Health and Human Rights through Development: The Right to Development, Rights-Based Approach to Development, and Sustainable Development Goals
by
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This chapter examines the evolution of sustainable human development as applied to health governance with grounding in a human-rights based approach (HRBA), drawing on international human rights norms and standards. Part 1 contextualizes the discernible paradigm shifts along this trajectory with an introductory historical overview, mapping the progression of the relevant development agenda and theories. Part 2 discusses the current state of the right to development, the 2030 Sustainable Development Agenda, and a rights-based approach to international development assistance. Part 3 is forward-looking, proposing the potential value for global health of a HRBA to development. A global commitment to sustainable human development, with explicit human rights content in institutional policies and practices is vital to address the challenges of climate change, poor governance, unjust power relations and political inertia, and to collectively build on the mutually reinforcing goals of health, human rights and development to improve the human condition on a global scale.

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Introduction

Development, health, and human rights share a commitment to promoting human wellbeing. From the development perspective, wellbeing means economic processes that improve people’s material and social conditions; from the health perspective, it means improving physical, mental, and social dimensions of human existence; and from the human rights perspective, it means ensuring human dignity and the elimination of repressive and oppressive processes. Thus, development is crucial to the realization of human rights in global health. The underlying assumption is that health advocates can advance their goals by applying a human rights-based approach to development (HRBA), achieving positive outcomes for population health. The HRBA applies international human rights norms and standards to address development problems and unjust distributions of power that impede development progress, including in the field of global health. It provides a framework to examine international health assistance and cooperation from wealthier countries to low-income countries. Beyond this rights-based approach to development, public health is rarely related to the right to development a collective right transcending the right to health’s focus on the individual and social determinants of health. The right to development offers public health actors an opportunity to work through development discourses to identify legal obligations and empowerment strategies that have the potential of changing the ways that states and international organizations allocate public goods for the public’s health.

This chapter discusses the role of human rights in applying development to the realization of a healthier population, examining the role of a HRBA to development and the right to development in improving public health, analyzing the neglect of human rights in the Millennium Development Goals (MDGs), and highlighting the civil society advocacy that led to enhanced attention to human rights in the Sustainable Development Goals (SDGs). It begins in Part I with an historical background of the evolving development agenda and theories underlying various approaches to integrating health and human rights concerns into development theory and practice. Part II elaborates on development practice by examining the current state of the right to development, the 2030 Sustainable Development Agenda, and a rights-based approach to international development assistance. Part III proposes explanations for the resistance to introducing human rights into development and the potential value for global health of overcoming this resistance, particularly to, realize the right to development and positive trends in developing SDG indicators. This chapter concludes that much has been achieved in moving development thinking from a narrow understanding of development as growth to a global commitment to sustainable human development in which health and human rights are vital approaches to address the challenges of climate change, poor governance, unjust power relations, and political inertia.

I. The theory and practice of human rights in development

Health and human rights relate to development only to the extent that development is understood as centered on meeting human needs and not just economic growth. Exploring the evolution of development thinking—from considering growth as an end to considering it as a means of advancing human wellbeing—requires consideration of an evolving focus
on eliminating poverty as a means of addressing needs of vulnerable populations. This focus on addressing the needs of people led historically to an effort to make development itself a human right through the right to development, yet this focus on human rights in development was minimized in the formulation of the 2015 Development Agenda and the MDGs.

A. Emergence of Human-Centered Development

In traditional economic theory, development focused on gross national product (GNP) growth (Lewis 1955) and transformation from traditional to mass consumer society (Rostow 1960), with the Industrial Revolution and colonialism largely responsible for divergent economic growth between industrialized Europe and North America and that of Asia, Africa and Latin America. Development economists in the 1960s began to criticize the exploitive relations forming dependency by formerly colonized countries struggling in poverty on the industrialized former colonial powers (Frank 1966). Development policy in the 1970s began to integrate human-centered elements—such as human capital, basic needs or human welfare—evolving into the “Human Development Approach” endorsed by the United Nation Development Program (UNDP) and the World Bank’s “Comprehensive Development Framework.”

Development came to be seen not as the acquisition of goods and services, but as “capabilities,” that is, the enhanced freedom to be and do what one values, with poverty being deprivation of basic capabilities (Sen 1998). Drawing on this capability approach, UNDP integrated human rights into its approach to sustainable human development (UNDP 1998), considering human rights and human development as mutually reinforcing approaches to realizing the goal of “human freedom” of people to “exercise their choices and to participate in decision-making that affects their lives” (UNDP 2001, 9). This close relationship between capabilities and human rights provides “a moral and humanly rich set of goals for development” (Nussbaum 2003, 36).

Although the capabilities approach influenced human development within UNDP, other parts of the international system were influenced by a neoliberal approach to international economics, maintaining that trade liberalization and market-based policies would increase economic growth and, hence, development as prosperity. This perspective is found, for example, in the G20, discussed below in Part II, C., where a resolutely pro-growth, neoliberal position avoids any mention human rights or human development. Thus, the emergence of a human development approach, prioritizing capabilities over growth as the aim of development, has not replaced the neoliberal understanding of development. The more complex reality is that governments send representatives to the G20 to argue for a growth-based approach reflecting neoliberal thinking, while other representatives of the same governments participate in the Human Rights Council, casting positive votes for the right to development, and others go to the World Trade Organization or the World Bank, resisting efforts to introduce human rights into decision-making on trade or lending policies, while still others participate in UNDP or the United Nations High-level Political Forum on Sustainable Development supporting human rights as the guiding principle of the development agenda.
In their operations, some governments and international actors apply a HRBA, which, utilizes international human rights standards to overcome the obstacles to meaningful human-centered development found in unjust distributions of power and discriminatory practices. The HRBA is both normative and operational in that it relies on standards that define a just social order to alter policies and practices of the political economy and health systems.

Another way of understanding the HRBA is that it shifts the focus of human-centered development from charity to rights, from top-down efforts to aid people suffering in poverty to recognizing people as rights-holders with entitlements. It promotes sustainable development by empowering people to participate in policy formulation and hold duty-bearers accountable.

B. The Right to Development

While a Human Rights-Based Approach (HRBA) pursues development with due attention to human rights, the right to development affirms a right to both achieve sustainable human development and benefit from human rights in development. The right to development traces its normative content to numerous principles of international cooperation reaffirmed in UN documents since World War II (UN 1990), but was not formulated as a distinct right until a 1972 lecture by Senegalese Judge Kéba M’Baye (M’Baye 1972). He argued that the right to development differed from that of international development law by providing the legal basis for the obligation to improve living conditions of people, which is otherwise justified economically, politically, strategically and morally. The time had come, he argued, for this right to be recognized by the UN.

Drawing from the ideas reflected in that lecture and the political momentum to declare a New International Economic Order (NIEO), the UN Commission on Human Rights, with Senegal as its chair, requested a study in 1977 on “the international dimensions of the right to development as a human right.” The political climate was tense as developing countries sought to create a NIEO in order to address what the UN General Assembly (in its resolution 32/130) called the “continuing existence of an unjust international economic order which constitutes a major obstacle to the realization of economic, social and cultural rights in developing countries.” These developing countries, most of which were former colonies that had coordinated their political positions as member of the Non-Aligned Movement (NAM), were frustrated with the Cold War rivalry dominating international relations, and supported codifying obligations for economically dominant countries to accept (1) greater responsibility to eliminate the structural causes of poverty, (2) larger payments for raw materials extracted from developing countries, (3) additional aid, and (4) improvements to trade terms in favor of developing countries (Salomon 2010).

After the aforementioned study on the international dimensions of the right to development was completed in 1979, the Commission on Human Rights requested the secretariat to prepare several other studies and created a working group. The group prepared the draft that was amended by the UN General Assembly which finally proclaimed in 1986 the UN
Declaration on the Right to Development.¹ This declaration defines development, commits to international peace and elimination of massive human rights violations, and enumerates rights, duties, and courses of action of individuals and states to realize this right. As a General Assembly resolution, it carries moral authority but creates no legal obligations to transfer resources from North to South and codifies no specific obligations regarding any issues in the Declaration (Marks 2004, 2010). Without the formal codification of this right, North-South tension continued over whether the right to development implies that dominant economic powers have legal obligations to change the “unjust international economic order” and whether the declaration should be transformed into an international treaty.

Case Study: A Short-lived Fresh Start for the Right to Development

Several right to development implementation working groups established in the 1980s and 1990s did not change development practice. One bright spot was the Global Consultation on the Realization of the Right to Development in 1990, which recommended criteria for measuring progress and action by states and intergovernmental bodies. In 1998, a breakthrough occurred when the Commission on Human Rights established an open-ended working group (OEWG) to monitor progress and an Independent Expert (IE) to study the current state of right to development implementation. Arjun Sengupta, a prominent Indian economist, served as IE from 1999 to 2004, was subsequently appointed IE on Human Rights and Extreme Poverty and then elected chair of the OEWG until his passing in 2010. Sengupta’s work revitalized understanding of the right to development as a “right to a process that expands the capabilities or freedom of individuals to improve their well-being and to realize what they value.” As OEWG chair, Sengupta collaborated closely with the Task Force and the OHCHR secretariat. This collaboration resulted in a comprehensive, though short-lived, evidence-based and non-political approach. As explained below, the Human Rights Council continues to receive reports from the OEWG and the new Special Rapporteur and the General Assembly regularly adopts a resolution with significant numbers of negative votes and abstentions, reflecting the return to a highly politicized consideration of this right. There is no longer the effective collaboration of outside experts, the secretariat and politically influential members of the OEWG to avoid this stale process.

C. The Millennium Development Goals

Despite these early efforts to advance both a rights-based approach to development and a right to development, efforts failed to include a human rights-based approach in the Millennium Development Goals (MDGs) (Marks 2014). The MDG process began by linking human rights and development in the 2000 Millennium Declaration, including the

¹ The Declaration was adopted on 4 December 1986 as Resolution 41/128 by a vote of 146 in favor, 1 against (USA), and 8 abstentions (Denmark, Finland, Germany, Iceland, Israel, Japan, Sweden, UK).
statement: “We, heads of State and Government, … are committed to making the right to development a reality for everyone and to freeing the entire human race from want,” as well as the commitment to “spare no effort to promote … respect for all internationally recognized human rights.” (UN General Assembly 2001, para. 24). However, when the chief advisors to the Secretary-General sought to translate the commitment to eliminate poverty in the Millennium Declaration into measurable targets and goals, using the model of the OECD’s 1996 International Development Goals, they de-linked human rights and development and drafted the MDGs in 2001. One scholar explained this de-linking as the result of the MDG focus on quantification through targets and indicators which created “a narrative of development that was strangely alien to the vision of the Millennium Declaration for a people-centered development motivated by universal values of equality, respect for nature, solidarity and freedom.” (Fukuda-Parr et al. 2014). Another described the MDGs and human rights mechanisms as “ships passing in the night,” noting the paradox “that the HR community, which has been so quick to criticize the reluctance of development agencies to take human rights considerations on board, has itself shown a significant degree of obstinacy when it comes to making the necessary outreach to ensure that its own agenda is effectively promoted within the context of the international community’s development agenda.” (Alston 2005)

The UN High Commissioner for Human Rights drew further attention to the relationship between the MDGs and human rights by disseminating charts on the intersection of human rights treaty obligations and the MDGs and an exhaustive analysis of how human rights can contribute to the MDGs (OHCHR 2008). Similarly, UNDP published a primer called Human Rights and the Millennium Development Goals: Making the Link (UNDP 2007), and various international organizations and national development agencies published their own human rights approaches to MDGs.²

Under pressure from civil society prior to the 2010 MDG Summit, governments adopted an outcome document, “Keeping the Promise,” (UN General Assembly 2010a), which recognized the integral role of human rights in achieving the MDGs, especially on issues of universal access to primary health care. Subsequently, the 2012 UN Conference on Sustainable Development (Rio+20) produced an outcome document called “The Future We Want.” This document launched the process of developing the Sustainable Development Goals (SDGs). In focusing on the next global agenda for development, it referred to “respect for all human rights, including the right to development” and state responsibility to “protect and promote human rights and fundamental freedoms for all” (UN General Assembly, 2012a, para 9). The High Commissioner proclaimed:

² In 2004, twenty-one heads of UN departments and agencies adopted the Action 2 Plan of Action, which, fully operational from 2006 to 2009, supported more than sixty UN country teams, introduced HRBA in training of staff, and created an “HRBA Practitioners’ Portal on Human Rights Based Approaches to Programming” (OHCHR 2007).
[A] few short months ago, human rights were virtually absent… Today, the centrality of human rights in the international community’s conception of sustainable development has been affirmed (OHCHR 2012).

This effort to overcome the shortcomings of the 2015 Development Agenda and resolutely integrate human rights into the 2030 Development Agenda was sustained and proved successful, as will be explained below.

II. Using SDGs, the Right to Development and Development Cooperation to Advance Human Rights and Health

This part will address the place and significance of health and human rights in the 2030 Development Agenda, the current state of thinking and practice on how the right to development can promote public health, and the framing of human rights mainstreaming in bilateral and multilateral development agencies.

A. Health and Human Rights in the SDGs

After over a decade of tense policy debate between technocratic officials promoting the MDGs and the normative approach of human rights advocates (Alston 2005; Darrow 2012), a post-2015 development agenda emerged and was adopted by the UN General Assembly in a resolution entitled “Transforming our world: the 2030 Agenda for Sustainable Development,” enumerating 17 SDGs and 169 targets. These sustainable development goals (SDGs) to “transform our world” are:

GOAL 1: No Poverty
GOAL 2: Zero Hunger
GOAL 3: Good Health and Well-being
GOAL 4: Quality Education
GOAL 5: Gender Equality
GOAL 6: Clean Water and Sanitation
GOAL 7: Affordable and Clean Energy
GOAL 8: Decent Work and Economic Growth
GOAL 9: Industry, Innovation and Infrastructure
GOAL 10: Reduced Inequality
GOAL 11: Sustainable Cities and Communities
GOAL 12: Responsible Consumption and Production
GOAL 13: Climate Action
GOAL 14: Life Below Water
GOAL 15: Life on Land
GOAL 16: Peace and Justice Strong Institutions
GOAL 17: Partnerships to achieve the Goal

Whereas the MDGs make no reference to human rights, the SDGs contain 14 such references. The prominence of human rights in the SDGs followed sustained efforts during high-level panel and working group sessions established to prepare proposals on the SDGs
in consultation with relevant stakeholders from civil society, the scientific community and the UN system. These efforts proved successful since the resolution on “Transforming our world” strongly affirms the importance of human rights in the post-2015 development agenda in several paragraphs:

3. We resolve, between now and 2030, to end poverty and hunger everywhere; to combat inequalities within and among countries; to build peaceful, just and inclusive societies; to protect human rights and promote gender equality and the empowerment of women and girls; and to ensure the lasting protection of the planet and its natural resources

...  

8. We envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity.

...  

10. The new Agenda is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law. It is grounded in the Universal Declaration of Human Rights, international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome. It is informed by other instruments such as the Declaration on the Right to Development.

...  

19. We reaffirm the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law. We emphasize the responsibilities of all States, in conformity with the Charter of the United Nations, to respect, protect and promote human rights and fundamental freedoms for all… (UN General Assembly 2015b).  

The final product not only contains strong language on human rights but also on global health. For example, one paragraph states “To promote physical and mental health and well-being, and to extend life expectancy for all, we must achieve universal health coverage and access to quality health care.” It also refers to reducing newborn, child and maternal mortality, universal access to sexual and reproductive health-care services, fighting malaria, HIV/AIDS, tuberculosis, hepatitis, Ebola and other communicable diseases and epidemics, and prevention and treatment of non-communicable diseases. (UN General Assembly. 2015b, para. 26).

The above quotations from the official text adopting the SDGs are worthy of attention because they underscore that health and human rights are more than an important area of concern of the international community – they are an integral part

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3 Additional references are found in paragraphs 20, 29, 35, in Goal 4.7 on education, in paragraph 67 on business and human rights, and in paragraph 74.
of how governments of the world agree to protect natural resources and to overcome the causes of poverty and inequality. It is not surprising that the UN called it a “bold and transformative plan of action [which] over the next 15 years could shift the world onto a sustainable and resilient path” (ECOSOC 2016a).

B. The Potential of the Right to Development for Public Health

Despite efforts by academics and UN experts to clarify its meaning, the right to development has been less successful than a HRBA or the right to health at providing practical guidance for development activities. Efforts since 1979 to translate the right to development into meaningful development practice have been fraught with deep political divisions relating to aid effectiveness and national ownership, trade and investment, and lack of policy coherence and incentives to take practical steps. From 2005 to 2010, the IE and the High-Level Task Force sought to operationalize the right to development. The final product provided a set of attributes, criteria, operational sub-criteria, and indicators, aimed at clarifying responsibilities of decision-makers in government, international institutions, and civil society for planning, implementing, monitoring, and assessing their development-related policies, projects, and processes (HRC 2010b). In its 2010 report to the OEWG, the High-Level Task Force defined the right to development as “the right of peoples and individuals to the constant improvement of their well-being and to a national and global enabling environment conducive to just, equitable, participatory and human-centred development respectful of all human rights” (UN General Assembly, 2010b) and clarified the right to development’s utility through three attributes relating to policy, process, and outcomes:

1. “a comprehensive and human-centred development policy,”
2. “participatory human rights processes,” and
3. “social justice” outcomes in terms of fair distribution of the benefits and burdens of development.

The Task Force also provided criteria, sub-criteria, and indicators for each attribute to further specify what is expected of national and international development policy and practice conducive to the realization of the right to development. All three attributes involve health-related criteria. For example, Table 1 lists the sub-criteria and indicators of the first criterion of the first attribute, showing the relevance to health.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Sub-criteria</th>
<th>Indicators</th>
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<tbody>
<tr>
<td>1 (a) To promote constant improvement in socio-economic well-being</td>
<td>1 (a) (i) Health</td>
<td>Public expenditures on primary health; life expectancy at birth; access to essential drugs; low birthweight babies; child mortality; HIV prevalence; births attended by skilled personnel</td>
</tr>
<tr>
<td></td>
<td>1 (a) (ii) Education</td>
<td>Public spending on primary education; school enrolment rates; school completion</td>
</tr>
<tr>
<td>Criteria</td>
<td>Sub-criteria</td>
<td>Indicators</td>
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<td></td>
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<td>rates; international scores for student achievement</td>
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<tr>
<td>1 (a) (iii) Housing and water</td>
<td>Public expenditure on public service provision; access to improved drinking water and sanitation; homelessness rate; cost of housing relative to income; slum populations</td>
<td></td>
</tr>
<tr>
<td>1 (a) (iv) Work and social security</td>
<td>Long-term unemployment; involuntary part-time employment; public expenditure on social security; income poverty rates below national and international lines</td>
<td></td>
</tr>
<tr>
<td>1 (a) (v) Food security and nutrition</td>
<td>Child stunting rates</td>
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</table>

Attributes 2 and 3 measure progress in a similar manner. Attribute 2, for example, relates to an “enabling environment” for the right to development, with a sub-criterion on “global health governance” and indicators including “explicit reference to human rights, prioritization of marginalized groups, measures to control corruption, genuine participation and voice of affected populations, monitoring and redressing violations of human rights, and ensuring transparency, accountability, and non-discrimination.” Attribute 3 relates to social justice with a sub-criterion on “health governance program contribution to social justice in development” and indicators on “equality of opportunity in health; equality of access to resources and public goods; reducing marginalization of least developed and vulnerable countries; safety nets to provide for the needs of vulnerable populations in times of natural, financial or other crisis; [e]limination of sexual exploitation and human trafficking, child labour, and slum housing conditions” (HRC 2010).

The Human Rights Council thereafter instructed the OEWG to “revise and refine the draft criteria and operational sub-criteria” (UN General Assembly 2012b, para 8) and to elaborate “a comprehensive and coherent set of standards for the implementation of the right to development” (Ibid, para 9b). The OEWG Chair-Rapporteur attempted to apply the SDGs to the right to development through a set of four new “Standards for the implementation of the right to development,” which called for state cooperation (HRC 2016a). Most relevant to health governance was Standard 4, calling for international cooperation in the context of SDG 3 “to overcome transnational epidemics such as tuberculosis, malaria, hepatitis, AIDS and other communicable diseases” and to achieve “universal health coverage and access to quality, essential health-care services, including access to safe, effective, quality and affordable essential medicines and vacancies” (Ibid., para. 37). In 2016, the General Assembly appointed a Special Rapporteur on the right to development (HRC 2016c) with a mandate, *inter alia*, to promote, protect and fulfill the right to development “in the context of the coherent and integrated implementation of the 2030 Agenda for Sustainable Development” and to contribute to the Working Group (HRC 2016c, para. 14a). It is yet unclear whether these actions will advance the effort to move
the right to development from political rhetoric to development practice in ways that reduce the structural causes of poverty.

C. Health and Human Rights in Development Cooperation

Development cooperation is a broad term that describes all forms of support to developing countries to help them meet basic needs and advance wellbeing of their citizens, including correction of extreme international inequalities and supporting improved access to international public goods. Official development assistance (ODA) and other forms of financial aid are part of international development cooperation, which includes a wide range of activities which support national or international development priorities favoring developing countries, especially the poorest. These cooperative relationships recognize developing country “ownership,” which means respecting recipient country sovereignty in guiding national developing strategies rather than dictation by outsiders. The principal agents of this technical and financial assistance are bilateral and multilateral development agencies, including South-South and Triangular cooperation, which prioritize health and human rights in different ways, summarized below.

1. Bilateral Development Cooperation

The vast majority of ODA comes from bilateral sources, that is foreign aid from affluent countries to poorer counties. Donor countries agreed in a 1970 UN General Assembly resolution to try to reach a minimum 0.7% of their GDP as ODA but only Sweden, Norway, Luxembourg, Denmark, Netherlands and the United Kingdom have met that goal. A larger group of donor countries have developed national aid policies that integrate human rights into their ODA.4

In order to coordinate the policies of donor and recipient countries, ministers or senior officials of some 85 developed and developing countries and heads of 20 bilateral and multilateral development agencies adopted the Paris Declaration on Aid Effectiveness, in 2005 (OECD 2005). The Paris Declaration outlined five overarching principles of ownership, alignment, harmonization, managing for development results, and mutual accountability.

Human rights were not mentioned in the Declaration, however, prompting OECD to argue for using human rights to broaden its scope of commitments and indicators on mutual accountability. The leading institution that coordinates bilateral development assistance is the Organisation for Economic Co-operation and Development’s Development Assistance Committee (OECD-DAC). In spite of strengthened commitment to human rights objectives by OEDC-DAC efforts, two key problems remain for the application of a HRBA through this mechanism: “the lack of a common approach to human rights and the absence of

4 Examples of bilateral policies and programmes applying a human rights-based approaches to development are found in Sweden, the UK, Germany, Austria, Australia, Canada, the Netherlands, the United States, Switzerland, New Zealand, Norway, and Ireland (OECD and World Bank 2016).
sustained increases in ODA volume.” (Hammonds and Ooms 2018, 407). It is also worth considering whether collective definition of objectives such as by OECD-DAC advances a HRBA to health and human rights any better than national aid policies. The former approach is exemplified by OECD-DAC's “Action-oriented policy paper on human rights and development,” which acknowledges “the vital role human rights play in mobilising social change; transforming state-society relations; removing the barriers faced by the poor in accessing services; and providing the basis for the integrity of information services and justice systems needed for the emergence of dynamic market-based economies.” (OECD 2007) It also enumerated ten “Principles for promoting and integrating human rights in development.”

Of particular significance for the health dimension of international development cooperation is the International Health Partnership Plus (IHP+), which was created in 2007 to apply the Paris Principles in health ODA (IHP+ 2016). This partnership in coordinating aid has grown over time to include 66 partners who promote development cooperation in 60 countries and have incorporated the SDGs, primarily SDG 3 on health. In September 2016, IHP+ established the International Health Partnership for Universal Health Coverage 2030 (UHC2030), which seeks to improve coordination of health systems strengthening (HSS), promote adherence to IHP+ principles in aid receiving countries, enhance accountability for progress toward HSS for UHC and advocate for more resource allocation to HSS (Hammonds and Ooms 2018, 413-414).

Positions on human rights in aid effectiveness have evolved through various high level follow up meetings to the Paris Declaration. For example, the Busan Partnership for Effective Development Cooperation, adopted by the Fourth High Level Forum on Aid Effectiveness, refers to “agreed international commitments on human rights, decent work, gender equality, environmental sustainability and disability” (OECD 2011, para 11). It also recognizes the vital role of civil society organizations “in enabling people to claim their rights” (Ibid., para 22) and calls for a new Global Partnership for Effective Development Co-operation (GPEDC) to “ensure accountability for the implementation of commitments at the political level” (Ibid, para 36). At its 2016 high level meeting in Nairobi, GPEDC embraced the SDGs as central to its work, and expressed its commitment “to galvanize governments, civil society and other actors into the ‘gear change’ needed to accelerate SDG implementation at the country level and globally.” Like the Busan Partnership, the Nairobi Partnership refers to “our agreed international commitments on human rights, decent work, gender equality, environmental sustainability and disability,” acknowledging them as “critical means of implementation for the realisation of the 2030 Agenda.” (GPEDC 2019, para. 7) This mention of human rights is minimal compared to the OECD-DAC Action-oriented policy paper of 2007 and health is almost completely neglected, with only a brief mention of the “gains that can come from the demographic dividend through improved policies for youth employment, education and health.”

Given this trend in the GPEDC context to link aid effectiveness to SDG implementation and minimize the significance of health and human rights, it is more effective to link bilateral ODA to health and human rights in the context policy setting by the individual donor countries. The collective definition of health and human rights objectives of ODA
through efforts like GPEDC is thus less valuable than the policies and practises of national agencies for international development. For example, health, water and sanitation appear among the thematic areas of the HRBA of the Swedish International Development Agency (SIDA) (SIDA 2015a). It defines the purpose of its HRBA to health as the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (right to health) and other health-related human rights (SIDA 2015b). The bilateral policies—whether collectively defined by OECD-DAC or defined by individual donor countries—remain the main vehicle for applying a HRBA to development. To complete the picture, we need to examine multilateral development cooperation as well.

2. Multilateral development cooperation

Multilateral development cooperation refers to the lending and spending of international institutions consisting of numerous national governments (such as the World Bank and its sister institutions, including the International Development Association-IDA and the International Monetary Fund-IMF) that decide collectively on policies and resource allocation for development projects that tend to be on a larger scale than those of individual bilateral donors, although the total contribution to development cooperation is less than that of bilateral donors.

The relations between multilateral development actors and human rights range from a neoliberal agenda focused on finance and growth with no concern for human rights, at one end of a continuum, to full integration of human rights into development cooperation, at the other end. Towards the human rights end are financial institutions with a concern for poverty reduction and agencies that have adopted a human development approach. At the human rights end are agencies with explicit engagement with human rights on development issues. Some examples will clarify this continuum of human rights in multilateral development cooperation. At the neoliberal end of this continuum, we find the Ministers of Finance and Governors of Central Banks, meeting as the Group of Twenty (G20), that is, the leaders from 19 relatively wealthy countries and the EU, whose sessions address international economic cooperation. Despite representing around two-thirds of the world’s population and 80 per cent of world GDP, the approach of the G20 to development focuses resolutely on growth, without mentioning human rights or human development. The focus on global financing and participation of several authoritarian governments may explain this aversion to acknowledging the links between human rights and development.

Multilateral ODA is more attentive to human rights in institutions with a formal commitment to eliminating poverty. As the case study below recounts, the World Bank (WB), whose official purpose is ending extreme poverty and building shared prosperity, has had a chequered history of resisting and reluctantly addressing human rights in its funding of development (Mac Darrow 2006). The WB has begun to shift from staunchly

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5 The members are Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Republic of Korea, Republic of South Africa, Russia, Saudi Arabia, Turkey, United Kingdom, United States of America.
resisting to reluctantly addressing human rights in its financing of development and it has a global strategy for health, nutrition and population, through which it supports countries’ efforts to achieve universal health coverage and provide quality, affordable health services for all.

**Case Study: Human Rights Influence Health Financing in the World Bank**

The World Bank was long reluctant to consider human rights in its work, initially as a result of its interpretation of its Articles of Agreement, which dictate that it “shall not interfere in the political affairs of any member” and must base its decisions only on “economic considerations.” Nevertheless, according to an insider, an “increasingly permissive view” has emerged among the economists, which “acknowledges the substantive interrelatedness of human rights and development,” and “The World Bank’s approach to human rights can be characterized as broadly supportive of human rights discourse without being explicitly, systematically, or strategically engaged in it.” (McInerney-Lankford and Sano 2010) However, in 2015, the Special Rapporteur on human rights and extreme poverty described the WB as a “human rights-free zone” which is “unable to engage meaningfully with the international human rights framework” (Alston 2015). Others have identified the period of resistance to human rights in the WB as from 1945 to 1990, followed by a decade of enhanced willingness to consider human rights, under the presidency of James D. Wolfensohn. When he was replaced by Paul Wolfowitz and then Robert B. Zoellick this willingness declined, in spite of the creation in 2008 of the Bank’s Nordic Trust Fund (NTF) to inform staff on “how human rights relate to the Bank’s core work.” Matters did not improve as much as was hoped after the appointment in 2012 of Jim Yong Kim, a medical doctor known for his advocacy for health and human rights of the poor. There remain, nevertheless, “entrenched institutional challenges” for the WB to support human rights for global health. (Shawar and Ruger 2018)

Returning to a concept of a continuum of human rights in development cooperation, the human rights end of the continuum is best represented by the reform of the UN’s development agenda by the UN Development Group (UNDP), which in 2003 led an inter-agency workshop that adopted a “The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies” (UNDG 2003). This document became a standard reference for translating human rights commitments of member states into development cooperation policies and projects of UN agencies, funds, and programmes. From 2003 to 2009 it took the form of “Action 2 Global Programme on human rights strengthening,” which integrated human rights into humanitarian, development, and peacekeeping work throughout the UN system, supporting over 60 UN country teams and their national partners in capacity-building to integrate human rights into their work, including issuing the UN Common Learning Package on Human Rights-Based Approach (HRBA). In late 2009, the UN Development Group Human Rights Mainstreaming Mechanism (UNDP-HRM) replaced Action 2 with the overarching objective “to further institutionalize human rights mainstreaming efforts in the UN development system and to strengthen system-wide coherence,” including a UN Practitioners Portal on Human Rights Based Approaches to Programming (HRBAP) and a Multi-Partner Human Rights Mainstreaming Trust Fund. UNDG-HRM was replaced in
January 2015 by the UN Development Group’s Human Rights Working Group (UNDG-HRWG), consisting of 18 agencies of the UN system, which continues “to integrate human rights in the UN’s development work.” The UNDG-HRWG continues to disseminate the UN Inter-agency common learning package (CLP) on human rights-based approach (HRBA), which seeks to guide UN staff in applying a HRBA to UN common country programming.

3. South-South and Triangular Cooperation (SSC)

In contrast to the above North-South cooperation, South-South cooperation (SSC) is defined as “a process whereby two or more developing countries pursue their individual and/or shared national capacity development objectives through exchanges of knowledge, skills, resources and technical know-how, and through regional and interregional collective actions” (UNDP, n.d.). Building on the 1978 Buenos Aires Plan of Action (BAPA), a High-level United Nations Conference on South-South Cooperation took place in Nairobi in December 2009 (UN 2009), followed by the second SSC conference (BAPA+40) in Buenos Aires in March 2019. While the first BAPA did not mention human rights, the 2019 BAPA+40 outcome document states that “[g]ood governance, rule of law, human rights, fundamental freedoms, equal access to fair justice systems, and measures to combat corruption and curb illicit financial flows will be integral to our efforts” (BAPA+40, para. 14).

In summary, while the health and human rights content of the SDGs and the right to development, described in Part II A. and B. above, are valuable for understanding policy options, the operations of international development cooperation provide evidence of how resources are actually allocated. To understand the tensions between policy and operations, we need to examine the sources of resistance to introducing human rights into development.

III. Sources of Resistance to Introducing Human Rights into Development

Despite these advances, development practitioners may shy away from human rights because they conjure up a confrontational “naming and shaming” approach used by advocacy organizations, whereas multilateral and bilateral agencies seek to advance their health programs through negotiation, training, technical assistance and financing. This reluctance to disrupt development cooperation through human rights has presented numerous challenges to the application of the rights-based approach to development and the operationalization of the right to development, including the difficulties in revising development indicators to be more attentive to human rights concerns and the “political theatre” limiting the potential of the right to development. Regarding the SDGs, the progress in integrating health and human rights has been more promising, although there continues to be resistance to adopting the tools of measurement and evaluation to these dimensions of sustainable development.
A. “Political Theater” of the Right to Development

Given the political obstacles to development and implementation of the right to development, the challenge is to reconcile contrasting positions of donor and recipient states. The latter often voice concerns about the negative impact of international trade, unequal access to technology, and the crushing debt burden; they favor the idea of an international convention to establish binding obligations to realize the right to development, and challenge the use of indicators to measure progress in implementing the right to development. The donor community usually sees the right to development’s potential to improve the governance and rule-of-law performance of recipient states, but often press for this without seeking new binding legal obligations. The UN High Commissioner for Human Rights voiced this critique of the process:

[While] generating plenty of academic interest and stimulating political theatre, that debate has done little to free the right to development from the conceptual mud and political quicksand in which it has been mired all these years (Pillay 2013a, iii).

This political theater revealed major obstacles to progress for the right to development: (1) structural impediments to global economic justice, which UN human rights mechanisms are unable to change; (2) resistance from states and relevant institutions to addressing trade and lending from a right to development perspective; (3) resistance by some states to the use of measurement tools; (4) lack of policy coherence and incentives to move from commitment to practice; and (5) politicization of the necessary balancing of national and international responsibilities to realize the right to development (OHCHR 2013a, 479-484)). Because of these obstacles, states have failed to incorporate this right into decision-making with international partnerships aimed at poverty reduction.

Without an explicit mandate under international law, inclusion of the right to development into national and international the economic policies and programmes that affect public health is unlikely. Most poverty reduction strategies are based on political and legal commitments with clear incentives to comply with standards and procedures, often resulting in targeted funding or debt forgiveness; however, the right to development has no such incentives or legally-binding commitment. The right to development is guaranteed in two regional human rights treaties—the African Charter on Human and Peoples’ Rights and the Arab Charter on Human Rights—yet the prospects for an international treaty and international monitoring are dim.⁶ The right to development is the most systematic human rights framework for addressing issues of development at the normative level, but it

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⁶ No institutions monitoring treaty implementation held states parties accountable until the African Commission on Human and Peoples’ Rights issued its landmark decision concerning the violation of the right to development through eviction of an indigenous group from a Kenyan wildlife reserve. (African Commission on Human and Peoples Rights 2009a). The African Charter was also deemed violated by the Republic of Sudan through attacks and forced displacement of the Darfurian people (African Commission on Human and Peoples Rights 2009b).
remains too broad in scope and too demanding of structural change to impact development policy and practice.

B. Rights-Based Indicators of Sustainable Development

Development professionals in bodies like the World Bank or the UN’s Department of Social and Economic Affairs (DESA) have developed indicators to assess progress in achieving development goals, yet these indicators were not conceived to measure progress in respecting human rights in development. Of course, there were methodological problems in designing indicators that could meaningfully measure progress in realizing, for example, rights to education, health, and food (UNDP 2000). This effort to rethink human rights obligations in terms of indicators in fact began with the right to health and the interpretation of that right by the Committee on Economic, Social and Cultural Rights (CESCR) in its 2000 General Comment No. 14, where the Committee advised states parties that “National health strategies should identify appropriate right to health indicators and benchmarks,” drawing on the work of WHO and UNICEF for that purpose (CESCR 2000, para. 57) The Special Rapporteur on the Right to Health, Paul Hunt, carried this process further by declaring in his 2006 report “there is no alternative but to use indicators to measure and monitor the progressive realization of the right to the highest attainable standard of health.” (OHCHR 2006b, para. 29) He distinguished typical health indicators used in public health from human right indicators by noting that the latter are linked to an explicit right to health norm; that they are “disaggregated by at least sex, race, ethnicity, rural/urban and socio-economic status;” and that they are supplemented by additional indicators that monitor essential features of the right to health.” (Ibid, para. 49). Significantly, he clarified and defined structural, process and outcome indicators, which have been used in numerous subsequent efforts to define human rights indicators, including, as was mentioned above in section II, B, for the right to development. (Ibid., paras. 53-57)

Both the World Bank and the OHCHR have published valuable guides on human rights indicators for development. The World Bank study reviews a wide range of efforts to measure human rights and development performance, using both “compliance measurement” (respect for principles and rights, either in negative or positive terms) and “performance assessment” (indicating processes toward goals) (McInerney-Lankford 2010, 21). The study then examines “how human rights are integrated into development and what role human rights indicators play in this process.” The OHCHR study defines human rights indicators as “specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights” (OHCHR 2012b, 16). Both use policy process and outcome indicators and explore the potential and difficulties of utilizing human rights indicators. Bridging the gap between traditional tools of measuring development and robust indicators of human rights contributions to development, these two studies (among others) have demonstrated how far the approaches of development economics and human rights advocates have moved from a dialogue of the deaf to mutually reinforcing paradigms. The problem is that these exemplary efforts have not transformed the professional practice of development economics. It is not surprising,
therefore, that this tension is being played out in the context of the elaboration of SDG indicators.

At the time of the adoption of the 2030 Development Agenda, the OHCHR expressed its concern that “[a] human rights-sensitive SDG indicator framework is needed, to monitor progress for all people, everywhere.” OHCHR specifically recommended that “[d]ata should be collected and disaggregated by all grounds of discrimination prohibited under international human rights law, which will require developing new partnerships, methods and data sources, including non-traditional data sources and data gatherers including civil society.” (OHCHR n.d.)

**Case Study: Human Rights-Based Criteria for SDG Indicator Selection**

The High Level Political Forum on Sustainable Development (HLPF) was established to monitor SDG implementation. Indicators were prepared by the Inter-Agency and Expert Group on SDG Indicators (IAEG-SDGs) and agreed upon by the UN Statistical Commission. SDG 3 is particularly valuable for the vision of health, seeking to “ensuring healthy lives and promote well-being for all.” Related indicators include access to affordable essential medicines and vaccines. However, despite the proclamation that the SDGs “seek to realize the human rights of all,” only a few indicators refer to human rights, including those under SDG 4 (reproduction), SDG 8 (labor), SDG 10 (anti-discrimination) and SDG 16 (access to justice). The Center for Economic and Social Rights immediately responded with a policy brief highlighting the potential of the new development agenda to fulfill human rights and the “promise of the SDGs” and it enumerated the necessary human rights-based criteria for indicator selection (CESR 2015, 2). In 2016 CESR and its NGO coalition partners published another policy brief, focused on SDG 10 (reduce inequalities within and between countries) proposing “a human rights-centered policy agenda to tackle economic inequality and the social inequalities it reinforces.” (CESR 2016) Its 2018 Spotlight report continued to call for human-rights alignment, asserting that “The world is off-track in terms of achieving sustainable development and fundamental policy changes are necessary to unleash the transformative potential of the SDGs.” (Ibid)

**IV. Conclusion**

The promise of the overlapping commitment to “human wellbeing” through public health, development, and human rights has not been met, in spite of integrating theories and normative development.

The human rights-based approach to development is essentially absent from G20 deliberations, as the ministers of finance and governors of central banks set priorities for development through only economic growth. Human rights are also rarely mentioned in the context of development assistance. The strongest applications of a human rights-based approach to development occurs in the functioning of national determination of bilateral ODA and mainstreaming through the UNDG and the various mainstreaming activities.
building on the 2003 “Common Understanding among UN Agencies” on Human Rights-Based Approaches to Development. The engagement with certain human rights impacts of lending operations of international financial institutions like the World Bank remains problematic, with some finding signs of “increasingly permissive view” and others of a “human rights-free zone.”

Further, the good intentions of the right to development and the compelling logic of a global commitment to a human-centered development policy, a participatory human rights-based process, and social justice outcomes (the three right to development attributes) have been inadequate to change policy or practice. In spite of a few moments of thoughtful proposals to operationalize the right to development over more than thirty years, it remains mired in political theater. However, given political will, the numerous political and structural obstacles may yet be lowered.

The drafting and implementation of the SDGs offer lessons about the promise and peril in pursuing health and development with due attention to human rights obligations. The MDGs emerged from a technocratic approach to applying traditional tools of development to the global commitment to eliminating poverty in the Millennium Declaration, disregarding the firm human rights content of that document. In contrast, a decade of advocacy from academic, civil society and UN human rights sources succeeded in imbedding human right into the SDGs. The challenges now will be to draw on the considerable progress in developing and applying human rights indicators to realize the transformative potential of the SDGs.

This assessment of rights-based development as applied to health governance is positive when one looks beyond the weeds and sees the enormous and transformative shifts over the long term. A few decades ago, this field was characterized by a narrow understanding of development as exclusively economic growth-oriented, with a minimal mention of health as part of human rights. Today there is a wide consensus in support of a global commitment to sustainable human development with explicit human rights content in institutional policies. The challenges ahead—posed by climate change, poor governance, unjust power relations, and political inertia—will test the resilience of the health and human rights imperatives of sustainable development. However, a foundation has been established to make real progress in bettering the human condition, which is the ultimate rationale of human rights, public health, and development.

Discussion Questions:

1. What are the main impacts of economic globalization on the realization of human rights?
2. Why is the link between economic development and health improvement problematic?
3. What is the difference for global health between a rights-based approach to development and the right to development?
4. How did Arjun Sengupta’s work revitalize the Human Rights Council’s consideration of the right to development?
5. How does human rights impact bilateral assistance to influence public health?

6. How can the World Bank overcome its institutional challenges to supporting human rights for global health?

7. What are the obstacles to applying the right to development as a tool for clarifying priorities and measuring progress in advancing global health and sustainable development?

8. What are the main criticisms from the human rights perspective of the 2030 Development Agenda?

9. How has the use of indicators impeded or advanced progress in applying human rights to the SDGs?

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