

Righting Finances

As part of the preparatory work for agreement on a Post-2015 Development Agenda, the outcome document of the United Nations Conference on Sustainable Development (known as “Rio+20”) called for the establishment of an intergovernmental committee of experts on financing for sustainable development tasked with preparing a report “proposing options on an effective sustainable development financing strategy to facilitate the mobilization of resources and their effective use in achieving sustainable development objectives.”

In this regard the Righting Finance Initiative issued a statement on “Co-Creating New Partnerships for Financing Sustainable Development,” which called for the post-2015 agenda, including means of financing it, to be aligned with the international human rights framework and sustainable development commitments.

It stressed that in view of the systemic market failures of the past decade, the need for an effective and capable government as a protector and guarantor of human rights in development rather than a mere enabler of private sector development is greater than ever. Moreover, there is enough experience documented in the literature on the negative impact of privatization on growing inequality and gaps regarding access to basic services, such as education, health, water, and energy. States in the end bear primary responsibility for international cooperation to achieve human rights, so the nature of the Global Partnership for Development as one driven by States should be reaffirmed.

The initiative states that while a number of partnerships can play a role in the post-2015 development agenda, those partnerships do not operate in a vacuum. As they are voluntary, opt-in and opt-out arrangements, they cannot by any means crowd-out States’ existing obligations of cooperation to achieve human rights. So, the international human rights framework takes primacy and precedence above any agreements with the private sector.

Ensuring such primacy and precedence will entail a number of consequences for the approach to partnerships, as follows:

- Governments’ commitments on tackling global asymmetries in areas such as trade, debt, finance, ODA and taxation that represent the international enabling conditions and mobilize resources to achieve sustainable development and human rights should remain at the core of the agenda. Governments also should acknowledge and transform the unequal power relations between different multilateral organizations of global governance, between transnational corporations and States, and between the more and the less developed States.
- States are required to use the maximum available resources to meet their human rights obligations. These include (1) government spending and revenue, (2) development assistance; (3) debt and deficit financing; and (4) monetary policy and financial regulation. A more realistic and long-term focus on strengthening public resourcing for development will lead to financing for development that is not only more reliable and sustainable, but also more democratic and open to scrutiny by the

very people we claim to be “developing.” Consistent with the commitments made at the Rio + 20 Conference, new sources of financing such as public-private partnerships and South-South cooperation must be recognized as complementary and not a substitute for traditional means of implementation.

- Private sector actors are essentially mandated to realize maximum profits for their shareholders, an aim that more often than not comes at odds with the public interest of home and/or host States. States, individually and in concert with one another, are duty-bound to ensuring the progressive realization of human rights for all, so guaranteeing equity and non-discrimination based on income, gender, race-ethnicity, location, sexual orientation, and age, among others. This means that only through strong regulatory and accountability frameworks can we hope that the private sector will be a useful contributor to the realization of sustainable development goals. It also means that governments, operating jointly or individually, can at any time declare there are areas that will remain off-limits for any form of partnership with the private sector.

Key questions on “outsourcing development”

- As private finance follows market trends leading to a concentration of resources, what regulatory framework or policies could ensure that it delivers development objectives?
- Analysis by the Overseas Development Institute (ODI) has shown that “leverage ratios do not have a one-to-one relationship with additionality.” How can we be sure that these mechanisms really leverage additional resources?
- With private investment increasingly taking the decisions that determine development funding, how can the UN ensure transparency and accountability and regular reporting?
- Should mechanisms be promoted when they may increase developing countries’ debt burdens to unsustainable levels? ■

- In those areas where the private sector is potentially deemed a suitable partner, given the history of human rights abuses implicating private companies, especially transnational corporations, the following guidelines should be embraced:
- The partners in these partnerships should act in accordance of the human rights framework, which imposes obligations and correlative duties. Consistent with the call by the High Commissioner for Human Rights, governments are required to prevent and protect people against human rights abuses perpetrated by private actors, and people affected by breaches of those obligations have a right to effective remedy. It is also important to use a dose of healthy scepticism when projecting the extent to which, in practice, they will address human rights concerns raised by private sector behaviour. Study after study show that the private sector uses its transnational presence as a way to arbitrage, when not entirely avoid, the domestic laws of places in which it operates, and ultimately escape any accountability for its actions. Moreover, the economic power of these actors often means they have the level of access and capacity to lobby decision-makers to shape to their advantage legislative, regulatory and judicial environments. This way they can frequently rig access to remedies for victims, or pre-empt it altogether (examples are regulatory stability agreements and arbitration clauses that subject human rights controversies to investment tribunals).
- Human rights principles call for full participation by, and transparency towards, those affected in the negotiation, implementation and monitoring of partnerships. Participation cannot be fully realized without civil society groups that independently evaluate whether objectives set by governments are met and shape public opinion in holding government agencies to account for failing to deliver. Partnerships should accord an institutionalized role for civil society, particularly with regard to priority-setting and accountability. Partnerships can only be truly effective if founded on full transparency and meaningful accountability of all partners involved. As a summary of post-2015 consultations observed, “the consultations consistently present human rights as a non-negotiable element to deliver accountability to the new commitments.” Over and above public-private ventures, ensuring accountability of these key development actors to human rights will be the essential ingredient to making the new generation of goals transformative. Accountability cannot take place in the absence of a legal framework guaranteeing that civil society groups will not risk their safety and physical integrity for seeking to expose business’ misconduct – whether such misconduct was with or without State complicity.
- There need to be clear criteria, in advance, to determine whether a specific private sector actor is fit for a partnership in pursuit of the post-2015 goals. This is not only in the interest of human rights, but in the interest of the UN, which might never recover from the reputational shock if chief private financiers it engages with are also chief violators of its most cherished principles. Such criteria should examine:
 - (a) whether the private actor has a history or current status of serious allegations of abusing human rights or the environment, including in their cross-border activities;
 - (b) whether the private actor has a proven track record (or the potential) to deliver on sustainable development, as articulated by the UN outcome by 2015;
 - (c) whether the private actor has previous involvement in acts of corruption with government officials;
 - (d) whether the private actor is fully transparent in its financial reporting and fully respecting existing tax responsibilities in all countries it operates, and not undermining sustainable development through tax avoidance;
 - (e) any conflicts of interest in order to eliminate potential private donors whose activities are antithetical or contradictory to the UN Charter, the Universal Declaration on Human Rights, and the SDG framework.
- Governments should commit to take immediate measures to ensure that businesses respect human rights and the environment, including by mandating independent, rigorous and periodic human rights and environmental impact assessments of large businesses.
- Partnerships must not limit the capacity of governments to mobilize their maximum available resources and avoid retrogression in the enjoyment of rights, as defined by existing human rights legal commitments. Where fiscal support is provided to the private sector, such resources are being deviated from their potential use to support the fulfillment of economic and social rights. Fiscal resources should only be applied to support the private sector in instances where it can be demonstrated concretely that a) such allocation will advance certain rights, b) this is a more effective use of such resources than through public investment, c) mechanisms exist for the transparent and public participation of those affected by the use of those resources and d) performance in meeting the promised targets will be evaluated and monitored periodically, with lack of compliance credibly giving rise to a withdrawal of the fiscal support. ■