

7. STATES AS PARTNERS IN DEVELOPMENT: OPPORTUNITIES FOR GREATER COOPERATION

7.1 The Key Issues

- Cooperation is seen as an essential component to the way many States approach human rights, and encouraging signs of existing cooperation between States can be seen in the work of their embassies and also multilateral institutions in which they are members (section 7.2).
- A renewed interest in public-private partnerships will help to clarify their future effectiveness in deepening State areas and activities that are now only competitive (section 7.3).
- MSIs are a long-standing and valuable method of cooperation on business and human rights issues, but more focus on cooperation with the global South is needed (section 7.4).
- Fundamental to cooperation and participation is public education, access to information, and freedom of expression (section 7.5).

7.2 Existing Forms of Cooperation

States which see business and human rights purely as an issue related to “corporate social responsibility” may be more likely to treat it as an issue of competition – a strategy that gives an edge to companies in the global marketplace. While many of the underlying trends between State economies remain competitive, such as around access to resources, security and the flows of finance, labour and information for example, this Report suggests, and emerging practice strongly indicates, that cooperation is an essential component to the way States approach human rights and business.

There is already a good amount of engagement between States, businesses, civil society, trade unions, national human rights institutions and rights-holders emerging, as the 1000+ stakeholders that attended the 1st and 2nd Annual UN Annual Forums on Business and Human Rights in 2012 and 2013 attest to.¹⁹⁷ More specifically, encouraging signs of increased cooperation between States can be seen in respect to their practices regarding export credit, mediation, and public procurement. For example, over 20 export credit agencies are now cooperating within the context of the **OECD** “Common Approaches” with an increasing focus on human rights, and over 40 Governments now have functioning National Contact Points (NCPs) under the OECD Guidelines on Multinational Enterprises. Cooperation on relevant issues is intensifying within the **European Union** (through the development of national action plans on business and human rights), as well as within the **ASEAN** region, between **Gulf States** and between National Human Rights Institutions in **Africa**. A growing number of States are seeking to align their efforts on specific issues such as gender discrimination, indigenous peoples, fighting human trafficking and forced labour, conflict minerals, and the worst forms of child labour. Some signs of collaborative policy engagement are also emerging, through the formation of donor groups at local level that take up business and human rights issues, as well as in the proactive agenda of OECD NCPs in specific third countries.

The question for business and human rights, as a movement between States and other actors, is can cooperation can be deepened in areas that are now only competitive?

7.3 Public-Private Partnerships

States are used to collaborating with business partners to achieve commercial and sometimes also developmental goals. Whilst the Millennium Development Goals did not give full consideration to the role of the private sector in their fulfilment, this was a key focus of the mid-term review when a number of direct references to business were added. All indications suggest that the new UN

¹⁹⁷ See: United Nations, Geneva, 2-4 December 2013. Available at: <http://www.ohchr.org/EN/Issues/Business/Forum/Pages/2013ForumonBusinessandHumanRights.aspx>

Development Goals for the post-2015 context will put a heavy emphasis on public-private partnerships (PPPs), as noted for example in a recent High-Level panel report: “Each priority area identified in the post-2015 agenda should be supported by dynamic partnerships.”¹⁹⁸

There are differing views on the effectiveness of PPPs and their suitability for the provision of public goods for the realisation of human rights. For example, efforts to establish PPPs for the provision of water met a slowdown and reversal in many parts of **Africa** and **Latin America** in late 1990s and 2000s. Whilst the UN Special Rapporteur on the Right to Safe Drinking Water and Sanitation has remained agnostic on the issue of public or private ownership¹⁹⁹, PPPs have remained very localised to specific developments – such as situations where mining companies have become the de facto providers of water in remote areas. There has been greater consensus over the effectiveness of international PPPs when tackling global diseases – with examples such as the Global Fund to Fight AIDS, Tuberculosis and Malaria²⁰⁰ or the Global Alliance for Vaccines and Immunisation.²⁰¹

The post-2015 agenda is bringing a renewed interest in the role of PPPs at the international level. However, there is little research as to what such partnerships might look like if they are to fully respect human rights.²⁰² There are perhaps two initial reflections, based on current experiences of such PPPs:

- Partnerships between State-actors and companies are less controversial when they explicitly aim at tackling international development targets, but become more controversial if they impose new private-public relations at the national or local level;
- Partnerships between NGOs and companies also exist, and can sometimes relate directly to human rights, but challenges of scale-ability exist, as NGOs are unlikely to accept corporate funds for reasons of legitimacy and impartiality.

The UN will need to develop criteria for crucial issues like governance and accountability and human rights in relation to PPPs if the post-2015 discussions on PPPs are to succeed. Existing UN initiatives, such as the Global Compact, will be most effective if they too model the high standards anticipated in post-2015 UN Development Goals.²⁰³

7.4 Multi-stakeholder Initiatives and Other Related Approaches

It could be argued that Multi-stakeholder Initiatives (MSIs) have become a de-facto response by States, businesses, NGOs and to some extent trade unions in recognition of the international governance gaps around business and human rights. Over the past ten years, a number have been developed by States themselves, such as:

- The Kimberley Process
- The Extractive Industries Transparency Initiative
- The Voluntary Principles on Security and Human Rights
- The International Code of Conduct for Private Security Providers

¹⁹⁸ The report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, “A new global partnership: eradicate poverty and transform economies through sustainable development” (UN, 30 May 2013). Available at: http://www.un.org/sg/management/pdf/HLP_P2015_Report.pdf

¹⁹⁹ IHRB, “More than a resource: Water, Business and Human Rights” (2011). Available at: http://www.ihrb.org/pdf/More_than_a_resource_Water_business_and_human_rights.pdf

²⁰⁰ See: www.theglobalfund.org

²⁰¹ See: www.gavialliance.org

²⁰² See one exception by GPF, Brot für die Welt and Misereor, “Corporate influence in the Post-2015 process” (January 2014). Available at: http://www.globalpolicy.org/images/pdfs/GPFEurope/Corporate_influence_in_the_Post-2015_process_web.pdf

²⁰³ See: IHRB, “The UN Global Compact and Human Rights: Developing a vision for 2020” (October 2010). Available at: http://www.ihrb.org/pdf/UNGC_and_Human_Rights_A4_FINAL.pdf

In other cases, States have helped to initiate supply chain approaches that have been developed by businesses and civil society together, such as:

- The Fair Labour Association
- The Ethical Trading Initiative
- Social Accountability International

In some cases States have been deliberately excluded, such as with the Global Network Initiative, or businesses similarly, such as with the Clean Clothes Campaign. More recently attempts have been made to standardise the way that MSIs are evaluated and assess the value of current arrangements.²⁰⁴

When taken as a whole, it is clear that some Governments – such as the **Netherlands, Norway, UK** and the **US**, have been particularly active in multistakeholder approaches. Far fewer have been at least partly rooted in the global south, though exceptions include:

- The Roundtable on Sustainable Palm Oil, based mainly in Indonesia and **Malaysia**
- The International Cocoa Initiative, based in **Geneva** with national offices in **Ghana** and the **Ivory Coast**
- The Nairobi Process relating to oil and gas exploration, based in **Kenya** and **East Africa**
- The various “Better Work” initiatives of the International Labour Organisation and the International Finance Corporation, such as those in **Cambodia, Jordan** and **Lesotho**.

Multi-stakeholder initiatives (MSIs) do bring States together with other actors on what are complex and sometimes competitive issues, for example security. However, MSIs face a range of commonly accepted challenges:

- They are still dominated mainly by OECD-based States, and in particular **North American and North-West European** States. Efforts are being made to widen the interests and memberships of some MSIs. Exceptions include the Extractive Industries Transparency Initiative that has significantly widened its membership over recent years.
- Similarly, many of the companies involved are also those based in OECD member countries, but efforts are underway to diversify State membership in a number of initiatives. Sometimes there is a “mid-Atlantic” split between **Europe** and **North American** business approaches, leading to two separate initiatives – as has been the case in the Electronics Industry²⁰⁵ or in the apparel sector following the Rana Plaza disaster in **Bangladesh**²⁰⁶.
- Civil society is engaged in most of these initiatives but they place a very heavy resource commitment on NGOs. Human rights NGOs, in particular, are also frustrated at the lack of progress towards governance and accountability measures in some of the initiatives.
- Trade unions have been openly critical of the auditing aspects of the some of the initiatives, partly those in which trade unions are not themselves party.²⁰⁷
- The lack of engagement by communities and civil society organisations based in the **Global South** is a fundamental problem.
- All MSIs and related initiatives are still very much focused on process and find it much harder to demonstrate tangible impact on human rights outcomes. This is still harder if the impact is preventative – i.e. has been focused mainly on due diligence.

²⁰⁴ See further: <http://www.msi-integrity.org/>

²⁰⁵ Contrast the memberships of the Electronics Industry Code (EICC) of Conduct with the Global E-Sustainability Initiative (GeSI), for example.

²⁰⁶ European companies have mainly joined “The Accord” in partnership with the ILO, whilst US-based companies have largely gone for “The Alliance”.

²⁰⁷ See, for example: AFL-CIO, “Responsibility outsourced: social Audits, Workplace certification and twenty years of Failure to protect Worker Rights” (April 2013). Available at: <http://www.aflcio.org/content/download/77061/1902391/CSReport.pdf>

The consensus amongst those interviewed for this Report is that MSIs are still a valuable part of cooperation on business and human rights, but there needs to be more focus on drawing in States from the global South to processes that are accountable as well as relevant to the needs emerging in developing economies.

7.5 Enabling an Information Society

Public awareness of human rights generally remains low across the populations of all States. Such awareness is important in framing expectations of the State as well as participation by citizens in civil and political processes and explaining the rationale for transparency and accountability.²⁰⁸ Whilst some reference to human rights are part of primary or secondary education in many States, aspects relating to the responsibilities and impacts of non-State actors such as business, in the most part, have yet to emerge. This leaves a context in which consumers are poorly informed of and equipped to understand the human rights responsibilities of companies, other than those that directly related to them (i.e. “consumer rights”). If asked to judge a company on its wider impact on communities, society, its workers, suppliers or customers, most consumers would struggle – guided only by media representations, or for the small minority of actively responsible, publicly available materials on the internet. A promising development is the small, but growing, number of law and business schools teaching business and human rights within core their curricula.

As well as integrating business and human rights into school curricula, States therefore need to also think about wider public education. There have been some notable successes in behaviours that relate to specific products, not least the change in public attitudes to smoking worldwide, following the milk scare in **China** or meat tracing in **Europe**. It would seem that consumer health resonates more strongly with the wider public than most other business and human rights issues. Beyond this, consumers – and even experts – find it hard to objectively rate the societal impacts of businesses and their leaders.²⁰⁹ Public education on how the public might best evaluate the performance of companies is an unmet need almost universally, and one in which the State has a central role.

More fundamental is public information. Business and human rights can only proceed as an evolving issue of public policy if the facts are available to rights-holders within society and not just to those narrowly defined as “stakeholders” to a specific company.²¹⁰ As noted in previous sections of this Report, on issues such as formal corporate reporting and contract disclosure, transparency is becoming the central priority for those States wishing to advance greater accountability on human rights performance by business. This accountability objective is hinged on active third party scrutiny by States’ citizens and civil society. Such scrutiny first requires freedom of information laws, and disclosure in practice, in order to empower the public in their acquisition of knowledge – the effect being the ability of any rights-holder to understand and exercise their rights, ensure they are being respected, and seek and effectively access remedy should their rights be infringed.

Balanced against this is the need for legitimate commercial confidentiality where this is necessary to safeguard the competitiveness of a company. States must define this threshold as clearly as possible. The threshold might sit differently in the case of State-owned enterprises or other interactions with States as economic actors, such as in public procurement, where freedom of information requests might be applicable. States also need to be clear as to when private disclosures by a company in mediation processes, such as those under the OECD Guidelines on Multinational Enterprises, might be subject to full disclosure – as this will have a direct effect on the mediation itself.

²⁰⁸ See for example, materials available through the UN Office of the High Commissioner for Human Rights: <http://www.ohchr.org/EN/ISSUES/EDUCATION/TRAINING/Pages/HREducationTrainingIndex.aspx>

²⁰⁹ Note, for example data on “Trust” from the Edelman annual “Trust Barometer”. Available at: <http://www.edelman.com/insights/intellectual-property/trust-2013/>

²¹⁰ Note the work of the Business and Human Rights Resource Centre in this regard. Available at: www.business-humanrights.org

Freedom of expression on-line, facilitated by the private companies who often control access to the network and run on-line services such as social media, remains a valuable underpinning of an open and fair society.²¹¹ Free or more widely affordable internet access is a key enabler to both access to information as well as education and should be prioritised by States for the future. States must also avoid creating a “chilling effect” on freedom of expression and arbitrary interference with the right to privacy through excessive data gathering and sharing practices.²¹² States must strive to carefully balance their own national security concerns with those that protect the privacy, freedom of expression and right to information of citizens.

7.6 Summary Note

States demonstrated an unprecedented willingness to cooperate on business and human rights during the development of the UN Guiding Principles. They should continue in that spirit of cooperation today to innovate and work together in advancing implementation of the business and human rights agenda, avoiding making this a competitive topic only for the commercial sections of their trade departments.

Greater cooperation between States on business and human rights can take many forms. More partnerships between the UN and business, particularly in the emerging call for more public-private partnerships in the context of the post 2015 development agenda, are expected and would benefit from the perspective and experience of the UN Guiding Principles in developing much needed criteria around governance and accountability. Multistakeholder initiatives are an established method of cooperation amongst States, businesses, trade unions and civil society, but more focus on engagement with the global South is needed. Though a key driver of accountability, public awareness of human rights and the responsibilities and impacts of business remains low across the populations of all States. Enabling an information society is a key avenue States can pursue in empowering the public to ensure their own rights are being respected.

²¹¹ See UN Human Rights Council Resolution, “The promotion, protection and enjoyment of human rights on the Internet” (29 June 2012), A/HRC/20/L.13. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G12/147/10/PDF/G1214710.pdf?OpenElement>

²¹² See further: IHRB, “Big Data, Big Government, Big Companies: NSA data gathering raises new questions about corporate human rights responsibilities” (June 2012). Available at: <http://www.ihrb.org/commentary/staff/big-data-big-government-big-companies.html>; see also: IHRB, “Part II: Telecommunications companies must join the debate on surveillance” (June 2012). Available at: <http://www.ihrb.org/commentary/staff/telecommunications-companies-must-join-the-debate-on-surveillance.html>