AFRICAN COALITION FOR CORPORATE ACCOUNTABILITY (ACCA)

TERMS OF REFERENCE: ACCESS TO REMEDY

Pretoria, September 2016
BACKGROUND

The African Coalition for Corporate Accountability (ACCA) is a coalition of 116 organisations from 31 African countries which supports African communities and individuals whose human rights are adversely impacted daily by the activities of corporations, both multi-national and domestic.

In the ACCA declaration, the ACCA takes the following position on Access to Remedy:

1. “The ACCA believes there is a need to strengthen remedies and eliminate obstacles to justice;
2. Those affected by corporate-related human rights abuses must have a clear, effective and independent means of seeking remedy, both judicial and non-judicial; and
3. Facilitating access to regional and international remedies must be a priority, especially where State remedies are weak or non-existent”.

The United Nations Guiding Principles on Business and Human Rights (UNGPs), considered by many to be the main authoritative instrument on business and human rights, articulate the need for access to remedy under its ‘third pillar’. However, it is important to note that the UNGPs only reflect internationally accepted human rights standards, and are by no means the highest standard. More specifically, the UNGPs confirm that it is grounded in recognition of ‘the need for rights and obligations to be matched to appropriate and effective remedy when breached’. In this light, for the purpose of this study, the ACCA Working Group on Access to Remedy defines Access to Remedy as firstly the right to effective access to justice, to sufficient, rapid and appropriate remedial measures (judicial or non-judicial), and secondly as access to all useful information on violations and reparation mechanisms. The business and human rights community across the globe, consisting of governments, business, civil society, international organisations, academia, and several other interest groups, have explored the issue of access to remedy in an attempt to identify the barriers that are keeping those affected adversely from accessing existing remedial mechanisms, as well as exploring ways of creating new and effective mechanisms to address these shortcomings.

It is clear that access to remedy, and perhaps more specifically the form of ‘remedy’ provided, also depends on the context of the corporate human rights violation. For example, when setting up an internal or operation level grievance mechanism (in accordance with the provisions of instruments that include the African Charter on Human and Peoples’ Rights (1987), the African Charter on the Rights and Welfare of the Child (1999), the United Nations “Protect, Respect and Remedy” framework for business and human rights (2008) and the UN Guiding Principles on Business and Human Rights (2011)) the appropriate remedy provided by the mechanism will be greatly influenced by the cultural, environmental, geographical and other contexts of the human rights violation or situation in question. In terms of regional human rights dynamics, Africa has always had a distinct approach due to its strong focus on group rights and communal living practices. As a result, business of a transnational character (especially those based outside Africa) often find it hard to identify and provide appropriate forms of ‘remedy’ in the context of human rights.
RESEARCH OBJECTIVE

ACCA’s first project on ‘Access to remedy’ will seek to map existing forms of remedy provided in Africa, as well as get input from grassroots and civil society organisations across Africa in an attempt 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 used in the global business and human rights discourse, especially in the context of Africa. In addition, the study will seek to identify key factors that are particular to Africa in the context of remedy that need to be included in any remedial framework set up in the continent.

ACTIVITIES

Phase 1: Information gathering

Once the terms of reference have been finalised by the ACCA Working Group, the ACCA Secretariat will send out a call for a research consultant. The research consultant will be tasked with developing a discussion document of between 30 – 40 pages on access to remedy which will be presented to the general membership during the next ACCA General Assembly. The research consultant will collect information on existing practices on access to remedy in the different sub-regions of Africa (West Africa, Central Africa, East Africa, and Southern Africa) with a particular focus on the different forms of remedy provided through these activities. The research consultant will lead the research and liaise with regional experts from the Working Group who will validate the information gathered by the research consultant.

Phase 2: Consultations and validation workshops

The discussion document produced during the first phase of the project will be used as a basis for consultations that will aim to bring together civil society, grassroots organisations, and affected communities from across the different sub-regions of Africa. The consultations will mainly draw from the ACCA membership, and extended networks within the membership. The events will serve two purposes – firstly to consult the members on the findings of the desktop study and get further information, and secondly to validate the findings of the first phase of the study. The input gathered during the workshops will be incorporated into a final report.

Phase 3: Finalisation of report

Once the consultations and validation workshops have concluded, the ACCA Working Group together with the ACCA Secretariat will merge these findings in a final report on access to remedy. The report will seek to shed light on existing practices on access to remedy which highlighting existing forms of institutional frameworks in Africa and the need to adapt to the context. The report will seek to highlight key factor adapted to the African context which must be taken into consideration and included in all frameworks and mechanisms implemented on the continent.
Phase 4: Dissemination and advocacy

The mapping exercise and study on remedy in Africa will culminate in a report that may be used for advocacy at international fora, engagement with multi-stakeholder initiatives, and other interest groups on the issue of remedy in Africa. The ACCA will use the report to advocate for legal reform, or the changing of practices in the context of access to remedy, to reflect the findings of the study and the context-specific elements identified in the study.

RESEARCH QUESTIONS

Research questions that will inform the study on access to remedy include:

1. What are the current practices in terms of access to remedy in Africa?
2. What are the different mechanisms available in this regard?
3. What forms of remedy are currently provided under existing remedial mechanisms?
4. What are the key context-specific elements to be considered when providing remedy?

OPPORTUNITIES AND EXPECTED RESULTS

Based on the gathering and validation of information by the ACCA thematic Working Group, we hope to use the report to advocate for legal reform, or the changing of practices in the context of access to remedy, to reflect the findings of the study and the context-specific elements identified in the study.

ESTIMATED TIME-FRAME

- Preparation of the first draft on concept note: February - June 2016;
- Formation of Working Groups: July 2016;
- Finalisation of the Terms of Reference: September 2016;
- Call for applications for research consultant: September 2016;
- Hiring of a research consultant: February 2017;
- Research consultant produces a first draft of discussion document: April 2017;
- ACCA Steering Committee reviews 1st draft of the discussion document: April 2017;
- Research consultant finalises discussion document: May 2017;
- Sub-regional consultations (phase 2) June 2017;
- Finalisation of discussion document (phase 3) July 2017;
- Presentation of finalised ACCA discussion document at ACCA GA: October 2017;
- Presentation of adopted ACCA discussion document at UN Forum on BHR November 2017.