

Effective remedy and redress for human rights impacts of businesses on indigenous peoples

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Key talking points

Introduction/setting the stage

- Impacts on business on indigenous peoples depend on the type of business but most likely they can be impacts on sacred and heritage sites; impacts on medicinal plants; impacts on livelihood-enhancing natural resources; and disruptions of views on culturally appropriate mitigation measures.
- Sacred sites for most African indigenous peoples can be categorized into two broad groups namely physical locations/features such as water sources and mountains, and selected tree species (which retain their sacredness irrespective of where they are found, and irrespective of whether they remain standing or cut)
- Among the Maasai of Kenya and Tanzania for example, *Oretet* is regarded sacred. It has spiritual significance. Used by women to pray for rain and purification of young women
- The Barabaig's community is particularly renowned for a ritual known as *Bung'eda*-a term which means both a grave mound as well as the ceremony associated with it.
- With regards to other physical sites, these for the Maasai are places in the forests or open areas, where rites of passage are performed.
- Generally, pastoralists' sacred sites are largely immovable because they are associated with physical natural resources.
- Heavily dependent on traditional medicinal plants. Dependence on traditional medicine is compounded by the lack of health facilities in their remote villages.
- Key pastoral-livelihood enhancing assets in the study villages notably traditional livestock routes for accessing water, pastures, and salt resources.

Grievance mechanism

- Where there are adverse impacts grievance mechanisms are needed, capable of issuing effective remedies and redress for human rights impacts of business.

- The Mechanism should be capable of promptly resolving disputes, transparent, consultative, culturally appropriate, less costly, or not costly at all, and not supplanting other judicial and administrative remedies.
- To meet the above benchmarks, it is important to involve tribal leaders' representatives and NGOs representatives.
- In redressing the human rights impacts and issuing effective remedies, this body should use traditional means for remediation, including traditional laws and procedures.
- For many Indigenous Peoples for example, non-material compensation schemes that are absent in formal grievance mechanisms have special significance.
- They may include recognition of wrongs by perpetrators, guarantee of no-repetition, disclosure of truth, and apologies.
- Furthermore, spiritual, cultural, and social values have extraordinary significance that cannot be fully safeguarded by an adversarial tribunal, or by consideration of economic interests alone.

Challenges

- Voluntary nature. Companies have no binding obligation arising from a treaty for example.
- Cultural appropriateness
- Best practice: scant in the case of Africa because of the contestation around the concept of indigenous peoples.
- Recommendation is to ensure that Transnational corporations do not hide behind weaker local laws and instead be guided international law norms, especially the UN Declaration on the Rights of indigenous peoples.

Conclusion

- Impacts on indigenous peoples are far reaching due to their dependence on land and natural resources as well as the spiritual and cultural significance they attach on their lands.