: Global Governance Spotlight
5 | 2014

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The Private Sector in the Post-2015 Negotiations

A plea for a stronger emphasis on corporate human rights responsibility

Brigitte Hamm

2015 is the deadline for achieving the United Nations' eight Millennium Development Goals (MDGs). However, it has been clear for some time that despite significant progress, not all the MDGs will be met in all sectors and regions by this date. The negotiations on a post-2015 agenda have therefore reached fever pitch. Back in 2010, the United Nations Summit on the Millennium Development Goals pushed for the continuation of the MDG process. Then in 2012, the United Nations Conference on Sustainable Development (Rio+20) called, in addition, for new Sustainable Development Goals (SDGs). Alongside the UN, governments and civil society organisations, the private sector is a key player, influencing the debate in a multitude of forums. Indeed, corporate principles are exerting considerable influence on the post-2015 negotiations, as is evident from the emphasis on market-based solutions in the fields of health and food security, for example. However, as experience since the 1992 Rio Summit shows, this trend often clashes with the goal of sustainable development. As the world's countries negotiate the new agenda, they should therefore pay greater heed to the voices of civil society.

Key features of the post-2015 agenda

A striking feature of the future post-2015 agenda is the greater linkage between development and sustainability. In order to integrate the three dimensions of sustainable development – economic, environmental and social – it is essential to challenge and question the dominant paradigm of economic growth as the guarantor of development. The truth is that an economic model geared primarily towards growth does not respect planetary boundaries, nor can it create an equitable and solidarity-based global society. On the contrary, the reality is that the global gap between rich and poor is steadily widening, and the ongoing ruthless exploitation of natural resources is counterproductive to low-impact and sustainable development. The holistic approach that is needed is only attainable if we put human rights – and that means political, economic, social and cultural rights in equal measure – at the heart of our endeavours.

Corporate involvement in the post-2015 process

Given that the private sector – primarily transnational corporations – can exert considerable influence on sustainable, human rights-based development, its involvement in the post-2015 negotiations is crucial. This involvement in international negotiations is nothing new. The first United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992 marked the turning point towards an active and autonomous role for the private sector in international policy processes. This engagement arises from a willingness to accept responsibility, but it also reflects the transnational corporations' desire to align these processes to their own interests. This influence could already be discerned in the Rio Summit's outcome document, known as Agenda 21, which bears the private sector's handprint: self-regulation, i.e. the voluntary assumption of corporate social and environmental responsibility via multi-stakeholder initiatives, is emphasised as an appropriate governance structure for addressing sustainable development challenges.

The private sector is mainly involved in the post-2015 negotiations via business associations and initiatives. Examples are the International Chamber of Commerce (ICC), the Business and Industry Advisory Committee to the OECD (BIAC), the World Economic Forum (WEF) and the World Business Council for Sustainable Development (WBCSD). The private sector also brings influence to bear on the negotiations via philanthropic foundations set up by major companies, such as the Bill & Melinda Gates Foundation and the Novartis Foundation. Links between the UN and the private sector have gained in intensity since the late 1990s via the Global Compact and public-private partnerships (PPPs), for example, and exert considerable influence on these activities.

But the private sector participates in other ways as well. For example, representatives of major corporations sit on various bodies involved in the post-2015 process, business associations and initiatives provide input and are engaged in lobbying, and countless networks have been established as a result of companies' involvement in a multitude of initiatives. However, some civil society organisations are critical of what they regard as the UN's excessive openness to the private sector. They see a risk that the UN will become financially dependent on private funding, especially in view of some Member States' financial foot-dragging, meaning that the UN is permanently underfunded.

A small number of major transnational corporations, such as BASF, Bayer, Coca-Cola, Unilever and mining corporations from various regions of the world, exert particular influence on the post-2015 negotiations through their participation in key forums. These include the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda (HLP), established by United Nations Secretary-General Ban Ki-moon in July 2012: two of the HLP's 27 members were corporate representatives. Ten thematic consultations and 12 country meetings, largely initiated by Paul Polman, Chief Executive Officer (CEO) of Unilever, ensured that business interests were a key focus of the HLP's attention. Indeed, the HLP notes in its report that these private sector consultations involved the CEOs of 250 companies in 30 countries. Another UN-led initiative is the Sustainable Development Solutions Network (SDSN), which aims inter alia to mobilise technical and scientific expertise in support of new sustainable development goals. Here, private sector stakeholders are represented in various thematic groups and in the Leadership Council (Anglo American, Citigroup, Siemens and Unilever). One of the thematic groups is dedicated to redefining the role of business in the transition towards sustainability.

Probably the most important international body in the post-2015 process is the UN General Assembly's Open Working Group (OWG), an outcome of Rio+20. In July 2014, it unveiled a new draft agenda with a total of 17 Sustainable Development Goals (SDGs), which will form the basis for the official negotiations, due to commence in autumn 2014. The OWG's work was based on intensive dialogue with nine Major Groups representing diverse stakeholder interests. One of them is the Business and Industry Major Group, which submitted various statements in an effort to influence the OWG's work. At the Third Session of the OWG, for example, a representative of this Major Group advocated for a Goal dedicated to water, arguing that this was necessary because so many economic activities depend on the availability of this resource. The statement was notable for the lack of any critical self-reflection on how corporate activities – in the mining industry, for example – adversely affect the human right to water, nor did it spell out how the corporate sector plans to contribute to the realisation of this right in future.

The corporate agenda in the post-2015 process

In addressing the question of how human rights and sustainability criteria should be integrated into the post-2015 agenda, it is essential to look critically at the corporate sector's contribution. Here, the *UN Guiding Principles on Business and Human Rights*, endorsed by the UN Human Rights Council in June 2011, provide important pointers. They build on three pillars: the state duty to protect, the corporate responsibility to respect, and access to remedy. This is the most prominent international document to enshrine the corporate human rights responsibility at institutional level. According to the *Guiding Principles*, it is the states and the corporate sector which bear the primary responsibility for aligning the global economy with human rights criteria. This precept should be reflected in the post-2015 negotiations as well. However, a consistent focus on the *UN Guiding Principles* is conspicuous by its absence from the corporate sector's submissions. Instead, there is an emphasis on market- and growth-based solutions to global challenges, along with a preference for multi-stakeholder initiatives as a governance model that promotes voluntary private self-regulation.

The private sector's ideas about how sustainability goals should be framed and realised are outlined in a Position Paper issued by the Business and Industry Major Group in March 2014. In this paper, the Major Group emphasises that "open markets and private enterprise are critical for sustainable development".

Its preferred model for promoting sustainable development is based on conventional market principles: good governance, and creating an environment conducive to private sector initiatives by reducing barriers to international trade and foreign direct investment. This, it is argued, is the only way to create jobs and pursue technological innovation, which are prerequisites for inclusive growth and equitable distribution. Economic growth, trade and investment, entrepreneurship, innovation and sustainable job creation are described, in a set of 12 criteria, as key to development. In relation to good governance, for example, the Major Group calls for minimal bureaucracy but also advocates for regulation and policies which encourage better practices by governments, business and civil society. It also refers in general terms to human rights as universal principles, but fails to mention the corporate human rights responsibility enshrined in the *UN Guiding Principles*. And in contrast to the position espoused by other Major Groups, the Business and Industry Major Group does not advocate for a specific human rights-based approach for the post-2015 negotiations. Instead, its Position Paper emphasises economic growth, and although it occasionally specifies that this should be “inclusive growth”, it is not clear precisely what the private sector means by this. There is thus a risk that, like the concept of sustainable development to date, “inclusive growth” will simply be a buzzword that is bandied around while corporations continue with “business as usual” within the existing economic model. By contrast, other Major Groups are demanding a reframing of the growth concept and its closer alignment with sustainable development and human rights criteria in future.

The importance of multi-stakeholder initiatives

Multi-stakeholder initiatives are the manifestation of a governance model which prioritises voluntary self-regulation and rejects binding regulation by governments and international organisations on the grounds that it is ineffective. Multi-stakeholder processes have gained in popularity worldwide since the 1990s. These initiatives’ design reflects global governance aspirations, for it is based on cooperation between diverse stakeholders at diverse levels – mainly between civil society organisations, trade unions and businesses, with governments predominantly playing the role of facilitators. In that sense, multi-stakeholder initiatives are merely another form of private regulation – one which differs from straightforward corporate self-regulation and is therefore described as co-regulation. The aim is to foster dialogue between proponents of different viewpoints, in order to achieve common solutions. Multi-stakeholder initiatives are regarded as legitimate and effective because they not only involve cooperation between diverse actors on an equal basis but also harness their different skills and expertise. Most were established in the CSR context in order to monitor and safeguard compliance with social and environmental standards in global value chains. However, international initiatives, such as the UN Global Compact, pursue a similar approach, as did the efforts over many years to develop the *UN Guiding Principles on Business and Human Rights*; the same applies to the current post-2015 negotiations.

Multi-stakeholder initiatives can fulfil various important functions, but they also have limitations and weaknesses. Whereas the corporate sector, the UN and governments laud these initiatives as effective and efficient mechanisms to address global challenges, civil society and, indeed, various academic analyses cast doubt on their effectiveness. The participation of diverse stakeholders in these initiatives is not necessarily fair or legitimate, but requires an appropriate structure in order to smooth out power asymmetries resulting from inequitable resourcing. Besides the legitimacy deficit, it is mainly the absence of monitoring mechanisms and the lack of formal accountability for participating companies that worry civil society. As a consequence, non-governmental organisations are increasingly sceptical about participating in these initiatives. They are concerned that their participation could be utilised by the corporations involved as a means of bolstering their own legitimacy, or could serve as an argument for co-regulation as a means of resolving injustice in the global economy. So instead, civil society organisations are demanding more responsibility for governments. They want binding regulations for companies at national and international level in order to ensure corporate compliance with human rights and sustainability goals.

Recommendations

A sustainable economic model must take full account of the international community’s and the corporate sector’s human rights responsibilities, and this must be reflected to a greater extent in the negotiations on the post-2015 agenda. This will require stakeholders to fulfil their human rights due diligence and carry out human rights risk assessments for their activities. The *UN Guiding Principles on Business and Human Rights* can serve as a roadmap here.

Multi-stakeholder initiatives should be seen as a complement to, not a replacement for, binding regulation. Civil society’s demands for a stronger intergovernmental framework and for binding regulations for the global economy, based on human rights and sustainability criteria, should be supported, and must include monitoring and reporting obligations for the corporate sector.

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The Development and Peace Foundation was founded in 1986 on the initiative of Willy Brandt. As a cross-party and non-profit-making organisation, the SEF provides an international high-level forum for shared thinking on urgent peace and development issues.

Global Governance Spotlight is a policy-oriented series whose purpose is to critique international negotiation processes from a global governance perspective.

Published by
Development and Peace Foundation/
Stiftung Entwicklung und Frieden (SEF)
Dechenstr. 2 : 53115 Bonn : Germany
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sef@sef-bonn.org : www.sef-bonn.org

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Translation
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Design Basic Concept
Pitch Black Graphic Design
Berlin/Rotterdam

Layout
Gerhard Süß-Jung