



IBON International input to the OHCHR and UNDP-led global consultation on governance and the post-2015 framework.

Without Corporate Accountability, “Good Governance” Falls

By: Mark Dearn

The business sector, led by corporations, has an increasingly prominent role in international development. Although rapidly increasing in recent years, this role has its origins in the same neoliberal ideology that launched what has become today’s mantra of “good governance”.

However, while the “good governance” promoted by Bretton Woods institutions valorises the centrality of business in development and the rolling back of the state, its policy prescriptions do not include an enforceable system for holding corporations to account or a framework that acknowledges the impact of corporate activities on people – who are, due to such impacts, stakeholders in corporations.

IBON International believes the creation of a system that upholds the wider interests of stakeholders above the narrow interests of shareholders and enforces corporate accountability in line with international human rights standards and codes of best practice. This must underpin any governance objective agreed under the Post-2015 Agenda.

A new agenda

As UNDP and OHCHR outline in the guiding questions for the thematic consultation on governance, a new development agenda depends on effective governance capacities at all geographic levels, including commitment to the rule of law and the empowerment of people - especially the most excluded and vulnerable - to participate in decision-making.

UNDP and OHCHR note that if civil society can hold “states and other duty-bearers” to commitments through accessible, effective accountability mechanisms, it is more likely that duty bearers “feel compelled to identify and address patterns of inequality, discrimination, exclusion and other structural factors inhibiting human development. Human rights offer principles and tested mechanisms to ensure accountability both at national and global level”.

IBON International believes that the business sector - especially corporations - is a major duty bearer. Indeed, the economic and political weight of some corporations, and their direct and indirect impacts on a range of development issues and decision-making processes, outweighs that of some states. This must be matched by an overarching, enforceable accountability system to “compel” corporations, and hold them accountable for serial breaches of international human rights standards.

Increasingly important duty bearers

Recent international summits have reified the centrality of the private sector to development: the 2011 Fourth High-Level Forum on Aid Effectiveness affirmed the “central role” of the private sector in “contributing to poverty reduction”; the outcome document of the 2012 G20 meeting in Mexico emphasized the importance of private-sector investment to infrastructure projects, food security initiatives, and inclusive green growth in developing countries; it was made clear at Rio+20 that the “Green Economy” proposal focuses mainly on private funding, with public finance relegated to the role of catalyst, co-sharer of risk and guarantor of public infrastructure and services.

Over the same time period, there has been a litany of cases of corporations and their supply chains being involved in abuses of human rights in developing countries – whether environmental degradation, abuses of workers’ or indigenous people’s rights, complicity in extra-judicial killings, or land grabbing. The overwhelming majority of cases have seen no legal redress for victims. They make a mockery of voluntary corporate commitments. They flaunt international human rights standards.

As the OHCHR observes, stakeholders are universally calling for the Post-2015 Agenda to be in line with international human rights standards and principles. Due to their leading role, such standards must be applied to corporations. Several attempts – whether from the UN, multilateral institutions or civil society – at providing guidelines for corporate behavior have thus far failed to uphold human rights and corporate accountability.

Flawed approaches

The series of attempts to create frameworks to encourage responsible business behavior include the 2012 Guiding Principles on Business and Human Rights, the UN Global Compact, and the OECD Guidelines for Multinational Enterprises. These exist alongside increasingly popular, voluntary “corporate social responsibility programs” created by individual companies.

However, all of these frameworks are beset by the same problem: they prescribe only voluntary adherence to principles. As Human Rights Watch has argued, voluntary approaches may serve to entrench a paradigm of unenforceable commitments, ultimately to the detriment of human rights. As it notes: “Companies can reject the principles altogether without consequence—or publicly embrace them while doing absolutely nothing to put them into practice.”

Domestic legal provisions exist under which, in theory, corporations can be held to account in their home countries for crimes committed overseas. In theory, corporations can also be held to account in many countries they operate in.

However, in practice many developed countries in which corporations are domiciled fail to monitor and hold accountable the actions of corporations – although, as noted by the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, “the human rights of individuals, groups and peoples are affected by and dependent on the extraterritorial acts and omissions of States”. For their part, many developing countries can either lack the capacity or will – due to, for example, dependence on foreign investment or government executives being part of a two-way corruption process – to hold corporations to account.

But while the actions of states in regulating corporate activity and holding corporations to account for human rights violations must be a central part of a new commitments and must be monitored as a central part of a new corporate accountability system, this must be backed by an enforceable international framework.

The need for compliance to rigorous international standards and a stakeholder approach

A number of useful measures have been elaborated among existing frameworks for regulating the role of business in development and with regard to human rights, for example, “human rights due diligence” and the “protect, respect, remedy” framework, both included in the Guiding Principles. However, such proposals are undermined by the lack of a mechanism to ensure compliance or measure implementation, and, as Human Rights Watch notes with reference to the Guiding Principles, “setting a lower bar than international human rights standards in some areas, like ensuring a victim’s right to redress and accountability”.

IBON International believes that in addition to the duty of creating an enforceable system backed by mechanisms to measure implementation, and a rigorous system for evaluating the actions of states in regulating and monitoring corporations, a new, stakeholder-based framework may also be applied to the activities of corporations, specifically in developing countries.

This approach is based on the existing premises of “stakeholder theory”. While corporations have a special relationship with shareholders, as R Edward Freeman elaborates, “corporations have stakeholders, that is, groups and individuals who benefit from or are harmed by, and whose rights are violated or respected by, corporate actions”.

As such, corporations have a fiduciary duty to stakeholders. With regard to indigenous peoples specifically, while gaps remain between theory and practice, the right to “free, prior and informed consent” across a range of issues affecting indigenous peoples’ land has been recognized by a number of intergovernmental organisations, international bodies, conventions and international human rights law and domestic laws. Such an approach is critical to ensuring indigenous rights to ancestral land and resources, but is also an instructive model for an integrated strategy for wider stakeholder engagement where communities are affected by corporate activity.

Stakeholders must be incorporated into internal decision-making processes, involved in human rights due diligence processes, setting up independent monitoring systems, and in subsequent publishing of reporting. In this, grassroots organisations must play a prominent role.

However, it is also vital that the stakeholder approach extends beyond the governance structure of corporations into institutions that function to regulate corporate activity. This includes local and national government regulatory mechanisms, independent monitoring mechanisms, and UN or multilateral agencies assigned with creating and maintaining corporate oversight in line with an enforceable, stakeholder framework.

Such an approach ensures that non-corporate stakeholders cannot be co-opted. This is crucial to ensure rigorous regulation in line with human rights standards, with the empowerment of people through effective access to information, participation in decision-making, and access to and active involvement in seeking remedies.

Commitments to the rule of law, adherence human rights standards, and the empowerment of people to participate in decision-making are fundamental facets of “good governance”. These cannot subsist without corporations being held to international human rights standards or empowering people as stakeholders in the governance of one of the largest actors in development today.