Book Review Symposium: Adopting a human-rights-based approach to Resource Governance

By:

Akinwumi Ogunranti

July 18, 2023

Dr. Oyeniyi Abe's book, *Implementing Business and Human Rights Norms in Africa: Law and Policy Intervention*, is a timely intervention in the field of business and human rights. The book focuses on interpreting and implementing the United Nations Guiding Principles on Business and Human Rights (UNGPs) in Africa through legal and policy frameworks.

In examining the competing theories on corporate responsibility, the book highlights the importance of business enterprises adopting a stakeholder value theory that gives host communities a "heightened stake" in developmental projects. Abe argues that companies should not ignore host communities in developmental projects because they are major stakeholders in wealth production. While Abe argues that corporations are well under their existence to operate in a profitable and sustainable way, he advocates for balancing profit maximization with the interest of host communities. He concludes that it

is in companies' self-interest to consider host communities' interests because not doing so may lead to heightened tension and distrust in the community. This conclusion resonates with the self-enlightened interest theory that Pillar II of the UNGPs (corporate responsibility to respect human rights) is built on.

The author's framing of Chapter 4 as "corporate duty to respect human rights" strikes the reader at first glance. Most of the debate about pillar II is about its framing. For example, Surya Deva argues that Pillar II's framing conflates the typology of rights as we know it in international human rights law. In choosing the framing of the title of Chapter 4, the author advances the argument that Corporations' compliance with Pillar II is not just a "responsibility" (which is voluntary) but a duty (an obligation). Corporations human rights obligations is no longer an option, but a necessity. The author's framing might have been influenced by his assumption in Chapter 3 that corporations "have sufficient legal personality to bear legal rights and duties." However, a missing point in the transition between chapters 3 and 4 is the critical analysis of the corporate legal status. This is more so because the author uses the word duty and responsibility interchangeably in chapter 4. Due to the framing of Pillar II, these two words have different meanings in the BHR field. For future research, discussions about the legal status of corporations will further enrich the book. However, to be fair, it is impossible to unpack every BHR debate or analysis within a book.

The first section of chapter 5 unpacks how corporations can discharge their duty to respect human rights through corporate Human Rights Due Diligence (HRDD) and corporate Human Rights Impact Assessment (HRIA). The author discusses these two components of the duty to respect human rights. He notes that when corporations carry out HRDD in their operations, it obviates the need to show that they respect human rights. This is because the HRDD exercise is prima facie evidence of respecting human rights. The author then proceeds to discuss some of the advantages of HRDD, which include being a legal defence against claims by host communities in court. However, it is important to add that HRDD is a double-edged sword that can be used as a shield or a sword. Some corporations have been sued for negligence based on their HRDD policies. So, when HRDD is not conducted properly, as the author describes, it can be a sword for host communities to hold parent companies accountable. Furthermore, the author discusses the importance of HRIA in determining,

recognizing, and alleviating the potential adverse human rights impacts of developmental projects. He describes the importance of reviewing legislation, policies, and consultation with host communities when developing and conducting an HRIA. The author acknowledges that it is an expensive exercise. However, when corporations factor in the transactional cost of not conducting HRDD and HRIA, it outweighs the cost of performing these exercises. Perhaps, the book could benefit more from providing clarity on the difference between conducting HRIA and HRDD. Does an HRIA exercise run throughout the course of the project like an HRDD? Do the HRDD and HRIA play different but complementary functions? What is the implication of conducting one without the other, especially when the author says that HRIA is an expensive exercise? Answers to these questions would clarify the analytical scope of this chapter and demonstrate Pillar II's framework. However, the second half of Chapter 5 compensates for this gap. The second half of Chapter 5 (5.4) introduces and builds a robust framework for a rights-based approach to developmental projects. Anchored on detailed case studies, analysis, and recommendations, the author addresses issues relating to the accountability of corporations and how a rights-based approach can be integrated into human rights standards and policies. The section justifies implementing a rights-based approach based on the abundance of natural resources in Africa and their potential for generating wealth or economic impoverishment, the need to implement business and human rights norms as well as the African Union's Agenda 2063.

The book conceives a rights-based approach as requiring "the inclusion of human rights considerations into state laws and project agreements." It stresses the inclusion and heightened role of host communities, the poor, and vulnerable people in this approach. Abe claims that development will occur through projects co-owned by these groups and corporations. Relying on the provisions of the UNGPs, he advocates for the joint responsibility of states and corporations to infuse human rights considerations in legislation, policies, and projects. However, he apportions more responsibility to states in implementing the UNGPs. Although the author recommended how states can implement a human rights approach in their legislation and policies in subsequent chapters, this recommendation minimizes the politico-economic considerations under which most African states operate. The cut-throat competition for foreign direct investment among African states sometimes results in lower human rights

standards. This factor accounts for states' complacency and complicity in some human rights abuses that the author copiously referred to. Suggestions on closing this gap will further enhance the feasibility of the author's recommendations.

Abe rightly noted that weak governance systems in most African countries do not absolve corporations from complying with international human rights norms and standards. He identified principles to guide corporations under the human rights-based approach. These are participation, accountability, transparency, access to information, non-discrim¬ination, and fairness. He unpacks these principles beautifully to emphasize the role of consultation with and participation of host communities in developmental projects. Indeed, lack of commitment to these principles has been a significant factor in incidents of human rights abuses and civil unrest arising from developmental projects. The author uses case studies to show this missing link in most HRDD exercises. The propensity for corporations to use an HRDD exercise as a tick-box exercise accounts for haphazard consultations aimed mainly at legitimizing developmental projects. The authors' analysis of the principles show an acceptable standard of consultation and participation corporations should aim at.

Indeed, this book is an important contribution to the BHRs literature. Its analyses and practical recommendations to implement provisions of the UNGPs will help states, corporations, policymakers, NGOs, and academics to understand and appreciate the complementary role that all stakeholders should play in promoting human rights norms in Africa.

Dr. Akinwumi Ogunranti

Faculty of Law, University of Manitoba Canada

View online: [Book Review Symposium: Adopting a human-rights-based approach to Resource Governance]

Provided by Afronomicslaw