Business and Human Rights Law in Africa

Book Project

Call for Chapter Proposals/Outline

Introduction

Globalization has unified the world by creating a new scope for sharing commonalities. Within this space, business enterprises and transnational corporate actors operate in a complex global environment, especially in high risk sectors such as mining, oil and gas, telecommunications, construction, banking and health care amongst others. Understanding human rights responsibilities, impacts and socially responsible behaviour for companies is therefore an essential component of corporate risk management in our current world. The release of the United Nations Guiding Principles on Business and Human Rights (GPs) in 2011,[1] an instrument consisting of 31 principles on this issue, has further underscored the emergence of a rapidly developing set of international law norms on human rights responsibilities of businesses and multinational corporations. In addition to minimizing litigation, financial and reputational risks, understanding and demonstrating corporate respect for human rights is vital to building a culture of trust and integrity amongst local communities, investors and shareholders.

We conceive the GPs as "both a product of social and power relations and a tool for challenging and reshaping those relations".[2] Hence, we seek to investigate, to what extent does the GPs and other normative ideologies provide the shared language for, and "delineates the arenas of contest among, very different contenders: citizens and states; MNCs and indigenous people".[3] Consequently, we are investigating the questions:

1. What roles do corporations play in domestic and international economies?
2. How does that role impact human rights?
3. How do companies justify investments in human rights?
4. What are the most effective means of achieving respect for and compliance with international human rights standards?

---

[1] Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', Report of the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and Other Business Enterprises UN Doc. A/HRC/17/31 (21 March 2011). ['Guiding Principles']. The UN Special Representative, John Ruggie, had earlier proposed a framework on business and human rights to the UN Human Rights Council in June 2008, resting on three pillars:

  1. State duty to protect against human rights abuses by third parties, including business;
  2. Corporate responsibility to respect human rights; and
  3. Greater access of victims to effective remedy, both judicial and non-judicial.

[2] World Bank, World Development Report: Governance and the Law (2017) 83. (World Development Report).

[3] J. Comaroff, J. L Comaroff "Millennial Capitalism: First Thoughts on a Second Coming." in J. Comaroff, J. L. Comaroff (eds) *Millennial Capitalism and the Culture of Neoliberalism* (2001) 1–56.

5. How has state and non-state actors been able to synergize in designing and implementing policies within a determined focal and informal structures shaped by power?
6. To what extent has tiered systems along the lines of gender and social class been replicated or challenged in corporate organization?
7. How should we approach the political and evolving discourses about implementation of social norms ingrained in business and human rights principles, ethics and ideals?
8. What are the synergies and tensions between the legal protection of human rights and businesses?
9. Can we promote responsible business practices through existing human rights mechanisms?
10. How can state and non-state actors mobilise or "harness" the vivacities of women, children, youth, and local communities?
11. What are the threats and prospects for businesses in engaging with human rights issues?
12. How can business entities respect the rights of their host communities, consumers and workers?

We will also be exploring how we can demand for responsible corporate practices through the institutionalization of rights-based language in socio-economic constructions of state practice - a process that has come to be associated with "vernacularization" of rights.[4] Undoubtedly, political contestation at the local, national and international level is a crucial antecedent of effectual rights-based strategies for the vulnerable members of the society.

With these questions and contexts in mind, this book project seeks to examine, clarify and unpack the nature, scope and practical implications of emerging business and human rights norms in international law. The project will create a platform for stakeholders, especially academics, corporate lawyers, and non-lawyers in business, economic and financial spheres, as well as government and policy leaders, community leaders, experts, researchers and academics, to discuss, debate and clarify how to support businesses in this emerging area.

Conceptual Clarification

The challenges and opportunities for leveraging resources for sustainable development are as critical as ever. The most pressing problems in the fields of governance and development are evident in the manner in which development scholars and practitioners grapple "with the ways in which power, interests, incentives, and characteristics of political systems shape how various projects are developed",[5] the impacts of governance interventions, and the ultimate outcomes of both. Historically,

---

[4] S. E Merry *Human Rights and Gender Violence: Translating International Law into Local Justice* (2006).
[5] World Development Report (n 2 above) 87.

the divergent views held by global communities has almost always been resolved through skirmishes. A collection of global conflicts has created several events for business operating in weak zones, for instance.

According to the World Development Report (2017),[6] the function of law in shaping behaviour and ordering power is primarily about how leaders use law to implement policies and to exercise authority. At the same time, how have citizens been able to utilize the available laws – normative or otherwise to contest and dispute the use of power. This book project critically examines how normative contestations (in this case, business and human rights principles), often in combination with other social and dogmatic approaches, can be used as a commitment and institutionalized stratagem to foster accountability, and also to change the rules of the game to foster more equitable bargaining spaces.[7]

The countries of the Global North have shaped corporate behavior through legal and institutional frameworks. Their legal systems enhance corporate responsibility by mandating parallel checks on authorities and offering a medium for vertical claims by citizens. In the African continent, more needs to be done to check the activities of multinational companies (MNCs). African states need to reinforce and strengthen its courts (including prosecutors and police); oversight institutions (ombudsmen, anticorruption agencies and human rights commissions). Not only should these institutions be more accessible to the people, they must be effective in handling complaints and grievance mechanisms. For instance, South Africa, with its apartheid history, a reformist constitution, and the progressive realization of rights by the judiciary, the income and racial inequality continues to widen.[8] However, the courts have shown commitment to realizing socio-economic rights, and being an avenue for contestation, with a far-reaching practice of public interest litigation and rightful challenges to principal power interests. Amongst most African states, there is the noticeable "trend toward juridification of social and political contestation across the globe",[9] with proliferation of legal order and creation of multi-agencies. The terrestrial growth of these institutions, judicialisation of policies, and the provision of private regulations does not seem to have any bearing on MNCs operating in the continent. Perhaps, the "transmutation of social movements' struggles into human rights litigation" has created a rude awakening to the activities of non-state actors.[10] While these laws are normative, African scholars must begin to create innovative pathways to framing claims, employ necessary rhetorics, to hold non-state actors accountable under

---

[6] World Development Report (n 2 above) 85.

[7] E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (1975).

[8] South Africa Human Rights Commission, 'Research Brief on Race and Equality in South Africa, 2013-2017', available at: https://www.sahrc.org.za/home/21/files/RESEARCH%20BRIEF%20ON%20RACE%20AND%20EQUALITY%20IN%20SOUTH%20AFRICA%202013%20TO%202017.pdf (last visited 22 March 2019)

[9] World Development Report (n 2 above) 85.

[10] Jonathan Berger, "Litigating for Social Justice in Post-Apartheid South Africa: A Focus on Health and Education" in V. Gauri, D.M. Brinks (eds) *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, (2008) 38-99.

international law. This trend could mandate a culture where local communities are involved in discussing community development agreements with state and non-state actors.[11]

This scholarly endeavour takes the nuanced position that the mere existence of formal laws does not lead to their envisioned effects. In most African countries, there is a problem of weak enforcement of law, or they are selectively implemented. While the global body continues to debate the necessity or importance of designing an international legal rule for regulating corporate behavior, in the name of treaty, care must be made to ensure these laws or treaty does not result into an instrument of insecurity, stagnation, and inequality. Africa needs investment and growth, at the same time, must guarantee sustainable development of these investments. To this extent, we are investigating how these laws and normative contestations can order corporate behavior.

By design, Business and Human Rights (BHR) scholars are exceptionally placed to provide clarity on the egregious impacts of business on human rights, and for violators to respond appropriately and timeously to human rights harms caused. We envisage that book contributions can mirror corporate action – in various industries – as an exploration to comprehend Africa's past and to envision its futures. We call on scholars to explore the theme of BHR, and to reconceptualize dynamic intervention of actors within the African continent. For instance, most extractive (and other businesses) activities have overwhelmingly transformed African landscapes. Non state actors, sometimes allied with despotic governments, have continuously heightened economic inequality, threatened civil society and democratic institutions, and contributed to environmental disasters. At the same time, corporate activities have enthused socio-political movements, and awareness at the local level.

This book focusses on the normative contestations that has bedeviled the articulation of BHR scholarship in Africa. How have these concepts and realities been articulated and represented in the various genres of businesses – within the cultural, social and political spaces. The book seeks to spark debate and discussions across different disciplines that addresses how intersecting categories of businesses have been morphed into operationalizing human rights norms. We intend to discuss how contestations occur at the local level, in multiple forms and varied expressions, as an extremely problematic reaction towards service providers – especially corporate actors. Furthermore, we seek to interrogate the discourses and processes that produce and reproduce what we can call a cultural politics of corporate irresponsibility, and its effect on the social structures and defining license to operate within the set boundaries of either morality or legality. We also look forward to receiving papers that navigate the resistance and alternatives to socio-economic, political and cultural nuisances that prevents the adaptation of these normative experiences to practical realities, thereby contributing to a shared viewpoint and inventive creation of more effective forms of community building constructed on

---

[11] Stuart Kirsch, *Mining Capitalism: The Relationship between Corporations and Their Critics.* (2014).

firm equity and social justice grounds. Paradoxically, however, the introduction of BHR principles that should generally guarantee corporate respect for human rights coupled with a more transparent and effective governance system is failing to strengthen accountability and people's access to resource dividend.

While topics or subject areas are broadly set, papers must be able to adapt their discussion to the adaptation of the BHR Principles to their specific topics. Therefore, we invite contributions on topics including, but not limited to, the following:

1.   Gender and human rights.
2.   Environmental Sustainability and development.
3.   Trade and human rights.
4.   Corruption, Accountability, Transparency and Good Governance
5.   Energy, Oil, Gas, Mining and environmental governance (climate change)
6.   Telecommunications and Infrastructural development,
7.   Migration, Reproductive and health care Development,
8.   Banking, Intellectual Property, Information Communication Technology,
9.   Peace and Conflict Resolution Studies
10.   Sustainable Agricultural and Environmental Development.
11.   The rights of indigenous peoples, traditional local communities and migrants.
12.   Strategies to use international HR mechanisms to litigate and advocate for corporate liability for human rights violations.
13.   Access to judicial and non-judicial remedies

The collection of chapters will epitomize the multiplicity of voices, providing a baseline for the convergence of outstanding research that will invigorate discussions around Africa's future, at the same time, developing theory and shaping policy making. This book will survey the changing role of law as industry enablers, discuss how representations of private ordering have changed and remained the same in the wake of significant globalized and ever-increasing capacity of MNCs.

Submission Procedure
Scholars are invited to submit chapter proposals, which establishes critical thought and insightful analysis, and must be accompanied with a detailed outline of the proposed chapter. Proposal/chapter outlines, with clearly defined objectives, should not exceed 1500 words in English, sent by e-mail to: BHRSubmissions2020@gmail.com (cc to oo.abe@up.ac.za) not later than June 30, 2019. Authors whose proposals/chapter outlines are accepted will be contacted with a time-table, chapter guidelines and procedure for submission of final chapter, no later than the first week of August 2019.
The subject line of the e-mail must state: "BHR Chapter Proposal_Surname". The Proposal must include chapter title, authors name (s), institutional affiliation, full contact address (including phone number and email), 350-word authors profile. Please name the document as follows: "Surname_Name_BHR Proposal".

All submitted chapters will be reviewed on a double-blind review basis. Contributors may also be requested to serve as reviewers for this project.

Publisher
This book is scheduled to be published by Pretoria University Law Press (PULP). PULP is an open-access publisher based at the Centre for Human Rights, University of Pretoria. For additional information regarding the publisher, please visit: http://www.pulp.up.ac.za. This publication is anticipated to be released in 2020.

Contact Information:
Professor Damilola Olawuyi
Hamad Bin Khalifa University
College of Law and Public Policy
Qatar.
dolawuyi@qf.org.qa, dolawuyi@ogeesinstitute.edu.ng

Dr. Oyeniyi Abe
International Development Law Unit
Centre for Human Rights
University of Pretoria
oo.abe@up.ac.za