Book Symposium Introduction: Implementing Business and Human Rights Norms in Africa: Law and Policy Intervention.

By:

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Introduction

Businesses operate in a globally complex, yet uncertain environment with increasing risks in numerous domains. While it is important and necessary for businesses to be able to continue to operate in these challenging times, it is essential that companies understand human rights risks of their conducts, measures to prevent, address and mitigate such risks, as well as rules and regulations to manage corporate obligations to respect human rights risks in a consistent manner. Furthermore, as the world faces tremendous challenges, including intra and inter-state conflicts, living crisis, environmental disasters, climate change, and the debate on energy justice and transition, this book argues that African states must promote investment opportunities and

safeguard trade regimes that do not create the space for corporate induced human rights violations. It considers that development approach must be anchored on indices that delivers economic growth, is environmentally sustainable and socially inclusive.

Responding to global business and human rights challenges.

The book examines, clarifies, and unpacks the guiding principles of a rights-based approach to development and social inclusion. It offers an excellent exposition of regulatory capacity, institutional efficacy, and democratic legitimacy of governance institutions that shape development including a comprehensive analysis of how developing states are shaping business and human rights discourses locally. Given the slow pace that has characterised Africa's approach to integrating business and human rights discourses, the book highlights the gaps in law and policy frameworks and provides an evaluation of what international human rights standards currently regulate corporate conduct as opposed to the conduct of states and individuals, while clarifying the corresponding roles of states and businesses in safeguarding these rights. Largely, globalization has generated substantial changes in the structure of international society. One of the effects of globalization is the development of diverse mechanisms in which corporate entities approach political, legal, and economic implications of their operations. The emergence of non-state actors in global governance has shaped the discourse surrounding human rights responsibilities of corporate entities. This creates a dilemma. How do we control the potential monstrosity of non-state actors in shaping discourses, should there be development of new regulations and what are the implications of enforcement. Should there also be voluntary mechanisms propping up companies to be engaged in socially responsible investments? Indeed, business enterprises and transnational corporate actors operate in a complex global environment, especially when operating in high risks sectors such as oil and gas, mining, construction, banking, and health care amongst others. Understanding human rights responsibilities, impacts and socially responsible behaviour for states and companies is therefore an essential component of risk management in Africa. However, corporate induced human rights abuses have contributed to the most challenging human rights issues of the 21st century. One of the perplexing concerns of business and human rights debate is the human rights obligations of business enterprises to prevent,

mitigate and address adverse impact of their activities. Often times, development projects, extractive activities, and manufacturing activities in Africa result in serious social, environmental, labour and human rights impacts. Not only have these projects caused land displacements, economic exclusion of the vulnerable members of the society, and large-scale environmental problems amongst others, they have increased local community resilience, and occasioned deep mistrust between host communities and development partners. In addition to minimizing litigation, financial and reputational risks, understanding and demonstrating corporate respect for human rights is vital to building a culture of trust and integrity amongst local communities, investors, and shareholders. Throughout the book, strong emphasis is placed on the capability of African human rights systems to bolsters rights holders claim to protection of fundamental human rights in the face of growing lack of human rights respect of multinational enterprises (MNEs).

Afro-centric approach to business and human rights

Over the last several decades, the African continent has been the epicentre of complex human rights, environmental and social impacts resulting from industrial activities, manufacturing processes, and resource production operations. Consequently, responding to current and anticipated human rights impacts of business activities and transnational investments on local communities is squarely at the forefront of the political and legislative agenda across the continent. However, despite the rise in policy formulation on business and human rights (BHRs) globally, legal preparedness to effectively implement the UNGPs remains uneven in Africa - in terms of policy discourses, and legal design. This book attempts to fill that gap. It provides a home-grown, exhaustive assessment that analyses the local contexts for the implementation of the UNGPs across Africa, the key challenges that remain, and the way forward in terms of designing good-fit approaches to effectively address the drivers of adverse human rights impacts across the entire value chain of respective economic sectors and activities in Africa. Furthermore, in designing, and implementing human rights-compatible laws, the book argues that states must engage stakeholders in the process leading to the enactment of such laws. Critical stakeholders include vulnerable members of the society especially women, children, and disabled. This process should be designed to strengthen stakeholders' capacity in addressing human rights violations by MNEs and local

businesses. Such laws must also promote and protect human rights, support an environment conducive to dialogue and peace between stakeholders, as well as informing and empowering actors and citizens on the interface between energy development and human rights. Reporting mechanisms must detail how businesses have adopted and are implementing economic, social and cultural rights, as well as respecting women's economic and social rights.

The books also highlight the importance and the necessity for heightened scrutiny and punitive measures for irresponsible corporate practices in Africa. In doing this it, examines the role of the African Union in developing an African Union Policy Framework on Business and Human Rights, and the importance of integrating business and human rights into trade agreements such as the African Continental Free Trade Area Agreement (AfCFTA). For rights holders, the book explores innovative legal methodologies and mechanisms needed to achieve a sustainable and rights-based approach to development projects and examines the judicial and non-judicial process of obtaining remedy. It considers that a rights-based approach to development projects provides a just and ethical path towards meeting societal expectations and that corporations ought to make a proactive contribution to solve grave communal problems associated with their activities.

The book further challenges policy makers and researchers to think of imaginative and innovative ways states and non-state actors can leverage their natural resources for sustainable development. Leveraging in this way will certainly prevent social exclusion or environmental challenges that has permeated Africa's resource governance space. For example, in the South African context case study, the book noted that the South African state has a lot of established capacity and experience working with mining capital. In addition, given the power of the mining unions, it has also had to negotiate a corporatist pact with trade unions. The state has the capacity, experience, and legal instruments to manage a positive corporate approach to human rights. However, the critical question is the political equation. Where the political class in a country becomes a highly organised rent-seeking machine, and mining has been a lucrative source of rents, it becomes inherently difficult to plough back proceeds of mining into social development and environmental protection objectives. This is the challenge of many African states. Additionally, there is heightened calls on businesses to implement environment, social and

governance (ESG) benchmarks to realize sustainable growth, inclusive trade and investment in accordance with international human rights law. By integrating human rights standards, businesses operating in Africa are open to responsible investment and this a fundamental approach to ensure that goods and services from Africa become much more acceptable internationally, knowing full well that those goods were sourced and derived in a human right, sustainable manner.

Conclusion

Exploring the varied and divergent approach towards mainstreaming human rights protection in the continent, the book first considers that till date international law has not been able to create a strategic and innovative pathway for MNEs to be liable for their deleterious activities. Through the lens of continental and regional approach to BHRs, the book concludes with an optimistic appraisal of the future of business and human rights in Africa. As actors in regional (and international) law, it is critical that businesses use their leverage to promote best practices. Respect for human rights is no longer an option or choice, it is a necessity. Thus, best practices must be integrated internally, in the supply chain, for contractors and sub-contractors, especially in the production and manufacturing sector. The book investigates the prospects and potentials of implementing business and human rights norms, in trade, investment, extractive, energy and diverse sectorial projects in developing countries, with particular perspectives from Kenya, Nigeria and South Africa. By using the elements of the rights-based approach, the book evaluates what international human rights standards currently regulate corporate conduct as opposed to the conduct of states and individuals, and to clarify the corresponding roles of states and businesses in safeguarding these rights. At a time when there is mounting pressure on transition to green energy and the question of just transition (especially the demand for electric vehicles and wind turbines), it is important that businesses source critical minerals in a responsible manner that does not exacerbate human rights violations in resource rich countries. Local communities expect that their resources are utilized in a responsible way, that improves their living conditions, addresses poverty, and promotes human rights standards. Businesses, on the other hand, are more concerned about profit maximization rather than people centred development objectives. This negligent business approach has created huge

lack of transparency and accountability in resource management, exacerbated social exclusion, inadequate stakeholder engagement and consultation processes. The critical question is how businesses can develop, manage and adhere to responsible behavioural standards, human rights and environmental standards, even where state actors are not showing interest in fulfilling their human rights obligations. As identified in the book, one area this can be achieved is in the support for business and human rights education, especially in the informal sector.

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