Promoting Investment in the Renewable Energy Sector: Concluding Remarks and Future Legal Research Agenda

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The blog posts presented in this symposium indicate that Foreign Direct Investment (FDI) in the renewable energy (RE) sector is desirable to support decarbonisation and clean energy transformation in developing countries such as Nigeria. Despite the enormous potential for RE based on the natural conditions in Nigeria, there is high level of energy poverty and low level of investments in RE sector by both government and private investors. There is significant incoherence and contradictions in the architecture of institutions for RE development, especially as various actors involved continue to promote multiple objectives that are sometimes competing. Nonetheless, there are success stories such as the passage of enabling laws and policies for FDI in the

RE sector, and the deployment of green bonds to fund environmentally friendly projects such as RE generation and distribution. The contributions in this symposium have reflected on the current state of FDI in renewables in Nigeria, particularly the drivers of FDI, the social dimension of FDI in the RE sector, and an enabling legal framework at the international, regional, national and local levels of governance.

The symposium authors offer insightful analysis for future research directions. Circumspect about the role of law and institutional infrastructure for FDI in the RE sector, bearing in mind that the overriding objective – sustainable development – has not only an environmental dimension but also social and economic dimensions which need to be balanced in a way that fosters inclusiveness. There is a significant relational element to inclusiveness at various levels of governance, from the international to the local levels.

Orie's post set the tone by providing an overview of the existing framework for FDI in renewables in Nigeria, highlighting the strengths and constraints with insights into creating an enabling environment for further investments. This post buttressed the need for capital investment to support the massive deployment of RE infrastructure in Nigeria.

Obani wrote about the potential of international environmental law in addressing relational inclusiveness, between developing countries and industrialised countries in global climate change negotiations and governance processes. Her post highlighted the need for reconfiguring the relationship between international environmental law and climate change science to the extent that supports transdiciplinarity.

Omiunu analysed green bonds as a potential source of the required capital. Naturally, investments in renewables are likely to lead to conflicts involving key actors, such as local communities, the government, and investors, due to competing interests. This requires deliberate mechanisms to improve synergies between the actors and provide effective resolution of conflicts that may arise in the process of negotiation or implementation of projects.

One important principle for minimising conflicts that is highlighted in various

posts is participation. Amodu highlighted broad concerns about effective participation of local communities in land-use and development planning decisions which are crucial for the deployment of significant RE infrastructure projects. Similarly, Iyayi analyseed the potential of energy transitions to fuel conflict because of the resultant redistribution of power among actors. Analysing the role of the dominant trade unions in the energy sector as agents of continuity, this post discusses the need for their participation to avoid labour conflicts capable of derailing the decarbonisation process.

Investment in the RE sector implies numerous interactions with a variety of actors, including suppliers, service providers, local communities and, of course, the host state itself. As explained by authors in this series, it is likely that disputes will arise out of these interactions, and different models for dispute resolution will have to be assessed. When such disputes arise, it is both important and desirable to ensure speedy and amicable resolution. International arbitration would normally be the preferred dispute settlement mechanism for any dispute that may arise involving foreign investors. Olawoyin assessed the existing legal framework for arbitration, and buttresses its potential for conflicts to related FDI. Similarly, Akano and Seriki assessed recent administration of justice reforms in Nigeria which enhance efficient dispute resolution through arbitration and thereby improve the prospects for FDI in the RE sector in particular.

Nonetheless, conflicts related to FDI in the RE sector could take other forms, including human rights violations and the disenfranchisement of local communities that host RE projects. Kunuji and Farah drew attention to the need for effective grievance mechanisms to ensure reasonable access to remedies in case of the violation of the human rights of vulnerable communities hosting RE projects. The authors favour binding grievance mechanisms, particularly litigation and arbitration, because of the lack of evidence of the effectiveness of non-binding grievance mechanisms in addressing human rights violations by corporations.

Furthermore, Ekhator explored the role of sub-regional judiciaries in promoting access to environmental justice/rights – this is especially important given the non-justiciability of the right to environment in many African countries. The post

focuses on the Economic Community of West African States (ECOWAS) Court of Justice (ECCJ) as an option for advancing environmental justice/rights in the sub-region.

An underlying message running through the contributions is that the current institutional framework needs re-design to effectively support FDI in the RE sector. Otherwise, countries such as Nigeria may not be able to attract sufficient FDI to support capital investment in renewables to meet policy targets. And even if there is FDI in clean energy infrastructure and technology, this may not promote inclusiveness and sustainability without the appropriate legal and institutional infrastructure. This state of affairs implies a necessary balancing act; one that will take into account the various interests of a diverse group of actors - from foreign investors, to local communities; from the environment, to workers' rights; from municipal authorities, to local governments and international institutions.

This delicate balancing act will necessarily lead to certain painful compromises. It will be difficult, if not impossible, to satisfy all relevant actors. Foreign investors will simply not invest if the conditions are not right. Local communities will equally not (and should not) tolerate unleashed corporate behaviour. This is all leading to the role of Law, and more specifically to the importance of sufficient legal safeguards. Authors in this symposium have identified some of these safeguards, notably the role of institutions (e.g. international courts), procedures/procedural rights (e.g. public participation), access to remedies, grievance mechanisms, international law and more. The lack of appropriate safeguards, it is feared, could lead to the reiteration of past mistakes with extractives governance, a result that has proved to be both destructive and inefficient.

A second underlying message that comes out from this symposium is that the efforts to attract investment in African countries (and elsewhere) will not only have to be cross-sectorial, but also cross-disciplinary. The variety of laws that could impact this effort is immense. Authors in this symposium have pointed at a variety of areas, including labourstandards, environmental protection, Corporate Social Responsibility, finance, land, and dispute settlement (including international, regional, national, and ADR). This list, of course, reflects only the

tip of the iceberg, and numerous other fields should be explored as well, both on the international and domestic levels. A cursory list includes areas such as investment law, trade law, insurance law, competition law, development law (e.g. targeted Official Development Assistance (ODA)), tax law, human rights law and more. States will have to identify and address also the role of numerous institutions, ranging from national investment promotion agencies to green funds, to human rights, to domestic courts and investment tribunals. In short, this task is as momentous as it is enormous in scope.

Future Research Agenda?

And what role should researchers play in this effort? The above reviewed implies several initial tasks. First, it is imperative to map and identify the relevant areas of law that could impact FDI in the RE sector, whether positively or negatively. Secondly, an in-depth study of the potential impact of these laws on RE-related investment should be prepared. This, by all means, is not a one-man/woman job. Rather, it requires a coordinated effort by different groups of experts that will investigate not only their own limited field of law, but also the manner in which their subject-area could complement, or be supported by, other areas of law. For example, it is likely that development lawyers will point at the role that ODA-base grants could play in this effort. The effectiveness of this tool however, could be enhanced by other tools from different areas of law (such as investment protection, or 0% tariffs on Environmental Goods and Services), and refined by others (for instance, subjecting FDI to Corporate Social Responsibility codes and environmental standards). This final effort implies a role for yet another group of experts – those who research *institutional interactions/interplays*, including areas such as Policy Coherence for Development (PCD). Tying these different areas of law in a coherent, mutually supportive and holistic manner should indeed be the grand objective of this future research agenda.

Lastly, necessary safeguards must be mapped and assessed. This assessment should begin with the identification of ‘suspected’ sensitive issues, such as human rights, indigenous rights, and the economic rights of local communities and investors alike. A comparative assessment of suitable safeguards should then follow, and, where appropriate, be adjusted to the specific context of RE-related FDI in African states.

This symposium is a very modest step in this direction. The authors reflect on different dimensions of an enabling legal and institutional infrastructure for FDI in the RE sector in Nigeria through their respective research questions and appropriate research methods. Through this, the symposium contributes to knowledge about strengthening the infrastructure for FDI in Nigeria's RE sector as well as improving inclusiveness and sustainability in the outcomes of the FDI. The authors effectively built on existing knowledge, sometimes contesting mainstream global discourses and paradigms, in order to propose alternative models that are better suited to the local realities in countries such as Nigeria.

Overall, the symposium provides the multidimensional perspectives of scholars and reveals interesting dynamics of FDI in Nigeria's RE sector. The symposium posts provide a strong imperative for further research into decarbonisationpathways for Nigeria, and the role of legal and institutional infrastructure in the process. There is also room for a more sophisticated combination of methods and disciplines in order to advance transdisciplinary outcomes that could be better suited to addressing complex development problems such as energy security for developing countries in low carbon scenarios. While the lessons learnt from Nigeria could be generalised and applicable to other African countries at some levels of abstraction, it is also important for further representative case studies to be investigated in order to get a regional perspective on affective approaches to strengthening the infrastructure for the realisation of clean energy transitions and the achievement of related development objectives in a time-bound agenda such as the 2030 Sustainable Development Goals, the African Union Agenda 2063, and long, short and medium term national development plans and strategies.

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