

CORPORATE ACCOUNTABILITY AND TRANSITIONAL JUSTICE IN AFRICA

POLICY BRIEF
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PROF EGHOSA O. EKHATOR
DR JEAN-CLAUDE N ASHUKEM



Summary

Across the world, activities of multinational corporations (MNCs) are negatively impacting people, the environment, and communities. These impacts are more pronounced in developing countries with extractive industries. Africa is no exception. Several categories of human rights are vulnerable to the activities of oil MNCs, especially in developing countries. Thus, human rights cannot be protected in a damaged or polluted environment.¹ This is against the backdrop of the implications of transitional justice (TJ) strategies in different parts of Africa.

In Africa, many MNCs and other business enterprises operate in different countries on the continent that are or have been impacted by conflicts, wars, and authoritarian regimes. Thus, in certain circumstances, companies or business entities have been accused of violating several human rights and engaged in alleged criminal conduct (at domestic and international law), whether in cahoots with the government or as direct actors.² Hence, the question is: can TJ be used to enhance corporate accountability (CA) against the backdrop of the activities of MNCs in Africa?

Commentators have recognised a common trend in the objectives of CA and TJ. This commonality lies in the need to promote CA. While CA is a company's responsibility to acknowledge and be held accountable for the consequences of its actions, including legal, financial, environmental, social, and ethical impacts. It goes beyond profit to include accountability to a wider range of stakeholders like employees, the community, and the environment. This concept is upheld through internal governance, external regulations, and public demand for ethical and transparent business practices. TJ refers to how countries address atrocities that occurred during periods of civil conflict and repression. It consists of formal and informal processes for both legal justice, social reckoning, and preventing

repetition. Historically, TJ processes have failed to address the role that economic actors, such as MNCs, play in atrocities committed during conflicts.³ This policy brief illustrates the role of CA mechanisms in facilitating and promoting TJ in Africa.

Background

Over the years, TJ has increasingly been established as a distinct field necessary to address historical atrocities. Some examples of TJ include: the Argentinian National Commission on the Disappearance of Persons of 1984; the South African Truth and Reconciliation Commission of 1998; the Truth and Reconciliation Commission for Sierra Leone of 2002; the Rwandan – traditional Gacaca Community Courts & the National Unity and Reconciliation Commission of 1999. The South African case was officially charged with a mandate to establish “as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed,”⁴ including circumstances, factors, and context of such violations. In Sierra Leone, it investigated and reported on the causes, nature, and extent of the violations and abuses [related to the 1991 conflict], including their antecedents.⁵ Notably, TJ has been included in relevant international and African regional instruments, including the Official document of UN Policy: U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, U.N. Doc. S/2004/616, and the African Union Transitional Justice Policy of 2019. Despite this importance, efforts to integrate CA within the various mechanisms of TJ may challenge the global structures of rule that have so far produced conditions of violence within and among formerly colonised nation-states.⁶ According to Atteberry, the notion of a “transition” around which TJ is articulated derives from a nineteenth century understanding of history that reflects the ideology of development, which supported the colonial system.⁷

1 Olubayo Oluduro, Oil exploitation and human rights violations in Nigeria's oil producing communities. (Intersentia, 2014), 214.

2 Irene Pietropaoli. Business, Human rights and Transitional Justice. (Routledge, 2020), i.

3 Jeffrey Atteberry, 'Turning in the widening gyre: History corporate accountability, and transitional justice in the postcolony' (2019) 19 (2) Chicago Journal of International Law, 337.

4 Ibid.

5 Ibid.

6 Ibid, 337–338.

7 Ibid, 333.

Thus, the legacy of colonial governmentality persists in the present global order, creating the kinds of atrocities that TJ aims to remediate or address. Much as historical and ideological forces have shaped and influenced the international governance regimes, it is logical that theories and practices of TJ could be influenced by the same forces that determined these institutions.⁸

This situation is concerning, especially as Atteberry warns that: “The work of transitional justice runs the risk of reproducing, rather than restructuring, the underlying dynamics and forces that have created the various social catastrophes that it would hope to remedy.”⁹



At the international level, there have been efforts to develop a binding international legal instrument for CA, including the Human Rights and Transnational Corporations and other Business Enterprises, Guiding Principles on Human Rights: Implementing the United Nations “Protect, Respect and Remedy of 2011 (hereinafter the Guiding Principles). Yet, it is reported that these efforts are inconsistent with the work of the Intergovernmental Working Group (IGWG) on a Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with Respect to Human Rights of 2014 (Human Rights Council Res. 26). Nonetheless, transitional justice must actively engage with these ongoing efforts and seek ways to address corporate liability for ongoing human rights violations, by thoroughly engaging with the rules of international and supranational laws on CA.

African Union, Transitional Justice and Corporate Accountability

African scholars have argued that developments at the global level regarding TJ outpace the frameworks developed in Africa. This is especially so in the context of CA. In 2019, the AU adopted the Transitional Justice Policy, which it is argued could be crucial for addressing human rights atrocities committed by MNCs and consequently achieving TJ.¹⁰ However, argues that ‘Ecological concern is muted in this policy document.’¹¹ Thus, there is no explicit allusion to CA and allied issues in the AU Transitional Justice Policy. On the other hand, article 52 of the AU Transitional Justice Policy states that Transitional Justice commissions may focus on one or a combination of the following objectives: “i. Examining and documenting patterns of human rights violations over time; ii. Providing a safe and supportive environment for victims to testify about the violations they have suffered and gain some satisfaction ...”

Furthermore, although environmental protection and CA have never been part of the several Truth and Reconciliation Commissions (TRCs) in Africa, things are changing now in the African context. Hence, several TRCs established in Africa have tried to shed light on the various activities or roles played by companies and other similar entities during violence or wars in African countries.¹²

⁸ Ibid, 335.

⁹ Ibid.

¹⁰ Bobuin Jr Valery and Annah Yvonne Moyo ‘Transitional justice tools and business in Africa: A conceptual approach’ in Jean-Claude N. Ashukem, Handbook on Business, Human Rights, and the Environment in Africa (Springer, 2025), p. 103.

¹¹ Somadina Ibe-Ojiludu, ‘Ecological Concerns and Transitional Justice in Africa’ (2025) 16 (4) The Journal of Sustainable Development, Law and Policy, 63.

¹² Joris Van de Sandt et al, Peace, everyone’s business! Corporate accountability in transitional justice: lessons for Colombia (PAX, The Netherlands, 2017), 10, https://www.dejusticia.org/wp-content/uploads/2017/05/PAX_COL_PZ_BIZ_FINAL_WEB.pdf (accessed on 4 March 2026).

Corporate Accountability, Transitional Justice, Human Rights, and Multinational Corporations in Africa

There is a seemingly interconnection between CA & TJ. This connectivity could be evident from an understanding of how tools of CA and TJ complement each other to achieve the best outcomes for bringing justice to victims and lasting peace to societies. The linkages between TJ & CA and analysing problems frequently arising where the two fields meet in practice. For instance, the role of corporations in past human rights violations is examined by truth and reconciliation commissions or during litigation. Theories /tools of CA and theories/tools of TR can complement each other. The AUTJP advocates the need to integrate traditional and formal mechanisms into transitional justice to achieve justice, peace, accountability, social cohesion, reconciliation, and healing.

But achieving these objectives seems to be an illusion. They are carefully worded and sound good to the ear. Yet, despite progress in some countries as indicated above, implementation remains a huge problem. Under the AUTJP, traditional justice mechanisms encompass a range of community-based adjudicative and restorative practices, including traditional structures such as clan and customary courts, community-based dialogue platforms, and culturally embedded practices, including rituals.

The fundamental question here is how MNCs can promote TJ in Africa in the context of BHR in regions or countries plagued by conflicts? Given the need for corporate impunity, an expanded ecological approach to TJ that addresses MNCs can play a strategic role in holding MNCs accountable and may positively alter the governance structures of the post-conflict countries. The role can be evident from two perspectives: the incorporation of CA for human rights, and the incorporation of CA into TJ approaches.

Towards Corporate Accountability for Human Rights

Importantly, the role of transnational corporations in postcolonial governance has long been recognised, and attempts are being made to find legal mechanisms for holding them accountable for human rights violations. The initiative to legally regulate the conduct of MNCs gained new momentum and addresses issues such as host state sovereignty, development, child labour, and direct foreign investment. However, the UN Centre on Transnational Corporations UNCTC failed because it was strongly opposed by the developed nations, who were, and continue to be, the home states to most transnational corporations in Africa today.¹³ It is not a coincidence that this was and still is a game of interest.

Previous measures have revolved around a game of interests, such as the 1970 initiative of the Group of 77 (G77), the UN Centre on Transnational Corporations (UNCTC) in 1974 at the UN Economic and Social Council. 1977 Declaration and Decisions on International Investment and Multinational Enterprises. In 1998, the U.N. Sub-Commission on the Promotion and Protection of Human Rights approved the Transnational Corporations Working Group – the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (Draft Norms) of 2003.

The scope of the UNCTC's concern was outlined by the study *Multinational Corporations in World Development*. The declaration outlined voluntary principles and standards for business conduct that were periodically renewed until 2000, outlined a voluntary set of principles, and served as the guiding force behind the development of the Corporate Social Responsibility (CSR) movement.¹⁴

The Sub-Commission was tasked with a code of conduct to regulate transnational corporations. Their work led to the development of the 2003 norms on the responsibilities of transnational corporations and

¹³ Atteberry, supra n 3 at 359.

¹⁴ Ibid, 359–360.

other business enterprises with regard to HR. However, the Draft Norms were opposed by the Global North. In opposing the Draft Norms, the US delegation, led by Leonard Leo, said: “The resolution before us takes a negative tone towards international and national businesses, treating them as potential problems rather than the overwhelmingly positive forces for economic development and human rights that they are.”

The Protect, Respect Remedy: A Framework for Business and Human Rights was adopted in 2008 and is based on 3 pillars. These include the following:

- State’s duty to protect against human rights abuses by third parties. This pillar entails that policies should be expressed in a formal statement that is approved at the most senior levels of management, made publicly available, and reflected in the business operations and procedures.
- Corporate responsibility to respect human rights. This pillar requires businesses to ensure due diligence process is sufficiently robust to reflect the scope of the enterprises’ operations, is conducted on a periodic and ongoing basis, and entails consultation with groups whose human rights are likely to be affected by the business activities.
- The need for more effective access to remedies. This last pillar entails businesses to “cooperate” in the remediation of human rights violations by participating in established “legitimate processes,” including “cooperation with judicial mechanism[s]” where appropriate.

The Guiding Principles are also based on 3 policies and processes, including the commitment and responsibility to respect human rights, the need for human rights due diligence, and the remediation of human rights impacts. The Guiding Principles centre on the notion that the responsibility of businesses to respect human rights “exists independently of States’ abilities and/or willingness to fulfill their own

human rights obligations” and that this responsibility “exists over and above compliance with national laws and regulations protecting human rights. This independent responsibility requires businesses to “[a]void causing or contributing to adverse human rights impacts through their own activities” and to “prevent or mitigate adverse human rights impacts linked to their operations (Atterberry 2019).

Incorporating CA into TJ Approaches

A means versus an end. It is appropriate to see CA as an end to TJ, especially since CA builds bridges for TJ during complicity in crimes in times of armed conflict, for example. Local communities have no means of redress, such as in the case of *SERAC and CSER v. Nigeria*. Without the need to hold MNCs & other economic actors accountable for their gross human rights violations, there cannot be TJ, building of trust, reconciliations, reparations, etc. Generally, MNCs & other economic actors are often complicit in human rights violations and environmental degradation in times of armed conflict. The impunity leaves local communities without redress, maintains abusive power structures, and undermines sustainable peace by preventing a full reckoning with the past and the establishment of measures to avoid recurrence.

In 2013, the US Supreme Court decided *Kiobel v. Royal Dutch Petroleum*, which limited the ability of U.S. courts to hear these claims for human rights abuses committed overseas, effectively robbing victims of corporate abuse of one of the few tools at their disposal.¹⁵ This was a year after the US Supreme Court eliminated corporate liability under a different statute that had previously made it possible to bring claims in U.S courts against companies for torture and killings that occurred overseas.

Given the multilateral character of TJ, successful efforts in any one of these areas will have positive effects on others. Of course, political dynamics and considerations will inevitably thwart many of these

¹⁵ Holly Cullen and Karen Morrow ‘Addressing human rights violations by extractive businesses in Nigeria: The limitation of transnational mechanisms and international recourses as alternative’ in Jean-Claude N. Ashukem, *Handbook on Business, Human Rights, and the Environment in Africa* (Springer, 2025), pp 705–726.

efforts, but the objective of CA, even if achieved only partially and piecemeal, will still generally advance the work of TJ.¹⁶ As such, integrating CA into mechanisms of transitional justice could be done in three ways: promoting and developing a binding instrument for CA, designing truth and reconciliation committees that expressly consider the part played by corporate actors, and setting up tribunals with jurisdiction to hold businesses accountable. TJ has an opportunity to take a more active role in both holding transnational corporations accountable for their part in human rights violations and advancing the development of international legal mechanisms for CA.

A legally binding instrument for CA would greatly advance the objectives and work of TJ by proactively addressing the role of corporate actors in human rights violations. The reason is that the objective of TJ is to promote institutional reform, establish a truthful account of the past, and secure justice for victims. Yet, in Sierra Leone, for example, the failure to address the underlying economic structures and actors has resulted in transitional justice efforts being perceived as incomplete.¹⁷

The role of TRCs is also crucial. TRCs have a particularly important role to play in integrating CA into transitional justice regimes, and there are several systemic ways that truth commissions can become more effective in this regard. This will entail investigating corporate actors, involving corporations in reconciliation, and the consequential effects for judicial enforcement. This would entail, for example, that the investigative work of a TRCs should be expressly guided by the Guiding Principles. For example, a robust investigation should include explicit consideration of how the relevant states have failed in their duty to protect individuals from human rights abuses by corporate actors. Explicit examination of corporate actors by TRCs can have.

For example, the TRCs of Liberia expressly considered the role that businesses played in the extended civil conflict and detailed the role played by several corporate actors.¹⁸ Arms dealer Guus Kouwenhoven used his timber business to cover his weapons smuggling operation, which supplied arms to Charles Taylor's activities, which were explicitly detailed the work of the Liberian TRC.¹⁹

Suggestions

Several suggestions are made in this policy brief on how TJ can be used as one of the tools or strategies to promote CA of companies or business entities in the African context. These include developing a legally binding international treaty, reliance on the African Human Rights System, potential role of the AU in regulating corporations, and reliance on domestic legal frameworks.

Development of a binding international treaty

A binding international treaty should be developed to explicitly regulate the activities of MNCs or corporations at the international level. Corporations must respect existing international frameworks and incidental commitments (such as the UNGPs, etc.). Furthermore, the international community should develop a treaty on ecocide. For example, "the Council of Europe has adopted a landmark treaty – *the Convention on the Protection of the Environment through Criminal Law* – which defines and criminalises a wide range of environmental offences and establishes a legal framework for states to prosecute intentional conduct resulting in environmental disasters 'tantamount to ecocide.'²⁰ Thus, the AU should also develop a similar treaty in Africa.

¹⁶ Atteberry, *supra* n 3 at 336.

¹⁷ *Ibid*, 350.

¹⁸ *Ibid*, 372.

¹⁹ *Ibid*.

²⁰ Stop Ecocide, "Tantamount to Ecocide: Council of Europe Criminalises Severe Environmental Harm" (15 May 2025), <https://www.stopecocide.earth/bn-2025/tantamount-to-ecocide-council-of-europe-criminalises-severe-environmental-harm> (accessed on 4 March 2026).

Reliance on the African Human Rights System

The African Human Rights System plays an integral role in the promotion of human rights in Africa. Thus, AU institutions such as the African Court of Human and Peoples' Rights, the African Commission on Human and Peoples' Rights, and sub-regional courts and bodies in Africa can be used to promote the nexus between TJ and CA in Africa. Recently, the African Court of Human and Peoples Rights in *Ivorian League for Human Rights (LIDHO) v. Republic of Cote D'Ivoire* held that the government of Ivory Coast was culpable in failing to protect the human rights of the victims of the Trafigura toxic waste dump case in the country.²¹

Potential role of AU in regulating corporations

In Africa, arguably, several AU treaties and mechanisms can be the basis of promoting CA. Hence, several scholars have argued that "Arguably, the African Union (AU) (and its mechanisms) can be the basis of MNC regulation in Africa".²² For example, the African Commission's Working Group on Extractive Industries, Human Rights and the Environment has been at the vanguard in developing mechanisms or policies on the control of MNCs operating in Africa.²³ Thus, this Working Group can also develop guidelines for corporations to explicitly integrate TJ principles in their activities in Africa.

Furthermore, arguably, the Revised African Convention on the Conservation of Nature and Natural Resources (Revised African Nature Convention) 2003 has some implications for CA in Africa. Also, the African Policy Framework on Transitional Justice should explicitly mainstream CA issues in its provisions.

Reliance on domestic legal frameworks

Laws and national policies can be used to ensure that companies do not engage in activities leading to air pollution, or companies should ensure that they mitigate their contribution to air pollution. The environment is always one of the first casualties of war. CA is also rife with wars or conflicts. Hence, TRCs in Africa should ensure that environmental issues and CA are part of their mandate or remit.

Conclusion

It is recommended that MNCs involved in conflicts in Africa should play an important role in promoting TJ as a strategy to mitigate the negative impacts of the conflict, build trust, and reconciliation among communities. The AU must also live up to its responsibility in this regard. This brief argues that for TJ to have positive impacts on the activities of business entities in Africa and mitigate conflict on the continent, the following recommendations are essential: the development of legally binding international treaty at the international and AU levels, explicit reliance on the African Human Rights System, potential role of the AU in regulating corporations, and reliance on domestic legal frameworks in regulating the activities of corporations or business entities in Africa.

21 Business and Human Rights Centre, "African Court on Human and Peoples' Rights holds Côte d'Ivoire accountable in Trafigura toxic waste dump case for human rights failures" (3 October 2023), <https://www.business-humanrights.org/en/latest-news/african-court-holds-ivory-coast-accountable-in-trafigura-toxic-waste-dump-case-for-human-rights-failures/> (accessed on 4 March 2026).

22 Eghosa O. Ekhator, 'Regulating the activities of multinational corporations in Nigeria: a case for the African Union?' (2018) 20 (1) International Community Law Review 30–68, Jean-Claude N. Ashukem, 'Business and human rights in the Anthropocene – the much ado about business and human rights norms and standards' in Jean-Claude N. Ashukem, Handbook on Business, Human Rights, and the Environment in Africa. (Springer, 2025) pp 3–18.

23 Ekhator, supra n 22.

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