

Myth or Lived Reality

Claire Boost · Andrea Broderick ·
Fons Coomans · Roland Moerland
Editors

Myth or Lived Reality

On the (In)Effectiveness of Human Rights

Maastricht Centre for Human Rights



NETHERLANDS NETWORK FOR
HUMAN RIGHTS RESEARCH



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Introduction

The adoption by the United Nations of the *Universal Declaration of Human Rights* in 1948 marked the beginning of the modern system of protection of human rights at the international level. Since that date, much has been said about the effectiveness or, rather, the ineffectiveness of human rights. Indeed, the notion of the ‘effectiveness’ of human rights has long been the subject of sustained and fierce (academic) debate throughout the international human rights community.

The perceived (in)effectiveness of human rights relates not only to institutional challenges at the international level but also to national implementation mechanisms and processes. Questions have also been raised regarding whether the individual benefits from the normative guarantees contained in human rights law, and whether human rights themselves, can be effectively translated into practice in a meaningful way. Indeed, the first chapter of this book by Suzanne Egan draws attention to the fact that claims regarding the ineffectiveness of the human rights regime at the international and regional levels, and the lack of domestic impact, are heavily disputed by certain scholars.

This edited volume stems from the proceedings that occurred during the 2019 Annual Research Day (*Toogdag*) of the Netherlands Network for Human Rights Research, which took place at Maastricht University in June 2019. The *Toogdag* was organised jointly by the editors of this volume, who seized the opportunity to ask the various scholars who contributed to the conference to turn their presentations into a collective volume.

This volume presents the main tensions that lie at the heart of the opposing views about the effectiveness or ineffectiveness of human rights. The contributions to this book add novel perspectives to the existing literature in the field, employing a variety of methods, as will be outlined below. Ultimately, this book seeks to answer fundamental questions stemming from the notion of ‘effectiveness’. Those questions include: what does the essence of ‘effectiveness’ really mean in connection to human rights? what criteria or indicators can be used to measure effectiveness in that context? and, what does effective human rights activism entail? Furthermore, how can rights as legal constructs be translated into better outcomes?

The collection of academic contributions presented in this volume addresses the effectiveness of human rights institutions and processes in a range of settings. To varying degrees, the book extends in its material scope to institutions and processes in the United Nations (UN), the Council of Europe and at the national level. The findings of the contributions incorporated in this book are intended to contribute to a better understanding of, not only the authority, legitimacy and effectiveness of international (quasi-judicial) bodies in the field of human rights, but also of global non-governmental organisations and domestic actors.

Crucial in determining effectiveness or ineffectiveness of human rights are the goals that have been set by various actors and stakeholders, which serve as benchmarks for assessing effectiveness. These goals can be the protection or fulfillment of rights, achievement of a policy objective, or a higher degree of human rights awareness among the general public. The specific goal would also depend on who the actor is that has set the goal(s).

A researcher needs to know or perhaps to design the criteria on the basis of which effectiveness can be measured. It is clear that these types of issues and questions often require an interdisciplinary approach, in which legal and social science perspectives should be included in the research design.

This volume is divided into a three-part structure, broken down into three distinct thematic strands. The aim of this division—both at the *Toogdag* and for this book—was to identify the (in)effectiveness of human rights demonstrated at different levels of society. The intention was also to capture the interactions between these three levels—interactions that are demonstrated in all seven chapters of this book—and to examine the role of these interactions in the realisation of human rights in practice. Part I of this volume deals with a variety of international institutions, mechanisms and actors, and the extent to which they affect the materialisation of human rights, while Part II of the book addresses the question of the effectiveness of human rights law through implementation at the domestic level. Finally, Part III of this book addresses human rights at the individual level, taking account of individual experiences and individual agency, in particular. In sum, this collective edited volume reflects on key questions as to whether human rights can actually be transformed into a lived reality for various individuals, and it examines the diverse strategies that can be employed in pursuing that objective.

This volume is intended to add to the vast array of literature that already exists regarding the notion of the ‘effectiveness’ of human rights. It can, however, be distinguished from the existing literature by virtue of the fact that it not only brings together scholars at different stages of their careers, including Ph.D. researchers, but that it also incorporates contributions that adopt different methodological perspectives. Those methods include quantitative analysis with regard to the domestic effectiveness of the right to education; qualitative methods; and legal doctrinal methods, combined with socio-legal research. Employing those methods, the volume incorporates themes as wide-ranging as the effective realisation of the human rights of refugees in Turkey by local governments, to the domestic enforcement

of the European Social Charter in light of recent judicial practice and the role of individual agency of local government officials in the realisation of human rights at the local level. Since the topics covered and the approaches chosen by the authors are so diverse and hard to compare, the editors have decided not to present overall conclusions to the questions identified above. The book rather presents factors and developments that are typical for the process of assessing the (in)effectiveness of the human rights regime in various settings and contexts.

There is no doubt that the existence of international and national human rights mechanisms and processes does not automatically mean that individuals or groups of individuals, especially victims of human rights violations, benefit from the normative guarantees contained in human rights law. Furthermore, without effective enforcement at the domestic level, and active participation at the individual level, human rights are meaningless. The various contributions made to this book reflect on those sentiments and put forward novel viewpoints on the issue of effectiveness as a whole.

The struggle towards ensuring the effectiveness of human rights has taken on increased importance in recent times, against the background of the global COVID-19 pandemic. It is more important than ever that, as a global human rights community, activists and scholars continue to debate the new and existing challenges that arise in securing effective human rights realisation, and that they put forward feasible and innovative solutions that can serve to meet those challenges.

The context and background to this collective edited volume are certainly worth noting, since some of the contributions included in this book were completed right at the beginning of the outbreak of the COVID-19 pandemic, in March 2020, and others were finalised in the months that followed. The finishing touches were put to the volume in September 2020, at a time when it remained very unclear as to how the pandemic was going to evolve. However, there was no opportunity for the various authors who contributed to this volume to update or amend their contributions in light of the pandemic. There is no doubt that the COVID-19 pandemic has profoundly impacted on the human rights landscape as a whole. This overwhelming public health crisis has turned into a real human rights crisis in many parts of the world. The current Secretary-General of the United Nations, António Guterres, recently issued a call-to-action consisting of a compilation of best human rights practices with regard to the COVID-19 response and recovery initiatives. His words ring truer than ever before in the struggle towards ensuring the effectiveness of human rights:

This is not a time to neglect human rights; it is a time when, more than ever, human rights are needed to navigate this crisis in a way that will allow us, as soon as possible, to focus again on achieving equitable sustainable development and sustaining peace.

With these words ringing in our ears, we—as editors—feel that this collective volume presents a good picture of the various ways in which the effectiveness of human rights realisation is not only hindered but also fostered at the domestic and international levels, and it paves the way for solutions to emerge to answer the call-to-action highlighted above.

Maastricht, The Netherlands
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Roland Moerland

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Abbreviations

AI	Amnesty International
AKDEM	Centre for Supporting the Family, Women and the Disabled
CRC	Convention on the Rights of the Child
CRCee	Committee on the Rights of the Child
DGMM	Directorate General of Migration Management
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ESC	European Social Charter
ESCR-Net	International Network for Economic, Social and Cultural Rights
EU	European Union
GADEM	Gaziantep Centre for the Support of the Family
GIZ	German Society for International Cooperation
HRBA	Human Rights-Based Approach
HRW	Human Rights Education
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IMF	International Monetary Fund
IO	International Organisation
IOM	International Organization for Migration
KOR	Workers' Defence Committee
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institutions
OHCHR	United Nations Office of the High Commissioner for Human Rights
OP-ICESCR	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
PAH	Plataforma de Afectados por la Hipoteca (Platform of Mortgage Affected People)
RevESC	Revised European Social Charter
ROPCiO	Movement for the Defence of Human and Civic Rights
SALAR	Swedish Association of Local Governments

SC	Spanish Constitution
TBB	Turkish Union of Municipalities
TUIK	Turkish Statistical Institute
UN	United Nations
UNCEDAW	United Nations Committee on the Elimination of Discrimination Against Women
UNCESCR	United Nations Committee on Economic, Social and Cultural Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children’s Emergency Fund
UPR	Universal Periodic Review
US	United States
VCLT	Vienna Convention on the Law of Treaties
WOOC	Work on Own Country Rule
YUKK	Turkish Law on Foreigners and International Protection