



Human Rights Discourse in the Sustainable Development Agenda Avoids Obligations and Entitlements

Comment on “Rights Language in the Sustainable Development Agenda: Has Right to Health Discourse and Norms Shaped Health Goals?”

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Abstract

Our commentary on Forman et al paper explores their thesis that right to health language can frame global health policy responses. We examined human rights discourse in the outcome documents from three 2015 United Nations (UN) summits and found rights-related terms are used in all three. However, a deeper examination of the discourse finds the documents do not convey the obligations and entitlements of human rights and international human rights law. The documents contain little that can be used to empower the participation of those already left behind and to hold States and the private sector to account for their human rights duties. This is especially worrying in a neoliberal era.

Keywords: Human Rights, Right to Health, Climate Change, Sustainable Development Goals (SDGs), International Human Rights Law, Discourse Analysis, Neoliberalism

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Introduction

As health and human rights advocates, we welcomed the paper by Forman et al and its suggested finding that “express use of right to health language ‘frames’ policy responses by implicitly guiding actors toward a universalistic impetus in health and healthcare.”¹ Their paper speculated about, but was written before the United Nations (UN) adopted the final text of *Transforming Our World: the 2030 Agenda for Sustainable Development*.²

We examined *Transforming Our World* and found it had explicit human rights discourse and health goals that are consistent with right to health entitlements, in particular, universal health coverage. We searched for the rights-related terms that Forman et al had used in their investigation of four earlier Sustainable Development Goals (SDGs) documents, and found 26 instances, that is one term per 595 words, or (using their measure) 0.74 terms per page. It appears that, as the Forman hypothesis would predict, the human rights discourse in the forerunners to *Transforming Our World* promotes more equitable global health policy.

However, we have some reservations about making inferences on the basis of the inclusion of certain terms. Discourse analysis effectively treats a term, such as ‘human rights,’ as an indicator. But like all indicators, it has weaknesses—one of which is that the number of times the indicator terms appears is not necessarily a measure of meaningful commitment to human rights.

We explored the value of human rights discourse analysis in two other closely-related 2015 UN Summit outcome documents: the *Addis Ababa Action Agenda* on Financing for

Development,³ and the *Paris Agreement* and accompanying *Conference of the Parties Decision* on climate change.⁴

As we explain in the two next sections, where and how human rights terms are used in documents has an important bearing on their impact. Conversely, the absence of words and phrases is also important, but discourse analysis does not usually measure the absence of terms.

The Significance of Placement and Omission

In *Transforming our World*, of the 26 uses of rights-related terms, five are in the actual goals and targets. The only specific health rights reference is in SDG 5.6, “Ensure universal access to sexual and reproductive health and reproductive rights . . .” Equal rights for all men and women to economic and other resources are referred to in SDGs 1.4 and 5.7a. Labour rights are referred to in SDG 8.8. Human rights is listed as an education topic in SDG 4.7.

We found Forman’s rights-related terms occurred 18 times in the 38-page *Addis Ababa Action Agenda* - but only once in association with the 15 times human health is mentioned. They were used four times (including the right to health) in both the 20 pages of the *Paris Agreement* and four times (again including the right to health), in the 12-page *Decision*. In *Transforming Our World* and the *Addis Ababa Action Agenda*, but not the Paris documents, there is greater association of the term ‘human rights’ with rights relating to civil and political rights, than to economic, social and cultural rights.

Many advocates are disappointed that human rights obligations were marginalised to the point of exclusion in the

outcomes of the three 2015 UN summits.⁵⁻⁸ But as mentioned earlier, discourse analysis is not able to readily identify what is not included in a text.

Absence of Human Rights Entitlements and Obligations

Human rights are part of International Human Rights Law and States are obligated to respect, protect, fulfill and promote the human rights entitlements of all. Human rights, in their full, proper and legal meaning, refer to all human rights—civil and political rights, equally with economic, social and cultural rights—to which all people, everywhere, have claim. Human rights are universal, indivisible, interrelated and interdependent⁹—thus the enjoyment of any human right is dependent on the fulfillment of all human rights. In guiding policy responses, Paul Hunt has said of human rights, “Crucially, it introduces legal obligation, enabling reformers to say to ministers and officials – not only is a suitable policy a matter of good practice, it is also required by law. Just as they advise ministers to comply with environmental and planning law, officials also have a responsibility to advise governments to comply with binding international and national human rights law.”¹⁰

As we examined these global agreements, we also observed a subtle shift in the use of human rights language: the phrasing around the rights-related terms avoids recognition of the obligations of State and non-state duty-bearers, and fails to address rights as (legal) entitlements.

For example, the phrase, “respect, protect and promote” human rights is used only once in *Transforming our World*, and then with the qualifier, “We emphasize the *responsibilities* of all States, in conformity with the Charter of the United Nations, to respect, protect and promote human rights...” (paragraph 19, emphasis added). The document should have but did not position human rights as *obligations* under International Human Rights Law, and thus misses an opportunity to explicitly link SDGs with legal obligations. Although the phrase “human rights” is used in the education goal of the SDGs, it is not used to promote a human rights-based approach (HRBA) to education, or even to acknowledge all children have a fundamental human right to education—instead it is a topic of learning. *Transforming our World* includes a target to ensure universal access to sexual and reproductive health and reproductive rights, but does not extend this to acknowledge the right to health in any other target.

Human rights advocates have also expressed disappointment at the weak accountability mechanisms in *Transforming Our World*.^{11,12} The ‘follow up and review’ section says: “Follow-up and review processes at all levels will be guided by the following principles...They will be people-centred, gender-sensitive, *respect* human rights and have a particular focus on the poorest, most vulnerable and those furthest behind” (paragraph 74, emphasis added). Again, the wording avoids the legal obligations to *promote*, *protect* and *fulfil* human rights.

Of the 18 times in the *Addis Ababa Action Agenda* that rights are mentioned, it is only used once as a legal principle, and then in relation to violence, terrorism and human trafficking (paragraph 112). Otherwise, each reference to human rights is associated with words that imply an association that is less

than legally binding – for example, “*commit* to respecting all human rights” (paragraph 1, emphasis added) and “*reaffirm* the vital *importance* of promoting and protecting the rights of all children” (paragraph 7, emphasis added).

The eight references to rights in the *Paris Agreement* and *Decision* are all in places that are non-binding, and described as obligations for Parties to “respect, promote and *consider*” (pp. 1 and 20, emphasis added).

Human Rights Discourse in a Broader Context

Using the discourse of human rights but without reflecting the full intent of human rights promotes a customary usage of the terms that undermines the meaning of ‘human rights.’ While this cannot effect actual State obligations, it can have serious implications for people’s and duty-bearers’ understanding of human rights entitlements, as well as for accountability and civil society monitoring of human rights situations.

The avoidance of the proper recognition of human rights obligations, freedoms, and entitlements in the global agreements is happening contemporaneously with current neoliberal political agendas to encourage the private business sector to play a large role in achieving the SDGs. The private sector is explicitly included in the Global Partnership described in the ‘Means of Implementation’ section of *Transforming Our World* (paragraph 39), and there are several references to its role in achieving the SDGs, and climate change commitments. Audrey Chapman suggested in her critique of the World Health Organization (WHO) Commission on Social Determinants of Health (CSDH) that by framing equity as an ethical issue, not a human rights obligation: “CSDH closed off access to the international, regional, and national human rights institutions that monitor and evaluate the implementation of human rights and to the extensive networks of civil society organizations committed to the realization of the human rights agenda.”¹³ We suggest the new global agreements are similarly marginalising opportunities for the involvement of human rights organizations whilst privileging the private sector.

All three of the agreements we examined position the private business sector as being what *Transforming Our World* describes as a “major driver of productivity, inclusive economic growth and job creation” (paragraph 67). And yet, despite the UN Guiding Principles on Business and Human Rights,¹⁴ there is a complete absence of human rights discourse around the private sector in these documents. Active promotion of the private sector, without any protection of human rights embedded in the policies, is a risk to people who, for reasons such as poverty or marginalisation, are unable to benefit from—or indeed are harmed by—private sector activities. As Alicia Ely Yamin has written, the State has a duty to ensure the basic preconditions and determinants of health are there for all, and cannot simply hand over this duty to the free market.¹⁵

The private sector’s explicit inclusion is in keeping with neoliberal beliefs that governments should play ever diminishing roles in public life. Yamin states, “A fundamental challenge to meaningfully using human rights is that the prevailing liberal narrative about rights as freedoms from state intrusion, which is deeply tied to the neoliberal organization of economies at national and global levels, continues to

pervade much public discourse as well as practice.”¹⁵ She adds it is crucial to develop empowering HRBAs to health that can challenge “the sophistry that underlies restricting the application of human rights norms to a thin slice of questions about civil and political freedoms, which fails to challenge the distribution of resources in society.”¹⁵

Alfred-Maurice de Zayas, the UN Independent Expert on the promotion of a democratic and equitable international order, has also observed the risks arising from neoliberal agendas: “While recognizing that globalization may contribute to human rights and development, experience suggests that human rights have frequently been subordinated to dogmas of market fundamentalism with a focus on profit rather than sustainable development.”¹⁶

The fourth big international agreement of 2015 was the Trans-Pacific Partnership (TPP). If and when the TPP is ratified it will be legally binding and give considerable power to large corporations to act in ways which can harm health rights—including through restricting access to affordable healthcare and healthy food, and limiting actions that protect public health, the environment and the climate.^{17,18} The weak human rights discourse in the *Addis Ababa Action Agenda*, *Transforming Our World*, and *Paris Agreement*, is at risk of being trumped by the contractually tight legalities in trade and investment deals. De Zayas argues that, under the UN Charter, Vienna Convention and customary international law, States have legally binding obligations towards all that cannot be put aside by investment treaties.¹⁹ The implementation of UN agreements will be reliant on international human rights law for protection against the provisions of the TPP.

Conclusion

We encourage efforts to hold all governments and other actors accountable for their human rights obligations, as articulated and codified in human rights treaties. One way of checking that governments are acknowledging human rights, as suggested by Forman et al, is a count of the frequency of human rights terms in State agreements. Use of this discourse, as theorized by those authors, helps frame policy responses, and provides a means of holding government to account for their human rights duties.

In our examination of three global agreements made in 2015, we found that discourse analysis needs to extend, to examine where and how human rights are used, and as importantly, where they are not used. We found that although rights-related terms are used in *Transforming our World*, the *Addis Ababa Action Agenda* and the *Paris Agreement and Decision*, they are not usually used in ways that acknowledge obligations of States, or people’s entitlements, under international human rights law. This marginalizes the use of HRBAs in policies and practice, and reduces their potential to reduce inequities within and between countries.

The discourse distances rights from international human rights law and obligations of State and non-state actors. We observed, in association with a neoliberal influence on all the global agreements, a privileging of civil and political rights over economic, social and cultural rights in two agreements. What remains in the documents is little that can be used to empower the participation of those already left behind to claim their rights, and to hold States and the private sector to

account for their human rights duties.

Nevertheless, human rights entitlements, freedoms and obligations remain binding under international law. As the agreements do not explicitly recognize this, it is difficult for civil society and those implementing SDGs and climate action to remind ministers and officials that responses should be framed as human rights entitlements, and that suitable policies are not just good practice, but also required by law.¹⁰ Worryingly, if discourse does subtly guide actors, then these agreements could encourage superficial approaches to human rights in future agreements and policies.

Ethical issues

Not applicable.

Competing interests

Authors declare that they have no competing interests.

Authors’ contributions

Both authors undertook the discourse analysis, drafted the manuscript, and approved the final version.

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