



## HUMAN RIGHTS IN INTERNATIONAL COOPERATION FOR DEVELOPMENT CONTRASTING LEGAL AND POLICY APPROACHES

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### ABSTRACT

Various United Nations instruments emphasize the essential link between human rights and development, advocating for international cooperation to achieve both. The United Nations Declaration on the Right to Development asserts that development encompasses human rights and emphasizes the duty of states to cooperate internationally to remove obstacles to development. Intergovernmental organizations and states, including emerging donors like Brazil and India, are integrating human rights into development cooperation efforts. This contribution outlines approaches taken by key actors and suggests an ideal model for development. This contribution examines the approaches of United Nations development agencies, the European Union, and China in integrating human rights into development cooperation. The landscape of development cooperation has become increasingly diverse, with countries traditionally seen as recipients—such as Brazil, India, South Africa, and the United Arab Emirates—emerging as providers of cooperation. These "new" donors assert that their relationships with partner countries are more respectful and free from colonial influences, including in their approach to human rights.

**Keyword:** Direitos Humanos. Cooperação Internacional. Direito ao desenvolvimento. Países emergentes.

### *EDUCOMMUNICATION PRACTICES FOR INCLUDING CITIZENS IN THE BRAZILIAN SOCIAL SECURITY*

### ABSTRACT

*Diversos instrumentos das Nações Unidas enfatizam a ligação essencial entre direitos humanos e desenvolvimento, defendendo a cooperação internacional para alcançar ambos. A Declaração das Nações Unidas sobre o Direito ao Desenvolvimento afirma que o desenvolvimento engloba os direitos humanos e destaca o dever dos Estados de cooperar internacionalmente para remover obstáculos ao desenvolvimento. Organizações intergovernamentais e estados, incluindo doadores emergentes como Brasil e Índia, estão integrando os direitos humanos nos esforços de cooperação para o desenvolvimento. Esta contribuição delinea as abordagens adotadas por atores-chave e sugere um modelo ideal para o desenvolvimento. A contribuição examina as abordagens das agências de desenvolvimento das Nações Unidas, da União Europeia e da China na integração dos direitos humanos na cooperação para o desenvolvimento. O cenário da cooperação para o desenvolvimento tornou-se cada vez mais diversificado, com países tradicionalmente vistos como receptores, como Brasil, Índia, África do Sul e Emirados Árabes Unidos, emergindo como provedores de*

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*cooperação. Esses "novos" doadores afirmam que seus relacionamentos com os países parceiros são mais respeitosos e livres de influências coloniais, incluindo em sua abordagem aos direitos humanos.*

**Palavras-Chave:** *Direitos Humanos. Cooperação Internacional. Direito ao desenvolvimento. Países emergentes.*

## INTRODUCTION

For decades various instruments adopted at the United Nations have taken that view that human rights are integral to development, and that the realization of development (including human rights) requires international cooperation.<sup>2</sup>

By way of example, the United Nations Declaration on the Right to Development<sup>3</sup> contains straightforward language in this respect. The Declaration provides that development includes the full realization of all human rights and fundamental freedoms<sup>4</sup>, and adds unambiguously that States “should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic social and cultural rights”<sup>5</sup> - a clear rejection of the position that development needs to be achieved before human rights can be realized. The Declaration also emphasizes that States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development<sup>6</sup>. According to the Declaration, “as a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development”.<sup>7</sup>

As a result, intergovernmental organisations and States providing development cooperation have attempted to define the legal and policy consequences of their commitment to human rights for the assistance they provide, both in terms of their relationship with the partners countries and in terms of the sectors for cooperation. This has proven to be a hazardous undertaking, leading to a variety of interpretations on how the relationship between development and human rights is to be understood.

This contribution focuses on the approaches taken by the United Nations development agencies, the European Union and China.

The landscape of countries providing cooperation for development is becoming increasingly varied. Countries formerly perceived of uniquely as recipient countries

<sup>2</sup> According to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, States have the duty to cooperate with

one another in the various spheres of international relations to promote international economic stability and progress and, to that end, to cooperate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance (UN General Assembly resolution 2625/XXV (24 October 1970). In international human rights treaty law, the importance of international cooperation is explicitly recognized in the International Covenant on Economic, Social and Cultural Rights (art. 2, para 1), the Convention on the Rights of the Child (art. 4) and the Convention on the Rights of Persons with Disabilities (art. 32).

<sup>3</sup> United Nations Declaration on the Right to Development, General Assembly resolution 41/128 (4 December 1986).

<sup>4</sup> *Ibid.*, art. 1, para 1.

<sup>5</sup> *Ibid.*, art. 6, para 3.

<sup>6</sup> *Ibid.*, art. 3, para 3.

<sup>7</sup> *Ibid.*, art. 4, para 2.

such as Brazil, India, South Africa and the United Arab Emirates have stepped in as cooperation providing countries. These 'new' donors take the view that since their relationship with partner countries is not tainted by colonialism, the cooperation they provide is more respectful of the recipient countries' leadership, including on human rights.<sup>8</sup> An analysis of the legal and policy approaches of these individual countries to the integration of human rights into cooperation for development is beyond the scope of this contribution, but a section on South-South cooperation is included.

The contribution closes with a short section suggesting an ideal type of development cooperation program that encompasses human rights.

## 1. THE UNITED NATIONS HUMAN RIGHTS BASED APPROACH TO DEVELOPMENT COOPERATION

In 2003, the United Nations Development Group adopted the following *Common Understanding of a human rights-based approach to development cooperation (HRBAD)*<sup>9</sup>:

"1. All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.

3. Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights".

The Common Understanding built on the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights. The World Conference Declaration had stated that while development facilitated the enjoyment of human rights, "the lack of development may not be invoked to justify the abridgment of internationally recognized human rights".<sup>10</sup> In a subsequent section, the document called for increased coordination on human rights within the United Nations system.<sup>11</sup> The section called into question the division within the United Nations system between development and human rights institutions and created a mandate for the UN Secretary-General and subsequently for the UN High Commissioner for Human Rights to bridge the gap.

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<sup>8</sup> For example, see United Arab Emirates Ministry of Foreign Affairs & International Cooperation, Promoting Global Peace and Prosperity. The UAE Policy for Foreign Assistance 2022 Update, 8 available at <https://www.mofa.gov.ae/en/The-Ministry/UAE-International-Development-Cooperation/UAE-Foreign-Aid-Policy>.

<sup>9</sup> The Human Rights Based Approach to Development Cooperation. Towards a Common Understanding Among UN Agencies (5 May 2003) is available as <https://unsdg.un.org/resources/human-rights-based-approach-development-cooperation-towards-common-understanding-among-un>.

<sup>10</sup> World Conference on Human Rights, Vienna Declaration and Programme of Action (25 June 1993), Section I, para 10; endorsed by the UN General Assembly in resolution 48/121 (20 December 1993).

<sup>11</sup> *Ibid.*, Section II (A).

The Common Understanding was thus primarily intended to assist United Nations entities in ensuring that their development programming was human rights compliant. Today the Common Understanding is used more broadly as a reflection of how the UN understands the human rights-based approach to development cooperation. The text is frequently referenced by other multi- and bilateral donors and civil society organisations as a starting point for their own human rights-based policies.

The document does not directly address the cooperation receiving country. It offers advice to UN agencies (and in the broad interpretation to development agencies generally) on how to integrate human rights in the cooperation programmes and policies they offer to recipient countries. The integration of human rights into development cooperation programs is considered a best practice. References to any legal obligations the UN agencies may have to engage in a human rights-based approach or to the organization's own accountability to rights holders are absent from the text. The document does not prescribe; the main preoccupation is to ensure coherence between the UN organisations that have chosen to adopt a human rights-based approach.

It is worth further investigating to what degree the agencies affiliated with the UN Sustainable Development Group<sup>12</sup> have committed to and implemented the human rights-based approach in practice. There may well be a great deal of variation in the extent to which UN resident coordinators and UN country teams prioritize human rights. Agency priorities also shift over time. UNICEF adopted a human rights approach to programming in 1998<sup>13</sup> and was a frontrunner within the UN family. A study on the UNICEF human rights based approach and its application in a water and sanitation project in the Bas-Congo in the DRC<sup>14</sup> found that by 2015 the official rhetoric had remained but that attention to the approach in strategic and operational documents had dwindled.<sup>15</sup> This was confirmed by the evaluation of a specific program in the DRC: the commitment to HRBAD had mainly taken place at the discursive level. HRBAD Principles were absent from the operational documents, and even more from interventions.<sup>16</sup> No mechanisms for sharing local rights holders' input on practical or programmatic concerns had been built, and no efforts were undertaken to investigate local human rights understandings.<sup>17</sup>

The remainder of this section is not so much concerned with follow-up within the UN system of the Common Understanding but rather with difficulties that have surfaced when actors providing cooperation for development have attempted to operationalize the integration of human rights along the lines suggested in the Common Understanding.

The explanatory note to the Common Understanding explains that a cooperation program that only incidentally contributes to the realization of human rights does not necessarily constitute a human rights-based approach to programming. Ideally,

<sup>12</sup> See <https://unsdg.un.org/>. The international financial institutions are not a part of this group.

<sup>13</sup> UNICEF, Guidelines for human-rights based programming, Executive Directive, CF/EXD/1998-04 (21 April 1998).

<sup>14</sup> Tine Destrooper, An analysis of the human rights-based approach to development. UNICEF's role in the villages assainis program in the Bas-Congo (2015), University of Antwerp, 250p. – available in open-access as <https://www.uantwerpen.be/en/research-groups/law-and-development/publications/localising-human-rights/>

<sup>15</sup> Ibid., 59.

<sup>16</sup> Ibid., 208.

<sup>17</sup> Ibid., 217.

activities in all sectors should contribute to the realization of one or several human rights. In the development cooperation jargon, this aspiration became known as the need to 'mainstream' human rights in development cooperation. The Common Understanding further adds that in a cooperation program all human rights should have an a priori equal status and that all individuals affected by the program are equally entitled to human rights protection.

It is unlikely that any development agency can fully achieve mainstreaming human rights across all its activities. In practice, development agencies tend to apply human rights to specific sectors (i.e., sectors most closely covered by corresponding human rights) or to fund projects specifically dedicated to human rights. In practice development agencies may well prioritize certain rights over others (e.g., because of their constituent documents or by way of a policy choice or due to public pressure within their own society). It is also not self-evident to ensure that development programs benefit all intended beneficiaries equally and to avoid that a development program creates new inequalities between beneficiaries and rights holders that are in the same situation but that are not targeted by the program's activities. Development agencies may also be selective in applying a human rights-based approach in only some recipient countries. The bottom line of "mainstreaming" is to ensure that no intervention that the development agency supports contributes to human rights violations.

The seminal element of the Common Understanding is the emphasis on capacity enhancement of both the rights holders and duty bearers through development cooperation.

Except for direct assistance given to human rights defenders or individuals at risk, support to rights holders tends to be directed at civil society and indigenous organisations. These may include both service providing organisations and social movements that adopt a human rights approach as well as human rights advocacy organisations. In deciding which organisations to prioritise for support, the extent to which they represent and defend the rights of those (most) under threat may serve as an appropriate criterion, as the end goal is to strengthen the capacity of the rights holders to claim their rights. Such an assessment is ideally based on an in-country presence that is mandated to enter direct contacts with rights holders. On the other hand, once the criterion is satisfied and an organisation is selected for support, an emphasis on capacity enhancement suggests that the support should aim at strengthening the organisation's own plans and strategies, preferably over an extended period, rather than to provide funding for short term projects reflecting donor priorities. In countries where the domestic fundraising basis is slim, the dependency of human rights based civil society organisations on international or foreign funding has impacted upon their relationship with the domestic government and on how they are perceived within the society.

Support to capacity enhancement of the duty bearer raises a number of additional concerns. Development agencies tend to perceive of States as the main, if not the only human rights duty bearer. Obviously, the human rights obligations that the receiving country (the "partner country") has subscribed to - at levels varying from the global to the local - form the starting point. Assessments by the United Nations human rights

system of how these obligations have been implemented provide valuable information on the design of a development cooperation program that addresses gaps in the capacity of the State to meet its human rights obligations.

Again, the emphasis on capacity enhancement suggests that support should be given to the capacity of the recipient government's own plans and strategies to address human rights issues in the country. The domestic government has the primary responsibility for the realization of both human rights and development within its jurisdiction, and this responsibility needs to be respected by international or foreign development agencies.

The difficulty is that the human rights records of States are often mixed, as United Nations human rights assessments amply show. There is a risk that the development agency's capacity enhancement effort will be seen as providing legitimacy to governmental laws, policies and practices that are subject to human rights criticism. This risk is most evident when support is given to the executive branch of the government. Governments are however seldom homogeneous and various ministries may have different stances on human rights issues. It may well be possible to support benevolent ministries on human rights issues that are less confrontational but that can keep human rights practice alive. For example: the government of the recipient State may be interested in cooperation on moving towards the banning of child marriage, but not on curbing excessive use of force by law enforcement officials. In such circumstances, the development agency could still usefully engage in human rights-based cooperation on the issue to which the recipient government is open if the development intervention is complemented by a political (foreign policy) dialogue including public diplomacy raising the human rights issues on which no development cooperation can be achieved.

Apart from the executive branch other State organs may also be addressed through human rights-based development cooperation. They include strengthening the capacity of the parliament and the judiciary to protect human rights and their independence from the executive. Local authorities including city administrations are often the first State organs that human rights claimants encounter, and they may be less driven by the national interest as defined by the domestic government.

Guardian institutions are potential bridge builders between the duty bearers and the rights holders. They include national or sub-national human rights institutions, ombudsmen, anti-corruption commissions, electoral commissions and the like.

Development agencies may also wish to support initiatives for governmental authorities and civil society actors to engage with each other to arrive at optimal solutions, i.e., initiatives that respond as effectively as possible to human rights needs as identified by the rights holders.

The Common Understanding document remains silent on the suspension of development cooperation due to human rights violations. The explanatory note to the Common Understanding does list "accountability and rule of law" as one of the human rights principles that are to be considered in a human rights-based approach to development. This principle requires that when duty bearers fail to comply with human rights "aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and

procedures provided by law". It would thus be proper for a development agency to assist the rights-holders directly or indirectly in doing so.

At the World Conference on Human Rights, the emphasis was equally on cooperation for the realization of human rights. The World Conference called on States "to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that create obstacles to trade relations among States and impedes the full realization of human rights (...) in particular the rights of everyone to an [adequate] standard of living".<sup>18</sup>

The United Security Council has imposed sanctions ranging from comprehensive trade and economic sanctions to more frequently used targeted measures such as arms embargoes, travel bans, and financial or commodity restrictions in response to some (but not all) situations involving gross and systematic violations of human rights.<sup>19</sup> A clear example was the UN Security Council initiative to intervene in the civil war in Libya at the end of the Gaddafi era. The relevant UN Security Council resolutions refer to the need to protect the civilian population against gross and systematic violations of human rights including arbitrary detention, enforced disappearances, torture and summary executions and attacks that might amount to crimes against humanity.<sup>20</sup>

## 2. THE EUROPEAN UNION HUMAN RIGHTS-BASED APPROACH

The European Union (EU) is a staunch defender of the application of a human rights-based approach to development cooperation<sup>21</sup>.

The EU external human rights policy is scattered across a multitude of legal and policy instruments. According to the Treaty of the European Union the EU is "founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities".<sup>22</sup> The Treaty commits the EU to uphold these values, including the universality and indivisibility of human rights and fundamental freedoms "in the wider world".<sup>23</sup> Under its constituent document the European Union is therefore under an obligation to uphold human rights in its external action.

Development cooperation is a shared competence between the European Union and its Member States. The European Union has the competence to carry out activities and conduct a common policy, but this "shall not result in Member States being prevented from exercising theirs".<sup>24</sup> The EU and the Member States separately maintain development cooperation budgets. The European Union is also required to ensure policy coherence by taking "into account of the objectives of development cooperation in

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<sup>18</sup>World Conference on Human Rights, Vienna Declaration and Programme of Action (25 June 1993), Section I, para 31

<sup>19</sup> As officially confirmed at <https://www.un.org/securitycouncil/sanctions/information>.

<sup>20</sup> See UN Security Council resolutions 1970 (26 February 2011) and 1973 (17 March 2011).

<sup>21</sup> In some of the more recent EU instruments, the terminology shifts from 'development cooperation' to 'international partnerships'.

<sup>22</sup> Art. 2, Treaty on European Union, Official Journal C 202 (7.6.2016).

<sup>23</sup> Ibid., art. 3, paras 5 and 21.

<sup>24</sup> Art. 4, Treaty on the Functioning of the European Union, Official Journal Treaty on the Functioning of the European Union, Official Journal C 202 (7 June 2016).

the policies that it implements which are likely to affect developing countries”<sup>25</sup> which implies a commitment to extend the human rights-based approach to all areas of external action.

In 2014, the European Council, consisting of the heads of state or government of the 27 EU member states, the European Council President and the President of the European Commission adopted conclusions on a rights-based approach to development cooperation, encompassing all human rights.<sup>26</sup> In the document, the Council commits to step up its efforts in ensuring the effective implementation of a rights-based approach to development based on the universality and indivisibility of human rights and on four additional principles “that should be central to EU development cooperation”: inclusion and participation in decision-making processes; non-discrimination, equality and equity; transparency and accountability.<sup>27</sup> In June 2017, as a response to the UN 2030 Agenda on Sustainable Development the EU Council, the Parliament and the Commission, together with the Member States adopted the European Consensus on Development.<sup>28</sup> This document too declares that the EU and its Member States will implement a rights-based approach to development cooperation, encompassing all human rights and that this approach i.a. will include addressing the multiple discriminations faced by vulnerable people and marginalised groups.<sup>29</sup>

Over the years, the EU has adopted a number of human rights Guidelines “on issues of importance to the EU (...) that are priorities for the EU and its Member States”.<sup>30</sup> They are intended as practical tools to support EU missions to advance the EU human rights policy. The Guidelines have no legally binding force; they serve as steering instruments for the EU’s human rights external action. Most of the Guidelines deal with civil and political rights and with humanitarian law – reflecting Europe’s internal historical tradition and the contemporary consensus between the Member States. The EU Guidelines on Safe Drinking Water and Sanitation<sup>31</sup> are an exception to the focus on civil and political rights. Although the title of the document avoids human rights language,<sup>32</sup> the text leaves no doubt that the EU and the Member States subscribe to the human rights to drinking water and sanitation as components of the right to an adequate standard of living, building on agreed UN language. The Guidelines explicitly adopt a rights-based approach and apply the EU’s working principles of a human rights-based approach to safe drinking water and sanitation.<sup>33</sup>

<sup>25</sup> Ibid. art. 208, para 1.

<sup>26</sup> Council Conclusions on a rights-based approach to development cooperation, encompassing all human rights Foreign Affairs (Development) Council Meeting (19 May 2014) available as [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/foraff/142682.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/142682.pdf). Council conclusions set up political commitments; they do not intend to have legal effects.

<sup>27</sup> Ibid., para 4.

<sup>28</sup> The New European Consensus on Development. Our World, our dignity, our future (2017/C 210/01). Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission Official Journal of the European Union C 210/1 (30 June 2017)

<sup>29</sup> Ibid., para 16.

<sup>30</sup> Language taken from [https://www.eeas.europa.eu/eeas/eu-human-rights-guidelines\\_en](https://www.eeas.europa.eu/eeas/eu-human-rights-guidelines_en).

<sup>31</sup> EU Guidelines on Safe Drinking Water and Sanitation, Council doc 10145/19 (17 June 2019) available as <https://www.consilium.europa.eu/media/39776/st10145-en19.pdf>.

<sup>32</sup> Initially, not all EU Member States appear to have agreed about whether there was a *human* right to water and sanitation. The reference in the Guideline to a rights-based a human rights-based approach may be a remnant of that discussion.

<sup>33</sup> Ibid., 9-11.



Since 2012, the EU Council has adopted Action Plans on Human Rights and Democracy. They set the EU's priorities for the advancement of human rights and democracy worldwide. The current plan spans the 2020-2024 period.<sup>34</sup> It emphasizes the empowerment and defence of individuals as rights holders and seeks to strengthen long-term partnerships and cooperation with civil society actors, human rights defenders and social movements and to counter the closing of civic space. Thematically the action plan confirms many of the EU's entrenched priorities: the death penalty, torture, the protection of civilians in armed conflict, freedom of thought, conscience and religion, the rights of children and older persons, and non-discrimination. Gender equality, gender-based violence, sexual and reproductive rights and LGBTI rights figure prominently.

In the context of the support of human rights defenders, the material scope widens to include "raising individual cases related to inter alia legitimate land tenure rights, labour rights, natural resources, environmental issues, freedom of peaceful assembly and association indigenous peoples' rights as set out in the UN Declaration on the Rights of Indigenous Peoples, climate change, and those resulting from corporate abuses".<sup>35</sup> Support is also offered to indigenous peoples by promoting their participation in relevant human rights and development processes and by upholding the principle to free, prior and informed consent in all decisions affecting them.

An innovation of the current action plan was the support to measures to address the high risk and serious impacts of climate change, environmental degradation and biodiversity loss on the exercise of human rights such as the rights to life, health, safe drinking water and sanitation, food, adequate housing and standard of living, including for climate-induced displaced people. The section on economic, social, cultural, and labour rights<sup>36</sup> includes support to state authorities on complying with environmental regulations, including the promotion of good governance and community-based natural resources management; and on developing and implementing laws, regulations, policies and on water, food, land, natural resources, housing and property that uphold human rights. The right to self-determination and the right to development are absent from the document.

The current financial instrument for the human rights-based approach to development is the Global Europe: Neighbourhood, Development and International Cooperation Instrument (NDICI).<sup>37</sup> The instrument regulates all external action funds for the 2021-2027 period. Article 8, that deals with the general principles of the text states in part:

(b) The Instrument shall apply a rights-based approach encompassing all human rights, whether civil and political or economic, social and cultural in order to integrate

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<sup>34</sup> EU Action Plan on Human Rights and Democracy 2020-2024, available as [https://www.eeas.europa.eu/sites/default/files/eu\\_action\\_plan\\_on\\_human\\_rights\\_and\\_democracy\\_2020-2024.pdf](https://www.eeas.europa.eu/sites/default/files/eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf).

<sup>35</sup> *Ibid.*, 12.

<sup>36</sup> *Ibid.*, 15-16.

<sup>37</sup> Global Europe: Neighbourhood, Development and International Cooperation Instrument, EU Regulation 2021/947 of the European Parliament and the Council (9 June 2021), Official Journal of the European Union L 209/1 (14 June 2021).

human rights principles, to support the right holders in claiming their rights, with a focus on poorer, marginalised and vulnerable people and groups, including persons with disabilities, and to assist partner countries in implementing their international human rights obligations. That approach shall be guided by the principles of ‘leaving no one behind’, equality and non-discrimination on any grounds.

This general principle applies not only to development cooperation, but to all areas of the EU external action. Annex III, part 1 of the regulation offers more specifics on the thematic “area of intervention” of human rights and democracy.

A striking feature of the NDICI (and of its predecessor the European Instrument for Democracy and Human Rights) is the EU’s direct support to non-State actors regardless of whether the recipient country gives its consent to provide such support. According to the regulation:

... Union assistance under the Human Rights and Democracy thematic programme and the Civil Society Organisations thematic programme should have a specific complementary and additional role by virtue of its global nature and its independence of action from the consent of the governments and public authorities of the third countries concerned. That role should allow for cooperation and partnership with civil society, especially on sensitive human rights and democracy issues. The Union should pay particular attention, in a flexible manner, to countries and urgency situations where human rights and fundamental freedoms are most at risk and where disrespect for those rights and freedoms is particularly pronounced and systematic.<sup>38</sup>

In addition, the funding instrument includes a European Fund for Sustainable Development Plus (EFSD+) that raises financial resources for sustainable development from the private sector for inclusive economic development, and the External Action Guarantee that is to be used for de-risking activities and leveraging private investment.<sup>39</sup> The EFSD+ is presented as a means of contributing to the achievement of the objectives and general principles laid down in Articles 3 and 8 of the Regulation, and hence subject to a human rights based approach as well.

According to preambular paragraph 40 of the NDICI Regulation, assistance could be suspended in the event of degradation in democracy, human rights or the rule of law in third countries, and that possibility is also envisaged in the section dealing with geographic programmes.<sup>40</sup>

The European Union and the Member States built on the inclusion of human rights as a fundamental value in the EU constituent documents to impose ‘autonomous’ sanctions on third countries beyond the sanctions imposed by the United Nations Security Council. A 2004 document already listed the EU ‘Basic Principles on the

<sup>38</sup> Ibid., preambular paragraph 42 and art. 12, para 2(e). The instrument also envisages direct awards to human rights defenders to finance urgent protection actions and needs. See art. 27, para 3(a).

<sup>39</sup> Ibid., chapter IV.

<sup>40</sup> Ibid., art. 4, para 5(b).

Use of Restrictive Measures<sup>41</sup>. Restrictive measures were to be taken in line with the EU common foreign and security policy, in conformity with international law, with maximum impact on those whose behaviour “we want to influence”<sup>42</sup> and with minimum adverse consequences for those not targeted. These restrictive measures were intended as instruments “to fight terrorism and the proliferation of weapons of mass destruction and (...) to uphold respect for human rights, democracy, the rule of law and good governance”. At the time of writing the EU Sanctions Map showed thirty-five affected countries.<sup>43</sup> A broad package of restrictive measures against a third country would typically include measures against officials, financial institutions and restrictions on the trade in goods, including on arms trade in conflict situations.

The EU Action Plan on Human Rights and Democracy 2020-2024 anticipated the establishment of an additional “new horizontal EU global human rights sanctions regime to tackle serious human rights violations and abuses worldwide”.<sup>44</sup> This additional instrument became known as the EU Global Human Rights Sanctions Regime.<sup>45</sup> The regime applies to genocide, crimes against humanity and “serious human rights violations or abuses”: torture and other cruel, inhuman or degrading treatment or punishment; slavery; extrajudicial, summary or arbitrary executions and killings; enforced disappearance of persons and arbitrary arrests or detentions.<sup>46</sup> The regime also applies to “other human rights violations or abuses, in so far as those violations or abuses are widespread, systematic or are otherwise of serious concern as regards the objectives of the common foreign and security policy”.<sup>47</sup> The “other human rights” listed are all civil and political rights.

The sanctions regime targets State actors, other actors exercising effective control or authority over a territory such as militias; and other non-State actors considering the CFSP policy and the gravity or impact of abuses. The restrictive measures consist of travel bans, asset freezes and a prohibition to make funds or economic resources available to listed individuals and entities. The measures are to be applied to those committing, supporting or associated with the relevant violations.<sup>48</sup>

The regime applies within EU territory, to EU nationals and legal persons incorporated under the law of a Member State and to all legal persons, in respect of any

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<sup>41</sup> Council of the European Union, Basic Principles on the Use of Restrictive Measures (Sanctions), 10198/1/04 REV 1 (7 June 2004) available as <https://data.consilium.europa.eu/doc/document/ST-10198-2004-REV-1/en/pdf>.

<sup>42</sup> *Ibid.*, para. 6

<sup>43</sup> See <https://www.sanctionsmap.eu/#/main>.

<sup>44</sup> EU Action Plan on Human Rights and Democracy 2020-2024, 16.

<sup>45</sup> EU Council Regulation) 2020/1998 (7 December 2020) concerning restrictive measures against serious human rights violations and abuses, Official Journal of the European Union L1 410/1 (7.12.2020) and EU Council Decision (CFSP) 2020/1999 (7 December 2020) concerning restrictive measures against serious human rights violations and abuses OJ L 410 I/13 (7.12.2020).

<sup>46</sup> EU Council Regulation) 2020/1998 (7 December 2020), art. 2, para 1(c).

<sup>47</sup> *Ibid.*, art 2, para 1(d).

<sup>48</sup> *Ibid.*, art.3.

business done in whole or in part within the Union.<sup>49</sup> The regime thus also affects European development agencies when they cooperate with targeted actors— although some of the derogations (e.g. the humanitarian exception in Article 5 of the regulation) may apply.

Listings (and de-listings) require a unanimous decision by the Council, upon a proposal from a Member State or from the High Representative of the Union for Foreign Affairs and Security Policy.<sup>50</sup> At the time of writing, restrictive measures were imposed under the sanctions regime against State or non-State natural and legal persons in Russia, China, North Korea, Libya, South Sudan, Afghanistan, Myanmar, Eritrea, Central African Republic, Iran, and Syria.

The European Union and its Member States perceive of their autonomous sanction's regime as an example of European global leadership on establishing accountability for human rights violations – particularly in contexts where neither the United Nations nor the domestic government are likely to take action.

At the global level the EU human rights sanctions regime and similar regimes set up unilaterally by developed countries are controversial, both from a political and legal perspective.<sup>51</sup> The UN Human Rights Council has established a Special Rapporteur on the negative impact on Unilateral Coercive Measures on the enjoyment of human rights.<sup>52</sup>

At a level of principle, the EU system can be interpreted as an expression of dissatisfaction with multilateralism. The unilateral imposition of sanctions may well result in an exchange of sanctions. When the EU targeted Chinese officials involved in the administration of the Uygur autonomous region<sup>53</sup> China responded by imposing sanctions on EU individuals and entities. An exchange of sanctions is less than helpful in fostering global human rights solidarity or in improving the robustness of the UN human rights machinery. It can also be questioned whether any regional organisation should assume the authority to create a “global” human rights regime with clear extra-territorial effects beyond the region. The imposition of sanctions on government institutions in developing countries and the EU use of a leadership discourse summons

<sup>49</sup> Ibid., art.19.

<sup>50</sup> and EU Council Decision (CFSP) 2020/1999, art.5.

<sup>51</sup> For an overview, see Iryna Bogdanova, *Unilateral Sanctions in International Law and the Enforcement of Human Rights* (2022), Brill/Nijhoff, available in open access.

<sup>52</sup> See <https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures>. In 2020, the Human Rights Council enigmatically chose to appoint a Belarus national who is a professor at a state university to the position. Academic freedom in Belarus is heavily curtailed. Belarus has been targeted by unilateral sanctions even before the government's support to Russia in the military intervention in Ukraine. This makes it quite easy to discredit the content of her otherwise interesting reports. In 2012, the Human Rights Council appointed a Special Rapporteur on situation of human rights in Belarus – a mandate that has been renewed ever since. See <https://www.ohchr.org/en/special-procedures/sr-belarus>. The Belarus authorities refuse to cooperate with the Special Rapporteur on Belarus.

<sup>53</sup> See [https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/690617/EPRS\\_ATA\(2021\)690617\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/690617/EPRS_ATA(2021)690617_EN.pdf).

memories of the colonial era in many developing countries. The use of leadership language is simply unwise. There are also concerns about the political nature of the exercise. The regime explicitly refers to EU foreign policy concerns as a factor in the assessment of whether to impose sanctions or not for “other” human rights violations, and in any case, the regime reflects the EU’s own specific human rights priorities. The regime is political, not judicial in nature and this may mean that the threshold for determining violations is lower than in the context of a judicial or quasi-judicial procedure. It is also unclear to what extent a proportionality/necessity test between the severity of the violations and the severity of the sanctions applies. The EU regime also considers a broader range of human rights in the context of the imposition of sanctions than the UN Security Council has done so far. Also in that respect, the threshold for sanctions is lower.

Finally, the European Commission has prepared an EU Toolbox on applying the human rights-based approach to international partnerships<sup>54</sup> learning from the practice of implementation and as an instrument to promote consistency in the approaches by the EU, the Member States, and the European Financial Institutions. The document is thus “primarily aimed at staff working in EU external action, practitioners in Member States and the EU’s development and implementing partners”.<sup>55</sup> The Toolbox offers clarification on the five working principles of the human rights-based approach to development as interpreted by the European Union. These principles are to be rigorously applied throughout programming, design and implementation and across all sectors, so the document states. Gender equality should be mainstreamed throughout the principles.<sup>56</sup>

The text constantly emphasizes that human rights are legally binding state obligations. A degree of ambivalence pervades because the instrument serves both as a knowledge tool for staff as well as a prescription of what is expected from the development partners. One criticism of the human rights-based approach is that it serves as an instrument of increased monitoring of the human rights obligations of recipient countries but fails to address the human rights responsibilities of the cooperation providing country. The exception in the Toolbox is the recognition that the principle of transparency and access to information not only implies legal and policy interventions by the state institutions of the development partner, but also requires that the EU must make sure that it ensures transparency by sharing publicly information and data on decision making and intervention implementation, in a way that is understandable and accessible to all.<sup>57</sup>

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<sup>54</sup> European Commission, *Applying the Human Rights Based Approach to international partnerships*, EU doc. SWD (2021) 179 final (30 June 2021).

<sup>55</sup> *Ibid.*, 4.

<sup>56</sup> *Ibid.*, 8.

<sup>57</sup> *Ibid.*, 12.

It remains unclear what exactly the phrase “legally binding state obligations” refer to in the Toolbox. In the specific context of a development partnership, the notion can be understood in three ways: as the legally binding obligations of the EU and the Member States (i.e. a donor driven interpretation of the partnership); as the legally binding obligations of the development partner (i.e. an interpretation of the partnership that is deferent to the sovereignty of the partner country); or as the legally binding human rights obligations that both partners have in common. The latter interpretation is in alignment with the idea of an equal partnership but implies a recognition that at least with some of the recipient countries the EU human rights priorities cannot be achieved through development cooperation (while other means such as public diplomacy remain available).

The problem arises in an atypical way in the Toolbox. The Toolbox uses a fictional case on the treatment of migrant workers to illustrate how EU staff can implement the human rights-based approach in practice. For the purposes of the fictitious case EU staff is thus encouraged to check whether the country at hand has ratified the International Convention on the Protection of the Rights of All Migrant Workers (ICRMW) and has thus accepted legally binding international obligations to protect migrant workers.<sup>58</sup> This makes eminent sense as of itself. On the other hand, not a single European Member State has ratified the ICRMW notwithstanding calls from the European Parliament to do so. Clearly one can question whether it is appropriate for States that refuse to consent to a treaty and thus internally withhold the protection offered by the treaty to migrant workers to call on States that are parties to the treaty to implement the treaty properly within the context of a relationship that is nominally an equal partnership.

The 2020-2024 EU Action Plan on Human Rights and Democracy commits to broaden the scope of the Toolbox to all EU external action programmes.<sup>59</sup> The commitment is part of the wider objective to ensure that human rights and democracy are “promoted consistently and coherently in all areas of EU external action (e.g., trade, environment, development, counterterrorism”.<sup>60</sup> The action plan also includes the more detailed objective to “strengthen the implementation of human rights provisions in EU trade policy, including through the GSP, and by promoting labour rights in the context of FTAs”.<sup>61</sup>

### 3. THE CHINA DEVELOPMENT APPROACH OF HUMAN RIGHTS

In February 2021, Wang Yi, the Minister of Foreign Affairs presented China’s approach to human rights in remarks to the Human Rights Council under the heading

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<sup>58</sup> *Ibid.*, 18.

<sup>59</sup> EU Action Plan on Human Rights and Democracy 2020-2024, 32.

<sup>60</sup> *Ibid.*, 9.

<sup>61</sup> *Ibid.*, 24.

“A People-centred Approach for Global Human Rights”.<sup>62</sup> The Minister of Foreign Affairs argued that:

- Human rights should centre on the people. Increasing people's sense of gains, happiness and security is the fundamental pursuit of human rights as well as the ultimate goal of national governance.
- The universality and particularity of human rights should both be upheld. Human rights should be observed and delivered by all countries, but countries must promote and protect human rights in light of their national realities and the needs of their people.
- All aspects of human rights should be advanced, but among them, the rights to subsistence and development are the basic human rights of paramount importance. The scope of human rights is constantly evolving, and the right to health and the environmental right should also be given more prominence.
- Global human rights governance should be advanced through consultation among all countries. The benefits of human rights progress should be shared by people of all countries. Human rights are not a monopoly by a small number of countries, still less should they be used as a tool to pressure other countries and meddle in their internal affairs. All countries should abide by the purposes and principles of the UN Charter, carry out human rights exchange and cooperation on the basis of equality and mutual respect, and jointly promote the sound development of the international human rights cause.

In September of the same year, President Xi Jinping launched a Global Development Initiative.<sup>63</sup> He presented the initiative as China's effort to speed up the implementation of the 2030 Agenda in response to the shocks of COVID-19. The President stressed that development held “the key to people's well-being”. He argued that:

We should safeguard and improve people's livelihoods and protect and promote human rights through development, and make sure that development is for the people and by the people, and that its fruits are shared among the people.

In his view, the special needs of developing countries were to be taken care off by such means as debt suspension and development aid, with emphasis on addressing unbalanced and inadequate development among and within countries. He promised that China would step up support for other developing countries in developing green and low-carbon energy and would not build new coal-fired power projects abroad. Cooperation should prioritize poverty alleviation, food security, COVID-19 response and vaccines, development financing, climate change and green development, industrialization, digital economy and connectivity, among other areas. The enhancement of the capacity of developing countries as duty bearers to meet their human rights

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<sup>62</sup> Available from: [http://geneva.china.mission.gov.cn/eng/dbdt/202102/t20210222\\_9899531.htm](http://geneva.china.mission.gov.cn/eng/dbdt/202102/t20210222_9899531.htm)

<sup>63</sup> The speech that was delivered to 76th session of the United Nations General Assembly on 21 September 2021 is available from <https://webcache.googleusercontent.com/search?q=cache:a-pX3DunmsQJ:https://asia.nikkei.com/Politics/International-relations/Xi-Jinping-s-full-speech-at-the-U.N.-s-76th-General-Assembly2+&cd=16&hl=en&ct=clnk&gl=au&client=safari>.

obligations - a major component of the United Nations human rights based approach to development – was not mentioned as a prioritized sector, although the role of the United Nations in advancing “in a balanced manner, work in all the three areas of security, development and human rights” was fully acknowledged. The President pledged an “additional three billion U.S. dollars of international assistance in the next three years to support developing countries in responding to COVID-19 and promoting economic and social recovery”.

In 2013 China had launched the Belt and Road Initiative, an ambitious infrastructural plan originally aimed at re-establishing historical overland trading routes between China and Europe (“One Road”) and new sea trade infrastructure connecting China, Southeast Asia, Africa and Europe (“One Belt”). The initiative has gradually expanded to other regions (including Latin America) and other sectors.<sup>64</sup> In 2015, the South-South Cooperation Assistance Fund (now Global Development and South-South Cooperation Fund )<sup>65</sup> to “support South-South cooperation and assist developing countries in implementing their agendas” was set up; funding is also provided for cooperation with United Nations development agencies. China also initiated the Asian Infrastructure Investment Bank that according to its Articles of Agreement aims at fostering sustainable economic development by investing in infrastructure and other productive sectors; and at promoting regional cooperation and partnership in addressing development challenges by working in close collaboration with other multilateral and bilateral development institutions.<sup>66</sup>

Li Erping and Yao Yunsong explain that China’s opening up policy was the result of the country’s capital surplus. The country needed to heavily increase its capital export, and this is what the initiatives listed above provided. In addition, China had a production overcapacity and capability of massive infrastructure construction, that, so the authors argue, is consistent with the demands and needs of the developing countries to develop their economy:

The Belt and Road Initiative is not related to any ideology, but a “culture with harmonization” as the foundation of cooperation.”<sup>67</sup>

At the United Nations Human Rights Council, the development approach to human rights (or the people-centered approach to human rights) serves as China’s counternarrative to the EU’s human rights-based approach to development. The contrasts are clear.

First, while the EU focuses on the individual as the holder of human rights, China emphasizes the people as rights holder. It is argued that a people-centred/development approach to human rights is more conducive to all civilisations than an approach to human rights that is uniquely focused on individual freedom.<sup>68</sup> The term ‘people’ refers

<sup>64</sup> For background, see Frank Umbach, How China’s Belt and Road Initiative is faring (2022), available at <https://www.gisreportsonline.com/r/belt-road-initiative/>.

<sup>65</sup> <http://en.cidca.gov.cn/southsouthcooperationfund.html>

<sup>66</sup> Article 1, Asian Infrastructure Investment Bank Articles of Agreement (25 January 2019) available as: [https://www.aiib.org/en/about-aiib/basic-documents/\\_download/articles-of-agreement/basic-document-english-bank-articles-of-agreement.pdf](https://www.aiib.org/en/about-aiib/basic-documents/_download/articles-of-agreement/basic-document-english-bank-articles-of-agreement.pdf)

<sup>67</sup> Li Erping and Yao Yunsong, The Contribution of the Belt and Road Initiative to the Global Right to Development in: Wang Xigen (ed.), *The Right to Development and the Practice of Good Governance*. Brill Nijhoff (2019), 235

<sup>68</sup> *Ibid.*, 51-54.



to the entire population of a country (sometimes: the “nation”<sup>69</sup>) or the “large majority”<sup>70</sup> of the population. At the same time there is some recognition of a need to strengthen development in “weak areas”<sup>71</sup> or to protect the right to development of “underdeveloped subjects”<sup>72</sup>. Within China the need for differentiation is usually addressed in terms of regional development – with region referring to a geographical concept, not to a subject of rights.<sup>73</sup> It is doubtful whether the people’s centred approach to human rights includes communities or other social groups within countries as peoples and thus as holders of human rights.<sup>74</sup>

Secondly, while both the European Union and China subscribe to the indivisibility and interdependence of human rights, they prioritize different rights. While the EU strongly advocates civil and political rights, China considers the right to subsistence and the right to development<sup>75</sup> as basic rights of paramount importance. Strikingly neither right is included in the International Human Rights Covenants. The pedigree of the right to subsistence is mainly in philosophical and political science literature where it is defined as “the right to those material provisions needed for one’s self-preservation, i.e., those material provisions required for enjoying a minimal physical and physiological well-being”<sup>76</sup> The substance and legal standing of the right to development as a global human right are the subject of intense contemporary debate. The designation of both rights as “basic” rights may imply that their realisation is seen as a requisite for the enjoyment of all other human rights. From there on, it takes only a single step to arrive at the worn-out argument that (economic) development for the benefit of the people as represented by the government comes first and individual human rights come later.<sup>77</sup>

Thirdly, China and the European Union differ on the imposition of restrictive measures (including the suspension of development cooperation) as in instrument for ensuring accountability for human rights violations. China views such measures as the imposition of a particular view of human rights on the targeted country or actor. Instead, progress on human rights should be achieved through cooperation based on the mutual respect of each other’s sovereignty, and thus be based on agreement, not on coercive measures.

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<sup>69</sup> He Zhipeng, *The Development Approach of Human Rights in: Wang Xigen (ed.), The Right to Development and the Practice of Good Governance*. Brill Nijhoff (2019), 50.

<sup>70</sup> Wang Xigen, *Practical Contribution to the Right to Development* in Wang Xigen (ed.), *The Right to Development and the Practice of Good Governance*. Brill Nijhoff (2019), 173.

<sup>71</sup> *Ibid.*, 186.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> He Zhipeng argues that development may be seen as a right of a person, of a group, of a community, of a city, of a country or even of a continent. See He Zhipeng, *The Development Approach of Human Rights in: Wang Xigen (ed.), The Right to Development and the Practice of Good Governance*. Brill Nijhoff (2019), 50.

<sup>75</sup> Chapter 4 discusses the right to development at length.

<sup>76</sup> Alejandra Mancilla, *The human right to subsistence* (2019), *Philosophy Compass*, Vol. 14, e12618. Arguably, this description of the right to subsistence relates to the minimum core of the right to an adequate standard of living (Article 11 ICESCR), but it is noteworthy that the language of the global legal instrument is avoided.

<sup>77</sup> Lyu and Wang write: “When the preliminary economic rights are realized, to ensure political, cultural, social and other rights will gradually become main interests represented by the law”. See Lyu Ning, Wang Xigen, *Basic Principles of the Legal System of the Right to Regional Development in Wang Xigen (ed.), The Right to Development and the Practice of Good Governance*. Brill Nijhoff (2019), 245.

Cooperation for development should facilitate the implementation of the development agenda as defined by the government of the recipient country, but the basis of the cooperation should also be the common interest of China and the partner country. In the context of the Belt and Road Initiative, cooperation takes the form of a “market contract or rational agreement”<sup>78</sup> made between the Chinese government and the partner government. Li and Yao acknowledge that a country wishing to take part in the Belt and Road Initiative “should agree to certain obligations”<sup>79</sup> that the authors do not specify, but it is unlikely that these obligations are related to the obligations that the partner country is bound by under international human rights law.

Finally, China’s development approach to human rights is intergovernmental in nature. It does not envisage support to civil society organisations acting on behalf of the rights holders, or to human rights defenders directly. Within China, the space for independent action by both domestic and foreign civil society organisations is very limited, and support to civil society organisations abroad unless at a request of a partner country would no doubt be construed as an interference in the country’s internal affairs.

Chinese companies implementing cooperation for development are State-owned. China does not have a law regulating corporate activities. In line with what was set out above, it would leave regulation of foreign investors to the domestic law of the host country. Nevertheless, some non-binding guidelines on social and environmental responsibility of Chinese foreign investors - including in follow-up to the UN Guiding Principles on Business and Human Rights - were adopted by Chinese ministries and business associations.<sup>80</sup>

In an analysis of the human rights impact of Chinese investments in Latin America, Merino finds that that the combined approach of following domestic law and restrictive interpretation by the companies of the guidelines issued in China has not prevented conflicts with affected communities, because the communities’ own understanding of their rights is not taken into account.<sup>81</sup> A 2022 report evaluating Chinese development projects in nine Latin American countries by a coalition of more than sixty civil society organisations found a pattern of non-compliance with international standards on human rights and the environment.<sup>82</sup>

China’s assertive stance on the development approach of human rights has made an impact at the Human Rights Council<sup>83</sup> and at the Office of the High Commissioner for Human Rights. At China’s initiative, the Human Rights Council regularly votes a resolution on “the contribution of development to the enjoyment of all human rights”

<sup>78</sup> Li Erping and Yao Yunsong, *The Contribution of the Belt and Road Initiative to the Global Right to Development* in: Wang Xigen (ed.), *The Right to Development and the Practice of Good Governance*. Brill Nijhoff (2019), 236.

<sup>79</sup> *Ibid.*

<sup>80</sup> See Roger Merino, *The Politics of Localizing Human Rights: Chinese Policies and Corporate Practices in Latin America* (2022), *Business and Human Rights Journal* (2022), 11-14.

<sup>81</sup> *Ibid.*, 22.

<sup>82</sup> *Colectivo sobre Financiamiento e Inversiones Chinas, Derechos Humanos y Ambiente (CICDHA), DE-RECHOS HUMANOS Y ACTIVIDADES EMPRESARIALES CHINAS EN LATINOAMÉRICA* (2022), 130p.

<sup>83</sup> See more generally: Raphael Viana David, *CHINA’S GROWING INFLUENCE AT THE UN HUMAN RIGHTS COUNCIL* (2022), *Sur. International Journal of Human Rights*. Vol. 32 available as: <https://sur.conectas.org/en/chinas-growing-influence-at-the-un-human-rights-council/>

<sup>84</sup> that recognizes the significant contribution of development to the enjoyment of all human rights and perceives of development and human rights as mutually reinforcing. The 2021 resolution calls upon all States to realize “people-centred development of the people, by the people and for the people”.<sup>85</sup> The resolution also entrusts the Office of the High Commission for Human Rights with the organization of a number of activities (such as studies and regional seminars on the contribution of development to human rights, which China supports with earmarked funding. OHCHR consequently dedicated a webpage to the contribution of development to human rights displaying activities undertaken.<sup>86</sup>

#### 4. SOUTH-SOUTH AND TRIANGULAR COOPERATION AND HUMAN RIGHTS

At the United Nations, South-South cooperation 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, including partnerships involving Governments, regional organizations, civil society, academia and the private sector, for their individual and/or mutual benefit within and across regions”.<sup>87</sup> Triangular cooperation involves “Southern-driven partnerships between two or more developing countries supported by a developed country(ies)/or multilateral organization(s) to implement development cooperation programmes and projects”.<sup>88</sup>

South-South cooperation is not burdened by the history of colonialism as North-South cooperation often is. Cooperation between developing countries is thus potentially more equal, given proximities of experience or a sense of regional identity. The Nairobi Outcome document of the High-Level UN Conference on South-South Cooperation reflects this sentiment when it affirms:

South-South cooperation is a common endeavour of peoples and countries of the South, born out of shared experiences and sympathies, based on their common objectives and solidarity, and guided by, inter alia, the principles of respect for national sovereignty and ownership, free from any conditionalities. South-South cooperation should not be seen as official development assistance. It is a partnership among equals based on solidarity.<sup>89</sup>

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<sup>84</sup> E.g., see HRC resolution 47/11 (12 July 2021), adopted by a 31-14-2 vote. China also supports a resolution on the enhancement of international cooperation in the field of human rights emphasizing the need for a cooperative and constructive approach on the part of all stakeholders to resolving human rights issues in international forums, e.g., see HRC resolution 50/4 (7 July 2022), adopted by a 29-16-2 vote. Both resolutions are opposed by European States.

<sup>85</sup> *Ibid.*, para 4.

<sup>86</sup> See <https://www.ohchr.org/en/development/contribution-development-enjoyment-all-human-rights>.

<sup>87</sup> Framework of operational guidelines on United Nations support to South-South and triangular cooperation.

Note by the Secretary-General. UN document SSC/19/3 (14 March 2016), para 10.

<sup>88</sup> *Ibid.*, para. 11.

<sup>89</sup> Par. 18, Nairobi Outcome document of the High-Level UN Conference on South-South Cooperation, endorsed by the UN General Assembly in GA resolution 64/222 (21 December 2009).

In the Addis Ababa Action Agenda, the importance of South-South cooperation “as a complement, not a substitute” for North-South cooperation is recognized<sup>90</sup>, and “it should continue to be guided by the principles of respect for national sovereignty, national ownership and independence, equality, non-conditionality, non-interference in domestic affairs and mutual benefit”.<sup>91</sup> Developing countries are encouraged to ‘voluntarily’ step up and improve the effectiveness of their cooperation.<sup>92</sup>

The United Nations facilitate South-South cooperation. As a contribution to the realization of the 2030 Agenda, the UN adopted a System Wide Strategy and Action Plan on South-South and Triangular Cooperation for Sustainable Development (2020-2024)<sup>93</sup>. The UN also host an Office (UNOSSC) and a Fund for South-South Cooperation (UNFSSC).<sup>94</sup>

In a celebratory paper, the Office of the High Commissioner for Human Rights perceives of South-South cooperation as a good practice in operationalizing the right to development and highlights the contribution of a number of South-South cooperation projects “to the realization of the right to development as well as other human rights”.<sup>95</sup> The OHCHR paper promotes a “human person and people-centred framework”<sup>96</sup> (sic) for South-South cooperation (SSC). According to the OHCHR paper this framework, building on the right to development, implies that the SSC receiving countries ensure that SSC activities are in sync with the national development priorities and targets for realizing SDGs that are based on participation and contribution of right-holders and that the SSC providing countries do not impose their own development priorities on receiving States, do not determine the sectors for aid allocation, and refrain from imposing predatory conditions that enhance indebtedness or require contracts only for companies of SSC providing countries.<sup>97</sup>

The paper recognizes that South-South cooperation operates predominantly at a government-to-government level, but argues that there is room for participation by rights-holders and civil society organisations as long as this is endorsed by the government of the recipient State.<sup>98</sup> Likewise, there is space for human rights impacts assessments of cooperation projects, although this potential remains largely untapped.<sup>99</sup>

An interesting example of South-South Cooperation discussed in the OHCHR paper is the India, Brazil and South Africa Facility for Poverty and Hunger Alleviation (aka the IBSA Fund).<sup>100</sup> The IBSA Fund was established in March 2004 and became operational in 2006 to:

<sup>90</sup> The Addis Ababa Action Agenda (AAAA) of the Third International Conference on Financing for Development, Outcome document (2015), para 56. – as endorsed in GA resolution 69/313 (27 July 2015).

<sup>91</sup> Ibid.

<sup>92</sup> Ibid, para 57.

<sup>93</sup> Available at [www.unsouthsouth.org/wp-content/uploads/2021/04/United-Nations-system-wide-strategy-on-South-South-and-triangular-cooperation-for-sustainable-development-2020-2024.pdf](http://www.unsouthsouth.org/wp-content/uploads/2021/04/United-Nations-system-wide-strategy-on-South-South-and-triangular-cooperation-for-sustainable-development-2020-2024.pdf)

<sup>94</sup> See <https://unsouthsouth.org/> and <https://unsouthsouth.org/un-fund-for-ssc/> respectively.

<sup>95</sup> See OHCHR, Good Practices in Operationalizing the Right to Development (RTD) in South-South Cooperation (SSC) (2023), currently available as: [https://indico.un.org/event/1004988/attachments/9551/27242/Study\\_Good%20Practices%20in%20Operationalizing%20the%20Right%20to%20Development%20in%20South-South%20Cooperation.pdf](https://indico.un.org/event/1004988/attachments/9551/27242/Study_Good%20Practices%20in%20Operationalizing%20the%20Right%20to%20Development%20in%20South-South%20Cooperation.pdf).

<sup>96</sup> Ibid, 1.

<sup>97</sup> Ibid, 2.

<sup>98</sup> Ibid., 4.

<sup>99</sup> Ibid.

<sup>100</sup> See [https://www.ibsa-trilateral.org/ibsa\\_fund.html](https://www.ibsa-trilateral.org/ibsa_fund.html).

identify replicable and scalable projects that can be disseminated to developing countries on a demand driven basis as examples of best practices in combating poverty and hunger. IBSA Fund-supported projects help partner countries in the Global South to achieve their national priorities, as well as all other internationally agreed development goals.

The United Nations Office for South-South Cooperation serves as the Fund Manager and secretariat of the IBSA Board of Directors (consisting of the three providing countries). The IBSA Fund Annual Report 2020 further elaborates on the Fund's mission by presenting supported projects as concrete expressions of solidarity for the benefit of the most vulnerable and marginalized people with the objectives of promoting food security, addressing HIV/AIDS, extending access to safe drinking water, and promoting quality education and gender equality, all with the aim of contributing to the achievement of the Sustainable Development Goals (SDGs).<sup>101</sup>

In describing the projects supported, the 2020 Annual Report of the IBSA Fund carefully identifies the SDG each project contributes to, but human rights language is avoided (with the exception of a short term project on child marriages in Malawi and Zambia)<sup>102</sup>, nor are any of the projects directly aimed at enhancing the capacity of the receiving government to comply with its human rights obligations or of the rights holders to claim their rights. As represented in the Annual Report, the projects do not appear to be rights based (as the United Nations understands it), but come across as mainstream development projects, aimed at improving livelihoods by providing services and facilities to the beneficiaries. There is also little evidence of an attempt to engage in an analysis of how the projects relate to the broader human rights context at both national and international levels. For example, a project in the department of Beni in Bolivia aims at providing new water wells to both cattle farmers and indigenous communities while the relationships between these two groups of beneficiaries are strained, and the relevance of indigenous rights is ignored.<sup>103</sup> The descriptions of four projects supported in Palestine aimed at constructing or improving sports and medical facilities both on the West Bank and in Gaza (before the current conflict) remain silent on the implications for the interventions of the human rights consequences of the occupation and the complexities of dealing with a divided Palestinian governmental authority.

## FINDINGS

The view that human rights are integral to development is well established at the global level. Violations of human rights are development failures. International cooperation for development should therefore encompass human rights.

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<sup>101</sup> IBSA Fund Annual Report 2020, 6 available as <http://www.ibsa-trilateral.org/pdf/SSC-IBSA-Report-WEB.pdf>. At the time of writing, this was the most recent Fund Annual Report available on the website.

<sup>102</sup> *Ibid.*, 18-19. Note that one other project in Haiti included training to community leaders on eradicating child labour. See *ibid.*, 28.

<sup>103</sup> *Ibid.*, 13-14.

By drawing on best practices, an ideal model of integration of human rights into international cooperation for development can be constructed.

In reality, many obstacles remain. If cooperation remains a voluntary endeavour, it is subject to an initiative by the cooperation provider, under the terms decided by the cooperation provider, including on whether to integrate human rights in the cooperation. The cooperation provider may wish to engage in cooperation to push its own human rights agenda or other interests. The establishment of an equal partnership between a cooperation providing and a cooperation receiving actor remains a challenge. This is particularly, but not uniquely so when the cooperation takes place in a post-colonial context.

The commitment to enhance the capacity of both the rights holders and the duty bearers through the cooperation lies at the heart of a development cooperation policy that integrates human rights.

As regards the rights holders, the aim of the cooperation should be to support the human rights priorities and strategies identified by the rights holders themselves. On the part of the cooperation provider this requires awareness of these priorities and strategies – which in turn may depend on a presence within the receiving country that relates as directly as possible to the rights holders, particularly those most under threat of human rights violations. The capacity enhancement objective also requires directing cooperation to civil society organisations that credibly support the human rights agenda as defined by the rights holders. Ideally these credible civil society organisations are supported over an extended period and in a hands-off manner. Long-term progress in the realization of human rights is dependent on strong local actors that can influence governmental human rights policies by speaking up, negotiating, claiming and enforcing human rights protection.

Similarly, intergovernmental cooperation should aim at strengthening the capacity of the duty bearer to comply with its human rights obligations. Cooperation on the common human rights agenda of the cooperation providing and receiving country should not be controversial. This common human rights agenda consists of human rights obligations both States share – either under customary international law or because of human rights treaties that both States have ratified. In an international system based on State sovereignty, the realization of human rights remains dependent on the implementation by domestic authorities of their human rights obligations. The cooperation providing country (or by analogy any other cooperation providing actor) should thus endeavour to identify and forge alliances with ministries, departments and other government agencies with a credible commitment to human rights compliance and a willingness to define the domestic human rights agenda while ensuring active, free and meaningful participation by the rights holders.

It may well not be possible to agree cooperation for development on the full range of human rights concerns. The human rights obligations and agendas of the States engaged in the cooperation may well not fully overlap. In areas where cooperation is not possible, a concurrent human rights dialogue is necessary. Criticism through foreign policy and public diplomacy remains legitimate, and crucial to address human rights issues on which governments cannot agree to act jointly. Conceptually, human rights criticism by a foreign government is not an intervention in the internal affairs of another country, as the realization of human rights is in the common interest of the international community.

As a minimum cooperation providing actors should ensure that their assistance does not result in human rights violations. When the cooperation does contribute to human rights violations, they should provide for accountability to those harmed and deliver a form of redress. Progress can still happen in this respect: the accountability for human rights violations of cooperation providing actors remains rudimentary.