

INTERNALIZATION OF COSTS TO CORPORATE GROUPS: PART-WHOLE RELATIONSHIPS, HUMAN RIGHTS NORMS AND THE FUTILITY OF THE CORPORATE VEIL

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INTRODUCTION

Corporations conduct their business activities through a variety of business structures including, among others, wholly owned subsidiaries, partially owned subsidiaries, and affiliate corporations.¹ In the event that a parent corporation controls the subsidiary or affiliate corporations, it may easily influence them to pursue profits through activities that violate human rights. In such cases, the parent corporation may still avoid liability because entity law deems the two corporations to be separate entities. This obstacle of separate legal personality enables entities within a corporate group to enjoy the privileges of limited shareholder liability and, therefore, allows parent companies² to avoid accountability for human rights. This may arise, for instance, when a corporate group utilizes an undercapitalized foreign subsidiary to conduct risky business that poses a threat to human rights. When corporate structures are manipulated in this manner, tort and human rights victims³ end up bearing the cost of harmful

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¹ See CYNTHIA WALLACE, *THE MULTINATIONAL ENTERPRISE AND LEGAL CONTROL: HOST STATES SOVEREIGNTY IN AN ERA OF ECONOMIC GLOBALIZATION* 102 (2nd ed. 2002). An affiliate corporation is a corporation that is associated with another. If a parent corporation has controlling interests in the affiliate, then the affiliate can be referred to as a subsidiary. If a parent corporation has no controlling or majority interests in the affiliate corporation, then it can be referred to as an associate. *Id.*

² See *id.* at 102, 171. The term parent corporation refers to a corporation that owns and controls other foreign affiliated corporations in two or more host states.

³ See *Vortex Fishing Sys., Inc. v Foss*, 38 P.3d 836, 841 (Mont. 2001). The violation of all human rights could form the basis of a claim under the tort of intentional infliction of emotional distress. In the United States, for example, the Montana Supreme Court has held that the standards that a plaintiff needs to satisfy in order to get damages for emotional distress under a human rights claim are much lower than those of tort. Under tort law, a plaintiff must suffer a substantial invasion of a legally protected interest, such that no reasonable person should be expected to endure it, in order to win damages. This standard is not applicable in human rights claims. It is also worthy of note that torts that have the required level of severity could also breach a variety of human rights, including the right not to be subjected to torture or cruel, inhuman or degrading treatment, the right to life, the right to liberty and security of the person etc. The rights whose violations lead to common tortious claims include, for example, freedom from torture (torture of protestors and workers), right to life (harassment of workers leading to death), environmental rights (nuisance arising from exposure to industrial toxics), liberty and security of the person, abolition of slavery and forced labour, freedom of movement (false imprisonment), right to work (economic torts arising from interference with trade or business) etc. Those which might not necessarily lead to obvious tortious claims (but which could still fall under the tort of intentional infliction of emotional distress) include, for example, right to organise and participate in collective bargaining, right to a fair trial, right to marry and form a family, right to political life, right to privacy, right to education, right to social security, right to non discrimination, right to equal pay, right to just and favourable remuneration. Research has shown that all categories of internationally recognized rights can be affected by corporate conduct. For more on