

**A HUMAN RIGHTS PERSPECTIVE ON
THE MILLENNIUM DEVELOPMENT GOALS**

**Paper prepared as a contribution to the work of the
Millennium Project Task Force on Poverty and Economic Development**

-by-

Philip Alston

**Special Adviser to the United Nations High Commissioner for Human Rights on the
Millennium Development Goals**

and

**Professor of Law, and Faculty Director, NYU Law School,
Center for Human Rights and Global Justice**

Table of Contents

	Paragraph
Executive Summary	
1. Introduction	1
Overcoming the Historical Legacy	9
2. Human Rights Critiques of the MDGs	18
Responding to the Critiques	24
The Privatization of Rights	29
3. Comparing the MDGs with Human Rights	34
(a) The Legal Status of the MDGs versus that of Human Rights	35
(b) The Internationalization of Responsibility	43
(c) The Role of Civil and Political Rights within the MDG Framework	50
(d) The Relationship Between Economic, Social And Cultural Rights and the Equivalent MDGs	62
(i) Poverty as a Human Right	63
(ii) The Role of ESCR	71
4. The Role Currently Accorded to HR in MDG Reporting	75
(a) The Theory	75
(b) The Practice	84
(c) Explaining the Gap between Theory and Practice	96
5. Can ‘Human Rights-based Approaches’ Provide the Solution?	101
6. Identifying the Key Characteristics of an Integrated HR/MDG Approach at the National Level	124
7. Monitoring and Accountability: The Role of the UN’s Human Rights Mechanisms	139
The Roles of the CHR and of Special Rapporteurs vis-à-vis MDGs	145
Treaty Bodies MDGs Role	152
MDGs and the Treaty Bodies up to 2004	156
A Future Role for the Treaty Bodies	157
Recommendations to the treaty bodies	165
8. Conclusions	173

Executive Summary

In a number of respects there would appear to be a natural fit between the MDGs and a limited range of specific human rights norms. Yet neither the human rights nor development communities have unreservedly embraced a marriage between the two approaches. It is important to understand why. The first set of reasons is of general applicability and concerns the historical division between the two communities, reflecting different disciplinary assumptions, the influence of the Cold War, and competing institutional and jurisdictional claims. In recent years efforts to promote 'rights-based approaches to development' have made considerable headway within the UN system, but progress has been more impressive on paper than in practice. It has, however, served to underscore the potential commonality of efforts to ensure HR/MDG synergies.

The second set of reasons explaining the reluctance relates to concerns on the part of the human rights community about the nature of the MDG project as a whole. Not much can be done about essentialist critiques that would impugn any selective, numerically focused, and essentially pragmatic approach such as the MDGs. But other human rights-related critiques can and should be addressed. They are directed at: the perceived technocratic nature of the process, the limited goals which are set (e.g. only halving poverty, rather than eliminating it), the lack of a full human rights framework especially in relation to civil and political rights, a failure to address the private sector, the perception that a commitment to the MDGs would absorb too much of the time, energy and resources currently devoted to human rights campaigns (including those focused on women's rights and children's rights), and inadequate monitoring and follow-up.

This report suggests that most, if not all, of these critiques can be dealt with by specific, targeted measures. It then reviews some of the reasons why the development community should consider making the necessary adjustments so that the MDG campaign can benefit fully from the advantages offered by incorporating the human rights dimension. These include: the advantage of building upon legal obligations already voluntarily undertaken by governments which have ratified human rights treaties; the mobilizational potential of rights discourse; the added value and credibility brought to the MDGs by applying norms of non-discrimination and equality to ensure that aggregated approaches do not neglect individuals; the specificity given to vague terms such as participation and empowerment when particular civil and political rights norms are invoked; the potential role of human rights institutions which already exist at the national level in many countries; and the potential contribution of increasingly sophisticated international accountability mechanisms in the human rights arena.

The paper then examines the legal status of the MDGs, and particularly the claim that they reflect customary international law and are thus binding on all governments. It concludes that a plausible claim can be made that at least some of the MDGs enjoy this status. It is, however, very difficult to argue that a human rights-based obligation has emerged which would require wealthy countries to provide specific assistance to any developing country which is unable to meet the economic and social rights of its citizens. On the other hand, the case is potentially much stronger in favour of the gradual

emergence over time of such an obligation linked to the MDG commitments which have been reaffirmed so often by developed countries and the much more limited, specific and feasible nature of any such obligations. An important step in this direction is to report upon and monitor specific undertakings given by developed countries in the MDG context.

The paper next considers the relationship between the MDGs as currently promoted and the two sets of human rights. In relation to civil and political rights the text of the Millennium Declaration contains a significant number of important references but these are not reflected in any of the specific MDGs. By taking the BWI's Global Monitoring Report 2004 as a test case the study concludes that there remains strong resistance to the inclusion of human rights within the MDG framework, that while rule of law-type issues are addressed they are defined restrictively, and that instrumentalism – rather than principles or obligations – is the main reason why such issues are included at all. In relation to economic, social and cultural rights, consideration is given to whether poverty is, per se, a human rights violation, the extensive overlap between these rights and the key MDG targets is noted, and the importance of an approach which integrates both sets of human rights is emphasized.

The paper then considers the role currently accorded to human rights in reporting on the MDGs. It contrasts the markedly human rights-conscious approach reflected in the theory – represented by the UNDP *Human Development Reports* and the UNFPA *State of World Population 2004 Report* – with the treatment accorded in practice to human rights, as illustrated by the great majority of national MDG reports, in which the issue is either absent or rates a tokenistic reference. The few exceptions serve mainly to demonstrate what could be done but is not. The paper considers some of the reasons for this neglect and argues that a failure to remedy it will reinforce the concerns of those who see the MDGs as a human rights-free zone.

Against this background the report tackles the two major issues of how the MDG process can be made more human rights-aware and how the human rights framework can enhance the effectiveness of the MDG initiative. Several critiques of existing 'human rights-based approaches' are identified: they not infrequently tend to gloss over the complexities, idealize the characteristics of the human rights mechanisms, are overly demanding, and are poorly attuned to the need for operational priorities. Human rights advocates need to prioritize, stop expecting a paradigm shift, and tailor their prescriptions more carefully. The key elements in a new approach to ensuring effective complementarity between HR and the MDGs are: (i) overt recognition of the relevance of human rights obligations; (ii) ensuring an appropriate legal framework; (iii) encouraging community participation but doing so in a realistic and targeted way; and (iv) promoting MDG accountability mechanisms. All of these elements should avoid being too prescriptive. Instead, what is needed is faith in the dynamism and self-starting nature of the rights framework once it is brought inside the gates.

The final part of the paper notes the new emphasis on accountability in the development literature which highlights the potential relevance of international human rights

accountability mechanisms. But research shows that the UN Commission on Human Rights and its Special Rapporteurs have taken minimal account of the MDGs, despite a rhetorical embrace. The treaty bodies which monitor states' human rights obligations have also largely ignored the MDGs and the paper sets out various ways in which this might be changed.

Principal recommendations

- (i) There are clear synergies and commonalities of interest between the human rights and development communities in relation to the MDGs. Both sides need to make a greater effort to identify an acceptable *modus operandi* (para. 16).
- (ii) The human rights community should take the MDGs much more seriously. It is the single most important and pressing initiative on the international development agenda and provides an opportunity for collaboration which has no parallel (para. 16).
- (iii) Human rights proponents have put forward many critiques of the MDGs. These should be acknowledged (paras. 18-23), and systematically responded to (paras. 24-28).
- (iv) The role of private actors, especially corporations, in relation to the MDGs should not be neglected. The main responsibility rests with the state and the Human Rights Committee has spelled out ways in which the situation can be approached (paras. 29-33).
- (v) The claim of at least some of the MDGs to the status of customary international law norms should be promoted within the MDG framework (paras. 40-42)
- (vi) The best way to advance the claim that developed countries have international responsibility for ensuring that all states can meet the MDGs is for the industrialized countries to accept clear reciprocal undertakings (para. 49).
- (vii) Efforts to meet the MDGs should be conceptualized and presented within a clear human rights framework. While the Millennium Declaration itself does this, the vast majority of analyses produced by the development community entirely neglect this dimension (paras. 50-61).
- (viii) While the slogan that 'poverty is a violation of human rights' is potentially justified, the legal foundation for such a statement is a qualified one and care should be taken in using the slogan (paras. 63-70).
- (ix) Wherever possible the various MDGs ought to be presented in terms that highlight their status as universally recognized economic, social and cultural rights (e.g. the right to education and the right to food) (paras. 71-74)
- (x) The MDG National Reports reveal a highly unsatisfactory approach to the human rights dimensions of the issue (paras. 84-95). Efforts should be made to ensure that

future reports contain a separate section addressing a specific list of human rights issues that are of essential relevance to the MDG campaign (paras. 96-100).

(xi) Human-rights based approaches to development have made a major contribution to understanding the issues involved but for the most part they are overly ambitious and fail to set clear priorities (paras. 101-123).

(xii) The way forward is for the human rights component of the MDG initiative to emphasize four elements. Thus, MDG strategies and reports should:

- expressly recognize the relevance of the country's national and international human rights obligations to the MDG effort (paras. 126-31);
- define what is considered to be the appropriate legal framework within which the MDG targets can be met in a context which respects human rights (para. 132);
- affirm that broad-based and meaningful participation in decision-making will be sought, and spell out what this means in practice. Where any international human rights body has indicated that any aspect of the freedom of individuals to participate is currently limited in the country concerned this should be noted and addressed (para. 135); and
- identify domestic institutional arrangements for monitoring MDG processes and outcomes. Ideally a clear role in this respect should be accorded to the national human rights commission or equivalent agency (paras. 136-38).

(xiii) Monitoring and accountability mechanisms are essential, as has been emphasized very clearly in the major reports by the World Bank, IMF and UNDP published in 2004 on the PRSP initiative. These organizations should be urged to consider how the relevant and extant human rights monitoring arrangements might be relevant in this respect.

(xiv) In this context the UN Commission on Human Rights, its relevant Special Rapporteurs and the UN human rights treaty monitoring bodies have important roles to play to ensure that human rights monitoring is adapted to take full account of the MDG commitments. Since their contributions to date have been disappointing it is recommended that: the Commission should adopt an explicit resolution calling for closer collaboration, where appropriate, between the various mechanisms that report to it and the MDGs; the Special Rapporteurs should focus more systematically on the MDGs in all aspects of their work and especially in the context of country missions; and that the treaty bodies should adopt a range of initiatives designed to promote the MDGs while also reinforcing their own efforts (paras. 165-72).

A HUMAN RIGHTS PERSPECTIVE ON THE MILLENNIUM DEVELOPMENT GOALS

Philip Alston

1. Introduction

1. Are the aims, assumptions and processes of the Millennium Development Goals [MDG] initiative entirely consistent with those of international human rights law? Or are they more accurately characterized as being: (ii) potentially complementary; (iii) not necessarily inconsistent; (iv) duplicative; or (v) competing alternatives? All of these characterizations have been put forward in the now burgeoning literature.

2. The 2003 *Human Development Report* made the case in a nutshell for the first option: The Millennium Development Goals not only ‘mirror the fundamental motivation for human rights’, but they also ‘reflect a human rights agenda – rights to food, education, health care and decent living standards’.¹ And the UN High Commissioner for Human Rights reported in 2002 that ‘[t]he strategies to reach the Millennium human rights goals and the Millennium development goals reinforce and complement each other.’ Indeed, in her view, [m]ost if not all of the strategies to achieve the [MDGs] operate within a human rights framework.²

3. Indeed it is often assumed that the MDGs and human rights are not just significantly overlapping and mutually reinforcing, but fully compatible and complementary. They are seen as a natural fit, driven by the same objectives, using very similar means, facing common obstacles, and relying on closely related constituencies and political dynamics in order to make progress. As Jahan has put it, the MDGs ‘are solidly anchored, both in terms of substance as well as process, into human rights’.³

4. It would be a mistake, however, to take this love-in too far, either at the conceptual or empirical level. In fact the MDGs reflect only a partial human rights agenda and a clear challenge exists to ensure that there is full mutual compatibility. Merely wishing it so will not make it so. While an ideal version of the MDGs is certainly compatible, a barebones version which is sometimes put forward might accord only a token role to civil and political rights and endorse a very limited portion of the overall economic, social and cultural rights agenda. Thus the differences need to be acknowledged and strategies need to be identified for ensuring authentic compatibility.

5. If the natural synergies that would seem to exist within the MDG/HR equation are to be realized there is a great deal that needs to be done. The existing situation is far from exploiting those synergies and it is by no means clear that the constituencies which

¹ UNDP, *Human Development Report 2003*, pp. 27 and 29.

² UN doc. E/2002/68, para. 10.

³ Jahan, Selim, ‘Millennium Development Goals and Human Rights’, presentation to Deutsche Stiftung für internationale Entwicklung, 2002, p.1, available at www.dse.de/ef/human_rights/jahan.htm

support and promote either of the two sides of the equation are yet convinced of the value of close collaboration.

6. On the MDG side, references to human rights are relatively fleeting, rarely rely on any precise formulations and generally content themselves with an occasional reference to the Universal Declaration of Human Rights or the Declaration on the Right to Development. As we shall see below, there are precious few references to human rights terms or concepts in the 60 or so national MDG reports prepared to date.⁴ And in these and other analyses there seems to be an enduring predilection for the use of alternative terms, one of the principal attractions of which is that they have no fixed normative content, at least when seen from a human rights perspective. Terms such as governance, equity, participation, dignity have much to be said for them but unless rooted in identified standards their meaning is conveniently open-ended, contingent, and too often subjective.⁵

7. The response to the MDGs on the human rights side has not been perfect either, as detailed below. The MDGs have drawn remarkably limited attention in the context of either the General Assembly's deliberations on human rights matters, or those of the Commission on Human Rights. While some of the latter's Special Rapporteurs have made occasional reference to the Goals, their focus has been neither systematic nor sustained, and none of them has sought to make strong use of them as a basis for his or her work. The human rights treaty monitoring bodies have also paid only scant attention to the Goals, and human rights NGOs, while not hostile, seem to have been wary of them. The major NGOs have acknowledged their existence but done little more, many women's rights groups have engaged directly with them but a significant number has also expressed strong reservations about the desirability of full engagement, and children's rights groups have generally failed to make systematic use of the MDGs, although an increasing number of critiques is starting to emerge.

8. Nevertheless, the resulting picture is far from being entirely negative and there are some grounds for optimism. The strong support manifested in UNDP's *Human Development Report 2003*, the openness of the Millennium Project to human rights in general and women's rights in particular, and the extent to which there really is a natural potential fit between the two frameworks, should lead us to see the overall picture as one in which both sides are open to closer collaboration. The shared interests between the MDGs and the HR framework are strong and the challenge is to devise means by which to effectively realize the potential synergies. The conclusion reached by the *Human Development Report 2000* remains entirely apposite to the MDG/HR relationship:

⁴ See paras. 84-95 below.

⁵ See Philip Alston, 'What's in a Name: Does it Really Matter if Development Policies Refer to Goals, Ideals or Human Rights?', in H. Helmich (ed.), *Human Rights in Development Co-operation* (Utrecht, OECD Development Centre and Netherlands Institute of Human Rights, 1998) 95; and James Gatthi, 'Good Governance as a Counter Insurgency Agenda to Oppositional and Transformative Social Projects in International Law,' *5 Buffalo Human Rights Law Review* (1999) 107.

Human development and human rights are close enough in motivation and concern to be compatible and congruous, and they are different enough in strategy and design to supplement each other fruitfully. A more integrated approach can thus bring significant rewards, and facilitate in practical ways the shared attempts to advance the dignity, well-being and freedom of individuals in general.⁶

Overcoming the Historical Legacy

9. In many respects the relative reluctance of both sides on the HR/MDG equation to embrace one another is no more than a continuation of the separate paths taken by human rights and development issues in the course of the first 45 years or so of the post World War II era. In fact, the analysis contained in the present report provides a convenient and useful lens through which to survey the current state of the HR and development relationship in general.

10. For several decades after the proclamation of the UN Charter, with its path-breaking human rights provisions, and the subsequent adoption of the Universal Declaration of Human Rights in 1948, the energy invested by the international community into the promotion of a development agenda and a human rights agenda resulted in products that were deliberately kept entirely apart from one another. Rare was the development context in which it was considered appropriate, productive, or politically acceptable to make mention of human rights considerations. Development economists, as well as the leading institutional generators of development policy, did little to undermine the resulting artificial separation.

11. The end of the Cold War and a range of associated factors opened the doors to change, and the work of Amartya Sen in some respects epitomized the new approach. Within the United Nations system UNICEF took the lead in the mid-1990s in linking children's rights and operational development programs⁷ and in embracing the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women as foundations for the Organization's work. This process also has relevance to the focus of the present paper because in some respects the goals that had been agreed upon at the 1990 World Summit for Children were subsequently understood and promoted in terms of the specific legal obligations undertaken by countries which had ratified the CRC.

12. UNDP's *Human Development Reports* were also at the cutting edge from 1990 onwards in terms of bringing human rights issues in out of the cold. In particular, the publication of the *Human Development Report 2000*, which developed the theme of human rights and development in considerable depth, constituted a definitive watershed by bestowing an essential legitimacy on efforts to explore and understand the links between the two policy agendas. These innovations were also reflected elsewhere in the

⁶ UNDP, *Human Development Report 2000*, p. 19

⁷ This was formalized in an Executive Directive No. 1998-04, issued by the Executive Director of UNICEF in 1998. See generally Urban Jonsson, *A Human Rights Approach to Development Programming* (Nairobi, UNICEF Eastern and Southern Africa Regional Office, 2003).

international development community. The much-cited World Bank report *Voices of the Poor*,⁸ based on interviews with over 60,000 persons and the subsequent *World Development Report 2000/2001* highlighted new approaches to poverty analysis. While the latter's approach was built upon the three 'pillars' of opportunity, empowerment and security, the former served to highlight the importance of addressing questions of empowerment and not only the availability of goods and services.⁹ The ten 'assets and capabilities' identified by the interviewees in the *Voices* report had very clear analogues within the human rights framework. In the past few years this evolution in thinking has given rise to a substantial number of efforts within and among UN agencies designed to promote a creative synthesis between the human rights and development approaches. These are epitomized in the 'Common Understanding on the Human Rights Based Approach to Development Cooperation' adopted in 2003¹⁰ at a meeting involving some ten UN agencies and a wide range of other development agencies,¹¹ which gave an imprimatur of sorts to such analyses and approaches. The three main elements of the 'Common Understanding' were:

1. All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
 2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
 3. Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.¹²
13. But despite the adoption of such statements and programmatic efforts to give them substance, the level of engagement on both sides has nevertheless continued to be uneven at best. In a recent analysis Darrow and Tomas concluded that the 'continued credibility of rights-based approaches demands a higher degree of conceptual rigour and

⁸ D. Narayan and P. Petesch (eds.), *Voices of the Poor: From Many Lands* (World Bank, 2000); D. Narayan, R. Chambers, M. Shah, and P. Petesch (eds.), *Voices of the Poor: Crying Out for Change* (World Bank, 2002); and R. Patel, K. Schafft, A. Rademacher, and S. Koch-Schulte (eds.), *Voices of the Poor: Can Anyone Hear Us?* (World Bank, 2002).

⁹ World Bank, *World Development Report: Attacking Poverty* (2000/2001).

¹⁰ See 'The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies', in *Report of the Second Interagency Workshop on Implementing a Human Rights-based Approach in the Context of UN Reform*, (Stamford, USA, 5-7 May, 2003), available at <http://www.humanrights.se/svenska/Common%20Understanding%20FN%202003.pdf>

¹¹ They included: FAO, ILO, OHCHR, UNAIDS, UNDP, UNESCO, UNFPA, UNICEF, UNIDO, UNIFEM, World Bank, WFP, WHO. *Ibid.*

¹² *Ibid.*, Attachment 1.

clarity than has prevailed in the past, along with a frank appraisal of their relative strengths and limitations.’¹³

14. We return below to some of the reasons why the apparent embrace of human rights-based approaches to development have a long way to go if they are to succeed in transforming practical approaches pursued by international agencies and their national level interlocutors.¹⁴ For present purposes, it must suffice to note that while the relationship between human rights and development is now much more clearly understood than was the case ten years ago, and a great deal has been written about human rights-based approaches to development, the operationalization of such approaches has been extremely uneven. As a result, many development practitioners remain unconvinced of their utility even when they are favourably disposed in principle.

15. It is against this general background that the HR/MDG debate has emerged in the past couple of years. Unsurprisingly, it is not a debate which is without its mutual suspicions on the part of the chief protagonists. But the process of rapprochement has at least begun and human rights NGOs, at both the national and international levels, are now paying some attention to the MDGs. Thus, for example, the Secretary-General of Amnesty International observed in her foreword to Amnesty’s *Annual Report 2004* that ‘there is a real risk that the targets of UN Millennium Development Goals ... will not be achieved because international attention and resources have been diverted to the “war on terror”.’¹⁵ But this statement also illustrates the tendency of human rights groups to see the MDGs through a particular lens which relates more to other issues that they are tackling rather than to view them in a sustained or programmatic ways which would relate the Goals to economic, social and cultural rights, or to civil and political rights. In the same report, Amnesty acknowledges that ‘despite the increasing discourse on the indivisibility of human rights, in reality economic, social and cultural rights are neglected, reducing human rights to a theoretical construct for the vast majority of the world’s population’.¹⁶ There are, nonetheless, grounds for limited optimism in the sense that some of the major human rights groups are beginning to focus their attention on economic and social rights.¹⁷

16. The result of the limited convergence between the MDG and human rights agendas is that while a potential commonality of interest has been acknowledged, not enough has yet been done in concrete terms to explore the exact nature of the relationship. From the perspective of the human rights community this amounts to a major missed opportunity given that the realization of the MDGs is arguably the single

¹³ Mac Darrow and Amparo Tomas, ‘Power, Capture and Conflict: A Call for Human Rights Accountability in Development Cooperation’, forthcoming in *Human Rights Quarterly*

¹⁴ See paras 101-123 below.

¹⁵ Secretary General’s message, ‘Why human rights matter’, in Amnesty International, *Annual Report 2004*, at <http://web.amnesty.org/report2004/message-eng>

¹⁶ *Ibid.*

¹⁷ Human Rights Watch in particular has begun to build up a substantial list of in-depth reports dealing with a gradually broadening range of economic, social and cultural rights issues. Human Rights First, however, has moved in the opposite direction by narrowing its focus to enable it to deal more directly with a narrower agenda focused in particular on human rights in the war against terrorism.

most important and pressing initiative on the international development agenda and that there are a great many possible points of mutual reinforcement. From a development perspective it is equally problematic given the extent to which the MDG agenda could be promoted in the context of the multifarious activities undertaken at both the domestic and international levels to promote respect for human rights. Yet there are obvious synergies and commonalities of interest between the two and there is potentially much to be gained if progress can be made towards identifying an acceptable *modus operandi*.

17. Much of the focus of this paper, therefore, is on the ways in which the human rights community might be encouraged or persuaded to mobilize itself to make a contribution to the MDG campaign and to ensure that the relevant effort is undertaken in ways which contribute to advancing the human rights agenda. Consideration is also given to the ways in which the development community might better respond to the critiques and concerns which have been expressed, from a human rights perspective, in relation to the MDGs.

2. Human Rights Critiques of the MDGs

18. Despite the constructive focus of the present analysis, the appropriate starting point is to recognize that, on both sides of the HR/MDG divide, various reasons have been put forward for maintaining a large degree of separation between the two agendas. Thus an effort to identify the opportunities for synergy, can usefully begin by recognizing the obstacles that exist. An acknowledgement of some of the main criticisms that have been made at least provides the opportunity to design a strategy which responds to, and seeks to take account of, at least some of the concerns.

19. Before looking in detail at some of the criticisms directed at the MDGs it should be noted that some essentialist critiques have been made that focus not on the details or the emphasis but on the very concept itself. The approach of the MDGs is essentially a narrowly focused one, quantitative in orientation and, despite the relative ambition of the Goals, more pragmatic than idealistic. One of the essentialist critiques, exemplified by the work of Thomas Pogge, posits that the MDGs do not go nearly far enough to warrant support. Pogge's analysis is focused in particular on the first of the Goals – that of halving world poverty rates by 2015. In his view, such a formulation is radically under-ambitious and actually constitutes a dramatic lowering of goals previously endorsed in United Nations fora such as the 1996 Rome Declaration on World Food Security. He goes as far as to characterize the embrace of the Goal as a crime against humanity on a particularly large scale, an allegation justified on the basis that the Goal amounts to the toleration or acceptance of the fact that by the year 2015 the world is prepared to countenance at least half of today's poor continuing to live in a state of poverty and deprivation.¹⁸

¹⁸ Thomas Pogge, 'Global Justice and the First UN Millennium Development Goal', available at <http://www.etikk.no/globaljustice/>

20. Another essentialist critique has been put forward by those who believe that the setting of goals such as the MDGs is not only wholly unrealistic in terms of international experience to date but is positively counter-productive in the sense of giving rise to false hopes and expectations which will inevitably be dashed. The latter critique is one leveled also against human rights and which has a rather distinguished pedigree starting with Edmund Burke's famous critique of the French Revolution for encouraging the common people to think that they had rights which they clearly did not. Maurice Cranston's critique of economic and social rights, first published in the 1960s, runs along similar lines. In his views such matters cannot be the subject of human rights because '[f]or a government to provide social security ... it has to have access to great capital wealth. ... The government of India, for example, simply cannot command the resources that would guarantee' each Indian an adequate standard of living.¹⁹ It is somewhat ironic in this context that the first MDG might in fact be met on a global basis precisely because of the progress made towards poverty alleviation by India and China.²⁰

21. Several authors have used comparable arguments to criticize the MDG focus on time-bound universal targets. Clemens, Kenny and Moss, for example, have warned that the MDGs could end up 'undermining the cause by over-reaching on the targets and over-selling the efficacy of aid',²¹ by 'making the perfect the enemy of the good',²² and by 'creating a climate of inaccurate pessimism about development and aid'.²³ The critique rests on several concerns. One is that many countries are bound to fail to meet the goals because of their ambitious nature and that, as a result, '[s]ome governments pursuing wise policies and making historically encouraging progress on development indicators could be weakened or delegitimized by the label of "failure" in 2015.'²⁴ Another is that countries which do not receive the scale of aid called for can pass the buck for the failures which are really due to their own poor policies. And finally, failure could 'undermine constituencies throughout the developing world for necessarily slow but essential reforms toward transparency, accountability, rule of law, and meritocracy.'²⁵ The authors conclude that the MDGs should be treated not as genuine time-bound targets but as 'reminders of the stark contrast between the world we want and the world we have', or in other words simply as a way of keeping the crisis of world poverty in the headlines.

22. In some respects the critiques represented by Pogge on the one hand and Clemens, Kenny and Moss on the other, might be seen to cancel one another out. The first points to a 'criminal' lack of ambition which tolerates continuing neglect, while the second argues that gradualism is the only way and that reminding governments and others of the

¹⁹ Maurice Cranston, 'Human Rights: Real and Supposed', in D.D. Raphael (ed.), *Political Theory and the Rights of Man* (1967) 43, at 51.

²⁰ Michael A. Clemens, Charles J. Kenny, and Todd J. Moss, *The Trouble with the MDGs: Confronting Expectations of Aid and Development Success* (Washington DC, Center for Global Development, Working Paper 40, 2004), p. 2.

²¹ *Ibid.*, p. 5.

²² *Ibid.*, p. 28.

²³ *Ibid.*, p. 30.

²⁴ *Ibid.*, p. 29.

²⁵ *Ibid.*, p. 30.

extent to which they are neglecting the fundamental needs of their citizens is potentially counterproductive. From a human rights perspective, Pogge is correct in insisting that governments should be held to the standards reflected in their international human rights obligations, although the dimension of resources cannot be left out of the equation. Clemens et al are correct in pointing to the potential disillusionment that will follow if the MDGs make little or no difference to the status quo despite efforts to depict them as being fundamentally different from all of the previous broken promises made by governments in international development fora. But of course that is precisely the point of the MDGs. They represent a quest to achieve what has not been achieved before, to transform expectations and results by virtue of a concerted, focused, mobilizing campaign at all levels to address the intolerable poverty and misery that has been permitted to persist for so long.

23. In addition to these criticisms, a range of human rights-specific critiques have been put forward. The following survey is designed to give a brief taste of the objections that have been raised.²⁶ Some are clearly more significant than others and an attempt to respond to those follows below.

(a) Processes of adoption

The MDG process is top-down and has not come from the grassroots up – it is, in effect, an imposition by governments acting through the UN General Assembly.

(b) Content

The MDGs do not contain any particular focus on rights, thus effectively sidelining rights as though they were a marginal or token issue.

From a human rights perspective the MDGs are problematic because of their selectivity which also involves the exclusion of certain rights.

The MDGs' preparedness to settle for half measures (e.g. halving poverty, instead of eliminating it) is incompatible with the HR commitment to the right of every individual and the need to seek comprehensive solutions.

The MDGs represent a one-size-fits-all prescription, and are not tailored to the specific needs of individual countries.

The MDG definition of poverty is too narrow, and its emphasis on specified goals takes poverty out of its broader context.

(c) Focus

²⁶ The two most useful critical sources are a Statement of the Asia-Pacific Civil Society Forum on Millennium Development Goals and the Eradication of Extreme Poverty and Hunger, Bangkok, 6-8 October 2003, reproduced in Center for Human Rights and Global Justice, *Human Rights Perspectives on the Millennium Development Goals: Conference Report* (New York, NYU Law School, 2003), Annex 3; and Women's International Coalition for Economic Justice, *Seeking Accountability on Women's Human Rights: Women Debate the UN Millennium Development Goals* (New York, 2004).

The MDGs are state-focused at a time when privatization and other policies are making the state less capable of responding.

(d) Relationship to other initiatives

MDGs are superfluous because the adoption of the alternative framework of a rights-based approach to development would take care of all of the issues.

The MDGs process will be used by governments and donors to distract attention from the real human rights issues.

The MDGs compete with other frameworks through which NGOs and civil society are already working effectively, such as the Beijing follow-up.

The MDGs framework does not address private actors, including transnational corporations, which often have a major role to play in MDG satisfaction or non-satisfaction.

(e) Monitoring and follow-up

The MDGs do not provide for any in-depth analytical review of progress achieved or of shortcomings.

Devoting time to the MDGs will distract energy and resources away from existing human rights mechanisms.

Responding to the Critiques

24. While these criticisms should certainly not be lightly dismissed, there are grounds for suggesting that many of them are able to be remedied and that the challenge can be situated in a broader context which would provide at least some of the reassurances sought by the human rights community before it is prepared to commit to the MDGs in any strong form. Perhaps the most important response is to emphasize that support for the MDGs by human rights groups need not involve tradeoffs by the latter. Nor should any such efforts be seen as part of a zero-sum game in which work done on MDGs detracts from that which can be done for HR. There are many ways in which the two can reinforce one another and in which a win-win outcome is possible. Take for example the struggle to ensure that women enjoy their basic economic and social rights. It is widely accepted that these rights have not received the attention they warrant and that many governments are reluctant to treat them as full-fledged human rights. The introduction of the MDG rationale for pursuing many of them brings in a reinforcing argument and helps to underscore the instrumentalist rationale which complements the principled or normative commitment to such rights. An MDG orientation should have the potential to involve new, previously unengaged groups in the human rights struggle, and, ideally, to mobilize additional resources which would be unlikely to be forthcoming on the basis of an exclusively human rights-based effort.

25. Another response is that many of the criticisms are directed against a lowest common denominator version of the MDG strategy, one that closes out considerations that are not explicitly stated in the Goals, one that insists on taking up all of the available space and excluding additional rights, one that demands the exclusive attention of civil society, and that will generate no additional resources, thus reducing the amount available for broader human rights endeavours. But, as will be argued below, it is both possible and desirable to insist on a contextualized MDG approach, one which is located within a human rights framework, one which is flexible and able to be adapted to local needs and changing circumstances, and one which will involve the mobilization of additional resources. In brief, there are versions of the MDG strategy which are potentially very human rights friendly.

26. In addition, much of the analysis in this and other reports is designed to identify measures that can be taken by the major players in the MDG initiative to reinforce the human rights dimensions of the project and to reassure the human rights community in various ways that the agenda is not going to be promoted in ways which ignore or downgrade human rights. As noted below there are various steps in this direction which could usefully be taken in the near future.

27. Another general observation which is prompted by many of the criticisms is that they tend to see the existing arrangements in relation to human rights through rose-coloured glasses, rather than recognizing that the HR framework actually shares a number of weaknesses, as well as strengths, with the MDG framework. In many cases the effort required is to strengthen both rather than to sing the praises of the former and then reject the latter as being inadequate. Several examples are pertinent in this regard. The suggestion that the MDG process is a top-down rather than a grassroots one is true in some respects, but equally it is true of the human rights that were first proclaimed in 1948 by the UN General Assembly in the Universal Declaration of Human Rights. Similarly some of the criticisms of the shortcomings of arrangements to monitor and promote the MDGs risk overstating the effectiveness of the human rights monitoring system, despite the obvious shortcomings which the latter continues to manifest. On the other hand, the MDG process, for all its non-treaty based informality, has a number of strengths which are not to be under-estimated including the possibility of significant domestic constituencies and the potential to mobilize groups such as international donors and multilateral agencies which have scarcely engaged at all with the human rights enterprise. Finally the allegation that the MDG project reflects a one-size fits all approach, can be leveled equally well against the aspirations of a universalist human rights regime. By the same token, however, both frameworks need to identify ways of tailoring and adapting what they have to offer, while not trading off the essentials.

28. Finally, there are also various problems that the two approaches have in common. One has just been mentioned, another is the risk of misuse by governments acting in bad faith, and another is the challenge of the 'privatization of human rights'. The latter is of sufficient relevance to warrant detailed attention in the present context.

The Privatization of Rights

29. As one author has noted critically in relation to the MDGs, ‘the identifying of MDGs relating to universal primary education, and maternal and child mortality in an environment in which these very services are being eroded by a combination of privatization and removal of subsidies ... seems rather ironic.’²⁷ But this objection can be made equally of both the MDGs and of the HR arena, at least to the extent that no attempt is made to ensure both that the state retains certain responsibilities in relation to public functions and to encompass in some way the activities of private actors. The issue is a major one and its implications have been recognized in the MDG context. Humphreys and Varshney have recommended in relation to conflict situations that specific measures be taken to address the major role played by what they term the international private sector. The policy priorities they recommend in relation to the MDGs are: (i) to make MDG-related development financing conditional upon respect by the recipients of guidelines for corporate action, in particular the ‘Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’ put forward in 2003 by the U.N. Sub-Commission on the Promotion and Protection of Human Rights; (ii) to establish a ‘monitoring and research unit’ within the framework of the UN’s Global Compact initiative; and (iii) to legislate for mandatory disclosure of payments to governments made by corporations involved primarily in the exploitation of natural resources.

30. While it is indeed essential to focus on the role of the private sector, it is unlikely to be sufficient to do so only to the extent that corporations are, or might be, involved in conflict zones. Much of the critique of privatization concerns the power now exercised by private actors exercising what were once seen to be public functions such as running schools, prisons, water, gas and electricity companies, public transport, or even welfare services. These settings are often exclusively national and may or may not involve conflict. Even when directed specifically at the challenge of responding to conflict situations, it will be necessary to have a set of policy recommendations which are of more general application and which address the crucial issues of why, when and how the private sector can be held directly accountable. Moreover, there are various specific measures which might be more appropriate in conflict situations, such as the invocation of the international criminal responsibility of corporate employees and arguably of the corporations themselves in situations involving war crimes or crimes against humanity.²⁸

31. Finally, policy prescriptions which seek to build on both the UN Norms and the Global Compact will need to explain how they aim to reconcile what are generally seen as competing or alternative policy approaches. In this regard the Global Compact is seen as being determinedly voluntary in nature, respectful of the unique role of the private sector and of the characteristics which distinguish it from the public sector, and as not seeking to impose any mandatory accountability *per se* on the private sector. The UN Norms are, for the most part, a response to what was seen as the inadequacy of such

²⁷ SA 7

²⁸ See Andrew Clapham, ‘The Question of Jurisdiction under International Criminal law over Legal Persons: Lessons from the Rome Conference on an International Criminal Court’, in M. Kamminga and S. Zia-Ziarifi (eds), *Liability of Multinational Corporations under International Law*, 139 (2000).

approaches. They are premised upon the assumption that human rights obligations can be imposed directly upon corporations, that some form of monitoring is indispensable, and that consequences, whether civil or criminal, ought to attach to failures to respect any of the Norms.

32. In the human rights framework, an effective response to the growing role of the private sector in relation to activities impinging upon the realization of the MDGs would involve several different elements. The first is an insistence upon the state as the actor with ultimate responsibility for ensuring respect for human rights. The Human Rights Committee has recently outlined the legal dimensions of this strategy in its General Comment No. 31. It began with the proposition that while the ICCPR cannot ‘be viewed as a substitute for domestic criminal or civil law’, states’ obligations nevertheless require them to protect individuals ‘not just against violations of Covenant rights by [State] agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities’. The latter qualification is of major importance and leaves open to debate the extent to which certain rights are indeed amenable. The Committee then goes on to offer a potentially more flexible version of a well-established and much cited approach according to which acts violating the Covenant would be characterized as violations by the State in circumstances in which the latter had permitted or failed ‘to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.’ The Committee also recalled several provisions of the Covenant which explicitly impose ‘positive obligations on States Parties to address the activities of private persons or entities.’ Amongst these it included ‘fields affecting basic aspects of ordinary life such as work or housing [in which] individuals are to be protected from discrimination ...’.²⁹

33. In other words, States are required to do their utmost to ensure that private actors do not violate human rights but the Committee is not prepared to go so far as to say that, in the absence of effective action by the State, international law imposes direct obligations on private actors such as private health care or water service providers, or transnational corporations. This may well prove to be an overly cautious approach in the years ahead as efforts evolve to ensure that such private actors are able to be held to some forms of direct accountability where there is no effective alternative.

3. Comparing the MDGs with Human Rights

34. This part of the paper deals with four main issues: the legal status of the MDGs compared with that of human rights norms; the extent to which responsibility for the realization of the MDGs can be internationalized so as to generate obligations upon third states; the role of civil and political rights within the MDG framework; and the relationship between economic, social and cultural rights on the one hand and the equivalent MDGs on the other. In the latter context, particular attention is paid to some

²⁹ General Comment No. 31 on Article 2 The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (adopted on 29 March 2004), UN doc. HRI/GEN/1/Rev.6 (2003) at 193, para. 8.

of the most frequently cited criticisms of the relevant category of human rights and the implications of those criticisms.

(a) The Legal Status of the MDGs versus that of Human Rights

35. One of the most important techniques by which innovative approaches become part of international law is through the evolution of customary international legal norms which, although usually not codified in treaty form, have become sufficiently widely accepted in practice that they are arguably binding upon governments despite their original intent not to bind themselves. At first glance it would seem relatively easy to make the case that the aim of ensuring that the MDGs are met within their respective time frames has assumed the status of a binding obligation upon governments by virtue of the fact that they have reiterated the commitment so frequently and on so many solemn occasions. When large numbers of heads of state or government congregate together, along with foreign ministers and other dignitaries, and solemnly declare their abiding commitment to meet a set of MDGs – as they did in the context of the 2000 Millennium Declaration, and again at both the Johannesburg World Summit on Sustainable Development and the Monterrey Consensus, each in 2002 – there would seem to be good reason to assume that they meant what they said and that they had thereby undertaken a form of obligation which should have some legal consequences. This, after all, is the trajectory that many commentators argue occurred in relation to the Universal Declaration of Human Rights, adopted on the agreed basis that it did not generate any legally binding obligations, and then claimed by many some decades later to have attained the status of customary law as a result of having been so consistently endorsed and invoked by governments of every kind.

36. It is not surprising therefore that Nankani, Page and Judge have suggested in a recent analysis that the MDGs ‘arguably have the status of international customary law’.³⁰ But before endorsing that position it is salutary to recall that the equivalent claim when made in relation to the Universal Declaration as a whole rather than to a limited range of its component rights is contested by many scholars and not widely endorsed by governments. But perhaps the MDGs are different, in the sense that their universality, their content, and their priority are not contested and in any event the aim is only to assist governments to achieve what they have said is in their own interests. Ironically the view that the Goals are binding has been put forward most vigorously by some of the private groups that are hostile to the UN and to what they see as its ambitions towards world government. In their view, the MDGs have been ‘automatically [incorporated] into international law’ as a result of the signature of the Millennium Declaration by 152 heads of state. The result is said to be to ‘give the UN all the authority it needs to move ahead and implement all of the changes that are included in the Declaration that do not require a change in the UN Charter.’³¹

³⁰ Gobind Nankani, John Page and Lindsay Judge, ‘Human Rights and Poverty Reduction Strategies: Moving Towards Convergence?’, in Philip Alston and Mary Robinson (eds.), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford, Oxford University Press, forthcoming 2005).

³¹ ‘UN Millennium Declaration—“Mandate” for global governance’, at http://www.discerningtoday.org/un_millennium_declaration.htm

37. There are several questions that need to be considered in this connection. The first is whether the various affirmations of the MDGs by governments appear to satisfy the criteria required for a norm to become a part of customary law. They are consistent state practice combined with *opinio juris* or an intention to be bound on the part of governments following the norm. Although a number of human rights norms are widely agreed to have achieved this status,³² the difficulty of applying the traditional criteria in order to evaluate the status of human rights norms has frequently been pointed out.³³

38. According to Christian Tomuschat '[t]his list of rights and/or forbidden acts and activities', which in his view includes the right to life, the prohibition of torture, the protection of personal freedom, and the prohibition of racial discrimination, 'is not so much based on actual stock-taking of the relevant State practice but rather on deductive reasoning: if human life and physical integrity were not protected, the entire idea of a legal order would collapse.'³⁴ If this test, which is by no means widely accepted, were applied then many of the MDGs, although not all, could certainly be argued to be essential to the protection of human life and physical integrity and would thus qualify as customary norms.

39. But there remains a problem which is that neither Tomuschat nor the other principal authorities in this area,³⁵ include any economic and social rights *per se* in their lists of customary norms. While the right to life has sometimes been interpreted as embracing such rights (for example in General Comment No. 6 (1984) of the Human Rights Committee, and in some of the case law of the Indian Supreme Court),³⁶ few courts or international human rights bodies have been prepared to follow the logic of such reasoning. This conservative approach has been defended mainly on the grounds that the right to life was intended to deal with direct rather than indirect threats to life and that the indirect threats such as hunger or lack of medical care were dealt with under the rubric of other rights such as the right to food. Since the MDGs relate most closely to economic and social rights, most commentators would conclude that since the latter have not become part of customary law, the former could not have either. In seeking to rebut the customary law claim, governments, which are always keen to avoid legal obligations in such matters, could be expected to emphasize the second, and equally important, element

³² In a famous judgment the International Court of Justice cited the prohibition of genocide, protection from slavery and racial discrimination. ICJ, *Barcelona Traction, Light and Power Company*, ICJ Reports (1970) para. 34. This list was subsequently expanded in the American Law Institute, *Restatement of the Law Third. The Foreign Relations Law of the United States*, vol. 2 (St. Paul, Minn.: American Law Institute, 1987) 161, § 702, which lists the prohibitions of genocide, slavery or slave trade, the murder or causing the disappearance of individuals, torture, prolonged arbitrary detention, systematic racial discrimination, or a consistent pattern of gross violations of internationally recognized human rights

³³ For an insightful recent analysis see Anthea Roberts, 'Traditional and Modern Approaches to Customary International Law: A Reconciliation', 95 *American Journal of International Law* (2001) 757.

³⁴ Christian Tomuschat, *Human Rights: Between Idealism and Realism* (Oxford University Press, 2004) p. 35.

³⁵ T. Meron, *Human Rights and Humanitarian Norms as Customary Law* (Oxford, Oxford University Press, 1989)

³⁶ For a description and critique see S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (New Delhi, Oxford University Press, 2002).

in the formation of customary law. Thus, they would say, even if it could be argued that the first element is satisfied by the practice generated by the three Declarations cited above, followed by a slew of other UN General Assembly, Economic and Social Council and other resolutions, it is not clear that these commitments have been made with the requisite intent to be bound (*opinio juris*).

40. But there are in fact strong arguments that can be made in favour of a more progressive analysis. In the first place the content of the MDG norms is much more limited than that of economic and social rights and there are good reasons for arguing that it is the actual or potential expansiveness of those rights (the right to an adequate standard of living, or the right to social security, for example) that deter governments from acknowledging their customary law status. By insisting on what is truly a bare minimum selection of those rights, the approach would be in line with what has occurred in relation to civil and political rights, in relation to which the more expansive and broad-ranging rights are generally assumed not to be part of customary law, while a narrow core has taken on that status. In the second place, it can be argued that the MDGs have been affirmed, reiterated, and restated in ways and forms and with greater frequency and insistence than economic and social rights have ever been. For all the normative strength that economic and social rights derive from the various treaty provisions that address them, it cannot be denied that parts of that corpus of rights continue to be the subject of strong resistance on the part of many governments, at least in practice. The MDGs on the other hand have been endorsed in an endless array of policy documents adopted not only at the international level but in the policies and programs of the national governments to whom they are of the greatest relevance.

41. At this point it might be helpful to revert to a slightly different form of Tomuschat's test. Rather than including any right, the absence of which would lead to the collapse of 'the entire idea of a legal order', the argument would be that no right should be excluded which is (i) indispensable to a meaningful notion of human dignity (upon which human rights are based) and (ii) the satisfaction of which is demonstrably within the reach of the government in question assuming reasonable support from the international community. It would seem that many of the MDGs have the virtue of satisfying these criteria without giving rise to great controversy. Halving the number of people who live in hunger, achieving universal primary education, eliminating gender disparities in education, assuring only minimum rates of child mortality, assuring very low levels of maternal mortality, and taking essential measures to combat HIV/AIDS and other major diseases, are all quantifiable goals which, if not met, involve the denial of fundamental rights to a large number of individuals. Governments of all types have not only committed themselves to such goals, but have insisted on their viability and feasibility if the appropriate policies are put in place. There has been no demur on the part of governments, even if scholars and development economists have expressed skepticism about the likelihood of governments living up to their promises, and have called for less ambitious objectives on the grounds of 'realism'.

42. On the basis of such an analysis it is submitted then that it can plausibly be claimed that at least some of the MDGs reflect norms of customary international law. A

more detailed analysis is beyond the scope of the present paper but it can be observed that the case would be most easily made in relation to the first six of the Goals. And parts at least of the seventh would also be strong candidates. The greatest resistance would come in relation to the eighth Goal, that calling for the ‘development of a global partnership for development’. In so far as the official development assistance (ODA) and related commitments are concerned, developed country governments would be expected to resist strongly any suggestion that there are specific obligations which have been enshrined in customary international law. Consideration is thus given to the status of claims relating to the internationalization of responsibility for the fulfillment of the MDGs.

(b) The Internationalization of Responsibility

43. It is suggested with increasing frequency that responsibility for meeting the MDGs should be internationalized so that third states would have some type of obligation to provide resources or other forms of assistance to ensure that a country which, despite its own concerted good faith efforts has shown itself to be unable to meet the goals. Such a linkage has been suggested in many of the proposals surrounding the MDGs and much of the debate at the international level has indeed been premised on the assumption that the international community, the UN and perhaps the BWI, or donor countries would step in and provide assistance in such circumstances. The question for present purposes, however, is whether it can be argued that this responsibility has risen to the level of an international obligation. As in the previous section of the paper, the argument needed to sustain such a claim would proceed on the basis that a customary law obligation of this kind has emerged. And indeed if we accept that at least some parts of the first seven Goals have achieved that status, it would follow in many respects that the eighth Goal is also a strong candidate, especially in light of the existence of an international duty to cooperate, as enshrined in the UN Charter and elsewhere.

44. This theme has been pursued in recent reports. In an expert report prepared for the Office of the High Commissioner for Human Rights, entitled ‘Draft Guidelines: Human Rights Approach to Poverty Reduction Strategies’, one of the features of a human rights approach is said to be ‘that responsibility for poverty reduction becomes a universal obligation’.³⁷ In addition the *Human Development Report 2003* has noted that ‘Human rights carry counterpart obligations on the part of others’ and, after citing Article 28 of the UDHR and Article 2 of the ICESCR, suggests that they establish ‘the counterpart obligations of governments and other actors to contribute to their realization.’³⁸ Three sources of an international obligation to cooperate are usually cited. They are the general undertaking given in the UN Charter; Article 28 of the Universal Declaration of Human Rights which provides that ‘[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized’, and the reference in Article 2(1) of the ICESCR to States Parties obligation ‘to take steps, individually and through international assistance and co-operation’. On these bases, it is argued that wealthy countries are obligated to support those poor countries which are unable from their own resources to satisfy the economic

³⁷ Geneva, Office of the High Commissioner for Human Rights, 2002, para. 13.

³⁸ UNDP, *Human Development Report 2003*, p. 28.

and social rights of their own citizens. Arguments that wealthy governments are thus left with no choice but to distribute large quantities of aid to other governments, whether they would choose to do so or not, have also surfaced from time to time in the debates over the right to development. In this context the MDGs assume a special significance.

45. It is perhaps not surprising that some of the industrialized countries, and especially the United States, have made a point of rejecting such suggestions. The U.S. has warned, for example, that economic and social rights ‘will not be achieved through shifting blame from a country's government to the international community’.³⁹ In other words, such rights do ‘not give rise to international obligations..., nor [do they] diminish the responsibilities of national governments toward their citizens’.⁴⁰ Concern that the obligation to cooperate would be extremely costly for a wealthy country such as the United States has been around at least since the US Senate Committee on Foreign Relations held hearings into the ICESCR in 1979, on which occasion Phyllis Schlafly asserted that, if ratified, the Covenant ‘would obligate us to take steps by all measures, including legislation, to distribute food all over the world and to finance a rising standard of living’ for other nations.⁴¹

46. But despite the concerns expressed by some governments, it must be emphasized that no UN body, nor any group of governments, has accepted the proposition that any given country is obligated to provide any specific assistance to any other country. Moreover, the persistent rejection of such a claim by developed countries, and the failure of even the most generous of donors to locate their assistance within the context of such an obligation, would present a major obstacle to any analysis seeking to demonstrate that such an obligation has already become part of customary law.

47. The nature of any obligation which could reasonably be argued to have emerged from the various commitments to cooperate internationally is, at best, a generic one which attaches to the undifferentiated international community. One illustration of this approach is the proposal emanating from the UN Commission on Human Rights’ former Independent Expert on the Right to Development, Arjun Sengupta, in which he proposes that ‘development compacts’ would be drawn up between developing countries and an unspecified and presumably largely self-identified group of donors. As long as the former fulfilled their rights-based commitments to the best of their ability and capacities, the latter group would undertake to mobilize the necessary resources. According to the proposal a given country would propose a program outlining both what needs to be done overall and what the country itself can achieve while a ‘support group’ would ‘examine the obligations specified and decide on burden-sharing among the members of the international community’ to provide the needed assistance. The scheme would enable the developing country, once it had satisfied its own commitments, to invoke certain ‘callable

³⁹ *Ibid.*

⁴⁰ Statement on the right to food, available at <http://www.humanrights-usa.net/statements/0421Food.htm>

⁴¹ Quoted in Henry Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (1st ed., 1996) p. 1139.

commitments' which would have been made in advance and made dependent upon the required progress by the government concerned.⁴²

48. It should be noted, however, that the emergence of a growing international consensus around the MDGs provides a strong argument in favor of revisiting this debate in the years ahead. This is a logical consequence of the emphasis within the MDG context on the mobilization of resources and the need to ensure that countries which are authentically committed to achieving the Goals and have done all within their power to do so, will be provided with the additional resources necessary to enable them to meet the MDGs. At some point, the reiteration of such commitments in documents such as the Millennium Declaration, the Johannesburg World Summit on Sustainable Development and the Monterrey Consensus, will start to provide a strong argument that some such obligation has crystallized into customary law. It will be difficult for countries to insist that they have persistently objected to such an evolution if they continue to affirm in so many contexts their commitment to ensuring that they will do whatever is necessary to assist developing country governments to achieve targets as tangible and clearly achievable as the MDGs.

49. At the end of the day, however, it must be conceded that progress towards agreement on the part of scholars that such an obligation has emerged is unlikely to have significant practical consequences. What is required is an acceleration in respect to the actual practice of donor countries. One important and useful step in that direction would be for the industrialized countries to provide clear reciprocal undertakings which will indeed ensure the mobilization of assistance when certain conditions are met and which would subject such undertakings as are given to a sustained system of monitoring and evaluation of the type that developing country governments are expected to accept in relation to the Poverty Reduction Strategy process, and in some ways under the MDG initiative.

(c) The Role of Civil and Political Rights within the MDG Framework

50. Since the end of the Cold War there has been widespread recognition of the indispensable role played by civil and political rights in enabling and facilitating the realization of economic, social and cultural rights. The argument has been well synthesized in the following comment:

An adequate conception of human development cannot ignore the importance of political liberties and democratic freedoms. Indeed, democratic freedom and civil rights can be extremely important for enhancing the capabilities of people who are poor. They can do this directly, since poor people have strong reason to resist being abused and exploited by their employers and politicians. And they can do this indirectly, since those who hold power have political incentives to respond to

⁴² The proposal is spelled out in Arjun Sengupta, Asbjørn Eide, Stephen Marks and Bård Anders Andreassen, 'The Right to Development and Human Rights in Development', A Background Paper for the Nobel Symposium organized in Oslo from 13-15 October 2003. It is also explored in the reports of the Independent Expert.

acute deprivations when the deprived can make use of their political freedom to protest, criticize and oppose.⁴³

51. While it must be acknowledged that the MDGs, as distilled into the specific goals and targets that have been the principal focus of the process, do not contain explicit civil and political rights dimensions (other than non-discrimination), those aspects are indeed present in the larger context of the Millennium Declaration.⁴⁴ The term ‘human rights’ occurs eight times in the text of the Declaration. In particular the Heads of State and Government proclaimed that ‘We will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights ...’. Indeed ‘freedom’ is the first of the ‘fundamental values’ listed in the Millennium Declaration. Before it moves to the second value (‘equality’) the Declaration defines freedom as follows: ‘Men and women have the right to live their lives and raise their children in dignity, free from hunger and the fear of violence, oppression or injustice. Democratic and participatory governance based on the will of the people best assures these rights.’

52. But this contextualization of the MDGs within a human rights framework, which emerges clearly from a reading of the Millennium Declaration, is not reflected in the great majority of analyses that have been undertaken on the subject. This is best illustrated by reference to one of the most important of the many reports devoted to the issue – the World Bank and IMF Development Committee’s *Global Monitoring Report 2004* – which calls for the acceleration and deepening of reform in many countries if the MDGs are to be realized.⁴⁵ The report identifies four priority areas in which such reforms are essential. While a human rights dimension would appear to be both obvious and unavoidable in relation to each of them, the report succeeds in either ignoring that dimension or addressing it clandestinely.

53. Thus, for example, the first priority is said to be to improve the enabling climate for private sector activity.⁴⁶ This is to be achieved through ‘solidifying progress on macroeconomic stability, further reducing barriers to trade,’ etc. In addition, however, emphasis is attached to the need to strengthen property rights and the institutions that ‘establish and enforce the rule of law’. While the rule of law is a term well-known to human rights lawyers and which they define by reference to the full corpus of international human rights law, that is not the way in which it is used in this or most other reports emanating from the Bretton Woods Institutions. This report indicates that the reference is to ‘legal and judicial reform, reduction of bureaucratic harassment’.⁴⁷ Thus the only reference to ‘rights’ is to property rights and the rule of law is defined in relation to matters which will facilitate a better business environment. References to property rights in such contexts are generally concerned with the need to provide formal legal title

⁴³ UNDP, *Human Development Report 2000*, p. 20.

⁴⁴ General Assembly Res. 55/2 (2000), available at: <http://www.un.org/millennium/declaration/ares552e.htm>

⁴⁵ World Bank and IMF Development Committee, *Global Monitoring Report 2004: Policies and Actions for Achieving the MDGs and Related Outcomes* (Washington, D.C.: World Bank and IMF, 2004), pp. i-ii.

⁴⁶ *Ibid.*, p. i.

⁴⁷ *Ibid.*, para. 27

to property-owners rather than reallocation of land to the landless or the elimination of discriminatory practices which limit or prevent access by certain groups to property in the first place.

54. In contrast, an authentic human rights perspective on such an objective would include the following tasks, among others:

- the elimination of laws and practices designed to exclude or marginalize certain ethnic, linguistic, religious or other minority groups in their efforts to compete in the marketplace on an equal footing with the dominant groups in society;
- the removal of discriminatory laws and practices which keep women from owning land and acting as fully empowered economic agents;
- measures designed to ensure freedom of association and freedom of speech;
- the provision of judicial or other remedies in response to cases of discrimination;
- efforts to ensure the free flow of information, including a free press, access to economic statistics, and alternative sources of information which are essential ingredients for an effective market economy; and
- efforts to reform the police service so as to ensure that the rule of law operates to provide security to all citizens so that private life, including business, can proceed effectively.

55. The second priority listed is to strengthen public sector capacity and improve the quality of governance.⁴⁸ While the emphasis is on the need for ‘transparency, accountability, and control of corruption’, the motivation is to improve public financial management performance. Nonetheless, it is in relation to this issue that the report comes closest to describing a human rights agenda:

Political will is key, as are political processes that allow broad participation, build in checks on executive authority, and enable citizens to hold administrations accountable.⁴⁹

56. Again, a human rights perspective on these issues would include consideration of:

- ways of ensuring free and fair elections;
- actions aimed at promoting and upholding free speech;
- the maintenance of a free press,
- the establishment of national institutions to promote respect for, and an understanding of, the human rights commitments undertaken by the government in question; and
- the creation of institutional arrangements to provide redress to aggrieved citizens.

57. The report’s third priority is to scale up infrastructure investment and improve its effectiveness, and the fourth is to better target ‘education, health, and social assistance

⁴⁸ *Ibid.*, p. i.

⁴⁹ *Ibid.*, para. 29.

services toward poor people, addressing governance-related impediments to service quality and effectiveness, increasing community participation ...'.⁵⁰ But the reference to participation is another good example of seeking to avoid any overt reference to the human rights implications of what is being proposed. Instead of being seen as the quintessential civil and political rights issue that it is, the problem of grossly unequal rights and capacities to participate in decision-making is presented in terms of a technocratic challenge to find better techniques for 'scaling up on the basis of successful programs' such as a handful identified in Bangladesh, El Salvador and Mexico. The systematic suppression of women's voices, the exclusion of minorities from the political and economic spheres, the brutal suppression of dissent, and the resulting prevention of debate over alternative policies to achieve agreed objectives, are all commonly present elements which would render ineffectual any well-meaning technocratic project-based efforts, no matter how assiduously designed unless the broader human rights policy dimensions are addressed. The reliance on concepts such as community involvement, participatory inputs, and consultative mechanisms, has the advantage that none of these can be clearly defined by reference to any objective or fixed standards, as is the case with human rights norms. Moreover, such references are almost always used in relation to initiatives that are able to be undertaken on an individual project basis, as though a participatory process could effectively be implemented within a broader context in which, for example, women's voices are ignored, minority groups are excluded, and political dissent is not tolerated.

58. These concerns are perhaps best illustrated by the approach taken in the report to education. At no point is there any reference to a right to education, or to the empowering effects that such a designation might have, despite the fact that every single government in the world (except those of Somalia and the United States) has (by virtue of ratification of the Convention on the Rights of the Child) explicitly accepted that there is such a right. But, for present purposes, that is not the central point. The report does acknowledge that instrumental considerations must be addressed and thus the importance of maternal education for diminishing child mortality rates is noted. So too is the fact that girls 'may be prevented from attending if they spend much of their time fetching water ... or if adequate and safe means of transport [presumably for the girls to go to school, rather than for the water to be carried in] are lacking.'⁵¹ At a later point it calls for community involvement to ensure that 'interventions to educate girls' are 'responsive to needs' and observes that '[e]ffective improvement of female access to education ... requires that design of services reflect gender concerns.'⁵² From a human rights perspective, such recommendations are decontextualized. They carefully fail to recognize that the challenge is best responded to through the adoption of measures that have been carefully spelled out, and subscribed to by the vast majority MDG-relevant countries concerned about the MDGs, in the Convention on the Elimination of All Forms of Discrimination against Women.

⁵⁰ *Ibid.*, pp. i-ii.

⁵¹ *Ibid.*, para. 13.

⁵² *Ibid.*, para. 37.

59. There are several conclusion to be drawn from this analysis. The first is that efforts to gauge the role accorded to human rights in the MDG context should not be confined to eclectic, conceptually broad-minded, and avowedly human rights sympathetic analyses such as the *Human Development Reports* but must also focus on the more operational analyses which describe what is actually going on and what tangible policy prescriptions are being ‘sold’ in the context of the operationalization of the MDG package. The *Global Monitoring Report 2004* provides pause for reflection in this regard, but an equally significant test is provided by the country MDG reports that are now being produced. These are examined in detail below.⁵³

60. The second conclusion is that human rights, other than property rights, are entirely absent in terms of explicit references in the *Global Monitoring Report*. It is not surprising then that the 2003 UN inter-agency meeting statement on human rights approaches to development noted apprehensively that ‘[t]here is concern that, taken in isolation, the MDGs might lead us back into a technocratic (input/output) approach to development.’⁵⁴ This also highlights the need to explore, in an open and constructive manner, the reasons why human rights are not seen to warrant attention in such settings.

61. Third, those issues that could be assimilated to human rights issues, such as the rule of law and participation, are analyzed in ways that are much too narrow from a human rights perspective. Fourth, the issues that are taken up, are pursued in terms of their instrumental value for the promotion of free markets. While this is a legitimate dimension, and justified in part by the IFI’s self-proclaimed focus only on factors impeding improved economic performance, it is simply not viable to identify a wide range of issues from gender equity in education to participation in project design and implementation and then assume that only those aspects which can be justified in economic or other instrumental terms should be addressed without taking account of the broader human rights framework within which the effort to promote the MDGs is being undertaken.

(d) The Relationship Between Economic, Social And Cultural Rights and the Equivalent MDGs

62. Since a detailed report on this aspect is currently under preparation by the OHCHR that terrain will not be covered here. Instead the focus will be on the relationship between poverty and human rights on the one hand and on the relationship between the two sets of human rights: economic, social and cultural rights, and civil and political rights.

(i) Poverty as a Human Right

63. Any discussion of the relationship between poverty and human rights which takes the United Nations approach of indivisibility as its starting point must acknowledge the need to consider the role of both sets of rights. The problems begin, however, when poverty is treated as being synonymous with economic, social and cultural rights, in

⁵³ See paras. 84-95 below.

⁵⁴ See *Report of the Second Interagency Workshop*, note 10 above, p. 9.

which case the analysis of the relationship between the two concepts risks becoming tautological. We thus need to define our terms more precisely.

64. The need not to exclude poverty which involves a major denial of economic and social rights was underscored in an oft-quoted statement to the Vienna World Conference in 1993 by the UN Committee on Economic, Social and Cultural Rights which drew attention to:

[t]he shocking reality . . . that States and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action. In effect, despite the rhetoric, violations of civil and political rights continue to be treated as though they were far more serious, and more patently intolerable, than massive and direct denials of economic, social and cultural rights

Statistical indicators of the extent of deprivation, or breaches, of economic, social and cultural rights have been cited so often that they have tended to lose their impact. The magnitude, severity and constancy of that deprivation have provoked attitudes of resignation, feelings of helplessness and compassion fatigue. Such muted responses are facilitated by a reluctance to characterize the problems that exist as gross and massive denials of economic, social and cultural rights. Yet it is difficult to understand how the situation can realistically be portrayed in any other way.⁵⁵

65. In recent years this clarion call to take economic and social rights violations seriously has often been encapsulated in the maxim that ‘poverty is a denial of human rights’. A recent UNDP report on this theme opens with a quote from Mary Robinson: ‘I am often asked what is the most serious form of human rights violations in the world today, and my reply is consistent: extreme poverty’.⁵⁶

66. But in legal terms this maxim is only true to the extent that a government or other relevant actor has failed to take measures which would have been feasible (‘to the maximum extent of available resources’ etc, as the language of the ICESCR puts it) and which could have had the effect of avoiding or mitigating the plight in which an individual living in poverty finds him or herself. In a country with adequate resources, the proposition will almost always be valid. The only qualification in that context, and it is highly unlikely to be a problem, is that the definition of poverty is not more expansive than the definition of the economic and social rights involved. In a country with very limited resources, it will often also be valid, in the sense that the government has failed to take steps which were open to it to improve the situation and instead has opted to devote scarce resources to other objectives which do not address directly the realization of basic rights.

⁵⁵ UN Doc. E/1993/22, Annex III, paras 5 and 7.

⁵⁶ UNDP, *Poverty Reduction and Human Rights: A Practice Note*, June 2003, p. iv.

67. Consistent with this legal analysis (but also of course with the reluctance of governments to accept a legal responsibility in relation to poverty) the Vienna Declaration of the 1993 World Human Rights Conference observed that the ‘existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights’, and that ‘extreme poverty and social exclusion constitute a violation of human dignity’.⁵⁷ Indeed this formulation points to the principal justification which can be invoked in defence of Mary Robinson’s proposition. It is that poverty is incompatible with human dignity, human dignity is the foundation stone of human rights, and in cases where a national government does not have the resources to remedy (extreme) poverty a human rights-based responsibility falls upon the international community. But while progressive international lawyers might argue on this basis that a violation of human dignity is tantamount to a violation of human rights, this is not the message that the carefully negotiated Vienna language was designed to convey. The 2000 *Human Development Report* avoided characterizing poverty as a violation of human rights but instead noted that ‘Poverty eradication is not only a development goal – it is a central challenge for human rights in the 21st century.’⁵⁸ Finally, nor does the Millennium Declaration characterize poverty as a human rights violation *per se*. It does, however, resolve to ‘spare no efforts to free [people] from the abject and dehumanizing conditions of extreme poverty.’⁵⁹

68. The UNDP Practice Note cited above also suggests that ‘the definition of poverty is steadily moving towards a human rights-based vision’.⁶⁰ This is not necessarily the case, however. Thus the definition of poverty contained in the Millennium Project TF1 report embraces three forms of ‘human poverty’: (1) income poverty, as typically defined by lack of private household income (so-called dollar-a-day poverty); (2) social service poverty, including the lack of public provision of education, health, water and other services; (3) environmental poverty, including the lack of, or degradation of, core environmental resources needed for human well-being. The report notes that this usage is broader than that adopted in the *Human Development Reports*, which rely mainly upon non-income poverty. It is not clear from this list whether there is room within the definition of poverty for civil and political rights concerns, or whether they would fall into an external category of factors facilitating or impeding the reduction or elimination of poverty.

69. There is, however, extensive overlap between the eight key indicators identified in the TF1 report for measurement purposes and the economic and social rights recognized in the ICESCR. The following table gives an indication of the extent of that overlap.

⁵⁷ the Vienna Declaration and Programme of Action, para. 5, in *Report of the World Conference on Human Rights: Report of the Secretary-General*, UN doc. A/CONF.157/24 (part I), 13 Oct. 1993, paras. 14 and 25 respectively.

⁵⁸ UNDP, *Human Development Report 2000*, p. 8.

⁵⁹ G.A. res 55/2 (2000), para. 11.

⁶⁰ Note 56 above, p.2.

TF1 Indicators	Principal relevant provisions of ICESCR
Malnutrition	'The fundamental right of everyone to be free from hunger' Art 11(2)
Grain yields per hectare	Measures to be taken include: 'To improve methods of production, conservation and distribution of food' Art 11(2)(a)
Access to clean water	'Right of everyone to the enjoyment of the highest attainable standard of physical and mental health', Art. 12(1)
Access to sanitation services	Right to health measures to include 'The improvement of all aspects of environmental and industrial hygiene' and 'The prevention, treatment and control of epidemic, endemic, occupational and other diseases'. Art 11(2)
Literacy rates	'Primary education shall be compulsory and available free to all' and 'Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education'. Art 13(2)
Primary education completion rates	States which have not achieved compulsory, free, primary education for all must 'work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.' Art.14
Gender equality in school	'States ... guarantee that the rights ... will be exercised without discrimination of any kind as to ... sex' etc. Art 2(2); and 'undertake to ensure the equal right of men and women'. Art 3.
Infant mortality rates	'Special protection should be accorded to mothers during a reasonable period before and after childbirth'. Art. 10(2) Right to health measures to include 'reduction of the stillbirth-rate and of infant mortality' Art. 12(2)(a).

70. The conclusion to be drawn is that it may not be helpful, other than in general mobilizational terms, to proceed mainly on the basis that poverty is per se a violation of human rights. Nevertheless, there is a sufficiently clear relationship between the explicit MDG goals and ESCR norms that the language of rights can very appropriately and usefully be used in many relevant contexts.

(ii) The Role of ESCR

71. In any analysis of the relationship between human rights and the MDGs there arises a definitional problem which requires clarification if the subsequent discussion is

to be meaningful and technically correct from a human rights point of view. Human rights, as defined by all of the major international treaties and other legal instruments, consist of civil and political rights as well as economic, social and cultural rights. In the latter respect, in particular, the international definition is significantly broader than any classical liberal approach to civil liberties or human rights. The second category includes, among others, labor rights, the right to an adequate standard of living, the right to social security and rights to food, housing, clothing, education, and health.

72. Despite the departure from tradition that this recognition represented in terms of the classical liberal approach, the inclusion of economic, social and cultural rights was achieved by consensus in the 1948 Universal Declaration of Human Rights.⁶¹ These foundations were then built upon and reinforced by the adoption of two separate International Covenants in 1966, one dealing with each of the categories. More targeted treaties dealing with racial discrimination, discrimination against women, and the rights of the child, have all included components dealing with both types of rights.

73. The United Nations doctrine, re-stated with unanimity in 1993 by all governments participating in the Vienna World Conference on Human Rights, is that '[a]ll human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.'⁶²

74. The following analysis taken from the *Human Development Report* provides a concise statement of the important ways in which the two sets of rights reinforce one another:

First, the diverse human rights—civil, political, economic, social and cultural—are causally linked and thus can be mutually reinforcing. They can create synergies that contribute to poor people's securing their rights, enhancing their human capabilities and escaping poverty. Because of these complementarities, the struggle to achieve economic and social rights should not be separated from the struggle to achieve civil and political rights. And the two need to be pursued simultaneously. Second, a decent standard of living, adequate nutrition, health care and other social and economic achievements are not just development goals. They are human rights inherent in human freedom and dignity. But these rights do not mean an entitlement to a handout. They are claims to a set of social arrangements—norms, institutions, laws, an enabling economic environment—that can best secure the enjoyment of these rights. It is thus the obligation of governments and others to implement policies to put these arrangements in place. And in today's more interdependent world, it is essential to recognize the

⁶¹ Albeit with a handful of communist countries abstaining on the grounds that economic and social rights were not given sufficient prominence and apartheid South Africa also abstaining, ostensibly on the grounds that 'a condition of existence does not constitute a fundamental human right merely because it is eminently desirable for the fullest realisation of all human potentialities' and that if economic rights were to be taken seriously it would be 'necessary to resort to more or less totalitarian control of the economic life of the country'. UN Doc. E/CN.4/82/Add.4 (1948) 11, 13.

⁶² See the Vienna Declaration, note 57 above.

obligations of global actors, who in the pursuit of global justice must put in place global arrangements that promote the eradication of poverty.⁶³

4. The Role Currently Accorded to HR in MDG Reporting

(a) The Theory

75. One of the reasons why some human rights proponents have hesitated to become involved with the MDG process is their suspicion that human rights will not be taken seriously enough in the process. This is a reasonable concern and one that would need to be alleviated if human rights groups were to be convinced to put a major effort into the MDG process.

76. There are a number of very encouraging signs that human rights are indeed an important element within the MDG project. In addition to the eight different references to human rights contained in the Millennium Declaration itself, human rights have been accorded particular prominence in a number of reports produced within the UN system. Upon closer analysis, however, there is a large discrepancy in the ways in which human rights issues are dealt with in the context of MDG reporting. In terms of broad policy documents there are instructive differences to be found by comparing the *Human Development Report 2003 [HDR 2003]* which was expressly devoted to the ‘Millennium Development Goals: A Compact Among Nations to End Human Poverty’, with other reports on the MDGs. When we move from the policy domain to examine the programmatic side, the discrepancy between rhetorical references to human rights and actual program content becomes even more marked.

77. In the analysis that follows consideration is given first to *HDR 2003*, then to other major international reports on the MDGs and then to the many reports detailing national MDG programs.

78. *HDR 2003* makes reference to the human rights dimensions of the MDGs in relation to a wide range of issues. As a general rule it asserts that ‘National programmes must ... respect human rights, support the rule of law and commit to honest and effective implementation.’⁶⁴ It goes on to argue that ‘Without sound governance – in terms of economic policies, human rights, well-functioning institutions and democratic political participation – no country with low human development can expect long-term success in its development efforts or expanded support from donor countries.’⁶⁵ And in identifying six crucial policy aspects which are essential if countries are to succeed in breaking out of poverty traps, it includes the need to emphasize human rights and social equity through the promotion of democratic governance. It explains this so-called fifth policy cluster in the following terms:

⁶³ UNDP, *Human Development Report 2000*, p. 73.

⁶⁴ UNDP, *Human Development Report 2003* (New York, 2003), p. 15.

⁶⁵ *Ibid.*, p. 16.

In dozens of countries poor people, ethnic minorities, women and other groups still lack access to public services and private opportunities – and so will not benefit even when growth begins to take off. Political institutions must allow poor people to participate in decisions that affect their lives and protect them from arbitrary, unaccountable decisions by governments and other forces. National strategies for the Millennium Development Goals must include a commitment to women’s rights to education, reproductive health services, property ownership, secure tenure and labour force participation. They must also address other forms of discrimination – by race, ethnicity or region – that can marginalize poor people within countries. Deepening democracy through reforms of governance structures, such as decentralization, can enhance poor people’s voice in decision-making.⁶⁶

79. And finally the report devotes an entire page to exploring and elaborating upon the linkages between human rights and the MDGs.⁶⁷ It begins by identifying some fundamental values which guide the Goals, including:

- *Freedom.* Men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice. Democratic and participatory governance based on the will of the people best assures these rights.
- *Equality.* No individual and no nation must be denied the opportunity to benefit from development. The equal rights and opportunities of women and men must be assured.
- *Solidarity.* Global challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice. Those who suffer or who benefit least deserve help from those who benefit most.
- *Tolerance.* Human beings must respect one another, in all their diversity of belief, culture and language. Differences within and between societies should be neither feared nor repressed, but cherished as a precious asset of humanity. A culture of peace and dialogue among all civilizations should be actively promoted.

80. The other two values listed are ‘respect for nature’ and ‘shared responsibility’.

81. The Report also noted several of the advantages of linking the MDGs to the human rights framework. They are: (i) the HR approach transforms the content of the Goals into obligations rather than soft objectives or ‘a form of charity’; (ii) the obligations on other countries to assist in the realization of the MDGs is highlighted; (iii) the policies and institutional reforms required to achieve the Goals are clearer in the light of a HR approach and include elements such as participation in public decision-making,

⁶⁶ *Ibid.*, p. 19.

⁶⁷ *Ibid.*, p. 28, Box 1.1 ‘The Millennium Development Goals, human development and human rights share a common motivation’.

protection for vulnerable groups, and elimination of gender discrimination; and (iv) the MDGs provide firm and agreed benchmarks which are otherwise lacking in a 'progressive realization' approach to ESCR.

82. Another major report which deals with both the MDGs and HR at some length and in an integrated fashion is the *UNFPA State of World Population 2004*. The report focuses not only on family planning as a human right, or on reproductive rights, but also on gender equality and women's empowerment. It uses the human rights framework in a variety of ways. There are plentiful references to specific human rights norms, the relevance of the Convention on the Elimination of All Forms of Discrimination against Women is acknowledged, the need for legal remedies in cases of the violation of rights is emphasized, the role of human rights institutions is noted, and the broader human rights context of specific objectives is consistently recognized.

83. The emphasis placed on human rights in the *HDR 2003* and the 2004 UNFPA Report are not matched, however, by a great many other reports on the MDGs produced by the major international actors. One recent example will suffice although many others could be mentioned. A major report on access to safe drinking water and sanitation,⁶⁸ goals which figure prominently in the MDGs as a whole and in MDG 7 in particular, makes no mention of the human rights dimensions of the issue, either in relation to the status of the human right to clean water or to the role of human rights in securing such access.⁶⁹

(b) The Practice

84. It is impossible to understand why the MDG/HR relationship is both complex and opaque unless we recognize the extent of the gap that exists between the theory put forward in 'progressive' policy analyses such as those cited above, and the practice on the ground.

85. This is best illustrated by reference to the 59 national MDG reports available on the UNDP website as of August 2004. It is neither possible nor useful in the context of the present analysis to undertake an exhaustive survey of the extent to which those reports take account of the human rights dimensions of the process. However, on the basis of an unsystematic review of over 25 per cent of the reports (15 of 59), including all of those published in 2004, and covering all of the principal regions of the world, it is possible to reach some fairly firm conclusions. Unsurprisingly, there is a spectrum of approaches ranging from heavy reliance upon a human rights framework, through the inclusion of somewhat tokenistic references, to the complete exclusion of any reference to the term human rights. What is surprising, however, is the paucity of analyses in the first of those categories and the extent to which human rights are altogether invisible in a great many of the reports.

⁶⁸ *Meeting the MDG Drinking Water and Sanitation Target: A Mid-Term Assessment of Progress* (Geneva, WHO and UNICEF, 2004)

⁶⁹ See e.g. Salman M. A. Salman and Siobhan McInerney-Lankford, *The Human Right to Water: Legal and Policy Dimensions* (Washington DC, World Bank, 2004).

86. At one end of the spectrum is the report on Bosnia and Herzegovina which, in the course of 141 pages, makes 108 references to human rights. Indeed the entire analysis of the MDG situation is located squarely within a human rights framework. The report proclaims that its focus is on ‘a universal and global programme to secure the welfare of the world’s population and protect and promote human rights, a programme around which all development actors should congregate and cooperate ...’.⁷⁰ The report is also noteworthy for the extent to which it places economic, social and cultural rights at the heart of the analysis, albeit as much for their instrumental value as for their intrinsic worth:

In the immediate post-war period it was reasonable to insist most on respect for certain fundamental rights, from the right to life to the right to vote, in order to allow not only for the return of refugees and displaced persons, but also for a democratisation of society, above all by establishing democratically elected authorities. Little attention was paid to the fact that, in addition to civil and political rights, there are also some fundamental economic, social, and cultural rights that are no less important for the process of democratisation or return. If such rights ... are not exercised, return and democratisation will remain impossible or incomplete.⁷¹

87. Similarly, the report attaches major emphasis to the gender dimensions of the challenges of meeting the MDGs. It observes that some assessments suggest that ‘gender is “at the heart of the problem of poverty in BiH”’.⁷² The report as a whole is one of the most sophisticated examples of a carefully elaborated human rights approach to any set of development issues, and not only in relation to the MDGs.

89. Thailand, on the other hand, presents a very different picture despite the inclusion of fifteen references to human rights in a lengthy report. On closer inspection eight of those references turn out to be contained in the text of the Millennium Declaration which the report reproduces.⁷³ Of the remaining references, one indicates that the Office of National Human Rights Commission was one of the agencies consulted in the preparation of the report.⁷⁴ Another affirms that violence against women is a ‘human rights issue of the highest concern’ and emphasizes that society should understand and support ‘a system of equal rights, roles, and responsibilities between women and men’.⁷⁵ The strongest general statement in relation to human rights is:

⁷⁰ *Where Will I Be in 2015: Bosnia And Herzegovina Human Development Report* (2003), p. 9, available at http://www.undp.org/mdg/engleseka_final.pdf

⁷¹ *Ibid.*, p. 19.

⁷² *Ibid.*, p. 22.

⁷³ *Thailand: Millennium Development Goals Report 2004* (Bangkok, Office of the National Economic and Social Development Board, and United Nations Country Team in Thailand, 2004) available at <http://www.undp.or.th/mdgr.htm>

⁷⁴ *Ibid.*, p. vi.

⁷⁵ *Ibid.*, p. 36.

Bringing the poor, the disadvantaged and the vulnerable into the mainstream of development is at the top of the agenda. ... The human rights aspiration of the Constitution needs to be turned into reality by institutionalizing relevant legal frameworks This will provide a fundamental basis for the advancement of rights-based development, which will constitute a long-term guarantee that no one will be excluded from partaking in the benefits of development.⁷⁶

90. The shortcoming of the report from a HR perspective, however, is the failure to effectively integrate these dimensions into the operational parts of the report.

91. Close to the other end of the spectrum are those reports in which a token reference is made to human rights and nothing more is included. Thus, for example, the report of the Philippines, a country in which a great deal has been done to promote human rights-based approaches to development, contains two references to human rights within a 58 page report. The first occurs in the very first paragraph of the body of the report in which the Millennium Declaration is presented as having renewed ‘the global commitment to peace and human rights’.⁷⁷ The second and final reference to human rights comes much later in the report. In discussing the school curriculum it notes that ‘the elementary education bureau integrated human rights and sex education modules into the curriculum.’⁷⁸ Similarly, the report on Ghana contains a single reference, which is in fact to the Ghanaian PRS and notes that the latter aspires to ‘consolidate democratic governance, strengthen accountability, and guarantee protection of human rights and the rule of law’.⁷⁹ The report on Gabon contains three references, two of which are to the Millennium Declaration and UN Summits, and the other to the fact that Gabon has ratified the CEDAW Convention.⁸⁰ The latter reference is, in fact, an advance on many of the other reports.

92. The Vietnamese Report also contains a single reference to the instrumentalist argument that ‘Appropriate minimum standards in the provision of education and health services are not only pre-conditions for development, but most importantly basic human rights.’⁸¹ The most tokenistic approach is contained in the report of Ethiopia which mentions on the first page the important role of human rights in the Millennium Declaration, but does not contain any other reference to the issue.⁸²

⁷⁶ *Ibid.*, p. 57.

⁷⁷ UNDP, *Philippines: The Development Context* (2003), p. 7, available at <http://www.undp.org/mdg/phil.pdf>

⁷⁸ *Ibid.*, p. 29.

⁷⁹ *Ghana: Millennium Development Report 2003*, p. ii, available at http://www.undp.org/mdg/ghana_report.pdf

⁸⁰ *Objectifs du Millénaire pour le Développement* (Libreville, Ministère de la planification et de la programmation du développement, République Gabonaise, 2003), p. 12, available at http://www.undp.org/mdg/Gabon_report_french.pdf

⁸¹ *The Millennium Development Goals: Bringing the MDGs Closer to the People*, available at <http://www.undp.org/mdg/vietnam2002.pdf> (Hanoi, The UN in Vietnam, 2003) p. 47.

⁸² *Millennium Development Goals Report: Challenges and Prospects for Ethiopia*, Vol. 1: Main Text (Addis Ababa, The Ministry of Finance and Economic Development, and the United Nations Country Team, 2004) p. i, available at <http://www.et.undp.org/Documents/MDG-in-Ethiopia.PDF>

93. At the human rights-free end of the spectrum lie many examples. They include fairly detailed reports on China,⁸³ Hungary,⁸⁴ Saudi Arabia,⁸⁵ the Slovak Republic,⁸⁶ Slovenia,⁸⁷ the Ukraine,⁸⁸ and Zambia.⁸⁹ An especially striking example is a lengthy report of some 56 pages on Afghanistan, prepared with extensive assistance from UNDP, which engages in a detailed analysis of the challenges faced in seeking to meet the principal goals. The report actually reproduces an abstract of its content on the cover which indicates the range of issues in relation to which some human rights dimension or perspective would have been appropriate and useful. It begins in the following terms:

More than four million children have enrolled in school since the fall of the Taliban. Nearly forty percent are girls. An impressive immunization drive has virtually eradicated polio just five years after polio caused more disability than land mines. A measles campaign has saved nearly 30,000 lives. Afghanistan has a democratic constitution and is preparing for presidential and parliamentary elections. In two years, the country has taken important strides towards a more open society.

...

[The MDGs] represent a synergy of purpose – a moral and political commitment to the people of Afghanistan.⁹⁰

94. But despite clearly signaling the relevance of human rights to so many of the challenges faced in Afghanistan, there is not a single reference to human rights in the entire document.

95. Dissatisfaction with related aspects of the national reports has also been expressed by the United Nations Population Fund. In its 2004 annual report it argues that the ‘rights-based agenda’ adopted by the International Conference on Population and Development, held in Cairo in 1994, ‘deserves the highest priority’ in the context of efforts to achieve the MDGs.⁹¹ But it goes on to note the relatively low level of

⁸³ *Millennium Development Goals: China's Progress, An Assessment by the UN Country Team in China* (Beijing, Office of the United Nations Resident Coordinator, 2004), available at <http://www.undp.org/mdg/chinaMDG.pdf>

⁸⁴ *Millennium Development Goals: Reducing Poverty and Social Exclusion: Hungary* (Bratislava, UNDP, 2004) http://mdgr.undp.sk/DOCUMENTS/MDG_Hungary_GB.pdf

⁸⁵ *Millennium Development Goals: Report for the Kingdom of Saudi Arabia* (United Nations, Riyadh, 2002).

⁸⁶ *Millennium Development Goals: Reducing Poverty and Social Exclusion: Slovak Republic* (Bratislava, UNDP, 2004) http://mdgr.undp.sk/DOCUMENTS/MDG_Slovak_GB.pdf

⁸⁷ *Millennium Development Goals: Reducing Poverty and Social Exclusion: Slovenia* (Bratislava, UNDP, 2004) available at http://mdgr.undp.sk/DOCUMENTS/MDG_Slovenia_GB.pdf

⁸⁸ Ministry of Economy and European Integration of Ukraine, *Millennium Development Goals: Ukraine*, (Kyiv, 2003), available at http://www.undp.org/mdg/Ukraine_report.pdf

⁸⁹ UNDP, *Millennium Development Goals: Progress Report 2003* (2003), available at <http://www.undp.org/mdg/MDGRZambia.pdf>

⁹⁰ UNDP, *Opening Doors to Opportunity: Afghanistan's Millennium Development Goals*, (2004), available at http://www.undp.org/mdg/afghanistan/afghanistan_mdg.pdf

⁹¹ *UNFPA State of World Population 2004: The Cairo Consensus at Ten: Population, Reproductive Health and the Global Effort to End Poverty* (New York, 2004), p. 11.

recognition of reproductive health issues in the reports that have been produced up until 2004 under the MDG reporting process.⁹²

(c) Explaining the Gap between Theory and Practice

96. There is no shortage of explanations as to how it happens that human rights come so close to being invisible from so many of these MDG Reports. The most obvious one is that the Government in question did not wish to include such references. Another is that their international advisers preferred to use different language, or that either they or the Government felt that human rights language might be counter-productive in some way. Another is that while the reports do not address human rights per se, that is too formalistic a test since they address issues which are in fact the subject of human rights even if they use a different terminology. The latter justification is dealt with elsewhere and it must suffice here to say that the difference between talking of educational objectives as compared to the realization of the right to education, or talking of treating people well as compared to respecting the human right to bodily integrity, should by now be more widely understood within the development community than seems to be the case.

97. The deference accorded to justifications such as these for avoiding the human rights dimensions are well illustrated by a 41 page report prepared by the UNDP Evaluation Office assessing the national MDG reports. The term human rights appears only three times.⁹³ One of those is in the context of a comment that ‘it may be unreasonable to expect a government to discuss ‘sensitive’ issues, such as documenting human rights violations, discrimination against marginalized communities, neglect of remote areas, or to discuss unresolved conflicts, especially close to the time of elections.’⁹⁴ While the point is made in support of the argument that governments might not be the best source to ‘author’ the national MDG Report, the principle seems to be applied in practice no less to reports prepared by international agencies themselves, and for the same reason of not wishing to offend the government. This point actually goes to the crux of the human rights critique of MDG reporting. If these reports fail to address, or even acknowledge, such matters they will often be excluding the very issues that are crucial to understanding the principal obstacles that are inhibiting the realization of the MDGs. For example, if it is not possible to mention ‘sensitive issues’ such as deeply entrenched discrimination against women, the effective exclusion of certain racial, religious, linguistic or other minority groups from the development process, or the systematic harassment of anyone who challenges government policy or seeks to express a different viewpoint in the press or in community planning settings, then the report will not only have an air of unreality about it but will also be unable to address the critical steps that need to be taken if the MDGs are to be met.

98. An approach which ignores human rights altogether, or treats them solely in a tokenistic fashion, neglects a crucial dimension of the development equation, overlooks the empowerment potential of rights, and pays no attention to the wide range of human rights obligations undertaken by the Governments concerned and to the international

⁹² *Ibid.*, p. 13.

⁹³ UNDP Evaluation Office, *Millennium Development Goals Reports: An Assessment* (2003).

⁹⁴ *Ibid.*, p. 29.

standards which are binding upon them as a result. Most problematically in the context of the present report is the fact that such an approach provides little incentive for human rights proponents to engage in the MDG process, and lends fuel to the arguments of those who suggest an incompatibility between the way in which the MDGs are sometimes promoted and the human rights framework.

99. Somewhat ironically this same point is acknowledged in the UNDP assessment of the national MDG reporting exercise, referred to above. The additional two references to human rights are in fact to the same text, repeated in both the Executive Summary and in the conclusions and recommendations:

Communication [i.e. public relations materials] on MDGs must re-assure NGOs and others that the focus on MDGs is not intended to displace attention from other issues such as violence, child rights abuse, discrimination, human rights violations and the like.⁹⁵

100. In fact, it will be difficult to provide such reassurances when the national reports demonstrate such a consistent neglect of those very issues and when the overall assessment of the reports itself makes not a single reference to the human rights dimension other than to express understanding of governmental reluctance to address such issues in their reports.

5. Can ‘Human Rights-based Approaches’ Provide the Solution?

101. For the most part, the crucial issue is not whether a more integrated approach should be sought, but rather how such an approach might best be fashioned. In particular, two questions need to be answered. How can the MDG process be made more human rights friendly? And how can human rights standards and procedures be mobilized so as to enhance the effectiveness of the MDG initiative?

102. These questions are not easy to answer. The most important endeavor that has so far been undertaken in this regard is the attempt to elaborate so-called ‘human rights-based approaches’ to development. These approaches, which initially grew out of civil society efforts, have attracted increasing scholarly attention, and have been the subject of a range of analyses undertaken by UN agencies and NGOs at the national level. One recent analytical overview of ‘rights-based approaches’, prepared by the UK Department for International Development, lists human rights as merely a fifth category of ‘rights’, preceded by those reflected in living law and customary law, religious law, statutory law, and constitutional law.⁹⁶ But this wide-ranging and eclectic approach is not at all what is generally intended by the expression ‘rights-based approaches’.

⁹⁵ *Ibid.*, p. 9. See also p. 36.

⁹⁶ Department for International Development, Key Sheet: Rights-based Approaches, July 2003, p. 1, available at

[http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256F15006A99E6/\\$File/RBA-](http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256F15006A99E6/$File/RBA-)

103. A much more typical definition, in this case of a ‘Human Rights-Based Approach to Programming’, was offered by a UN group in 2003:

The fundamental purpose of all programmes of co-operation is the realisation of human rights. The normative framework for programming is set out in international human rights treaties and conventions.

Human rights principles guide all programming in all sectors, including all programming directed towards achievement of the Millennium Development Goals and the Millennium Declaration.

Human rights principles guide all phases of the programme process, including assessments and situation analyses; the design and implementation of country programmes of co-operation; and the monitoring and evaluation of these programmes.

Programmes support the development of capacities of ‘duty-bearers’ at all levels to meet their obligations to respect, protect, and fulfil rights, as well as the development of capacities of ‘rights holders’ to claim their rights.⁹⁷

104. Darrow and Tomas are more cautious about offering a definition and elaborate on the pitfalls of over-simplifying the challenge. Nevertheless, they observe that such approaches have generally ‘sought to give tangible expression to human rights “principles” (for example, participation, accountability, transparency, universality, non-discrimination, and so forth) and “values” (the Millennium Declaration lists “freedom, equality, solidarity, tolerance, respect for nature and shared responsibility,” however one often finds others including equity, democracy, or even human dignity in a broad sense).

105. While Jonsson also eschews a simple definition he lists eleven elements of ‘human rights programming’. They can be summarized as follows: (i) empowerment, especially of poor people, to claim their rights; (ii) facilitating participation in societal decision-making; (iii) a people-centred approach based on dignity and respect for the individual; (iv) accountability which ‘requires monitoring at all levels of society’; (v) identification of the relationship ‘between all claim-holders and all duty-bearers’; (vi) ‘disparity reduction’ with a view to poverty eradication; (vii) ‘respect for local knowledge’ but leaving room for the external promotion of alien rights values; (viii) the need to understand all structural causes and to pay ‘simultaneous attention’ to all of them; (ix) equal attention to ensure that both outcomes and processes are human rights determined; (x) a ‘country’s human rights realisation must come from within’ but the UN

Keysheet.pdf [http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256F15006A99E6/\\$File/RBA-Keysheet.pdf](http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256F15006A99E6/$File/RBA-Keysheet.pdf)

⁹⁷ Taken from a document prepared jointly by the Office of the High Commissioner for Human Rights and the UNDP in the context of the Human Rights Strengthening Program (‘HURiST’), quoted in Urban Jonsson, *Human Rights Approach to Development Programming* (Nairobi, East and Southern Africa Regional Office of UNICEF, 2004).

Development Assistance Framework is nevertheless ‘of particular importance’; and (xi) the comparative advantage of each international agency should determine the actions of each.

106. Finally, a relatively sophisticated example of the type of approach suggested in the context of such frameworks was provided by a 2003 UN inter-agency meeting on human rights approaches to development. It arrived at a set of recommendations, divided into two parts. The first part was said to consist of elements which are ‘necessary, specific, and unique to a human rights-based approach’:

- Assessment and analysis in order to identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights.
- Programmes assess the capacity of rights-holders to claim their rights, and of duty-bearers to fulfill their obligations. They then develop strategies to build these capacities.
- Programmes monitor and evaluate both outcomes and processes guided by human rights standards and principles.
- Programming is informed by the recommendations of international human rights bodies and mechanisms.

107. The second part consisted of ‘other elements of good programming practices’ that were characterized as ‘essential’ but presumably not unique:

- People are recognized as key actors in their own development, rather than passive recipients of commodities and services.
- Participation is both a means and a goal.
- Strategies are empowering, not disempowering.
- Both outcomes and processes are monitored and evaluated.
- Analysis includes all stakeholders.
- Programmes focus on marginalized, disadvantaged, and excluded groups.
- The development process is locally owned.
- Programmes aim to reduce disparity.
- Both top-down and bottom-up approaches are used in synergy.
- Situation analysis is used to identify immediate, underlying, and basic causes of development problems.
- Measurable goals and targets are important in programming.
- Strategic partnerships are developed and sustained.
- Programmes support accountability to all stakeholders.⁹⁸

108. This is not the place to engage in a detailed critique of such statements, and to do so in fairness to their authors would require a careful analysis of the various supporting

⁹⁸ See *Report of the Second Inter-Agency Workshop*, note 10 above, p. 10. For a more detailed exposition of a human rights-based approach see Jonsson, note 97 above.

documents that underpin the suggestions made and an examination of the case studies that have been offered to illustrate some of the experiences on which they are based.⁹⁹

109. Nevertheless, several general observations are prompted by the sort of criteria that are commonly put forward as defining a human rights-based approach. The first is that they are often expressed at a level of abstraction and generality which is not uncharacteristic of some human rights discourse but which is likely to seem abstract, untargeted, and untested to the community of development economists. For all their conceptual sophistication and undoubted importance, these frameworks and checklists appear to the latter to offer little guidance in concrete situations and to gloss over many of the complexities of real-world decision-making and trade-offs.

110. The second is that some of the formulations do little more than restate the fundamental dilemma and do not actually offer a lot of guidance as to how to resolve it. To take the first of the elements above, identifying ‘the corresponding human rights obligations of duty-bearers’ is a matter which may be extremely difficult to do. Sorting out the role of the government, of the private sector, of the individual right-holders, and of the international community will rarely be a routine accounting matter which can be done with ease in the context of complex development strategies. Such an approach might well be viable and helpful at a micro-level but seems less likely to be so in terms of national level planning of macro-economic policies.

111. The final part of the first element of the 2003 statement calls for identification of ‘the immediate, underlying, and structural causes of the non-realization of rights’. This will usually be even more fraught with difficulty since most problems are subject to diverse and heavily contested causal explanations. Exploitative child labour is just one of a huge number of issues of relevance in this context on which extensive analytical work has been undertaken. It is not hard to find radically different explanations of the structural causes of this problem, or of the most effective human rights-inspired responses to any problems thus diagnosed. And if we move from sectoral areas such as child labour to country situations the magnitude of the challenge becomes even more apparent as we contemplate wholly inconsistent explanations as to the structural causes of deep-rooted situations of discrimination and so on.

112. This is not to say that structural causal analyses of the type advocated should not be attempted on a grand scale, but it underscores the great complexity that would be generated by any such effort. What is involved is not simply the adoption of a new methodology but also a willingness on the part of governments to address a range of issues which most of them have systematically refused to confront in such contexts. While the proponents of a rights-based approach would rightly respond that this is precisely the point of insisting upon a deeper structural analysis, it is nevertheless

⁹⁹ For a detailed and challenging evaluation of the role of rights-based approaches to development see Peter Uvin, *Human Rights and Development* (Kumarian Press, 2004). For a brief overview see Rosalind Eyben, *The Rise of Rights: Rights-Based Approaches to International Development*, IDS Policy Briefing 17, 2003, available at <http://www.ids.ac.uk/ids/bookshop/briefs/Pb17.pdf>

necessary to recognize the immensity of the change that is being sought under the relatively innocuous guise of calling for a new methodology.

113. A third general point is that there is a good deal of optimism implicit in the suggestion that decisions on complicated matters of development programming should be ‘informed by the recommendations of international human rights bodies and mechanisms’. At the current relatively embryonic and certainly under-funded stage of development of such bodies and mechanisms, a great many of the recommendations emerging from them are not at all operational, and some of them are not especially well grounded or arrived at on the basis of a compelling analysis.¹⁰⁰ Ironically, one of the major advantages of taking such an approach seriously would be to put the pressure on the treaty bodies and special procedures to spell out more clearly and justify more thoroughly their recommendations.

114. A fourth point concerns the disparate items contained in the second list, all of which are said to be ‘essential’ for a human rights based approach. In many cases, the advice proffered does not seem to follow inexorably from human rights principles *per se*, but rather to be a reflection of what the authors consider to be sound policy on the basis of their own expertise. For example, local ownership of the development process is not dictated by human rights norms, even if will usually be a desirable attribute. It is hardly an issue of self-determination unless we are talking of very large-scale external imposition, and the right to participate in the conduct of public affairs is regularly interpreted in the United States, France and a good many other countries to be satisfied in situations in which immensely powerful central governments make major decisions in which the only element of local ownership is the often overridden vote of a local parliamentarian or congressperson.

115. In other cases, the criteria seem to be somewhat platitudinous and to offer little real practical guidance, or to exhibit any clear human rights based origins. For example, the suggestion that ‘both top-down and bottom-up approaches [should be] used in synergy’ is mostly platitudinous although it could also be challenged as being misleading since in practice one or other approach will sometimes need to be clearly dominant if progress is to be achieved. The development and sustenance of ‘strategic partnerships’ would seem to be another injunction which is based less on any human rights imperative than on the bitter experience of development planners whose designs have been foiled for want of a broader base of support. Finally, some of the criteria, while unquestionably correct, seem to do little more than beg the question. To insist that strategies be ‘empowering, not disempowering’ leaves open the question of what strategies are actually empowering, particularly when so few of those pursued in the name of empowerment seem to succeed in any marked way.¹⁰¹

¹⁰⁰ This is not to suggest for a moment that I would go as far as Uvin who characterizes the UN’s human rights mechanisms as ‘some of the most powerless, under-funded, toothless, formulaic, and politically manipulated institutions of the UN’. He adds that ‘even the human rights NGOs by and large neglect them!’ which is demonstrably not the case. Uvin, note 99 above.

¹⁰¹ As Woolcock concludes ‘The development community has too few examples of demonstrated successes and even fewer examples of how empowerment projects have fared compared with plausible alternatives’ See Michael Woolcock, ‘Empowerment at the Local Level: Issues, Responses, Assessments’, in R. Alsop

116. Moreover, how does one resolve the dilemma created by situations in which the result of empowering local communities is the rejection of the priorities identified from outside which were proposed in order to ensure compatibility with human rights standards. One only needs to read some of the literature on decentralization to see the complexity of prescriptions such as these. Decentralization is advocated on the grounds that it enhances local ownership, promotes empowerment of local groups, facilitates accountability, includes more stakeholders, makes participation more feasible, and so on. In practice, however, there are major concerns that mechanisms of accountability that have been painstakingly built up at the centre are not transferred, that the empowerment of some comes at the price of disempowering others because the transferred power is captured by elite local groups, that human rights mechanisms are not in place, and various other challenges.¹⁰²

117. A related issues concerns the emphasis on the ‘marginalized, disadvantaged and excluded’. One of the potentially misleading claims contained in much of the literature about rights-based approaches is that they are, *per se*, pro-poor, or reflect a preference for the poor and disadvantaged, or that their purpose is to ‘set out the rights and entitlements within which the poor and their representatives can make claims.’¹⁰³ At one level such a claim is certainly correct in the sense that if the poor enjoyed all of the rights recognized in human rights declarations they would be infinitely better off than they are at present. But at another level, it is almost naïve not to acknowledge that human rights systems have historically benefited the well-off even more than the downtrodden, and that the consequences of highlighting rights will depend very significantly on the power relations that exist within the society or the group.

118. This is easily illustrated by the example of a situation in which women are systematically disempowered. Unless carefully targeted, the promotion of a rights approach in such a setting could well reinforce the ‘rights’ of those whose are capable of

(ed.), *Power, Rights, and Poverty: Concepts and Connections* (London, UK Department for International Development, 2004) 112.

¹⁰² For example, Mosse observes that decentralization often has the effect of empowering local elites to capture resources from the poor and that this outcome ‘is consistent with a stream of recent research emphasizing that the existence of a strong center that is able and willing to resist the power of local elites (to earmark funds, support strong local staffing, and so on) is a necessary precondition for decentralization’. David Mosse, ‘Power Relations and Poverty Reduction’, in R. Alsop (ed.), *Power, Rights, and Poverty: Concepts and Connections* (London, UK Department for International Development, 2004) 51 at 60. For a diverse range of views on the relationship between decentralization initiatives and the protection of human rights see: UNDP, *Human Development Report 2003*; International Council on Human Rights Policy, *Local Rule: Decentralisation and Human Rights* (2002); World Bank, *Decentralizing Indonesia: A Regional Public Expenditure Review Overview Report* (Report No. 26191-IND, East Asia Poverty Reduction and Economic Management Unit, 2003); Olowu, D., *Decentralisation Policies and Practices under Structural Adjustment and Democratisation in Africa*, UNRISD Democracy, Governance and Human Rights Programme Paper No. 4, July 2001; and Alex Brillantes, Jr. and Nora Cuachon (eds.), *Decentralization & Power Shift: An Imperative for Good Governance, A Sourcebook on Decentralization Experiences in Asia*, volume 1 (Manila, Center for Local and Regional Governance, University of the Philippines, CLRG Working Papers Series 2002/02, at http://www.decentralization.ws/srcbook_main.asp, p. 2.

¹⁰³ Rights-based Approaches, note 96 above.

exercising them, in other words those who already have power. In this respect, Alsop and Norton have recently pointed out that ‘a de-politicized view of empowerment ... can lead to donor agencies engaging in capacity building activities that may reinforce power relations that are unfavourable to many poor people.’¹⁰⁴ Without specific measures targeted at the poor in the context of rights-based approaches it is highly unlikely that they will benefit disproportionately from the emphasis on human rights.¹⁰⁵ Nevertheless, it remains the case, even in relation to rights-based approaches, that the recognition of the need for such measures ‘is rarely factored into a decision-making process that remains largely technocratic in character.’¹⁰⁶

119. Finally, a more difficult issue concerns the appropriate limits of the ambitions or aspirations of human rights-based approaches to development. What often seems to be called for is a comprehensive change of approach on the part of virtually all national and international agencies addressing issues relating to development. The range of addressees is thus vast, moving from international financial institutions such as the IMF through national donor agencies such as the US Agency for International Development, to planning or other central coordinating agencies in developing countries. All are asked to adopt a human rights analytical framework and to make systematic and effective use of human rights norms, techniques, and institutions. While there is sometimes an element of nuance in what might reasonably be required of each such actor, it seems that consideration is rarely given to arguments put forward by some of them suggesting, for example, that their mandates (whether in institutional or legal terms) are limited and make it inappropriate for them to take the lead on human rights issues, or that they lack the institutional expertise to engage fully in a human rights dialogue, or that they prefer to use an alternative analytical framework which better reflects their specific concerns and is capable of being sensitized to at least certain human rights issues but would not pass muster as a human rights-based approach.¹⁰⁷

120. Since critiques such as the foregoing inevitably provide grist to the mill for those governments and development experts who are simply not persuaded of the importance of human rights, it must thus be emphasized that this is not my intention. Rather, it is to provoke more self-critical reflection by human rights proponents in order to strengthen, and not in any way to undermine, the fledgling efforts underway to promote broader

¹⁰⁴ Ruth Alsop and Andrew Norton, ‘Power, Rights, and Poverty Reduction’, in R. Alsop (ed.), *Power, Rights, and Poverty: Concepts and Connections* (London, UK Department for International Development, 2004) 3 at 13.

¹⁰⁵ In terms of legal empowerment more broadly, Woolcock has argued that it is necessary to discover which groups within a community ‘have the hardest time gaining access to, and a fair hearing from, the court systems, and identifying which groups have to negotiate their way between the largest number of dispute resolution alternatives.’ In his view, evaluating the empirical effectiveness of empowerment strategies ‘requires integrated forms of qualitative and quantitative data’, which would help in identifying appropriate service delivery mechanisms for excluded groups in specific contexts. Woolcock, note 101 above, 115.

¹⁰⁶ Alsop and Norton, note 104 above, 13.

¹⁰⁷ For a sophisticated and oft invoked version of this argument see W. Michael Riesman, ‘Through or Despite Governments: Differentiated Responsibilities in Human Rights Programs’, 72 *Iowa L. Rev.* 391 (1987).

acceptance of human rights-based approaches. The emphasis then needs to be on positive prescriptions which build on the achievements of these initial efforts.

121. If there is one policy prescription which emerges clearly it is the need to be more selective and to set priorities. If every possible human rights element is deemed to be essential or necessary, then nothing will be treated as though it is truly important. A list of requirements which is too demanding or ignores trade-offs and dilemmas is unlikely to be taken seriously by practitioners operating under major resource constraints, time pressures, and faced with competing priorities and the need to make difficult choices. Two caveats are in order at this point. The call for prioritizing is not to suggest that any obvious violation of rights can be ignored, let alone that human rights shortcuts can be acceptable in the development process. The second is that we need to distinguish between contextually identified priorities and fixed hierarchies. While the latter are unacceptable in human rights law in so far as they purport to authorize one set of rights to trump another, the former are also somewhat alien to the analytical frameworks of many human rights specialists who are carefully trained to avoid any form of selectivity in the name of the indivisibility and interdependence of all rights. It is, however, a misunderstanding of the consequences of this principle to suggest that setting priorities is unacceptable.

122. Another prescription that emerges is that human rights proponents need to be more realistic about the obstacles that lie in the way of the adoption of human rights methodologies by those working in the area of development. This suggests the need for a more sympathetic and insightful inquiry into the underlying reasons for the shortcomings of efforts to date. The foregoing survey of the role accorded to human rights in the MDGs context shows that hesitance to use a human rights framework is deeply entrenched, that the shining examples to which human rights proponents can point are generally far from the mainstream, and that the resistance to human rights frameworks by development agencies is based on more than ignorance or bloody-mindedness. There needs to be greater awareness that calling for a rights-based approach effectively demands a paradigm shift on the part of the development community. As Uvin puts it, adopting such a strategy is:

a radical affair ... demanding profound changes in choices of partners, the range of activities undertaken and the rationale for them, internal management systems and funding procedures, and the type of relationships established with partners in the public and non-governmental sectors.

123. The problem, of course, is that paradigm shifts are rarely achieved on the basis of gentle appeals, or of bureaucratic checklists. Two elements will be important in charting the way forward. The first is that the onus will largely be on the human rights community to demonstrate the feasibility of the approaches that they advocate, to demonstrate their adaptability to different circumstances, and to show a greater engagement with the alternative methodologies employed within the development community. The second is that incremental change is far more likely to succeed than is an approach which assumes that a paradigm shift can be achieved almost overnight. A gradualist approach will be more easily incorporated into existing development

paradigms, will be less threatening and thus meet less resistance, will be better able to emphasize the benefits of taking some aspects of human rights on board, and is far better able to be monitored and evaluated than is a demand that a fundamentally different methodology should be adopted.

6. Identifying the Key Characteristics of an Integrated HR/MDG Approach at the National Level

124. If the critique of human rights-based approaches as being too all-embracing is warranted then it becomes clear that the resulting challenge is to work out what the distinctive and genuinely indispensable elements of a more incrementalist human rights strategy should be. Some of the criteria on the basis of which those elements should be selected are: the need for a demonstrable grounding in human rights law of any principles put forward; a degree of modesty which acknowledges that a human rights approach will not in fact have clear answers, or perhaps any answers, in relation to at least some of the more intractable problems; the need for a judicious blend of process and outcome requirements; specificity in the sense of a list of requirements which is able to be stated with reasonable certainty or clarity; and manageability in terms of a list of requirements which is not utopian and does not impose impossible demands upon the relevant processes.

125. It is suggested that the following elements should be given priority in seeking to ensure that efforts to promote the MDGs take adequate account of human rights and that the human rights framework is mobilized in such a way that it can contribute effectively to the quest to ensure the meeting of the MDGs.

1. Recognition of the relevance of human rights obligations.

126. This element has three dimensions. The first and most important consists of recognition of the fact that the international human rights obligations which the country concerned has voluntarily undertaken should be one of the key reference points to be taken into account in MDG planning and implementation. In many respects this element is comparable to the practice of the World Bank in its environmental safeguards policy which requires that the environmental assessment (EA) required before projects are undertaken should take:

into account the ...obligations of the country ... under relevant international environmental treaties and agreements. The Bank does not finance project activities that would contravene such country obligations, as identified during the EA.¹⁰⁸

¹⁰⁸ The World Bank Operational Manual, Operational Policies: Environmental Assessment, OP 4.01 (January 1999, revised August 2004), para. 3, available at <http://wbIn0018.worldbank.org/Institutional/Manuals/OpManual.nsf/0/9367A2A9D9DAEED38525672C007D0972?OpenDocument>

127. The most important step in relation to the MDGs is simply the acknowledgement of the relevance of the human rights obligations. The significance which is subsequently attached to this recognition will vary from country to country and situation to situation. It is thus not necessary for the MDG policy itself to be any more prescriptive. An appropriate formulation would be: 'This national MDG policy recognizes that efforts to achieve the Goals will take into account, as appropriate, the human rights obligations of [State X].'

128. It would of course be possible to enter into more detail and spell out that such a commitment involves not only international treaty obligations undertaken by the state, but also any customary law provisions, as well as relevant soft law standards. But it is important not to see the MDG context as the site for the drafting of a contract but rather as an important occasion on which to introduce human rights considerations into the heart of the development planning processes and assume that this point of entry will eventually stimulate appropriate discussions as to the extent of the human rights obligations which are applicable.

129. Another important reason for emphasizing the human rights obligations voluntarily undertaken by the government in question is to combat what is still apparently seen as one of the stumbling blocks to the promotion of human rights by international institutions: the curious perception that the values are 'internationally [rather] than internally driven'.¹⁰⁹ While it is true both that there are international pressures to ratify human rights agreements (pressures long brought to bear and still only partially successful in relation to the United States, to take one pertinent example) and that governments sometimes accept international obligations in order to impress or placate domestic constituencies, the fact remains that such decisions are no more externally imposed than are those to accept foreign direct investment or to permit citizens to make use of the internet.

130. The second dimension of this first element is for the MDG strategy to state that its implementation will be consistent with the principles of equality and non-discrimination laid down in applicable international human rights standards. This is justified not only on the grounds that these principles are central to human rights but also that their application is often relatively straight-forward, does not necessarily raise complex issues of resource allocation, and can have a very large impact in addressing many of the challenges that arise in the MDG context. A human rights purist might well respond that this approach is too often interpreted as requiring only abstention on the part of governments and does not attach sufficient importance to the need for positive, affirmative measures in many contexts. While that is a justifiable critique, the purpose of this provision is again to serve as an entry point for the raising of a range of issues that might be appropriate in any given context, and the assumption is that it will take on a life of its own over time.

131. The third dimension would involve the use of human rights terminology wherever it is clearly applicable. The easiest examples would be to include references to the *right to* education, the *right to* adequate food, and the *right to* health, in the sections dealing

¹⁰⁹ Alsop and Norton, note 104 above, 8.

with those issues as MDGs. Once again the precise implications of this terminology need not be spelled out in the document. In most cases it will be through a dialogue within the community and particularly between civil society and the government to identify the specific implications in a given society.

2. MDG strategies should address the legal framework in relation to human rights

132. The MDG strategies need to steer their way between the Scylla of ignoring all questions of the legal structuring of society and the Charybdis of insisting that everything is related to everything else and thus no strategy is complete without addressing every dimension of governance and related concerns. Again the MDG strategy should confine itself to committing the government to ensure that an appropriate legislative and legal framework will be put in place in order to facilitate the meeting of the MDGs on the basis of respect for human rights. This will then provide the necessary entry point for a community debate over what measures are required, rather than trying (in vain) to be highly prescriptive.

3. The encouragement of community participation based on human rights formulations

133. Too many discussions of the need for ‘participation’ in the development process are hollow and tokenistic. That term, when used in the abstract and not related to a specific context, has remarkably little assured meaning. In development discourse, calls for the ‘informed and active participation of individuals in making decisions that affect them’ are heard all too often, without any adequate attempt to spell out what this means and how it might be translated into concrete law or policy.¹¹⁰ And the problem is not unknown in the human rights context either. Thus the 1986 Declaration on the Right to Development is positively dripping with references to participation.¹¹¹ But the relationship between that term and the concrete exercise of specified civil and political rights is never spelled out. This was not unintentional since the result enables one side of the debate to assert that participation is in fact a very satisfactory proxy term which invokes the whole gambit of relevant civil and political rights, while the other side can

¹¹⁰ There is a rich and extensive literature on this problem in relation to the Poverty Reduction Strategy process. For a synthesis of some of the critiques see Susan Mathews, *Poverty Reduction Strategies and Human Rights: A Position Paper for the World Social Forum – 2004* (Utrecht, Interchurch Organisation for Development Co-operation, 2004), available at

http://www.wemos.nl/prs/maillinglist/011mar/paper_icco_rights_and_prsp.pdf

¹¹¹ In extolling the virtues of participation the Declaration states that: ‘the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom’ (preamble para. 2); ‘development policy should ... make the human being the main participant and beneficiary of development’ (preamble para. 13); ‘every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development’ (Article 1); ‘the human person ... should be the active participant and beneficiary of the right to development’ (Article 2(1)); national development policies must aim at the ‘constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation’ (Article 2(3)); and ‘States should encourage popular participation in all spheres’ (Article 8(2)). See Declaration on the Right to Development, GA Res. 41/128 (1986), available at <http://www.unhchr.ch/html/menu3/b/74.htm>

insist that it is a much less inclusive term and one that is better understood in terms of its traditional, more localized, and limited usage in development discourse.

134. It is true that the most frequently cited human rights text is equally vague. Article 25 of the Universal Declaration of Human Rights states only that ‘Every citizen shall have the right and the opportunity, [without discrimination] and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives ...’. But this statement of the right to participate must be seen in the context of other rights recognized in the Universal Declaration which give substance to it. They include the right to freedom of speech, the right to non-discrimination, the rights to assembly and association, the right to a free press, and so on. So too must a call for participation in relation to setting and implementing MDG strategies.

135. For present purposes the point is that it is not meaningful to call for participation of those affected in decision-making unless the strategy goes on to specify what this might mean in practice, and that such specification should use human rights terminology. The range of issues that might usefully be identified in this regard in any given context is probably too broad to be susceptible of generalized prescriptions. The way forward, therefore, might be to affirm that broad-based and meaningful participation in decision-making will be sought, but then to ask those responsible for drawing up the relevant MDG strategy to spell out what this means in practice. It should always include the right to criticize official policy positions. The generality of such a recommendation could be dramatically reduced if it were possible to go further and call for specific proposals to be made in any context in which an international human rights body has indicated that any aspect of the freedom of individuals to participate is currently limited (e.g. reports by the ILO in relation to freedom of association, by UN Special Rapporteurs in relation to freedom of the press, freedom of speech, minority rights, etc, or by the UN Commission on Human Rights in its overall assessment of the situation in the country in question).

4. Accountability mechanisms are the sine qua non of a human rights approach

136. Institutionalized arrangements for monitoring processes and outcomes and for establishing some form of accountability are indispensable in any human rights context and they are equally relevant and necessary in relation to MDGs. Such a dimension is needed in order to ensure that the MDG initiative is more than just another bureaucratic scheme which will come and go just as its predecessors have. In the MDG context this would require the setting of explicit targets or benchmarks and then detailed reporting on the progress achieved in relation to those targets on the basis of an annual or biennial report. Where the benchmark has not been set, a re-examination of the relevant policies would be triggered. The reporting would also need to be disaggregated to the extent possible, to take account of elements such as gender, regional disparities, and the situation of the most disadvantaged groups in the society in question (who should be identified in the benchmarking process).

137. There is, as noted below, an important role for international human rights mechanisms in this regard, but the first line of support should be at the national level.

Thus, in every state in which a national human rights institution exists, it should be given an explicit mandate to review and report on the realization of MDG targets at regular intervals. It is estimated that there are now at least 55 such institutions in existence, a dramatic increase from the eight that existed in 1990.¹¹² In states which do not have such mechanisms, the MDG strategy could usefully recommend their creation.¹¹³

138. In essence the focus of this four-point list of desirable human rights elements is on the process-related aspects, in part because the specific outcomes are spelled out in the MDGs themselves. A process orientation is also justified on the grounds that such aspects provide a more focused basis on which to evaluate the human rights content of MDG strategies. Each of the suggested elements or criteria can be measured, at least in a formal sense, even if the adequacy of the content is difficult to assess. The assumption, however, is that even somewhat gestures in the direction of human rights components will empower civil society and other interested parties to engage with the government more fruitfully in relation to the key human rights issues that arise.

7. Monitoring and Accountability: The Role of the UN's Human Rights Mechanisms

139. Probably the most intense debate today about development policy strategies at the international level is focused on the Poverty Reduction Strategy (PRS) initiative rather than on the MDGs. The overlaps are considerable, however, and it seems both likely and appropriate (although some UN agencies are at best reluctant) that the two processes will increasingly coincide in the years ahead, to the point that most of the MDG advocacy and strategizing will take place within the PRS process.

140. It is thus of particular significance that the need for enhanced monitoring of progress made at the national level has, in the course of 2004 alone, been a matter of strong concern in a series of internal reviews undertaken by UNDP,¹¹⁴ the World Bank¹¹⁵ and the IMF¹¹⁶. Yet none of these reviews takes any account of the fact that there is already in place a relatively sophisticated and comprehensive system of monitoring linked to the international human rights regime. Nor do they focus on the potential overlaps between what is done in that setting and what is so clearly missing in both the MDG and PRSP settings. The UN Guidance Note on PRSPs, for example, notes that the UN Country

¹¹² M. Kjaerum, 'National Human Rights Institutions Implementing Human Rights', in M. Bergsmo (ed.), *Human Rights and Criminal Justice for the Downtrodden: Essays in Honour of Asbjørn Eide* (2003) 631.

¹¹³ See Committee on Economic, Social and Cultural Rights, General Comment 10 (1998) on 'The role of national human rights institutions in the protection of economic, social and cultural rights', UN doc. E/C.12/1998/25; and Committee on the Rights of the Child, General Comment No. 2 (2002) on 'The role of independent national human rights institutions in the promotion and protection of the rights of the child', UN doc. CRC/GC/2002/2.

¹¹⁴ Terry McKinley, *Overview of UNDP's Support to Poverty Reduction Strategies* (UNDP, 2004).

¹¹⁵ World Bank Operations Evaluations Department, *The Poverty Reduction Strategy Initiative An Independent Evaluation of the World Bank's Support Through 2003* (Washington DC, World Bank, 2004), available at <http://www.worldbank.org/oed/prsp/>

¹¹⁶ Independent Evaluation Office of the International Monetary Fund, *Report on the Evaluation of Poverty Reduction Strategy Papers (PRSPs) and The Poverty Reduction and Growth Facility (PRGF)* (Washington DC, 2004), available at <http://www.imf.org/External/NP/ieo/2004/prspgrgf/eng/report.pdf>.

Team can help ‘to establish a poverty monitoring and public expenditure tracking system, the development of country-specific indicators for monitoring the impact of their strategies on poor people and regions, and strengthening national statistical capacity’ and to make use of such information to assist the government to ‘use data, analysis and evaluations effectively, for multiple reports ...’. Yet much of that information would be relevant in relation to what should be done by countries in the context of their human rights reporting.

141. The existing arrangements for reporting on progress made in relation to the MDGs are relatively primitive and not especially convincing by most standards. As noted above, some 60 national MDG reports have now been completed. Notwithstanding rhetorical insistence that such reports will play an important role at the national level, their main ‘consumer’ seems to be the UN Development Programme which has a procedure for assessing the reports ‘especially with regard to participation, disaggregation and presentation’.¹¹⁷ In UNDP’s view the reports have two purposes: ‘public information and social mobilization’, and on each of these dimensions the assessment suggests considerable shortcomings on the part of many of the completed reports. It is noteworthy that neither human rights NGOs nor civil society organizations more broadly defined which have a particular involvement in human rights matters (such as women’s and children’s rights groups) are referred to at all in the assessment, despite the finding that ‘close collaboration with civil society organizations (CSOs) is essential for widening support and consensus around the MDGs’.¹¹⁸ The assessment also attaches considerable importance to tailoring MDG indicators to reflect the particular needs and circumstances of each country, in a way which is reminiscent of the approach advocated in relation to human rights benchmarks. Finally, UNDP concludes that there is a need to ‘build capacity among government officials, CSOs, parliamentarians, and the media to use data for evidence-based policy-making and programming, as well as for advocacy and campaigning.’¹¹⁹ From a human rights perspective it is striking that the unique mobilizational capacities of human rights standards are considered not to be relevant in this context, while it is assumed that civil society will be able to be galvanized around the relatively bureaucratically formulated MDGs.

142. The neglect of human rights dimensions in this context is also at odds with the recommendations of the UN inter-agency report on human rights based approaches to development. It attached particular importance in the context of the MDGs to the reporting process as part of an overall system of human rights monitoring. In the view of the inter-agency group:

A [human rights based approach] to national reporting on MDGs, requires a clear communication plan (about the process and time-table for preparing national reports); to serve as the basis for participatory approaches (which draw upon reports from governmental, nongovernmental, and notably local sources); with

¹¹⁷ ‘Management Response to the Assessment of the Millennium Development Goals Reports’, UNDP doc. DP/2004/3, para. 1.

¹¹⁸ *Ibid.*, para. 9.

¹¹⁹ UNDP doc. DP/2004/3, para. 12.

clear roles and responsibilities in reporting; disaggregation of national data, (to ensure that no group is left behind in the race to fill national goals and targets); and clear indicators, benchmarks and targets to measure progress.¹²⁰

143. But this inconsistency serves mainly to highlight the fact that many of those who are advocating human rights approaches within the leading international development agencies are relatively isolated, that their recommendations have too little impact upon the policies promoted by the institution as a whole, and that little real progress in this direction has yet been made.

144. Before considering how this situation might be improved it is useful to undertake a brief survey of the extent to which the two major avenues for UN human rights monitoring have been engaging, if at all, with the MDGs. Those avenues are the special rapporteurs of the Commission on Human Rights and the treaty bodies established to monitor states' compliance with the principal international human rights treaties.

The Roles of the CHR and of Special Rapporteurs vis-à-vis MDGs

145. As early as 2001 the Commission on Human Rights included non-specific references to the Millennium Declaration in a variety of its resolutions.¹²¹ By 2002 it had gone further and recognized 'the need for effective implementation and fulfilment of internationally agreed targets ..., with particular emphasis on those contained in the Millennium Declaration, within the agreed time frames',¹²² and it highlighted the link between the right to development and the MDGs.¹²³ The UN High Commissioner for Human Rights followed up on by focusing almost her entire 2002 report to the Economic and Social Council on the MDGs.¹²⁴ But while this series of resolutions should have augured well for the incorporation of the MDG issue into the work of the Commission, the early promise has not been borne out.

146. At a superficial level, the Commission has been assiduous, even admirable, in relation to the Millennium Declaration and the MDGs. By 2004, 19 out of the 125 resolutions it adopted contained an express reference to either the Declaration or the Goals or both. On closer examination, however, the result provides no cause for satisfaction for those who would wish to see the development of a substantive link. Twelve of the 19 resolutions contained only a passing reference in a preambular paragraph to the Declaration or the MDGs. In some cases, this superficiality was understandable, such as in the resolutions dealing with terrorism, the trafficking of women and girls, or human rights education.¹²⁵ In other cases, it was extremely surprising, such as in the individual resolutions dealing with the rights to food, housing,

¹²⁰ See *Report of the Second Inter-Agency Workshop*, note 10 above, p. 10.

¹²¹ CHR resolutions 2001/9 (dealing with the right to development), 2001/31 (extreme poverty), 2001/32 (globalization).

¹²² CHR res. 2002/69, para. 5. See also para. 6.

¹²³ *Ibid.*, paragraph 12.

¹²⁴ UN doc. E/2002/68.

¹²⁵ CHR resolutions 2004/44, 2004/45, and 2004/71 respectively.

education, and health,¹²⁶ none of which contained a single reference in the operative part of the resolution. Indeed the only relevant action proposed by the Commission in relation to the MDGs was to ask its independent expert on extreme poverty to ‘pay particular attention to ... the assessment of ... the internationally agreed goals contained in the Millennium Declaration ...’.¹²⁷ Finally, three resolutions – dealing with structural adjustment policies, international solidarity, and the rights of the child¹²⁸ – invoke the Millennium Declaration in connection with a call for more resources to be available to developing countries for the purpose of meeting the MDGs.

147. For their part, the various experts advising the Commission have also not paid a great deal of attention to the MDGs. A brief survey is sufficient to illustrate the point. The only really significant attention given to the MDGs in the Commission context in 2004 came from the Working Group on the Right to Development, the report of which states that ‘[i]mplementation of the Millennium Declaration ... and the Millennium Development Goals will contribute to the progressive realization of the right to development’.¹²⁹ And in recommending the creation of a ‘high-level task force on the implementation of the right to development’, it suggested that the first of its terms of reference should be to examine the ‘obstacles and challenges to the implementation of the Millennium Development Goals in relation to the right to development’.¹³⁰

148. The MDGs are of direct relevance to the work of various of the Commission’s thematically-focused Special Rapporteurs, but at least in 2004, the topic was barely visible. There were no references either in the general report or the country visit reports of the Special Rapporteur on housing, although in previous years he had made a reference to them.¹³¹ The Special Rapporteur on the right to food concluded his general report by recommending that ‘[a]ll Governments take immediate actions to meet their commitments’ made, *inter alia*, in the ‘Millennium Declaration to reduce the number of victims of hunger by half by 2015’.¹³² But the MDGs were not mentioned in his country report on the Occupied Palestinian Territories,¹³³ while in a report on Bangladesh he observes only that the interim PRSP prepared by the government does address the MDG targets.¹³⁴ The Special Rapporteur on the right to education refers to the MDGs twice in her general report,¹³⁵ although not in a substantive way, and they are not mentioned in her country reports on Colombia¹³⁶ or China.¹³⁷

¹²⁶ CHR resolutions 2004/16, 2004/21, 2004/25, and 2004/27 respectively.

¹²⁷ CHR resolution 2004/23, para. 10(e).

¹²⁸ CHR resolutions 2004/18, 2004/66, and 2004/48 respectively.

¹²⁹ UN doc. E/CN.4/2004/23, para. 43(g).

¹³⁰ *Ibid.*, para. 49(a).

¹³¹ UN docs. E/CN.4/2004/48 and Add.2.

¹³² UN doc. E/CN.4/2004/10, para. 54(a).

¹³³ UN doc. E/CN.4/2004/10/Add.2.

¹³⁴ UN doc. E/CN.4/2004/10/Add.1, para. 33.

¹³⁵ UN doc. E/CN.4/2004/45, para. 21 (MDGs address only primary school attendance), and para. 29 (MDG monitoring has been most successful in Western European countries).

¹³⁶ UN doc. E/CN.4/2004/45/Add.2.

¹³⁷ UN doc. E/CN.4/2004/45/Add.1.

149. The principal exception among the rapporteurs is the Special Rapporteur on the right to health. While he had made only passing reference to the MDGs in his earlier reports to the Commission, his 2004 report to the General Assembly includes a very detailed analysis of the relationship between the right to health and the MDGs. For present purposes the key points of his analysis were that there is ‘considerable overlap’ between the right to health and the relevant MDGs,¹³⁸ and that the right to health has much to offer to the latter in terms of its non-discrimination-based focus on the disadvantaged and vulnerable, and its emphasis on participation and accountability. But although it calls for the integration of human rights into the MDGs the report does not get into the specifics of what this might mean.

150. The conclusion of this survey of the relevance of the MDGs to the work of those Special Rapporteurs of the Commission on Human Rights whose mandates are of the most obvious and direct relevance is that the MDGs have not been ‘taken on board’ in any sustained way. They have not significantly influenced the analytical frameworks used by the rapporteurs, they do not feature in any applied sense in their recommendations, and there is no sense that the MDG initiative can contribute significantly to the human rights enterprise.

151. One interesting question to which this conclusion gives rise is whether the various experts who advise the Commission have themselves paid too little attention to the MDGs, thus encouraging the Commission to follow suit, or whether the reverse psychology has been applied. In other words, is it the Commission’s failure to embrace the MDGs that has encouraged the rapporteurs not to attach much importance to them?

Treaty Bodies MDGs Role

152. The evolution of effective monitoring procedures in relation to the major international human rights treaties has been a long and gradual process, but the ingredients are now in place for effectively holding governments to account for their action or inaction in relation to specific normative provisions, and there are a great many instances in which these procedures have been able to produce meaningful results.¹³⁹ In the development field, efforts have long been made to set specific goals and targets, and to reinforce such steps by the introduction of monitoring mechanisms. The approach reflected in the Declaration adopted at the Children’s Summit in 1990 exemplified both the successes and shortcomings of such endeavours. Clear goals were indeed set, but the monitoring arrangements were relatively ineffectual except in so far as they were applied by a specific agency such as UNICEF which had significant resources with which to back up its efforts to pressure states to adopt the agreed measures.

153. Five years later, the Beijing Conference was again able to agree on targets but not on effective monitoring. Subsequent arrangements have sought to compensate for that

¹³⁸ UN doc. A/59/422 (2004), para. 18.

¹³⁹ See generally Philip Alston and James Crawford (eds.), *The Future of U.N. Human Rights Treaty Monitoring* (Cambridge, Cambridge University Press, 2000).

deficiency but they have had to be somewhat ad hoc and dependent upon the energy of NGOs and the goodwill of governments.

154. It is against this background that the proclamation of the MDG goals has to be seen. At one level the goals are more precise, and have achieved higher level formal recognition (156 Heads of State or Government), than any previous development goals. In addition, they have been accompanied by a variety of monitoring arrangements which include national level efforts, sustained analysis and reporting by a range of international agencies including the Bretton Woods Institutions, and a major focus by the General Assembly, the Secretary-General, and the elaborate advisory apparatus that he has set up to promote the realization of the goals.

155. On the other hand, the MDG goals have been accused of being taken out of context, and thus of meeting ‘the letter of civil society demands for accountability, but not the spirit’.¹⁴⁰ And observers taking as their reference point a human rights approach to monitoring would argue that the MDG monitoring arrangements are lacking in several respects, including adequate opportunities for civil society inputs into the process, sufficiently clear, comprehensive and integrated set of standards, an open and transparent monitoring process, and the ability to mobilize both public and political support in the event of inadequate progress being made. Such critiques raise the question of whether the existing international human rights treaty monitoring framework has so far made a contribution, and whether in the future it could usefully and productively be invoked in order to complement and supplement the other arrangements already put in place in relation to the MDGs.

MDGs and the Treaty Bodies up to 2004

156. This part of the story is the most straight-forward. None of the treaty bodies appears to make any significant use of any part of the MDG apparatus which includes the specific commitments undertaken, the plans of action etc for their achievement, and the national reports. A review of the ‘concluding observations’ adopted by each of the treaty bodies as the principal reflection of the outcome of the dialogue with each reporting states reveals no references to the MDGs and no attempts to encourage governments to attach any particular importance to their MDG commitments. The assumption seems to be either that the MDGs add nothing to the already available framework or that it is specialized territory into which the treaty bodies should not stray. We take up these issues in the following section.

A Future Role for the Treaty Bodies

157. A simplistic answer to the question of how best to encourage the treaty bodies to take note of the MDGs would be to call upon each of them (leaving aside the Committee on Migrant Workers in view of the paucity of ratifications received by the relevant treaty) to take full account of the MDG commitments in their work.

¹⁴⁰ Carol Barton, ‘Introduction’, in *Seeking Accountability on Women’s Human Rights*, note 26 above, p. 3.

158. But there are several reasons why this would not be especially helpful. First of all, whenever a special focus arises, the treaty bodies are entreated to pay special attention to it, with the result that many of the calls made meet with all too little responsiveness. Experience to date tends to point to the emergence of a rapid saturation point in reaction to such calls. While each of them is entirely valid on its own terms, the fact that committees with already overloaded agendas will be loathe to add to them unless a strong, targeted, case can be made to them.

159. Second, the treaty bodies are concerned in different ways, and to a different extent, with the various issues raised by the MDGs. The Committee against Torture, for example, could do relatively little, other than making an extra effort to ensure that those who call upon governments to change their policies in order to meet the MDGs are not subsequently tortured for voicing criticism of government policies. A similarly restrictive role would be expected of the Human Rights Committee which monitors compliance with the International Covenant on Civil and Political Rights, although its mandate to scrutinize all discriminatory measures would give it a potentially more significant role. So too would the Committee on the Elimination of Racial Discrimination have a role in so far as racial or ethnic discrimination is involved in the failure to meet the goals or characterizes any of the measures designed to promote their realization.

160. While we should be careful not to exaggerate the significance of identifying treaty bodies whose potential role in relation to the MDGs seems limited, such a process nevertheless enables us to be more selective in excluding a leading (but not a subsidiary) role for any of those three committees. That leaves us with the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Discrimination Against Women (CEDAW), and the Committee on the Rights of the Child (CRC). Each of these three committees requests States Parties to submit reports on a five yearly cycle, modified to take account of delays etc. The reports are comprehensive, but are also expected to take particular account of shortcomings that have been identified in previous reporting cycles.

161. While there is a very significant overlap in the range of issues addressed by each of these three committees, there is in practice some degree of specialization and a division of labour, even if this is unlikely ever to be formalized or even officially acknowledged in such terms. The CESCR would reasonably be expected to focus more on general policy initiatives such as the MDGs and on the processes or procedures by which effect is given to commitments in relation to most of the Goals, whereas the other two committees do have specific 'constituencies' whose rights are expected to provide the principal focus of their activities. Both the CEDAW and the CRC would normally be expected to devote major attention to the issues considered as MDGs, and in general there is no particularly noteworthy gap in the coverage that either of them ends up providing.

162. There is, however, something of a difference in the attention that has been paid by the principal constituencies of each of the two treaties to the MDGs. Women's groups

have devoted a lot of attention to ensuring that the MDG process as a whole takes adequate account of gender, that the overall goal of gender equality suffuses what is done, and that the gender specificity of particular issues is recognized as appropriate. This is also reflected in the structure of the task forces established by the Millennium Project and the issues that many of them have identified. Children on the other hand seem to be less of a special focus, and children's rights NGOs have engaged less with the MDG process. In part this might well be due to what appears to be a certain reticence or skepticism about the Goals on the part of UNICEF which has its own longstanding set of goals to promote.

163. Indeed, before considering the ways in which the treaty bodies might be able to contribute to the MDG initiative there is an additional question to be asked. Why should the treaty bodies make a special effort in relation to the MDGs when it would add yet another element to an already over-crowded agenda? Are there any advantages in it for them? There are several respects in which it is possible to offer an affirmative and convincing answer to such a hard-nosed realist question, which will be uppermost in the minds of many of those working with the treaty bodies, even if they are too discrete to give voice to it.

164. The first concerns on- the-ground mobilization and the opportunity to begin to work with development-oriented groups who bring an important additional constituency to bear upon the promotion of human rights approaches. The second is that identification with some aspects at least of the MDG campaign will heighten the affirmative or positive dimension of the focus of some of the treaty bodies. In other words, the focus is not only on violations and omissions on the part of governments to act, but on positive measures which can and should be taken in an effort to ensure the realization of certain rights within a firm time limit. Third, the MDGs would provide a human rights context in which national and international aid agencies could offer to provide targeted funding to promote the achievement of specific goals, thus making the monitoring effort more operational, giving it an important constructive dimension, and making it potentially more effective. And finally, the MDGs can, up to a point, be taken as reflecting the minimum content of certain of the economic and social rights, so that states which fail to achieve their MDG commitments cannot easily seek to excuse themselves by relying upon a lack of available resources or arguments based on progressive realization.

Recommendations to the treaty bodies

165. On the assumption then that these three treaty bodies (the CESCR, CEDAW and CRC) will be prepared to do all they can to promote the realization of the Goals, several recommendations begin to emerge from this part of the analysis. The recommendations can be divided up to reflect the different phases of the monitoring process.

166. *Reporting by states:* Rather than requesting states in their individual reports to each of the three or six treaty bodies to report on progress made, or not made, in relation to the Goals, the best approach would be for that information to be accorded a special place in the 'core document' that each country now submits for use in connection with its

reporting under all of the relevant treaties to which it is a party. Proposals to expand the scope of this document have recently been put forward by the UN Secretariat and these proposals include making reference to the MDGs and also including relevant statistical and other data generated by the MDG process.¹⁴¹ The same report proposes that consideration be given by states to setting up a permanent single institutional framework at the national level for preparing both human rights and MDG reports.¹⁴² The latter approach would make a lot of sense but is likely to be strongly resisted for precisely the reasons that underlie the deep separation between these two processes as they currently exist. An alternative suggestion is that MDG reporting be referred to in the human rights reports submitted by states.¹⁴³

167. While the inclusion of this information in the core reports would ensure that each of the committees could take up the issue, it would not preclude more detailed and targeted information being provided to any one of the treaty bodies.

168. *Mobilization by NGOs and others:* The treaty bodies could encourage the various NGOs that work closely with each of them to devote more attention to the MDGs and to try to reach out to different constituencies in building more broad-based local campaigns focused on specific Goals.

169. *Activities undertaken by national human rights institutions:* It is appropriate to highlight here the role that these institutions might play in linking the realization of specific MDGs to the activities which they undertake with a view to giving effect to the State's obligations under particular treaties.

170. *Inputs by civil society into the reporting process:* In the examination of States' parties reports, the different treaty bodies rely heavily upon the provision of detailed and accurate information from civil society in order to be effective in holding governments to account. If NGOs, not only those working specifically in the human rights field, but also those dealing with development issues, were to make a particular effort to focus on the state of realization of specific MDGs they would render the reporting process more productive.

171. *Concluding Observations:* The outcome of the process of considering States reports is the adoption of a set of concluding observations addressed to the States party itself, but which are also supposed to be widely disseminated by the media in the country in question and are in practice very often taken up by the political process. A recurring criticism of some of the observations made is that they are not sufficiently precise or targeted, but a focus on individual MDGs, combined with explicit recommendations as to

¹⁴¹ 'Guidelines on an expanded core document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties', Report of the secretariat UN doc. HRI/MC/2004/3, para. 13.

¹⁴² *Ibid.*, para. 31.

¹⁴³ The same report asserts that MDG reporting 'is of particular interest to many of the committees insofar that [sic] each goal impacts on related articles of the treaties' and includes a detailed Appendix listing the human rights instruments and documents that are of direct relevance to each of the MDGs. *Ibid.*, para 55, and Appendix 5.

what needs to be done, would serve to bring important publicity to the Goals, would help to keep the government's feet to the fire, and would strengthen the hand of both those government departments and external donors which are advocating greater attention to these particular dimensions. Where appropriate, calls could be made upon international agencies and others to provide relevant assistance needed to ensure the meeting of the Goals.

172. *Follow-up:* A degree of urgency could be attached by the treaty bodies to the States parties responses to the recommendations concerning MDGs. NGOs could facilitate this process by following up on the recommendations and providing continuing information to inform the efforts of the treaty bodies.

8. Conclusions

173. The principal conclusion to emerge from this study is that neither the human rights nor the development community has taken the steps necessary to capitalize on the immense potential for a complementary approach between the human rights and MDG frameworks. The resulting opportunity costs on both sides risk being immense.

174. It is apparent that the experience of the past few years has failed to vindicate the optimistic assessments of either the UN High Commissioner for Human Rights in 2002 as to the active role that human rights could play in relation to the MDGs, or of the 2003 UNDP Human Development Report which highlighted the natural synergies between the two agendas. The High Commissioner's report argued that

human rights law provides a value system, a legal framework, monitoring mechanisms and realistic tools that can strengthen the effectiveness of the implementation of these goals. ... The elaborate system of the [Commission's] special rapporteurs ... as well as the expert [treaty] bodies ... provide a wealth of information that could usefully assist in assessing to what degree the Millennium development goals have been fulfilled.¹⁴⁴

175. Yet the present report has shown that neither the development nor the human rights community has responded very enthusiastically or convincingly to the challenge. This will probably be surprising to many in both the human rights and development communities. Members of the latter have spent considerable time in recent years discussing and in some cases applying human rights-based approaches, and even where such endeavors have been resisted there has been a dramatically increased awareness of the importance of various aspects of the human rights agenda even if the preferred approach has been based on concepts such as entitlements, empowerment, and so on.

176. On the human rights side it is generally taken for granted that the failure to have achieved a more fully integrated approach is due to the reluctance of the development community to adopt a rights-based approach. Yet, in addition to that factor, many

¹⁴⁴ UN doc E/2002/68, para. 11.

members of the human rights community have been equally reluctant to venture outside their areas of expertise narrowly defined. They have been happy for the development and humanitarian agencies to take on human rights functions but have not seen it to be necessary or even desirable for themselves to reach out with actions that seek to complement the overall agenda.

177. The MDGs make for an excellent case in point. There are very strong reasons why human rights bodies with particular specialist expertise should not stray beyond the limits of their competence, although it needs to be recalled that this same argument was used for many years to defend the failure or reluctance of the development agencies to take account of human rights. But the MDGs do indeed fall squarely within areas of competence which any human rights experts dealing with economic, social and cultural rights must have. And any effort to take a more pro-active approach to the promotion of civil and political rights would recognize that the potential inherent in a campaign with as big a reach as the MDG campaign should not be ignored.

178. The principal way forward, leaving aside the many other recommendations contained in this report and highlighted in the Executive Summary, is for the United Nations and other key international agencies to actively promote the principal elements of a slimmed down human rights approach (as described above) which would involve: (i) overt recognition in national MDG strategies of the relevance of human rights obligations; (ii) ensuring an appropriate national legal framework is a part of the MDG approach; (iii) encouraging community participation but doing so in a realistic and targeted way; and (iv) promoting MDG accountability mechanisms, which seek to build upon the synergies between human rights and development approaches. None of these elements needs to be highly prescriptive; rather the need is to have faith in the dynamism and self-starting nature of the rights framework once it is made part of the basic approach. These minimalist elements also seek to respond to the need to avoid the perception that values are being internationally imposed by being based upon commitments agreed to by the country in question and allowing the specific MDG framework to adapt and adjust to local circumstances under the influence of local community preferences.