



Rights before profit: Recommendations on corporate accountability from the co-convenors of the Post-2015 Human Rights Caucus

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The private sector can play an important role in contributing new resources to achieving sustainable development and the post-2015 agenda. However, without clear lines of accountability there is an imminent risk that the development agenda over the next 15 years will be disproportionately impacted by unconstrained private sector financing, activities and priorities which undermine human rights.

Civil society organizations and coalitions participating in the post-2015 and Financing for Development (FFD) processes have repeatedly expressed concern about unregulated and unaccountable private sector involvement in financing and implementing sustainable development. Moreover, several Member States have also called for safeguards, and asked for concrete proposals for how to integrate corporate accountability into the post-2015 and FFD follow-up and review mechanisms. In his Synthesis Report, the Secretary-General also emphasized the need for regulation, safeguards and mandatory reporting for private investments in sustainable development.

States have the legal duty to protect all those within their territory from violations of their human rights by third parties, which includes business entities. This duty to protect also extends extra-territorially. States have an obligation under international law to protect human rights beyond their borders, which includes guaranteeing that business entities they are in a position to regulate – for example, businesses headquartered in their territory – respect human rights throughout their global operations abroad. States also are the ultimate human rights duty bearer; their human rights obligations cannot be ‘outsourced’ to the private sector, for example by privatization of public services that are essential for human rights enjoyment. The State is always responsible for ensuring that those services are delivered in a manner which is compatible with the State’s human rights obligations and related principles.¹

Seven calls for ensuring private sector accountability in the context of FFD and the post-2015 agenda follow. These include recommendations that should be integrated into the post-2015 and FFD outcome documents, and that Member States should act on at national level.²

¹ Any services which are essential for rights realization (such as water, education and health services, must be 1) accessible, available, adaptable and of sufficient quality; 2) must be provided in a non-discriminatory way, prioritizing improving the rights enjoyment of the poorest and most disadvantaged people that may be excluded by privatized entities; 3) respect minimum essential levels of economic, social and cultural rights

² The recommendations are focused on actions that States themselves should undertake, including through inter-governmental bodies such as the UN. (i.e. not focused on policies and self-regulation of corporations themselves)

1) Integrate the Guiding Principles on Business and Human Rights

- The outcome documents of the FFD and post-2015 processes should explicitly reference the UN Guiding Principles on Business and Human Rights as a key normative framework with which to structure private sector involvement in sustainable development.³
- Governments should ensure integration and coherence between their national implementation plans for the SDGs and their National Action Plans on Business and Human Rights, which all states should design and implement without delay.

2) Set robust standards and safeguards for partnerships

- Specific *ex ante* criteria, based on human rights standards, should be established to determine whether a specific private sector actor is fit for a partnership in pursuit of the post-2015 goals. These would include whether the private actor has been involved or is currently involved in human rights abuses and/or breaches of environmental standards, in any country and including in the conduct of their subsidiaries and throughout their operations; whether the private sector actor has been involved in acts of corruption with government/local government officials; whether the private actor has adequate due diligence policies and processes in place to ensure it does not cause or contribute to human rights abuses, including in its cross-border activities, and whether it is fully transparent in its financial reporting; and whether it fully respects existing tax obligations in all countries within which it operates.
- Private sector financing and public-private partnerships for sustainable development should likewise be accompanied by mandatory human rights due diligence standards and processes, transparency and accountability safeguards in compliance with international human rights standards.⁴
- Private sector involvement in the SDGs should be subject to strict and enforceable standards, which should build upon the ILO supervisory mechanism, international human rights standards including but not limited to the UN Guiding Principles on Business and Human Rights, and other relevant international standards.⁵
- International financial institutions and other actors involved in financing the SDGs must not enforce loan or aid conditionalities that force private sector participation onto States.
- Given the human rights concerns arising from privatization of essential services crucial to human rights enjoyment (including water and sanitation, education and health care), the post-2015 and FFD processes should not be used as a forum to uncritically promote privatization in these sectors.

3) Strengthen regulatory frameworks and safeguards

- Recognizing that International financial institutions, both from the North and those from the South will be engaging in the delivery of the SDGs , they must properly integrate international

³ See also the recommendations in the 2015 report of the UN Working Group on the issue of transnational corporations and other business enterprises, A/HRC/29/28.

⁴ Righting Finance letter to UN Secretary-General, November 2014
http://cesr.org/downloads/RF_letter_SG_nov17.pdf

human rights standards into their safeguard policies and procedures, carry out human rights due diligence in relation to their activities, and be held accountable for violations of human rights resulting from any harmful policies and practices.

- The SDG and FFD agreements and implementation should promote effective legislative and regulatory measures that require companies to act in line with international human rights law and standards throughout their global operations,⁶ for example by making parent/controlling companies legally responsible for human rights abuses arising from the actions of their subsidiaries abroad. When companies do not meet their responsibility to respect, States must ensure accountability and the right to an effective remedy.⁷
- In line with their duty to protect human rights extraterritorially in pursuit of common sustainable development commitments, governments should seize on the post-2015 moment by ensuring adequate regulation of international financial markets (as enshrined in SDG 10) to prevent and mitigate future financial crises and ensure public financial resources are protected when they do occur.⁸
- States should ensure that international investment agreements (including provisions related to Investor-State Dispute Settlement decisions) do not prioritize protection of investors over State capacity to regulate in the interest of sustainable development and human rights.

4) Commit to impact assessments

- States should commit to undertake ex ante and periodic impact assessments to analyze the impact of their tax, trade, debt, financial regulation and investment policies on sustainable development and human rights at home and abroad.⁹ Such assessments would be firmly in line with the need for States to ensure and promote policy coherence, reflected in SDG17 and in the FFD zero draft.

5) Make reporting mandatory

- Governments should commit to mandating clear and specific integrated human rights and sustainable development reporting guidelines for companies they are in a position to regulate. This would include due diligence requirements on the human rights impacts of their tax and financial arrangements, as well as their track record in human rights and environmental impacts to date.¹⁰
- The post-2015 agenda should be a catalyst for increasing access to information (as reflected in Goal 16), by introducing mandatory disclosure requirements on companies - and on the parent

⁶ Post-2015 Human Rights Caucus Litmus Test. <http://cesr.org/article.php?id=1610>

⁷ Amnesty International report 'Injustice Incorporated: corporate abuses and the human right to remedy' <https://www.amnesty.org/en/documents/POL30/001/2014/en/>

⁸ Center for Economic and Social Rights & Third World Network (2015), *Universal Rights, Differentiated Responsibilities: Safeguarding human rights beyond borders to achieve the Sustainable Development Goals* http://cesr.org/downloads/CESR_TWN_ETOs_briefing.pdf

⁹ For example, to address the ways in which their laws and policies may encourage or enable corporations to avoid tax in the developing countries in which they operate (for example by providing secrecy jurisdictions or encouraging race-to-the-bottom international tax competition re. corporate income tax rates). Such policies starve the revenue base of many developing countries, who lose far more in IFFs than they gain in ODA. See <http://cesr.org/article.php?id=1718>

¹⁰ CESR and TWN, *Universal Rights, Differentiated Responsibilities*

company with respect to their global operations.¹¹ Purely voluntary reporting mechanisms are not enough.

6) Provide access to remedy

- States must ensure the availability of effective remedies for corporate abuses of human rights that may result from private sector involvement in implementation of the SDGs. Home states must provide a remedy for abuses committed by their own companies abroad.

7) Ensure sufficient scope and capacity of Post-2015 follow-up and review mechanisms

- The post-2015 accountability mechanisms must be robust and comprehensive enough to cover private sector actors, partnerships and IFIs as well as States, premised on full transparency, accountability for human rights impacts and the right to information, and encompassing States' extra-territorial obligations.
- Therefore, the mechanisms and processes tasked with monitoring and reviewing the implementation of the post-2015 and Financing for Development commitments should be given a clear mandate (and adequate capacity, expertise and resources) to examine the trans-boundary consequences for sustainable development and human rights of states' policies and practices, in particular in the areas of corporate regulation, tax, trade, aid, investment, finance and the environment.
- The High-level Political Forum on Sustainable Development (HLPF) could undertake global-level monitoring of partnerships made with the private sector in the name of sustainable development. In any reporting by Member States on their implementation of the SDGs – and reviews undertaken of their progress at the regional or global level – partnerships with the private sector to achieve the SDGs should be included within the scope of review and reporting, and subject to careful examination of impacts.
- The HLPF could ask for annual thematic reports on means of implementation which involve and engage the private sector (and which can also be systemic enablers of - or obstacles to - sustainable development) such as tax, trade, investment, and finance.
- For the post-2015 monitoring and accountability architecture at national and regional levels, the impacts of transnational actors should also be a core component of the reviews; for example national review bodies could examine the contribution of transnational corporations to sustainable development at country level.¹²

¹¹ Amnesty International *Injustice Incorporated: Advancing the Right to Remedy for Corporate Abuses of Human Rights*, 2014, (pages 168 - 170)

¹² Beyond 2015 position paper on accountability, monitoring and review framework for the post-2015 agenda. <http://beyond2015.org/sites/default/files/Accountability%20Position%20Paper%20-%20Final.pdf>