Symposium on Sustainable Development Goals, Trade, Investment, and Inequality

By:

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November 26, 2019

The Purdy Crawford Workshop

This Symposium, co-hosted by Afronomicslaw and the Dalhousie Law Journal Blog is an outcome of one of the streams at the 2019 Annual Purdy Crawford Workshop at the Schulich School of Law. The theme of the Workshop which took place from Sept. 26–28 was "The Role of Business Regulation in Advancing the Sustainable Development Goals." Co-organized by three Schulich School of Law Professors, the Workshop featured three inter-disciplinary and simultaneous streams as well as cross-over plenaries that focused on: "SDGs and Revenue Mobilization" – convened by Kim Brooks, the Purdy Crawford Chair in Business Law; "SDGs, Trade, Investment, and Inequality" convened by Olabisi D. Akinkugbe; and "Business Responsibilities for Human Rights and Environmental/Climate Justice – convened by Sara Seck." The contributions to this symposium were initially presented as part of "SDGs, Trade, Investment,

and Inequality” stream.

Introduction to the Symposium on Sustainable Development Goals, Trade, Investment, and Inequality

The adoption of the United Nations Sustainable Development Goals (SDGs) by all Member States of the United Nations in 2015 committed them to undertake a range of actions that will reduce poverty, promote prosperity, protect the environment, but, also take steps towards addressing inequality within and among nations. In this regard, the 2030 agenda for sustainable development aim at transforming the world by ensuring, simultaneously, human well-being, economic prosperity, and environmental protection. The SDGs are embedded in long standing ideological and philosophical debates about the relationship between developing and developed countries on the one hand, and the relationship of these countries vis-à-vis the exploitation of their natural resources in contemporary times. The debate has since assumed a different dimension based on the activities of multinational/transnational corporations in the extractive industries in many developing countries.

Although anchored on the currency of “sustainable development”, the challenges that the SDGs address are not novel.The SDGs are ambitious; riddled with accountability and evaluation challenges; as well as measurement of implementation or operationalization at the national and international levels to mention a few. These challenges have deep historical roots; they typify the perennial Global North and Global South socio-economic and environmental issues which critical third world and development scholarship have and continue to examine.

For example, inequality in trade, investment, and financial relations between develop and developed nations is an important goal of the SDGs. Target 6, Goal 10 aims to “[e]nsure enhanced representation and voice for developing countries in decision-making in global international economic and financial institutions in order to deliver more effective, credible, accountable and legitimate institutions.” To “reduce inequality within and among countries”, the SDGs Target 8 will “[i]mplement the principle of special and differential treatment for developing countries, in particular least developed countries, in

accordance with World Trade Organization agreements"; while Target 9 will "[e]ncourage official development assistance and financial flows, including foreign direct investment, to States where the need is greatest, in particular least developed countries, African countries, small island developing States and landlocked developing countries, in accordance with their national plans and programmes." The foregoing targets raise significant issues that intersect existing debates on inequality, trade, investment and development in the context of the relationship between state and non-state actors in international law.

On the one hand, the aspirational nature of these targets invoke a curious, and rather pessimist, feeling of how has the plight of the unequally rivalled territories of the world been improved by previous UN related projects that were centered around various decades of development, such as the precursor to the SDGs, the Millennium Development Goals, or the 1960 UN Decade of Development that began these UN led agendas. On the other hand, the SDGs also provoke a nostalgic feeling regarding previous political projects led by Third World Countries such as the New International Economic Order of the 1970s and the unsuccessful attempt to restructure an oppressive international economic order and legal regime.

In short, the SDGs and its interesting set of targets are a fertile ground not only to reimagine past UN led decade themed goals and their implications for (sustainable) development, but, to also situate them in contemporary discourse of the activities of nations, transnational corporations and other non-state actors. As part of the 2019 Purdy Crawford Workshop, the contributions to the symposium on "Sustainable Development Goals, Trade, Investment, and Inequality" critically examine these goals from the vantage point of each contributor's scholarly expertise.

The Symposium features 10 excellent contributions from the participants. Following this Introduction by Olabisi D. Akinkugbe is Ibironke T Odumosu-Ayanu's post titled "Sustainable Development and Community Content in the Oil and Gas Industry". In many developing countries, Prof. Odumosu-Ayanu notes, "oil and gas development has historically contributed to some of the challenges that the SDGs seek to address – climate change and environmental

degradation, population displacement, economic and social inequality, armed conflict, gender-based violence, tax evasion and corruption, increased risk of certain health problems, and the violation of human rights." Her contribution "focuses on the inequalities that result *within* countries as a result of the activities of the oil and gas industry and which endure in spite of the local content policies that are adopted" by looking at the context of the industry in Nigeria.

Using Nigeria as a case study, Ohio Omiunu's contribution examines the "localization of the UN SDGs" through the sub-national governments. Highlighting the problems that are inherent in the current vertical nature of the SDGs, he argues that merely "localizing the SDGs is not a magic bullet solution to development problems in Nigeria." In his view, the involvement of sub-national governments "as collaborators and co-rule designers is crucial to the successful attainment of the SDGs." Dr. Eghosa Osa Ekhator's contribution stretches the analysis beyond national boundaries to the African continent. He assesses the barriers to the implementation of the SDGs in Africa. In particular, he reflects on two pertinent questions: (i) "With the history and activities of Multinational Corporations in Africa, can we expect a fruitful partnership with the governments of African States?" (ii) "Are there existing frameworks capable of delivering national outcomes or development programmes envisaged by the SDGs in Africa?" Like, Dr. Omiunu, Dr. Ekhator argues that "effective partnerships or collaborations (e.g. between government, academia, public sector, private sector, civic society and local communities amongst others) need to be developed in order to achieve sustainable SDGs outputs" in Africa. He contends that mobilizing domestic financial resources within and by Africans is critical to the achievement of these goals.

Providing a different perspective outside of the African continent Salvador Herencia Carrasco's contribution examines the role of the Inter-American Human Rights System (IAHRS) and in particular, the jurisprudence from the Inter-American Court of human Rights (IACtHR) in probing the role of SDGs in human rights litigation. Salvador argues that "as the IAHRS consolidates its jurisprudence on ESC rights, the SDGs could contribute to set specific targets for states which could bolster non-repetition guarantees and institutional reforms ordered by the IACtHR.

The challenge of access to justice for the victims of international investment by transnational corporations is at the heart of Tamar Meshel; Akinwumi Ogunranti , Michael Marin as well as Penelope Simons and Anthony Vanduzer's excellentcontributions. Tamar Meshel examines the plight of the "victims of human rights violations at the hands of transnational corporations [noting that] the question of redress remains daunting. With the challenge of access to justice confronted by these victims before domestic courts now an issue at the forefront of international discourse, she examines the potential of the the draft UN Treaty for Business and Human Rights to provide access to remedy for these victims. On their part, Penelope Simons and Anthony Vanduzer contextualize the challenge of access to justice in relation to international investment agreements. They proffer some concrete but measured proposals with respect to how international investment agreements can be drafted and leveraged upon to seek justice for the victims of human rights violations in the extractive industries.

Michael Marin's contribution moves the analysis further in asking a pertinent question relating to the liability of officers and directors in transnational human rights litigation. In search of remedy for the victims of human rights violation in transnational extractive industry, Marin contends that "suing the agents of the parent company (e.g. its directors or officers) is likely to be a more effective deterrent than suing the parent company itself. In other words, … that personal liability, as opposed to corporate liability, may be a better way of using tort law to ensure that TNCs respect human rights." In his contribution, Akinwumi Ogunranti, examines the question whether a Business and Human Rights Arbitration is worth establishing. Situating his analysis in the context of the ongoing reform of the International Center for Settlement of Investment Dispute and the United Nations Commission on International Trade Law, he contends that the omission of the local communities undermines the legitimacy of the reform efforts in two respects. Amidst the reform processes of the ICSID and UNCITRAL, Akinwunmi, contends that the introduction of Business and Human Rights arbitration Rules is unnecessary in international dispute resolution.

The penultimate post by Mariam Momodu asks whether transnational private regulation can facilitate the achievement of the SDGs while simultaneously

“minding the business that pays them.”? Noting the ambitious nature of the SDGs, Mariam Momodu examines “the traditional and emerging approaches through which the private sector contributes to the attainment of the SDGs. She argues that while “private regulation is not a silver bullet in the global quest for sustainable development, considering the inherent legal, administrative, institutional and political concerns. … seeing the private sector as a partner in rule making and enforcement opens a realm of possibility in terms of possible collaborative models among stakeholders towards achieving the SDGs.”

The final post by Obiora Okafor on focuses on “International Accountability in the Implementation of the Right to Development” via an examination of the notion of ‘accountability’ espoused in two Reports of the UN – the *UN High-Level Panel on the post-2015 Development Agenda* (May 2013) and the UN Secretary-General’s Report (July 2013). For Okafor, “the particular conception of accountability espoused in these two reports is a limited one. Its near-entire focus is on accountability at the *national* level. Not nearly as much is said about the role of good governance on the *international* plane in fostering the kind of mutual accountability that is envisaged.” Okafor showes that development praxis have existed for some time at the African regional level to demonstrate what meaningful mechanisms for ensuring some accountability may look like, and while he cautions that the approach, as is, does not apply outside Africa and “does not completely plug the accountability issue” in relation to the SDGs, he suggested an augmented form of the approach – one that “ungirded by hard law” as an approach that “ought to be replicated at the UN level.

On a final note, I would like to acknowledge Joy Kategekwa and James Thuo Gathii, both of whom were also participants at the 2019 Purdy Crawford Workshop.

Contributions

Ibironke T. Odumosu-Ayanu: Sustainable Development and Community Content in the Oil and Gas Industry

Ohio Omiunu: The role of sub-national governments in ‘localising’ the UN SDGs in Nigeria

Eghosa Osa Ekhator: Barriers to implementation of SDGs in Africa: the need for effective business and government collaboration

Salvador Herencia Carrasco: The Inter-American Human Rights System and social justice: What role for the SDGs to enforce human rights in the Americas?

Tamar Meshel: International Business and Human Rights Dispute Settlement Before Domestic Courts: The Draft UN Treaty for Business and Human Rights

Penelope Simons and Anthony Vanduzer: Using International Investment Agreements to Address Access to Justice for Victims of Human Rights Violations Associated with Transnational Resource Extraction

Akinwumi Ogunranti: Towards Access to Justice for Local Communities in Investor-state Arbitration

Mariam Momodu: Can Transnational Private Regulation Facilitate Achievement of the Sustainable Development Goals?

Michael Marin: Officer and Director Liability in Transnational Human Rights Litigation

Obiora Okafor: International Accountability in the Implementation of the Right to Development

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