
AGENDA 2030 MEASUREMENTS AND FINANCE

Interaction of International Investment Law and Sustainability

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ABSTRACT

This work analyzes the Agenda 2030 in its main potentiality to lead public policies and private actions towards a more sustainable path. At the same time it acknowledges its dependency on measurements and finance mechanisms for the Sustainable Development Goals implementation. The main argument is that public expectations face difficulties to be translated in public actions, due to, among other factors, the lack of measurement and finance mechanisms. With this purpose it starts describing what is the Agenda 2030, and how this United Nations lead international declaration is structured to be monitored and implemented by States and others multi stakeholders. Secondly it analyses the importance of the measurements to address critical social environmental challenges and to allow comparison between the achievements of each member state. Third it remarks the role played by international financial institutions, by international investment and by the private sector in general. Forth, the article highlights the drawbacks the methodology of goals can represent when used to overcome collective challenges marked by moral issues and diffuse impacts, being

highly dependent on measurements and finance tools. The methodology chosen was the descriptive and normative, the techniques used were documentary, legislative and bibliographic research.

Keywords: Agenda 2030; Sustainable Development Goals; Global Governance; International Investment Law; International Environmental Law.

RESUMO

Este trabalho aborda a Agenda 2030 e sua capacidade de orientar políticas públicas e ações privadas para a sustentabilidade. Ao mesmo tempo, reconhece a importância de ferramentas de medição e mecanismos de financiamento para a implementação dos Objetivos do Desenvolvimento Sustentável. A tese é que as expectativas da população enfrentam dificuldades para serem traduzidas em políticas públicas, devido, entre outros fatores, à falta de adequados mecanismos de medição e financiamento. Para tanto, começa descrevendo a Agenda 2030 e como esta declaração internacional das Nações Unidas estrutura-se para ser monitorada e implementada pelos Estados e por outras partes interessadas. Em seguida, analisa a importância do monitoramento para enfrentar desafios sociais e ambientais difusos e para permitir a comparação entre o desempenho de cada Estado-membro. Em terceiro lugar, analisa o papel desempenhado pelas instituições financeiras internacionais e pelo setor privado em geral, por meio do controle sobre os investimentos. Por último, destaca as desvantagens que a metodologia dos objetivos pode representar quando usada para superar desafios coletivos marcados por questões morais e impactos difusos, sendo a performance altamente atrelada a medições e ferramentas de financiamento. A metodologia escolhida foi a descritiva e normativa, as técnicas utilizadas foram análise documental, legislativa e bibliográfica.

Palavras-chave: Agenda 2030; Objetivos de Desenvolvimento Sustentável; Governança Global; Direito do Investimento Internacional; Direito Ambiental Internacional.

INTRODUCTION

The Agenda 2030 (UN, U. N., 2015a), consolidated the Sustainable Development Goals (SDGs), the successors of the Millennium Development Goals (MDGs) (UN, U. N., 2000). The MDGs were in place from 2000 to 2015 and had a fundamental role¹ in structuring public policies around: poverty reduction; basic education universalization; gender equality and women's autonomy; less child mortality; better maternal health; combating AIDS, malaria and other diseases; environmental sustainability and global partnership for development.

However, how to access the achievement of these goals? What is the best way to put the results on statistics? Can the whole system rely on self-assessed information by member states? How can the private governance of private standards and scientific index contribute to better frame the real achievements and practical results?

On the other hand, numbers can by themselves be very deceiving. In the specific case of the first goal, for example, the result shown by the Millennium Development Goals Report (UN, U. N., 2015b) is an expressive success. Three years before the deadline, the goal had already been exceeded, reaching two thirds of poverty eradication. With regard to malnutrition, it was very close, it reached 23.3% of the population of the developing countries in 1992 and fell to 12.9% in 2014, this corresponds to a 45% fall, almost achieving the reduction target that were to half it.

However, the same report (UN, U. N., 2015b) has shown how much remains to be achieved, more than 800 million people are still malnourished, basic sanitation has not yet reached nearly a third of the world's population and extreme poverty has killed three times as many as the Second World War. There is a massive deficit in the realization of human rights, both civil and political, as well as economic, social and cultural rights.

The main challenges are faced by less developed countries, and one of the reasons why concerns financing. While industrialized countries can raise \$ 50,000 per person, less developed countries such as India and others raise less than two hundred dollars per person through different forms

¹ The UN report, entitled The Millennium Development Goals Report, has shown that most countries have been able to achieve or approach the targets during the last fifteen years, proving therefore through numbers, the effectiveness of these non legally binding, non coercive, with declaratory, soft law instruments. Conveying that even though it does not provide sanctions for noncompliance, it has shown the capacity to generate voluntary commitment and cooperation of the countries in search of results and common objectives. ONU. (UN, U. N., 2015b)

of taxation (POGGE; MEHTA, 2016). Thus the ability of these countries to finance measures to implement the SDGs is prejudiced beforehand. In addition, in the less developed countries the capacity to increase collection is limited, partly because a large amount of the taxation is levied on consumption which has a characteristic of non-proportionality, causing the poor to pay more taxes, and on the other hand because the existent taxes on income and wealth in these countries are often evaded or elided by schemes or tax planning that tend to revert resources out of those countries.

Furthermore consumption and revenues are not particularly rising. The International Labor Office report has shown that reductions in working poverty are slowing. Nearly half of workers in Southern Asia and nearly two-thirds of workers in sub-Saharan Africa live in extreme or moderate poverty, in 2016. This means they have a purchase power of less than US\$3.10 per day. And the absolute number of underpaid workers earning less than US\$3.10 per day over the next two years is expected to increase by around 3 million per year in developing countries (ILO, 2017).

Because of this scenario the inter-governmental agenda for financing the SDGs – the Addis Ababa Action Agenda (UN, U. N., 2015c) – highlights that “public funding and development aid alone will not be enough to secure the necessary resources and investment to achieve the SDGs.” Private sector investments locally or via foreign direct investment as well as those made in order to put in place sustainable international trade become crucial drivers of progress towards the green economy paradigm.

And to further these investments a robust legal framework has to be put in place to stimulate sustainable development financing and also to develop follow-up process to ensure good governance actions are being implemented and reviewed from time to time in an inclusive, and transparent manner. Non-institutional stakeholders, such as finance ministers national parliaments, local authorities and academia can play an important role.

The International Investment Law disciplines how States treat foreign investors and the resources or infrastructure brought by their investments. Normally is a legal framework derivative of the International Private Law, and not inspired by the SDGs or others social environmental concerns, with some rare exceptions. The investment regime is based in legal obligations that are object of investment treaties; customary international law, the interpretation and application conducted by tribunals

and arbitration bodies on case-by-case dispute settlement jurisprudence.

Ultimately some cases have to balance the investment protection such as non - discrimination and fair and equitable treatment with the host state's right to regulate the national environmental protection, labor standards and finance mechanisms for example. And in these cases the SDGs have to play an important role to orient the legal interpretation and application of what is written in the treaties or practiced in the customary law as subdued to the broader common interests expressed by the Agenda 2030.

The question beneath this investigative effort is to elucidate the role measurements and finance has in the implementation of common goals such as those stated in the Agenda 2030. With this purpose it starts describing what is the Agenda 2030, and how this United Nations lead international declaration is structured to be monitored and implemented by States and others multi stakeholders. Secondly it analyses the importance of the measurements to address critical social environmental challenges and to allow comparison between the achievements of each member state. Third it remarks the role-played by international financial institutions, by international investment and by the private sector in general. Forth, the article highlights the drawbacks the methodology of goals can represent when used to overcome collective challenges marked by moral issues and diffuse impacts, being highly dependent on measurements and finance tools.

1 AGENDA 2030

World leaders at a historic UN summit in September 2015 unanimously adopted the UN's Agenda 2030 for Sustainable Development, featuring the 17 Sustainable Development Goals. By aligning national priorities with the Agenda 2030 and working together with the private sector and civil society, governments have started a new multilateral cooperative way of mobilizing efforts to end poverty, address inequalities and tackle climate change by 2030.

Much differently from the MDGs, the SDGs framework emphasizes the Green Economy², and therefore the involvement of the

² UNEP defines Green Economy as "(...) economy that results in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcity. (...) The development path must maintain, enhance and, where possible, rebuild natural capital as a critical economic good and as a source of public benefits, especially for the needy population (UNEP, 2011, p. 2)

private sector. Private companies are not any more seen as threats; or part of the problems, but as crucial parts of the solutions. Since the beginning business was involved in defining the agenda, and is taken as indispensable to the implementation overall tackling major sustainability challenges in their production chain and also investing in greener technology and in the achievement of the global goals.

The Agenda 2030 is an international treaty, as defined by the Vienna Convention³, more specifically a declaration, a political agreement. But besides its non-legally binding character, it intends to incite ambitious commitments to orient policies. Signed by all members of United Nations sets a “comprehensive, far-reaching and people-centered set of universal and transformative Goals and targets”.

We resolve, between now and 2030, to end poverty and hunger everywhere; to combat inequalities within and among countries; to build peaceful, just and inclusive societies; to protect human rights and promote gender equality and the empowerment of women and girls; and to ensure the lasting protection of the planet and its natural resources. We resolve also to create conditions for sustainable, inclusive and sustained economic growth, shared prosperity and decent work for all, taking into account different levels of national development and capacities. As we embark on this great collective journey, we pledge that no one will be left behind. Recognizing that the dignity of the human person is fundamental, we wish to see the Goals and targets met for all nations and peoples and for all segments of society. And we will endeavor to reach the furthest behind first. (UN, U. N., 2015a, p. 3)

Probably it could not be so audacious if it was legally binding. The creation of legal commitments can be a double-edged sword: at the same time they carry more strength, it can lead States not to participate or demoralize the agreement effort due to the absence of judicial application or enforcement, typical in the international legal system. Structured processes, transparency, accountability and precision can make a much more significant difference in practice to regulate international actions.

And, as so, with the broad phrasing it intends to articulate global widesocio environmental governance, integrating arenas of transnational, international, national and subnational authority with organizations,

³ “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;” (UN, U. N., 1969)

individuals and other actors. Its main contribution is to identify the goals towards which this multiplicity of agents public and private should deliberate and establish policies or behaviors to guaranty an appropriate social environmental preservation and sustainable development.

Governments, international organizations, private business, academia, and civil society have a collective task to fulfill: identifying the pathways to environmental, social and economic development. Resources, technical expertise and democratic representation have to be combined. Global problem-solving demands a well orchestrated network to deal with consumption patterns, energy, food, labor, urbanisation, social media, resilience, etc.

But because Agenda 2030 is an ambitious ‘soft law’⁴, it reverberates the same pros and cons of previous declarations, such as the Human Rights, especially relating to measurements and finance tools.

2 MEASUREMENTS

Assessing the impact of the SDG on environmental, social and economic justice is a complex case. United Nations created DevInfo (UN, U. N. H. C. For, 2013) an open source database to aggregate all the info around the globe. It is a tool to organize, register, compare, elaborate graphs, maps, charts, and presents data in a uniform way. This facilitates the comparison and data sharing between countries the UN, various intra government department levels and with the society in general. The DevInfo originated as ChildInfo, to manage the criteria monitored by UNICEF in 2004.

This UN platform has been many times updated and has been wide spreaded through various countries, for example, Brazil developed the PortalODM (PORTALODM, 2013), through a partnership between public and private investments to launch a national system uploading the information of all 5570 Brazilians municipalities and therefore enabling the DevInfo dynamic reporting system to track the progress

⁴ Hard law is a legal jargon normally used to refer legally binding obligations that are precise and enforceable through adjudication and that results in coercive measures if not followed by countries. Soft law, on the contrary, don't have this characteristic but can be even more effective specially by informing delegate authorities about how to interpret and implement the laws and policies. Soft law provides normative values, standards, processes. Abbott and Snidal highlights that there is a “continuous gradations of hardness and softness that are blurred when the hard law/soft law distinction is incorrectly taken as binary (...)” “Contracts” and “covenants” refer to two distinct though not incompatible understandings of international agreements. States enter into “contracts” to further interests; they enter into “covenants” to manifest normative commitments.” (ABBOTT; SNIDAL, 2000, p. 423)

made on environmental, economic and social areas. The database allows the updating of information in real time and uses official data. It creates infographics that help comparison, analysis, advocacy, and decision-making. As a public management tool it also enables comparison between states and municipalities.

But in the program the data is updated by the governments, therefore there is a considerable controversy about the accuracy of the statistics and the credibility of the baseline chosen to monitor the improvement. Other thing is that the data provided by governments are often out of date; this because information accurate broadly published in a transparent way is still not available for most developing countries. This time lag must be fight by the digitalization of the process of collection and monitoring of the data, broadening the use of mobile phone and electronic devices. Another aspect is the infrastructure boundary in many countries specially the lack of wireless broadband and remote access to enable digital data collection and monitoring.

More recently UNDP launched the SDGs in Action (GSMA, 2017) a cell phone app that has been developed to spread the knowledge about the SDG, especially highlighting they are a world's to-do list, not something restricted to government and companies. The initiative was funded by the mobile industry and developed by GSMA, which represents the interests of nearly 800 mobile operators worldwide, and Project Everyone, a non-profit global campaign to spread the messaging of the SDGs. GSMA calculates in their annual report (GSMA, 2016) that there are more than 4.7 billion individual users of mobile services, from those 3.4 access internet through their cell phones, this represents two-thirds of world population potentially able to take action through their devices in implementing 17 SDGs, getting news on their four favorite goals, or simply finding out what is being done or can be done around.

The UN initiatives are still uncoordinated, and without comparable metrics. The methodology used to assess the effect of the SDG need to include the long term analyses about the life-cycle of the products and the input and output of the production, expanding the data analyses, and cross information comparison beyond borders, to reflect the human rights and the social environmental measures of the whole supply chain. Ivanova indicates many improvements in the metrics that need to be done

Resource Sufficiency Evaluation (RSE), is the use of established metrics to determine whether the current and projected demand for natural resources is sustainable. Scientifically based accounting methodologies such as life-cycle assessment (LCA) or input-output (I-O) modeling are already available to conduct resource sufficiency evaluations in a universally applicable manner. These methodologies, and the biophysical “balance sheets” that are generated, offer policy makers and the public a clearer understanding of ecological sustainability and what is needed to achieve it. (...) Countries that understand their natural resource assets and limitations, and reduce their reliance on scarce resources, acquire a competitive edge in a now globalized world.(IVANOVA, 2014, p. 150)

The private initiatives of measurements also face the difficulty of defining the best index and spreading the evaluation process to make it possible a broader comparison between member states. One initiative to close this gap is Environmental Performance Index a data-driven environmental solutions that seeks to address critical environmental challenges relating to environmental health and ecosystem vitality. It uses a “cutting edge data analytics and provides a global view of environmental performance and country by country metrics to inform decision-making” (HSU *et al.*, 2016, p. 5). The calculation aggregate more than 20 national-level environmental indicators, combined into nine issue categories, accordingly to World Economic Forum.

Another kind of measurement is the standards that access the performance of business. Many are these initiatives, but to be a reliable standard systems, according to WWF/ISEAL it has to have: 1) transparency; 2) multistakeholder participation process, involving “the entire supply chain from businesses, civil society, governments, research institutions and NGOs, with balanced decision-making”; 3) independent verification by third party auditors or certification body; and 4) continuous improvement (WWF/ISEAL, 2017, p. 8).

Above all because multi-nationals have to manage their production globally, there is a consistent increase in the demand for reliable standard especially for accessing the impact their investments have. This is the conclusion the GIIN report of 2017 that also ascertained that 60% of the investors “actively track their financial performance of their investments with respect to SDGs or plan to do so soon” (MUDALIAR *et al.*, 2017, p. 15).

Sustainability standards can vary widely especially on the level

of performance they require, some are low-bar, easy to achieve, and therefore many times used as a measure of only appearing sustainable without actually committing and envying the efforts needed to become really more sustainable, this kind of disguise is called ‘greenwash’ and is further explained ahead. This attitude can have a negative backlash on the reputation of the company using this trick. Another thing are the high-bar standards, which can be very demanding. Some focus on preventing worst corporate practices, others establish a rigorous improvement pathways to be followed in order to achieve good governance.

The effective impact a sustainability standard can have into drive the companies to a more sustainable path depends a lot on the qualities accessed, the process of compliance and the due diligence mechanisms. But also the external reading of the standard is very important how consumers and other stakeholders value that standard is directly related with the ability of it providing incentives and mobilize investments of the actors within the supply chains. The improve in the performance come from being seeing as a better quality player, this can provide enhanced market access, better contract terms and, very often, a direct price premiums to producers (better products can cost more).

3 FINANCE

As well as measuring, financing for development is also crucial to the implementation of Agenda 2030 in many ways. As Addis Ababa Action (UN, U. N., 2015c) stresses public funding and philanthropic development aid alone will not suffice the necessary resources and investment to achieve the SDGs. Private sector investment and international trade will have to play an indispensable role as drivers of socio environmental progress.

Even the public domestic resources they are directly related with economic growth. All kind of domestic resources need to be conditioned and articulated following a profound commitment to sustain social, environmental and economic development. Countries can count on countercyclical fiscal policies, to manipulate price and therefore change the competitiveness of the products and services more sustainable. At the same time put an end to fossil fuel wasteful subsidies removing these kinds of market distortions to effectively price the negative externalities those irrational attitudes bring to the collectivity. Using, therefore the political control over the economy to foment better technologies, adequate

scale and space, as well as promoting good governance at all levels, with democratic and transparent institutions to respond to the needs of the society accordingly with the achievement of the SDGs goals.

The domestic resources have to be supplemented by international assistance, direct investment, loans and trade. But some administrative measures are very effective too: 1) better structured tax systems, social environmental conditioned tax policy and more effective tax collection; 2) more fairness, transparency, efficiency and effectiveness in the administrative process; 3) strengthen and facilitate international cooperation to support capacity building and philanthropic assistance; 4) police and effectively curb illicit financial flows, tax evasion and corruption; 5) adopt anti-money-laundering/counter-terrorism measures.

International Monetary Fund (IMF), the World Bank and the United Nations can assist the countries to attain these measures. And also the investment banks have a relevant role mainly to bridge the global infrastructure gap, estimated during the Addis Ababa conference, in something between \$1 trillion to \$1.5 trillion annually (UN, U. N., 2015c). Those banks can condition their loans to sustainable, accessible and resilient quality types of infrastructure to be implemented. Better articulation between these types of banks can also be very transformative, like Asian Infrastructure Investment Bank, the Global Infrastructure Hub, the New Development Bank, the Asia Pacific Project Preparation Facility, the World Bank Group's Global Infrastructure Facility and the Africa50 Infrastructure Fund, and the InterAmerican Investment Corporation.

Foreign direct investment, when allied with sustainable development strategies, can also be very effective. And wise government policies can strengthen the positive spillovers generated by the influx of foreign money. Than besides the greater amount of capital circulating in the economy there can also have know-how and technology transfer, increasing linkages between the domestic suppliers, and more active participation of micro, small and medium-sized enterprises into regional and global value chains.

Not only the funding but also the regular borrowing / lending of money is a strong tool to foment social environmental investments. Sovereign borrowing also share this positive role because they allow governments to gain liquidity to act in the economy countercyclically and to make the investments in infrastructure to foment the sustainable development. Having in mind that the level of indebtedness has to be kept

in a reasonable level to avoid finance crisis.

International public finance can become an important driver of sustainable development by complementing national public resources when it is an investment that attends the social environmental criteria. This is overall meaningful in the poorest and most vulnerable countries where resources are scarce and, therefore, any limitation, or condition put ahead of money holders, is taken as a disincentive that limited domestic policy cannot sustain alone.

Dedicated funds like the Green Climate Fund, under the United Nations Framework Convention on Climate Change, can enable mitigation activities and support resilience measures but the counter parts of the countries have to be significant and accordingly to the historic emissions of each country. Alexandre Gajevic Sayegh developed a calculation that concludes that what the countries now have committed and are contributing to the Green Climate Fund is far behind what it would be fair and necessary (GAJEVIC, 2018).

And as Henry Shue highlights developed countries must bear this historic responsibility because their present better economic development is because they in the past used the common good that is the environment in their benefit (SHUE, 2014, p. 294). And this success led these countries to a privileged position and so now they have more ability to contribute to these funds and also to invest in social environmental alternatives such as greener technologies and renewable energy. Indeed the investments in alternatives can be more effective than many other measures. Changing the path of consumption and the standards of living of society is very complex, so if better alternatives are developed to maintain the usage patterns but impacting less the environment, they can be easier to put in place right away.

Revisiting the legal structure of these funds, to make them more responsive for the challenges faced by the population and more solution oriented, can also be very effective. An example is the Health Impact Fund, a creative system to cope with the lack of competitiveness of drugs that cure poor people diseases and the massive denial of patented pharmaceuticals to the majority of the population. As Thomas Pogge explain this legal structure to be created would comprises alternative ways to remunerate the investor (POGGE, 2009, p. 194).

This proposed new patent regime would reward in proportion of effectiveness, calculated based in human health. The better the power

of cure, the grater the amount paid by the fund to the developer. In this sense the reduction in human morbidity and premature mortality would orient the whole legal system behind the funding. Prices would be kept the lowest possible and governments would step in to buy off the difference in price, acting in a counter cycle way to protect health as a public good. And when it is not the case of poor people diseases with massive low price drugs consumption, innovators could continue to use the regular model we have today.

Finance mechanisms like this that are global and multistakeholder governed bring an intrinsic advantage, the efficiency gain by diluting costs, and facilitating the process of collaboration to solve a common problem. Other examples of this kind of initiative, already in place are the Global Alliance for Vaccines and Immunization and the Global Fund to Fight AIDS, Tuberculosis and Malaria.

International trade by itself is another strong engine to foment development, even better if oriented to promote inclusive economic growth, poverty reduction, elevation of labor standards, and a reasonable and sustainable use of natural resources. The World Trade Organization normally focused in the liberalization of trade, faces the challenge of inserting social environmental concerns into its interpretation and application of rules.

The main problem is to handle social and environmental dumping that has been put in place along the global chain production. Companies and countries take advantage of places where labor force and the natural resources can be exploited recklessly to produce cheaper products and services, and because of that experimenting better revenues than their competitors that comply with higher social and environmental standards. Differently from the past when barrier to free trade were on the borders, now they come from internal national rules though, such as the national labor and environmental laws of a country.

These innumerable intra borders regulations add complexity to the multilateral trading system and the continuous promotion of universal, rules-based, open, transparent, predictable, inclusive, non-discriminatory and equitable dispute settlement mechanism as well as meaningful and ethical trade liberalization. But the paradigms of green economy depend on that and the ability of the trade system to encourage long-term investments, cleaner productive capacities and decent work.

Trade finance compatible with WTO, and conditioned to social

environmental compliance, have a long path to follow increasing the availability of trade credit, guarantees, insurance, factoring, letters of credit and new creative technological financial instruments. Micro, small and medium-sized enterprises have been kept apart from these instruments especially in developing countries. Better and more abundant market-oriented trade finance mechanisms have also to address market failures, and put in place negative externalities pricing.

The rush to return to the pre crises buoyant growth rates, experienced overall in some of the leaders, most developed countries, such as the United States cannot override the social environmental concerns. The deadlocks on the furthering of the negotiations on the Doha Development Agenda are reason to concern. Many unethical business-as-usual measures can arise from the unequal negotiation basis experienced in Mega External Preferential Trade Agreements, such as the Trans-Pacific Partnership (TPP), Trans-Atlantic Trade and Investment Partnership (TTIP) and the Europe Association of Southeast Asian Nations Free Trade agreement (EU-ASEAN).

These initiatives are outside the scope of the World Trade Organization, don't follow the logic of regional agreements and can be very unbalanced. That's why Vera Thorstensen considers the main scope nowadays to the multilateral trade negotiations to be looking forward to implementing coherence, convergence and cooperation to the trade regulatory system (THORSTENSEN; MESQUITA, 2016). Regulatory gaps, unbalanced articulations and misaligned incentives risk the financial stability and compromise the implementation of the SDGs.

As pointed out by Jorge Viñuales more adaptive legal systems have to be put in place "law, when considered as a regulative instrument, becomes a technology that can be fine-tuned and optimized to reach a stated purpose" (VIÑUALES, 2016, p. 63). Our empirical technological and environmental abrupt changes call for policy and legal change. Moreover, finance is indispensable to the "emergence, experimentation and refinement" (VIÑUALES, 2016, p. 63) of new technologies and processes. And these type of socio environmental adaptive regimes are deeply grounded on sunk investments and incentives policies, specially when the aim is to cut stages through capacity building, making those who don't have access to energy, water or sanitation gain this access directly using the newest and more efficient socio and ecofriendly technologies.

4 SHORTCOMINGS OF THE AGENDA 2030

The focus of the Agenda 2030 has been only in the progress, but there are many foes. Some authors, like the experts involved in the Oslo Principles (BENJAMIN *et al.*, 2015), believe the goals model is not enough to pursue environmental, social and economic justice. Their effort is to document international principles to be implemented in order to hold States responsible international in legal disputes or mediations, right away.

The big share of weaknesses regarding the goals model is the disorganization of the collective efforts necessary to implement the SDG. Before 2030, in the intermediate milestones, if countries do not comply with the goals, nothing effective can be done to force them otherwise. This feedback is needed to enable a closer relation between policies and outcomes. Nowadays countries declare that they will comply, but in reality do not invest money, people or time in effectively implementing what they declared.

Promoting citizen engagement in governance and evaluating interventions effects on the life of people has still been a challenge. And as The GovLab points out “we measure what we value” (BARNETT; DEMBO; G. VERHULST, 2013, p. 13): so indicators are inextricably linked with values (even the statistical kind). In this sense, the Agenda 2030, following the recommendation of The GovLab should “engage with citizens to determine what success should look like and what to measure” with “the use of big data to provide real time feedback” (BARNETT; DEMBO; G. VERHULST, 2013, p. 13). The legislative process on the other hand tends to be hermetic, made exclusively by the public staff accessorizing politicians. Only when a bill or policy is ready it is submitted to the public consultation to be fined tuned. In many cases society is kept apart from the process of formulating the law or policy.

And an open government would be very useful to restore trust in the institutions meant to implement the SDGs, and would probably come with solutions more innovative and scientifically oriented, less marked by the political pressures or by the tendency of maintaining the status quo. The use of new technologies can enable the more qualified people to search the data, analyze and compare them and then participate, collaborate, take action. Beth Noveck denominates this sort of politics taking advantage of spread collaboration “smarter governance” that takes advantage of “the expertise and capacity distributed in a networked society” (NOVECK,

2015, p. 3).

The actual monitoring system does not reflect this benchmark of real impact on life of the people and fail to incorporate the important leadership of private companies. Basically only governments are responsible for update their data on the current tracking systems. Therefore Agenda 2030 don't have instruments of monitoring directly what companies are doing worldwide to reach the SDG. Especially the transnational ones that are in a very favor position to implement cutting-edge technologies, and large-scale management solutions, that are essential to tilt the balance towards a greener economy should be directly monitored. Certainly their collaboration should be envisaged with caution, because companies' economic power could reflect in 'pro status quo' lobby or corruption, but their greater partnership would be not only convenient but also indispensable.

Another problem of the Agenda 2030 is that it lacks the orientation or the means to foster investment in sustainable development. The transition to the green economy pattern will face massive costs, and under economic liberalism patterns no investment of this kind is made; governments and society need to intervene to artificially change the price to guarantee the competitiveness of more sustainable products and services. The economics of the Agenda 2030 has to rely less as possible on voluntary financing mechanisms, notably those made by foreign aid that depends on parliament votes of the donors' countries.

Only a handful of countries have abided by their promises to give 0.7% of their gross domestic product as official development assistance. Even specific, timebound pledges (such as the pledge at the G8 Gleneagles summit in 2005 to double official development assistance to Africa) were not met. (...) Rather than relying on so-called aid voluntarism, in which countries announce their individual aid promises (and then fail to honour them in most cases), countries should agree to transparent and specific standards of financing, such as quotas and assessments (eg, International Monetary Fund quotas and UN dues) related to national incomes, and levies on national greenhouse gas emissions (eg, a few dollars per ton of carbon dioxide emitted per year). The sums are small, manageable, and essential for success. (SACHS, 2012, p. 2211)

In addition to that this diffuse governance, mainly privately driven policies represent a risk of derailing to corporate "greenwashing," or simply implicating in a flip flop effect, without anything critical being

achieved. The concept of greenwashing emerged back in the 1960's as a corporate response to the growing environmentalist movement. The book *Silent Spring* published in 1963 triggered the public awareness in regard to environmental issues humanity faces in these terms:

As the tide of chemicals born of the Industrial Age has arisen to engulf our environment, a drastic change has come about in the nature of the most serious public health problems. Only yesterday mankind lived in fear of the scourges of smallpox, cholera, and plague that once swept nations before them. Now our major concern is no longer with the disease organisms that once were omnipresent; sanitation, better living conditions, and new drugs have given us a high degree of control over infectious disease. Today we are concerned with a different kind of hazard that lurks in our environment—a hazard we ourselves have introduced into our world as our modern way of life has evolved.(CARSON; LEAR; WILSON, 2002, p. 100)

The systemic changes in the nature due to anthropic activities has lead the United Nations to hold the 1972 Stockholm Conference to debate necessary actions to be taken by the international community to stop/decrease the negative effects. On one side, the adoption of the precautionary and prevention principles in international and national laws have impacted positively the awareness of the environmental issues; however, on the other side, it has made business very hard to be conducted due to stricter regulations without balancing with the needs for development (it is important to note that even with a restrict environmental regulation, transnational corporations were responsible for major accidents around the world that caused a negative impact in the environment and public opinion).⁵

Consumer reports in 1990s started to show a powerful tendency towards consumer choice demanding eco-friendly products; transnational corporations initiated a public relations battle to meet this demand offering more sustainable products and production. The creation of environmental reports, event sponsorship, educational material, and front groups for discussion, among others, have been created by transnational corporations

⁵ To name a few: Bhopal, and Exxon-Valdez.

to confront the negative publicity; and to face the growing environmental movements that can be potentially dangerous to business. These actions if uncorrelated if effective transformative actions, comprehend a marketing maneuver to manipulate public opinion disguising harmful practices, what has been called greenwashing (SAGE, 2011).

Because transnational companies are important non-state actors in the international system, their power to influence public opinion and politics are immense, thus raising ethics concerns about greenwashing. Taking the food system as an empirical stance, Jennifer Clapp and Doris Fuchs explain why they occupy such a central position:

Transnational corporations (TNCs) have been central actors in the development of this global food system. They dominate the production and international trade in food and agricultural items, and are also key players in the processing, distribution, and retail sectors. Indeed, it is unlikely that the current global food system would exist as it does today without the participation of TNCs. Many of these firms operate in numerous countries and at more than one level along the global food chain. As food systems around the world become increasingly affected by the corporate-dominated global food system, we must pause to consider the consequences of this fundamental change in the provision of our food (CLAPP; FUCHS, 2009, p. 1).

The control over the food system by transnational corporations brings important social, economic and environmental implications to local dimension. Land grabbing and environmental degradation are among the most direct effects of said domination. The production of large amounts of food requires a larger portion of land, which is mostly “available” in underdevelopment countries, justifying what Prosper B. Matondi, Kjell Havnevik and Atakilte Beyene call the concept of land grabbing:

[...] has acquired various definitions, reflecting the positions of players globally. The term ‘land grabbing’ has gained popularity, alongside a plethora of terms such as ‘green colonization’, ‘new land colonization’, ‘climate colonization’ and ‘water plunder’. In the African context, we find land grabbing to be a more useful and generic concept, which we define to include exploration, negotiations, acquisitions or leasing, settlement and exploitation of the land resource, specifically to attain energy and food security through export to investors’ countries and other markets (MATONDI;

HAVNEVIK; BEYENE, 2011, p. 1).

Most of the land grabbing in Africa, a continent that suffers chronically from hunger, is made to produce monocultures, especially commodities for export and biofuel production, which is advertised positively as a way to mitigate global warming problems, regardless of their local bad side effect of contributing to food insecurity. However, land grabbing is symptomatic of a greater issue involving the so called Green Revolution that combines persistent hunger, remittance of money abroad as royalties, increasing poverty, violence, and destruction of biodiversity (SHIVA, 1991).

Therefore, the governance and compliance with the SDGs is subject to a frail normative system that enables the greenwashing. First, the scientific data amounted over the years provides enough evidence stating that international food system based on transnational companies interests does not eradicate hunger and can destroy biodiversity. Second, the pressures for development and direct foreign investment over Third World Countries⁶ is paramount, providing the grounds for local elite domination over the mass population, which in terms of the SDGs governance is done in detrimental of local circumstances, according to FantuCheru and Colin Bradford Jr. in this terms:

Global targets are valid but not all nations can meet them because country-specific circumstances differ significantly from global trends. The Philippines, for instance, is closer to reflecting the global trends than, say, Chad is. Countries that face an acute HIV pandemic cannot be expected to achieve the same progress in human development as countries that do not face such a challenge. Target setting at the national level is more about adaptation than about adoption. The spirit of the Millennium Declaration is not to impose a uniform set of targets on each and every country. The MDG targets must be tailored and customized to reflect national circumstances and priorities. In describing his country's recent progress towards universal primary education, Tanzania's President stated, 'I am now convinced that the MDGs can only be attained through a global compact, anchored in national policies that take into account local

⁶ We use the term Third World Countries to keep our approach of providing an analysis based on TWAIL (Third World Approaches to International Law).

circumstances' (CHERU; BRADFORD JR, 2013, p. 45).

But the risks Agenda 2030 faces, fall heavily on the inaction, more than on greenwashing. The greenwashing concept has been developed to antagonize the negative pressures over business activities, which to a certain point contributes to sustainable development even if weak and underestimated. Inaction though is the main risk. The fact that SDGs are more susceptible to be implemented and effective at the local level, and considering that the systemic pressures over countries for development leaves no room for debate, inaction is perceived as the real problem regarding global environmental governance.⁷

These risks are greater in cases left aside by public regulation or by the complementary participation of external reviewers. The ideal than is to implement governance methods along not alternatively to legal regulation. Once governance has the capacity of filling some gaps left by domestic regulation or to address topics to which public initiatives have been shown insufficient. And on the other hand governments normally lack the expertise necessary to devise policies about technical and complex matters such as implementing measures and finance mechanism to implement the SDGs.

CONCLUSION

This article highlights the drawbacks the methodology of goals can represent to areas deeply related with moral issues, impacting poor, weak and less informed people; and that share the same collective challenges which poses extra difficulties on structuring a litigation claim against collective diffuse damages. The implementation of the SDG will not be possible without active government intervention, but alone, even with the right policies it will be insufficient, the roots and causes of the social environmental problems have to be fought in a collaborative way because they are complex and interdependent. Therefore a myriad of interventions

⁷ The issue of legislative efficiency is not the subject of this paper. However, it is worth noting that literature evidences that the SDGs compliance is linked to the local dimension, thus, why stating general and global goals without regarding local and regional aspects of development? (MADER, 2001, p. 125). On the other hand, one might say that the goals are more like guiding principles with transformative potential to spread global governance. (PATTBERG; WIDERBERG, 2016) and (DELMAS; YOUNG, 2009)

to implement them from different angles must be put in place. Regarding measurements and finance mechanism, policy innovations and institutions capable of identifying and implementing such innovations, are crucial.

Public expectations about a more sustainable production are being translated into public actions such as the SDGs. But measurements and finance initiatives are still based on self-accessed information that compromise the comparison between the aggregate performances of the countries. But besides that, private governance has been faster to incorporate these public expectations, especially using credible, multi stakeholder standards, which can embody the multilevel and multi stakeholder partnership spirit of the Agenda 2030. By bringing together businesses, NGOs, governments and others to collaborate benefit the common good in search of solutions to shared problems, therefore balancing the sustainable tripod: business, people and the planet.

As much the SDGs become a universal language for governments, businesses and NGOs, they can foment and articulate partnerships to achieve sustainability aims. But an effective set of measurements, and finance tools have to be put in place to access the commitments, outcomes and impacts of the actions taken. And also to coordinate a shift in the actions towards a more innovative, path dependent, and solution oriented design. New kinds of public-private partnerships and finance arrangements taking advantage of the data driven technological devices available will be fundamental to manage the shared use of common goods and the cooperation, to be converted into policy or programs to ameliorate the problems.

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Artigo recebido em: 16/08/2017.

Artigo aceito em: 21/11/2017.

Como citar este artigo (ABNT):

DENNY, Danielle M. T.; CASTRO, Douglas; MAXIAO YAN, Emma. AGENDA 2030 MEASUREMENTS AND FINANCE... *Veredas do Direito*, Belo Horizonte, v. 14, n. 30, p. 53-76, set./dez. 2017. Disponível em: <<http://www.domhelder.edu.br/revista/index.php/veredas/article/view/1146>>. Acesso em: dia mês. ano.