

Wouter Vandenhole*

De-Growth and Sustainable Development: Rethinking Human Rights Law and Poverty Alleviation

<https://doi.org/10.1515/ldr-2018-0033>

Abstract: In strong definitions, sustainable development has been argued to imply the prevalence of the environmental dimension over the economic one. The prioritization of the environmental (planet) and (arguably also the) social (people) pillar over the economic (profit) one may require a rather radical departure from assumptions of economic growth, including zero-growth or even de-growth, as argued in post-growth or ecological economics. This article asks the “what if” question. What if unorthodox, ecological economics got it right that post-growth or growth agnosticism is the new economic norm? What are the implications for human rights law and for the field of human rights and development? How could poverty alleviation look like in a growth agnostic scenario? The objective of this article is to draw out in an exploratory way some of the implications of strong definitions of sustainable development for human rights law and its relevance for development. At first, this intellectual exercise may look irrelevant or even cynical in the context of Africa, where more than 40% of the population, more than 300 million people, live in poverty. However, I see two major reasons for also debating in an African context the implications of growth agnosticism for human rights law. First, economic growth does not necessarily lead to economic development, let alone human development, and has typically come at a huge environmental cost. Alternative approaches that focus more directly on human well-being and ecological sustainability may help avoid a simple mimicking of the historical development of the global North. Second, ecological economics shifts the attention from growth to redistribution. The latter is a key challenge within Africa and within African countries, as well as from a global perspective. I examine how to factor in the consequences of post-growth or doughnut economics in the conceptual analysis of socio-economic human rights, and in the role of human rights law in development (cooperation), globally and nationally. In particular, I will try and set a research agenda on two issues that require further examination: the redefinition

*Corresponding author: **Wouter Vandenhole**, Faculty of Law, Universiteit Antwerpen, Law and Development Research Group, Venusstraat 23, Antwerpen 2000, Belgium, E-mail: wouter.vandenhole@uantwerp.be

of obligations of international assistance and cooperation in human rights law and the reconceptualization of equality towards redistributive equality in human rights-based development cooperation interventions.

Keywords: human rights, human rights-based approaches to development, growth agnosticism, sustainable development, equality

1 Introduction

For a long time, development was equated with economic development. In 1987, the Brundtland Commission introduced an ecological dimension to development, emphasizing limits to growth.¹ With the introduction of UNDP's *Human Development Reports* in 1990, a social dimension was added.² In addition to economic growth, human well-being (as reflected in longevity, education and income) was accepted as a yardstick for development. The 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs),³ the 2015 world's development agenda for the coming decades, seeks to integrate the ecological sustainability dimension into economic development and poverty alleviation and social development efforts.

In the 2030 Agenda, economic growth, social development and ecological sustainability go hand in hand. The language of inclusive and sustainable development illustrates more generally an incorporation of the social and ecological dimensions in thinking about development. In other words, the suggestion is that development is more than economic development: social and ecological aspects matter too. Commonly, sustainable development is explained in terms of a triple bottom line (the three Ps of Profit, Planet and People), suggesting that it is about *balancing* economic growth with environmental and social considerations. In what follows, I will refer to this approach as the weak definition of sustainability. In this weak definition, economic growth is taken for granted. For example, SDG 8 mentions the promotion of sustainable and inclusive economic *growth*. In other words, economic development and poverty alleviation are based on orthodox economics and

1 World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987), available at: <<http://www.un-documents.net/our-common-future.pdf>>.

2 Available at: <<http://hdr.undp.org/>>, accessed 26 March 2018.

3 UNGA, *Transforming Our World: The 2030 Agenda for Sustainable Development* (2015), UN Doc. A/RES/70/1 of 21 October 2015.

therefore on assumptions of (the need for) never-ending economic growth: “growth is an axiomatic necessity”.⁴

Strong definitions of sustainability deplore that sustainable development “has become to mean ‘environmentally friendly economic growth’” (references omitted).⁵ In strong definitions, sustainable development has been argued to imply the *prevalence* of the environmental dimension over the economic one.⁶ The prioritization of the environmental (*planet*) and (arguably also the) social (*people*) pillar over the economic (*profit*) one may require a rather radical departure from assumptions of economic growth, including zero-growth or even de-growth, as argued in post-growth or ecological economics.⁷

This article asks the “what if” question. What if unorthodox, ecological economics got it right that post-growth (used here as an umbrella term for zero-growth and de-growth) is the new economic norm? Or, what if we take seriously the argument that we should at least be agnostic about growth, as Raworth has argued in her *Doughnut Economics*?⁸ What are the implications for human rights law and for the field of human rights and development? How could poverty alleviation look like in a growth agnostic scenario? The objective of this article is to draw out in an exploratory way some of the implications of strong definitions of sustainable development for human rights law and its relevance for development. At first, this intellectual exercise may look irrelevant or even cynical in the context of Africa, where more than 40% of the

4 G. Kallis, C. Kerschner and J. Martinez-Alier, *The Economics of Degrowth*, 84 *Ecological Economics* (2012), 172. For references to literature on the desirability of unlimited economic growth, see e.g. C. Kerschner, *Economic De-Growth Vs. Steady-State Economy*, 18 *Journal of cleaner production*, no. 6 (2010), 544.

5 Kerschner (2010), *supra* note 4, p. 549.

6 K. Bosselmann, *A Vulnerable Environment: Contextualising Law with Sustainability*, 2 *Journal of Human Rights and the Environment*, no. 1 (2011), 54; compare the argument that the SDGs need to be organized “in a normative hierarchy, with a single priority sustainability goal at the apex”, see R. E. Kim and K. Bosselmann, *Operationalizing Sustainable Development: Ecological Integrity as a Grundnorm of International Law*, 24 *Review of European Comparative & International Environmental Law*, no. 2 (2015), 198; on the nine planetary boundaries, see the Stockholm resilience Centre, available at: <<http://www.stockholmresilience.org/research/planetary-boundaries.html>>, accessed 26 March 2018.

7 For arguments about the desirability and feasibility of de-growth, see the references in Kallis *et al.* (2012), *supra* note 4, pp. 173–175.

8 K. Raworth, *Doughnut Economics. Seven Ways to Think Like a 21st-Century Economist* (London: Random House Business Books, 2017), pp. 243–285.

population, more than 300 million people, live in poverty.⁹ However, I see two major reasons for also debating in an African context the implications of growth agnosticism for human rights law. First, economic growth does not necessarily lead to economic development, let alone human development, and has typically come at a huge environmental cost. Alternative approaches that focus more directly on human well-being and ecological sustainability may help avoid a simple mimicking of the historical development of the global North. Second, ecological economics shifts the attention from growth to redistribution. The latter is a key challenge within Africa and within African countries, as well as from a global perspective.

As a (human rights) lawyer, I am not in a position to take sides in the economics debate as to who got it right.¹⁰ Admittedly, “the [steady-state economy] and the de-growth economy respectively are socio-politically utopian at the present state of affairs”.¹¹ Doughnut economics and its agnosticism about growth (see for more details below) are certainly not yet part of mainstream economic thinking. Nonetheless, compelling evidence about the planetary boundaries (i. e. the limits to the carrying weight of the planet, see further below) and how we have crossed several of them¹² necessitates out-of-the-box reflection, also in human rights law. I therefore engage in a thought experiment on what it would mean for human rights law to take strong definitions of sustainable development seriously.

Strong definitions of sustainable development, while highly critical of economic growth as the main denominator of development, do not reject social justice (“people” in the triple bottom line) as a legitimate objective. Taking a strong definition of sustainable development does therefore not necessarily imply that economic, social and cultural (ESC) rights are challenged or questioned. To the contrary, if it is accepted that extreme social inequality is problematic, as is now also more and more acknowledged from an orthodox

⁹ K. Beegle, L. Christiaensen, A. Dabalen and I. Gaddis, *Poverty in a Rising Africa* (Washington, DC: World Bank, 2016), available at: <<https://openknowledge.worldbank.org/handle/10986/22575>>, accessed 26 March 2018.

¹⁰ For an overview of some of the debates between the economic schools of thought, see Kerschner (2010), *supra* note 4.

¹¹ *Ibid.*, p. 550.

¹² J. Rockström, W. Steffen and K. Noone, *Planetary Boundaries: Exploring the Safe Operating Space for Humanity*, 14 *Ecology and Society*, no. 2 (2009).

See also <<http://www.stockholmresilience.org/research/planetary-boundaries.html>>, accessed 26 March 2018.

economic perspective,¹³ ESC rights should even gain more prominence. Alston, a leading human rights scholar and currently UN Special Rapporteur on Human Rights and Extreme Poverty, has argued

A serious commitment to tackle extreme inequality is only possible in the context of policies and programmes that take the concept of economic, social and cultural rights seriously and give them prominence and priority equal to that of civil and political rights. [...] In circumstances in which economic, social and cultural rights are not a fundamental part of the overall approach, there are no obvious limits to inequality.¹⁴

Whereas it may be true that “human rights have the potential to transform economic thinking and policy-making with far-reaching consequences for social justice”,¹⁵ in a strong definition of sustainable development, social transformative potential is only one piece of the puzzle, since in addition to social justice, ecological sustainability must be fully factored in. Therefore, only if human rights law undergoes a paradigmatic shift in the understanding of socio-economic human rights and its role in development, beyond growth assumptions and with a stronger focus on redistribution, it may keep that transformative potential in post-growth or growth agnostic economies.

In what follows, I will examine how to factor in the consequences of post-growth or doughnut economics in the conceptual analysis of socio-economic human rights, and in the role of human rights law in development (cooperation), globally and nationally. In particular, I will try and set a research agenda on two issues that require further examination: the redefinition of obligations of international assistance and cooperation in human rights law and the reconceptualization of equality towards redistributive equality in human rights-based development cooperation interventions. My approach is quite global and abstract at this stage. Implications at regional, country and local level will have to be drawn out later on, and in more detail, elsewhere, although I will provide indications how this may play out in the African context. Given my disciplinary background and the primary focus

¹³ P. Alston, *Extreme inequality as the antithesis to human rights*, 27 October 2015, available at: <<https://www.opendemocracy.net/openglobalrights/philip-alston/extreme-inequality-as-antithesis-of-human-rights>>, accessed 26 March 2018: “International economic actors like the World Bank, the International Monetary Fund (IMF), the World Trade Organization (WTO), and the Organization for Economic Cooperation and Development (OECD) have begun to speak about the negative economic consequences of such inequalities”.

¹⁴ P. Alston, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, UN Doc. A/HRC/29/31 of 27 May 2015, p. 17, para. 50.

¹⁵ R. Balakrishnan, J. Heintz and D. Elson, *Rethinking Economic Policy for Social Justice: The Radical Potential of Human Rights* (London & New York: Routledge, 2016).

of the article on the human rights law implications, I mainly rely on secondary literature on ecological and doughnut economics.

In the next section, I introduce ecological economics and doughnut economics. I discuss the implications for human rights-based development interventions in Section 3 and for obligations of international cooperation and assistance in Section 4. Section 5 offers conclusions.

2 Ecological and Doughnut Economics

If environmental and social aspects are to prevail over (and not just balanced with) economic growth in order to achieve sustainable development, as strong definitions of sustainable development suggest, no-growth is to replace economic growth as the normal.¹⁶ Given the “limited ecological space” in light of the planet’s carrying capacity, “managing without growth” becomes the challenge.¹⁷

Steady-State Economics, the New Economics of Prosperity and De-growth are three different strands in ecological economics, with diverging positions on the need for de-growth (commonly referred to as negative growth), zero-growth or selective growth.¹⁸ None of them see de-growth as a permanent feature: it is “the path of transition” towards ecologically sustainable development.¹⁹ For some, “zero-growth could [however] be the new long-term normal”,²⁰ at least in the global North. But even though it is only a transitory stage, questions remain as to which level of the economy it will lead to, and what will happen during the transition period: will social welfare and employment be affected dramatically? Kallis *et al.* conclude that “combating climate change equitably will include an unprecedented degrowth, with a dramatic restructuring of the State and a reconfiguration of work”.²¹ Since whatever the length of the transition, “[g]rowth

16 J. Martínez-Alier *et al.*, *Sustainable De-Growth: Mapping the Context, Criticisms and Future Prospects of an Emergent Paradigm*, 69 *Ecological economics*, no. 9 (2010), 1741–1747; J. Martínez-Alier, *Socially Sustainable Economic De-Growth*, 40 *Development and change*, no. 6 (2009), 1099–1119.

17 Kallis *et al.* (2012), *supra* note 4, p. 172.

18 For references, *ibid.*

19 *Ibid.*, 173.

20 E. Perotti, *Zero-growth Could Be the New Long-term Normal in Developed Economies: Six Charts That Explain Why*, 20 December 2016, available at: <<https://www.weforum.org/agenda/2016/12/zero-growth-could-be-the-new-long-term-normal-in-developed-economies-six-charts-that-explain-why/>>, accessed 26 March 2018.

21 Kallis *et al.* (2012), *supra* note 4, p. 174.

economies do not know how to degrow. They collapse”.²² Raworth’s *Doughnut Economics* is a milder version, in that she does not posit that de-growth needs to happen. She argues that one needs to be agnostic about growth, i. e. “designing an economy that promotes human prosperity whether GDP is going up, down, or holding steady”.²³

Post-growth scholars have not confined themselves to making a (daunting) analysis of the current growth paradigm and its destructive and untenable environmental impact; they have also scrutinized and prescribed how de-growth may go hand in hand with social sustainability or, in other words, how “prosperous de-growth” can be realized.²⁴ Central to their proposals is the idea of (re-) distribution. An important building block of prosperous de-growth is offered by happiness economics, which submits that “a more equal distribution of income and investment in public services that make a difference in the quality of life, can have greater welfare effects than generalized growth”.²⁵ Second, proposals for work-sharing, unpaid work and a basic income have been launched in order to ensure full employment in a de-growth scenario.²⁶ In these proposals, and in particular in the one for a basic income financed through taxation, distribution is again the key word: granting a basic income is “a fundamental new way of distributing national product and surplus”.²⁷ Third, de-growth “entails a very strong State”, given the level of intervention that is required, e. g. in imposing social and ecological caps or in introducing a basic income.²⁸

The de-growth literature is not very explicit on whether it applies across the board to all economies, including those in Africa, but it seems to target primarily advanced economies in the North. In Kerschner’s analysis, economic de-growth is “the rich North’s path towards a globally equitable” steady-state economy.²⁹ The steady-state economy is a concept coined by Daly to refer to a zero-growth economy.³⁰ In other words, economic de-growth is a necessary stage the rich North has to go through for some time (a transition) to reach “stabilisation” of the economy.³¹ The reasons offered are twofold, an environmental one and a

²² *Ibid.*, p. 172.

²³ Raworth (2017b), *supra* note 8, p. 245.

²⁴ Kallis *et al.* (2012), *supra* note 4.

²⁵ *Ibid.*, p. 174.

²⁶ *Ibid.*, p. 176.

²⁷ *Ibid.*

²⁸ *Ibid.*, p. 177.

²⁹ Kerschner (2010), *supra* note 4, p. 544.

³⁰ For a description of the steady-state economy, see e. g. *ibid.*, pp. 545–546.

³¹ *Ibid.*, pp. 547 and 550.

distributional one. First, the North's economies have meanwhile transgressed sustainable levels as determined by planetary boundaries³² and need to shrink therefore: "rich industrialised countries have evidently surpassed sustainable limits already, and de-growth is therefore essential".³³ Second, in order to allow the South, including Africa, to grow without further transgressing sustainable levels globally,³⁴ the North needs to downsize

[T]he rich North will need to de-grow in order to allow for some more economic (vs. *uneconomic*) growth [references omitted] in the poor South. This is to balance the service obtained from the steady-state level of stock and throughput between the rich and the poor [...].³⁵

Uneconomic growth is used here by Kerschner to refer to growth that does not contribute to welfare.³⁶ He builds inter alia on Max-Neef, who has argued that each society has its threshold point beyond which economic growth is matched with a decrease in quality of life (Threshold hypothesis).³⁷ The threshold point is the point "where quantitative growth must be metamorphosed into qualitative development".³⁸

A more moderate version of post-growth economics is Raworth's *Doughnut Economics* (see Figure 1).³⁹ Raworth seeks to redefine economic development as inclusive and sustainable economic development. In doughnut economics, between the outer boundary, i. e. the ecological ceiling (composed of Roxtrom *et al.*'s 9 planetary boundaries), and the inner boundary, i. e. the social foundation (12 social boundaries drawing on "internationally agreed minimum social standards"), "lies an environmentally safe and socially just space in which humanity can thrive".⁴⁰

Raworth identifies three main shifts in focus in *Doughnut Economics*: towards more attention for goods and services provided outside the monetary economy; towards changes in the level of wealth; and towards the distribution

³² Rockström *et al.* (2009), *supra* note 12.

³³ Kerschner (2010), *supra* note 4, p. 549.

³⁴ Rockström *et al.* (2009), *supra* note 12.

³⁵ Kerschner (2010), *supra* note 4, p. 549.

³⁶ *Ibid.*, p. 549.

³⁷ M. Max-Neef, *Economic Growth and Quality of Life: A Threshold Hypothesis*, 15 *Ecological Economics*, no. 2 (1995), 117.

³⁸ *Ibid.*

³⁹ Raworth (2017b), *supra* note 8.

⁴⁰ K. Raworth, *The Doughnut of Social and Planetary Boundaries* (2017), available at: <<https://www.kateraworth.com/doughnut/>>, accessed 26 March 2018.



Figure 1: Doughnut Economics © Kate Raworth.

of economic benefits. Like in post-growth economics, an economy that is “distributive by design” is at the centre.⁴¹ However, she does not position herself necessarily within post-growth economics: “GDP could grow, so long as it remained compatible with staying within social and planetary boundaries”.⁴²

⁴¹ Raworth (2017b), *supra* note 8, pp. 163–205.

⁴² K. Raworth, *Doughnut Economics*, available at: <<https://www.humansandnature.org/economy-kate-raworth>>, accessed 26 March 2018. She does admit though that her answer is a theoretical one and that history does not bode well on whether GDP growth could be achieved in practice within her model of inclusive and sustainable economic development. *Ibid.* Elsewhere, she flagged this as the critical question, without unequivocally answering it (see *A Safe and Just Space for Humanity: Can We Live within the Doughnut?*, *Oxfam Discussion Papers* (2012), p. 20, available at: <<https://www.oxfam.org/sites/www.oxfam.org/files/dp-a-safe-and-just-space-for-humanity-130212-en.pdf>>, accessed 26 March 2018).

But at least for some parts of the world, consumption patterns will have to change, and redistribution will be necessary: “the biggest source of planetary-boundary stress today is excessive resource consumption by roughly the wealthiest 10 % of the world’s population”.

Social justice demands that this double objective [of eradicating poverty to bring everyone above the social foundation, and reducing global resource use, to bring it back within planetary boundaries] be achieved through far greater global equity in the use of natural resources, with the greatest reductions coming from the world’s richest consumers.⁴³

On the other hand, she argues that addressing poverty requires surprisingly little additional financial resources and does not need to stress the ecological ceiling/planetary boundaries.⁴⁴ Moreover, she does envisage subservience of the economic objective to the ecological and social one: “The economy’s over-arching aim is no longer economic growth in and of itself, but rather to bring humanity into the safe and just space – inside the doughnut – and to promote increasing human well-being there”.⁴⁵

Raworth’s analysis too primarily targets the global North: in her view, there are “vast inequalities of resource use”,⁴⁶ whereby high-income countries have a disproportionate impact on the planetary boundaries (the ecological ceiling). Hence, it is up to high-income countries to take up responsibility. What does that mean for the level of social protection reached in these countries? Does de-growth mean austerity and a drastic reduction in welfare and living standards? Does it mean that retrogressive measures are needed in the area of ESC rights? And will de-growth in the global North automatically translate into tangible benefits for the poor in the global South?

Raworth engages explicitly though rather uncritically with human rights, suggesting that they “provide the cornerstone” for defining the social foundation below which lies “unacceptable human deprivation”.⁴⁷ The section on human rights (which only references the Universal Declaration of Human Rights) very quickly moves to the MDGs and other policy documents, such as governments’ social priorities for Rio + 20.⁴⁸ What is missing is a solid engagement with human rights law and the implications of doughnut economics for human rights enjoyment. This article sets out to initiate that reflection.

⁴³ Raworth (2012), *supra* note 42, p. 5.

⁴⁴ *Ibid.*, p. 19.

⁴⁵ *Ibid.*, p. 8.

⁴⁶ *Ibid.*, p. 19.

⁴⁷ Raworth, *Doughnut Economics*, *supra* note 42.

⁴⁸ Raworth (2012), *supra* note 42, pp. 8–9.

The conceptual challenge posed by de-growth and doughnut economics for human rights law is huge: how to factor in the main consequences of de-growth in the conceptual analysis and operationalization of ESC rights? In this article, I zoom in on the implications for human rights-based development interventions in developing economies, for example, in Africa (Section 3), and for obligations of international cooperation and assistance (Section 4), also towards Africa.⁴⁹

3 Challenges for Human Rights-Based Development Interventions

In human rights-based development interventions in Africa and the global South more generally, commonly referred to as “human rights-based approaches to development” (HRBADs), the realization of ESC rights is premised on economic growth. HRBADs have been adopted mainly, though not exclusively,⁵⁰ by external actors (donor countries such as Germany, Norway, Sweden or Belgium, the European Commission and international organizations like UNDP and UNICEF) in their development interventions in developing economies. Following a common understanding of UN agencies on HRBAD in 2003,⁵¹ the Office of the High Commissioner for Human Rights defined a human rights-based approach as “a conceptual framework for the process of human

⁴⁹ Hence, I will not examine the consequences for ESC rights in the domestic legal order of *advanced* economies. This is not to say that these consequences are negligible. To the contrary, they are considerable, since current analysis of ESC rights takes the tenets of mainstream economic theory for granted and builds on the assumption of economic growth as the basis for prosperity, social progress and a progressive realization of economic, social and cultural rights, domestically and globally. See J. Markus, *What Is the Use of a Human Right to Development – Legal Pluralism, Participation, and a Tentative Rehabilitation*, 41 *Journal of Law and Society*, no. 3 (2014), 367–390.

⁵⁰ See inter alia P. Gready and J. Ensor (eds.), *Reinventing Development? Translating Rights-Based Approaches from Theory into Practice* (London: Zed Books, 2005); B. Andreassen and G. Crawford (eds.), *Human Rights, Power and Civic Action. Comparative Analyses of Struggles for Rights in Developing Countries*, Routledge Research in Human Rights (London: Routledge, 2013).

⁵¹ A. N. Author, *Report Second Interagency Workshop on Implementing a Human Rights-Based Approach in the Context of UN Reform, Stamford, USA, 5–7 May 2003, Attachment 1: The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies*, available at: <https://undg.org/wp-content/uploads/2016/09/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf>, accessed 26 March 2018.

development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights”.⁵² In the words of Darrow and Tomas, “[a] human rights-based approach represents both a ‘vision’ of development as well as a way of ‘doing’ development”.⁵³ Central features of most HRBAs can be summarized in the acronym PANEN, i. e. participation, accountability, non-discrimination, empowerment and normativity (the latter has sometimes also been referred to as linkage to human rights).⁵⁴

So what does a radically different starting point of de-growth or growth agnosticism mean for HRBADs, and in particular for the HRBAD principles of participation, accountability, non-discrimination, empowerment and normativity? Given the shift in emphasis from growth to redistribution, I submit that the impact of de-growth or growth agnosticism will be highest on the human rights principle of non-discrimination.⁵⁵ I see three reasons. First, whereas de-growth or growth agnosticism is mainly seen as a necessity for the global North, the steady state as a reflection of ecological sustainability is also a worthwhile “unattainable” goal⁵⁶ to be pursued in the global South, including Africa, if not immediately, then certainly in the longer run. Second, even if growth stays on the agenda in the global South, a reorientation from “uneconomic” to “economic” growth (i. e. growth that contributes to welfare) may be needed, and equality is bound to play a role in such a reorientation. A third reason why the HRBAD principle of non-discrimination must be revisited has to do with the growing evidence that inequality is as prominent *within* States as it is among States, also in the global South.⁵⁷ Therefore, reflection is needed on how to ensure *within* countries’ (also in the global South) fair shares of effort to realize the social foundation and to stay within planetary boundaries.⁵⁸ Once more, this

52 OHCHR, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (New York and Geneva: OHCHR, 2006), p. 15.

53 M. Darrow and A. Tomas, *Power, Capture, and Conflict: A Call for Human Rights Accountability in Development Cooperation*, 27 *Human Rights Quarterly*, no. 2 (2005), 487.

54 For more details, see e. g. W. Vandenhole and P. Gready, *Failures and Successes of Human Rights-Based Approaches to Development: Towards a Change Perspective*, 32 *Nordic Journal of Human Rights*, no. 4 (2014), 291.

55 Given the shift in emphasis from growth to redistribution as the economic basis of human development, de-growth or growth agnosticism has not necessarily any disempowering effect.

56 Kerschner argues that the steady-state economy, just like full employment in mainstream economics, is an “unattainable goal” that is nevertheless worth to be pursued, see Kerschner (2010), *supra* note 4.

57 The 2016 Human Development Report talks about deepening inequality, see UNDP, *Human Development Report 2016. Human Development for Everyone* (New York: UNDP, 2016), pp. 29–32.

58 Raworth (2012), *supra* note 42, p. 21.

raises questions of equality. Is the concept of non-discrimination and equality, as used in HRBADs, up to this threefold challenge should de-growth or growth agnosticism be adopted?

In HRBADs, non-discrimination typically translates into a prioritization of the most vulnerable or marginalized in society.⁵⁹ This means that development cooperation programs should not be “directed solely at those that are currently easy to reach” and that “underlying and systemic causes of discrimination must be tackled”.⁶⁰ The latter may imply priority attention for those suffering from multiple discrimination and necessitate advocacy for affirmative action “to level the playing field and rectify structural discrimination”.⁶¹ But beyond these elements, surprisingly little work has been done on the meaning of the non-discrimination principle in HRBADs.

For a long time, the human rights community has closed its eyes to what has been coined extreme or radical inequality,⁶² as a reality, but also as a conceptual challenge. In recent times, international economic actors and the human rights community have started to pay more attention to extreme or radical inequality in its actual occurrence. Conceptually, it remains underdeveloped though. Human rights law has mainly focused on formal equality – at the expense of substantive equality, and on negative obligations to abstain from discrimination rather than on positive obligations to fulfil equality. Or in the words of Balakrishnan and Heinz, “issues of horizontal inequality are more strongly incorporated” in human rights law, at the expense of “vertical inequality”. Horizontal inequality is defined as occurring “between culturally defined or socially constructed groups, such as gender, race, ethnicity, religion, caste and sexuality”, and vertical inequality as occurring “between individuals or between households, such as the overall income or wealth distribution of an economy”.⁶³ Moyné has argued that

⁵⁹ See, for example, OHCHR (2006) *supra* note 52, p. 24.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Alston (2015a), *supra* note 13: “Extreme inequality should also be seen as a cause for shame on the part of the international human rights movement. Just as global economic institutions have eschewed human rights, so too have the major human rights groups avoided tackling the economics of rights”.

⁶³ R. Balakrishnan and J. Heintz, *How Inequality Threatens All Human Rights*, 29 October 2015, available at: <<https://www.openglobalrights.org/how-inequality-threatens-all-humans-rights/?lang=English>>, accessed 26 March 2018. The 2016 Human Development Report suggests that the opposite dynamic can be witnessed in the development debates: “The inequality discussion often focuses on vertical inequality – such as the inequality between wealthiest 10 percent of the population and the poorest 10 percent – and rarely on horizontal inequality – such as the

human rights law has so far only focused on status equality (equality in dignity and rights), but ignored distributive equality. And to the extent that it speaks to distributive equality, it only offers “a floor of protection against indigence”, not a ceiling “on the wealth gap between rich and poor”, i. e. “a ceiling on inequality”.⁶⁴ In sum, there is an emerging awareness of human rights law’s silence on radical inequality and on positive obligations of redistribution (distributive equality). That is particularly problematic, given the strong emphasis on redistribution in post-growth and doughnut economics.

So what is the way forward? I agree by and large with Moyné’s backward-looking analysis of human rights’ failure so far to offer a “ceiling on inequality”. However, I am not convinced about his forward-looking conclusion that human rights law cannot evolve and provide a better check on extreme inequality

Could a different form of human rights than the legal regimes and movements spawned so far correct this mistake? I doubt it. [...] [W]hen inequality has been contained in human affairs, it was never on the sort of individualistic, and often anti-statist, basis that human rights do indeed share with their market fundamentalist Doppelgänger. [...] The drastic mismatch between the egalitarian crisis and the human rights remedy demands not a substitute but a supplement.⁶⁵

In my view, and although I am happy to acknowledge its limits,⁶⁶ human rights law has potential to address extreme inequality, provided that it evolves conceptually. As Alston has argued

If the human rights movement is to spur states to adopt such an agenda for equality, it will need first to correct its own gaps and biases, including by revitalizing normative understandings of equality, and putting questions of resources and redistribution back into the human rights equation.⁶⁷

Let me spell out tentatively the research and reform agenda ahead for human rights law, bearing in mind that the fundamental changes that human rights law

inequality across ethnic groups”. UNDP, *Human Development Report 2013. The Rise of the South: Human Progress in a Diverse World* (New York: UNDP 2013), p. 31.

⁶⁴ S. Moyné, *Human Rights and the Age of Inequality*, 27 October 2015, available at: <<https://www.opendemocracy.net/openglobalrights/samuel-moyn/human-rights-and-age-of-inequality>>, accessed 26 March 2018.

⁶⁵ *Ibid.*

⁶⁶ W. Vandenhole, “The Limits of Human Rights Law in Human Development”, in E. Claes, W. Devroe and B. Keirsbilck (eds.), *Facing the Limits of the Law* (Berlijn/Heidelberg: Springer, 2009).

⁶⁷ Alston (2015a), *supra* note 13.

is required to make do arise not only out of deepening inequality (as discussed in the previous paragraph) but also out of the sustainability imperatives as spelled out in the de-growth and doughnut economics literature. A first challenge is that more attention needs to be given to equality of outcomes (substantive equality)⁶⁸ and that questions of resources need to be “[put] back into the human rights equation”.⁶⁹ Also, the notion of a social protection floor must be clarified in human rights language. Second and more fundamentally, there is a need to “revitalize the equality norm”⁷⁰ by incorporating inequality of income, a ceiling on inequality, and issues of redistribution⁷¹ firmly within a legal understanding of equality. A human rights approach to tax policies can be most helpful for achieving some of this.⁷² Likewise, a right to social protection⁷³ and notions like an “adequate standard of living” and a minimum income or basic wage may need to be fleshed out in order to strengthen the understanding of redistributive equality in human rights law.

In the African context, and that of the global South more generally, growth agnosticism – let alone de-growth – has not been argued for. Nonetheless, given the overall concern with staying within planetary boundaries, unlimited economic growth should not be pursued or actively promoted either. The key question is hence how much human development can be achieved through redistribution, within Africa and globally, and how much economic growth is needed to provide a solid economic basis for redistribution.

4 Global Human Rights Obligations

Post-growth and doughnut economics are built on an idea of collective responsibility and globally agreed levels of economic activity. Kerschner envisages the objective of a steady-state economy “on a *global* level at some *mutually agreed*

⁶⁸ See, for example, S. Fredman, *Substantive Equality Revisited*, Oxford Legal Studies Research Paper No. 70/2014 (University of Oxford, 2014), available at: <<http://ssrn.com/abstract=2510287>>, accessed 26 March 2018.

⁶⁹ Alston (2015b), *supra* note 14, p. 20, para. 56.

⁷⁰ *Ibid.*, p. 19, para. 55.

⁷¹ *Ibid.*, p. 19, para. 55: “Questions of resources and redistribution can no longer be ignored as part of human rights advocacy”. For an interesting attempt to clarify the redistributive dimension of substantive equality as one of the redressing socioeconomic disadvantages, see S. Fredman, *Emerging from the Shadows: Substantive Equality and Article 14 of the European Convention on Human Rights*, 16 Human Rights Law Review, no. 2 (2016), 282.

⁷² Alston (2015b), *supra* note 14, p. 18, paras. 52–53.

⁷³ *Ibid.*, p. 18, para. 51.

upon sustainable level of throughput” (emphasis added).⁷⁴ With regard to the ecological ceiling in doughnut economics, Raworth makes explicitly the point that a “planetary perspective is essential for shaping their governance” and that the planetary boundaries represent a “wake-up call for the international community ... to take collective responsibility”.⁷⁵

This raises a second set of questions in addition to revisiting the legal concept of equality as discussed in the previous section, namely “how to agree on fair shares of effort for staying within planetary boundaries – e. g. through ‘common but differentiated responsibilities and respective capabilities’”.⁷⁶ Fair shares of effort, in particular also among countries,⁷⁷ is an issue that has been quite central to international environmental law, as reflected in the notion of common but differentiated responsibility. In human rights law too, in particular in the context of extraterritorial human rights obligations, attention has been paid in recent years to the distributive allocation of obligations and responsibility for violations.⁷⁸

Does the burden for shouldering these efforts lie primarily with States in the global North and with emerging economies, since they have benefited most from economic growth patterns in the past? As Wilde has argued

[C]urrent economic inequalities can in part be linked back to colonial and imperial structures of the past. One link would be in how industrialization in the West, with its ongoing legacy in terms of economic inequality and environmental destruction, was bound up in and enabled by slavery, the imposition of unequal trade relations, and the exploitation of people and the plunder of natural resources in colonial territories.⁷⁹

So, both as a matter of redress for injustices in the past, but also because countries in the North have benefited most from stressing the environment and crossing planetary boundaries, it seems fair that some of the heavy lifting in the burden sharing will be done by the North. What are the implications for the field of “human rights law and development”?

⁷⁴ Kerschner (2010), *supra* note 4, p. 549.

⁷⁵ Raworth (2012), *supra* note 42, p. 12.

⁷⁶ *Ibid.*, p. 14.

⁷⁷ *Ibid.*, p. 21.

⁷⁸ See, inter alia, W. Vandenhole, “Obligations and Responsibility in a Plural and Diverse Duty-Bearer Human Rights Regime”, in W. Vandenhole (ed.), *Challenging Territoriality in Human Rights Law: Building Blocks for a Plural and Diverse Duty-Bearer Regime*, Routledge Research in Human Rights Law (London: Routledge, 2015).

⁷⁹ R. Wilde, “Dilemmas in Promoting Global Economic Justice through Human Rights Law”, in N. Bhuta (ed.), *The Frontiers of Human Rights: Extraterritoriality and Its Challenges* (Oxford: Oxford University Press, 2016), pp. 169–170.

4.1 Extraterritorial Obligations

The challenges and sources of global impoverishment cannot be located within one territorial state

[T]he Westphalian framing of poverty and law is problematic in a globalising world. Its constitutive assumptions are belied by the increasingly salient fact of “global poverty”. That expression names modes of impoverishment whose causes and manifestations cannot be located within a single territorial state. Generated by transborder processes, the harms suffered by “the global poor” largely escape the parameters of national law and the control of national states. To locate them within the Westphalian frame is to *misframe* them.⁸⁰

However, human rights law is statist in orientation⁸¹: “[...] in its inception, structure and content, the legal order of human rights is not a global legal order [...]”.⁸² For sure, there is a burgeoning literature on extraterritorial human rights obligations⁸³ and some legal practice, but most of it focuses on civil and political rights and on instances where an immediate and contemporary causal link between action or inaction and harm exists. In that sense, it is worth recalling that “[t]he extraterritorialization of human rights law should not be understood as some kind of natural fulfilment of the telos of human rights as a cosmopolitan constitutional law for all humanity”.⁸⁴

One of the rare attempts to codify extraterritorial human rights obligations in the field of ESC rights is the Maastricht Principles on the Extraterritorial Obligations of States in the area of ESC rights.⁸⁵ The Maastricht Principles do contain some

80 N. Fraser, “Social Exclusion, Global Poverty, and Scales of Injustice: Rethinking Law and Poverty in a Globalising World”, in S. Liebenberg and G. Quinot (eds.), *Law and Poverty: Perspectives from South Africa and Beyond* (Cape Town: Juta, 2012), p. 10.

81 Not to mention general challenges to the transformative potential of law (Wilde (2016), *supra* note 79, pp. 172–73.) and its Northern bias and neocolonial outlook, see the TWAIL scholarship, such as B. Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge: Cambridge University Press, 2003), and challenges specific to human rights law.

82 N. Bhuta, “The Frontiers of Extraterritoriality-Human Rights Law as Global Law” in Bhuta (2016), *supra* note 79, p. 18.

83 See, for example, M. Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (New York: Oxford University Press, 2011); M. Gondek, *The Reach of Human Rights in a Globalising World: Extraterritorial Application of Human Rights Treaties* (Antwerp: Intersentia, 2009).

84 Bhuta (2016), *supra* note 82, p. 19.

85 A. N. Author, *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, 29 *Netherlands Quarterly of Human Rights*, no. 4 (2011). See also O. De Schutter *et al.*, *Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, 34 *Human Rights Quarterly*, no. 4 (2012).

principles that may help to legally capture the idea of collective responsibility. For one, Principle 8(b) refers to “rights obligations of a global character [...] to take action [...] to realize human rights universally”, i. e. obligations of international cooperation.⁸⁶ International cooperation includes “the development of international rules to establish an enabling environment for the realization of human rights and the provision of financial or technical assistance”.⁸⁷ These global obligations are further spelled out in the extraterritorial obligations to fulfil. In particular, Principle 29 identifies an obligation – in language reminiscent of the Millennium Declaration and the Declaration on the Right to Development – “to create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation”. Moreover, a soft procedural obligation (“should”) of cooperation, “including in the allocation of responsibilities” so as to cooperate effectively, is established (Principle 30). This procedural obligation may be useful in the context of negotiating the sustainable throughput levels in a steady-state economy too. Each State’s contribution to the fulfilment of ESC rights extraterritorially has to be “commensurate with, *inter alia*, its economic, technical and technological capacities, available resources, and influence in international decision-making processes”. As part of that obligation of international cooperation, States that are in a position to do so “must provide international assistance to contribute to the fulfilment of economic, social and cultural rights in other States”.⁸⁸ As the Commentary to the Maastricht Principles (which was written by the same six experts who prepared the draft Maastricht Principles) explains, Principle 30 seeks to address a gap in human rights law, namely that

[i]nternational human rights law, at present, does not determine with precision a system of international coordination and allocation that would facilitate the discharging of obligations of a global character (in the meaning given to this expression under Principle 8 (b)) among those states “in a position to assist”.⁸⁹

The Maastricht Principles have been criticized for failing to address the key issues flagged in no-growth economics and doughnut economics, that is collective responsibility for fundamental changes in the global economic system and burden sharing. For example, Wilde has argued that the Maastricht Principles are too reformist: “[...] the current legal regime takes the fundamental structures

⁸⁶ De Schutter (2012), *supra* note 85, p. 1104.

⁸⁷ *Ibid.*

⁸⁸ A. N. Author, *supra* note 85.

⁸⁹ De Schutter (2012), *supra* note 85, p. 1149.

of global economic relations largely as is [...]”.⁹⁰ He seeks an explanation for this modest agenda for reform in the Maastricht Principles in the failure to acknowledge the structural and historical roots of economic globalization

Rich countries and their populations are operating on a blank slate in terms of the historical past and their inheritance from previous generations. No investigation is to be made into how the economic inequalities of today are in part rooted in such inequalities in the past. Thus any matters of global economic reconstruction and redistribution can be understood exclusively in terms of debates around communitarianism and charity-resulting in very modest economic consequences-not unfair, inherited privilege based on past inequality and exploitation-which might require more profound, transformatory change.⁹¹

This criticism is partly incorrect, since the Maastricht Principles do elaborate on global obligations and do reference structural issues of trade, investment, finance and the environment, to mention just a few (Principle 29). Moreover, in the Commentary, it is argued with force that “capacity and resources do not exhaust the basis for assigning obligations of international assistance and cooperation”.⁹² One of the other bases for assigning obligations is precisely “historical responsibility or causation, which takes a compensatory approach based on some determination of liability for contributing to a problem that undermines the fulfillment of economic, social, and cultural rights extraterritorially”.⁹³ The Maastricht Principles also clearly distinguish between international cooperation and international assistance (Principle 33). The critique that issues of global economic redistribution may end up in charity is therefore not appropriate either. The Maastricht Principles clearly debunk Raworth’s suggestion that reaching the social foundation is a matter of international assistance, whereas safeguarding the ecological ceiling is a matter of international cooperation. The social foundation too requires structural measures, collectively taken.

It is nonetheless true that

The Principles remain [...] fairly silent on the division of responsibility among external actors, i. e. what exactly should which foreign State or non-State actor do? In particular for the extraterritorial obligation to fulfil, it is clear *what* should be done, but not *who* should do it, notwithstanding some reference to the obligation to coordinate, “including in the allocation of responsibilities” (Principle 30).⁹⁴

⁹⁰ Wilde (2016), *supra* note 79, p. 171.

⁹¹ *Ibid.*, p. 172.

⁹² De Schutter (2012), *supra* note 85, p. 1153.

⁹³ *Ibid.*

⁹⁴ W. Vandenhoe, *Beyond Territoriality: The Maastricht Principles on Extra-Territorial Obligations in the Area of Economic, Social and Cultural Rights*, 29 *Netherlands Quarterly of Human Rights*, no. 4 (2011), 432.

Principle 31 of the Maastricht Principles spells out the basis for *assigning* obligations (capacity and resources), but refrains from clarifying the distributive allocation of obligations. Which state has to do what precisely?

A further limitation of the Maastricht Principles, as the Commentary to these Principles bears out, is that they do not establish a regime of shared responsibility for violations of the global obligations. In other words, whereas collective legal obligations are recognized, the Maastricht Principles rely on an “individualized regime of legal responsibility in the event of a breach of those obligations” (footnote omitted).⁹⁵ As argued elsewhere, I find the international law regime of independent responsibility for internationally wrongful acts inadequate for human rights violations and even more so for violations of global human rights obligations.⁹⁶ Independent responsibility means that responsibility for a human rights violation is determined for each duty bearer separately and individually. Shared responsibility attributes responsibility for a human rights violation jointly to all duty-bearers. Shared responsibility considerably alleviates the burden on victims of human rights violations to identify and prove each duty bearer’s share in a violation.

In an attempt to fill this double void – i.e. the absence of distributive allocation of obligations, and of a shared responsibility regime – I have suggested elsewhere some principles for the distributive allocation of obligations and for shared responsibility for violations.⁹⁷ First, I take the primary obligation of the domestic State as the natural point of departure.⁹⁸ Second, I consider the extraterritorial obligations to respect and to protect as parallel obligations for all States: they apply simultaneously to the territorial and foreign States. The extraterritorial obligation to fulfil is only secondary: it is triggered by the inability or unwillingness of the territorial State to abide by its human rights obligations.⁹⁹ As to the distributive allocation among foreign States of the extraterritorial obligation to fulfil, I have argued in favour of identifying

⁹⁵ De Schutter (2012), *supra* note 85, p. 1152.

⁹⁶ W. Vandenhole, “Shared Responsibility of Non-State Actors: A Human Rights Perspective”, in N. Gal-Or, C. Ryngaert and M. Noortmann (eds.), *Responsibilities of the Non-State Actor in Armed Conflict and the Market Place: Theoretical Considerations and Empirical Findings* (Leiden: Brill, 2015), in particular pp. 57–68.

⁹⁷ Vandenhole (2015a), *supra* note 78.

⁹⁸ W. Vandenhole and W. Benedek, “Extraterritorial Human Rights Obligations and the North-South Divide”, in M. Langford, et al. (eds.), *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law* (New York: Cambridge University Press, 2013), p. 335.

⁹⁹ *Ibid.*, pp. 335–40.

duty-bearers and their respective obligations in some detail: merely establishing “a generic [obligation] that attaches to the undifferentiated international community”¹⁰⁰ will not do. I have suggested a smart mix of more abstract principles (such as those States traditionally belonging to the donor community, legal and political commitments made by States) and more context-specific elements (such as causation, capacity and vicinity) in order to identify specific duty-bearers and specific obligations.¹⁰¹

Leaving the primary obligation with the territorial State, as I propose, is open to challenge, in light of a global human rights obligations paradigm as put forward by the Maastricht Principles. In such a paradigm, “the global order in its entirety” can be blamed for structural obstacles to human rights realization.¹⁰² It may be even more open to challenge by post-growth and doughnut economics, given the global and interconnected nature of the planetary challenges and the structural external impediments that countries in the global South often face. De-growth and doughnut economics hence question the long-standing principle in human rights law and in development law that the primary responsibility is incumbent on the territorial state. On the other hand, challenging the primary responsibility of the territorial state raises new complex questions, as the “primary responsibility of the domestic State is based on its sovereign rights to determine policy choices on development strategies and exploitation of natural resources”.¹⁰³ In other words, by challenging the primary responsibility of the territorial state for human rights and for development, does one not question the sovereignty of that state? And if that is the case, what are the broader implications for public international law that is built on the principle of state sovereignty?

Efforts to better grasp “fair shares of effort” in post-growth and doughnut economics can also benefit from the work done to clarify the specific (extra-territorial) obligations of States in human rights law. At a basic level, the tripartite typology of respect, protect and fulfil obligations is useful to clarify that not all obligations are resource intensive. There remain nonetheless

100 P Alston, *Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen through the Lens of the Millennium Development Goals*, 27 Human Rights Quarterly, no. 3 (2005), 777.

101 Vandenhole and Benedek (2013), *supra* note 98, pp. 341–349.

102 M. E. Salomon, *Global Responsibility for Human Rights* (Oxford: Oxford University Press, 2007), p. 187.

103 K. De Feyter, *Towards a Framework Convention on the Right to Development* (Berlin: Friedrich Ebert Stiftung, 2013), p. 12, available at: <<http://library.fes.de/pdf-files/bueros/genf/09892.pdf>>, accessed 26 March 2018.

considerable challenges to flesh out the differentiation of (fulfil) obligations much more, in order to operationalize the “fair shares of effort” notion. Historical causation may play a prominent role in differentiating obligations, but on this point too, human rights legal thinking is in its infancy.

Clearly, all these points on fair shares of effort and how this could be translated in human rights law are of particular relevance in the context of Africa, given the exploitative and extractive nature of the global North’s economic relationship with the continent. The burden of ensuring human prosperity and the realization of socio-economic rights in Africa cannot be left to African States only, but is to be shared by States in the global North.

Beyond extraterritorial obligations and their codification in the Maastricht Principles, the right to development – the best attempt to date to conceptualize so-called third-generation rights or solidarity rights – has sought to clarify duties and duty-bearers for development.

4.2 The Right to Development

The right to development was coined and legally framed in the late 1960s and early 1970s. A Declaration on the Right to Development was adopted by the United Nations General Assembly in 1986.¹⁰⁴ Unanimous political recognition to the right to development as a human right was accorded in 1993, in the Vienna Declaration and Plan of Action.¹⁰⁵

The right to development is to be understood as an attempt of countries in the global South to realize socio-economic self-determination in the wake of political independence through decolonization.¹⁰⁶ Justification for the right to development was sought in the strategic, economic and political domination of the North over the global South, which was considered to justify making the North responsible for development in the South.¹⁰⁷

104 UNGA, *Declaration on the Right to Development*, UN Doc A/RES/41/128 of 4 December 1986. Compare voting patterns on NIEO and the right to development.

105 Art. 10 *Vienna Declaration and Programme of Action*, UN Doc A/CONF.157/23 of 12 July 1993.

106 R. N. Kiwanuka, *Developing Rights: The UN Declaration on the Right to Development*, 35 *Netherlands International Law Review*, no. 3 (1988), 257.

107 K. M’Baye, *Le droit au développement comme un droit de l’homme*, V *Revue des droits de l’homme* nos. 2–3 (1972), pp. 514–526; K. M’Baye, “Le droit au développement” in R.-J. Dupuy (ed.), *Le droit au développement au plan international* (Leiden: Nijhoff, 1980), pp. 78–88.

In origin, the right to development was a radical framing of responsibility for development, since it challenged prevailing international economic relations and sought to introduce alternative legal principles for international relations, such as international solidarity, substantive equality and international justice.¹⁰⁸ These principles relate to the external dimension of the right to development, i. e. the claims of a developing state for international cooperation and assistance towards third States or the international community¹⁰⁹ or the right to secure the removal of structural obstacles to development inherent in prevailing international economic relations.¹¹⁰ The right to development was meant to address underdevelopment as a structural violation of human rights.

At first sight, the right to development may be well equipped to capture some of the key challenges raised by post-growth and doughnut economics in terms of global responsibility and burden sharing. However, neither the legal codification of the right to development in the Declaration on the Right to Development nor later attempts to elaborate on its meaning in reference to the global partnership for development in Millennium Development Goal 8 offer much analytical clarity.¹¹¹ Neither the 1986 Declaration nor the High-Level Task Force¹¹² clarify the distributive allocation of obligations and responsibility under the right to development. Even more so, in recent attempts at further standard setting, the external dimension of this right, that is the obligations it imposes on foreign States and/or the international community, has been more and more downplayed.¹¹³

For a decade now, the potential elaboration of a treaty on the right to development has been discussed, but there is clearly a political deadlock on

108 *Ibid.*, pp. 85–88.

109 K. De Feyter, *The Human Rights Approach to Development* (Antwerp, Universitaire Instelling Antwerpen: 1992), p. 556; M. Salomon, *Legal Cosmopolitanism and the Normative Contribution of the Right to Development* (London: London School of Economics and Political Science, 2008), pp. 2–8, available at: <<http://www.lse.ac.uk/law/working-paper-series/2007-08/WPS2008-16-Salomon.pdf>>, accessed 26 March 2018.

110 S. Marks, “Emerging Human Rights: A New Generation for the 1980s?” in R. Falk, F. Kratochwil and S. Mendlovitz (eds.), *International Law: A Contemporary Perspective* (Boulder: Westview Press, 1985), p. 509. See also Salomon (2008), *supra* note 109, pp. 8–9.

111 A. Vandenbogaerde, *The Right to Development in International Human Rights Law: A Call for Its Dissolution*, 31 *Netherlands Quarterly of Human Rights*, no. 2 (2013).

112 The High-Level Task Force assisted the open-ended working group on the right to development between 2004 and 2010. The open-ended working group was established by the UN Commission on Human Rights in 1998.

113 Vandenbogaerde (2013), *supra* note 111, pp. 199–200.

the matter. Conceptually, some of the framing that has been proposed can help to address through human rights law the challenge of “fair shares of effort” as posed by post-growth and doughnut economics. De Feyter primarily favours the elaboration of a treaty on the right to development in order to provide a counterweight to treaty obligations in international economic law.¹¹⁴ Substantively he believes that

The potential added value of a right to development treaty is to complement the current human rights regime with a treaty that goes beyond individual State responsibility and builds on principles derived from international development efforts, including the Paris Declaration on Aid Effectiveness that provides for mutual accountability [...]. The focus on individual State responsibility in current human rights treaty law prevents the integration of human rights into the international development effort. It also hampers international human rights law in delivering on its promise of protection to those adversely affected by globalization.¹¹⁵

Two sets of relationships are of particular relevance here: the unilateral dimension of the duty to cooperate (which coincides with the extraterritorial obligations of States), including the impact of aid, trade, investment and finance, and the multilateral dimension of the duty to cooperate (through partnerships between States). De Feyter has argued more in particular for the elaboration of a *Framework Convention*. Framework Conventions typically “denote the subject matter of the treaty as one that is of concern to the international community and requires international cooperation”.¹¹⁶ State sovereignty with regard to such an issue of common concern to the international community is custodial: the State acts as the custodian of that interest.¹¹⁷ Interestingly, Framework Conventions are quite common in international environmental law and allow for a holistic approach to an issue. Whereas in De Feyter’s view, holistic “defines the integration of development and human rights concerns”,¹¹⁸ there is no technical obstacle to also including ecological sustainability in such a holistic approach, as he suggests himself.¹¹⁹

Operationalization of such a Framework Convention could happen through compacts, funds and/or multi-stakeholder agreements. In De Feyter’s view, multi-stakeholder agreements “would be concluded by coalitions of the willing,

¹¹⁴ De Feyter (2013), *supra* note 103, pp. 3–4.

¹¹⁵ *Ibid.*, p. 4.

¹¹⁶ *Ibid.*, p. 5.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*, p. 8.

¹¹⁹ *Ibid.*, p. 10, where a reference is made to the environmental dimension of the right to development, drawing on the Rio Declaration on Environment and Development.

consisting of a variety of public and private actors, committed to demonstrating that the right to development can be implemented in a meaningful way through joint initiatives”.¹²⁰

In sum, post-growth and doughnut economics necessitate rather drastic, but not impossible, conceptual developments in human rights law to better grasp notions of joint responsibility and burden sharing. The work on extraterritorial obligations and on the right to development provides useful entry points for such an exercise, but more conceptual work is required in order to make human rights law fully responsive to the challenge of “fair shares of effort”.

5 Conclusions

Sustainable development typically pursues three objectives at once: economic development, social development and ecological development. Strong definitions of sustainable development introduce a hierarchy between these objectives and give prominence to the ecological and social one. Ecological or post-growth economics, and to some extent also doughnut economics, has argued that the prominence of the ecological objective of sustainable development necessitates de-growth in the North, at least to make the transition to sustainable throughput levels. It also argues in favour of global collective responsibility for sustainable development and of burden sharing between North and South. For Africa and the global South more generally, economic growth is not excluded, but in order to avoid the ecological pitfalls of unlimited economic growth as pursued in the global North, it seems advisable to balance the economic, ecological and social objectives. The global North has to contribute to this balancing process through international assistance and cooperation, as part of a global redistribution effort.

In this article, I have explored the implications of these economic theories for human rights law in development (cooperation). Within HRBADs, the principle of non-discrimination and equality must be revisited so that redistribution can be fully factored into human rights law. This sets an ambitious research agenda on equality, ranging from conceptualizing redistributive equality to fleshing out a right to social protection and the right to an adequate standard of living and to elaborating a human rights approach to tax policies and paying more attention to the question of resources.

¹²⁰ *Ibid.*, p. 16.

In the African context, and that of the global South more generally, growth agnosticism – let alone de-growth – has not been argued for. Nonetheless, given the overall concern with staying within planetary boundaries, unlimited economic growth should not be pursued or actively promoted either. Key questions are, for example: how much human development can be achieved through redistribution, within Africa and globally, and how much economic growth is needed to provide a solid economic basis for redistribution? How may redistributive equality play out in Africa? Which levels of economic growth are needed to make the right to social protection and to an adequate standard of living fully realizable while staying within planetary boundaries? How would a human rights approach to tax policies look like in Africa?

The notion of international cooperation and assistance must equally take on new meaning. Given the exploitative and extractive nature of the global North's economic relationship with Africa, the burden of ensuring human prosperity and the realization of socio-economic rights on the continent cannot be left to African States only, but is to be shared by States in the global North. Entry points can be found in extraterritorial obligations in the area of ESC rights and in scholarly work on the external dimensions of the right to development. However, it is not because human rights law has the conceptual “absorbing capacity” to deal with the challenges posed by post-growth and doughnut economics that these conceptual changes will also occur. Political resistance is expected to be high so the legal codification of these conceptual changes will inevitably be slow if happening at all.

References

- A. N. Author, *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, 29 Netherlands Quarterly of Human Rights, no. 4. (2011).
- A. N. Author, *Report Second Interagency Workshop on Implementing a Human Rights-Based Approach in the Context of UN Reform, Stamford, USA, 5–7 May 2003, Attachment 1: The Human Rights Based Approach to Development Cooperation Towards a Common Understanding among UN Agencies*, available at: <https://undg.org/wp-content/uploads/2016/09/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf>, accessed 26 March 2018.
- Alston, P., *Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen through the Lens of the Millennium Development Goals*, 27 Human Rights Quarterly, no. 3 (2005).
- Alston, P., *Extreme Inequality as the Antithesis to Human Rights*, 27 October 2015a, available at: <<https://www.opendemocracy.net/openglobalrights/philip-alston/extreme-inequality-as-antithesis-of-human-rights>>, accessed 26 March 2018.

- Alston, P., *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, UN Doc. A/HRC/29/31 of 27 May 2015b.
- Andreassen, B. and G. Crawford (eds.), *Human Rights, Power and Civic Action. Comparative Analyses of Struggles for Rights in Developing Countries*, Routledge Research in Human Rights (London: Routledge, 2013).
- Balakrishnan, R. and J. Heintz, *How Inequality Threatens All Human Rights*, 29 October 2015, available at: <<https://www.openglobalrights.org/how-inequality-threatens-all-humans-rights/?lang=English>>, accessed 26 March 2018.
- Balakrishnan, R., J. Heintz and D. Elson, *Rethinking Economic Policy for Social Justice: The Radical Potential of Human Rights* (London & New York: Routledge, 2016).
- Bhuta, N., "The Frontiers of Extraterritoriality-Human Rights Law as Global Law". in N. Bhuta (ed.), *The Frontiers of Human Rights: Extraterritoriality and Its Challenges* (Oxford: Oxford University Press, 2016).
- Bosselmann, K., *A Vulnerable Environment: Contextualising Law with Sustainability*, 2 Journal of Human Rights and the Environment, no. 1 (2011).
- Darrow, M. and A. Tomas, *Power, Capture, and Conflict: A Call for Human Rights Accountability in Development Cooperation*, 27 Human Rights Quarterly, no. 2 (2005).
- De Feyter, K., *The Human Rights Approach to Development* (Antwerp: Universitaire Instelling Antwerpen, 1992).
- De Feyter, K., *Towards a Framework Convention on the Right to Development* (Berlin: Friedrich Ebert Stiftung, 2013), available at: <<http://library.fes.de/pdf-files/bueros/genf/09892.pdf>>, accessed 26 March 2018.
- De Schutter, O., A. Eide, A. Khalfan, M. Orellana, M. Salomon and I. Seiderman, *Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, 34 Human Rights Quarterly, no. 4 (2012).
- Fredman, S., *Substantive Equality Revisited*, Oxford Legal Studies Research Paper No. 70/2014 (University of Oxford, 2014), available at: <<http://ssrn.com/abstract=2510287>>, accessed 26 March 2018.
- Fredman, S., *Emerging from the Shadows: Substantive Equality and Article 14 of the European Convention on Human Rights*, 16 Human Rights Law Review, no. 2 (2016).
- Gondek, M., *The Reach of Human Rights in a Globalising World: Extraterritorial Application of Human Rights Treaties* (Antwerp: Intersentia, 2009).
- Gready, P. and J. Ensor (eds.), *Reinventing Development? Translating Rights-Based Approaches from Theory into Practice* (London: Zed Books, 2005).
- Kallis, G., C. Kerschner and J. Martinez-Alier, *The Economics of Degrowth*, 84 Ecological Economics (2012).
- Kerschner, C., *Economic De-Growth Vs. Steady-State Economy*, 18 Journal of Cleaner Production, no. 6 (2010).
- Kim, R.E. and K. Bosselmann, *Operationalizing Sustainable Development: Ecological Integrity as a Grundnorm of International Law*, 24 Review of European Comparative & International Environmental Law, no. 2 (2015).
- Markus, J., *What Is the Use of a Human Right to Development – Legal Pluralism, Participation, and a Tentative Rehabilitation*, 41 Journal of Law and Society, no. 3 (2014).
- Martínez-Alier, J., *Socially Sustainable Economic De-Growth*, 40 Development and Change, no. 6 (2009).

- Martínez-Alier, J., U. Pascual, F.-D. Vivien and E. Zaccai, *Sustainable De-Growth: Mapping the Context, Criticisms and Future Prospects of an Emergent Paradigm*, 69 *Ecological Economics*, no. 9 (2010).
- Max-Neef, M., *Economic Growth and Quality of Life: A Threshold Hypothesis*, 15 *Ecological Economics*, no. 2 (1995).
- Milanovic, M., *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (New York: Oxford University Press, 2011).
- Moyne, S., *Human Rights and the Age of Inequality*, 27 October 2015, available at: <<https://www.opendemocracy.net/openglobalrights/samuel-moyn/human-rights-and-age-of-inequality>>, accessed 26 March 2018.
- OHCHR, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (New York and Geneva: OHCHR, 2006).
- Perotti, E., *Zero-Growth Could Be the New Long-Term Normal in Developed Economies: Six Charts that Explain Why*, 20 December 2016, available at: <<https://www.weforum.org/agenda/2016/12/zero-growth-could-be-the-new-long-term-normal-in-developed-economies-six-charts-that-explain-why/>>, accessed 26 March 2018.
- Rajagopal, B., *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge: Cambridge University Press, 2003).
- Raworth, K., *A Safe and Just Space for Humanity: Can We Live within the Doughnut?*, *Oxfam Discussion Papers* (2012), available at: <<https://www.oxfam.org/sites/www.oxfam.org/files/dp-a-safe-and-just-space-for-humanity-130212-en.pdf>>, accessed 26 March 2018.
- Raworth, K., *The Doughnut of Social and Planetary Boundaries* (2017a), available at: <<https://www.kateraworth.com/doughnut/>>, accessed 26 March 2018.
- Raworth, K., *Doughnut Economics. Seven Ways to Think Like a 21st-Century Economist* (London: Random House Business Books, 2017b).
- Raworth, K., *Doughnut Economics*, available at: <<https://www.humansandnature.org/economy-kate-raworth>>, accessed 26 March 2018.
- Rockström, J., W. Steffen and K. Noone, *Planetary Boundaries: Exploring the Safe Operating Space for Humanity*, 14 *Ecology and Society*, no. 2 (2009).
- Salomon, M., *Legal Cosmopolitanism and the Normative Contribution of the Right to Development* (London: London School of Economics and Political Science, 2008), available at: <<http://www.lse.ac.uk/law/working-paper-series/2007-08/WPS2008-16-Salomon.pdf>>, accessed 26 March 2018.
- Salomon, M.E., *Global Responsibility for Human Rights* (Oxford: Oxford University Press, 2007).
- UNDP, *Human Development Report 2013. The Rise of the South: Human Progress in a Diverse World* (New York: UNDP, 2013).
- UNDP, *Human Development Report 2016. Human Development for Everyone* (New York: UNDP, 2016).
- UNGA, *Transforming Our World: The 2030 Agenda for Sustainable Development* (2015), UN Doc. A/RES/70/1 of 21 October 2015.
- Vandenbogaerde, A., *The Right to Development in International Human Rights Law: A Call for Its Dissolution*, 31 *Netherlands Quarterly of Human Rights*, no. 2 (2013).
- Vandenhole, W., "The Limits of Human Rights Law in Human Development". in E. Claes, W. Devroe and B. Keirsbilck (eds.), *Facing the Limits of the Law* (Berlin/Heidelberg: Springer, 2009).

- Vandenhole, W., *Beyond Territoriality: The Maastricht Principles on Extra-Territorial Obligations in the Area of Economic, Social and Cultural Rights*, 29 *Netherlands Quarterly of Human Rights*, no. 4 (2011).
- Vandenhole, W., "Obligations and Responsibility in a Plural and Diverse Duty-Bearer Human Rights Regime", in W. Vandenhole (ed.), *Challenging Territoriality in Human Rights Law: Building Blocks for a Plural and Diverse Duty-Bearer Regime*, Routledge Research in Human Rights Law (London: Routledge, 2015a).
- Vandenhole, W., "Shared Responsibility of Non-State Actors: A Human Rights Perspective". in N. Gal-Or, C. Ryngaert and M. Noortmann (eds.), *Responsibilities of the Non-State Actor in Armed Conflict and the Market Place: Theoretical Considerations and Empirical Findings* (Leiden: Brill, 2015b).
- Vandenhole, W. and W. Benedek, "Extraterritorial Human Rights Obligations and the North-South Divide". in M. Langford, et al. (eds.), *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law* (New York: Cambridge University Press, 2013).
- Vandenhole, W. and P. Gready, *Failures and Successes of Human Rights-Based Approaches to Development: Towards a Change Perspective*, 32 *Nordic Journal of Human Rights*, no. 4 (2014).
- Wilde, R., "Dilemmas in Promoting Global Economic Justice through Human Rights Law". in N. Bhuta (ed.), *The Frontiers of Human Rights: Extraterritoriality and Its Challenges* (Oxford: Oxford University Press, 2016).
- World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987), available at: <<http://www.un-documents.net/our-common-future.pdf>>.

Reproduced with permission of copyright owner.
Further reproduction prohibited without permission.