

The Right to Development Obligation of Multinational Corporations in Local Community Development: A Focus on the Lesotho Highlands Water Project

Tankiso Motipi* and Carol Chi Ngang**

Abstract

This article examines the right to development obligation of multinational corporations involved in local community development, with a particular focus on the Lesotho Highlands Water Project (LHWP). Most of the LHWP's construction work is undertaken by foreign multinational companies from China, France and South Africa. South African companies are contracted by the Lesotho Highlands Development Authority (LHDA) under the 1986 bilateral treaty between Lesotho and South Africa. Some multinational companies have allegedly, with impunity, infringed a broad range of human rights, including the right to development, in the highland communities hosting the LHWP. With minimal leverage by state governments to regulate multinational corporations, this article contends that when multinational corporations violate human rights in their operations, they must be held directly accountable. This analysis also highlights the contemporary understanding of development as a human right. The growing recognition of the intersection between business and human rights requires functional measures and mechanisms for redress. One such mechanism is the duty to cooperate, as the UN Expert Mechanism on the Right to Development has already highlighted. This article argues that the obligation of multinational corporations entails, at a minimum, adherence to the negative obligation to refrain from contravening the right to development in the local communities where they operate, and accountability for violations when they occur.

Keywords

right to development, Lesotho Highlands Water Project, local communities, corporate accountability, multinational corporations

1. Introduction

This article examines the right to development obligation of foreign multinational corporations engaged in local community development, with a focus on those from China,

* LLM (Human Rights Law), LLB (National University of Lesotho). PhD Researcher in Law and Development Research Group, University of Antwerp, Belgium. <<https://orcid.org/0009-0006-0180-4627>>; email: tankisomotipi@gmail.com

** LLD (University of Pretoria, South Africa), LLM (University of Pretoria, South Africa), IDHA (Fordham University, United States of America), PGD-HE (National University of Lesotho, Lesotho), SUSTLAW (University of Antwerp, Belgium), LLB (University of Yaoundé II, Cameroon). Associate Professor/UNDP Human Rights Chair, Department of Public Law (National University of Lesotho, Lesotho) Research Fellow, Free State Centre for Human Rights (University of the Free State, South Africa) <<https://orcid.org/0000-0001-7222-4693>>; email: ngang.carol@gmail.com



France, and South Africa undertaking mega construction works under the LHWP. What is concerning is the increasing abuse by foreign multinational corporations of a broad range of human rights, including the right to development; these companies often evade accountability, thereby contravening contemporary international law standards.¹

The right to development is a multifaceted human right. It guarantees every individual and all peoples the right to participate in, contribute to, and benefit from development attainable through a rights-based process that aims to fully realise all human rights and freedoms at the national and international levels.² It incorporates substantive and procedural elements, envisaging, on the one hand, that development must be responsive to livelihood exigencies and hence must result in the equitable sharing of the benefits that accrue from the development process, and, on the other hand, that the processes of development must be genuinely participatory, accountable and transparent, and decision-making related thereto must be subject to equity and justice.³

The right to development, accordingly, involves recognising persons as the central subjects and beneficiaries of development, and must be pursued in a manner that guarantees continuous improvement in their well-being and quality of life. The article focuses on Lesotho because it is one of the least developed countries in the world,⁴ and a mega-development venture like the LHWP raises expectations for a substantive contribution to improving the standard of living of local communities. Although recognised as an engineering marvel,⁵ the LHWP is reported to have caused enormous hardship to the local communities, where human rights have consistently been infringed upon by the foreign multinational corporations contracted by the LHDA.⁶

The right to development, in its contemporary framing, is a human right intended to improve well-being, raise living standards, and uphold dignity, as opposed to its obsolete conception, which focused solely on economic growth.⁷ The LHWP was established under a bilateral treaty between South Africa and Lesotho, which was adopted and

-
- 1 Ullah, S et al 'Multinational Corporations and Human Rights Violations in Emerging Economies: Does Commitment to Social and Environmental Responsibility Matter?' (2021) 280 *Journal of Environmental Management* 1; Ryngaert, CMJ 'Accountability of Multinational Corporations for Human Rights Abuses' (2018) 14(2) *Utrecht Law Review* 1; Calatayud, MJT, Candelas, JC & Fernández, PP 'The Accountability of Multinational Corporations for Human Rights Violations' (2008) 64(65) *Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol* 171.
 - 2 Subedi, S 'Declaration on the Right to Development' (2021) *United Nations Audiovisual Library of International Law* 1.
 - 3 Sengupta, A 'The Human Right to Development' (2004) 32(2) *Oxford Development Studies* 180.
 - 4 UN Trade and Development (UNCTAD) 'UN List of Least Developed Countries' <<https://unctad.org/topic/least-developed-countries/list>> accessed 5 February 2026.
 - 5 Davies, AG 'An Introductory Description of the Lesotho Highlands Water Project, Emphasizing Implementation of Phase IA' (1994) 9 *Tunneling and Underground Space Technology* 73.
 - 6 Manwa, H 'Impacts of Lesotho Highlands Water Project on Sustainable Livelihoods' (2014) 5(15) *Mediterranean Journal of Social Sciences* 640.
 - 7 United Nations Development Programme *Human Development Report 1990* (Oxford University Press 1990) 3.

entered into force in 1986. The full execution of the project is envisaged to be carried out in four principal phases: the supply of large volumes of water to South Africa and the generation of hydropower for energy self-sufficiency in Lesotho.⁸ The first phase of the project, involving the construction of the Katse and Mohale Dams, was completed and became operational in 2008.⁹ The second phase is ongoing, with the construction of the Polihali Dam currently at an advanced stage. The project has yielded significant economic benefits for Lesotho through substantial royalties paid by South Africa.¹⁰ A similar venture is underway with Botswana, positioning Lesotho as a strategic player in regional water security and investment cooperation.¹¹

Studies have chronicled a broad range of human rights infringements committed by the multinational companies involved in the LHWP.¹² This raises the question of whether these multinationals are obliged to adhere to human rights standards during their operations. The more precise question – whether multinational corporations have an obligation to guarantee the right to development in the local communities where they operate is also examined. Assuming that multinational corporations do have a development obligation, as argued in this article, a related question is whether they must be held accountable when they contravene that right. These questions will illustrate that, in implementing the LHWP, the foreign multinational corporations involved have been complicit in depriving host communities of their inalienable right to development.

In responding to the above questions, it is further argued that corporate social responsibility (CSR),¹³ to which business entities generally subscribe, is unable to support

-
- 8 Treaty on the Lesotho Highlands Water Project Between the Government of the Kingdom of Lesotho and the Government of the Republic of South Africa 1986, Art 4(1) <https://www.lhda.org.ls/Uploads/documents/Governance/LHWP_Treaty.pdf> accessed 13 January 2025.
 - 9 Hitchcock, RK ‘The Lesotho Highlands Water Project: Dams, Development, and the World Bank’ (2015) 3(10) *Sociology and Anthropology* 526.
 - 10 Mpesi, M ‘SA pays M350 Million Monthly for Lesotho Water’ *Sunday Express*, 16 November 2025 <<https://sundayexpress.co.ls/?p=35402>> accessed 27 February 2026; Ronoka ‘The Economic and Social Value of Water in Lesotho and South Africa: A Macroeconomic Baseline Analysis’ (2020) *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH* 32.
 - 11 African Development Bank Group ‘Supporting Lesotho’s Bold Plans for Sustainable Water and Energy Supply in Southern Africa: King Letsie III and Akinwumi Adesina Meet’ (31 March 2025) <<https://www.afdb.org/en/news-and-events/press-releases/supporting-lesothos-bold-plans-sustainable-water-and-energy-supply-southern-africa-king-letsie-iii-and-akinwumi-adesina-meet-82190>> accessed 27 June 2025; ORASECOM ‘The Lesotho-Botswana Water Transfer Project’ <<https://orasecom.org/l-bwt-project/>> accessed 27 June 2025; Lesotho Times ‘Lesotho-Botswana water project progressing’ 13 March 2024 <<https://lestimes.com/lesotho-botswana-water-project-progressing/>> accessed 27 June 2025.
 - 12 Mwangi, O ‘Hydropolitics, Ecocide and Human Security in Lesotho: A Case Study of the Lesotho Highlands Water Project’ (2007) 33 (3) *Journal of Southern African Studies* 11.
 - 13 Katamba, D et al (eds) *Principles of Corporate Social Responsibility* (Strategic Book Publishing and Rights Co, 2012); Khan, MT et al ‘Corporate Social Responsibility (CSR) – Definition, Concepts and Scope (A Review)’ (2012) 2(7) *Universal Journal of Management and Social Sciences* 41; Crowther, D & Aras, G *Corporate Social Responsibility* (Bookboon 2008); Hohnen, P ‘Corporate Social Responsibility: An Implementation Guide for Business’ International Institute for Sustainable Development (2007) <https://www.iisd.org/system/files?file=publications/csr_guide.pdf> accessed 10 March 2026.

people-centred development. The argument is framed on the understanding that the LHWP is a development project,¹⁴ and that development is a human right that contributes to human well-being and improved living standards. In the event of a contravention of that right, as has been the case in the communities affected by the LHWP, the perpetrators must be held legally accountable. Contrary to the dominant perception of multinational corporations as exclusively business-focused,¹⁵ to the extent that their operations fall within the scope of development, it is argued that they have a corresponding obligation to ensure the realisation of the right to development in the communities in which they operate.

The analysis comprises two main parts. The first part delves into the interconnection between business and human rights, emphasising the business focus of multinational corporations, the impact of business on human rights, and an inquiry into corporate accountability for human rights. The second part examines development as a human right. It highlights the contemporary understanding of development, the normative framework for the right to development, the obligations of multinational corporations, and community claims to the right to development. The conclusion argues that international law, through a range of emerging instruments, is increasingly moving towards imposing binding obligations on multinational corporations and other non-state actors in the domains of business and human rights and of the right to development.

2. Business and human rights interconnection

2.1 Business focus

Prior to the adoption of the Companies Act¹⁶ and the launch of the Mohlomi Corporate Governance Code in 2021,¹⁷ corporate activities in Lesotho historically prioritised profit-driven goals, leaving significant gaps in respect of human rights and the welfare of local communities.¹⁸ Corporate entities in Lesotho must still adjust to the shift in paradigm regarding corporate value addition to society, including accountability for wrongful actions. Being business-focused means that multinational corporations are established primarily, though not exclusively, to do business, and their mission and vision centre on profit-making and protecting their business interests, regardless of how pursuing that goal may affect local communities. This position was articulated in the 1919 *Dodge v Ford Motor Co* case, where the Michigan Supreme Court asserted that ‘there shall be no confusion’ that ‘a business

14 Haas, LJM, Mazzei, L & O’Leary, D ‘Lesotho Highlands Water Project: Communication Practices for Governance and Sustainability Improvement’ (World Bank, 2020) 3–5.

15 Zimmerli, WC, Richter, K & Holzinger, M (eds) *The Social Responsibility of Business to Increase its Profit: Corporate Ethics and Corporate Governance* (Springer 2007) 173–178.

16 Act 18 of 2011.

17 Kajane, K ‘Mohlomi Corporate Governance Code Launched’ *The Reporter*, 6 September 2021 <<https://www.thereporter.co.ls/2021/09/06/mohlomi-corporate-governance-code-launched/>> accessed 29 December 2025; AfriWise ‘Corporate Governance in Lesotho: Towards a Culture of Accountability Under the Mohlomi Code’ <<https://www.afriwise.com/blog/corporate-governance-in-lesotho-towards-a-culture-of-accountability-under-the-mohlomi-code>> accessed 29 December 2025.

18 Macheka, MT, Mdee, A & Ofori, AD ‘The Political Ecology of Water Quality Monitoring in Lesotho Mining Enclaves’ (2025) 24 *The Extractive Industries and Society* 101740.

corporation is organized and carried on primarily for the profit of the stockholders.¹⁹ The court implied that any other consideration beyond the profit-making purpose is ancillary to the corporation and invokes only a discretionary obligation rather than strict accountability.

It is indeed rational to expect multinational and other business entities to pursue their corporate objectives, which focus on generating and sustaining cash flow through profit maximisation; otherwise, the business would collapse, leading to job losses and other adverse effects. The context and dynamics regarding corporate functioning are, however, progressively shifting. Academic literature advances the view that corporations also have a responsibility to create value and benefits for multiple constituencies, not only corporate shareholders.²⁰ By implication, multinational corporations cannot reasonably focus their operations exclusively on making money but must also ensure that their operations add value to society or, at a minimum, that their business pursuits do not harm existing social values and standards. Human rights protection within their business jurisdictions and spheres of influence has become a growing concern.²¹

The multinational corporations in the LHWP have apparently focused on the business angle in their operations, without due regard to human rights in the development process, underscoring the tension between the pursuit of corporate objectives and commitment to societal exigencies. Goldman and Mabula note that several multinational corporations implementing the LHWP have no direct rapport with host communities, aside from illicit relationships between contractors and vulnerable community members.²² There is no evidence of CSR policies guiding their operations. While overall corporate responsibility is supposed to be a priority of the LHDA, the body that oversees implementation of the LHWP, its website reveals only a ten-year strategy document²³ containing elements of corporate governance but no specific institutional CSR policy. Hence, while the multi-billion-rand project thrives on maximising profits, the operations of the participating foreign multinationals are reported to have overwhelmingly negative human rights consequences for local communities, some of which are discussed below.

19 *Dodge v Ford Motor Co* 204 Mich 459 (1919).

20 Orts, E 'Toward a Theory of Plural Business Purposes' (2024) 23(2) *Journal of Corporate Law Studies* 437; Lund, D 'Toward a Dynamic View of Corporate Purpose' European Corporate Governance Institute–Law Working Paper No 746/2023; Salter, M 'Rehabilitating Corporate Purpose' (2019) *Harvard Business School Working Paper* 19; Wells, H 'The Birth of Corporate Governance' (2010) 33(4) *Seattle University Law Review* 1247.

21 Barker, LC 'From Institutional Mismatches to Socially Sustainable Governance: The Guiding Principles for the Implementation of the United Nations Protect, Respect and Remedy and the Construction of Inter-Systemic Global Governance' (2012) 25 *Pacific McGeorge Global Business & Development Law Journal* 69.

22 Goldman, MB & Mabula, RM 'Breaking the Silence: Gender-Based Challenges in the Lesotho Highlands Water Project II' Africa.Com, 26 April 2024 <<https://www.africa.com/breaking-the-silence-gender-based-challenges-in-the-lesotho-highlands-water-project-ii/>> accessed 17 March 2025.

23 Lesotho Highlands Development Authority '10 Year Strategy 2023/2024–2033/2034' <https://www.lhda.org.ls/Uploads/documents/Strategic_Plan/Strategic_Plan_10_years.pdf> accessed 29 December 2025.

2.2 Lesotho Highlands Water Project and its impact on human rights

2.2.1 Community displacements

Mabula observes that while the LHWP has contributed greatly to the exponential growth of the Lesotho economy, the project's adverse impact on human rights in the highlands communities is unprecedented, with members of the community enduring massive involuntary displacements and losing vast stretches of arable and grazing lands, including indigenous flora and fauna, which constitute the basis of their livelihoods and survival.²⁴ She points out that Phase IA of the project, involving the construction of the Katse and Mohale Dams, affected approximately 20,000 community members (at least 2,345 families), and dispossessed them of almost 1,900 hectares of cropland, while 1,000 hectares of land was expropriated under Phase 1B with the construction of the Mohale Dam, impacting negatively on livelihoods and the socio-economic conditions of nearly 1,000 more families.²⁵ These communities are relocated to the peripheries and semi-urban areas of Maseru and forcibly integrated into the urban economy, where they struggle to adapt, a consequence of being cut off from the rural economy, customary tenure practices and subsistence livelihoods to which they are accustomed. Displacement is a major problem for socio-economic and cultural development in communities where land is revered not only as home but also as a dependable source of livelihood sustainability; cattle-rearing and subsistence agriculture, coupled with traditional forms of spirituality rooted in ancestral worship at burial grounds and other designated sites for rituals, form the core of their cultural norms and practices.²⁶

2.2.2 Socio-economic and cultural development vulnerabilities

Despite being hailed as an engineering masterpiece with enormous economic benefits, the LHWP has, contrary to the guarantee in Article 15 of the LHWP Treaty, inflicted severe socio-economic and environmental harm on host communities, with many community members still owed meagre compensation for the assets they have lost.²⁷ It is over a quarter of a century since Phase I of the project became operational, but affected communities have remained impoverished due to disruptions to their livelihoods, with little or no

24 Mabula, RN 'Litigating Impacts of Large Infrastructure Development Projects in Lesotho: Challenges and Opportunities' (2025) 17(2) *Journal of Human Rights Practice* 2; Hitchcock (note 9) 526–538.

25 Mabula (note 24) 2. See also Hoover, R *Pipe Dreams: The World Bank's Failed Efforts to Restore Lives and Livelihoods of Dam-Affected People in Lesotho* (International Rivers Network 2001).

26 Seinoli Legal Centre 'White Paper on Water Infrastructure Development and Human Rights in Lesotho' (2025) 29 <https://www.seinoli.org.ls/wp-content/uploads/2025/09/SLC_Whitepaper_.pdf> accessed 10 March 2026.

27 Daily Maverick 'Can Anyone Hear the Socioeconomic and Environmental Alarm Bells on Lesotho Highlands Water Project?' 23 March 2023 <<https://www.dailymaverick.co.za/opinionista/2023-03-23-can-anyone-hear-the-socioeconomic-and-environmental-alarm-bells-on-lesotho-highlands-water-project/>> accessed 6 January 2026. Article 15 of the LHWP Treaty provides that '[t]he Parties agree to take all reasonable measures to ensure that the implementation, operation and maintenance of the project are compatible with the protection of the existing quality of the environment and, in particular, shall pay due regard to the maintenance of the welfare of persons and communities immediately affected by the Project'.

improvement in well-being or standards of living.²⁸ Apart from the violations that are directly imputed to the Lesotho government and the project-implementing authorities, other human rights abuses have been documented, including human trafficking, child abuse and sexual offences committed by employees of the multinational companies.²⁹

The harm has been disproportionately borne by women and girls; there have been reports of sexual harassment, exploitation, gender-based violence, teenage pregnancy and girls dropping out of school, exacerbating their vulnerabilities and their heightened risk of inequality and impoverishment.³⁰ Though few formal complaints have been lodged by community members, local NGOs and media have reported acts of sexual exploitation and abuse of women and girls in the project implementation areas.³¹ As the communities lose grazing and farmland and other sources of sustainable livelihoods, women bear the impact and may resort to culturally unconventional practices, including commercial sex, to support their families.³² The migrant workers and contractors employed by the LHWP have allegedly impregnated girls as young as 13, in violation of the Lesotho Sexual Offences Act, 2003.³³ The perpetrators have not been held accountable for their actions. The impact on public health has also been severe, with HIV and AIDS spreading as a result of labour mobility and the influx of migrant workers to the project areas.³⁴

The LHWP is known to have engendered extensive environmental challenges, including altered river ecosystems and biodiversity loss, depriving communities of their natural resource entitlements and cultural ties to their ancestral land. Compensation mechanisms have reportedly failed to meet legal requirements and have left affected host communities in extremely vulnerable and precarious conditions, prompting local communities to assert a legitimate claim to the right to development.

Regarding their contribution to development, multinational corporations have reluctantly adopted the CSR paradigm in their commitment to local communities.³⁵

28 Thamae, L 'The Irony of Development: Communities Impacted by the Lesotho Highlands Water Project' *Survivors of Lesotho Dams (SOLD)* (Protimos 2020); Manwa, H 'Impacts of Lesotho Highlands Water Project on Sustainable Livelihoods' (2014) 5(15) *Mediterranean Journal of Social Sciences* 642-645; Mashinini, V 'The Lesotho Highlands Water Project and Sustainable Livelihoods: Policy Implications for SADC' AISA Policy Brief – Briefing No 22 of June 2010, 3-8.

29 Sessional Select Committee on Pandemics *Report on the Public Hearing in Mokhotlong on New HIV and TB Infections and Unintended Pregnancies Among the Communities Around Polihali Construction Site* (National Assembly, 23 May 2024) <<https://nationalassembly.parliament.ls/wp-content/uploads/2025/05/Report-on-the-Public-Hearing-1.pdf>> accessed 23 January 2025.

30 Goldman, MB & Mabula, RN 'Opinion – Breaking the Silence: Gender-Based Challenges in the Lesotho Highlands Water Project II' *Forus International*, 5 April 2024 <<https://www.forus-international.org/en/news/opinion-breaking-the-silence-gender-based-challenges-in-the-lesotho-highlands-water-project-ii-112504>> accessed 6 January 2026.

31 *Ibid.*

32 *Ibid.*

33 *Ibid.*

34 Hitchcock (note 9) 526.

35 Amodu, N 'Business and Human Rights versus Corporate Social Responsibility: Integration for Victim Remedies' (2021) 21 *African Human Rights Law Journal* 856; The Conversation 'Human Rights: The Indirect Impact of Multinationals in Emerging Countries' (2019) <<https://theconversation.com/human-rights-the-indirect-impact-of-multinationals-in-emerging-countries-123790>> accessed 5 March 2026.

Regarding responsiveness to human rights expectations, the CSR mechanism is fundamentally weak and unable to ensure accountability and redress when violations occur. It is noted that:

[t]he right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.³⁶

This quote illustrates that the right to development is an amalgamation of all other human rights, implying that a violation of any component right constitutes a violation of the right to development. The range of human rights abuses reported to have been committed by the foreign multinational companies cumulatively amounts to a violation of the right to development, which the LHWP host communities have raised concerns about.³⁷ This raises the question of corporate accountability, which is supposed to inform and shape the actions of foreign multinational corporations.

2.3 Corporate accountability

Universal human rights standards are integral to customary international law and impose non-derogable thresholds for achievement that must be adhered to by all relevant stakeholders, including multinational corporations.³⁸ Corporate accountability subjects multinational corporations to legal action and the obligation to remedy any human rights violations committed. As opposed to CSR, which is a voluntary mechanism devoid of any enforcement protocols, simply requiring corporate entities to self-regulate by adopting corporate policies that outline their commitments and contributions to society, corporate accountability is a mandatory regulatory mechanism that obligates corporate entities to adhere to legally binding measures and makes them answerable for their actions and omissions with respect to applicable laws.³⁹

Although business corporations have made major contributions to society through the corporate responsibility framework,⁴⁰ this article argues that the CSR mechanism is evidently not sufficient for addressing human rights violations. Scholars have accordingly argued for a shift from corporate responsibility to corporate accountability, so that there is an enforceable framework for shaping corporate behaviour through predictable

36 UN Declaration on the Right to Development, Resolution A/RES/41/128, adopted by the UN General Assembly on 4 December 1986, Art 1(1).

37 Seinoli Legal Centre (note 26) 36–38.

38 Kammerhofer, J 'Obligations Erga Omnes' *Max Planck Encyclopedias of International Law* (2024); Dinstein, Y 'Erga Omnes Applicability of Human Rights' (1992) 30(1) *Archiv des Völkerrechts* 16.

39 Tamvada, M 'Corporate Social Responsibility and Accountability: A New Theoretical Foundation for Regulating CSR' (2020) *International Journal of Corporate Social Responsibility* 2.

40 Georg, AS & Palazzo, P 'The New Political Role of Business in a Globalized World: A Review of a New Perspective on CSR and its Implications for the Firm, Governance, and Democracy' (2011) 48 *Journal of Management Studies* 899.

measures for sanctioning non-compliance.⁴¹ In addition to progress in developing binding instruments on corporate accountability under international law (discussed below), regional and domestic measures are also being adopted. For instance, the European Union has enacted laws that impose legal obligations on corporations regarding their commitments to society and the environment, which member states such as Italy and France have adopted as domestic law.⁴² In the African human rights system, several human rights treaties contain provisions, such as Articles 21 and 24 of the African Charter, which include corporate obligations, notably in the extractive sector.⁴³

Yet, despite reported cases of human rights abuses by multinational companies involved in the LHWP, the lack of commitment to holding them accountable indicates a broader deficiency in corporate accountability related to the LHWP. Lesotho statutes, such as the Environment Act⁴⁴ and the Companies Act,⁴⁵ provide the legal framework for regulating businesses but are unfortunately ill-suited to redressing corporate misconduct, suggesting a relatively weak domestic legal system that lacks adequate enforcement mechanisms for effective corporate human rights accountability. Apparently, neither the LHDA nor any of the project contractors under its jurisdiction have a corporate social responsibility policy in place that indicates a commitment to respecting human rights in their operations. These legislative and policy gaps create a situation in which multinational corporations can take advantage of them, knowing they are subject to limited accountability for violating human rights and development obligations.

3. Development as a human right

3.1 Contemporary understanding of human rights and development

This section highlights the human rights dimension of the concept of development on which the argument about multinational corporations' right-to-development obligation is constructed. It notes that multinational corporations have a mandate to contribute to development in the places where they operate and, therefore, must respect the right to development in their community development operations. Unlike previously, when development was viewed as the achievement of economic goals, GDP growth, expansion

41 Yan, M & Zhang, M 'From Corporate Responsibility to Corporate Accountability' (2020) 16(1) *UC Law Business Journal* 43; Hoffman, J "Corporate Social Responsibility" is a Flawed Concept: What We Really Need is "Corporate Accountability" *Fortune* (2025) <<https://fortune.com/2025/03/10/corporate-social-responsibility-accountability/>> accessed 10 March 2026; Sandip, S 'Corporate Social Responsibility to Corporate Accountability: A Paradigm Shift' LinkedIn (2025) <<https://www.linkedin.com/pulse/corporate-social-responsibility-accountability-paradigm-sandip-saha-zo7yc/>> accessed 10 March 2026

42 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

43 African Commission on Human and Peoples' Rights 'State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment' Niamey, Republic of Niger, 22 May 2017.

44 Act 10 of 2008, s 19.

45 Act 18 of 2011, s 9.

of the market economy, technological advancements, modernisation and infrastructural engineering, development is now viewed more expansively, as aiming to improve human well-being. Therefore, development initiatives must contribute to improving people's quality of life and standards of living.

The concept of development has progressively been framed as a human right and recognised as such by law, to which all people can lawfully lay claim.⁴⁶ As a human right, development cannot be misconstrued to imply charity, philanthropy or some act of kindness subject to the discretion of the donor, or as an 'intervention' intended to rescue those in need. Development is an obligation that must be fulfilled to improve the well-being of the right-holders/beneficiaries. This article considers the contemporary understanding of development and examines the normative framework for the right to development, which legitimises the LHWP host communities' claims to development.

Notwithstanding the human rights and development framing in international law, the pursuit of development predominantly from an economic point of view, prioritised economic growth over the protection of fundamental human rights. Instead of enabling improved livelihoods and better living conditions, development became a bane to vulnerable and disadvantaged populations around the world.⁴⁷ To address this issue, the UN made several commitments, including declaring the period 1960–1970 as the First UN Development Decade,⁴⁸ culminating in the adoption of the Declaration on Social Progress and Development in 1969.⁴⁹ This was followed by the Second UN Development Decade from 1971 to 1980, with an emphasis on the social aspects of development.⁵⁰ The UN Declaration on the Right to Development was adopted in 1986, affirming that development is a human right. In 1987, the Brundtland Commission drew global attention to the fact that prevailing models of economic development, which focused more on growth and profit-making (at the expense of human well-being), could not be sustained.⁵¹ The Brundtland Report recommended recourse to the sustainable development model, defined as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.⁵²

46 Sengupta, A 'The Human Right to Development' (2004) 32 *Oxford Development Studies* 179, 181–185.

47 Mazibuko, S 'Understanding Underdevelopment through the Sustainable Livelihoods Approach' (2013) 44(2) *Community Development* 173.

48 1710 (XVI) UN Development Decade: A Programme for International Economic Co-operation (I), adopted by the 1084th Plenary Meeting of the UN Economic and Social Council on 19 December 1961.

49 Declaration on Social Progress and Development, UN General Assembly Resolution 2542 (XXIV), adopted on 11 December 1969.

50 1409 (XLVI) Second United Nations Development Decade with Special Reference to the Social Aspects, adopted by the 1600th Plenary Meeting of the UN Economic and Social Council on 5 June 1969.

51 UN Conference on Trade and Development 'Disclosure of the Impact of Corporations on Society: Current Trends and Issues' (2004) 4–5 <https://unctad.org/system/files/official-document/itete20037_en.pdf> accessed 12 June 2025.

52 UN Brundtland Commission 'Report of the World Commission on Environment and Development: Our Common Future, 1987' <<https://www.brundtland.co.za/wp-content/uploads/2022/08/Brundtland-Report-1987-Our-Common-Future.pdf>> accessed 12 June 2025.

In 1990, the UN Development Programme published its seminal Human Development Index Report, emphasising that development cannot be conceived exclusively in terms of economic growth and suggesting a shift to human development.⁵³ UN agencies and development initiatives embraced the shift and have consequently focused on the well-being of people around the world. The Copenhagen Declaration and Programme of Action reiterates the social progress model in the pursuit of international development.⁵⁴ At the turn of the century, the Millennium Development Goals, adopted in 2000 and eventually replaced by the Sustainable Development Goals in 2015, fundamentally underscore the global commitment to place people at the centre of development action.⁵⁵ Since the 1990s, rights-based approaches to development have been advocated,⁵⁶ including the role of non-state actors in pursuing development objectives.

The initiatives highlighted above mostly involved state governments, probably because states have generally borne the primary obligation to protect human rights, even though, under the guise of development, businesses have been the principal perpetrators of human rights abuses or are heavily complicit in violations committed by the state. To be effective in addressing the problem, the UN involved the global business community in its efforts to resolve the world's development problems. Then UN Secretary-General, Kofi Annan, called on business leaders to embrace nine universal principles of business conduct in the areas of human rights, labour standards and environmental practices – an action that saw the birth of the UN Global Compact in 2000, whereby businesses pledged cooperation in making the universal principles an integral part of their operations.⁵⁷ In this way, multinational corporations commit to ensuring that their operations contribute to development and the advancement of society; if not positively, through concrete commitments to improve quality of life and standards of living, at least negatively, by refraining from causing harm or preventing the enjoyment of existing human rights.

When a human rights violation occurs, whether arising from the contravention of a positive or negative obligation, its impact on victims is generally the same. Hence, while

53 UNDP *Human Development Index* (Oxford University Press 1990) 109–111.

54 Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development, Resolution A/CONF.166/9, adopted at the World Summit for Social Development in Copenhagen, Denmark on 12 March 1995.

55 UN Sustainable Development Group 'Universal Values Principle 2: Leave No One Behind' <<https://unsdg.un.org/2030-agenda/universal-values/leave-no-one-behind>> accessed 12 June 2025).

56 Osmani, SR 'The Human Rights-based Approach to Development in the Era of Globalization' in Office of the UN High Commissioner for Human Rights (ed) *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (2013) 117–124; Gready, P 'Rights-based Approaches to Development: What is the Value Added?' (2008) 18(6) *Development in Practice* 734–747; Marks, SP 'The Human Rights Framework for Development: Seven Approaches' in Sengupta, A, Negi, A & Basu, M (eds) *Reflections on the Right to Development* (Sage Publications 2005) 23; Cornwall, A & Nyamu-Musembi, C 'Putting the "Rights-based Approach" to Development into Perspective' (2004) 25(8) *Third World Quarterly* 1415; Earle, P 'Human Rights Approach to Development: Issues and Challenges' (2001) *Trocaire Development Review* 17.

57 UNCTAD (note 51) Preface, v; UN Global Compact 'The World's Largest Corporate Sustainability Framework' <<https://unglobalcompact.org/what-is-gc>> accessed 12 June 2025.

it is acknowledged that the international law framework currently imposes obligations exclusively on states, the evolving trends and the progressive shift in human rights and development thinking suggest that business corporations will no longer be able to contravene human rights with impunity. If a state defaults in its positive human rights obligations and is held accountable, there is no reason why a corporate entity that defaults in its negative obligations on human rights should not equally be held accountable. The effects of a violation of a negative obligation are no less than those resulting from the violation of a positive obligation. The discussion narrows down to the right to development because it provides a clear understanding of the convergence between human rights and development as envisaged by the normative instruments that provide for such a right.

3.2 Normative framework on the right to development

The right to development, like every other universally acknowledged human right, is recognised and protected by law, suggesting that the impunity that has traditionally shielded perpetrators of human rights violations and abuses can no longer be supported. At the international level, the right to development is recognised and protected by the Declaration on the Right to Development. Although it is not a treaty and therefore has no binding effect, the Declaration includes universal standards that form part of customary international law, which impose *erga omnes* obligations.⁵⁸ This has inspired the conceptualisation and incorporation of the right to development in ancillary instruments.

Besides the Declaration on the Right to Development, an International Covenant on the Right to Development has been drafted and is currently being negotiated for adoption as a binding treaty. When the draft International Covenant eventually comes into force, after the requisite number of ratifications, it will form an integral part of the international Bill of Human Rights and will have the same *erga omnes* status as a *jus cogens* norm. Unlike other human rights treaties that impose obligations exclusively on states, the International Covenant envisages imposing obligations on legally constituted entities (legal persons) to facilitate its realisation. As a general principle, it is noted that there is a universal duty on everyone (including legal persons) 'to respect all human rights, including the right to development, in accordance with international law'.⁵⁹ The Covenant further notes:

Nothing in the present Covenant may be interpreted as implying for any natural or *legal person*, people, group or State any right to engage in any activity or perform any act aimed at the destruction, nullification or impairment of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Covenant. To that end, States Parties agree that all natural and *legal persons*, peoples, groups and States have the general duty under international law to refrain from participating in the violation of the right to development.⁶⁰

58 UN Human Rights 'Frequently Asked Questions on the Right to Development: Fact Sheet No 37' Geneva/New York, 2016, Q 3, 5.

59 Draft International Covenant on the Right to Development – Report by the Chair-Rapporteur of the Working Group on the Right to Development, Zamir Akram (Pakistan) Human Rights Council, A/HRC/54/50, 54th Session, 6 October 2023, Art 3(k).

60 Ibid Art 7 (emphasis added).

Article 2 of the Covenant defines a legal person as ‘any entity that possesses its own legal personality under domestic or international law and is not a natural person, a people or a State’, which applies to legally constituted multinational corporations. This means that when the Covenant is eventually adopted and becomes binding international law, business corporations will have to conform to the negative obligation to refrain from actions that may impair the right to development. This guarantee is enhanced by ‘the duty to cooperate’, with regard to eradicating obstacles to development as enshrined in Article 13(2)(a) of the Covenant, which means ensuring ‘that natural and *legal persons*, groups and States do not impair the enjoyment of the right to development.’⁶¹ It obligates states to regulate the operations of multinational corporations within their territorial jurisdictions strictly, ensuring that these entities comply with their obligations under the right to development. The duty of multinational corporations to cooperate for development is explained below.

At the African regional level, a range of treaties and soft law instruments enshrine the right to development.⁶² Core among these is the African Charter on Human and Peoples’ Rights, which 54 out of the 55 African Union member states have ratified. The Charter provides the framework for regulating human rights across the continent. Article 22 of the Charter states:

1. All peoples shall have the right to their economic, social and cultural development with due regard to the identify and freedom and equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually and collectively, to ensure the exercise of the right to development.

Article 22 must be read with Article 1, which enjoins state parties to adopt legislative and other measures to give effect to the Charter’s provisions. Regarding the right to development, the obligation is to take legislative and other measures, including the requisite legislative and policy measures, to regulate the operations of multinational corporations in order that, as noted in Article 13(2)(a), these entities do not prejudice the realisation of the right to development, as has frequently happened in many African countries. For instance, by virtue of having ratified the African Charter in 1992, Lesotho is under a binding obligation to adopt legislation and policy measures to prevent all natural and juristic persons, including the state itself, from contravening any of its provisions, including the right to development.

Because this article focuses on the right to development obligation of multinational corporations operating under the LHWP, a question arises: whether and to what extent Lesotho has adopted the requisite domestic legislative and other measures with respect to Articles 1 and 22 of the African Charter. The Lesotho legal framework is silent on the

61 Emphasis added.

62 African Charter on Human and Peoples’ Rights adopted in Nairobi, Kenya on 27 June 1981, OAU Doc CAB/LEG/67/3 Rev 5 (1981), Art 22; Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women adopted in Maputo, Mozambique on 11 July 2003, Art 19; African Youth Charter adopted in Banjul, The Gambia on 2 July 2006, Art 10; African Charter on Democracy, Elections and Governance adopted in Addis Ababa on 30 January 2007, Preamble.

right to development, thus allowing for multinational corporations operating under the LHWP to violate human rights with impunity, as illustrated earlier in this article. Neither the Lesotho Constitution nor any other legislation or policy instrument provides for the right to development, which means the government is not complying with its obligations under Articles 1 and 22 of the African Charter.

Business operations in Lesotho are primarily regulated by the Companies Act and the Business Licensing and Registration Act.⁶³ However, these statutes are silent on any commitment to human rights and, moreover, do not include any provisions on CSR, thus implying no commitment to CSR principles or human rights standards. The push for adherence to the principles and practices of CSR in ensuring responsible business conduct and sustainable development in Lesotho has largely been driven by civil society organisations, such as the Corporate Social Responsibility Network Lesotho,⁶⁴ rather than being regulated by legislation. It is observed that:

[f]oreign and local enterprises tend to follow generally accepted corporate social responsibility (CSR) principles such as those contained in OECD Guidelines for Multinational Enterprises and the United Nations' Guiding Principles on Business and Human Rights, although the government does not actively promote adherence to these principles. Firms who pursue CSR are viewed favorably by society, but CSR does not necessarily provide any advantages in dealing with the government.⁶⁵

Quasi-legal instruments such as the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises⁶⁶ and the United Nations' Guiding Principles on Business and Human Rights⁶⁷ affirm that corporate accountability is a crucial component of the business and human rights framework. However, while relevant for defining the rules on corporate accountability and, thus, business conduct with respect to human rights, the OECD Guidelines and the UN Guiding Principles are soft-law instruments and do not impose binding obligations on multinationals. The efforts of the business and human rights movement and progressive scholarship have, however, motivated the drafting of a hard-law instrument to regulate the activities of transnational and multinational corporations and other businesses, which, if adopted into law by the UN General Assembly, will become legally binding on corporate entities.⁶⁸ While the adoption

63 Act 3 of 2019.

64 CSR Network Lesotho <<https://csrlesotho.org/>> accessed 24 June 2025.

65 Privacy Shield Framework 'Lesotho: Responsible Business Conduct' <<https://www.privacyshield.gov/ps/article?id=Lesotho-Responsible-Business-Conduct>> accessed 24 June 2025.

66 OECD *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD Publishing, 2023).

67 UN Human Rights *Guiding Principles on Business and Human Rights: Implementing the United Nations' Protect, Respect and Remedy Framework* (UN Publication 2011).

68 Draft Legally Binding Instrument (Clean Version) to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises, July 2023. <<https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-updated-draft-lbi-clean.pdf>> accessed 24 June 2025.

of this instrument is awaited, the absence of a robust domestic regulatory framework in Lesotho allows the multinational companies involved in the LHWP an exceptionally free hand regarding human rights, which they tend to have little regard for; this has resulted in host communities claiming that their right to development has been violated.⁶⁹

3.3 Local communities' right to development claims

As indicated earlier, the Lesotho legal framework does not guarantee the right to development. It must be noted that human rights, including the right to development, transcend the law, implying that the absence of legal recognition and protection does not diminish the inherent value of a right. By implication, the right to development exists as a guarantee of well-being, improved quality of life and better standards of living, which all Basotho are naturally entitled to irrespective of whether the right has been constitutionally endorsed. That aside, the right to development accrues to all Basotho on account of Lesotho's ratification of the African Charter, among other African regional instruments, which enshrines the right to development and enjoins the government to ensure its implementation and enforcement. By subscribing to the standards embodied in the African Charter, Lesotho acknowledges that its citizens are right-holders and beneficiaries of the right to development, and thus have a legitimate claim to that right, either individually or collectively.

The local communities that host the dam construction, water harvesting and hydro-power generation facilities for the LHWP qualify as 'peoples', and are therefore entitled to the right to development. Local communities, defined as a 'tightly knit social unit, whose members experience feelings of unity and solidarity and live in a specific region',⁷⁰ exhibit the attributes and characteristics by which the concept of 'peoples' is defined and are accordingly holders of the right to development.⁷¹ The Expert Mechanism on the Right to Development affirms that local communities qualify in their collective capacity as holders and beneficiaries of the right to development, in conformity with the acceptable characteristics for defining peoples.⁷² To say that the LHWP host communities are legitimately entitled to the right to development means that they are entitled to make claims to the development happening in their localities. This includes, as stipulated in Article 1(1) of the Declaration on the Right to Development, three fundamental entitlements: to participate in, to contribute to, and to share the socio-economic, cultural, and political benefits that arise from the development process.

69 Seinoli Legal Centre 'Developments Should Benefit Communities: Communities Have a Right to Development' <<https://www.seinoli.org.ls/developments-should-benefit-communities-communities-have-a-right-to-development/>> accessed 28 January 2026.

70 International Meeting of Experts on Intangible Cultural Heritage: Establishment of a Glossary *TER/CH/2002/WD/4*, UNESCO, Paris, 6 June 2002.

71 De Feyter, K 'The Holders of the Right to Development' in Ngang, CC (ed) *International Covenant on the Right to Development: Implications for Developing Countries and the Global Balance of Power* (Brill 2025) 70–72.

72 Expert Mechanism on the Right to Development, Duty to Cooperate and Non-State Actors, Human Rights Council, Fifty-fourth Session, 11 September–6 October 2023, para 27; Declaration on the Right to Development (note 36) Art 2(3).

The entitlement to participate in the development brought to the community by the LHWP entails active and meaningful involvement in the decision-making, especially on issues that affect their lives and livelihoods, and in the implementation processes of development. According to Taylor, participation creates the means for collective self-determination regarding exigencies, priorities, and the protection of ancillary rights and interests in the development process, and enforces socio-economic and cultural rights by enabling disadvantaged and oppressed people to have a voice on issues that affect their livelihoods and interests.⁷³ The right to contribute to development recognises that local communities have the capabilities to make valuable inputs to development. It prohibits the displacement of local communities from the development site. As subjects and beneficiaries of development, all peoples have the responsibility to create their own development that adequately responds to their livelihood exigencies. In the same vein, the right to share in the benefits of development guarantees redistributive justice for affected local communities through the fair and equitable sharing of those benefits. It entitles local communities to lifetime shareholding in the proceeds generated from water extraction in the Lesotho Highlands rather than the one-off compensation provided for in the LHWP Treaty.⁷⁴

The right to natural resource ownership, read in conjunction with the right to development in Articles 21 and 22 of the African Charter, guarantees that local communities have a legitimate ownership claim to the natural resources in their localities, which, as a common heritage, is granted to them for equal enjoyment. The law guarantees that, where necessary, local communities may freely dispose of resources to satisfy their exclusive interests, particularly to optimise collective well-being, improve quality of life, and raise living standards. People may not be deprived of the right to own and freely dispose of their natural resources; if the local community incurs damage or loss (spoliation), the dispossessed people shall have the right to an equitable remedy.⁷⁵ In the *Ogiek Community and Endorois* cases,⁷⁶ the African Court and the African Commission, respectively, held that the dispossession of indigenous communities from their ancestral land constituted a violation of the right to development guaranteed to them under Article 22 of the African Charter.⁷⁷

3.4 Right to development obligation of multinational corporations

3.4.1 *Developmental aspects of the LHWP and the nature of the obligations on multinational corporations*

Multinational corporations have traditionally enjoyed the privilege of operating in local

73 Taylor, CR 'The Right of Participation in Development Projects' (1994) 13(3) *Penn State International Law Review* 29.

74 Slater, R & Mphahle, M *Compensation, Welfare and Development: One-off Lump-Sum and Regular Transfers in the Lesotho Highlands Water Project* (Overseas Development Institute 2009).

75 African Charter (note 62) Art 21(1).

76 *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v Kenya* Comm 276/2003 (African Commission on Human and Peoples' Rights 2009) paras 277–281, 297–298.

77 *African Commission on Human and Peoples' Rights v Republic of Kenya* (2017) Appl No 006/2017 (African Court on Human and Peoples' Rights, 2017) paras 195–211; *Endorois* case (note 76) paras 255–298.

host communities without any human rights accountability. The LHWP is a practical illustration of how the foreign multinational companies involved have perpetrated massive human rights abuses with impunity, apparently because the law currently allocates human rights obligations exclusively to states, which are then mandated to regulate the operations of non-state actors. Unfortunately, most foreign multinational corporations are exceedingly powerful to the extent that their economic might often dwarfs the authority of relatively weak and fragile state governments.⁷⁸

A notable example is Shell Petroleum's operations in Nigeria, where, despite the deplorable environmental harm caused by oil spills in the Niger Delta region, the company avoided state regulation with impunity. For about 90 years (from 1936) of abusive oil exploration in the Ogoni communities, up to the time of its exit from Nigeria in March 2025, Shell accumulated billions of dollars in profits. The company left no development gains for the Ogoni people, only a deteriorating environment, underdevelopment, and loss of livelihoods.⁷⁹ In 2009, the African Commission ruled against the Nigerian government in the famous *SERAC* case, for failing to regulate and for colluding with Shell in orchestrating human rights violations in the Ogoni communities.⁸⁰ It has been argued that action should also have been taken against Shell for violating the Ogoni peoples' right to development, among other human rights.⁸¹ While Shell is not a party to the African Charter, its operations are limited by the negative obligation not to violate human rights. By implication, Shell had a duty of care, under corporate law and human rights due diligence, to guard against harm; its operations should not have impaired the enjoyment of human rights⁸² enshrined in the African Charter on Human and People's Rights, or contravened Nigeria's domestic environmental and petroleum laws.⁸³

The question is whether foreign multinational corporations bear a right to development obligation. Answering this question requires an *a priori* determination of the nature of their operations, especially with regard to the impact (positive or negative) they have on society. Beyond being predominantly business-oriented, contemporary development

78 Ngang, CC *The Right to Development in Africa* (Brill 2021) 196; Chirwa, D 'In Search of Philosophical Justifications and Suitable Models for Horizontal Application of Human Rights' (2008) 8(2) *African Human Rights Law Journal* 306; Chirwa, D 'The Doctrine of State Responsibility as a Potential Means of Making Private Actors Accountable for Human Rights' (2004) 5(1) *Melbourne Journal of International Law* 26–28, 33–35.

79 Boele, R et al 'Shell, Nigeria and the Ogoni: A Study in Unsustainable Development: I. The story of Shell, Nigeria and the Ogoni People – Environment, Economy, Relationships: Conflict and Prospects for Resolution' (2001) 9(2) *Sustainable Development* 74.

80 Owen, W 'Case Study: SERAC vs. Nigeria: Examining the Role of International Law in Supporting Social Movement Goals' (Masters Thesis, American University in Cairo 2011) <<https://fount.aucegypt.edu/etds/952>> accessed 25 January 2025.

81 Ibid.

82 See Nartey, E 'Enforcing the Legal Principle of Duty of Care in Corporate Human Rights Violations and Environmental Damage Cases in Developing Countries' (2023) 9(4) *Athens Journal of Law* 611; Sherman III, J 'Human Rights Due Diligence and Corporate Governance' Harvard Kennedy School – Corporate Responsibility Initiative, Working Paper No 79 (2001) 16; Valesco, J 'A Defense of the Corporate Law Duty of Care' (2015) 40(3) *The Journal of Corporate Law* 648; Conway, M 'A New Duty of Care? Tort Liability from Voluntary Human Rights Due Diligence in Global Supply Chains' (2015) 40(2) *Queen's Law Journal* 745.

83 Environmental Impact Assessment Act 86 of 1992, s 15.

thinking requires viewing the operations of multinational corporations as developmental and contributing to socio-economic development. The operations of multinational corporations are accordingly seen to have a direct impact on human rights – notably, the right to development – and therefore corporations must be held accountable when they encroach on those rights. A 2024 World Bank report notes that the Lesotho economy expanded by 2% in 2023, following the commencement of construction of the Polihali Dam,⁸⁴ an indication of the project's vital contribution to the national GDP and hence to socio-economic development in the country. The realities on the ground provide evidence to the contrary: the operations of the multinational companies involved have a severe adverse impact on the livelihoods and well-being of host communities. The problem arises from the manner in which the LHWP is conceived: principally as a business-oriented approach aimed at achieving economic growth objectives rather than human development.

To the extent that the activities of multinational corporations count as development, they have an obligation to ensure that the right to development is upheld in the local communities where they operate. Water extraction and the generation of hydro-electricity as envisaged in the LHWP Treaty are not just business ventures, as may be believed because of their income-generation and profit-making inclination, but are development projects. While businesses aim to make money and expand the economy, development projects are essentially people-centred, intended to improve well-being and living standards.⁸⁵ The naming of the project-implementing organ as a development authority – the LHDA – is significant. The LHDA is enjoined to ensure that the project brings people-centred development to the highlands communities. A development project requires prioritising community participation and meaningful contribution to the development. It also means that all stakeholders have a duty to cooperate to ensure that the right to development is achieved.

3.4.2 Duty to co-operate for development

The duty to co-operate to realise the right to development is contained in the Declaration on the Right to Development and has been repeatedly emphasised in several other soft-law instruments.⁸⁶ Article 3(3) of the Declaration on the Right to Development stipulates that 'States have the duty to co-operate with each other in ensuring development and

84 The World Bank 'The World Bank in Lesotho: Overview' 9 September 2024 <<https://www.worldbank.org/en/country/lesotho/overview>> accessed 5 June 2025).

85 Ibid.

86 See, for example, Transforming Our World: The 2030 Agenda for Sustainable Development Resolution A/RES/70/1 adopted by the United Nations General Assembly on 27 September 2015, para 10; UN Declaration on the Rights of Indigenous Peoples Resolution 61/295 adopted by the General Assembly on 13 September 2007, Arts 21 and 23; Durban Declaration adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, 31 August–8 September 2001, para 78; UN Millennium Declaration Resolution A/55/L.2 adopted by the General Assembly on 8 September 2000, paras 11, 24; Vienna Declaration and Programme of Action adopted by the UN World Conference on Human Rights, UN Doc A/CONF.157/24, 25 June 1993, paras I(10) and (11); Rio Declaration on Environment and Development adopted at the UN Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992, Principle 3.

eliminating obstacles to development'. The draft International Covenant on the Right to Development provides an elaborate formulation of the duty to co-operate in Article 13, aiming to '[p]romote and encourage universal respect for human rights and fundamental freedoms for all, without discrimination of any kind' and '[t]o ensure that natural and legal persons, groups and States do not impair the enjoyment of the right to development'.⁸⁷ It emphasises that 'States Parties reaffirm and shall implement their duty to cooperate with each other, through joint and separate action'.⁸⁸ In terms of the cited provisions, the duty to co-operate is conceived essentially as the duty of states, understandably because obligations imposed by human rights treaties generally fall within the purview of states as the guarantors of human rights protection, with a mandate to regulate non-state actors to ensure the adequate protection of right-holders. This approach is, however, starting to change, with the effect that the duty to co-operate is no longer reserved exclusively to states. Since non-state actors are extensively involved in development and their operations impact the right to development in host communities, they ought to be held accountable for their actions or inactions.⁸⁹ The duty to co-operate to realise the right to development is, accordingly, extended to non-state actors.

The thematic study on the Duty to Cooperate and Non-State Actors conducted by the UN Expert Mechanism on the Right to Development in 2023 affirms that non-state actors equally have a duty to cooperate in realising the right to development,⁹⁰ other than being regulated by the state. Focusing on foreign non-state actors, the report highlights that 'the States' duty to cooperate was not limited to the conduct of the State itself, but that it extended to the conduct of actors within its jurisdiction'.⁹¹ The field trip for the thematic study was conducted in Lesotho, to investigate how engagement by non-state actors affected the realisation of the right to development of mountain communities in the context of major economic investments, notably diamond mining mainly by Letseng Diamond Mine, and water harvesting by the LHWP.⁹² Involving a broad range of stakeholders, including the governments of Lesotho and South Africa, international organisations, the corporate sector, civil society and the local communities, the study highlighted the impacts that the activities of public and private operators have on the people who have been living in the Maluti mountains for generations,⁹³ and demonstrated the willingness to cooperate in promoting the right to development for the local communities.⁹⁴

Referencing *Bear Creek Mining Corporation v The Republic of Peru*,⁹⁵ the report affirms that states have the duty to ensure that any actor that the state is in a position to regulate –

87 Expert Mechanism on the Right to Development (note 72) Art 13(1).

88 Ibid Art 13(1)(d) and (2)(a).

89 Senyonjo, M 'The Applicability of International Human Rights Law to Non-State Actors: What Relevance to Economic, Social and Cultural Rights?' (2008) 12(5) *The International Journal of Human Rights* 725; Expert Mechanism on the Right to Development (note 72) para 3.

90 Expert Mechanism on the Right to Development (note 72) para 6.

91 Ibid para 22.

92 Ibid para 39.

93 Ibid para 36.

94 Ibid paras 42–44.

95 *Bear Creek Mining Corporation v Republic of Peru* (ICSID Case No ARB/14/21, Award, 30 November 2017) paras 404–408.

such as a foreign investor that operates on its territory – does not impair the enjoyment of the right to development; this implies that foreign investors have a parallel duty under international law to refrain from violating the right to development.⁹⁶ If the state regulates multinational corporations by, for example, implementing the requisite legislative, policy, and administrative measures, as well as enforcement mechanisms, and they still do not comply, the right to development will not be achieved.

The full realisation of the right to development is only attainable if states and non-state actors adhere to the obligation to co-operate.⁹⁷ In terms of effective implementation, the Expert Mechanism breaks down the duty to co-operate for non-state actors into four core duties: the duty to give prior notice of intended operations to enable relevant stakeholders to effect the necessary adjustments; the duty to consult and secure agreement on envisaged project activities; the duty to assist in contributing to the realisation of the right to development; and the duty to repair harm if the right to development has been violated.⁹⁸

4. Conclusion

This article has explored the right to development obligation of multinational corporations, with an emphasis on their involvement in local community development. Focusing on the foreign multinational corporations involved in the LHWP and the human rights abuses committed during their operations, the article has illustrated that their role goes beyond business operations, money-making and profit maximisation, and entails a commitment to corporate human rights accountability. The analysis highlights the shift in the contemporary understanding of development as a human right. The growing recognition in international law of the intersection between business and human rights and the right to development has led to the formulation of measures and mechanisms for redress, including the duty to co-operate, as emphasised by the UN Expert Mechanism on the Right to Development.

It is accordingly argued that the right to development obligation of foreign multinational corporations entails, at a minimum, refraining from actions or omissions that may impair the right to development in the host communities in which they operate, if they are unable to positively contribute to development. The duty to co-operate for development is now recognised as a general principle of international law,⁹⁹ which means it has a universally binding effect and applies not only to states but also to non-state actors, including multinational corporations. The increasing recognition under international law of the corporate human rights obligations of non-state actors implies that, in the event of a transgression, the perpetrator is held legally accountable.

When foreign multinational corporations contravene the right to development in the course of their operations, they can and must be held to account under the existing human rights frameworks, including the African human rights system, where the right to

96 Ibid para 36.

97 Ibid para 6.

98 Ibid paras 62–78.

99 Ibid para 3.

development is protected in several treaty instruments. While the state, as guarantor of human rights, has the primary obligation to regulate multinational corporations operating within its jurisdiction, it is suggested that action should be taken against both the state for failing in its fiduciary duty and the specific multinational corporation that contravenes the right to development. In this way, a rule of law standard is established to the effect that foreign multinational corporations cannot conduct business as usual, and violate human rights in their host communities with impunity.

How to cite:

Motipi, T and Ngang, CC 'The Right to Development Obligation of Multinational Corporations in Local Community Development: A Focus on the Lesotho Highlands Water Project' (2026) 6 *Turf Law Journal* 1-21.