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A human rights assessment of the Intergovernmental Committee of Experts on Sustainable Development Financing Report

This paper by the RightingFinance Initiative[1] offers a human rights assessment of the Report by the Intergovernmental Committee of Experts on Sustainable Development Financing (hereinafter "the Report" and the "ICESDF" or the "Committee").

In the context of the intergovernmental deliberations to craft a post-2015 set of development goals, pronouncements by the UN Task Team, the UN Secretary General and the Office of the High Commissioner for Human Rights, among others, have stressed the importance of placing human rights and equality at the center of the post-2015 development agenda.

Such centrality, however, calls for the promotion of human rights and equality not only in the goals themselves, but also in the full range of means to finance them. An analysis of the experience with the Millennium Development Goals provides enough evidence that aligning the means of implementation with human rights standards is every bit as important as aligning the goals themselves, and failure to do so can hamper human rights and development effectiveness.[2] Human rights commitments— as legally-binding and universal norms aimed to promote human dignity and well-being —should be a central benchmark for assessing whether the financing of sustainable development is sufficient, progressively generated and allocated, and accountable in the lead up to the Third Financing for Development Conference (FfD) in July 2015, the Post-2015 Development Agenda Summit, and in the implementation of their outcomes.

Following a mandate of the United Nations Conference on Sustainable Development (Rio+20), the General Assembly established an Intergovernmental Committee of Experts on Sustainable Development Financing, comprising 30 experts nominated by regional groups. The Committee had the mandate to assess financing needs, consider the effectiveness, consistency and synergies of existing instruments and frameworks, and evaluate additional initiatives, with a view to preparing a report proposing options on an effective sustainable development financing strategy to facilitate the mobilization of resources and their effective use

[1] Steering Committee members of the initiative are the following organizations and networks with human rights advocacy mandates: Association for Women's Rights in Development –AWID, Center for Economic and Social Rights –CESR, Center for Women's Global Leadership –CWGL, Center of Concern, CIVICUS: World Alliance for Citizen Participation, Development Alternatives with Women for a New Era –DAWN, International Network for Economic, Social and Cultural Rights -ESCR-Net – (Working Group on Economic Policy and Human Rights), IBASE (Brazil), Social Watch.

[2] Caliari, Aldo 2013. Analysis of Millennium Development Goal 8: A global partnership for development. Harvard School of Public Health, FXB Harvard University Center for Health and Human Rights and The New School. Working Paper. May.

in achieving sustainable development objectives. The Report, produced last August, will, thus, be an important input into the intergovernmental deliberations that will decide on means of financing the Sustainable Development Goals.

We followed the work of the Committee as closely as it was possible in circumstances in which the Committee made a decision to conduct its deliberations in closed sessions. In spite of the decision to hold some half-day interactive sessions and a number of regional and other consultations, we have repeatedly stated that these did not substitute for the transparency and accountability of making the proceedings open to civil society (even if civil society would not be given opportunity to formally intervene) or even resorting to a simple and available alternative such as webcasting. Although to justify its decision the Committee took shield on the purported special nature of the Committee as an expert group, we found and brought to their attention precedents to the contrary. The decision by this intergovernmental expert committee was not only inconsistent with the practice established in the Financing for Development process[3] but we also found out that, in reality, such decision to operate in closed fashion was a rarity, rather than the rule, for expert committees of such kind.[4]

Our objections to the process notwithstanding, the intention of this document is to assess from a human rights standpoint the resulting substance of the report. International human rights law sets obligations for States to respect, protect and fulfill human rights, obligations that apply to all ways in which the State exercises its authority, certainly including the field of finance.

Section I lays out the normative framework for our analysis. Section II discusses the Committee's recommendations in the area of public finance and Section III the ones on private finance. Sections IV focuses on blended finance. Section V addresses the Committee's global governance and institutional framework that were not addressed in previous sections as pertaining to private, public or blended finance. Section VI ends with some conclusions.

I. Normative framework for analysis

Below we summarize the main international human rights law principles that guided our assessment:

Maximum available resources: Under the International Covenant on Economic, Social and Cultural Rights, which so far 160 countries have ratified, States have an obligation to devote their maximum available resources to "take steps" progressively for the full achievement of these rights.[5]

Non-retrogression: the obligation to realize progressively economic, social and cultural rights entails a prohibition of retrogression, that is, of measures that directly or indirectly lead to backwards steps in the enjoyment of certain rights. States can only adopt such retrogressive measures if they can demonstrate that "they have been introduced after the most careful consideration of all alternatives and that they are duly

[3] It is worth mentioning that now the Committee's Report is being considered as a substantive input also for the Third Conference on Financing for Development, to be held in July 2015.
[4] See for instance the Committee of Experts on International Cooperation on Tax Matters and the Human Rights Council Advisory Committee.
[5] International Covenant on Economic, Social and Cultural Rights, Art. 2(1).

justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources."[6] This obligation puts a legal onus on governments to assess whether sufficient revenues are being raised to meet human rights and sustainable development imperatives, and if not they are compelled to increase revenue in equitable, non-regressive ways.[7] Before making any cuts to public expenditure or introducing other fiscal austerity measures which could lead to "retrogression" or backsliding in economic and social rights enjoyment, governments are duty-bound to seek out and exhaust all possible alternatives, including tax and budget alternatives.[8]

It is important to mention that some economic and social rights have been found to be "capable of immediate application."[9]

Minimum core: Also in the context of economic, social and cultural rights, States have an obligation to meet a "minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights."[10] For instance, this translates into essential primary health care, or basic shelter.[11]

Non-discrimination and equality: States have an immediate obligation to guarantee that human rights are exercised without discrimination of any kind,[12] obliging states to strive towards substantive equality in the enjoyment of all human rights, and to take active steps to eliminate discriminatory laws, policies or practices which result in disparities on grounds such as race, gender, religion or economic status.[13] In certain circumstances, States are also required to take special measures to prevent and eliminate structural disadvantages which perpetuate *de facto* discrimination.[14] This is a fundamental pillar of international human rights law. Importantly, in the case of economic, social and cultural rights, this is one of the principles exempt from the progressive realization. In other words, regardless of the level of resources or the level of enjoyment of such rights in a country, the State has an obligation to ensure non-discrimination in the access to them.

Participation, transparency, accountability: These are also operative principles in international human rights law that should be upheld by States in the fulfillment of all their human rights commitments.

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[6] Committee on Economic, Social and Cultural Rights (CESCR), Gral. Comment No. 3, para. 11.
[7] See CESCR General Comment No. 3 para. 9; Official Report of the UN Special Rapporteur on Extreme Poverty and Human Rights (A/HRC/26/28), p. 7; R. Balakrishnan, D. Elson, J. Heintz, N. Lusiani, 'Maximum Available Resources & Human Rights: Analytical Report', Center for Women's Global Leadership, Rutgers University, (June 2011), at: http://www.cwgl.rutgers.edu/economic-a-social-rights/380-maximum-available-resources-a-human-rights-analytical-report-
[8] See CESCR General Comment No. 3 para. 9. Also CESCR, General Comments No. 13, para. 45, No. 14, para. 32, No. 15, para. 19, No. 17, para. 27, No. 18, para. 34, No. 19, para. 42 and No. 21, para. 65; CESCR, Letter to States Parties dated 16 May 2012, Reference CESCR/48th/SP/MAB/SW.
[9] CESCR Gral. Comment No. 3.
[10] CESCR Gral. Comment No. 3, para. 10.
[11] Ib.
[12] CESCR 2007. An Evaluation of the Obligation to Take Steps to the "Maximum Of Available Resources" Under an Optional Protocol to the Covenant. E/C.12/2007/1. 21 September.
[13] See CESCR General Comment 20 paras. 8 and 39.
[14] See e.g., CEDAW, Article 4(1); CERD, Article 2(2); HRC General Comment No. 18 para.10; CESCR, General Comment No. 20 para. 39.

Access to information: as a necessary complement, the right to participation necessitates access to appropriate information, adequate support and feedback.[15]

Access to justice: Alongside full transparency and meaningful participation in fiscal policy making, human rights require effective legal remedies and reparation for deprivations resulting from fiscal measures that breach human rights standards.[16] Fiscal policies should thus be subject to judicial oversight, and public officials should be held accountable for decisions that run counter to human rights.[17]

Governments are legally obliged to protect against and remedy human rights abuses by third parties, including businesses, in line with the UN Guiding Principles on Business and Human Rights.[18] Governments thus must ensure that all legal and natural persons they are in a position to regulate, including banks and accounting firms, cease to be involved in human rights abuses, including we argue illegal tax evasion or other potential tax abuses which are detrimental to the full realization of human rights.[19] In order to ensure companies respect human rights and sustainable development in turn requires due diligence and mandatory, independently-verified reporting of the human rights, sustainable development and tax impacts of large businesses.

II. Public finance[20]

We welcome the Report's emphasis on the roles of public finance as increasing equity, providing public goods and services that markets will eschew or underprovide and providing incentives to change behavior of private actors, and managing macroeconomic stability (64, 109). We would like to add the important role that revenue collection via taxes, in particular, plays in strengthening governance and public accountability. We would also insist that the post-2015 FfD agenda place a primary emphasis on public funding. Rather than merely complementary to private financing sources, progressive fiscal policy supported by international cooperation must be central to any effective sustainable development financing strategy. Domestic resource

[15] CRC/C/GC/12, para. 48. See also other standards on right to information in A/HRC/23/36.

[16] The right to an effective remedy for violations of human rights is enshrined in article 8 of the Universal Declaration of Human Rights and codified in a range of international treaties which subsequently flow from it, including the International Covenant on Civil and Political Rights (ICCPR) Art. 2 (3); the Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (Arts. 13 and 14); the International Convention on the Elimination of All Forms of Racial Discrimination (Article 6); the Convention on the Rights of the Child (Art. 39); the American Convention on Human Rights (Arts 25 and 63 (1)); the African Charter on Human and Peoples' Rights (Art. 7(1)(a)); the Arab Charter on Human Rights (Arts. 12 and 23); the European Convention on Human Rights (Arts. 5 (5), 13 and 41); the Charter of Fundamental Rights of the EU (Art. 47); and the Vienna Declaration and Program of Action (Art. 27). While the ICESCR makes no express provision regarding remedy, the Committee on Economic, Social and Cultural Rights has reaffirmed on numerous occasions that an obligation to provide remedies is inherent in the Covenant. See also General Assembly resolution 60/147, "Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law" (2005) which pertains to all violations, not only gross violations.

[17] See Official Report of the UN Special Rapporteur on Extreme Poverty, *supra*, para. 23.

[18] UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, (A/HRC/17/31); See also Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997.

[19] Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights Arts. 24-25; International Bar Association's Human Rights Institute *supra 45.*

[20] Unless otherwise stated, numbers in parentheses refer to paragraphs in the Committee's report.

mobilization is the most effective and legitimate way to strengthen universal social protection floors, support substantive socio-economic equality and provide capable and accountable states with well-resourced public institutions and a strong regulatory system.

The Committee also calls for the tax base to be as wide as possible, while maintaining equity and efficiency. However, the remark that "recent advances in tax collection in many developing countries are due to that widening of the tax base (65) neglects consideration of the regressive effects with which such widening has been pursued. Widening of the tax base often relied on the taxes easiest to collect (such as VAT), regardless of distributional implications.

While appreciating the Committee's statement that "governments may also prioritize real income gains at the bottom of the income distribution through progressive tax policies, such as "earned –income tax credits" and VAT exemptions on basic goods and services" (65), we find this language too tentative and far short from the strong call for progressive fiscal policies that human rights obligations justify. As stated by the Special Rapporteur on Human Rights and Extreme Poverty, "the higher the prevalence of regressive taxes in the mix of revenue-raising sources, the more likely it is that a State would run afoul of the principles of equality and non-discrimination and the minimum essential levels of rights enjoyment by the poorest would be threatened."[21]

We welcome the Committee's support of public spending consistent with national sustainable development strategies, inclusive of environmental, social, economic, gender, and other goals, and planning and execution of budgets based on transparency, legitimacy, accountability and participation of citizens (including reference to public sector internal and external control mechanisms, such as supreme audit institutions). (70)

We applaud the Committee's recognition that "highly mobile capital and the predominance of MNEs in international trade and finance . . . has created opportunities for MNEs and international investors to evade and avoid taxes by structuring international transactions to take advantage of different national tax rules." (160 - 162). And that individual governments face limits to what they can accomplish on tax collection in the globalized economy (66). Consistent with this we support its call for increased international cooperation on tax matters. (160 - 162) . These are very much in line with the Special Rapporteur on Human Rights and Extreme Poverty's recent report which brought attention to the limits to national-level actions on revenue-raising in the absence of global tax reforms and said that due to this "States are undoubtedly hamstrung in their efforts to enact progressive taxation and combat illicit financial flows that could combat inequality and resource better economic, social and cultural rights realization."[22]

However, the Report's mention that increased international cooperation on tax matters "could" cover "country-based reporting, notification of owners, automatic exchange of tax information, transfer pricing regulations, lists of tax havens and standards for non-economic reporting" (161) is too tentative. It is clear that on such matters, the extraterritorial impacts of tax-related action or omission by states should be forcefully remedied. The Committee missed an important opportunity to recommend that all governments mandate independent, periodic and integrated spillover analyses of all major tax rules, agreements and

[21] Official Report of the UN Special Rapporteur on Extreme Poverty, *supra*.
[22] Ib.

policies to examine the cross-border impacts of all countries' fiscal and tax policies on human rights and sustainable development. Further, conspicuously for a report that claims to discuss global governance gaps, the Committee omits mention of the failure to strengthen the UN Committee of Experts on Tax Matters, only body charged with tax cooperation that enables participation from developing countries.

We welcome the Report's recognition of public procurement systems as a suitable tool to promote the development of sustainable local businesses and the exhortation for authorities to align their procurement policies with national sustainable development strategies (73). At the same time, the Report's recommendation that public procurement systems "need further strengthening in many countries to ensure fair competition" (73) seems to run counter to such advice, at least if fair competition means opening of public procurement systems to market competition, as it is interpreted in some forums.

We are also quite concerned by the Committee's premature endorsement of policies on whose environmental friendliness the jury is still out. For instance, direct emission restrictions on investments, carbon capture and storage technologies, and payments for ecosystem services.. (76) The Committee also states that environmental accounting is "another mechanism that can help policymakers internalise externalities," (77) a statement not balanced by any recognition of the risks that it can also facilitate greater use of natural resources as collateral in financial instruments. In all, these solutions lack imagination and do little to challenge the model of growth and commodification of the environment that has been responsible for climate change and other kinds of environmental damage.

We welcome the Report's acknowledgments that:

--"structural vulnerabilities, which affect the poor and other socially excluded groups, women, persons with disabilities, . . . can be reduced by aiming for universal provision of basic social services" (79)
--"social protection can contribute to equitable growth by reducing poverty and inequality, raising labour productivity, and enhancing social stability," (80)
--"productive and decent employment is the most important form of income security." (81)

At the same time, the call for countries to "consider policies" to strengthen social protection floors (80-81) could have been stronger, in light of the fact that an ILO recommendation which recommends that governments establish social protection floors as a fundamental element of their national security systems, already exists.[23]

Likewise, we support the connection drawn with macroeconomic and fiscal policies:
"Macroeconomic and fiscal policies that promote full and productive employment, as well as investment in human capital, are therefore central to poverty reduction and increased equity." (81)
We hope this statement will help continue to broaden the set of actors that contest the view that macroeconomic policy needs to be guided only by narrowly-conceived goals of reaching external balance and that non-economic values are not relevant to its design and implementation.

[23] ILO Recommendation: Social Protection Floors Recommendation, 2012 (No. 202).

It is good that the Report also takes the view that "Debt financing can represent a viable option to provide funding for public spending on sustainable development." (82) At the same time, without denying that debts need to be effectively managed (82) we take issue with the apparent endorsement by the Committee of how that is done under the World Bank/ IMF Debt Sustainability framework. We believe the Committee could have restated the finding by many human rights bodies that unduly burdensome debt service represent an obstacle to the fulfillment of human rights obligations in many countries, or even the more limited Monterrey Consensus commitment that debt sustainability should be compatible with development finance needs to achieve the MDGs. The IMF/World Bank debt sustainability framework never took those mandates to heart, even if initially claimed to be developing in response to the latter.

We appreciate the Report's discussion of the status quo on sovereign debt restructuring mechanisms (165 – 168), including reference to the responsibility of the creditors share with the sovereign debtor in preventing and resolving debt crises (82) and the insufficiencies of the contractual approach and the need for alternatives (167-168). However, we miss a reference to the Guiding Principles on Foreign Debt and Human Rights, in particular Principle 6 according to which States should ensure that the renegotiation and restructuring of external debt and the provision of debt relief when appropriate does not derogate from their obligations to respect, protect and fulfill human rights.[24] Such references could have helped cement the urgency of establishing an international debt workout mechanism and also establish some of the parameters that would be needed to make it consistent with international human rights law, namely that it be: 1) neutral and independent, 2) designed to resolve disputes concerning the restructuring of sovereign debt, based on the obligation of States to respect, protect and enforce human right, both in their territories and extraterritorially, 3) comprehensive and binding for all creditors, public and private, bilateral and multilateral. It should also contemplate an immediate stay of all payments as of the initiation of proceedings, make a determination about what constitutes a sustainable debt burden taking into account the need to recover ensure the population's human rights are met and provide opportunities for participation, accountability and transparency that encompass the debtor country's population.

We welcome the recognition that national development banks (84-86) can play a countercyclical role. However, the Committee identifies as "challenges" that "provisions should be in place to avoid inappropriate political interference with the operation of the bank, and to ensure efficient use of resources, particularly with regard to leveraging private sector investment in sustainable development." (86) From a human rights perspective, it is precisely the ability of the Bank to respond to political influence to realize public policy objectives that makes such a bank an important and even necessary complement to private banks. In many countries, precisely thanks to what the committee calls "political interference," national development banks have served sectors such as agriculture, small and medium enterprises, and other socially-demanded goals that would otherwise be priced

[24] UN Human Rights Council, Guiding principles on foreign debt and human rights, endorsed by resolution A/HRC/RES/20/10 (2012).

out of access to finance.

Moreover, in line with human rights obligations, the Committee could have chosen to highlight that the challenge is to ensure that in carrying out their mission the national development banks should have in place mechanisms so goal-setting, implementation and monitoring for the NDBs are done with proper respect for participation and accountability by citizens.

When addressing international public finance, the Committee underscores that it should be deployed efficiently and effectively, and that "ODA should be focused where needs are greatest and the capacity to raise resources is weakest, including LDCs, SIDS, LLDCs and the poorest in all developing countries, with a sufficient portion of ODA concentrated on the eradication of extreme poverty, as well as the reduction of all forms of poverty and meeting other basic social needs." (117) We cannot disagree with the efficient and effective use of public resources thereby advocated. But precisely because of that we disagree with the statement that follows it: "International public finance will also have an important role in financing investments in national development, such as infrastructure. Some of these investments are profitable, and international public finance can catalyze private financing for sustainable development in such areas." (118) In other words, the Report advocates that scarce taxpayers funds should be put at the service of bringing investment into "profitable" infrastructure projects. We find this is in contradiction with the whole rationale for private sector engagement in infrastructure projects, which is usually staked on the private sector's capacity to take the risks associated with the investment, and its incentives to use the most efficient techniques to extract a profit. Neutralizing the risks of the private sector is not only questionable as a use of taxpayer funds, but also undermines the whole rationale for bringing the private sector in in the first place. Because it leads to wasted resources both on the public and the private sector, we find this altogether inconsistent with the State's obligations to use the "maximum available resources."[25]

In light of the trillion-dollar estimated annual costs of the SDGs, sustained and bold actions are needed to boost public financing of sustainable development on an appropriate scale. While the Report focuses on ODA and underscores the failure so far to reach the 0.7 per cent of GNI internationally agreed target, the Committee fails to urge action to improve such dire situation, either by increasing ODA or by acting on innovative sources of finance whose feasibility is technically proven by now, such as Financial Transaction Taxes in all major financial centers, Special Drawing Rights, a 'Sustainable Development Solidarity' progressive capital tax or a range of environmental taxes. A comprehensive package of complementary domestic and global commitments together could unleash at least US$1.5 trillion per year in additional, stable and predictable public funding.[26]

III. Private finance

[25] See more on this point in Section IV (on Blended finance).
[26] Christian Aid and CESR, 'A Post-2015 Fiscal Revolution.'

We praise the Committee for taking on board –even if at some points in language that is only suggestive -- important notes of caution regarding the role of private financial sources that human rights and development advocates have raised for a long time, for instance:

> “In general, financial markets need to be developed with care as bond and equity markets often demonstrate high volatility, especially in small markets that lack liquidity. To limit excessive volatility that can impact the real economy, regulations can be enacted in conjunction with capital account management tools to deter "hot money". (100)

> “[I]t is important to note that the financial sector can grow too large relative to the domestic economy. Above certain thresholds financial sector growth may increase inequality and instability, in part due to excessive credit growth and asset price bubbles. It is therefore important for all countries to design strong "macro-prudential" regulatory frameworks.”

> ”Conventional approaches to managing volatile cross-border capital flows have focused on macroeconomic policies to enhance an economy's capacity to absorb inflows. However, these policies are often not sufficiently targeted to stabilize financial flows and may have undesired side effects. Policymakers should thus consider a toolkit of instruments to manage capital inflows, including macroprudential and capital market regulations, as well as direct capital account management.” (129)

However, statements on the “enabling environment” for private investment stick to a discredited orthodoxy on the matter. The Committee says: “It is well known that strengthening the domestic policy, legal, regulatory and institutional environment is an effective way for governments to encourage private investment.” (104) This is an innocuous and seemingly uncontroversial statement.

But then it goes on to elaborate that it means “easing the bottlenecks” and to speak approvingly of reforms that reduce “excessive complexity and cost that businesses pay to start and maintain operations. . . strengthen the enforceability of contracts, the protection of creditor and debtor rights and the effectiveness of trade and competition policies, streamline business registration regimes. . . “ (104) These reforms sound too close to the indicators the World Bank evaluates through its Doing Business rankings, now widely discredited after an independent panel appointed by the World Bank President found significant methodological shortcomings and criticized its lack of rigor and biases towards deregulation. Human rights groups have criticized the chilling effect such rankings have on regulations that may be required to protect a range of rights and public policy concerns, including guaranteeing labor rights. The lack of rigor is deepened when later on the Report links unwillingness of investors to invest long –term to lack of an enabling environment so defined. (126)

That the enumeration of requirements for the enabling environment lumps these together with the “promot[ion of] the rule of law, human rights and effective security,” (104) does not purge them of their basic incompatibility with human rights obligations. Moreover, human rights should be a primary consideration by all States in designing their policies towards the business sector, and not one pursued instrumentally and on a selective basis to attract private investment.

The Committee calls for this reforms while paying lip service to the notion that the "structure of reforms varies between countries and regions in line with their historical experience, culture and politics." (104) The fact is that, claims to the contrary notwithstanding, it is only this specificity of history, culture and politics that has ever made reforms successful. Attempts to standardize a one-size-fits-all model that cuts across all jurisdictions, in the way the rankings for business environment attempt to do, is only useful to multinational actors that can, thereby, see their transaction costs of operating across multiple jurisdictions reduced.

We welcome the Committee's support, also within the context of considering private sources of finance, for the need to foster sustainability considerations via, for instance, reporting on environmental, social and governance impacts and appropriate regulations to strengthen them. (105-107) In particular, we welcome that it raises the important question of "whether largely voluntary initiatives can change the way financial institutions make investment decisions" and says that "Policymakers could consider creating regulatory frameworks that make some of these practices mandatory." (108)

However, such statements can at most be regarded as a weak step in the right direction. The UN Guiding Principles on Business and Human Rights already go farther than them, addressing substantive responsibilities that private sector companies have, beyond reporting, and that include the need to implement mandatory due diligence, access to justice and compensation for the victims of corporate human rights abuses. It is worth noting that even the UN Guiding Principles, which were approved by consensus in the Human Rights Council, are themselves considered so weak and insufficient as an accountability framework that the Council has needed to launch a process to negotiate a complementary set of binding international rules for companies.

IV. "Blended finance"

The Report focuses on "blended finance", the pooling of private and public resources that the Report defines in a broad way:

"Blended finance encompasses a large portfolio of potential instruments, including instruments provided by DFIs to leverage private finance (e.g. loans, equity investments, guarantees etc.), as well as traditional public private partnerships (PPPs) . . . . But it goes beyond these structures to encompass structured public-private funds and innovative 'implementing partnerships' between a wide range of stakeholders - including governments, civil society, philanthropic institutions, development banks and private for-profit institutions. When well designed, blended finance allows governments to leverage official funds with private capital, sharing risks and returns, while still pursuing national social, environmental and economic goals in areas of public concern." (134)

We welcome that the Committee singles out "the provision of basic development needs that do not offer an economic return" as an area where blended finance between the public and for-profit private sector is not well suited to contribute to. (136) But the exclusion seems to be too narrow and risks leaving governments only in charge of projects that are not profitable, where the private sector reaps the benefits of profitable ones.

Additionally, as the Committee itself recognizes that the for-profit sector will demand often upward of 20-25 per cent returns (138), even projects that yield an economic return may not be suitable for undertaking in this modality if the economic return does not reach such extreme level.

The Committee recognizes that "These costs need to be offset by efficiency gains or other benefits to make their use attractive." This is a lopsided assessment, and insufficient as a safeguard. The Committee skirts the important question of efficiency gains and benefits for whom, and the human rights assessment of the distributional impacts that follow. At the same time, no efficiency gain or benefit can condone the high returns that may be achieved at the expense of the lack of observance of human rights standards, as when basic due process guarantees are not observed or important regulations that exist to protect citizens are stripped away.

Moreover, from the fact that the project passes a certain returns threshold it does not follow that it is suitable for public-private blending. The State, in complying with its obligations to make maximum available resources available for rights, needs to always consider whether public investment and ensuring such returns accrue to the public budget are not a better alternative, especially if such returns can help subsidize many of the other projects for which private provision.

We welcome the call for blended finance projects to be "transparent and accountable." (137) But this call fails to live up to human rights standards that call for full participation by, and transparency towards, those affected at all stages: the negotiation, implementation and monitoring of partnerships. Moreover, accountability cannot take place in the absence of a legal framework guaranteeing that civil society groups will not risk their safety and physical integrity for seeking to expose business' misconduct – whether such misconduct was with or without State complicity. The Report does not come to grips with this reality.

It is also good that the Report refers to the sustainable development impacts of projects and, further, links such impact to addressing "poverty, environment, and gender aspects . . . in the project design phase." (137) But there is no mention of human rights, and limiting the assessment to the design phase is not enough, with the phases before (selection) and after (implementation and evaluation) also requiring assessment of the said aspects.

While the Report does mention that a strong case for blended finance exists where the investment in question is "just below the margin of real or perceived commercial viability and cannot be unlocked by an enabling policy and institutional environment alone," but it falls short of recommending as a concrete pre-requirement the step of evaluating additionality – that is, an assessment of whether the project would actually be undertaken by the private sector anyway, absent public involvement.

We welcome the Committee's recognition that engagement in blended finance structures should be done "with careful planning, design and management in order to strike a balance between economic and non-economic returns and to ensure fair returns to citizens." Also its recognition of the high degree of failure: "projects often struggle to deliver as planned, in both developed and developing countries, with a 25-35 per cent failure rate of PPPs in developed countries due to delays, cost overruns and other factors, and even higher failures in developing countries." However, it is worth noting that this is likely a conservative assessment. In all fairness, there is not enough data coming from independent sources to assert that any PPP

project actually has performed in an acceptable way, certainly not if such assessment includes human rights standards.

We are puzzled that after recognizing the difficulty in appropriately managing the State side engagement in single PPPs the Report goes ahead with a recommendation for investing public entities to "carry out a number of projects simultaneously and thereby take a portfolio approach for pooling funds for multiple projects, similar to risk diversification carried out by DFIs and the private sector." The Report justifies this as a way to "allow for gains from successful investments to compensate for losses on failed projects." But, to the additional complexity that this would introduce in projects that are already too complex on their own, it should be added that standardized and historical data to perform an assessment of diversification benefits does not exist and is likely not to be available for a long time. Moreover, this approach does not seem to be symmetrically applied. If successful investments can compensate for losses on failed projects, it would be fair that the portfolio approach is used to assess public financing options first.

Regarding the "implementing partnerships" of paragraph 134, the Committee does not say much, which we see as a too benign and permissive approach towards them. The partnership model that treats all actors, including civil society and the private sector, as equal and sharing a common interest, often obscures the disparities in power and conflicting goals among actors.

Since such partnerships do not operate in a vacuum, they are voluntary, opt-in and opt-out arrangements that cannot by any means crowd-out States' existing obligations of cooperation to achieve human rights.

Ensuring the primacy of such obligations entails a number of requirements for "partnerships" of this kind that the Committee neglects altogether. At a minimum, specific ex ante criteria should be established to determine whether a specific private sector actor is fit for a partnership in pursuit of the post-2015 goals. These would include

1) whether the private actor has a history or current status of serious allegations of abusing human rights or the environment, including in their cross-border activities;
2) whether the private sector actor has a proven track record (or the potential to) deliver on sustainable development, as articulated by the UN outcome by 2015, including ruling out conflicts of interest antithetical or contradictory to the UN Charter, the Universal Declaration on Human Rights, and the SDG framework;
3) whether the private sector actor has previous involvement in acts of corruption with government officials; and
4) whether the private actor is fully transparent in its financial reporting and fully respecting existing tax responsibilities in all countries within which it operates.

Private sector financing and public-private partnerships for sustainable development should likewise be accompanied by mandatory transparency and accountability safeguards in compliance with human rights norms and standards putting people's rights before profit. The UN as an institution might never recover from the reputational shock if chief private financiers it engages with were found to be also chief violators of its most cherished principles.

V. Global governance

We welcome the Committee's references to "systemic coherence," which include a need for harmonization and integration of existing international mechanisms, strengthening the legitimacy and effectiveness of international organizations (147), further reviewing the governance regime of the IFIs to, inter alia, make them more democratic and representative.

However, coherence is an empty shell and may be positive or negative depending on the principles that guide it. The Committee fails to recall that the international human rights law framework is the primary set of principles that should guide such efforts towards greater coherence. Along these lines, the Committee missed the opportunity to call for reform of the IFIs and WTO to eliminate any potential for misinterpretation about their subordination to international human rights law. In similar vein, reform of the relationship agreements between such institutions and the United Nations, ultimate guardian of the human rights framework, should have been a recommended step. Regrettably, the Report adds its own seed of confusion by referring to the United Nations as a "global forum to bring the specialized international institutions and authorities together without challenging their respective mandates and governance processes." In the past, the particular "mandates and governance processes" of the Bretton Woods Institutions or the World Trade Organization have been used to argue that they should be shielded from full-fleshed human rights responsibility for their actions.

We welcome the implicit recognition by the Committee that there is an imbalance between current rules in investor rights and sovereign capacity to regulate within areas of public interest (153) but, while appreciative of the ICESDF's statement that "the international community could consider, as appropriate, a further elaboration of standards for investment in areas that directly impact domestic sustainable development outcomes, and ensure that investments do not undermine international human rights standards," we find such statement too feeble. It is not even a faithful reflection of existing international human rights law which, in our view, requires States to at all times elaborate, uphold and implement those standards without exception.

The Report seems to implicitly call for a conclusion of the WTO Doha Round: "WTO ministers have committed to consider a final work program to conclude the Doha Round of multilateral negotiations that began in 2001. It is time to address politically sensitive issues, such as agricultural export subsidies, and signal that global cooperation on trade liberalization in the interest of global development is still possible." (151)

But the scope of issues in negotiation at the Doha Round has long ago strayed from its purported development purpose. The Committee seems to endorse unconditionally a conclusion to the Doha deal without any reflection on what adjustments to current trade rules it would take to make the international trading system compatible with member governments required policy space to comply with their human rights obligations. Its recommendation that countries "correct and prevent trade restrictions and distortions in world agricultural markets, including by the parallel elimination of all forms of agricultural export subsidies and all export measures with equivalent effect, in accordance with the mandate of the Doha Development Round," (72) goes in this same questionable direction.

We welcome the Committee's inclusion of financial regulation issues (155 – 158) within the scope of its report. In spite of the strong impact that the recent global financial crises has had on all areas of the development finance agenda, there have been few voices within the post-2015 debate ready to acknowledge its proper role in the financing of the agenda. The Committee's inclusion of the issue will surely contribute to dispel such mistaken approach.

But the Committee could have made more robust links with human rights, or at least with development finance, than seeing it as an obstacle to it (e.g. "the unintended consequences of financial regulations may adversely impact the availability of long term financing" (155)). Because of missing appropriate financial regulations risks were massively transferred from the private to the public sector and public resources in the opposite direction. Rising and increasingly volatile food and fuel prices, tax evasion and avoidance and rising inequality, took place are also attributable to a good extent, at least, to weak regulations. Those who profited from practices that precipitated the pre-crisis situation went largely unpunished, highlighting a failure of accountability and governance in the financial system. The firms that profited, while in some cases had to bear the cost of some sanctions, overall maintained extraordinary profit levels and were even able to profit from the ensuing consolidation and withdrawal from the market by smaller companies. None of this one would know from reading the Committee's report.

The Committee addresses the international monetary system only in timid and fragmented ways (e.g. calls for "international coordination of monetary policies of the major economies and management of global liquidity" (130) and "a strengthened global safety net" to "reduce the need for countries to stockpile international reserves (158)).

The duty of cooperation for the achievement of human rights calls for far more than that. The dangers of continuing the status quo international monetary system (based on the domestic currency of one country as the main international trading and reserve currency) were already laid out in the Recommendations of the Commission of Experts on Reforms of the International Monetary and Financial System. These dangers relate to a system prone to crises and recessionary biases in adjustment mechanisms. States have a responsibility to act collectively to put in place an international monetary system that enhances, rather than limits, the space of individual governments to take actions on monetary, and also fiscal, policy to support human rights for all. Moreover, new sources of finance could be freed up through the Special Drawing Rights whose overhaul and allocation could be part of such reforms.

We agree with the Committee's view on the importance of strong, relevant and comparable data and its assessment that "current information flows, reporting standards and monitoring mechanisms are overlapping, contradicting, incomplete in coverage and often inaccessible to development actors" and its recommendation to "in order to improve the quality of statistics . . . reduce the fragmentation of current reporting frameworks and initiatives and increase their harmonization." (169)

But the best data and statistics do not amount to accountability, a dimension that the Committee ultimately fails to address.

As put by the OHCHR and CESR: "Accountability from a human rights perspective "refers to the relationship of Government policymakers and other duty bearers to the rights holders affected by their decisions and

actions. Accountability has a corrective function, making it possible to address individual or collective grievances, and sanction wrongdoing by the individuals and institutions responsible. However, accountability also has a preventive function, helping to determine which aspects of policy or service delivery are working, so they can be built on, and which aspects need to be adjusted."[27]

The Committee's recommendations surely contribute, especially with its complementary calls for "Enhanced national capacities for monitoring and accounting of financing flows" and "the potential of combining active (e.g. reporting) and passive (e.g. websites) transparency mechanisms to ensure disclosure and transparency to stakeholders, constituencies and beneficiaries should be further explored."(170) But it is precisely the availability of mechanisms for the powerful to be brought into account[28] by citizens that will provide the ultimate litmus test of whether accountability exists. Whether for its own political limitations, or for whatever other reasons, we have to accept that the Committee decided to ignore this question.

VI. Conclusion

States bear primary responsibility for international cooperation to achieve human rights, so the nature of the next incarnation, in the post-2015 framework, of the Global Partnership for Development should be in line and framed by the existing human rights commitments adopted by the international community. The UN Task Team, the UN Secretary General and the Office of the High Commissioner for Human Rights have stressed as much by referring to the importance of placing human rights and equality at the center of the post-2015 development agenda.

Given the importance of the ICESDF's task to provide what is the main input on financial means of implementation in the post-2015 development framework we believe it should be held accountable to such commitments, and assessed from the vantage point they provide. By doing this we are, overall, disappointed. The ICESDF, in spite of some steps in the right direction, failed to take to heart its mission to become a leading voice providing strong policy recommendations that lived up to the expectations embodied in such normative framework.

It is only in that context that the Committee's deliberate decision to offer a menu of options, with considerable qualifications and room for discretion, rather than prescriptive approaches, can be seen as a positive outcome. It creates more room for constructive discussion in the upcoming intergovernmental political process towards the post-2015 summit.

In order to foster human rights alignment of the Summit outcomes, we hope that states will take this political process as an opportunity to build on the positive steps we have rescued from the Committee's report while remedying the areas that it neglected. An appropriate response to the urgency, scale and immediacy of the threats to human rights and sustainable development globally calls for no less.

[27] OHCHR and CESR 2013. Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda.
[28] Bissio, Roberto 2014. Carved in stone or written in the sand? The search for accountability in development agendas, available at www.rightingfinance.org