CURRENT CHALLENGES TO GLOBAL JUSTICE

Karin Lukas

24 August 2015
"We can be the first generation to succeed in ending poverty; just as we may be the last to have the chance of saving the planet."

Transforming Our World: The 2030 Agenda for Sustainable Development

The Fight for Resources
By 2030, according to estimations, the demand for water and energy will augment to 40%, the demand for food even to 50%.

The UN Food and Agriculture Organization (FAO) notes that the need for increased food production — given the prognosis of a world population of 9.6 billion by 2050 — will require more agricultural land. However, in several regions, due to climate change and the political framework, food production will decrease. For example, the growing production of bio-fuels has direct negative impacts on the loss of agricultural land and has strongly contributed to the drastic augmentation of global food prizes.

The administration of land, forestry and fishery has a strong influence on food security, in particular in developing countries. According to FAO, a legal framework on how to deal responsibly with land, forestry and fishery rights needs to be implemented. Such a legal framework needs to include the recognition and protection of codified and non-codified, individual and collective ownership and responsible investments.

The scarcity of these essential resources impacts disproportionately on the poorest population groups. In the nexus of food, water and energy, fundamental questions of access to and the distribution of resources arise. These require international concerted action and governance systems that correspond to human rights standards and standards of gender justice. The role of women in this nexus is central — policies and implementation measures in these areas must be gender-responsive. According to the UN, MDG 1 (ending poverty, now SDG 1) — among others — will not be reached without a comprehensive gender approach.

Climate Change
Volatile weather patterns, severe drought, storms and major flooding already have devastating effects on human rights, and the severity of such disasters are said to increase. Even if current climate commitments are fulfilled, global temperatures could rise by 4°C from pre-industrial levels by the end of the century. Such climate change would

---

1 European Development Report 2012: 3.
2 The Stockholm Environment Institute estimates that the production of bio-fuels led to almost 1/3 of the total increase in food prizes (SEI 2011: 27).
3 FAO-ADAPT 2011: 5.
4 Sherwood and al., „Spread in model climat sensitivity traced to atmospheric convective mixing“.
have severe consequences for a variety of human rights, in particular the human rights to life, food, water, health, and housing.

As the importance of environmental protection for human beings has become more evident, efforts have been made to apply and evolve human rights protections to environmental policy-making and disaster risk management. Environmental rights have been better codified in human rights legal instruments and mechanisms. More than 90 countries have in one way or other integrated the human right to a safe, sustainable and healthy environment into their constitutions, and several regional human rights systems also formally recognize environmental rights. Many of these instruments include procedural guarantees on the right to information and participation in environmental decision-making. As environmental rights become more explicitly protected under constitutional and human rights law, several initiatives have been developed to seek remedies for ecologically-related human rights violations. Advocates have challenged environmentally destructive activities using national constitutional guarantees. For example, Niger Delta communities successfully brought a suit in Nigerian federal court against the government and Shell for the practice of gas flaring.5

As the Independent Expert on human rights and the environment has noted, despite the progress in the recognition of norms in relation to the environment, these do not yet constitute a coherent, universal set of environmental rights standards. What also lacks is a clear articulation of the right to a healthy environment as part of the international framework of human rights. This has hindered a broader recognition and application of these rights outside of specific geographical locations or issue areas, such as environment-related rights of indigenous groups in Ecuador or Bolivia.6

The role of transnational corporations and other companies
Regarding the use of essential resources, transnational corporations and other companies play a major role. For example, a major beverage company allegedly used disproportionate amounts of ground water for production, and caused shortages in local water supply. By now, the company has remedied the situation and pledged to improve water efficiency in its operations by 25% from 2010-2020. This is one of numerous examples, demonstrating the need for business behaviour which respects, protects and supports the fulfillment of human rights.

---

5 Center for Economic and Social Rights (CESR), Twenty Years of Economic and Social Rights Advocacy (2015): 27.
The UN Guiding Principles on the human rights responsibilities of companies are in the course of implementation. For quite some time, the UN Guiding Principles have been seen as the major trump card in the game to reach broad acceptance on an internationally accepted set of standards for companies. Despite their undisputable merits to end the stalemate situation at the UN level, this framework was driven by the pragmatic motivation to find consent from all stakeholders involved. The advantage of this approach is the broad support of the framework, but its disadvantage is the fact that it is to some extent the smallest common denominator because of its soft-law nature, and thus limited in terms of effective accountability.\textsuperscript{7}

Although some progress has been made regarding remedies for victims of human rights violations in the business context, this third pillar of the Guiding Principles remains underdeveloped and full of controversy. On the one hand, the accountability gap regarding judicial remedies does not diminish as a number of states are either unable or unwilling to hold companies accountable for human rights violations. On the other hand, non-judicial remedies have proliferated, rendering a mixed picture of effectiveness. Some are more easily accessible and less costly than the judicial avenue, but problems remain regarding the lack of trust in some mechanisms and their limitations regarding serious and large-scale human rights problems.\textsuperscript{8} While in other areas, such as national application efforts through national action plans, progress in implementing the UN Guiding Principles is tangible\textsuperscript{9}, pressure has been rising by civil society and some states to work towards a legally-binding instrument to hold companies accountable for human rights violations, and a resolution to establish a working group to this effect has been passed by the UN General Assembly. This politically contested open-ended intergovernmental working group has commenced its work in 2015 and its success or failure will shape the future of human rights in business.

**Economic crises undermine economic, social and cultural rights**

Recent trends of underfunding of social welfare systems through Europe and North America, and the implementation of austerity measures through much of the world, is a major threat to economic, social and cultural (ESC) rights. For example, the 2008 global financial crisis and the ensuing great recession threw millions out of jobs and increased poverty levels substantially. Spikes in world food prices led to price increases threatening food security.\textsuperscript{10}

\textsuperscript{7} Karin Lukas, Labour Rights and Global Production 2013: 163.
\textsuperscript{8} Linder/Lukas/Steinkellner, The Right to Remedy 2013: 85f.
In 2013, the European Committee of Social Rights published its annual conclusions showing more than 180 violations of the European Social Charter, a social and economic counterpart to the European Convention on Human Rights, across 38 Council of Europe member states. According to the Committee, the rise in violations of the Charter is increasingly linked to inadequate levels of social benefits because of austerity measures – disproportionately affecting the poor, the unemployed, the elderly and the sick – and to unequal treatment of migrants.

Within the European Union, Greece stands out, showing a clear pattern of serious findings of non-conformity. The review of Greece outlined charter violations that included inadequate worker safety protections, retirement benefits, unemployment benefits for people with dependents, as well as care support for the poor.

The Council of Europe has pledged to give heightened attention to the situation of ESC rights in Europe. The Secretary General of the Council of Europe, Mr. Jagland said: “The need to protect everyday rights for workers and non-working people is a core European value which becomes all the more important when times are tough. International organisations – including the European Union – must take individual countries’ obligations under the charter into account when discussing austerity measures.”¹¹ This is particularly relevant for the EU’s ongoing negotiations with Greece.

The 2030 Sustainable Development Agenda
On 2 August 2015, the global world leaders agreed on a set of goals to be reached by 2030 in sequence to the Millennium Development Goals. According to the 2030 Agenda for Sustainable Development, the eradication of poverty remains the biggest global challenge. During the political negotiations, references to human rights norms and obligations have been contentious, with some member states arguing that human rights are ‘too political’ or controversial for inclusion in a global sustainable development agenda. After 20 years of Human Rights Based Approaches, this is a disappointing result.
Still, the Sustainable Development Goals are more far-reaching, comprehensive and equality-sensitive than the Millennium Development Goals, and they will apply universally, moving away from outdated dichotomies of aid-giving and aid-receiving countries. It remains to be seen how effectively this ambitious agenda which has enormous potential for the realisation of ESC rights, can be implemented in practice.

A Way Forward

Addressing the systemic causes to prevent future crises requires international cooperation as some of these arise from the unstable nature of global markets. Politically, however, little has been done to address these systemic deficiencies, and more financial crises are foreseeable in the future.

Human rights standards have increasingly been applied regarding issues of corporate governance, fiscal policy, and financial regulation. A dynamic social movement has emerged to advance the applicability of human rights norms in relation to the environment. However, regarding the implementation of these evolving standards we are only at the beginning of a long road.

Thus, an essential function of human rights in the 21st century is to influence and „humanize“ the global market economy.

Financial instability, growing economic inequality and climate change are collective problems which stem from complex, resilient systems and groups of actors in those systems. The proliferation of responsible agents complicates the conventional approach of establishing a violation, a duty-bearer and then seeking redress. Taken together, these factors suggest that forward-looking preventative approaches which target systemic root causes rather than symptoms are necessary. Such an approach would be based on the precautionary principle and would need to integrate human rights into policy planning and practice.12

There was confidence that the end of the Cold War would open up new policy space to promote ESC rights and that the social rights movement would flourish. Looking back, there wasn't as much uptake as had been hoped for, but the conditions for action have become more favourable. ESC rights are still often marginalized in political fora, international bodies, and by the courts. However, ESC rights advocates have clearly refuted the myth that ESC rights are merely programmatic aspirations, by demonstrating that ESC rights are justiciable and can be effectively advocated.13

In the last two decades, ECS rights have been more widely recognized at the normative level, yet often ignored or heavily contested in socio-economic, environmental and development policy and practice – the recent negotiations of the SDGs being a prominent example. The challenge for the next two decades will be to bring human rights to bear more fully and concretely in all spheres of public policy, and to further unravel their transformative potential to advance social and economic justice.

13 Supra, 12-13.