

Corporate Social Responsibility and Human Rights – Role of the International Organisations to Regulate Business Corporations for Violating Human Rights: A Socio-Legal Study

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Abstract This article explores the social responsibility of business corporations and role of the international organisations to regulate business corporations for violating human rights. Business corporations are powerful vehicle for economic, social, and cultural enhancement; particularly in developing countries via job creation and diffusion of technology, scientific advances, and management skills. Business corporations are expected to respect the sovereign interest of the host State. The latter is in turn also duty bound to reciprocate by fulfilling what it has undertaken while contracting with the business corporations. This article briefly making an analysis of the definition of legal personality of business corporations. Further to that it also explains the importance of corporate social responsibility in the human rights context in this globalized market. It also contributes with socio-legal analysis on international regulations to control business corporations such as OECD initiatives, ILO tripartite declarations, UN Global compact shared values and principles including SRSGs draft ‘guiding principles’ for the implementation of the United Nations ‘protect, respect and remedy’ framework. Finally, concludes with few suggestions to improve litigation and framing of international legal settings for regulating ‘business corporations’ against abuse of human rights.

Keywords: corporate social responsibility, business corporations, legal personality, human rights

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1. Introduction

Civil conflicts and economic hardships in many countries are the dominant challenges of our time. Statistics show that the schism between the rich and the poor is widening both within and between nations [1]. Poverty and conflict by systematically reinforcing each other violate a number of human rights that international society has a duty to uphold and protect [2]. In this globalized market the relationship between ‘business corporations’ and ‘human rights’ has increased in recent years. Globalization has stimulated a number of positive and negative developments in national and international regulations [3]. Principally it has seen the rise of the economic, social and political power of the corporations [3].

Business corporations have a unique capacity to advance human rights goals. It’s a powerful vehicle for economic, social, and cultural enhancement; particularly in developing countries through job creation and diffusion of technology, scientific advances, and management skills.

Foreign Direct Investment (FDI) may both promote economic development in the host country powerfully affect the enjoyment of a wide range of human rights from health, food, and improved living standards to rights of free expression, and access to information through new technologies [4]. The FDI also poses a threat to the enjoyment of human rights either through their conduct or through complicity in the host government’s invasion of rights [4].

The Conventional international framework for the protection of human rights is State-centric [5] however States has primary obligation to promote human rights [6]. However, the advent of national and transnational private actors, especially ‘business corporations’, in public services has posed severe challenges to this model. The “business corporations” can violate, and broken, a wide range of human rights – from civil and political to social, economic, and cultural [3]. Importantly, they could remain unaccountable for their conduct by exploiting the loopholes of existing regulatory regimes [3].

Efforts to promote corporate social responsibility acknowledge both positive and potentially negative

consequences of the business activities. Naturally, business corporations are not only economically powerful, but they have the mobility and capacity to evade national laws and enforcement. They can easily relocate or use their political and economic clout to pressure governments to ignore corporate abuses [6]. International human rights standards, such as those promulgated by the U.N. are increasingly important to achieving corporate social responsibility. The need for such an international standard is especially visible as the global economy becomes more complex. In the absence of clear international standards articulating the human rights obligations of business corporations, it is likely that temptations of short-term profit maximization may outweigh the benefits of socially responsible behaviour.

Business corporations are expected to respect the sovereign interest of the host state. The latter is in-turn also duty-bound to reciprocate by fulfilling what it has undertaken while contracting with the business corporations [7]. Business corporations apparently have headquarters in one country (usually in the home country) and operate in at least one foreign country (the host). It has been accused of direct or complicit violations of human rights including murder, rape, torture, forcible dislocation of populations, forced labour, destruction of the environment, and extrajudicial executions [8]. Most of the time the victims are indigent, or indigenous peoples who are the most vulnerable, and find themselves with no recourse against the 'business corporations' or 'state' regarding the violations [8].

Debates have already taken place on the issue of business corporations violating human rights but were mainly focused on the primary issue - whether 'business corporations' are subject to human rights obligations or not [9]. However, in international law, the duties of business corporations have been recognized in different human rights instruments [10,11,12].

2. Legal Personality of Business Corporations

While co-relating business corporations and human rights, it is important to know the 'legal personality' of business corporations under international law. There are discussions and debates have been established and influenced international legal systems around this topic and posed several questions and effectively answered in the right direction [13]. But the dualist hierarchy of national and international law diverted the concept and introduced business corporation as private legal persons - formally; and hence subjects of national law, but not international law, which directly binds only states [14].

Unfortunately, the international legal community has failed to reach an agreeable 'definition', as to whether the 'business corporations' have been considered as 'legal personality' under international law or not [15]. According to the traditional theory, the only subjects of international law are nation-states...all other entities, particularly individuals and business organizations, interact with international law indirectly through their national governments' [16]. The law of nations is based on the common consent of individual states, and not of individual human beings [17].

Basically, 'legal personality' refers to the extent to which an entity is recognised by a legal system as having rights and responsibilities' [18]. Whether this 'rights and duties' also extend to a legal person, such as a corporation [19], is a debatable question among international scholars. Some scholars argue that international law cannot impose obligations on corporations, as it is not considered as international personality [20]. Though the 'states' are the sole authority to regulate the legal systems internationally, this does not conclude that 'states' are the only subjects of international law [21]. Moreover, Judge Jessup opined that 'individuals' are also subjects of international law and included 'corporations' and 'partnerships' within the meaning of 'individual' [22]. By supporting the views of Judge Jessup, the scholars argued that the business corporations should have the status of legal personality, and dismissed the orthodox view as obsolete; [23] this created artificial obstacles to the recognition of 'non-state' entities as subjects of international law [24] and it remains incompatible with the modern realities [25]. In domestic law, legal personality is conferred not only upon individuals but also companies and business corporations [18]. Whereas, in international law, an entity is said to have an international legal personality if it is the beneficiary of rights under international law [18]. International legal personality is not a pre-requisite for the imposition of rights and duties, [26] instead; it follows attribution of rights and responsibilities [26]. One cannot deny the existence of certain rights and duties for individuals and international organizations. Conceptually, there is nothing preventing states from jointly regulating corporate behaviour through international law, provided, that behaviour falls within their respective jurisdictions [27].

On the other hand, jurists have argued that the relations of states and foreign corporations as such should be treated on the international plane and not as an aspect of the standard rules governing the position of aliens and their assets on the territory of a state [28]. Relatively supporting this view in *Serbian Loans Case*, the Permanent Court of International Justice (PCIJ) held that, the governing law for an agreement not concluded between subjects of international law should be the municipal law of the 'state' concerned with the dispute [29]. In the *Anglo-Iranian Oil Company case*, the ICJ adopted a line of reasoning that suggested that an oil corporation was not a subject of international law [30]. After analysing the different approaches among scholars, we could conclude that states are the primary and predominant subjects of international law [31] and other legal entities are not necessarily non-subjects nor are they precluded from gaining international legal personality [32]. Moreover, a subject of international law does not have to possess the same character or share all attributes of a State to fit into the definition of a subject [26].

3. Corporate Social Responsibility (CSR) and Human Rights

Protection of Human Rights is one of the fundamental principles of the United Nations [12]. Human right abuses by States have been condemned in a series of global issues. Though the corporations are considered as 'legal persons',

it raises a few doubts that, to what extent business corporations are responsible for human rights violations. The theory of CSR has been developed since 1970, the legal community failed to reach an acceptable definition of CSR [33]. Business corporations operate in varied cultures and environments, and thus are more likely to encounter differing stakeholder groups and non-governmental organizations [34]. Hence, the legal community have struggled to define CSR, especially in the context of 'business corporations'. The CSR comprises social, environmental and economic aspects of business performance, or more simply 'people, planet and profits' [35].

There are different perceptions of the concept CSR among governments, the private sectors, and civil society organizations. The European Commission defines CSR means being 'socially responsible'. It not only fulfilling legitimate expectations but also going beyond compliance and investing 'more' into human capital, the environment and relations with stakeholders [36]. Another legal scholar said that 'corporate social responsibility' include the following: a company running its business responsibly in relation to internal stakeholders (shareholders, employees, customers, and suppliers); the role of business in relationship to the state, locally and nationally, as well as to inter-state institutions or standards; and business performance as a responsible member of the society in which it operates and the global community [37].

The corporate responsibility to respect human rights means acting with due diligence to avoid infringing on the rights of others and addressing harms that do occur. Corporate responsibility to respect human rights applies across its business activities and through its relationship with third parties connected with these activities - such as business partners, entities in its value chain, and other non-state actors and State agents. Besides, the corporations should need to consider the country and local contexts for any particular challenges they may pose and how those might shape human rights impacts of 'corporations' activities and relationship [38].

4. Role of the International Organisations to Regulate the Business Corporations

International law and human rights law are considered as existing in the realm of 'public' law, and hence has principally focussed on regulating government conduct and protecting individuals from violations by governments. Based on the allegations of human rights violations by the 'business corporations', legal scholars around the globe were pressurised to include the 'business corporations' to be regulated under the norms and standards of the international human rights law. Traditionally, the national governments regulate the business corporations in their human rights conduct within their own jurisdictions through national legal systems. Gradually, the business corporations started establishing their branches internationally thus becoming increasingly powerful actors in this globalized economy. Business corporations also increased their power within the international legal system through expansion of the legal obligations imposed on states through the international trade regime, and increased

levels of direct legal protection through bilateral and regional investment treaties [39]. In these circumstances, questions may raise about the ability of national governments to effectively regulate the conduct of the business corporations. Developing countries are often in competition to attract investments from the business corporations, and thus amenable to harmonising their national legislations towards reaching and therefore in agreement with business corporations. In this situation, it is hard to impose regulatory measures unilaterally if at all the business corporations violate the human rights in their jurisdictions.

As an exception, some human rights treaties and other law-making instruments may be interpreted to apply to business corporations as well. The Universal Declaration of Human Rights (UDHR) [12] focuses on the obligations of States, and also mentions the responsibilities of individuals and of 'every organ of society', which includes business corporations. Under the International Covenant on Civil and Political Rights (ICCPR), [40] each state party 'undertakes to respect and to ensure to all individuals within its territory and subjects to its jurisdiction the rights recognised in the present Covenant...' [40] Accordingly, if a corporation endangers the rights of an individual, the State has a duty to ensure the respect of human rights and thus to take preventive action.

Even though, the UDHR and ICCPR have highlighted in their preambles' and dwelt in their articles on the importance of human rights and its protection from the violators, the constructive debate to regulate business corporations began in the mid-1970s'. This was a time of growing concern, both at the national and international levels about the 'business corporations' and its implications for national sovereignty, democracy, and cultural diversity [18]. To regulate the 'business corporations', in this particular period, there were three different initiatives that took place on the international arena. They are the Draft UN Code of Conduct on Transnational Corporations, [41] the Organization for Economic Cooperation and Development (OECD) guidelines on Multinational Enterprises [42], and the International Labour Organization (ILO) Tripartite Declarations [43].

4.1. The OECD Initiative

The OECD is perhaps the first comprehensive code to have been officially adopted by a group of nations and has been in the forefront of the movement for a code of conduct [44] for regulating the business corporations. This OECD code of conduct is a soft law named as 'Guidelines for Multinational Enterprises' initially set up in 1976 and revised in 2000 [39]. These guidelines are 'most widely used instrument defining the obligations of multinational enterprises' [26]. It is clearly stating that business corporations should 'respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments' [45]. Moreover, this guideline also includes general policies, competition, taxation, employment and industrial relations, science and technology and disclosure of information. With regard to attracting FDI, the guidelines

sought to ensure all 'states parties' would ensure, via national contact points and cooperation with the OECD Investment Committee, [46] a certain level of control over business corporations within their respective jurisdictions.

4.2. ILO's Tripartite Declarations

The International Labour Organization (ILO) has been dealing with the issues of 'business corporations' since 1970's and finalised the Tripartite Declaration of Principles on Multinational Enterprises and Social Policy. The aim of the Tripartite Declaration of Principles is to 'encourage the positive contributions of the business corporations and to minimize and resolve the difficulties, taking into account the United Nations resolutions advocating the Establishment of a New International Economic Order' [47]. In 1976 a 'Tripartite Advisory Meeting on Multinational Enterprises and Social Policy' recommended the preparation of a set of 'non-mandatory principles for multinationals in the area of social policy' [18].

The ILO adopted Tripartite Declaration Principles based on the findings that 'the advances made by the multinational enterprises in organising their operations beyond the national framework which may lead to the abuse of concentration of economic power and to conflicts with national policy objectives and with the interest of the workers' [48]. Moreover, the Declaration also contains a general provision relating to the obligation to respect human rights. It states that:

All the parties concerned by this Declaration should respect the sovereign rights of States, obey the national laws and regulations, give due considerations to local practices and respect relevant international standards. They should respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations as well as the Constitution of International Labour Organization and its principles according to which freedom of expression and association are essential to sustained progress. They should also honour commitments which they have freely entered into, in conformity with the national law and accepted international obligations [47].

Although the Declaration insists that all parties 'respect the sovereign rights of states' and pursue activities 'in harmony with the development priorities and social aims and structures of the country in which they operate' [47]. The standards on social policy developed under ILO Conventions and Recommendations are to be complied with, even where the host country either would not be bound by certain of those instruments, or where, even though bound, the host government would be acting in violation of those international obligations [47]. Even if the Declarations adoption was consensus by the ILO Governing Body at which governments, employers and workers are represented, the Declaration remains, as such, a non-binding instrument [49].

A further initiative was the UN Draft Code of Conduct on Transnational Corporations which was finalised in 1990 and included a provision requiring that business corporations shall respect human rights [50].

4.3. UN Global Compact

In January 1999, the then Secretary-General of the United Nations Kofi Annan proposed a 'Global Compact' of shared values and principles at the World Economic Forum in Davos [51]. The core aim of the 'compact' was to establish a framework to facilitate dialogue between the 'UN and business corporations' in relation to the social issues arising from globalisation. The 'Compact' was launched with ten core principles relating to human rights, labour, environment and anti-corruption measures [52].

The ten core principles of the 'Compact' derived from the Universal Declaration of Human Rights, the International Labour Organization Declaration on Fundamental Principles and Rights at Work, the Rio-Declaration on Environment and Development, and the UN Convention Against Corruption. These 'principles' are a set of objectives, said to have been condensed from international law, which, it is suggested, should be implemented as part of corporate policy [18]. Principle 1 and 2 relate to human rights and urges business to support and respect international human rights within the sphere of their influence and make sure the corporations are not complicit in human rights abuses [53]. Principle 3 highlighting on 'the elimination of all forms of forced and compulsory labour; Principle 4 dealing with the 'effective abolition of child labour; Principle 7 explains the precautionary approach to environmental challenges; and Principle 9 has taken 'initiatives to promote greater environmental responsibility [53].

Under this 'Compact' the process is voluntary, based on the idea that good practices should be rewarded by being publicized, and that they should be shared to promote mutual learning among businesses [53]. The corporations acceding to the 'compact' are to 'embrace, support, and enact, within their sphere of influence', and they should report annually to what extent they fulfilled to implement the compact principles into their operations. The 'compact' standards themselves explained that the initiative has been able to appeal to companies and governments from developing as well as industrialized states [18]. Even though the states' role is of a superficial nature in the development of the 'Compact' initiative, the corporate sector has been supportive of it.

4.4. Norms for the Responsibilities of Business Corporations

Despite the extensive work on framing an international regulation for 'business corporations' there remains a 'gap in understanding what the international community expects when it comes to human rights' [54]. Keeping view in correlating business and human rights, the United Nations Sub-Commission on the Promotion and Protection of Human Rights formulated a working group 'to conduct relevant background research concerning transnational corporations and human rights' and to draft a code of conduct for regulating business corporations [55]. The working group submitted the report to the Sub-commission in 2004 titled 'Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights' [56]. The Norms essentially sought to impose as binding

obligations on companies directly under international law the same range of duties that states have accepted for themselves: 'to promote, secure the fulfillment of, respect, ensure respect of, and protect human rights', with the only distinctions being that states would have 'primary' duties and companies would have 'secondary' duties, and that the duties of companies would take effect within their 'sphere of influence' [57].

The norms had mainly three distinctive characteristics. *First*, it unified and integrated principles articulated in international codes of conduct for transnational corporations and other business adopted by OECD, ILO, and World Health Organization (WHO) as well as Universal Declaration of Human Rights (1948), Rio-Declaration on Environment and Development (1992), the WHO Health for All Policy for the Twenty-first Century (1998), and the UN World Summit on Sustainable Development (2002) [58]. *Second*, the Norms are inspirational in the sense that they identify ideals of TNCs behavior rather than minimum standards of acceptable international conduct. In this sense the Norms parallel the UDHR in articulating ideal human rights standards [53]. *Third*, the drafter of the Norms claim that they are non-voluntary and thus that they are legally binding. The non-voluntary nature of the Norms is said to be reflected in the implementation provisions that require reporting and oversight [58] [56]. Despite the above said characteristics, the UN Sub-commission neither adopted the norms nor rejected it entirely, but the Sub-commission requested UN Secretary-General to appoint a Special Representative of the Secretary-General (SRSG) on the issue of 'business and human rights' [59]. The UN Secretary-General appointed Prof. John Ruggie as the UN Special Representative in 2005 with a three-part mandate regarding business and human rights. It includes:

'To identify and clarify standards of corporate responsibility and accountability for businesses and human rights; clarify the implications for businesses of concepts such as "complicity" and "sphere of influence"; develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises' [60].

The objective of the SRSG is to produce a policy framework for understanding the duties of the business corporations and other multinational enterprises regarding human rights. On the base of this objective the SRSG proposed a conceptual policy framework to the United Nations Human Rights Council in 2008. The framework is organized around the three foundational principles of "protect, respect and remedy" [38]. It holds that states have the primary duty to 'protect' against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; corporate responsibility to 'respect' human rights, which means to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur; and greater access to 'remedy' must be made available to victims of human rights abuses, both judicial and non-judicial [38].

The SRSGs proposed framework identifies the state duty to protect against human rights abuses by third parties including 'business corporations' and other

business enterprises. He recommended a variety of domestic policies to encourage respect for human rights by 'business corporations' and to hold them accountable for both domestic and non-domestic human rights violations [38]. It includes support for corporate cultures that respect human rights through sentencing practices to criminal liability and punishment; implementation of regulations that are applicable to 'business corporations' when operating outside their home nations; trade policy and human rights policy alignment; tightening the control of state-owned enterprises; and harmonizing the standards by implementing international cooperation [38].

In the second part of the framework SRSG highlighted the baseline responsibility to respect human rights, and it includes both in 'social expectation' and in 'prudential risk management' [38]. He added that 'failure to meet this responsibility can subject companies to the courts of public opinion – comprising employees, communities, consumers, civil society, as well as investors – and occasionally to charges in actual courts' [38]. He also emphasized that in order to discharge this responsibility, due diligence processes such as those carried out in support of financial transactions and legal compliance are required [55].

The third characteristic of the framework explains the 'access to remedy'. Prof. Ruggie opined that the state must provide 'mechanism to investigate, punish, and redress abuses' [38]. He also recommended that the 'business corporations and other multinational enterprises develop and deploy grievance mechanism cell for alleged human rights abuses [38].

Though the SRSGs proposal has been appraised by the UN Member States, international legal scholars, and NGO's around the world, but the criticism mainly focused on the distinction between a state 'duty' to protect and a business corporations 'responsibility' to respect. He failed to make a clear distinction between 'duty' of a state and 'responsibility' of a business corporation. States have moral and legal duty to protect human rights, and at the same time 'business corporations' should make sure about their responsibility against the human rights abuses [58].

The above said proposal of the SRSG subsequently endorsed by the UN Human Rights Council and on 18 June 2008 extended SRSGs mandate for three more years, requesting him to work on 'operationalize' and 'promote' the submitted proposal. The mandate mainly includes:

'Elaborate further on the scope and content of the corporate responsibility to respect all human rights and to provide concrete guidance to business and other stakeholders; identify, exchange and promote best practices and lessons learned on the issue of transnational corporations and other business enterprises, in cooperation with the efforts of the human rights working group of the Global Compact' [61].

On the basis of the above said mandate, on 22nd November 2010, the SRSG proposed draft 'Guiding Principles for the Implementation of the United Nations 'Protect, Respect and Remedy' framework. Basically, the 'guiding principles' normative contribution lies not in the creation of new international law obligations for the business corporations but in elaborating the implications of existing standards and practices for States and

Businesses. It also highlights integrating and correlating within a single, coherent and comprehensive template; and identifying and recognizing where the current system falls short and how it should be improved in a better way [62]. Each 'guiding principle' is accompanied by a short commentary, further clarifying its meaning and implications on the state, business corporations and an individual [62].

The draft 'guiding principle' is divided into Part 'A' and Part 'B'. Part 'A' further divided into four chapters, includes a very brief introduction followed by second chapter 'the state duty to protect human rights; third chapter 'the corporate responsibility to respect human rights'; and finally, fourth chapter 'access to remedy'. The four chapters explained in the form of 29 principles along with a brief commentary. Part B 'definition' explains the terminology explanations for the purpose of above said principles.

The 'guiding principles' are grounded in recognition of: *'States' primary role in promoting and protecting all human rights and fundamental freedoms, including with regard to the operations of business enterprise; The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and meet the societal expectation to not infringe on the human rights of others; The reality that rights and obligations have little meaning unless they are matched to appropriate end effective remedies when breached'* [62].

The above said 'guiding principles' receiving appreciation for extensive work of the UN Special Representative of the Secretary-General on Business and Human Rights, and also comments from the legal scholars, human rights NGO's, and international law practitioners as well. The Human Rights Law Centre (HRLRC) made some of the important suggestions to improve the 'draft guiding principles'. They commented on guiding principle 2, 5, 15 and 23. According to HRLRC, the 'guiding principle 2' should require states to regulate the human rights impact of corporations that are registered in the State's jurisdiction, including those corporations' human rights overseas [63]. Instead, the 'draft guiding principles' use the weaker language of states 'encouraging' business enterprises to respect human rights in their global operations and states that there is neither a requirement nor prohibition on states regulating corporation overseas [62]. The HRLRC recommended that 'the guiding principle should recognize and provide that States are required to regulate, including through legislation, the extra-territorial human rights impact of corporation domiciled within their territory or subject to their jurisdiction [63].

The Amnesty International observed that the draft 'guiding principle' include the strong statement that 'States must protect against business-related human rights abuses within their territory and/or jurisdiction' [64]. Amnesty International commented that the 'guiding principle' has not clearly stated corporate entities should be required to respect human rights. Instead, the draft 'guiding principle' often emphasizes that States should only require corporate respect for human rights "where appropriate", without elaborating what this is intended to mean. Yet, the requiring of corporate respect for human rights is an essential component often lacking in many

contexts, which inhibits accountability and can prevent human rights-holders from being able to obtain effective remedies [64].

Regarding 'guiding principle 15', the HRLRC argues, that 'states should require corporations to undertake human rights due diligence in their operations, including operations overseas. This arises from the state duty to protect as well as the responsibility to respect [63]. HRLRC recommended that the 'guiding principles' would read much more consistently internally, and better reflect international human rights principles and standards, if States were asked to require human rights due diligence of businesses, including through legislation [63].

According to the Amnesty International, the 'guiding principles' fail to specify that States should require private companies to undertake human rights due diligence, [64] which the SRSG emphasizes is an essential component of the corporate responsibility to respect human rights [62]. Corporate human rights due diligence is an important component in preventing corporate-related human rights abuses. Given that States may be in breach of their duty to protect, if they fail to take appropriate steps to prevent human rights abuses by business, States should require companies to undertake human rights due diligence [64].

Moreover, the draft 'guiding principle' only suggests that States guide private companies on human rights due diligence. This is entirely inadequate. The SRSG has stated, "the responsibility to respect the baseline expectation for all companies in all situations" and "to discharge the responsibility to respect requires due diligence", then it logically follows that all companies should carry out some level of human rights due diligence. As presently written, the draft Guiding Principles effectively make corporate human rights due diligence a voluntary tool for business [62].

Amnesty International recommends that 'despite proposing States guide private companies on human rights due diligence, the Draft Guiding Principles simultaneously indicate that State-owned or controlled entities should be required to undertake human rights due diligence "where appropriate". Legally and conceptually, there is no sound reason why private entities should thus not also be required to undertake human rights due diligence [64].

The requirement to provide an 'effective remedy' as part of a States obligations in relation to particular human rights is found in many human rights conventions, including under the ICCPR, [63,65] the International Convention on the Elimination of All Forms of Racial Discrimination [63,66] and the Convention on the Rights of the Child [63,67]. The Human Rights Committee has recognized the 'unqualified' right of victims to a remedy for breach of their human rights under international human rights instruments, including ICCPR [63]. The HRLRC commented on 'guiding principle 23' that the draft principles do not explicitly recognize the right to a remedy itself, which is the basis for the requirement of States to provide and ensure the utility these grievance mechanisms [63]. It recommended that the 'guiding principle' should explicitly state the existence of the right to a remedy. The 'guiding principles should reflect the potential resource and power disparities between parties in cases of corporate misconduct to ensure that the remedies are accessible and adapted to the vulnerability of claimants [63].

Moreover, in this regard the Amnesty International has commented that there is a lack of recognition of the right to an effective remedy; for a breach of duty of States to protect that right and the responsibility of corporate entities to respect the right [64]. The draft 'guiding principle' failed to reflect and address many of the circumstances and issues with which rights-holders are often faced [64]. Moreover, the draft 'guiding principles' neither recognizes nor provides guidance on overcoming the significant challenges often faced by rights-holders who are impoverished and face large imbalances in power, resources and information compared with corporate actors. Within the context of remedies, as elsewhere in the draft Guiding Principles, the role of home States is also significantly under-examined [64].

The HRLRC also made a recommendation for the 'continuation of the Work of the Special Representative. It advised that the work of the Special Representative must be consolidated and advanced through a Human Rights Council Mechanism, such as one or more special procedures. The new or revised mechanism should assess the implementation of 'guiding principles' and work with all relevant international and national bodies to continue to address gaps in governance and availability of remedies' [63].

Prof. Larry Cata Backer [68] appreciated SRSRs efforts to emphasize the central place of remedy to both the state duty to protect and corporate responsibility to respect human rights. He stated that the 'guiding principle 23' is written in a way that emphasizes the principle role of the state and the foundational importance of legal remedial frameworks in the context of human rights. However, he stressed that, it should not be forgotten that remedy is also critical to the autonomous operation of corporate responsibility [68]. Principle 23 should not be read to suggest that remedy is less central to the corporate responsibility than it is to the state duty to protect human rights or that it relates solely to the first pillar responsibility of states. He also added that, the development of the conceptual basis of the second pillar and its emphasis on the autonomy of the standards under which corporations may be held by its stakeholders suggests the importance of the corporate remedial responsibility [68]. This is picked up in Principles 13, 26, and 27 to which cross reference might usefully be made [68].

The UN Human Rights Council directed that the SRSR should "integrate a gender perspective throughout his work and to give special attention to persons belonging to vulnerable groups, in particular children" [60]. However, the draft 'guiding principles' provides no specific guidance in relation to protecting and respecting rights of children, nor is any clear guidance provided as to how States and corporate entities should address gender in the context of protecting human rights against corporate abuse [63]. The draft 'guiding principle' refers to women as one of several "marginalized and vulnerable" groups and propose without specificity that such groups may face particular human rights risks to be addressed [64].

There is no clear guidance provided about the rights of 'indigenous peoples' or 'human rights defenders. Given the significant and increasing risks faced by 'indigenous peoples' and 'human rights defenders' in the context of

many corporate activities, the 'guiding principles' should provide particular guidance for the effective protection of their human rights [63]. Such guidance should draw upon the recommendations contained in reports of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and the Special Rapporteur on the situation of human rights defenders, each of whom has released reports relevant to the protection of human rights in the context of corporate activity [63].

5. Conclusions

In this competitive world economy created by the globalization, it is tempting for every States and 'business corporations' to take a short-term view and to prioritize immediate profits and advantages. The States are always looking for the right investors for achieving the fast track development. It is true that, the 'business corporations' are the major source of investment and job creation. Factually, it is proved that it can make significant contributions to economic growth, reducing poverty in the host countries. Nonetheless, recent decades witnessed growing institutional misalignments such as human rights violations, lower compensation, harmful environmental pollution, unsafe working conditions, engage in bribery to host countries officials and politicians, harming indigenous people and ignoring host nation laws.

Much debate on 'corporate social responsibility and human rights' has been already taken place with 'zero' output. The legal scholars failed to identify what exactly the 'corporate social responsibility' means. Most of the legal literature trying to touch this area, but there is no proper identification for the corporate social responsibility and human rights. We can conclude that the corporate responsibility to respect human rights means acting with due diligence to avoid infringing on the rights of others and addressing harms that do occur. The term 'responsibility' rather than 'duty' is meant to indicate that respecting right is not currently an obligation that international human rights law generally imposes directly on corporations, although elements of it may be reflected in domestic laws. Hence, it is the Corporation's responsibility to protect and respect the human rights of an individual at work-place and surroundings.

Conflict of Interest Statement

The authors hereby declare that there is no conflict of interest.

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