African Union and public–private partnership: The potential and limitations of corporate social responsibility in context

By:

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June 18, 2020

On the 4th of May 2020, the African Union announced a partnership with HP to provide distance learning education to its 55 countries through two of the company's online platforms: 'HP's Learning Initiative For Entrepreneurship (HP Life) and Be Online Programmes'. The partnership for education was in response to the Covid-19 pandemic school closures and the need 'to ensure accessible and continued learning for African youth'. For our purposes, this presents an opportunity to examine the wider issues regarding such public–private partnerships which lie at the intersection between international economic law and corporate social responsibility (CSR) especially with regard to multinational corporations.

In 2014 the Executive Secretary of Economic Commission for Africa called upon the African private sector to reorient CSR towards development and raise its profile by setting up private public partnership. In 2019, the 11th Africa Private sector forum organised by the African Union Commission, declared the intention to commit to transforming African economies, through private sector engagement with a key focus of the declaration, being public private partnerships for the transformation of African economies (point 7).

My article in 2012 on CSR, law and development in an African context discussed the role of governments, in ensuring CSR in an African context. While this appeared paradoxical, it is an essential question, when collaboration is needed in context for shared development objectives. This attempt to re-orient CSR for sustainable development objectives of the wider continent, pushes this question to the fore, in a regional way. In the African context, the drive for development is central to the agenda 2063 framework document. Agenda 2063 is the 50 year masterplan by the African Union, that identifies - key aspirations with specific goals and priority areas for development in Africa The first aspiration recognised within this document, is that of 'a prosperous Africa based on inclusive growth and sustainable development'. The priority areas under this aspiration, include education, health, sustainable economic growth, poverty alleviation and sustainable natural resources management. This ties in with the 17 Sustainable Development Goals (SDG) principles at the UN level.

However the role of private sector in development is somewhat contested, because of the dominant view which regards development as a government priority, the democratic deficit of corporations and the reluctance of dominant state actors at the international level, to spell out the obligations of multinational corporations (even in the face of significant impact of business on development objectives such as human rights, environment and tax). There is also significant objection to excessive reliance and dependency on multinational corporations, considering potential claims of neo-colonialism. Yet the practically, global embrace of privatisation and neoliberal policies since the 1980s and 90s, has shrunk the capacity of the states, leaving very few pragmatic options. The World Development Report 1997 noted that the changes as a result of globalisation and global thinking, on the role of states had resulted in a conclusion that: '*the state is central to economic and social development, not as a direct provider of growth but as a partner, catalyst, and* *facilitator'*.

This question of state capacity and capability to deliver the development goals has informed the urgency for partnerships. The High Level Political forum on Sustainable development under the auspices of economic and social council focus in 2020, is on accelerated action and transformative pathways, reiterating paragraph 84 of the UN 2030 Agenda for Sustainable development which suggests the provision of – '*a platform for partnerships, including through the participation of major groups and other relevant stakeholders*'. This need for partnerships is also mirrored in the strategy of the African union.

Yet the African development challenge is compounded by the specific contextual challenges linked with the unique history of Africa and significant resource dependency. The region has been a source of significant natural resources and long-standing industry and business interests which have benefitted the world significantly but in Africa, this has resulted in significant dependency on production of these basic resources and commodities. UNCTAD's Director of the division on International trade and commodities points out that '*in some cases, the dependence is extreme. There are 35 countries in the world for which more than 90% of their exports are commodities. For Angola, Iraq, Chad, Guinea-Bissau and Nigeria, this share surpasses 98%, and in some instances a single product constitutes more than three-quarters of all export revenue*'. This prompts an unsustainable drive to produce more, even for very low returns.

Conversely, problems arise with the ability of companies to tackle development objectives directly and this includes the lack of a democratic deficit and accountability. Although this may be obviated by direct cooperation with government, albeit acknowledging the governance challenges in some African countries. Furthermore globally, the overall mandatory versus voluntary debate within CSR is shifting, as countries realise the negative impact of companies, directly through wrongful conduct, such as tax avoidance, human rights violations and environmental pollution. The ILO research paper on CSR in International trade and investment agreements identifies: 'the partial "legalization" of the concept of CSR is assessed through the lens of the hard-soft law continuum, which characterizes a continuum of regulatory approaches that range from the traditional state-centred and sanction-based “hard” law to purely voluntary (or “soft”) and private regulation’(p.6).

The UN Guiding Principles on Business and Human Rights establishes the corporate responsibility to respect human rights (pillar II) although its voluntary basis and weak access to remedy pillar have been severely criticised. The debate is also shifting, because there is increasing evidence that indicates capacity of business, to do good in strategic ways which can be disruptive and transformative. Furthermore the protections of investor - businesses has outstripped the demand for responsibility and overcome hitherto barriers set in international law by viewing states as the only key actors. Nevertheless such public- private sector cooperation will raise issues of the capacity of both governments and corporations, sustainability responses, competitive advantage and regulation in each given context.

Firstly the question of capacity arises in two directions. On the one hand, the state capacity and capability forprovision of education and affordable internet connections in African countries and on the other hand, business benefit and impact for HP, who have adopted a policy for sustainable impact . This can also be deduced from the 2018 HP sustainable impact report which focuses around its capacity and capability for digital technologies. This may have better cost implications for the company, as this CSR objective relates to the core of the business. With regard to sustainability responses, this example identifies the potential of triggers. For example, this HP response is pushed by the current covid pandemic, which has seen an emphasis on distance learning globally. This also raises questions about durability and the transformational nature of such partnerships. Questions linger about whether the pandemic may cause lasting changes in learning patterns. This is because although, corporate sustainability practices are often viewed from cost-benefit, competitive advantage lens, there are long term gains to be made. Africa is home to the world’s youngest population and there is potential to unleash this human capital through education. There is also the potential that branding can create competitive advantages in economic terms. Other long term advantages may include: future workforce, business trust and goodwill for contracting.

Finally, the question of a regulatory framework for this type of CSR at the

African Union level is paramount. Such regulatory frameworks could be meta-regulatory in nature and thus embrace a mix of soft law and hard law rules with incentives. This need for policy and regulation is recognised in the African Union Agenda 2063 framework document both in order to effectively finance development objectives and to enable full exploitation of the partnership capabilities in the interest of Africa. The African Union has also pursued this set goal for agribusiness as a result of the Malabo declaration on accelerated agricultural growth commitments. There is also a significant rise in national laws and frameworks on public-private partnerships in African countries. Nevertheless an overarching African Union regulatory framework in this regard, would also be crucial for transparency, as it would allow clear objectives and planning for future private public partnerships on this scale.

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