Introduction to the Symposium on State and Investor Responsibility in Africa's Extractive Industries

By:

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State responsibility for internationally wrongful acts is one of the principal areas of international law. The ascendance of international investment law and mechanisms designed to protect foreign investment and investors have generated significant debate leading to calls, *inter alia*, for investor responsibility in international law. Juxtapositions of investment protection and state and investor responsibility have been particularly relevant in Africa's extractive industries. A confluence of factors account for this relevance: Africa's large mineral deposits; African states' interest in promoting foreign investment in their jurisdictions; the capacity of extractive industries to generate significant wealth for host states; the human rights and environmental impacts that often attend extractive natural resource development; the competing goals of the relevant actors including states, foreign investors, host and impacted communities, and other citizens of the countries; and the insufficient interaction between international investment law and other areas of law such

as international human rights law and international environmental law. These coexisting factors contribute in great measure to an environment where significant debate has arisen regarding the actors that bear responsibility in Africa's extractive industries.

This symposium includes contributions that analyze state and investor responsibility for wrongful acts, and responsibility for the development of sustainable extractive regimes, in African countries. The contributions are timely interventions at a time when Africa's regional institutions and states are developing mechanisms for responding to challenges presented by the extractive industries. From the articulation of the Africa Mining Vision to the establishment of a Working Group on Extractive Industries, Environment and Human Rights Violations under the auspices of the African Commission on Human and Peoples' Rights, there is awareness of a need to navigate a range of issues that resource development presents, from responsibility for designing appropriate frameworks and conditions to accountability for wrongs that occur during natural resource development.

Nadege Campaore's contribution explores actors' responsibility during one of the earlier stages of extractive resource development. She raises pertinent questions regarding responsibility for addressing unequal terms in mining contracts between African states and investors. Compaore's contribution outlines a number of actors that may have some responsibility for responding to unfair mining contracts including host African states, investors, homes states of the investors, and international institutions that contribute to the global economic structures that shape the narrative regarding mining contracts. Oyeniyi Abe, in his contribution to this symposium, outlines "four responsibility indices that will guide states and investors in fostering a shared value approach to an inclusive and sustainable development of Africa's extractive sector." Abe's contribution explains indices that apply to extractive industries from project development to project impact, including domestic law and regulation, infrastructure, international investment and trade laws and policies, and judicial remedies for wrongs. He also discusses corporate criminal liability under article 46(C) the *Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol)* which is yet to enter into force. Abe's focus in outlining these indices is the sustainable development

impacts of natural resource development and the challenges that African states encounter in this regard.

The other contributions to the symposium turn their analytical lens to state and foreign investor responsibility for human rights violations and environmental degradation. Chukwunonso Ekeolisa's contribution reaffirms host states' primary responsibility to protect the human rights of people in communities that host or are impacted by natural resource development. He acknowledges calls for investor and home state responsibility for human rights protection and argues that African states retain primary responsibility for human rights protection and should act in accordance with this responsibility.

Ibironke Odumosu-Ayanu completes the symposium's examination of responsibility from contract formation to accountability for human rights and environmental impacts by analyzing investor responsibility towards local communities in the development of natural resources in African countries. She situates the contribution in the African landscape at a time when the debate regarding business and human rights has garnered significant attention especially in the wake of the *United Nations Guiding Principles on Business and Human Rights* and the negotiation of a treaty on business and human rights. Odumosu-Ayanu's contribution demonstrates that local communities in Africa are leading advocates of investor accountability for human rights violations and environmental degradation that occur in the course of natural resource development. In seeking to ensure accountability for human rights violations and environmental degradation, African peoples have had recourse to domestic courts, foreign courts, regional bodies such as the African Commission on Human and Peoples' Rights and the Court of Justice of the Economic Community of West African States, as well as mechanisms such as the World Bank's Inspection Panel and the International Finance Corporation's Compliance Advisor Ombudsman. While local communities encounter challenges in actualizing their keenness for responsibility, recent developments in Africa and elsewhere demonstrate that there is impetus for mechanisms that "delineate clearly identifiable, binding and enforceable international obligations for foreign investors."

As the contributors note, regional institutions in Africa, and African states, are

developing frameworks and responding to challenges that resource development raises. Yet, much remains to be done with regard to responsibility in the extractive industries and this symposium contributes a variety of perspectives to the subject. It, however, remains an ongoing conversation as the debates and development of mechanisms that envisage and respond to challenges that articulating and enforcing frameworks for state and investor responsibility in Africa's extractive industries present will, undoubtedly, continue.

Contributors

Oyeniyi Abe: Leveraging Natural Resources for Sustainable Development in Africa

Nadège Compaoré: Unequal Terms in Africa's Mining Contracts: What to Do, and Whose Responsibility?

Chukwunonso Cherechi Ekeolisa: Primary Human Rights Responsibility in Africa's Extractive Industries

Ibironke Odumosu-Ayanu: Investor Responsibility towards Local Communities in Extractive Industry Projects in African Countries

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