

A Paradigm Shift in Human Rights Discourse: Corporate Social Responsibility and the Role of Multi-national Corporations in Protecting Women's Rights in Malawi

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I. Introduction

Foreign Direct Investment (FDI) is widely viewed as the preferred means of propelling the on-going integration of developing countries like Malawi into the global market. Corporations have extended their operations across national borders as Multinational Corporations (MNCs) or Transnational Corporations (TNCs). The legal and regulatory framework governing the conduct of these MNCs has seemingly responded to the growing prominence of bilateral, regional and multi-lateral arrangements, which largely aim at encouraging FDI by providing substantive standards relating to the admission and treatment of foreign investment by host states.

It is obvious that FDI contributes to growth in GDP, a positive indicator towards improvement in the living standards of people, demonstrated through job creation and the increased purchasing power of local populations. However, the expansion of trade through MNCs to developing countries has been characterised by liberalisation of national laws, deregulation and privatisation as part of broader market-oriented reforms of economic policies. These elements of FDI tend to operate at a much higher level which only considers political and economic aspects of investment. Government bargaining power on the *modus operandi* with MNCs tends to thin to political mirage because the economic clout MNCs wield helps them easily influence the political decision-making machinery. It therefore comes as little surprise that the expansion of MNCs into countries like Malawi has exacerbated violations of the already elusive human rights of the people.

Of particular interest to this discussion is the promotion and protection of women's rights, since most violations are visited upon those groups of people considered vulnerable in society, e.g. women and children, as they are not able to cope with emerging and up-scaling social challenges currently associated with globalisation and other global market initiatives. By either commission or omission, both host countries and MNCs continuously sweep women and children's rights under the carpet in favour of more appealing political and economic objectives.

Developing countries are more concerned with addressing perceived immediate needs of the people, such as job creation and construction of social amenities like schools. However, national development policies like these, which only focus on economic considerations, neglecting other equally significant aspects like environment, have proved an utter failure in guaranteeing improvement in living standards.¹ This discussion argues for more robust policy and legislative and institutional frameworks that adequately address the contribution of corporate social responsibility (CSR) to sustainable development. It looks at issues surrounding vulnerable people

¹ Brown, L.R. et al. (2008). *State of the World: A Worldwatch Institute Report on Progress Toward a Sustainable Society*, London: Simon & Schuster. p.196.

in society in the midst of a robust culture of CSR and posits the need for a human rights-based approach to CSR from corporations in the light of emerging issues that require an equally robust human rights protection system for women – one that can actually support national efforts aimed at achieving gender equality in line with Millennium Development Goal Number (MDG) 3, which aims at achieving gender equality and empowering women. Emphasis has been placed on women and children as special interest groups that have been marginalized over a long period of time in this particular field. The discussion also focuses on the impact of MNCs on some major sectors of life like environment, social-cultural values, health and safety.

2. Human Rights within the Development Context of Malawi

Malawi joined the UN soon after independence in 1964, thereby subscribing to the principle of equality as set out in the UN Charter. The country took further steps signing and ratifying several legally-binding UN human rights treaties: e.g. the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The standards embodied in these international instruments were fully taken into account in the 1994 Constitution,² following change from a one-party regime to a multi-party state. In fact, it is widely acknowledged that the Malawi Constitution is one of the most progressive in Sub-Saharan Africa, despite having emerged from a repressive background. The document unequivocally lists gender equality as one of the principles of national interest, with emphasis on elimination of all forms of discrimination against women. Adherence to the standards of these constitutional provisions is, however, threatened by Malawi's interest in attracting Foreign Direct Investment (FDI) in order to fight poverty and unemployment among other issues.

The onus to protect rights rests solely on the state but due to the social, economic and political changes that have taken place over the years, non-state actors like MNCs have, in most instances, emerged as a more powerful force than some states, hence able to influence government decisions. Nonetheless, there is a legitimate expectation that MNCs will take up their ethical responsibility to minimise suffering and improve the status and well-being of communities in which they operate. On the contrary, their activities have mostly resulted in violations of human rights either directly or indirectly, in some cases with legal consequences.

It is indubitable that a number of MNCs have contributed enormously to the economic well-being of countries in general through increases in tax revenues, import duties, job creations and infrastructure development and general reduction in poverty levels. The World Investment Report³ indicates that by 1998, 19 of the 86 million people employed by MNCs were from developing countries and that more than 100 million jobs had been created indirectly through multiplier effects. Nevertheless, Malawi is still struggling to fight both poverty and unemployment and this explains why establishment of business undertakings by MNCs in the

² Chapter IV of the 1994 Constitution of Malawi is the Bill of Rights, which stipulates the rights and freedoms of individuals.

³ World Investment Report. (1999). *Foreign Direct Investment and the Challenge of Development*, New York and Geneva: UN. pp.261-9

country presents one of the top opportunities that the government seizes in order to meet its desired social, political and economic objectives.

In light of the growing prominence of both bilateral and multi-lateral arrangements aimed at encouraging FDI, it is imperative that international instruments outlining standards to be followed when admitting and regulating foreign investors by host states incorporate human rights issues as a condition to be met by the investor. This is often spelt out in terms of how much the corporations invest their profits back into society through CSR. Overall, as noted by Williams,⁴ very little attempt has been made to link gender equality with governance of trade both at national and international levels: needless to say CSR is an 'appendage' of trade, operating virtually outside all legal ambit.

3. Impact of MNCs on Malawian Society

While it is evident that the economies of developing countries receive a boost from FDI, the neglect of gender and human rights considerations has negated the impact of CSR and of governmental positive intentions in engaging with MNCs. It is not surprising to see agreements between MNCs and states ending up in litigation between citizens and their governments as responsible entities. For instance, the 2007 UNCTAD Report⁵ states that several cases were brought before the UN centre as a result of the effect on citizens of such contractual arrangements between government and private investors as the rezoning of land from agricultural to commercial use and waste management.

The Church and Society Programme, a human rights organisation in Northern Malawi records a rather scantily documented case in Dwangwa, one of the sugarcane growing areas in the central region of Malawi, in which communities complained over allocation of rice farms made by the chief around the sugar plantation areas as favouring migrant workers over local inhabitants.⁶ Ensuing confrontations resulted in violent clashes among the local populations. This exemplifies the general experience that rezoning land creates pressure as local populations scramble for the remaining agricultural land with devastating consequences. Women's access to capital like land is already heavily circumscribed, especially in patrilineal communities: rezoning land pushes them further away from arable land, thereby limiting their capacity to grow food to feed their children.

Because of several social cultural factors, women tend to be excluded from formal employment. The 2007 MDG Report states that Malawi is unlikely to achieve gender equality for women in employment in the non-agricultural sector under the current trend, as projection suggests that women's share in formal employment will be at 19% by 2015 as compared to the desired 50%.

⁴ Williams, M. (2003). *Gender Mainstreaming in the Multilateral Trading System: A Handbook for Policy Makers and Other Stakeholders*. London: Commonwealth. p.37

⁵ UN. (2007). *United Nations Conference on Trade And Development Report*. NY: UN. p.8

⁶ Coincidentally, the sugar plantation is situated within the headquarters of the most senior chief of the area whose traditional court arbitrated the case.

Even within the agricultural sector, women's participation tends to be confined to subsistence farming as evidenced by the fact that 71% of food consumed in the country is grown by women. Whether by omission or commission, MNCs have de facto reinforced women's exclusion from commercial farming by having more male contract or smallholder farmers than females. For instance, females represent only 19% of smallholder or contract farming between the Dwangwa Cane Growers Trust, which has the overall responsibility of promoting smallholder sugarcane farmers, and the Illovo Sugar Company.⁷ This is without a doubt true of other traditional exports of the country, even though smallholder farming dates back to as far as the 1970s.

In addition, the rezoning of land referred to earlier pushes people into wage labour for alternative sources of income. Due to their low literacy levels, women tend to be confined to marginal forms of labour like tea picking which does not pay much. At the same time, women continue to suffer discrimination which effectively excludes them from holding higher positions, even with proper qualifications.

Low wages is another factor that complicates gender relations among wage earning families as it traps people in a poverty cycle. Though fully employed, many people attempt to subsidise their cost of living through subsistence farming. However, long hours of work mean that workers have little or no time left to subsidise their cost of living through other forms of work such as subsistence farming. Men become over-dependent on wage labour, yet the wages fail to adequately compensate for their labour and provide them with decent living standards. Women and children often take up the role of supplementing family incomes through petty trading and subsistence farming. To maximise on profits or farm yields, families resort to engaging their children in these income-generating activities, a practice regarded as responsible for school drop outs. Even though the government is trying to curb this practice, there are still over one million children engaged in wage labour and most of these are in the agricultural sector. Often, because of the generally low value placed on a girl's education, it is the girl child who suffers from labour practices that demand withdrawal from formal education

Sometimes, wage labour also requires that the worker migrate to stay close to his workplace, leaving the family behind to take care of farmland. It is also an open secret that migration favours men more than women, primarily because of the women's multiple roles in society. Moreover, migrant labour poses a health risk. For instance, the risk of HIV/AIDS infection is higher among migrant workers because of the high rate of transactional sex between workers and the local populations.⁸ In the long run, the effects of HIV/AIDS come pressing down on women because of their reproductive role in society.

Even other corporations operating outside Malawi but relying on exports like tobacco, tea, and sugarcane for raw materials, contribute by implication to human rights violations as these crops thrive on social ills such as the exploitation of vulnerable sources of labour like women and

⁷ Kumwenda, I. et.al. (2005). *The Status of Contract Farming in Malawi*, Lilongwe: Study Paper for Food, Agriculture and Natural Resources Policy Analysis Network. pp.6-9.

⁸ Kanyenze, G. et.al. (eds.) (2006). *The Search for Sustainable Human Development in Southern Africa*, Harare: ANSA. p.227.

children or expose employees and communities to hazardous working environments. Yet little or nothing is done by the corporations to ensure that standards of supply chain sustainability are properly followed. Attempts at addressing some of these social ills have been branded as attempts at protecting corporate reputations or distracting public scrutiny on how MNCs profit from cheap labour rather than providing sustainable solutions to the issues at hand.⁹

Recently, the government has embarked on uranium mining but it is obviously premature to assess the human rights implications of such a venture. It is an open secret however, that mining remains the most hazardous activity for the environment and human life. Attempts have been made at undertaking environmental impact assessments. In the absence of rights-based approaches, the true cost of mining to the environment and human life can barely be shown or substantiated on paper. Nevertheless it should be recognised that environmental degradation is one of the most contributory factors to gender disparities, as it means that women must often cover long distances in search of scarce natural resources like water and firewood to fulfil their domestic obligations.

Apart from environmental degradation, exposing mine workers to hazardous chemicals results in health problems and death. Even though FDI has been treated as part of a wider set of issues relating to economic cooperation and integration of sustainable development, there is no deliberate policy that obliges a foreign investor to observe equal employment opportunities. Recruitment policies remain at the discretion of the employer. Therefore, most employees exposed to such hazardous conditions are likely to be men, and their wives or female relations become burdened with the socially attributed task of caring for the sick. All these issues impinge on women's rights. In case of death of the mine workers, their widows are further subjected to a whole host of hostile socio-cultural practices such as property grabbing, thus pushing women into further poverty.

4. The Case for Social Engineering in the Corporate World

CSR is simply referred to as giving back to those communities in which a business operates. Since CSR is viewed as a moral rather than a legal obligation, the corporate world, quite often, gives without really addressing community issues at the roots, as this is viewed as being outside their mandate. In the absence of legally binding international standards, there is no basis for a country to strengthen its policy and legislative frameworks in this regard. In addition, constitutional and other subordinate provisions addressing such issues as fair labour practices and non-discrimination are not effectively enforced to ensure compliance to minimum standards. The combined effects of laxity in enforcing existing legislation and absence of international commitment have resulted in the development of a complex human rights system minus the full protection of women's rights in developing countries like Malawi, where women's rights remain a vague ideological principle when weighed against the impact of MNCs. The right to earn a living, environmental protection and cultural rights are some of the rights enshrined in the Constitution of the Republic of Malawi yet they rarely, or not at all, form part of negotiations between the government and the corporations. However, the argument that CSR is meant to

⁹ Otañez, M.G. et. al. (2006). *Eliminating Child Labour in Malawi: A British American Tobacco Corporate Responsibility Project to Sidestep Tobacco Labour Exploitation*. Available at <http://www.tobaccocontrol.bmj.com>. p.2.

compensate for the negative consequences arising out of the corporations' activities or simply to promote co-existence between the corporate world and the community may trigger legal consequences arising out of 'breach of the peace' if viewed from a rights paradigm.

In Malawi, as with most Sub-Sahara African countries, women's rights and the need to address their specific needs continue to stumble across cultural barriers among other obstacles, yet women contribute more than normally to development when their combined effort, skill and status are put together. Thus, in their quest for co-existence, MNCs may have the goodwill of contributing to local projects through consultations with the local leadership; yet it is an open secret that, in most communities, leadership is male dominated. Positive results from such consultations are likely to elude women and children because of lack of representation.

It is not all negative. Some industries like sugar production inevitably encourage mosquito breeding, resulting in high prevalence of malaria. Some MNCs have done a highly commendable job, a cut above their CSR, as they subscribe to the 'Roll Back' malaria programme which carries out mosquito spraying programmes and distributes insecticide-treated bed nets in affected areas.¹⁰ Initiatives that apply human rights principles like this one contribute to the country's economy through promotion of a healthy environment, which is in line with Section 13(d) of the Republican Constitution.

Additionally, a number of corporations have taken positive steps by developing HIV/AIDS workplace policies and providing employees with anti-retroviral drugs and sometimes food supplements, but this goodwill gesture is yet to extend to employees' families and communities in which MNCs operate. Corporations ought to develop comprehensive programmes that effectively mitigate the effects of HIV/AIDS by taking care of employees and their social lives, otherwise corporations risk glossing over deep rooted issues.

Climate change is another social ill that contributes to women's vulnerability, as it impacts on the social amenities like water, a resource mostly utilised by women for domestic purposes. During summer, most water sources dry up and women have to cover longer distances to fetch water. For instance, the area around Vwaza Game Reserve in Northern Malawi experiences extreme drought during the dry season. The only source of water during this period is Lake Kazuni, situated inside the protected area itself. To avoid game rangers, women resort to drawing water from the lake at night or at dawn, risking being attacked by wild animals or even sexual harassment from rangers. Women around this area lament tensions with their spouses as a result of time spent on drawing water, i.e., men accuse women of flirting around under the pretext of drawing water.¹¹ So long as provision of social amenities is not viewed from a gender perspective, government policy will, by default, continue to aggravate such incidences of gender based violence.

It is clear that the decision to declare Vwaza a protected area did not take into consideration the specific needs of the local population around the area. To make matters worse, much of the remaining land has been taken up by tobacco estates, an industry that is largely responsible for

¹⁰ Illovo Annual Report. (2008). Blantyre: Illovo. p.14.

¹¹ An assessment carried out by the Church and Society Programme in 2005/2006.

deforestation.¹² It is not an overstatement to say that there was little or no mention of the scarcity of water and its effects on women and men in the area when government decided to grant a concession to a foreign investor to run the game reserve; and much of the brunt of such decisions has been borne by women.

5. Why Corporate Social Responsibility?

CSR is an integral part of developmental processes in developing countries like Malawi; therefore, regulation is necessary to ensure achievement of development goals. For businesses to flourish, they rely, among other resources, on labour, most of which are drawn from the communities in which they operate. Both violation and promotion of gender equality and human rights have cost implications but long-term benefits of mainstreaming human rights and gender in CSR outweigh the cost implications this process may initially require.

The agenda towards advancing women and inclusion as a CSR begs critical synthesis and analysis from both legal and sociological perspectives, underlined by an ethical obligation. A business is not there only to make profits but also to look at its business as a moral issue, i.e. to improve the general social welfare of society.¹³ It is important that government impresses upon corporations the need to entrench human rights within the social, economic and legal context of investments. Governments should re-think the processes, strategies and measures aimed at regulating CSR in a more holistic way than has been the case. A precedent is in place at the international level: the UN Secretary General, Kofi Annan proclaimed the UN Reform Agenda in 1997 to homogenize corporate conduct. The UN Global Compact initiative launched in 2000 brings together UN agencies, labour and civil society organisations in support of universal principles of human rights.¹⁴ This initiative however, does not legally bind MNCs to the Global Compact's ten principles, rather MNCs voluntarily subscribe to the principles.

MNCs commit considerable resources to CSR but this has fallen short of inclusion of human rights-based approaches. Absence of policy and legislative frameworks leaves room for unscrupulous manipulation of negotiations. For instance, corruption and greed among officials from both sides of the discussion table have been known to dominate investment processes and, certainly, human rights considerations, though significant in human development and nation building, tend to be shelved in favour of more attractive gains at the time, be they personal or otherwise.¹⁵

Government can utilize the CSR resources to conduct vulnerability assessments and rights-based approaches which are some of the most powerful tools of empowering local communities if they

¹² Memorandum submitted by a working group to the presidential enquiry on land policy reform and protected areas in 1997.

¹³ Handy, C. (2002). What is a Business For? *Harvard Business Review*, (80) 12. pp.49-55.

¹⁴ UN NGLS. (2005). *UN System Engagement with NGOs, Civil Society and Other Sectors: A Compendium*. Geneva: UN. p.47.

¹⁵ Levinson, J. (ed.) *Foreign Direct Investment: Contemporary Issues*. (Unpublished). p.41.

are to contribute to the management of environmental, social and economic impact and good governance practices. It is evident that businesses most likely to succeed in the globalising world will be those best able to incorporate a wider spectrum of opinions within the decision-making process.¹⁶

Another way government and the corporate world could further strengthen CRS is to incorporate an aspect of audit of the social responsibility facet. For instance, the Malawi Law Society requires that at the end of each year, each lawyer should have represented at least ten economically disadvantaged people who cannot afford commercial legal fees, a move meant to help such vulnerable groups as widows and orphans fighting for inheritance rights. This is clearly supported by the Bill of Rights in the Republican Constitution. Similarly, corporations could be obliged to account for the impact of their CSR by assessing how the intervention has impacted on vulnerable people in society.

6. Conclusion

Social issues are meant to be addressed through social measures supported by policy and legislation. The main actors on the ground in social development are women who shoulder most of the socially attributed tasks, so it follows that their voice should be seriously considered. The future will require foresighted planning that uses human rights principles to balance the unequal power relations between MNCs and some host states, not for political or profit *raison d'être* but to alleviate suffering among vulnerable groups, otherwise economic development risks disenfranchising whole groups of populations.

Mainstreaming gender and human rights in CSR can mitigate the effects of legal consequences emanating from social ills inflicted upon communities by industrial activities of MNCs. The gaps in both international and national commitments in terms of legally binding instruments need sober reflection as they can cause or result in gender gaps, thereby undermining the rationale behind the engagement of MNCs.

Relations between MNCs and communities are symbiotic and not self-contained, therefore the 'permissive' culture of most MNCs to socio-cultural issues affecting communities in which they operate can not apply anymore. Without sounding cynical, what appear to be sporadic clashes now may as well erupt into scaled up hostilities between concerned parties requiring legal redress. As long as MNCs continue to avoid their ethical responsibility to share the burden of supporting charitable causes, and as the general public becomes more aroused on matters of national interest, the business advantages being enjoyed by MNCs now, though fully legitimate, may prove to be unacceptable.¹⁷ Even if glossed over or utterly overlooked now, accountability and determination of future interventions will demand a background check of all players and their roles in the infringement or protection or promotion of the rights of those less able to speak out for themselves.

¹⁶ Leader to Leader. (2003). Available from <http://www.pfdf.org>

¹⁷ Chomsky, N. (2007). *Failed States: The Abuse of Power and the Assault on Democracy*, New York: Penguin Books. p.206.

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