

DISCUSSION PAPER

DELIVERING DEVELOPMENT JUSTICE?

Financing the 2030 Agenda for
Sustainable Development



No. 10, March 2016

TESSA KHAN

FOR THE EXPERT GROUP MEETING IN PREPARATION FOR THE 60TH SESSION
OF THE COMMISSION ON THE STATUS OF WOMEN

The UN Women discussion paper series is a new initiative led by the Research and Data section. The series features research commissioned as background papers for publications by leading researchers from different national and regional contexts. Each paper benefits from an anonymous external peer review process before being published in this series.

In preparation for the 60th session of the Commission on the Status of Women in 2016, UN Women convened an expert group meeting on 'Women's empowerment and the link to sustainable development' with a particular focus on the implementation of the 2030 Agenda for Sustainable Development for realizing substantive gender equality, women's rights and empowerment. This background paper was produced for the expert group meeting by Tessa Khan, on behalf of the Asia Pacific Forum on Women, Law and Development.

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ISBN: 978-1-63214-042-5

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Produced by the Research and Data Section
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Design: dammsavage studio

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SUMMARY

The “supremely ambitious and transformative vision” embodied in the 2030 Agenda for Sustainable Development includes a goal to achieve gender equality for all women and girls and a re-commitment to governments’ human rights obligations. At the same time, governments have agreed to a range of strategies for financing the Agenda that arguably undermine their ability to fulfil women’s human rights and advance a just and gender-equitable model of development. This paper critically evaluates this potential contradiction with a focus on the key financing strategies of trade and investment liberalization, sovereign debt resolution, international private finance, and public-private partnerships, as well as the role of the global partnership for development. Recommendations are made to better align financing targets with the objective of supporting the enjoyment of women’s human rights. Finally, the paper reflects on the inherent limitations in the 2030 Agenda and the need for an urgent shift to a model of development justice.

RÉSUMÉ

La « vision extrêmement ambitieuse et transformatrice » consacrée dans l’Agenda 2030 pour le développement durable comprend un objectif portant sur la réalisation de l’égalité des sexes pour toutes les femmes et de toutes les filles et invite les gouvernements à renouveler leur engagement en faveur des droits de l’homme. Dans le même temps, les gouvernements ont convenu d’une série de stratégies en faveur du financement de l’Agenda qui compromettent incontestablement leurs capacités à respecter pleinement les droits fondamentaux des femmes et à promouvoir un modèle de développement juste et équitable en matière d’égalité des sexes. Le présent document se livre à une évaluation

critique de cette contradiction potentielle, en mettant l’accent sur les principales stratégies de financement de la libéralisation du commerce et des investissements, le règlement de la dette souveraine, la finance privée internationale et les partenariats public-privé, ainsi que le rôle du partenariat mondial en faveur du développement. Des recommandations sont également formulées aux fins d’une meilleure harmonisation des cibles de financement avec l’objectif de promotion de l’exercice des droits fondamentaux des femmes. Enfin, le document analyse les limites inhérentes à l’Agenda de 2030 et traite de la nécessité de passer rapidement à un modèle de développement axé sur la justice.

RESUMEN

La “visión sumamente ambiciosa y transformadora” plasmada en la Agenda 2030 para el Desarrollo Sostenible incluye un objetivo que consiste en alcanzar la igualdad de género para todas las mujeres y niñas y el compromiso renovado con las obligaciones de derechos humanos por parte de los Gobiernos. Al mismo tiempo, los Gobiernos han acordado una serie de estrategias para la financiación de la Agenda que, sin duda, socavan su capacidad de respetar los derechos humanos de las mujeres y promover un modelo de desarrollo justo y equitativo desde el punto de vista del género. Este documento evalúa de forma crítica esta posible contradicción centrándose en las estrategias de financiación clave de la liberalización del comercio y la inversión, la reestructuración de la deuda pública, las finanzas privadas internacionales y las asociaciones público-privadas, así como el papel que desempeña la colaboración mundial en el desarrollo. Se formulan recomendaciones para adaptar mejor las metas de financiación con el objetivo de respaldar el disfrute de los derechos humanos de las mujeres. Por último, el documento refleja las limitaciones intrínsecas de la Agenda 2030 y la necesidad de cambiar urgentemente hacia un modelo de desarrollo con justicia.

1.

INTRODUCTION

The adoption of the 2030 Agenda for Sustainable Development comes at a time when there is an urgent need to correct the world's economic, social and environmental trajectory. The last decade has been defined by crises, including in global finance, food and energy prices, and in connection to potentially irreversible, catastrophic climate change. By 2013, another two alarming trends demanded attention: sovereign debt crises unfolding in the Eurozone, and a level of global economic inequality without recent precedent. In 2015, the richest 1 per cent of the world's population collectively owned 50 per cent of the world's wealth.¹ While governments express scepticism that the \$3 to \$5 trillion United States dollars that will be required annually to finance the 2030 Agenda can be mobilized², between \$21 and \$32 trillion dollars sits undisturbed in offshore tax havens.³

At the root of all of these phenomena are economic policies that have failed most of the world's population and, most acutely, women and girls.⁴ This is not just because women are disproportionately vulnerable to the human rights impacts of food insecurity and land and natural resource degradation. It is because the prevailing economic model perpetuates, and often relies on, the systematic discrimination and disadvantage experienced by women in order to generate growth. As outlined in subsequent parts of this paper, companies participating in global value chains rely on the devaluation of women's work as a source of competitive advantage, and the rationalization of social safety nets and essential public services is made possible by the availability of women's unpaid labour to fill the gaps in care. Moreover, the very way in which economic activity is defined requires gross undervaluation of women's unpaid work, whether in the home or in family businesses.⁵ Work that is considered "women's work" is not given any economic value, even though without

it economies could not function.⁶ This underpins the ongoing failure to recognize the true value of paid care work or work that is feminized.

Challenging gender inequality therefore requires directly challenging economic policies, institutions and accounting that have entrenched social inequalities and often undermined the regulatory capacity of States. It also requires the adoption of an expansive notion of women's empowerment that goes far beyond the idea that women are economically empowered when, as proposed by the World Bank, they have the agency to compete in markets.⁷ If women's empowerment is to mean anything, it must extend to strengthening women's capacity to exercise real power and control over their own lives and the terms on which they engage with social and economic structures.⁸ This is not possible without substantive equality for women and the fulfilment of their human rights.

The objective of this paper is to consider whether the means of financing the Sustainable Development

1 Credit Suisse 2015.

2 UNCTAD 2015a.

3 Henry 2012.

4 Balakrishnan and Esquivel 2014; UN Women et al. 2014.

5 Waring 1988.

6 Elson 1993.

7 World Bank 2006.

8 Kabeer 2012.

Goals (SDGs) proposed in the 2030 Agenda and the Addis Ababa Action Agenda (Addis Ababa AA)⁹ are likely to support gender equality and the realization of the human rights of women and girls, both of which are clearly articulated as objectives of the SDGs.¹⁰ Indeed, Goal 5 of the SDGs, entitled “Achieve gender equality and empower all women and girls”, includes targets on ending all forms of discrimination and violence against women and girls, ensuring women’s full and effective participation in political and economic life, and recognizing and valuing unpaid care and domestic work, among others. This paper focuses its critique on the key financing strategies of trade and investment liberalization, sovereign debt resolution, international private finance and public-private partnerships. Recommendations that are primarily targeted at an intergovernmental level are put forward at the end of each section to better align the proposed financing targets with the objective of supporting women’s human rights.

A consistent pattern that emerges in the analysis is that these financing strategies currently undermine mobilization of domestic resources, particularly in developing countries, and therefore the ability of governments to provide the services, infrastructure and public goods that are necessary for the enjoyment of women’s human rights. This is despite the fact that the 2030 Agenda and the Addis Ababa AA place considerably more emphasis on the role of domestic

resource mobilization as a source of financing for development than the outcomes of previous financing for development conferences or the Millennium Development Goals (MDGs).¹⁰

The analysis also highlights additional, related contradictions, including the tension between the financing strategies under consideration and the targets in Goal 17 of the SDGs relating to the preservation of domestic policy space¹¹ and the need for policy coherence for sustainable development.¹² As the United Nations (UN) Secretary-General stated in his Synthesis Report on the Post-2015 Development Agenda, policy coherence for sustainable development requires coherence between the governance and outcomes of international trade, finance and investment architecture on the one hand, “and our norms and standards for labour, the environment, human rights, equality, and sustainability on the other”.¹³

The penultimate section of the paper considers the decline of the global partnership for development, which is framed as consistent with the overall erosion of the role of the State in financing and guiding sustainable development. It concludes by discussing the inherent limitations in the SDGs for achieving the “supremely ambitious and transformative” model of sustainable development that is needed to curtail accelerating inequalities, halt climate change, fulfil women’s human rights and deliver development justice.¹⁴

9 UN General Assembly 2015a, Addis Ababa Action Agenda 69/313. Although the integration of the Addis Ababa Action Agenda into the means of implementation of the 2030 Agenda was strongly critiqued (see, e.g., the collective civil society responses during the Financing for Development negotiations, available at <https://csoforffd.wordpress.com/cso-collective-responses/>) the 2030 Agenda for Sustainable Development makes clear that the Addis Ababa Action Agenda ‘is an integral part of the 2030 Agenda for sustainable development...[and] supports, complements and helps contextualize the 2030 Agenda’s means of implementation targets’: 2030 Agenda, para. 62. The historical objective of the Financing for

Development conferences is, however, broadly concerned with ensuring that financing for development advances a more fully inclusive and equitable global economic system.

10 Aside from the goal dedicated to gender equality, Goal 5, the 2030 Agenda mentions its ambition to fulfill human rights for all including for women and girls in the Preamble, paras. 8, 10, 19, 20, and 35.

11 UN General Assembly 2015f, Target 17.15.

12 Ibid. Target 17.14.

13 United Nations Secretary-General 2014, para. 95.

14 UN General Assembly 2015f, para. 7.

2.

TRADE AND INVESTMENT LIBERALIZATION

The 2030 Agenda and Addis Ababa AA give considerable emphasis to international trade and foreign investment objectives. Trade and investment policy appear in the means of implementation targets for Goals 2, 8 and 10 and throughout the targets for Goal 17. The overall tenor of these targets is to strongly promote trade liberalization and to encourage greater global financial integration, despite evidence that both have contributed to increasing global inequality and undermined the enjoyment of economic and social rights.

The emphasis on both agendas is also on trade liberalization that occurs in accordance with the mandate of the World Trade Organization (WTO), despite the fact that thousands of bilateral and multilateral trade and investment agreements that are concluded between States outside the WTO. The failure of the 2030 Agenda to address these agreements is a substantial omission, given that these agreements affect the economic and social landscape in almost every country in the world. There has been a four-fold increase in the number of free trade agreements (FTAs) in the last two decades. Now all but one WTO member country is a party to an FTA,¹⁵ and there are currently approximately 3,200 international investment agreements in place.¹⁶ Further, these agreements continue to attract intensive scrutiny from civil society, human rights experts, the women's movement and UN bodies. In 2015, 10 UN Human Rights Council mandate-holders voiced their concern over the impact of trade and

investment agreements on human rights in joint and separate statements.¹⁷

FTAs have significant implications for domestic policy space and policy coherence because they go beyond merely reducing tariffs. There is a focus on promoting deeper “behind-the-border” measures that are considered necessary to advance trade in certain sectors or to achieve economic integration. These measures pertain to “regulatory harmonization”, investment and competition policy, and intellectual property rights regimes. In this respect, these agreements often push the trade and investment liberalization agenda much further than under WTO agreements. Among the features of these agreements that have grave implications for women's rights are their push for deregulation of the financial sector, liberalization of trade in services, and the privileging of investors' rights over human rights via investor-state dispute settlement clauses.

2.1

Implications for domestic resource mobilization

While the 2030 Agenda and Addis Ababa AA commit to strengthening domestic resource mobilization, neither agenda adequately reflects the tension

between this objective and some of the consequences of trade liberalization. As highlighted by a UN Independent Expert, trade liberalization has resulted in

¹⁵ WTO 2011.

¹⁶ UNCTAD 2015d.

¹⁷ UN OHCHR 2015b.

significant reductions in government revenue due to cuts in domestic trade taxes.¹⁸ A 2005 International Monetary Fund (IMF) working paper found that in sub-Saharan Africa, trade taxes accounted for an average of one-quarter of all government revenue, and in developing countries in Asia and the Pacific, they accounted on average for approximately 15 per cent, although the proportion tended to be higher for least developed countries.¹⁹ In 2011, for example, Bangladesh collected 30 per cent of its national revenue through customs duties.²⁰ Further, developing countries tend to experience higher relative levels of revenue loss because of a greater reliance on tariff revenue and export taxes²¹ and weaker capacity to replace lost revenue through the collection of other taxes. The same IMF working paper found that low-income countries largely fail to recover revenue they have lost as a result of trade liberalization from other domestic sources and that, at best, on average they recover 30 cents from every lost dollar.²² Further, efforts to recover lost revenue through the introduction of increased taxes such as

regressive consumer taxes often have a detrimental effect on women's enjoyment of human rights.²³

Trade mispricing also continues to comprise one of the principal sources of illicit financial outflows from developing countries. The practice of mispricing imports or exports transferred within multinational corporations resulted in an annual loss of tax revenue to developing countries of between \$98 and \$106 billion between 2002 and 2006.²⁴ As stated in a recent UN Women report, that figure represents nearly \$20 billion more than the annual capital costs needed to achieve universal water and sanitation coverage by 2015.²⁵ While both the 2030 Agenda and Addis Ababa AA urge governments to significantly reduce illicit financial flows, developed countries failed to agree to key proposals to address tax evasion and avoidance in Addis Ababa and thereby equip developing countries to curb trade mispricing.²⁶ This is discussed further in the recommendations in the third part of this paper.

2.2

Deregulation of the financial sector

Free trade and investment agreements often promote further deregulation of the financial and banking sectors.²⁷ The danger of constraining domestic regulation of these sectors has been dramatically illustrated by recent regional and global financial crises, including the 2008 global financial crisis. The deep deregulation advanced by FTAs and the WTO's General Agreement on Trade in Services was directly linked to the 2008 financial crisis by the Commission of Experts of the President of the UN General Assembly on Reforms of the International Monetary and Financial System, which noted that commitments under North-South free trade agreements, bilateral investment treaties

and the WTO prevented developing countries from undertaking the regulation necessary to "support financial stability, economic growth, and the welfare of vulnerable consumers."²⁸

The disproportionate impact of financial crises on women has been well-documented and is discussed further in the second part of this paper. As stated in UN Women's recent report, austerity measures adopted in response to financial crises have included "drastic cuts in social transfers and public services... triggering a retrogression in economic and social rights women... and a setback for gender equality."²⁹

18 UN General Assembly 2012a, para. 60.

19 Baunsgaard and Keen 2005.

20 Customs Duty Survey cited in Reid Smith 2015.

21 Reid Smith undated.

22 Baunsgaard and Keen 2005 Keen and Mansour 2009.

23 UN General Assembly 2012a, para. 60.

24 Hollingshead 2010.

25 UN Women 2015.

26 Global Alliance for Tax Justice 2015.

27 For example, the Trade in Services Agreement, Trans-Atlantic Trade and Investment Partnership and Trans-Pacific Partnership Agreement each include chapters on financial services.

28 United Nations 2009, paras. 38, 82-83.

29 UN Women 2015, 204; UN General Assembly 2014a; UN General Assembly 2012b; de Schutter 2013; Seguino 2009; Ghosh 2013.

FTAs also restrict the use of capital controls, even though capital market liberalization can destabilize developing country economies by enabling short-term volatile capital flows that affect exchange rates and cause broader dislocations in the financial system.³⁰ A recent review of the United States' FTAs

and bilateral investment treaties confirmed that restrictions on either capital inflows or outflows could trigger investor-state dispute settlement and that restrictions would not be waived even if temporary safeguards were introduced to prevent or mitigate a financial crisis.³¹

2.3

Liberalization of trade in services

The most recent generation of FTAs—including the current negotiation of the Trade in Services Agreement, which would account for two-thirds of global trade in services—aggressively pursue the liberalization of trade in services, including essential social services. The notion that services markets should be economically efficient or profitable is, however, at odds with the human rights obligations of governments to ensure equal access to healthcare, education, water and sanitation. For example, in March 2015, an Indonesian court annulled water privatization contracts with the corporations Suez and Aetra on the basis of a four-fold increase in tariffs following privatization, inconsistent coverage that was especially bad in low-income areas and high water leakage levels.³² The court found that the privatization had led to the violation of citizens' right to water.³³ The recent wave of remunicipalization of public utilities, including water and energy services, demonstrate the risks of limiting

the autonomy of governments to determine which services are publicly provided. Remunicipalization is often a response to the failure of privatized services to yield equitable or otherwise acceptable service provision.³⁴

The liberalization of trade in services also has the potential to significantly increase women's burden of unpaid work and deepen women's poverty. The introduction of market-based user fees is not just a regressive measure that deters women from accessing essential services, such as healthcare and education; as services are cut in a bid to increase economic efficiency, women are the ones who are left to fill the gaps in provision.³⁵ As women's burden of work in the household increases, they are further precluded from seeking employment, education or exercising a range of other rights, thereby entrenching cycles of poverty.

2.4

Investor-state dispute settlement clauses

Perhaps the most controversial aspect of trade and investment agreements is the investor-state dispute settlement (ISDS) mechanism. ISDS provisions enable investors to bring a claim in an arbitral tribunal

against a government for a breach of a provision of the agreement or treaty. These provisions are common in international investment agreements and, where they contain investment chapters, in FTAs. A record number

30 UNCTAD 2015c, 43.

31 Gallagher 2010.

32 Public Services International 2015.

33 Hairani 2015.

34 Pigeon et al. 2015.

35 UN General Assembly 2012a; UN Women 2015, 225.

of claims were initiated under ISDS in 2013 (52 claims), and the majority of these cases continue to be brought against developing countries.³⁶ The erosion by ISDS clauses of domestic policy space needed to advance sustainable development and the enjoyment of human rights recently prompted the UN's Independent Expert on the promotion of a democratic and equitable international order to suggest that agreements containing ISDS clauses should be revised or terminated on the basis of incompatibility with the UN Charter.³⁷

The wealth of critical literature on ISDSs generally highlights three broad sets of concerns. The first pertains to the scope of the provisions that investors have sought to enforce through ISDSs. Among these core provisions are national treatment requirements, requirements that investors receive “fair and equitable treatment”, and a prohibition of direct or indirect expropriation of investments in the absence of prompt and full compensation. Aside from the breadth of the provisions themselves, a recent review of the jurisprudence of arbitral tribunals shows that, in interpreting these provisions, tribunals can take an extremely broad view of their scope. For example, with respect to the doctrine of legitimate expectation that underpins fair and equitable treatment clauses, investors have successfully claimed breach of legitimate expectations “despite the identified expectation having no base in the legal rights of the claimant under domestic law, nor in representations made by the host state or the regulatory arrangements in force at the time the investment was made.”³⁸

The second set of concerns relates to the arbitral process itself, which the Independent Expert on the promotion of a democratic and equitable international order recently stated could entail a *prima facie* violation of the principle of legality.³⁹ While not a judicial process, significant concern has been expressed regarding the consistency,⁴⁰ transparency and impartiality of decisions made in ISDS arbitrations, including by senior

members of state judiciaries.⁴¹ Among other alarming characteristics of the arbitral process, review committees have refused in the past to annul decisions even when they find manifest errors of law,⁴² and there is a growing phenomenon of third-party funding of claims by banks, hedge funds and insurance companies who receive a significant cut of final awards.⁴³

The final set of concerns relates to the use of ISDSs to directly undermine actions taken by governments to protect human rights and the environment and promote equitable development. ISDS claims have been brought to challenge Canada's moratorium on fracking, Egypt's proposed increase in the minimum wage, Germany's decision to phase out nuclear power following the Fukushima nuclear power plant disaster, measures introduced by India to enforce the tax liability of a multinational company, Australia and Uruguay's introduction of anti-smoking measures, and El Salvador's refusal to grant a mining permit on environmental grounds. Arbitral tribunals have routinely ignored the binding human rights obligations of governments in making their decisions in favour of enforcing the rights of investors. For example, in 2015 Argentina was ordered to pay \$405 million to Suez for freezing the price of water during an economic crisis in the early 2000s that led to mass unemployment.⁴⁴ The tribunal found that, while Argentina argued its actions were in fulfilment of the human right to water for its population, that right was trumped by the rights of Suez under its contract with the government.⁴⁵

Respondent governments also incur significant costs when defending a claim (the Organisation for Economic Co-operation and Development [OECD] has estimated the average cost of each ISDS arbitration to be \$8 million) and, if unsuccessful, face potentially enormous awards against them, such as the award of \$1.7 billion plus interest against Ecuador.⁴⁶ In the latter case, the award was made despite the fact that Ecuador had exercised a right expressly granted

36 UNCTAD 2015b.

37 UN General Assembly 2015c.

38 Bonnitcha 2011.

39 UN OHCHR 2015a.

40 Jones 2011.

41 French 2014.

42 *CMS Gas Transmission Company v. Argentine Republic*, 2007.

43 Kahale 2012.

44 Russo 2015.

45 *Sociedad General de Aguas de Barcelona SA and Vivendi Universal SA v Argentine Republic*, 2010.

46 *Occidental Petroleum Corporation et al. v. The Republic of Ecuador*, 2012.

to it under its national law to terminate its contract with Occidental Petroleum. The prospect of multi-million dollar claims against a government has been described as having a regulatory chilling effect that deters governments from even seeking to introduce

regulation that may be challenged by investors.⁴⁷ Given the absence of any enforcement mechanism for the 2030 Agenda or the Addis Ababa AA, it is easy to see why the threat of ISDSs “may render the implementation of [the two agendas] illusory”.⁴⁸

2.5

Trade liberalization and decent work

Aside from the human rights implications of the regulatory prescriptions of trade and investment agreements, trade liberalization shapes domestic economies, industries and labour markets in a way that fundamentally affects women’s access to decent work.

Both the 2030 Agenda and the Addis Ababa AA aspire to achieve decent work for all, including women. Goal 8 of the SDGs aims to “[p]romote sustained, inclusive and sustainable growth, and full and productive employment and decent work for all” and includes targets specifically focused on achieving decent work and labour rights for all workers. The Addis Ababa AA echoes this language.⁴⁹ However, neither agenda attempts to seriously reconcile these objectives with the labour market restructuring that results from the increased integration of developing countries into global markets and global value chains. The impacts on women workers reflect the discrimination and inequality women experience in almost every social and economic role, including inequality in education, training and the distribution of income, as well as gender stereotypes that posit that women are unsuited to more highly valued forms of work.

The assumption underpinning trade liberalization has been that free trade will contribute to sustained economic growth and productivity, which will in turn expand decent work opportunities for men and women. However, while a growth in export-oriented industries may expand job opportunities for women,

these jobs have tended to be concentrated in labour-intensive, low value-added and low-wage export industries.⁵⁰ In the manufacturing sector, the expectation that wages will rise as productivity of low-wage sectors increases has been displaced by evidence that firms operate on the basis of competitive advantage that depends on the lower pay, casualization and informalization of women workers. In fact, there is evidence that as countries move into higher value-added stages of production, a process of “defeminization” of employment occurs.⁵¹

Similarly, in the non-traditional agricultural export sector (including exports of products such as cut flowers and vegetable packing) women tend to be clustered in a highly flexible workforce and placed in lower occupational categories where there is less opportunity for training or upward mobility.⁵² As explained by the former UN Special Rapporteur on the Right to Food, the overrepresentation of women in the “periphery” of the workforce is not because women prefer flexible working arrangements, “it is because women are easier to exploit and have fewer options than men.”⁵³

Women also form the majority of people engaged in home work, which is among the least secure forms of informal work.⁵⁴ A 2010 study estimated that there are more than 300 million homeworkers in developing countries, many of whom work in export-oriented industries such as textile and garment production.⁵⁵ Aside from losing a portion of their wages to

47 UN General Assembly 2015c.

48 Ibid, para. 7.

49 UN General Assembly 2015a, paras. 16, 41.

50 UNCTAD 2008.

51 UNCTAD 2014b; Kabeer 2012; UNCTAD 2014a.

52 De Schutter 2013, 45.

53 Ibid 46.

54 Kabeer 2012, 36.

55 Ethical Trading Initiative 2010.

intermediaries, like all forms of informal work home workers lack basic labour rights protections.

For the expanded job opportunities that may come with trade liberalization to translate into decent work for women, governments need to intervene with supportive fiscal, wage and industrial policies. However, as discussed above, the fiscal and policy space for governments to do so is constrained by the dominant model of trade and investment liberalization. While governments have committed to the SDGs, they continue to conclude FTAs that directly undermine those goals.

During the negotiation of the Addis Ababa AA, governments also failed to support two proposals that would have significantly strengthened domestic policy space *vis à vis* trade and investment agreements, and coherence between the obligations assumed under these agreements and binding human rights obligations. The first was a proposal to encourage governments to conduct human rights impact assessments of trade agreements, which is discussed further in the recommendations below. This proposal was eventually moved to the section of the Addis Ababa AA that addresses systemic issues and merely calls on countries to assess the impact of their policies on sustainable development⁵⁶—a suggestion that is so broad it is practically meaningless.

Further, governments missed a critical opportunity to address the impact of ISDS clauses on policy space and policy coherence. The zero draft of the Addis Ababa AA included a commitment to “strengthen safeguards in investment treaties, especially by proper review of investor-state-dispute-settlement clauses, to ensure the right to regulate is retained in areas critical for sustainable development, including health, the environment, employment, infrastructure, public safety, macroprudential regulations and financial stability”.⁵⁷ It also committed governments to negotiating agreements transparently, an essential step to remedying the increasing exclusion of civil society and parliaments from the negotiation of trade and investment agreements. However, by the final stages of the negotiations, all references to reviewing ISDS clauses had been removed and replaced with an extremely weak commitment to “endeavour to craft trade and investment agreements with appropriate safeguards so as not to constrain domestic policies and regulation in the public interest”⁵⁸ (emphasis added). Further, the commitment to negotiate agreements transparently was replaced with a commitment to implement agreements transparently.

56 UN General Assembly 2015a, para. 103.

57 Zero draft of Addis Ababa Action Agenda 2015, para. 81.

58 UN General Assembly 2015a, para. 91.

2.6

Recommendations

Ex-ante and periodic human rights impact assessments of trade and investment agreements

As previously noted, during the Addis Ababa negotiations, governments contemplated including a provision on the need to conduct human rights impact assessments for trade and investment policy. Such a provision would have been in line with the Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements,⁵⁹ as drafted by the UN Special Rapporteur on the Right to Food. The Guiding Principles require that *ex-ante* impact assessments are conducted before any agreements are concluded, with periodic impact assessments to follow.

Assessments of these kind are already being conducted, albeit inconsistently. There has been a gradual increase in the incorporation of human rights concerns into the Sustainability Impact Assessments carried out by the European Commission when negotiating trade agreements. Further, the European Union's (EU's) 2012 Action Plan on Human Rights and Democracy explicitly calls for the inclusion of human rights impact assessments of trade agreements.⁶⁰ The National Human Rights Commission of Thailand has also conducted a human rights impact assessment of Thailand's proposed free trade agreement with the United States.⁶¹ It is therefore an opportune time to further institutionalize the Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements and to ensure that assessments include a rigorous analysis of the gendered impacts of these agreements.

Evaluating the human rights impacts in all countries that are a party to an agreement would also strengthen

the implementation of governments' extraterritorial human rights obligations.⁶² In recognition of these obligations, the UN Committee on Economic, Social and Cultural Rights has urged States under review to apply a human rights-based approach to international trade policies.⁶³ A number of south-east Asian human rights commissions also recently affirmed the necessity for governments to conduct human rights impact assessments of trade and investment agreements in line with their extraterritorial human rights obligations.⁶⁴

Ensure the primacy of human rights over inconsistent international obligations

The provisions of trade and investment agreements that are found to be inconsistent with the human rights obligations of governments should be revised or terminated. Article 103 of the UN Charter, by which all UN Member States are bound, states: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, the obligations under the present Charter shall prevail." The obligations of Member States under the UN Charter include the promotion of universal observance of human rights and fundamental freedoms for all.⁶⁵ The UN Independent Expert on the Promotion of an Equitable and Democratic International Order has stated that:

This means that bilateral and multilateral free trade and investment agreements that contain provisions that conflict with the Charter must be revised or terminated, and incompatible provisions must be severed according to the doctrine of severability.⁶⁶

59 UN General Assembly 2011.

60 Bonanomi 2014.

61 Reid Smith 2007.

62 For a statement of international expert opinion on the existing extraterritorial human rights obligations of States, see Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights 2013.

63 UN ECOSOC 2011, para. 9; ESCR-Net 2014.

64 Bangkok Declaration on Extraterritorial Human Rights Obligations 2014.

65 Charter of the United Nations and Statute of the International Court of Justice, arts. 55, 56.

66 UN General Assembly 2015, A/70/285, para. 14.

To the extent that arbitration tribunals privilege the rights of investors over the human rights obligations of governments, this would require severing ISDS provisions.

Universal implementation of a living wage

The universal implementation of a living wage as a floor wage is essential for several reasons: to fulfil governments' obligations to ensure decent work for all under Goal 8 of the SDGs and in line with the International Labour Organization Conventions and Recommendations⁶⁷, to address economic inequality, to mitigate the downward pressure on wages caused by the mobility of international investment in labour-intensive industries and the "race to the bottom", and to stimulate domestic markets and provide tax revenue.⁶⁸ Further, implementation of a living wage would enable reductions in poverty and economic and social inequalities that would advance the fulfilment of several other SDGs, including Goals 1, 5 and 10.

A living wage is a wage that enables a worker and his or her family to live in dignity. It should be calculated according to the cost of a basket of goods that would include sufficient calories for a family and cover non-food costs, including housing, clothing, energy and material goods (guided by the local cost of goods and services).⁶⁹ Because living wage calculations have previously assumed an employment model of a male breadwinner, universal non-discriminatory living wages are necessary to address gender discrimination and the feminization of poverty. Articulating a living wage is especially important for migrant workers and women in the informal economy given their vulnerability to exploitation.

67 ILO 1970a Convention 131, Art. 3; ILO 1949 Convention 95 and ILO 1967 Recommendation No. 131 and ILO 1970b, Recommendation No. 135.

68 Asia Pacific Forum on Women, Law and Development 2015a.

69 The Asia Floor Wage campaign, for example, has developed an equation that provides for both food and non-food costs for a family. This standard should be used to guide the development of a living wage indicator for the SDGs; see Asia Floor Wage 2009.

In his Synthesis Report on the Post-2015 Development Agenda, the UN Secretary-General recognized a living wage as a key component of a sustainable and inclusive economy.⁷⁰ A living wage indicator should therefore be included as a cross-cutting measure of the targets relating to decent work, poverty reduction and income inequality in the SDGs. An appropriate indicator would be the percentage of workers receiving a living wage (disaggregated by gender, migration status, age, etc.) or the difference between the statutory minimum wage and a living wage.⁷¹

Protect and strengthen the right of women to organize in the workplace

Globalization, trade and investment liberalization, and the growing informality of work are among the factors that have contributed to a steady decline in recent decades in the share of workers affiliated to trade unions.⁷² Trade unions are also experiencing an increasingly hostile political and corporate environment including deliberate restrictions on the capacity to organize locally and trans-nationally. This is despite the fact that trade unions play a critical role, especially for women, in promoting and protecting worker's rights and in amplifying the concerns and agency of workers in political decision-making at community, national and international levels.⁷³ Women's organizing in the workplace has been instrumental to the improvement of wages and working conditions for women, including narrowing the gender pay gap.⁷⁴ For example, in the Bangladeshi garment industry, organizing and protest by women workers led to a doubling of their wage and the provision of subsidized food grains to factory workers.⁷⁵ As stated by the Asia Pacific Forum on Women, Law and Development, "the right to organize is the one right that can unlock all

70 UN Secretary General 2014, para.73.

71 Asia Pacific Forum on Women, Law and Development 2015a.

72 Ostry et al. 2014.

73 ILO 2001.

74 UN Women 2015, 117-118; Kabber 2012, 49.

75 Hossain 2012.

others”⁷⁶ and is particularly important for women in vulnerable forms of employment, including migrant and domestic workers. Further, recent IMF research found that a decline in union density is associated with a rise in income inequality, notably at the top of the income distribution, and with a decrease in redistribution.⁷⁷ The latter is associated with the limited influence of weaker unions on redistributive public policies and corporate decisions.⁷⁸

Despite a general increase in the numbers of women joining trade unions, women still remain under-represented as members, organizers and leaders in the trade union movement.⁷⁹ This is linked to underlying

gender norms and stereotypes that deter women from taking on trade union responsibilities, including perceptions that women are not suitable for leadership roles, the male-dominated nature of trade union culture, the additional responsibilities women have outside the workplace, and a lack of training or opportunities available to women to take on those responsibilities.⁸⁰

Beyond ensuring that the right of women to collectively organize in the workplace is protected, governments should adopt measures of union density as an indicator of decent work and income inequality, including for targets in Goals 8 and 10 of the SDGs.

76 Asia Pacific Forum on Women, Law and Development 2010, 5.

77 Jaumotte and Buitron 2015.

78 Ibid, 5.

79 UN Women 2015, 118.

80 European Trade Union Confederation 2003.

3.

SOVEREIGN DEBT AND AUSTERITY MEASURES

The enormous social and economic costs of the Latin American and East Asian financial crises have made it impossible for governments in the last 15 years to ignore the links between external debt burdens, development and the enjoyment of human rights. The Millennium Declaration and the MDGs included a commitment to “deal comprehensively with the debt problems of developing countries”,⁸¹ and the Monterrey Consensus on Financing for Development recognized that assessments of debt sustainability should “bear in mind the impact of debt relief on progress towards [the MDGs]”.⁸² However, despite an increase in international debt levels from \$11.3 trillion in total net debts in 2011 to \$14.7 trillion in 2014,⁸³ the proposals to address external debt in the SDGs and the Addis Ababa AA are a regression from previous commitments. This is particularly alarming given a recent assessment by Jubilee Debt Campaign that 22 countries are currently in debt crisis, and 71 countries are at risk of debt crisis.⁸⁴

Neither the 2030 Agenda nor the Addis Ababa AA uphold the notion in the Monterrey Consensus and Doha Declaration on Financing for Development that maintaining sustainable debt levels is the shared responsibility of borrowers and lenders. Despite broad recognition of the significant role of reckless lending practices of financial institutions in exacerbating sovereign debt burdens, the Addis Ababa AA places primary responsibility on borrowing countries.

Second, the Addis Ababa AA fails to endorse the important work of the United Nations in this context, including the UN Commission on Trade and Development’s Principles on Responsible Sovereign Lending and Borrowing and the UN Guiding Principles on Foreign Debt and Human Rights. It instead privileges the work and role of the IMF and World Bank—creditor institutions that bear substantial responsibility for the social and economic impacts of debt crises. Governments of developed countries also refused, in Addis Ababa and in New York, to constructively

engage with the important process initiated in the United Nations in 2014 of developing a sovereign debt restructuring mechanism.⁸⁵ The debt-related target in Goal 17 of the SDGs instead merely encourages governments to assist developing countries to attain long-term debt sustainability “as appropriate”.⁸⁶ Even if this was a less qualified target, the way in which debt sustainability is assessed continues to exclude any consideration of the social impacts of debt servicing. Civil society working on this issue has long advocated for an approach to debt sustainability that takes into account the resources countries need to address poverty and inequalities.

The impacts of high levels of sovereign debt on women’s human rights and gender equality are well known. The UN’s Independent Expert on the effects of foreign debt and other related international financial obligations on the full enjoyment of human rights dedicated a report to the disproportionate impact of debt and related conditionalities on women,⁸⁷ a

81 UN Millennium Development Goals, Goal 8 Target 8.5.

82 Monterrey Consensus on Financing for Development 2002, Art. 48.

83 Jones 2015.

84 Ibid.

85 UN General Assembly 2014b.

86 UN General Assembly 2015f, Goal 17, target 17.15.

87 UN General Assembly 2012a.

number of the conclusions of which were reiterated in a recent report of the UN Working Group on Discrimination against Women in Law and in Practice.⁸⁸ In short, women's rights are affected by the diversion of resources in debtor countries from social services and by the policy conditionalities frequently attached to international debt relief mechanisms.⁸⁹ Together, these conditions can lead to violations of human rights including rights to education, health, adequate housing, work, food, water and sanitation, as well as the entrenchment of gender inequality.⁹⁰

The proportion of government revenue that is spent on foreign debt payments is significant, even in countries that are considered too wealthy or not indebted enough to qualify for debt relief schemes. Jamaica and El Salvador, for example, spent 20 per cent and 18 per cent respectively of government revenue on debt repayments in 2015.⁹¹ Among the reforms considered by governments between 2010 and 2013 to consolidate budgets in light of public debt are rationalization of social safety nets, which amount to *de facto* reductions in social protection coverage; healthcare system reforms, which include raising fees; and labour flexibilization reforms, which include revising the minimum wage and decentralizing collective bargaining.⁹²

A common response across regions has also been to downsize the public sector.⁹³ Cuts and freezes in public sector wages and hiring are also often a result of policies that are a condition of loans, grants and debt relief granted by international financial institutions.⁹⁴ This has especially grave implications for women, for whom the public sector is an important source of decent work.⁹⁵ Women are often the first to be made redundant as they are the most likely to occupy temporary or part-time positions and because of the prevailing perception that women are not the breadwinners in their household. For example, redun-

dancies in the public sector were a key condition imposed by the IMF in exchange for the \$57 billion aid package to South Korea during the Asian financial crisis. This resulted in women losing jobs at twice the rate of men.⁹⁶

Cuts in public spending also lead to reductions in the availability of essential public services, which interferes with women's enjoyment of their rights in several ways: first, women rely more than men on public services and social security guarantees, and second, women are left to fill the gaps in provision that occur when services are reduced. As the Independent Expert states, "while [women's unpaid care work] enables communities to weather the debt crisis, it reinforces the exclusion and dependency of women."⁹⁷ Policy conditionalities that require governments to privatize utilities or services have similar consequences for women. The UN Special Rapporteur on the Right to Health has commented on the increased inequality in access to healthcare, including greater out-of-pocket expenditure, that results from privatization of healthcare services.⁹⁸ For example, the privatization of dozens of public hospitals in the Philippines in line with policy prescriptions of the Asian Development Bank and World Bank over decades has been linked by the Government of the Philippines to the increasing maternal mortality rate.⁹⁹ The UN Special Rapporteur on the right to adequate housing has also noted that privatization of housing services in the context of financial crises further marginalizes poor women, who are left without access to adequate housing.¹⁰⁰

Trade liberalization has also been a common policy condition for debt relief in the past. The implications of trade liberalization for women's rights, including their access to decent work, have been discussed in detail in the first part of this paper.

88 UN General Assembly 2014a.

89 UN General Assembly 2012a.

90 Ibid.

91 Jones 2015.

92 Ortiz and Cummins 2013.

93 Ibid.

94 UN General Assembly 2012a.

95 UN General Assembly 2014a.

96 Asia Pacific Forum on Women, Law and Development 2011.

97 UN General Assembly 2012a, para 31.

98 UN General Assembly 2012c, para. 8.

99 Lorenzo 2012; Asia Pacific Forum on Women, Law and Development 2011.

100 UN General Assembly 2010, 6.

3.1

Recommendations

End austerity measures and commit to universal social protection

It is remarkable that austerity measures continue to be prescribed and implemented by governments to address fiscal imbalances, despite the growing evidence that confirms austerity policies undermine economic and social progress, including the fulfilment of women’s human rights. In a recent report, Ortiz and Cummins state:

In the short term, austerity depresses incomes and jobs, hinders domestic demand and ultimately recovery efforts. Austerity also has negative impacts on employment, economic activity and development over the long term. Even recent research at the IMF acknowledges that fiscal consolidation has adverse effects on both short and long-term unemployment, private demand and GDP [gross domestic product] growth, with wage-earners hurt disproportionately more than profit- and rent-earners.¹⁰¹

Rationalization of social safety nets is a particularly regressive measure in view of the critical role social protection plays in reducing poverty and inequality. Given the overrepresentation of women in informal occupations that are excluded from legal coverage, universal social protection is a critical tool for addressing poverty experienced by women¹⁰² and is especially important in times of financial crisis. In line with International Labour Organization (ILO) Recommendation 202, governments must establish social protection floors as a fundamental element of national social security systems.¹⁰³ Unfortunately, the SDGs significantly weaken that commitment by setting targets for “nationally appropriate social protection systems and measures...[to] achieve

substantial coverage of the poor and vulnerable.” The Addis Ababa AA dilutes this further by adding the qualification “fiscally sustainable and nationally appropriate”,¹⁰⁴ which makes social protection especially vulnerable to austerity policies. Ortiz argues that even the poorest countries have capacity to fund social protection floors in even through, for example, the reallocation of public expenditures, increasing tax revenue, addressing illicit financial flows and restructuring debt.¹⁰⁵ Beyond that, there is also a proposal for a global fund for social protection, which would be a solidarity-based financing mechanism to assist countries to design and implement national social protection floors.¹⁰⁶

Establish a sovereign debt restructuring mechanism

As previously noted, the UN General Assembly has recently taken steps to support the establishment of a multilateral legal framework for sovereign debt restructuring.¹⁰⁷ This is a necessary alternative to the fragmented, *ad hoc* and often inequitable legal approach that currently exists for restructuring debt—a problem exacerbated by the growing number of creditors as debt has moved from banks to capital markets, and by the role of so-called vulture funds. As a universal and democratic multilateral body, the United Nations is also a more appropriate forum to consider sovereign debt restructuring than a discussion led by a major creditor institution, such as the IMF. The voting record when the UN General Assembly adopted the Basic Principles on Sovereign Debt Restructuring Processes also points to a greater willingness among developed and creditor countries to engage in the process compared to the vote to adopt the initial resolution in 2014.¹⁰⁸

101 Ortiz 2013.

102 ILO 2015.

103 ILO 2012, Recommendation 202, art. 1(a).

104 UN General Assembly 2015a, para. 12.

105 Ortiz 2014.

106 Global Coalition for Social Protection Floors 2015.

107 UN General Assembly 2014c.

108 Muchhala 2015b.

4.

PRIVATE FINANCE AND PUBLIC-PRIVATE PARTNERSHIPS

In the context of current global financial and economic fragility, it is perhaps unsurprising that governments—particularly in the North—have turned to the private sector as a key source of the trillions of dollars annually required to implement the SDGs. Representatives of the private sector have also played a significant role in shaping the narrative around the private sector’s prospective contribution to the implementation of the SDGs.¹⁰⁹ Indeed, even before the Addis Ababa Conference took place, the Third UN Conference on Financing for Development (FfD) Business Sector Steering Committee released a compendium of proposals and initiatives by businesses “aimed at mobilizing private sector capital, expertise and facilitation” in the context of sustainable development.¹¹⁰ Compared to previous FfD outcomes and the MDGs, the SDGs and the Addis Ababa AA give unprecedented attention to “unlocking the transformative potential”¹¹¹ of the private sector, including through a target on public-private partnerships in Goal 17¹¹² and the space created for private sector involvement in the promotion of multi-stakeholder partnerships.¹¹³

There is no question that parts of the private sector—particularly small and medium-sized enterprises—are an important source of livelihood for women. The ILO estimates that globally and across all sectors of the economy, small and medium-sized enterprises account for the largest share of employment, including two-thirds of all formal jobs in developing countries.¹¹⁴ However, the means of financing the SDGs clearly privilege the role of large and transnational businesses, which have a far less

consistent record of contributing to development, let alone sustainable development. This will be further substantiated below, but it is worth noting a striking evolution in the structure of the Addis Ababa AA: it collapses the discussion of domestic and international private financial flows into one chapter, rather than maintaining the structural separation between these very different streams of finance that was reflected in the Monterrey and Doha outcomes.

109 Pingeot 2014; Adams and Martens 2015.

110 FFD Business Sector Steering Committee 2015.

111 UN General Assembly 2015a, para. 5.

112 UN General Assembly 2015f, Goal 17, target 17.17

113 UN General Assembly 2015, Goal 17, target 17.16; UN General Assembly 2015a, paras. 10, 76.

114 de Kok et al. 2013.

4.1

Enabling foreign direct investment

Both the SDGs and Addis Ababa AA start from the premise that an increased flow of foreign direct investment,¹¹⁵ with a few small adjustments, is inherently beneficial for developing countries, especially least developed countries. For example, the Monterrey Consensus, Doha Declaration, Addis Ababa AA and the SDGs each commit to assisting least developed countries to attract more foreign direct investment (FDI).¹¹⁶ First, it is worth noting that despite more than a decade of commitments to redirect FDI, such flows still overwhelmingly bypass the smallest or weakest economies. In 2014, less than 2 per cent of global investment flows reached least developed countries,¹¹⁷ and the limited investment that reaches Africa (the region with the lowest level of FDI after Oceania) continues to be concentrated in larger, more successful economies.¹¹⁸

Second, and more importantly, neither the SDGs nor the Addis Ababa reflect sufficiently on whether or not flows of FDI actually correlate with strong sustainable development, human rights or gender equality outcomes. A growing body of evidence suggests that it does not and that the confidence placed by governments in foreign investors is misplaced. Aside from the increasing proportion of FDI to developing countries that is short-term and speculative,¹¹⁹ in 2014 the highest growth in the value of greenfield investment was in the primary sector, which is driven mostly by extractive industry in developing countries.¹²⁰ The development of extractive industry often not only fails to create decent work in local communities,¹²¹ it also entails broader social and environmental impacts that have had particularly serious consequences for women's human rights.¹²² The UN Working Group on

Discrimination against Women in Law and in Practice recently reported that women are disproportionately displaced by extractive industry and are often denied compensation paid for resettlement, which is given to male landowners or heads of household. Further, the arrival of a transient largely male workforce and general mismanagement of extractive projects can lead to serious human rights violations, including sexual violence perpetrated by private and State security forces.¹²³

Finally, the positive spillover effects of foreign investment are far from automatic.¹²⁴ The obstacles to local economies benefiting from skills transfers and technology dissemination within global value chains have been well-documented. As reported by the United Nations Conference on Trade and Development (UNCTAD), “developing countries face the risk of remaining locked into relatively low value-added activities.”¹²⁵

A more significant concern is the introduction of incentives by governments to attract FDI, which includes relaxing labour and environmental standards and providing significant tax breaks to foreign investors. The imperative to create an “enabling environment” to encourage private sector activity is reiterated in the Addis Ababa AA.¹²⁶ The human rights and environmental risks of “business-friendly” reforms have been highlighted in relation to the World Bank's Doing Business Index and Enabling the Business of Agriculture initiative (previously called Benchmarking the Business of Agriculture), which have considerable influence on policymakers in developing countries. The Enabling the Business of Agriculture initiative heavily promotes the interests of foreign agribusiness while overlooking the

115 FDI is defined by the OECD as a cross-border investment by a resident entity in one economy with the objective of obtaining a lasting interest in an enterprise resident in another economy.

116 UN General Assembly 2015f, Goal 17, target 17.5, goal 10, target 10.a; UN General Assembly 2015a, para. 35; Monterrey Consensus on Financing for Development 2002, para. 20.

117 UNCTAD 2015d.

118 Ernst & Young 2014.

119 UNCTAD 2015c.

120 UN General Assembly 2014a.

121 Salazar-Xirinachs et al. 2014.

122 Asia Pacific Forum on Women, Law and Development 2009.

123 UN General Assembly 2014a, para. 72.

124 UNCTAD 2013.

125 Ibid, p xi.

126 UN General Assembly 2015a, para. 36.

interests and rights of smallholder farmers that are critical for rural food security and sustainable development. Among the regulatory reforms promoted by such initiatives is private land ownership, despite the fact that many local communities abide by customary systems of land tenure. A number of these reforms are also intended to facilitate granting of large-scale land concessions to private investors, which has been linked to land-grabbing.¹²⁷ These reforms have particularly grave implications for women, particularly in south Asia and sub-Saharan Africa where large numbers of women rely on land for their livelihoods.¹²⁸

The introduction of tax exemptions and other incentives by governments to attract FDI has also deprived

developing countries of a significant amount of revenue and led to a regulatory “race to the bottom”. Even where transnational companies are expected to pay taxes, abusive tax avoidance has resulted in an estimated loss to developing countries of \$189 billion annually.¹²⁹ Developing countries are also particularly ill-equipped to counter the sophisticated profit-shifting tactics of transnational corporations.¹³⁰

The ways in which investors can exploit investment treaty provisions, including through investor-state dispute settlement mechanisms, to undermine sustainable development, human rights and gender equality is discussed in section 2 on trade and investment liberalization.

4.2

Public-private partnerships

Public private-partnerships (PPPs) are broadly used to describe collaboration between the public and private sectors to achieve a public policy goal, including a private company financing, building or operating a public service or facility. The SDGs and Addis Ababa AA both specifically commit to encouraging and promoting public-private partnerships as a means to achieving sustainable development.¹³¹

The prominence given to PPPs in the context of the SDGs and the Addis Ababa negotiations is consistent with the growing enthusiasm for PPPs within development finance institutions and groups like the G20. The World Bank has been steadily increasing its support in recent years for PPPs, including through the establishment of the Global Infrastructure Facility, which aims to facilitate “the preparation and structuring of complex infrastructure PPPs to enable mobilization of private sector and institutional investor capital”.¹³² This is despite proliferating critiques of the potential of PPPs to contribute to sustainable development and

the enjoyment of human rights, much of which is based on past experience with PPPs in developed and developing countries. The critical literature on PPPs, mostly emanating from the development finance institutions that are their greatest advocates, raises two broad sets of concerns. The first relates to the fiscal implications of PPPs, and the second relates to the social and human rights impacts of PPPs.

One of the principal justifications used by governments for entering into PPPs is that it is an efficient way to share the costs and fiscal risks associated with building or operating expensive public facilities or services, particularly large-scale infrastructure. One of the biggest flaws in this rationale is that the performance of PPPs is rarely, if ever, compared to traditional public procurement and delivery systems.¹³³ The evidence that does exist, however, suggests that PPPs are not a more efficient way for governments to finance infrastructure. The World Bank’s Public Private Partnership in Infrastructure Resource Centre noted that one of the risks

127 Martin-Prevel 2014.

128 UN Women 2015.

129 Griffiths 2014.

130 UNCTAD 2015d.

131 UN General Assembly 2015f, Goal 17, target 17.17; UN General Assembly 2015a, para. 48.

132 See website for GIF: <http://www.worldbank.org/en/programs/global-infrastructure-facility>.

133 UNCTAD 2015c.

of PPPs is that “development, bidding and ongoing costs in PPP projects are likely to be greater than for traditional government procurement processes.”¹³⁴ Further, national governments can usually borrow money at lower interest rates than private companies.¹³⁵ IMF research has also identified that PPP contracts are frequently renegotiated (55 per cent of PPPs are renegotiated, on average every two years) in favour of the private sector partner, including through postponement or decreases in the private sector obligations.¹³⁶

Further, PPPs can create significant contingent liabilities for governments that arise in various ways and, as noted by the World Bank’s Independent Evaluation Group, “are rarely fully quantified at the project level”.¹³⁷ An example of the considerable debt risks involved is a large-scale road-building programme in Mexico in the 1990s that involved more than 50 PPPs. Unanticipated costs and macroeconomic shocks led to the government bailing out more than half of the PPPs and assuming close to \$8 billion in debt.¹³⁸ These liabilities are often greater when foreign investors are involved because of foreign currency exposure and the impact of exchange rates on profitability.¹³⁹ Moreover, PPPs can be used to conceal levels of government borrowing by classifying PPP assets as private assets and “moving debt off balance sheets”.¹⁴⁰ In this way, debt payment obligations arising from PPPs are not covered in debt sustainability assessments and have been identified by Jubilee Debt Campaign as a major debt risk.¹⁴¹

Fiscal costs and risks aside, the evidence suggests that PPPs are an inappropriate vehicle for financing the social and human rights goals that are at the heart of the 2030 Agenda. Much like FDI more broadly, private sector participation in PPPs is concentrated in sectors and markets that are most profitable, such as

energy and telecommunications,¹⁴² and not in those that benefit the poorest and most marginalized, including women. As UNCTAD recently noted, “water and sanitation are among the most needed infrastructure services to relieve human suffering, and yet they are the least likely to be financed through this method”.¹⁴³ The irrelevance of poverty reduction as an objective for most PPPs is confirmed by the absence of indicators for measuring a project’s effect on poverty in the International Finance Corporation’s evaluation framework (the International Finance Corporation is the “private sector arm” of the World Bank Group).¹⁴⁴ Further, a recent study of PPPs by the World Bank’s independent evaluation group found that the impact on poverty reduction was assessed for 2 out of 442 projects.¹⁴⁵

Where PPPs have been used to provide social services, particularly health and education, this has often led to an exacerbation of inequality in access to services and deepened social inequalities. The UN Special Rapporteur on the Right to Education recently condemned the World Bank’s promotion of private sector engagement in education, stating that its guidance to create “very profitable and flourishing enterprises” is “blatantly disrespectful of human rights obligations”. Further, the Special Rapporteur found that the privatization of educational services had a discriminatory, negative impact on the school attendance of girls.¹⁴⁶ The need to provide dividends or profits to private providers also means that PPPs inevitably involve the introduction of user fees or other tariffs that are levied on the public. As discussed in parts I and II, these policies have clearly gendered impacts.

PPPs have been notoriously unsuccessful in the context of water provision, which has led to more than 180 cities and communities in 35 countries remunicipalizing their water services in the last 15

134 See website for the World Bank’s PPP in Infrastructure Resource Centre: <http://ppp.worldbank.org/public-private-partnership/overview/ppp-objects>.

135 Romero 2015.

136 Queyranne 2014.

137 World Bank Independent Evaluation Group, undated.b.

138 UNCTAD 2015c, 18.

139 UNCTAD 2015c, 162.

140 Queyranne 2014.

141 Jones 2015.

142 UNCTAD 2015c, 161.

143 Ibid.

144 World Bank Independent Evaluation Group, undated.a

145 World Bank Independent Evaluation Group, undated.b

146 UN General Assembly 2015e.

years.¹⁴⁷ Remunicipalization has been prompted by tariff increases that put water beyond the reach of poorer communities, environmental hazards, a failure

to invest in infrastructure, and a recognition that the public sector can provide equally or more efficient water services at lower prices.¹⁴⁸

4.3

Recommendations

Establish a universal intergovernmental tax body

The enormous quantities of money that leave developing countries each year as a result of tax evasion and tax avoidance by private companies leave little doubt that the international tax system is in urgent need of reform. The most important proposal to address this put forward during the Financing for Development negotiations was for a universal, intergovernmental tax body housed within the United Nations. A global tax body would be a critical step towards a coherent global system of tax rules that is in the interests of all countries, including the poorest countries who stand to lose the most from the loss of tax revenue, and towards putting an end to the dangerous “race to the bottom” in tax incentives.¹⁴⁹ Presently, international tax reform is principally discussed within the OECD, which excludes more than 100 developing countries from participating in decision-making on an issue that will fundamentally affect their ability to finance their national development strategies.

However, the proposal to establish a universal intergovernmental tax body—which was driven by the Group of 77, a bloc of 134 developing and middle-income countries—was vigorously resisted by the EU, United States and their allies. The negotiation of the issue became one of the most contested debates during the negotiation, and significant momentum was created by a vocal civil society campaign in favour of a global tax body. This momentum should be built

upon to continue the push for a global tax body and a fairer system for setting global tax rules.

Create a binding, regulatory framework for business based in international human rights law

As the SDGs and Addis Ababa AA increase the licence for large businesses to play a role in the provision of public goods and services, so the need increases for robust regulation of businesses to ensure they act consistently with human rights standards and are held accountable for human rights violations. As observed by the UN Working Group on Discrimination against Women in Law and in Practice, weak corporate accountability and increased corporate mobility has created “insurmountable barriers for women to access justice” for corporate abuse and violations of human rights, of which most of the victims are women.¹⁵⁰

The “accountability gap” that exists around human rights violations caused by private business activity is not a new concern. The United Nations has been engaged in efforts to address the issue of aligning corporate behaviour with human rights standards for more than three decades, but a combination of active private sector resistance to regulation combined with a lack of political will has consistently pushed the discourse towards voluntarism and “partnership” rather than regulation.¹⁵¹ This culminated in the endorsement by the UN Human Rights Council of the Guiding Principles on Business and Human Rights in 2011,

147 Lobina et al. 2014.

148 Ibid.

149 EURODAD 2015.

150 UN General Assembly 2014a, para. 69.

151 Martens 2014.

which are a voluntary set of guidelines based on the State obligation to protect human rights and provide a remedy for violations, and the corporate responsibility to respect human rights.

Aside from substantial criticism of the normative content of the Guiding Principles,¹⁵² the Principles have failed to catalyse meaningful change in national frameworks regulating the actions of businesses and awareness within the private sector of the Guiding Principles remains extremely low.¹⁵³ The lack of enforcement of the Guiding Principles is unsurprising when many governments do not even enforce existing law that is intended to regulate corporate activity. Labour law, for example, is among the most widely violated bodies of law.¹⁵⁴

This is all the more reason to support the process currently unfolding in the UN Human Rights Council to elaborate a binding instrument “to regulate, in international human rights law, the activities of transnational corporations and other business

enterprises”.¹⁵⁵ The process has been initiated by the governments of Ecuador and South Africa and, at the time of writing, the United States, EU and their allies have refused to constructively engage in the discussions in the Human Rights Council. While the scope and content of the proposed international instrument are still far from clear, negotiation of an instrument is a critically important opportunity to address, in an intergovernmental forum, a number of the imbalances and injustices arising from the current state of corporate governance and accountability. These include the jurisdictional challenges that arise when seeking a remedy against a company that has activities across national borders; the many practical and political impediments local communities face when seeking to confront powerful companies regarding human rights violations, including attacks on human rights defenders by private and State security forces; and the fact that trade and investment treaties provide for powerful mechanisms to enforce the rights of investors, but not the rights of individuals and communities.¹⁵⁶

152 Deva and Bilchitz 2013.

153 Ford 2015.

154 Kabeer 2012.

155 Elaboration of an international legally binding instrument on transnational corporations and other business Enterprises with Respect to Human Rights. UN OHCHR 2014b.

156 Asia Pacific Forum on Women, Law and Development 2015b.

5.

GLOBAL PARTNERSHIP FOR DEVELOPMENT AND INTERNATIONAL SOLIDARITY

The steady erosion of the developmental role of the State can also be tied to the recent shift in the nature of the global partnership of development. Both MDG 8 and Goal 17 refer in their titles to a global partnership for development. However, the language concerning partnership in the 2030 Agenda and the Addis Ababa Action Agenda serves to relegate the central notion of a global partnership between States. For example, the 2030 Agenda refers to the need for “a revitalised and enhanced Global Partnership [which] will facilitate an intensive global engagement in support of implementation of all goals and targets, bringing together Governments, civil society, the private sector, the United Nations system and other actors”.¹⁵⁷ Both documents give unprecedented attention to the role of multi-stakeholder partnerships, which contributes to an overall diffusion of the language of partnership and obscures the central and separate notion of a global partnership between States.

This is significant for a number of reasons. States are the principal duty-bearers of human rights obligations and have an obligation to respect, protect and fulfil human rights, including in the context of actions taken to advance development objectives. States bear responsibility for the implementation of the SDGs, including through international development cooperation. Indeed, the International Covenant on Economic, Social and Cultural Rights includes an obligation upon States to engage in economic and technical measures, individually and through international assistance and cooperation,

to fully realise economic, social and cultural rights (to the maximum of the assisting States’ available resources).¹⁵⁸

Second, State responsibility for the implementation of the agenda provides a clearer path for accountability for the vast range of human rights violations that result from projects and programmes undertaken in the name of development.¹⁵⁹ The particular difficulties and exacerbation of harms that arise when this responsibility is delegated to the private sector have been considered in the third part of this paper.

¹⁵⁷ UN General Assembly 2015f, para. 6o.

¹⁵⁸ UN General Assembly 1966, Article 2.1: “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its

available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

¹⁵⁹ UN General Assembly 2015d.

Finally, the Global Partnership for development is an expression of the principle of international solidarity between countries, which is fundamental for a just and equitable international order.¹⁶⁰ International solidarity is articulated as a foundational value in international relations in a number of international instruments, including those that directly relate to international development cooperation. This includes the Millennium Declaration,¹⁶¹ two of the outcome documents of the Financing for Development Agenda,¹⁶² and most recently a proposed draft declaration on the right of peoples and individuals to international solidarity.¹⁶³ In the context of international development cooperation, the principle of solidarity is premised on the equality and autonomy of States, and directly challenges the vertical, donor-recipient relationship that has long characterized international development assistance¹⁶⁴ as well as the broader inequities between developing and developed countries discussed previously that extend beyond conditionalities in aid. As stated by the current Independent Expert on human rights and international solidarity, the principle of international solidarity provides a “coherent conceptual and operational framework to regulate a spectrum of global governance issues”.¹⁶⁵ However, the framing of Global Partnership in the 2030 Agenda distorts this principle

by referring to a Global Partnership that will work not in solidarity between States, but in “a spirit of global solidarity...with the poorest and with people in vulnerable situations”.¹⁶⁶

This is a departure from the Millennium Declaration, which explicitly affirms solidarity as a “fundamental value” that is considered “essential to international relations in the twenty-first century”.¹⁶⁷ Moreover, the Millennium Declaration interprets solidarity as requiring global challenges to be “managed in a way that distributes the costs and burdens fairly...Those who suffer or who benefit least deserve help from those who benefit most.”¹⁶⁸ Acknowledging that international solidarity requires differentiated responsibilities in pursuit of a common purpose or objective—enshrined in the concept of common but differentiated responsibilities, as first set out in the Rio Declaration on Environment and Development—proved to be one of the most contested elements of the negotiation of the 2030 Agenda and the Addis Ababa AA. Further, even a rhetorical recognition that developed countries should bear any costs or compensate for the bias in their favour in global economic governance is elided by the 2030 Agenda’s promotion of “win-win cooperation”.¹⁶⁹

160 UN General Assembly 2004, art. 4.

161 UN General Assembly 2000.

162 United Nations 2008, Art. 1; UN General Assembly 2015a, Art. 1.

163 UN OHCHR 2014a.

164 Dann 2010.

165 UN General Assembly 2015b, para. 15.

166 UN General Assembly 2015f, para. 39.

167 UN Millennium Declaration 2000, art. 6

168 Ibid.

169 UN General Assembly 2015f, art. 18.

6.

BEYOND THE SDGS AND TOWARDS DEVELOPMENT JUSTICE

Implementing the recommendations outlined in the previous parts of this paper would be a first step towards achieving more inclusive and equitable societies. However, the current political landscape gives little cause for hope that governments will commit to the necessary structural shifts in our economies and political governance. Indeed, the intergovernmental negotiations regarding the financing targets in the SDGs and the Addis Ababa AA were among the most divisive and polarized to unfold during the nearly three years of negotiation of the post-2015 development agenda.¹⁷⁰ This is precisely because financing for development requires governments and powerful institutions to confront the current distribution of power in international economic and financial governance, to consider the role that developed countries have played in creating and sustaining poverty and deprivation in developing countries, and to assess whether or not decades of abiding by the doctrine of economic growth and market fundamentalism has delivered on its promise of poverty reduction and wealth that “trickles down”.

The latter question of whether or not growth should be the principal goal of economic and development policymaking is the one that governments—developed and developing alike—seem the least willing to answer. Rejecting the primacy of economic growth is, however, an urgent ethical imperative. There is now overwhelming evidence that growth neither automatically reduces poverty nor creates decent work, and the model of resource-intensive, consumption-driven growth that has precipitated the climate crisis has relied on the exploitation of women’s unpaid care work and cheap labour. Recent research authored by a Senior Advisor at UNCTAD confirmed that if we rely on growth alone to increase the income of everyone in the world to \$5 per day—which is still below the poverty

threshold in many developing countries—it would mean increasing our current level of production and consumption by at least 175 times.¹⁷¹ Aside from the impossibility of achieving this in a carbon-constrained world with finite environmental resources, it establishes that growth in the absence of redistribution will not eradicate poverty in the foreseeable future.

The challenge of redistribution is perhaps the central challenge in the pursuit of a just and sustainable model of development. The degree to which wealth, and with it power, are concentrated in the hands of an extremely small minority is not only politically, economically and socially destabilizing¹⁷²—but it is also corrosive of the democratic political processes that

¹⁷⁰ Muchhala 2015a; Caliarì 2015.

¹⁷¹ Woodward 2015.

¹⁷² Ostry et al. 2014.

are necessary to correct the current trajectory of social and economic inequality and ecological disaster.¹⁷³

For this reason, redistribution—of wealth, power, resources and opportunities, between men and women, between rich and poor, and between countries—is at the heart of a call by the women’s movement and broader civil society in Asia and the Pacific for “development justice”.¹⁷⁴ Development justice is an alternative model of development that seeks to fundamentally displace the neoliberal emphasis on market-driven growth, consumption and externalization of environmental and social costs that have locked millions of women into poverty and put enjoyment of their human rights beyond reach. It is framed around five “foundational shifts”: redistributive justice, economic justice, social and gender justice, environmental justice and accountability to peoples.¹⁷⁵ These core principles underpin a broad range of reforms that have been articulated by networks in the region, including reductions in military budgets as a means to both address militarization and to finance social goals, universal access to public care services to enable the redistribution of unpaid care and domestic work, and redistributive land reform as a path to more democratized control of natural resources.¹⁷⁶

These changes are likely to be driven by social movements and mobilizations, including local women’s movements. Autonomous feminist movements, for example, have been shown to be key drivers of progressive policy in the realm of women’s rights.¹⁷⁷ Social movements, including women’s movements, are also likely to play an increasingly central role in catalysing social and political change given the apparent weakness of key international political processes. While the adoption of the SDGs and its purported universality is an important multilateral commitment, the absence of effective financing highlights the lack of will on the part of developed countries to cede their historical power

and privilege. Combined with the increasing manipulation of domestic political institutions by corporate and elite interests, the onus on social movements to challenge and provide alternatives to the existing political and economic order and to return political sovereignty to people is greater than ever.

Women’s movements in Asia and the Pacific have been at the forefront of demands for decent work, corporate accountability, land rights, and climate justice.¹⁷⁸ Some of these have yielded immediate results for women workers and women affected by a changing climate.¹⁷⁹ Others have demonstrated that, to effectively challenge the deeply embedded and intertwined corporate and political interests that shape our economies, local action must connect to change on a systemic and global level.

The degree of financial and economic integration wrought by recent decades of globalization is one of the greatest impediments to new and more just economies taking root. There is, for example, increasing interest in the role that social and solidarity economies may play in shifting the goal of economic activity towards furthering the social wellbeing of communities and marginalized minorities. The term “social and solidarity economies” captures an extremely broad range of institutions and initiatives, from cooperatives and mutual associations, to forms of solidarity finance such as complementary currencies, to collective management of natural resources such as community forestry initiatives.¹⁸⁰ Some of these initiatives have significant potential for advancing the enjoyment of women’s human rights and gender equality. Mukherjee-Reed has recently written about the way in which *Kudumbashree*, a government-led poverty eradication programme in the Indian state of Kerala, has enabled millions of women living below the poverty line to collectively plan and implement programmes that address structural causes of poverty, including

173 Gilens and Page 2014.

174 The call for Development Justice has been endorsed by hundreds of networks and organisations representing numerous constituencies in the region, and forms the basis of the advocacy platform of the Asia Pacific Regional CSO Engagement Mechanism, which represents more than 400 constituent organizations and networks (see <http://www.asiapacificrcem.org/about-rcem/what-is-the-rcem/>).

175 Asia Pacific Forum on Women, Law and Development 2014a.

176 Bangkok Civil Society Declaration 2013.

177 Htun and Weldon 2013.

178 Asia Pacific Forum on Women, Law and Development 2014b.

179 Ibid; Asia Pacific Forum on Women, Law and Development *forthcoming*.

180 Utting 2015.

through income and employment-generating social and solidarity activities.¹⁸¹ However, these initiatives—aside from their inherent vulnerabilities, including co-option by mainstream commercial actors as in the case of microfinance—are, for the most part, highly localized. The challenge is therefore how to build these fragmented networks into a collective movement that is capable of defying the hegemony of neoliberal globalization.

Similarly, the philosophy of *buen vivir* has the potential to support the evolution of a new economic paradigm in line with the environmental, economic and social shifts envisaged by development justice. *Buen vivir* is a concept that has evolved from Latin American indigenous traditions that broadly embraces the notion of wellbeing where “the subject of wellbeing is not the individual, but the individual in the social context of their community and in a unique environmental context”.¹⁸² It has gained prominence as a political and constitutional principle in recent years because of its incorporation into the national constitutions of Ecuador and Bolivia. The governments of both countries, however, have

been strongly criticized for their implementation of *buen vivir*, primarily in relation to their ongoing reliance on exploitation and export of natural resources to finance their national development strategies.¹⁸³ Although implementing *buen vivir* as a constitutional principle is still a relatively new political project, it is difficult to imagine that any country can advance a radically different economic model when the international context makes it almost impossible to exercise independent monetary, fiscal and trade policy.

A shift to a more just and sustainable model of development—one that will support the implementation of the 2030 Agenda for Sustainable Development and fulfil the human rights of women and girls—must therefore begin by addressing the inequities in the international trade and finance architecture that constrain domestic policy space and undermine the human rights and environmental protection obligations of governments. In the absence of significant reform and regulation of these international structures, financing for the SDGs and a transition to development justice will remain illusory.

¹⁸¹ Reed 2015.

¹⁸² Gudynas 2011. Note that there is no accepted universal definition of *buen vivir*; rather it covers a plurality of concepts with some common core elements: Ruttenberg 2013; Waldmuller 2014.

¹⁸³ Calisto and Langmore 2015.

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MEETING THEIR NEEDS WORLDWIDE.**

UN Women supports UN Member States as they set global standards for achieving gender equality, and works with governments and civil society to design laws, policies, programmes and services needed to implement these standards. It stands behind women's equal participation in all aspects of life, focusing on five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic empowerment; and making gender equality central to national development planning and budgeting. UN Women also coordinates and promotes the UN system's work in advancing gender equality.



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