BUSINESS AND HUMAN RIGHTS LAW & POLICY
2025, VOL. 1, NO. 1

Human Rights Due Diligence as a Tool to Prevent Human Rights Violation by TNCs: An Assessment of the Current Regulations

Joel Niyobuhungiro

PhD Candidate, University of Debrecen, Hungary. Email: joeljoe@mailbox.unideb.hu

ABSTRACT
This paper explores the role of Human Rights Due Diligence (HRDD) as a tool to prevent human rights violations by Transnational Corporations (TNCs). Despite their contributions to economic development, TNCs often engage in activities that undermine fundamental human rights. This study evaluates the effectiveness of HRDD frameworks, focusing on the UK Modern Slavery Act (2015) and the French Duty of Care Law (2017). The research compares these regulations in terms of scope, corporate compliance mechanisms, and overall impact on mitigating human rights violations. Findings reveal that while these frameworks provide foundational steps toward accountability, significant gaps persist, such as limited applicability to certain corporations and insufficient reporting standards. This paper highlights the need for internationally binding instruments to regulate TNCs comprehensively and improve human rights compliance.

KEYWORDS: Human Rights Due Diligence, Transnational Corporations, UK Modern Slavery Act, French Duty of Care Law, Human Rights Violations

1. Introduction

Business enterprises are one of the economic actors in development of every country given that they undertake some business activities which, in many ways, contribute hugely to economic development of the country. In the course of their business activities, business entities may operate activities within the scope of a country's territory as well as they can do so beyond jurisdictional territories of a country. Corporations whose business activities are operated in more than one country are often referred to as Multinational Enterprises (MNEs), Transnational Corporations (TNCs), Multinational Corporations (MNCs) depending on the jurisdiction and the nature of incorporation. However, for the purpose of this study preferential use will be placed upon transnational corporations (hereinafter referred to as TNCs).

It is incontrovertible that TNCs are significant players in economic development on a planetary scale. Nevertheless, they undeniably present adverse effects detrimental to human rights thereby violating human rights in the course of their business activities and this has prompted a global concern and focus especially for researchers and human rights advocates.[1]

Despite an increased number of accusations of human rights abuses by transnational corporations, it is safe to assert that holding TNCs responsible has not been easy due to the fact that national jurisdictions are either reluctant or they encounter difficulty in applying criminal sanctions to corporations.[2] The reason may be that applying criminal law to individual human agents is normally a more attractive enterprise. Interestingly however, many national laws have recently begun to address the corporation as the potential subject of criminal law.[3]

---

1 Europe-Third World Center (CETIM), *Transnational Corporations: Major Players in Human Rights Violations*, published on 15/12/2011. Available at https://www.cetim.ch/transnational-corporations-major-players-in-human-rights-violations/ Accessed on 11/11/2018.

2 C. Wells (BRASS and Cardiff Law School), *Multinational Corporations and Human Right*s, P2, Available at https://orca.cf.ac.uk/67402/1/cainthrCW0203.pdf Accessed on 11/11/2018.

3 *Ibid.*

In addition to that, international law requires the respect of human rights though some believe that it has a limited role in sanctioning or preventing human rights abuses.[4]

It is undeniable that TNCs infringe upon human rights but one may wonder how TNCs violate human rights. There are many ways the latter can violate human rights. To exemplify this, let us imagine a scenario where a mining company headquartered in state A is operating its activities in region called *SHAMBA* located in state B where this company has its branch. In the course of its mining activities, there happens a serious water pollution with lots of wastages and toxic products which adversely affect the lives of inhabitants of Shamba village many of whom fall sick and some even die subsequently. In this case, violation of human rights has occurred as it denied the victims the right to a healthy life and right to a clean environment.

Another example would be a case where a construction company (TNC) employs many day workers and refuses to pay them their salaries. In this case, violation of human right has occurred and the infringed right in this case is economic right. There are many pragmatic cases that have proved that corporations may violate human rights and the Bhopal case may serve as good example. The Bhopal case involved Union Carbide, a multinational corporation which has worldwide operations and the case arose when Union Carbide released lethal gas known as methyl isocyanate in Bhopal, a township situated in the state of Madya Pradesh, India.[5] The release caused death and injury from a chemical plant and subsequently resulted in the deaths of over 2,000 persons and injuries of over 200,000.[6]

Despite the fact that TNCs violate human right in many ways, they have no green light to do so. TNCs are subjected to duty to respect international human rights law (IHRL)[7] albeit human right violation by TNCs remains undisputable fact. Companies or business enterprises, as non-state actors, have the obligations to protect and promote human rights and today, these obligations are becoming more explicit in both theory and practice.[8]

Obligation of TNCs to respect human rights is not an odd in realm of human rights law. This may be corroborated by the fact that, for example, pursuant to the Universal Declaration of Human Rights (UDHR), every individual and every organ of society (including companies), is called to uphold and promote the principles contained in the UDHR.[9] According to legal scholars, the aforementioned obligation includes all persons and all legal entities such as

---

4 *Ibid.*

5 R. Kapur, *From Human Tragedy to Human Rights: Multinational Corporate Accountability for Human Rights Violations*, 10 B.C. Third World L.J. 1. Vol.10/iss1/2 (1990),P5. Available at http://lawdigitalcommons.bc.edu/twlj/ Accessed on 18/11/2018.

6 *Ibid.*

7 The obligation of TNCs as duty to respect Human Rights is recognized at global level as may be seen in United Nations Guiding Principles on Business and Human Rights as drafted by John Ruggie and endorsed by the Human Rights Council in 2011. These principles identify a minimum set of human rights instruments to be respected by business in all contexts in the spectrum of human rights such as the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights etc.

8 J. Silverman& A. Orsatti, *Holding Transnational Corporations Accountable For Human Rights Obligations: The Role Of Civil Society,* Social Watch, 2009, p1 available at http://socialwatch.org/node/812#_ftn5 accessed on11/11/2018.

9 See the Preamble of the Universal Declaration of Human Rights as proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (in General Assembly Resolution 217 A) as a common standard of achievements for all peoples and all nations. Downloadable at http://www.un.org/en/universal-declaration-human-rights/.

companies.[10] This requirement does equally align with the United Nations Guiding Principles (UNGPs) pillar 2 which entails that corporates have responsibility to respect human rights.[11]

As discussed earlier, the responsibility of business enterprises to respect human rights refers to internationally recognized human rights expressed in International Bill of Human Rights and the principles concerning fundamental rights set out in it the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.[12] Responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure.[13] Incredible role played by International law and organizations in setting the standard for human rights recognition and compliance is laudable. Nevertheless, policies implemented to safeguard human rights are not without criticism as these policies are failing to address this concern to the desired degree and these policies are not effective as they should be.[14]

Regarding the current international mechanism to hold TNCs liable for their actions of human right violation, it is worth reminding that holding TNCs to account would not occur in a legal vacuum. The appointment of Prof. John Ruggie in 2005 as the Special Representative of the UN Secretary General for Business and Human Rights has helped shape how to get multinational corporations to respect and protect human rights as his remarkable efforts led to the draft of United Nations Guiding Principles on Business and Human Rights.[15]

The UN guiding principles identify a minimum set of human rights instruments to be respected by businesses in all contexts of human rights law spectrum such as Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights etc. One may add the recent draft of legally binding instrument to regulate in international human rights law, the activities of transnational corporation and other business enterprises also known as Zero draft.[16]

As far as the importance of human right due diligence (HRDD) embedded in the said draft, which was later endorsed by the Human Rights Council in 2011, is concerned, the human rights due diligence process enables a company to systematically identify its human

---

10 J. Silverman& A. Orsatti, *Loc. Cit*.

11 Corporations' responsibility to respect human rights is under the pillar 2 one of the three pillars underlying the Guiding Principles. See UN "Protect, Respect and Remedy" Framework and Guiding Principles, Available at https://www.business-humanrights.org/en/un-secretary-generals-special-representative-on-business-human-rights/un-protect-respect-and-remedy-framework-and-guiding-principles Accessed 19/11/2018.

12 See UNGPs principle 12. See Also IFC Sustainability Framework and the UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy", p2. Available at https://www.ifc.org/wps/wcm/connect/.../UNGPsandIFC-SF-DRAFT.pdf?MOD. Accessed 20/11/2018.

13 See principle 14 of UNGPs.

14 L. Kronforst, Transnational Corporations and Human Rights Violations: Focus on Colombia, Wisconsin International Law Journal, 2006, p. 1, available at https://hosted.law.wisc.edu/wordpress/wilj/files/2012/02/tlustosch.pdf . Accessed 14 /11/2018.

15 United Nations Human Rights under the Office of High Commissioner, Holding business accountable for human rights abuses, Available at https://www.ohchr.org/EN/NewsEvents/Pages/HoldingbusinessaccountableHRabuses.aspx, accessed 19/2018.

16 A legally binding instrument to regulate, in international human rights law, the activities of transnational corporation and other business enterprises also known as Zero draft is yet to be signed and ratified by states. Like its name suggests, it is the latest draft as it was drafted in 2018 July. The rationale behind this draft may be the fact that there is a lack of a binding treaty that regulates business enterprises at planetary level yet the lack of a binding treaty is increasingly posing challenges equated with holding business enterprises responsible for violation of human rights given that UNGPs is not legally binding.

rights impacts and their costs whereby this realization can help companies move towards more socially responsible operating processes.[17] Human right violation by TNCs pose fresh challenges especially those pertaining to enforcement of Human right law by national courts in enforcing human rights law in the private sphere and difficulty in determining the effect that human rights have in private legal relationships are obstacles.[18] This challenge is also noticed in holding TNCs criminally liable owing to the fact that only a limited number of states have legislation that makes the attribution of criminal responsibility to legal entities possible.[19]

On similar note, responsibility under civil law is sometimes an empty exercise in case the company alleged to have violated human rights has no means to bear the costs of remediation and under the doctrine of corporate law in most jurisdictions, the owners of company are not liable for the damage the company causes (corporate veil).[20] Due to a wide scope of human rights in nature, it has been a hot debate as to the human right duties of private actors. However, as clearly put by J. Hazenberg, “It has been argued that TNCs violate human rights, assuming that at least some perfect human rights duties can be assigned to them, and that they have duties to protect and provide for human rights, assuming that special perfect human rights duties can be assigned to them”.[21]

Despite the aforementioned flaws equated with the standards to ensure compliance with duties of TNCs and imperfections in enforcement of human rights in national courts, TNCs are bound to respect human rights and to endeavor to protect them by possible means under what is famously known as “due diligence” which is a legal requirement in some jurisdictions.

Till date, few countries have specific and comprehensive Acts to regulate companies in the realm of due diligence insofar as duties of TNCs to respect and protect human rights are concerned. So far, these countries are namely United Kingdom (UK) and France under a UK modern slavery act and French law on duty of care respectively. This paper intends to look at these current two different regulations on Human Right due diligence (HRDD) and make a comparative analysis specifically on scope of human rights enshrined therein, scope of the companies concerned, method to induce compliance, effectiveness in preventing companies from human rights violation as well as guidance on how the report should be done. In a nutshell and simply put, this paper assesses these two current regulations as to the extent to which they induce companies to conduct Human Rights Due Diligence and how these regulations change the way companies observe Human Rights.

2. Methodology

This study employs a qualitative approach using comparative legal analysis to evaluate the effectiveness of two human rights due diligence frameworks: the UK Modern Slavery Act (2015) and the French Duty of Care Law (2017). By analysing legislative documents and related case studies, the research examines how these laws address corporate accountability and mitigate human rights violations. The analysis integrates the theoretical lens of the UN Guiding Principles on Business and Human Rights, focusing on the "Protect, Respect, and

---

17 See supra note 15.

18 S. Droubi, "Transnational Corporations and International Human Rights Law," Notre Dame Journal of International & Comparative Law: Vol. 6: Iss. 1, Article 9, 2016, p 2. Available at http://scholarship.law.nd.edu/ndjicl/vol6/iss1/9 accessed on 11/11/2018.

19 *Ibid.*

20 *Ibid*, p 3.

21 J. L. J. Hazenberg, Transnational Corporations and Human Rights Duties: Perfect and Imperfect, Published online: 7 July 2016, p. 7, available at https://link.springer.com/content/pdf/10.1007%2Fs12142-016-0417-3.pdf, accessed on 11th/11/2018.

Remedy" framework to assess the adequacy of these regulations. Furthermore, the study identifies strengths and limitations within the laws, drawing insights from their application in real-world contexts to propose recommendations for enhancing human rights compliance in corporate operations.

3. Human Rights Due Diligence

Human rights due diligence (HRDD) is under the operational principles and policy commitment by corporates to help the respect of human right, in the context of UNGPs, materialize. One may wonder what does corporate human rights due diligence signify? Well, Human rights due diligence denotes “a way for enterprises to proactively manage potential and actual adverse human rights impacts with which they are involved”.[22] HRDD refers to systems and programs for decision-making and business operations used by corporate leadership to ensure that they exercise due care appropriate for their positions and this comprises internal controls regarding human rights risks, and provides criteria based on which to evaluate whether or not corporate responsibility exists.[23]

Human rights due diligence contains four core components within itself. These are the following:[24]

(a) Identifying and assessing actual or potential adverse human rights impacts that the enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
(b) Integrating findings from impact assessments across relevant company processes and taking appropriate action according to its involvement in the impact;
(c) Tracking the effectiveness of measures and processes to address adverse human rights impacts in order to know if they are working;
(d) Communicating on how impacts are being addressed and showing stakeholders (in particular affected ones) that there are adequate policies and processes in place.

Generally, the cornerstone of UNGP is the respect of human rights by business enterprises. Thus, all principles enshrined therein aim at the respect of human rights. Therefore, it is indubitable truth that Human right due diligence has a significant role in materialization of objective sought by UNGPs. Insofar as the main purpose of human right due diligence (HRDD) is concerned, the prevention of adverse impacts on people is the main purpose of human rights due diligence as it concerns risks to people and not risks to business.[25] Regarding the importance, human rights due diligence process enables a company to systematically identify its human rights impacts and their costs whereby this realization can help companies move towards more socially responsible operating processes.[26] The Framework and UN Guiding Principles are anchored on three pillars within

---

[22] Office of the High Commissioner of Human Rights, “Corporate human rights due diligence – identifying and leveraging emerging practice” Available at https://www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDueDiligence.aspx Accessed on 20/11/2018.
[23] Japan Federation of Bar Associations, Guidance on Human Rights Due Diligence, 2015, p 33 Available at https://www.nichibenren.or.jp/library/en/document/data/150107_guidance.pdf accessed on 20/11/2018.
[24] Office of the High Commissioner of Human Rights, *Loc. Cit*.
[25] *Ibid.*
[26] See supra note 15.

which UNGPs are realized. Those pillars are the following:[27] Protect (pillar 1), Respect (pillar 2), Remedy (pillar 3).

Pillar 1(Protect) entails that state has duty to protect against human rights abuses by third parties, including business while the second pillar (Respect), holds that corporates have responsibility to respect human rights whereas the third pillar (Remedy) entails the need for a more effective access to remedies for the victims of corporate-related human rights abuses.[28]

It is worth analysing these pillars' framework in the context of UNGP. To begin with pillar 1(Protect), as seen above, it is founded on existing legal obligations and requires states to prevent, investigate, redress and punish human rights abuses by private actors. This pillar is made of 10 Guiding Principles:[29]

(a) Foundational Principles (contained in guiding principles 1-2),
(b) General state regulatory and policy functions (as contained in guiding principle 3),
(c) The state-business nexus (as contained in guiding principles 4-6),
(d) Supporting business respect for human rights in conflict affected areas (as contained in guiding principle 7),
(e) Ensuring policy coherence (principles 8-10).

On the other hand, with regard to Pillar 2 (Respect), the UNGPs provide, though implicitly, guidance (while the NAP provides a mechanism) for states on how to support business in fulfilling its responsibility to respect human rights, through a better use of 'soft' and 'hard' law measures aimed at making it practical for companies to undertake human rights due diligence.[30]

Regarding the Pillar 3 (Remedy), it also comprises of many guiding principles but the most relevant are:[31]

(a) Foundational Principles concerning Access to remedy (Guiding principle 25);
(b) State-based judicial mechanisms (guiding principle 26);
(c) State-based non-judicial grievance mechanisms (Guiding Principle 27) and
(d) Effectiveness criteria for non-judicial grievance mechanisms (guiding principle 31)

In the context of achieving a better human rights due diligence, UNGPs recommend business enterprises to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts and this process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses and communicating how impacts are addressed.[32] In addition to that, Human rights due diligence:[33]

---

[27] See UN "Protect, Respect and Remedy" Framework and Guiding Principles, Available at https://www.business-humanrights.org/en/un-secretary-generals-special-representative-on-business-human-rights/un-protect-respect-and-remedy-framework-and-guiding-principles, accessed 19/11/2018.

[28] European Parliament (Policy Department), Implementation of the UN Guiding Principles on Business and Human Right, 2017, p 19. Available at www.europarl.europa.eu/RegData/etudes/STUD/.../EXPO_STU(2017)578031_EN.pdf, accessed 19/11/2018.

[29] See the details of the content therein in UNGPs. Although pillar 1 (Protect) seems to be exclusively addressed to states, it does not preclude states from other pillars. All three pillars, especially protect and remedy require states to undertake a number of measures that ensure that business enterprises do not violate human rights and that effective remedies are available in cases of their violation

[30] European Parliament (Policy Department, *Loc.Cit*., p 20.

[31] For details about other related guiding principles see the UNGPs.

[32] For example, see Principle 17(1).

[33] *Ibid.*

(a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
(b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
(c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

Since human rights risks are business enterprise's potential adverse human rights impacts these potential impacts should be addressed through prevention or mitigation whereas the actual impacts i.e. the impacts that have already occurred, should be a subject for remediation.[34] From this, it can be inferred that the actual impacts (those that have already occurred) to human rights will submit business enterprises to remedy reflected under pillar 3.This is in accordance with the provision of principle 22 which states that: "*Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes*".

Business enterprise may identify potential impacts and actual impacts through due diligence or other means. However, where a business enterprise identifies such a situation, whether through its human rights due diligence process or other means, the responsibility to respect human rights will still require active engagement in remediation either by itself or in cooperation with other actors.[35]

4. UK Modern Slavery Act and French Law on Duty of Care

As seen introductory part discussed earlier, in United Kingdom (UK) and the Republic of France, Human Right Due Diligence does not exist in legal vacuum. Currently, United Kingdom and France are the countries which have adopted specific comprehensive regulations insofar as Human Right Due Diligence is concerned. These regulations of UK and France are UK Modern Slavery Act 2015 and The French Act on the duty of care 2017 respectively. This part analyses these two acts with the purpose to see how Human Right Due Diligence is ensured and if the respect of human rights in that particular context materializes.

4.1. UK Modern Slavery Act 2015

UK is one of few countries that have pioneered the move of unprecedented step to initiate a comprehensive legislation in realm of duties of companies to respect human rights under due diligence. This initiative is corroborated by the adoption of UK modern Slavery Act of 2015. But what is this Act about? Here as quoted EcoVadis:

"*The UK modern slavery act is one of the most far- reaching pieces of legislation in the world addressing issues of modern slavery. It consolidates current slavery and human trafficking offences, and introduces new preventive measures, support systems and a regulatory body. The modern slavery Act includes new measures including trafficking reparation orders which encourage to use seized assets to compensate victims and prevention*

[34] UN Human Rights (under the Office of the High Commissioner*), the Implementing the United Nations "Protect, Respect and Remedy" Framework,* HR/PUB/11/04. New York and Geneva, 2011, P.23. Available at *https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf,* accessed on 20/11/2018.
[35] *Ibid*. p. 29.

orders to ensure that those who pose a risk of committing modern slavery offences cannot work in relevant fields, such as with children and gang masters"[36]

The UK Modern Slavery Act is the first piece of UK legislation focusing on the prevention and prosecution of modern slavery and the protection of victims. After much debate, the government included a provision on transparency in supply chains, which came into force in October 2015.[37] Modern slavery Act is comprehensive as it tackles not on business entities but also others. In regard to companies and human rights however, the relevant part of the Act is section 54 entitled "transparency in supply chain etc."

Regarding the annual statement as obligation of the targeted companies, the UK modern slavery act stipulates that company must publish an annual statement if it has sales of more than £36 million and if some or all of its businesses is in the UK.[38] Furthermore, the concerned company must confirm the steps taken to ensure slavery and human trafficking are absent from the business and supply chain or they must declare that no steps have been taken.[39] It is obvious that under the UK modern slavery Act, companies have obligation to avoid activities that amount to slavery and human trafficking. Interestingly, not only are companies required to confirm the steps taken to ensure the absence of slavery and human trafficking in their businesses and supply chain they are also required to declare that no steps have been taken.

The rationale behind the aforementioned obligations of the companies is undoubtedly equated with the global concern in growth of modern slavery globally as the International Labour Organization (ILO) estimates that 21 million people in the world are victims of forced labour and that this number is driven by profits of USD 150 billion generated every year with this practice.[40] Therefore, this may serve as response to this challenge. Since it is a global concern however, all states should take the UK move and take regulatory measures to combat human rights violations by companies.

As awareness grows, businesses are under pressure to tackle the crisis of modern slavery and this might be because, to some extent, modern slavery represents a significant reputational risk to businesses in case non-governmental organizations, the media and even community, in general, name and shame the companies which violate human rights.[41] Understandably, if a company indulges itself in modern slavery related acts thereby violating human rights, it should so at its own peril as it runs a very huge reputational risks which may even adversely affect its business interests following the exposure of its reputation through "name and shame" especially when done by media and non-governmental organization.

---

[36] EcoVadis, *UK Modern Slavery Act,* available at https://www.ecovadis.com/us/uk-modern-slavery-act/, accessed on 15/11/2018.

[37] The Guardian, The UK's New Slavery Laws Explained: What Do They Mean for Business? Article by Annie Kelly on Mon 14 Dec 2015. Available at https://www.theguardian.com/sustainable-business/2015/dec/14/modern-slavery-act-explained-business-responsibility-supply-chain, accessed on 20/11/2018.

[38] EcoVadis, *Loc.cit*.

[39] *Ibid.*

[40] The Guardian, *Loc.cit.*

[41] Ernst & Young (EY) *The UK Modern Slavery Act 2015,* p1. Available at https://www.ey.com/...uk-modern-slavery-act.../ey-the-uk-modern-slavery-act-2015, accessed on 15/11/2018.

It is worth noting that not every company is targeted by this Act. There is a scope of companies over which the Act is applicable. Broadly speaking, business will be obligated under the Act if it fulfils the following four conditions:[42]

1. It is a commercial organization;
2. It has a global turnover of over £36M;
3. It carries on a business, or part of a business, in any part of the United Kingdom;
4. It supplies goods or services

In a nutshell, a business has to comply with the Act if it meets the two main criteria as laid down in the UK Modern Slavery Act 2015. The criteria of targeted companies are that a company must have a Global turnover of over £36M and carries on a business or part of a business, in any part of the United Kingdom.[43] The concerned entities are the companies seen earlier which are obligated to publish a 'slavery and human trafficking Statement' for each financial year, disclosing the steps they have taken to ensure that slavery and human trafficking is not taking place in their own operations and supply chains (or a Statement stating that they have not taken such steps).[44]

The Statement must be approved by the Board of the company, signed by Director (or equivalent) and prominently linked on the company's homepage.[45] The Act highlights six areas that companies could consider covering in their Statements:[46]

(a) The organization's structure, its business and its supply chains;
(b) Its policies in relation to slavery and human trafficking;
(c) Its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
(d) the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
(e) its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;
(f) The training about slavery and human trafficking available to its staff.

To ensure the effectiveness and validity of the statement of slavery and human trafficking, the statement must be approved by relevant persons according to the type of the corporate. According to the Act, the statement should be approved as follow:

(a) if the organisation is a body corporate other than a limited liability partnership, must be approved by the board of directors (or equivalent management body) and signed by a director (or equivalent);
(b) if the organisation is a limited liability partnership, must be approved by the members and signed by a designated member;
(c) if the organisation is a limited partnership registered under the Limited Partnerships Act 1907, must be signed by a general partner;
(d) if the organisation is any other kind of partnership, must be signed by a partner.

---

[42] PWC, Responsible Business: What are Companies Doing to Respond to The Modern Slavery Act? p. 2, available at https://www.pwc.co.uk/services/sustainability-climate-change/sustainability-strategy-support/supply-chain/the-modern-slavery-act.html accessed on 20/11/2018.
[43] For details see the Section 54(2) of the UK Modern Slavery Act 2015.
[44] See supra note 43.
[45] *Ibid.*
[46] See part 6. Section 54(5): Transparency in Supply Chains etc.

4.2. French Law on Duty of Care

France has not lagged behind in as far as special legislation on companies' duty of care is concerned in efforts to prevent human rights violations by business companies. Historically, it was not until 21 February 2017 when France finally adopted the Act 2017-399 (Act on the duty of care) which was later published in French official journal.[47] French Act on the duty of care or Law on duty of care recognises the due diligence known in French as "*plan de vigilance*" which, in English, translates to 'vigilance plan'.

In the context of prevention of human right violation by companies within the scope of the Act, as far as due diligence is concerned, the French Act on duty of care recognised it under vigilance plan. It targets parent and controlling companies of MNEs which are headquartered or registered in France and are above a certain size and it obligates them to establish and implement a 'vigilance plan' (plan de vigilance). Vigilance plan must contain due diligence measures to identify and prevent potential human rights abuses, human health and safety risks and environmental damages. Importantly, if a company neglects to effectively draft and/or implement a vigilance plan, a court can impose fines and order compliance.[48]

Something laudable about French Act on the duty of care is that the Act does not only prevent human rights abuses it also provides the courts with capacity to hold MNEs liable for any damage to humans or the environment arising from the failure to draft and implement a vigilance plan. This is a fascinating step taken to not only prevent but also to provide justice where damage has occurred. This is evidenced by the fact that French Act has incorporated some of the commercial code provisions, more importantly article L225-102-5, pertaining to courts' power to hold MNE liable in tort law cases[49]. Obviously, this is in line with pillar 3 (remedy)since it creates an opportunity for victims of business abuse to obtain remedy and this interlinkage of human rights due diligence and access to justice should be praised in view of the difficulties victims regularly face when suing MNEs.[50]

Like the UK Act, the French duty of care law provides a duty of care as an obligation of vigilance (*devoir de vigilance*) as set out in the duty of care law. As far as the scope is concerned, the aforementioned obligation applies, as matter of conditions, to:[51]

1. Companies incorporated or registered in France for two consecutive fiscal years
2. Companies that either employ at least 5,000 people themselves and through their French subsidiaries, or employ at least 10,000 people themselves and through their subsidiaries located in France and abroad.

Regarding how duty of care must be implemented, the French duty of care law, is threefold: *elaboration, disclosure* and *effective implementation of a 'vigilance plan'* (plan de

---

[47] See *Loi No. 2017-399 du 27 Mars 2017 Relative au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d'ordre*. Available at https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id, accessed on 20/11/2017

[48] See Virginie Rouas, *Access to Justice and the new French Act on the Duty of Care: Main Opportunities and Challenges for Plaintiffs,* Cambridge Core blog, on 6 November 2018 (last updated 13/11/2018) available at http://blog.journals.cambridge.org/2018/11/06/access-to-justice-and-the-new-french-act-on-the-duty-of-care-main-opportunities-and-challenges-for-plaintiffs/, accessed on 20/11/2018

[49] See article 4 of the French Act on Duty of Care 2017.

[50] Virginie Rouas, *Op.Cit*.

[51] S. COSSART et. Al., *The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All,* Business and Human Rights Journal, Volume 2, Issue2, 2017, p.4. Available at https://doi.org/10.1017/bhj.2017.14 or at https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/french-law-on-duty-of-care-a-historic-step-towards-making-globalization-work-for-all/7C85F4E2B2F7DD1E1397FC8EFCFE9BDD/core-reader# .

vigilance).[52] According to article 1, the vigilance plan may be drafted in association with stakeholders or within multi-party initiatives and it must include reasonable vigilance measures to adequately identify risks and prevent serious violations of human rights and fundamental freedoms, risks and serious harms to health and safety and the environment.[53]

As to what must contain vigilance measures, the French Act provides five vigilance measures: a mapping that identifies, analyses and ranks risks; procedures assessing the situation of certain subsidiaries, subcontractors or suppliers; actions to prevent and mitigate risks and serious harms; an alert mechanism; and a monitoring scheme to follow-up on the plan's implementation and efficiency of measures.[54] The duty of care has to cover risks and serious harms that derive from the parent and subcontracting companies' activities, the activities of companies it controls directly or indirectly and further down the supply chain, the activities of its subcontractors and suppliers with which the company maintains an established commercial relationship.[55]

5. Can UK Modern Slavery Act and French Duty of Care Law Change the Way TNCs Observe Human Rights?

After an in-depth analysis of UK Modern Slavery Act of 2015 and French Duty of Care Law of 2017, it is now worth assessing whether these Acts may change the way TNCs observe human rights. The efforts made by UK and French legislatures deserve an acknowledgement. It is fair to say that these Acts may have impact on the way TNCs observe human rights. There are reasons why these Acts may impact TNCs.

Firstly, the nature of UK Modern Slavery Act and French Duty of Care (vigilance plan) say an important thing to TNCs targeted therein. These Acts contain binding provisions of which non-compliance by concerned corporates, entails imposition of sanctions upon them. Generally, it is known that some of the rationale behind sanction is to teach (correct) and deter. From this, it can be inferred that after the sanctions imposed to companies for failing to comply with due diligence, corporate will try to avoid recidivism of non-compliance thereby understand the seriousness and importance of respect of human rights. For example, French vigilance plan enables courts to hold MNEs liable in tort law for any damage to humans or the environment arising from the failure to draft and implement a vigilance plan.[56]

Secondarily, pursuant to UK Act for example, secretary of state may issue guidance on duties imposed on commercial organizations and the provision about the kind of information which may be included in a slavery and human trafficking statement by publishing it.[57] This will, no doubt, generate a wide understanding on human rights because not all commercial organizations understand the depth of human rights. Furthermore, since many of violations of human rights constitute crime and or civil torts pursuant to the two Acts, it can change the way TNCs observe human rights by realizing that human rights are equally enforceable. Therefore, TNCs will take more precautionary and preventive measures to better uphold the respect of human rights pursuant to the obligations enshrined in the two Acts under discussion.

Thirdly, the scope of application of these two Acts is another talking point as to whether they may impact on the way TNCs observe human rights. Given the extended territorial scope

---

[52] See note 1, Para 3 of the Article 1 Loi No. 2017-399, du 27 Mars 2017 Relative au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d'Ordre.
[53] *Ibid.*
[54] *Ibid*, art 1, paras 4–9.
[55] S. COSSART et. al.,*Op.Cit*.
[56] See Article L225-102-5 as incorporated in Art 4. of French vigilance plan
[57] See Part 6: Section 54 (9), 10) Transparency in Supply chains etc.in UK Modern Slavery Act.

of application of these two Acts as they apply to business entities regardless, for example, whether they operate locally or outside the country. This will also help concerned corporates inquire about and analyse any situation that may lead to violation of human rights not only through its mere subsidiaries but also the entire supply chains.

From the above analytical lens, it is safe to say that both the UK Act on Modern Slavery 2015 and French Vigilance Plan 2017 have played a tremendous role in the modern regulation of human rights violations by business enterprises (TNCs). It is more likely than not that these two Acts will influence the way TNCs observe human rights since the failure to do so, will lead them to criminal sanctions and civil sanctions such as tort liabilities as earlier seen.

6. Conclusion

There is a little doubt, if not at all, that business enterprises contribute to development of the country's business undertakings. Corporations whose business activities are operated within more than one jurisdiction are referred to as Multinational Enterprises (MNEs), Transnational Corporations (TNCs), Multinational Corporations (MNCs) depending on the jurisdiction and its nature of incorporation. Despite their contribution to economic development, TNCs jeopardize human rights in the course of their business undertakings and this has been, and it is still, a challenge given that until now there is no specific legally binding instrument to hold TNCs to account for human rights abuses. Nevertheless, the lack of this instrument does not signify that TNCs have green rights for human rights violations.

It has been found that TNCs, as organs of community, have duty to respect all internationally recognized human rights as substantiated by UDHR (for example see its preamble) and UNGPs under pillar 2 (Respect) failure of which shall amount to corporates' liability pursuant to UNGPs as the current mechanism. To better materialize, UNGPs provides guidance to help states and corporates respect human rights under due diligence (HRDD) process. HRDD is anchored upon three pillars i.e. Protect, respect and remedy. The spirit is to maintain the momentum within human rights protection whereby these pillars, as objective, envisage for prevention of corporates' adverse impacts on people. HRDD enables companies to systematically identify their human rights impacts and their costs where this realization can help companies move towards a more socially responsible and operating processes.

Despite its non-binding nature, UNGPs have gained a momentum as some corporates are already abiding by the guidance set forth therein. Some countries, although not yet many, have taken unprecedented step to legislate duty of care of company insofar as HRDD is concerned. The UK and France have adopted Modern Slavery Act 2015 and Duty of Care (Vigilance Plan) 2017 respectively. It has come to the researcher's notice that the UK Modern Slavery Act and French Duty of Care law play significant role in human rights protection. These regulations are the trailblazing legislative efforts that deserve more than a mere mention. Therefore, other states should follow the trend, particularly, for the sake of human rights. Although these Acts present some legal flaws, especially on the fact that neither do they target all corporates nor do they provide standard to be followed by companies, there is no doubt that they will play a significant role in helping concerned companies fulfil their duty to respect human rights contemplated in UNGPs pillar 2.

Another thing worth of a mention is, for example, the fact that French Duty of Care does not only have preventive approach it also gives opportunity to victims to have access to justice in sense that courts are enabled to hold MNEs liable, in tort law, for any damage to humans or the environment arising from the failure to draft and implement a vigilance plan.

UK modern slavery Act and French Duty of Care law continue to play a key role in prevention of human right violation by business entities through the obligation of due diligence

imposed upon corporates within the scope of those two Laws. In bid to help the concerned corporates comply with the obligation of due diligence, the two Acts provide guidance and areas or specific matters to include in the statement that companies have to report/publish on annual basis. These Acts also provide victims, who suffered human rights abuses by business entities, with right to access to justice and this right is enforceable through judicial mechanism.

In spite of the efforts made by legislators from both jurisdictions (UK and France) throughout the two regulations discussed, these Acts present some weaknesses. First, regarding the statement of human rights due diligence as an obligation imposed upon the corporates, these regulations do not provide standards as to how the report should be. There is likelihood that the reports/statements published or declared are not 100% accurate given that companies might not either have expertise in reporting or not have different understanding of human rights. Furthermore, the Acts provide corporates with some areas to tackle on while preparing their statements yet these areas might not cover all international human rights.

Second, the research highlighted a weakness pertaining to the scope of application. These two regulations target specific corporates i.e. they do not target all business entities yet human rights may be violated by any business enterprise regardless their size as to how much the annual turnover is. Thus, this is still a challenge in human rights sphere where business entities are involved in human rights abuses.

As for the recommendations, the first recommendation concerns the legislators of both the UK and France that for a better and robust prevention of human right violations and successful respect of human rights through HRDD, should extend the scope of application such that the obligation imposed on business entities should apply to all business corporations capable of committing human right violations and should tackle on all areas of human rights.

The second recommendation concerns UN. To maintain the spirit of the UN guiding principles on business and human rights and the rationale thereof, there should be an international legally binding instrument to regulate TNCs in realm of human rights protection. This is because the existing zero draft is not legally binding. Thus, neither does it bind states nor does it legally bind TNCs.

Bibliography

C. Wells (BRASS and Cardiff Law School), Multinational Corporations and Human Rights, Available at https://orca.cf.ac.uk/67402/1/cainthrCW0203.pdf.

EcoVadis, UK Modern Slavery Act, available at https://www.ecovadis.com/us/uk-modern-slavery-act/.

European Parliament (Policy Department), Implementation of the UN Guiding Principles on Business and Human Right, 2017. Available at www.europarl.europa.eu/RegData/etudes/STUD/.../EXPO_STU(2017)578031_EN.pdf.

Europe-Third World Center (CETIM), Transnational Corporations: Major Players in Human Rights Violations, published on 15/12/2011. Available at https://www.cetim.ch/transnational-corporations-major-players-in-human-rights-violations/.

Ernst & Young (EY) The UK Modern Slavery Act 2015, Available at https://www.ey.com/...uk-modern-slavery-act.../ey-the-uk-modern-slavery-act-2015.

International Finance Corporation (IFC), Sustainability Framework and the UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy”, Available at https://www.ifc.org/wps/wcm/connect/.../UNGPsandIFC-SF-DRAFT.pdf?MOD.

Japan Federation of Bar Associations, Guidance on Human Rights Due Diligence, 2015, Available at https://www.nichibenren.or.jp/library/en/document/data/150107_guidance.pdf.

J. J. Hazenberg, Transnational Corporations and Human Rights Duties: Perfect and Imperfect, Published online: 7 July 2016, P7. Available at https://link.springer.com/content/pdf/10.1007%2Fs12142-016-0417-3.pdf.

J. Silverman& A. Orsatti, Holding Transnational Corporations Accountable for Human Rights Obligations: The Role of Civil Society, Social Watch, 2009, available at http://socialwatch.org/node/812#_ftn5.

L. Kronforst, Transnational Corporations and Human Rights Violations: Focus on Colombia, Wisconsin International Law Journal, 2006, P 1. Available at https://hosted.law.wisc.edu/wordpress/wilj/files/2012/02/tlustosch.pdf.

Loi No. 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre, available at https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id.

Office of the High Commissioner of Human Rights, “Corporate human rights due diligence – identifying and leveraging emerging practice” Available at https://www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDueDiligence.aspx.

R. Kapur, From Human Tragedy to Human Rights: Multinational Corporate Accountability for Human Rights Violations, 10 B.C. Third World L.J. 1. Vol10/iss1/2 (1990), Available at http://lawdigitalcommons.bc.edu/twlj/.

S. COSSART et. Al., the French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All, Business and Human Rights Journal, Volume 2, Issue2, 2017. Available at https://doi.org/10.1017/bhj.2017.14.

S. Droubi, "Transnational Corporations and International Human Rights Law," Notre Dame Journal of International & Comparative Law: Vol. 6: Iss. 1, Article 9, 2016, Available at http://scholarship.law.nd.edu/ndjicl/vol6/iss1/9.

The Guardian, The UK's New Slavery Laws Explained: What Do They Mean for Business? Article by Annie Kelly published on Mon 14 Dec 2015. Available at https://www.theguardian.com/sustainable-business/2015/dec/14/modern-slavery-act-explained-business-responsibility-supply-chain.

UN "Protect, Respect and Remedy" Framework and Guiding Principles, Available at https://www.business-humanrights.org/en/un-secretary-generals-special-representative-on-business-human-rights/un-protect-respect-and-remedy-framework-and-guiding-principles.

United Nation Guiding Principles on Business and Human Rights, a draft of John Ruggie endorsed by the Human Rights Council in 2011.

United Nations Human Rights under the Office of High Commissioner, Holding business accountable for human rights abuses, Available at https://www.ohchr.org/EN/NewsEvents/Pages/HoldingbusinessaccountableHRabuses.aspx.

Universal Declaration of Human Rights (UDHR), as proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (in General Assembly Resolution 217 A) as a common standard of achievements for all peoples and all nations. Downloadable http://www.un.org/en/universal-declaration-human-rights/.

Virginie Rouas, Access to Justice and the new French Act on the Duty of Care: Main Opportunities and Challenges for Plaintiffs, Cambridge Core blog, on 6 November 2018 (last updated 13/11/2018) available at http://blog.journals.cambridge.org/2018/11/06/access-to-justice-and-the-new-french-act-on-the-duty-of-care-main-opportunities-and-challenges-for-plaintiffs/.

--This page is intentionally left blank--