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TRANSNATIONAL CORPORATIONS AND HUMAN RIGHTS

The number of transnational corporations – including parent companies and subsidiaries – has exploded over the last forty years, which has led to a correlating rise of corporate violations of international human rights and environmental laws, either directly or in conjunction with government security forces, local police, state-run businesses, or other businesses. In this work, Gwynne Skinner details the harms of business-related human rights violations on local communities and describes the barriers, both functional and institutional, that victims face in seeking remedies. She concludes by offering solutions to these barriers, with a focus on measures designed to improve judicial remedies, which are the heart of international human rights law but often fail to deliver justice to victims. This work should be read by anyone concerned with the role of corporations in our increasingly globalized society.

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Transnational Corporations and Human Rights

OVERCOMING BARRIERS TO JUDICIAL REMEDY

GWYNNE L. SKINNER

Willamette University College of Law

Assisted by

RACHEL CHAMBERS

SARAH McGRATH



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For Beth, Lucy, and Ella.
And for a more just world for all.

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Foreword

Sadly we live in a world where victims of corporate-related human rights abuses are often unable to obtain justice. While dam collapses, factory fires, oil spills, and child labor and exploitation regularly make global headlines, legal systems are commonly unable or unwilling to respond effectively. In today's global economy, multinational corporations operate across borders and legal systems with ease, allowing them to evade liability and ultimately profit from human rights harms.

Gwynne Skinner had a vision for a better world, one where victims have access to effective remedy and where corporate actors can no longer act with impunity.

In December 2017, Gwynne Skinner passed away in her home in Portland, Oregon, surrounded by her loved ones. Throughout her career, Gwynne provided a leading voice in the business and human rights arena, particularly on areas of access to remedy and legal standards of accountability. Her work litigating on the front lines of corporate accountability, producing scholarship and thought-leadership on issues related to access to remedy was ground-breaking. We were fortunate to have had the opportunity to work closely with Gwynne. She was a mentor, advisor, and dear friend to both of us and to many others in the business and human rights community.

This publication, *Transnational Corporations and Human Rights: Overcoming Barriers to Judicial Remedy*, is both a culmination and a celebration. It is a culmination of years of incredible work: research, reasoning, and writing conducted by Gwynne. It represents perhaps the most comprehensive exploration of the legal barriers which victims face in seeking remedy for business-related human rights harms, and offers the business and human rights field with strong, legal argumentation and practice solutions to these barriers. But it is also a celebration. It is a celebration of Gwynne's mind and intellect, as well as her dedication to shaping the world for the better. It is a celebration of community, including the incredible lawyers, advocates, and activists that have and continue to work every day to ensure

that human rights are protected and that corporations are held accountable for harms caused by their operations.

In reading this book, it is our hope that you will be challenged, educated, and inspired. These are the hallmarks by which Gwynne engaged in her teaching practice, and we believe they are captured here as well. By engaging with this work, you will also be helping to chart a critical path forward for building meaningful accountability for human rights harms – one where corporations are not exempt from the harms’ cause, including by their subsidiaries, and where legal loopholes that eviscerate opportunities for redress from communities and individuals harmed are ultimately closed.

We want to also note that this work could not have been completed without the support and dedication of Dr. Rachel Chambers. Rachel jumped into this process in 2018, and has held the pen since that time. Her commitment to Gwynne and to these issues has resulted in a text that is timely, compelling, clear, and directed at action.

The ability to obtain justice through the courts is fundamental to the realization of human rights globally. While judicial remedy can sound technical and esoteric, the principles behind it are fundamentally about justice, about what is right and what is fair. These principles imbue the legacy of Gwynne Skinner. Every day she is missed, but through these pages, she is not forgotten.

**Amol Mehra
Sarah McGrath**

Abbreviations

ATS	Alien Torts Statute
AUC	United Self-Defense Forces of Colombia
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CERD	Committee to End Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CIL	Customary international law
CJPTA	Uniform Court Jurisdiction and Proceedings Transfer Act
ERISA	Employee Retirement Income Security Act
EU	European Union
FCPA	Foreign Corrupt Practices Act
FDI	Foreign direct investment
FDIUS	Foreign direct investment in the United States
FIDH	<i>Fédération Internationale des Ligues des Droits de l'Homme</i>
FRA	European Union Agency for Fundamental Rights
HRSP	United States Department of Justice Human Rights and Special Prosecutions Section
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTY	The International Criminal Tribunal for the former Yugoslavia
IMT	International Military Tribunal of Nuremberg
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act
MEPs	Members of the European Parliament
NCPs	OECD National Contact Points
OECD	Organisation for Economic Co-operation and Development
OTP	Office of the Prosecutor
RICO	Racketeer Influenced Corrupt Organizations Act
SLAPP	Strategic lawsuit against public participation

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xvi *List of Abbreviations*

TNCs	Transnational corporations
TVPA	The Trafficking Victims Protection Act
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights

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