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MIGRATIONS AND  
FUNDAMENTAL RIGHTS:  
THE WAY FORWARD

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## PREFACE

The publication of this volume concludes the experience of the “*Jean Monnet Centre of Excellence on Migrants’ Rights in the Mediterranean*”.

Unfortunately, during the three years of existence of the Centre (2014 - 2017), the issue of the management of the migratory phenomenon in the Mediterranean has undergone a significant regression. The withdrawal of the Member States of the European Union as a result of the “sovereign” pressures has shown even more than in the past the lack not only of solidarity, but also, simply, of the necessary cooperation between these States. The “closure of ports” decided by the Italian Government, at the expense of migrant lives, is its emblem.

The main reason for this behaviour is well-known to legal scholars: since the country of first entry in the European Union is the one that must assume responsibility for processing the asylum applications of a migrant, and ultimately granting him/her a residence permit, welcoming boat people into one’s port turns out to be a much more exacting move than it would be otherwise (that is, absent the current Dublin regulation). This led the European Council, at the end of June 2018, to encourage the exploration of the notion of “regional disembarkation platforms”, with the aim of promoting “a truly shared regional responsibility on replying to the complex migration challenges” (as quoted in the non-paper stemming from the European Council meeting). The idea of burden-sharing and cooperation in the management of migratory crises, and the severance of the link between disembarkation and hospitality, is not new. However, the feasibility of such a model, or one akin to it, can be doubted, in consideration of how difficult it is to move away from the European *status quo* whenever migration issues are discussed.

The European Union’s continued reliance on the Libyan authorities to “outsource” the management of migration in the Mediterranean has even aggravated the picture, in light of the unresolved issue of pacification in Libya.

This final volume touches, on the one hand, on some specific issues not dealt with in previous publications, such as the protection of LGBT Refugees in the European Union (Fazzini), the Enforced disappearances and migration (Doria), the Condition of Reciprocity (Riccio). On the other hand, it broadens the analysis of the territories of departure (Africa in particular, see Piratti and Saggiomo’s papers) as well as the updating of issues already dealt with in previous publications of the Centre, such

as smuggling and trafficking of migrants (Corleto), the challenges posed by the environmental crisis (Fornalé), the specific issues of application of the rules on the law of the sea (Cataldi), the protection of fundamental rights with reference to the “Italian case” (Del Guercio and Mellino), the role of civil society (Saggiomo’s second paper), the European Court of Human Rights judgments on Migrants (Pacelli), Migrations and Sustainable Development (Pace).

We, at the *Centre of Excellence*, have tried, in our own small way, to do our part by trying to explore this phenomenon through our studies, the dissemination of our researches, the constant comparison between the different actors of the migratory phenomenon (Stakeholders, scholars, institutions), the in-depth information and training of young people. We would like to thank the European Commission’s *Jean Monnet* action for having allowed us to live this experience. We hope that we have contributed, albeit to a small extent, to directing the choices of those who, in the years to come, will have to act in this field and, above all, to assume responsibilities.

Giuseppe Cataldi  
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HUMAN RIGHTS OF MIGRANTS AND REFUGEES  
IN THE NEW INTERNATIONAL AGENDA  
FOR SUSTAINABLE DEVELOPMENT

*Marianna Pace\**

SUMMARY: 1. Introduction: about migration and sustainable development. – 2. A human rights-based approach to migration in the new international agenda for sustainable development (2030 Agenda). – 2.1. The protection of the right to health of migrants. – 2.2. Promoting gender equality. – 2.3. The protection of child migrants. – 2.4. Migration, environment and climate change. – 3. The New Agenda: a different approach between migrants and refugees. – 4. The implementation of Agenda: *Quis custodiet ipsos custodes?* – 5. Final remarks.

*1. Introduction: about migration and sustainable development*

In the last few years, the migratory phenomenon has increasingly been associated to concepts such as “crisis” or “emergency” as if it were an exceptional phenomenon. However, while data do not show the existence of an emergency, the recent migration flows have shown, on the contrary, the gaps and weaknesses of national and international legal systems in dealing with humanitarian emergencies that have occurred especially in the Mediterranean. This in particular both with regards to the inclusion of migrants and the recognition of their basic human rights, and with regards to the promotion of international solidarity and to the removal of the causes that are at the origin of the need to emigrate. The awareness of pointing out a global political perspective to approach migration and asylum-seekers phenomenon, avoid finding systemic and long-term way to face demographic, politic- and socio-economic causes, is an issue of the utmost importance.

In particular, as regards issues here concerned, in the international law of development the watertight-division approach of the past decades led to the establishment of development agendas in which migration was not regarded as a whole, migrants were not regarded as potential actors of development, but rather as a social and economic emergency to be solved. When dealing with migrants as potential actors of devel-

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opment issue, we refer to the existing relationships between migration and development, which can be summarized in two main questions: how development affect migration? And, vice versa, how does migration affect development? Theoretical and practical answers have been investigated in development studies since the 1960s but, however, a real interest on these issues has only increased in the last 20 years in parallel with the raise of the awareness on the causes and of the drivers of migration and of the important function of remittances as financial source for receiving countries (comparable in size to the official development aid from the ‘developed’ to the ‘developing’ countries). The growing of the attention to relationships between migration and development, has been also encouraged by the increasing development of private initiatives and bottom-up approaches from local communities and stakeholders as diversified and non-governmental development funding.

Since the 1960s, the absence of references to these issues characterized UN development Programmes. In the same vein, as regards as the interrelationship between development, peace and security, it is not adequately reflected in the MDGs, despite the significative contribution of the United Nations Development Programme (UNDP) to the development of the concepts of Human Security and Human Development since the second half of the 1990s.<sup>1</sup>

Likewise, in the Millennium Declaration adopted in 2000, the so-called Millennium Development Goals (MDGs), little consideration was given to migration and migrants, thus demonstrating the distances that existed in acknowledging the dynamics of dialogue between migration and development.<sup>2</sup> In the last 15 years, this dialogue has increased due to the promotion efforts made by the United Nations High Level Dialogue Migration and Development (HLDMD) in 2006 and 2013 and by

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<sup>1</sup> A. Sen, “Development as Freedom”, Oxford University Press, 1999; S. Jahan, “Evolution of The Human Development Index”, in *Handbook Of Human Development*, Oxford University Press, 2002; D. Hulme, “The Millennium Development Goals (Mdns): A Short History Of The World’s Biggest Promise”, *Bwpi Working Paper*, 2009, available at: [Http://Ssrn.Com/Abstract=1544271](http://Ssrn.Com/Abstract=1544271); Liesl Riddle, “Diaspora Engagement and the Sustainable Development Goals”, pp. 1-23, Gervais Appave, Neha Sinha (ed.), *Migration in the Agenda 2030*, International Organization for Migration Publications, 2017.

<sup>2</sup> G. Rodriguez, “Migración y Objetivos de Desarrollo del Milenio”, in *Revista interdisciplinar da mobilidade humana*, 2010, available at: [Http://www.Csem.Org.Br/Remhu/Index.Php/Remhu/Article/View/96/88](http://www.Csem.Org.Br/Remhu/Index.Php/Remhu/Article/View/96/88); See also International Organization for Migration (IOM), *Diaspora and development*, available at [Https://Diaspora.Iom.Int/](https://Diaspora.Iom.Int/).

the Global Forum on Migration and Development (GFMD)<sup>3</sup>. The Post-2015 Development Agenda adopted by UN General Assembly in September 2015, on the contrary, does not consider human mobility as background context for development, or even worse, as a by-product of the lack of development, but on the contrary innovates by recognizing the “positive contribution of migrants for inclusive growth” and the “multi-dimensional reality” of migration. The Agenda has, consequently, acknowledged the importance of migrants and refugees as a vulnerable category and has recognized that they are addressees of specific human rights, highlighting, in the same time, the pre-eminence of an economic-centered perspective to those phenomena.

Accordingly, migration issues have been incorporated in several Goals and targets of SDGs, and in particular in a specific target on “facilitating orderly, safe, regular and responsible migration and mobility of people” attached to Goal 10 on reducing inequalities. In addition, Goal 8 on decent work and economic development encompasses the condition of migrant workers. Also, the same Goal 8 includes target (8.7) concerning the phenomenon of trafficking, which is defined the “modern day slavery”, urging for its abolition. Migration is also relevant for Goals and targets concerning the sustainable cities and resilience in respect to environment and climate change.

The aim of this contribution is to draw attention, in the first place, to the dimensions of the migratory experience that are encompassed by the Sustainable Development Goals (SDGs) and, in the second place, to offer practical suggestions as to how these aspects of migration can be addressed effectively during the implementation process as well as to propose measures for a more human rights-based implementation.

## *2. A human rights-based approach to migration in the new international agenda for sustainable development (2030 Agenda)*

The adoption of the SDGs and the related 2030 Agenda for Sustainable Development (Agenda or 2030 Agenda) with UN General Assembly Resolution 70/1 of 25 September 2015 was an historical moment.<sup>4</sup> The

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<sup>3</sup> The Global Forum on Migration and Development which is a global, non-binding multilateral forum that has convened yearly since 2006 and which in 2015 endorsed a GFMD Business Mechanism, see: <https://gfmd.org/>.

<sup>4</sup> United Nations General Assembly, *Transforming Our World: The 2030 Agenda*

SDGs were adopted after a long, complex and participatory negotiation process launched by the Rio+20 Conference in 2012, and setting the global development agenda for the period 2016-2030, aimed at pursuing the macro-objective of sustainable development. The SDGs are characterized by the ambitious objective of “transforming our world”, are grounded upon the experience gained with the MDGs, which were adopted in 2000 by the General Assembly of the United Nations as the world’s development agenda for the period 2000-2015. However, there are significant differences between the SDGs and their predecessors, the MDGs. First, the MDGs were developed at a technocratic level, while little relevance was attributed to a human rights approach to development due to marginal involvement of human rights defenders in the drafting phase of the MDGs. Secondly, there is a marked increase of the number of objectives and related targets. The MDGs, in fact, were divided into 8 objectives and 21 targets. The 2030 Agenda consists of 17 Goals, 169 targets and innumerable indicators to track at national, regional and global level, and distinct by theme with the purpose of eliminating extreme poverty and ensuring sustainable development.

As far as the SDGs are concerned, the pursuit of the macro-objective of sustainable development should be inspired by the 2030 Agenda and must be declined in the national context of the individual countries, which are called upon to adopt and implement specific strategies and national plans in implementation of the Agenda itself, with the full in-

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*For Sustainable Development*, Resolution A/RES/70/1 of 25 september 2015; in general on 2030 Agenda and SDGs see, M. Montini, F. Volpe, “Sustainable Development Goals: ‘Molto Rumore Per Nulla?’”, in *Rivista giuridica dell’ambiente*, 2015, pp. 489-496; Inga T. Winkler, Carmel Williams, “The Sustainable Development Goals and human rights: a critical early review”, in *The International Journal of Human Rights*, 8/2017, pp. 1023-1028; William Easterly, “The Sdgs Should Stand For Senseless, Dreamy, Garbled”, in *Foreign Policy*, September 28, 2015, available at: <http://Foreignpolicy.com/2015/09/28/The-Sdgs-Areutopian-And-Worthless-Mdgs-Development-Rise-Of-The-Rest/>; Massimiliano Montini, “L’interazione tra gli Sdgs ed il principio dello sviluppo sostenibile per l’attuazione del diritto internazionale Dell’ambiente”, in *Federalismi.it*, 9/2019, pp. 1-21; Rakhyun E. Kim, “The Nexus between International Law and the Sustainable Development Goals”, in *Review of European Community & International Environmental Law*, 2016, pp. 15-26; Malcolm Langford, “Lost in transformation? The Politics of the Sustainable Development Goals”, in *Ethics & International Affairs*, 2016, pp. 167-76; Graham Long, “The idea of universality in the Sustainable Development Goals”, in *Ethics & International Affairs*, 2015, pp. 203-22; Maria Ferrara, “La Corte di giustizia dell’Unione europea e lo ‘strano caso’ dei Principi di Yogyakarta”, in *Diritti umani e diritto internazionale*, 1/2019, pp. 175-196.

volvement of all relevant stakeholders. The adoption of the SDGs, in sum, should be regarded as an opportunity to rethink and revise the policies, regulations and governance models adopted both at the international level and at the national level in individual countries, with a view to promoting sustainable development alongside its three dimensions: the economic one, the social one and the environmental one.<sup>5</sup>

The new international Agenda for sustainable development deals with two kinds of interrelated challenges: both general and universal challenges. As far as general challenges are concerned, Agenda's Goals are multiple and deal with a wide range of interconnected issues such as poverty, hunger, health and deprivation, the absence of violence, access to education, physical, mental and social welfare, access to drinking water and sanitation, better hygiene and food, safe human habitats and affordable, reliable and sustainable energy.<sup>6</sup> As far as universal challenges are concerned, firstly the very same SDGs constitute a universal challenge as they require intense and tangible cooperation from all the international community (the so-called Global Alliance for Sustainable Development) and the adoption of measures by all stakeholders (States, International Organizations, civil society, corporations, and so on). This awareness has its roots in the Declaration "The future we want", adopted in 2012 by the United Nations General Assembly, calling «for renewed and strengthened global partnership to implement sustainable development». Universal challenge means, moreover, that new Agenda should move away from the stereotyped north-south approach, based on the developed-developing countries logic, to one that involves and empowers all countries, with the same extent, as actors of Sustainable Development and, hence, of the Agenda. The measures to be taken to achieve the SDGs also mean a qualitative transformation of international society's functions, as well as integrated, indivisible and coordinated policies.

A preliminary issue to be addressed is to ascertain the legal value of the SDGs. In short, the basic question is: are SDGs rules and principles of some legal relevance, or are they mere statements of political value (without any legal relevance)? Well, generally soft-law refers to non-

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<sup>5</sup> N. Kanie, F. Biermann, *Governing through goals: Sustainable Development Goals as governance innovation*, The MIT Press, Cambridge, Massachusetts, 2017.

<sup>6</sup> United Nations General Assembly, *Transforming Our World: The 2030 Agenda For Sustainable Development*, cit.

binding principles and rules that cannot be sanctioned for non-compliance, but that have a certain degree of legal force.<sup>7</sup> From this perspective, soft law is not quite positive international law, but somehow aspiring thereto or at least thought to influence legal interpretation<sup>8</sup>: and in this sense, sanctions in case of non-compliance are more political and social than legal.<sup>9</sup> This also applies in relation to SDGs and to human rights issues connected to SDGs, since all the involved stakeholders may consider principles and provisions contained in such instrument as involving a hard legal value, and thus behave in accordance with such principles. This could mean to establishing expectations of compliance both at international and domestic level and even more likely to have positive effects coming from such compliant behavior. Summing up, recognizing some legal relevance to the SDGs, in the form of soft law, at the very least, is entirely legitimate especially with regard to the human rights approach incorporated in the elaboration of the agenda and despite the vague and mainly political content of most of the objectives and targets.<sup>10</sup>

Turning to its content, the 2030 Agenda for sustainable development

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<sup>7</sup> Stephanie Lagoutte, and others (eds.), "Introduction", in *Tracing the roles of soft law in human rights*, Oxford University Press 2016, p. 222.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> See more in general on these considerations: D. French, "The Global Goals: Formalism Foregone, Contested Legality And "Re-Imaginings Of International Law", in *Ethiopian Yearbook Of International Law*, 2017, pp. 164-165; A. Persson, N. Weitz, M. Nilsson, "Follow-up and review of the Sustainable Development Goals: alignment vs. Internalization", in *Review of European, Comparative & International Environmental Law* (RECIEL), 2016, pp. 59-60; R. E. Kim, "The nexus between international law and the Sustainable Development Goals", in *Review of European, Comparative & International Environmental Law* (RECIEL), 2016, pp. 16; W. Scholtz, M. Barnard, "The environment and the Sustainable Development Goals: 'We are on a road to nowhere'", in D. French, L. J. Kotzé, *Sustainable Development Goals. Law, theory and implementation*, op. cit., pp. 227-230; S. Fukuda-Parr, D. Hulme, "International norm dynamics and the 'end of poverty': understanding the Millennium Development Goals", in *Global Governance*, 2011, pp. 17-36; M. Finnemore, K. Sikkink, "International norm dynamics and political change", in *International Organization*, 1998, pp. 887-917; O. Spijkers, "The cross-fertilization between the Sustainable Development Goals and international water law", in *Review of European, Comparative & International Environmental Law* (RECIEL), 2016, pp. 39; P. Lode, P. Schonberger, P. Toussant, "Clean air for all by 2030? Air quality in the 2030 Agenda and in international law", in *Review of European, Comparative & International Environmental Law* (RECIEL), 2016, pp. 27.

highlights people, the planet and prosperity;<sup>11</sup> Goals and targets aim at build pacific, just and inclusive societies that create the conditions for economic, sustainable, inclusive and sustained growth. According to the UN General Assembly, it is a long journey towards human dignity, in which no-one should be left behind as Goals and target are strictly related to the effective enjoyment of human rights.<sup>12</sup> As it has been observed, the new Agenda encompasses a new and improved approach towards international human rights law: “an approach that is not based as much on the human rights/State obligation dialectic, but on promoting national and international policies that facilitate a context for human rights to exist and not as much on classical legal techniques, but rather on promoting a certain line of action by governments and the international community. (...) it therefore constitutes a supplement rather than an alternative. We trust that it will not dilute what has already been achieved from a legal perspective. In other words, a State that progresses in the indicators, but does not meet its international obligations in human rights can use the situation”.<sup>13</sup>

With specific regard to the human rights-based approach to migration in the international agenda of sustainable development, it must be recalled that migration was not included in the 2000 MDGs framework probably because of a certain amount of skepticism on the contribution of migration to development. Hence, it was considered only to deplore acts of discrimination, racism and intolerance targeting migrants. However, this approach has been challenged by the Report of the United Nations System Task Force on the Post-2015 Development Agenda (Realizing the Future We Want for All), which, by acknowledging migration as one of the core enablers of development and called for fair rules to manage migration, established that “we will cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants regardless of migration status, of refugees and of displaced persons”.<sup>14</sup> The New York Declaration for Refu-

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<sup>11</sup> Ibid.

<sup>12</sup> Paloma Durán y Lalaguna, Cástor Miguel Díaz Barrado, Carlos R. Fernández Liesa, *International society and Sustainable Development Goals*, Thomson Reuters, 2016.

<sup>13</sup> Carlos R. Fernández Liesa, “Sustainable development in international law: general issues”, in Paloma Durán y Lalaguna, Cástor Miguel Díaz Barrado, Carlos R. Fernández Liesa, *International society and Sustainable Development Goals*, Thomson Reuters, 2016, pp. 73-98.

<sup>14</sup> United Nations General Assembly, *Transforming Our World: The 2030 Agenda For Sustainable Development*, cit., paragraph 29.

gees and Migrants adopted at the UN General Assembly Summit on Addressing Large Movements of Refugees and Migrants, held on 19 September 2016,<sup>15</sup> at the start of the Seventieth session of UN General Assembly, is the starting point for the adoption of two *Global Compact* on refugees and migrants approved at the Marrakech Conference of 10-11 December 2018.<sup>16</sup> These instruments afford to the international community an unprecedented opportunity to demonstrate the political will needed to achieve the ambitious commitments of the SDGs.

Migrants and migration are mentioned explicitly in a number of the targets under several Goals. For example, the situation of migrant workers is mentioned in Goal 8, on economic growth and decent work; trafficking in persons is mentioned in Goal 16, on peaceful societies, and in certain targets; migration status is mentioned specifically as a factor for disaggregation during the follow-up and review processes called for under Goal 17. Target 10.7, under Goal 10, concerning the reduction of inequalities both within and among nations, is the cornerstone for migration issues in 2030 Agenda. This Goal fixes the commitment for States to facilitate “orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies”.<sup>17</sup>

Furthermore, SDGs Declaration, by recognizing the positive contribution of migrants to inclusive growth and development, calls for the empowerment of vulnerable groups, including refugees, internally displaced persons and migrants and access for all to lifelong learning opportunities. It highlights the impact of humanitarian crises and forced displacement of people on development and fixes an explicit commitment to the eradication of forced labour and migrant trafficking. The international migration community is now faced with the challenge of implementing the SDG Goals and targets, including the difficult selection and definition of indicators to measure progress. This will be a long and complex process requiring the cooperation of all stakeholders at the national, regional and global levels.

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<sup>15</sup> United Nations General Assembly, *New York Declaration for Refugees and Migrants*, Resolution of 3 October 2016, UN Doc. A/RES/71/1.

<sup>16</sup> The text is available at: [https://refugeesmigrants.un.org/sites/default/files/180713\\_agreed\\_outcome\\_global\\_compact\\_for\\_migration.pdf](https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf).

<sup>17</sup> International Organization for Migration, *International dialogue on migration. Follow-up and review of migration in the sustainable development goals*, International Organization for Migration Publications, 2017.



In the light of the abovementioned observations, the change that has been made in the negotiation of the SDGs and 2030 Agenda is plainly clear. The creation, in the Rio+20 Declaration, of an Open-ended Working Group in which States, experts and interest groups participated<sup>18</sup> has made possible the broadening of the debate on the need to maintain a holistic and human rights-based approach, and has highlighted the importance of ensuring that the Goals should be achieved especially among the most vulnerable groups such as migrants and refugees.

It is worth to note, also, how the awareness for a comprehensive approach to migration management in the context of poverty reduction and the need to integrate organically migration issues into development and economic cooperation policies had been already considered since the final report of the United Nations Millennium Project 2005<sup>19</sup>. This awareness finds its recognition in the Report “The Road to Dignity by 2030” of UN Secretary General Ban Ki Moon<sup>20</sup>, presented on the margins of the SDGs negotiation work in the framework of the Open Working Group. The Report refers to migrants, refugees and all displaced persons not only from a displacement prevention perspective but defines them as vulnerable groups that have to be particularly protected by the new development agenda,<sup>21</sup> it also calls for the respect of their human rights and underlines their particular role in the implementation of the agenda.<sup>22</sup> In this respect, the Resolution “Transforming our World”<sup>23</sup>, after more than two years of negotiation, can be considered a generally positive achievement, due to its inclusion of the different dimensions of development. However, some critical gaps, firstly the difference in treatment that refugees and migrants experience within the framework of the SDGs and 2030 Agenda, there exist.

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<sup>18</sup> United Nations General Assembly, *Transforming Our World: The 2030 Agenda For Sustainable Development*, cit., paragraph 248.

<sup>19</sup> Proyecto del Milenio de las Naciones Unidas, *Invirtiendo en el desarrollo: un plan práctico para conseguir los objetivos de desarrollo del milenio*. Panorama, 2005, available at: [www.unmillenniumproject.org/Documents/Overviewspanlo\\_wres.pdf](http://www.unmillenniumproject.org/Documents/Overviewspanlo_wres.pdf).

<sup>20</sup> United Nations General Assembly, *El camino hacia la dignidad para 2030: acabar con la pobreza y transformar vidas protegiendo el planeta, informe de síntesis del Secretario General sobre la Agenda de desarrollo sostenible después de 2015*, 4 December 2014, A/69/700.

<sup>21</sup> Ibid, paragraph 51 Y 68.

<sup>22</sup> Ibid, paragraph 72 Y 117.

<sup>23</sup> United Nations General Assembly, *Transforming Our World: The 2030 Agenda For Sustainable Development*, cit.

Actually, it must be underlined that the incorporation of the new Goals into the international system for the protection of human rights, mentioned since 2013 by the Secretary General in his report “A dignified life for all”,<sup>24</sup> has not been fully realized. Here, the 2030 Agenda lacks of explicit mention to human rights law, and this applies both to the formulation of the objectives and to the definition of indicators for monitoring and accountability.

According to the Declaration preceding the Goals, international migration is defined, in particular, as “a multidimensional reality of great relevance to the development of countries of origin, transit and destination that requires coherent and comprehensive responses”. Furthermore, the international community is urged to respect the human rights of migrants, “regardless of their migratory status”, as well as those of refugees and displaced persons.<sup>25</sup> Also, and under a broader perspective, particularly significant is the inclusion of migrants, refugees and internally displaced persons among the most vulnerable categories, with the consequence that they have to be addressed accordingly in the implementation of all objectives. In particular, many of the Goals of the SDGs point to the creation in the countries of origin of an economic and social environment more favourable to the human development of their inhabitants, attempting to address the systemic causes of the phenomenon as requested by civil society in its Stockholm Agenda of 2014.<sup>26</sup>

However, references to people who choose to embark on or have already embarked on the path of migration, whatever their motivation, remain scanty. In target 8.8, for example, States commit themselves to protect and promote a safe working environment for all workers, including migrant workers and in particular migrant women. Even though this gender approach affords added value, it should be noted that this Goal does not establish a time-limit for its achievement, limiting itself to a programmatic declaration in compliance with international standards

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<sup>24</sup> United Nations General Assembly, *Una vida digna para todos: acelerar el logro de los Objetivos del Milenio y promover la Agenda de Naciones Unidas para el desarrollo después de 2015, informe del Secretario General*, 26 July 2013, A/68/202.

<sup>25</sup> *Ibid.*, paragraph 28.

<sup>26</sup> MADE (Migration and Development Civil Society Network), *La “Agenda de Estocolmo” de la Sociedad Civil. Objetivos relacionados con la migración en las Agendas de Desarrollo nacionales y globales post-2015. Un llamado a la acción: Migración y objetivos de desarrollo sostenible*, available at: [http://www.un.org/en/development/desa/population/migration/events/coordination/13/documents/backgrounddocs/MADE\\_Migration\\_and\\_Post-2015\\_SDG\\_Framework\\_Spanish.pdf](http://www.un.org/en/development/desa/population/migration/events/coordination/13/documents/backgrounddocs/MADE_Migration_and_Post-2015_SDG_Framework_Spanish.pdf).

(without further specification). In contrast, target 10.c, *i.e.* one of the targets relating to the means of implementation of target 10 “Reduce inequality within and between countries”, sets out a commitment to reduce the transaction costs of migrants’ remittances to below 3% by 2030.<sup>27</sup> This difference seems to suggest that, despite the recognition of migrants as natural and important actors for the realization of sustainable development, as well as a disadvantaged category, the approach of SDGs still does not attach the necessary weight to the human rights implications of migrations. Indeed, the very same fact that references to main international legal instruments in this field area, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and Conventions Nos. 97 and 143 of the International Labour Organization, are lacking, is open to criticism. In the same way, it has to be highly criticized the absence of clear commitments to establish legal and effective channels for migration and family reunification over a certain period of time, with the aim of limiting illegal trafficking of human beings and the violations of the fundamental rights, and in the first place the right to life, that migrants may suffer during the transit.

In order to stimulate proactive reflection on migrations and on the management of flows of people in the 2030 Agenda, some issues attaining to the area of human security and strictly connected to human rights deserve to be analysed, and this in order to verify the “resilience” of the new agenda on migration. In particular, such issues include: the right to health; the principle of gender equality; the protection of children migrants; the relationship between environment, climate change and migration.

### 2.1. *The protection of the right to health of migrants*

The 2030 Agenda includes a specific Goal on health (SDG 3) and also a specific target on migration (10.7) with the aim of reducing inequalities. These provisions offer opportunities, and challenges, in respect to the promotion of the health of migrants. It is recognized, indeed, that safe, dignified and regular migration is linked to equitable access to health services: migrants may enjoy an improved health status through access to income-generating opportunities, better housing, im-

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<sup>27</sup> Gaia Tascioni, “Migrantes y refugiados en la agenda de desarrollo 2030”, in *Working Papers “El Tiempo de los Derechos”*, 2016.

proved nutrition and a higher standard of health care and security. However, migrants encounter barriers in accessing to health-care services due to restrictive policies, discrimination, and a lack of migration-sensitive health systems and conducive policies across sectors. There are groups that are exposed to very specific health risks: i.e. irregular migrants and low-skilled workers, particularly women and youth in precarious employment settings, who are often invisible in health and social protection systems. Achieving universal health coverage will require bringing these groups out of the shadows to protect their right to health and ensure their access and inclusion to equitable health services.<sup>28</sup> It follows that States are challenged to integrate the health needs of migrants into national plans, policies and strategies.<sup>29</sup> Realizing a better promotion of migrants' health through the SDGs also requires reflecting at what has already been achieved. First of all, the right to health and access to health services for all in an indiscriminate manner is guaranteed by main international human rights instruments.

In effect, the right to the enjoyment of the highest attainable standard of physical and mental health, to give it its full name, is not new. At international level, it was first articulated in the 1946 Constitution of the World Health Organization (WHO), whose preamble defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. The preamble further states that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.” The 1948 Universal Declaration of Human Rights also mentioned health as part of the right to an adequate standard of living (art. 25). The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights. Since then, other international human rights treaties have recognized or referred to the right to health or to elements of it, such as the right to medical care. In recent years, increasing attention has been paid to the right to the highest attainable standard of health, for instance by human rights treaty monitoring bodies, by WHO and by the Commission on Human Rights (now replaced by the Human Rights Council), which in 2002 created the

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<sup>28</sup> Eliana Barragan, Poonam Dhavan, Julia Puebla Fortier, Davide Mosca, Jacqueline Weekers, Kolitha Prabhask Wickramage, “Migration and health in the Sustainable Development Goals”, in Gervais Appave, Neha Sinha (ed.), *Migration in the Agenda 2030*, International Organization for Migration Publications, 2017, pp. 39-57.

<sup>29</sup> Ibid.

mandate of Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health. These initiatives have helped clarify the nature of the right to health and how it can be achieved. The right to health is relevant to all States: every State has ratified at least one international human rights treaty recognizing the right to health. Moreover, States have committed themselves to protecting this right through international declarations, domestic legislation and policies, and at international conferences.

In 2008, Member States of the World Health Organization (henceforth WHO) adopted a resolution on the health of migrants (WHA 61.17) that paved the way for the 2010 Global Consultation on Migrant Health in Madrid. Co-organized by the International Organization for Migration (IOM), WHO and the Government of Spain, the consultation defined an operational framework to guide Member States and stakeholders in implementing the WHO resolution. The framework reaffirmed the need to take a rights-based, equity-driven, multisectoral approach through four priority areas for action: monitoring of migrants' health; policy and legal framework; migrant-sensitive health systems; and partnerships, networks and multi-country frameworks. More recently, at the 106th IOM Council in November 2015, a Highlevel Panel on Migration, Human Mobility and Global Health offered recommendations to advance the unfinished migrant health agenda for all.<sup>30</sup> Migration health issues were also raised during the UN Summit for Refugees and Migrants in September 2016,<sup>31</sup> during the WHO Executive Board in January 2017,<sup>32</sup> and during the Second Global Consultation on Migrant Health in Sri Lanka in February 2017.<sup>33</sup> The latter offered a platform for

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<sup>30</sup> International Organization for Migration, *Advancing The Unfinished Agenda Of Migrant Health For The Benefit Of All*, 106th Session Of IOM Council, 18 September 2015, available at: [https://governingbodies.iom.int/system/files/en/co\\_uncil/106/c-106-inf-15-migration-health.pdf](https://governingbodies.iom.int/system/files/en/co_uncil/106/c-106-inf-15-migration-health.pdf).

<sup>31</sup> United Nations General Assembly, *New York Declaration for refugees and Migrants*, 13 September 2016, available at: [www.un.org/ga/search/view\\_doc.asp?symbol=a/71/l.1](http://www.un.org/ga/search/view_doc.asp?symbol=a/71/l.1).

<sup>32</sup> World Health Organization, *Outcome of the informal drafting Group on promoting the health of refugees and migrants*, Draft Decision proposed by Argentina, Croatia, Ecuador, Greece, Haiti, Italy, Luxembourg, Mexico, Portugal, Switzerland, Thailand And Turkey (Executive Board Eb140/Conf./3rev.2), 2017, available at: [http://apps.who.int/gb/ebwha/pdf\\_files/eb140/b140\\_conf3rev2-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/eb140/b140_conf3rev2-en.pdf).

<sup>33</sup> International Organization for Migration, *Second Global consultation on migrant health: resetting the Agenda*, 21–23 February 2017, Colombo, Sri Lanka, available at: [www.iom.int/migration-health/second-global-consultation](http://www.iom.int/migration-health/second-global-consultation).

multisectoral dialogue and political engagement, particularly through the endorsement of the Colombo Statement,<sup>34</sup> to ensure the mainstreaming of the migration health agenda and a coordinated response to future governing bodies and international development processes.

The UN 2030 Agenda for Sustainable Development builds on these efforts and provides a general framework for addressing the health of migrants, based upon the necessity of joint actions from national and international actors who have to work together to integrate health needs of migrants into national plans, policies and strategies across sectors. In respect to the health-specific targets, Goal 3 deserves to be mentioned together with its cornerstone target 3.8 which calls for universal health coverage and demands the inclusion of migrants, irrespective of their legal residence status, under the national health coverage schemes, with dedicated financial mechanisms. Any failure in this respect would be in contrast with global health, and public health principles, ethics and universal health coverage Goals.

Other migrant health issues are also contained in other sectoral Goals and targets related to aspects of migration, from housing to the impact of disasters to labour rights. In particular, housing conditions (under SDG 11.1) have relevant health implications for migrants. In effect, housing conditions of migrant workers are often deplorable: whether they work on migrant farms, in factories or on construction sites, they are under the risk of poor environmental conditions and inadequate facilities. From this perspective, targets 8.7 and 8.8 call for “decent work”<sup>35</sup> and address the need to protect labour rights, promote safe and

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<sup>34</sup> International Organization for Migration, *Colombo Statement, High-Level Meeting of the 2nd Global consultation on migrant health*, 23 February 2017, available at: [www.iom.int/sites/default/files/our\\_work/dmm/migration-health/colombo%20statement%2023feb2017%20final.pdf](http://www.iom.int/sites/default/files/our_work/dmm/migration-health/colombo%20statement%2023feb2017%20final.pdf)

<sup>35</sup> The Committee on Economic, Social and Cultural Rights (CESCR) in Article 6 of CESCR General Comment 18 specifies that the right to work means the right to “decent work” and it defines decent work as “work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration”. The goals of full employment and decent work for all are central purposes of both the United Nations and the ILO, and most countries are members of both organizations. Both Organizations have established multiple mechanisms for technical assistance, monitoring, and accountability for advancing decent work for all, among the other, key to the development of international norms for “decent work” is the ILO *Decent Work Agenda*, a soft law initiative adopted in 1999 and the above mentioned UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18, available at: <https://www.refworld.org/docid/4415453b4.html>, drawing on ILO Conventions.

secure working environments, and eradicate forced working arrangements, child labour and trafficking. The concept of “decent work” is especially relevant to migrants, who are often working in dirty, dangerous and demeaning jobs, do not have occupational health protections, and may be easily exploited.<sup>36</sup> Few national development plans currently address migration health, and those that do tend to focus on immigration control, irregular migration and human trafficking. SDG target 10.7 on orderly and safe migration requires that the health of migrants be promoted and protected throughout the migration process through improved policy coordination among multiple sectors that impact on the health of migrants, as well as application of rights-based approaches to ensure equitable access to health services for all migrants respecting international standards of care.

## 2.2. Promoting gender equality

Women and girls still suffer disproportionately from discriminatory practices and violence worldwide and Goal 5 is aimed exactly at dealing with this global challenge by achieving gender equality and women’s empowerment. Its indicators, in particular, outline clear targets pertaining to specific gender-related challenges (5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.A, 5.B and 5.C) and translate the general Goal into a series of actionable objectives to achieve migration governance as defined by the International Organization for Migration’s Migration Governance Framework, by fulfilling the rights and maximizing the socioeconomic well-being of all migrants and society.<sup>37</sup> The ‘feminization’ of migration is an issue that has emerged only recently with the increase in the number and percentage of women migrating independently. Current policy dialogue, such as the negotiations of the *Global Compact for Safe, Orderly and Regular Migration*, offers new fora to discuss these structural trends and

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<sup>36</sup> Occupational risks are common in mining, construction, manufacturing and agriculture, including inadequate training, lack of protective gear, and exposure to toxic agents and conditions.

<sup>37</sup> Targets are complemented by a set of indicators allowing for progress to be monitored: *i.e.* Target 5.4 aims to promote and value unpaid domestic work through policies related to infrastructure, social protection and public services while promoting shared responsibility within households; indicator 5.1.1, for instance, measures whether legal frameworks exist that promote and monitor equality and non-discrimination on the basis of sex, while indicator 5.4.1 measures the proportion of time spent carrying out unpaid domestic work disaggregated by sex, age and location.

facilitate the achievement of the SDGs, including Goal 5.<sup>38</sup> They are meant to build evidence-based systems and gender-sensitive policies in order to respond to the specific challenges that affect women and girls, with particular emphasis on discriminatory practices influencing decision-making and the ability to migrate and to determine how to empower women and girls through migration.<sup>39</sup> Addressing the challenges of

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<sup>38</sup> See, among the others, United Nations General Assembly, *Investigation into sexual exploitation of refugees by aid workers in West Africa*, Resolution 57/306 of 15 April 2003, and Secretary-General's Bulletin, *Special measures for protection from sexual exploitation and sexual abuse*, St/Sgb/2003/13 of 9 October 2003.

<sup>39</sup> Ludvik Girard, "Achieving gender equality through migration governance: opportunities and solutions in support of the sustainable development agenda", in Gervais Appave, Neha Sinha (ed.), *Migration in the Agenda 2030*, International Organization for Migration Publications, 2017, pp. 59-69; see also: M. Couldrey, T. Morris (eds.), "Special feature on gender and displacement", in *Forced migration review*, published by the Refugee Studies Centre in association with the Norwegian Refugee Council/Global IDP Project 9 December 2000; Katharine M. Donato, Donna Gabaccia, *Gender and international migration: from the slavery era to the global age*, New York, Russell Sage Foundation, 2015; F. Du Pasquier, "Gender diversity dynamics in humanitarian negotiations: the international committee of the red cross as a case study on the frontlines of armed conflicts", in *Humanitarian negotiation working paper*, 2016; G. Ferrant, and others, *The role of discriminatory social institutions in female south-south migration*, Organization for Economic Co-operation and Development, Development Centre, 2014; International Organization for Migration, *Taking action against violence against women and discrimination affecting migrant women and girls*, Infosheet IOM, 2013 available at: [http://publications.iom.int/system/files/pdf/violence\\_against\\_women\\_infosheet2013.pdf](http://publications.iom.int/system/files/pdf/violence_against_women_infosheet2013.pdf); International Organization for Migration, *Migration governance framework: the essential elements for facilitating orderly, safe, regular and responsible migration and mobility of people through planned and well-managed migration policies*, 2015, available from: <https://governingbodies.iom.int/system/files/en/council/106/c-106-40-migration-governance-framework.pdf>; International Organization for Migration and Organization for Economic Co-operation and Development, *Harnessing knowledge on the migration of highly skilled women*, 2014, available at: [https://publications.iom.int/system/files/pdf/iom\\_oecd\\_gender.pdf](https://publications.iom.int/system/files/pdf/iom_oecd_gender.pdf); S. F. Martin, *Women and migration. Paper presented at the consultative meeting on migration and mobility and how this movement affects women*, Malmö, Sweden, 2-4 December 2003; Organization for Economic Cooperation and Development, *Gender equality and women's rights in the post-2015 agenda: foundation for sustainable development*, OECD and Post-2015 reflections series, element 3, paper 1, 2014; Organization for Economic Cooperation and Development, *Strengthening national statistical systems to monitor global goals*, OECD and post-2015 reflections series, element 5, paper 1; I. Omelaniuk, *Gender, poverty reduction and migration*, World Bank, 2005; B. Sijapati, *Women's labour migration from Asia and the Pacific: opportunities and challenges*, International Organization for Migration and Migration Policy Institute, Issue in brief no. 12, 2016, available at: <http://publications.iom.int/system/files>



gender inequality in the context of migration requires the acknowledgement of the degree of violence that migrant women and girls experience. Gender-based violence affecting women and girls, such as domestic violence, forced marriage, female genital mutilation, sexual violence may also impact migrant women and young girls along migration routes, and current data indicate, indeed, that women and girls are also under a disproportionate risk to be subjected to trafficking and discriminatory practices against domestic workers.<sup>40</sup>

Discrimination may undermine their ability to freely and independently determine whether they want to migrate or not. This may also depend, for instance, by national law, in which domestic rules may impose constraints on women, by the establishment for instance of their duty to respect wishes of male relatives. Other reasons include the lack of access to education, impeding young girls to complete their education process, with the consequence that they may become dependent on male relatives or acquaintances and forced to delegate to them important choices concerning their own life. Of course, the scope of these challenges cannot be underestimated if Goal 5 is to be achieved: in effect, the traditional perception of female migration as a by-product of male migration is fundamentally incompatible with the idea of gender equality and puts the identification of women's rights violations at risk. Likewise, it undermines the awareness of how gender-specific discriminations can directly trigger pull and push factors.<sup>41</sup> Goal 5 and the entire Sustainable Development Agenda framework, along with the IOM Migration Governance Framework,<sup>42</sup> aspire to deal with such a challenge by relying on evidence-based policy, rights-based approaches and partnerships. Specifically, migration governance can contribute to achieve gender equality and women and girls' empowerment through the sys-

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/pdf/mpi\_issue12.pdf; United Nations Economic and Social Council, *Report of the inter-agency and expert group on sustainable development goal indicators*, 2016, e/cn.3/2016/2/rev.1.

<sup>40</sup> Girard Ludvik, "Achieving gender equality through migration governance: opportunities and solutions in support of the Sustainable Development Agenda", in Gervais Appave, Neha Sinha (ed.), *Migration in the Agenda 2030*, International Organization for Migration Publications, 2017, pp. 59-69.

<sup>41</sup> Ibid.

<sup>42</sup> International Organization for Migration's Migration Governance Framework aims at facilitating orderly, safe, regular and responsible migration and mobility of people through planned and well-managed migration policies, see [https://gfmd.org/files/documents/presentation\\_gfmd\\_iom\\_migof.pdf](https://gfmd.org/files/documents/presentation_gfmd_iom_migof.pdf)

tematic incorporation of gender data to measure vulnerabilities and support empowerment strategies. This requires accurate monitoring of the indicators defined by the Sustainable Development Agenda to develop gender-sensitive policies.<sup>43</sup>

### 2.3. *The protection of child migrants*

For statistical purposes, the United Nations defines youth as “those persons between the ages of 15 and 24 years, without prejudice to other definitions by Member States”.<sup>44</sup> Based on the UN definition of youth, the assumption would be that only persons under the age of 15 are children. However, the United Nations Convention on the Rights of the Child (CRC) defines a child as a “human being below the age of 18.” This definition was used so that the Convention can provide protection and rights to as broad an age-group as possible, but from a data perspective, it leads to an overlap since persons between the ages of 15 and 18 years are counted as both children and youth.

According to statistical data available by United Nations Department of Economic and Social Affairs, the estimated number of people aged 19 or under living in a country other than the one where they were born rose from 28.7 million in 1990 to 36 million in 2017. In 2017, child migrants (aged 19 years and under) accounted for 13.9 per cent of the total migrant population and 5.7 per cent of the total population (of all ages). The estimated number of young migrants (aged 15 to 24) also rose from 22.4 million in 1990 to 27.9 million in 2017. In 2017, young migrants accounted for 10.8 per cent of the total migrant population and 4.7 per cent of the total population (of all ages).<sup>45</sup>

While international human rights law affords to children both rights and safeguards, the majority of States, even when they have ratified international instruments, have not fully implemented such rights and often neglect child migrants as distinct rights holders when adopting migration laws and policies. It is, therefore, of utmost importance to address such gaps in international child migrant protection by enforcing the SDGs and relevant targets connected to the overall well-being of

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<sup>43</sup> Ibid.

<sup>44</sup> See: <http://www.unesco.org/new/en/social-and-human-sciences/themes/youth/youth-definition/>.

<sup>45</sup> See: <https://migrationdataportal.org/themes/child-and-young-migrants>.

child migrants.<sup>46</sup> Child migrants may be accompanied by their parents or guardians, by other adults (separated children) or alone (unaccompanied children). The 1989 United Nations Convention on the Rights of the Child (CRC) defines separated children as those who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members. Unaccompanied children, as defined by the CRC, are those who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

The SDGs try to address several of the issues concerning child migrants through multiple migration-specific and child-specific targets. In this field area, indeed, SDGs' targets underline the importance of reducing the number of children living in poverty (1.2) and improving the quality of and access to education and vocational training for all chil-

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<sup>46</sup> Gina Starfield, "Children and migration in the Sustainable Development Goals", in Gervais Appave, Neha Sinha (ed.), *Migration in the Agenda 2030*, International Organization for Migration Publications, 2017, pp. 129-141; See also among the others: Asylum Information Database (Aida), "Detriment of the doubt: age assessment of unaccompanied asylum-seeking children", in *Aida Legal Briefing*, no. 5, 2015; J. Bhabha, *Child migration and human rights in a global age*, Princeton University Press, New Jersey, 2014; D. Corlett, and others, *Captured childhood. International detention coalition*, Melbourne, 2012, available at: <http://Idcoalition.Org/Wp-Content/Uploads/2012/03/Captured-Childhood-Final-June-2012.pdf>; European Asylum Support Office (Easo), *Age assessment practice in Europe*, Easo, Brussels, 2013; International Organization For Migration, *Counter trafficking and assistance to vulnerable migrants: annual report of activities 2011*, IOM, Geneva, 2012, available at: [www.iom.int/files/live/sites/iom/files/what-we-do/docs/annual\\_report\\_2011\\_counter\\_trafficking.pdf](http://www.iom.int/files/live/sites/iom/files/what-we-do/docs/annual_report_2011_counter_trafficking.pdf); International Organization For Migration, *Children and unsafe migration in Europe: data and policy, understanding the evidence base*, Global Migration Data Analysis Centre (Gmdac), Data Briefing Issue no. 5, 2016, available at: [https://publications.iom.int/system/files/gmdac\\_data\\_briefing\\_series\\_issue5.pdf](https://publications.iom.int/system/files/gmdac_data_briefing_series_issue5.pdf); International Organization For Migration and Unicef, *Migration of children to Europe*, IOM and UNICEF Data Brief, 2015, available at: [www.iom.int/sites/default/files/press\\_release/file/iom-unicef-data-brief-refugee-and-migrant-crisis-in-europe-30.11.15.pdf](http://www.iom.int/sites/default/files/press_release/file/iom-unicef-data-brief-refugee-and-migrant-crisis-in-europe-30.11.15.pdf); A. Levinson, *Unaccompanied immigrant children: a growing phenomenon with few easy solutions*, Migration Policy Institute, 24 January 2011, available at: [www.migrationpolicy.org/article/unaccompaniedimmigrant-children-growing-phenomenon-few-easy-solutions](http://www.migrationpolicy.org/article/unaccompaniedimmigrant-children-growing-phenomenon-few-easy-solutions); G. Noll, "Junk Science? Four arguments against the radiological age assessment of unaccompanied minors seeking asylum", in *International Journal of Refugee Law*, 2016, pp. 234-250; United Nations High Commissioner for Refugees, *Global trends: forced displacement in 2015*, Unhcr, Geneva, 2016; Unicef, *Uprooted: the growing crisis for refugee and migrant children*, Unicef, New York, 2016.

dren (4A, 4.2 and 4.5), which in turn are means of improving living standards for children all over the world. Such programmes help to mitigate the aforementioned adverse psychological effects associated to migrations and to integration into a host society. Targets promoting human rights and access to justice for all (16.3) also call for programmes addressing issues of abuse, detention and denial of basic services that child migrants face upon arrival in many host countries. Targets aimed at reducing death of new-borns (3.2), eliminating violence against girls (5.2), eradicating human trafficking and child labour (8.7) and, most notably, ending abuse, exploitation, trafficking and all forms of violence against children (16.2), envisage greater protection and safety for child migrants along migratory routes. The implementation of policies aimed at enacting abovementioned targets should also contribute to reduce criminal activities, exploitation, abuse and child mortality occurring along migratory routes, in transit and within host countries. Mitigating the adversity faced by child migrants and providing for their care and safety at all stages of migration is crucial in order to adopt international and national policies for managing child migration in their “best interests”.

#### 2.4. *Migration, environment and climate change*

While the most evident reference to migration in the 2030 Agenda for Sustainable Development may be found in Target 10.7, several other SDGs underpin cross-cutting issues addressing migration, environment and climate change.<sup>47</sup> Environmental issues are cross-cutting concerns

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<sup>47</sup> See, first of all the contribution of Elisa Fornalé in this book, and among the others: Soumyadeep Banerjee, Arabinda Mishra, “Migration and environmental change in the Sustainable Development Goals”, in Gervais Appave, Neha Sinha (ed.), *Migration in the Agenda 2030*, International Organization for Migration Publications, 2017, pp. 101-120; D. Ionesco, “Cop21 Paris Agreement: a stepping stone for climate migrants”, in *International Organization for Migration Weblog*, 23 December 2015, available at: <https://weblog.iom.int/cop21-parisagreement-stepping-stone-climate-migrants>; D. Ionesco, M.T. Chazalnoel, “Migration as an adaptation strategy to climate change”, in *International Organization for Migration Weblog*, 30 November 2015, available at: <https://weblog.iom.int/migration-adaptation-strategy-climate-change>; D. Ionesco, D. Mokhnacheva, F. Gemenne, *Atlas of environmental migration*, Routledge, London, 2016 available at: [www.environmentalmigration.iom.int/atlas-environmentalmigration](http://www.environmentalmigration.iom.int/atlas-environmentalmigration); International Dialogue on Migration, *Follow-up and review of migration in the Sustainable Development Goals*, IOM, Geneva, 2017, available at: [https://publications.iom.int/fr/system/files/pdf/rb26\\_en.pdf](https://publications.iom.int/fr/system/files/pdf/rb26_en.pdf); Internal Displacement Mon-

which are incorporated in all 17 Goals that urge for a drastic acceleration of environmental sustainability and climate change mainstreaming into all areas of life, including migration policies and programmes.<sup>48</sup>

In 2016, the International Organization for Migration (IOM) devoted its International Dialogue on Migration (IDM)<sup>49</sup> to a full review of migration in the 2030 Agenda for Sustainable Development and emphasized the cross-cutting nature of migration and its many interlinkages with development, environment, climate change and disaster risk reduction (DRR).<sup>50</sup> From this perspective, SDGs reinforce other important international frameworks developed in recent years, such as the Sendai Framework for Disaster Risk Reduction, the Addis Ababa Action Agenda on Financing for Development, the SAMOA Pathway Docu-

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iting Centre, *Global estimates 2014: people displaced by disasters*, Geneva, 2014, available at: [www.internal-displacement.org/publications/2014/global-estimates-2014-people-displaced-bydisasters2016](http://www.internal-displacement.org/publications/2014/global-estimates-2014-people-displaced-bydisasters2016); Internal Displacement Monitoring Centre, *Global Report on Internal Displacement*, Geneva, 2016, available at: [www.internal-displacement.org/assets/publications/2016/2016-global-report-internal-displacement-idmc.pdf](http://www.internal-displacement.org/assets/publications/2016/2016-global-report-internal-displacement-idmc.pdf); Intergovernmental Panel on Climate Change, *Climate change 2014: impacts, adaptation, and vulnerability. Contribution of working group II to the fifth assessment Report of the intergovernmental panel on climate change*, Cambridge University Press, Cambridge, 2014, available at: [www.ipcc.ch/report/ar5/wg2/](http://www.ipcc.ch/report/ar5/wg2/); United Nations Environmental Programme, *The environmental dimension of the SDGs*, available at: <http://web.unep.org/unea/environmental-dimension-sdgs>.

<sup>48</sup> See the following reports available at: <https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf>; <https://weblog.iom.int/cop21-paris-agreement-stepping-stone-climate-migrants>; <http://refugeesmigrants.un.org/declaration>; <https://environmentalmigration.iom.int/un-summit-refugees-and-migrants>; [www.fmreview.org/sites/fmr/files/fmrdownloads/en/fmrpdfs/fmr33/fmr33.pdf](http://www.fmreview.org/sites/fmr/files/fmrdownloads/en/fmrpdfs/fmr33/fmr33.pdf); [www.iom.int/migration-disaster-risk-reduction-and-resilience](http://www.iom.int/migration-disaster-risk-reduction-and-resilience); [http://publications.iom.int/system/files/pdf/mecc\\_outlook.pdf](http://publications.iom.int/system/files/pdf/mecc_outlook.pdf); <https://weblog.iom.int/migration-adaptation-strategy-climate-change>; [www.iom.int/files/live/sites/iom/files/what-we-do/docs/iom-drr-compendium-2013.pdf](http://www.iom.int/files/live/sites/iom/files/what-we-do/docs/iom-drr-compendium-2013.pdf); [www.iom.int/solarlanterns](http://www.iom.int/solarlanterns).

<sup>49</sup> The two International Dialogue on Migration (IDM) workshops were organised by International Organization for Migration and bracketed the UN General Assembly Summit on *Addressing Large Movements of Refugees and Migrants*, held on 19 September 2016. The purpose of the IDM, consistent with the mandate in IOM's constitution, is to provide a Forum for member States and observers to identify and discuss major issues and challenges in the field of international migration, to contribute to a better understanding of migration and to strengthen cooperation on migration issues between Governments and with other actors.

<sup>50</sup> See [https://publications.iom.int/fr/system/files/pdf/rb26\\_en.pdf](https://publications.iom.int/fr/system/files/pdf/rb26_en.pdf) and Eva Mach, "Implementation of the migration, environment and climate change related commitments of the 2030 Agenda", in Gervais Appave, Neha Sinha (ed.), *Migration in the Agenda 2030*, International Organization for Migration Publications, 2017, pp. 23-33.

ment<sup>51</sup>, the Paris Agreement under the United Nations Framework Convention on Climate Change (UNFCCC) and, finally, as far as the subject-matter of this contribution is concerned, the *Global Compact* on migrants and refugees.

Accordingly, while various data suggest that migration – both internal and cross-border – is expected to escalate given the impacts of climate change on livelihoods, the SDGs urge States to put in place several actions in order to address environmental migration: ending poverty by building resilience of vulnerable populations to extreme events under Goal 1; achieving food security and promoting sustainable agriculture and strengthening capacity for adaptation to environmental changes under Goal 2; reducing the number of people suffering from water scarcity under Goal 6; promoting the implementation of planned and well-managed migration policies under Goal 10; reducing the number of deaths and people affected by disasters through effective DRR practices and strengthening development planning for resilient cities and settlements under Goal 11; and building adaptive capacity against climate change and integrating climate change measures in policies under Goal 13.

From this side SDGs include specific recommendations for States when designing policies in this field area. In the first place, they have to acknowledge that the sustainable development path is posed at risk by current environmental and climate changes, both at global level and at local level. Hence, they should assess the impact of such processes when designing migration governance frameworks and migration management programmes and activities. In the second place, States should recognize the contribution of migrants and the role played by migration processes for achieving sustainable development: migration indeed can reduce vulnerability to environmental hazards and lessen the impact of crises on development through well-designed migration schemes, remittances and relocation. In the third place, States should explore and support avenues for releasing the positive contribution of migration to development with a focus on building resilience and supporting adaptation and mitigation. In the fourth place, States should design policy framework applicable to those most vulnerable persons, which are normally unable to make use of migration as an adaptation strategy, in line with the commitment to “leave no one behind”. In the fifth place, States

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<sup>51</sup> The States Accelerated Modalities of Action (SAMOA), is the outcome document of the Third International Conference of Small Island Developing States held in September 2014.

should include environmental issues, including climate migration, in national development planning and incorporate proactive response measures, accordingly. Finally, States should ensure that migration management and governance might contribute to the implementation of the environment-related SDG Goals and design projects with positive environmental and mitigation benefits.

The future of migration governance will depend on how the existing cross-cutting intergovernmental agreements – such as the 2015 Paris Agreement on Climate Change, the 2030 Agenda for Sustainable Development, the 2015 Addis Ababa Action Agenda and the 2015 Sendai Framework for Disaster Risk Reduction – will be operationalized in a truly sustainable and coordinated manner. The impact of the SDGs will depend on how successfully they are mainstreamed across different policy areas and the extent to which these efforts are coordinated. From this perspective, Goal 17 on global partnerships is apt to play a pivotal role in building bridges and harmonizing international and national plans for sustainable development beyond 2030.<sup>52</sup>

### 3. *The New Agenda: a different approach between migrants and refugees*

While SDGs and 2030 Agenda disclose an almost balanced approach with respect to the role of migrants, the same may not be said for the refugees category, whose position is much more critical. References to this group, indeed, can only be found in two of the introductory paragraphs to the Goals. In particular, on the one hand, the Declaration stresses that the security and enjoyment of human rights held by refugees shall be guaranteed (para. 29); on the other hand, it addresses the issue of the resilience of host communities, particularly in developing countries. This last point is extremely relevant if one considers that according to the UN High Commissioner for Refugees (UNHCR) the 86% of forcibly displaced persons are in developing countries.<sup>53</sup> However,

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<sup>52</sup> Eva Mach, “Implementation of the migration, environment and climate change related commitments of the 2030 Agenda”, cit.; Soumyadeep Banerjee, Arabinda Mishra, “Migration and environmental change in the Sustainable Development Goals”, in Gervais Appave, Neha Sinha (ed.), *Migration in the Agenda 2030*, International Organization for Migration Publications, 2017, pp. 101-120.

<sup>53</sup> United Nations High Commissioner for Refugees (UNHCR), *Tendencias globales. Desplazamiento forzado en 2015, 2016*, available at: [http://www.acnur.org/t3/fileadmin/documentos/publicaciones/2016/106\\_27.pdf](http://www.acnur.org/t3/fileadmin/documentos/publicaciones/2016/106_27.pdf).

any Goal or target sets forth the redistribution of the economic, social and demographic burdens between developing and developed countries, nor the modalities according to which implement the international cooperation necessary to build the resilience of host communities.<sup>54</sup>

Among the few direct references to the refugee dimension, it is necessary to focus the attention on Goal 16 which “promote peaceful and inclusive societies for sustainable development, facilitate access to justice for all and build effective and inclusive accountable institutions at all levels”. Ten of its targets aim at the achievement of the Goal and two are specifically destined to indicate modalities of implementation. However only two of these targets have a fixed time frame for their achievement, *i.e.* the Goals 16.4 and 16.9. Goal 16, included in the Agenda after a heated debate during the intergovernmental negotiations, sets out a series of objectives that address the causes of the refugee problem: the reduction of violence, in particular against women and children, and of all kinds of violations of individual security, the promotion of the rule of law and the protection of human rights, the reduction of corruption and the illicit flow of arms and capital. However, concrete and effective realization of Goal 16 objectives is greatly weakened by its broad definition: it does not include in particular percentages and intermediate temporary Goals; it also encompasses vague and only generally-framed definitions such as “significantly reduce” or “considerably” (target 16.1, 16.4, 16.5), which afford to this Goal programmatic rather than an operational, character.

Also, it is extremely interesting to highlight the circumstance that the term “peace” appears exclusively in the text of the objective, while none of the Goals highlight measures to combat the major threats to peace that are at the origin of the refugee problem. Moreover, 2030 Agenda omits in dealing with the terrorist threat, and this in spite of the many recent resolutions adopted by the UN Security Council in last years.<sup>55</sup> Only reference to this problem may be found in target 16.a,

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<sup>54</sup> Gaia Tascioni, “Migrantes y refugiados en la agenda de desarrollo 2030”, in *Working Papers “El Tiempo de los Derechos”*, 2016.

<sup>55</sup> *Ibid.* See, in particular Resolution 2253 (2015), should invite States to adopt an integrated approach in the fight against terrorism in which development, security and the rule of law human rights were the main axes. In particular, both with regard to the financing of terrorist groups, and with regard to the financing of terrorist groups, as well as with regard to the financing of terrorist groups in relation to other aspects, the Security Council has already intervened several times *ex* Chapter VII of the UN Charter, see, among the others, Security Council Resolution n. 2199 (2015), 2161 (2014), 2178 (2014).



which by referring to the necessity to “Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime” addresses the implementation at national level of measures for fighting against terrorism.

In conclusion, while the inclusion in the SDGs of provisions concerning refugees and a certain acknowledgment of the different approaches needed to deal with migrants and refugees, affords of course added value, however, some weaknesses there remain. Due to the limits of the present chapter, it is not possible to perform a complete review of these weaknesses, suffice here to say that one of the main weaknesses, if not the main, is that provisions envisaged in Goal 16 have exclusively a programmatic, if not symbolic, character. This situation highlights the lack of a concrete will for its implementation and measurement that leaves without concrete proposals and attempts of solution some serious problems, such as that of refugees.<sup>56</sup>

#### 4. *The implementation of Agenda: Quis custodiet ipsos custodes?*

The 2030 Agenda foresees that the SDGs will be customized by each country as States assign priority to a number of SDGs’ targets and translate global indicators into national ones, in order to achieve the SDGs taking into account different national contexts. In addition, States are called to put in place “a robust, voluntary, effective, participatory, transparent and integrated follow-up and review framework” in order to assure a concrete contribution to implementation.<sup>57</sup> The monitoring and follow-up process on the SDGs will be realized at national, regional and global levels, according to thematic lines, as well. Multiple intergovernmental forums are mandated to monitor and review aspects of the SDGs as well follow-up and review must be carefully designed in order to avoid repetition and confusion. Under this perspective, the Secretary-General’s report on the follow-up and review process<sup>58</sup> has identified

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<sup>56</sup> Gaia Tascioni, “Migrantes y refugiados en la agenda de desarrollo 2030”, cit.

<sup>57</sup> United Nations General Assembly, *Transforming Our World: the 2030 Agenda for Sustainable Development*, cit., Paragraph 72.

<sup>58</sup> United Nations General Assembly, *Critical milestones towards coherent, efficient and inclusive follow-up and review at the global level*, Report of The Secretary-General, United Nations General Assembly Seventieth Session, 15 January 2016, A/70/684.

three preliminary steps to enable intergovernmental agencies and forums to contribute efficiently to the review process, culminating at each stage in the annual United Nations High-level Political Forum on Sustainable Development (HLPF)<sup>59</sup> held under Economic and Social Council (ECOSOC) auspices. The Secretary-General's report suggests that each forum must: reflect on the implications of the 2030 Agenda for its respective areas of work, given the integrated nature of the Agenda; review its programmes and working methods in the light of the SDGs; assess its ability to mobilize key actors for the process.

Since all the indicators used in SDGs, according to the classification of the UN Office of the High Commissioner on Human Rights (OHCHR), are result indicators,<sup>60</sup> there was consensus among participants of the International Dialogue on Migration workshops organized by International Organization For Migration in 2016, that an effective

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<sup>59</sup> The establishment of the United Nations High-Level Political Forum on Sustainable Development (HLPF) was mandated in 2012 by the outcome document of the United Nations Conference on Sustainable Development (Rio+20), "*The future we want*". The format and organizational aspects of the Forum are outlined in General Assembly Resolution 67/290. The Forum meets annually under the auspices of the Economic and Social Council for eight days, including a three-day ministerial segment and every four years at the level of heads of State and Government under the auspices of the General Assembly for two days. The HLPF is the main United Nations Platform on Sustainable Development and it has a central role in the follow-up and review of the 2030 Agenda for Sustainable Development at the global level. General Assembly Resolution 70/299 provides further guidance on the follow-up and review of the 2030 Agenda and the SDGs. The Forum adopts intergovernmental negotiated political declarations. As part of its follow-up and review mechanisms, the 2030 Agenda encourages member States to "conduct regular and inclusive reviews of progress at the national and sub-national levels, which are country-led and country-driven" (paragraph 79). These national reviews are expected to serve as a basis for the regular reviews by the HLPF as stipulated in paragraph 84 of the 2030 Agenda; regular reviews by the HLPF are to be voluntary, State-led, undertaken by both developed and developing Countries, and shall provide a platform for partnerships, including through the participation of major groups and other relevant stakeholders.

<sup>60</sup> "Structural Indicators" define all those indicators that help to capture the acceptance, intent and commitment of the State to implement measures in accordance with its human rights obligations. In contrast, so-called "process indicators" are a tool for assessing a State's efforts, through the implementation of policy measures and action programmes, to transform its human rights' commitments into desired outcomes. Finally, "outcome indicators" are quantitative indicators that help to assess the impact of the State's efforts in promoting the enjoyment of human rights, see UN Office of the High Commissioner on Human Rights, *Indicadores de derechos humanos: guía para la medición y la aplicación*, 2012.

implementation of the 2030 Agenda would have depended on the creation of a strong follow-up and review framework to ensure that States' national laws and strategies are consistent with achievement of the SDGs' commitments.<sup>61</sup>

Moreover, “[q]uality, accessible, timely and reliable disaggregated data will be needed to help with the measurement of progress and to ensure that no one is left behind”.<sup>62</sup> So, disaggregating data collected on the basis of migration status, gender, age, and so forth will support measuring and monitoring progress towards the achievement of SDGs on migration issues and in order to ensure policy framework for safe migration.<sup>63</sup>

Finally, in the light of a human rights approach, it would be desirable to adopt indicators that can measure the state of ratification of the international legal mechanisms on human rights by States. In this way, binding legal bases in the implementation of 2030 Agenda could be also established.<sup>64</sup>

##### 5. *Final remarks*

Since 2000, migration has become a pivotal issue in the policy agendas of many United Nations Member States, which provided decisive input also for the 2030 Agenda approach to consider the impact of migration and the role of migrants on sustainable development. Accordingly, the inclusion of migration in the 2030 Agenda is apt to provide a framework for a more effective governance of international migration, grounded in protection of the human rights of migrants, regardless of their legal status, and built on inclusive national development planning. At the same time, the *Global Compact* on migration brings many of those elements together in a guiding document for the governance of international migration. However, gaps concerning the implementation of the SDGs, specifically with regard to issues related to migrants and migration, are at the basis of some criticism on their methodology and ef-

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<sup>61</sup> International Organization for Migration Publications, *International dialogue on migration. Follow-up and review of migration in the sustainable development goals*, International Organization for Migration Publications, 2017.

<sup>62</sup> United Nations General Assembly, *Transforming Our World: The 2030 Agenda For Sustainable Development*, cit., Paragraph 48.

<sup>63</sup> International Organization for Migration Publications, *International dialogue on migration. Follow-up and review of migration in the sustainable development goals*, cit.

<sup>64</sup> Gaia Tascioni, “Migrantes y refugiados en la agenda de desarrollo 2030”, cit.

fectiveness. In particular, main debated issues involve: the management of statistical data for monitoring progress, the implementation of a Global Partnership in the logic of a holistic approach; and, finally, the accountability as central theme of human rights concern.

As far as the management of data for monitoring progress is concerned, problems connected to this issue were already evident during the MDGs era. First of all, data disaggregation and breakdown taking into account different groups and categories of people (i.e. the status of migrants or asylum seekers) is essential in monitoring process in order to identify if and for which category of groups or persons there are progress. In the second place, capacity building in migration data collection and data disaggregation at the national level must be a priority: this is the major obstacle to effective review and follow-up of SDG target 10.7 and other migration-related SDGs. This makes it difficult to assess whether migrants are or are not being “left behind”.<sup>65</sup> Moreover, the management of data for monitoring progress is particularly relevant with respect to the countries of immigration in order to implement the Agenda as in their territory as through Official Development Assistance.<sup>66</sup> Strictly linked to the previous point, finally, in order to ensure the assessment of progress in the protection of rights of individuals, especially vulnerable groups, the monitoring system based essentially on voluntary reports presented by States, is not sufficient. Here, it is worth to note that although the norms on the protection of human rights are not explicitly cited in 2030 Agenda, they are intimately related to SDGs. Therefore, it would be desirable that treaties bodies on human rights take into account in their monitoring activity the 2030 Agenda framework (monitoring progress and Goals) that, although not binding, can constitute an authoritative reference point in assessing respect of human rights obligations when these are related to SDGs implementation. On the other hand, “structural” indicators relating to the level of ratification of international instruments on human rights should be included in the 2030 Agenda; in particular such indicators should have to cover at the very least basic international instrument concerning the protection of migrants’ rights. This seems should be necessary in order to assessing respect of human rights obligations under the 2030 Agenda and to assure both qualitative and quantitative dimensions of monitoring on the implementation of Agenda.<sup>67</sup>

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<sup>65</sup> International Organization for Migration Publications, *International dialogue on migration. Follow-up and review of migration in the sustainable development goals*, cit.

<sup>66</sup> Gaia Tascioni, “Migrantes y refugiados en la agenda de desarrollo 2030”, cit.

<sup>67</sup> United Nations statement by 17 special procedures mandate-holders of the human

As far as the second issue is concerned, the 2030 Agenda stresses how “the scale and ambition of the new Agenda requires a revitalized Global Partnership ... bringing together Governments, the private sector, civil society, the United Nations system and other actors and mobilizing all available resources”.<sup>68</sup> Accordingly, national governments bear of course primary responsibility for reaching the SDG targets, including those related to migration; however, they are not the only actors involved in the process. Indeed, the measure of the success of their efforts will also depend to a considerable extent on their ability to involve other stakeholders into the process. The realization of this partnership requires a holistic approach and a good governance<sup>69</sup> aimed at including other pivotal actors, such as transnational corporations who are also addressees of the duty to respect human rights and environment principles. In order to achieve this result the implementation of the Agenda requires a strong and coordinated partnership between International organizations, local authorities, civil society, diaspora communities and the private sector in order to draw the maximum benefits from human mobility and reduce its costs especially in terms of human lives and respect for human rights.<sup>70</sup> From this side, contemporary human rights crises, including climate change and refugee crises, which demand attention and responses, could be seen to be more immediate concern than the development Goals of the 2030 Agenda. However, it should not be forgotten that these are global and interconnected challenges requiring to be dealt accordingly. They call for global actions and global partnership: if States will be able to fill the abovementioned gaps, the 2030 Agenda might demonstrate to be a powerful instrument for addressing this Goal

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Rights Council on the post-2015 development Agenda, grounding development priorities in human rights: incentives to improve equality, social security and accountability, <http://www.ohchr.org/documents/issues/food/post2015jointsubmission.pdf>; see also: Inga T. Winkler, Carmel Williams, “The Sustainable Development Goals and human rights: a critical early review”, in *The International Journal of Human Rights*, 8/2017, pp. 1023–1028; Katja Freistein, Bettina Mahlert, “The potential for tackling inequality in the Sustainable Development Goals”, in *Third World Quarterly*, no. 12/2016, pp. 2139–55; Edward Anderson, “Equality as a global goal”, in *Ethics and international affairs*, 10 June 2015.

<sup>68</sup> United Nations General Assembly, *Transforming Our World: The 2030 Agenda For Sustainable Development*, cit., Paragraph 39.

<sup>69</sup> Ban Ki-Moon, “Prologue”, in J. Sachs, *The Age Of Sustainable Development*, Paidós, 2014, pp. 19–21.

<sup>70</sup> International Organization for Migration Publications, *International dialogue on migration. Follow-up and review of migration in the sustainable development goals*, cit.

in an interconnected and comprehensive manner, beyond simple piecemeal-measures approaches. Of course, enacting the necessary connections and finding comprehensive solutions is a tremendous challenge; however, grounding 2030 Agenda on human rights law is the cornerstone for overcoming most of the abovementioned gaps. Explicit references to international human rights rules provide binding obligations within the framework of a soft law and, moreover, an accountability mechanism, that allow a systems-based and consistent, transformative and structural change in order to reduce inequalities and power imbalances and, thereby, response to sustainable development needs.

In conclusion, a human rights-based approach is essential in order to fulfil SDGs objectives and, consequently, also accountability becomes a central theme. Linking SDGs with international human rights instruments on a dual mandate basis, by combining both frameworks, will contribute to mutually reinforcing their frameworks and to establish transparent and binding accountability processes and mechanisms in order to fulfil the promise of “leaving no one behind”.<sup>71</sup>

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<sup>71</sup> Kate Donald, Sally-Anne Way, “Accountability for the Sustainable Development Goals: a lost opportunity?”, in *Ethics & International Affairs*, no. 2/2016, pp. 201-13, p. 207ss; Nadja Filskov, *SDGs and human rights monitoring guidance for national implementation*, Danish Institute for Human Rights, 2015; See also *Global Initiative For Economic, Social and Cultural Rights. Snapshot: The SDGs at the Human Rights Council*, March 2017, available at: <http://globalinitiativeescr.org/snapshot-the-sdgs-at-the-human-rights-council-march-2017>.