DECEMBER 2014

MULTI-STAKEHOLDER PARTNERSHIPS, CORPORATE ACCOUNTABILITY AND PUBLIC-PRIVATE PARTNERSHIPS IN THE CONTEXT OF THE 3RD INTERNATIONAL FINANCING FOR DEVELOPMENT CONFERENCE

In the context of the post-2015 development agenda, which includes the Financing for Development conference, the United Nations is witnessing the rise of a powerful **multi-stakeholder partnerships paradigm.** This particular governance model, which embraces a voluntary (rather than legally binding) and responsibility-based (rather than commitment-based) "partnership" approach with the private sector, has been influencing the content and debates of the Rio+20 sustainable development conference, the Open Working Group on the Sustainable Development Goals and currently, the Financing for Development process.

This trend, which is in large part upheld by large Transnational Corporations and the governments invested in it, can be witnessed across almost every international institution in global governance, including the World Trade Organization, the World Bank and other multilateral and national development banks, as well as forums like the G20 and the World Economic Forum.

In the Sustainable Development Goals final text, partnerships is referred to in Goal 17, within targets 17.1 and 17.2 which are titled "**multi-stakeholder partnerships**." Both targets allude to only a bare bones formulation of what these partnerships will entail, such as "mobilize and share knowledge, expertise, technologies and financial resources to support the achievement of sustainable development goals in all countries, particularly developing countries" **and** "encourage and promote effective public, public-private, and civil society partnerships, building on the experience and resourcing strategies of partnerships." There is virtually nothing with regard to accountability, oversight and governance over the said partnerships.

The UN must ensure that multi-stakeholder partnerships in the post-2015 context will be held accountable to delivering development results that are equitable and rights-based, aligned to national and local needs, and uphold an enabling international environment for development, as well as sustainable development, through an enhanced and strengthened global partnership for development.

In this spirit, multi-stakeholder partnerships should not replace the singular partnership which is articulated in both the Monterrey Consensus outcome document as well as in the Millennium Development Goals. Indeed, the **global partnership for development** incorporates key elements under an international development cooperation framework that recognizes the critical importance of North-South cooperation and the global drivers

and determinants that shape national policy space for development.

Some key elements of a global partnership for development are:

1. a development-oriented trade regime;

2. facilitating external debt sustainability;

3. regulating financial markets, including food and commodity price markets;

4. affordable access to technology and medicines for developing countries;

5. reforming the international monetary system; and,

6. democratizing global economic governance, particularly in the international financial institutions.

The partnerships discourse in the Financing for Development conference must make due reference to the global partnership for development with a recognition that such a partnership is one that is principally between governments of developed and developing countries, with the developed countries taking the lead in providing resources and the means of implementation. It is imperative to re-capture the term with its original meaning and not allow it to be isolated only as partnerships with the private sector and other external stakeholders.

Human Rights Council resolution for an international legally binding instrument on Transnational Corporations

A historic and significant resolution to start a process for an international legally instrument on transnational corporations (TNCs) was adopted by the Human Rights Council in Geneva on 26 June 2014. A result of mass mobilisations by civil society coalitions, the resolution A/HRC/26/L.22, "**Elaboration of an international legally binding instrument on Transnational Corporations and other Business Enterprises with respect to Human Rights**," is a revival of previous efforts starting in the 1970s with discussions about a Code of Conduct for Transnational Corporations, and continuing into the late 1990s with the attempt to adopt the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.

All these efforts met with vigorous opposition from TNCs and their business associations, and thus all of the initiatives to hold corporations legally accountable ultimately failed. At the same time, many corporate actors have been successful in implementing public relations strategies that have helped to present business enterprises as good corporate citizens seeking dialogue with governments, the UN and decent concerned 'stakeholders', and able to implement environment, social and human rights standards through voluntary Corporate Social Responsibility (CSR) initiatives.

The UN Global Compact and the UN Guiding Principles on Business and Human Rights are prime examples of an allegedly pragmatic approach based on consensus, dialogue and partnership with the corporate sector.

The resolution adopted by the HRC in June was co-sponsored by Ecuador and South Africa, and also supported by Bolivia, Cuba and Venezuela. In the vote on the resolution, 20 Members of the HRC supported the resolution, while 13 Members abstained, and 14 Members voted against it. The delegation of **Ecuador** noted its conviction that the United Nations should continue to work on the issue of establishing binding international standards on the activities of TNCs. Ecuador's statement underlined that the Guiding Principles are "not binding standards", "are just a guide", and thus "are not mandatory".

The delegation of **South Africa** noted that the government of South Africa holds a strong view that these entities, which are the primary drivers of globalization, cannot operate in a void. TNCs and other business enterprises often operate in an environment where appropriate national legislation to effectively regulate their operations, or mitigate the propensity for their violation of human rights, is either absent or very weak.

Experience shows that in countries of the North, where there are strong binding laws and regulations promulgated by national parliaments, the violations of human rights by corporations are significantly minimized. A universal regulatory framework in the form of a binding instrument to provide legal protections, effective remedies, as well as a range of other measures in quest for protections of victims, is desirable and imperative.

The future success and operationalisation of this treaty should be supported by the Financing for Development process here in New York.

Key concerns with the partnerships governance model

- The multi-stakeholder partnership model relies on the willingness of large corporations to report on their impact and voluntary commitments. This approach evades, or even subverts, the possibility of **effective regulation of corporations by States**, and instead reduces governments, especially in developing countries, to creators of an "enabling environment" for business (for example, through incentives and subsidies);

- An **imbalance** is also established where States are the sole duty bearers to guarantee human rights in a vacuum where corporations have only a vague and voluntary responsibility. This allows corporations to avoid sanctions for corporate abuses, which should be addressed by establishing a binding system of regulations, norms and a strong system of accountability for partnerships with private actors;

- The promotion of voluntary corporate social responsibility initiatives ignores **structural drivers of inequality** and the need for redistributive policies in order to facilitate a genuine sustainable development trajectory;

- There is a lack of clarity regarding the label "**stakeholders**" – which includes

corporations and many "Non-Governmental Organisations" that represent corporate interests. The very term "stakeholders" obscures the sharp power imbalances between various sectors and groups and the vast differences between their agendas. It also promotes a depoliticized model of governance that negates the different interests and power structures inherent in the global economic system;

- Armed by the **investor-state dispute settlement clause** in bilateral investment treaties as well as bilateral and plurilateral trade agreements, many multinational corporations have sued governments in closed-door arbitration tribunals for introducing or amending regulations and policies that reduce their profits or potential profits, even if state regulations are intended to secure economic and social rights and prevent environmental harm. Multi-stakeholder partnerships in the Post-2015 development agenda needs to urgently address the threats posed by trade agreements and bilateral investment treaties to government regulations related to national development priorities, such as health and environment;

- The role of transnational corporations in the post-2015 agenda also needs to confront the controversial and much publicized issue of **tax evasion and avoidance**, including the use of offshore tax havens, transfer mispricing and illicit financial flows from the South to the North.

Some recommendations for a way forward

- **An intergovernmental governance framework for multi-stakeholder partnerships,** rooted in the international human rights framework and existing obligations in all three dimensions of sustainable development (economic, social, environment).

The central objective of the framework would be to ensure **accountability and ex-ante assessment** of partnerships. For this, there would need to be clear criterion, applied ex ante, to determine whether a specific private sector actor is fit for a partnership in pursuit of the post-2015 goals. United Nations member states would be at the helm of formulating the framework, including the criterion, the oversight and monitoring process based on due diligence reporting and independent third-party evaluations.

As outlined in the statement of the Righting Finance Initiative, such criteria should examine, at the least:

1. Whether the private actor has an evidence-based history or current status of abusing human rights or the environment, including in their cross-border activities;

2. 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;

3. Whether the private actor has previous involvement in acts of corruption with government officials;

4. Whether the private actor is fully transparent in its financial reporting and ensures that it is respecting existing tax responsibilities in all countries it operates, and not undermining sustainable development through tax avoidance; and,

5. Implement a conflict of interest and public disclosure policy system-wide within the UN. This would entail systematic impact assessments and independent evaluations of the UN's relationships with businesses.

One key objective would be 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.

Such a framework could be situated within the High Level Political Forum (HLPF), which would re-structure the HLPF into a meaningful locus for accountability and governance in the post-2015 development agenda over the next 15 years.

The second key recommendation concerns the role of investors and corporations within the context of the investor-state dispute settlement mechanism within trade and investment treaties.

- The incorporation of partnerships in the third international Financing for Development conference must address the legal power of private investors and corporations in **investor-state dispute settlement mechanisms** under trade and investment treaties.

While private investors and corporations have legally binding power over states, states currently only have recourse to voluntary and responsibility-based guidelines, such as the UN Business-Human Rights Guidelines, where all legally binding and accountable measures of governance over the private sector are precluded.

While several states have already taken measures to review their bilateral investment treaties in order to restore a balance in the role of foreign investors, more efforts are required. Without a development-oriented regulatory framework and sustainable development national policies, the role of big corporations, whether in or out of partnerships, will not be a positive one.

Concerns on Public-Private Partnerships

Public-private partnerships (PPPs) must not be endorsed at face value. Key concerns and risks must first be addressed through open and participatory intergovernmental discussion, not behind closed doors. Poorly designed PPPs can place disproportionate risks on the public partner and are less well suited to contribute to basic development needs that do not offer an economic return.

Private sector financing is profit-oriented and not required to invest in social needs and global public goods. The public sector, whose crucial roles are to finance social needs towards poverty eradication and finance global public goods, thus remains the lynchpin of a global strategy for sustainable development financing. Private finance is undeniably a part of the strategy, but should not be the core foundation.

Two central concerns of infrastructure-related PPPs are:

- **Costs and risks,** particularly in the form of contingent explicit and implicit liabilities; and,
- **Socialization** of costs while privatizing the benefits—thus exacerbating inequality in income and access to the very infrastructure services.

The developmental role of the state is critical. This means that the state needs to be able to play a pro-active developmental role in the governance of the economy, the regulation of the market and in ensuring that economic growth creates decent work and translates into equality, opportunity and well-being through ensuring the economic and social rights of people, including women's rights.

10 Recommendations on PPPs *(particularly in infrastructure project financing)*:

(1) **Fiscal and public debt risks** of PPPs are properly accounted for and placed under public scrutiny through mechanisms for participation and accountability;

(2) **Institutional and capacity pre-requirements** for the success and effective functioning of PPPs should be in place before they are undertaken. Building competent and effective institutions for governance takes time and skills- training, which are often incompatible with the need to deliver quick public-private partnership deals;

(3) Equity concerns should be addressed in distribution, access and affordability of infrastructure and services. Providing access alone has proven to be insufficient; it is **equitable and affordable access** that is an essential dimension to fight poverty;

(4) **Regulation and enforcement** in infrastructure projects is necessary, particularly of laws, policies and safeguards to ensure the economic and social rights of people, including women's rights, as well as environmental protection and sustainability.

Regulations include rules against tax evasion and tax loopholes. For example, all firms involved should be required to disclose annual information related to taxes paid, profits made, sales, and information regarding beneficial ownership, including trusts, foundations and bank accounts.

(5) **Align private sector financing to developing countries investment and**

development priorities. Developing country ownership should be respected by aligning investments to national development strategies, including national industrial and agricultural policies and strategic priorities for scaling up the domestic private sector. A coherent framework that sets clear guidelines for alignment and ownership, and regular reporting on results have been recommended by many actors as a first step forward;

(6) **Make development outcomes the overriding criteria for project selection and evaluation.** (One possible requirement could be that development outcomes are disclosed at the project, not the aggregate, level, which could improve accountability of public-private projects to affected communities);

(7) **Prioritise domestic MSMEs and companies over foreign companies.** (This is essential for private investments to actually support the development of competitive and locally-owned private industry);

(8) **Compliance with international human, social and environmental standards.** (Adherence to rights and standards must be ensured through regulatory systems and governance institutions, through third-party and independent monitoring, among other mechanisms);

(9) **Set higher standards for transparency of financial intermediary investments and review their use of investments.** (Besides improved reporting by financial intermediaries to both governments and the public, criterion can be developed whereby public agencies only channel financing to intermediary institutions if the investment flows can be tracked and investigated); and,

(10) **A broad range of financing forms** from the public to the private exists, including a diversity of forms of association and partnership that are available for building and financing infrastructure. These various financing forms should be openly discussed with the participation of affected communities and groups, where their distributional consequences are debated in transparent and open ways.

--