

Conference on Sustainable Development Goal 16, in preparation for the High Level Political Forum 2019

Peaceful, just and inclusive societies

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Session B 2, on promoting equality and protecting fundamental freedoms

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It is a pleasure to take part in this session, which focusses on the relationship between human rights and the SDGs, in particular SDG 16.

It seems clear to me that there are strong synergies between these two areas, and also areas of possible tension. Let us first turn to the synergies.

Synergies

I want to argue in the first place that human rights can serve as enablers for the SDGs, and then that SDGs can in turn strengthen the human rights project.

Let us start then with the question: To what extent can the human rights mechanisms, as well as the substantive human rights norms, serve as key resources or enablers for the SDGs?

The work of the *human rights mechanisms*, on the international and domestic levels, should be a central reference point in the implementation of the SDGs. On both these levels political bodies as well as independent bodies are responsible for determining what the applicable standards are, and how they should be applied in specific cases. It is worth recounting what the main mechanisms are.

On the international level, this includes the work of the United Nations human rights bodies. The Human Rights Council, which oversees the Universal Peer Review of the human rights practices of states by other states, is among the most important political bodies, but the General Assembly and the Security Council as well as host of other UN bodies and agencies also play important role in establishing and monitoring human rights standards.

The ten treaty bodies, as well as the special procedures, are unique in that they consist of independent experts who are responsible for human rights monitoring and standard setting. I will return to the importance of their independent role in this regard.

The international level also has a regional component, and in three regions of the world – Europe, the Americas and Africa – there are well established human rights mechanisms, with human rights systems also emerging in areas such as the Arabic-speaking world as well as South East Asia. As on the global level, the relevant inter-governmental and thus political institutions on the regional level likewise play a role on the human rights front, in addition to independent human rights bodies such as the regional courts (in some cases commissions) on human rights.

The domestic mechanisms for the protection of human rights are in many ways the most important, since they constitute the first line of defence. If human rights are protected on this level, the international system, which is largely subsidiary, does not come into play. Constitutions, laws, governmental policies and practices, all form part of this line of defence, in addition to the work done – also on this level – by independent bodies, such as courts and national human rights institutions.

The fact that there is an independent element in the way in which human rights standards are formulated and protected on the international as well as domestic level is of particular importance. This means that the determination of what human rights norms entail, and how they should be applied in a particular case, is not left entirely to the political pressures of the day, but are also tied to a longer term understanding of human rights, and thus of the core elements of a life in dignity.

It has been observed that human rights standards were largely developed in response to human rights violations. Human rights emerge from human wrongs. A longer term view, a historical and indeed inter-generational approach, is inherent to human rights. The closest we can get to such an approach is to appoint those whom we view as most qualified to pursue this perspective as the independent experts and judges who staff these mechanisms. They are the ones on whom we primarily rely to ask what did we learn from all the wrong turns that we have taken and may be taking.

These independent bodies serve as the custodians of the human rights project and are integral to its unique voice. They do not, however, operate in a vacuum, and their work is supplemented by the extent to which these values are taken up in the actual practice of States and others over time.

Human rights have been described as providing the ‘moral backbone’ of the SDGs. To give sustainable effect to this long-term aspiration, I would argue that the implementation of the SDGs should use the work of these various mechanisms as a central point of reference.

In addition to highlighting the importance of the human rights mechanisms, it is worth pointing out that the *substantive human rights norms* generated by these bodies, and by States over time, can and should serve an important role in giving contents to the standards set by the SDGs.

Someone at this conference has said that two thirds of the SDG goals are human rights goals. There is indeed a significant degree of overlap between the two approaches, and the

goals of sustainable development should thus largely be understood in terms of the contents that has been given to the human rights norms.

This applies for example to the slogan of the SDGs, to 'leave no one behind', which attests to the impact on the SDGs of one of the core values of human rights, namely equality, also in the substantive sense, requiring special measures to be taken to protect the most vulnerable.

To give another example, from my own current experience: Both in SDG and human rights circles, there is strong realisation of the need to protect the civil space. SDG 16 talks about inclusive institutions, and the idea of participation is central to the SDG enterprise, following a whole-of-society approach. From the human rights perspective, some of the rights directly involved are the rights of peaceful assembly and association, as well as political participation, and much is currently being done to give more concrete contents to these norms. We are for example currently in the Human Rights Committee developing a General Comment on peaceful assembly.

While international law has long recognised the need for 'rules of engagement' for violent confrontations (and someone at the conference called Hugo de Groot the father of the SDGs), it is important today to get greater clarity on the rules for non-violent confrontations and airing of grievances, not least to prevent an escalation into violence. Should on-line assembly be recognised; can organisers be held accountable; when can the police use force, and how should less lethal force be employed? I would think taking into account this sort of norm-setting should also be of great interest in pursuing peaceful, just and inclusive societies through the SDGs.

It should, however, be pointed out that the human rights approach, while in some respects similar, differs in other respects from that often taken in many other sectors, including, in the context of SDG 16, the violence reduction sector and development in general, which animates much of the SDG thinking.

The human rights approach is primarily a normative one, drawing a line for example between when force may and may not be used, and then policing that line, maintaining the norm through imposing accountability. The violence reduction approach for its part sees violence essentially as a public health problem, to be addressed by collecting data, designing and testing interventions (such as hot-spot policing), and then refining them to achieve better results in terms of securing a safer society, measured typically in terms such as the number of deaths among 100 000 members of the society. While the former approach only to a limited extent allows trade-offs between the interests of individuals and the common good, the latter has fewer constraints.

Perhaps the most salient example from the human rights perspective to illustrate this point is the so-called ticking bomb scenario, where the question is whether torture could be allowed if it is aimed at obtaining information necessary to diffuse a bomb that is about to explode in the middle of a crowded city. The classical human rights approach is that torture is never permissible, because freedom from torture is an absolute norm. Not all rights are similarly absolute, but limits in the interests of the public good are subjected to narrow

scrutiny. The interests of each right-holder represent a goal in itself, and at its core cannot be sacrificed for the collective interest, even if the majority dictates that this should be done. Even if it would make society more efficient if there was less religious diversity, the priority of the human rights approach is to protect the individual's ability to establish her or her ultimate concerns. Likewise, the prospect of greater public security does not necessarily justify infringements of the right to personal privacy.

This same approach is not necessarily inherent to the way in which development or economic growth targets have typically been pursued, where trade-offs may more readily be made, and decision-making is often utilitarian. It is the infusion and integration the human rights approach that has resulted in the emphasis in the SDGs to move forward, while at the same time leaving no one behind. The inclusion of the human rights approach thus adds a unique flavour to the SDGs, though this is not the only or the dominant approach.

To the extent that SDG 16 brings the human rights and traditional developmental approaches together, it is thus clear that the human rights approach brings a salient perspective to the table.

So far then, the contribution of human rights towards the SDGs. But what about the reverse? To what extent can and will the SDGs strengthen human rights?

There can be little doubt the SDGs offer a major opportunity to mainstream human rights and, by making human rights part of the SDG package, to exponentially increase their reach. If due notice is taken of the work of the human rights mechanisms and the substantive human rights norms, as outlined above, human rights will find its way through the SDGs, in a myriad of ways, into the world. Human rights will reach into places where it has not been before. This is strengthened by the universal aspirations of both enterprises.

And, I should hasten to add, this applies to human rights in its interdependent and indivisible form – civil and political rights as well as economic, social and cultural rights, together with rights to the environment and peace. The human rights project as a comprehensive enterprise can be buoyed by the SDGs.

Exposure to the methodology of the SDGs, and its focus on data, also offers lessons to the human rights community. The human rights approach is too often focussed on the application of a norm to a particular situation, without full regard for its actual impact. Our presence in Rome reminds me of the Latin adage, *fiat justitia, ruat caelum*. Let justice be done, even if the heavens were to fall. What could be seen as an absolutist approach may be tempered by the focus on evidence.

Moreover, the evidence-based approach that underlies the SDGs, drawing on reliable and disaggregated data, offers the promise of giving practical effect to the ideal of equality. A pre-occupation with the application of an abstract norm may not reveal its real impact on everyone concerned.

Along the same lines, human rights law has for too long focussed insufficiently on precaution. For example, in the context of the use of force by law enforcement officials, the question has for a long time been whether the use of force was necessary and proportionate when a given situation arose. We have only recently begun to use data to establish whether all necessary precautionary measures have been taken to prevent the situation from arising in the first place, for example by insisting that well tested less lethal weapons are made available under appropriate circumstances. The very notion of what constitutes 'due diligence' in the context of protecting rights has to become much more evidence based.

Moreover, the SDGs hold the promise of supplementing one of the major shortcomings of the human rights project, namely its strong focus on the State as the main agent, and on its excesses, often to the exclusion of engaging the other players whose contributions are essential to achieve the underlying goal of the human rights project, namely to secure the minimum conditions for a dignified life for everyone. The SDGs have a different understanding of agency and responsibility. The whole-of-society approach of the SDGs recognises that access to justice also relies of the role of civil society lawyers, that peaceful societies require intervention by faith-based organisations, that the key to curbing violence form becoming deadly often lies with the availability of private medical personnel, and so the list continues.

This is not to say that human rights should abandon its normative edge, and rely only on the outcome of empirical studies, or, what I would find even more worrying, on opinion polls or perceptions (which play a strong role in the SDGs). Human rights are ultimately anchored in a conception of right and wrong, which is not the result of a popularity contest. However, the normative content cannot exist in vacuum, and has to be grounded and tested in terms of its impact.

Taking this point further, I think the SDGs and their emphasis on inclusion will help to foster a different understanding of the very concept of the universality of human rights. The universality of human rights is often understood to refer to the fact that the same human rights standards apply to everyone, equally. This understanding of universality is no doubt partly correct, but it is incomplete. To be truly universal, human rights must also entail the participation of everyone, over time, in what those standards are in the first place. That is the ultimate guarantor of their legitimacy, guarded over by the independent institutions. There is top down as well as a bottom up element in human rights.

Potential tensions

So, human rights have much to offer to the SDGs, and the other way around. At the same time, the above already suggests that there are potential tensions which we have to acknowledge, and manage, to ensure that the synergies are maximised and sustained.

In the first place, it is possible that, with the rise of the focus on the SDGs, there will be a shift of attention by States and others to the development goals, and the human rights mechanisms and as a result the standards may be left behind. I am in particular thinking

about the independent mechanisms, which are – given their longer term role - unlikely to be the flavour of the month.

This is brought into stark relief by the current position faced, for example, by the treaty bodies. Six of them may not have the funds to meet in the second half of this year, due to the non-payment of dues by State parties. I do not think this unfortunate development is tied to the new emphasis on the SDGs, but it may be more difficult to rectify the situation in future if States have a focus on the more immediate attractions of the development agenda.

This ties in with the more general point that it will remain of central importance to the sustainability of the SDGs that the voice of the independent human rights monitors, as the custodians of the moral backbone of the SDGs, will continue to be heard, in order to retain the current focus of the SDGs on aspirations such as ‘leave no one behind’. The SDGs in its own monitoring processes do not entail an independent assessment of the human rights relevant standards, and without a strong anchor in that domain, it will be susceptible to the political pressures of the day. Special care will thus have to be taken to ensure that the current emphasis on human rights in the SDGs is sustained over time, and does not turn out to be pious wishes.

It should in the last place be mentioned that while there is a great degree of overlap between the SDGs and human rights, there are also differences in how the standards are formulated. For example, the indicators of the rule of law and the available remedies in SDG 16.3 are currently exclusively related to criminal law, while access to civil remedies are in many instances as important.

This highlights the point that while human rights monitoring mechanism, such as State reporting to the the treaty bodies, can benefit from ensuring synergies with SDG reporting, thus ensuring greater efficiency and a better use of resources, this should not be done in an uncritical way. Much will turn – also for the future of the SDGs – on the extent to which the independent human rights mechanisms will be able to retain their independence and influence.

Conclusion

It seems important that we will recognise the opportunities as well as the challenges presented by the SDGs to the human rights agenda. Agenda 2030 offers a great opportunity, if well managed, to enhance our collective ability to achieve the objective that has been driving the human project for so many years, namely to ensure a life in dignity for all.

