

## **HOLDING THE PRIVATE SECTOR ACCOUNTABLE FOR SUSTAINABLE DEVELOPMENT AND HUMAN RIGHTS: A CALL FOR GOVERNMENT ACTION**

Report on a “side event” organized by the CSO FfD Group<sup>1</sup> and the UN FfD Office during the Inaugural Meeting of the FfD Follow-up Forum  
United Nations, New York, 19 April 2016

When leaders of UN Member States and other senior officials adopted the Addis Ababa Action Agenda (AAAA) at the International Conference on Financing for Development in July 2015, they promised to “work towards harmonizing the various initiatives on sustainable business and financing, identifying gaps, including in relation to gender equality, and strengthening the mechanisms and incentives for compliance” (para. 37). The same paragraph identified several such initiatives, including the Guiding Principles on Business and Human Rights, ILO labour standards, the Convention on the Rights of the Child, the principles advocated by the Global Compact, and “key multilateral environmental agreements.” So far, little work has been initiated in regard to harmonization under the FfD process of intergovernmental meetings. A side event on holding the private sector accountable sought to underline the need to begin that work.

Meanwhile, policymaking on separate initiatives moves forward on separate tracks. For example, the European Commission is working on non-binding guidance on disclosure of non-financial and diversity information by large firms.<sup>2</sup> In addition, at the request of the Group of 20 (G20), the Financial Stability Board convoked an industry-led Task Force on Climate-Related Financial Disclosures in December 2015, which issued its Phase I Report for consultation on 1 April 2016.<sup>3</sup> Also, the UN Economic Commission for Europe continues to develop its recommended international standards and best practices on public-private partnerships (PPPs); its PPP Advisory Board plans meetings with senior policymakers in Georgia, Moldova and Brazil and to finalize certain standards by 2017.<sup>4</sup>

It would thus be timely and of global policy significance if Member States agreed soon to initiate at the FfD Follow-up Forum the work they promised on harmonizing and strengthening non-financial corporate reporting, which should apply to private business and to PPPs as outlined in paragraph 48 of the AAAA. While on-line public consultations and similar exercises on individual initiatives are valuable steps in drafting official guidelines and regulations, consideration by an official forum that has a broader scope, universal membership of UN Member States, and an established mechanism for participation by civil society and business is also warranted.

The 2016 FfD Forum did not yet act on the proposal to start deliberations on this matter or make decisions on any specific future work programme. Nevertheless, the value of such an

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<sup>1</sup> Including the Women’s Working Group on FfD; the following organizations facilitated preparations of the side event: Bread for the World, Christian Aid, EURODAD, Society for International Development, and Third World Network.

<sup>2</sup> The European Commission launched a public consultation in January 2016 on drafting its non-binding guidance on a methodology for implementing Directive 2014/95/14/EU of the European Parliament and the Council on disclosure of non-financial and diversity information by large firms (EU Member States should transpose rules on non-financial reporting into national legislation by December 2016).

<sup>3</sup> The Phase I Report was opened for public consultation until 1 May; in support of this, New Rules for Global Finance hosted a roundtable of leading organizations in finance and climate change to discuss the report on 15 April on the sidelines of the Spring Meetings of the International Monetary Fund and the World Bank in Washington DC.

<sup>4</sup> The Committee intends to finalize international PPP standards in 2016-2017 on health policy, water and sanitation, renewable energy and transport, including on roads, rail, ports and airports (ECE/CECI/2016/5).

exercise was underlined by the discussion at the side event, as well as by a civil society intervention at the official meeting.<sup>5</sup> The side event, in particular, sought to take stock of the ongoing initiatives to strengthen the social, environmental and governance (ESG) dimensions of business activity and the degree to which additional steps might be warranted, including how they might be harmonized. The aim of the side event was thus to ask not only what the standards should be for private sector behaviour, but also how they might be monitored by the public and by investors that wish to take sustainability criteria into account in their investment decisions.

## Agenda

The side event was moderated by Ms. Eva-Maria Hanfstaengl (Germany), Policy Officer on Development Finance, Bread for the World, and featured presentations by the following contributors:

Mr. Steve Waygood (United Kingdom), Chief Responsible Investment Officer, AVIVA Investors;

Dr. Daniel Platz (USA), Economic Affairs Officer, Financing for Development Office, Department of Economic and Social Affairs, UN;

Ms. Ranja Sengupta (India), Senior Researcher, Third World Network;

Mr. Raymond Landveld (Suriname), Counsellor, Permanent Mission of Suriname to the United Nations; and

Mr. Stefano Prato (Italy/ Kenya), Managing Director and Editor, *Development*, published by the Society for International Development.

## Presentations

**Steve Waygood** stressed the need for civil society, especially for advocates for sustainable development, to understand the “supply chain of capital”, so as to appreciate the potential pressure points for advocacy on socially and environmentally responsible business behaviour. In this regard, he described the financial sector intermediaries that link savers (individuals, pension funds, etc) who provide the funds to users of finance (mainly corporations).

Some investors ask their fund managers to monitor the environmental, social and governance standards used by the firms they invest in. Various independent research firms provide this information to the fund managers. However, the firms that investigate companies and provide information about them are highly competitive and the information is private. Needless to say, it is also costly.

Mr. Waygood argued that we need that research to be freely available and it should measure company performance against agreed benchmarks, appropriately selected production sector. Indeed, he would apply comparable benchmarks and reporting to the components of the financial sector itself, not just to the end-user corporations. Such public knowledge could affect a firm’s stock market valuation and its retail sales and thus just publishing this information could

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<sup>5</sup> See Matt Simonds, International Trade Union Confederation, Statement in Roundtable C on Behalf of the CSO Group, including the Women’s Working Group on FfD (<https://csoforffd.org/2016/04/20/statement-in-round-table-b-matt-simonds-tuac-on-behalf-of-cso-group-including-wwg-on-ffd/>).

provide management with an incentive to improve corporate behaviour. If companies were regularly and publicly assessed, it could also help raise the environmental and social consciousness of managers, who are not routinely trained to think about more than profits.

**Daniel Platz** presented the conclusions of his paper he recently co-authored, which has been receiving attention in academic development circles.<sup>6</sup> He noted that there had been a resurgence of interest lately in public-private partnerships (PPPs) in light of the enormous financing needs of the 2030 Agenda. However, despite a recent rise in the private sector's participation in infrastructure finance in developing countries, especially in electricity and telecommunications, private finance continues to provide just a small portion of aggregate infrastructure investment in the developing world. Moreover, evidence suggested that PPPs often tended to be more expensive than the alternative of public procurement while in a number of instances they had failed to deliver the envisaged gains in quality of service provision, including its efficiency, coverage and development impact. If PPPs were to be scaled up, there had to be sound understanding as to their ultimate purpose, namely to add value for money, i.e. to improve the coverage, access, quality and efficiency of a given service to the citizen. A commonly accepted definition of PPPs, something that is still sorely lacking, should be firmly anchored in such an understanding.

He noted that the Addis Agenda called on countries to develop and adopt guidelines on PPPs. Dr. Platz emphasized that guidelines had already been formulated by the Organization for Economic Cooperation and Development and the World Bank Group and that they had been endorsed by the G20.. However, he and his co-authors see shortcomings in them in not ruling out certain fairly common practices. For example, the private partners in PPPs are often able to transfer "exogenous risk" to the public partner, as by making it responsible for covering losses owing to labour unrest. Also, the public partner needs to compensate the private partner in the event of regulatory changes made in the interest of citizens. Furthermore, if the private partner defaults, the public partner has had to cover 80-85% of its losses. In sum, more work was needed on specifying a better set of guidelines and the FfD Forum could provide an opportunity to undertake that work.

**Ranja Sengupta** focused on the impact on developing countries of trade and investment agreements that their governments negotiate primarily with developed countries. Those agreements establish frameworks for foreign private investor expectations of treatment by the government of the country in which they are operating. In her view, bilateral and regional "free" trade agreements (FTAs) between developed and developing countries have been biased in favour of the interests of investors, reflecting their ability to influence the government officials negotiating the agreements. Such negotiations are typically carried out behind closed doors, leaving the public uninformed, often along with members of parliaments. This is especially relevant as once a trade and investment agreement is ratified, it supersedes domestic law. This has the effect of freezing government regulations, as the government may have to pay compensation for regulatory changes. Ms. Sengupta underlined her argument by citing the notorious case in which Philip Morris successfully sued the Government of Uruguay for harm to its business in that country owing to an anti-smoking campaign that reduced purchases of cigarettes. She also expressed concern about working conditions, especially in export processing zones, that exploit workers, especially women, through low wages, conversion of full-time jobs into informal or casual employment, and weak or absent social protection.

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<sup>6</sup> Jomo KS, Anis Chowdhury, Krishnan Sharma and Daniel Platz (2016), "Public-Private Partnerships and the 2030 Agenda for Sustainable Development: Fit for purpose?" DESA Working Paper No. 148, United Nations, February.

Ms. Sengupta proposed that stronger labour and environmental standards be introduced into FTAs and that they apply equally to both developed and developing country partners, instead of the corporation-friendly standards that are aimed at developing countries, as is the current practice. She also proposed that independent human rights impact assessments be made of draft FTAs and that assessments be made of the prospective contribution or impediment to achieving the sustainable development goals and the AAAA commitments. While the “Ruggie Principles” on business and human rights are useful guidelines, she looks forward to a time where they would become legal obligations embedded in a multilateral treaty that would bind the behaviour of corporations and governments.

**Raymond Landveld**, who was the main negotiator for the Group of 77 and China (G77) in the preparations of the Addis Agenda on FfD, reviewed some of the controversial points in the negotiation as they related to social and environmental standards for investors. He recalled how the G77 was concerned when the structure of the Monterrey (2002) and Doha (2008) agreements was changed. That is, previously, the domestic “chapter” had considered domestic public and private financing of development, while a separate “chapter” addressed flows and behaviour of international private investment. In the Addis agreement, the domestic “chapter” addressed domestic public finance and the following chapter addressed domestic and international private finance. This seemed to him to imply that all private investment, domestic as well as foreign, was meant to follow a common set of policy principles shaped to the needs of the globalized economic system.

Mr. Landveld was especially concerned about “extraterritoriality” in that foreign direct investors would feel bound by the rules and behavioural expectations of their home country rather than those of the host country. He was keenly aware that when potential foreign investors express interest in direct investment in a country, they negotiate the terms of their investment with the host government and often are able to extract special benefits that can often be excessive and thus be deemed abuses. In his view, it would be better to have agreed international standards on what kind and degree of concessions to give to direct investors and what kind and degree of performance to expect from them. Establishing international benchmarks could reduce the abuses.

**Stefano Prato** emphasized the need to “unpack” the concept of the “private sector”, as the phrase obfuscates and impedes critical analysis. Instead, he focuses on the dynamics of the development of business, paying attention to when and how power becomes concentrated in monopolies, how the lowest value-added stages in “value chains” of international production are located in poor countries, and how the tensions he sees between global companies and local businesses progress. He also insists that analyses and policy proposals for setting business standards be contextualized. Many states are heavily dependent on a few commodities for exports and income, presenting different challenges than a more diversified economy.

He also argues for shifting attention from what is good for the global economy to what is good for the domestic economy of developing countries. For example, spreading the “rule of law” seems a universal principle worth propounding, but one needs to pay attention to how it is used. It can justify “land grabs”. Also, while rule of law is deemed appropriate in general, when it comes to corporate behaviour, there seems to be a strong preference for voluntary principles that are not legally binding.

There are other “smokescreens” that confuse clear thinking that Mr. Prato warns against. For example, advocates of privatization or PPPs do not consider that private delivery of public services usually creates more unequal societies, as the private provider has to make a profit in delivering the public service to warrant continued operation, requiring higher prices for the service

provided than otherwise. Also, one needs to worry about “corporate capture” of public space, whether behind the scenes or in direct participation in policy making. Indeed, Mr. Prato reminds us that government consultation with “stakeholders” is not the same as government consultation with “rights holders”. These are different concepts, different people, and thus lead to different policies.

Contact: Eva Hanfstaengl

Policy Officer Development Finance,  
International Financial Policies

Bread for the World – Protestant Development Service  
Evangelisches Werk für Diakonie und Entwicklung e.V.  
Caroline-Michaelis-Straße 1, 10115 Berlin  
Tel: +49 30 65211 1813 | Fax: +49 30 65211 3813  
[eva.hanfstaengl@brot-fuer-die-welt.de](mailto:eva.hanfstaengl@brot-fuer-die-welt.de)  
[www.brot-fuer-die-welt.de](http://www.brot-fuer-die-welt.de)

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