

Audit as Accountability: Technical Authority and Expertise in the Governance of Private Financing for Development

Social & Legal Studies

1–24

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DOI: 10.1177/0964663921992100

journals.sagepub.com/home/sls**Celine Tan** *University of Warwick, UK*

Abstract

The paper examines the emergence of a new landscape of international development finance that is blurring traditional boundaries between public and private resources for meeting the Sustainable Development Goals (SDGs) and other global public goods (GPGs). In the SDG financing ecosystem, private actors are no longer passive bystanders in the development process but as active contributors to and investors in development projects and programmes. The paper argues that the emerging ‘private turn’ in the architecture of development finance represents a technology of governance that is rooted in the assemblage of international development policy and practice. This regime constitutes an emerging complex and often problematic framework of organising and managing countries’ access to external finance and establishing their terms of engagement with the broader global economy.

Keywords

Aid, environmental, social and governance (ESG), financing for development, financial regulation, global public goods, international financial institutions, private regulatory standards, impact investing, Sustainable Development Goals

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Introduction

International development finance has emerged as a centrepiece for the international community as the world responds to the health, social and economic impacts of the COVID-19 pandemic. The health, social and economic crises brought on by the pandemic require large-scale injections of external finance to meet immediate interventions and support short and long-term relief and recovery measures in developing countries (UN, 2020). Financial resources are also crucial to ensuring that progress towards broader global sustainable development objectives, notably commitments made under the auspices of the United Nations (UN)'s 2030 Agenda for Sustainable Development (Agenda 2030) and its associated Sustainable Development Goals (SDGs), is not significantly derailed by the pandemic.

As global policymakers begin resetting the international agenda for sustainable development in the context of COVID-19, it is also important to cast a spotlight on the architecture for the mobilisation and disbursement of these global resources that has undergone significant changes in the past few years. A key development in the framework for financing for development since the inception of Agenda 2030 and the SDGs has been the emergence of the 'new ecosystem of investment for sustainable development' (Blended Finance Innovators, 2016) that is blurring traditional demarcations between public and private resources for financing development and global public goods. The rise of private non-profit and for-profit actors in international development financing is reorienting the role of official financiers from *funders* of development and global public goods to *brokers* of private financing for these purposes.

This shift in global public policy is transforming the regulatory and governance landscape of international development finance, moving away from traditional, more hierarchical forms of aid governance and public administration towards what scholars have termed 'contractual' governance (Cutler and Dietz, 2017) and 'hybrid transnationalism' (Richey and Ponte, 2014) in the international development cooperation where development actors and alliances are regulated less through formal transgovernmental regimes and more through webs of private agreements and compacts to deliver development finance and meet global public policy challenges.

An important aspect of this new landscape is the endorsement of private actors and market models as key to overcoming the 'resource gap' of 'billions to trillions' to meet the SDGs (World Bank, 2015) and, in contemporary circumstances, meeting the challenge of pandemic and post-pandemic resourcing (see Le Houérou, 2020). Although deeply embedded within a globalised and marketised and assemblage of economic and geopolitical relations, the SDG financing agenda has been turned into a depoliticised technical exercise where questions of financial resources have been abstracted from political contestation. Resource constraints have been decoupled from considerations of the structural constraints of the global economy and the systemic inequalities of the legal and regulatory architecture that supports it. Accompanying this discursive policy shift is a corresponding pivot towards private systems of governance, such as private regulatory standards and indicators, audit systems and private grievance processes to regulate development finance.

This paper examines the shift in the governance and regulation of international development finance and its impact not only on development policy and practice but also on client countries and communities' broader socio-economic and political organisation and their engagement with the global economy. The paper argues that this emerging regulatory regime is a technology of governance that reinforces the depoliticisation of the international development framework. This regime establishes a technical agenda that problematises governance and accountability of public finance and the provision of global public goods as one of quantification and management that can be resolved through 'calculative practices' (Ilcan and Lacey, 2015: 615) of measurement and reporting and the deployment of expert knowledge and 'scientific' authority. The development of these regulatory norms and expert ideas are rooted in the 'club'-like governance regime of the new aid architecture that is populated by a transnational policy elite of western donor states, private investors, northern bureaucrats and transnational civil society actors that have resulted in this 'ideational convergence' on the form and content of aid governance.¹

Drawing on the concept of the 'assemblage' developed by critical geographers and development scholars (Ferguson, 1994; Ilcan and Lacey, 2015; Li, 2007a), this paper situates these governance mechanisms within the proliferating transnational regulatory 'audit culture' (Shore and Wright, 2015) that fails to engage with or, in some circumstances, displaces more traditional forms of social and political accountability, at local, national and transnational levels, including those developed through international and national law. Consequently, concerns over both the distributive elements of aid and development finance and countering negative social and environmental dislocations of development projects are seen as adequately addressed through private regulatory standards and corporate disclosure and reporting regimes. This has significant consequences not only for the substantive efficacy of the SDG financing agenda but more importantly, the broader engagement of the developing countries within the global economy. Most notably, the shift to private governance systems in this way undermines accountability and diffuses public oversight over key distributive decisions while further constraining countries' access to and control over resources for sustainable development.

The Assemblage of Private Development Finance

Assembling the New Ecosystem

The emergence of this new landscape of privatised development finance can be located within the broader 'reengineering of public finance' that has taken place in the wake of the global 'rebalancing of markets and states' (Kaul and Conceição, 2006a: 3). In this reconfiguration, public finance is viewed less about taxation and expenditure but more about the deployment of fiscal, regulatory and other tools of public administration to harness and complement private sector resources to meet public policy objectives, including global public policy goals (Kaul and Conceição, 2006a: 7). This 'new public finance' responds to the two major trends we have witnessed in the past two decades in the reorganisation of states and markets in domestic and transnational governance and

policymaking: (1) the blurring of boundaries between private and public spheres of social and economic activity, particularly in the provision and regulation of access to public goods and services; and (2) the extension of public finance challenges beyond the state to respond to growing social, economic, ecological and geopolitical interdependence beyond geographical borders (Kaul and Conceição: 3–21).

Operationally, the shift to private financing for sustainable development covers a broad range of policy manoeuvres and changing modalities. It includes the channelling of official development assistance (ODA)² and other forms of international development finance into private investments, particularly through bilateral or multilateral development finance institutions (DFIs); the growing establishment of and reliance on public-private partnerships (PPPs) with commercial and other private actors for development cooperation; and the proliferation of private development assistance and the emergence of philanthropic foundations and social enterprises as international development actors. In the new SDG financing ecosystem, private actors are no longer passive bystanders in the development process nor engaged merely as clients or contractors for bilateral or multilateral development organisations but they have become co-investors and co-producers in development projects and programmes.

Transposed into international development policymaking and governance, these new reconfigurations posit state and non-state actors as complementary partners in the financing and delivery of sustainable development and other GPGs, transforming international cooperation in these arenas from ‘an intergovernmental process to a multiactor process’, with bilateral and multilateral governmental actors and non-state entities, such as business and civil society, like their national counterparts, ‘cooperating and competing to deliver both public goods and equity more efficiently and effectively’ (Kaul and Conceição, 2006b: 35). This has been complemented by the rise in so-called ‘multi-stakeholderism’ (Benedek, 2011) in international law and global governance in which non-state actors have been increasingly recruited to perform a variety of functions in arenas that have previously been exclusive domains of states, including policy-setting, rulemaking, regulatory compliance and service delivery (Benedek, 2011: 201–203; Pattberg et al., 2012: 3–4).

The policy and regulatory changes accompanying the new landscape of development finance are thus embedded within broader contemporary ‘assemblages of international development’ (Ilcan and Lacey, 2015) that are increasingly positioning and deploying market values and norms as principal modes by which the design, delivery and measurement of poverty reduction, economic growth, social welfare, gender equality, climate change mitigation and adaptation and other objectives of international sustainable development are framed, financed and operationalised (Brooks, 2016; Ilcan and Lacey, 2015; Rosenman, 2017; Soederberg, 2013). The SDGs have been framed as a ‘compelling market opportunity’ for businesses (Convergence, 2018: 6) and the legal and regulatory frameworks are to be designed to facilitate these market opportunities.

The ‘assemblage’ as a concept is drawn from the literature on governmentality (see Dean, 2010; Ferguson, 1994; Miller and Rose, 2008) that broadly refers to the set of discourses and regime of practices that are assembled to address and resolve an identified need (Li, 2007a: 264). Government interventions in the economy and society are said to be assembled from a multiplicity of heterogenous elements, including

‘discourses, institutions, forms of expertise and social groups whose deficiencies need to be corrected’ (Li, 2007a: 264). As a conceptual device, the ‘analytic of the assemblage’ (Li, 2007a: 264) has been applied to the arena of international development by different scholars as a means of understanding how disparate components of international development policy and practice work together to create a powerful regime of governance within and outside third world states (Li, 2007a: 264; Blowfield and Dolan, 2014; Escobar, 1995; Ferguson, 1994; Ilcan and Lacey, 2015; Soederberg, 2013).

Viewing international development policy and practice through the prism of the assemblage enables us to recognise and deconstruct the regime of discourses and practices that have served, in the postcolonial period, to organise and legitimise specific patterns of production and consumption and socio-economic organisation the third world. These technologies of governance rely heavily on mechanisms of representation and signification to embed ideas and knowledge about how we structure societies and the economies. As both critical development scholars and third world international lawyers have demonstrated, the development discourse has been central to the maintenance of geopolitical and material imperial control in the postcolonial period (see Anghie, 1999; Escobar, 1995; Pahuja, 2011). The development discourse and the systems of knowledge production it produces create an effective ‘regime of government over the Third World’ (Escobar, 1995: 9) that is as powerful as the international legal architecture and other modalities of transnational political and economic regulation.

Technologies of Governance

The privatisation agenda in international development illustrates the ways in which the technologies of governance work in the global economy. This regime relies on the two key practices that have long been utilised by development institutions to manage and implement development projects and programmes: 1) the process of problematisation or identification of deficiencies that requires an intervention or remedy; and 2) the ‘rendering technical’ or construction of technical solutions to the development problems identified and the creation of an ensemble of expertise on how to do so (Li, 2007b: 7). As Li has argued the ‘identification of a problem is intimately linked to the availability of a solution... they coemerge within a government assemblage in which certain sorts of diagnoses, prescriptions and techniques are available to the expert who is properly trained’ (Li, 2007b: 7). The consequence of the process of *problematisation* and *technicisation* is the *depoliticisation* of development policymaking and operational practice so that expertise is enrolled to insulate development interventions from political contestation (Bebbington, 2005; Li, 2007b: 8; McCoy and Singh, 2014: 151–152).

This process results in what Ferguson famously termed the ‘anti-politics machine’ (Ferguson, 1994), the way in which development programmes have been designed to exclude considerations of broader socio-political questions and contain political advocacy for broader structural transformations (see Bebbington, 2005; Ferguson, 1994; Li, 2007a, 2007b). The depoliticisation of the development sphere results in less focus on addressing the broader systemic causes of global development challenges – including inequalities in economic opportunities and health and educational outcomes due to asymmetries and regulatory gaps in the international economic legal order or ecological

crises from patterns of neoliberal production and consumption – and a prioritisation of operationally bounded solutions to a technically defined diagnoses of a development ‘problem’, such as how to fund vaccination problems or generate finance for an electricity grid (see Li, 2007b: 6–8; McCoy and Singh, 2014: 151–152).

In the case of the shift towards privatised development finance, the assemblage of international development, the process of technicisation and depoliticisation has led to a curious isolation of transformative politics that originally animated the global debates on the SDGs. Many observers have commented on how the SDGs, while not without problems, did create normative shifts in the international development agenda, reconceptualising development as a holistic and complex process that overcomes some of the more reductionist critiques of their predecessor, the Millennium Development Goals (MDGs) which they replaced in 2015 (Caballero, 2019; Fukuda-Parr and McNeil, 2019). However, by moving the programme of global cooperation on development away from issues of economic redistribution towards that of financial resourcing, the new conceptual framings of the SDG financing agenda have somewhat blunted the political dimensions of the SDGs and the original Monterrey Consensus on Financing for Development. This financing agenda can and have marginalised calls for broader transformations in the global economy to remove the structural barriers developing countries faced in meeting development and other public goods objectives, such as in trade, investment, taxation and sovereign debt.

While the movement towards this so-called ‘privatisation of aid’ predates the SDGs,³ Agenda 2030 has accelerated this shift by endorsing and amplifying the role of the private sector in mobilising and delivering the financial resources to support attainment of the SDGs, including emphasising the role of official financing in catalysing private resources (UN, 2015a: para. 43, 2015b: paras 48 and 54). Problematising the attainment of the SDGs as primarily a resource challenge for the public purse rather than a political question of global redistributive decisions reframes international development cooperation from a political question of socialised, collective responsibility to one that is premised on bringing more financial actors and instruments to the table and on how these new financial resources can be incentivised and deployed. This is the narrative that will likely underpin current global initiatives to ‘build back better’ after COVID-19 (OECD, 2020a), including positioning DFIs as ‘economic first responders’ (EDFI, 2020), scaling up blended finance (Convergence, 2020) and promoting ‘impact investing’ (ICMA, 2020a; IFC, 2020) as financial complements to traditional official development finance in pandemic responses.

The logic of public-private cooperation is sustained by two important narratives that have been prominently enrolled to rationalise, endorse and embed the increasing participation of private actors in the mobilisation, disbursement and delivery of development finance. First, private finance and the use of public and/or philanthropic resources to mobilise commercial resources is viewed as crucial to ‘growing the overall financing pie’ (OECD, 2017: para. 14–17) and bridging the ‘financing gap’ between the ambitious targets of the SDGs⁴ and public finance shortfalls (Mawdsley, 2018; Watts and Scales, 2020). High-profile policy documents and political declarations routinely highlight the need to progress beyond the ‘billions’ mobilised through traditional ODA to harnessing

the ‘trillions’ potentially available through public and private investments⁵ (see OECD, 2016: 27; World Bank, 2015: 1).

Second, private finance is represented as an antidote to the inefficiency and opacity of traditional public finance (see Gibbs, 2020) and its failure to account for ‘how resources are spent on the ground’ (Keohane, 2016: 11). Market models, particularly financial market innovations, are promoted as solutions to bringing in much needed ‘discipline, efficiency and accountability to development’ lacking in traditional aid instruments to meet the SDGs and other GPGs (Keohane, 2016: 6–7) while at the same time socialising market actors by making the ‘business case’ for socially responsible and ecologically sustainable private investments (OECD, 2016: 17).

In this landscape, public and private sectors are co-imbriated in the restructuring of policy and regulatory frameworks of international development finance and in the creation of new markets and mechanisms to accommodate and facilitate these reformulations of public finance. Specifically, the hybrid modalities of the new development financing architecture constitute part of a broader emerging set of financial markets called social or innovative finance that aims to correct both market *and* public policy failures in the delivery of development and other global public goods and services (see Dowling, 2017; Kaul and Conceição, 2006b; Keohane, 2016; Rosenman, 2017; Soederberg, 2013). Under this paradigm, state actors create the financial, policy and regulatory foundations and incentives for private sector engagement in social or sustainable development investment ‘markets’ while private commercial and non-profit actors step in to ‘close the funding gap’ or ‘encourage more efficient delivery’ of social and development projects and programmes (Keohane, 2016: 7; also Kaul and Conceição, 2006b: 37–38).

Law and regulatory regimes become integral to this reconfigured landscape of development finance, creating the aforementioned infrastructure for the commodification of global public goods as well as structuring the terms upon which the reconstituted producers and consumers of development finance engage and interact with each other and the state or community of states as an intermediary or facilitator of access to such public goods. The result of these changes has been the rapid expansion of what Salamon describes as ‘an elaborate system of *third-party government* in which crucial elements of public authority are shared with a host of non-governmental and other-governmental actors, frequently in complex collaborative systems’ (Salamon, 2001: 1613). As blended and private finance become increasingly central in COVID-19 and post-COVID-19 development policy responses, these new governance formations are likely to be further concretised by international policymakers (see for example, OECD, 2020b; UN DESA, 2020).

New Governance Formations

Audit Culture and Benchmark Governance

Accompanying the positioning of private actors as technical solutions to a development problematic – the lack of development resources – discussed in the previous section, is a parallel positioning of private systems of governance as the regulatory solution to concerns over regulatory oversight and accountability of these private entities. An emerging

component of this new architecture of aid governance is the use of transnational indicators, metrics, codes of conduct and internal accountability mechanisms as means of supervising, monitoring and regulating the use of blended and private finance deployed to meet SDG objectives. These standards and codes range from the OECD Development Assistance Committee (DAC)'s Blended Finance Principles (OECD, 2018) to the International Finance Corporation (IFC)'s Operating Principles for Impact Management (OPIM) (IFC, 2019) and the European Development Finance Institutions (EDFI) Principles for Responsible Financing of Sustainable Development (EDFI Principles) (EDFI, 2019a) to the International Capital Market Association (ICMA) voluntary guidelines on the issuance of green, social and sustainability bonds (ICMA, 2020b).

Accordingly, the current financing for development agenda, mirroring the broader SDG framework, is creating and deepening what Merry calls 'the infrastructure of measurement' (Merry, 2019) that is fast becoming the default regulatory regime for the new privatised aid landscape. Collectively, these components of the new international development assemblage, can be broadly referred to as elements of an audit culture or audit society (Power, 1997) that serves to regulate inasmuch as it is regulated by the private entities and their interlocutors within the international development policy community.

This paper argues that the audit culture in relation to private development finance is comprised of two interrelated parts: 1) the use of non-binding codes of conduct or private regulatory standards in lieu of direct regulation by state entities or international organisations, and 2) the use of these codes and standards and CSR-like regimes to monitor and measure compliance with development targets, objectives and accountability. The overall result is the increasing proliferation of standards and codes and standard-setting agencies and monitoring and evaluation (M&E) mechanisms composing the general architecture of supervision and surveillance over the providers but mainly the recipients of development finance.

Embedded within this regime are various nested sets of indicators and benchmarks, data generated to rank and classify actions and outcomes relating to the mobilisation and disbursement of development finance. For example, the OECD's Blended Finance Principles consist of a set of five core principles aimed at guiding policymakers in the use and application of blended finance, consisting of both general normative commitments ('Principle 1: Anchor Blended Finance Use to a Development Rationale') and specific undertakings to track, map and collect 'financial flows, commercial performance and development results' (Principle 5: Monitor Blended Finance for Transparency and Results') (OECD, 2018). Meanwhile, the OPIM and the EDFI Principles for Responsible Financing of Sustainable Development both contain commitments to mainstream social and environmental impact management into their operations, establish codes of conduct for investee companies as well as commitments to harmonise and strengthen development impact measurement and reporting (EDFI, 2019a; IFC, 2019).

The use of rankings within the international development sphere to allocate resources is not new as bilateral and multilateral financiers have routinely used indicators to rank and score governments on a range of policy, institutional and regulatory performance to allocate ODA and other development funds and to determine the terms under which they are disbursed (Bhuta, 2012; Halliday, 2012; Pistor, 2012). What is new about the use of

indicators in the context of blended and private finance for development is their enmeshment with private and commercial regulatory regimes and the insertion of private actors within this process of governance and regulation. The effect of these developments is reducing public surveillance of private financiers while correspondingly increasing the power of these private entities to survey and allocate capital to these countries and communities.

Here, the use of these audit and calculative practices of measurement serve two objectives vis-a-vis the privatised development regime: 1) it normalises and validates the legitimacy of the shift from public to private forms of financing through authenticating the normative and operational role of private and blended finance in the international development sphere; and 2) it constructs a regime of governance which reinforces and furthers the ideal and material move from public financing of development and global public goods towards mixed and wholly private mechanisms of aid and development finance.

In other words, the process of data-gathering, ranking and standardising data can serve to discipline actors subject to their authority, and the data that is gleaned from these calculative practices can also be used to further reinforce this discipline and to justify and legitimise particular policy choices. Sending refers to this use of scientific knowledge as a form of 'policy' storytelling, constituting 'a symbolic resource' that is deployed to persuade and mobilise support from different stakeholders and 'for formulating and establishing policy practices' (Sending, 2003: 58).

Additionally, the construction of these techniques as necessarily apolitical and technical exerts a powerful discursive disciplinary regime over the objects of its supervision – in this case, developing countries and their communities. The presentation of these indicators as administrative mechanisms for regulating access to and use of development funds/external finance to developing countries neutralises their significant political import. This narrative obscures the ways in which rankings, standards and codes of conduct have 'regulatory effects' because they set universal norms for measuring the conduct of supervised entities (Davis et al., 2012: 84). As a modality of governance, the audit and benchmarking culture reinforces the technicisation of international development finance, rendering aspects of political contestation and socio-economic claims for redistribution and accountability into components of calculative measurement while, at the same time, introducing an increasingly intrusive surveillance regime over countries in receipt of private or blended development finance. These governance effects are often asymmetrical as they are inserted into the 'tension-ridden' terrain of development policymaking 'in which the global North produces norms and framings that are then transplanted and imposed on the global south' (Dadush, 2012: 430).

Diffused Accountability

Conceptualising benchmarking as 'a mode of *transnational governance*', Broome and Quirk argue that the popularity of benchmarks as a regulatory device is due to their capacity to reduce complex social phenomena and often 'highly contentious policy goals and political agendas' into 'ostensibly neutral language of technocratic assessment and numerical comparison' (Broome and Quirk, 2015: 821). In the field of international

development finance, this process of simplification and standardisation is aimed at generating a common mode of assessment to guide both *ex-ante* allocation of development resources, including screening of potential recipients, and *ex-post* supervision of how these resources have been deployed, including monitoring and redressing any adverse outcomes from the use of project or programme funds.

The emergence of an audit culture attached to the monitoring and supervision of private development finance exemplifies the shifting governance contours of international development cooperation. The dispersal of development finance across a more diverse range of providers and platforms has meant an increasing fragmentation of aid governance but also increasingly, a shift towards a more diffused modality of regulating the exercise of mobilising, disbursing and accounting for the use of development finance⁶ (Tan, 2019). The movement to privatised forms of development finance, including blended finance, PPPs and impact investments by public and private financial actors will both: a) increase fragmentation and intermediation in the oversight and governance of public concessional and non-concessional development finance; and b) undermine the already weak mechanisms for aid accountability at national and international levels (Tan, 2019). The movement of development finance into private arenas, particularly when it involves a co-mingling of funds (such as under blended finance operations or designated ‘impact’ bond issuances by public entities), will result in a greater fragmentation of the regimes of accountability for development finance.

This turn to private standards and audits as the regulatory regime governing private development finance is unsurprising given that these forms of governance are especially popular in the three main arenas that comprise the new architecture of aid: governance of ODA, corporate accountability and the regulation of financial markets. All three regimes, which come together in the rapidly emerging privatised development landscape, rely significantly on these ‘soft’, non-binding modes of regulation and supervision, including in the aforementioned *ex-ante* due diligence and *ex-post* M&E and grievance and remedial mechanisms (see Broome and Quirk, 2015).

Decision-making, standard-setting and regulatory oversight in these areas are often achieved through the use of non-binding instruments that rank, code and make ‘symbolic judgments’ (Broome and Quirk, 2015) about supervised entities in order to allocate resources and legitimise policy interventions where supervised entities fall short of expected outcomes. These standards do not just establish the criteria for expected behaviour of actors engaged in development finance – whether the public financier engaged in blended finance or private sector loans or the private actor in receipt of loans or state beneficiaries of the resources – but also set the parameters for reporting and evaluating the outcomes of private development finance. For example, the OPIM encompasses ‘an end-to-end process’ (IFC, 2019: 2), placing responsibility on the manager of a private operation (funded wholly or in part by a public entity or wholly by a commercial financier) to demonstrate *intent* to achieve a social, environmental or sustainability goal (Principle 1), establish a credible narrative on its *contribution* to achieving these goals (Principle 3), and have systems in place to *measure* the expected positive impact of each investment (Principle 4) while also providing a systemic process to assess, address, manage and mitigate negative impacts, described as ‘environmental, social and governance (ESG) risks’ (Principle 5) (IFC, 2019: 3–4).

However, there remains a disjuncture between broad-brush political and institutional commitments to transparency and accountability of blended and private financing for development and operational impact, including the alignment with principles of aid effectiveness (see OECD, 2005) and implementation of social and environmental safeguards that have traditionally been a key feature of development projects and programmes. As documented elsewhere, the new mechanisms for channelling blended and private development finance are being created outside traditional platforms developed by official financiers to map, track and account for official development flows and to mitigate and redress environmental and social harms of development projects (Tan, 2019: 311–328). While imperfect, established institutional frameworks, including safeguards regimes such as the World Bank’s Environment and Social Framework (ESF), provide some coherent mechanism for due diligence, accountability and redress for harms caused to third parties and public finance channelled through official sector financiers and through public mechanisms in recipient states remain governed by more transparent and accountable public administrative and procurement laws.

The enmeshment of public and private resources under the SDG financing agenda means that much of the supervision, monitoring and redress frameworks will be outsourced to more dispersed private ordering regimes, including corporate accountability schemes that have been described as ‘norm-rich’ but compliance poor compared to state-sponsored or public regulatory systems (Bridgeman and Hunter, 2008: 187–190). OPIM, for example, refers to alignment with ‘industry standards’ and good international industry practice’ when seeking signatory commitments to conduct due diligence and mitigate and manage ESG risks (Principles 4 & 5, IFC, 2019: 3–4). While these industry codes include both public sector codes – such as the Harmonised Indicators for Private Sector Operations (HIPSO)⁷ and IFC Environmental and Social Performance Standards⁸ – and private sector codes – such as the ICMA guidelines, the Impact Reporting and Investment Standards (IRIS),⁹ Global Impact Investing Rating System (GIIRS) and indicators from the Sustainability Accounting Standards Board (SASB)¹⁰ – the enforcement of these standards would normally be governed by private audit regimes. For example, where MDBs lend to financial intermediaries to ‘on-lend’ to private sector entities for a development project or where funds are raised in the international capital markets by MDBs and DFIs to support private sector operations, the onus will rest on the private entity to undertake ESG due diligence and redress mechanisms (Park, 2019; Tan, 2019).

This use of ‘soft’ private regulatory standards mirrors the diffused forms of corporate accountability and privatised regulation that has traditionally characterised regulatory form in this arena of public and private international law, especially in the fields of international financial regulation and transnational corporate governance (see Ho, 2019; Picciotto, 2011: 20–21). The design of many private sector operational grievance mechanisms fall considerably short of substantive or procedural standards established by their public sector counterparts, including limited operational independence from the project sponsor and the lack of third party review and verification (Ong, 2016: 201, 224). Meanwhile, studies of audit regimes within global supply chains have shown that the audit regime is rife with commercial interference that is ultimately less about regulating the corporations at the helm of supply chains than about managing the

reputational fallout and potential business and legal risks arising from the social and environmental impacts of their operations (LeBaron et al., 2017; Lin, 2009). This is consistent with general practice observed in relation to compliance with regulatory standards where private ordering regimes for industry codes and standards tend to be more effective if implemented in the ‘shadow of the law’ or, in other words, sustained by ‘a credible threat of state-supported enforcement’, such as contractual claims where these codes are incorporated into legal agreements between the parties (Vebruggen, 2017: 309, 321).

Technocratic Governance as Discipline

The significance of the ‘private turn’ in development finance go beyond their immediate effects on the availability and efficacy of resources to support SDG investments and finance other global public goods. It can and will impact on the constitution of global economic governance and international economic law more generally. Specifically, the new assemblages of international development finance create new forms of discipline on developing countries by 1) enacting new forms of transnational regulation that will distribute and allocate capital in way that enforces greater economic and geo-political discipline on third world states, and, in doing so, 2) displace more endogenous, accessible and accountable systems of policymaking and regulatory oversight and abstract the financing agenda from broader questions of global economic inequality and redistribution.

Steering Capital

The expansion of benchmarking indicators for resource allocation and supervision can lead to transnational regulation through the back door and entrench opaque private authority in global economic governance and lawmaking. First, as discussed previously, indicators can become powerful modalities of regulatory control through their power to define the terms under which development finance transactions take place. Indicators produce as well as organise knowledge – such as on what policy intervention constitute eligible social or environmental investments for financing and how to quantify and measure them – and therefore play a crucial role in constituting markets and shaping investment decisions of public and private actors (Dadush, 2012; Petry et al., 2019). These indicators both define and commodify social and environmental impact, attaching financial value and risk to prospective and current SDG-related investments, so that they can form quantifiable tools for allocating and trading capital (Dadush, 2012; Watts and Scales, 2020).

With blended and private capital becoming much more prominent as modes of financing development and other global public goods, the use of these indices and matrices can lead to what Soederberg terms the ‘new conditionality’ (Soederberg, 2007). As indicators exert greater authority over financing decisions, widespread use of these mechanisms can form new disciplinary frameworks that can constrain the economic and social policymaking space of developing countries in a similar fashion to the ‘old’ forms of aid conditionality (such as under structural adjustment or policy-

based lending). Instead of being governed directly by traditional IFIs and bilateral and multilateral donors, the SDG financing agenda inserts countries into global financial markets (including bond and equity markets and public and private markets) to be governed by financial indices, credit ratings and other market rankings, that are central to how finance is allocated to sovereign and non-sovereign entities.

In her assessment of the socially responsible investing agenda, Soederberg outlines how non-financial benchmarking by institutional investors, such as the pension funds that official development financiers are now clamouring to engage as development partners, can exert significant discipline over developing countries and impose policy and regulatory reform through the backdoor (Soederberg, 2007). Soederberg argues that ESG indicators, such as the Permissible Country Index used by the California Public Employees' Retirement System (CalPERS), can 'reproduce neoliberal forms of discipline and exploitation' through measurements of countries' social and political systems via the imposition of benchmarks of country behaviour based on compliance with 'market-friendly' strategies (Soederberg, 2007). Coercive measures include divestment from emerging markets due to non-compliance with ESG indicators and the creation of a normative expectations of behaviour to expand capital market expansion in these countries (Soederberg, 2007).

This normative role of capital market indicators, including ESG benchmarks, often intersect with broader market regulatory requirements that influence the content and relative ranking of countries and companies within them. For example, in their study of financial indices, such as SP 500, FTSE 100 or MSCI World, Petry et al. reveal how index providers 'exercise private authority in capital markets as they steer investments through indices they create and maintain', defining 'the criteria according to which companies or countries are included into an index' (2020: 19). This, in turn, influences not only the investment decisions of the investors but, crucially, the corporate governance policies of companies and regulatory strategies of states dependent on such markets for financing. As indices make selective judgments about the policy and institutional quality of destination countries' investment environment, including adherence to ESG criteria, there is a corresponding movement to encourage countries to adopt policy and regulatory reforms to accommodate and maintain favourable rankings to encourage foreign capital. Policy support and technical assistance schemes from IFIs, such as the World Bank, are seen as key to enabling domestic reforms that remove operational or regulatory 'bottlenecks' to the scaling up and entry of foreign private capital for SDG-related investments in developing countries (Rowden, 2019: 17–18).

A second concern with the increasing influence of private regulatory authority is the composition of the regulators and the transnational epistemic community that underpin these regulatory networks. This form of technocratic regulation raises fundamental questions over legitimacy of those charged with the design of rules governing important aspects of resource allocation and transnational regulation. The growth of 'expert knowledge' that accompanies the rise of these calculative disciplinary practices of benchmarking and audit cannot be separated from those who profess expertise in this area. Numerous studies have highlighted the influential role of transnational policy networks in the development of technical governance norms and processes and the problematic

homogeneity of expertise that populate these networks (see for example, Broome and Seabrooke, 2015; Picciotto, 2017; Tsingou, 2015).

Tsingou's landmark paper on expertise and the ideational infrastructure of global financial regulation traces the way in which shared understandings among policy-makers can drive policymaking and regulatory standard-setting in tightly-controlled transnational norm-brokerage spaces (Tsingou, 2015). This form of 'club governance' (Tsingou, 2015) certainly resonates with the way in which the regulatory space for the SDG financing agenda has been constructed. While the broader political objectives, such as the SDGs, were negotiated and continue to be monitored through the more open, democratic fora of the UN, policymaking for the SDG financing agenda has taken place within more tightly controlled, donor-dominated arenas, such as at the OECD's DAC, and the club-like framework of the EDFI and newly established DFI Alliance (EDFI, 2019b).

These arenas for policymaking are increasingly dominated not only by public technocrats but also private sector entities and a rapidly growing cadre of 'impact investment' experts that are playing an increasing role in framing the policy agendas of development finance, including the setting of funding priorities, programme focus and substantive decisions on the allocation of financial resources. For example, the OECD has recently convened a DAC Community of Practice on Private Finance for Sustainable Development for dialogue, discussion and information sharing among DAC members, the private sector and 'key stakeholders' on blended finance with an eye towards the development of its Blended Finance Principles (OECD, 2020b). Meanwhile, there has been a proliferation of private expertise on impact measurement with the growth of the SII market, including through existing mechanisms such as the GIIRs and Global Reporting Initiative (GRI) but also relatively new players such as the Impact Management Project (IMP)¹¹ seeking to develop processes and frameworks for defining, measuring and reporting on social and environmental impact of investments.

The danger of homogeneity of thought and the danger of 'cognitive capture' by dominant interests in these regulatory fields is very real (see Picciotto, 2017: 689), especially where composition of these networks are not balanced between different stakeholders. There has been and remains very little input from developing countries or beneficiary communities either into the shift towards blended or private financing or into the accompanying process of standard-setting despite their significant normative impact (UNCTAD, 2019: 77). The power of the technocratic norm-makers is bolstered by 'their claim to scientific authority' (Fukuda-Oarr and McNeil, 2019: 7), with their policy agendas framed as authoritative and operationally legitimate because of their abstraction from the messy political contests of conventional regulatory design and lawmaking.

It is a form of governance that Dadush describes as characterised 'by a fundamental experiential mismatch' or 'simply, the people affected by the issue are distinct from those who formulate the issue' (Dadush, 2012: 430). According to Dadush, the governance structure of platforms such as IRIS and GIIRS demonstrate the steering role is undertaken by predominantly US and north-European-based private entities, and that intended beneficiaries or clients of SII-funded projects are not involved nor invited to

feed into the substance of the matrices developed to map, track and report on impact investments (Dadush, 2012: 421). In other words, ‘the market for impact is being developed largely without substantive input from the ‘impact’ed’ (Dadush, 2012: 421).

Displacement of Public Oversight

Accompanying the reconfiguration of economic and political authority under the new development finance landscape is a reconfiguration of the arenas in which international development cooperation is negotiated, implemented and regulated. The pluralisation of development actors is creating a ‘hybrid transnationalism’ in international development cooperation whereby new actors and alliances are constituted less by geographical or geopolitical location – for example, OECD countries, bilaterals or multilaterals, states or non-governmental organisations (NGOs) – but by networks of causes, such as infrastructure development, microfinance, gender equality, carbon market transactions, etc (see Richey and Ponte, 2014: 13–14) that are bound together through webs of private agreements and compacts to deliver development finance and meet global public policy challenges. These forms of ‘contractual governance’ (Cutler and Dietz, 2017) are increasingly displacing more formal arenas of law and policymaking on international development finance, including oversight over development outcomes and social and environmental externalities of development projects and programmes.

These reconfigurations are not only restructuring the relationship between donors, recipients and associated stakeholders, they are also reconfiguring developing countries’ engagement with the broader global economy and the international legal frameworks that govern it. At one level, the abstraction of the technical and operational aspects of financing for development from the political contestations over the distribution of global economic resources masks more contingent questions over the causes of global impoverishment and inequality that are predicated on structural asymmetries in the global economy and the way in which law and regulatory regimes act as transmission nodes for global poverty and inequality. As Rosenman argues, the deployment of ‘private investment, rather than public redistribution, as the means for enacting social change gives investors new power over the future of anti-poverty policy’ and expands ‘private influence over public policy priorities while decreasing the state’s responsibility for direct service provision’ (Rosenman, 2017: 10).

The shift from official lending to sovereign states towards blended and private financing will further erode the policy space of countries, tying countries to terms and conditions established by official financiers *and* private financial actors. There are already concerns that the types of policy reforms required to encourage private investment and commercial finance – such as the deregulation and liberalisation of domestic financial markets and investment regimes – into developing countries will reduce the capacity to countries to deploy capital towards social and economic sectors that meet domestic productive and reproductive needs and remove the policy and regulatory tools for countries to deal with potential financial or debt crises that can occur with greater integration in to the global financial system (Rowden, 2019: 10–19; UNCTAD, 2019: 73–101).

This continuing depoliticisation of the development sphere in which decisions related to the financing or policymaking on international development and GPGs are ‘rendered

technical' so that the focus of interventions is less about addressing the broader systemic causes of global development challenges – including inequalities in economic opportunities and health and educational outcomes due to asymmetries and regulatory gaps in the international economic order or ecological crises from patterns of neoliberal production and consumption – but seeking operationally bounded solutions to a technically defined diagnoses of a development 'problem' (see Li, 2007b: 6–8; McCoy and Singh, 2014: 151–152). The deployment of 'innovative financial instruments' to respond to a problem of unequal allocation of global resources often result in these platforms being 'regulated according to a logic of opportunity rather than a politics of redistribution' where structural causes of poverty, inequality and exclusion are ignored in favour of less transformative measures to tackle the symptoms of such dislocations (Natile, 2019).

The depoliticisation of development at the global level translates into depoliticisation of public policy at national level. When governments sought to procure financing for public capital investments and essential services through official loans and grants from external financiers, these forms of financing remain mediated through the state and national budgetary and public policy priorities. The privatised financing agenda means such decisions are now made by external actors or between external actors and the executive arm of government. For example, terms of financing, such as under project and meso-level PPPs funded through DFIs, are often negotiated and agreed upon outside the purview of national legislatures or other spaces for political and judicial oversight of executive power (see for example, Tan and Cotula, 2018) while tapping into international impact investing markets means that financing is contingent on the interests and terms set by international investors and industry codes established externally. This can significantly reduce the space for political mobilisation and civic society representation on fundamental issues of allocation and distribution of economic and other resources.

Another consequence of the move away from official sector to blended and private finance is the potential weakening of the compact between the state and communities as the state transitions away from a funder of public services to a broker of public service investments delivered by private actors and/or a mediator of communities' access to public goods and services. As Moore demonstrates in relation to the donor branding of humanitarian aid to post-conflict states, the performativity of the state's role in providing essential goods and services to its populace is as important as its perceived efficacy in doing so by its citizens and residents (Moore, 2018). For the vast majority of people, and more acutely in developing countries, access to public goods and services, such as healthcare, education, water and sanitation, energy supply and transportation, are pivotal mechanisms through which they encounter the state. Thus, the 'ability of the state to provide public goods to its people and to receive credit for providing them plays an essential role in [establishing its] legitimacy' and sustaining its authority, particularly within fractured and recuperating democratic spaces, notably those transiting from conflict or disaster situations (Moore, 2018).

The accountability gaps at the international level also transfers responsibility for financial oversight to national levels, necessitating changes in the regulatory and administrative structures of resource and capacity-strapped developing countries to accommodate new exercises of public authority by private entities or reformulating public law and

administrative governance regimes to manage the shifting relationship between the state and private sector providers of public goods and services. As Feigenbaum and Henig have argued, '[i]n shifting responsibilities from government to market, privatisation potentially alters the institutional framework through which citizens normally articulate, mediate, and promote their individual and shared interests' with the impact of this 'institutional restructuring' falling differentially across different constituencies (Feigenbaum and Henig, 1994: 186).

At the same time, the construction of social and environmental accountability through private ordering regimes that underpin the SDG financing agenda has also enabled a discursive and operational shift from accountability frameworks that address harms caused by corporate and commercial actors to local communities to managing and mitigating these harms as corporate ESG risks to the private entity. The disciplinary force of this shift means that law and regulatory orderings under this new architecture addresses less the 'risk-to-people' than it does the 'risk-to-corporation' (Shamir and Weiss, 2012: 129). This process decentres communities from the processes of social investment and economic transformations that are purportedly aimed at improve their lives. Again, experience with audit regimes for global supply chains have shown that governance regimes designed primarily by private actors – corporate and non-profit actors, such as NGOs – rarely generate lasting or substantive material outcomes for communities but can instead create 'an illusion of governance effectiveness' that stabilise rather than resolve the problems created by corporate globalisation (LeBaron et al., 2017: 961).

Countries and communities have little or no say in how finance is channelled to them or under what terms and where such finance will be deployed. As Cutler argues, this shifts regulatory control 'from what was traditionally state-based, constitutionally backed, and socially embedded production to private hands' (Cutler, 2017: 89). This can lead to legal transplantation and policymaking through the backdoor where corporate actors have greater influence over the design and implementation of regulation than domestic policymakers and local communities (Lin, 2009), thereby displacing matters of public interest.

Conclusion

The governance changes that accompany the 'private turn' in development finance has broader implications for developing countries engagement with the global economy and the international and transnational law which sustains it. This operational shift towards the engagement of private non-profit and for-profit actors in international public financing has been accompanied by a redefinition of the purposes for multilateral and bilateral finance, particularly development finance. Audit culture as a fundamental component of the new assemblage of international development, creates new forms of the governance that complicates relationships between states, and between states and communities. The turn to standards and codes and indicators as the governing regime for private development finance is as much performative as well as regulatory. They signal to certain audiences a narrative and legitimises the broader shift towards privatised financial regimes and fragmented governance. As Power argues, '[a]udit is not simply a solution

to a technical problem; it also makes possible ways of redesigning the practice of government' (Power, 1997: 11).

The use of the aforementioned calculative practices in the governance of development finance is highly problematic and can undermine the objectives of the SDGs they purport to finance. Although these measures are in their infancy, the emergence of the web of regulatory indicators and audit regimes that are developing to monitor and assess countries' engagement with the SDGs, are beginning to constitute a complex framework of organising and managing countries' access to external finance. At the same time, the decentering of voices and interests of the population to whom SDG-finance is targeting is an outcome of the process of depoliticisation and technisation that has characterised its development and implementation and is leading to broader governance and substantive social and economic concerns. This has significant implications in a COVID-19 and post-COVID-19 global environment where developing countries are much more exposed and reliant than ever to the external financial exigencies. The framing of global development challenges as a technical problem requiring technical solutions abstracts these issues from political contestations over equitable distribution of global economic resources and limits the potential for radically reconstituting the international economic order to address systemic asymmetries.

Author's note

This paper was originally presented at the Workshop on New Frontiers in International Development Finance (NeF DeF), University of Humboldt, Berlin, 23–24 September 2019.

Acknowledgements

The author wishes to thank participants at the workshop, and to Daria Davitti, Annamaria La Chimia, Victor Tadros and Anil Yilmaz Vastardis for their comments and feedback on the paper. All errors and omissions remain her own.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This paper is based on research that has been supported by the Society for Legal Scholars (SLS) Research Activities Fund and the Institute for Global Sustainable Development (IGSD), University of Warwick. It also draws on discussions at the aforementioned NeF DeF workshop funded by an Independent Social Research Foundation (ISRF) discretionary award (2018–2019).

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Notes

1. See Tsingou (2015) on the idea of 'club governance' and below for further discussion.

2. At present, the OECD classifies ODA as resource transfers to developing countries and multi-lateral institutions from donor countries which are: (a) provided by official agencies; (b) aimed at the promotion of economic development and welfare of developing countries; and (c) concessional in character and convey a grant element of at least 25 percent (OECD, 2019). However, the OECD is currently reforming its statistical and measurement framework which will, among other things, change the way concessionality is measured so that higher thresholds are introduced for lending to countries in higher need and importantly for our purposes here, track 'ODA used to catalyse private sector investment in development' (OECD, 2019).
3. See for example, Mawdsley (2015).
4. The SDGs, implemented through Agenda 2030 are a set of development goals, targets and indicators which replaced the Millennium Development Goals (MDGs) when they expired in 2015. See: <https://www.un.org/sustainabledevelopment/development-agenda/>.
5. For example, the OECD estimates that investment needs for the SDGs to be around US\$3.3–4.5 trillion a year (OECD, 2016: 27), well above current aid levels of US\$153 billion in 2019 (Seggers, 2020: 6–7). This is likely to increase significantly with the economic shocks from COVID-19 with the UN estimating a need of US\$500 billion in ODA to fund emergency health and social relief services alone (Seggers, 2020: 6–7).
6. Despite efforts to harmonise and coordinate the mobilisation and disbursement of development finance over the years, and lobby for formal, external accountability mechanisms, much of the policymaking, regulation and supervision of development finance, including relating to the SDG financing agenda, remains largely conducted through non-binding, delegated platforms (see Dann, 2013: 217).
7. The HIPSO are a set of benchmark indicators governing IFI engagement with private entities agreed to by 25 IFIs: <https://indicators.ifipartnership.org/about/>.
8. The IFC's Performance Standards establish the responsibilities for IFC clients in the management of ESG concerns: https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards.
9. See <https://iris.thegiin.org/document/iris-and-giirs/>.
10. See <https://www.sasb.org/>.
11. See <https://impactmanagementproject.com/>.

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