



Topic:

***Corporate responsibility to respect human rights: Is the UN Guiding Principles on Business and Human Rights up to the task or is there a need for a Treaty on Business and Human rights?***

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**Abstract**

*On the 26<sup>th</sup> of June 2014, in a sharply divided vote, the UN Human Rights Council adopted the proposal put forward by Ecuador and a host of other states and nongovernmental organizations for a treaty on business and human rights despite the existence of the UN Guiding Principles on Business and Human Rights. Against this background, this research seeks to critically assess whether the UN Guiding Principles on Business and Human Rights is in fact inadequate to the extent that there is an urgency for an international treaty on business and human rights to be established by the international community. In bringing this to the fore, the research critically considers the arguments of those advocating for a treaty while advancing cogent and practical reasons as to why the call for a business and human rights treaty may be redundant and superfluous.*

*It is vital to make the point that this research is by no means to be perceived as an obstacle to the proposal for a treaty on business and human rights. Rather, it is an attempt to establish a case that the UN Guiding Principles may perhaps be the best compromise that can ever be reached to impose obligations on non- state entities for human rights compliance since business corporations are not required to carry obligations under International Human Rights*

*Law. The paper however concludes with a recommendation that the UNGP be transformed into an International Model Law on Business and Human Rights if there is any urgency for reform. This Model Law will serve as a standard setting and blue print that states could draw inspiration from when enacting laws, frameworks and policies that seeks to impose human rights obligations on business corporations within their respective domestic jurisdictions such as the DODD FRANK ACT in the United States; thus displacing the need perhaps for a treaty.*

## **Abbreviations**

<b>HRC</b>	<b>Human Rights Council</b>
<b>ICC</b>	<b>International Criminal Court</b>
<b>ICJ</b>	<b>International Court of Justice</b>
<b>IPIECA</b>	<b>International Petroleum Industry Environmental Conservation Association</b>
<b>NGO</b>	<b>Non-governmental Organizations</b>
<b>OECD</b>	<b>Organization for Economic Cooperation and Development</b>
<b>TNC</b>	<b>Transnational Corporations</b>
<b>UNGP</b>	<b>United Nations Guiding Principles on Business and Human Rights</b>
<b>UK</b>	<b>United Kingdom</b>
<b>USA</b>	<b>United States of America</b>

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## 1.0 Introduction

The push for an international treaty to regulate transnational corporations (TNC's) dates as far back as the 1970's<sup>1</sup> though real outcomes only manifested in 1990 when the UN Draft Code of Conduct for Transnational Corporations<sup>2</sup> was proposed. However, due to the significant divide between the developed and developing world, the Code was never adopted. A further attempt was made in 2003 when the UN Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights<sup>3</sup> were established. But like the UN Codes, they were vigorously opposed by TNC's<sup>4</sup> and subsequently neglected by the Human Rights Council.

In 2011 however, a global consensus was eventually reached and a set of Guiding Principles on Business and Human Rights<sup>5</sup> (UNGPs) to enhance corporate responsibility for human rights was unanimously endorsed. Notwithstanding its wide acceptance by TNC's, critics have expressed pessimism over its effectiveness to guarantee business compliance for human rights especially because of its soft law character, lack of effective remedies and accountability measures.<sup>6</sup>

Several calls have come from Ecuador<sup>7</sup> and other international Non- governmental organizations<sup>8</sup> for the creation of a robust international treaty on Business and Human Rights that will hold business corporations accountable where they fail to respect human rights. As a consequence of the above, on the 26<sup>th</sup> of June 2014, in a sharply divided vote,<sup>9</sup> the UN Human Rights Council adopted a Resolution<sup>10</sup> for a treaty on business and human rights with full negotiations commencing next year.

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<sup>1</sup> Keller, H. (2008) '*Codes of Conduct and their implementation: the Question of Legitimacy*' Pg 9.

<sup>2</sup> Proposed Text of the Draft Code of Conduct on Transnational Corporations, U.N Doc.E/1990/94 (1990).

<sup>3</sup> U.N Doc. E/CN.4/Sub.2/2003/12 (2003).

<sup>4</sup> Murphy, S. (2005) '*Taking Multinational Corporate Codes of Conduct to the next level*' (Citing International Chamber of Commerce and the International Organisation of Employers joint views on the Draft Norms.).

<sup>5</sup> UN Guiding Principles on Business and Human Rights, available at [www.ohchr.org/documents](http://www.ohchr.org/documents)

<sup>6</sup> 'Critiques of the Guiding Principles by Amnesty International, Human Rights Watch, FIDH & Others debate with Ruggie' available at [www.business-humanrights.org](http://www.business-humanrights.org).

<sup>7</sup> Draft Resolution for 'Elaboration of an international legally binding instrument on Transnational Corporations and other business enterprises with respect to Human Rights', A/HRC/26/L.22/Rev.1, 24 June 2014, available at [www.business-humanrights.org](http://www.business-humanrights.org).

<sup>8</sup> Treaty Alliance, Amnesty International, Human Rights Watch.

<sup>9</sup> The votes in favour were 20, those against were 14 and abstentions were 13.

<sup>10</sup> Supra note 7.

While it is anyone's guess as to what the outcome of the treaty negotiations will be, this paper critically assesses whether the UNGP is in fact inadequate to the extent that there is urgency for an international treaty on business and human rights to be established. In bringing this issue to the fore, the research advances cogent and practical arguments as to why the call for a business and human rights treaty may be obsolete and superfluous.

This study is significant because it brings to the awareness of all that it is not always true to say that until and unless an international treaty exists, much cannot be realized or accounted for in terms of business compliance for human rights. Also, in this research, an attempt is made to examine the extent to which compliance within the business sector for human rights have surged on due to the impacts of the UNGP's.

## **2.0 The UN Guiding Principles at a glance**

In 2011, the UN Human Rights Council unanimously endorsed a set of Guiding Principles on Business and Human Rights for implementing the UN 'Protect, Respect and Remedy' Framework.<sup>11</sup>

The UNGP's provide 'an authoritative global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.'<sup>12</sup> It imposes on business corporations a responsibility to respect human rights.<sup>13</sup> This presupposes that 'business enterprises should avoid causing or contributing or being linked to adverse human rights impacts through their own activities and business relationships;'<sup>14</sup> and where they have not contributed to these violations, business enterprises should seek to 'prevent or mitigate impacts that are directly linked to their operations, products or services through their business relationships and also address adverse human rights impacts by providing adequate and effective remedies where violations have occurred.'<sup>15</sup>

The successful implementation of the 'responsibility to respect human rights' would further require business enterprises to have certain policies and processes in place 'to know and show

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<sup>11</sup> Supra note 5.

<sup>12</sup> Reggae, J.G (2014) 'A UN Business and Human Rights Treaty?' available at [www.business-humanrights.org](http://www.business-humanrights.org).

<sup>13</sup> Ibid.

<sup>14</sup> Supra note 5 at para 13(a) & (b).

<sup>15</sup> Ibid.

that they respect human rights'.<sup>16</sup> Such policies and processes may include human rights policy frameworks, undertaking human rights due diligence and provision of remedies.<sup>17</sup>

Under the UNGP's also, the states existing obligations under international law to protect human rights<sup>18</sup> are reiterated. The Guiding Principles makes clear that States should carry out the duty to protect through 'effective policies, legislations, regulations and adjudication and further provide greater clarity of expectations and consistency for business corporations in relation to human rights';<sup>19</sup> and 'where appropriate, require business enterprises to communicate how they address their human rights impacts and guarantee access to remedies where violations have taken place'.<sup>20</sup>

Despite these comprehensive provisions, critics have opposed the UNGP on many grounds in favour of a treaty.

### **3.0 Arguments in favour of a business and human rights treaty**

On the 26th of June 2014, the Human Rights Council endorsed a landmark resolution<sup>21</sup> put forward by Ecuador and South Africa calling for the establishment of an open-ended intergovernmental working group within the Human Rights Council "to elaborate an internationally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises."<sup>22</sup> Even though the resolution acknowledges "that transnational corporations and other business enterprises have the capacity to foster economic well-being, development, technological improvement and wealth," and also cause 'adverse impacts on human rights',<sup>23</sup> it however failed to address specific abuses of business enterprises or explain why there is urgent need for a treaty on business and human rights.<sup>24</sup>

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<sup>16</sup> Supra note 5 at para 15 (a), (b), &(c).

<sup>17</sup> Ibid.

<sup>18</sup> See UN Committee on Economic, Social and Cultural Rights, General Comments No 3: The Nature of States Obligations (Article 2 para 1 of the Covenant).

<sup>19</sup> Supra note 5 at para 1, 2&3.

<sup>20</sup> Ibid.

<sup>21</sup> Supra note 7.

<sup>22</sup> Ibid.

<sup>23</sup> Supra note 7.

<sup>24</sup> Ruggie, J.G. (2014): '*The Past as Prologue? A Moment of Truth for UN Business and Human Rights Treaty*', available at [www.business-humanrights.org](http://www.business-humanrights.org).

Irrespective of this lacuna however, proponents for a business and human rights treaty have made the following arguments:

Fundamentally, they have argued that a business treaty would ensure a level playing field in terms of human rights enforcement across jurisdictions for all TNC's and all states.<sup>25</sup> This uniformity is key to enhancing legal predictability and stability over the huge variations of human rights responses that are prevalent within jurisdictions.

Furthermore, 'Treaty Alliance' have also expressed their discontent over the continued and widespread abuse of human rights by business corporations and the lack of effective prevention and remedy to hold them accountable as the main impetus for their push for a robust treaty.<sup>26</sup> They maintained that the continued dispossession of lands, poor wages, harmful pollution, labour abuse etc by business enterprises are all pointers to the fact that a robust treaty is needed to regulate business corporations.

Some proponents have also opined that the deterrence from violations of human rights by corporations can only be guaranteed through hard law and not soft law or voluntary codes such as the UNGP.<sup>27</sup> They express disdain for initiatives which do not create human rights obligations for corporations nor obliged them to prevent and redress their abuse of human rights.

The case has also been made that the lack of a treaty on business and human rights harms corporations too in the sense that they are unlikely to gain public trust and confidence where they continue to lobby for weak and voluntary initiatives to regulate this domain.<sup>28</sup> Critics maintain that TNC's will continue to face tough resistance and prolonged litigations with civil societies as long as weaker frameworks continue to exist.

Irrespective of the above arguments however, stated below are a plethora of reasons as to why the call for a business and human rights treaty may be redundant and superfluous.

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<sup>25</sup> Deva, S. (2014): '*The Human rights obligations of Business: Reimagining the Treaty Business*' pg6. available at [www.business-humanrights.org](http://www.business-humanrights.org).

<sup>26</sup> '*Does the World need a Treaty on Business and Human Rights? Weighing the Pros and the Cons*' - Workshop and Public debate, Notre Dame Law School, 14 May, 2014.

<sup>27</sup> Ibid.

<sup>28</sup> Supra note 25 at pg.6.



#### 4.0 Arguments against a treaty on business and human rights

In bringing forward the arguments against a business and human rights treaty, it is vital to re-echo the words of the International Organization of Employers:

‘the adoption of the Ecuador initiative has broken the unanimous consensus on business and human rights achieved three years ago with the endorsement of the UN Guiding Principles on Business and Human Rights. Today’s vote at the UN Human Rights Council is a genuine setback to the efforts underway to improve the human rights situation and access to remedy on the ground...’<sup>29</sup>

Arguably speaking, this statement may be quiet correct when a close assessment of the impacts of the Guiding Principles is made. Despite its limitations, the UNGP has significantly contributing to change in attitudes by state actors and business corporations with respect to human rights.<sup>30</sup> Within three years of its introduction, there are tangible proofs of good practices already reflecting in the way business corporations and states do business within jurisdictions.

For example, in 2012, after the Marikina Commission of Inquiry was opened in South Africa over the death of about 45 mine workers and the UNGP’s brought into the preliminary discussion, LOMNIN, the multinational corporation and owner of the mines, became incentivized even ahead of the close of proceedings to provide more favourable conditions of services to its workers and also cared for the educational welfare of children whose parents died during the strikes.<sup>31</sup>

Also, the UNGP’s message for business corporations to grant access to remedy for their negative impacts on human rights has also dawn vividly on Shell Corporation of late to the extent that they are now willing to offer about 30 million pounds as compensation to affected communities over its oil spill in the Niger Delta.<sup>32</sup>

Furthermore, in 2012, recommendations from the Sierra Leone’s human rights commission to the African Minerals Corporation informed by the UNGP’s did incentivized the company to

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<sup>29</sup> International Organisation of Employers statement on the adoption of the treaty resolution for a Business and Human Rights Treaty. Available at [www.ioe-emp.org/index.php?id=123](http://www.ioe-emp.org/index.php?id=123).

<sup>30</sup> Rees, C. (2014):’ *Treaties & The UN Guiding Principles on Business and Human Rights: The Way Forward*’.

<sup>31</sup> [www.fin24.com/companies/mining/lonmin-offers](http://www.fin24.com/companies/mining/lonmin-offers).

<sup>32</sup> Royal Dutch Shell Plc.Com website. [www.royaldutchshellplc.com](http://www.royaldutchshellplc.com).

make reform on its conditions of service to its workers in a bid to forestall strikes and demonstrations from occurring in the future.<sup>33</sup>

A great deal of reforms ranging from health safety of workers, improved pay conditions, infrastructure as well as compensations for victims are currently being executed in Bangladesh after the Rana Plaza factory collapse due to effective advocacy by NGO's using the UNGP's as advocacy tool in challenging the government and TNC's involved to own up to their obligations and responsibilities as required by the UNGP.<sup>34</sup>

More important still, a good number of business corporations like Total and BP have begun introducing for the first time internal human rights policy frameworks within their establishments<sup>35</sup> in a bid to effectively minimize the risk of human rights violations within their business environment.

A number of states are also taking concrete steps in line with the UNGP's call to action. The UK for example has adopted a policy regulatory framework<sup>36</sup> where it has set out guidelines and expectations for business corporations with respect to human rights and an Action Plan for the implementation of the UNGP's. Sierra Leone has also established a National Minerals Agency in 2013 to promote and implement policies and regulations that will ensure compliance for human rights within the mineral sector. In the USA, there is currently an incorporation of the UNGP's concept of human rights due diligence into Section 1502 of the United States Dodd Frank Act in relation to conflict minerals that are procured from the Democratic Republic of Congo.

Regional integration frameworks have also been influenced by the UNGP. For instance, the European Commission has made several requests to member states to submit plans for implementing the Guiding Principles.<sup>37</sup> The Africa Mining Vision is also currently being reformed in line with the UNGP so as to effectively maximize the development outcomes of

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<sup>33</sup> Human Rights Commission of Sierra Leone Bumbuna Inquiry Report 2012.

<sup>34</sup> Motlagh, J. (2014): 'A Year after Rana Plaza: What hasn't changed since the Bangladesh Factory Collapse' the Washington Post.

<sup>35</sup> See TOTAL's Human Rights internal Guide 2012; See BP's Business and Human Rights Policy 2013.

<sup>36</sup> 'Good Business, Implementing the UN Guiding Principles on Business and Human Rights, Sept 2013, available at <https://www.gov.uk>.

<sup>37</sup> Supra note 30 at pg.2.

mineral resources in the African continent.<sup>38</sup> The General Assembly of the Organization of American States have also endorsed the UNGP's.<sup>39</sup>

Even prior existing international policies that borders on business and human rights have also being impacted. For instance, the UNGP has given perspective to the OECD Guidelines for Multinational Enterprises. In 2011, a new set of changes has been reflected into the Guidelines which includes among others: a new human rights chapter and a new comprehensive approach to due diligence and responsible supply chain management.<sup>40</sup> Also, many of the UNGP's provisions have now been incorporated into the ISO 26000 international guidance standard on social responsibility.<sup>41</sup> IPIECA has also launched a Human rights due diligence practical guide in 2012 to enhance human rights due diligence and implementation for oil and gas companies.<sup>42</sup>

From the aforementioned, it stands to reason that the UNGP is actually owning up to the task of ensuring that business corporations become more responsive to their human rights impacts. To assert that it has not done much could therefore be misleading.

Furthermore, a closer examination of the treaty resolution that was adopted would reveal that it only seeks to impose liability on TNC'S and not local companies.<sup>43</sup> In this sense, it can be argued that the resolution is limiting in scope and outlook. This limitation brings to memory the trajectories of the UN Norms and Codes which considered TNC's as powerful agents that needs to be checkmated and controlled. While the UNGP's focuses on all shades of business corporations; ensuring that they account for their negative impacts,<sup>44</sup> the treaty resolution does not envisage this at all but rather limits itself only to the big and powerful companies.<sup>45</sup> The exclusion of local companies from accountability makes a ridicule of the proposed treaty itself and Like Ruggie humorously puts it, 'the proposed treaty would have imposed liability on international corporations purchasing garments from factories housed in the collapsed

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<sup>38</sup> See Joint Partnership meeting held in Adisababa, Ethiopia on 8 Oct 2012 to deliberate on a Business Plan to implement the African Mining Vision, Available at [www.modernghana.com/news](http://www.modernghana.com/news).

<sup>39</sup> Supra note 24 at p2.

<sup>40</sup> Available at [www.ituc-csi.org](http://www.ituc-csi.org).

<sup>41</sup> Ibid.

<sup>42</sup> IPIECA's Human Rights Due diligence process: A Practical Guide to implementation for oil and gas companies, 2012.

<sup>43</sup> Supra note 24 p 1.

<sup>44</sup> Ruggie J.G. (2013): *'Just Business: Multinational corporations and human rights'* (Norton Global Ethics Series) WW Norton& Company.

<sup>45</sup> Supra note 7.

Rana Plaza, but never on the local factory owners themselves.<sup>46</sup> This kind of selective accountability would certainly be counterproductive and several concerns have even been raised by NGO's that the resolution as adopted will insulate national companies from accountability for human rights violations.<sup>47</sup>

The argument is also been made that there may be no hope to achieving a better instrument other than the existing UNGP's. This is the case because judging from the treaty resolution that was adopted, there is nothing radically different to be expected other than issues already raised by the UNGP. As a matter of fact, the resolution does not address any specific human rights abuses by business corporations nor did it explain why a treaty is needed in this domain.<sup>48</sup> All it sets out to do is to establish 'an overarching international legal frame governing business and human rights.'<sup>49</sup> It is even agreed in the resolution that:

the obligations and primary responsibility to promote and protect human rights and fundamental freedoms lie with the State, and that transnational corporations and other business enterprises only have a responsibility to respect human rights.<sup>50</sup>

The question then to ask is, why the fuss for a treaty that will only re-echo the Guiding Principles provisions? The resolution in its current state did not identify any governance gaps which might necessitate the need for a treaty.

Moreover, the chances that a consensus would be reached by states and business corporations during the forthcoming treaty negotiations is a probability. The outright divide and polarization that were characteristic of the voting process symbolically points to the hurdles that lie ahead. For instance, apart from the initiators of the proposal, all Latin American countries including Brazil, abstained. The USA and the European Union, home countries with the vast majority of TNC's, voted against the proposal and made it clear that they will not participate in the treaty negotiating process.<sup>51</sup> South Korea and Japan also voted against the proposal and even China who favoured the proposal signaled stringent

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<sup>46</sup> Supra note 24 at p 1.

<sup>47</sup> Ibid.

<sup>48</sup> Supra note 24

<sup>49</sup> Supra note 7.

<sup>50</sup> Ibid.

<sup>51</sup> Available at [www.ipsnews.net](http://www.ipsnews.net).

conditionality.<sup>52</sup> The votes in favour were 20, those against were 14 and abstentions were 13.<sup>53</sup> Even Ecuador has estimated that it might take a decade or more to get to an international consensus on the issue.<sup>54</sup> With all these bottlenecks, there is possibility to witness a replay of the 1970 UN Code of Conduct negotiations which drifted right on to 1992 and then abandoned.<sup>55</sup>

It is important to also emphasize that it is through the UNGP that a global consensus was reached for the very first time between state actors and TNC's to impose responsibilities on business corporations to respect human rights.<sup>56</sup> This opportunity for global engagement should be guarded jealously and not frustrated. A push for a treaty will ultimately frustrate progress on international consensus that has been garnered so far by the UNGP. International legalization may create similar harm just like what the Alien Torts Statute did before its extraterritorial applicability was restricted by the US Supreme Court in the *Kiobel* case'.<sup>57</sup>

Also, the costs implications with respect to time and money in negotiating a treaty on business and human rights can be enormous. Examples have shown that contentious treaty negotiations can go on for decades and even where they have been eventually passed, there coming into force could still be stalled due to states refusal to ratify such treaties.<sup>58</sup> Certainly, with the errant divide that has manifested itself in the Human Rights Council over the proposed business and human rights treaty, there would be huge costs implications during the ensuing negotiations to arriving at a consensus.

In rebuttal to the argument that human rights abuses by Corporations have persisted, critics against the treaty have raised several questions: Will all abuses of human rights by business enterprises end with the passing of a treaty? Can an International Treaty on Business and Human Rights guarantee the much needed compliance from business corporations overnight? Certainly, to simply hold the doctrinal belief that only an international treaty on

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<sup>52</sup> Supra note 24.

<sup>53</sup> Available at [www.business-humanrights.org](http://www.business-humanrights.org).

<sup>54</sup> Ruggie, J.G. (2014): 'Regulating Multinationals: The UN Guiding Principles, Civil Society and International Legalization'. Available at <http://ssrn.com>.

<sup>55</sup> Ibid.

<sup>56</sup> Supra note 30.

<sup>57</sup> *Kiobel v Royal Dutch Petroleum Co*, 133 S.ct 1659 (2013)'.

<sup>58</sup> The Declaration on the Rights of Indigenous Peoples took 26 years from Conception to adoption. The TNC's Code of Conduct negotiations drifted from 1976 right on to 19912 and then abandoned. The Migrant Workers Convention negotiations began in 1979, adopted in 1990 but only came into force in 2003.

business and human rights will bring about the desired changes may be fundamentally misleading. Even a well drafted and targeted treaty will only succeed in incentivizing corporate respect for human rights in the same direction as the UNGP's presently advocates.<sup>59</sup> No treaty can play the magic overnight and there will certainly be enormous challenges in the process.

A treaty on business and human rights would also mean inviting TNC'S into a club that has been an exclusive reserve for states.<sup>60</sup> This novelty would pose serious challenges to international law since business corporations are not required to carry obligations under international human rights law.<sup>61</sup> Though some successes have been scored under international arbitration and investment law, by and large however, past attempts to impose obligations on companies have failed woefully.<sup>62</sup> Will the international community succeed this time in making the paradigm shift? Are there available legal institutions at the international level to hold business corporations accountable when they violate human rights? Certainly, the International Criminal Court and the International Court of Justice do not have jurisdiction at the moment nor is the Human Rights Council equipped to supervise, monitor and ensure accountability to the thousands of TNC's and subsidiaries around the world for human rights violations.<sup>63</sup> Indeed, these are legitimate issues that ought to be considered even as the negotiations for a treaty on business and human rights is being pursued at the international level.

## **5.0 Recommendation**

Ruggie,<sup>64</sup> in his report<sup>65</sup> to the UN Human Rights Council did admit that there is need for further improvements to be made on the UNGP especially in targeting specific governance gaps that will ensure more accountability for human rights violations by business corporations. Be that as it may however, it is vital to pinpoint that such admission should

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<sup>59</sup> Supra note 30 at p 2

<sup>60</sup> Smith, R.K.M. 92007):' Text Book on International Human Rights' 3<sup>rd</sup> edition, Oxford University Press.

<sup>61</sup> Weissbrodt D, Ni Aolain D.F & Rumsey .M (2014):'The Development of International Human Rights Law' vol 1 mew edition, Ashgate publishing.

<sup>62</sup> See Reparations for injuries suffered in the service of the United Nations, Advisory Opinion 1949, ICJ.174, 179 (April 11).

<sup>63</sup> Connie De La V & Others (2011)' *Holding Business Accountable for Human Rights Violations*' p 11.

<sup>64</sup> John Ruggie was the UN Secretary General's Special Representative for Business and Human Rights (2005-2011)

<sup>65</sup> A/HRC/17/31, 21 March 2011, p 15. Available at [www.ohchr.org](http://www.ohchr.org).

never be construed as a dismissal of the UNGPs but rather a clarion call for a conscious search for prudent interventions in areas where the UNGPs have proven to be inadequate. This is the case because business and human rights is quite a complex area that cannot easily lend itself to a single set of treaty obligations. The issue of 'diversity, institutional variations, conflicting interests, challenges of monitoring coupled with the absence of a world business court and the multiplicity of TNC's',<sup>66</sup> all make the discourse one that demands a well thought out solution that is necessary, achievable and capable of yielding practical results.

Without prejudice to the myriad of recommendations that are being forwarded as alternatives, perhaps, a better compromise would be to transform the UNGP into an international model law on business and human rights. This law will be carefully constructed to address specific governance gaps that the UNGP has failed to address.<sup>67</sup> A Model law will also serve as a standard setting and guide to states when enacting laws, frameworks and policies within their respective jurisdictions that imposes human rights obligations on corporations. The introduction of Model Laws has been a common practice within the UN system especially on matters of great contention and diversity. A good example is the UNCITRAL Model Law on International Arbitration.<sup>68</sup> This law has helped in many respects to provide standards and guidelines to states when passing domestic laws and regulations that borders on investments, arbitration and international trade.<sup>69</sup> The DODD FRANK ACT<sup>70</sup> is an apt example of a domestic law that draws inspiration from an international framework such as the UNGP. A model law on business and human rights might serve similar purpose but in a more binding way perhaps.

## **6.0 Conclusion**

To emphasize that more work needs to be done in ensuring that business corporations respect human rights is fundamentally a necessary argument that could be made. But to trivialize or down play the impacts that the UNGP is having on business corporations with respect to human rights is an error that must be robustly corrected. With just 3 years of its existence, it may perhaps be unrealistic to expect too much too soon. However, even with its

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<sup>66</sup> Supra note 24 at p2.

<sup>67</sup> Supra note 65 at p15.

<sup>68</sup> 1985 with Amendments as adopted in 2006. Available at [www.uncitral.org](http://www.uncitral.org).

<sup>69</sup> See commentary on [www.uncitral.org](http://www.uncitral.org).

<sup>70</sup> Dodd Frank Wall Street Reform and Consumer Protection Act (2010):USA

limitations, the UNGP is 'slowly but surely creating a coalition of states, businesses, multi-stakeholder bodies and indigenous groups who are all working towards the goal of universal acceptance of corporate responsibility for human rights.'<sup>71</sup> Perhaps, giving it a little more time or transforming it into a Model Law could be a practical way forward rather than going for a treaty that would only lead to another dead end either because of prolonged negotiations or the refusal of ratifications by countries that are hosts to most of the world's TNC's.

### **Biography of the Author**



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<sup>71</sup>Batesmith .A (2013):' *HRW vs Ruggie: How valid is the criticism of the UNGP's?*



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