

Human Dignity and Corporations: Pursuing Non-State Avenues to Hold Corporations Accountable for Human Rights Abuses Under Regional Conventions

Simone Berman-Perlstein

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Professor May and Daly**

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Question Presented: Whether the regional conventions surveyed provide a means for victims of human rights abuses to seek redress against multinational corporations for infringing upon their human dignity.

Answer: This paper seeks to answer whether there is a means in which victims of human rights abuses may seek judicial remedy against corporations that infringe upon their human dignity and if so, what measures have been implemented. It surveys various international human rights instruments and concludes that while some regional conventions provide a form of redress, the instruments do not have a means of holding corporations judicially liable. Instead these regional conventions may be a useful tool in binding States into action against corporations who violate the human dignity of their citizens. There exists an ability for some of these regional conventions to provide victims with support in seeking justice against corporations, though assistance is needed either from member States or the corporations themselves in order for any ruling to have a true effect.

I. Introduction

Is there a method in which victims may seek recourse against corporations for violations of human dignity through international instruments? This paper surveys the following regional conventions: the African Charter on Human and Peoples' Rights, the American Convention on Human Rights, the Arab Charter on Human Rights, the Association of Southeast Asian Nations Human Rights Declaration, the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union. The focus of this paper is on the presence of human dignity in these regional conventions and whether these instruments provide a means for judicial accountability against corporations. All the regional conventions surveyed demonstrate that there is an inherent human dignity in all people that must be protected. A victim trying to prevail

using a claim of human dignity may be more successful than just citing to general human rights abuses since human dignity, as it exists as either an article or section in each regional convention, must be protected.

In this paper each regional convention is studied on its own to discover to what extent, if any, human dignity plays in its formation. Then the scope broadens to see if there are any means to hold corporations liable and if so, what precedent exists. This paper demonstrates how the pursuit of corporate liability in the context of human dignity has either flourished or stalled. Finally, this paper addresses what forms of redress currently exists for victims and what can hopefully come to fruition with time. While it is impossible for these regional conventions to directly hold corporations accountable, there exists the possibility that these regional conventions could be a viable tool into binding States to seek justice against corporations who have violated the human dignity of their citizens.

Part I of the paper addresses human dignity and the role it has played in corporate practices. Part II focuses on the African Charter on Human and Peoples' Rights and the extent in which the African Commission on Human and Peoples' Rights has used its power to assist victims of corporate human rights abuses. Part III concentrates on the American Convention on Human Rights and the Inter-American Commission on Human Rights and the progress they have initiated concerning Canadian Mining companies in South America. Part IV concerns the Arab Charter on Human Rights and the potential issues the Arab Court of Human Rights may face once it is fully formed. Part V focuses on the Association of Southeast Asian Nations Human Rights Declaration and the effective steps the ASEAN Intergovernmental Commission has taken in regard to corporate accountability. Part VI highlights both the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union with a focus on the

absence of corporate accountability in the European Court of Human Rights. Finally, the paper concludes in section VII that while there is vast room for improvement, opportunities may exist for victims to seek recourse against corporations who violate human dignity, especially when the victim's own State refuses to seek justice on their behalf. There is no guarantee that even when a State's constitution guarantees its citizens the right of human dignity that such a right will be protected. Even though a victim may only use a regional convention to bind a State into action as they are not legally binding against corporations, this paper demonstrates that regional conventions may eventually be a means for victims to seek redress against corporations.

Human dignity as a constitutional right and idea permeates throughout the world in countless constitutions.¹ The Universal Declaration of Human Rights (UDHR) expressly says that "all human beings are born free and equal in dignity and rights."² Despite this international recognition of human dignity, corporations and human dignity do not have a tightly interwoven history. Despite efforts in the 1970's and 1980's to create a binding instrument to regulate corporations, progress did not start until the late 1990's.³ Multinational corporations resisted any action by the UN until Kofi Annan assumed the position of Secretary-General, who met with the International Chamber of Commerce (ICC) in 1998.⁴ The resulting partnership led to a UN working group tasked with creating a code of conduct for corporations based on human rights standards.⁵ Eventually this framework led to the creation of the UN Guiding Principles on

¹ The concept of human dignity appears in over 100 constitutions in various forms. *National Constitutions with Dignity Provisions*, DELAWARE LAW SCHOOL DIGNITY RIGHTS PROJECT, <https://docs.google.com/spreadsheets/d/1Tn8w8hJ7HOly-HY9rkUEPjyOAIcfaUw2X3a594RDA8/edit#gid=0>. (last visited Nov. 3, 2018).

² Universal Declaration of Human Rights (10 Dec. 1948), U.N.G.A. Res. 217 A (III) (1948).

³ Jens Martens, *Corporate Influence on the Business and Human Rights Agenda of the United Nations*, 5, https://www.globalpolicy.org/images/pdfs/GPFEurope/Corporate_Influence_on_the_Business_and_Human_Rights_Agenda.pdf (last visited Nov. 3, 2018).

⁴ *Id.* at 9.

⁵ *Id.* at 14.

Business and Human Rights (UNGP).⁶ The United Nations Human Rights Council officially endorsed the UNGP on June 16th, 2011 in its 17/4 resolution.⁷ These guiding principles “apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.”⁸

The UNGP does not create new laws nor places new obligations upon corporations, but rather sets out a blueprint for States and corporations to follow⁹ and identifies areas for improvement.¹⁰ Despite the creation of the UNGP, it has been difficult to ensure corporations uphold the notion of human dignity. Some corporations have seemingly embraced the UNGP, such as Coca-Cola, who released their first ever human rights report in 2017.¹¹ Coca-Cola utilizes the UNGP to lay the foundation for their policies and programs related to human rights.¹² Coca-Cola also teamed up with Shift, a NGO that works directly with companies to assist with implementing policies based on the UNGP.¹³ While it may appear that some major corporations have embraced the UNGP, this is not enough to ensure the protection of human dignity from corporate influence.

⁶ *Id.*

⁷ *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (last updated Dec. 16, 2016).

⁸ *Id.*

⁹ *Id.* (“Nothing in these Guiding Principles should be read as creating new international law obligations, or as limiting or undermining any legal obligations a state may have undertaken or be subject to under international law with regard to human rights.”).

¹⁰ *Corporate Influence on the Business and Human Rights Agenda of the United Nations* at 13. (“Guiding Principles’ normative contribution lies not in the creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses . . . and identifying where the current regime falls short and how it should be improved.”).

¹¹ *The Coca-Cola Company’s Human Rights Report 2016-2017*, 4, <https://www.coca-colacompany.com/content/dam/journey/us/en/private/fileassets/pdf/human-and-workplace-rights/Human-Rights-Report-2016-2017-TCCC.pdf> (last visited Nov. 3, 2018).

¹² *Id.* at 6.

¹³ *Id.* at 7.

Despite Coca-Cola's recent creation of a human rights report, they have still faced allegations of human rights abuses as recently as 2018 from the International Union of Food Workers (IUF). IUF contends that Coca-Cola has violated the rights of its international workers in the Philippines and Indonesia.¹⁴ Corporate practices violate human dignity across the world, from Wal-Mart, which has employed underage workers in Bangladesh, forcing them to work long hours and endure inhumane treatment, to Shell Oil, which paid Nigerian military personnel to "violently quash peaceful protests by indigenous Ogoni people."¹⁵ In today's world it is entirely up to a corporation if they will practice what they preach, with many only respecting the idea of human dignity in words only.

Human dignity as a concept exists between a State and its citizens, so the question becomes: what of human dignity and non-State actors? It is understood that when a State joins the United Nations, they will comply and follow the UNGP.¹⁶ The UNGP explicitly refer to States and what they must do to protect their citizens against human rights abuses by private actors. The UNGP dictate that "[b]usiness enterprises should respect human rights"¹⁷ as opposed to States, "which must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises."¹⁸ Since businesses *should* respect human rights unlike the States, which *must* protect their citizens, businesses have no obligation to protect or ensure these rights are not infringed upon.¹⁹ This lack of accountability creates a need for a method in which corporations *must* be held accountable for any action that infringes

¹⁴ *Coca-Cola Stands Firm Amid Criticism of 'Human Rights Violations' in South East Asia*, FOOD NAVIGATOR ASIA, <https://www.foodnavigator-asia.com/Article/2018/09/19/Coca-Cola-stands-firm-amid-criticism-of-human-rights-violations-in-South-East-Asia> (last updated Sep. 18, 2018).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* at 13.

¹⁸ *Id.*

¹⁹ Lieselot Verdonck, *How the European Court of Human Rights evaded the Business and Human Rights Debate in Özel v. Turkey*, 2 *The Turkish Rev.* 111 (2016) at 112.

upon the right of human dignity. The need is especially apparent when the State refuses to pursue action against a corporation operating within its own borders. This creates an impediment for victims to find justice, which may be successfully avoided by utilizing regional conventions.

International law holds States accountable for violations of human rights, so a means must exist in which to extend the law in such a way as to hold corporations accountable.²⁰ Regional conventions may be the best way to do so, by at least forcing States to seek redress for their citizens against corporations when they may not otherwise do so. The presence of human dignity in these regional conventions may be the key towards creating an easier pathway for victims to pursue justice against corporations; this presence may provide victims with a direct clause that establishes their right to seek redress.

II. African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (Banjul Charter) explicitly mentions human dignity.²¹ Article 5 says that “[e]very individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.”²² Of the regional conventions reviewed, only the Banjul Charter mentions holding non-State actors liable for infringing upon the rights enumerated in the Charter. During the 57th Ordinary Session in November 2015, the African Commission on Human and Peoples' Rights (ACHPR) adapted General Comment number 3 as an addition to article number 4.²³ General Comment number 3 mentions accountability of States and their involvement with non-State actors. “States must hold

²⁰ Yael Ronen, *Human Rights Obligations of Territorial Non-State Actors*, 46 *Corn. Int. L.J.* 45, 46 (2013).

²¹ Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 *June 1981*, CAB/LEG/67/3 rev. 5, 21 *I.L.M.* 58 (1982).

²² *Id.* at 3.

²³ *General Comment No. 3 On the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)*, AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, http://www.achpr.org/files/instruments/general-comments-right-to-life/general_comment_no_3_english.pdf (last visited Nov. 3, 2018).

to account . . . corporations . . . that are responsible for causing or contributing to arbitrary deprivations of life in the State's territory or jurisdiction."²⁴ The General Comment also mentions State responsibility as the State “. . . has an obligation to protect individuals from abuses or threats at the hands of other private individuals or entities, including corporations. . .”²⁵ The ACHPR also created the Working Group on Extractive Industries, Environment and Human Rights Abuses, which functions to inform the African Commission on “the possible liability of non-State actors for human and peoples' rights abuses under its protective mandate.”²⁶

The ACHPR has tried to utilize its power to hold corporations liable for violations of human dignity. Though the Banjul Charter provides a means for member States to seek action against non-State actors, it is not a binding instrument against corporations, as demonstrated in *Institute for Human Rights and Development and Others v. Democratic Republic of Congo*.²⁷ This case concerns the 2004 Kilwa uprising, which occurred in the Katanga province of the Democratic Republic of Congo (DRC). Anvil Mining Limited, a Canadian corporation, played a detrimental role in the uprising.²⁸ Up until 2010, Anvil Mining operated a mine in Kilwa.²⁹ as of 2011, Anvil Mining still has three copper mines in the DRC.³⁰

²⁴ *Id.* at 10.

²⁵ *Id.*

²⁶ 148: Resolution on the Establishment of a Working Group on Extractive Industries, Environment and Human Rights Violations in Africa, AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (Nov. 25, 2009), <http://www.achpr.org/sessions/46th/resolutions/148/>.

²⁷ Decision Regarding Communication 393/10 (Institute for Human Rights and Development and Others v. Democratic Republic of Congo), (Afr. Comm'n Hum. & Peoples' Rts. June 18, 2016).

²⁸ *Anvil Mining*, <https://www.miningafrika.net/companies/anvil-mining/> (last modified Oct. 29, 2018).

²⁹ *Anvil Mining (D.R. Congo/Canada)*, CANADIAN CENTRE FOR INTERNATIONAL JUSTICE, <https://www.cciij.ca/cases/anvil-mining/> (last visited Nov. 3, 2018).

³⁰ Anvil Mining, LTD. was officially acquired by the Chinese run Minemetals Resources in 2012. Leslie Hook, *Minmentals Wins Anvil Mining For C\$1.3bn*, FINANCIAL TIMES (Feb. 17, 2012), <https://www.ft.com/content/9f85e210-5960-11e1-abf1-00144feabdc0>.

The Revolutionary Movement for the Liberation of Katanga (MRLK) led the uprising on the 14th of October 2004.³¹ The group, reported as disorganized and small in the United Nations investigation into the incident, encountered no resistance as they briefly sought to occupy the city of Kilwa.³² The uprising seemingly stemmed from MRLK's issue with the mine.³³ When MRLK arrived in Kilwa, they met with Anvil Mining's security personnel and subsequently Anvil Mining began evacuating staff from the mine and nearby area.³⁴

In regard to the mine, evidence suggests the existence of community strife directed towards Anvil Mining. Anvil Mining apparently exploited their mines in the DRC and supposedly supported Augustin Mwanke, one of President Kabila's cabinet members, who had ties to corrupt Katanga businessmen.³⁵ Though Anvil Mining pledged their involvement in two local community projects to better the community, "the company was indeed accused by parts of the population of employing non-native persons and of not contributing enough to the improvement of the level of life of the local community."³⁶

In response to the uprising, the Armed Forces of the Democratic Republic of the Congo (FARDC) led by Colonel Ademar Ilunga, attacked the town on October 15th.³⁷ The FARDC committed various human rights abuses in their mission to take back Kilwa, including summary executions of over 100 civilians and destroying homes.³⁸ Various eyewitnesses made statements regarding the involvement of Anvil Mining in the uprising. According to these eyewitnesses, the

³¹ *Report on the Special Investigation Concerning Human Rights Violations Perpetrated by the FARDC*, <http://www.raid-uk.org/sites/default/files/monuc-final-report.pdf> (last visited Nov. 3, 2018).

³² *Id.* at 1.

³³ One of the leaders, on the way to Anvil Mining's gas depot in Kilwa spoke to a gathered crowd, telling them that the "time for pocketing the money from the mines" was over for President Kabila and Katumba Mwanke, a political advisor to the president. *Id.* at 4.

³⁴ *Kilwa Massacre: Timeline of Key Events 1998 to 2010*, CANADIAN CENTRE FOR INTERNATIONAL JUSTICE, 1, <https://www.cciij.ca/content/uploads/2015/07/Kilwa-timeline-EN-8Nov10.pdf> (last visited Nov. 3, 2018).

³⁵ *Report on the Special Investigation Concerning Human Rights Violations Perpetrated by the FARDC* at 5.

³⁶ *Id.*

³⁷ *Id.* at 4.

³⁸ *Id.* at 6.

FARDC used vehicles supplied by Anvil Mining to transport pillaged goods and corpses.³⁹

Anvil Mining also chartered planes to safely evacuate key personnel from the region and provided food to the FARDC.⁴⁰

Anvil Mining denied any involvement beyond supplying chartered planes to transport soldiers.⁴¹ In October 2006, three Anvil Mining employees were indicted for voluntary failure to withdraw vehicles being used by the FARDC and of having “knowingly facilitated the commission of war crimes by Ilunga Ademar and his men.”⁴² In the Congolese legal system, a case in which military personnel and civilians are implicated goes before a civilian judge.⁴³ At the time of the indictment, however, only the Congolese military penal code recognized war crimes and crimes against humanity, which led the military court to assume jurisdiction over the case.⁴⁴ The military court on June 28th, 2007 found the Anvil Mining employees not guilty of war crimes.⁴⁵⁴⁶ The court agreed with the employees’ defense that as workers for Anvil Mining, they were merely complying with orders issued by the Governor of Katanga.⁴⁷ The court also explicitly found Anvil Mining itself not guilty, even though it was only Anvil Mining’s employees who were charged with a crime.⁴⁸

Beginning in 2010, relatives of the victims with assistance from Canadian Association Against Impunity (ACCI) brought suit against Anvil Mining in Canada (*Anvil Mining Ltd. v.*

³⁹ *Id.* at 8.

⁴⁰ *Id.*

⁴¹ *Kilwa Massacre: Timeline of Key Events 1998 to 2010* at 6.

⁴² *Id.* at 9.

⁴³ *Id.* at 8.

⁴⁴ *Id.* at 25.

⁴⁵ *Anvil Mining Limited and the Kilwa Incident Unanswered Questions*, RIGHTS AND ACCOUNTABILITY IN DEVELOPMENT, <http://www.raid-uk.org/sites/default/files/qq-anvil.pdf> (last visited Nov. 3, 2018).

⁴⁶ Interesting to note that in 2007 Anvil Mining was the highest producer of copper in the DRC. *Anvil Mining Limited Resources*, INSTITUTE OF DEVELOPING ECONOMIES JAPAN EXTERNAL TRADE ORGANIZATION, http://www.ide.go.jp/English/Data/Africa_file/Company/drc02.html (last visited Nov. 3, 2018).

⁴⁷ *Kilwa Massacre: Timeline of Key Events 1998 to 2010* at 5.

⁴⁸ *Id.*

ACCI)⁴⁹. In January of 2012, Quebec’s Court of Appeal overturned the lower court’s ruling, effectively dismantling any means for the suit to go forward.⁵⁰ The court’s ruling stressed that the victims could have sought justice in the DRC and Canada had no jurisdiction to hear the case.⁵¹ Though ACCI appealed, the Supreme Court of Canada refused to hear the case, ending the legal battle in Canada.⁵²

In 2010, the citizens of Kilwa, represented by Institute for Human Rights and Development in Africa (IHRDA), l’Action contre l’impunité des droits humains (ACIDH), and Rights and Accountability in Development (RAID), filed an official complaint before the ACHPR against the DRC.⁵³ The complaint alleged the citizens’ rights as enumerated in the Banjul Charter, including article 5, were violated.⁵⁴ Seven years later, on August 4th, 2017, the ACHPR issued their landmark decision.⁵⁵ The commission awarded over \$2 million dollars (USD) to the victims and relatives.⁵⁶ The commission also publicly reprimanded Anvil Mining in their decision. “At a minimum, they [extractive industry companies] should avoid engaging in actions that violate the rights of communities in their zones of operation. This includes not

⁴⁹ *Anvil Mining Ltd. v. ACCI (Association Canadienne Contre l’Impunité)*, [2012] 117 Q.C.C.A.

⁵⁰ The Canadian Press, *Congolese raise mining lawsuit in Supreme Court*, CANADIAN BROADCASTING CORPORATION (Mar. 26, 2012) <https://www.cbc.ca/news/canada/montreal/congolese-raise-mining-lawsuit-in-supreme-court-1.1291457>.

⁵¹ *Anvil Mining Ltd. v. ACCI (Association Canadienne Contre l’Impunité)*, CHILD RIGHTS INTERNATIONAL NETWORK, <https://www.crin.org/en/library/legal-database/anvil-mining-ltd-v-acci-association-canadienne-contre-limpunite> (last visited Nov. 3, 2018).

⁵² *Id.*

⁵³ *Communication 393/10: IHRDA, ACIDH and RAID v DR Congo communication filed before African Commission*, INSTITUTE FOR HUMAN RIGHTS AND DEVELOPMENT IN AFRICA, <https://www.ihrda.org/2011/03/ihrda-acidh-and-raid-file-communication-against-drc/> (last visited Nov. 3, 2018).

⁵⁴ *Id.*

⁵⁵ *African Commission: Landmark \$2.5 Million Award to DR Congo Massacre Victims; Anvil Mining rebuked for its role in Kilwa killings; New criminal investigation ordered*, INSTITUTE FOR HUMAN RIGHTS AND DEVELOPMENT IN AFRICA, <https://www.ihrda.org/2017/08/african-commission-landmark-2-5-million-award-to-dr-congo-massacre-victims-anvil-mining-rebuked-for-its-role-in-kilwa-killings-new-criminal-investigation-ordered/> (last visited Nov. 3, 2018).

⁵⁶ *Questions and Answers: The Kilwa Massacre and the Landmark Decision of the African Commission of Human and Peoples Rights*, INSTITUTE FOR HUMAN RIGHTS AND DEVELOPMENT IN AFRICA, <https://www.ihrda.org/2017/08/questions-and-answers-the-kilwa-massacre-and-the-landmark-decision-of-the-african-commission-of-human-and-peoples-rights/> (last visited Nov. 3, 2018).

participating in, or supporting, violations of human and peoples' rights."⁵⁷ Remedy "i" of the decision also requested the DRC to "take all diligent measures to prosecute and punish State's agents and Anvil Mining Company staff who were involved in the violations."⁵⁸ Despite the fact that the DRC's constitution guarantees its citizens the right to an "existence in accordance with human dignity,"⁵⁹ the DRC has yet to seek redress against Anvil Mining for their blatant disregard of human dignity.

As shown by the outcome in *Institute for Human Rights and Development and Others v. Democratic Republic of Congo*, the ACHPR does not have the ability to issue binding orders against non-member States and instead can only offer recommendations.⁶⁰ Though the ACHPR can refer cases concerning member States to the African Court of Human and Peoples' Rights, the DRC is not a member.⁶¹ The ACHPR could not render a binding decision against Anvil Mining as the ACHPR is only able to issue judgement on member State actions.⁶² If the DRC had been a member State, there is a possibility that the ACHPR could have held more sway in compelling the DRC to file additional charges against Anvil Mining. In 2001, the ACHPR issued a holding against Nigeria, a member State of the ACHPR, who purposely deprived their citizens their rights as established in the Banjul Charter.⁶³ In this ruling the ACHPR did not address corporate liability, even though the case concerned oil companies.⁶⁴

⁵⁷ *Id.*

⁵⁸ *Translated Version of the Remedies Section in Kilwa Decision*, RIGHTS AND ACCOUNTABILITY IN DEVELOPMENT, http://www.raid-uk.org/sites/default/files/achpr_english_translation_of_remedies.pdf (last visited Nov. 3, 2018).

⁵⁹ Congo (Democratic Republic of the) 2005 (rev. 2011), Art. 36.

⁶⁰ *Questions and Answers: The Kilwa Massacre and the Landmark Decision of the African Commission of Human and Peoples Rights* ("The African Charter does not contain any provision for enforcement of the Commission's findings and recommendations, which are not formally binding.")

⁶¹ *Id.*

⁶² Holger Hembach, *African Commission urges Anvil Mining to pay compensation to victims in Congo*, HEMBACH LEGAL: THE BUSINESS OF HUMAN RIGHTS (Feb. 2, 2018), <https://human-rights-law.eu/african-commission-urges-anvil-mining-pay-compensation-victims-congo/>.

⁶³ See *The Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria*, a case from 2001 in which the ACHPR held the former military court of Nigeria responsible for various human rights abuses against the Ogoni people in connection with a state-run Oil company, who was a majority shareholder in a consortium with

On December 5th, 2017, Chairperson of the Working Group on Extractive Industries, Environment and Human Rights for the ACHPR sent a letter to Anvil Mining. The letter urged Anvil Mining to “acknowledge responsibility for breaching its duty of care through a public statement and contribute to the reparations that the African Commission on Human and Peoples’ Rights granted to the victims of violations in . . . *Institute for Human Rights and Development in Africa and Others v. Democratic Republic of Congo*.”⁶⁵ To date, Anvil Mining has yet to respond.⁶⁶ The ACHPR extended their power as far as possible to hold Anvil Mining accountable.

Institute for Human Rights and Development and Others v. Democratic Republic of Congo is an important case because it demonstrates that a regional convention is only binding against States that have ratified it and can never legally bind a corporation. It also demonstrates the difficulty victims face when their own State refuses to seek justice on their behalf due to a relationship between the State and the corporation in question. As demonstrated by this case, a regional convention could be incredibly useful as a means to compel a State into action when they may otherwise refuse to do so. This case also highlights the importance of having human dignity present in a regional convention, as a victim may directly cite to that article rather than trying to compile evidence that they suffered from a specific type of human rights abuse. There

Shell Petroleum Development Corporation. The ACHPR found that the then government of Nigeria had enacted various means of preventing its citizens from seeking redress, even though Nigeria had incorporated the Banjul Charter. *155/96 Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, 155/96, African Commission on Human and Peoples’ Rights, Oct. 27 2001, http://www.achpr.org/files/sessions/30th/comunications/155.96/achpr30_155_96_eng.pdf, (last updated Oct. 6 2011).

⁶⁴ Even though the state-run oil company was directly involved with Shell Petroleum Development Corporation, the ACHPR was “not competent to give its views about the conduct of private companies,” so any discussion of corporate accountability is absent in the decision. Fons Coomans, *The Ogoni Case Before the African Commission on Human and Peoples’ Rights*, (July 3, 2015), <http://www.righttoenvironment.org/ip/uploads/downloads/ogonicaseprof.coomans.pdf>.

⁶⁵ *Letter to Anvil Mining Company on its role in human rights violations in the DRC*, AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS (Dec. 19, 2017), <http://www.achpr.org/press/2017/12/d381/>.

⁶⁶ *Id.*

is no denying that Anvil Mining's actions violated the human dignity of the citizens of Kilwa. In light of *Institute for Human Rights and Development and Others v. Democratic Republic of Congo* and in recognition that regional conventions cannot legally hold corporations accountable, it may be effective for the ACHPR in the future to follow in the footsteps of the Inter-American Commission on Human Rights and place pressure on the corporation's home country instead of the corporation itself.

III. American Convention on Human Rights

The American Convention refers to human dignity in Article 5 by stating, “[a]ll persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”⁶⁷ The Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights are the bodies responsible for ensuring the principles laid forth in the American Convention are upheld.

Like the ACHPR, the IACHR has done its best to fulfill its purpose in ensuring the rights specified in the American Convention are defended. For instance, in the past six years or so, the IACHR placed a surmountable amount of pressure on Canada, urging Canada to take responsibility for human rights violations on behalf of Canadian corporations. The issues arose from the Canadian mining industry and its subsequent effects on the South American region. In the opinion of various human rights groups and the IACHR, Canada's response to the action of Canadian companies did not show a respect for human rights.⁶⁸

The IACHR provides a public forum that allows victims and their advocates to address human rights abuses. In 2013, the IACHR heard a group of over 30 NGOs, who asked the

⁶⁷ American Convention on Human Rights, Nov. 21, 1969, 1144 U.N.T.S. 143. Art. 5.

⁶⁸ *Inter-American Commission on Human Rights to Consider “Home Country Liability” for the Extraterritorial Actions of Transnational Corporations*, EARTHRIGHTS INTERNATIONAL (Nov. 7, 2013) <https://earthrights.org/blog/inter-american-commission-on-human-rights-to-consider-home-country-liability-for-the-extraterritorial-actions-of-transnational-corporations/>.

Commission to consider the question of whether “a corporation’s home country [can] be held liable for the actions of that corporation abroad, or for failing to provide a remedy to its victims?”⁶⁹ The petitioners presented evidence that companies with headquarters in Canada have histories of human rights abuses.⁷⁰ The evidence also indicated that Canada provided support for many of these companies while not having any procedures in place to ensure the companies were operating with respect to human dignity.⁷¹ The following year, 29 human rights environmental, labor, religious, and social groups spoke before the IACHR in regard to Canada’s activities.⁷² These groups, through the IACHR, called for Canada to address human rights abuses associated with Canadian mining companies and for Canada to create a framework to address these allegations.⁷³

There have been several notable incidents involving Canadian Mining companies and Latin America, including Hudbay Minerals and Blackfire Exploration. Hudbay currently faces allegations dating back to 2007 when several Maya Q’eqchi’ women from Guatemala claimed military and private security personnel associated with the mining company raped them.⁷⁴ Current litigation surrounding this incident is still ongoing in Canada.⁷⁵ Unlike the Anvil Mining case, Canadian courts have agreed to hear the merits of the case and if the alleged human rights abuses did occur, deliver a binding decision against the perpetrators.⁷⁶

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Human Rights Commission Probes Canada on Mining*, (Nov. 5, 2014) <https://justice-project.org/wp-content/uploads/2017/08/embassy-full-version07112014.pdf>.

⁷³ For instance, in 2014 there were at least 85 instances of conflicts between Canadian mining companies and people in both Latin America and the Caribbean. *Id.*

⁷⁴ Ashifa Kassam, *Guatemalan women take on Canada's mining giants over 'horrific human rights abuses'* (Dec. 17, 2017) <https://www.theguardian.com/world/2017/dec/13/guatemala-canada-indigenous-right-canadian-mining-company>.

⁷⁵ *Id.*

⁷⁶ *Id.*

Blackfire Exploration, a mining company once based in Alberta Canada, was implicated in the murder of Mariano Abarca a prominent Mexican activist.⁷⁷ At the time of the murder, Blackfire Exploration had a Payback Mine in Chiapas, Mexico.⁷⁸ Mariano Abarca was murdered outside his home, supposedly over his opposition to a mine owned and operated by Blackfire Exploration.⁷⁹ Released diplomatic emails and briefings suggest that the Canadian embassy in Mexico provided “active and unquestioning support” to Blackfire Exploration during and after the murder.⁸⁰ As of February 2018, the Canadian federal government pledged its full cooperation with any possible investigation into the role Canadian diplomats and Blackfire Exploration played in Mariano Abarca’s murder.⁸¹ The complaint alleges that Canadian diplomats in Mexico City invested more time and energy in assisting Blackfire Exploration overcoming local protests than ensuring Blackfire respected the human rights of the local population.⁸²

The American Convention on Human Rights is not a binding instrument against Canada. Canada, however, did respond to the countless forums led by the IACHR. Canada’s response to the IACHR led to the creation of an Ombudsperson to oversee Canadian companies operating abroad in 2017.⁸³ The Canadian Ombudsperson for Responsible Enterprise (CORE) “address[es] complaints related to allegations of human rights abuses arising from a Canadian company’s

⁷⁷ Julian Sher, *Canadian mining company got embassy help amid controversy in Mexico: Advocacy group* (May 5, 2013), https://www.thestar.com/news/world/2013/05/05/canadian_mining_company_got_embassy_help_amid_controversy_in_mexico_advocacy_group.html.

⁷⁸ *Id.*

⁷⁹ Christian Peña, *Canada mining murder in Mexico* (March 5, 2018), <https://nowtoronto.com/news/canadian-diplomats-target-of-complaint-mexico-murder/>.

⁸⁰ *Id.*

⁸¹ The Canadian Press, *Ottawa pledges co-operation in mining complaint over Mexican activist's slaying* (Feb. 6, 2018), <https://www.ctvnews.ca/canada/ottawa-pledges-co-operation-in-mining-complaint-over-mexican-activist-slaying-1.3792147>.

⁸² *Id.*

⁸³ *IACHR Welcomes Creation by Canada of an Ombudsperson to Oversee Canadian Companies Operating Abroad*, ORGANIZATION OF AMERICAN STATES (Feb. 6, 2018), http://www.oas.org/en/iachr/media_center/PReleases/2018/020.asp.

operations abroad, as well as a multi-stakeholder Advisory Board on Responsible Business Conduct.”⁸⁴ This action has set precedent that, if successful, may inspire similar implements worldwide.⁸⁵

In their response to Canada’s reaction, the IACHR took time to reaffirm their own obligations as set forth in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.⁸⁶ It ensures legislative and administrative action will be taken to prevent violations, along with investigating violations, providing victims access to justice, and providing effective remedies.⁸⁷

The Inter-American Court of Human Rights has the authority to adjudicate cases where executives of public corporations or corporations assuming the provision of public services violate human rights.⁸⁸ When private corporations commit atrocities, the Inter-American Court has affirmed it is a State’s responsibility to investigate and prosecute those responsible.⁸⁹ It is apparent that while the Inter-American Court cannot establish a direct means of responsibility for an individual of human rights abuses against a corporation, “it could interpret the American Convention and the international obligations of States in such a way as to prevent impunity for mass atrocities or other type of human rights violations committed by corporations and its executives.”⁹⁰

The IACHR has done what it can within its power to address the growing concept of corporate responsibility and the role it plays in human rights abuses and human dignity. The

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ G.A. Res. 60/147, U.N. GAOR, 60th Sess., U.N. Doc. A/60/147 (2006).

⁸⁷ *Id.*

⁸⁸ Jesús Orozco–Henríquez, *Corporate Accountability and the Inter-American Human Rights System*, 57 Harvard L.J. Online Symposium 48 (2016).

⁸⁹ *Id.* at 50.

⁹⁰ *Id.* at 51.

relationship between the IACHR and Canada has proven that even when a country is not bound by a regional convention, if the governing body who uses that regional convention pools their resources and places pressure upon a non-member State, they can compel, though not bind, a non-member State into acknowledging and adjusting their corporate presence beyond their own borders.

IV. Arab Charter on Human Rights

Though the Arab Charter on Human Rights was adapted by the League of Arab States in 1994, it was not ratified until 2008.⁹¹ The Arab Charter “given the Arab nation’s belief in human dignity”⁹² sets out in article 1, section (b) that “racism, Zionism, occupation and foreign domination pose a challenge to human dignity and constitute a fundamental obstacle to the realization of the basic rights of peoples.”⁹³

In September 2014 the Arab League approved a statute for the formation of the Arab Court for Human Rights.⁹⁴ The Arab Court for Human Rights will rely upon the framework of the Arab Charter to provide a remedy for human rights abuses among the member States.⁹⁵ The Statute of the Arab Court of Human Rights cites to the purpose of the Arab Charter in its preamble.⁹⁶ In regards to jurisdiction, the court “shall have jurisdiction over all suits and conflicts resulting from the implementation and interpretation of the Arab Charter of Human Rights, or any other Arab convention in the field of Human Rights involving a member State”⁹⁷

⁹¹ League of Arab States, *Arab Charter on Human Rights*, 15 September 1994.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Joe Stork, *New Arab Human Rights Court is Doomed from the Start*, INTERNATIONAL BUSINESS TIMES (Nov. 26, 2014), <https://www.hrw.org/news/2014/11/26/new-arab-human-rights-court-doomed-start>.

⁹⁵ Marisa McCrone and Waleed Alhariri, *Challenges Abound in Proposed Arab Court of Human Rights*, IPI GLOBAL OBSERVATORY, <https://theglobalobservatory.org/2015/03/arab-league-human-rights-icc/> (last updated March 27, 2015)

⁹⁶ *English Version of the Statute of the Arab Court of Human Rights*, https://aci.hl.org/texts.htm?article_id=44&lang=ar-SA (last visited Nov. 3, 2018).

⁹⁷ *Id.*

and “[t]he Court shall decide any dispute related to its jurisdiction in examining suits, petitions or cases at hand.”⁹⁸ The Court will have the power to issue any “opinion regarding any legal issue related to the Charter or to any other Arab convention on human rights, based on the request of the League of the Arab State’s Assembly or any of its subsidiary organization or authority.”⁹⁹ The court, when established, effectively proposes to serve as a regional judicial body to protect victims against human rights abuses and to uphold the Arab Charter’s definition of human dignity.

Article 19 of the Statute does not allow individuals access to the court, but rather vests the power in a State party.¹⁰⁰ The right of individual access to a court of this importance is imperative.¹⁰¹ The Statute cannot be used as an effective tool for redressing human rights abuses unless it is amended to ensure that any individual who claims to be a victim has the means to be heard.¹⁰² As shown throughout the world, States rarely make use of interstate complaint procedures.¹⁰³ There is a fear that the creation of this court will provide the member States with a means to project an image of caring about human rights abuses while not rectifying the issue at hand.¹⁰⁴ According to UN war crimes expert and Egyptian national Mahmoud Cherif Bassiouni, the court is no more than a “Potemkin tribunal.”¹⁰⁵

As it stands, the future Arab Court for Human Rights may not fulfill its purported obligation to protect victims from human rights abuses. Though human dignity exists in the

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *The Arab Court of Human Rights: A Flawed Statute for an Ineffective Court*, GRADUATE INSTITUTE GENEVA, 5, http://graduateinstitute.ch/files/live/sites/iheid/files/sites/international_law/shared/international_law/Prof_Clapham_website/docs/MENA-Arab-Court-of-Human-Rights-Publications-Report-2015-ENG.pdf (last visited Nov. 3, 2018).

¹⁰¹ *Id.* at 27.

¹⁰² *Id.*

¹⁰³ Joe Stork, *New Arab Human Rights Court is Doomed from the Start*.

¹⁰⁴ *Id.*

¹⁰⁵ Rebecca Lowe, Bassiouni: *New Arab Court for Human Rights is fake ‘Potemkin tribunal’*, INTERNATIONAL BAR ASSOCIATION (Oct. 1, 2014), <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=c64f9646-15a5-4624-8c07-bae9d9ac42df>.

groundwork for the Arab Court for Human Rights, it is impossible to know at this stage what significance human dignity may have in any rulings. There is no telling how the importance of corporate liability in regard to human rights abuses may, if ever, come into play. There will certainly be a need for an effective court system in the Arab world to hold corporations accountable for their actions, as the economies in the Middle East, like the countries in the ASEAN, are set to see rapid economic growth in the following years.¹⁰⁶

V. Association of Southeast Asian Nations Human Rights Declaration

The ASEAN Intergovernmental Commission on Human Rights (AICHR) was created in 2009.¹⁰⁷ One of the mandates of the AICHR was to create a declaration of human rights for the region. According to the ASEAN Human Rights Declaration (AHRD), “[a]ll persons are born free and equal in dignity and rights.”¹⁰⁸ The declaration was adopted on November 18th, 2012 by the ASEAN members: Brunei Darussalalm, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.¹⁰⁹ It is the responsibility of these member States to ensure the implementation of the AHRD.¹¹⁰ The AHRD provides a framework for human rights in the ASEAN region.¹¹¹

The ASEAN Human Rights Declaration currently does not have any language regarding corporate or non-State actor liability in regard to human rights abuses. Efforts have been made by various human rights organizations to add additions to the AHRD without success. In May of

¹⁰⁶ Sarah Townsend, *Growth returns to Middle Eastern economies this year after difficult 2017, report says* (July 3, 2018), <https://www.thenational.ae/business/economy/growth-returns-to-middle-eastern-economies-this-year-after-difficult-2017-report-says-1.746743>.

¹⁰⁷ *ASEAN Intergovernmental Commission on Human Rights Launched by ASEAN Leaders during the 15th ASEAN Summit*, ASSOCIATION OF SOUTHEAST ASIAN NATIONS (Oct. 24, 2009), https://asean.org/?static_post=asean-intergovernmental-commission-on-human-rights-launched-by-asean-leaders-during-the-15th-asean-summit.

¹⁰⁸ Association of Southeast Asian Nations (ASEAN), *ASEAN Human Rights Declaration*, 18 November 2012.

¹⁰⁹ *Id.*

¹¹⁰ *ASEAN Human Rights Declaration and its Translations*, v, [http://www.asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20\(7.%20Jul\)%20-%20ASEAN%20Human%20Rights%20Declaration%20\(AHRD\)%20and%20Its%20Translation.pdf](http://www.asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20(7.%20Jul)%20-%20ASEAN%20Human%20Rights%20Declaration%20(AHRD)%20and%20Its%20Translation.pdf) (last visited Nov. 3, 2018).

¹¹¹ *Corporate Accountability in the ASEAN: A Human Rights-Based Approach* at 32.

2011, the AICHR undertook a study on the topic of “corporate social responsibility” in the ASEAN.¹¹² During these public hearings, testimonies from representatives of communities affected by corporate activity were heard.¹¹³ During September 10th and 11th of 2012, 62 representatives of civil society organizations and people’s movements made a joint submission to the AICHR.¹¹⁴ The joint submission was proposed during the Civil Society Forum on the AHRD with the “aspiration to provide ‘added value’ to the body of international human rights laws.”¹¹⁵ The joint submission suggested an amendment to general principle number 9. The joint submission reads: “Where human rights abuses are perpetrated by non-State actors, including individuals, groups and corporations at the national, regional or international levels, Member States shall exercise due diligence to prevent, punish and ensure reparation for such abuses.”¹¹⁶ The amendment has not been added to the AHRD.

In 2013 Forum-Asia provided in their book, “Corporate Accountability in ASEAN: A Human Rights-Based Approach,” various recommendations in which the AICHR can assist in a shift towards recognizing corporate accountability.¹¹⁷ The recommendations include promoting awareness of corporate accountability and a call on member States to ratify human rights treaties, adopt a set of standards on corporate accountability that reflect the international standards, establish a mechanism for when these standards are violated, ensure that both the governments and the businesses operate with full transparency, and “receive and investigate complaints on human rights violations from individuals, groups and member States . . . and where necessary

¹¹² *Id.* at 6.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Joint submission to the ASEAN Intergovernmental Commission on Human Rights on the ASEAN, FORUM ASIA (Sep. 14, 2012), <https://www.forum-asia.org/?p=15341>.

¹¹⁶ *Id.*

¹¹⁷ *Corporate Accountability in the ASEAN: A Human Rights-Based Approach* at 11-14.

with the business, to ensure that the violation is stopped and justice and reparations are provided to victims.”¹¹⁸ The ASEAN has not adapted any of these proposed procedures.

The ASEAN region has seen an acceleration in economic growth over the last few decades.¹¹⁹ The economies in the ASEAN member States are some of the fastest growing in the world and the influence of corporations are felt in many member States of the ASEAN.¹²⁰ The “ASEAN Way,” a term coined by Forum-Asia, has been a barrier for furthering corporate accountability in the region.¹²¹ The “ASEAN Way” emphasizes “non-interference in the domestic affairs of other countries and consensus-based decision making resulting in the lowest common denominator.”¹²² If the AICHR adopted Forum-Asia’s recommendations, it would, at the very least, create a method for ensuring corporations are operating within the scope of human dignity, though it would still require the corporation of the member States of the ASEAN. It is especially important for the ASEAN to take an active role in the future of corporate accountability due to the vast economic growth in the region, which is projected to only increase. If all the member States of the ASEAN proceeded with the recommended changes, the AHRD could be a tool in which to ensure States put their citizens before economic growth, by requiring States to guarantee corporations operating within their borders respect the human dignity of their people.

VI. European Convention on Human Rights and the Charter of Fundamental Rights of the European Union

¹¹⁸ *Id.* at 14.

¹¹⁹ *Economic Achievement*, ASSOCIATION OF SOUTHEAST ASIAN COUNTRIES (July 9, 2012), https://asean.org/?static_post=economic-achievement. (“With its combined trade value, ASEAN is the fourth largest trading entity in the world after the European Union, the United States and Japan.”).

¹²⁰ *Id.*

¹²¹ *Corporate Accountability in the ASEAN: A Human Rights-Based Approach* at 9.

¹²² *Id.*

The European Convention on Human Rights was signed in 1950 and became effective in 1953.¹²³ Human dignity explicitly appears in the European Convention on Human Rights in reference to the death penalty in protocol 13 by stating there is an “inherent dignity of all human beings.”¹²⁴ The Charter of Fundamental Rights of the European Union was ratified in 2000 with the intention of bringing together “all the personal, civic, political, economic and social rights enjoyed by people within the EU in a single text,”¹²⁵ including the European Convention on Human Rights. The Charter’s intent is to further protect and expand upon the rights enumerated in the European convention.¹²⁶ Title 1 of the Charter is named “dignity” and article 1 focuses entirely on human dignity as a right. “Human dignity is inviolable. It must be respected and protected.”¹²⁷ The charter applies when a country is applying or implementing an EU directive but does not apply when a fundamental right is guaranteed under ratified constitutions of EU countries.¹²⁸ The charter does not create the ability for the European Commission to intervene when it comes to fundamental rights.¹²⁹ The charter is not a replacement for the European Convention of Human Rights, but in 2010 the European Commission adapted three main objectives, with one being “to guarantee that the rights and principles of the charter are correctly taken into account at every step of the legislative process.”¹³⁰

The European Convention on Human Rights may provide an attainable means to

¹²³ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, 4 November 1950.

¹²⁴ *Id.*

¹²⁵ *Why do we need the charter?* EUROPEAN COMMISSION, https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/why-do-we-need-charter_en (last visited Nov. 3, 2018).

¹²⁶ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Incorporating fundamental rights into EU legislative process*, EUROPEAN COMMISSION, https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/incorporating-fundamental-rights-eu-legislative-process_en (last visited Nov. 3, 2018).

judicially hold a corporation liable for human rights abuses, because the Convention directly established the European Court of Human Rights (ECtHR), which can ensure that member States abide by the guarantees laid out in the Convention.¹³¹ So while the ECtHR cannot directly hold a corporation accountable, it is conceivable for the ECtHR to compel a State to seek justice against a corporation on the behalf of its citizens. In order for the court to hear a case, the plaintiff must have been directly and personally a victim of the violation alleged.¹³² To date, the ECtHR has refused to issue an order concerning corporate liability even when presented with a relevant case.

*M. Özel & Others v. Turkey*¹³³ is a case in which the ECtHR could have insisted a member State hold a corporation accountable for its actions but refused to address the issue entirely. The case centered around the 1999 earthquake in Turkey. In August 1999, a massive earthquake in Turkey killed over 2,000 people.¹³⁴ The earthquake destroyed countless buildings including apartment blocks built in Çınarcık. Çınarcık is located in a known “major risk zone” for natural disasters such as earthquakes.¹³⁵ The buildings in Çınarcık were over five stories tall and violated local law.¹³⁶ In June of 1995, a citizen complained that the buildings were not constructed to code and on the 13th of October the Municipal Head of Technical Services informed the municipal council the buildings did not comply with urban planning schemes.¹³⁷ In

¹³¹ *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

¹³² *European Court of Human Rights: Questions and Answers* at 6.

¹³³ *M. Özel AND Others v. Turkey*, 2016-2 Ct. H.R., <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%5C%2001-158803%22%5D%7D>.

¹³⁴ Edmund L. Andrews, *Earthquake in Turkey: The Overview; Thousands Killed as Big Quake Hits Cities in Western Turkey* (Aug. 18, 1999), <https://www.nytimes.com/1999/08/18/world/earthquake-turkey-overview-thousands-killed-big-quake-hits-cities-western-turkey.html>.

¹³⁵ *Proceedings Failed to Establish Responsibility for Death of Earthquake Victims*, EUROPEAN COURT OF HUMAN RIGHTS, <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-5224921-6478918&filename=Judgment%20%D6zel%20and%20Others%20v.%20Turkey%20-%20inadequacy%20of%20investigation%20following%20earthquake%20of%2017%20August%201999.pdf> (last visited Nov. 3, 2018).

¹³⁶ *Id.*

¹³⁷ *M. Özel AND Others v. Turkey*, 2016-2 Ct. H.R.

the following years, the Municipal Council tried several times to adapt amendments that would view the current buildings, which failed to comply with the building permits, as valid.¹³⁸

After the 1999 earthquake, the Yalova public prosecutor visited Çınarcık and discovered that many of the destroyed buildings were built with subpar materials.¹³⁹ An expert opinion concluded that the buildings were “constructed without any kind of technical control.”¹⁴⁰ Following an investigation, five individuals were criminally charged including partners in V.G. Arsa Ofisi (the real estate developer responsible for the buildings that collapsed) and also the company’s scientific officers.¹⁴¹ A legal battle ensued for over 12 years, which resulted in the conviction of two out of the five suspects from the construction company.¹⁴² V.G. Arsa Ofisi was ordered to pay a damages award.¹⁴³

The case came before the ECtHR because the victims exhausted all other remedies.¹⁴⁴ The complaint was brought by the relatives of the victims against Turkey, citing a violation of an infringement of right to life (Article 2), unfair criminal proceedings (Article 6), and also a lack of effective remedy (Article 13).¹⁴⁵ In their decision, the ECtHR refused to acknowledge the possible responsibility of V.G Arsa Ofisi and instead focused the case entirely on Turkey’s role and subsequent actions following the earthquake.¹⁴⁶ As few authoritative bodies have ruled on corporate liability as it comes to human rights abuses, this case presented an opportunity for a

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Lieselot Verdonck, *It is time for the European Court to step into the business and human rights debate: A comment on Özel & Others v. Turkey*, <https://strasbourgothers.com/2015/12/07/it-is-time-for-the-european-court-to-step-into-the-business-and-human-rights-debate-a-comment-on-ozel-others-v-turkey/> (last visited Nov. 3, 2018).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *M. Özel and Others v. Turkey*, 2015-2 Ct. H.R.

¹⁴⁶ *How the European Court of Human Rights evaded the Business and Human Rights Debate in Özel v. Turkey* at 118.

judicial ruling.¹⁴⁷ Instead the court unanimously held that Turkey violated Article 2 and ordered Turkey to pay damages.¹⁴⁸ The ECtHR could have compelled Turkey to pursue an avenue of justice against V.G. Arsa Ofisi, or at least acknowledged the fact that Turkey had not even done so, but did neither.

VII. Conclusion

The influence of the UDHR and the UNGP is visibly seen in countless constitutions and regional conventions around the world. Human dignity is a prevalent right that must be upheld and protected, but how can a victim pursue justice against a non-State actor in today's world? Human rights instruments, such as the regional conventions surveyed, provide for human dignity as a protected right, but currently none hold a standard means to judicially protect citizens against corporations who infringe upon their inherent dignity.

Though some steps have been made, there is room for improvement. Providing a means for victims to seek recourse through regional conventions is imperative, especially when precedent shows the influence a corporation can have on a State's actions. Such influence could prevent a State from pursuing legal action against a corporation, even in order to protect their own citizens' fundamental rights. The key may lie in directly consulting the corporations' home countries rather than the corporations themselves, as this method has proven quite successful as exemplified by the IACHR.

The future holds the key as to whether regional conventions will truly provide victims with forms of redress. As certain areas are seeing advanced economic growth, such as the ASEAN or the Arab world, the need for an effective means to hold corporations accountable

¹⁴⁷ Lieselot Verdonck, *It is time for the European Court to step into the business and human rights debate: A comment on Özel & Others v. Turkey*.

¹⁴⁸ *ECHR fines Turkey over collapse of buildings in 1999 quake*, HURRIET DAILY NEWS, (Nov. 17, 2015) <http://www.hurriyetdailynews.com/echr-fines-turkey-over-collapse-of-buildings-in-1999-quake-91270>.

only grows. Further research will be needed in the following years to track the progress of regional conventions and if their presence has been felt in growing economies. It will also prove interesting to see if Canada does, indeed, set a precedent regarding State acknowledgement of corporate accountability in other countries. This is a topic that will only develop as the concept of human dignity begins to take on a more paramount role in discussions of corporate accountability. The research into the possibility of the effectiveness of regional conventions and corporate accountability as it concerns the concept of human dignity is a topic that will only propagate in the following years.

Even if these international instruments cannot create binding precedent, they can still act much like the UNGP and establish a foundation for their own member States to follow. When these regional conventions fully embrace human dignity beyond the words in their charters, conventions, or declarations, and commit to furthering the notion of corporate accountability, future victims may have a successful means of having their cases heard and action taken. That is why it is crucial that these instruments expand to include accountability of non-State actors, if they have not already done so, and utilize their power to instigate change among their member States in order to protect the human dignity of all people.