



Kenya Conference of Catholic Bishops

Catholic Justice & Peace Commission

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A CALL FOR THE KENYAN GOVERNMENT AND INTERNATIONAL COMMUNITY TO ENSURE THAT TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES RESPECT HUMAN RIGHTS FOR THE COMMON GOOD

As Christians, we are both called and commanded to “love your neighbor as yourself” (Matthew 23:39). In this way, we serve God most when we serve others (Matthew 25:40). The invitation is meant for safeguarding human wellbeing as opposed to injuring human dignity.

A keen look at the history of international development and local economic transformation in various contexts, one can only but marvel at the tremendous growth and change that has taken place over the years. These mega changes in growth and development are driven by government policy regulation and private corporations that invest in technology, innovations, capital and other resources to drive change. Further, when looked at in a collectivity, both governments and private corporations share in the essential responsibility of delivering goods and services for public good and private consumption. At the heart of this is the real need to realize development that enhances and promotes important values such as human dignity, wellbeing, sustenance, self-esteem and above that which promote the human person’s abilities to become a moral agent through human rights.

In Kenya, just like many other African countries, the realities of local development have significantly changed. Yet, the data from the World Bank report indicates, there is a paradox that the country is still classified to be having a large population which is struggling with absolute poverty at the rate of 37.3% (World Bank; 2018, p. 44). Fundamentally, the denial of basic access to justice and human rights facilities by authorities breeds the grounds for discord.

Taking the example of ethnic discrimination, social exclusion, extreme economic inequality and institutional capture constitute collective political development failure that leaves ordinary citizens disenfranchised. The capture of public and

state interests by the elite conspires and militates against the possibility to realize the much-desired fruits of foreign direct investments (FDI) from multinational corporations (MNCs).

Many MNCs work in concert with senior actors in government to collude on extracting natural resources from communities while degrading the environment thus robbing local communities of their vital abilities for utilization of the God given resources. As good stewards of God's natural environment, we have a responsibility to respond and work with public sector actors as the Church to remedy the vagaries that the market exposes the most vulnerable members of the society to.

The Church many times serve and remain an essential pillar as the conscience of society and being driven by the responsibility for pastoral duty and care for the poor towards realizing the common good principles. The Kenya Conference of Catholic Bishops – through the Catholic Justice and Peace Commission with other likeminded partners, have been playing a crucial role on ensuring the Government of Kenya holds Transnational Companies accountable while transacting their businesses within the Country.

In the realm of globalization, migration, global trade, technology and human trafficking are all important policy issues that require the Church through its social teaching and institutions to become more responsive to work positively and in close relationship with the State towards ending abuse of human dignity, workers dignity, right and end among other abuses. Critical contribution would include collaboration on partnering for purposes of providing support for victims of various violations, protection and legal aid through the justice system of the state. Accelerated globalization of economic activities, extraction of natural resources tilts towards privatization wherein businesses play an important role in the realization of economic, social benefits with uneven distribution of exchange and use value.

As a whole, the business sector contributes to the fulfillment of the rights enshrined in the International Covenant on Economic, Social and Cultural Rights, including generation of employment opportunities and investing in economic development. Trends from the global trade demonstrate that business activities can also adversely and irreparably affect the substantial enjoyment of the said rights. This therefore calls for the State under the International Covenant on Economic, Social and Cultural Rights to ensure that the activities of businesses contribute to and do not impede the realization of economic, social and cultural rights. We also draw attention to General Comment 24 of the Committee on Economic, Social and Cultural Rights, including the recommendation to address the specific impacts of business activities on women and girls, including indigenous women and girls, and incorporate a gender perspective into all measures to regulate business activities that may adversely affect economic, social and cultural rights; the recommendation that States should adopt measures such as imposing due diligence requirements to prevent abuses of Covenant rights and the assertion of the duty of the state to ensure access to remedy and reparation.¹ This would be a major addition towards the realization of Article 43 of the Constitution of Kenya 2010.

Other than the material minerals that are extracted from the earth, the primary resource in the extractives sector is land. For this reason, many communities in Kenya have been denied their fair share of benefits and opportunities to participate in the sector due to shortcomings in land adjudication and registration. Quite often, community members have not been adequately compensated when their land is earmarked for extractives operations. The distinctive relationship between indigenous people with land and natural resources needs to be protected and the particular needs of women should be specifically addressed. However, as noted by the African Commission on Human and Peoples' Rights in 2009 and the African

¹ Committee on Economic, Social and Cultural Rights (2017) General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities. E/C.12/GC/24

Court on Human and Peoples' Rights in 2017 the rights of indigenous peoples have been violated by displacing them in the pursuit of development projects.² There are numerous instances where the government and international investors gain consent from and even compensate people who do not belong to the affected communities. In essence, local communities are robbed of their basic rights to say no, consent and decent living standards. Kenya should ratify ILO Convention 169 which establishes a basic framework for the protection of indigenous and tribal peoples under international law and outlines the right to Free, Prior and Informed Consent.

As a result, there are grievances surrounding the compensation of community members in Kwale, Kitui, Turkana and Elgeyo Marakwet counties.

While the legislative and policy framework has developed in Kenya, including the Community Land Act (2016), Environmental Management and Coordination Act (2015) and Petroleum (Exploration, Production & Development) Bill, the operationalisation of such legislation is inadequate. For example, due to significant gaps and weaknesses in the operationalisation of the Community Land Act 2016, communities affected by the development of the oil field in Turkana are extremely vulnerable to expropriation of their land by external actors, either by informal/illegal or legal means. A failure to adequately take into account the rights of affected community members, especially those that relate to community land and natural resource use, may dramatically increase conflict risks in the area.

We call upon the Ministry of Lands and Physical Planning and the National Land Commission ensure that indigenous peoples and women's rights to land and property is recognized, promoted and protected by both Transnational Corporations and local investors.

We, also call upon the Kenyan Government to comply with Section 119 of the Mining Act 2016 by publicizing all mineral agreements, including the ones made with Tullow Oil Inc and Base Titanium Limited. Further to this we urge the International Community to take serious regard for human dignity in their activities for purposes of shared value through local development that is sustainable and promotes integral human development.

² UN HRC (2019) Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. A/HRC/41/43/Add.2

The Kenya Conference of Catholic Bishops through the Catholic Justice and Peace Commission is concerned that the social and cultural impacts of exploitation of extractive resources are not adequately assessed and addressed. The existing regulations that provide for public participation in the impact assessments are not being enforced by the authorities.

In this regard, we call upon the Ministry of Petroleum and Mining and the National Environmental Management Authority to partner or strengthen their partnerships with non-state actors to expand the Environmental Impact Assessment framework to include other important aspects like Climate Change, Gender, Social and Cultural impacts. Further, the framework should provide for regular monitoring of multinational companies on adherence to the Environment and Social Impact Assessments.

We note that the Final Kenya National Action Plan on Business and Human Rights (July 2019 – subject to a process of approval) introduce a requirement for conducting Human Rights Due Diligence, before approval of licenses/permits to businesses, and which will be continuously reviewed to ensure that they prevent, address and redress any human rights violations. Such impact assessment should involve meaningful consultation with potentially affected groups and other relevant stakeholders and include particular gendered impacts. We would like to welcome this, whilst noting the importance of environmental considerations, and assert that mandatory human rights and environmental due diligence legislation is crucial to establish a corporate duty to respect human rights and the environment, to hold companies legally accountable and to provide access to justice for victims.

We also note the need for a global legally binding instrument to regulate the activities of transnational corporations and other business enterprises. This is necessary to address the global governance gap in the regulation of transnationals. We call on the Kenyan government to support a strong Treaty that will ensure prevention of human rights abuses by transnational corporations; free, prior and informed consent, legal liability for corporations across all business relationships,

access to remedy for affected communities and individuals, the primacy of human rights over trade and investment and strong enforcement mechanisms. A Treaty should have a strong gender analysis and be cognizant of the rights of women and indigenous communities, and pay particular attention to the experiences of women human rights defenders.

May the Grace of Our Lord Be with You Always and guide you as you make important resolutions for the good of the mankind.

Signed by:



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