

HEALING THE BLIND EYE?

USING THE UNITED NATIONS

PROTECT, RESPECT, REMEDY FRAMEWORK

TO ACHIEVE ACCOUNTABILITY FOR CORPORATE

COMPLICITY IN HUMAN RIGHTS ABUSE

CATHERINE BROOKS

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ABSTRACT

This thesis considers the widespread and extensive issue of corporate complicity in human rights abuse, and ways of holding corporations accountable for this involvement. It is framed around the United Nation's Protect, Respect, Remedy Framework (the Framework), which was proposed by the Special Representative to the Secretary General on the issue of human rights and transnational corporations and other business enterprises, Professor John Ruggie (Special Representative) on 18 June 2008. The thesis will examine the Framework from a human rights perspective.

The Human Rights Council has adopted the Framework as a conceptual policy framework that will be used as a foundation for policy development on the issue of corporate human rights abuse, including corporate complicity. The Framework rests on three pillars: first, the State's duty to protect from human rights abuse, including those caused by business and the corresponding enforcement mechanisms including policies, regulation and adjudication; second, the corporate responsibility to respect human rights, which requires business to avoid involvement in human rights abuse complying with the law and by exercising due diligence; and third, ensuring victims and survivors have access to effective remedies, both judicial and non-judicial. In adopting the Framework, the Human Rights Council has, for the first time, enunciated a policy position on the issue of corporations and human rights. It is intended that regulation will stem from the Framework, and the goal of regulation is the protection and perseverance of all human rights. This thesis is structured around the Framework.

The influence and power of corporations continues to grow. As the process of globalisation and economic interdependence has increased, so too has market deregulation. Many transnational corporations are far more economically powerful than States; by the year 2000, corporations made up 51 of the top 100 economies in the world.¹ The power of corporations can be overwhelming, and corporations' activities can have severe consequences for human rights. Despite

¹ Sarah Joseph, *Corporations and Transnational Human Rights Litigation* (Hart Publishing, Oxford, 2004), p 1

this, only a fraction of the 70,000 transnational corporations around the world have moved toward any implementation of human rights standards within their companies.

This thesis will argue that the harm caused by corporate complicity in human rights abuse is a remediable injustice, and given the political will, the mechanisms to hold corporations to account can be developed, and existing mechanisms can be made more effective. Both international law and international relations will have important roles to play as this area of regulation develops. As such, it is an area of research and development that calls for and requires collaboration and joint research between political scientists and lawyers.

DECLARATION

This work contains no material which has been accepted for the award of any other degree or diploma in any University or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text.

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Catherine Brooks

Date:

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ACRONYMS

AFP	Australian Federal Police
ATCA	Alien Tort Claims Act
CSR	Corporate Social Responsibility
DRC	Democratic Republic of Congo
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
GSK	GlaxoSmithKline
ICC	International Criminal Court
ICJ	International Court of Justice
ICTY	International Criminal Tribunal for the former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
IFC	International Finance Corporation
ILO	International Labour Organisation
HRIA	Human Rights Impact Assessment
MOGE	Myanma Oil and Gas Enterprise
MRCF	Medical Research and Compensation Fund
NHRI	National Human Rights Institutions
NCP	National Contact Point
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
RUF	Revolutionary United Front
TRIPS	Trade Related Aspects of Intellectual Property Rights
UK	United Kingdom
UN	United Nations
UNICEF	United Nations Children's Fund
UNITA	Uniao Nacional para a Independencia Total de Angola
US	United States
WTO	World Trade Organisation