Forum: Environmental Commission

Issue: Ensuring environmental accountability of multinational corporations in Africa

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Introduction

With past surges in Africa's social and economic growth and their historically resource abundant geography, it is no surprise that many multinational corporations have set their sights on the continent and sought to expand their influence into these regions. Many international corporations, especially oil companies such as Shell, have begun to invest in the continent to reap the benefits of its geography. The problem lies in the fact that, due to prioritizing economic growth and maximizing employment opportunities, developing and low-income countries in Africa often set lax environmental standards to attract foreign investors. The high costs of conforming to the stricter environmental standards in more advanced countries further discourages governments from setting and enforcing regulations. Weak and corrupt governmental regimes only worsen this problem, with cases of bribery surfacing in low income, yet resource-abundant countries. This thus creates a situation where many corporations relocate their "dirty industries" to Africa, passing their environmental burdens to the poor by exporting waste and pollution factories, with no need to be held accountable for their environmentally degrading actions.

Thus far, many African countries have primarily relied on the idea of voluntarism on the company's part for being environmentally accountable. However, due to the huge environmental control costs involved, it is unlikely that self-regulation is effective when this conflicts the profit-maximizing objective of multinational corporations. It is unfeasible that countries rely on polluters themselves to make laws and punish themselves for going against those laws.

While economic growth is certainly important, environmental concerns and sustainability should not be ignored as a consequence. The United Nations (UN) Sustainable Development Goals (SDGs) emphasize the need to balance the 3 dimensions of sustainable development: economic, social, and environmental. As such, it is needed that countries implement the right policies and regulations so that environmental accountability for Multinational Corporations (MNC) in Africa can be ensured.

Definition of Key Terms

Multinational Corporations (MNC)

Multinational corporations (MNC) are defined as a large corporation that is based and operated in one country and has facilities and other assets in at least one other country. They generally have offices and/or factories in different countries but have a centralized head office where global operations are managed. Also known as international, stateless, or transnational corporate organizations.

Environmental accountability

Defined by the Organization for Economic Cooperation and Development (OECD) as the responsibility for the deterioration of the natural environment, to be environmentally accountable implies that the relevant organization is held responsible for their actions, and are expected to allocate environmental costs to economic activities that cause environmental deterioration.

Corporate social responsibility

A business practice that incorporates sustainable development into a company's business model. For an organization to practice corporate social responsibility is to be held socially accountable to the public, its stakeholders, and itself, being conscious of the impacts their actions have on the economic, social, and environmental aspects of society. This sustainable business practice ensures that organizations are acting in a way that enhances the society and environment around them, rather than contributing negatively to them.

Stakeholder theory

First posited by economist Milton Friedman, stakeholder theory is the idea that a firm should create value for all relevant stakeholders (such as local communities, investors, suppliers, customers, environmental groups, media), in contrast to shareholder theory, which argues that a company must make a profit for its shareholders. Dr.Freeman defines stakeholders as any group without whose support the organization would cease to exist. This theory suggests that since companies are compelled to make a profit, they must satisfy all of their stakeholders in order to continue positive growth, and never lose sight of everyone involved in its success.

Background

The history behind the issue of environmental accountability of MNCs dates back to the Scramble for Africa in the late 19th century, during which several European nations competed for territories within Africa principally for access to their natural resources. Many transnational companies, such as the British East India Trading Company, the Royal Niger Company, the Lever Brothers (now known as UniLever), and many others sought to expand their influence in different regions in Africa for trade and territorial acquisition, for the benefit of their home countries.

The new scramble for Africa

Now, more than a century later, a new round of the scramble for Africa begins to unfold. Many of the world's most powerful nations are now once again competing over the abundant natural resources within Africa, in what many analysts now call the "New Scramble for Africa". Nations such as China, India, Russia, and to a lesser extent Japan and Indonesia, have tried to expand their influence into Africa primarily for natural resources. As a result, several state-owned MNCs, such as Shell, Exxon Mobil, and British Petroleum have set their sights on the continent.

The problem is that after former European colonies in Africa gained independence, many decided to prioritize economic development in order to improve the quality of life for their citizens. Ironically, this has led to cases where policies that failed to take into account the well being of the citizens ended up being adopted, harming the environment, and by extension were detrimental to the public. This in turn resulted in many human rights and environmental abuses by trasnational corporations within Africa. Owing largely to colonialism, corruption, poverty, weak institutional structure, and a lack of modern civil society groups, irresponsible actions of these MNCs went largely without scrutiny and resistance, causing damage and degradation to several regions in Africa especially in the Niger Delta.

Voluntarism vs Regulation

The dominant regulatory regime for MNCs was centered around the idea of corporate social responsibility and voluntarism, which recognizes the need for corporations to be socially responsible and consider the needs of relevant stakeholders like host communities and states in their affairs. Regulations were built around the idea that MNCs are naturally inclined, as described with stakeholder and legitimacy theory, to act responsibly so that they can garner support and have their actions perceived as proper, desirable, or appropriate. However, corporations have consistently used Corporate Social Responsibility (CSR) as a way to prevent mandatory international regulation of their activities to be introduced, with the reasoning that CSR reflects the commitment of business to voluntary responsible behavior and any attempt to making it mandatory would jeopardize their "goodwill". This poses a challenge to enacting mandatory regulations for MNCs for ensuring environmental accountability.

Economic Clout and Influence

As many nations in Africa have oil as their main export, many governments have tried to ensure that the activities of MNCs do not go obstructed to continue making money. As such, any opposition to the activities of the MNCs involving oil exploration is deemed subversive to national economic interest. This was the case with Ogoniland and Shell. Due to the oil exploration activities of Shell, environmental degradation in Ogoniland was extremely severe. A report by the United Nations Environment Programme (UNEP) on the situation stated that "pollution of soil by petroleum hydrocarbons in Ogoniland is extensive in land areas, sediments, and swampland. Most of the contamination is from crude oil, although contamination by refined products is also found at three locations." Causing environmental degradation, ecological disaster, and causing farmers and fishermen to lose their livelihoods, this catastrophic event illustrates the detrimental effects that environmentally irresponsible oil exploration has on the host society. This would move the community to peacefully protest and demand compensation. The main response by the government was the militarisation of Ogoniland and several unarmed protestors were killed, and it was alleged that Shell took an active role in suppressing the local protestors. This shows how low income but resource-abundant governments in Arica have a vested interest in protecting MNCs despite their actions being socially and environmentally irresponsible. As said by Jane Nalunga of the Uganda based Non Governmental Organizations (NGOs) southern and Eastern Africa Trade Information and Negotiations Institute, "The problem is that African governments… fear that laws on human rights or the environment might chase away international investors"

International law and non-state actors

One other reason why it's difficult to hold MNCs environmentally accountable is due to the belief that international law applies only to states and not individuals, and thus does not apply to transnational corporations. In addition, as corporations are not "real criminals", and their decisions are instead conducted by complex hierarchies, structures, and processes, it is difficult to decide if any one actor should be punished. This absence of international restraints allow the power of corporations to go unchecked and can continue to challenge the traditional economic and political dominance of governments.

Environmental consequences

Already, the detrimental effects of corporate irresponsibility have begun to surface within Africa. 130 oil spills were reported within Nigeria's Niger Delta as a result of operations by Shell. It is estimated that between 9 to 13 million barrels of oil have been spilled in the last 50 years, and this has caused major direct risks to the environment, human health, and economic development of the Niger Delta. Locals have argued that in some areas agrarian land will be unusable for 25-30 years, rendering much of the delta's agricultural land infertile, which is extremely problematic for the locals, who rely heavily on fishing and farming for subsistence. In Angola's northern province Cabinda, fishing was artisanal and has been going on for three generations or more, but the entire sea area around Cabinda province have been negatively affected by oil production. There is very little space for fishing and fishermen complain that the bay of Cabinda no longer even yields fish. Opportunities for legal recourse are very limited too. In 2005, AESCAB launched a court case against the Cabinda Gulf Oil Company following a major oil spill affecting 1226 fishermen. The case is still pending with no ruling expected in the foreseeable future. Due to a combination of political corruption, lack of an international legal framework, weak institutions, inadequacies of substantive and procedural legislation for litigation, and weak judicial remedies, legal actions against MNCs in many African states have limited prospects. MNCs are well aware of this fact, and take advantage of it to undermine efforts at securing their accountability.

Major Parties Involved

United Nations Environment Programme (UNEP)

The UNEP is a UN program that coordinates environmental activities and assists in promoting the implementation of the environmental dimension of sustainable development. Their work includes supporting governments develop sustainable policies and promote environmental rights, helping countries in planning and making policies where legislations or principles on environmental rights have yet to be made or implemented, and also working with countries and institutions to strengthen national laws to ensure environmental conditions are met and the laws can be enforced. In addition, the UNEP has done assessments on African nations to determine the intensity of the violations made by MNCs, such as when they were commissioned by the Nigerian government to assess the effects of Shell's operations. The UNEP has created the United Nations Benchmark Corporate Environemental Survey Report, which investigates the environmental management practices of MNCs.

Organisation for Economic Co-operation and Development (OCED)

An intergovernmental economic organization with 36 member states, the OCED "works with governments, policy makers, and citizens to establish international norms and find evidence-based solutions to a range of social, economic, and environmental challenges.” On the issue of environmental accountability of MNCs, The OCED has created a set of guidelines, called the “OECD Guidelines for Multinational Enterprises” for multinational enterprises to ensure environmentally sustainable development as well as outlined several approaches in implementing them. Examples include maintaining a system of environmental management, assess and addressing environmental issues during decision making for processes gods, and services over their full life cycle, maintaining contingency plans for preventing, mititgating, and controlling serious environmental and health damage, and more. The extensive documentation of the document provides a detailed guideline for corporations to follow in order to be environmentally responsible.

UN Working Group on Business and Human Rights (UNWGBHR)

The UNWGBHR was created as part of the UN Guiding Principles on Business and Human Rights under the Human Rights council in 2011, which has a mandate stating: to promote the effective and comprehensive dissemination and implementation of the Guiding Principles on Business and Human Rights, promote good practices and lessons learned, conduct country visits, enhancing access to effective remedies, and more. The organization is important as it prevents corruption and forces businesses to adhere to all human right laws, thereby allowing victims of corporate environmental negligence to seek justice and compensation from corporations.

Previous Attempts to Resolve the Issue

The UN, starting in the 1990s, has begun taking steps to allow international law to apply to not only states but also MNCs, so that a universal set of regulations can be applied to MNCs operating in Africa. One such steps was the United Nations Global Compact in 2000 (UN Compact), the world’s largest corporate sustainability initiative that, as they state on their official site, is “a call to companies to align strategies and operations with universal principles on human rights, labour, environment and anti-corruption, and take actions that advance societal goals.” The UN Compact contains 10 principles for incorporating to strategies, policies, and procedures. Three of the principles deal with environmental concerns and one on anti-corruption. However, the effects of these principles are limited as they are simply a voluntary initiative rather than a regulatory instrument. It places reliance on public accountability, transparency, and disclosure to complement regulation. So it is unlikely to do much for ensuring accountability of MNCs.

Another one of these steps is the UN Guiding Principles on Business and Human Rights, presented by UN special representative John Ruggie to the UN Human Rights Council where it was unanimously approved. It rested on three pillars, the state duty to protect human rights abuses by third parties, corporate responsibility to respect human rights, and greater access by victims to effective judicial and non-judicial remedies. Though this does not directly deal with environmental accountability of MNCs, it is nevertheless relevant as it deals with accountability through a human rights compliant regime rather than corporate social responsibility. This is important as it requires corporations to respect every type of human rights, instead of a selection of issues they are comfortable with, and so the framework provides a universally recognized, people-centered approach to company’s social and environmental impacts, paving the path towards environmental accountability of MNCs. The resolution also established the UN Working Group on Business and human rights. However, these principles are still just a guide and are non-binding, and so it is reliant on a corporation's morals to be carried out.

Possible Solutions

- Mandating that corporations provide public and employees sufficient and timely information on operations, as well as possible environmental, health, and safety impacts of the activities. This allows local stakeholders to stay aware of the potential risks of MNC corporations, act accordingly, and make sure the corporation is acting responsibly.
- Setting an enforceable and binding universal environmental standard for MNCs to follow, such as limits on emission and requiring adequate methods of toxic waste disposal. In addition, employ the help of UN organizations, NGOs, and local communities, ensure that the standards are being upheld by the MNC. As environmental regulations are lax in some developing countries seeking for higher economic growth, having at least some form of universal standard ensures that MNCs do not take advantage of less developed countries with weak institutions.
- Conducting regular checks on MNCs and surrounding communities through the use of NGOs or UN organizations, in order to check for any signs of environmental degradation, political corruption, and suppression of locals. Govenments with weak institutional structures or ones that are being bribed by MNCs would not perform checks and holding them accountable. As a result, external help may be needed for conducting such checks.
- As MNCs usually have home countries with better technology than their host countries, incentivise and/or mandate corporations to utilize more efficient, safe, and/or environmentally friendly technology in their processes, such as utilizing better pipes for oil transportation to decrease the chance of an oil spill.
- Allowing local stakeholders who are subject to environmental degradation as a result of MNC operations to raise global awareness of their plight and garner worldwide support. Preceding against a MNC within the current legal regime in a developing country can be extremely frustrating for victims, especially economically and socially disadvantaged ones, as it is not a level playing field. For example, in a case between Nigerian fishermen and farmers against Shell, Shell used various tactics to delay the proeedings, such as refusing to produce documents allegedly in their possession, challenging the jurisdiction of the courts in all three cases, and more. Ensuring that the victims have some way to contact international bodies and environmental rights groups to report the case to the world, and give much needed moral and legal support for the victims against the MNCs.
- Establishing an enforceable international mechanism for MNCs and their stakeholders. As much of the issue behind environmentally accountability of MNCs lies in the fact that current international laws does not apply to them and thus they cannot be punished, the successful implementation of an enforceable and legally binding international mechanism for all MNCs is crucial to ensuring environmental accountability. While individual actors in the MNC does not need to be punished, the MNC can be convicted, fined, and

punished in other ways to hold them accountable. The mechanism can also make sure that victims are able to have access to effective judicial recourse, and solves the problem of lax environmental regulations and laws within developing countries.

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