

The Role of the Private Sector in fostering peace, justice and sustainable institutions

2 May 2018, Jones Day, London

CONFERENCE SUMMARY

These notes are a summary of the day's event; any mistakes or misrepresentations are the author's alone.

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OVERVIEW:

This summary highlights the key points from the conference:

1. The Business Case (Panel 1)

- Making money is not inimical to the SDGs. In fact, investing in the SDGs can make good business sense, and help turn a profit. The SDGs shouldn't be seen as a challenge and can help mitigate risks. They should be part of sustainable strategies of companies. A long-term vision is essential.
- A lot of themes captured in SDG16 (e.g. strong institutions, lack of corruption) are vital for a stable and sustainable business environment. But we still lack coordinated approaches to implementing SDG16 and engaging the business community.
- The private sector covers a broad swathe of organisations, and not all have genuine interests in Rule of Law, or in the SDGs. It is possible for the private sector to act on SDG16, but it will require putting aside their self-interest.

2. How should private sector engage to advance peace, justice and strong institutions? (Panel 2)

- Investing in the SDGs makes strong business sense, but also hinges on the importance of strong and sustainable partnerships with the local communities. The SDGs should be part of any business strategy – they help leverage opportunities, and mitigate risks.
- Internally, tone from the top, and aligning performance reviews against delivery of the SDGs are some of the strategies that help advance the SDGs. Externally, many companies engage with the UN Guiding Principles on Human Rights (UNGPs). It was argued that the UNGPs are inter-related to the SDGs, such that a company that meets the former automatically addresses the later. Training and capacity-building throughout the supply chain also provide means of mainstreaming the SDGs.
- In addition to investing in advocacy and information-raising, there is a need to localise the SDGs, as well as a need to engage with SMEs (as they can be more nimble, but don't always know about the SDGs).

3. Who can help the private sector engage to advance peace, justice and strong institutions? (Panel 3)

- It was stressed that ‘access to justice’ is a key component of the SDGs – governments have a key role to play in this, including in coordinating action on the SDGs. However, although collaboration between government and the private sector is needed, there may be a risk when the private sector seeks to affect justice outcomes.
- ‘Justice innovators’ are equally important, and data suggests that local communities are key in facilitating access to justice. These can be Small and Medium Enterprises (SMEs), who are often more flexible and nimble. The private sector can help foster access to justice, e.g. by investing in technology, focussing on public goods, etc.
- Lawyers and the legal profession have an important role to play in implementing the SDGs, e.g. by advising on laws and legal problems that various stakeholders encounter.
- Critically, the business sector and lawyers do not always prioritise social outcomes, and thus it is important to build strong and lasting partnerships (including with local communities), and to facilitate the work of these stakeholders (e.g. via pro-bono mechanisms).

4. A call to Action – the role of the private sector in fostering peace, justice and strong institutions (Panel 4)

- The SDGs provide a unique framework for countries to address most issues affecting humanity. However, there are clearly some challenges to their implementation, and SDG 16 remains controversial.
- Success in achieving the SDGs depends on coordination across governments (who are responsible for setting the frameworks and creating incentives for engagement), and the private sector. Although, as was remarked previously, the private sector is eclectic in nature, it is also vital for the private sector to organise and coordinate if the SDGs are to succeed. Coordination can be mediated by third-parties.
- Three examples were provided showing how the private sector can engage a broad range of stakeholders in addressing SDG16 – the Pathfinders Programme, the UN Global Compact, and the Rule of Law Clearing House. As was remarked, these are three examples out of a broader pool of initiatives, and thus coordination is vital.

DETAILED SUMMARY:

Keynotes

The conference kicked-off with two keynotes. **Harriett Baldwin MP** (Minister of State for Africa at the Foreign and Commonwealth Office and Minister of State at the Department for International Development) highlighted the importance for the UK Government to work alongside the legal profession and civil society (such as the Bingham Centre), which act to advance the Rule of Law. She also referred to efforts from the UK government to foster implementation of SDG16, both in the UK and abroad (such as by working on anti-corruption and improving transparency mechanisms). The Minister of State also emphasised the benefits that a rules-based system brings to the private sector, and more generally, noted that a strong legal system has allowed the UK economy to flourish. Conversely, the private sector plays a key role in promoting better and stronger institutions. There are various good examples of this, such as Safaricom which banned hate speech messages from its network, which was influential in setting national-level reforms. Questions to the speaker related to the importance of having a joined-up and strategic approach in dealing with the private sector, and on the importance of the Rule of Law in developing countries.

The second keynote speaker, **Manoelle Lepoutre** (Senior Vice President, Civil Society Engagement, Total) emphasised the importance of being a good corporate citizen and highlighted the importance of a sustainable business model for the company. Notwithstanding the challenges posed by Total's operations (across 130 countries), sustainability is embedded within the company's strategic plans, and the company reports against the SDGs. Moreover, she argued, the SDGs and human rights are interlinked and mutually reinforcing. Finally, in addition to climate considerations, transparency is also a cornerstone of Total's approach, and has guided its work on third-party engagement (e.g. with local communities and civil society who can help keep the company to account). The company also discloses all payments made to governments where it operates. Questions concerned the significance of climate policies for Total; the company's presence and operations in Myanmar; and engagement with civil society and third parties.

Panel 1 – the Business Case: WHY should the private sector engage to advance peace, justice and Strong institutions?

As the panel chair remarked, the SDGs provide a 'lingua franca' that brings together businesses, governments and various other stakeholders to address most of the world problems. **Ulysses Smith** (Bingham Centre) stressed that there are many themes in SDG16 which are core business issues – such as the importance of strong judiciaries and the certainty of contracts; fair regulatory systems; lack of corruption, etc. But the speaker also highlighted several challenges and constraints, including the lack of strategic approach to engaging the business community (i.e. where various SDG initiatives are piecemeal and/or run in parallel); and using the wrong language or terminology. **Bob Cusumano** (Legal Horizons Foundation) reflected on the underlying motivations for private sector involvement in the SDGs. He remarked that some companies get involved in the SDGs for wrong (reputation-enhancing) reasons. The private sector tends to have a vested interest in the status quo, and thus can be self-interested when seeking to benefit from key Rule of Law institutions such as effective

judiciaries. The private sector is a broad spectrum, and only a fraction effectively engages with the SDGs. To achieve the SDGs, we must leave these self-interests aside, and make a distinction between public and private interests in law. **Esteban Mezzano** (Nestlé) reflected on his company's approach to the Rule of Law. Remarking that sustainability is part of the corporate 'DNA', the speaker also stressed the need for a long-term vision. In fact, he suggested, most companies address various different SDGs in day-to-day operations (e.g. in Nestlé's case, by acting to avoid child labour, or by adopting a business strategy on diversity, gender balance and youth employment. This, he remarked, is not driven by PR or marketing needs. The company invests in this because it is the only way to do business, especially in environments where the Rule of Law is weak. Where suppliers and/or competitors fail to meet these standards, then Nestlé is at a competitive disadvantage. **Manoelle Lepoutre** added that the SDGs allow a company to manage risks, but also make good business sense over the long-term. Millennials, she remarked, are increasingly drawn to work for companies that invest in sustainability.

Questions and answers referred to the difference between start-ups and MNCs (according to some speakers, SMEs are much more nimble and able to address the SDGs); the incentives for adopting the SDGs (as opposed to this being akin to a 'code of conduct'); and on the use of 'Rule of Law' to elicit change and outcome-neutral action.

Panel 2 – HOW should the private sector engage to advance peace, justice and strong institutions?

Nadiya Aziz (Safaricom) began by relating her company's engagement with the SDGs, and stressed the importance for a company to invest in sustainability as well as in building strong partnerships with third parties and governments alike. Tone from the top, as set by the CEO, means that each divisional director is a custodian of one or two SDGs (the company is involved in 9 of them), and this SDG policy trickles down to each company staff. In addition to this 'internal' involvement, externally, the company also engages with the UN Global Compact (UNGC). All suppliers have to sign up to the compact, and Safaricom also provides tailored training for smaller suppliers as needed. Ultimately, she remarked, the SDGs present the company with an opportunity to make money, and thus shouldn't be seen as a risk. **David Croft** (Diageo), also reinforced the point that the SDGs need to be a central part of a business strategy, and can help manage risks and leverage on opportunities. The strategy for Diageo is to leverage the strength of their core business to generate inclusive growth, and if the communities they supply thrive, then so will Diageo's business. Mentalities are changing, and it is expected of businesses to make a vital contribution to society. Companies need to align their SDG strategy with their core business. In turn, **Oluseyi Ojorongbe** (Sahara Foundation) talked about the Sahara's Group support to help the Government of Nigeria and other businesses achieve the SDGs. In his opinion, the SDGs should be 'localised'. More should be done to engage with small businesses, which do not always have the same mindset or capacity to engage with the SDGs. Moreover, a lot of advocacy is needed to help advance the SDGs. In a lot of developing countries, governments are driving the SDGs and tend to focus mostly on infrastructure, but there is a need to move beyond that. The private sector is not only a source of money – it can also provide data, and can also be a channel to engage with local communities. Finally, **Michael Addo** (University of Notre Dame) spoke about the

importance of human rights as a mechanism for addressing the SDGs. There tends to be a lot of 'initiative fatigue', and thus using existing mechanisms or frameworks – such as the UN Guiding Principles – is a better alternative. Human Rights and the Rule of Law are deeply intertwined, and so conforming with the Guiding Principles means a company automatically addresses the SDGs.

Questions and Answers concerned the use of and relevance of stakeholder feedback for a company's performance on the SDGs (investor pressure is key in this regard, it was argued); the risk that if too many people are responsible for the SDGs in a company like Safaricom, this might ultimately dilute responsibilities (the SDGs are actually streamlined within professional objectives and development opportunities, it was suggested); the importance of free, prior and informed consent; the kind of strategy for 'integrating' the SDGs; the existence of grievance mechanisms, and access to remedies (which can be problematic when companies in the supply chain don't enforce them); and on the importance for MNCs to use their social muscle to enforce social standards (companies can leverage and facilitate engagement of the SDGs, though it was also suggested that businesses need to take bold commitments).

Panel 3 – PANEL THREE: WHO can help the private sector engage to advance peace, justice and strong institutions?

As the chair remarked at the onset, the input of many external stakeholders (lawyers, accountants, etc) is critical in helping the private sector address the business case, and mechanisms for engaging with the SDGs. Reflecting on the role of government in the SDGs, **Dr Henry Mbawa** (Government of Sierra Leone) argued that they provide the ability to change the narrative. However, most efforts (including from international development partners) tend to focus on reviving the business sector or on social development, not Rule of Law institutions that provide access to justice. The government can set the framework and set the tone for constructive engagement between government and the private sector. Coordinated interventions are needed, especially to cater to various private sector sizes. However, he also noted, it is important to acknowledge that the private sector – and hence its interests – vary in nature. In thinking of the challenges, he remarked that there may be a risk of conflict of interest when the justice and private sectors work together. **Prof. Maurits Barendrechts** (Hague Institute for Innovation and Law, HiiL) laid emphasis on the importance of 'user-friendly justice'. Data produced by HiiL shows that the local community overwhelmingly provides access to legal services. There are innovative ways how this can be achieved, e.g. through one-stop-shop resolution centres. Businesses can get involved in addressing access to justice by focussing on public goods (e.g. water, telco, etc) and on online platforms. However, in thinking of the challenges, the speaker also remarked that lawyers are not trained to focus on results for end users, and that partnerships with ministries or courts are not always straightforward. **Yasmin Batliwala** (A4ID) introduced the work lawyers and the legal profession can do to support the SDGs. Law firms can provide advice on data protection, legal problems, and regulations, but a challenge is to ensure that this can translate into long-term partnerships. While the legal sector is a critical actor in its own right, the key is to match legal skills with legal needs in the development sector. But in addition to match-making, capacity-building, information-sharing and technical expertise is required, such that lawyers

understand the language and meaning of the SDGs and international development. Lastly, it was said, many of the problems that the SDGs aim to address require partnerships across various stakeholders and areas (as enshrined in SDG17). Finally, **Richard Morgan** (Anglo American) emphasised the importance of trust, and for the private sector to engage more widely with third-sector parties. Reiterating the previous speaker's points, he stressed the importance of partnerships with local communities, but also acknowledged that there may be a risk that some companies can be seen as too involved in a sensitive justice process.

Questions and Answers related to the different understanding of justice; the relativistic view on business involvement in the SDGs (making money is not inimical to the SDGs, it was retorted); and on the relationship between developing countries and foreign MNCs (which, it was said, needs to be built on a relationship of trust and transparency involving the local communities); and finally, on the importance of involving SMEs and startups (innovators are typically small firms, it was said, and government also needs to encourage 'localising' the SDGs).

Panel 4 – Concluding panel: a call to action – the role of the private sector in fostering peace, justice and strong institutions

Tasked to reflect on 'where next', **Alejandro Alvarez** emphasised that the SDGs are unique in that they bring together many countries which agree on the key issues affecting humanity (and thus the solutions needed to address them). However, there have been many challenges, and SDG 16 remains very controversial. Countries need to implement the SDGs, track progress, and report against it. Moreover, Mr. Alvarez continued, the SDGs is the responsibility of various stakeholders, including the private sector. Whilst governments need to set the right incentives and frameworks, the private sector needs to get organised and coordinate to elicit change. Presenting the first of three concrete initiatives for how the private sector can address SDG16, **David Steven** discussed the Pathfinders Programme, presenting it as a partnership between governments and the private sector. The programme, which focusses on all targets across the 17 Goals that refer to Rule of Law and justice ('SDG16 plus'), aims to be a platform for action that also generates solutions (as opposed to simply discuss what the issues are). Mr Steven argued that there is a real opportunity for the private sector to contribute to addressing the justice gap, e.g. on data-processing and analysis, and in driving innovation in this area. **Christina Koulias** (UN Global Compact) stressed that an increasing amount of lawyers and in-house counsel are starting to engage with the SDGs. The UNGC has recently launched a global platform on peace, justice and sustainable institutions, which aims to understand, implement, and report on SDG16 initiatives, and provides a platform for MNCs to engage with governments under a same umbrella. Finally, **Nicola Port** reflected on her experience engaging with businesses and setting up a 'clearing-house' (or 'Rule of Law finder') whereby private sector actors can be matched with those who seek and/or can provide solutions to a Rule of Law problem.

Questions and Answers touched on the importance of embedding human rights (and human rights defenders) in these initiatives; on the absence of a clear evidence-base for why and how businesses can invest in Rule of Law (and it was pointed out that there is a strategy for building the evidence in other SDGs); and on the importance of Government to Private Sector partnerships.