Towards Transnational Corporate Accountability for Human Rights Abuses in Africa: Analysis of Conceptual and Institutional Hurdles

ABSTRACT

Corporate conduct is diverse; its character is often dependent on the sector in which any given investment can be placed. The effects of corporate conduct on human rights could be positive or negative if assessed from the standpoint of the responsibility arising from international law for 'all organs of society' to protect, respect and fulfill the human rights of individuals and communities. The paper analyses the impact of foreign multinational corporations (MNCs) on human rights in developing countries and assesses the capacity of international law to regulate MNCs. The paper focuses on relations between MNCs and public institutions exercising regulatory functions over the MNCs. The empirical point of departure for the paper is whether history records MNCs and developing countries have been partners in mutually beneficial relationships. It investigates the causes of developing countries' long-established unenviable position in the international economy by examining critically the role of foreign MNCs.

INTRODUCTION

1. Background of the Study

Between 1970 and 1993, various United Nations bodies undertook a range of initiatives to formulate a code of conduct for multinational corporations (MNCs). Developing countries were the main engine of attempts to generate a code of conduct for multinationals at the UN level, with the support of socialist countries. The key opponents of those efforts comprise the international business sector and developed countries led by the US (home States to the majority of multinational corporations). In the paper, the term 'international business community/ sector' refers to the business community of the OECD countries.

Corporate conduct is diverse; its character is often dependent on the sector in which any given investment can be placed. The logging of tropical forests, large-scale plantations and the extraction of natural resources such as coal or oil results in destruction of the ecological environment, contributing to climate change. Corporate conduct affects civil and political rights, environmental rights, workers' rights and economic and social rights not only in the extractive sector, but also in industry/manufacturing and the service sector.[3]

The paper analyzes the impact of foreign multinational/transnational corporations on human rights in developing countries and assesses the capacity of international law to regulate them. The empirical point of departure for the paper is whether history records MNCs and developing countries to have been partners in mutually beneficial relationships. It investigates the causes of developing countries' long-established unenviable position in the international economy, by examining critically the role of foreign MNCs.

The paper focuses on relations between MNCs and public institutions in developing countries exercising regulatory functions over MNCs.

Investment treaties and tribunals recognise investor rights as a primary purpose and more often in practice as the overriding goal; yet, the idea to include duties for investors in a multilateral treaty still is resisted by MNCs and their home States.

The human rights dimension of foreign investment refers to benefits that flow to communities and individuals living where the investment is located; particularly, the protection of civil, political, economic, social, cultural and environmental rights in the host

[1] DP Forsythe *Human Rights in International Relations* (2006) at 218.
[2] D Tladi *Sustainable Development in International Law* (2007).
[3] E Wiles 'Aspirational Principles or Enforceable Rights? The Future for Socio-Economic Rights in National Law' (2006) *22 American University Internationall Law Review at 35*.

communities.[4] MNCs activities have direct or indirect effects on the natural environment and on human well-being.[5] This is particularly the case for African countries where public regulatory institutions are weak and, in some cases, complicit alongside MNCs in violating the rights of their own citizens.[6]

Sections 1.1. and **1.2** compare claims by mainstream economists that foreign direct investment (FDI) is an indispensable component of economic growth to counter-arguments from a strand of neo-Marxist writing associated with Paul Baran, A G Frank, and Samir Amin. **Section 1.3** analyses South Africa as a test-case for FDI coming into Africa from a political economy perspective. It examines the socio-economic and political consequences of South Africa's reception of foreign investment following the discovery of diamonds in 1867 and gold in 1886. **Section 2** revisits the unsuccessful attempts by various United Nations bodies to develop a binding code of conduct for MNCs between the 1970s and 1993. The concluding **section 3** analyses the institutional weaknesses of African public institutions historically.

1.1 Foreign direct investment (FDI) in Africa: the historical, economic, and social implications

Some scholars claim that globalisation has resulted in impressive poverty reduction in major emerging markets countries and overall welfare in industrialised countries. It is also true that globalisation entails costs on individuals and communities including corporate-related human rights abuses in developing countries; particularly, countries endowed with natural resources.[7] For instance, Angola, the Democratic Republic of Congo, Equatorial Guinea and Nigeria hold significant natural resource endowments and have witnessed political instability and recurrent conflict.[8] Zambia, Ivory Coast and Kenya supply the world market with significant amounts of copper, cocoa and tea respectively. The latter countries are not characterized by recurrent conflict unlike the former group, although Kenya and the Ivory Coast were the scene of post-election violence in 2007-9.[9] However,

[4] D Collier and C Moitui 'Africa's Regulatory Approach to Biotechnology in Agriculture: An Opportunity to Seize Socio-Economic Concerns' (2009) 17 *African Journal of International and Comparative Law* at 33.
[5] ST Ebobrah 'Litigating Human Rights Before Sub-Regional Courts in Africa: Prospects and Challenges' (2009) 17 *African Journal of International and Comparative Law* at 100.
[6] V Gamba and R Cornwell "Arms. Elites and Resources in the Angolan Civil War" in M Berdal and DM Malone (eds) *Greed and Grievance: Economic Agendas in Civil Wars* (2000) at 97.
[7] K Franko *Globalization and Crime* (2020).
[8] M Meredith *The State of Africa–A History of Fifty Years of Independence* (2006).
[9] K Kanyinga and D Okello *Tensions and Reversals in Democratic Transitions – Kenya's 2007 General Elections* (2010).

economic transformation from being suppliers to the world market of one or two agricultural or mineral products to become viable industrialized countries, as envisaged in the 1960s and '70's has proven elusive for all six countries listed above and for the majority of African countries.

African countries are highly reliant on foreign investment and look to their "traditional markets" in the former colonizing countries which act as the primary markets for external trade, tourism, loans and foreign aid.[10] African economies tend to have few forward or backward linkages between the dominant commodity-exports sector and other sectors of the economy. Globalisation has not meant greater market access for African products apart from the traditional exports, even as developed countries continue to subsidise their agricultural sector.[11] The European Union (EU) is the largest importing market for African agricultural products and imposes a tariff (tax) for processed agricultural products such as chocolate or processed fruit juice from Africa. A commodity such as chocolate which Ghana or the Ivory Coast could export to the EU market attracts a non-zero preferential tariff, as opposed to export of raw and semi-processed cocoa whose preferential duty rate is zero in the same market.[12] The foregoing tariff structure by the EU has the effect of reducing the ability of exports of processed agricultural goods from African countries to compete with domestic EU producers, as it rewards African exports of agricultural goods in raw and semi-processed form.

A typical MNC according to the United Nations definition has branches in not less than two countries. The MNC is distinguishable from an ordinary firm in that it represents the attainment of high levels of capital expenditure, economies of scale, technological sophistication and managerial skills.[13]

A host country refers to a country on whose territory a multinational corporation has established a subsidiary or branch. Host countries bear obligations towards investors under the applicable investment treaty and also under customary international law.[14] However, no well-established obligations are imposed on investors according to both the traditional and the presently-existing frameworks of international law.

Moyo notes that foreign direct investment (FDI) has tended to favour MNCs as the means of entry into the continent and has not enhanced the welfare of Africans. Without demarcating sharply as in this paper, Moyo draws a distinction between two types of FDI, as follows:

(i) FDI that enhances national welfare;
(ii) FDI that contributes to corporate profits but does not improve the national welfare.

[10] P Kinyua 'The Theory of Competition and the Developmental State in Africa: A Case-Study of Kenya and South Africa' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2768411 (accessed 10 April 2022)
[11] TA Oyejide and D Njinkeu (eds) *African Imperatives in the New World Trade Order* (2008).
[12] AD Oduro and GTM Kwadzo 'A Case Study of Ghana and the Agreement on Agriculture' in TA Oyejide and D Njinkeu (eds) *African Imperatives in the New World Trade Order* (2008) at 79.
[13] United Nations Centre on Transnational Corporations *The United Nations Code of Conduct on Transnational Corporations* (1986) Series A. No. E.86.II.A.15 (ST/CTC/SER.A/4) Annex I at 28-45.

[14] A Kaushal 'Revisiting History: How the Past Matters for the Present Backlash Against the International Investment Regime' *50 Harvard International Law Journal* 1 at 491-534.

She stresses that most of the 'transnational capital coming into Africa' has tended to benefit from "long-tax holidays, subsidies and benefits of repatriation of dividends and profits."[15] She stresses that most of foreign capital invested in Africa has tended to benefit from several special conditions such as the repatriation of profits, tax holidays and subsidies. Summarising the historical record, she concludes that Africa has been a victim of exploitation by multinational corporations operating in the continent. In response to the claim that MNCs carry positive outcome for host economies in Africa because MNCs transfer new technology, Moyo insists that MNCs are main beneficiaries of such technology transfers. She argues that foreign capital entering Africa tends to favour plantation agriculture and mining, both of which occasion ecological destruction.[16]

Tandon understands FDI to be a separate phenomenon from both capital and money; and criticizes some of the "experts and policy makers" who, it is claimed, tend to conflate the three items. FDI is understood as follows: "FDIs are a package of capital, technological know-how, management specific to a particular type of production of goods or services, market knowledge and access, and contacts".[17] Domestic capital is preferable to Tandon than FDI. He offers a negative verdict of TNCs operating in Africa and differentiates between 'self-reliance' by African countries and 'FDI reliance'. He claims that if resource rich African countries such as Nigeria did not "externalise" a big part of the national savings "through legal or illegal means", FDI would be unnecessary. In reply to the question: "What will foreign capital do that it has not been doing for all these decades [in Africa]?" Tandon's response is that the question is not whether Africa needs capital; rather, what should matter is the origin, purpose and conditions attached to any form of capital seeking to enter Africa. He concludes that "there are no good or bad FDIs outside of national policy, and in terms of hard negotiations with the owners of capital".[18] Tandon cautions African countries which are potential recipients of FDI to "unbundle the FDI package," and where this is not possible, "to monitor and control its use carefully."[19]

[15] T Moyo 'The resource mobilization strategy (RMS) of the *New Partnership for Africa's Development (NEPAD): A critical appraisal' in PA Nyong'o and others (eds) New Partnership for Africa's Development (NEPAD) – A New Path*? (2002) at 185.

[16] Moyo (n 15) at 187.

[17] Y Tandon 'NEPAD and Foreign Direct Investment: Symmetries and Contradictions' in PA Nyong'o and others (eds) *New Partnership for Africa's Development (NEPAD) – A New Path*? (2002) at 121.

1.2. Benefits of foreign investment: a comparison between mainstream economic theory and neo-Marxist theories

Mainstream development theorists such as R.F. Harrod claim that capital formation is the driving force of development.[20] They argue that the lack of development in developing countries results from a shortage of capital which is a necessary condition for economic growth.[21] The savings of developing countries are viewed by mainstream economists as insufficient for investing in a manner that would generate self-perpetuating growth in the developing country, hence need for foreign capital and foreign aid. The Harrod-Domar growth model postulates a direct relationship between a country's rate of savings, s, and its rate of output growth, g, via the equation $g=s/k$ where k is the national capital/output ratio.[22] Mainstream economic theory views the State as a perennial 'loser' in 'every war against poverty' and designates 'the market' as the only viable solution to problems of mass poverty and underdevelopment.[23] David

Ricardo's classical theory of international trade claimed that trade would ensure that resources flow to those countries where they would derive the highest return. Ricardian theory also claimed that 'diminishing returns' would accompany capital that was invested abroad rather than in the country where the profits were generated. Ricardian trade theory assumed that the rate of return to capital would be higher in the capital poor countries because of conditions of scarcity of capital in such countries. Similarly, the Hecksher-Ohlin version of factor-price equalisation argues that the higher returns to capital in capital poor countries would induce a flow of capital from the capital rich to the capital poor until "such returns of factor are equalised".[24] It is so close to Ricardo's original formulation that it merits the description of being 'neo-classical'. The factor-price equalisation theory, according to some critics, is another name for "the Hecksher-Ohlin based belief in foreign financing of development."[25]

Other economists contend that the principal barrier to development in the poor countries is not traceable to a lack of capital itself, but lies in the absence of creative entrepreneurs who would launch the country on path of self- sustaining economic growth[26] This argument draws its roots from the early-twentieth century writings of Max Weber who claimed that the protestant ethic was instrumental in forging the spirit of capitalism which he found to characterise western European society.[27]

Unlike mainstream development economists, dependency theorists view foreign investment as harmful

[18]Tandon (n 17) at 122.
[19]Tandon at 123.
[20]HJ Bruton 'International Aspects of the Role of Government in Economic Development' in L Putterman & D Rueschemeyer (eds) *State and Market in Development - Synergy or Rivalry*? (1992) at 102.
[21]WW Rostow *The Stages of Economic Growth: A Non-Communist Manifesto* (1961).
[22]MP Todaro *Economic Development in The Third World* (1981).
[23]PP Streeten 'Against Minimalism' in L Putterman & D Rueschemeyer (eds) *State and Market in Development - Synergy or Rivalry*? (1992) at 17.
[24]Todaro (n 22).

rather than beneficial to host countries for several reasons.[28] Firstly, multinational capital insists on the 'freedom to repatriate profits' generated in the host State from the host State to a destination of choice such as the headquarters of the MNC or a tax haven, instead of investing those profits in the same host country that needs and also seeks investment capital.

Viewing the international economy as a single system composed of centre and periphery, Amin notes some qualitative differences in the set-up of the economic system of peripheral countries on the one hand, and central countries on the other. It is claimed that "unequal exchange" characterises economic interactions between centre and periphery on the world system.[29] "Unequal exchange", in this view, refers to "a constant transfer of value toward the center of the capitalist system due to a greater productivity per unit-wage cost-and hence greater rate of exploitation which... precludes the growth of an internal market" in the peripheral State.[30]

Baran insists that re-investment of profits by MNCs, as opposed to repatriation, could as well be damaging to the domestic economy of the host country because multinational capital with its international production and marketing system tends to make most of its purchases abroad.[31] Furthermore, foreign investment is ill-advised as it creates disarticulated economies in host countries; "the railways, bridges, ports and power stations" have little linkages with the internal structure of the host country, such infrastructure having been constructed for the benefit of raw material exporters.[32] Another demerit of foreign investment is that it promotes the growing of cash crops for export, placing the economies of the concerned host countries in a position of almost perpetual dependency.[33] In contrast to Baran's view that peripheral countries could become viable industrialized countries despite great challenges involved in the process, Amin concludes that 'the Japanese road' to industrialization was closed to other late-industrializing countries at the beginning of the twentieth century. When metropolitan capitalism reached the monopoly stage at the beginning of the twentieth century, Amin argues, it would not allow new capitalist centres to develop in the periphery of the world's economic system.[34] In summary, a strand of the dependency/-neo-Marxist school argues that foreign capital engages in both direct and indirect exploitation in the underdeveloped countries.

Warren represents a strand of Marxist thought known as paleo-Marxism which disagrees with the preceding neo-Marxist positions and whose main contention is similar to that of main-stream economists; namely, that peripheral capitalism ensures both productivity growth and economic progress.[35]

1.3. South Africa: a case-study of FDI in Africa

The section places South Africa's socio-economic trajectory in historical perspective and concludes with a review of the main issues discussed in the literature on the impact of multinational capital on host countries. The mining industry has been at the centre of south Africa's economy for more than a century. The industry

[25] T Mkandawire 'Financing of the *New Partnership for Africa's Development (NEPAD)' in PA Nyong'o and others (eds) New Partnership for Africa's Development (NEPAD) – A New Path*? (2002) at 110.
[26] JB Foster *The Theory of Monopoly Capitalism* (2014) at 160-92.
[27] A Giddens *Capitalism and Modern Social Theory- An Analysis of the Works of Marx, Durkheim and Max Weber* (1973) at 130.
[28] P Baran and P Sweezy *Monopoly Capital* (1970) at 107-8.
[29] S Amin *Imperialism and Unequal Development* (1977) at 229-33.
[30] Amin (n 29) at 218.
[31] P Baran *The Political Economy of Growth* (1957) at 174.

provides a good example of the effects FDI on developing countries over an extended period of time. South Africa could serve as a good test-case for FDI on the continent based on post-apartheid experience of deepening economic inequality with clear-cut racial divisions, reminiscent of both apartheid and British colonialism. South Africa was ranked as 'the most unequal country in the world' in year 2022.[36] The conditions for racial capitalism being no longer inescapable for South Africa since 1996, there is need to clarify patterns of outdated racial capitalism that appear to be self-perpetuating. The paper points out that the basic pattern of South Africa's economy for a full century preceding 1996, is connected to the 'coincidence' between 'race' and 'poverty' in that country during the period of majority rule.

[32]Baran (n 31) at 197.
[33]Foster (n 26) at 182-3.
[34]Amin (n 29) at 230.
[35]B Warren 'The Post-War Economic Experience of the Third World' in Toward a *New Strategy for Development, A Rothko Chapel Colloquium* (1979) at 144.
[36]V Sulla and others 'Inequality in Southern Africa: An assessment of the Southern African Customs Union' (2022) http://documents.worldbank.org/curated/en/099125303072236903/P1649270c02a1f06b0a3ae02e57eadd7a82 (accessed 10 April 2022).

From the 1880s, South Africa's mining industry reserved skilled and semi-skilled jobs for European immigrant workers while consigning blacks to unskilled labour. The establishment of South Africa's mining sector is traced to the huge influx of British capital entering that country towards the end of the nineteenth century.[37] South African mining industry is "highly centralised" in character because of "two central needs" on the part of mining companies: the first is the need for "a hefty flow of capital to establish and run mines," the other is the need for "a reliable and cheap labour supply to keep the profit margin attractive".[38] That arrangement in the mining sector, is taken to have laid out "the basis for political alliance between the 'capitalist class' in mining and 'white labour'" (Marais, 2001). The alliance endured until the end of apartheid. To be sure, the unequal, race-based labour and wage system remained a key feature of South Africa's mining industry from the 1880s, "until the 1970s" (Marais, 2001).[39]

South Africa's mines were run on a labor policy with an employment system that adhered to racial categories with both economic and social consequences. Racial discrimination in terms of job skills and wages in mining was approved by law and was policy-driven. Pass laws, vagrancy laws, influx -control legislation, zoning of South Africa's territory into 'tribal reserves' and 'European areas' are some of the methods used by the British colonial administration right from the 1880s to control the supply of cheap African labor. The main point is that the flow of British FDI to South Africa, particularly in mining, provided the example and template for future racial segmentation

in that country's economy and polity. Mamdani views apartheid as deriving from a basically British colonial policy of the 1920s as developed by the Stallard Commission of 1922. In this view, apartheid as a "late" form of colonialism, rather than as a unique economic and social formulation.[40]

2. United Nations efforts to regulate Multinational Corporations

Developing countries began to pursue foreign investment mostly in competition with each other from the 1980s. Inter-developing country competition for investments through the offer of various special concessions to foreign owners of capital is described in the literature as a "race to the bottom".[41] Following the serious economic and social crises witnessed throughout the 1980s, African countries were compelled to compete for foreign investment throughout the 1990s which seemed to be the only capital available to drive national economic and social development.

The result of the struggle over foreign investment by developing countries was a relaxation of rules to govern the entry, operations and exit of foreign capital on their territory. The 1990s are considered the hey-day of "Washington Consensus" economic policy doctrine and entailed the espousal of free market economics by the International Monetary Fund (IMF) and the World Bank and western countries, resulting in significant pressure being exerted on developing countries to liberalise their political and economic policy framework and, more pointedly, to embrace foreign investment with minimal or no conditions.

The relaxation of the legal framework for foreign investment was achieved through the signing of new trade agreements with a decidedly free-market aspect such as the World Trade Organization (WTO) constitutive Agreements which took effect from January 1995, the signing of numerous bilateral investment treaties, domestic liberalisation of the economy and privatization of State-owned enterprises many of which had been established during the 1960s and '70s.

Between 1970 and 1990, several United Nations bodies undertook a range of initiatives to formulate a code of conduct for multinational corporations. At the UN level, developing countries took the initiative to develop a code of conduct to control the operations of multinationals. Key opponents of those efforts were comprised of the international business sector and developed countries under the leadership of the United States (home States to the majority of multinational corporations). Between 1977 and 1990, the United Nations Commission on Transnational Corporations (UNCTC) was engaged in deliberations on a legally-binding code of conduct for MNCs which, it was hoped, would be acceptable to both developed and developing countries, without much success.

Failure to agree on a code of conduct for MNCs is attributed to fears expressed by western countries of nationalization of investor property by developing countries. Western countries were also concerned that new rules would be created on the basis of which host countries could vary the acquired rights of MNCs.[42] Developing countries, for their part, were suspicious about the capacity of multinational corporations to affect or influence both their domestic policies and relations with other countries.

[37] P Gutkind and I Wallerstein (eds) *The Political Economy of Contemporary Africa* (1976).
[38] H Marais *South Africa Limits to Change* (2001).
[39] Marais (n 39) at 11.
[40] M Mamdani *Citizen and Subject* (1996).

[41] M Sornarajah *The International Law on Foreign Investment* (2010).

Having regard to the power of MNCs and their capacity to affect human rights globally, the closure of the UNCTC in 1993 came as a surprise to many observers.[43] Ironically, in the same year 1993, United Nations member countries assembled for an important conference on human rights in Vienna, Austria where the universality and interdependence of human rights was affirmed by State officials present, representatives of international organizations, scholars and civil society from around the world.

There is remarkable contrast between the inter-developing country competition for capital from abroad throughout the 1980s and 1990s and during the present-day period and the solidarity of developing countries during the 1970s. The latter crystallized in three major achievements by developing countries: (i) United Nations General Assembly New International Economic Order (NIEO) resolutions; (ii) the Charter of Economic Rights; and, (iii) recognition by large number of countries of the international law principle of 'permanent sovereignty over natural resources.'[44]

A decade following the demise of the UNCTC, particularly during the two years preceding July 2005, an official UN document known as: *(The) Draft Norms on the Human Rights Responsibilities of Transnational Corporations and Other Business Enterprises (UN Norms)* was facing fierce resistance from the international business sector and the home States of leading MNCs, just like the draft code of conduct for MNCs generated by the UNCTC in the 1980s.

The UN Norms were formulated by the UN Sub-Commission for the Promotion and Protection of Human Rights and were further buttressed by a resolution passed by the UN Commission on Human Rights in August 2003. The perspective of the UN Norms was that, in the scheme of international law, transnational corporations were responsible for 'promoting and securing' the human rights set forth in the Universal Declaration and other instruments. According to the UN Norms, although the main responsibility to secure, respect and protect human rights was imposed on States; MNCs were not free from certain responsibilities in respect to human rights.

The UN Secretary General's Special Representative on human rights and business Professor John G. Ruggie took office in mid-2005. The role was created for very first time at the UN largely in response to rising cases of grave abuses of human rights by MNCs, sometimes acting in alliance with dictators and armed groups such as the case of Shell oil corporation in Ogoniland, Nigeria.[45]

In 2008, the UN Special Representative presented his own work on the subject of corporate responsibility for human rights under international law; whereby, he took a decidedly different approach in comparison to the UN Norms. He proposed "differentiated and complementary responsibilities of States and corporations", arguing that as the basic minimum, private business had a responsibility to respect human rights. He referred to it as the "do no harm" principle, to govern corporate conduct across all countries.

The Special Representative's proposal also highlighted the need for victims of violations of human rights by both State and non-State actors to gain more effective access to

[42] N Schrijver *Sovereignty over Natural Resources: Balancing Rights and Duties* (1997).
[43] R Muradian 'NEPAD and the environment: envisaging the ecological consequences of outward-oriented development in Africa' in PA Nyong'o and others (eds) *New Partnership for Africa's Development (NEPAD) – A New Path?* (2002) at 234.
[44] G Corea *Need for Change Towards the New International Economic Order* (1980).

legal remedies. He also noted the issue of "policy misalignment" in investment treaties and other instruments. "Policy misalignment", it was claimed, limited the host State's sovereignty in favour of protecting investor property; thus, making it difficult for the State to discharge its obligation, under international law and domestic law, to protect human rights.[46]

3. Regulating foreign multinationals in Africa: challenges of a political and institutional nature

Several other challenges with respect to corporate accountability for abuses of human rights in Africa are of a more practical nature. Foremost among them, is the diminished capacity of State institutions in many developing countries since the early 1980s. From the mid-1970s, many developing countries in sub-Saharan Africa began to register uninspiring figures and statistics related to human welfare.[47] Throughout the 1980s and 1990s, many African countries recorded high levels of poverty and inequality, high debt to gross domestic product (GDP) ratios, recorded unimpressive scores on the human development index (HDI) and performed dismally according to other indicators of human well-being

[45]Forsythe (n 1) at 224-6.
[46]JG Ruggie 'Business and Human Rights: The Evolving International Agenda' John F. Kennedy School of Government - Harvard University - Faculty Research Working Paper Series, Working paper No. 38.
[47]P Gibbon (ed) *Social Change an Economic Reform in Africa* (1993) at 11-27.

such as infant mortality rates per 1000 live births, maternal death rates and life expectancy rates.[48]

Recent studies of globalisation underline "the growth of illegal and illicit operations" in the international economy and note that boundaries between public institutions and crime have become difficult to discern as corruption and organised crime become enmeshed with public authority, and today constitute key features of the way contemporary societies are organised.[49] For some of African countries, such as the Democratic Republic of Congo, Equatorial Guinea and Nigeria, the challenge of corruption is so widespread as to threaten macro-economic stability and even the viability of the nation-state.[50]

Per capita growth rates in GDP for developing countries experienced a decline from an average per annum of 3.4 percent in the period between 1965 and 1980, to 2.3 percent between 1980 and 1989 (Grindle, 1996). The average decline in per capita GDP recorded by the sub-Saharan African region was -2.2% for the years between 1980 and 1989. This dismal performance led to claims by some observers that the 1980s were a "lost decade" in terms of the economic growth of sub-Sharan African countries.[51]

In the opening decades of the twenty-first century, many African countries are faced with the twin challenge of large youthful populations and high

unemployment rates. Governments in developing countries have formulated policies to reduce poverty and inequality through job-creation particularly, in the Small and Medium Enterprise (SME) sector; such policies, however, are confronted with the challenge of existing poverty and inequality that have become entrenched. Institutional incapacity and proneness to corruption are acclaimed features of many African State bureaucracies and public bodies.[52] Accountability to the citizenry for welfare was not an acclaimed feature of the State in Africa during colonial rule between the 1880s-1960s; in southern Africa, minority rule came to an end in the mid-1970s in Mozambique and Angola, in 1980 in Zimbabwe and in 1996 in South Africa. Sociologists have noted that “the historical legacy of many Africans countries … left them with implanted institutions more designed for control than development”. To exercise control over subject ‘native’ populations was the raison d’etre of the public administration system under colonial rule, rather than the economic or social development of the so-called natives. In this sense, it has been claimed that the African State represents the Africanisation of despotic regimes of colonial governance including the typical the predatory actors that characterised colonial rule including the provincial administration, police, chiefs and the public service system.[54]

The paper views such institutional weaknesses as mostly the result of neo-liberal economic reforms in the shape of structural adjustment programs (SAPs) adopted-by capital-importing countries in the early 1980s and which endure in the contemporary period, at the instigation of the International Monetary Fund (IMF), the World Bank (IBRD) and western countries. During the 1980s, African countries adopted SAPs, whose collective effect was to force Africa to de-industrialise. However, attempts by African countries led by Algeria, Nigeria, Senegal and South Africa at the turn of the twenty-first century to formulate their own development strategy pivoted on a neo-liberal framework, echoing the damaging, western-derived SAPs.

[48] PA Nyong’o and others (eds) *New Partnership for Africa’s Development (NEPAD) – A New Path*? (2002).
[49] Franko (n 8) at 27.
[50] E Duruigbo ‘Multinational Corporations and Compliance with Regulations relating to the Petroleum Industry’ 7 *Annual Survey of International and Comparative Law* at 101-137.
[51] Gibbon (n 48) at 14.
[52] I Husain and R Faruqee *Adjustment in Africa Lessons from Country Case Studies* (1994) at 427-6.

Behind the Research

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Research Objectives

1. To investigate the causes of developing countries long established unenviable position in the international economy by examining critically the role of foreign multinational companies.

2. Establish the relationship between multinational companies and public institutions exercising regulatory functions over the MNC's.

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Developing countries, Foreign Investment, Development, Human Rights, Environment, Capital Accumulation, Institutions, International Trade, Investment Law, Stabilization Clauses, Host Country, Multinational Corporation.
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