights. Many local communities have deep connections to their environment, viewing it as an integral part of their culture and identity. This consultation is not only a legal requirement in many jurisdictions but a moral imperative for companies seeking to respect human rights. Without genuine, and sustained engagement, MNEs activities risk causing irreparable damage to both people and ecosystems. Additionally, these consultations should extend beyond local communities to all affected stakeholders, ensuring that the voices of women, labourers, and marginalized groups are heard and incorporated into corporate plans. Ensuring that these groups have a say in the decision-making process surrounding environmental impacts and human rights violations increases the likelihood that corporate projects will avoid harm and respect local priorities when access to justice.

6. Conclusion

MNEs significantly impact labor markets in developing countries, often leading to human rights violations and limited access to justice. Current legal frameworks, both international and national, are insufficient to hold MNEs accountable due to barriers like the corporate veil and forum non convenience. While recent due diligence laws in Europe are a positive step, they fall short by excluding meaningful participation from Global South stakeholders and failing to consider their specific socio-economic realities. To address these challenges, an integrated approach is needed. This includes involving Global South governments, civil society, and affected communities in decision-making, risk assessments, and enforcement processes. Additionally, recognizing local legal systems, especially local perspectives, can strengthen protection for human rights and the environment. Beyond preventive measures, enforceable mechanisms must be developed to overcome power imbalances and ensure justice is both accessible and equitable for those most affected by MNEs.

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