Health and Human Rights through Development

The Right to Development, Rights-Based Approach to Development, and Sustainable Development Goals

Stephen P. Marks and Alice Han

Development, health, and human rights share a commitment to promoting human well-being. From the development perspective, well-being means economic processes that allocate resources to 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 introduces the dimension of resource allocation as crucial to realizing human rights in global health. Health advocates can advance their goals by applying a human rights-based approach to development and a right to development, achieving positive outcomes for public health.

Human rights can frame the sustainable development necessary for global health. The human rights-based approach applies international human rights norms and standards to address economic development obstacles and unjust power distributions that impede sustainable development. It provides a framework to examine international health assistance from wealthier countries to low-income countries. Outside of this rights-based approach to development, public health is rarely considered under the human 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 allows public health actors to work through development discourses to identify legal obligations and empowerment strategies that can potentially change how states and international organizations allocate public goods for the public's health.

This chapter discusses the role of human rights in framing development to realize a healthier population, examining the role of a rights-based approach to development and the right to development in improving public health and highlighting the civil society advocacy that brought attention to human rights in the Sustainable Development Goals (SDGs). Part I introduces the evolving development agenda underlying the birth of a human right to development, the integration of health and human rights concerns in development theory and practice, and the neglect of human rights in the Millennium Development Goals (MDGs). In light of this past neglect, Part II elaborates the contemporary role of human rights in development practice by examining the 2030 Sustainable Development Agenda, the current state of the right to development, and a rights-based
approach to international development cooperation. Part III examines the continuing reluctance to implement human rights in development cooperation, the neglect of human rights in SDG indicators, and the retrenchment in foreign assistance with rising nationalism. The chapter concludes that, despite obstacles, much has been achieved in development thinking through human rights, moving the world 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 addressing the challenges of climate change, pandemic disease, poor governance, unjust power relations, and political inertia.

I. The Evolving Theory and Practice of Human Rights in Development

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

A. Emergence of Human-Centered Development

In traditional economic theory, development focused on the growth of gross national product (GNP) and the transformation from traditional to mass consumer society, with the Industrial Revolution and colonialism largely responsible for divergent economic growth between industrialized Europe, Australia, and North America and that of Asia, Africa, and Latin America. However, development economists in the 1960s criticized the exploitive relations between former colonies struggling in poverty and the industrialized former colonial powers, which continued to extract raw materials from their former colonies (Frank 1966). Development policy in the 1970s began to integrate human-centered elements—such as human capital, basic needs, and human welfare—evolving into the “Human Development Approach” that would be 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 money, goods, and services, but as “capabilities”—the enhanced freedom to be and do what one values—with poverty redefined as the 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 “human freedom” for people to “exercise their choices and to participate in decision-making that affects their lives” (UNDP
This close relationship between capabilities and human rights has provided a moral framework for development (Nussbaum 1999), laying a foundation for a human rights-based approach to development.

In realizing human rights in development, the human rights-based approach utilizes international human rights norms and principles to overcome the obstacles to meaningful human-centered development found in unjust distributions of power and discriminatory practices. The rights-based approach to development is both normative and operational, in that it relies on human rights standards that define a just social order to alter policies and practices of the political economy and health systems. It therefore 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. By elevating people in development, the human rights-based approach promotes sustainable development by empowering people to participate in policy formulation and hold duty-bearers accountable (Broberg and Sano 2018).

B. The Right to Development

While the rights-based approach to development pursues development with due attention to human rights, the right to development affirms a distinct right—both to achieve sustainable human development and to benefit from human rights in development. The right to development traces its normative content to principles of international cooperation, reaffirmed repeatedly in United Nations (UN) documents since World War II, but development was not formulated as a distinct right until a 1972 lecture by Senegalese Judge Kéba M’Baye. In advocating for this right to be recognized by the UN, M’Baye argued that a right to development could reframe international development law, with this new human right providing a legal (rather than economic, political, or moral) basis for obligations to improve living conditions (M’Baye 1972).

Drawing from these incipient ideas, 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” (UN Commission on Human Rights 1977, para. 4). The international political climate at the intersection of development and human rights was tense, as developing countries sought to create a New International Economic Order (NIEO) in order to redress what the UN General Assembly 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” (UN General Assembly 1977, preamble). These developing countries, many of which were former colonies that had coordinated their political positions as members of the Non-Aligned Movement, were frustrated with the Cold War rivalry dominating international relations and supported codifying obligations for economically dominant countries to

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1 Although the capabilities approach influenced human development within UNDP, other parts of the international system have been influenced by a “neoliberal” approach to international economics, which returned to economic growth as the definition of development and maintained that trade liberalization and market-based policies would increase economic growth.
accept (1) greater responsibility to eliminate the structural causes of poverty, (2) larger payments for raw materials extracted from developing countries, (3) additional foreign aid obligations, and (4) improvements to trade terms in favor of developing countries (Salomon 2010).

The UN General Assembly in 1986 finally adopted the Declaration on the Right to Development. Based upon the work of the Commission on Human Rights and the UN Secretariat, this compromise document (of sixteen preambular paragraphs and ten articles) defines development; commits to international peace and the elimination of massive human rights violations; and enumerates the rights, duties, and courses of action of individuals and states to realize this right. It proclaims that “the human person is the central subject of development” and defines the core obligation of states: “to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom” (UN General Assembly 1986, art. 2).

As a General Assembly resolution, the Declaration carried moral authority but created no legal obligations to transfer resources from the Global North to the Global South and codified no specific obligations regarding any issues (Marks 2004). Without any formal codification of this right, North-South tensions continued over whether the right to development implies that dominant economic powers have legal obligations to change the “unjust international economic order,” with advocates continuing to press for the Declaration to be transformed into an international treaty (Marks 2010).

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

Several working groups on implementing the right to development, established in the 1980s and 1990s, were unsuccessful in changing the practice of international development. One bright spot was the 1990 Global Consultation on the Realization of the Right to Development, which recommended criteria for measuring progress and action by states and intergovernmental bodies. No action was taken on these recommended criteria until 1998, when the UN Commission on Human Rights established an open-ended working group (OEWG) to monitor progress and appointed an Independent Expert to study the implementation of the right to development. Arjun Sengupta, a prominent Indian economist, served as Independent Expert from 1999 to 2004, was subsequently appointed Independent Expert on Human Rights and Extreme Poverty, and then was 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.” In 2004, the Commission established a High-Level Task Force of the OEWG, which drafted criteria on the implementation of the right to development in 2005 and tested them

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2 The Declaration was adopted on December 4, 1986, by a vote of 146 in favor, 1 against (United States), and 8 abstentions (Denmark, Finland, Germany, Iceland, Israel, Japan, Sweden, and the United Kingdom).
on twelve multilateral, financial, trade, and development institutions with a view to operationalizing them. This comprehensive, though short-lived, evidence-based approach to the right to development focused on criteria and indicators to clarify what should be done by governments, international institutions, and civil society and how to measure progress on policies, processes, and outcomes. Although the Human Rights Council continues to receive reports from the OEWG and appointed a new Special Rapporteur and an “expert mechanism,” as well as preparing a draft convention on the right to development, these steps have all been adopted with significant numbers of negative votes and abstentions.

C. The Millennium Development Goals

Despite early efforts to advance both a rights-based approach to development and a right to development, these efforts failed to embed human rights in the MDGs. The MDG process began by linking human rights and development in the 2000 Millennium Declaration, including the 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 2000, para. 24). However, when the chief advisors to the UN Secretary-General sought to translate the commitment to eliminate poverty in the Millennium Declaration into measurable targets and goals, they de-linked human rights and development in drafting the MDGs (Marks 2014). The MDG focus on quantification through targets and indicators 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, Yamin, and Greenstein 2014, 115). Where the human rights community had largely failed to take an active role in the development of the MDGs, the international community’s development agenda and protection of human rights were seen as “ships passing in the night” (Alston 2005, 755).

Seeking to reform the UN’s development agenda in the years that followed, the UN High Commissioner for Human Rights drew attention to the relationship between the MDGs and human rights by disseminating charts on the links between human rights treaty obligations and MDG targets, analyzing how human rights could contribute to the MDGs (OHCHR 2008). Similarly, UNDP published a primer on 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 (Piron and O’Neil 2016).3

3 In 2004, twenty-one heads of UN departments and agencies adopted the Action 2 Plan of Action, which, fully operational from 2006 to 2009, served to support more than sixty UN country teams, introduce human rights-based approaches in staff training, and create an “HRBA Practitioners’ Portal on Human Rights Based Approaches to Programming” (OHCHR 2007).
Under pressure from civil society leading up to the 2010 MDG Summit, governments adopted an outcome document, "Keeping the Promise," which recognized the integral role of human rights in achieving the MDGs, especially on issues of universal access to primary health care (UN General Assembly 2010a). Subsequently, the 2012 UN Conference on Sustainable Development (Rio+20) produced an outcome document called “The Future We Want.” Launching consideration of the post-2015 Development Agenda, the Rio+20 Conference affirmed the importance of “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, 2012, paras. 8 & 9). Commenting on this document, the High Commissioner proclaimed:

"[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).

The sustained effort to overcome the shortcomings of the MDGs and resolutely integrate human rights into the 2030 Development Agenda would prove successful in the SDGs.

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

Health and human rights now hold a central place in the 2030 Development Agenda, which has reformed the potential of the right to development in promoting public health and framed the mainstreaming of human rights in development cooperation.

**A. Health and Human Rights in the SDGs**

After over a decade of tense policy debate—between technocratic officials promoting the MDGs and normative advocates pressing for human rights (Darrow 2012)—a post-2015 development agenda emerged in the UN General Assembly. This agenda, “Transforming our world: the 2030 Agenda for Sustainable Development,” enumerated the 17 SDGs and 169 targets—including, as diagrammed in Figure 15.1, a far more holistic set of targets on health. Whereas the MDGs made no reference to human rights, the SDGs contain fourteen such references. The prominence of human rights in the SDGs, as first introduced in Chapter 4, follows sustained efforts 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, with the UN General Assembly resolution strongly and repeatedly affirming the importance of human rights in the post-2015 development agenda in 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 2015).

This strong rhetorical commitment to human rights, in contrast to the MDGs, promised to impact the definition and implementation of policies, the allocation of resources, and the monitoring and evaluation of steps taken to achieve the SDGs.

The 2030 Agenda for Sustainable Development not only contains strong affirmations of human rights, but also of global health. Reflecting a wide range of health concerns, the UN resolution refers to: reducing newborn, child, and maternal mortality; ensuring universal

![Figure 15.1. Health-Related MDG and SDG Targets (Friedman and Gostin 2016).](image)

4 Additional references to human rights 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.
access to sexual and reproductive healthcare services; fighting malaria, HIV/AIDS, tuberculosis, hepatitis, Ebola, and other communicable diseases and epidemics; and preventing and treating non-communicable diseases (UN 2015). Bringing these determinants of health together in advancing sustainable development, states recognized that in order “[t]o 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” (Ibid., para. 26). Of particular value for achieving this vision of health is SDG 3, which seeks to “[e]nsure healthy lives and promote well-being for all at all ages,” with related targets and indicators, including on access to affordable essential medicines and vaccines (Ibid., para. 59). SDG 3 and its nine targets advance a human rights-based approach to achieving health goals, especially through target 3.8 on universal health coverage; however, SDG 3 has been criticized for not meeting human rights objectives in such areas as providing access to health services to poor and disadvantaged communities (Chapman 2016).

Going well beyond the MDGs, the 2030 Agenda underscores that health and human rights are more than an important area of concern for the international community—they are an integral part of how the governments of the world agree to protect natural resources and to overcome the causes of poverty and inequality. Yet, despite the general affirmation that the SDGs “seek to realize the human rights of all” (UN General Assembly 2015, preamble), only a few of the indicators explicitly refer to human rights, including those on reproductive rights under SDG 5, labor rights under SDG 8, anti-discrimination in SDG 10, and access to justice in SDG 16 (ECOSOC 2016b). Nevertheless, the UN has called the 2030 Development Agenda 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, para. 1).

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

Despite this progress in clarifying human rights under the SDGs, the right to development has been less successful in providing practical guidance for development activities. Efforts 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 Independent Expert and the High-Level Task Force sought to operationalize the right to development, and in its 2010 report to the OEWG, the 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, Annex).

The Task Force clarified the implementation of the right to development through an examination of attributes on 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” (Ibid.).
The Task Force delineated 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. With all three attributes involving health-related criteria, Table 15.1 lists the sub-criteria and indicators of the first criterion of attribute 1, showing their relevance to health. 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” (Ibid.). 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 (Ibid.).

After collecting the views of governments and regional groups, the Human Rights Council 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

Table 15.1: Comprehensive and Human-Centered Development Policy (HRC 2010, Annex)

<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>1 (a) (ii) Education</td>
<td></td>
<td>Public spending on primary education; school enrollment rates; school completion rates; international scores for student achievement</td>
</tr>
<tr>
<td>1 (a) (iii) Housing and water</td>
<td></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>
</tr>
<tr>
<td>1 (a) (iv) Work and social security</td>
<td></td>
<td>Long-term unemployment; involuntary part-time employment; public expenditure on social security; income poverty rates below national and international lines</td>
</tr>
<tr>
<td>1 (a) (v) Food security and nutrition</td>
<td></td>
<td>Child stunting rates</td>
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and coherent set of standards for the implementation of the right to development” (Ibid, para. 9b). In addition, the OEWG Chair-Rapporteur applied the SDGs to the right to development through a set of four new “[s] tandards for the implementation of the right to development” (UN Human Rights Council 2016). Most relevant to health governance is 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 2018, the Human Rights Council decided that the OEWG should begin work on a treaty on the right to development (UN Human Rights Council 2018). Through a politically divided resolution, the Council extended the Chair-Rapporteur’s mandate in 2019 and called on him to present a draft treaty (UN Human Rights Council 2019). He submitted this draft convention, consisting of a preamble and 36 articles, in January 2020 (UN Human Rights Council 2020).

C. Health and Human Rights in Development Cooperation

Development cooperation is a broad term that describes all forms of support to low- and middle-income countries to help them meet basic needs and advance the well-being of their citizens, alleviate extreme international inequalities, and improve access to global 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 that support national or international development priorities favoring the poorest countries. The importance of development cooperation for the realization of human rights was recognized long before the emergence of human-centered development, with the Universal Declaration of Human Rights referring to the realization of economic, social, and cultural rights “through national effort and international co-operation.”

Recognizing international obligations for human rights realization, it has been argued that the international community has a collective obligation to realize health-related human rights by scaling up support to reduce public health inequities through global health governance (Meier and Fox 2018). These cooperative relationships for human rights realization recognize country “ownership,” respecting recipient country sovereignty in guiding national development strategies while providing technical and financial assistance through both bilateral development cooperation and multilateral development agencies.

1. Bilateral Development Cooperation
The vast majority of ODA comes through bilateral programs, providing foreign aid from affluent countries to poorer ones. Donor countries agreed in a 1970 UN General Assembly resolution to try to reach a minimum 0.7 percent of their gross domestic product for ODA.

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5 Twenty years later, the 1968 International Conference on Human Rights reaffirmed that “[t]he widening gap between the economically developed and developing countries impedes the realization of human rights in the international community” (UN General Assembly 1968, para. 12).
product (GDP) as ODA, but thus far, only Sweden, Norway, Luxembourg, Denmark, the Netherlands, and the United Kingdom have met that goal. In pushing toward this 0.7 percent goal, a larger group of donor countries have more recently developed national ODA policies that integrate human rights, such as the Swedish International Development Agency’s embrace of a rights-based approach to development assistance for water, sanitation, and health (OECD and World Bank 2016).

To coordinate the policies of donor and recipient countries, senior officials of some eighty-five developed and developing countries and heads of twenty bilateral and multilateral development agencies adopted the 2005 Paris Declaration on Aid Effectiveness. The Paris Declaration outlined five overarching principles of foreign aid: ownership, alignment, harmonization, managing for development results, and mutual accountability (OECD 2005). However, human rights were not mentioned in the Declaration, prompting the Organization for Economic Co-operation and Development (OECD)—the leading institution coordinating bilateral development (OECD)—to argue for using human rights to broaden its scope of commitments and indicators of mutual accountability. Yet, despite a strengthened commitment to human rights objectives by OECD’s Development Assistance Committee (OECD-DAC),6 the application of rights to bilateral development cooperation remains weakened by the lack of a common approach and the absence of sustained increases in assistance (Hammonds and Ooms 2018). To improve aid coordination across donors, the International Health Partnership Plus (IHP+) was adopted in 2007 and now includes sixty-six partners that promote development cooperation in sixty countries (IHP+ 2016). In September 2016, IHP+ became 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).

Bilateral policies—whether collectively defined by OECD-DAC, defined by individual donor countries in the Global North, or, increasingly, in partnerships across what is called South-South and Triangular Cooperation—remain the main vehicles for applying a human rights-based approach to development.7 The implementation of human rights in aid effectiveness has evolved through various high-level follow-up meetings to the Paris Declaration. Through the 2011 Busan Partnership for Effective Development Cooperation, for example, states refer to “agreed international commitments on human rights, decent work, gender equality, environmental sustainability and disability”

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6 OECD-DAC has acknowledged “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,” enumerating ten “principles for promoting and integrating human rights in development” (OECD 2007).

7 In contrast to North-South Cooperation, South-South Cooperation (SSC) involves exchanges of knowledge, skills, resources, and technical know-how among two or more countries in the Global South. Building on the 1978 Buenos Aires Plan of Action (BAPA), a High-level United Nations Conference on SSC took place in Nairobi in December 2009, followed by the second SSC conference (BAPA+40) in Buenos Aires in March 2019. Although 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” (UN General Assembly 2019, para. 14).
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(OECD 2011, para. 11), recognizing the vital role of civil society organizations “in enabling people to claim their rights” (Ibid., para. 22). The Busan meeting also established 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). Embracing the SDGs as central to its work, the GPEDC seeks to meet “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 2016, para. 7). However, this mention of human rights is minimal compared to past OECD efforts, 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” (Ibid., para. 6).

2. Multilateral Development Cooperation

Multilateral development cooperation, referring to the lending and spending of international institutions, supports individual state efforts to provide bilateral assistance. These international institutions, as introduced in Chapter 9, decide collectively on policies and resource allocations for development projects that tend to be larger than those of individual bilateral donors. Although the total contribution to development cooperation is less than that of bilateral donors, these institutions—including the World Bank and the International Monetary Fund—have begun to consider human rights in their support for global health.

While many of these institutions continue to advance a neoliberal agenda, focused on finance and growth with no concern for human rights, several multilateral development initiatives have started to integrate human rights into development cooperation. Despite the World Bank’s mandate for ending extreme poverty and building shared prosperity, it long resisted human rights in its funding (Alston 2015). More recently, however, the Bank has begun to shift from staunchly resisting to reluctantly addressing human rights in its financing of development, looking to human rights in health financing through its global strategy for health, nutrition, and population (Shawar and Ruger 2018).

Case Study: Human Rights Face Challenges in the World Bank

The World Bank was long reluctant to consider human rights in its work, initially based upon an 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, World Bank economists often acknowledged the links between development and human rights, even as they avoided

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8 For example, the Group of Twenty (G20), leaders from nineteen relatively wealthy countries and the EU, address international economic cooperation by focusing resolutely on growth, without mentioning human rights or human development. While attempts have been made to address rights-based issues, the focus on global financing and the participation of several authoritarian governments may explain this aversion to acknowledging the links between human rights and development (G20 Osaka Summit 2019).
explicitly engaging with human rights law. Given the lack of explicit engagement with human rights, the UN Special Rapporteur on human rights and extreme poverty described the World Bank in 2015 as a “human rights-free zone,” with staff unwilling and unable to engage meaningfully with human rights. Although the World Bank’s Nordic Trust Fund was created in 2008 to inform staff on how human rights relate to the Bank’s work, there remain entrenched institutional challenges to human rights mainstreaming, including varying interpretations of the legal constraints, limited staff knowledge about human rights, and attitudes of borrowing countries and other lenders. Despite these challenges, the World Bank tends to express broad support for human rights even if it does not explicitly adjust its programming to use a human rights approach. Under the leadership of President Jim Yong Kim (a medical doctor known for his advocacy for the health and human rights of the poor), the World Bank moved to support universal health coverage and SDG 3, but critics continued to note the lack of human rights in World Bank efforts to assure high-quality, affordable health services. With Kim replaced in April 2019 by David Malpass, whose policies thus far focus on growth and raising median incomes, the World Bank is not expected to advance a human rights-based approach to development in the near future.

Embracing human rights in development cooperation, the reform of the UN’s development agenda by the UN Development Group (UNDG) led in 2003 to an interagency consensus, “The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies” (UNDG 2003). This Common Understanding has become a standard reference for translating the human rights commitments of member states into development cooperation policies and projects of UN agencies, funds, and programs. From 2003 to 2009, it took the form of the “Action 2 Global Programme on human rights strengthening.” This Programme integrated human rights into humanitarian, development, and peace-keeping work throughout the UN system. Action 2 supported over sixty 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 UNDG Human Rights Mainstreaming Mechanism 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,” and in January 2015, it was in turn replaced by the UNDG’s Human Rights Working Group, consisting of eighteen UN agencies whose work seeks “to institutionalize human rights as a central part of the UN’s development work” (UNDG 2014, 1).

Despite a sometimes circuitous path, considerable progress has been made in integrating human rights into development policies—reflected in efforts to operationalize the right to development and to define the goals of the 2030 Development Agenda—and in translating these policies into programs to realize global health through bilateral and multilateral development cooperation. However, in assuring rights-based accountability for how resources are actually allocated, there remains resistance to introducing human rights into development.
III. Continuing Resistance to Introducing Human Rights into Development

Numerous challenges limit the application of a human rights-based approach to development and the operationalization of the right to development, including reluctance to applying human rights in global health policy. While multilateral and bilateral development agencies seek to advance health programs through negotiation, training, technical assistance, and financing, development practitioners have continued to shy away from human rights because they conjure up confrontational “naming and shaming” advocacy approaches. This reluctance to disrupt development cooperation over human rights concerns has presented numerous challenges to the application of the rights-based approach to development and the operationalization of the right to development, including (a) the ongoing “political theater” of the right to development, (b) the resistance to revising development indicators under the SDGs to be more attentive to human rights concerns, and (c) the rise of nationalist economic policies leading to retrenchment in foreign assistance and engagement with international institutions.

A. “Political Theater” of the Right to Development

Given the political obstacles to the development and implementation of the right to development, the primary challenge is to reconcile the 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. 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 presses for this without seeking new binding legal obligations. The former UN High Commissioner for Human Rights has critiqued this paralyzing impasse: “[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 2013, iii).

This political theater has presented major obstacles to progress for the right to development, including: (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 aid 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). Due to these obstacles, states have failed to incorporate the right to development into decision-making with international partnerships aimed at poverty reduction.

Without an explicit mandate under international law, inclusion of the right to development in national and international economic policies and programs that affect public health is unlikely. Most poverty reduction strategies are based on political and legal commitments with clear incentives, often resulting in targeted funding or debt forgiveness; however, the right to development has no such incentives or legally binding
commitments to comply with standards and procedures. For example, if a borrowing country complies with International Monetary Fund requirements, it can receive billions of dollars in loans, but if a country changes its laws and policies to comply with the right to development, there is no commitment from any other governments or organizations to provide any benefits. Unless the draft convention on the right to development is adopted and widely ratified, there remains no institution to hold governments or other international stakeholders accountable to the right to development.

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 adoption of the draft convention and international monitoring are dim. While the right to development is the most systematic human rights framework for addressing issues of development at the normative level, it remains too broad in scope and too demanding of structural change to impact development policy, economic assistance, and global health.

B. Rights-Based Indicators of Sustainable Development

The progress of integrating health and human rights has been more promising in the development of the SDGs, although there continues to be resistance to adopting the tools of measurement and evaluation to the rights-based dimensions of sustainable development. Development professionals in bodies like the World Bank or the UN Department of Social and Economic Affairs have developed indicators to assess progress in achieving development goals, yet these indicators do not give much attention to human rights. Where international organizations long assumed that there were methodological problems in designing indicators that could meaningfully measure progress in realizing economic and social rights, these organizations, as introduced in Chapter 7, have since come to define human rights indicators to include “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 2013b, 16).

Bridging the gap between traditional tools of measuring development and robust indicators of human rights in development, the UN has benefited from two significant trends. The first is the diligent effort a decade before the SDGs by human rights experts—especially the UN Special Rapporteur on the right to health—to propose methodologically rigorous indicators for the right to health (UN Commission on Human Rights 2006). The second trend was the partially successful effort by the Office of the UN High Commissioner on Human Rights (OHCHR), academics, and civil society organizations to insist on the inclusion of human rights-sensitive indicators among the official SDG indicators. In developing these human rights-sensitive indicators, the High

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9 No institution monitoring treaty implementation had held states accountable for realizing the right to development until the African Commission on Human and Peoples’ Rights issued a landmark decision concerning a violation of the right to development through eviction of an indigenous group from a Kenyan wildlife reserve (African Commission on Human and Peoples Rights 2009).
Commissioner noted that indicators could function as “a potential bridge between the human rights and the development policy discourses” (OHCHR 2013b, iv). At the time of the adoption of the 2030 Development Agenda, OHCHR expressed concern that “[a] human rights-sensitive SDG indicator framework is needed, to monitor progress for all people, everywhere,” specifically recommending 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.).

In considering human rights in the SDG indicators, the initial efforts in 2015 by the Bureau of the UN Statistical Commission (UNSC) to prepare SDG indicators encountered reluctance from representatives of National Statistical Offices (NSOs) in venturing “out of their traditional comfort zone” (CESR 2015, para. 2). In spite of constructive civil society inputs, as a leading NGO put it, “most of the discussions so far have failed to include key human rights considerations” (Ibid., para. 3). Even though OHCHR regards the majority of SDG indicators as relevant to human rights, producing a general guidance note on a Human Rights-Based Approach to Data, OHCHR was only responsible for 4 of the 232 indicators. Looking beyond these indicators, OHCHR seeks a human rights-based “data revolution for sustainable development” (OHCHR 2018).

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 UNSC. However, the reluctance of NSO representatives and UNSC staff to move beyond development statistics has slowed progress in embracing human rights indicators. 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). SDG 3 provides a valuable vision of health, by seeking to “[e]nsure healthy lives and promote well-being for all;” however, none of the nearly thirty related indicators and sub-indicators explicitly mentions human rights—although many indicators are relevant to the right to health and other health-related human rights. A coalition of human rights NGOs has, since the beginning of this process, lobbied the HLPF on the need to apply human rights-based criteria for indicator selection in measuring progress in reaching the SDG targets. Yet, judging by the limited refinements to be made to the global indicator framework by the IAEG-SDGs, there does not appear to be much progress. These refinements were examined as part of the 2020 comprehensive review of SDG indicators, which essentially maintained the limited input by OHCHR on four human rights indicators rather than being responsive to the calls of the human rights caucus and OHCHR to make human rights central to the “data revolution for sustainable development.”
C. The Rise of Populist Nationalism

Compounding these limitations, the recent rise of populist anti-immigrant and anti-globalist regimes challenges the underlying premise of the post-World War II global order; namely, that it is in the interest of all to pursue collective efforts to eliminate conflict, poverty, disease, and human suffering. With governments pursuing nationalistic, xenophobic policies, the right-wing populist retreat from international cooperation threatens the premise of collective governance, posing what has been described as “an existential threat to the global health governance system” (Meier et al. 2018, 89).

This hostility toward global governance is reflected in recent actions by leaders in low-, middle-, and high-income countries—often with a degree of popular support—to restrict immigration and to withdraw political and financial support for international institutions pursuing health and human rights objectives. Such attitudes motivated the United States to withdraw from the UN Human Rights Council, UNESCO, and WHO, as well as to remove its critical support for health and education for Palestinian refugees through the UN Relief and Works Agency, leading the agency’s health department to appeal to the medical community for support. Brexit in the United Kingdom is expected to have a negative impact on health, especially access to medicines and medical devices. India’s military action in Kashmir is considered an internal matter by the government but is a matter of intense international concern, including over mass human rights violations as reported by UN experts, creating what a leading medical journal called a “formidable mental health crisis” (The Lancet 2019). Each of these situations is fraught with passion and politics, yet the limitations of these reactionary nationalist approaches in the COVID-19 response have exposed the risks in this hostility to collective global governance.

From the perspective of advancing public health through human rights in development, this populist nationalism reflects a retreat from the commitment to international cooperation to solve, in the words of the UN Charter, “international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights” (UN 1945, art. 1). Unless this commitment to international cooperation is restored, the price will be extremely high for the realization of health and human rights in sustainable development.

Conclusion

The promise of the overlapping commitment to “human well-being” 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 remains largely absent from international deliberations, as ministers of finance and governors of central banks set priorities for development based only on economic growth. Human rights are also rarely mentioned in the context of development assistance. The strongest applications of a rights-based approach to development occurs in 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 of international financial institutions, like the World Bank, with the human rights impacts of lending operations remains problematic, posing difficulties for global health.

Further, the good intentions of the right to development—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. Despite a few thoughtful proposals to operationalize the right to development, it will remain mired in political theater until political will obviates the numerous political and structural obstacles—obstacles that are only exacerbated by the rise of populist nationalism.

The creation 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 the traditional tools of development to the global commitment to eliminating poverty, disregarding human rights while seeking to advance global health. From this neglect of human rights, a decade of advocacy from academic, civil society, and UN human rights activists succeeded in embedding human rights into the SDGs. The challenge now will be to draw on the considerable progress in developing and applying human rights indicators to facilitate rights-based accountability for the transformative potential of the SDGs.

Beyond these specific struggles, rights-based development for health governance has seen enormous and transformative shifts over the long term. A few decades ago, this field was characterized by a narrow understanding of development as exclusively oriented around economic growth, with minimal mention of health as part of human rights. Today, there is widespread support for a global commitment to sustainable human development, with explicit human rights content in institutional policies. The challenges ahead—posed by climate change, the COVID-19 pandemic, poor governance, unjust power relations, and political inertia—will test the resilience of health and human rights imperatives for 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.

Questions for Consideration

1. Why is the link between economic development and health improvement problematic? How has a “capability approach” to development shifted international development policy?
2. What is the difference for global health between a rights-based approach to development and the right to development?
3. Why has the right to development proven contentious in international affairs? How did Arjun Sengupta’s work revitalize the Human Rights Council’s consideration of the right to development?
4. Why was the focus on human rights in development minimized in the formulation of the MDGs? In what ways did advocates succeed in advancing human rights in the development of the SDGs?
5. How can the criteria for development assessing implementation of the right to development promote health?

6. How do human rights frame bilateral development assistance to influence public health? What steps have donor countries taken to coordinate bilateral assistance to support health and human rights?

7. How has the World Bank sought to overcome its institutional challenges to supporting human rights for global health?

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

9. What are the main human rights criticisms of the 2030 Development Agenda? How has the use of indicators impeded or advanced progress in implementing human rights through the SDGs?

10. What are the implications of the rise of populist nationalism for a rights-based approach to development? What are the health consequences of the retrenchment of some major countries from international cooperation to pursue collective efforts to promote global health governance?

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