Can Transnational Private Regulation Facilitate Achievement of the Sustainable Development Goals?

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Introduction

The 2030 Agenda for Sustainable Development can be described as an emphatic collective acknowledgement of the world's interconnectedness and shared destiny. It is a global call to action for governments, organisations, businesses and individuals to embrace the joint responsibility of transforming our world by eliminating poverty, entrenching prosperity, fostering peace and protecting the planet.

The SDGs are ambitious; and there is a clear recognition that critical engagement of all actors is vital for the goals to be achievable. While the SDGs recognise that traditional development partners such as governments, international organisations and non-governmental organisations, are vital, the SDGs also identify the private sector as an agent of development, whose choices have the potential to produce positive externalities that may facilitate the attainment of the SDGs.

However, unlike governments who are duty bound to pursue the interests of its citizens, or NGOs which generally have some “greater good” motivating their activities, the private sector exists primarily to pursue profit. In its pursuit of profit, the private sector is frequently implicated in violations of the very principles that underpin the SDGs - think violations of labour laws, environmental pollution, and so on. It is therefore easy to understand why the combination of the “private sector and SDGs” may be received with disillusion.

Here lies the conundrum. If the SDGs acknowledge the role of the private sector in its attainment, but the private sector’s primary goal of maximizing profit is often-times at odds with these SDGs, how then is it possible for the private sector to take an active role in achieving the SDGs?

In this essay, I examine traditional and emerging approaches through which the private sector contributes to the attainment of the SDGs. Thereafter, I consider whether transnational private regulatory schemes are an emerging and viable way for businesses to actively facilitate the achievement of SDGs, while simultaneously “minding the business that pays them.”

The Private Sector and Sustainable Development: Traditional Approaches

The private sector traditionally contributes to the attainment of the SDGs using several direct and indirect methods. Some of these include instituting corporate social responsibility projects in host communities or around specific industries along the business’ value chain. The private sector also commits to SDGs through internal procedures and policies. For instance, businesses’ commitment to gender equality and equal pay, directly advance target 2 of SDG 10 (inequality). Also, the private sector is demonstrating increased awareness about the long-term impact of their business activities on the environment and available resources. Hence, many businesses are consciously choosing raw materials from sustainable sources or are actively working to reduce their carbon footprint. Other businesses are taking the initiative to develop products that satisfy consumers' demand for environmentally friendly products.

While these traditional efforts are beneficial, questions linger around their effectiveness. For instance, one could question whether privately led community development projects survive in the long term. Also, some private actors are constantly accused of greenwashing their products and processes to appeal to consumers. In addition, questions arise around the efficiency of these traditional efforts in handling the magnitude of the challenges which motivated the creation of the SDGs in the first place. Finally, many of these traditional efforts are often voluntary and do not necessarily provide returns for the businesses; therefore, there is no guarantee that the private sector will deploy their resources towards such projects.

The Private Sector and Sustainable Development: Hybrid Approaches

Recognising the limitations of traditional approaches of businesses to contribute towards sustainable development, the private sector is evolving in its approach to sustainable development and this approach is underpinned by the concepts of "ownership" and "responsibility". Admittedly, the private sector is not a charity. They take on the risks of entrepreneurship, the strain of management and the burden of work, therefore reward for these efforts are expected. However, when the private sector develops a sense of ownership towards the host community and a sense of responsibility for addressing a local or global issue, hybrid approaches emerge. The private sector in these instances begins to explore how to do well as a business while simultaneously doing good. Within the African context, this idea rests firmly on one of the pillars of *Africapitalism* - a sense of place and belonging. Where businesses are rooted in the areas they operate, they make business decisions conscious of the implication of their decisions on the surrounding physical and social ecosystem.

The rise of social entrepreneurship in Africa in education, healthcare, and so on, stems partly out of a sense of ownership and responsibility. Through social entrepreneurship, businesses are meeting social needs while also running profitable businesses. Companies like Zipline supply medicines to remote areas using drones, while Easy Solar distributes energy solutions on affordable payment plans to communities underserved by the grid.

Also stemming from a sense of ownership and responsibility is the increase in impact investing globally. Investors are deliberately channelling funds to address pressing global challenges such as renewable energy, healthcare and microfinance. Individual and corporate investors can express their commitment to environmental, social and corporate governance goals by directing their financial resources to sustainable projects.

This hybrid approach of pursuing profits and making an impact is promising. However, the sense of ownership and responsibility that drives social entrepreneurs and impact investors may not have significant impact on a large scale, as presently, only a limited number of investors pursue impact investing. Furthermore, it is sometimes difficult for social entrepreneurs to access funding. However, it is possible to galvanize more interest in these hybrid approaches through government incentives that may encourage the private sector to strongly consider sustainability factors in business decisions.

Private Regulation and Sustainable Development Goals

Private regulation constitutes a body of rules, practices, and processes, created primarily by private actors including firms, NGOs, independent experts like technical standard setters and epistemic communities who either exercise autonomous regulatory power, implement delegated power conferred by international law or national legislation or have their rule-making, enforcement and compliance mechanisms recognized by state actors. Private regulation could operate as a complement or competitor to conventional state-led regulatory authority, depending on the objectives of the private regulatory regime, the identities of the parties involved as well as the area within which it operates.

The growth of private regulation is attributable to several factors including the desire for standardization to reduce transaction costs and increase efficiency. In other cases, it has developed as a response to failure or inability of governments to effectively regulate or monitor compliance over transnational concerns as well as private concerns in relation to environmental sustainability and human rights violations. In this essay, the emphasis is on the latter motivation.

The private sector's involvement in developing private regulatory schemes is arguably also an approach through which the private sector has taken initiative in leading the drive for sustainable development. Private regulation is not without its concerns, such as issues relating to legitimacy, accountability, regulatory capture amongst others. However, private regulation presents a potential option for the private sector to address industry concerns, avoid over-regulation by the state and also contribute towards a sustainable future.

For instance, the Forest Stewardship Council (FSC) is a global not-for-profit organization that sets standards for responsible forest management and certifies forest products as both environmentally and socially sustainable. The early founders of the FSC were timber users, traders and representatives of environmental and human rights organizations. The organisation was created after the 1992 Earth Summit in Rio failed to produce an agreement to stop deforestation. In light of intergovernmental failure to provide acceptable action on deforestation, environmentalists and community leaders championed the FSC which was designed to operate as a voluntary, market-based approach that would improve forest practices worldwide.

Another example is the Global GAP, one of the largest private sector food safety certification bodies which was created in response to failed application of environmental regulation by farmers in Europe. It began as a private initiative by retailers who sought to harmonise their standards and procedures to develop independent certification systems for Good Agricultural Practice. Global GAP is a global quality assurance standard for food safety, occupational health and environmental protection in relation to agricultural activities.

These are examples of market motivated regulatory schemes which have a certain attraction for the private sector. For example, by pursuing harmonised certification, businesses are able to reduce transaction costs and also distinguish their products within markets by easily signalling to consumers who are also concerned about sustainability. Businesses can also contribute their expertise within an environment where their commercial interests are understood. Furthermore, unlike government regulation, private regulatory schemes are not mandatory, therefore giving the private sector flexibility in adoption. However, it is important to note that these private regulatory schemes could become de-facto mandatory where the private regulatory scheme act as a barrier to market access.

Private regulation offers a platform for the private sector to take responsibility for the impact of their business on communities, the environment and individuals. Using this approach, government and civil society can also employ a collaborative stance when engaging the private sector on sustainable development.

Conclusion

This essay highlights the traditional, hybrid and private regulation-inspired approaches through which the private sector arguably facilitates the achievement of the SDGs. Private regulation is not a silver bullet in the global quest for sustainable development, considering the inherent legal, administrative, institutional and political concerns. However, seeing the private sector as a partner in rule making and enforcement opens a realm of possibility in terms of possible collaborative models among stakeholders towards achieving the SDGs.

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