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THE AFRICAN FORUM IN BRUSSELS

## Mechanisms for Business Accountability

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This report reflects the discussions held in Bonn on 7 & 8 March 2011, where a group of leading experts in governance and business accountability from Europe and Africa discussed the problem of business accountability in Africa. The objective of the discussions was to analyze the current state of affairs and put forward recommendations to policy-makers to improve the situation.

### 1. Effects of illegal business practices

Illegal business practices cause external effects that spill-over to the societies they operate in, leading to severe damage at very different levels.

#### a. Economic, social and environmental consequences

The African Union has estimated that the costs of corruption in African economies has amounted to to \$148bn per year, 50% of their tax revenue and \$30bn of aid since the late 1990s. Capital flow also constitutes a major problem, since 80 % of aid to Africa flows outside the continent.

In what relates to social effects and taking the extractive industry in Africa as a reference, the situation of the workforce is particularly worrying: 45% of all labour contracts in Africa do not provide social security. In addition, these corporations develop neither links to local business nor social infrastructures.

With regard to the environment, the domestic mining companies themselves conduct environmental assessments of their own activities, which should be done by independent bodies, leading to biased and non-transparent management which neglects environmental criteria.



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**b.** Political consequences

Illegal business practices in countries with weak institutions contribute to the development of structural political corruption. South Africa is a clear example of this.

European arms manufacturers contributed to illegal political funding in South Africa in the mid 90s through “arms deals”. To facilitate the selling of unnecessary military armaments to South Africa, European corporations (BAE, ThyssenKrupp and MAN/Ferrostaal) granted large commissions per contract to the governing party in South Africa, the ANC, sums amount which served to finance the party.

Through this mechanism (and other similar ones) the ANC finances its activities and has managed to remain in power since 1994. With all non-governing parties marginalized from political competition in practical terms, the result has been the establishment of a de facto one-party system which jeopardizes the democratic foundations of South Africa and brings the country closer to being a failed state.

**c.** Distortion of fair competition

Corruption and illegal business practices distort fair competition in the economy. The moral legitimacy of a market economy is based on fair competition, where productive instruments generate benefits for the society as a whole on the basis of performance-based competition. However, in a corruption-intensive market (such as in Africa), it is not the performance of business that determines the success of a company but its ability to play the corruption game.

In this sense, companies in Africa expect the others to “play” the corruption game and therefore have no incentives to be non-corrupt. Since the problem is not rooted in the ethos of corporations but rather in the logic of interaction, the key to change is therefore developing stronger and stable institutions which ensure equal rules for all and implement sanctions high enough to make corruption unattractive.

**2. Need for public-private cooperation**

The role of business in society and in policy-making has drastically changed in the last few decades. Constructive engagement between business and governments becomes necessary to achieve both public and corporate good governance. The latest trends among EU policy-makers



and business towards new forms of self and co-regulation. This new approach goes beyond the pure self-interest of companies and shifts towards transparent engagement through “collaborative governance”.

Any corporation needs to understand the local society in which it operates and respect its human needs. Companies need to develop a certain self-awareness of where they operate and assess the degree of acceptability of the regime they collaborate with. The respect of “6 human security principles” could provide a reference for corporations in this regard: primacy of human rights, legitimacy of political authority, bottom-up perspective, effective multilateralism, regional focus, clear and transparent strategic direction.

However, this approach is still missing in Africa. The lack of transparency and accountability of corporations operating on the continent combined with the lack of willingness by African Public Authorities to facilitate such an approach generate a dead-end scenario. Nevertheless, some initiatives being developed by European authorities, such as the Joint Europe Africa Strategy, its Platform for Dialogue or the Economic Partnership Agreements are providing support to African Government initiatives and encouraging reforms, although they remain insufficient.

### **3. The way forward**

Two recommendations for the improvement and achievement of sustainable business accountability are put forward:

- a.** Simplification and sector adaptation of existing transparency initiatives
- The Extractive Industry Transparency Initiative encourages companies to report what they pay as taxes, royalties, duties, etc, and independent auditors accordingly produce country reports. However, there is a need to strengthen the network of stakeholders involved and the implementation of initiatives as well as to develop a mechanism for companies to contribute to building the capacity of state departments.
- The OECD Convention on Bribery generates a distortion of fair competition between market players due to the differences in anti-foreign bribery enforcement. A more holistic approach on both sides of corruption (active bribery and bribe solicitation), further clarification of bribery (facilitation payments, political



contributions and indirect and private-to-private bribery) and an improvement of its enforcement is needed.

- The UN Convention against corruption, despite being one of the most comprehensive anti-corruption instruments of global dimension, needs to speed-up its implementation phase if it is to be effective.
- The African Union Convention on Corruption, adopted by 29 AU Member States, still needs to be signed by the rest of the AU Members to be efficient. In addition, help to AU countries with setting up identification systems of their citizens is needed to ensure efficacy along with the introduction of criminalization of corruption in national legal systems.

These initiatives, if properly reinforced, can constitute a good basis for the improvement of the current state of affairs. Nevertheless, these proposals need to be complemented by a more substantial and targeted corporate mechanism.

#### **b.** Business Peer Review Mechanism

The creation of a Peer-Review Mechanism could, from a corporate to corporate approach, act as an efficient instrument to catalyze, ensure and improve business accountability. Such a mechanism would encourage businesses to comply with a series of standards and indexes that would be reviewed by peers (and have its results accessible by citizens and consumers).

This mechanism should build up on the experience of the African Peer Review Mechanism regardless of its inter-governmental component. Combining some of its elements with new concepts into a new corporate to corporate system would remove some of its weaknesses and reinforce its strengths.

#### **4. Conclusions**

There is a clear need for additional and enforceable rules and effective corporate peer review procedures in Europe and Africa, both at governmental and business-to-business level, to mitigate future corruption. Voluntary initiatives are not sufficient. A level playing field can only be created by governments and the EU through the integration of these initiatives into their national legislations.



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Among the mechanisms and initiatives that could constitute a step forward, the sector adaption of existing initiatives and the creation of a business peer review mechanism rise as the most effective and feasible instruments to improve medium and long-term business accountability. The US Dodd-Frank Act provisions on transparency in the supply chain of minerals is a step in the right direction and should encourage European and African policy-makers to not only adopt similar initiatives, but even expand them to additional specific economic sectors.

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