

THE POWER OF BIG BUSINESS AND THE HUMAN RIGHTS PROTECTION VACUUM

Opening Remark on the occasion of the General Assembly of the African Coalition for Corporate Accountability.

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Master of ceremony,

Co-Chairs of the African Coalition for Corporate Accountability (ACCA),

Director of the Centre for Human Rights, host of the general assembly of the ACCA

It is a pleasure to be here with you and make this opening remark of the inaugural meeting of the general assembly of the ACCA.

Ours is a time of globalization. Perhaps more accurately, this time is best described as the era of corporations, the single most dominant force and beneficiary of globalization. As the Australian social scientist Alex Carey aptly observed, ‘the 20th century has been characterized by three developments of great political importance: The growth of democracy, the growth of corporate power, and the growth of corporate propaganda as a means of protecting corporate power against democracy.’

While the demise of the Cold War brought about a new global order premised on the triumph of liberalism famously declared by Francis Fukuyama in his famous book *The End of History and the Last Man*, one of, if not, the most prominent development of the new world order has been the rise and rise of corporations to unprecedented levels of economic and socio-cultural prominence. The power and unconstrained mobility that corporations has increasingly marshalled has been breath-taking in its sheer magnitude so much so that, in the words of Christian La Brie, ‘there seems to be nothing to prevent the transnational corporations taking possession of the planet and subjecting humanity to the dictatorship of capital’.

Clearly, the corporation’s sheer power not only presents a threat to the socio-economic and democratic wellbeing of societies but also brings about massive adverse impacts for human rights. Their activities in international trade, finance, and investment have numerous implications for the observation and protection of human rights, particularly economic, social and cultural rights, and the solidarity rights of peoples.

The perils of corporate power for people and for human rights are even bigger in Africa and other economically weak regions of the world. For example, the Special Representative of the Secretary General pointed out in one of his reports in 2008 that much of and the most serious of violations involving the operations of corporations take place in the parts of the world like Africa, ‘where governance challenges were greatest: disproportionately in low income countries; in countries that



often had just emerged from or still were in conflict; and in countries where the rule of law was weak and levels of corruption high.'

Beyond the pervasiveness and gravity of violations that the operation of corporations occasion in places like ours, the perils of corporate power is best portrayed in so colourful and dramatic terms in what the renowned African novelist Ngugi wa Thiong'o calls corporonialism. This is, as he noted in his famous novel *The Wizard of the Crow*, the incorporation of countries by powerful corporations and their transformation into corporate colony, corporonies. The upshot of this view is that in the African context the sheer scale of the economic, socio-cultural and political power of corporations creates huge imbalance in their relations with states skewing the balance firmly in favour and to the principal advantage of corporations and away from and to the detriment disadvantage of the role and ability of the state to ensure protection of human rights.

In the context in which human rights is organized around the role of the state as both the principal, if not exclusive, bearer of obligations and the primary focus of accountability for human rights violations, the obligation of corporations for human rights and their role as focus of accountability remains not only poorly established in law but also severely contested. Seen against the background of the power of corporations and the major human rights impact of their operations, what the lack of legal obligation and direct responsibility of corporations for violations has left on our hands is one of the most serious challenges that have faced the human rights regime.

This challenge is what I call a human rights protection vacuum. This human rights protection vacuum is a challenge with huge strategic ramifications in Africa on account of both the pressure to attract investment and the pervasive institutional and regulatory weakness of the state.

The challenge facing this gathering here and indeed the human rights community working on business and human rights is promoting the required legal developments that fully remove the prevailing condition of a human rights protection vacuum in relation to the operation of big business.

In Africa, nowhere is the impact on human and peoples' rights of, and the threat that the unaccountable power of corporations presents to, human rights is more pronounced than in the extractive industries. While the investment of extractive industries is increasingly seen as a vehicle for development, which is not entirely wrong, there is huge concern about the manner in which their activities affect peoples' access to and ownership of land, their rights to a healthy environment, and the conditions they are forced to work under.

It is this recognition of the long-term impacts of the poorly regulated operations of the extractive industries on human rights that led the African Commission on Human and Peoples' Rights to establish as one of its special mechanisms, the Working Group on Extractive Industries, the Environment and Human rights in Africa. Central to the mandate of this Working Group is also developing a framework not only for enabling the Commission to respond effectively and systematically to the human rights issues arising from the operations of the extractive industries. It is also for overcoming the human



rights protection vacuum I highlighted above including through analysing and determining the ‘direct accountability of corporations for human and peoples’ rights violations’ under the African Charter.

As you set yourself to face this tremendous task and work towards promoting legal developments that fully remove the human rights protection vacuum that the nature of the operation of corporations have created, I call on you to collaborate with and support the work of the Working Group of the African Commission on Extractive Industries.

I wish this gathering a very successful deliberation and I look forward to an outcome that help us clearly define the course of accomplishing this monumental task of ending the human rights protection vacuum.

I thank you all for your kind attention.

