

A Study of Home State Responsibility in the Regulation of Forced Labor by Transnational Corporations

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Abstract: This paper focuses on the home state responsibility of transnational corporations (TNCs) in regulating forced labor. As globalization progresses, the issue of international firms using forced labor has been more apparent. It violates workers' human rights and has an impact on the reputation of businesses, the climate for investment, and the long-term viability of the world economy. The article provides an in-depth analysis of the theoretical basis of the home state's legal responsibility for the regulation of forced labor, covering the protection of general personality rights and personal jurisdiction, as well as the relevant regulation under international law. At the same time, it points out that there are problems such as conflict of jurisdiction, challenges in establishing and compensating the victims, as well as barriers to the application of the removing the corporate veil concept, and imperfections in the home country's legal system, and then proposes ways to improve the situation. The study shows that strengthening home country responsibility and international regulatory cooperation are of great significance in solving the problem of forced labor by multinational corporations. Looking ahead, countries should strengthen the accountability mechanism of home countries, international organizations and NGOs should promote the compliance of enterprises with human rights principles, and countries should strengthen the coordination of laws and regulations, in order to foster the defense of international labor rights and interests and to create a favorable global working environment.

Keywords: Transnational corporations, forced labor, home country legal responsibility, corporate social responsibility

1. Introduction

With the deepening of globalization, the role of transnational corporations (TNCs) in the global market is increasing. However, the ensuing problem of forced labor not only affects the basic human rights of the victims, but also has a very negative impact on the image of the companies and the investment environment, and, at a deeper level, poses a threat to the sustainable development of the global economy. Forced labor practices refer to the use of violence, threats or restriction of personal freedom to force others to perform involuntary labor or services; in short, once a worker loses the de facto right to independently choose whether to engage in labor or not, he or she is in a situation of forced labor. It includes not only direct physical coercion, but also the use of economic means to force workers to work in poor conditions. Such behavior not only violates the basic conventions of the International Labour Organization, but also poses serious harm to the physical and mental health of workers. For example, the United States company MedPro brought in health care workers from the

Philippines and the Caribbean on the pretext of an epidemic and forced them to sign unequal contracts and work overtime.

In recent years, the international community has paid more and more attention to the issue of forced labor practices that may be involved in the business operations of multinational corporations, and relevant laws and norms have gradually taken shape. For example, the Forced Labor Convention formulated by the International Labor Organization (ILO) explicitly prohibits forced labor and requires governments to take effective measures to regulate it.

Nonetheless, the issue of safeguarding the rights and interests of multinational workers has not been essentially resolved, and the relevant legislation continue to fall short in this regard. Home nations, host nations, and multinational corporations have occasionally failed to uphold their legal obligations to safeguard the rights and interests of transnational workers, particularly in developing nations where issues with child labor, forced labor, excessively long workdays, and other issues are more prevalent.

Studying the allocation of responsibilities for the defense of international labor rights and interests, as well as its legal regulation, is thus very important from a practical standpoint. This paper discusses the legal responsibility of the home country in the protection of transnational labor rights and interests, and analyzes the theoretical basis of the home country's legal responsibility for forced labor, the existing problems of the home country's legal responsibility for forced labor, and the way to improve it. It is hoped that the research of this paper will provide theoretical support and practical guidance for the legal regulation of transnational labor rights protection and promote the further development of global labor rights protection.

2. The Rationale for Home State Legal Responsibility for Forced Labor Regulation

2.1. Protection of General Personality Rights and Jurisdiction *Ratione Personae*

The term "general personality rights" refers to the general personality interests that natural persons enjoy. These interests encompass all of the elements of personality equality, independence, freedom, and dignity and are the foundation for the specific personality rights that are specified. This right is a civil subject as an independent legal personality must enjoy, and its subject person is inseparable from the right. Forced labor practices clearly violate the personality rights of laborers, including the right to personal freedom, the right to human dignity, the right to health, etc. For instance, foreign laborers from Mexico, Guatemala, and other nations make up the majority of the transnational supply chain for agricultural products in the U.S. town of Immokalee, Florida. They are paid only \$5.50 per hour, which is significantly less than the \$8.65 local minimum wage. Moreover, the laborers are often threatened or violently controlled and beaten if they try to escape; they are exposed to degrading behaviors such as sexual assault and harassment for long periods of time; and they are exposed to toxic chemicals in their work environments, leading to symptoms of poisoning. For this type of forced labor, the protection of the personality rights of the forced person has to be regulated, so the home state has to regulate based on personal jurisdiction.

Personal jurisdiction refers to the legal jurisdiction of a state over the behavior of its nationals (including natural and legal persons) at home and abroad. The principle of nationality is at the heart of personal jurisdiction, which gives legal jurisdiction to a national, meaning that even if forced labor occurs in another country, the home state still has the right to investigate and hold the company involved accountable under its own laws. In the U.S., the Trafficking Victims Protection Reauthorization Act (TVRPA) provides that U.S. citizens or companies involved in forced labor practices, whether at home or abroad, are subject to U.S. law [1]. International law respects the sovereignty of nations, and home countries have jurisdiction over their own companies. Home countries have the right to enact laws requiring their companies to comply with international law

standards and domestic regulations. The OECD Guidelines for Multinational Corporations require that home countries monitor compliance with the Guidelines through personal jurisdiction.

Home states can pursue companies for forced labor abroad through judicial proceedings that never take place. The U.S. Alien Tort Statute (ATS) allows foreign victims to sue TNCs for human rights violations in U.S. courts. Personal jurisdiction applies not only to natural persons but also to legal persons. Through personal jurisdiction, home states can regulate and hold their own companies accountable for their behavior. When a parent company is directly responsible in a forced labor case (supporting forced labor through policy or directives), the home state can investigate and pursue the parent company directly. In the case of direct jurisdiction over subsidiaries, where a hotchpotch subsidiary is suspected of forced labor and there is a controlling relationship between the parent company and the subsidiary (financial or managerial commingling), the home country may hold the parent company jointly and severally liable through the "lifting of the corporate veil" doctrine. Home States can also use personal jurisdiction to hold TNCs liable for forced labor practices in their global supply chains. For example, U.S. Customs and Border Protection (CBP) has imposed bans on U.S. companies for importing goods produced with forced labor.

2.2. Forced Labor Regulation under International Law

Transnational corporate responsibility, labor rights, and human rights protection are the three core focuses of international law. In cases involving forced labor by transnational corporations, legal provisions against home countries mainly revolve around supply chain due diligence obligations, criminal penalties prohibiting forced labor, and civil liability.

The CPTPP labor rules require member states to translate core ILO conventions into domestic law and allow cross-border recourse against the home country of a multinational corporation for forced labor in the supply chain [2]. The independent legal personality of subsidiaries is protected by Article 14 of the Company Law, which states that parent companies control subsidiaries only through equity or agreements, and may not intervene in their sole operation. Article 14 of China's Company Law provides for the parent company to bear the civil liability of an unincorporated branch of a multinational company in China, including compensation for labor disputes or tort liability. The Interim Measures for the Management of State-owned Capital and Finance of Enterprises govern the parent company's obligation to contribute capital to its subsidiaries and its responsibility for compliance, ensuring that capital is adequate and that connected transactions do not jeopardize the interests of subsidiaries. If the parent company damages the subsidiary's interests through connected transactions, it must assume liability in accordance with Article 21 of the Company Law.

Multinational corporations are required by domestic legislation to do due diligence on forced labor practices in their international supply chains, which includes identifying hazards, implementing remedial actions, and filing reports on a regular basis. Companies risk fines, limitations on market access, and other consequences if they don't fulfill their due diligence responsibilities. The OECD Guidelines for Transnational Corporations require parent companies to identify and mitigate human rights and environmental risks in their operations through due diligence [3]. According to the National Contact Points (NCPs) home countries should set up NCPs to monitor their companies' compliance with the Guidelines and to deal with related complaints. According to article 12 of the (draft) Code of Conduct for Transnational Corporations, parent companies, as well as transnational corporations, should disclose the human rights and environmental impacts of their operations, including risks in their supply chains [4].

Principle 11 of the United Nations Guiding Principles on Business and Human Rights (UNGPs) recommends that home States have an obligation to ensure, through legislation and regulation, that their companies fulfill their human rights responsibilities and that parent companies establish human rights due diligence mechanisms to monitor the human rights and environmental compliance of their

subsidiaries; and Principle 17 recommends that home States should provide victims with access to effective and immediate means, including judicial and non-judicial mechanisms [5]. Article 1 of the Hague Convention on the Taking of Evidence provides that home and host States may obtain evidence of a parent company's control over subsidiaries (e.g., financial transactions, records of decision-making) through mutual legal assistance to provide procedural support for the pursuit of joint and several liability [6]. If the home state business is held to be jointly and severally responsible, Article 94 of the UN Charter requires the government of the home state to help enforce the ruling of the International Court of Justice.

The Regulation on Products Prohibiting Forced Labor provides for market access restrictions and places the burden of proof on the home country if the supply chain of a home country enterprise is involved in forced labor and its products may be prohibited from entering the EU market. For example, BYD Auto is at risk of an EU market ban due to allegations of involuntary overtime at its battery supplier, requiring a new audit of its supply chain and submission of a third-party compliance report.

The Anti-Trafficking in Persons Act (TVPA) provides that U.S. citizens or companies, whether at home or abroad, are subject to U.S. law if they are involved in forced labor practices under personal jurisdiction. The U.S. Trafficking Victims Protection Act (TVPA) contains provisions that allow U.S. courts to bring civil lawsuits against parties directly involved in or benefiting from forced labor practices abroad. Victims can sue companies for damages and may face criminal charges if the parent company knowingly or tacitly approves of the forced labor.

3. Current Problems And Ways To Improve The Legal Responsibility Of Home Countries For The Regulation Of Forced Labor

3.1. Problems

3.1.1. Jurisdiction and home country regulation issues

Theoretically, both the host country and the home country can take binding measures to regulate infringements, but under economic globalization, there is a conflict of interest between the two sides in dealing with infringements, which affects the effectiveness of regulation.

Firstly, as a capital-exporting country, the home country often negatively regulates and lets the infringement of transnational corporations in the host country; secondly, the host country and the home country have conflicting jurisdictions, and the home country is hesitant to exercise personal jurisdiction in consideration of the territorial jurisdiction of the host country; in addition, the home country may abuse the principle of forum non convenience, which is intended to ensure fairness and justice, but in practice, the home country abuses the principle to make it difficult for victims to obtain remedies. In practice, abuse by the home State has made it difficult for victims to obtain relief, as in the 1984 Bhopal Gas Leak case in India, where the local court in the United States rejected jurisdiction on the basis of the principle, and the two parties ultimately negotiated a settlement in which the Indian party did not receive reasonable compensation and did not hold the transnational corporation liable for infringement of the law.

3.1.2. Difficulties in applying the principle of lifting the corporate veil

The home State usually asserts jurisdiction over overseas conduct on the basis of personal jurisdiction, for example, the United States Alien Tort Statute permits suits against United States companies for torts committed overseas. Transnational corporations often have separate legal personality for their overseas subsidiaries, making it difficult for the home State to assert jurisdiction directly. In such cases, the principle of lifting the corporate veil is used to break through the independent legal

personality of the subsidiary and hold the parent company jointly and severally liable on the basis of the "economic entity theory".

Proving the parent company's liability for human rights violations committed by transnational corporations can be challenging due to the traditional corporate law principle of the corporate veil. By establishing the corporate veil, the company's legal personality and limited liability are established, which means that shareholders are not responsible for the company's legal liability. In special statutory circumstances, such as piercing or unveiling the corporate veil, it is possible to make exceptions to the corporate veil principle. For instance, in the UK case of *Adams v. Cape Industries Plc*, a group of workers with impaired health rights won their case in the court where Cape's U.S. subsidiary was located. However, because Cape's U.S. subsidiary went into liquidation, the workers turned to Cape's U.K. parent company to try to trace Cape's U.K. parent company's liability. They argued that the parent and subsidiary should be treated as one entity, piercing the corporate veil. The request was rejected by the English Court of Appeal, as it was held that the principle of limited liability was part of the tradition of English company law. This case demonstrates how, while protecting the parent company's interests, the traditional corporate veil concept also partially prevents human rights obligations from being retroactive [7].

In 2012, the Court of Appeal established a new precedent in *Chandler v. Cape plc*, holding that among other things, it was necessary to ascertain whether the parent company and the subsidiary engaged in the same primary activities, whether the parent company knew that the subsidiary's systems were insufficient, and whether the parent company could have predicted that the subsidiary would depend on the parent company's experience. Although the parent's duty of care about the subsidiary's behavior was acknowledged in that case, the requirement is too strict to be applied generally [8].

3.1.3. Difficulties of proof and remedies for victims

Victims of forced labor are often unable to retain evidence such as pay slips and contracts, and the courts in the home country usually do not accept witness testimony from foreigners. There are also laws in home countries that require victims to prove that the company knew or should have known of the existence of forced labor, but internal company documents are often kept secret, and the success rate of victims in proving this is extremely low. In the United States, the Trafficking Victims Protection Act has been successful in only 3 per cent of cases in the past 10 years.

Some countries have established special compensation funds to support victims of forced labour. Such legal measures not only enhance the protection of victims, but also provide clear standards for businesses. However, accountability is often difficult in international courts, especially when faced with transnational corporations that refuse to recognize responsibility, and victims often face high litigation costs and lengthy processes when seeking legal redress.

3.1.4. Deficiencies in the home country legal system

There is a lack of uniform criteria for the identification of forced labour in home countries, and the liability of parent companies is poorly defined in some national laws. Home country laws do not yet provide a consistent standard for the liability of transnational corporations for forced labour in supply chains in other countries, although some countries have begun to revise their legislation. For instance, the "two-in-one law and corporate due diligence law" of France makes businesses answerable for human rights and environmental concerns in international supply chains.

3.2. Refinement of the methodology

3.2.1. Improvement of the legal system and implementation

There may be instances when some corporate firms' human rights breaches go unpunished because of flaws in the host nation's own legal and regulatory framework, notwithstanding the host nation's readiness to exercise authority. The home countries of most transnational corporations are developed countries, where the legal system is better, the standards of human rights protection are stricter, human rights victims receive more adequate compensation, the cost of human rights violations by transnational corporations is higher, and developed countries have obvious advantages in terms of economic strength and technology. Thus, highlighting the home country's duty to regulate transnational corporations as the focus and trend of UN human rights monitoring can fill in the gaps in the host country's human rights obligations and jurisdiction, close the gaps in human rights protection caused by entanglement of interests, and create a dual safeguard mechanism under the joint jurisdiction of the home country and the host country [9].

In terms of legislation, the home country can formulate a human rights due diligence system for transnational corporations, and stipulate in the foreign investment regulations that transnational corporations should consider human rights risks in their foreign investments and submit regular reports to avoid infringement. The French Due Diligence Act for Parent Companies and their Underwriters, which was passed in 2017, addresses human rights violations by TNCs in their home jurisdiction by outlining the human rights duties that TNCs and their underwriters must fulfill when conducting business. It also provides for TNCs' human rights due diligence about human rights. It is also possible to legislate for industry-specific human rights protections quasi, such as the EU's 2017 Conflict Insolvency Regulation, which imposes due diligence on companies for import volume overruns.

Since efficient legal remedies are helpful in defending victims' rights and interests and establishing a system for preserving human rights, home nations should lower jurisdictional barriers and take on international responsibilities for upholding human rights. However, in practice, there are conflicts of jurisdiction and abuse of the principle of forum non conveniens by home countries, making it difficult for victims to obtain relief. If the home state applies the "legal personality denial system" to solve the problem of abuses by subsidiaries, it will advance the process of regulating abuses. For instance, the Magistrate's Court in The Hague extended the jurisdiction of the home state's courts in the 2013 case of *Nigerian Farmers v. Shell* by restricting the applicability of the forum non-conveniens concept [10].

3.2.2. Utilization of ISDS (Investor-State Dispute Settlement Mechanism)

There are significant differences in the ability of TNCs and individuals to litigate, with victims in the host State facing many difficulties, and the involvement of the host State in the remedy easing the burden and increasing the rate of success. Individual tort litigation protects individual or collective rights, while the host state's claim in ISDS protects the public interest; there is an overlap between the two, and the subject matter of the litigation is not materially different. Moreover, ISDS jurisdiction is not limited by territorial sovereignty, is not bound by the jurisdictional rules of domestic law, and does not have the problem of overreaching and conflicting with the administrative branch, and has the potential to overcome the obstacles of the home state's litigation jurisdiction and law application.

ISDS applies international law more liberally than home state court litigation, expands the application of international law in determining host state liability under the Washington Convention and tribunal interpretations, and makes transnational corporation infringement remedies possible if rules of international law binding on corporate bodies can be identified. According to the Urbaser

tribunal, companies may be bound by international law, and the Aven case supported this conclusion. The Aven decision affirmed the Urbaser tribunal's assertion that companies are subject to international law and illustrated the extent of the investor's responsibilities under that law. Clarifying which international law principles apply to TNCs is crucial at this point. If the arbitral tribunal applies and further investigates the application of customary international law in the context of reciprocal obligations, it should be able to implement international law remedies for TNC violations [11].

3.2.3. Long-arm jurisdiction

Home States have certain jurisdictional powers over their own TNCs and their conduct abroad on the basis of personal jurisdiction. The parent company of a transnational corporation acts as a legal person in the home country, which can exercise jurisdiction over its global business activities, including the forced labor practices of its overseas subsidiaries, on the basis of its nationality. When a number of factors make it difficult for the host nation to effectively aid the victims, the home country, through its long-arm jurisdiction, can, to a certain extent, provide a judicial remedy for the individuals or groups who have been victimized by the forced labor of transnational corporations, so as to safeguard the rights and interests of the victims.

The U.S. Department of Justice has used the fact that Siemens submitted equity certificates for listing in the U.S. market and that several suspected bribes were transferred through bank accounts in the U.S. as the reason for obtaining investigative power for the whole case. Although it is not a direct forced labor case, it reflects the U.S. practice of investigating multinational corporations' overseas conduct with long-arm jurisdiction, and similar logic can be applied to forced labor and other infringement cases.

Long-arm jurisdiction will make multinational corporations aware that even if they operate overseas, they may still be subject to legal sanctions in their home countries for violations such as forced labor, thereby deterring their behavior, promoting compliance with labor laws and human rights standards, and reducing the incidence of forced labor. Long-arm jurisdiction can also protect the rights and interests of workers and promote the unification of international labor standards, providing more ways and possibilities for workers subjected to forced labor in multinational corporations to seek remedies such as compensation in the courts of their home countries, and increasing the means and power of workers to protect their own rights and interests. The regulation of forced labor practices of transnational corporations by home countries through long-arm jurisdiction helps to promote the formation of uniform labor standards and the concept of human rights protection on an international scale, and promotes the improvement of the global labor environment and fair competition.

4. Conclusion

Under the wave of economic globalization, transnational corporations (TNCs) have spread their business activities all over the world, and their scale and influence have been expanding continuously, however, the issue of forced labor has followed them and become the focus of attention of the international community. Focusing on the home state responsibility of forced labor regulation of multinational corporations, this study provides an in-depth analysis of this complex topic, and clarifies that the theoretical basis of home state responsibility contains two aspects: the protection of general personality rights and personal jurisdiction, and the regulation of forced labor under international law. In addition, the joint and several liability of parent companies can be categorized into two types, one of which is the use of the principle of lifting the corporate veil. When a parent company causes forced labor to occur through substantive control or manipulation of its overseas subsidiaries, the home country can rely on the "economic entity theory" to break through the

subsidiary's independent legal personality and hold the parent company jointly and severally liable. The laws of the home country may decide that the parent company and the subsidiary constitute a joint infringement of the subsidiary's rights, and that the parent company is jointly and severally liable for damages, if the parent company offers guarantees or takes part in the decision-making process of the subsidiary's labor practices. This is another form of joint infringement. However, there are currently problems such as conflicting jurisdictions, difficulties in implementing the principle of lifting the corporate veil, difficulties in proving remedies for victims, and deficiencies in the home country legal system. This can be solved by strengthening home country regulation to form a dual safeguard mechanism of joint jurisdiction between the host country and the home country, utilizing the ISDS mechanism, and applying long-arm jurisdiction.

In the future, strengthening the responsibilities of home countries of multinational corporations and enhancing the coordination of international regulations are the key to solving the problem of forced labor. Through the joint efforts of all parties, it is expected that a fair, just and forced labor-free global labor environment will be built, which will promote the sustainable development of the global economy and safeguard the fundamental human rights of employees. Regarding international cooperation on regulations, countries should increase communication and cooperation, and share their experiences and lessons learned with each other, so as to enhance the operational transparency of multinational enterprises and promote the integration of social responsibility and corporate performance.

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