Book Review Symposium: BHRs and CSR: Connecting the Dots

By:

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This remarkable book on business and human rights norms in Africa, is written in three parts. Part one, examines the key contexts and principles which underpin the nature and scope of business and human rights in Africa, and the relevant corporate governance theories and regulations. Part two, proposes human rights-based approach (es) to business and human rights in Africa and examines the human rights corporate duty to respect, the integration of such a rights-based approach in development and the question of access for effective remedies. Finally, part three, examines the implementation of the protect, respect, and remedy framework in Africa's energy and extractive sectors, with particular focus given to three focal jurisdictions in Africa: Nigeria, South Africa, and Kenya.

The objective of the book is to apply Business and Human Rights (BHRs) principles to challenges of economic development and social change in African countries. The timing of the book is excellent because this is twelve years post the unanimous approval of the UN guiding principles on business and human

rights. There is also renewed focus on the African continent in the context of significant business and human rights challenges. This is further reflected in the United Nations OHCHR Business and Human Rights Africa Project 2022. The complementary African efforts towards development under the UN SDGs and the AU Agenda 2063 indicate a willingness to take steps towards sustainability and stronger protection of human rights. The book makes relevant recommendations about the integration of human rights considerations within trade treaties such as the African Continental Free Trade Area (AfCFTA) which is one of the flagship projects of the AU Agenda 2063.

An important contribution of the book is an examination of how an Afro-centric paradigm within business and human rights (BHR) would contribute towards ensuring sustainable resource governance practices and creating good relationships between key stakeholders in the extractive resource industry. The working paradigm would help engagement between three key stakeholders: state, corporations, and local communities. Such an Afrocentric view of a BHRs paradigm could unleash potential for the continent.

This review will focus on part one of the book which presents the critical context and principles. This part of the book is chosen for two vital reasons. Firstly, because this part describes the case studies which exemplify the context. and secondly, because it tackles the knotty issue of the potential relationship between CSR and BHR. The relationship between CSR and BHR is crucial to the legitimacy of corporate governance theories and action that advocate human rights and social justice issues. Abe’s attempt to capture and define this relationship between CSR and BHR, represents a major contribution to advancing debates about the complementarity of these two concepts.

On the first point of the case studies, chapter two sets out the background which acknowledges the legacy of many countries in sub-Saharan Africa. This includes a legacy of liberation struggles from colonial rule and the discovery of resources, upon independence. Furthermore, the nature of substantial investment required for extraction of these resources at a time when these countries did not have that fiscal investment, resulted in conflicting legacies of fiscal burden and corruption, which resulted in a combination of issues that has produced easy rents, foreign direct investment reliant economies and fragile democracies. In a 2021 Report, UNCTAD examined the state of commodity

dependence in a significant number of developing countries exposing volatilities, vulnerabilities and effects on economic growth.

The case studies covered in this part of the book include the well-known Niger Delta Ogoni (Nigeria) experience but also the Marikana incident (South Africa) and the Lake Turkana Wind Power Project (Kenya). (This also mirrors the national legal and policy frameworks considered within Part three – those of Nigeria, South Africa and Kenya.) The chapter also examines the role for the African union especially with the African Union Draft Policy Framework on Business and Human Rights.

As already highlighted, the book makes connections between trade and human rights within the African Continental Free Trade Agreement Area (AfCFTA). It indicates that "integrating human rights protection into trade agreements is essential to realizing the benefits from productivity and free flow of goods and services for the upliftment of the citizens"(p.28). This suggestion also has wider relevance for trade agreements of other regions. As the effect of the pandemic exacerbates the need to 'build back better', with trade and effective monitoring of human rights mechanisms within such trade agreements. Chapter two further identifies the additional benefit of the recognition of diverse levels of actors within the state, because this gives legitimacy for corporate activity, which may have human rights impact. Abe states that irrespective of "national level pact with MNCs, local level actors will continue to have a key role to play in securing concessions from development and project proponents"(p.21). Equally, there is recognition of the significant power and influence which non-state actors can have on relationships between state and business. This can reduce the negotiating power of these states. Such power reflects both corporate power within and over human rights in addition to, corporate and foreign direct investment influence over 'hostage' states.

On the second point, chapter three is a crucial focus point for those interested in the relationship between CSR and BHR. The chapter argues that BHR gives legitimacy for government involvement in CSR. This is particularly interesting for me, as I had questioned whether government should be responsible for ensuring CSR. The answer in the context of the book suggests that there is validity for government involvement on the basis of the UN Guiding Principles on Business and Human Rights (UNGPs) which can be seen as an integrated

international framework to ensure the corporate respect for human rights. This could give a justification for government to ensure that such respect is demonstrated across all human rights and with regard to state and non-state actors. This is also re-affirmed by the UNGPs operational principles for state regulatory and policy functions under the state duty to protect human rights. Chapter three thus contends that “BHR and CSR are two sides of a flip coin, each working together to enhance corporate responsibility for human rights. The real challenge under BHR is to develop a framework or model for corporate accountability, and at the same time identify distinct roles and responsibilities of States (p.35). The UNGPs National Action Plans can then be seen as examples of how such a responsibility is implemented in practice. This could also include the requirement for Human rights impact assessment (HRIA).

CSR can be seen as the relationship between business and society, therefore it can embody the relationship between business and human rights, because the responsibility to respect human rights must be contextual and yet universal. This contextual nature is what privileges the local host community, social licence, and drives the agenda that such corporate respect for human rights seeks to achieve, for example development projects. It is important to understand that the UNGPs engenders an active obligation to respect, which includes support of, and engagement with, rights found in internationally recognised human rights instruments as well as the obligation to redress adverse impacts. Conversely, this pillar also requires refraining from violations of human rights. Furthermore, the Social License to Operate (SLO) is similarly emphasised because companies would like local host community legitimacy for ease of operations and sensitivity to human rights impact. This prompts the interrogation of the relationship between SLO and legitimacy, where acquiring social licence from local host communities is vital for corporate legitimacy to operate. Legitimacy here should be contrasted with legality, which is often obtained at state national level. An example of this quest for SLO can be seen in the Global Memorandum of Understanding (GMoU) signed between oil companies and local communities. The chapter also indicates a role for the social theory of change and corporate culture. This contains an analysis of corporate governance theories and the capabilities of those theories to transform the way companies operate. This is an often-neglected aspect of the business and human rights agenda because of the subtlety involved in its

transformative capabilities. The book proposes a conscious agenda of social change that goes beyond commissioning specific CSR projects to a change in the organisational culture towards the corporate responsibility. The chapter specifically identifies that: the "… corporate responsibility to respect human rights goes beyond the mere duty to be involved in socially responsible projects. This responsibility demands a conscious attempt by companies to inject BHRs into board management and programmes – so that over time it becomes an unassailable part of corporate culture. In such a scenario, social change is said to have taken place. Consequently, social norms could become law over time if compliance with the UNGPs is strategically done – evolving into "corporate culture." This culture will involve a conflation of voluntary and legal regimes with cultural and socio-economic forces within a social field" (p.38).

Consequently, the book covers the major corporate governance theories including shareholder value, stakeholder value, and centres on approaches to sustainable BHR projects and incentivising social responsibility projects. Incentives for social responsibility projects may hold the key also to the development agenda for governments as the notable example of the orientation of CSR towards development projects through taxation systems in Mauritius, signifies. There may be further experimentation with incentives which privilege human rights initiatives and human development within resource management and extractive industries. This is critical because these industries dominate African economies. This book is a useful contribution to literature in this area and should serve an essential resource for students at both undergraduate and postgraduate levels. It is also crucial study for policy makers, as it contextualises BHR within Africa, using the UNGPs as a framework within the African context and highlights case studies, which brings a new dimension.

The analysis of complementary relationships between CSR and BHR on the one hand, and BHR and SLO on the other, as well as connecting corporate culture and stakeholder corporate governance theories, should also generate future contextualised analysis and debates beyond case studies and countries examined within the book. This specifically presents a good platform for further discussions about the relationship between CSR and BHR in the context of the UNGPs. The concepts examined and foundations outlined in this book such as the applications of BHR, SLO, CSR can be extended to other analytical

perspectives of specific African countries and communities. Overall, Abe’s book is an original contribution to this emerging area and is therefore essential reading.

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