

GUEST ESSAYS CIVIL SOCIETY & THE PRIVATE SECTOR

THE PRIVATE SECTOR IN DEVELOPMENT: NEW CHALLENGES FOR HUMAN RIGHTS AND CIVIL SOCIETY

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December 2016 marked the 30th anniversary of the adoption of the [UN Declaration on the Right to Development](#), reaffirming that the right to development is a human right. In the 30 years since, development, and how it is financed, have changed dramatically. One change that carries profound implications for human rights and civil society is the new role of the private sector.

Thirty years ago, development was largely the purview of states and public financial institutions. Financial flows to developing countries were dominated by Official Development Assistance (ODA), largely from Organisation for Economic Co-operation and Development (OECD) member countries, the World Bank and the regional development banks. However today, Foreign Direct Investment in developing countries eclipses ODA by a factor of five.¹ Multilateral development banks (MDBs) have long channelled money to the private sector in the form of loans, guarantees and equity investments, in addition to their public sector lending. But over the last 10 years, MDB financing to the private sector has more than doubled - to over US\$30 billion in 2013.² Financing from development finance institutions (DFIs) that explicitly focus on the private sector has grown from US\$10 billion in 2000 to almost US\$70 billion in 2014.³

Where did this tectonic shift come from? The 2015 Addis Ababa Action Agenda, part of the international Financing for Development process, crystallised a growing global consensus: there is a funding gap between the trillions

¹ 'Development Finance Institutions Come of Age', Center for Strategic and International Studies (CSIS), October 2016, p. 4, <http://bit.ly/2pFlhju>.

² 'From Billions to Trillions: Transforming Development Finance', Development Committee Discussion Note, 2 April 2015, p.17.

³ CSIS, op. cit.

of US dollars necessary to meet global development needs and the billions of dollars available from the public sector. The ‘billions to trillions’ paradigm argues that to achieve the Sustainable Development Goals (SDGs), the billions in public finance will need to be utilised to leverage trillions of dollars from a number of sources, most notably the private sector.⁴ The focus on the private sector for the achievement of the SDGs however goes beyond the mere overcoming of budget constraints to a belief that the private sector can deliver development benefits the public sector cannot, such as sustained economic growth, job creation, greater tax revenue and better innovation and service delivery.⁵ Under the billions to trillions paradigm, the private sector is now playing a prominent role not just as a financier of development, but as a recipient and executor of development.

At the same time, development banks and bilateral agencies are changing the way they do business to focus on brokering private sector deals and policy reform rather than on direct finance or implementation.⁶ Between 2012 and 2014, aid donors used their official development interventions to mobilise [US\\$36.4 billion](#) in private sector investments.

While greater private sector involvement in development may mean more money flowing into developing countries and emerging economies, does it actually mean more development, and is that development socially and environmentally sustainable? And what does the billions to trillions paradigm mean for civil society?

SHIFTING DEVELOPMENT PRIORITIES

To examine the implications of these new private sector investment models, we can first look at what is being financed. The pivot toward the private sector coincides with an unprecedented boom in infrastructure development, and not just any infrastructure, but very large-scale projects, particularly in mining, energy, transport, water and communications.⁷ Some estimate that global infrastructure spending will reach US\$3.4 trillion a year between 2013 and 2030, mainly in the form of large-scale projects.⁸ Another high growth area for development finance is the financial sector itself. Financial sector investments by the World Bank Group now make up [half of all investments](#): 50 per cent more than direct lending to health, and three times more than direct lending for education.

While there is an urgent need in the developing world for investments in infrastructure, energy and finance, these investments do not automatically translate into positive development outcomes unless they are designed with poverty reduction and sustainability in mind. Much of the energy infrastructure boom in Africa and Latin America, for instance, is geared not toward meeting urgent public needs for electricity, but toward enabling mining and other extractive industries. Centralised large-scale projects may serve large urban areas, but often are not at the right scale for reaching

⁴ There is an estimated US\$1.9 trillion to US\$3.1 trillion funding gap for development needs, according to the Development Committee discussion note, op. cit.

⁵ See e.g. CSIS, op. cit., p. 3.

⁶ Development Committee Discussion Note, op. cit.; ‘Aid reforms could see big increase in private sector subsidies’, Kate Hodal, The Guardian, 10 October 2016, <http://bit.ly/2e570MX>; ‘Global Community Makes Record \$75 Billion Commitment to End Extreme Poverty’ World Bank press release, 15 December 2016, <http://bit.ly/2hC8HRS>.

⁷ See e.g. ‘What You Should Know About Megaprojects and Why: An Overview’, Bent Flyvbjerg, Project Management Journal, April/May 2014, <http://bit.ly/2qzSba0>; ‘G20 Global Infrastructure Connectivity Alliance’ Heinrich Boell Foundation, 10 September 2016, <http://bit.ly/2ps6Pju>.

⁸ Flyvbjerg, op. cit., p. 8.

poor or marginalised populations most in need. Studies have shown “little direct evidence” of the poverty reduction impact of DFI investments in the private sector.⁹ A [review of projects](#) carried out by the World Bank’s International Finance Corporation (IFC) between 2000 and 2010 found that only 13 per cent of projects included an explicit focus on the poor.

When development is driven by private sector demand, critical development priorities such as equity, or provision in geographical areas and sectors where profitability is more challenging, such as rural areas or social services, tend to lose out. The IFC’s Health in Africa initiative, for instance, was found to have [concentrated investments](#) in high-end urban hospitals and clinics unlikely to serve poor populations. The UK’s private sector development finance institution, the CDC Group plc., similarly has come under fire for its pension for investments in luxury hotels, shopping centres and gated communities.¹⁰ Many DFIs finance for-profit basic and secondary education, [despite evidence](#) that such schools usually do not reach the poorest populations or marginalised groups, and often fail to provide quality instruction.

SWEETENING THE DEAL FOR PRIVATE INVESTORS

In addition to looking at what is being financed under this new model, it is important to examine how it is being financed. One key strategy development financiers are using to leverage private sector investment is through public-private partnerships (PPPs). In PPPs, the private sector brings in capital investment, while the public sector assumes the financial risk of the investment by guaranteeing profitability. PPPs are being promoted for everything from health and education to infrastructure. The data on the development outcomes of PPPs or their impact on poverty reduction is however mixed at best.¹¹ Because PPPs must ensure a return on investment, consumers and taxpayers can be left paying the bill. IFC-financed PPPs in water services in India and healthcare in [Lesotho](#), for example, led to skyrocketing costs and service cutbacks for consumers. Some PPP contracts can even encourage governments to repress labour activity or public protests to avoid liability for resultant project delays.¹²

Another key strategy for accelerating lending to the private sector is to lend through [financial intermediaries](#) (FIs) - private banks, private equity funds, microfinance institutions and other financiers - which then lend on to third parties. Development banks such as the IFC argue that lending through financial intermediaries allows these big institutions to increase the reach of their development dollars, allowing them to access small and medium enterprises and under-served populations. But World Bank internal evaluations have revealed that not only is the IFC unable

⁹ CSIS, op. cit., p. 20.

¹⁰ See e.g. ‘Privatisation of urban water supply: The muddy picture’, Shalini Nair, The Indian Express, 25 December 2015, <http://bit.ly/2psrOCY>; and ‘British aid money invested in gated communities and shopping centres’, Claire Provost, The Guardian, 2 May 2014, <http://bit.ly/2r80qWX>.

¹¹ See ‘PPPs: The passage of time permits a sober reflection’, Graeme A Hodge and Carsten Greve, Institute of Economic Affairs, vol. 29, no. 1, 2009, pp. 33-39; ‘World Bank Group Support to Public-Private Partnerships: Lessons from Experience in Client Countries: FY02-12’, Independent Evaluation Group, 2015, pp. ix-x, <http://bit.ly/2qdcQxC>.

¹² See treatment of Material Adverse Government Action in ‘WBG Report of Recommended PPP Contract Provisions’, World Bank Group, Public Private Infrastructure Advisory Facility, 2015 Edition, January 2015, p. 16, <http://bit.ly/2pFON8E>.

to track the development outcomes of its FI investments, but also in many cases, the IFC is [not even aware](#) of where its FI investments are going. Investigations have linked IFC financial intermediary investments to forced evictions and economic displacement of tens of thousands of people, environmental pollution, child and combat labour, and even the killings of activists.¹³ In many cases, the projects financed through financial intermediaries would not pass standard social and environmental requirements if they were financed as direct investments.

One of the strategies of the billions to trillions paradigm is to court institutional investors such as private equity, hedge funds, insurance, pension funds and sovereign wealth funds, which can potentially provide more long-term infrastructure investments. The engagement of these long-term institutional investors in public infrastructure development raises serious concerns regarding how social, environmental, and transparency concerns will be weighed against commercial interests and the need to secure a return on investment. Additionally, the involvement of hedge funds, and in a sense the financialization of infrastructure as an investment asset, raises the risk that infrastructure development becomes a new area for speculative investment.

AN ENABLING ENVIRONMENT FOR INVESTORS

One of the primary ways that public financial institutions facilitate private sector investment is by promoting a favourable legal and regulatory environment for business. While the conditionalities and structural adjustment policies imposed by international financial institutions (IFIs) in the 1980s and 1990s have fallen out of favour, many financial institutions continue to promote neoliberal macroeconomic reforms through technical assistance and other means. The World Bank's flagship 'Doing Business' report, for instance, ranks countries based on the extent to which they promote an enabling environment for private investment. The ranking has been criticised for penalising countries that introduce and apply important social regulations, such as labour or land rights protections.¹⁴ In its 13 years of existence, 'Doing Business' has spurred [2,600 different regulatory reforms](#) geared toward improving the environment for private enterprise.

In recent years, with and without the technical assistance of development financiers, many countries have weakened their domestic laws to accelerate investment. The South African government's 2010 Infrastructure Development Act facilitated priority infrastructure projects by eliminating standard procedural requirements, including those relating to social and environmental assessment and public consultation.¹⁵ Indonesia's 2015 amendment to the Land Acquisition for Development Law gave private companies new powers to finance land acquisition, greatly increasing the potential for land grabbing.¹⁶ The Brazilian Congress is, at the time of writing, considering a slew of measures that would roll back conservation requirements and indigenous rights protections.¹⁷

¹³ 'Outsourcing Development: Lifting the Veil on the World Bank Group's Lending through Financial Intermediaries', Inclusive Development International, 2016, <http://bit.ly/2qaEKfp>. See also 'The Suffering of Others: The human cost of the International Finance Corporation's lending through financial intermediaries', Oxfam Issue Brief, April 2015, <http://bit.ly/2r9FnnW>.

¹⁴ See e.g. 'Independent Panel Review of the Doing Business report', June 2013, <http://bit.ly/2pssqYV>.

¹⁵ See e.g. 'Infrastructure Development Act No. 23 of 2014', Centre for Environmental Rights, 2014, <http://bit.ly/2r9Nn8m>.

¹⁶ See e.g. 'Infrastructure in Indonesia: Will recent reforms make things easier?', Jared Heath and Cameron Grant, Corrs, Chambers, Westgarth, 26 May 2015, <http://bit.ly/2r8eeB0>.

¹⁷ See e.g. 'Proposed law may remove indigenous land rights in Brazil', Adriana Brasileiro, Reuters, 2 December 2015, <http://reut.rs/2psoRSI>.

THE RULES OF THE GAME

A final question to ask about what the billions to trillions model means for civil society is what the rules are and who sets them. Over decades, civil society has fought to defend human rights and the environment in development processes and to secure critical social and environmental standards and accountability mechanisms within development institutions. These protections include policies on access to information, standards for social and environmental assessment and requirements that governments or companies consult with local communities. They also include independent grievance mechanisms that can help to provide remedy where policies are violated or communities are harmed. These reforms have been critically important where governments or corporate actors are not transparent or accountable or where civil society space is restricted. Often, the fact that there is an international financier involved in a given development activity can bring higher standards and capacity, greater transparency and more leverage for advocacy and campaigning.

At the same time, as new development financiers come on the scene, accountability may become more elusive. There is a growing trend of relying more on countries' domestic social and environmental standards and corporations' internal policies, rather than on the application of international standards.¹⁸ This is a problem where corporate and national systems do not ensure a minimum protection floor for people and the environment, are not enforced, or are being weakened. Additionally, new co-financing arrangements that involve a complex web of public and private investors, and the growing use of FIs can make it more difficult for affected communities and civil society groups to know who is financing a given activity.¹⁹ The involvement of private sector financiers can allow public development institutions to skirt their transparency and disclosure rules, by citing business secrecy.

The challenge with private sector involvement in development is not the involvement itself. The private sector can and does bring crucial resources and innovations that will be essential in helping society to fulfil the SDGs. The challenge lies in who determines the appropriate role of the private sector, and who sets the priorities and the terms for each nation or each community's development. If the private sector is able to set critical public development priorities or to proceed without checks and balances, the voice of civil society and the realisation of human rights are placed at risk.

CIVIL SOCIETY RESPONSES

At the Coalition for Human Rights in Development, our members and allies around the world are redoubling their efforts to hold development actors accountable, and also adjusting their strategies and forging new alliances that reflect the new development paradigm.

¹⁸ See 'World Bank Leaves Holes in Safety Net', Coalition for Human Rights in Development, 8 August 2016, <http://bit.ly/2psx09W>.

¹⁹ See e.g. Inclusive Development International, op. cit.

SUPPORTING PUBLIC PARTICIPATION

One of the biggest challenges for civil society, and in particular for local communities, is being able to access information and decision-makers in order to shape development proposals before they are set in stone. Civil society groups such as Eurodad are working to influence the G20 and OECD proposals that fuel the billions to trillions paradigm, including those on financing for development, PPPs and regional infrastructure plans.²⁰ Initiatives such as the [Early Warning System](#), which supports community engagement around development proposals with significant human rights risks, are helping to ensure that communities have information about development proposals that might adversely impact them and have support to engage decision-makers early on.²¹ Groups such as Inclusive Development International are supporting communities to [‘follow the money’](#) to identify leverage points amid complex financial flows, and working to close the transparency and accountability loopholes around private sector finance. Fundar Centro de Análisis e Investigación in Mexico is working to increase transparency in how the Mexican government and pension funds invest public resources.²² Groups such as the Centre for Applied Legal Studies in South Africa and Fundación para el Desarrollo de Políticas Sustentables in Argentina are supporting communities to use independent complaint mechanisms to hold corporations and governments accountable.

To shape development and hold development actors to account on a broader scale will require that the corporate accountability and development communities work together to pool their distinct expertise on corporate and public finance. And in a landscape where financing is global, international solidarity and campaigning is critical to take full advantage of available leverage points and gain access to decision-makers. When the IFI-financed mining company [Eco Oro](#) initiated arbitration proceedings against the government of Colombia over its refusal to grant an environmental licence for Eco Oro’s operations in a sensitive wetland, civil society groups in Columbia and the USA were able to work together to pressure the IFC to divest.

STRENGTHENING HUMAN RIGHTS DUE DILIGENCE

While our members and other civil society groups have long pressed the large development banks to strengthen environmental and social protections, in recent years an explicit call for financiers to undertake human rights due diligence - to assess and address human rights-related risks and to provide remedy for adverse human rights impacts - has gained considerable traction. In 2014, communities in Liberia worked with Accountability Counsel, an organisation that supports communities to seek justice for harm caused by internationally-financed development projects, to expose the human rights and labour abuses associated with a [biofuels project](#) financed by the US Overseas Private Investment

²⁰ See e.g. ‘G20 Finance Ministers focus on private financing of infrastructure’, Eurodad, September 2015, <http://bit.ly/1LmdU4a>; ‘Infrastructure investment and Public Private Partnerships’, Nancy Alexander, Heinrich Boll Stiftung, 15 December 2016, <http://bit.ly/2j5wQID>.

²¹ The Early Warning System is an initiative of the Center for International Environmental Law and International Accountability Project. See <http://bit.ly/2r8q8e4>.

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Corporation (OPIC). The groups utilised OPIC's internal accountability mechanism and conducted advocacy with US Members of Congress to press OPIC to revise its social and environmental policy to strengthen human rights due diligence.

In 2016, when Honduran indigenous leader Berta Cáceres was assassinated in connection with her opposition to the Agua Zarca dam, the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH) and international allies such as the Dutch civil society organisation (CSO) BothENDs waged a [global campaign](#) targeting the international financiers of Agua Zarca: the Dutch Development Bank Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden (FMO), the Finnish development financier FinnFund and the Central American Bank for Economic Integration (CABEI). Campaigners succeeded in getting the financiers to suspend their financing, convinced FMO to adopt policy provisions to safeguard human rights defenders and continue to pressure the institutions to make a responsible exit from the project.²³

In 2016 at the [Coalition for Human Rights in Development](#) we launched a campaign with civil society groups around the world to urge development financiers to use human rights due diligence to address risks associated with shrinking civil society space and growing attacks on human rights and environmental defenders, and to promote an enabling environment for participatory development. Our members are also utilising [National Action Plans on Business and Human Rights](#) – the national-level processes to implement the United Nations Guiding Principles on Business and Human Rights - to strengthen the human rights due diligence of national development banks, development agencies and export credit agencies, and to shape the positions their governments take within multilateral development institutions.

MEETING THE CHALLENGES AHEAD

In this new paradigm of development, civil society will need to embrace a diversity of strategies to ensure that communities have a voice, human rights are respected and the environment is protected. These diverse strategies, however, will need to work in close coordination. With hundreds of new development projects being proposed each week by an array of development actors, civil society will need our own billions to trillions strategy.

Just as the public banks and governments are using their power to bring together new actors and mobilise new resources, civil society will need to leverage our power, by building stronger relationships with frontline communities and grassroots groups, forging new alliances with social movements and CSOs in sectors that traditionally have

²² See 'Development Loans in Mexico: a Transparency Assessment', Fundar Centro de Análisis e Investigación, 30 September 2015, <http://bit.ly/2qaHXvd>; 'Our retirement savings are funding projects violating human rights', Mariana González Armijo, 1 March 2017, <http://bit.ly/2miHLcb>.

²³ See 'CSOs call on Dutch development bank to adopt measures to prevent and address reprisals against human rights defenders', Business and Human Rights Resource Centre, <http://bit.ly/2q9HFoK>; and FMO Sustainability Policy, January 2017, <http://bit.ly/2pGAT72>.

not engaged on issues of development finance, and cultivating strategic allies within government, the private sector and international institutions. While development has changed dramatically in the 30 years since the adoption of the Declaration on the Right to Development, the fundamental need for civil society to work together to ensure that development processes are accountable and respect human rights remains constant.

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