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Urbanizing Human Rights Law: Cities, Local Governance and Corporate Power

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Abstract

This article considers ways in which human rights law ought to respond to a growingly urban global order of blurred private—corporate—and state power. Fragmented and dispersed power comes together, in different configurations of public and private, in the cities and towns of the world. For this reason, local government presents the appropriate scale at which to re-conceptualize the operation of international human rights norms, also against private power. This requires engaging not only with the reach and leanings of international human rights standards but also with the manner in which they are rendered applicable, through domestic constitutional law, against state and non-state actors at a local scale. The urbanization of human rights law accordingly also requires a second look at the powers, competencies and responsibilities of urban local government under domestic constitutional law.

Keywords: Urban governance; Human rights; Corporate power; Local government

A. Introduction

One pertinent aspect of the reconfiguration of state power through globalization has been the rise of urban local government as domestic locus for state power and responsibility, and as actor of increasing international law significance.¹ Another has been a remarkable increase in corporate

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¹See Helmut Philipp Aust, *Shining Cities on the Hill? The Global City, Climate Change, and International Law*, 26 EUR. J. INT'L L. 258 (2015); Helmut Phillip Aust & Anél Du Plessis, *Introduction: The Globalisation of Urban Governance—Legal Perspectives on Sustainable Development Goal*, in THE GLOBALISATION OF URBAN GOVERNANCE: LEGAL PERSPECTIVES ON SUSTAINABLE DEVELOPMENT GOAL 3, 11 (Helmut Phillip Aust & Anél Du Plessis eds., 2019); BENJAMIN R. BARBER, IF MAYORS RULED THE WORLD: DYSFUNCTIONAL NATIONS, RISING CITIES (2013); Simon Curtis, *Cities and Global Governance: State Failure or a New Global Order?*, 44 MILLENNIUM: J. INT'L STUD. 455 (2016); Gerald E. Frug & David J. Barron, *International Local Government Law*, 38 URB. LAW. 1, 2, 11 (2006); Barbara Oomen & Moritz Baumgärtel, *Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law*, 29 EUR. J. OF INT'L L. 607 (2018); Sandra C. Valencia, David Simon, Sylvia Croese, Joakim Nordqvist, Michael Oloko, Tarun Sharma, Nick Taylor Buck & Ileana Versace, *Adapting the Sustainable Development Goals and the New Urban Agenda to the City Level: Initial Reflections from a Comparative Research Project*, 11 INT'L J. OF URB. SUST. DEV. 4 (2019).

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power and clout at different scales, and the concomitant increased involvement of the private sector in governance activities that were conventionally associated with the state.² These come together in cities,³ which have been primary sites for a much-studied shift from “government” to “governance,” in terms of which power at an urban scale is exercised relationally. This happens through cooperative interactions between a range of stakeholders—including governments and parastatal entities at national, regional and local levels alongside local businesses, knowledge institutions, civil society organizations, and community organizations—and in terms of a fragmented range of institutional arrangements and legal and quasi-legal instruments.⁴

The objectives of such “blended” urban governance are neither always self-evident nor necessarily always progressive.⁵ As with governance at a national scale, there is a need for enforceable, substantive standards that steer and constrain urban governance efforts; against which urban governance actors can be held accountable for the ways in which they exercise power: “The globalisation of urban governance presupposes some kind of standard for (local) governance practice and the quality of life of those inhabiting the urban space.”⁶

When it comes to exercises of state power by national governments, human rights law has long fulfilled this dual function. But in the context of urban governance, human rights law’s primary role is increasingly supplemented, or even supplanted, by development-related standards, such as Goal 11 of the United Nations 2030 Agenda for Sustainable Development (hereinafter “SDG 11”), which requires states to “make cities and human settlements inclusive, safe, resilient and sustainable.”⁷ SDG 11 has further been elaborated by the United Nations’ New Urban Agenda, which espouses a vision of

[C]ities for all, referring to the equal use and enjoyment of cities and human settlements, seeking to promote inclusivity and ensure that all inhabitants, of present and future generations, without discrimination of any kind, are able to inhabit and produce just, safe, healthy, accessible, affordable, resilient and sustainable cities and human settlements to foster posterity and quality of life for all.⁸

Both SDG11 and the New Urban Agenda embody “ambitious, comprehensive and, arguably, socially progressive agendas.”⁹ Both envisage the pursuit of these agendas through integrated

²See Curtis, *supra* note 1, at 476–77; David Bilchitz & Surya Deva, *Human Rights Obligations of Business: A Critical Framework for the Future*, in HUMAN RIGHTS OBLIGATIONS OF BUSINESS: BEYOND THE CORPORATE RESPONSIBILITY TO RESPECT? 1 (Surya Deva & David Bilchitz eds., 2013); Jan Arno Hessbruegge, *Human Rights Violations Arising from Conduct of Non-State Actors*, 11 BUFF. HUM. RTS. L. REV. 21, 23–25 (2005); Steven R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L. J. 443, 460–62 (2001).

³Frug & Barron, *supra* note 1, at 2–4, 11; Alan Harding, Stuart Wilks-Heeg & Mary Hutchins, *Business, Government and the Business of Urban Governance*, 37 URB. STUD. J. LTD. 975 (2000); SASKIA SASSEN, TERRITORY AUTHORITY RIGHTS: FROM MEDIEVAL TO GLOBAL ASSEMBLAGES 185–200 (2006); RICHARD SCHRAGGER, CITY POWER: URBAN GOVERNANCE IN A GLOBAL AGE 6–9, 139 (2016).

⁴See, e.g., Caroline Andrew & Michael Goldsmith, *From Local Government to Local Governance – and Beyond?*, 19 INT’L POL. SCI. REV. 101, 108–09 (1998); Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 MINN. L. REV. 342 (2004); Sol Picciotto, *International Transformations of the Capitalist State*, 43 ANTIPODE 87 (2011); Jon Pierre, *Models of Urban Governance: The Institutional Dimension of Urban Politics*, 34 URB. AFFS. REV. 372 (1999); Jon Pierre & B. Guy Peters, *Urban Governance*, in OXFORD HANDBOOK OF URBAN POLITICS 71 (Karen Mossberger, Susan E. Clarke & Peter John eds., 2012); Illeana M. Porras, *The City and International Law: In Pursuit of Sustainable Development*, 36 FORDHAM URB. L. J. 537 (2009).

⁵Harriet Bulkeley, Andres Luque-Ayala, Colin McFarlane & Gordon MacLeod, *Enhancing Urban Autonomy: Towards a New Political Project for Cities*, 55 URB. STUD. 702, 706 (2018); Frug & Barron, *supra* note 1, at 21–28, 58–61; Mark Purcell, *Urban Democracy and the Local Trap*, 43 URB. STUD. 1921 (2006).

⁶Aust & Du Plessis, *supra* note 1, at 8.

⁷G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development (Oct. 21, 2015); see Aust & Du Plessis, *supra* note 1, at 8.

⁸G.A. Res. 71/256, annex, New Urban Agenda, ¶ 11 (Dec. 23, 2016).

⁹Valencia et al., *supra* note 1, at 19.

and cooperative governance that cuts across governmental spheres, boundaries and silos, and that bridges divides between the public and private, state and corporate sectors.¹⁰ But while both express principled commitment to the achievement of human rights¹¹ they, with the exception of the New Urban Agenda's elaboration of several objectives aligned with the right to adequate housing,¹² engage human rights law only incidentally¹³ and never do so explicitly when it comes to hybrid forms of public/private urban governance.

Indeed, it feels as if human rights law, both internationally and domestically, has been playing a somewhat more muted role in substantively guiding and guarding global urban governance than one would expect. Relatedly, the content and operation of human rights norms and obligations at the local, urban scale, and in relation to some of the non-state actors typically implicated in urban governance, appears to be underdeveloped.

This article considers ways in which domestic institutionalization of international human rights norms ought to expand and develop in order for human rights law to reclaim primary normative relevance for governance in an increasingly urban global order. As the places where human rights are realized and/or infringed, the places where corporate activities are carried out and the de facto sites for co-governance between private and public entities, it is argued that cities are the obvious places for the integration of human rights obligations into domestic law and policy and for their context-sensitive extension to non-state actors. However, this is complicated by the continued state-centeredness of domestic systems of constitutional law, which renders local governments vulnerable to pernicious exercises of corporate power while simultaneously locating the regulatory power inherent in human rights-based accountability beyond their scalar reach.

Section B below considers, first, the positioning of local governments in relation to international human rights law and, second, the manner in which domestic systems of constitutional law at once localize international human rights norms and determine the ability of local governments to leverage these by regulating non-state governance activities in urban space. Section C then considers some of the challenges associated with the application of international human rights norms to non-state—corporate—actors, before Section D presents the argument for the rights-based local government regulation of corporate participation in urban governance and draws attention to related challenges occasioned by cities' limited constitutional autonomy and the limited domestic application of socio-economic rights. It then alludes to ways in which cities around the world are beginning to address these challenges before Section E reflects, in conclusion, on the need to restructure human-rights accountability in a manner that equips urban local governments for contemporary governance challenges.

B. Local Government, Rights, and the City

It is generally acknowledged that local government actions matter for the realization and enjoyment of human rights. Cities, towns, and villages are the sites where civil and political rights are performed, where the objects of socio-economic rights are accessed and delivered and where the participatory dimensions of all rights are actualized. When it comes to ground-level enjoyment of rights—regardless of whether states have signed up to their treaty-embodied legal form—urban local governments' positioning in relation to residents' everyday experiences means that they

¹⁰See G.A. Res. 70/1, *supra* note 7, ¶¶ 17, 67; G.A. Res. 71/256, *supra* note 8, ¶¶ 21, 23, 48, 82, 87, 91, 126, 153; Valencia et al., *supra* note 1, at 11, 14–15.

¹¹Anne Klen-Amin & Rashid Abubakar, *Human Rights in the New Urban Agenda: Towards Inclusive Urban Planning*, in *LAW AND THE NEW URBAN AGENDA* 105 (Nestor M. Davidson & Geeta Tewari eds., 2020).

¹²G.A. Res. 71/256, *supra* note 8, ¶¶ 13(a), 14(a), 31, 105.

¹³Marius Pieterse, *Shifting Paradigms from Between the Lines? Legal Internalizations of the Right to Adequate Housing in South Africa*, in *LAW AND THE NEW URBAN AGENDA* 131 (Nestor M. Davidson & Geeta Tewari eds., 2020); Ivan Turok & Andreas Scheba, 'Right to the City' and the New Urban Agenda: Learning from the Right to Housing, 2 *TERRITORY, POL., GOVERNANCE* (2018); Valencia et al., *supra* note 1, at 19.

simultaneously hold tremendous potential to violate rights, and to advance their protection and fulfillment.¹⁴

Yet, international human rights law typically engages local governments only indirectly, as subservient organs of state accountability for observing human rights via the obligations of national governments.¹⁵ Recent—contested and largely incomplete—shifts towards acknowledging—mostly urban—local governments as international law actors¹⁶ have mostly occurred outside of the human rights arena. A product of the geopolitical context of their time, the leading international human rights treaties are resolutely focused on the obligations of states at the national level.

Regardless of how state power is devolved and fragmented domestically, international human rights law typically treats the state as a unitary entity with obligations to respect, protect and fulfill rights, that apply uniformly to all of its organs, branches, and spheres. The national state is thus responsible for structuring its domestic governance arrangements in ways that ensure rights-compliance by all its components and is held accountable for rights-violations notwithstanding the tier or organ of state by which these were perpetrated.¹⁷

Whereas city-level governments must thus equally respect, protect, and fulfill those rights to which their nation-states have ascribed, they do not have a choice in relation to which human rights obligations states undertake on their behalf.¹⁸ The extent to which local governments are formally implicated in the fulfillment of the state's international human rights obligations therefore vary, depending both on the “package” of rights formally acceded to by the national state—in that local government tends to be more closely implicated in states where socio-economic rights—typically the stuff of everyday local governance—are recognized and enforced—and on the manner in which rights-related powers, functions and responsibilities are apportioned by domestic constitutional and statutory law.¹⁹

Given the wide array of domestic constitutional arrangements through which local government powers and obligations are structured and the equally significant international variations in treaty-acquiescence and internalization, different cities in the world are sometimes very differently positioned in relation to international human rights norms.²⁰ This not only means that they are accountable for adherence to different rights-related obligations but also that they are differently enabled to regulate communities in furtherance of rights-related objectives.

State power is simultaneously restrained and enabled by human rights. Not only do rights embody the acceptable limits to which power may be exercised, they also legitimize and justify the wielding of state power within those limits.²¹ While human rights therefore substantively

¹⁴Oomen & Baumgärtel, *supra* note 1, at 614; Cynthia Soohoo, *Human Rights Cities: Challenges and Possibilities*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES 257, 265–66 (Barbara Oomen, Martha F. Davis & Michele Grigolo, eds., 2016); H.R.C. Res. 30/49, Role of Local Government in the Promotion and Protection of Human Rights: Final Report of the Human Rights Council Advisory Committee, ¶¶ 8, 26 (Aug. 7, 2015).

¹⁵See, e.g., Aust, *supra* note 1, at 267; Eva Garcia Chueca, *Human Rights in the City and the Right to the City: Two Different Paradigms Confronting Urbanisation*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES 103, 108 (Barbara Oomen et al., eds., 2016); Michele Grigolo, *Local Governments and Human Rights: Some Critical Reflections*, 49 COLUM. HUM. RTS. L. REV. 67, 73 (2017); Soohoo, *supra* note 14, at 259–61.

¹⁶See Aust, *supra* note 1, at 269–70; Michael Riegner, *International Institutions and the City: Towards a Comparative Law of Global Governance*, in THE GLOBALISATION OF URBAN GOVERNANCE: LEGAL PERSPECTIVES ON SUSTAINABLE DEVELOPMENT GOAL 11, 38 (Helmut Phillip Aust & Anél Du Plessis eds., 2019).

¹⁷H.R.C. Res. 30/49, *supra* note 14, ¶¶ 17–21, 27–28; see also, Oomen & Baumgärtel, *supra* note 1, at 620–22.

¹⁸Bardo Fassbender, *The State's Unabandoned Claim to be the Center of the Legal Universe*, 16 INT'L J. OF CONST. L. 1207, 1208 (2018).

¹⁹See Frug & Barron, *supra* note 1, at 11, 35; H.R.C. Res. 30/49, *supra* note 14, ¶ 10.

²⁰See RAN HIRSCHL, CITY, STATE: CONSTITUTIONALISM AND THE MEGACITY 36–37, 48–49 (2020).

²¹See Marius Pieterse, *The Legitimizing/Insulating Effect of Socio-Economic Rights*, 22 CAN. J. OF L. & SOC. 1–20 (2007); Chris Thornhill, *On Misunderstanding States: The Transnational Constitution in the National Constitution*, 16 INT'L J. OF CONST. L. 1186–98 (2018).

structure—and often limit—urban local governments’ constitutional or statutorily-derived powers to govern, they can simultaneously advance urban local governments’ power over cities’—corporate and other—residents by legitimizing and providing normative justification for, for instance, the wielding of regulatory powers and pursuit of redistributive agendas.²² As such, the content of urban local governments’ human rights obligations animate their autonomy alongside, for instance, the devolution arrangements and configuration of intergovernmental relations in domestic constitutional law.²³

While local governments around the world typically, albeit not exclusively, exist on weak and precarious constitutional footing and while urban governance is structured through a myriad of domestic constitutional arrangements along unitary-federalist spectra,²⁴ there have been growing similarities in how constitutional systems around the world position local governments in charge of large urban agglomerations in relation to national or regional governments, and in relation to corporate and other private power located within their jurisdictions.²⁵

In particular, the globalization and urbanization-inspired dual trends towards devolution and fragmentation of state power have significantly raised the profile of urban local governments as human rights actors.²⁶ In accordance with the accompanying shift from “government” to “governance,” local governments around the world are increasingly positioned simultaneously as recipients of public power formerly exercised nationally, and as the physical point from which power is wielded, dispersed, surrendered, or shared in relation to a variety of corporate and other non-state actors that produce and control urban space.²⁷ In this respect, governance literature regularly refers to local governments in cities and towns as “hoarding” or “steering” actors, responsible for enabling and coordinating the myriad exercises of hybrid public/private powers by a range of urban governance “stakeholders” and directing it towards the achievement of common, public goals such as, for present purposes, the realization and enjoyment of human rights.²⁸

Given also that it is the physical locality for most interactions between private actors—residents, civil society, business and so on—with different kinds and amounts of non-state power, local government has become especially prominent when it comes to fulfilling the state’s obligation to “protect” human rights, by regulating exercises of, and clashes between, private power in cities and towns.²⁹

When it comes to the enjoyment, realization, and assertion of human rights in cities it is therefore necessary to pay attention to more than just the manner and extent to which local governments are held accountable for their compliance with obligations to respect, protect, and fulfill rights. It is also necessary to consider the manner and extent to which they are in turn empowered, both by the constitutional devolution of state power and by the fact of their human rights obligations, to steer powerful non-state actors—both those directly or indirectly involved in urban governance and those exercising power over urban residents and space in other ways—towards,

²²Oomen & Baumgärtel, *supra* note 1, at 614, 621, 625.

²³See Bulkeley et al., *supra* note 5, at 704–10.

²⁴HIRSCHL, *supra* note 20, at 52; Oomen & Baumgärtel, *supra* note 1, at 614.

²⁵See generally Frug & Barron, *supra* note 1.

²⁶See *id.* at 28; Barbara M. Oomen, *Introduction: The Promise and Challenges of Human Rights Cities*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES 1, 2–4 (Barbara Oomen et al., eds., 2016); Oomen & Baumgärtel, *supra* note 1, at 626; G.A. Res. 71/256, *supra* note 8, ¶ 15(b).

²⁷See Andrew & Goldsmith, *supra* note 4, at 109, 115; Curtis, *supra* note 1, at 463; Porras, *supra* note 4 at 541, 548–49, 590–91, 598; Purcell, *supra* note 5, at 1921–23.

²⁸See Ismael Blanco, *Between Democratic Network Governance and Neoliberalism: A Regime-Theoretical Analysis of Collaboration in Barcelona*, 44 CITIES 123 (2015); Harding, Wilks-Heeg & Hutchins, *supra* note 3, at 975–80; Picciotto, *supra* note 4, at 88–93; Pierre & Peters, *supra* note 4, at 71–85. This is also the conception of local governments’ role in pursuing urban sustainability evident from G.A. Res. 71/256, *supra* note 8, ¶¶ 48, 91.

²⁹See Grigolo, *supra* note 15, at 71–74; MARIUS PIETERSE, RIGHTS-BASED LITIGATION, URBAN GOVERNANCE AND SOCIAL JUSTICE IN SOUTH AFRICA: THE RIGHT TO JOBURG 6 (2017).

and to hold them accountable for, rights-compliance.³⁰ This will hinge also on the manner in and extent to which rights apply to those non-state actors over which this power is asserted.³¹

C. Corporations, Rights, and the City

Much of the day-to-day business of urban local governance involves the simultaneous wielding of differently blended private and public powers.³² While manifestations of this vary considerably across different constitutional, legal, urban, and suburban settings, corporations perform a variety of de facto “governmental” functions in cities all over the world. It follows that, in many cities, corporations and their activities have a significant, and sometimes determining, influence over local wellbeing, as well as significant capacity to both realize and infringe upon human rights.³³ While this is increasingly accepted and acknowledged, it has not typically been accompanied by shifts towards legal accountability of corporate actors for the modes and effects of their governance activities.³⁴

The normative content of rights, the obligations they impose, and the mechanisms through which they are enforced have all been developed with only states in mind.³⁵ International human rights law binds corporations and other non-state actors only indirectly where, in the course of complying with the doctrine of state responsibility and the obligation to protect rights, states impose rights-based obligations, or rights-based limitations, on the activities of, private parties through domestic law.³⁶

While there has been a gradual but definite shift—represented, for instance, by the UN Guiding Principles on Business and Human Rights,³⁷ the UN Global Compact,³⁸ and the “legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises” currently being prepared by an open-ended intergovernmental working group of the Office of the UN High Commissioner of Human Rights³⁹—towards

³⁰See Bulkeley et al., *supra* note 5, at 704–06, 709–10; Frug & Barron, *supra* note 1, at 11, 61; Pierre & Peters, *supra* note 4, at 72–75; Porras, *supra* note 4, at 557; Soohoo, *supra* note 14, at 261; *Towards the Localization of the SDGs, UNITED CITIES & LOCAL GOV'T* (“UCLG”)14–15 (2018), https://gold.uclg.org/sites/default/files/hlpf_2021.pdf; UNHRC, *supra* note 14, ¶¶ 12–15; 31–33.

³¹*Towards the Localization of the SDGs, supra* note 30, at 15; H.R.C. Res. 30/49, *supra* note 14, ¶¶ 21–22.

³²Aust, *supra* note 1, at 269–70; Blanco, *supra* note 28, at 123–26; Harding, Wilks-Heeg & Hutchins, *supra* note 3, at 984–87, 992; Pierre, *supra* note 4, at 374; Porras, *supra* note 4, at 554–55.

³³See, e.g., Bilchitz & Deva, *supra* note 2; ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS 195–99 (2006); TRACY-LYNN FIELD, STATE GOVERNANCE OF MINING, DEVELOPMENT AND SUSTAINABILITY 122 (2019); Ratner, *supra* note 2, at 461–62.

³⁴See, e.g., Andrew & Goldsmith, *supra* note 4, at 108–09; Louis J. Kotzé & Oliver Fuo, *Bridging the Public-Private Regulatory Divide: South African Mines and the Right of Access to Water*, 34 J. ENERGY & NAT. RES. L. 285, 293–95 (2016); Porras, *supra* note 4, at 555, 566.

³⁵CLAPHAM, *supra* note 33, at 8–9; Manisuli Ssenyonjo, *The Applicability of International Human Rights Law to Non-State Actors: What Relevance to Economic, Social and Cultural Rights?*, 12 INT’L J. OF HUM. RTS. 725 (2008).

³⁶See Bilchitz & Deva, *supra* note 2, at 25–26; CLAPHAM, *supra* note 33, at 237–39; Stephen Gardbaum, *Where the (State) Action Is*, 4 INT’L J. OF CONST. L. 760, 768–70 (2006); Patrick Macklem, *Corporate Accountability Under International Law: The Misguided Quest for Universal Jurisdiction*, 7 INT’L L. FORUM 281 (2005); Ratner, *supra* note 2, at 470; Ssenyonjo, *supra* note 35, at 725–26; Beth Stephens, *The Amorality of Profit: Transnational Corporations and Human Rights*, 20 BERKELEY J. OF INT’L L. 45, 58–62, 68–70 (2002).

³⁷*Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, U.N. HUM. RTS. (2011) https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciples_businesshr_en.pdf, annexed to the final report of the Special Representative of the Secretary General of the United Nations to the UNHRC on the “issue of human rights and transnational corporations and other business enterprises” (UN A/HR/176/31) and endorsed by the UNHRC in Res. 17/4 (16 June 2011).

³⁸United Nations Global Compact, *Ten Principles of the UN Global Compact*, <https://www.unglobalcompact.org/what-is-gc/mission/principles> (last accessed Apr. 13, 2022).

³⁹Office of the UN High Commissioner of Human Rights, *Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises*, draft, https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG_Chair-Rapporteur_second_revised_draft_LBI_on_TNCs_and_OBEs_with_respect_to_Human_Rights.pdf (last accessed Apr. 13, 2022).

acknowledging that corporations bear certain responsibilities in relation to human rights, these responsibilities have thus far been articulated predominantly as negative obligations to respect rights and refrain from harming them and predominantly in relation to civil and political rights.⁴⁰

In a world where state functions are increasingly privatized and where corporations have gained tremendous power and influence, this state of affairs is increasingly regarded as untenable.⁴¹ In particular, whether and to what extent human rights remain relevant in cities and towns, where the shift from government to governance has tangibly entailed the surrender of state control over many urban systems, processes, and spaces to private actors, hinges to a large extent on whether and to what extent human rights, especially positive obligations inherent to socio-economic rights, can be made to apply to non-state entities.⁴²

Beyond the obligation to respect rights, which States—under pressure from their own international-law obligations⁴³—have come to enforce against corporations with increasing robustness, corporate human rights compliance in domestic legal systems currently tends to take place within predominantly voluntary, self-regulatory, and soft-law paradigms.⁴⁴ Specifically, the corporations' often significant role in socio-economic rights fulfillment tends to be conceptualized and harnessed either as a purely contractual undertaking, a positive externality of business activity or a charitable pursuit—albeit articulated as “corporate social responsibility.”⁴⁵ There is of course much to be said for such soft enforcement and voluntary, or self-imposed, compliance, especially in the hyper-contextual, relational, and constantly shifting urban governance environment.⁴⁶ But there is a clear need to better articulate, coordinate, and institutionalize a range of appropriate, enforceable, positive, civil, socio-economic, and political human rights obligations for at least those corporations embroiled, whether directly or indirectly, in the day-to-day business of urban governance.⁴⁷

While international human rights law remains resolutely state-focused in its operation, a growing number of domestic constitutional systems around the world provide, in different ways, for the operation of human rights norms against non-state entities. Without getting caught up in

⁴⁰David Bilchitz, *The Ruggie Framework: An Adequate Rubric for Corporate Human Rights Obligations?*, 12 SUR-INT'L J. HUM. RTS. 199, 203–07 (2010); CLAPHAM, *supra* note 33, at 324–28; Kotzé & Fuo, *supra* note 34, at 296–99; Aoife Nolan, *Holding Non-State Actors to Account for Constitutional Economic and Social Rights Violations: Experiences and Lessons from South Africa and Ireland*, 12 INT'L J. OF CONST. L. 61, 92 (2014); Ssenyonjo, *supra* note 35, at 726, 748. For a thorough historical overview of the UN human rights systems' increasing engagement with the obligations of business, see Bilchitz & Deva, *supra* note 2, at 5–10.

⁴¹See, for example, Bilchitz, *supra* note 40, at 199; Bilchitz & Deva, *supra* note 2, at 25; CLAPHAM, *supra* note 33, at 327; Adam McBeth, *Privatising Human Rights: What Happens to the State's Human Rights Obligations When Services are Privatized?*, 5 MELB. J. OF INT'L L. 133 (2004); Nolan, *supra* note 40, at 90–92; Justine Nolan, *The Corporate Responsibility to Respect Human Rights: Soft Law or Not Law?*, in HUMAN RIGHTS OBLIGATIONS OF BUSINESS: BEYOND THE CORPORATE RESPONSIBILITY TO RESPECT? 138 (Surya Deva & David Bilchitz eds., 2013).

⁴²Bilchitz & Deva, *supra* note 2, at 25–26; David Bilchitz, *A Chasm Between 'Is' and 'Ought'? A Critique of the Normative Foundations of the SRSG's Framework and the Guiding Principles*, in HUMAN RIGHTS OBLIGATIONS OF BUSINESS: BEYOND THE CORPORATE RESPONSIBILITY TO RESPECT? 107, 124–31 (Surya Deva & David Bilchitz eds., 2013); CLAPHAM, *supra* note 33, at 327, 439; Kotzé & Fuo, *supra* note 34, at 296–99; Ssenyonjo, *supra* note 35, at 739–40.

⁴³Ssenyonjo, *supra* note 35, at 738, 747. On the extent of states' international-law responsibility to ensure that businesses respect socio-economic rights and to provide remedies for corporate socio-economic rights violations, see Comm. on Economic, Social and Cultural Rights (UNCESCR), General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities U.N. Doc. E/C.12/GC/24 (2014).

⁴⁴See Nicola Jägers, *Will Transnational Private Regulation Close the Governance Gap?*, in HUMAN RIGHTS OBLIGATIONS OF BUSINESS: BEYOND THE CORPORATE RESPONSIBILITY TO RESPECT? 271, 296–98 (Surya Deva & David Bilchitz eds., 2013); Nolan, *supra* note 40, at 91–92.

⁴⁵See Bilchitz, *supra* note 42, at 126; Kotzé & Fuo, *supra* note 34, at 294–95; Nolan, *supra* note 41, at 139, 143.

⁴⁶See Jägers, *supra* note 44, at 299–300; Macklem, *supra* note 36, at 285; Nolan, *supra* note 41, at 140; Picciotto, *supra* note 4, at 98–100; Ratner, *supra* note 2, at 531–32; Stephens, *supra* note 36, at 69, 80.

⁴⁷See Bilchitz, *supra* note 40, at 210–11; Bilchitz, *supra* note 42, at 124–32; Bilchitz & Deva, *supra* note 2, at 25–26; Nolan, *supra* note 41, at 160–61; Ssenyonjo, *supra* note 35, at 725.

the various terminological tangles—involving distinctions, contradictions, and overlap between the direct and/or indirect, “vertical,” “horizontal,” or “diagonal” application of rights to a plethora of “state/quasi-state actions” or “special relationships”—that typically predominate rights-application-discussions,⁴⁸ these tend to involve one or more of the following trends.

First, constitutional systems not uncommonly extend the human rights obligations of the state to non-state actors who—whether by creation, by contract or by their own volition—supplant or assist the state in carrying out its obligations, including by fulfilling a range of socio-economic functions, such as essential service delivery, conventionally associated with the state.⁴⁹ Second, an increasing number of systems provide for the direct application of constitutional or international human rights obligations to private entities in contexts where this is justified by, for instance, the nature of the right and the obligations inherent to it, the nature, extent and impact of the power exercised by the duty-bearer, and/or the nature of the relationship between the duty-bearer and rights-bearer(s).⁵⁰ Third, there is the widespread indirect imposition of international human rights obligations, typically—but not exclusively—the obligation to respect rights on private entities by domestic statute, in giving effect to the state’s obligation to protect rights against infringement by such entities.⁵¹ Finally, several systems require that provisions of domestic statutory and common law which structure “private” relationships—in, for instance, contract law, property law, or corporate law—adhere to human rights and are interpreted or developed accordingly, thereby shaping private interactions.⁵²

But even in systems that provide for the possibility of corporate rights-based accountability in most or all of these ways, actual crystallization and consistent enforcement of “horizontal” human rights norms have been haphazard and uneven. This is often because human rights norms and obligations are themselves couched in state-centered logic, or are conceived and institutionalized in a one-size-fits-all, top-down fashion that belies the myriad and shifting contexts in which private entities exercise state-like power or assume public responsibilities.⁵³ Moreover, like international human rights law, many domestic systems provide only for the “horizontal” enforcement of negative obligations, and only in relation to civil and political rights.⁵⁴

⁴⁸For a cogent exposition of the spectrum of domestic horizontal application arrangements and corresponding terminology, see Stephen Gardbaum, *The ‘Horizontal Effect’ of Constitutional Rights*, 102 MICH. L. REV. 387 (2003).

⁴⁹US “state action” doctrine would hold the state liable for human rights infringements by private parties in this context. In other systems, private entities in this position could themselves be bound by (and liable for infringements of) the rights in question. See, for instance, discussion by CLAPHAM, *supra* note 33, at 486–94; Gardbaum, *supra* note 48, at 412–22; Danwood Mzikenge Chirwa, *The Horizontal Application of Constitutional Rights in a Comparative Perspective*, 10 LAW, DEM. & DEV. 21, 22–26 (2006); Hessbruegge, *supra* note 2, at 47–62; Ratner, *supra* note 2, at 497–500.

⁵⁰For instance, section 8(2) of the South African Constitution determines that “a provision of the Bill of Rights binds a natural or juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.” See Chirwa, *supra* note 49, at 37–45; Nolan, *supra* note 24, at 78–80; Marius Pieterse, *Indirect Horizontal Application of the Right to have Access to Health Care Services*, 23 S. AFR. J. HUM. RTS. 157, 161–63 (2007). Blanket direct ‘horizontal’ application of rights to private conduct is provided for in the constitutions of, for instance, Romania and Bulgaria; see CLAPHAM, *supra* note 33, at 442.

⁵¹This is the most common and least controversial form of imposing “horizontal” human rights obligations and flows from the international-law doctrine of state-responsibility. See Hessbruegge, *supra* note 2, at 27–34; Macklem, *supra* note 36, at 281–84; Ssenyonjo, *supra* note 35, at 729–33. Strong domestic internalizations of this include article 40(3) of the Irish Constitution which provides that the state is obliged to “defend and vindicate” citizens’ rights, and has sometimes been judicially interpreted to imply that rights bind private parties – see Chirwa, *supra* note 49, at 34–37; Gardbaum, *supra* note 48, at 412; Nolan, *supra* note 40, at 67–72.

⁵²The German doctrine of “*drittwirkung*”—whereby rights bind the legislature, executive and judiciary and must thus underlie and inform the content, operation and enforcement of all law, including private and commercial law—is a strong incarnation of this. See Chirwa, *supra* note 49, at 30–34. But variations of the “seepage” of rights into “ordinary” law through statutory interpretation or common law development are found in many states, including Canada, Hong Kong, South Africa, Spain and the United Kingdom. See discussion in Chirwa, *supra* note 49, at 46; CLAPHAM, *supra* note 33, at 499–521.

⁵³Gardbaum, *supra* note 36, at 774–76; McBeth, *supra* note 41, at 148–49; Picciotto, *supra* note 4, at 90.

⁵⁴Nolan, *supra* note 40, at 92–93.

While human rights law's predilection for universality is usually a strength, this has in most systems complicated the elaboration of horizontal obligations—and, in many ways, precluded the development of a workable regime on the human rights obligations of business—because of the myriad real differences between corporations and between the ways in which they are positioned in relation to different rights.⁵⁵ In the urban context, for instance, there are important differences between the position of a multinational industrial giant whose operations cause major socio-economic and environmental rights infringements in a small town beholden on the corporation for its economic survival, on the one hand, and that of a medium-sized domestic enterprise necessitated by local government failure in a similar town to assume temporary responsibility for essential service provision in an area housing the majority of its workers, on the other. Yet, the continued centering of nation-states in domestic constitutional law renders local rights regimes incapable of perceiving and appropriately responding to these differences.

Horizontal rights enforcement is further often caught up in jurisdictional tangles with, for instance, differences in the rights regimes of a multinational corporation's home and host states,⁵⁶ and is frequently compromised by the operation of international trade and investment regimes, which are triggered by national agreements that frequently insulate investors from rights-based accountability and thereby exacerbate existing power imbalances between weak local governments and the well-resourced corporations on whose investment, skill and employment they depend.⁵⁷

It is important to appreciate that corporations are enabled to exploit the confluence of multinational location and local economic dependence to evade human rights accountability in this manner precisely because of the resolute state-centeredness of most domestic constitutional law systems, which leave local government simultaneously dependent on and subject to the externalities of multinational corporate power while locating both rights-based accountability and attendant regulatory power only at a national level.⁵⁸

D. Urban Local Government as Site for Rights-Based Corporate Accountability

It is increasingly acknowledged that local government presents both the appropriate scale and the appropriate context(s) to think about human rights' operation against different conglomerations of public and private power. This is not only because of local government's position as the steering or coordinating actor between various public and private stakeholders in many contemporary devolution and governance arrangements, but also because state-action-type corporate assumption of public functions are often distinctly local in character.⁵⁹ Moreover, because local government typically tends to control the physical space in which mobile capital "lands"—which positions it well to regulate the physical activities of such capital⁶⁰—and also presents the logical space for community engagement and civil society partnership, it is the scale at which the interests of rights-bearers can most concretely and self-evidently be connected to corporate activities and balanced against corporate interests.⁶¹ Above all, because local government is more often than not the space where public power fragments and disperses, to be shared with or surrendered to a

⁵⁵Jody Freeman, *Extending Public Norms Through Privatization*, 116 HARV. L. REV. 1285, 1288, 1327 (2003); Ratner, *supra* note 2, at 493–94.

⁵⁶See Ssenyonjo, *supra* note 35, at 740.

⁵⁷See Frug & Barron, *supra* note 1, at 36–52; Hessbruegge, *supra* note 2, at 88; Porras, *supra* note 4, at 584–85, 590–91; Ssenyonjo, *supra* note 35, at 731, 737.

⁵⁸Ran Hirschl & Ayelec Shachar, *Spatial Statism*, 17 INT'L J. OF CONST. L. 387, 419–20, 438 (2019); see also HIRSCHL, *supra* note 20, at 185–91.

⁵⁹See Porras, *supra* note 4, at 541, 563; Ratner, *supra* note 2, at 513–15.

⁶⁰See generally, Richard C. Schragger, *Mobile Capital, Local Economic Regulation, and the Democratic City*, 123 HARV. L. REV. 482–541 (2009).

⁶¹See Oomen, *supra* note 26, at 4, 14–15; Oomen & Baumgärtel, *supra* note 1, at 614; Soohoo, *supra* note 14, at 268–70; H.R.C. Res. 30/49, *supra* note 14, ¶¶ 8, 12, 21, 26, 30, 51–54.

variety of non-state actors, it is arguably also the appropriate space to contemplate the concomitant apportioning of public responsibilities.⁶²

Many of the UN Guiding Principles on Business and Human Rights, for instance, seem obviously to be operational locally in the contemporary urban governance context. If appropriately empowered, local government can at once protect residents from corporate violations of human rights and shepherd non-state governance actors towards the achievement of human rights by mainstreaming human rights in all—public and public/private—governance fora, partnerships, institutions, processes, and governance instruments.⁶³ It is further well-placed, for instance, to conduct rights-audits of corporate activity within its boundaries, to incentivize rights-conducive business practices, to require alignment of corporate social responsibility endeavors to local needs, to monitor and oversee private-sector provision of essential municipal services, and to insist on rights as preconditions for entering into a variety of contractual arrangements—such as investment agreements, procurement contracts, or service delivery agreements.⁶⁴

Indeed, local government provides an appropriate spatial scale, geographical space, and institutional context within which to flesh out the notion of the corporate “sphere of influence,” a term frequently employed in soft-law instruments on corporate social responsibility to demarcate corporations’ obligations towards communities with reference to the locality, scale, and contexts within which corporate power determines rights enjoyment. Depending on the nature of their operations, their size, the resources they command and their interactions with other powerful social actors, a corporation’s “sphere of interest”—and, thereby, the potential reach of its responsibilities under “local” human rights law—may be limited to employee relations within its own workplace or may extend to the socio-economic fate of entire towns or regions.⁶⁵ While currently criticized for its vagueness,⁶⁶ the concept allows for linking corporate human rights responsibilities not only to a state-action-doctrine-like assessment of their public role but also to an assessment of their actual impact on the enjoyment of rights in a variety of geographical settings. As such, if properly anchored within an understanding of place-specific governance arrangements, it can usefully underlie elaborations of corporate duties to, for instance, perform rights-related due diligence and impact assessments in the course of their everyday operations.⁶⁷

Local government is further, in most systems, the level of state at which institutions and processes for public participation in governance are located and operate. Typically one of the points where the realization of socio-economic rights connects concretely to the exercise of civil and political rights, local public participation processes further present context-sensitive, relational, and flexible spaces within which to ensure and cement corporate accountability towards residents and civil society by providing for dialogue, negotiation—of, for instance corporate entry-agreements or community-benefit agreements—information-sharing, reporting back and resolving disputes. As such, these processes present a particularly potent space for embedding human rights in a range of public/private governance practices.⁶⁸

⁶²See Macklem, *supra* note 36, at 286–89; Pierre & Peters, *supra* note 4, at 79; Bertie Russel, *Beyond the Local Trap: New Municipalism and the Rise of the Fearless Cities*, 51 ANTIPODE 989, 100–02 (2015).

⁶³See, e.g., Richard Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 COLUM. L. REV. 365, 377, 471, 429, 473 (1999); Freeman, *supra* note 55, at 1327–29; Martha Minow, *Public and Private Partnerships: Accounting for the New Religion*, 116 HARV. L. REV. 1229 (2003); Picciotto, *supra* note 4, at 98–99.

⁶⁴UN GUIDING PRINCIPLES, *supra* note 37, ¶¶ 1–3, 5, 7–9; see also Freeman, *supra* note 55, at 1323, 1327; Jägers, *supra* note 44, at 300–03; Minow, *supra* note 63, at 1259; H.R.C. Res. 30/49, *supra* note 14, ¶¶ 30–41.

⁶⁵See Bilchitz, *supra* note 42, at 127, 134–35; Ratner, *supra* note 2, at 449–50, 496–524.

⁶⁶See Bilchitz, *supra* note 40, at 211.

⁶⁷See, for instance, Bilchitz & Deva, *supra* note 2, at 15; Ssenyonjo, *supra* note 35, at 747; *Guiding Principles on Business and Human Rights*, *supra* note 37, ¶¶ 15–20.

⁶⁸See FIELD, *supra* note 33, at 288, 310–12; Freeman, *supra* note 55, at 1326–27; Oomen, *supra* note 26, at 14–15; Minow, *supra* note 63, at 1260, 1262; SCHRAGGER, *supra* note 3, at 155–75; *Towards the Localization of the SDGs*, *supra* note 30, at 10.

As has been explicated above, the extent of urban local government's ability to commit itself to the realization of human rights, and to wield such legal powers as are at its disposal in ways that co-opt non-state urban governance actors in its jurisdiction to this commitment, depends in the first instance on the extent of its autonomous constitutional and legal powers. While the global turn towards devolution has gone a long way towards enjoining and equipping cities for rights-based governance, many cities remain on perilously unsteady constitutional footing in this regard.

Ran Hirschl shows that, in addition to being overwhelmingly state-centered, many constitutional systems around the world remain moored in outdated concepts of spatial governance that date back to a pre-urbanization era and that accordingly regard local governments as subservient creatures of statute with no or limited autonomous powers.⁶⁹ Faced with challenges of contemporary urban governance, city governments lacking sufficient constitutional and fiscal powers are relegated to either closely align themselves with national or regional political interests or to cozy up to corporate power active in their jurisdictions.⁷⁰ In the latter instance, urban local government's steering power over corporate actors is logically compromised. As Hirschl explains,

[I]f cities secured enhanced constitutional standing vis-à-vis other levels of government and gained direct taxation powers, their structural dependency on big business would diminish, in turn bolstering cities' bargaining capacity vis-à-vis the corporate world, and subsequently increase the likelihood that cities adopt policies that cater to all their constituencies and residents, across the spectrum of wealth and income.⁷¹

But beyond enhanced constitutional status and increased explicitly bestowed legal powers over other urban governance actors, an urban local government inclined to use such—hard or soft—regulatory powers at its disposal towards the realization of rights also requires the legitimizing force provided by the fact of its accountability to human rights obligations.⁷² In the absence of itself being directly answerable to international human rights norms, local government depends on national government to accede to relevant treaties and to appropriately domesticate their obligations in order to be able to avail itself of the insulation provided by human rights obligations for regulatory activities.⁷³

In particular, while international human rights law holds forth a wide range of civil, political, economic, social, and cultural rights and also recognizes an array of collective rights, their institutionalization through domestic constitutional law remains skewed towards the vindication of individual, civil, and political rights. This means that the content of domestic human rights enforcement frequently fails to optimally resonate with the context of urban governance, where concerns associated with socio-economic, environmental, and development-related rights not uncommonly dominate.⁷⁴ This is exacerbated by the hostility, in many constitutional systems, to the “horizontal” application of—especially socio-economic—rights to non-state actors, which constrains redistributive possibilities of local regulation.⁷⁵

⁶⁹See HIRSCHL, *supra* note 20, at 9–10, 18–19, 34–37, 48–52; see also Fassbender, *supra* note 18, at 1209; Hirschl & Shachar, *supra* note 58, at 408–9.

⁷⁰See Frug & Barron, *supra* note 1, at 57–60; Hirschl & Shachar, *supra* note 58, at 418–20; HIRSCHL, *supra* note 20, at 18, 181–82, 230–31.

⁷¹HIRSCHL, *supra* note 20, at 183; see also Oomen & Baumgärtel, *supra* note 1, at 629.

⁷²See Soohoo, *supra* note 14, at 260–61, 274; H.R.C. Res. 30/49, *supra* note 14, ¶¶ 22–25.

⁷³See HIRSCHL, *supra* note 20, at 170, 186.

⁷⁴See Chueca, *supra* note 15, at 108, 119; Thomas Coggin & Marius Pieterse, *Rights and the City: An Exploration of the Interaction Between Socio-Economic Rights and the City*, 23 URB. FORUM 257 (2012); Michele Grigolo, *Towards a Sociology of the Human Rights City: Focusing on Practice*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES 276 (Barbara Oomen et al., eds., 2016); Grigolo, *supra* note 15.

⁷⁵Frug & Barron, *supra* note 1, at 33–34; Gardbaum, *supra* note 36, at 760–61; Macklem, *supra* note 36; Nolan, *supra* note 40, at 64–65; Ssenyonjo, *supra* note 35, at 725.

But this is not inevitable. For example, in the author's home jurisdiction of South Africa, the constitutional entrenchment of justiciable socio-economic rights, alongside constitutional provisions explicitly tasking local government with many aspects of their delivery, have combined with the urban predilections of civil society organizations to result in litigation around socio-economic rights—in particular, the right of access to housing and rights pertaining to essential services—being waged near-exclusively against urban local governments. This has caused courts' socio-economic rights jurisprudence to attain a particular “good urban governance” flavor and has forced urban local governments to mainstream rights in their governance practices.⁷⁶ Meanwhile, the South African Constitution's permissive stance towards the horizontal application of civil, political and socio-economic rights appears to create ample space for local governments to enlist corporate and other citizens in their efforts to adhere to their constitutional obligations.⁷⁷

Elsewhere, cities are filling remaining accountability and empowerment gaps in this respect precisely by reaching around nation-states to the international human rights system. This is best illustrated by the recent and growing phenomenon of “human rights cities,” where local authorities appeal to the normative force of international human rights standards, regardless of whether these have been acceded to by their national governments, to both assert and legitimate their powers over urban spaces, inhabitants, and processes. By voluntarily assuming and locally adopting international human rights obligations and mainstreaming these into urban governance policies and processes, cities such as Utrecht, Barcelona, Bogota, and Porto Alegre have at once asserted a rights-based governance vision—often around socio-economic rights—as a way of enhancing their autonomy and capacity in relation to national governments, and relied on these self-imposed obligations to justify rights-based exercises of regulatory power over non-state actors.⁷⁸

This “urbanization” of human rights is not only playing out at an institutional level—also, for instance, through increased establishment of city-based human rights institutions such as local rights ombuds—,⁷⁹ but is even affecting rights' normative content. “New” rights peculiar to urban contexts—such as rights to, for instance, refuge, public presence, mobility, inclusion, and participation in various urban governance processes—are increasingly being formulated, enacted, recognized and enforced in and against cities in different parts of the world,⁸⁰ from where they “. . . gradually and often somewhat informally get wired into national law and therewith transform the rights-bearing subject that is the citizen.”⁸¹ Moreover, increasing interaction and networks between city governments are leading these rights to attain global credence and meaning,⁸² and they are growingly finding expression in supranational soft law instruments such as the World Charter on the Right to the City (2001) and the European Charter for the Safeguarding of Human Rights in the City (2000).⁸³

⁷⁶See Coggin & Pieterse, *supra* note 74; PIETERSE, *supra* note 29, at 45–68, 92–105.

⁷⁷See Marius Pieterse, *Corporate Power, Human Rights and Urban Governance in South African Cities*, 25 POTCHEFSTROOM ELECTRONIC L. J. (2022).

⁷⁸See Frug & Barron, *supra* note 1, at 28; Grigolo, *supra* note 15, at 68, 72–73; HIRSCHL, *supra* note 20, at 162–64; Oomen, *supra* note 26, at 4–9; Oomen & Baumgärtel, *supra* note 1, at 625; Soohoo, *supra* note 14, at 257; H.R.C. Res. 30/49, *supra* note 14, ¶¶ 42–44.

⁷⁹See Chueca, *supra* note 15, at 111; Soohoo, *supra* note 14, at 260–61; H.R.C. Res. 30/49, *supra* note 14, ¶¶ 38–41.

⁸⁰On these rights, many of which find their theoretical basis in Henri Lefebvre's “right to the city”, see Chueca, *supra* note 15, at 118; Grigolo, *supra* note 74, at 286–87; Grigolo, *supra* note 15, at 76–81; PIETERSE, *supra* note 29, at 4–6; Purcell, *supra* note 5, at 1930–31; 212–19; *Towards the Localization of the SDGs*, *supra* note 30, at 106; H.R.C. Res. 30/49, *supra* note 14, ¶¶ 46–48.

⁸¹SASSEN, *supra* note 3, at 320–21.

⁸²See Aust, *supra* note 1, at 272–73; Frug & Barron, *supra* note 1, at ; Oomen & Baumgärtel, *supra* note 1, at 627. On the role of transnational urban networks and their relationship with human rights and sustainable development see Aust & Du Plessis, *supra* note 1 at 5–8; Riegner, *supra* note 16, at 45–46.

⁸³This is traced and consolidated in UCLG, GLOBAL CHARTER-AGENDA FOR HUMAN RIGHTS IN THE CITY (2012).

While not—yet—legally binding, it has been suggested that these normative developments may over time “generate a different form of normativity, entrapping cities (and possibly also other actors) in a net of commitments which may slowly harden into something akin to binding law.”⁸⁴ While this is to be welcomed, the time has perhaps also come for binding international human rights law to meet cities halfway.

E. Conclusion

In moving with the shift from government to governance in contemporary urban contexts, where various hybrids of public and private power are exercised inconsistently and relationally, at different times and across a shifting patchwork of institutional and spatial contexts, there is a need for contextual, relational, malleable, and temporal understandings of rights as well as for flexible and dynamic enforcement mechanisms against a range of public, private, and public/private entities.⁸⁵ Especially when it comes to socio-economic rights, international human rights law’s global scale and associated predilections for universality and verticality, make it of limited use in this regard.⁸⁶ Moreover, the overwhelming nation-state-centeredness of both international human rights law and the constitutional systems tasked with translating it into domestic reality may be accused of “inhibiting our legal imagination when it comes to offering innovative solutions to changed realities on the ground.”⁸⁷

In considering the role of human rights in holding public, private, and hybrid public/private power accountable in the course of multiple, fragmented contemporary urban governance arrangements, this article has shown the need for international human rights law to both engage more directly with its operation at local government level and with its horizontal dimensions in relation to corporate involvement in urban governance. This in turn requires attention to be paid to the manner in which domestic systems of constitutional law localize international human rights norms alongside the manner in which they legally empower local government to exercise autonomous control over the governance of urban space.

The leading normative instruments guiding sustainable development in the urban era, such as the SDGs and the New Urban Agenda, at once emphasize the importance of empowering subnational and city-level governments,⁸⁸ the need for “an enabling, fair and responsive business environment based on the principles of environmental sustainability and inclusive prosperity”⁸⁹ and the need to connect these in functional and accountable governance partnerships. To this end, the New Urban Agenda endeavors to “encourage appropriate regulatory frameworks and support to local governments in partnering with communities civil society and the private sector to develop and manage basic services and infrastructure, ensuring that the public interest is preserved and concise goals, responsibilities and accountability mechanisms are clearly defined.”⁹⁰

While ostensibly sidelined in these instruments, human rights law has a crucial role to play in this regard. But this role cannot remain confined to the conventional “vertical” enforcement paradigm and cannot remain to be played only at the scale of the nation-state. Just as state-power has fragmented, privatized, and dispersed, rights-enforcement and accountability must too.

⁸⁴Aust, *supra* note 1, at 273; see also Oomen, *supra* note 26, at 4.

⁸⁵See Khulekani Moyo, *Privatisation of the Commons: Water as a Right; Water as a Commodity*, 22 STELLENBOSCH L. REV. 804, 821 (2011); Picciotto, *supra* note 4, at 90, 98, 102.

⁸⁶Moyo, *supra* note 85, at 820; Nolan, *supra* note 40, at 92–93.

⁸⁷See Hirschl and Shachar, *supra* note 58, at 438; see also HIRSCHL, *supra* note 20, at 164.

⁸⁸See G.A. Res. 71/256, *supra* note 8, ¶¶ 15(c), 87, 89; see also Addis Ababa Action Agenda of the Third International Conference on Financing for Development, U.N. ¶ 34 (2015) https://sustainabledevelopment.un.org/content/documents/2051AAAA_Outcome.pdf.

⁸⁹G.A. Res. 71/256, *supra* note 8, ¶ 58; see also *id.*, ¶¶ 82, 126, 133, 153; G.A. Res. 70/1, *supra* note 7, ¶ 67; Addis Ababa Action Agenda, *supra* note 88, ¶¶ 35–37, 48.

⁹⁰G.A. Res. 71/256, *supra* note 8, ¶ 91.

International human rights law has arguably resisted this because it seems to require sacrificing a measure of its universality. Certainly, the conventional top-down institutional mechanisms for rights enforcement have been struggling to accommodate the plethora of contexts in which rights are implicated in the course of urban governance and the myriad of ways in which different private actors are implicated in their infringement or realization.⁹¹

This article has shown that significant strides can be made towards addressing international human rights law's blind spots when it comes to ensuring corporate accountability for rights-violations and corporate responsibility for rights realization, by addressing its simultaneous reluctance to directly engage the local sphere of government. This pertains not only to the institutionalization of human rights at a local government level—which requires attention to be paid, *inter alia*, to the powers, functions and competencies of local governments, their human and financial resource capacity and their relations with national and regional spheres of government—but also to the manner in which local government is simultaneously enjoined to observe human rights and empowered to co-opt and steer non-state urban governance actors in this observance: “The challenge is . . . to link power and accountability in multiple dimensions and geographies that allow the city to exert as much capacity as it can to promote the well-being of its inhabitants.”⁹²

⁹¹See Aust & Du Plessis, *supra* note 1, at 5–6; Freeman, *supra* note 55, at 1288, 1327.

⁹²Bulkeley et al., *supra* note 5, at 710; see also Picciotto, *supra* note 4, at 102; Porras, *supra* note 4, at 600–01; *Towards the Localization of the SDGs*, *supra* note 30, at 9.