

Introduction



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Abstract The 2030 Agenda's Sustainable Development Goals and international human rights are connected to each other in many different ways. The contributions of this volume analyse this interdependency by addressing each aspect from a more human rights-focused angle and a development-policy angle. The comparative approach underlying the contributions sheds light both on similarities and differences between these two dimensions and therefore provides a broader perspective on the relationship between development policy and international human rights protection.

More than a decade ago, the *Human Rights Quarterly* published an article with the illustrative headline “Ships passing in the night” written by *Philip Alston*, professor at New York University and meanwhile UN Special Rapporteur on extreme poverty and human rights.¹ The article described the relations—or, to be more precise—the ‘lack’ of relations between the human rights community and the development community: Both groups of scholars, politicians and activists work in many respects on the same issues and have similar objectives, but they hardly know of each other and therefore often act separately.

¹Alston (2005).

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Much of what *Alston* elaborated in his essay has not lost its topicality and validity. It is, however, doubtful whether the name-giving picture of the ships passing each other still fits today: At least since the adoption of the *2030 Agenda for Sustainable Development* in 2015 it is obvious that there are strong connections between human rights and the objectives of global development actors.² Already the preamble of this document explicitly states that “the 17 Sustainable Development Goals ... seek to realise the human rights of all”.

Moreover, several goals and targets of the *2030 Agenda* correspond to already existing individual human rights obligations. Sustainable Development Goal (SDG) 2.1., for instance, calls on countries to “end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round” by the year 2030. This goal basically reiterates the obligations spelled out in Article 11 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and in *General Comment 12* adopted by the UN Committee on Economic, Social and Cultural Rights (CESCR) to specify this provision. *General Comment 15* elaborates the closely related right to water, and SDG 6 reflects the Comment’s requirements for implementing this right. The new goals relating to global health (listed in SDG 3) roughly resemble the right to health that is enshrined in Article 12 ICESCR and further outlined in *General Comment 14*. SDG 4 closely relates to the right to education (Article 13 ICESCR and *General Comment 13*). The right to work is enshrined in Article 7 of the ICESCR and was further clarified 2 years ago in *General Comment 23*. In the *2030 Agenda*, it is reinforced in SDGs 4.4. and 8, which relate to employment.

Last but not least, the right to social security is of great importance. It is expressed in Article 9 of the ICESCR and is reiterated by the *2030 Agenda*, particularly in the goal to “end poverty in all its forms everywhere” (SDG 1). To that end, SDG 1.3 calls on states to “implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable”. This goal corresponds with the right to social security, which has also been explicitly acknowledged in the *Social Protection Floors Recommendation* adopted by the International Labour Organization (ILO) a few years ago.

The complete list of overlaps between the SDGs and internationally recognised human rights is much longer. Based on a thorough analysis of the *2030 Agenda* the Danish Institute for Human Rights concluded that 156 of its 169 targets (more than 92 %) reflect human rights and basic labour standards.³ Apart from the ICESCR, relevant human rights are defined in the *International Covenant on Civil and Political Rights* (ICCPR) and a variety of more specific human-rights conventions, like the conventions on the rights of women and children or the ILO conventions. They also

²On the following see Kaltenborn and Kuhn (2017); see also the Statement by the Committee on Economic, Social and Cultural Rights on “The pledge to leave no one behind: the International Covenant on Economic, Social and Cultural Rights and the 2030 Agenda for Sustainable Development”, UN-Doc. E/C.12/2019/1 of 5 April 2019.

³Danish Institute for Human Rights (2016).

have multiple connections to the objectives of the *2030 Agenda*. To give an example on equality, a core principle of the rule of law: Equal rights for women and men to the enjoyment of all civil and political rights set forth in the ICCPR (Article 3) is a long-standing demand but has been achieved only in very few countries until today. Therefore, SDG 5 calls on achieving gender equality by ending all forms of discrimination against women and girls everywhere and ensuring women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life. Taking on board the capacity and talents of half of the world's population could make a huge difference in solving urgent global problems.

Ensuring all these human rights is the duty of the states where the rights holders live. The *2030 Agenda* recognises this fundamental obligation too, when it states that "each country has primary responsibility for its own economic and social development". However, it is also well recognised that the global development goals will not be achieved without revitalising and expanding the Global Partnership. One implication is that official development assistance (ODA) will continue to be a prominent part of the effort. This intergovernmental aspect of the *2030 Agenda* (SDG 17) is also included in international human rights provisions. All of the above-mentioned *General Comments* refer to Article 2 para. 1 ICESCR, which obliges the state parties to take steps to realise the rights outlined. This can be done both "individually and through international assistance and co-operation, especially economic and technical".

The ICESCR duty to provide international aid is an expression of extraterritorial state obligations. Even beyond their own borders, states have an international responsibility to strive towards achieving the ICESCR goals. Hence (along with Article 56 of the UN Charter) the ICESCR is the primary hard-law basis for the Global Partnership. Although soft law still determines—at least to a certain extent—the actual scope of these support obligations as well as the thematic and country-specific allocation of duties, one can now assume that, at the latest due to the adoption of the *2030 Agenda*, the obligation to provide development aid or to engage in other forms of development cooperation does not only meet ethical requirements, but is indeed deeply rooted in international law.⁴

In the preparatory stage of the *2030 Agenda*, several UN human rights experts stressed the close link between human rights and development policy objectives: "Human rights norms and standards provide concrete guidance as to how goals and targets for the post-2015 development agenda should be framed. Governments have already committed to uphold human rights in numerous international treaties. Grounding development priorities in human rights is not only a legal and moral imperative, but can also enhance effectiveness and accountability."⁵ At the same time, Navi Pillay, former High Commissioner for Human Rights, emphasized: "(P)eople across the globe are demanding that human rights be at the centre of the

⁴Kaltenborn and Kuhn (2017).

⁵Statement by 17 Special Procedures mandate-holders of the Human Rights Council on the Post-2015 development agenda, 21 May 2013, <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13341&LangID=E>.

new development agenda. Around the world, in the 88 national consultations and 11 thematic UN consultations on the new agenda, in which more than a million people have participated, this has been the most emphatic and consistent demand.”⁶ It seems that this demand has been heard by UN officials, politicians and diplomats when they formulated the goals and targets of the new development agenda. However, the question arises as to what significance the strong emphasis on the human rights approach has for the actual implementation of the document.⁷

The present volume takes the interconnectedness of the *2030 Agenda*’s SDGs and international human rights as the starting point for deeper analyses of the various aspects of the interplay of sustainable development and human rights. The contributions to this volume address each aspect from a more human rights-focused angle and a development-policy angle. For the most part, this is achieved by one contribution focusing more on the human rights dimension of the issue and a corresponding contribution by a scholar with a stronger emphasis on the SDG aspects. In some cases, both perspectives are combined in the same article. In both cases, the comparative approach highlights similarities and overlaps as well as differences between the two dimensions and allows to close gaps which would remain if only one perspective would be at the center of the discussions.

The first aspect addressed concerns poverty reduction. *Hans-Otto Sano* asks how a human rights-based approach can contribute to poverty reduction by focusing on the relevance of human rights in SDG 1. He critically reflects on the tendency of human rights research to imbed poverty analysis and argues that research-based evidence on human rights and poverty reduction is only modestly available and can mostly be found in local studies. *Sano* suggests that experiences from human rights-based endeavours at the local level need to be taken into account when addressing how human rights-based approaches can contribute to the implementation of SDG 1. Positive examples concern cases of empowerment processes and improved equal access to services. New technology may also offer opportunities for empowerment of the poor and for greater rights-based accountability. *Sano* concludes that the struggles of social actors from below should be recognized and be given voice, even when human rights are discussed with a global perspective.

Following the focus on poverty reduction, the volume turns next to social protection and health-related issues. *Markus Kaltenborn* assesses the human rights framework for establishing social protection floors and achieving universal health coverage and therefore connects issues of social and health protection, while *Delanyo Dovlo* discusses the right to universal health coverage and the SDGs in Africa. *Kaltenborn* takes *General Comments No. 14* and *19* of the CESCR which specify the contents of the right to health and the right to social security as a starting point. He shows that the main challenges associated with the implementation of

⁶Keynote remarks, Open Working Group on Sustainable Development Goals, 6th Session Interactive exchange on “Human rights, the right to development, global governance”, 3 December 2013, https://www.ohchr.org/Documents/Issues/MDGs/SpeechASGforHC_13Dec2013.pdf.

⁷Cf. in this context also Winkler and Williams (2017) and Collins (2018).

these two human rights have been addressed in several major international policy initiatives and global partnerships. In this respect, the *2030 Agenda* contributes to the concretization of the rights to health and social security, because it expressly obliges the international community both to implement the concept of social protection floors and to ensure universal health protection. *Dovlo* in turn focusses on the right to health and the health implications of the SDGs in Sub-Saharan Africa. He shows that some countries have improved health services coverage by removing financial barriers. African countries also increased their health budgets. However, attaining health rights in Africa also requires ensuring access to quality health services, and building effective “voice” for populations to exercise their rights. While scarce resources may require rationing health services *Dovlo* points out that innovations and ICT technology can help realise access to health care for all.

As already mentioned, gender equality is a fundamental human rights principle and a cornerstone of the *2030 Agenda*. *Beate Rudolf* therefore looks at the relevance of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) for the Implementation of the SDGs while *Josephine Odera* and *Judy Mulusa* assess the prospects of the SDGs for gender equality and women’s empowerment. *Rudolf* recalls that CEDAW is the core international human rights treaty on women’s equality in all fields and produced a wealth of information on causes of discrimination against women, on gaps in implementing women’s human rights that prevent their full and equal participation in all areas of life as well as on successful strategies and instruments to address the structural causes of gender-based discrimination. *Rudolf* argues that CEDAW implementation can therefore be used for promoting gender-sensitive SDG implementation in light of synergies between the SDGs and CEDAW, in particular with respect to the national, regional, and global follow-up and review processes under the SDGs. *Rudolf* also points out that National Human Rights Institutions (NHRI) can play a crucial role in this regard. *Odera* and *Mulusa* proceed from the premise that the developmental and political goal of reducing gender inequalities remain largely unmet. They recall that the SDGs stand-alone goal on gender is more comprehensive than the earlier approach of the Millennium Development Goals (MDGs) and encompasses a potentially transformative commitment for the rights of women and girls. The authors ask if the agenda and the theory of change embedded in the SDGs are transformational for women and girls. They argue that the influence of the SDGs may be most significant in their ability to transform the idea of development from a purely economic approach to one that addresses the rights perspective. *Odera* and *Mulusa* show that gender equality is a cross cutting development issue that must be addressed in a multidimensional way for the rights of women and girls to become a reality and for the SDGs to deliver for women and girls as equal partners. They conclude by suggesting various instruments and mechanisms with the potential for transformative action.

Concerning the perspective of international labour rights and human rights of work in light of SDG 8, *Christoph Scherrer* takes a pessimistic view and argues that this goal will not be achieved. His main argument is based on the observation of the

abundance of persons offering their labour power in relationship to the limited demand for their labour which stems from the insufficient absorption of peasants set free from their land. *Scherrer* shows that in many late industrialising countries most of those who are leaving agriculture do not find gainful employment even at the current juncture. In fact, many of the late industrialisers are prematurely de-industrialising. In order to explain the lack of absorption capacity of industries and productive services *Scherrer* looks at demographic pressures, restrictions on migration, productivity differentials vis-à-vis the Global North and the few successful late industrialisers, constraints on the promotion of industry stemming from neoliberal globalization and challenges stemming from the colonial heritage such as the lack of societal trust.

Addressing and reducing inequality is a key human rights concern and also of great significance for the Agenda 2010. *Heike Kuhn* argues that growing inequality has a significant impact on societies and the potential to undermine democracy. Stressing that the global community has agreed for the first time ever on the goal to reduce inequality within and among countries (SDG 10), *Kuhn* provides an overview of the reduction of inequality from a legal-developmental perspective, discussing the social, economic and ecologic dimension of inequality, the reason behind the highly complex SDG 10, its genesis, the long-standing idea of international solidarity, progress reporting on this SDG, Germany's approach to implement SDG 10 and the road ahead.

The interplay and connection between the SDGs and human rights may not always be based on a liberal or progressive agenda as *Liora Lazarus* shows in her analysis of the "coercive sting" in SDG 16. *Lazarus* argues that SDG 16 is the latest symptom of the securitization of the rule of law and human rights—a process implying a shift in conception whereby human rights and the rule of law no longer embody limitations on the coercive state. Instead, these concepts are now also linked to demands for coercion, and ultimately law and order in fragile states. *Lazarus* suggests that the development movement itself may be part of this securitization process and warns of the implications of such a shift.

The relevance of environmental concerns and climate change for human rights and the SDGs is again addressed by two corresponding contributions. *Alan Boyle* looks at climate change and sustainable development from a general human rights perspective whereas *Imme Scholz* reflects on the right to development from the perspective of global environmental change and the 2030 Agenda. *Boyle* focusses in particular on the 2015 Paris Agreement which is intended to implement the SDGs approach to climate change. Climate change will also affect the enjoyment of human rights in many ways, but its causes and effects are too numerous and too widely spread to respond usefully to individual human rights claims. *Boyle* stresses that human rights law as a whole requires states to comply with the Paris Agreement and calls upon UN human rights bodies to act accordingly and hold states accountable in this respect. *Scholz* on the other hand departs from the observation that the conceptual and legal relationship between human rights, human development and

environmental protection is not straightforward. The *2030 Agenda for Sustainable Development* and the *Paris Climate Agreement* adopted in 2015 link improvements in human development to human rights and to mitigating global changes in climate and the environment. The *UN Declaration on the Right to Development* (UNDRTD) of 1986, however, does not include any explicit obligation to protect the natural environment, and to contribute to the provision of global environmental goods. *Scholz* therefore takes a closer look at this declaration and how it could be linked with global environmental change. Finally, *Scholz* proposes two concepts that could help to situate the UNDRTD within the challenges of the twenty-first century as exemplified in the *2030 Agenda*. First, humanity should be introduced as a third category of right-holders (in addition to individuals and groups) and second, the rights of life forms should be established to transcend the conceptual boundaries of human rights and develop norms that govern the interdependencies between humans as well as plants and animals in the broadest sense.

The last two contributions to this volume address horizontal issues which concern all SDGs and human rights. They relate to the role of public and private actors and to extraterritorial human rights obligations. *Jens Martens* assesses public and private actors and means to implement the SDGs and calls for reclaiming public policy space for sustainable development and human rights. Departing from the observation that the *2030 Agenda* declared that public finance has to play a vital role in achieving the SDGs, he recalls that in recent decades, the combination of neoliberal ideology, corporate lobbying, business-friendly fiscal policies, tax avoidance and tax evasion has led to a massive weakening of the public sector and its ability to provide essential goods and services and to fulfill its human rights obligations. *Martens* claims that the proponents of privatization and public-private partnerships (PPPs) use these trends to present the private sector as the most efficient way to provide the necessary means for implementing the SDGs. However, as experiences by affected communities have shown, privatization and PPPs involve disproportionate risks and costs for the public sector and can even exacerbate inequalities, decrease equitable access to essential services and jeopardize the fulfilment of human rights. *Martens* concludes that it is high time to counter these trends, reclaim public policy space and take bold measures to strengthen public finance and weaken the grip of corporate power on people's lives.

In the last contribution to this volume *Wouter Vandenhoele* looks beyond national borders and calls for a "division of labour" for sustainable development which builds on extraterritorial human rights obligations. He analyses the role to be played by external governmental and intergovernmental actors in bringing about sustainable development from a human rights perspective. *Vandenhoele* discusses the strengths and weaknesses of the right to development and extraterritorial human rights obligations, and identifies five challenges for human rights law: the legal status of the obligations to cooperate internationally; the distributive allocation of extraterritorial obligations; the triggers of extraterritorial human rights obligations; the scope

of the extraterritorial obligation to cooperate for development; and the ability of human rights law to engage with strong definitions of development, which take growth agnosticism as their starting point.

References

- Alston P (2005) Ships passing in the night. The current state of the human rights and development debate seen through the lens of the millennium development goals. *Hum Rights Q* 25:755–829
- Collins L (2018) Sustainable development goals and human rights: challenges and opportunities. In: French D, Kotzé LJ (eds) *Sustainable development goals. Law, theory and implementation*. Edward Elgar Publishing, Cheltenham, pp 66–90
- Danish Institute for Human Rights (2016) The human rights guide to the Sustainable Development Goals, <http://sdg.humanrights.dk/>
- Kaltenborn M, Kuhn H (2017) Acceptance, not enforcement – the legal implications of the UN-2030-Agenda and the Sustainable Development Goals. In: *Development and Cooperation (D+C)* April 2017, <https://www.dandc.eu/en/article/2030-agenda-largely-reflects-and-reinforces-existing-international-law>
- Winkler IT, Williams C (2017) The Sustainable Development Goals and human rights: a critical early review. *Int J Hum Rights* 21(8):1023–1028

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