Joint proposal for a Session at the UN Forum on Business and Human Rights by the African Coalition for Corporate Accountability (ACCA), Centre for Human Rights (CHR), Zimbabwe Environmental Law Association (ZELA) & Business and Human Rights Resources Centre (BHRRC)

‘An African perspective to Access to Remedy – Regional Challenges and Needs’

Session objectives

This session seeks to:

- Briefly give an overview of existing practices on access to remedy in Africa;
- Articulate key factors that are particular to Africa in the context of remedy that need to be included in remedial frameworks set up in the continent;
- Actively advocate for legal reform or the changing of practices in access to remedy in the African context, to reflect the findings of a study carried out by the proposal partners; and
- Advocate for the United Nations Working Group on Business and Human Rights and other international actors to take into account specific regional approaches when articulating access to remedy.

Introduction

The ACCA, CHR, ZELA and BHRRC are organisations based in Africa, or with a strong presence and focus on business and human rights in Africa. The joint session seeks to bring to the fore realities experienced by African communities, specifically the challenges with which they are faced when attempting to access remedy, and to articulate appropriate remedy through an African lens. The session will build on work that is being done by each of the co-sponsors of the proposal, and in particular a study that is being carried out by the ACCA on access to remedy from an African perspective.

Africa has always had a distinct approach due to its strong cultural history of group rights, communal living practices, and traditional legal systems, which are often lacking in international responses to human rights violations. The UN Guiding Principles on Business and Human Rights require multi-pronged responses to facilitate access to remedy, which could be considerably strengthened through the adoption of regional perspectives.

Different forms of judicial, non-judicial, state-based, non-state-based, or operational level grievance mechanisms should be cognisant of the challenges and needs of people in Africa to
make access to remedy a realistic aim.

The ACCA commissioned a study on access to remedy in the African context in 2017. The study sought to map existing forms of remedy provided in Africa, as well as get input from grassroots and civil society organisations across Africa in order to identify appropriate forms of remedy in different contexts. The hypothesis of the study is that limited research, and in particular consultations with affected communities, went into the development of the access to remedy framework currently used in the regional business and human rights discourse.

Key discussion questions:

1. What are the current forms of access to remedy in Africa?
2. Are these remedies appropriate and successful?
3. Based on the experience of affected community members, what forms of remedy are needed (and currently lacking)?

Proposed panellists

- Bertha Hussaini Terry (Women's Representative of Kwilapandi Community, Nigeria);
- Malvern Mudiwa (Zimbabwe);
- Dr Attiya Waris (University of Nairobi, Kenya);
- Abiodun Baiyewu (Chairperson, ACCA & Global Rights Nigeria);
- Mutuso Dhliwayo (ACCA Steering Committee member & Zimbabwe Environmental Law Association); and
- Josua Loots (CHR) - Moderator

How does the proposed session reflect the 2017 Forum’s stated focus?

This presentation will articulate the findings from the mapping exercise of existing forms of remedy provided in Africa in an attempt to identify appropriate forms of remedy in different contexts from an African perspective. In addition, the presentation will articulate ACCA’s research to support advocacy for reform of laws and practices in the context of access to remedy.

Structure of the session

- The session will commence with the moderator posing a set of questions to the speakers and the audience;
- The panellists will then commence with brief presentations (5 minutes each) based on the questions that were posed;
• Excerpts from relevant videos, slides and/or photos from case studies will be displayed during the presentation to illustrate the on-the-ground realities faced by communities;
• The moderator will then request that the audience divide themselves into smaller groups during which the groups will reflect on these questions in light of the presentations;
• After reconvening, each group will be given a moment to respond to the presentations of the panellists;
• The panellists will have a final response to the presentations, with a few minutes for additional questions.

The participatory approach of this proposed session will enable participants to reflect on experiences by the affected community members and draft responses based on the findings of ACCA’s research and the affected community members’ expectations of remedy.

We will also urge that these commitments be included in the Working Group’s report on the outcomes in the subsequent annual Forums.

ACCA will aim to bring at least one community representative to represent an adversely affected community as a means of assessing the extent to which business has been successful in providing appropriate forms of remedy.

For any questions or more information, please feel free to contact:

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