



Prospects for Human Rights in the Post-2015 Development Agenda

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Stephen P. Marks

Prospects for Human Rights in the Post-2015 Development Agenda

Introduction

The prospects for including a human rights based approach in the post-2015 Development Agenda are dim if one considers the underlying reasons why the initial Millennium Development Goals (MDGs) were essentially silent on human rights. In this paper I will begin by exploring the obstacles to inclusion of human rights in the MDGs resulting from differing perceptions of development theory and practice. Secondly, I will examine some promising and some disappointing efforts to mainstream human rights in the post-2015 development agenda through official governmental and unofficial non-governmental and academic efforts. The third part will address the specific recommendations that have been made and conclude by highlighting those that appear reasonable and feasible to ensure that the new sustainable development goals are at least human rights sensitive and at best human rights based.

Obstacles to Including of Human Rights in the MDGs

The MDGs were not drafted with human rights in mind and were criticised for this shortcoming. Was it in the nature of the goals? A result of the controlling role of econometrically-oriented bureaucrats? A failure on the part of human rights specialists to make the case for the human rights dimensions of poverty reduction? To address these questions, I will recall some of the earlier formulations of the relationship between poverty and human rights and the tendency to focus on growth in economic policy-making and then discuss the focus on growth.

Earlier formulations of the relation between poverty and human rights

Economists and economic decision-makers only rarely invoke human rights concepts, although many are open to related notions. Some economists tend to consider their professional role as value-neutral, offering the tools of analysis to be applied to policies set by others. Other economists address moral dimensions of economic issues, but avoid human rights language. Jeffrey Sachs proposed to end extreme poverty by 2025 through a nine-step programme that he placed in the historical trajectory of the ending of slavery, colonialism, segregation, and apartheid. Although all of these were human rights movements, he does not call

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them that.¹ He does not explicitly make the link between the human rights movements of the past and the current movement for poverty elimination. Economists often apply notions of minimum standards, transparency, participation, and the like in the context of development policy, without relating them to a human rights framework. Thus, in the economics literature on international trade, there has been much discussion about appropriate mechanisms to promote labour standards, including addressing child labour in developing countries.² Likewise, the literature on public services has highlighted how a lack of transparency, insufficient accountability, and corrupt government officials will increase social wastage and distort economic and service delivery outcomes.³ Other research has focused on matters of “process”, correlating economic performance with democracy and the rule of law.⁴

An initial contextual feature of the absence of human rights in the design of the MDGs is that economists have traditionally avoided human rights discourse, whereas the human rights bodies of the UN have not hesitated to address the relationship between poverty and human rights. The World Conference on Human Rights, in its 1993 Vienna Declaration, stated that “[t]he existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority for the international community”.⁵ It further affirmed:

“[E]xtreme poverty and social exclusion constitute a violation of human dignity and [...] urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to promote the enjoyment of the fruits of social progress. It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty.”⁶

UN human rights bodies, in particular the Committee on Economic, Social and Cultural Rights (CESCR), share the critique of a statistically

1 Sachs, Jeffrey, *The End of Poverty: Economic Possibilities for Our Time*, Penguin Press, New York 2005, pp.360-8.

2 See, e.g., Edmonds, Eric V. and Pavcnik, Nina, *International Trade and Child Labor: Cross-country evidence*, National Bureau of Economic Research, 2004.

3 E.g. Shleifer, Andrei and Vishny, Robert W., “Corruption” (1993) 108 *Quarterly Journal of Economics*, p.599.

4 See, e.g., Rigobon, Roberto and Rodrik, Dani, *Rule of Law, Democracy, Openness and Income: Estimating the Interrelationships*, Kennedy School of Government, Harvard University, 2004.

5 Vienna Declaration and Programme of Action (VDPA), UN Doc. A/CONF.157/23 of 25 June 1993, para. 14.

6 *Ibid.*, para. 25.

determined definition of poverty. In its statement on poverty, the Committee endorsed a “multi-dimensional understanding of poverty, which reflects the indivisible and interdependent nature of all human rights” and defined poverty “as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living”.⁷

Focus on growth in economic policy

Although human-centred rather than growth-centred development has appeared in global development strategies since the 1960s, the dominant paradigm among economists is to focus on markets and growth. Commenting on the achievement of meeting the first MDG (halving global poverty) five years ahead of schedule, *The Economist*, forthrightly stated, “[t]he MDGs may have helped marginally, by creating a yardstick for measuring progress, and by focusing minds on the evil of poverty. Most of the credit, however, must go to capitalism and free trade, for they enable economies to grow — and it was growth, principally, that has eased destitution”.⁸

The farther one moves from trade, finance, and treasury departments of governments, including in their multilateral settings, and the closer one gets to bilateral and multilateral fora for addressing poverty, the more relevant human rights considerations become. Positions on the respective significance of growth and human rights range across a continuum running from the World Trade Organization (WTO) and the Group of Twenty (G20), at one end, passing through the World Bank Group and regional development banks to broad-based deliberative bodies (such as the global conferences and summits, and the UN Economic and Social Council), in the middle, to development aid agencies and programmes (such as the UK Department for International Development (DFID) and the UN Development Programme (UNDP)), to UN human rights bodies (such as the Human Rights Council and the Third Committee of the General Assembly), to human rights treaty regimes, at the other end. Economists and economic decision-makers dominate the WTO end of this continuum and only rarely invoke human rights concepts, although many are open to related notions such as equity and the rule of law.

A similar focus on growth and markets as the solution to poverty characterises the pronouncements of the G8 and the World Economic Forum in Davos, Switzerland. These settings and the G20, illustrate an ambiguity regarding human rights and poverty. The confrontation is not between the morally indignant voices of the poor against a band of greedy capitalists meeting in some boardroom in Washington or London. Many in the anti-globalisation movement do indeed claim to speak for the poor, but so do the representatives of the G20 Governments, which include India and China, as well as Argentina, Mexico, South Africa, and the European Union. These are not the forces of evil against the forces of good. They

7 CESCR, Statement on Poverty and the ICESCR, UN Doc. E/C.12/2001/10 of 10 May 2001, para. 8.

8 *The Economist*, 1 June 2013, p.11.

are the principal actors in the global economy and they send contradictory messages about the proposition that human rights have anything to do with poverty. It is little wonder, therefore, that human rights do not figure prominently among the approaches to poverty in vogue in policy pronouncements on the international financing of development. The critique of the human rights community of the G20 approach is found, among others in the work of "Righting Finance", which noted in 2011 that "human rights considerations have no place in their discussions or statements" but that "their actions have significant impacts on the realization and enjoyment of human rights, and the members of the G20 are Nation-states that cannot disregard their human rights obligations in any forum, including multilateral economic institutions".⁹

The context in which the Millennium Declaration — which did stress the interrelations of human rights, security and elimination of poverty — was made concrete in the MDGs is, therefore, one of diverse actors with diverse priorities, the more powerful of which see no need to make the nexus between the human rights and poverty agendas.

A report by the Center for Economic and Social Rights (CESR) captured the nature of the process well in characterising it as a "diplomatic pact between donor and recipient governments made operational by a team of technocrats".¹⁰ CESR considered that "the MDGs in practice harked back to a model of development centered more on charity than a sense of obligation between states, let alone duties of states to their people" and "did not reflect a human rights conception of poverty, either in the framing of the goals and targets, or in the measures taken to reach these goals".¹¹

Soon after the launch of the MDGs, the UN Secretary-General launched the Millennium Project in 2002 to develop an action plan and appointed Professor Jeffrey Sachs to head it. In 2005 he presented his final recommendations to the Secretary-General in a synthesis volume "Investing in Development: A Practical Plan to Achieve the Millennium Development Goals". The then High Commissioner for Human Rights, Mary Robinson, appointed Professor Philip Alston as her Special Adviser on the Millennium Development Goals, in which capacity he contributed to the work of the Millennium Project Task Force on Poverty and Economic Development (one of ten task forces) with a paper entitled "A Human Rights Perspective on the Millennium Development Goals",¹² outlining for the Task Force a detailed analysis of how human rights could be integrated into the MDGs. "Investing in Development" alluded briefly to some of his arguments but did not retain any in the recommendations for

9 Rightingfinance, "The Group of 20, Financial Regulation and Human Rights", available at <http://www.rightingfinance.org/?p=97> [17 September 2013].

10 Center for Economic and Social Rights, A Matter of Justice: Securing human rights in the post-2015 sustainable development agenda, 11 January 2013, p.1.

11 Ibid.

12 A Human Rights Perspective on the Millennium Development Goals (2003), available at http://www.hurilink.org/tools/HRsPerspectives_on_the_MDGs--Alston.pdf [17 September 2013].

action. Alston edited his paper for an academic publication, in which he characterised the relation between human rights and the MDGs as “ships passing in the night”. He found that “the framework within which the MDGs are being promoted at the national level in the great majority of developing countries does not currently take adequate account of the various human rights dimensions”.¹³ Regarding the international agencies involved, he found a “deliberate avoidance of the language of rights”.¹⁴ His critical observations do not exonerate the human rights community, “which has been so quick to criticize the reluctance of development agencies to take human rights considerations on board, [but] has itself shown a significant degree of obstinacy when it comes to making the necessary outreach to ensure that its own agenda is effectively promoted within the context of the international community’s development agenda”.¹⁵ Further, the recommendations he formulated then are worth repeating in relation to the post-2015 framework:

“The key elements in a new approach to ensuring effective complementarity between human rights and the MDGs should be: (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, however, 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 of the development enterprise.”¹⁶

Making the case for human rights in the MDGs

The High Commissioner for Human Rights has focused attention on the relationship between the MDGs and human rights by disseminating charts on the intersection of human rights treaty obligations and the MDGs and has published “Claiming the MDGs: A Human Rights Approach”, which is an exhaustive analysis of how human rights can contribute to the MDGs.¹⁷ Similarly, UNDP has published a primer called “Human Rights and the Millennium Development Goals: Making the Link”,¹⁸ and various national

13 Alston, Philip, “Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals”, *Human Rights Quarterly*, vol. 27 (2005), pp.755–829, at p.826.

14 *Ibid.*

15 *Ibid.*, p.827.

16 *Ibid.*

17 OHCHR, *Claiming the MDGs: A Human Rights Approach*, 2008.

18 UNDP, *Human Rights and the Millennium Development Goals: Making the Link*, Oslo Governance Centre, 2007.

development agencies have published their own human rights approaches to MDGs.¹⁹

As described above, the way the UN system and bilateral donors approach aid programmes and policies, the re-thinking of poverty reduction strategies, and the re-aligning of MDGs have accommodated to a considerable degree a human rights approach. Sakiko Fukuda Parr has noted that the relationship between human rights and poverty in the MDG process began with linking the two in the 2000 Millennium Declaration, but the MDGs de-linked them. She saw the Declaration as a “statement of a ‘human rights-based’ vision of development as both an end and a process”, which “conceptualizes poverty as a dehumanizing human condition, in the human rights and capabilities perspectives rather than in the utilitarian perspective of material deprivation”.²⁰ While the Declaration “reflects a human rights perspective on poverty as a problem that imposes obligations on states and the international community to put in place adequate social arrangements to eliminate it”, the MDGs “do not reflect the meaning of poverty as an affront to human dignity in the human rights and capabilities perspective”.²¹ In order to “recapture the narrative of development as a process of national development and expansion of human dignity as envisioned in the Millennium Declaration” she argues, a “new set of quantitative goals is needed to reset the narrative of development as sustainable, equitable and human rights-based development”.²² A similar position was taken by UN official and scholar Mac Darrow, who proposed that the “international human rights framework can serve a vital purpose in helping to ensure that the negotiations towards 2015 focus on legitimate ends of human development, corresponding to internationally agreed upon human rights norms, rather than context-specific and contested means”.²³

Five years after the adoption of the Millennium Declaration, heads of State and Government, gathered at the UN in New York from 14 to 16 September 2005 to reaffirm the Millennium Declaration and the values on which it was based. Resolution A/60/1, adopted on 16 October 2005 by the General Assembly at the Conclusion of the Summit, not only “acknowledge[d] that peace and security, development and human rights are the pillars of the United Nations system and [...] interlinked and mutually reinforcing”,²⁴ but “reaffirm[ed] that gender equality and the promotion and protection of the full enjoyment of all human rights and

19 See, e.g., the Swedish International Development Agency; the UK’s DFID; the US MCC; Canada’s CIDA; and Denmark’s DANIDA .

20 Fukuda-Parr, Sakiko, “Recapturing the Narrative of International Development”, UN Research Institute for Social Development Research Paper No. 2012–5, July 2012, p.6.

21 Ibid.

22 Ibid., p.11.

23 Darrow, Mac, “The Millennium Development Goals: Milestones or Millstones? Human Rights Priorities for the Post-2015 Development”, Yale Human Rights and Development Law Journal, vol. 15 (2012), p.105.

24 2005 World Summit Outcome, General Assembly resolution 60/1 of 16 October 2005, para. 9.

fundamental freedoms for all are essential to advance development [...]”.²⁵ The resolution also devoted an entire section to human rights and the rule of law²⁶ but only mentioned the MDGs in passing.

In anticipation of the MDG summit in September 2010, Harvard University, the University of Oslo, the Institute for Development Studies - Sussex, the United Nations Children’s Fund (UNICEF) and the Office of the UN High Commissioner for Human Rights organised an international symposium on 22 to 23 March 2010 at Harvard on “The MDGs and Human Rights”. Leading academics and international officials addressed the full range of “divergences between the MDGs and human rights both in terms of substance and key principles”, including “the MDGs’ lack of accountability, the imposition of targets from the top down, the use of aggregates and averages which can mask inequality”.²⁷ At that Symposium, Navi Pillay, the High Commissioner for Human Rights, told the participations that it was “clear that the objectives of human wellbeing and dignity for all enshrined in the Universal Declaration of Human Rights and reaffirmed in the Millennium Declaration will not be achieved if the MDGs are pursued in isolation from all human rights, including the right to development”.²⁸ She also stated that “States need to bring MDG targets and indicators in line with human rights in their national strategies”.

Under pressure from the symposium and other side-events organised at the time of the 2010 Summit, the governments adopted an outcome document, called “Keeping the Promise”,²⁹ which presented a more detailed agenda of priority policy measures necessary to achieve the Goals, including equity within and between countries, inclusive and equitable economic growth (para. 43), the role of human rights as an integral part of the Goals (para. 53), more efforts to collect disaggregated data (para. 68), the role of international cooperation in achieving growth and poverty reduction and for food security (para. 70), and universal access to services in primary health care (para. 73). The priority agenda for Goal 8 (para. 78) does not go beyond the original Millennium Declaration, with a few minor exceptions, namely, to explore new innovative finance mechanisms and to reaffirm the commitments made in the Monterrey Consensus, the Paris Declaration and the Accra Agenda, and to pursue the Doha Round of multilateral trade negotiations. The issues central to the right to development, namely discrimination within

25 Ibid., para. 12.

26 Ibid., paras. 119-145.

27 Millennium Development Goals and Human Rights March 22-23, 2010, Preliminary Conference Report, p. 19.

28 Statement by Navanethem Pillay, UN High Commissioner for Human Rights, “The MDGs and Human Rights”, International Symposium co-organized by OHCHR, UNICEF, University of Oslo, Institute for Development Studies-Sussex and Harvard University Harvard Law School, 22-23 March 2010, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10174&LangID=E> [17 September 2013].

29 Keeping the promise: united to achieve the Millennium Development Goals, General Assembly resolution 65/1 of 22 September 2010.

countries and the asymmetry in the decision-making processes on global economic issues, are not adequately addressed.

Nearly two years later, in June 2012, the United Nations Conference on Sustainable Development (Rio+20), met in Rio de Janeiro and adopted an outcome document called “The Future We Want”, which launched a process to develop a set of Sustainable Development Goals (SDGs). Rio+20 did not elaborate specific goals but stated that the SDGs should be limited in number, aspirational and easy to communicate. The goals should address in a balanced way all three dimensions of sustainable development (economic prosperity, environmental quality and social equity) and be coherent with and integrated into the UN development agenda beyond 2015. In “The Future We Want”, the heads of State and Government reaffirmed “the importance of [...] respect for all human rights, including the right to development and the right to an adequate standard of living”³⁰ and “the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law”. They further “emphasize[d] the responsibilities of all States, in conformity with the Charter, to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status”.³¹

The focus of “The Future We Want” was on the green economy, a term systematically accompanied by the terms “in the context of sustainable development and poverty eradication”. The green economy should “contribute to eradicating poverty as well as sustained economic growth, enhancing social inclusion, improving human welfare and creating opportunities for employment and decent work for all, while maintaining the healthy functioning of the Earth’s ecosystems”.³² Thus “green economy policies in the context of sustainable development and poverty eradication should: [...] (d) Promote sustained and inclusive economic growth, foster innovation and provide opportunities, benefits and empowerment for all and respect for all human rights”.³³ Other references to human rights related to rights of women and migrants and to Africa’s development. The High Commissioner said with respect to the human rights provisions in the document, “When we began our engagement with this process a few short months ago, human rights were virtually absent from the draft text being negotiated by the preparatory committees. Today, the centrality of human rights in the international community’s conception of sustainable development has been affirmed”.³⁴

The Center for Economic and Social Rights, on the other hand, was prompted to comment:

30 General Assembly resolution 66/288 of 27 July 2012, Annex, The Future We Want, para. 8.

31 Ibid., para. 9.

32 Ibid., para. 56.

33 Ibid., para. 58.

34 OHCHR News of 27 June 2012.

“‘The Future We Want’ was the slogan on banners promoting the meeting, but the resulting outcome document is unlikely to deliver anything on this worthy promise. The agreement appears to have sacrificed a swathe of key human rights and social justice concerns, prompting former High Commissioner for Human Rights Mary Robinson to brand it a ‘failure of leadership’. While commitments to certain economic and social rights, including food, water, education and health were ‘reaffirmed’ in the document, language on the critical issues of transparency and accountability is far too weak to ensure these affirmations translate into meaningful change. References to freedom of speech and association have meanwhile been omitted altogether.”³⁵

The UN System Task Team, created in September 2011 to support UN system-wide preparations for the post-2015 UN development agenda, recommended a “vision for the future that rests on the core values of human rights, equality and sustainability”.³⁶ According to its report, these three principles “would constitute the common, underlying elements necessary to address and resolve, through transformative change, the global trends and challenges that people will face in the post-2015 era. They provide the foundation of an agenda for achieving a better life for all human beings, and would serve to inspire and assist each society in determining how best to pursue this vision”.³⁷ The Secretary-General subsequently listed as the first of four building blocks for a sustainable development agenda to take root “(a) a far-reaching vision of the future firmly anchored in human rights and universally accepted values and principles, including those encapsulated in the Charter, the Universal Declaration of Human Rights and the Millennium Declaration”.³⁸

The UN Secretary General’s High-Level Panel of Eminent Persons on the Post-2015 Development Agenda was set up to make recommendations “regarding the vision and shape of a Post-2015 development agenda that will help respond to the global challenges of the 21st century, building on the MDGs and with a view to ending poverty”, to be considered by the General Assembly at the end of 2013.³⁹ The final report of the High-Level Panel, issued in May 2013, however, seems to

35 Human Rights After Rio+20: Failure Is Not An Option, 21 June 2012, available at <http://cesr.org/article.php?id=1303> [17 September 2013].

36 United Nations, *Realizing the future we want for all: Report to the Secretary-General*, June 2012, p.i.

37 *Ibid.*, p.23.

38 United Nations, *A life of dignity for all: accelerating progress towards the Millennium Development Goals and advancing the United Nations development agenda beyond 2015*. Report of the Secretary-General. UN Doc. A/68/202 of 26 July 2013, para. 75.

39 Terms of Reference for the High-level Panel of Eminent Persons on the Post-2015 Development Agenda, available at <http://www.un.org/sg/management/pdf/ToRpost2015.pdf> [17 September 2013].

take a step back from the Task Team. Human rights are mentioned twelve times but rarely with any substantive consideration.

Rather than basing the report on the three core values, the Panel, “convinced of the need for a new paradigm”, decided that the post-2015 development agenda should be “driven by five big, transformative shifts”. As part of shift “1. Leave no one behind”, is the commitment to “ensure that no person – regardless of ethnicity, gender, geography, disability, race or other status – is denied universal human rights and basic economic opportunities”.⁴⁰ The second shift has to do with sustainable development in the context of climate change and environmental degradation; the third with jobs and growth; the fourth with peace and accountable institutions; and the fifth with a new global partnership based on solidarity, cooperation, and mutual accountability. Only the fourth mentions human rights explicitly: “Freedom from fear, conflict and violence is the most fundamental human right”, which later becomes “Freedom from conflict and violence is the most fundamental human entitlement”.⁴¹ That theme also refers to “the rule of law, property rights, freedom of speech and the media, open political choice, access to justice, and accountable government and public institutions”. The fifth also mentioned - in passing - that the principles established at the Rio+20 Summit included “universality, equity, sustainability, solidarity, human rights, the right to development and responsibilities shared in accordance with capabilities”.⁴² Other references include, “The universal human rights and fundamental freedoms of migrants”;⁴³ and “We envision a world where the principles of equity, sustainability, solidarity, respect for human rights and shared responsibilities in accordance with respective capabilities, have been brought to life by our common action”.⁴⁴

As requested by the Rio+20 Outcome Document, “The Future We Want”,⁴⁵ the General Assembly established in January 2013 a thirty-member Open Working Group (OWG) on Sustainable Development Goals (SDGs) with the task of preparing a proposal on the SDGs,⁴⁶ involving relevant stakeholders and expertise from civil society, the scientific community and the United Nations system in its work, in order to provide a diversity of perspectives and experience.

In the progress report issued after the conclusion of its 4th session, in June 2013, the OWG only mentioned human rights in relation to the “fundamental right of everyone to be free from hunger”, the right to health, reproductive rights, and gender equality, but without reflecting in any way

40 High-Level Panel Of Eminent Persons on the Post-2015 Development Agenda, *A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustainable Development: The Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda*, United Nations, 2013, Executive Summary and p.7.

41 Ibid., Executive Summary and p.9.

42 Ibid., p.9.

43 Ibid., p.18.

44 Ibid., p.27.

45 *The Future We Want*, op.cit., para. 248.

46 General Assembly decision 67/555 (see UN Doc. A/67/L.48/rev.1).

a human rights based approach to realising SDGs.⁴⁷ The following observation in the OWG's progress report is not promising and hints at its discomfort with human rights in the conceptualisation of SDGs: "There are several enablers and drivers, strategies and approaches for sustainable development which may be difficult to enumerate as goals, among others human rights, rights based approaches, governance, rule of law, and wider participation in decision making".⁴⁸ The planned sessions of the OWG until February 2014 will focus on the themes identified on the Rio+20 framework for action (which do not include human rights), such as sustained and inclusive economic growth, sustainable consumption and production, climate change and disaster risk reduction, oceans, and SDG implementation. In its second phase (February-September 2014), the OWG will prepare its report and proposals to the General Assembly in the form of a single post-2015 UN development framework. Notwithstanding the reference to respect for human dignity in its mandate, there has so far been almost no attention to human rights in the deliberations of the OWG.

Recommendations for Negotiations in the Coming Two Years

Among the recommendations specifically addressing the human rights dimensions of post-2015 development agenda are those made to the High Level Panel, those made by the High Commissioner, those made by NGOs and those made by independent scholars.

Recommendations presented to the High-Level Panel

The Panel report offers, as "an example of how goals might be framed",⁴⁹ a set of twelve illustrative goals,⁵⁰ many of which make some reference to human rights. The language becomes more directly relevant to a human rights based approach to poverty reduction in Annex II on "Evidence of Impact and Explanation of Illustrative Goals", which includes the following under Goal 10 ("Ensure Good Governance and Effective Institutions"):

47 Advanced unedited copy: Progress report on the work of the General Assembly Open Working Group on SDGs at its first four sessions, available at <http://sustainabledevelopment.un.org/content/documents/1927interimreport.pdf> [17 September 2013].

48 Ibid., para. 26.

49 High-Level Panel, op.cit, p.15.

50 These illustrative goals are: 1. End Poverty; 2. Empower Girls and Women and Achieve Gender Equality; 3. Provide Quality Education and Lifelong Learning; 4. Ensure Healthy Lives; 5. Ensure Food Security and Good Nutrition; 6. Achieve Universal Access to Water and Sanitation; 7. Secure Sustainable Energy; 8. Create Jobs, Sustainable Livelihoods, and Equitable Growth; 9. Manage Natural Resource Assets Sustainably; 10. Ensure Good Governance and Effective Institutions; 11. Ensure Stable and Peaceful Societies; 12. Create a Global Enabling Environment and Catalyse Long-Term Finance.

“The Universal Declaration of Human Rights, signed over 60 years ago, set out the fundamental freedoms and human rights that form the foundations of human development. It reiterated a simple and powerful truth – that every person is born free and equal in dignity and rights. This truth is at the very heart of a people-centered agenda, and reminds us how high we can reach, if we reaffirm the value of every person on this planet. It is through people that we can transform our societies and our economies and form a global partnership.”⁵¹

Recommendations made by the High Commissioner

In an open letter dated 6 June 2013 addressed to all permanent missions, the High Commissioner took a positive view of progress in introducing human rights into the development agenda but stated, “This does not mean (and we have not advocated) adding a disconnected ‘human rights goal’ to the framework. Nor does it require extending the new framework to include unmeasurable targets or an unmanageable range of goals. But doing so will require the courage to break from the limited approaches of the past, and the vision to chart a new course, based on fundamental human rights”.⁵² She then proceeded to propose the ten elements of human rights in the post-2015 development agenda, focusing on (i) directing development efforts to the realization of human rights; (ii) balancing all rights; (iii) equality and non-discrimination; (iv) inclusion; (v) poverty as a complex human rights violation; (vi) environmental protection; (vii) human rights based international reform; (viii) universality; (ix) accountability framework, including UN treaty bodies, special procedures, and Universal Periodic Review, and (x) applying the “respect, protect, remedy framework” to business.

Recommendations made by NGOs

There has emerged a veritable industry of post-2015 proposals. An organisation called Beyond 2015 groups more than 650 civil society organisations in over one hundred countries to influence the creation of a post-2015 development framework that will succeed the current UN Millennium Development Goals. No fewer than two hundred reports are listed, many of which are human rights relevant.⁵³ Two are particularly interesting for present purposes: the Center for Economic and Social Rights (CESR) and Human Rights Watch.

– *The Center for Economic and Social Rights (CESR)*

51 High-Level Panel, op.cit., p.50.

52 Human rights in the Post-2015 Agenda, letter dated 6 June 2013, available at <http://www.ohchr.org/Documents/Issues/MDGs/HCOpenLetterPost2015.pdf> [17 September 2013].

53 Beyond 2015, Reports and Research, available at <http://www.beyond2015.org/content/relevant-research> [17 September 2013].

The Center for Economic and Social Rights published with the OHCHR a study on human rights accountability post-2015.⁵⁴ A joint statement, endorsed by 19 leading human rights organisations in 2013, called for human rights to be placed at the core of the new development agenda.⁵⁵ The Center for Economic and Social Rights, in its study, “A Matter of Justice: Securing Human Rights in the Post-2015 Sustainable Development Agenda”, enumerated the “human rights principles in which CESR believes any future sustainable development framework should be anchored: universality, interdependence, equality, participation, transparency, accountability, meeting minimum essential floors, using maximum available resources, and international cooperation”.⁵⁶

– *Human Rights Watch*

Human Rights Watch proposed “six elements, which are distinct but mutually reinforcing, [and] should be comprehensively incorporated into a sustainable and human rights-respecting Post-2015 Development Agenda”.⁵⁷ These elements relate to (i) measurable human rights targets for the poorest, (ii) inclusion, (iii) accountability through the justice system, (iv) participatory development, (v) applying the “Protect, Respect, Remedy” framework to corporations, and (vi) international accountability mechanisms.

Conclusion

The willingness to include more than a token and non-operational mention of established political commitments to human rights in the development agenda has evolved only slightly since 2001, when the Millennium Development Goals were first launched. In the time remaining before the new post-2015 Sustainable Development Goals will be promulgated, it is unlikely that human rights will be fully integrated in the post-2015 Development Agenda. The High-Level Panel of Eminent Persons clearly was not interested, although several targets in Illustrative Goals 2, 3, 5, and especially 10 are human rights-relevant. The UN System Task Team was willing to include human rights among the core values of the future framework, along with equality and sustainability and the Secretary-General included them among the four building blocks of sustainable development. The Open Working Group on Sustainable Development Goals has not demonstrated any willingness to integrate human rights into the SDGs. At the same time, some governments within the Organisation for Economic Co-operation and Development (OECD) hesitate to push too hard on human rights believing that invoking them will

54 Center for Economic and Social Rights and OHCHR, *Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda*, United Nations, 2013.

55 “New development goals must have human rights at their core”, 6 May 2013, available at <http://www.rightingfinance.org/?p=402>.

56 CESR, *A Matter of Justice*, op. cit., p.3.

57 See, e.g., Human Rights Watch, “Letter to the High-level Panel of Eminent Persons on the Post-2015 Development Agenda”, 24 March 2013, available at <http://www.hrw.org/news/2013/03/24/letter-high-level-panel-eminent-persons-post-2015-development-agenda> [17 September 2013].

jeopardise agreement on the post-2015 agenda. This reluctance is further reflected in the outcome document of the special event of September 2013.⁵⁸ While claiming to have “taken account of the voices of people worldwide and of the concerns and priorities they have conveyed,” in fact the outcome document only mentions human rights twice as part of an enumeration of several issues, without reference to human rights as either one of the “core values” (Task Team) or “building blocks” (Secretary-General) of the development agenda.

Nevertheless, numerous reasonable recommendations, building on the work of scholars like Alston, Yamin, Langford, Fukuda-Parr, and Darrow have been reflected in the positions taken by the High Commissioner, the treaty bodies, and in submissions to the High-Level Panel from NGOs. There have been some promising and some disappointing efforts to mainstream human rights in the post-2015 development agenda through official governmental and unofficial non-governmental and academic efforts. Many of the specific recommendations made by these entities are reasonable and feasible to ensure that the new sustainable development goals are at least human rights sensitive and at best human rights based. The substantive proposals from all these sources should be seriously considered during the next phase of the process in order to sustain the momentum for integrating of human rights meaningfully into the development agenda at a particularly vulnerable moment. What emerges from the formal process will be a bureaucratic enumeration of strategic directions, which may or may not mobilise adequate human and financial resources. It is social mobilisation based on human rights learning that will produce impacts both deeper and longer than an agenda aimed at 2030. At a minimum the following seven principles should be embedded in the final product. These elements have the potential of enhancing the relevance of the post-2015 sustainable development agenda to the process of social and political transformation aimed at removing the structural causes of poverty and inequality.

1. Centrality or imperative of human rights in sustainable development goals

Whether called “pillars”, “core values”, “building blocks”, “non-negotiable”, or other terms proposed, the agenda must affirm, similar to agreed terms of the Millennium Declaration and the VDPA, the principle that human rights ranks with sustainable development and peace and security as the interdependent bases of a just and sustainable national and international order. Human rights learning is the process through which awareness of the interrelatedness of these values becomes instrumental to community-based social change.

2. Mandatory Participation

⁵⁸ United Nations, Outcome document of the Special Event to follow-up on efforts made towards achieving the Millennium Development Goals. Contained in resolution submitted by the President of the General Assembly. Draft resolution A/68/6, adopted without vote on 9 October 2013.

Free, meaningful and effective participation will in any case be affirmed, but there must be a simultaneous affirmation of the requirement to include people living in poverty and others affected by development policies and practices in order to avoid the impression that token consultation is adequate or effective.

3. Explicit reference to human rights obligations

The sine qua non of the integration of human rights in the development agenda and the essence of the concept of policy coherence is to include in each goal or target, more than an indirect reference to human rights through terms such as “ensure access to...,” “safeguard...,” or “provide...,” but rather make explicit reference to treaty-based human rights, such as the use by the High Level Panel in Target 5a of the “right to sufficient, safe, affordable and nutritious food.” Such language must be included for all targets.

4. Accountability

References in the agenda to rule of law and access to justice must be formulated in ways that explicitly call for the use of human rights to achieve disparity reduction, not only holding officials accountable for failing to realise human rights enumerated in the targets but also through monitoring and evaluation with selected indicators that are disaggregated by gender, minorities and other categories in order to focus on inequalities and disparities.

5. Integration of development goals into existing UN human rights procedures

The Universal Periodic Review (UPR), treaty body reporting and complaints procedures, and thematic and country special procedures should be used to monitor progress in the development agenda. In this regard, the UPR should be extended to selected inter-governmental institutions.

6. International reform based on the right to development

The post-2015 development agenda must contain a firm commitment, similar to that of the Millennium Declaration and the VDPA, to move the right to development from its current stalemate to an operational framework through which all development actors can be held accountable, under the 1986 Declaration, for realising all human rights as part of national and international development policies and programmes, and for achieving global reforms that will genuinely advance sustainable development by overcoming the glaring injustices and inequalities of the international economic and financial order.

7. Private sector and finance and trade institutions

There is wide support for explicit reference to the UN's Guiding Principles on Business and Human Rights, which should be a minimum in the development agenda regarding the accountability of the private sector. In addition, international financial and trade institutions, notwithstanding their

constitutive acts and non-party status to human rights treaties, should be reminded of their human rights obligations based on the UN Charter and evolving interpretations. In this regard, the agenda should also invoke extraterritorial responsibility, in ways that may challenge not only OECD governments but also the BRICs, these two groups being the most powerful actors in the negotiation. Their support for private sector and State enterprise development must be balanced in the development agenda with language committing them to applying a human rights based framework to such entities.