

Submission to the NeFDeF submission to the UN SR on the RTD consultation on Financing for Development: International and Regional Level Practices.

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1. Introduction and context

The focus of this submission is on the use of Blended Finance (BF) as a relatively recent, yet key instrument and modality¹ of financing for international development. We recommend that BF receive dedicated attention in future work of the Special Rapporteur (SR) focusing on financing for development, as it is a mode of development finance whose distinct features and role within international development policy, including the UN Sustainable Development Goals (SDGs) clearly classify it as an instrument of international policy designed to facilitate the full realisation of the Right to Development (RTD).²

Though multiple definitions of BF exist, the definition used in this submission is that adopted by the main development finance institutions (DFIs). This focuses on the use of concessional development finance that “combin(es) concessional finance from donors or third parties alongside DFIs’ normal own-account finance and/or commercial finance from other investors, to develop private-sector markets, address the Sustainable Development Goals (SDGs), and mobilise private resources.”³ Note that here, concessional finance is Official Development Assistance (ODA) or international development aid (defined as the transfer of official financing to promote the development and welfare of developing countries).⁴ Thus, the focus of this submission is on ODA-related BF, in which

¹ The term aid modality usually refers to the particular instrument through which aid is delivered, such as budget support, project support, sector programme support, basket funds etc. and have primarily been distinguished according to the technical arrangements that govern the disbursement and management of funds. For traditional or non-blended ODA, these include (i) the terms of finance and the type of finance; (ii) the channels through which it is disbursed; (iii) procurement conditions and (iv) the targeting and tracking of donor resources. Sara Bandstein, *What Determines the Choice of Aid Modalities?* (Karlstad, Sweden: SADEV, 2007). However, for BF, the range of modalities are broader and more complex due to the ‘blending’ of different kinds of official finance (whether concessional or not), as well as the form that the development finance takes e.g. equity, debt, mezzanine etc.

² See Article 4. 1 of the Declaration of the Right to Development (RTD). This assertion is supported by evidence from policies and statements of many donors and several of the major international development organisations such as the World Bank and development finance institutions (DFIs) that clearly identify BF as a dedicated initiative reliant on the co-operation of donor financing states that is designed to ensure development and eliminate obstacles to development (Art 3.3 RTD). In addition, the donor-led nature of BF, and the stated purposes of their policies on BF unequivocally identify it as an activity key to states’ responsibilities for “(t)he creation of national and international conditions favourable to the realization of the right to development” (Art 3.1 RTD).

³ DFI Working Group on Blended Concessional Finance for Private Sector Projects, October 2017. Available at <https://www.adb.org/documents/blended-concessional-finance-private-sector-projects>.

⁴ ODA is “those flows to countries and territories on the DAC List of ODA recipients and to multilateral institutions which are (i) provided by official agencies, including state and local governments, or by their executive agencies; and (ii) each transaction of which: a) is administered with the promotion of the economic

official donors and DFIs are key actors, or on BF funded by what is known as “Other Official Flows” (OOF).

Three inter-dependent features of BF pose challenges to ensuring that its governance and implementation support the realisation of the RTD. The first feature of BF is its ubiquity in international development finance policy, discourse and emerging institutional practice across both international public and private realms. At the public international level, BF figures prominently in the Addis Ababa Action Agenda,⁵ as well as being a key modality of development finance policy by international donors,⁶ and key development actors such as multilateral development banks and DFIs. Similarly, BF has received considerable attention within donor development finance policy via the dedicated BF initiative led by the OECD’s DAC. This level of interest in BF in public international development policy frameworks is matched by interest from private international actors such as the World Economic Forum,⁷ and the Blended Finance Taskforce of the Business and Sustainable Development Commission.⁸

The second feature of BF is that a distinctly partial approach to the model of development inherent in BF policy discourse is evident. Our research in this area demonstrates that, within the existing policy frameworks and discourse on BF, there is overwhelming normative emphasis on the purpose of BF being primarily that of ‘leveraging’ additional (mainly private) finance, towards the creation of markets and commodities for future servicing by private, mainly for-profit actors. Other models and approaches to funding and meeting development needs are not included as alternatives to which BF might make a useful contribution. This marketized model of development has, over time, profound implications for the role of the state in ensuring adequate and equitable provision of goods and services poses. It poses challenges for delineating appropriate governance responsibilities for the different actors involved, and to developing coherent governance responses, that do not compromise the realisation of the RTD. Currently, within the various international and sectoral

development and welfare of developing countries as its main objective; and b) is concessional in character.” OECD, “What is ODA?”, April 2019, available at <http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/What-is-ODA.pdf>.

⁵ Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda). Outcome document adopted at the Third International Conference on Financing for Development, (Addis Ababa, Ethiopia, 13–16 July 2015) and endorsed by the General Assembly in its resolution 69/313 of 27 July 2015.

⁶ Donors such as Canada, the United States, the United Kingdom, Germany and the Netherlands not only have elaborated a distinct approach to Blended Finance within their respective international development co-operation policies, but have dedicated institutions to progress and implement BF-reliant financial instruments.

⁷ See for example, its Blended Finance Toolkit, arising from its ‘Redesigning Development Finance initiative.’ <https://www.weforum.org/reports/blended-finance-toolkit>.

⁸ Run for two years until 2018, the Business and Sustainable Development Commission was established “to make the business case for the Sustainable Development Goals, or Global Goods.”

arenas where policy and practice on BF is being developed, far too little attention is paid to the longer-term consequences of this policy push for the human rights of peoples, communities, and the human rights obligations of states and other actors. Related to this, is the kind of markets-possible development activity that becomes ‘investible’ for BF. Currently, the SDGs most targeted by funds and BF facilities are those for which a business case is clearer and the potential for commercial gains is more apparent.⁹

A third feature of the current approach to BF and its governance, is the longer-term implications for how ODA (and OOF) may evolve into the future. Significant momentum in donor interest in increasing ODA commitments to BF is evidenced from recent research. Yet, the longer-term effects of the current pattern of donor interest in the kinds of development projects that are amenable to BF remain unclear. Recent research indicates that if future spending patterns follow the current trends, a shift of between USD 1.1 billion and USD 6.0 billion away from social/humanitarian sectors and towards sectors considered ‘productive’ may emerge. Similarly, significant potential implications for spending on gender equality have been identified, with a shift of USD 0.6 billion – 3.8 billion away from interventions targeting gender equality possibly emerging (Meeks et al, 2020).¹⁰

This submission is structured to follow the outline offered by the SR’s call for submissions, and thus section 2 addresses “Resource Mobilisation,” and section 3 engages with “International Co-operation.” Each section begins with a brief overview of some challenges and concerns that BF raises.

2. Resource mobilisation

In relation to the current approach to BF as a key modality of mobilising finance for development, we make the following observations in relation to each of the areas highlighted by the Special Rapporteur;

- a) Coherence in mobilising finance for development at the national level through tools such as national financing frameworks, common definitions and methodologies for measuring impact

There is a well-recognised imbalance in influence and decision-making between the cohort of IFIs, DFIs and donors, and aid-recipient states, and in particular, marginalised communities and peoples

⁹ Thus, BF has mainly been invested in the SDGs that focus on economic growth and jobs (SDG 8); infrastructure (SDG 6, 7, 9, 11), climate change (SDG 13). OECD, *Making Blended Finance Work for the Sustainable Development Goals*, (Paris, OECD: 2017), at 29.

¹⁰ Polly Meeks, Matthew Gouett & Samantha Attridge, *Mobilising Private Development Finance: Implications for Overall Aid Allocations*, Report 2020:01, Expertgruppen för biståndsanalys (EBA), 2020, at 60-61.

within those states.¹¹ The persistence and growing gap in the participation in decision-making between, on the one hand, developing country states and their communities, and on the other hand, the cohort of DFIs, donors and investors, is directly contrary to provisions on equal and meaningful participation in the Preamble and Article 1 of the RTD. While tools such as national financing frameworks have been developed for, and are now being undertaken by several developing country states, in support of greater policy coherence in financing development, it remains unclear the extent to which these financing frameworks take cognisance of RTD. We recommend the Special Rapporteur to examine the feasibility of developing a dedicated instruments to support a human rights-based approach to such initiatives. The first is a Right to Development (RTD)-based standard by which the planning processes and resulting financing plans from these national financing frameworks may be deemed to adequately take account of the RTD. The second is to develop a RTD-human rights-based standard and methodology by which developing country states can assess the policies and practices of donors, DFIs and other influential private actors to identify their coherence with the vision and objectives of national, country-led development plans. Currently, there is an absence of a development finance practice-oriented, RTD-based assessment tools and standards that can be used by NGOs and developing country states to independently scrutinise and reveal the development impacts of such financing policies, in a coherent and useful way. Useful learning may be gleaned from local, national and international initiatives on developing human rights-based assessments of domestic public spending, and from efforts in the gender budgeting area.

b) Conditionality and requirements of development banks and investors

As noted earlier, the provision of Technical Assistance (TA) is a key ingredient of ODA, and technical assistance and capacity-building continue to be key elements in many donor and IFI/DFI ODA- and OOF-leveraged BF initiatives. Given the overall purpose of TA, we consider it an activity identified in Article 4.2 of the RTD that is “provid(ed) to these countries (as an) appropriate means and facilities to foster their comprehensive development.”¹² However, the purpose of such TA/capacity-building is to identify key areas of legal, regulatory and institutional change towards the creation of an “enabling environment.” This refers to ODA funding of policy, regulatory and institutional reform initiatives (such as a system for establishing clear property rights, and low costs of regulation on business) in aid-recipient states, targeted at creating the conditions necessary for the operation of domestic businesses and entrepreneurs, and the facilitation of international trade and investment. It

¹¹ Siobhán Airey, *Auras of Legality – the Jurisdiction and Governance Signature of the International Governance of Official Development Assistance*, (unpublished doctoral thesis, University of Ottawa, 2020).

¹² Note that Technical Assistance is also recognised by the SR in his report to the Human Rights Council A/HRC/42/38 at paras. 82, 83 and 91.

has been estimated that, in 2015, approx. US\$9.9 billion of ODA was spent on delivering activities targeted at strengthening the enabling environment for private sector development, including general regulatory reform re. business promotion, in targeted market areas such as infrastructure, access to finance, and labour force measures.¹³ Miyamoto & Chiofalo note that, in 2014, almost 20% of Official Development Finance (ODF) to infrastructure was allocated to the address the policy framework of, and other non-physical aspects related to, infrastructure sectors, particularly for energy. Spending here including technical assistance and capacity building for relevant ministries in power sector policy and regulatory reforms, especially for renewable energy.¹⁴

Given the key role of TA to the creation of an ‘enabling environment’ for development, we recommend that the Special Rapporteur develop “Guidelines on a RTD Compliant Technical Assistance and Capacity Building Approach” for donors and other official entities such as DFIs/IFIs and state-funded development banks that fund and deliver TA in an international development context.

c) Strengthening public finance in the 2015 policy frameworks on development

It is our contention that both the UNSDGs and Addis Agenda include many policy commitments that have under-recognised potential for the effective mobilisation of domestic and public finance to achieve the 2015 policy frameworks’ goals. As example, we draw the Special Rapporteur’s attention to details within Goal 17 of the UNSDGs that aims at “Strengthen(ing) the means of implementation and revitalize the Global Partnership for Sustainable Development.” We consider that Goal 17 includes provisions that fall clearly within activities identified in Article 2.3 of the RTD that constitute “appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, and in the fair distribution of the benefits resulting therefrom” as well as those enunciated in Article 3.1 of the RTD that relate to “the creation of national and international conditions favourable to the realization of the right to development.”

¹³ Cecilia Caio, “The enabling environment for private sector development – donor spending and links to other catalytic uses of aid,” Development Initiatives Discussion Paper, May 2018 at 4 and 9.

¹⁴ Kaori Miyamoto and Emilio Chiofalo, *Official Development Finance for Infrastructure With a Special Focus on Multilateral Development Banks*, OECD Development Co-operation Working Paper 30, (Paris: OECD, 2016) at 10.

The targets and indicators for Goal 17 are included below.

Targets – Finance	Indicators
17.1 Strengthen domestic resource mobilization , including <i>through international support to developing countries, to improve domestic capacity for tax and other revenue collection</i>	17.1.1 Total government revenue as a proportion of GDP, by source. 17.1.2 Proportion of domestic budget funded by domestic taxes.

Target 17.1 focuses on mobilising domestic resources within a state via taxation and other forms of revenue collection.¹⁵ In our view, the reference to “international support” points to a clear potential for a concerted international approach to supporting states to ensure they can effectively maximise domestic taxation capacity. However, note that the indicators for this target include no reference to an international element. Thus, we see that the targets for the finance section of Goal 17 firmly include the possibility for dedicated international initiatives to mobilise greater resources for the SDGs from tax and other revenues. But that, currently, no indicators are included here to signpost how this could be addressed or measured. This is a key and critical gap in Goal 17. A UN High Level Political Forum (HLPF) on Sustainable Development has the role of monitoring the implementation of the SDGs, and each state that has signed up to the SDGs can produce a Voluntary National Review (VNR) on how it is addressing the SDGs’ implementation. The HLPF has produced guidelines for States on their national reports. Their most recent edition of the Guidelines frames the VNRs as an instrument whereby states “take stock of and assess the shortcomings in implementation of the goals and targets...allow(ing) a country to plan more appropriate policies, structures and processes, and revise its national development goals (accordingly).”¹⁶ In the view of the HLPF, the VNRs are to be an opportunity for solid reflection; for identifying and taking real account of, for example, (5 (f)) “structural issuesincluding the possible external consequences of domestic policies. Countries can highlight the transformative policies, tools, institutional changes they have used to address these issues or barriers.”¹⁷ They can also include annexes that showcase best practice at the national level, and that include commentary from a range of stakeholders.

Clearly the VNRs are not to be a box-ticking exercise, or simply a method of recording compliance with indicators and targets; rather, the Guidelines suggest that states approach them from a stance that reflects one of positive and intentional engagement, over passive compliance. In this way, the

¹⁵ Note that A/HRC/42/38 includes several references to taxation, including paras 54, 65, 71, 72, 80, 81, 85.

¹⁶ UN HLPF, *Handbook for the Preparation of Voluntary National Reviews* (2020 Edition), at 1-2, available at . https://sustainabledevelopment.un.org/content/documents/25245Handbook_2020_EN.pdf

¹⁷ Ibid 60-61.

Guidelines can be interpreted as exhorting states to be RTD-compliant in their approach to fulfilling Goal 17.

3. International co-operation

a) International co-operation in tax matters

To aid states in determining how their domestic and international tax policies can best support developing country states in mobilising tax, we recommend that the Special Rapporteur develop an analytical instrument that can be used by all states to undertake a RTD-compliant taxation policy impact assessment of how their international and domestic taxation regimes promote or hinder the 2015 policy framework goals, and an approach to development that is RTD-compliant. Bodies such as the UN Committee on International Co-operation on Tax Matters, as well as recognised developing country-led centres of expertise such as the African Tax Administration Forum, along with recognised experts in equality-oriented international and domestic taxation experts, should be consulted in the development of this instrument.

We view international co-operation, and particularly in relation to addressing tax avoidance and tax evasion to be an international activity that meets the purposes of Article 3.1 and Article 4.1-2 of the RTD. Currently, the most influential international tax reform effort centres on the OECD's Base Erosion and Profit Shifting (BEPS) initiative, launched in July 2013. This is joint OECD-G20 initiative that centres on a 15-point Action Plan, and country by country reporting on their progress with monitoring the plan. However, we view that the BEPS initiative fails to adequately fulfill the threshold articulated in Articles 3 and 4 of the RTD. Critiques of BEPS have been made by many NGOs, and include the fact that much of its content does not address the kinds of issues that most affect for lower-income countries – which suffer most intensely from the estimated \$500 billion of annual revenue losses due to multinational companies' tax abuses. Another obvious critique is that the OECD does not have universal membership. Rather, its membership mainly consists of the more powerful Northern economies. Thus, its membership is not representative of, and does not have clear accountability to lower-income countries

But perhaps the greatest critique has come from within the OECD itself. In September 2017, the European Commission released a statement in relation to fair taxation of the Digital Economy in which it said, "The current tax framework does not fit with modern realities. The first focus should be on pushing for a fundamental reform of international tax rules, which would ensure a better link between how value is created and where it is taxed."¹⁸ For these reasons, we view the

¹⁸ http://europa.eu/rapid/press-release_IP-17-3305_en.htm

BEPS initiative as failing to meet the threshold of “effective international co-operation” articulated in Article 4.2 of the RTD.

With this in mind, in recognition of real harms done by massive tax evasion by multinational corporations (MNCs), we recommend that the Special Rapporteur produce an “RTD Tax Compact” guidelines document that lists the principles and core commitments that MNCs and all states will make as central to any tax reform agenda, and that reframes taxation as an institution representing *a public compact* between a government, its people and MNCs in *a public-oriented state*. To ensure that initiatives, targets and indicators in Goal 17 may be RTD- Tax Compact-compliant, we recommend that the Special Rapporteur offer examples of targets and indicators that may be considered as being RTD-compliant by constituting *effective* co-operation in tax matters.

4. Conclusion

We welcome the SR’s dedicated interest in the area of Financing for Development and look forward to the SR’s forthcoming report to the Human Rights Council and General Assembly on the subject.

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