

Lawyering for Change 2022 conference

SUMMARY

The (in)effectiveness of legal remedies in the field of natural resource governance

Workshop session Thursday October 13th 2PM - 3.20PM

Speakers:

- **Antonio Manganella** – Regional director for the Euro-Mediterranean region, Avocats Sans Frontières (Tunisia)
- **Deus Valentine** – Executive director and co-founder of the Centre for Strategic Litigation (Tanzania)
- **Léa Kulinowski** – Legal officer, Amis de la Terre (France)

Moderation by **Grazia Scocca** - Legal & Policy Advisor in Business & Human Rights, Avocats Sans Frontières (Belgium)

The exploitation of natural resources represents an emblematic Global North and Global South inter-related matter, marked by globalization, economic neocolonialism, and the ambitions for development set out by the emerging countries. The issue reflects dynamics of opacity, inequality, and impunity marked by a peculiar role played by economic actors and the inconsistency of the legal frameworks.

The Human Rights approach to natural resources governance is essential to prioritize the needs of the communities affected, taking into account also the so-called environmental rights as well as procedural rights.

Against this background, this workshop aimed to raise attention to the importance of access to remedies to resolve conflicts or seeking redress regarding natural resources exploitation and land expropriation. Besides, access to remedies is also used as a tool to empower local communities to ensure effective legislation and policies.

1. The weakness and inefficiency of international soft law instruments

During the workshop session, an emphasis was put on the **failure of voluntary measures** in the field of natural resources governance because of their lack of effectiveness, and on the need to force businesses to comply and to have enforceable frameworks.

A case illustrating that is the complaint filed against Perenco with ASF's and Iwatch's contribution. This complaint was filed against Perenco for its gas exploitation activities in Kébili (Tunisia) before the OECD national contact point (NCP). The latter is a grievance mechanism emerging out of OECD Guidelines for multinational enterprises, to resolve cases (known as "specific instances") relating to non-observance of the recommendations of the Guidelines. The initiative wanted to urge the NCP to investigate possible violations, facing the lack of access to information about the business activities in Tunisia, but also have an impact through advocacy on the ongoing process to build up a Tunisian NCP. One of the preliminary challenges was to show up the existing link between the French organization Perenco and its subsidiary operating in Tunisia, and for this, the complaint was filed before the French NCP. After more than two

years, without any progress, ASF and iWatch withdrew the complaint. Nonetheless, in January 2022 the final communiqué of the NCP recognized that Perenco violated OECD's principles.

Endorsing the previous ASF statement, Friends of the Earth (FoE-F) also emphasized the failure of voluntary measures in this field. According to FoE-F's experience, the key challenges in this field include failure to ensure and provide protection for victims and claimants who are often facing jail or threats; lack of procedures that put into effect the due diligence; gaps from the lack of judges specialized in environmental law and Human Rights provisions in this field. Other challenges mentioned pointed out the difficulty to get information about companies' activities.

2. The difficulty of local and national natural resources governance: an East African Perspective

In East-Africa, remedies to natural resources governance are limited. Investment, especially in extractive industries, is a relatively new development and most companies operating in the extractives are foreign companies rather than local ones. This has a bearing on how the relationship between the corporation, the State, and the communities is set up. Besides, we should consider the fragmentation within the national legal frameworks across the region, balancing well-implemented frameworks and special courts (ex. Environmental court in Kenya) and more fragile contexts.

In this context, local courts seem to not have the capacity to deal with cases of natural resources governance. This is why the best way to act in justice is through litigation outside the continent. International standards represent indeed a better tool to be mobilized to support effectively the communities affected.

Among the key challenges and restraints to enhancing access to justice and reparation in natural resource governance, there are: the **gaps in national standards** with regard to natural resources, the **failure to ensure compensation** for local populations in some national law provisions, the **lack of knowledge of populations** regarding their rights and the reparations they are entitled to ask for.

3. What solutions for a better natural resource governance?

A first solution highlighted was the **need for binding rules to hold corporations accountable**. In this regard, the French Law « the duty of vigilance » represents a big victory, although it is not as effective as it could have been and a number of improvements are needed. One of the issues is the lengthiness of its procedure.

Another one is the **role of society in supporting victims** in order to claim their rights and to facilitate access and effectiveness to the remedy. Due to a lot of reasons (corruption, economic implications, lack of awareness), victims do not often ask for justice. From the ground perspective, the different steps are: to explain to people their rights and what they are entitled to; to advocate for the rights of Human Rights defenders; to change the storytelling and the way in which citizens of the North conceptualize ownership of these companies: a multinational company does not benefit its home country and indeed has negative impacts on people there too.

3. Final recommendations

Key recommendations highlight priority pillars to **improve the effectiveness of remedies** to promote good governance of natural resources. The latter should cover: coherent and binding legal frameworks (national, regional and international); effective access to justice; raising awareness campaigns with local communities and ensure transparency in the dialogue platforms with the business sector.

For any question regarding this topic, please get in touch with Grazia Scocca: gscocca@asf.be