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Markus Kaltenborn

**Social Rights and
International
Development**
Global Legal
Standards for
the Post-2015
Development Agenda



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Social Rights and International Development

Global Legal Standards for the Post-2015
Development Agenda

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Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AFDI	Annuaire Français de Droit International
AICHR	ASEAN Intergovernmental Commission on Human Rights
AJIL	American Journal of International Law
ASEAN	Association of Southeast Asian Nations
ASF	Avocats Sans Frontières
ATCA	Alien Tort Claims Act
AU	African Union
AVR	Archiv des Völkerrechts
BMZ	Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSR	Corporate Social Responsibility
DAC	OECD Development Assistance Committee
DFID	Department for International Development
ECOSOC	United Nations Economic and Social Council
EIDHR	European Instrument for Democracy and Human Rights
EJIL	European Journal of International Law
FAO	Food and Agriculture Organization
FCO	Foreign and Commonwealth Office
FES	Friedrich-Ebert-Stiftung
GATS	General Agreement on Trade in Services

GFSP	Global Food Safety Partnership
GIGA	German Institute for Global and Area Studies
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GoJIL	Göttingen Journal of International Law
GYIL	German Yearbook of International Law
HILJ	Harvard International Law Journal
HLP	High-Level Panel of Eminent Persons on the Post-2015 Development Agenda
HLPE	High-Level Panel of Experts on Food Security and Nutrition
HLR	Harvard Law Review
HRC	Human Rights Council
HRLR	Human Rights Law Review
HRQ	Human Rights Quarterly
IACHR	Inter-American Commission on Human Rights
IBRD	International Bank for Reconstruction and Development
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice/Statute of the ICJ
ICLQ	International and Comparative Law Quarterly
IDA	International Development Association
ILA	International Law Association
ILC	International Law Commission
ILO	International Labour Organization
IMF	International Monetary Fund
INEF	Institut für Entwicklung und Frieden
IOE	International Organisation of Employers
ISSA	International Social Security Association
JWT	Journal of World Trade
LDCs	Least Developed Countries
LJIL	Leiden Journal of International Law
MDG	Millennium Development Goal
MPEPIL	Max Planck Encyclopedia of Public International Law
NGO	Non-Governmental Organization
NHIA	National Health Insurance Authority
NILR	Netherlands International Law Review
NorJIL	Nordic Journal of International Law
NQHR	Netherlands Quarterly of Human Rights
NYIL	Netherlands Yearbook of International Law
OAS	Organization of American States
OAU	Organization of African Unity
ODA	Official Development Assistance
ODI	Overseas Development Institute
OECD	Organization for European Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights

OP	Optional Protocol to the ICESCR
P4H	Providing for Health
PPA	Programme Partnership Arrangement
PRSP	Poverty Reduction Strategy Paper
RGDIP	Revue Générale de Droit International Public
RIW	Recht der internationalen Wirtschaft
SPF	Social Protection Floor
SWP	Stiftung Wissenschaft und Politik
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations/United Nations Charter
UN Doc	Document of the United Nations
UN GA	General Assembly of the United Nations
UNCHR	United Nations Commission on Human Rights
UNDG	United Nations Development Group
UNDP	United Nations Development Programme
UNHCHR	United Nations High Commissioner for Human Rights
UNICEF	United Nations Children's Fund
UNRISD	United Nations Research Institute for Social Development
UNTS	United Nations Treaty Series
UPR	Universal Periodic Review
USAID	United States Agency for International Development
USC	United States Code
VRÜ	Verfassung und Recht in Übersee
VUWLR	Victoria University of Wellington Law Review
WHA	World Health Assembly
WHO	World Health Organization
WTO	World Trade Organization
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht
ZSchwR	Zeitschrift für Schweizerisches Recht

Chapter 1

Introduction: Social Rights as a Legal Framework for International Development Strategies

Abstract Poverty is not only an economic and sociopolitical problem of individual States and societies, but also a global challenge with which the whole community of States is confronted. This book focuses particularly on the role which international human rights law has to take in coping with this challenge. The governments of developing and newly industrializing countries have to do everything in their power to enable their population to conduct a life in accordance with respect for basic social human rights. But also the governments of the developed countries are legally obliged to respect these rights in the design of their political programs (economic policy, foreign affairs, development aid).

Keywords Global poverty reduction · Social rights · Legal obligations of developing and developed countries · Links between development policy and human rights

When “severe violations of human rights” are bemoaned by the media in a given country, they mostly refer to the abuse of political and civil rights: demonstrations are restricted; journalists are barred from doing their job; and political dissidents are imprisoned without a fair trial, or even threatened with torture or the death penalty. A multitude of other, similar serious infringements of liberty are dominant in the news coverage on human rights. Less prominent, however, is the fact that the protection of another group of human rights, namely social rights, is restricted to an even larger extent in most countries of the world on a daily basis. Although considerable progress has been made in global poverty reduction, data published annually by the *United Nations* on the implementation status of the *Millennium Development Goals* (MDGs) are still cause for alarm: About one in five persons in developing countries (mostly in sub-Saharan Africa and Southern Asia) lives below the poverty line, i.e. these people must survive on less than 1,25 USD a day.¹ Generally, this means that these people suffer from hunger and malnutrition, have little or no access to primary health care services, in most cases inappropriate accommodation and, in addition, insufficient or non-existent social protection.

¹ United Nations 2014, p. 7.

It is certain that these are not only the economic and socio-political problems of individual States and societies, but are also global challenges with which the whole community of States is confronted.² Ever since the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) came into force in 1976, giving worldwide recognition to social and economic rights, this issue has also been developing into a serious *legal* problem for the South as well as the North: The governments of developing and newly industrializing countries are bound by international law to guarantee basic minimum standards of welfare within their sphere of responsibility. *They* are, in the first instance, addressees for claims arising from the violation of social human rights—therefore they have to do everything in their power to enable their population to conduct a life in accordance with respect for basic social human rights. However, governments of the northern hemisphere also bear not only political, but also legal responsibility for overcoming global poverty, because it is their duty to align consistently their relationships with the countries of the South with the requirements of the human rights treaties.³ Most notably, this means that their development cooperation programs must be designed in accordance with social rights, hence turning poverty reduction into the main focus of international aid.

Nonetheless, during the second half of the last century, development policy and human rights protection have remained fields of action whose convergence has been limited—thus depicted by Philip Alston as “ships passing in the night”.⁴ This relationship has only recently changed fundamentally: Human rights are increasingly becoming a focus of development policy objectives.⁵ In particular, the MDGs and their emphasis on global poverty reduction have led to the ever-growing importance of social human rights in the current development policy debates. Other global initiatives, such as the recent adoption of the *Social Protection Floors Recommendation* by the *International Labour Conference* in 2012, have contributed additional momentum to the further specification and implementation of global social legal standards.

It is the aim of this study to provide an overview of the global protection of social rights and to highlight its importance for the discussion on the future orientation of development cooperation.⁶ Therefore, an initial analysis of the relevant

² Other agreements ensuring social human rights had already been adopted before 1966 (see *infra* Sect. 2.2). Nevertheless, these agreements have not received global support, whereas today the ICESCR is binding for almost all States.

³ This will be discussed later in more detail, cf. Sect 3.3.

⁴ Alston 2005; see also Archer 2009; Marks 2001.

⁵ For the relationship between human rights and development cooperation see the concise overview in Dann 2012, pp. 93–99, 233–259; see also contributions in Alston and Robinson 2005; and in Andreassen and Marks 2010.

⁶ In some parts this study is based on previous work that has been published (in German) in Kaltenborn 2014. I would like to thank Lisa Gow, LLB University of Strathclyde (Glasgow), and Annika Engelbert, PhD candidate at the Institute of Development Research and Development Policy (IEE) of Ruhr-Universität Bochum, very much for their helpful comments on the English version of this text.

sources of law and implementation mechanisms is necessary (Chap. 2), as well as the presentation of the main legal obligations arising from international recognition of social rights (Chap. 3). In the following, the content of some specific social rights in the context of development cooperation will be examined (Chap. 4). Finally, newer global initiatives, linking development policy issues to human rights perspectives, will be presented (Chap. 5); they offer guidance for the future design of North-South relations that are currently under discussion in the frame of the *Post-2015 Development Agenda*.

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