



Strength in Unity: Innovative approaches in Africa to end Corporates Human Rights abuses

Presentation for Toronto Metropolitan University CSR Institute session
on

Business and Human Rights -- In conversation with the African
Coalition for Corporate Accountability

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Introduction

- Overview of the presentation objectives
- Importances of addressing corporate accountability in Africa at :
National and Regional Level
- Background: Corporate exploitation in Africa: from slavery to colonization to neocolonialism
- African countries are largely affected by business activities given the extractive nature of their economies.
- Impact on individuals, communities, environment and economy
- Scope of the issue: Key industries and sectors ;, these communities face numerous human rights abuses, including forced displacement, land grabbing, and environmental degradation...

Business and Human Rights Landscape in Africa

1. Unique challenges and opportunities at Domestic level

Both common law and Civil (Roman Germanic) legal systems have similarity in :

□ Opportunity :

- Several African countries have constitutions that provide protections for their citizens against human rights abuses, including those committed by corporations.
- Ability to appeal at higher jurisdiction after exhausting local remedy
- Access to local remedy for victims

□ Challenges :

- the power imbalance between States and corporations due to their large budget
- the effectiveness of these protections can vary depending on the country's legal framework, enforcement, and cultural context.
- Some countries lack adequate legal protection, inexistent legislation
- For most countries there are barriers in accessing remedies

Exception: Botswana, South Africa, Kenya, Ghana, Namiabia, etc.

Business and Human Rights Landscape in Africa Cont'd

2. Unique challenges and opportunities at Regional level :

Opportunity:

The Article 27 of the AchPR implies protection of Horizontal and vertical human rights obligations

In the framework of African human rights governance, businesses are subject to normative and institutional regulations, despite occasional absence from explicit AU regional human rights guidelines.

The African human rights framework ensures there are no gaps in safeguarding the rights of individuals and communities.

The African human rights system is structured to avoid complete focus on states, acknowledging broader societal influences.

Problematic sectors and countries

1. Land rights and displacement: - South Africa (e.g., Marikana platinum mine) - Nigeria (e.g., Ogoniland oil pollution) - Ethiopia (e.g., Oromo people's land rights)
2. Environmental degradation: - Nigeria (e.g., oil spills in the Niger Delta) - South Africa (e.g., acid mine drainage) - Democratic Republic of Congo (e.g., cobalt mining pollution)
3. Labor rights violations: - South Africa (e.g., Marikana platinum mine strike) - Nigeria (e.g., oil industry labor abuses) - Egypt (e.g., textile industry labor exploitation)
4. Human rights abuses in supply chains: - Democratic Republic of Congo (e.g., cobalt mining child labor) - Nigeria (e.g., cocoa industry child labor) - Ghana (e.g., gold mining child labor)
5. Corruption and bribery: - Nigeria (e.g., Halliburton bribery scandal) - South Africa (e.g., Gupta family corruption) - Democratic Republic of Congo (e.g., corruption in the mining sector with Dan Getler and Glencore)

6. Violence and security threats: - Nigeria (e.g., Shell security forces' human rights abuses) - South Africa (e.g., Marikana platinum mine massacre) - Democratic Republic of Congo (e.g., violence against artisanal miners)
7. Lack of transparency and accountability: - Nigeria (e.g., opaque oil revenues) - South Africa (e.g., lack of transparency in mining deals) - Angola (e.g., secrecy in oil and diamond industries)
8. Disregard for indigenous peoples' rights: - South Africa (e.g., San people's land rights) - Nigeria (e.g., Ogoni people's land rights) - Botswana (e.g., San people's relocation)
9. Health and safety risks: - South Africa (e.g., mine workers' silicosis) - Nigeria (e.g., oil pollution health impacts) - Democratic Republic of Congo (e.g., artisanal mining health risks)
10. Tax avoidance and evasion: - Nigeria (e.g., oil companies' tax evasion) - South Africa (e.g., multinationals' tax avoidance) - Democratic Republic of Congo (e.g., mining companies' tax evasion) Please note that these are just a few examples, and these violations have occurred in many other countries as well.

Legal frameworks and Decision- Making

1. In the framework of African human rights governance, businesses are subject to normative and institutional regulations, despite occasional absence from explicit AU regional human rights guidelines.
2. The African human rights framework ensures there are no gaps in safeguarding the rights of individuals and communities.
3. The African human rights system is structured to avoid complete focus on states, acknowledging broader societal influences (horizontal and vertical obligation).
4. Normative authority over businesses
5. Corporations are implied duty-bearers under the African Charter on Human and Peoples' Rights 1981: Also Arts 20, 21, 22 & 24, ACHPR

Legal framework and decision making cont'd

□ -Some relevant provisions of the African Charter relating to businesses:

- Articles 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 & 18 of the Charter
- Article 19 of the Charter: Right of peoples to equal treatment and equal protection
- Article 20 of the Charter: Right of peoples to existence and self-determination
- Article 21 of the Charter: Right of peoples to natural resources and protection from despoliation
- Article 22 of the Charter: Right of peoples to economic, social and cultural development
- Article 24 of the Charter: Right of peoples to a generally satisfactory environment suitable to their development.

Legal frameworks and Decision- Making Cont'd.

Supplementary protocols & other instruments

Protocols on the rights of women, Protocols to the Rights of People living with Disability (PWDs), Protocols to the Rights of older persons.

- Soft Law

State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to the Extractive Industries, Human Rights and the Environment 2018 (SRGPs)

- (Para 56, SRGPs)

In the UN negotiation process for a legally binding instrument on business and human rights in 2019, the African Commission emphatically iterated:

‘Under the African Charter, obligations of business enterprises towards rights holders have a clear legislative basis.

The institutional authority over businesses and human rights issues

At National level

- Parliament: members of the National Assembly and the Senate
- Portfolio committee of different ministries whose responsibility is to ensure corporations abide by the legislation.
- Ministry of Justice and Human Rights
- Ministry of Cooperation and foreign affairs
- Ministry of Economy, trade, Small and Medium enterprises,

At regional level

- African Commission on Human and Peoples' Rights
- New Partnership for Africa's Development (NEPAD)
- African Committee of Experts on the Rights and Welfare of the Child
- African Court on Human and Peoples' Rights
- The Future African Court of Justice and Human and Peoples' Rights
- Malabo Protocol – provides for Corporate Criminal liability

African response to the EU Corporate Sustainability Due Diligence Directive and the German Supply Chain due diligence law

The African response to initiatives such as the EU Corporate Sustainability Due Diligence Directive and laws like the German Supply Chain due diligence law has been varied.

Some key perspectives and responses include support and alignment, capacity building and technical assistance, concerns about unequal burden, emphasis on African ownership and leadership, regional harmonization, and focus on African priorities.

Success Stories and Best Practices

SUCCESS STORIES

Legal cases on corporate accountability by the African Commission.

- Social and Economic Rights Action Centre (*SERAC & Anor v Nigeria*)

- *IHRDA & Others v DRC, Communication 393/09*

Anvil mining case whe

BEST PRACTICES

- The Future African Court of Justice and Human and Peoples' Rights, Malabo Protocol provides for **Corporate Criminal liability**

- NEPAD is the African Peer Review Mechanism (APRM) was first envisioned in the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance.

- National Action Plan to implement UNGP on BHR.

- The Mining Indaba and Alternative Mining Indaba

- Africa Annual Business Forum is also an important annual gathering where they decide issues of Business and Human Rights

Conclusion

- Recommendations for Action to end corporate impunity in Africa through adequate legal protection.
- Proposal of recommendations for addressing challenges and enhancing business and human rights protection in Africa, discussing the way forward for civil society engagement and advocacy efforts.

Questions and Discussion .



THANK YOU!