

PEARLS OF LAW

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Preserving our Heritage

"We shape our buildings; thereafter they shape us." Winston Churchill

It is the year 2040, Sarah wakes up one morning and decides to ask her parents the history of her dear country. She had been taught about how her people lived prior to British rule. Her parents described what they could remember of their history, this made her very happy, being a very inquisitive child, she asked if she could see any of such historical buildings. Sadly, her parents could not show her any because the last historical building had been demolished ten years ago. She felt a gnawing emptiness, the previous generation had not thought it important to preserve the last vestiges of history for her benefit.

The scenario narrated above is the direct consequence of a dearth of laws preserving historical buildings and monuments. In certain developed countries buildings in specific areas have a distinct architectural style, this may seem like a coincidence but it is a deliberate effort to preserve the cultural heritage of that particular area. In the United States of America these areas are referred to as historic districts. And the buildings, structures and objects in that location are designated as architecturally or historically significant. A historic district is defined under the National Register of Historic Buildings as "a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history." For Federal buildings these are listed in the National Register of Historic places. Examples of Historic Districts in America include Charleston, North Carolina, Ocala Florida and the French Quarter in New Orleans. Most of the buildings in the French Quarter were constructed in the late 18th century, or during the first half of the 19th century, during the city's period of Spanish rule making them quite distinct and a formidable tourist attraction.

In London buildings of special interest or cultural significance are listed and protected by special laws, this comes with special planning implications for example such buildings cannot be altered or modified without obtaining special permission from the local council. Examples of such buildings are well-known residences such as Blenheim Palace or 10 Downing Street. Historic areas in England include Greenwich in London, the Old and New Towns of Edinburgh, the City of Bath which was built initially as a spa, it is preserved for its Roman remains



and Palladian architecture,

In Nigeria, we have very beautiful structures and architectural masterpieces hidden in various parts of the country. For example the Cathedral Church of Christ, the Holy Cross Cathedral, the National Theatre in Iganmu, the ancient wall and gates in Kano. These buildings and monuments create a feeling of pride and sense of belongingness in everyone who sees them but unlike our foreign counterparts we do not have a comprehensive legal framework to provide for their protection and preservation.

To begin with, let us examine the law protecting monuments and historical architecture in Nigeria. The law protecting historical architectural design is the National Commission for Museums and Monuments Act, section 3 of the Act provides that part of the Commission's functions is to administer national museums, antiquities and monuments.

Section 3 b states specifically that the commission is "to establish and maintain national museums and other outlets for or in connection with, but not restricted only to the following, that is—(i) antiquities,(ii) science and technology,(iii) warfare, (iv) African, Black and other antiquities,(v) Arts and crafts,(vi) Architecture,(vii) Natural history, and (viii) Educational services; (c) to make recommendations to any State Government or other person or authority concerning the establishment and management of museums and the preservation of antiquities and monuments,

not being national museums or antiquities and monuments declared to be national antiquities and monuments."

Examples of historic sites that are protected under the act include in Lagos- The Iloja Bar, Old Iga Oba's Palace building, Iga-Idun Ganran The water House at No. 12 Kakawa Street, Lagos Old Secretariat Building Marina, Lagos Elephant House A Brazilian Style House at No. 10 Elias Street, Lagos, In Kaduna- Street Foot bridge, Kaduna, Kufena Hills, Zaria Habe Mosque, Maigana, Zaria Zaria City walls, In Niger- Tsoede's Tomb at Gwangade, The Katamba, Etsu Muhammed's Palace, Bida and the Government House, Zungeru, In Adamawa- the World heritage site in Sukur.

One cannot help but notice that the act leans in favour of protecting buildings of historical significance but overlooks certain architectural designs such as the Cathedral Church of Christ, Holy Cross Cathedral and the National Theatre. Unlike the position in England where if a building is considered by the Secretary of State (for Culture, Media and Sport) to be of special architectural or historic interest it will be included in a list of such buildings. There are three categories of listed buildings, grade 1 buildings are preserved due to special interest. Special interest has been described by the Historic England to include "the contribution the building makes to the architecture or historic interest of any group of buildings of which it forms part (group value). Many buildings are

interesting architecturally or historically but in order to be listed, a building must have special interest." To be of Architectural interest "must be of importance in its architectural design, decoration or craftsmanship; special interest may also apply to nationally important examples of particular building types and techniques (e.g buildings displaying technological innovation or virtuosity) and significant plan forms." In America in addition to national legislation there is an Architectural Works Copyright Protection Act this was enacted on December 1, 1990 to protect architectural designs. An "architectural work" is defined by 17 U.S.C. S. 101 as "the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include the standard individual features."

Conclusion

The National Commission for Museums and Monuments should play a more active role in preserving buildings and monuments of historical significance. We can follow the example of other countries by developing special laws at the Federal, State and Local level for this purpose. This is very important so that contrary to the scenario described above, we would be able to pass our heritage to our future generations.

BALANCING STABILISATION CLAUSES WITH HUMAN RIGHTS OBLIGATIONS UNDER INTERNATIONAL LAW CONTINUED FROM PAGE 14

prevention, mitigation and remediation of adverse impacts should be for the full cycle of the project.

(4) Drafting of stabilisation clauses should be done with care in order to establish a balance with the Host state human rights obligations.

(5) Additional obligations on the multinational corporations for the provision of services should be done in a manner compatible with human rights obligations.

(6) Provision of physical security for the project should be compatible with human rights.

(7) Local communities where projects are located should be meaningfully engaged.

(8) Measures to monitor human rights compliance should be put in place.

(9) Operational level or non-judicial remedial measures should be put in place.

(10) Full disclosure and transparency should be maintained.

Overall, the above principles acknowledge that investment projects could impact negatively on human rights. Consequently, it recommends that such potential adverse impacts should be identified early in the life of the project for effective management and the provision of remediation measures where negative impacts are unavoidable.

The above principles can also be understood in the context of the UN Guiding Principles which seeks to operationalise the Ruggie's Protect, Respect and Remedy Framework.

Conclusion

Without a doubt most states especially in the developing world are in dire need of FDI. The advantageous impacts of these investments are too good to ignore in the face of obvious lack of capital, technology and technical know-how. However, respect for and the protection of human rights is a fundamental indicator of development and also a panacea to rebellion and insecurity.

It is therefore imperative that the need for economic and industrial development by Host states must be balanced with the urgency to respect, protect and fulfil human rights obligations under International Law.

Interestingly, human rights are not just matters for international law obligation alone. Most states have also domesticated these human rights treaties in their respective constitutions. Consequently, protecting these rights for persons within their territorial boundaries is a constitutional duty of states.

It is therefore recommended that Host states must balance their responsibility to respect, protect and fulfil the human rights of persons within their territories with the need to attract foreign investments before committing to stabilisation clauses that fetter their ability to meet up with human rights obligations.

Furthermore, it is recommended especially for states within the developing world that negotiating investment contracts with its consequences is something that should be approached with a lot of careful planning and in-depth preparation. In the rush to grab investment projects some states do not give enough thought to the required rubrics before committing to such contracts. This is largely due to either inadequate planning or lack of appropriate human capital. Engaging professional guidance (even from outside the shores of the state) in this sort of situation is desirable and is indeed recommended. Ruggie's ten principles of Responsible Contract could serve as a guide to Host states in crafting their responses to the demands of investment contracts.

Milton Friedman has argued that the "business of business is business". This means that Corporations are established for the sole purpose

of creating wealth for shareholders. This they do by enhancing shares value and by operating within the parameters of applicable laws. However, there is a steady shift away from this single objective of Corporations. Interestingly, Corporations are now expected to operate with respect for human rights, environment, labour rights and anti-corruption measures. The Global Compact is a very good example.

Additionally, the UN Guiding Principles mandate Corporations to respect human rights and to provide remedies for adverse impacts of their activities. These obligations exist independent of the state's obligation to protect. The case of Wiwa, et al. v. Royal Dutch Petroleum Company, et al has shown that Corporations can also be held accountable for human rights violations under International Law.

It follows therefore that Corporations should be aware of societal and legal expectations and should operate in ways that respect human rights and not fetter Host states contractually.

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