Expert Viewpoint: Crisis management

For investors taking the long-term view, respecting human rights is a business as well as a moral necessity.

Human rights and crisis management

Africa has shown significant potential for growth in the recent past, with a marked improvement in its relative attractiveness as an investment destination [Ernst & Young's Africa Attractiveness survey 2014]. While many African economies have been projected for significant growth this year and foreign investments are trickling into new sectors like retail and consumer products, and financial services, important questions about investing in Africa persist.

This article attempts to answer one such question – "How to invest in Africa" – and focuses on some issues affecting long-term investors (not short-term investors, as they tend to have different expectations and therefore require different approaches).

In order to be "bankable", long-term investments require a specific emphasis on risk/crisis prevention, and appropriate management when such risks or crises arise. A key element to be considered is the growing necessity for businesses to anticipate and manage their impacts on local communities, the environment and other fundamental human rights.

Doing business in Africa – human rights impact

Doing business in Africa is no different from doing business in other similar regions in the world. However, as in some other emerging markets, there are socio-political and economic challenges to be understood, respected and adequately managed in order to successfully do business on a long-term basis as Africa is a vast, diverse continent (barring some similarities) with 54 countries spanning about 30m sq km, with 1bn inhabitants speaking about 2,000 different languages.

Despite tremendous improvement in the past few years, several countries continue to suffer from a difficult operating environment for businesses due to various issues such as poor governance and political instability (though democracy is becoming more widespread in general), unpredictable decision-making, corruption, poor infrastructure, lack of key professional skills amongst the general population or lack of integration with other regional economies (although recently, progress has been made).

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A realistic and responsible approach instead of exaggerated pessimism or optimism will put investors in a better position to make sustainable long-term investments in Africa. In almost all circumstances, experience has shown that one key tool to avoid problems at a later stage is to ensure that a well-balanced contract, in addition to stability and arbitration provisions, is negotiated with the state alongside legal protection in the form of BITs [Bilateral investment treaties]. Business activities must also be conducted in line with internationally recognised human rights while balancing the needs in relation to the people, the planet and profits.

A number of international initiatives have been brought about to help investors and states manage these human rights issues, an important one, especially for businesses, being the Guiding Principles on Business and Human Rights (the Guiding Principles), unanimously endorsed by the UN Human Rights Council in June 2011. The Guiding Principles are the first international global standard for states and businesses (of any size or sector, including financial institutions), inter alia detailing how businesses shall respect and act in consonance with human rights and also how they can demonstrate and report their compliance with the global standard.

In September 2014, the African Regional Forum on Business and Human Rights was held in Addis Ababa to promote multi-stakeholder dialogue across the continent with a view to, inter alia, advancing the agenda put forth in the Guiding Principles in the region, identifying opportunities to embed the Guiding Principles in regional and sub-regional governance frameworks and identifying linkages between business and human rights, and sustainable development agendas in the region. Certain delegates stressed the "contextualisation" of the Guiding Principles since prevailing human rights challenges differed vastly across countries. Interestingly, there were participants who noted that respecting the rights of communities was not only "the right thing" to do, but also that there was a "business case" for doing so.

Respect for human rights is required of banks and their clients alike and this is now a key precondition for financing projects (see for instance, the Equator Principles and the IFC Performance Standards). It follows that banks and financial institutions will consider whether investors and clients have planned adequately to address human rights risks and contingencies when determining the "bankability" of projects.

Robust planning and crisis management

As stressed in the Guiding Principles, the significance of proper planning and preparation can never be overemphasised in addressing the potential human rights risks for an investor. In the initial stages of an enterprise and thereafter, on an ongoing basis, the relevant actors must consider:

(i) identifying, assessing and managing existing and potential risks pro-actively;

(ii) ensuring compliance with local and regional law requirements, and respecting internationally recognised human rights principles and guidelines (through compliance with standards such as the Guiding Principles, which is proven to be less onerous than non-compliance);

(iii) having appropriate systems

Left: A Nigerian army armoured car gives cover to Chibok women in northeastern Nigeria.

in place, including grievance mechanisms for victims to engage with businesses in relation to any human rights infringement; and

(iv) maintaining a good relationship with local and other stakeholders.

Poor planning at this stage will inevitably lead to lower-quality decision-making, which may result in irreparable damage to the enterprise. Telltale symptoms of poor planning include: (i) decisional paralysis, (ii) conflicted working instead of synergetic teamwork, and (iii) general chaos and confusion in organisational processes.

Success in Africa requires not just steps to prevent risks and crises, but also a well-organised crisis management process and team to take charge when a crisis arises. Crisis management is particularly critical in the field of human rights as a number of crises arise due to human rights-related issues. In the past, businesses have had to deal with crises caused by a variety of reasons, such as in the context of land-related rights and improper tax assessments.

Crisis management focuses on coordinating an appropriate response to identified or unexpected risks and events so as to ultimately prevent escalation and the loss of reputation, and to minimise the damage suffered directly or indirectly by stakeholders and third parties. In contrast to risk management, which involves assessing potential threats and finding the best ways to avoid those threats, crisis management involves dealing with unforeseen events as they occur. Key features of a good crisis management proposal include:

Flexibility: Incidents requiring a response may be of different types, for instance, natural (Ebola epidemic) or man-made (Boko Haram attacks). It is therefore important for crisis management to be flexible in order to address a range of different types of crises.

Above: Controlling the Ebola epidemic with advanced temperature-measuring technology.

No decisional paralysis: In the initial stages of a crisis outbreak, it is generally effectively managed at the lowest possible level of competence. Local and junior managers should be empowered and competent enough to address issues to avoid stasis or decisional paralysis. Senior management should be called in to make decisions in a timely manner and to the extent required. This also implies that members must have clearly defined roles and responsibilities in a crisis management team and the lines of reporting through management/leadership hierarchies should be clear and transparent.

Clear prioritisation: A good crisis management proposal will require the proper prioritisation of identified legal issues and the interests to be protected so that the important ones are considered first. For instance, protecting the corporate reputation of a business and maintaining a good working relationship with national and local governments, and local communities on an ongoing basis might require the business to accept a sub-optimal legal outcome in deference to these higher priority interests.

Appropriate communication: The amount of information provided to members of the crisis management team must be commensurate with their roles and responsibilities. Similarly, information provided to external parties must be strictly managed.

Proper resourcing: Team members must be chosen based on their skills, with people capable of making correct decisions under pressure being definite assets to any crisis management team. Any shortcomings within a crisis management team should be immediately compensated by taking on external help, such as legal counsel or accountants, in a timely manner.

The investment potential in Africa remains huge and investors must adapt their mindset to prudently anticipate and plan for risks and crises in order to invest successfully in Africa. Investors must have in place robust preparation, bespoke planning and adequate crisis management plans, particularly in relation to internationally recognised human rights. By doing so, the detrimental effects of any potential crisis can be mitigated and sustainable success achieved in the long term.

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