ENGAGING THE PRIVATE SECTOR IN POST-2015: HUMAN RIGHTS AND ACCOUNTABILITY - June 25**

Welcome: Ms. Susan Alzner, Officer in Charge, UN Non-Governmental Liaison Service (UN-NGLS)

***Moderator*:** Mr. Savio Carvalho Senior Advisor, International Development and Human Rights, Amnesty International

Panel Speakers:

H.E. Ambassador Guilherme de Aguiar Patriota, Deputy Permanent Representative of the Mission of Brasil to the UN
Ms. Lucy Graham, Legal Adviser, Business and Human Rights Team, Amnesty International
Mr. Niko Lusiani - Director, Human Rights in Economic Policy, Center for Economic and Social Rights
Mr. Leonardo SC Castilho - Human Rights Officer, Office of the United Nations High Commissioner for Human Rights
Ms. Alejandra Scampini - Lead Advocacy Associate, Association for Women's Rights in Development (AWID)

Executive Summary

The Post-2015 Sustainable Development Goals (SDGs) represent an important opportunity to engage in a conversation about private sector actions, the on-the-ground impacts of public-private partnerships (PPPs), and compliance with human rights standards. While states are understood to have human rights *obligations*, the private sector is accepted as having only informal responsibilities when it comes to alignment with human rights principles, and there is no formal framework or mechanism in place to hold companies accountable for the impacts of their actions. This governance gap poses a serious risk to the realization of the SDGs and to the enjoyment of human rights by all peoples.

Many states prefer to take a voluntary approach to corporate compliance with the UN agenda within their borders, providing companies with the opportunity to opt out of alignment with human rights standards. Critically, corporate human rights violations occur when there is a lack of internal law regulating corporate activity and ensuring corporate responsibility, or when the state is either unwilling or unable to enforce existing regulatory law. This especially occurs when countries are reliant on foreign investment, and creates a crucial gap in governance: the host state is not willing or able to put laws in place and hold others to account, and home states fail to take the burden upon themselves, or offer justice for the victims.

It is not enough to rely on a voluntary approach or a code of conduct to enforce accountability, and as states pursue the SDG goals and targets, it will be key to make clear that corporate compliance with the UN human rights agenda is more than a social responsibility: it is grounded in human rights, and violators will be legally pursued and sanctioned. Furthermore, states have human rights duties that extend outside of their territory, and this obligation to protect human rights abroad includes guaranteeing that the businesses that they can legally regulate respect human rights, don't undermine development through purely profit-driven practice, and, crucially, remedy harm where it has been inflicted. The above obligations can be utilized as a normative foundation for the establishment of a legal framework enforcing private sector compliance with human rights principles, and should be invoked in any discussion of international cooperation on accountability and PPPs.

To improve the interaction between the public and the private, and enforce concrete obligations from the corporate sector regarding human rights, the following mechanisms have been proposed:

- Businesses should be required to report on human rights, labour rights, and environmental sustainability.
- As intergovernmental tax body should be established to undertake investigations into the tax arrangements companies make, and the attached risks.
- Bilateral negotiations—such as international trade negotiations—must be transparent and participatory. No negotiation should be immune to public participation and oversight.
- Companies should be encouraged to take the lead by changing their business models to mould with a human rights agenda.
- All countries should be encouraged to develop national action plans; follow up and review of these national action plans should include an assessment of implementation.
- Governments must agree to conduct regular sustainable development impact assessments. These assessments will look at the impacts of government policy on sustainable development and human rights both at home and overseas. These assessments should include triggers for policy action and must meaningfully include the contributions of the impacted community.

Finally, it is important to be critical of narratives that assume low state capacity and the primacy of the private sector over the public, and to assess the concrete impact of private sector projects that promise to engage in "smart economics" by "investing in women and girls," but whose deliverables are unclear.

****Disclaimer**: This summary is based on notes taken at the panel, and may not reflect the speakers' views with complete and total accuracy.

<u>Review of Panel Discussion</u>:

H.E Ambassador Guilherme Patriota (Brazil): The private/corporate sector is an important partner in development, however, it is critical that we establish mechanisms that will prevent private sector projects and partnerships from undermining objectives that are central to the UN's global vision, and will ensure the compliance of SDG-related projects with human rights principles. To make progress in increasing corporate accountability, the private sector (both large international companies and domestic companies on a state-by-state basis) must make a concrete commitment regarding compliance with the UN human rights agenda, perhaps in the form of a permanent structured relationship with the UN and UN member states. Companies must commit to transparency regarding funding—both its source, and where it is directed. Civil society organizations will be particularly useful in making the domestic private sector more responsive to community needs on the ground, and in aiding in oversight and regulation of private sector projects.

Today, states have obligations whilst the private sector has more informal responsibilities, thus, the obligations of states to make sure that companies behave increase as the role of the private sector expands. However, states only have true sovereignty within their borders, providing international corporations with a "free ride" outside of their own state. The only way to limit the space for noncompliant behaviour is to require a commitment by private sector companies on more than a voluntary basis, and for the state and civil society to take on a more rigorous supervisory role, perhaps in the form of a structured interface between companies and civil society/ member states.

Finally, an ongoing narrative is that government capabilities have decreased, limiting the public sector's ability to drive development and necessitating partnerships with the private sector. The notion of the private sector as the preferable and more effective driver of development should not be accepted uncritically,

Leonardo Castilho (OHCHR): While the Post-2015 SDG's grounding in human rights is a significant improvement on the Millennium Development Goals (MDGs), developing a concrete framework for ensuring private sector compliance with these human rights principles will be crucial to achieving the human rights targets outlined in the Post-2015 goals.

While it is states' duty to their people to develop global governance and improve human rights outcomes, private actors can play a role in ensuring more coherent global outcomes, and have a responsibility to respect human rights, and not contribute to human rights violations. Companies should be encouraged to take the lead by changing their business models to mould with the agenda, and simultaneously, states must ensure that their actions are in line with UN human rights principles. A starting point for accomplishing this is the following:

- All countries should be encouraged to develop national action plans; follow up and review of these national action plans should include an assessment of implementation.
- Businesses should be required to report on human rights, labour rights, and environmental sustainability.

Lucy Graham (Amnesty International): The private sector has an important contribution to make to the Post-2015 process, but this contribution must respect human rights, and be held formally accountable for any accompanying rights violations.

Corporate human rights violations occur when there is a lack of internal law regulating corporate activity and ensuring corporate responsibility, or when state is either unwilling or unable to enforce existing regulatory law. This is a frequent occurrence when countries are reliant on foreign investment, and creates a crucial gap in governance: the host state is not willing or able to put laws in place and hold others to account, and home states fail to offer justice for the victims. It is not enough to rely on a voluntary approach or a code of conduct to enforce accountability—it must be made clear that compliance with the UN human rights agenda is more than a social responsibility, it is grounded in fundamental human rights, and violations are punishable by law.

In situations where private sector ventures go unregulated, there may be a lack of understanding among community members that their rights are being violated: for example, they may not be aware that their water sources are being polluted by environmentally irresponsible companies. Awareness raising is thus a critical component in addressing a lack of corporate accountability, in conjunction with effective regulatory mechanisms.

Nicolas Lusiani (Center for Economic and Social Rights): While corporations that take part in PPPs in developing countries may have the reputation of being companies with a strong sense of social responsibility, under market pressures these same companies can easily become driven purely by profit motive alone, rather than by a humanitarian agenda. Every business has a shadow that impacts human rights and sustainable development, and business activity influences every SDG. It is thus critical to look for the unexplored impacts of companies—such as whether they pay taxes or not, whether they are robbing countries of essential services, whether they are contributing to illicit financial flows. These types of impacts weaken the public sector and the services it is able to provide (such as healthcare and education), contribute to the narrative of a weakening state, and will obstruct the achievement of the SDGs.

The state's obligation to protect human rights abroad includes guaranteeing that the businesses that they can legally regulate respect human rights, don't undermine development through purely profit-driven practice, and remedy harm where it has occurred. These obligations should be utilized as a normative foundation for the establishment of a legal framework enforcing private sector compliance with human rights principles, and should be invoked in any discussion of international cooperation on accountability and PPPs.

Accountability should be enforced via the following mechanisms:

- Governments must agree to conduct regular sustainable development impact assessments. These assessments will look at the impacts of government policy on sustainable development and human rights both at home and overseas. These assessment should include triggers for policy action and must convincingly include the contributions of the impacted community.
- Businesses should be required to report on human rights, labour rights, and environmental sustainability.
- As intergovernmental tax body should be established to undertake investigations into the tax arrangements companies make, and the attached risks.
- Bilateral negotiations—such as international trade negotiations—must be transparent and participatory. No negotiation should be immune to public participation and oversight.

Alejandra Scampini (Association for Women's Rights in Development): Regarding women's rights, "investing in women and girls" has become a popular phrase in the private sector, as have projects that aim to "finance gender equality." Just as business solutions to social problems have proliferated, the language used to talk about women and girls-focused projects has shifted from aid to investment, and there are more formal demands for a private sector role in women's empowerment. However, despite this focus on "smart economics," adding value by leveraging women's rights, and investing in women, there is actually a decreasing amount of money going to women's organisations. This suggests that there is a need to establish an accountability framework that guarantees a move from language to concrete action.

Finally, it may be useful to perform an analysis of the concrete impact (and thus, value) of PPPs on society, environment and other sectors, and to make a visible call to action for justice, corporate transparency and accountability within the private sector in order to focus public attention on the issue.