

**BRATISLAVA INTERNATIONAL SCHOOL OF LIBERAL ARTS**

**The impact of Multinational Corporations on human rights in  
developing countries.**

**BACHELOR THESIS**

**Michaela Marcinová**

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**BRATISLAVA INTERNATIONAL SCHOOL OF LIBERAL ARTS**

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## **Declaration of Originality**

I hereby declare that this bachelor thesis is the work of my own and has not been published in part or in whole elsewhere. All used literature is attributed and cited in the references.

In Bratislava, July 17, 2022

Signature \_\_\_\_\_

**Author:** Michaela Marcinová

**Title:** The impact of Multinational Corporations on Human Rights abuse in developing countries

**University:** Bratislava International School of Liberal Arts

**Thesis Advisor:** JUDr. Sylvia Tiryaki, PhD.

**Thesis Defence Committee:** Prof. PhDr. František Novosád, CSc., doc. Samuel Abrahám, PhD., prof. PhDr. Iveta Radičová, PhD., Mgr. Dagmar Kusá, PhD., prof. Silvia Miháliková

**Head of the Defence Committee:** Prof. PhDr. František Novosád, CSc.

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## **Abstract**

This study examines the influence of Multinational Corporations on developing countries. The aim was to study the impact of multinational corporations on developing countries and international law, as there is currently no international framework set in place to regulate Multinational Corporations other than soft law documents. Data for the thesis were collected through two case analyses and a semi-structured interview. The theoretical part focused on the current international framework for multinational corporations, legal personality and responsibility gap. The case study analyses the impact of multinational corporations on developing countries, their population, and the relationship between international law and multinational corporations. The interview focuses on the impact of the lack of multinational accountability for multinational corporations.

**Autorka:** Michaela Marcinová

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**Školiteľka:** JUDr. Sylvia Tiryaki, PhD.

**Komisia pre obhajoby záverečných prác:** Prof. PhDr. František Novosád, CSc., doc. Samuel Abrahám, PhD., prof. PhDr. Iveta Radičová, PhD., Mgr. Dagmar Kusá, PhD., prof. Silvia Miháliková

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## **Abstrakt**

Táto štúdia skúma vplyv nadnárodných korporácií na rozvojové krajiny a ľudské práva. Cieľom skúmania bolo zistiť vplyv nadnárodných korporácií na rozvojové krajiny vrámci medzinárodné práva, keďže v súčasnosti neexistuje medzinárodný rámec na ich reguláciu, okrem “soft law” dokumentov. Údaje na bakalársku prácu boli zozbierané prostredníctvom dvoch prípadových analýz Texaco v Ecuador, Wiwa et al v. Royal Shell a pološtruktúrovaného rozhovoru. Teoretická časť bola zameraná na súčasný medzinárodný rámec pre nadnárodné korporácie, právnu subjektivitu a medzeru v zodpovednosti. Prípadová štúdia analyzuje dopad nadnárodných korporácií na rozvojové krajiny, ich obyvateľstvo a vzťah medzi medzinárodným právom a nadnárodnými korporáciami. Rozhovor sa zameriava na vplyv nedostatku nadnárodnej zodpovednosti pre nadnárodné korporácie.

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## **1. Chapter: Introduction**

The development of human rights came from the urge to preserve human dignity and values to make a better future for all. *The Universal Declaration Of Human Rights* (1948) introduced the first framework to serve as a global consciousness. Since then, human rights have not stopped evolving. The declaration of human rights became a custom of promotion and protection for human rights by states, as states are the dominant figures in international law. Human rights protection has come a long way, with numerous mechanisms to protect it. International declarations, agreements, and courts aim to treat and prevent impunity.

Despite that, human rights abuse is a relevant topic in the modern day. Violations occur extensively by different players outside the contemporary regulatory scope of international documents that protect human rights in international law. Extensive amounts of academic research and human rights violation reports by NGOs show human rights abuse conducted by Multinational corporations in third-world countries (who will be referred to in the thesis as MNCs) (Deva, S. *Human Rights Violations..*, 2005). The cases show a polluted environment that will last for generations as the result of forced resettlement of indigenous groups, health risks like cancer (Kimerling, J., *Lessons From The..*, 2013), murders and criminal trials of local activist groups (Center For Constitutional Rights, Wiwa et al...., 2022). The ones responsible have all the means at their disposal to avoid punishment.

The purpose of the paper is to address human rights abuse by multinational corporations in third-world countries. The lack of international regulation allowed MNCs to enjoy rights but bear no duties. The only existing documents are recommendations which are not legally binding (Konstantinos, T., *Multinational Corporations In..*, n.d.). As a result, the present framework creates confusion in international courts as a definition of accountability for MNCs is not stated. The cases take a long time to reach a verdict, and they are pushed around the world as the boundaries are unclear or do not get before the court.

We can find the theoretical background for MNCs in the works of *Multinational Corporations In World Politics* (1974) by Nye, J., which explains the political and economic power MNCs can accumulate or the impact they can have on the structure of the state. In contrast, the soft

law framework is addressed by *Informal International Lawmaking* (2012) by Pauwelyn, J., Wessel, R., and Wouters. J. on reviewed cases procedure.

## 2. Chapter : Methodology And Research Design

### 2.1 Methodology and Research Design

The analysis in the thesis consists of two theoretical frameworks. The two theories were selected as the selected topic is a newly developed field, and it was considered most appropriate to use theory on the level of international relations and international law as the two overlap at times.

The first part applies to Joseph Nye's *Multinational Corporations In World Politics* (1974). The theory talks about the impact of MNCs on the world order. It shows how MNCs can shape the course of a country under the right circumstances. The theoretical model expands on the manipulation of the country through economic and political power, the benefit of international manipulation and the economic advantage over non-governmental organizations. The analysis does not concern itself with the redefinition of the world order. It provides arguments for why the model should be redefined.

The parts of the applied theory are divided into:

1. The Direct Role
2. The Unintended Direct Role
3. Indirect Role

(Nye, J., *Multinational Corporations In World Politics*, p.155-161, 1974)

For the second part, theoretical background from *Informal International Lawmaking* (2012) by Pauwelyn, J., Wessel, R., and Wouters. J. was used; see chapter 4. The book itself is one of the first to establish a theoretical framework for soft law mechanisms (meaning non-binding documents such as recommendations, resolutions or declarations) in international law and the interpretation of the documents in domestic law. As it is a newly developed theory, it uses concepts of accountability borrowed from Boven (Pauwelyn, J., Wessel R., and Wouters. J., *Informal International Lawmaking*, 2012 ). Boven's definition of accountability describes a *relationship* that can be domestic or international, a definition of a *forum* that can be

international with an in-law process (meaning the process of adopting a recommendation that can be implemented into a domestic structure) or a stakeholder which is followed up by an *obligation* of the actor for its actions or explanation/justification for its conduct ( Pauwelyn, J., Wessel, R., & Wouters, J., *Informal International Lawmaking, I. Conceptual Approaches to Informal International Lawmaking*, 2012). The structure of the analysis is divided into:

(1) Democratic Accountability

(2) Accountability on both the international and the domestic level

( Pauwelyn, J., Wessel, R., & Wouters, J., *Informal International Lawmaking, I. Conceptual Approaches to Informal International Lawmaking*, 2012)

## 2.2 Analysis

As MNCs have branches worldwide and the study focuses on human rights abuse in developing countries, the thesis uses qualitative analysis of two cases and a semi-structured interview to gather data. The cases and the interview portray how severe the human rights abuse is, how complex the cases are, and why MNCs enjoy impunity for human rights abuse. The cases and the interview portray the extend of human rights breaches, the complexity of the cases, and MNCs' impunity for human rights abuse.

The subjects of analysis are the case of *Texaco v. Ecuador* (Crasson, A. *The Case Of Chevron...*, 2017) and *Wiwa et al. v Royal Dutch Petroleum et al.* (Center For Constitutional Rights, Wiwa et al. ..., 2022). The semi-structured interview is conducted with an interviewee from Človek V Ohrození (People In Need) as he has experience in the field.

The primary sources for these cases are summaries, and scholarly studies, as both cases were conducted over a long time in different courts around the world with various tort claims. Furthermore, the paper relies on other academic studies that analyzed the extent of the regulatory gap in the world: *Corporate Responsibility in International Law: Which Way to Go Note* (2007) by Adeyeye, A., *Human Rights Violations By Multinational Corporations And International Law: Where From Now?* (2005), by Deva, S., *Corporate Accountability and Liability for International Human Rights Abuses: Recent Changes and Recurring*

*Challenges* (2008) by Duruigbo, E., *Defining The Corporate Social Responsibility Of Business From International Law* (2007) by Schouten, E., and *Suing Multinational Corporations In The U.S. For Violating International Law* (1999) by Zia-Zarifi, S. To assess the severity of the situation.

## **2. 3 Chevron v. Texaco**

### **Why is Chevron important**

The first case presented in the case study is Chevron v. Ecuador. The case incorporates all of the elements that are of interest to the paper. The names Chevron and Texaco are used interchangeably as they are the same company (Crasson, A., *The Case Of...*, 2017). The multinational corporation Chevron Corp is an integrated oil and gas company which produces and transports oil and gas internationally (GlobalData, 2022). The MNC has headquarters in California, and its locations are across 180 countries (Chevron, *See how we operate*, n.d.).

### **The correlation with human rights abuse**

The company received permission from the Ecuadorian government in the 1960s to explore an Amazon region called Lago Agrio for oil (Crasson, A., *The Case of...*, 2017). The Ecuadorian environmental regulations at the time were not developed fully to protect the environment (Crasson, A., *The Case Of...*, 2017). From the year 1964 to 1992, Texaco extracted 1.5 billion barrels of Amazon crude, drilled 339 wells in the area that spans more than one million acres and built a Trans-Ecuadorian pipeline system from the Amazon region across the Andes Mountains to the Pacific Coast (Kimerling, J., *Lessons from The Chevron...*, 2013). The result was environmental damage. Dumping tons of toxic drilling and road maintenance wastes with the estimations by the Ecuadorian Ministry of Energy and Mines (Kimerling, J., *Lessons from The Chevron...*, 2013) and calculated by Kimerling J. (*Lessons from The Chevron...*, 2013) to be 19.3 billion gallons of produced water into the environment resulting to contamination of rivers and streams with the result of the soil contamination. The environment is reportedly damaged beyond repair making it the "Amazon Chernobyl" (Kendall, C., *Amazonian Chernobyl...*, 2008).

The resulting contamination and environmental damage harmed the population in the mentioned areas. Diseases like " child cancer, rise in miscarriage, skin disorders and digestive and respiratory issues were reported" (Crasson, A., The Case Of... , p.31, 2017). Meanwhile, the indigenous population inhabiting the area was severely affected. As Crasson (The Case Of Chevron., 2017) writes , the area used to be inhabited by six indigenous groups. As a result of the pollution caused by Chevron, two of the groups died, and the remaining ones are experiencing side effects.

#### **2.4 Wiva. et. al v Royal Dutch Petroleum**

The 1996 Ogoni case shows the consequences of MNCs cooperation with the government that exceeded the political and economic influence. The case concerns human rights abuse (summary executions, crimes against humanity, torture and inhumane treatment) of Activists in Nigeria (Centre For Constitutional Rights, Wiwa et al v. Royal Dutch Petroleum et al., n.d.) who protested against Shell using the Nigerian land for oil production. As a result of these protests the Nigerian government with Shell arrested the activists(Centre For Constitutional Rights, Wiwa et al v. ..., n.d.). The outcome of the cooperated arrests was a trial and the activists were sentenced to hanging under false charges.

These activists were known as the Ogoni 9. The trial received international attention and started a series of lawsuits by the relatives against Royal Dutch Shell Company. The trials did not reach a verdict. Instead, in 2009 the parties agreed for a settlement of 15.5 million dollars for the plaintiffs (Center For Constitutional Rights ,Wiwa et al v. Royal Dutch Petroleum, n.d.). Leaving the case behind and not establishing precedence for future cases concerning human rights abuse.

### **3. Chapter: Framework In International Law**

The framework that protects human rights abuse by MNCs is limited, and the present legislation offers guidelines for MNCs but no obligations. The soft-law framework is considered insufficient and creates chaos in international law as no international court is responsible for MNC violations (Deva, S., *Human Rights Violations...*, 2005). Works like *Informal International Lawmaking* (2012) by Pauwelyn, J., Wessel, R., and Wouters, J. discuss whether informal law-making in terms of soft law is to be considered law-making and is enough for regulation. Others lean on the side of the redefinition because the reviewed cases and mechanisms were demonstrated not to work (Schouten, J., *Defining The Corporate...*, 2007).

#### **3.1. International Framework For MNCs**

The international community first addressed human rights protection and multinational business conduct in 2008. As corporate responsibility is a developing field, it takes time for the international framework to develop. The United Nations worked on the solution with special Representative Jon Ruggie (2008). The framework addresses the question of human rights protection and multinational businesses (United Nations, *The UN "Protect, Respect..."*, 2010). It offers moral norms for MNCs to protect human rights.

The framework paints a picture of corporate behaviour with the relationship to human rights protection. It connects state responsibility through guidelines such as "the state's responsibility to protect against third parties, including businesses" (United Nations, *The UN "Protect, Respect..."*, 2010). The project led to *The Guiding Principles on Business and Human Rights*, adopted in 2011. The document created an ethical guideline but did not create legal obligations - as is stated in the General Principles. The Organisation for Economic Cooperation and Development (OECD) worked separately on creating a more ethical environment for business and human rights resulting in the *OECD Guidelines for Multinational Enterprises* (2011). The aim was to create ethical boundaries in the fields of "employment, industrial relations, human rights, environment, information disclosure, competition, taxation, and science and technology" (Policy Brief, *The OECD Guidelines...*,

2011). Nevertheless, a document that is not binding only offers ethical guidance. The mentioned documents are the only regulations set in the form of soft law.

The need for international legislation to create a human rights protection framework for MNCs is challenged on several levels. As the normative framework applies to states as the direct subjects of international law (Shaw, M, International Law, 2008 ), there is no space for legal personality to adjust. The working topic in academia is the redefinition of legal personality (Duruigbo. E., Corporate Accountability And..., 2008 ).

### **3.2 The challenges of legal personality for MNCs**

The views held in International law literature show Multinational Corporations as a problematic phenomenon in correlation with international legal personality ( Malanczuk, P., Akehurst's Modern Introduction..., 1997.) Adding additional legal personality definitions could cause disputes in international law. It has been recognized since the 19th century that states are the main subjects of international law because they are the dynamic part essential for its existence (Malanczuk, P., Akehurst's Modern Introduction..., 1997). From the concept, the legal personality is drawn. Those who possess it can enjoy rights, duties and the ability to stand in court (Malanczuk, P., Akehurst's Modern Introduction..., 1997). In the cases like human rights abuse by third parties, the state takes responsibility. However, developing countries do not possess the legal framework or capacity to do so ( Deva, S., Human Rights Violations..., 2005), making the approach difficult to apply.

The question of adding different actors as subjects of international law remains an open one. Under standard criteria, the international legislation that protects human rights is adopted internationally and later on; it gets interpreted on the national level under the state's constitution (Pauwelyn, J., Wessel R., and Wouters. J., Informal International Lawmaking 2012). However, in cases where the domestic structure is not strong and can be disrupted see chapters 3 and 4 the normative framework is hard to apply. Therefore, the binding treaties for human rights protection like *the Covenant on Civil and Political Rights* (1966), *The International Covenant on Economic, Social and Cultural Rights* (1966) or *the International Convention on the Elimination of All Forms of Racial Discrimination* (1965) remain a question of implementation.



### **3.3 The result of non-accountability in the Legal System**

As a result of the MNCs' lack of regulation, corporate accountability for human rights violations is poor. The soft law regulations are chaotic in concrete legal cases that concern human rights abuse in different jurisdictions. The reviewed cases for the paper display court cases with chaos in different jurisdictions as the case was first handed over from American to Ecuadorian court (Crasson, A., *The Case Of ...*, 2017). The courts could not decide to prosecute because of the unclear jurisdiction (Lachlan, M., *ICC won't prosecute Chevron*, 2015).

The framework for human rights protection is there. International human rights protection norms are located in international human rights treaties. These are considered to be primary sources as specified in the International Court of Justice's statute (Tromvoukis, K., *Multinational Corporations...*, n.d.). Another option for human rights protection is the International Criminal Court, which has the legislative framework set in the Rome Statute (2002) that covers crimes against humanity, among other things, leaving space for the prosecution of other entities such as multinationals. It is debated whether the cases mentioned in the paper filled the requirements of the statute breach. The case of *Ecuador v. Texaco* was put on the table for investigation. However, the prosecutor declined because they considered it outside of the ICC's jurisdiction (Lachlan, M., *ICC won't prosecute Chevron*, 2015), despite the plaintiffs' alleged crimes against humanity. MNCs cannot be bound to international institutions that would hold them accountable when human rights breaches occur in third-world countries.

The scholarly opinion is to use the mechanisms that are at disposal in combination with new international regulations that would be binding. These, in return, can help with mitigations at international courts. The newly created framework will be more effective in human rights violations (Shouten, E., *Defining The Corporate...*, 2007). The current state of affairs should be redefined as there is a gap in legislation in domestic and international courts. Some argue that a different legal body should be created as the current international legal structure is made for states exclusively (Kinley, D., Tadaki, J., *From Walk To Talk*, 2004)

### **3.3 Responsibility gap**

Another factor contributing to the responsibility gap is the fear of making MNCs equal by providing them with legal personality. However, even if there was an extended definition of legal personality, that is not the case. For a state to be a legal personality of international law, it needs to be a sovereign entity in the international system. The gained personality then carries rights and duties that are enforceable by the law (Shaw, M., International Law, 2008 ). The legal personality is attributed to the relevant legal system, domestic or international. As MNCs cannot possess sovereignty due to the lacking factors, even if states were to gain legal personality, they would not have the same rights as states.

## **4. Chapter: MNCs advantage**

The mentioned aspects of legal personality and accountability gap result in the lack of a normative framework, as it will be shown in the two case analyses. The cases used for the paper have certain features in common. The first element to notice is the breach of human rights in low-income countries due to lack of policy protection and extensive corporation involvement, MNCs' dominance against local groups and economic advantage. The 1996 Ogoni case against Shell (Adeyeye, A., *Corporate Responsibility in...*, 2007) concerns human rights abuse in Nigeria, and *Texaco v. Ecuador* (Crasson, A., *The Case Of ...*, 2017) concerns human rights abuse in Ecuador. The analysis of both of the cases is divided into three parts: The Direct Role, The Indirect Role, Setting The Agenda (Nye, J., *Multinational Corporations In World Politics*, 1974 ).

### **4.1 The Direct Role**

**(Nye, J., *Multinational Corporations In World Politics*, 1974 )**

As Nye (1974) mentions, the set agenda in world politics is that governments deal with governments in an international setting. Nye's theory explains that the boundaries between states and corporal influence are thin. Corporations can gather direct political influence, especially in countries that they exceed by income. The influence can vary from hiring private armies to bribing influential politicians and army managers or supporting political campaigns; these would indicate what the power over other governments multinationals hold (Nye, J., *Multinational Corporations In...*, 1974). One of the main functions of the state is to protect its citizens. If the breach of rights occurs, the violation of law is held accountable under private law. However, the protection of civil rights is challenging because the corporation is set in developing countries, where the law is not sufficiently regulated (Adeyeye, A., *Corporate Responsibility in ...*, 2007). Since developing countries are in the transition phase and their legal and economic framework is insufficient to regulate the corporal approach, the result is the corporal influence on countries' politics and economics.

## **Texaco v. Ecuador**

The case of Chevron v. Ecuador demonstrates the lasting power Multinationals have on human rights and environmental damage. For the case introduction see 1.4 Cases. The MNC was a dominant player in the country. Ecuador's political structure was not able to compete with political and economic development. The MNC exceeded the country's influence by having its politicians on the payroll in order to proceed with business and free access to its land (Crasson, A. The Case Of Chevron..., 2017). The Corruption Perception Index of Transparency International shows a score of 2.4 out of the total score of 10 for corruption in 2004 (Transparency International, Corruption Perception Index, n.d.) for Ecuador, touching on the years of the lawsuit filing.

The impact that the MNC had on the Ecuadorian land and the people living in the country is considered to be one of the disasters similar to Chernobyl (Kimerling, Indigenous Peoples And..., 2006 ). Chevron was persecuted by Ecuadorian villagers in the years of 1964- 1992 for destroying the rivers and streams, soil contamination, air pollution, deforestation and negative health impact (Kimerling, Indigenous Peoples And..., p. 464-466, 2006 ) despite human health and safety protection laws set in place at the time. The policies regulated water safety and to have access to drinkable water (Amazon Defense Coalition, Summary Of Overwhelming Evidence..., 2012). Chevron ignored the regulations.

The MNC demonstrated its power over the Ecuadorian government with its solution to clean up the contamination, data and further legal mitigations. MNCs are the ones to negotiate advantage in developing countries because they have the upper hand, as the outcome would be disruptive to the country's economy (Nye, J. , Multinational Organizations In World Politics, 1974). With the first trial conducted in Ecuador, the company used a set of fake laboratory tests and data to prove its credibility. The company faked the test results of the waste clean up, faked the water contamination results, and the end of the trial in Ecuador found the company liable for the contamination in the region at levels of 91% over the standard norm (Amazon Defense Coalition, Summary Of Overwhelming Evidence..., 2012). The initial trial proved to provide justice in the claims of environmental and human rights damage. But, in the series of trials to come, Chevron persecuted Ecuador in an American court, and with other series of cases with counterattack strategies, the MNC won the cases.

## **Wiwa et al v Royal Dutch Shell**

*The Niger Delta Oil Spill* demonstrates another example where the corporation directly influences the government, the people and the amount of accumulated political power. With the result of the lack of boundaries between a state and a corporation. As previously mentioned, the influence that a corporation can have on the state can be extensive depending on the resources of the corporation. The financial influence that MNC had on the country can be examined under several conditions. As Nye (1974) clarifies the range of political actions done by corporations can be measured by "hiring of private armies through the bribery of host country soldiers or politicians, campaign contributors to political parties, legitimate lobbying of host government legislators, to the influence of the climate of ideas" (Nye, J., *Multinational Corporations In World Politics*, p. 156, 1974) to find direct political activities of non-state entities. The business relationship dates from 1939 when the company first started to conduct business due to the country's natural resources (Shell, *The History of Shell In Nigeria*, n.d.). The company was suspected of having the country's politicians on its payroll<sup>1</sup>. As a result the company accumulated a closely associated relationship with the government.

### **4.2 The Unintended Direct Role : Instruments of influence**

(Nye, J., *Multinational Corporations In World Politics*, 1974 )

#### **Texaco v Chevron**

The breaking point was when Chevron filed a lawsuit in the American jurisdiction. As Nye (1974) describes, the benefit of an MNC and its impact is a beneficial tool for influencing the host country's government. That serves as an influence in the international sphere. Country A may try to influence country B, which depends on the corporation to incorporate policies that are favourable to country A to gain political power.

As the plaintiffs filed for environmental damage and human rights abuse in an American court, the lawsuit was handed to Ecuador due to the American court having a lack of

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<sup>1</sup> The allegations were proved to be true in 2011 in Italy (*Business and Human Rights, Shell Admits Fuelling... , n.d.*)

jurisdiction (Crasson, A. The Case Of Chevron..., 2017). Yet, in the time being, Chevron managed to create its own narrative of the story. Despite the Ecuadorian community suffering from diseases like the increase in child cancer, environmental pollution in the forms of water contamination of 20-25%, deforestation, and the forced movement of indigenous groups (Kimerling, Indigenous Peoples And...,p. 464-466, 2006 ) the American oil giant claimed the opposite. The Ecuadorian court ruled in favour of the plaintiffs and ordered Texaco to pay 8.6 billion dollars in damages (Crasson, A. The Case Of Chevron ,p.33, 2017). The company proceeded with a lawsuit in an American court, claiming that Ecuador's decision was "unlawful and arose from a fraudulent procedure" (Crasson, A. The Case Of Chevron,p.33, 2017). Chevron sued Ecuador at an international arbitration tribunal in The Hague, where it won, and Ecuador was sentenced to pay compensation to Chevron in the form of 112 million dollars (Crasson, A. The Case Of Chevron ,p.34, 2017). As Nye (1974) pointed out, the influence between state and corporate influence is thin. In the case of the company, it created a narrative of an unjust country trying to accuse a corporation falsely. Claiming that Ecuadorian activists, politicians and lawyers are the ones who polluted the Amazonian region and the company is the one at fault (Chevron, Ecuador Lawsuit, n.d.). Chevron gathered political influence in a country where it only conducted business, influenced the public opinion in its domestic jurisdiction and ultimately won a case over a country. The case reached international levels, where it was no longer the case of governments dealing with governments but rather a company simultaneously influencing judicial outcomes in different countries and internationally. Proving the domestic legal structure to be inadequate in reaching justice for its citizens and protecting human rights abuse for the future.

### **Wiwa et al v Royal Dutch Shell**

MNCs are the ones in negotiation advantage in developing countries since the outcome would be disruptive to the country's economy (Nye, J., Multinational Organizations In World Politics, 1974). As Nye (1974) continues, the results are favourable policies for the MNC rather than the country itself. The policies decided in favour of Shell had a direct impact on Nigeria's environment.

Currently, the MNC carries no responsibility for impacting human rights and causing environmental damage (Centre For Constitutional Rights, Wiwa et al..., 2022 ), even though the corporal impact on the country has been proven. The National Library of Medicine (2021)

conducted a case study between 2007 and 2017 that discloses environmental problems in Nigeria as the main element contributing to the death rate (National Library of Medicine, Environmental Health Situation., 2021), with oil spills being one of the main contributors. Furthermore, a report conducted by the *UN Environmental Programme On Oil Pollution In Ogoniland* (2011) found extensive pollution and environmental health risk in Nigeria caused by Shell (OCHA Services, No progress..., 2014). The report was conducted as a recommendation to Nigeria and Shell to see and improve the situation. As a follow-up, three years later, an analysis was published displaying the ignorance of both the state and the company and not taking international accourts seriously (Amnesty International et al., No Progress, 2014).

The framework for protecting Indigenous people in Nigeria is insufficient internationally and domestically. The country is not a party to one of the existing frameworks like an *Indigenous And Tribal People Convention* (1989) that serves to protect Indigenous Peoples' Rights. Furthermore, The 2000 Corruption government Perception Index covering 90 countries, with Nigeria being in 90th place, does not allow the Nigerian government to tackle other governments in an international setting. Or, have the capacity to deal with MNCs.

As Nye (1974) explains, the transnational nature is in favour of the companies when looking at the power of their negotiations. The MNCs are usually the ones that have the upper hand in negotiations. Since the consequences for the developing country of the company not investing are disruptive to its economic development. This leads to favourable policies for the company itself but is not necessarily sustainable for the country's environment and citizens. The Royal Dutch Shell company has repeatedly been using its influence to bribe government officials in Nigeria, as demonstrated in The Shell, Eni Corruption Case (Burdeu, C., Italian court acquits ...2021). Despite the environmental and health disruption, the MNC was in the decision-making power.

### **4.3. Indirect Role : Setting the agenda**

The conclusion of the legal battle with Chevron v. Texaco is that the company bears no responsibility for human rights abuse and environmental damage despite all accusations

(Crasson, A., *The Case OF ...*, 2017). As Nye (1974) analyzed, MNCs have the power to influence national interstate policymaking and set labour organizations. On a similar note, Shell carries no responsibility for playing a role in the murder of activists (Center For Constitutional Rights, *Wiwa et al...*, 2022). The lack of precedence in international law makes it challenging to reach justice in these cases. MNCs benefit from sufficient funding and extensive legal teams that are more powerful than the victims harmed. For the case of *WIWA V. ROYAL DUTCH SHELL* (Earth Rights International, *Wiwa v. Royal...*, 2022), the case required multiple partners to be able to bring the lawsuit to court. A case whose timeline expands approximately sixteen years relied on the partnership of multiple non-governmental organizations alongside the surviving family members of the killed activists (Earth Rights International, *Wiwa v. Royal...*, 2022). Despite the efforts, the case was settled before reaching a verdict (Center For Constitutional Rights, *Wiwa et al...*, 2022) without creating precedence for the next.

Nye points out the inevitable conflict between MNCs and states. As MNCs are an entity without military force and claimed territory, they do not threaten a state's existence; rather, the MNCs' economic influence can overthrow political parties and ruling regimes (Nye, J., *Multinational Corporations in...*, 1974). The reviewed cases point to MNCs influencing international law and domestic legal structures worldwide. With the political and economic power at the company's disposal, it is challenging to gain justice for human rights abuse and other damages (Schouten, J., *Defining The Corporate ...*, 2007). The legal battles challenge state jurisdictions since no international legislation regulates them. The case of *Texaco v Ecuador* (Kendall, C., *Amazonian Chernobyl...*, 2008) did create precedence, but one where the question of accountability remains open.

Even when ruling in favour of the Ecuadorian citizens, the Ecuadorian government was then overridden in the American Domestic court, where the oil giant created a new story narrative (Crasson, A., *The Case OF ...*, 2017). Only afterwards did it reach international courts. Despite Ecuador being a sovereign entity recognized under international law with its government and Chevron being an MNC allowed to come to the country, subjected to the Ecuadorian jurisdiction under domestic law, the Multinational defeated Ecuador in every court (Kendall, C., *Amazonian Chernobyl...*, 2008).



## **5. Chapter: In Law Mechanisms**

As mentioned in the third chapter, the framework for protecting human rights abuse by MNCs lacks regulatory mechanisms. Instead, only soft law regulations like *The Guiding Principles on Business and Human Rights* (2011) and *OECD Guidelines for Multinational Enterprises* (2011) are in place, leaving guidelines for MNCs on how to be ethical. MNCs are important internationally as they are an economic force. The modern-day lawmaking relies on states to promote human rights protection in the state. As demonstrated in the previous chapter, it is not always the best tool.

As the field of international relations no longer belongs to states exclusively (Duruigbo, E. Corporate Accountability and Liability., 2007), different frameworks are being proposed. Informal International Lawmaking: Framing the concept and research questions by Joost Pauwelyn (Pawelyn, J., Wessel, R., & Wouters, J., Informal International Lawmaking, I. Conceptual Approaches to Informal International Lawmaking, 2012) is assessing why accountability gap is in place. The paper will follow with criteria:

### **5.1 Democratic Accountability**

(Pawelyn, J., Wessel, R., & Wouters, J., Informal International Lawmaking, 2012)

The framework for MNCs is not presented in the form of international law that would be enforceable but rather soft international law. The present state of affairs, where states are the main actors in International law and can enforce it or create it, leaves no space to enforce accountability on another entity. The democratic structure relies on In-Law mechanisms to hold entities accountable, where the act of accountability is the responsiveness of the political system to the people (Pawelyn, J., Wessel, R., & Wouters, J., Informal International Lawmaking, 2012). The responsiveness is then defined on the level of in law that is set to promote the actions and priorities (Pawelyn, J., Wessel, R., & Wouters, J., Informal International Lawmaking, 2012). As both of the cases discussed took decades to battle across different jurisdictions around the world, the question is whether there was democratic accountability in the first place. As Pauwelyn (2012) writes, the assessment can be made on the question of accountability to whom?

## **Texaco v Ecuador**

With the first analysis, the focus will be on the domestic proceedings of the case - constitutional accountability. The constitution describes the principles by which the state is governed and describes the state's main institution, in return, defines the relationship ( UCL, What Is A Constitution, n.d.). The interest is in the analysis of the functionality of the state's judicial system. As Crasson (2017) writes, the case was filed in the Ecuadorian jurisdiction, and one of the two files proceeded further to the Superior Court of Justice of Nueva Loja, followed up by a trial. The trial was presented with lawyers of both the company and the activists that were the plaintiffs, the trial was fully assessed, and the company was charged with damages for financial reparation and to clean up the region (Amazon Defense Coalition , Summary of Overwhelming, 2012). The relationship is assessed based on Boven's criteria ( Pawelyn, J., Wessel, R.,& Wouters, J., Informal International Lawmaking, I. Conceptual Approaches to Informal International Lawmaking, 2012) was domestic, and the obligation was met.

## **Wiwa et al v Royal Dutch Shell**

On the other hand, Shell in Nigeria does not correspond with the criteria of the democratic accountability of the state. As the environmental group conducted protests against the MNC to stop building pipelines in the region, it was met with a direct response from the government in cooperation with Shell (Center For Constitutional Rights, The Case Against Shell, n.d.). As The Case Against Shell (n.d) describes, the response set in the state to protect the citizens was to proceed with the Army to stop the protests by shooting and killing a person in the process. The democratic process was furthermore underlined by the company's involvement in the military. The Case Against Shell (n.d.) describes that the troops were called on the site by the company itself, questioning the lines between the government and the corporation. As Pauwelyn (2012) writes, the democratic part of accountability is to work in the form of checks and balances. The structure of the state failed to provide a just proceeding for the activists (known as MOSOP). As the MOSOP were later on "prevented access to counsel, a fair trial, and the opportunity to appeal their decision" (Center For Constitutional Rights, The Case Against Shell, n.d.) and, as a result, sentenced to death by hanging.

## **5.2 Accountability on both the international and the domestic level**

(Pawelyn, J., Wessel, R., & Wouters, J., *Informal International Lawmaking*, 2012)

Regulatory norms that are based on soft law are challenging to make accountable. The guidelines are set in place as a recommendation and are reliant on in-law mechanisms to handle accountability. The in-state mechanisms work as long there are no other elements that disrupt them, as shown in the 3. Chapter. As explained by German and Wessel (2012), the in-law mechanism relies on multi-level regulation that relies on the intercommunication between global, national and regional bodies of regulation. This is a crucial aspect of international lawmaking since all of the adopted legal documents are interpreted under different constitutions in each country (Wouters, J., *Informal International Lawmaking*, 2012). Since the guidelines are only recommendations, this leads to confusion in different international courts and different jurisdictions around the world (Schoten, J., *Defining The Corporate...*, 2007). In the case of *Ecuador v. Texaco*, the case travelled around the world following different jurisdictions such as Ecuador, The United States, and Canada before being settled in The Netherlands (*Business and Human Rights, Texaco/ Chevron lawsuit*, 2003). The case of *Wiwa et al. v Royal Dutch Petroleum* was prosecuted in the sequence of several cases in the US but did not decide as the company reached a settlement with the plaintiffs (*Center For Constitutional Rights, Wiwa et al.*, 2022).

The international law is re-interpreted under domestic constitutions resulting in regulations that are not clearly stated, nor, as Wouters (2012) writes, it is not clear under which domestic regulatory body they are subjected to. As a result, the regulations are not subjected to any of the regulatory organs. Soft law regulation like OECD guidelines is insufficient not only because it is enforceable legally but it relies on sufficient in-law processes in states globally. It is making these kinds of recommendations insufficient, as shown not only in the two cases used as case studies but in more used in the reviewed literature. These include Union Carbide Corporation and Enroll Corporation in India, Unocal Corporation in Myanmar, Nike and Reebok in Asia, Shell Oil Company in Nigeria, Texaco in Ecuador, and Freeport- McMahon in Indonesia (Deva, S., *Human Rights Violations...*, 2005).

### **5.3 Domestic Control Over Companies**

(Pawelyn, J., Wessel, R., & Wouters, J., *Informal International Lawmaking*, 2012)

Moreover, the in-state regulation of MNCs is proven insufficient in the protection of human rights. Transnational corporations are private business organizations with several legal entities joined under the umbrella of the parent corporation (Shaw, M., *International Law*, 2012). The sister businesses range in size, locations and regulations. Environmental and human rights protection is dependent on the level of democracy in the country. The current international setting allows the mother corporation to be set in a democratic country with developed democratic processes that protect human rights, but the sister corporation that provides additional manufacturing demands can be set worldwide. In the case of MNC cases reviewed for the thesis, an energy corporation like Chevron is the umbrella corporation set in California, United States of America (Chevron, *History*, 2021). However, at the same time, for an owned company like Texaco that provides energy sources such as oil from a different country with little environmental protection, the in-state regulatory protection is not reliable. As Olsen (2001) explains, Texaco signed a contract with the Ecuadorian government when the state did not have environmental laws set in place. Yet, the international legal system at the time offered environmental protection in the form of The Stockholm Declaration (1972), which both The USA and Ecuador recognized.

The lack of controlling factors contributes to the democratic unsustainability of the country and the international system. As Wouters (2012) explains, accountability is a visible representation resulting in unstable democracy because it is a sign of responsiveness to the people. Yet, international organisations under the currently set norms are not responsible. The space where MNC are not held accountable results in an accountability gap where even if the framework to protect human rights is there if the violation occurs, there is no institutional framework directed to MNCs to enforce it. The case of *Chevron v Ecuador* and the reach for the court settlement. The case was submitted in 2011 to the International Criminal Court by Ecuadorian victims who were harmed in the Lago Agrio region and charged Chevron with crimes against humanity (Situation in Ecuador, Office of the Prosecutor, 2011 ). The ICC's purpose is to "investigate and try individuals charged with the gravest crimes of concern to the international community" (International Criminal Court, About) and the crimes against humanity are found under Article 7 of The Rome Statute (2002) International Corporations cannot be the parties of the statute. However, allegations can be made against a private person

under the jurisdiction of the ICC (International Criminal Court, Understanding the ..., 2020). This was the first case of MNC abuse to be submitted to ICC, with the presumption to investigate the case.

## **6. Chapter: impact on labour organisations**

The interview analysis aims to challenge the theory of soft law accountability and to show why there needs to be a further redefinition within the international legal system. The following interview was conducted as a semi-structured interview to provide more data for the paper.

Factors found to be influential were divided into three categories: the corporation's influence on the country, the influence on the people, the influence of the NGOs and other groups on MNCs. To gather data, the respondent was first questioned regarding his experience in Človek V Ohrození. However, as the interviewee had more experience before starting to work in the NGO, the interview concerned his experiences in Cambodia from approximately 2015-2016 in the Slovak language.

This interview does not examine the subject's feelings about the topic rather it is comparing the interviewee's experiences in a similar field to the reviewed cases. The purpose is to gather data from an individual, and the purpose of the interview was to highlight a similar pattern of behaviour from someone who worked in the field with human rights.

### **6.1. Influence Of The corporation On The Country**

The interview shows that the corporal impact on the shape of the country is extensive. Other than elements of corruption and challenging livelihoods, a benefit was highlighted of being able to reach minimum wage.

“(…) 800 000 females worked in the factories around the main city. It is important to note that this was the only form of work where the workers were able to form unions. Other positions like a state officer did not need it as they were corrupted. As a result the female workers managed to get minimum wage.” ( Interview, July 2022)

The interviewee pointed out the political influence of the corporation over the country. Similarly as the cases of Wiwa et al. and Texaco v. Ecuador the subject described the ties

with the government and MNC. As the government was actively helping the MNC against the labor unions.

“During the union strikes the government destroyed the opposition, and canceled media broadcasts of the strikes. Every country has to go through a selection process, if you have friends in the right places you get through it very quickly. In countries like Cambodia none of it is actually documented” (Interview, July 2022)

## **6.2. Influence outside of the state**

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## **6.3 The influence of the NGOs and other groups and reaching justice for human rights abuse**

The interviewee went on to describe other aspects that are more influential on MNCs than the law. In public opinion, labour organisations were the ones considered to be the key elements against MNC abuse.

"Without the pressure of the public and the workers, there is no change in the behaviour of the corporation because it holds power in its hands. Moreover, the corporation is tight with the political power of the country. "

Another negative that does not help labour organisations or NGOs in legal cases is time. Due to the accountability gap in legislation, the cases take a long time to develop. MNCs have financial benefits at their disposal, making it easy for them to withstand decades of legal cases if necessary.

"Another thing to take into account is that when you are attacking the corporation, you are fighting an enemy that is bigger than yourself. The corporation has legal teams with extensive judicial connections. This was very evident when my friends from Friends Of The Earth were suing Shell in Nigeria for river contamination. Shell did not have a problem dealing with the lawsuit as they had significantly more money and time on their hands."

(Interview, 2022)

Building on the accountability gap ( Pauwely, J., Wessel R., and Wouters. J., Informal International Lawmaking,2012 ), the subjects described the challenges with the current international legislation.

"It is extremely hard with corporations to make them accountable for their actions. The current legislative gap allows them to get away with responsibility from different country regulations to different taxation. Currently, there is no world organisation that would be able to mitigate the damage done."

(interview, 2022)

The one reliant part of the international framework that the subject mentioned was the hope of establishing precedence with similar cases. Otherwise, the best technique for stopping MNCs was not letting them get into the courts.

"The biggest impact on the corporations is to try and stop them during the process. Things like building a pipeline with activists, protesters, and NGOs to make the biggest impact. It is important to stop them before the case gets to court. It requires all the strength to stop them"

.(Interview, 2022)



## **7. Chapter: Conclusion**

The case study discusses the framework for human rights protection in developing countries from MNCs. It presents the international law regulations, soft law recommendations and opinions on the topic leading to the discussion on the redefinition of the current approach. The primary question is whether the regulatory framework is sufficient to make MNCs accountable for their actions. The redefinition of the importance of MNCs as multinational players is analysed through Nye's (1974) theory on MNCs. The currently insufficient regulation is presented through Wouters et al. theory on the accountability of soft law regulations. These are presented in two case studies and an interview. The study builds on legal personality and international accountability definitions to explain the challenges. It is presented through Pauwelyn, J., Wessel, R., and Wouters. J. (Informal International Lawmaking, 2012) analysis of soft law accountability and Nye's (1974) analysis of MNCs' importance in developing countries. The theory is applied to the cases of Texaco in Ecuador (Crasson, A., The Case Of., 2017) and *Wiwa et al. v Royal Shell* (Center For Constitutional Rights, Wiwa et al...., 2022). The study looks at the relationship between a developing state and MNC, the influence of MNCs on citizens in developing countries and the international legal system. Moreover, supported by data analysis of cases discussed above in the aspects of domestic and international structure. The case analyses and the interviewee showed similar patterns and impacts of the state and corporal litigations.

The empirical part of the thesis analyzes the effect of MNCs on the state, government, people and international relationships. It has been proven that MNCs have an impact on the state government, and the labour organisations have to face resistance from the government influenced by MNCs; furthermore, MNCs directly impact the health and environment of the population in the developing country. The results in this study correspond with the defined influences of Multinational Corporations In World Politics (Nye, J., 1974).

The results show that a different approach to protecting human rights from multinational corporations is needed. The currently set up soft law legislation creates accountability gaps on international and domestic levels, allowing MNCs not to carry responsibility for human rights abuses. The data shows a trend of human rights abuse in developing countries and a

lack of accountability on a domestic or international level. As qualitative research has its limitations, the results cannot be presented as general claims

The thesis could be further developed with the focus on the European Union as it is one with the highest standards for corporate accountability.

## Resumé

Vznik ľudských práv vyplynul z potreby zachovať ľudskú dôstojnosť a ľudské hodnoty, pre zabezpečenie lepšej budúcnosti pre všetkých. Všeobecná deklarácia ľudských práv (1948) zaviedla prvý rámec, ktorý slúži ako globálne vedomie dodnes. Odvtedy ľudské práva prešli dlhú cestu. Deklarácia ľudských práv sa stala zvykom na presadzovanie a ochranu ľudských pre štáty v medzinárodnom práve. Ak sa však bližšie pozrieme na medzinárodné dianie, zistíme že porušovanie ľudských práv je dlhodobým fenoménom. Táto bakalárska práca sa zaoberá porušovaním ľudských práv v krajinách tretieho sveta nadnárodnými korporáciami. Nadnárodné korporácie v porovnaní s rozvojovými krajinami, majú prevahu v politickej a ekonomickej oblasti. Nahlasené prípady dokazujú ekologické dopady ako znečistenie ovzdušia, vody a pôdy, ktorého následkom je nútené presídľovanie domorodého obyvateľstva poprípade úmrtia a zdravotné ťažkosti. Okrem toho opisujú nespravodlivé súdne procesy a vraždy aktivistov. Predmetom je skúmanie nedostatku medzinárodnej legislatívy v oblasti ľudských práv, ktorá nadnárodné spoločnosti momentálne nereguluje.

Prvá kapitola, opisuje použitú metodológiu, ktorá bola použitá v tomto výskume. Údaje pre tento výskum boli zhromaždené prostredníctvom dvoch prípadových analýz a pološtrukturovaného rozhovoru.

V druhej kapitole autor vysvetľuje pojmy medzinárodný rámec pre nadnárodné korporácie, problémy právnej subjektivity, a dôsledky nezodpovednosti v medzinárodnom právnom systéme. Následne objasňuje použité prípadové analýzy. Okrem toho vysvetľuje dopad týchto nedostatkov na proces použitých prípadov.

V tretej a štvrtej kapitole autor analyzuje prípady na pozadí dvoch teórií. Prvá vysvetľuje prečo treba zväžiť nadnárodné korporácie ako platných účastníkov medzinárodného práva a aké zaväzujúce dopady majú momentálne. Druhá na pozadí prípadov analyzuje prečo v medzinárodnom práve chýba právna zodpovednosť za porušovanie ľudských práv.

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