

“It Isn’t a State Problem”: The Minas Conga Mine Controversy and Exemplifying the Need for Binding International Obligations on Corporate Actors

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Abstract : After years of implacable neoliberal globalization, multinational corporations have moved from the periphery to the center of the international legal agenda. Human rights advocates have long called for greater corporate accountability in the international arena. The creation of the Global Compact in 2000, while aimed at fostering greater corporate respect for human rights, did not silence these calls. After multiple unsuccessful attempts to adopt a set of norms relating to the human rights responsibilities of transnational corporations, the United Nations succeeded in 2008 with the Guiding Principles on Business and Human Rights (Guiding Principles). The Guiding Principles, praised by some within the international human rights community for their recognition of an individual corporate responsibility to respect human rights, have not escaped their share of criticism. Many view the Guiding Principles to be toothless, failing to directly impose obligations upon corporations, and call for binding international obligations on corporate entities. After decades of attempting to promulgate human rights obligations for multinational corporations, the existing legal frameworks in place fall short of protecting individuals from the human rights abuses of multinational corporations. The Global Compact and Guiding Principles are proof of the United Nations’ unwillingness to impose international legal obligations on corporate actors. In June 2014, the Human Rights Council adopted a resolution to draft international legally binding human rights norms for business entities; however, key players in the international arena have already announced they will not cooperate with such efforts. This Note, through an overview of the existing corporate accountability frameworks and a study of Newmont Mining’s Minas Conga project in Peru, argues that binding international human rights obligations on corporations are necessary to fully protect human rights. Where states refuse to or simply cannot uphold their duty to protect individuals from transnational businesses’ human rights transgressions, there must exist mechanisms to pursue justice directly against the multinational corporation.

Keywords : business and human rights, Latin America, international treaty on business and human rights, mining, human rights

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