

MULTINATIONAL CORPORATIONS INVOLVED IN RIGHT ABUSES IN CAMEROON

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Introduction

Multinational corporations operating in diverse and different fields across Cameroon have emerged as those leading in human rights violations. This article provides insights about the right abuses of multinational corporations in Cameroon. At the core, it presents the current state of human rights abuses by MNCs across Cameroon. It comprehensively discusses the rights of MNCs and those of Cameroonians as a result of foreign direct investments. Notably, this work covers the rights of MNCs under international law, their duty to comply with local rights, their duty to protect human rights, the concern to protect the rights of Cameroonians and the relevance of Foreign Direct Investment to Cameroonians. Besides, this article goes further to present the nature and characteristics of rights violated by MNCs in Cameroon. It constitutes the prevailing rights abuses by MNCs in Cameroon with specific abuses recorded by various human rights agencies. The truth of this is that, there are judicial decisions which help us give an interpretation of such abuses by MNCs in Cameroon and the focused rights abuses are economic rights which duel on the sectorial focused of these MNCs. It should be stated that these violations are against national and international law. Additionally, it is observed that the preponderance of these violations takes into consideration the rights of vulnerable communities in Cameroon. Also, the scope of rights violated extent to social rights in different communities which these MNCs either operate or have their branches. This article has equally examined the adherence obligation to satisfy FDI with legal accountability and it is the function of both domestic and international organs to ensure that these MNCs are accountable. This article has an analysis of the impact of noncompliance with human rights in Cameroon by MNCs because of the increasing amount of rights violations in this area that has attracted the attention of the research.

1. The Establishment of rights under International Human Rights law against MNCs

To start with, under international law, MNCs do have legal personality. Cameroonian MNCs are subjects of both international and national law. They possess international rights and duties and are legally empowered to initiate international human rights claims. Therefore, MNCs as persons with legal personality in Cameroon have rights, legal obligations under national and international law. The various branches of law here are international law, international human rights law and international investment law which govern and regulate their investments. The various MNCs operating in Cameroon in the environmental sector are regulated by international environmental law and international human rights law. It should be stated that because of the authority of MNCs in Cameroon in the economic and social sector, criminal law equally governs their activities. The point is made that MNCs in Cameroon do harm right claims as they damage the environment and commit other wrongs. Besides, the principal reason why using international human rights law to hold these foreign investors accountable is because Cameroonian law is not sufficient in ensuring investors

accountability especially MNCs. It is their obligations which they violate which our study aims at checking in the private sector in Cameroon. It has to be said that exercising control over the activities of MNCs is very critical for accountability.¹

Additionally, this article further makes the point that, since MNCs actively participate in investments in Cameroon, under Cameroonian investment law and arbitration law, Cameroonian MNCs are empowered with legal personality particularly in the area of human rights and investments protecting their rights, claims and interests. This protection is found in some provisions of the investment laws enacted by Cameroon protecting investments and investors as incentives to foreign direct investments. In Cameroon, the courts in their decisions have recognized these rights granted to foreign companies under specific laws especially under human rights law when rights are violated. The point should be equally made that Cameroonians are not excluded from claiming rights against foreign companies as they are empowered to use judicial options when their rights are abused. Such claims usually emanate from the investment laws of Cameroon, criminal laws or human rights laws. The protection of MNCs and Cameroonians regarding investments in Cameroon is the affirmation of granting MNCs legal personality. These rights granted by local and international law include rights to respect the corporations operating offices, branches, products and other business operations within Cameroon. The view that Cameroonian MNCs have legal personality is to prevent them from right abuses and empower Cameroonians to claim their rights against MNCs regarding investment or business rights. Cameroonian investment law is most flexible through investments reason why foreign companies are highly protected.

2. The Duty to Comply with International Human Rights Law by MNCs in Cameroon.

Constructed on subsisting legal grounds, the duty to comply provides an obligation towards the fulfilment of human rights. Though authors like Antonio Cassese argue that these MNCs poses no international rights and duties because most states do not grant them global recognition.² The duty is required in the realm of accountability to empower Cameroonians hold MNCs accountable. Besides, the UN sub commission on the promotion and protection of human rights has decided that MNCs should have obligations. In 2003, the norms on the responsibilities of transnational corporations and other business Enterprises with regards to human rights was adopted.³ The above rules are a decisive approach to codify guidelines that MNCs in Cameroon must adhere to in the area of human rights, labour rights, environmental regulation, consumer rights and the prevention of bribery and corruption while investing in Cameroon. It should be known that as a soft legislation under international law, these norms are a driving force to hold MNCs in Cameroon accountable. Imposing these obligations on MNCs in Cameroon through the domestication of legislation is imposing binding measures on foreign business regarding their operational work. Besides, it should be noted that under international law, the general rule under the doctrine of corporate responsibility in international criminal law is that companies are responsible for their wrong acts.⁴ Another law

¹ Jan Wouters & Anna Louise Chane" Multinational Corporations in International Law, working paper No 129-December 2013. Updated version February 2015.

² Wolfgang Friedmann: "The Changing Structure of International Law" (1964) 230

³ Responsibilities of transnational Corporations and other business enterprises with regards to human rights, sub commission on the promotion and protection of human rights resolution 2003/1613, August 2003.

⁴ Menno T. Kamminga:" Corporate Obligations Under International Law".

which impose obligations of compliance on MNCs in Cameroon is the ILO Convention on Forced Labour which obliges contracting parties to take measures and mechanisms to end forced labour in their operations.⁵ In order to achieve the vision and spirit behind this convention, Cameroon must ensure that MNCs operating in Cameroon take appropriate measures to adhere to this international law position. But this is not the case in Cameroon as some MNCs like banks have not successfully implemented such.⁶ It has been observed that a great number of multilateral treaties directly impose compliance obligations on MNCs in Cameroon and these MNCs in Cameroon cannot avoid them since doing so will create a human right abuse gap if these MNCs are not held accountable. Powerful MNC operating in Cameroon will become more powerful at the expense of Cameroonians and to avoid such wanton abuses, MNCs who make huge financial gains in Cameroon and abuse rights should be accountable.

Notably, Cameroon as a host nation needs foreign direct investments to compete with other states across Africa and to fulfil the obligations of a state. The actions of none state agents like MNCs in Cameroon are fundamentally responsible for development and globalization. It is therefore our view that holding foreign companies to comply with human rights is to ensure that human rights are not threatened by powerful corporations like those below. Cameroon is a destination for investment located between two major economic communities in Africa which are CEMAC and ECOWAS (CEMAC, Economic community of Central Africa States).⁷ Cameroon can be described as a major investment portfolio contributor for MNCs located between two major economic blocs in Africa. From the above, it can be stated that Cameroon is a heaven for foreign direct investments because the country has abundant natural resources which is unexplored or exploited. These resources in Cameroon have attracted various MNCs in various sectors. Since Cameroon has a good business climate with these resources, Cameroon underwent a legal reformation in 2013 revising and amending her investments laws as an improved incentive for foreign direct investments in Cameroon. Cameroonian laws facilitate private investments in Cameroon with fiscal exemptions and other advantages for more than a decade. It should be said that, it is because of these legal advantages that has propelled foreign investors to invest in Cameroon. These foreign corporations operating in Cameroon are mostly in the mineral and extractive sector like cement coming from France and Switzerland. There are foreign cement corporations from Morocco, Nigeria and Turkey. In Cameroon, Dangote cement is a foreign company from Nigeria with Turkey's Medeen and Morocco's Cimaf.⁸ In 2013, about 50% of the total crude oil produced by Cameroons National Hydrocarbons Corporation SNH was purchased by three Swiss trading companies. A Spanish oil corporation named Cepsa was the leading purchaser of Cameroons oil from SNH. Swiss traders Glencore, Gunvor and Vitol bought half of the crude sold by SNH in 2013. The sales resulted of about \$600 million, equal to 12 percent of 2013 state income.

In 2013 Glencore bought four cargos from SNH, resulting in payments of around \$400 million. This to Glencore in 2013 was the company's turnover of \$233 billion in 2013 which was greater than Cameroons entire GDP in 2012. From the above, it can be said that FDI in

⁵ Art 1. (1) Convention on Forced Labour: (1930): Each State which ratifies this ILO Convention will take measures to end the use of forced Labour or compulsory Labour in all its forms within the shortest period.

⁶ Cameroon-United States Department of State: 'Cameroon's 2022 human rights report, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/Cameroon/>

⁷ Business in Cameroon" Discovering Multinationals that thrive in Cameroon", July-August 2019/NO77-7

⁸ Brice R. Mbodiam "Cameroon, The opportunity land for multinationals". July-August 2019/NO77-7

Cameroon create opportunities for the MNCs and Cameroonians as many advantages are provided to Cameroonians. But it should be said that if MNCs in the mineral sector in Cameroon do not comply with human rights and the natural resource rights of Cameroonians, there will be huge destruction carried out in most communities in Cameroon by the above MNCs. It is therefore the primary responsibility of corporations to comply with human rights as they act as agents of Foreign Direct Investments.

3 The Duty to Cooperate in the Protecting of Human Rights by MNCs in Cameroon.

The third session of the UN Human Rights Council's open ended intergovernmental working group on Transnational corporations and other Business Enterprises with respect to human rights adopted the terms of Resolution 26/9 of June 26, 2014. The working group had an assigned mission to work on a global binding rights legislation to govern international human rights law, the activities of transnational corporations and other business enterprises.⁹ Such a legislation in soft form aims at protecting members of host nations against human rights violations committed by multinational corporations and access to judicial services for victims of rights abuses. It should be noted that, it is the duty of MNCs in Cameroon to cooperate in the respect of the obligations contained in the above legislation. However, this is not the case in Cameroon. Many MNCs in various communities in Cameroon deprive the people of their rights as multinational companies monopolize their resources and do not cooperate in the respect or protection of human rights. These communities should under the duty to cooperate be able to demand justice and relief granted to the victims of such abuses. In Cameroon, many communities are deprived of land, drinking water or their land is polluted without these communities getting substantial justice. The livelihoods of indigenous people in Cameroon are affected by the actions of MNCs as workers are exploited, there are cases of expulsion of locals in their own communities and there is equally environmental pollution as seen in the case of Herakles Farm. It should be stated that MNCs can be prosecuted for human rights violations but not in an international Tribunal.

Therefore, the possibility to cooperate in the protection of human rights by MNCs in Cameroon has been made an obligation and it is open for Cameroonians to seek legal redress in courts to punish MNCs and their branches or parent companies for violations occasioned against individuals or communities. It is therefore the duty of Cameroon to ensure the protection of her people against MNCs and their activities for the numerous MNCs investing in Cameroon. The absence of the duty to cooperate will be very risky for victims of rights abuses in Cameroon if abuses occur in communities and the perpetrators are not brought to justice. Accordingly, per the law No 2002/004 of 19th April 2002 instituting the investment Charter of the Republic of Cameroon amended by Law No 2004/020 of 22nd July 2004, it is the fundamental mission of the state shall be notably to administer the nation ensure the exercise of justice and guarantee the safety of persons and their property.¹⁰

4 The Concern for Rights Protection in Cameroon and the relevance of FDI

⁹ Apollin Koagne Zouapet: "A binding instrument for multinationals and human rights" why and how Africa must enagae. 01 Nov 2014, Center for the environment and Development.

¹⁰ Section 8 Law No 2002/004 of 19th April 2002 instituting the investment Charter of the Republic of Cameroon amended by Law No 2004/020 of 22nd July 2004

Several human rights conventions and charters offer specific provisions and impose duties on MNCs to respect, protect, promote and fulfil human rights in Cameroon. This comprises both negative and positive duties on MNCs in Cameroon. The state has a duty to protect companies involve in natural resource exploration including gas, oil and minerals in Africa.¹¹ The duty to protect against the violation of rights by non-state actors (which includes corporations) has been developed by the African Rights Commission in a few important decisions. The Commission's decisions show that states may be compelled to take legislative, administrative and judicial measures. Specific obligations which the Commission has found rest upon states include the undertaking to prosecute, investigate, regulate, provide relief, ensure participation by citizens, monitor, and establish independent oversight bodies. Corporation through its obligational duty to protect would be compelled as part of fulfilling this responsibility to impose obligations upon themselves to play their part in realizing fundamental rights. An alternative way in which the Charter impose duties upon corporations is that these rights should apply in a direct horizontal manner to corporations. The African Charter's express recognition that individuals have duties as well as rights and other features of the African context may well strengthen the argument that corporations ought to be held directly accountable for their human rights violations by regional enforcement mechanisms.¹² There is nothing in the Charter that prevents such a reading; instead, it is argued that the Charter's spirit of unity, collectivism and intensified co-operation in the continent gives merit to such an interpretation. Consideration of the work of the Commission reveals little normative and practical work having been done in the field of corporate obligations for the realization of fundamental rights under the African Charter. Given the potential of the provisions in the Charter, it is hoped that this will shift in the near future as the Commission has begun a project involving a study of the liability of non-state actors.

The contributions of global trade have greatly led to the flow of FDI from the western nations to countries in Africa via the operations of MNCs. In Cameroon, the availability of opportunities attracts MNCs.¹³ It is discovered that, MNCs are more realistic at the micro level than at the macro level in Cameroon. These MNCs have contributed largely for poverty reduction in the area of economic concentration through FDI. Studies equally reveal that MNCs significantly contributed in the recovery of the economy of Cameroon during the period of 1994 to 2003.¹⁴ The contributions of MNCs to the GDP of Cameroon cannot be over emphasized.¹⁵ It is argued that Cameroons lucrative market economy is a positive drive for MNCs that have grown across the country. These foreign Direct Investment greatly contribute to the wide spread of resources mobilized by the country. Various indices have shown that

¹¹ Scott Martin, Joseph Kibugu: "A baseline assessment on business and human rights in Africa" From the First Decade to the next. UNDP 2022

¹² The State Duty to protect, corporate obligations and Extra-territorial Application in the African Regional Human Rights System. The South African Institute for Advanced Constitutional, Public, human Rights and International Law, 17 February 2010.

¹³ Kingsley Awang Ollong: "The Implication of Multinational corporations in poverty Eradication in Cameroon", International Journal of Information Communication Technologies and Human Development, 7(4),14-38, October-December 2015.

¹⁴ Bang (2009) A study of Foreign Direct Investment in Cameroon submitted to KDI School of public Policy and Management in partial fulfilment of the requirements for the degree of masters of business administration

¹⁵ Njimanted Godfrey Forgha, Joseph Tosam Ngong and Nembo Kedju: "Multinational activities and Economic growth in Cameroon", Journal of Economics and International Business Management Vol. 4(4), PP49-57, September 2016 ISSN.2384-7328 Research paper.

multinationals contribute to the economic performance of the economy in Cameroon. In 2018, Dangote Group published the outcome of its 2017 financial operations indicating that Cameroon was in the top three ranked African markets with the highest growth in records of sales of Dangote cement. About 22 million tons of cement were sold in 2017 and Cameroon was the largest producer of the commodity in Sub-Saharan Africa.¹⁶ In a way to promote economic performance in Cameroon, the government in fulfillment with global institutions like the World Trade Organization (WTO), The International Monetary Fund (IMF) and the World Bank put in place measures which guarantee the basic rules and regulations of economic, monetary and trade in Cameroon. Cameroon equally enacted a regime on investments from the 90s which are the 1990 investment code which was governed by ordinance NO80/1/ of 28 January 1990 relating to the Free Zone regime in Cameroon as ratified by Law No 90/23 of 10 August 1990 and Ordinance No 90/7 of 8 November 1990 and its following revisions aimed at encouraging investments in Cameroon. Cameroon has enacted her investment laws aimed at building a competitive and prosperous economy by attracting investments to attain economic and social objectives for the country.¹⁷

Who is an investor in Cameroon? According to Law No 2002/004 of 19th April 2002 instituting the investment Charter of the Republic of Cameroon amended by Law No 2004/020 of 22nd July 2004, section 3 of this legislation sees an investor as any individual or corporate body of Cameroonian or foreign nationality, resident or nonresident, whose activity involves acquiring assets with a view of earning interest. Cameroon enacted law No 2013/004 of 18 April to lay down private investment incentives in the Republic of Cameroon. Accordingly, section 1(1) is applicable to foreign natural or legal persons, whether or not established in Cameroon, conducting business therein or holding shares in Cameroonian companies with an aim at encouraging private investments and boosting national production in Cameroon. Common investment incentives for companies under this law are provided under section 4, sections 5, 6, 7, 8, 9, 10, 11, and 12. One major realization of foreign Direct Investments in Cameroon is the Cameroon oil pipeline which runs to Chad. The investment owned by a US investment has been termed one of the largest US investments in sub-Saharan Africa co-owned by US Company Exxon and Chevron. This company has shares of over 65% of American investments in Cameroon. The presence of multinational businesses in Cameroon can be seen with French businesses in Cameroon in the area of exports of pharmaceuticals. French business in the domain of pharmaceuticals compose about 70% of the domestic market size in Cameroon. France has more than 110 French branch companies in Cameroon with a labour force of about 30,000 people. Moreover, businesses from South Africa, Morocco and India are increasing their involvement in Cameroon's economy. MNCs through FDI have influenced the life of Cameroon both economically and socially.¹⁸ It should be noted that, Cameroon has always experienced major economic and social changes in international trade because she is receptive to FDI. MNCs in Cameroon play principally the

¹⁶ Business in Cameroon: "Cameroon among top 3 African countries where Dangote cement sales grew in 2017", July August 2019/No 77-78.

¹⁷ Section 2 Law No 2002/004 of 19th April 2002 instituting the investment Charter of the Republic of Cameroon amended by Law No 2004/020 of 22nd July 2004

¹⁸ Greer and Singh, (2000) A brief history of transnational companies published by Global Policy Forum.

role of GDP per capital, infrastructure development, return on investment on capital, openness of the economy and political stability.¹⁹

Cameroon's wealth development can be said to be greatly contributed by FDI through the operations of MNCs. FDI has impacted the economic performance of Cameroon and acted to the advancement of the economy than other economic considerations of economic performance in Cameroon.²⁰ Since FDI have created many opportunities in Cameroon, one legal factor which makes investment possible in Cameroon is the country's signatory of the New York Convention on the Recognition and Enforcement of International Arbitral Awards to set up the International Settlement of Investment Disputes (ICSID). According to Law No 2013/004 of 18 April to lay down private investment incentives in the republic of Cameroon, it empowers Cameroon to be part to bilateral and multilateral agreements which guarantee investments. Cameroon is equally a party of the Seoul Convention creating the multilateral investment Guarantee Agency (MIGA) aimed at settling non-business risks.²¹ Cameroon belongs to the African organization for the harmonization of business laws (OHADA). OHADA has formulated business laws in member states which regulate investments activities. These investment and business laws enacted by Cameroon is expected to boost investment especially FDI. Cameroon is equally a member of CEMAC and has ratified the CEMAC Investment Charter. The CEMAC Investment legislation is the general framework involving all the measures aimed at ameliorating the institutional, fiscal and financial environment of enterprises so as to promote growth and diversify the economies of CEMAC member states.²² Cameroon as a CEMAC member state is required to ensure the promotion of legal and judicial security and the strengthening of the rule of law. The community court of justice which Cameroon is a member is equally empowered to ensure the respect of the rights and obligations that arise from the treaty. Cameroon is obliged to implement the procedures and decisions of the court of justice and of arbitration of CEMAC while adopting OHADA legislation and judicial decisions emanating from the rules and provisions of OHADA ratified treaty. Cameroon under the Regulation No 17/99/CEMAC-020-CM-03 is required to train judges to handle commercial matters and possibly, get some courts specialize in commercial litigation. These courts are tasked to properly ensure the enforcement of court decisions in member states and Cameroon is mandated to encourage to take recourse of the procedure of arbitration and to ensure the application of arbitral awards. Cameroon is required under the above cited regulation to reduce administrative procedures and bottlenecks and provide investors with every data required for the speedy processing of relevant documents needed for their operations. Cameroon has been mandated to put in place mechanism for the reception, information and concealing for the investors and for facilitating the creation and approval of businesses. Cameroon is required to provide equal treatment to foreign business-like national businesses. The CEMAC regulation clearly obliges foreign investors in Cameroon to avoid any action or practices which are likely to harm the interest of the host nation.²³ Under section 9 of No 2013/004 of 18 April to lay down private investment incentives in the republic of

¹⁹ Bang (2009) A study of Foreign Direct Investment in Cameroon submitted to KDI School of public Policy and Management in partial fulfilment of the requirements for the degree of masters of business administration.

²⁰ Forgha (2009). Foreign Direct Investment and Economic performance in Cameroon, *Int.Rev. Bus. Red* 5(1)55-69

²¹ Section 11

²² Regulation No 17/99/CEMAC-020-CM-03- Meeting of 17th December 1999.

²³ Item 9, Regulation No 17/99/CEMAC-020-CM-03- Meeting of 17th December 1999

Cameroon, MNCs are bound to conduct business with due concern for the interest and health of consumers and users. They are equally bound by morality precepts and the judicial application of the rules of ethics inherent in every trade. Per the general principles and basic rights, under section 10 of same law, it provides that the state shall guarantee each natural person or corporate body duly established or desirous of establishing in Cameroon and observing the specific rules applicable to their economic activity.

5 Specific Abuses by MNCs in Cameroon through FDI

Cameroon has recorded numerous cases of business operations with MNCs that have harmed human rights with the Cameroonian authorities unwilling to intervene. Foreign companies operating in Cameroon are alleged to be among those that cause or contribute to violations of labor and health standards. According to a report by the Business and Human Rights Resource Centre, about 181 human rights allegations were linked to Chinese investment in Africa between 2013 and 2020 Cameroon inclusive. Furthermore, while beneficial, investments are often seen as allowing foreign investors to reap the bulk of the gains local communities often suffer damaging consequences in local communities in Cameroon.

These cases are a clear proof that human rights are abused by multinational corporations as a result of Foreign Direct Investments in Cameroon. In the human rights violation paradigm, we have the case against Glencore for business rights abuses in Cameroon.²⁴ In this case, Glencore pleaded guilty to a massive count implicating the company for a corrupt scheme in exploiting oil and gas in Cameroon. In fact, the charge was that “between 1 March 2012 to 1 March 2015 Glencore paid the sum EUR 10.532,712 an amount being bribe and corruption of officials of Société Nationale des Hydrocarbures and the Société National Raffinage (“SNH” and” SNR”) in Cameroon. These are Cameroons National Oil and Gas and oil refinery companies respectively.

A major problem in the Glencore case is the absence of the rights attached to the rights of Cameroonians and the unlawful interference in the natural resources of the Cameroonian state in an unfair way. Glencore in this case failed to respect the rights of Cameroonians as beneficiaries of proceeds of their resources which is provided under the Cameroon constitution. It has been argued that when MNCs companies expand, they forget the notion of human rights which are fundamental for growth.²⁵ The company failed to play it role as a MNC in promoting the economic rights of Cameroonians as they rather created more negative economic problems and right abuses. It should be noted that the actions of Glencore are against the African Convention on the Conservation of Nature and National Resources and the African Union Convention in preventing and combatting corruption 2003. The African Union Convention against Corruption actively promotes good governance in business including explicitly corruption against MNCS.²⁶ The right of economic prosperity of the Cameroonians through the use of their natural resources was not promoted by Glencore. The lack of the promotion of the economic prosperous rights of the Cameroonian people which was

²⁴ Serious Fraud Office V. Glencore (2022) EWCR 1.

²⁵ Leslie. Ewule Lifafe:” Human Rights and Transnational Corporations. A nexus with sustainable Development in Cameroon”. Commonwealth Law Review Journal/ Annual Volume 9, The Law Brigade Publishers (2023)

²⁶ Ekhaton, E.O.(20018), Regulating the Activities of Multinational Corporations in Nigeria: A case for the African Union? International Community Law Review, 20(1); pp.30-68

sanctioned is enough to justify that MCCs do not recognize nor promote business rights in Cameroon.

Oil exploitation and distribution needs the protection of the rights of the oil producing community through benefits enjoyed by all Cameroonians. The activities of Glencore can be criticized for lack of the will to adequately respect the rights of Cameroonians under the constitution of Cameroon and the African Charter. Both the constitution of Cameroon and the African charter on human and people's rights calls for the promotion and protection of human rights by individuals and incorporated business. The company did not only violate socio economic rights in Cameroon but across Africa which can be sanctioned by the Africa Charter which Cameroon human rights law is part of or the Charter being a core part of Cameroonian substantive rights law. Cameroon signed the African Charter such that its rights can protect Cameroonians. The activities of Glencore in Cameroon were equally against provisions contained in the binding instrument on business and human rights in Africa which has implications on the right to development in Africa. It should be noted that the right to development of Cameroonians through their natural resources is inalienable. Within the African and Cameroonian rights system, the people's rights to development remains one of the vital guarantees which businesses must protect and respect.²⁷

The judicial decision against Glencore regulating and controlling their activities in Cameroon which violated economic rights in Cameroon expressly brings out the obligations of incorporated businesses like MNCs in protecting and respecting human rights. It should be noted that African states and Cameroon in particular are obliged under Article 1 of the African Charter to promote, respect and fulfil the rights embedded in the Charter. The case of Glencore against Cameroon shows the nexus between human rights and corporate liability as decided by the British court. This case clearly establishes the economic and developmental rights violations by Glencore. It is one of the cases against MNCs in Cameroon which highlight issues of human rights, corporate liability and the role played by MNCs to under development. If the natural resources of Cameroon are property of the Cameroonian people as contained in Article 16 of the African Charter are not properly managed, the question to be answered is whether Glencore was responsible in ensuring that the Cameroonian people attain economic prosperity with their oil resources as required by the African Commission working Group on Extractive industries Human rights and Environment. Even though the court did not expressly hold that Glencore violated economic rights, the corporate liability of the company against Cameroon and certain state agencies like SNR and SONARA are clear violations of the Cameroon constitution and the African Charter.

This decision implicating two Cameroonian entities SNH and SONARA clearly show that Glencore with these companies failed in protecting and respecting the rights of Cameroonians by engaging in corrupt activities. It should be noted that it is the responsibility of company managers and corporations not to act or engage in acts which contribute and damage the rights of Cameroonians. These companies did not observe the rights of Cameroonians by acting under the constitution and the African Charter. This further explains the fact that most MNCs in Cameroon do violate rights in complicity with state agencies while dealing with the natural resources in an unsatisfactory manner. Holding Glencore accountable goes to prove that

²⁷ Tamo Atabongawung: "A legally-binding instrument on business and human rights: Implications for the right to development in Africa". African Human Rights Law Journal ISSN 1996-2096, Afr.hum.rights law j. vol21 n.1 Pretoria 2021

economic rights violation in an undesirable way must be changed for Cameroon's development. The decision to hold Glencore accountable is commendable. This decision is classical in checking the economic losses suffered by the activities of Glencore which could be avoided if the company did not involve in such abuses but obeyed the rights in the UN and AU adopted conventions against corruption. These two conventions prevent the hazardous practices of corruption especially from multinational companies involved in global investments.

Corruption is one of the many ills affecting states in Africa. The Glencore scandal involving bribery and inducement of state officials to realize it had access to the natural resources in an unfair manner is very unlawful. Endemic corruption in Cameroon in the private sector has undermined the right to development of the Cameroonian people. It should be noted that MNCs are members of the sector or domain which control the economies of countries particularly the development resources in private possession under the regulation and control of the state. Glencore clearly violated article 4(1)(e) and (f) of the AU convention on corruption with corrupt offences which are against Cameroonian laws. The Glencore case in Cameroon is similar to the *Halliburton* case where the company was claimed to have bribed Nigerian government agents to influence the award of the contract for the Liquefied Natural Gas plant in Nigeria.²⁸

The Herakles farms case in Cameroon is another case of a MNC which involved in human rights violations. The company engaged in mass illegal land acquisition which affected the inhabitants and communities in N'dian Division in South West Region.²⁹ The facts of the case are that, the company set up the Fabe palm nursery through their subsidiary SGSOG (SG Sustainable Oil Cameroon). After the nursery was set up, a judge issued a prohibitory order in August 2011 stopping the activities of the nursery but Herakles Farm continued working. It must be noted here that Cameroonian laws were abused by the company when a Mudemba court order stopping their operations by the local community was equally violated. The farm failed to obtain an operating license according to Article 7 of the law governing grants conditions for plantations in Cameroon.³⁰ In the case, a series of rights were violated ranging from economic, environment, land rights, social rights and property rights. It should be noted that the failure to protect biodiversity in the area violated the African convention on the conservation of nature and natural resources.³¹ The environmental rights violated saw the land containing protected rare habitat and species under the Biodiversity Convention destroyed. These animals were elephants, chimpanzees and aquatic species. The area equally served as a natural environment for medicinal plants for the local communities. The environmental destruction of the area propelled by the quest to promote palm plantation across the South West Region is what most rights defenders have termed as one of the globe's top 25 critical areas for biodiversity conservation. The company was found guilty of illegal logging following documentary evidence from officials of the ministry of forests and wildlife. Here

²⁸ John Rudolf, Albert Stanley, "former Halliburton Exec, sentenced in Bribery scheme"; Huffington Post, 2 December 2012.

²⁹ Greenpeace: "Herakles Farms in Cameroon, a showcase in bad palm oil production". Version 1.1, Updated 03/05/2013 Published 2013 by Green Peace USA.

³⁰ Decree No 76-166 of April 1976 to establish the terms and conditions of management of national lands, land grants in the "natural" domain in excess of 50 hectares require a presidential decree.

³¹ Algiers Convention adopted in 1968 under the OAU and came into force in 16th June 1969. (African Convention on the Conservation of Nature and Natural Resources), Revised in July 2003.

we see a complete disregard of Cameroonian laws and its institutions being the presidential decree, the laws of operations and the court order.

It should be stated here that civilian rights were abused by the company when locals attempted to resist the company they were arrested and tortured as the Worlds Organization Against Torture (OMCT) and the international Federation for human Rights (FIDH) condemned the torture.³² Sometime around 2012, Cameroonian right defenders who belonged to the group Struggle to Economize our Future Environment (SEFE) organized a harmless and peaceful demonstration against Herakles Farms were arrested and held under unlawful custody for a long period without an indictment.³³

Another environmental law and environmental right violation on behalf of Herakles Farm was the absence of an environmental and Impact Assessment (ESIA). This strict condition is contained in the revised African convention on the conservation of nature and natural resources revised in 2003. The revised law equally deals with other environmental rights and principles like the right to a sustainable and satisfactory environment in Article 3 of the convention which the company failed to protect. Cameroon could be blamed for violating Article 2 and Article XIV(2)(b) of the convention which provides that Cameroon should ensure that her policies, plans, programs, strategies, projects and activities likely to affect natural resources, ecosystems and the environment in general are subject of an adequate impact assessment at the earliest possible stage and that regular environment monitoring and audit are conducted. Failing to enforce the provision of this convention by Cameroon led to the abuse of most environmental rights in Cameroon by Herakles Farm which had direct consequences on the local community. Here we find the failure of state responsibility in enforcing her own laws including the polluter pay principle which Herakles Farm violated under International Environmental Law. Their activities were a threat to the livelihood of villagers and farmers in Mudemba.³⁴ The American MNC commenced operations after confiscating the farm lands of farmers without adequate measures for land compensation. The point is made that, International Finance Corporation (IFC) performance requirements used in Palm Oil plantations by Herakles Farm were very poor. The project breached many requirements such as not setting limitations, fixing the amount of greenhouse gas emissions.

In the Herakles Farm case, a Cameroonian and International NGO opposed the project citing illegality.³⁵ The two local NGOs, the Center for Environment and Development (CED) and Réseau de Lutte Contre la faim (Relufa) established the conventions both under national and international law which the company abused.³⁶ The unlawful cutting down of trees was equally blamed on Herakles Farm. The company failed to uphold the requirements and its RSPO principles and criteria as well as International Financial Corporation (IFC), performance Standards.³⁷ The company did not ensure that it promote the use of sustainable oil palm products that follow regulations fixed by global norms. They did not prevent deforestation and peat land clearance. The company was accused of habitat destruction

³² (<https://www.omct.org/human-rights-defenders-/urgent-intervention/Cameroon/2012/11/d22048/>)

³³ Save Wildlife Conservation Fund (2012) Greenpeace International(2012b)

³⁴ Government Of Cameroon/SGSOC/ (2009), Oakland, Institute (2012b) from 900.

³⁵ Linder et al, (2012), Greenpeace International (2012) Oakland Institute(2012a). Two

³⁶ CED (2012)

³⁷ Herakles Farms Website; News: September 6th 2012' <https://heraklesfarm.com/news.html>

through land grabbing from the locals while equally emitting millions of tons of carbon and it equally failed in her environment standards.

In this case, it is observed that the American company imposed its approach of development in Cameroon without legal consent from the Cameroonian people and when the locals resisted the behavior of the company since the actions of the company affected their community, the leaders were unlawfully arrested. From the above, it has been demonstrated that the company did engage in damaging environmental practices as their mode of operations were brutal and environmental unfriendly. It is noted that Article 1 of the RTD Declaration adopted by the UN General Assembly on 04th December 1986 attributes the right to development as inalienable which individuals and communities do enjoy. The above right to development goes with Agenda 2030 for sustainable development.³⁸ The failure of Glencore and Herakles Farm to uphold the developmental rights towards actualization of sustainable growth or progress in Cameroon during the time when their activities violated these community rights is not only against international human rights but the violations of the African Charter on Human and Peoples Rights which Cameroon is a signatory.

The environmental violations towards the right of development through foreign direct investment by Transnational Corporations did not profit these Cameroonian communities economically. These rights violation occurred affecting the development of the people of Mudemba and Herakles Farm was unaccountable through substantive justice. The failure of the Cameroonian government through judicial efforts in holding these two giant corporations accountable is either because they brought foreign direct investment to Cameroon or because they were business from powerful states like the USA. As argued by Atabongawung, the activities of corporate bodies as investment agents do have consequences on people and communities when the corporations act without ethical corporate behavior. From the above cases, it is strongly argued that, some of the negative impacts of foreign direct investment in Cameroon is that it leads to human rights abuses thereby creating lesser economic development and less rights development since these corporations do not fulfil or manifest a conduct to promote and protect these rights. It is observed from the above cases foreign direct investment efforts did not protect, promote or respect human rights especially the right to development which is an inalienable human right.³⁹ MNCs are legal persons and as legal entities, in terms rights, corporations could be held accountable for substantive right abuses and violations under national and international law. It should be stated here that rights like the right to fair trial applies to incorporated businesses which are part of the Cameroonian society. This therefore means that corporations operating across Cameroon can appear in court for human rights violations. In the above cases, the corporate duty to respect human rights was violated by Herakles Farm and Glencore.

Article 29(1) of the Universal Declaration of Human Rights provides the communal obligations for development which individuals and corporate bodies are obliged to observe. However, this is not what was observed in the activities of Glencore and Herakles Farm in Cameroon. It should be added that Article 30 of same declaration obliges individuals and companies not to involve in destructive activities that violates the rights in Article 29. The activities of Glencore and Herakles far affected Cameroonians in the paradigm of sustainable

³⁸ T. Atabongawung: "A legally binding instrument on business and human rights; implications for the right to development in Africa" (2021)21 African Human Rights Law 262-289

³⁹ A Sengupta: "On the theory and practice of the right to development". (2004) 24 Human Rights Quarterly 846

rights abuses through FDI. Glencore and Herakles Farm being right holders were unlawful in their actions. They failed in their community responsibility. Besides, the African Charter on Human and Peoples Rights states that "All people shall have the right to their economic development with due regard to their freedom, and identity and in the equal enjoyment of the common heritage of mankind.... The point to note here is that African states have the duty individually and collectively to ensure the exercise the right to development according to Article 22 of the African Charter. Article 21 of the African Charter talks about the utilization of the wealth and natural resources in the exclusive interest of the African people. Article 22 is read with Article 24 of the same Charter as was held in the case of *Social and Economic Rights Action Centre (SERAC) & Another v. Nigeria*.⁴⁰

This Cameroonian experience is similar to other countries across the African continent. In the Democratic Republic of the Congo more than 80 MNCs across the globe have been implicated in the illegal exploitation of natural resources in Cameroon just like Herakles Farm and American company. The companies across Africa that violate human rights are involved in Forest Resources, Gold, Palm Oil, Manganese, Colbath, Platinum, Uranium, Manganese, Oil and Gas.⁴¹

One problem identified here is that, the absence of efforts to adequately hold MNCs accountable for human rights contraventions is a core challenge in Cameroon and across Africa. Many victims like in the Herakles case will never have access to justice if there is no will by the Cameroonian authorities to hold these corporations accountable.⁴² In the matter against Anvil Mining, a company incorporated in Canada and was operating in the DRC, the company was accused in a United Nations report after rights abuses were observed, it was found that the company was responsible for rape, torture, killings, unlawful Seizure of property, unlawful arrests etc. Despite the fact that litigation proceedings were instituted in both the DRC and Canada, these claims were held to be inadmissible.⁴³ This was same in the case of *Okpabi & Others v. Royal Dutch Shell*, wherein, the court did not admit the tortious claims against Royal Dutch Shell company.⁴⁴ Even though, the claims were inadmissible, the point is made that these multination corporations can be sued at home and abroad. It should be noted that in the Glencore and Herakles cases both MNCs could be sued where they were incorporated.

However, in the case litigated by the African Commission between the *Democratic Republic of the Congo v. Burundi, and Uganda*, it was held that the deprivation of the right of the development of the people of the DRC to freely dispose of their wealth and natural resources is a right violation, rights which are guaranteed under Article 22 of the African Charter.⁴⁵ In the *Zambian case of Vendanta Resources Plc & Another v. Lungowe & Others*, Zambians

⁴⁰ (2001) AHRLR 60 (ACHPR) (2001) SERAC

⁴¹ The institute of West-Asia and Africa Studies of the Chinese Academy of Social Sciences and John Kennedy School of Government, Harvard University. M Forstate et al "Corporate Responsibility in African Development" October 2010,9.

⁴² JP Mujiyambere: (2017)," The status of access to effective remedies by victims of human rights violations committed by Multinational Corporations in the African Union members states". 5 Groningen Journal of International Law 256.

⁴³ Global Witness: (2007)," Military Court of Appeal succumbs to political Interference in Kilwa trial".

⁴⁴ *Okpabi & Others v. Royal Dutch Shell Plc* (2021) UKSC3, UK Supreme Court Judgment.

⁴⁵ *Democratic Republic of the Congo v. Burundi, Rwanda and Uganda* (2004) AHRLR 19(ACHLR 2003); *Dr Congo v. Burundi, Rwanda and Uganda* decided at the 33rd Ordinary session May 2003, 20th Activity Report.

collectively brought a class action representing their community regarding environmental gasses from the Nchanga Copper Mine.⁴⁶ These cases demonstrate that Cameroonians may bring actions against MNCs at home or abroad especially those who suffer harm through human right violations as a result of FDI. It is provided by international and national human rights law that; Cameroonian communities may delegate power to particular persons to sue MNCs on their behalf in a structured and recognized legal manner when their community properties are destroyed. However, this may not happen when such power does not reside with those delegated or if the power is withdrawn. The above view is contained in Article 9.1 of the Third Draft African Convention on business rights which provides that matters of substantive abuses regarding human rights which are initiated in courts vested with such powers to litigate will upon initiation either by victims or their representative in action be heard an action delivered. This Article further states that where the matter is initiated, the laws governing the issues raise in such claims either alleging acts or omissions will be the laws of the competent jurisdiction where the matter is initiated.

Conclusion

Conclusively, it can be argued that in their unwavering quest to explore the resources inside the territorial space of Cameroon, multinational corporations have not successfully made positive change in respecting human rights while impacting the lives of Cameroonians than have they violated the rights of Cameroonians. A majority of Cameroonians who are poor, deprived and underprivileged are challenged by these abuses on a daily basis. It should be understood that the myriad of challenges faced by most communities as a result of the ills of multinational corporations need urgent solutions. It is believe that it becomes hard for communities to survive with these violations. Besides, the development and prosperity of these communities cannot be achieved since these corporations have not empowered the people nor there is accountability to show by these corporations more importantly the absence of justice, fairness and equity. When these corporations violate the rights of the people with their multi billion dollars benefits derived in investments from the resources it becomes unfair. Worst is that these corporations do not declare their taxes which equally constitute a breach of Cameroonian tax law. It contravenes Cameroonian tax law that their properties are not taxed. It is our recommendation that the powers that be should enforce all human right laws against multinational corporation otherwise MNCs will contravene national laws conceal their profits under unlawful means and violate the rights of individuals and the larger society whose backyard these corporations operate but fail to respect the people's rights. Besides, probing the different MNCs in Cameroon through investigations may produce results for the benefit of the different communities whose rights have been violated. Enough evidence will disclose that most MNCs in Cameroon do not only escape from human right abuses but from offences committed but are never charged nor prosecuted which is clearly incorrect. From these cases, it can be said that Cameroon has not advanced the cause of those communities that suffer from the hands of MNCs. Cameroon has not imbibed the culture of punishing MNCs who inflict pains on individuals and communities thereby destroying communities with their atrocities.

⁴⁶ (2019) UKSC 20