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Human Rights and MDGs in Practice: A review of country strategies and reporting

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1. Introduction

1.1 Evolution of the MDGs

The Millennium Declaration of 2000 set out and restated an ambitious international agenda to tackle issues concerning peace and security, development, human rights and the environment. Alongside development goals on poverty, water and education, commitments were also made to promote democracy and respect for all human rights. This included the right to development and relevant economic, social and cultural rights with a particular focus on the rights of minorities, women and migrants and access to information.

In the following year, the development goals were slightly amended and expanded into a single list called the Millennium Development Goals (MDGs). The eight MDGs are to:

- (1) Eradicate extreme poverty and hunger
- (2) Achieve universal primary education
- (3) Promote gender equality and empower women
- (4) Reduce child mortality
- (5) Improve maternal health
- (6) Combat HIV/AIDS, malaria and other diseases
- (7) Ensure environmental sustainability
- (8) Develop a global partnership for development

The goals are accompanied by 18 targets, to be mostly reached by 2015, and are measured by indicators using 1990 as a baseline (see Table 1 below).

The process of selecting targets and indicators was conducted under the auspices of the UN Secretary-General and the list was broadly endorsed by UN agencies, the World Bank, the International Monetary Fund and the OECD. The UN General Assembly only embraced the separate list of eight MDGs as late as of October 2005. The General Assembly focus has always been on calling for implementation and monitoring of all the goals and measures in the broader Millennium Declaration framework.

The goals did not emerge in a vacuum and represent the culmination of a decade-long global debate and earlier attempts to set international development targets.¹ The MDGs have subsequently gained a significantly high profile, particularly amongst the international development community and a significant number of developing States. They have been lauded for providing a clear and simple means of benchmarking and assessing the progress of human development. According to the Millennium Development Campaign, policy and institutional reforms and resource allocations often result from an approach focused on time-bound targets.²

¹ See for example, the 1992 UN Conference on the Environment and Development (UNCED) and the 1995 World Summit on Social Development. One of the outputs of these conferences was the OECD's International Development Goals (IDGs) in 1996, whose targets were expanded to become the MDGs.

² UN Millennium Project, *Millennium Development Goals Assessments: Methodology*, September 2004.

Table 1. MDGs and linkages between the targets and human rights

<p>Goal 1 - Eradicate extreme poverty and hunger</p>	
<p><i>Target 1A:</i> halve the proportion of people whose income is less than \$1 a day (between 1990 and 2015)</p>	<p><i>the right to adequate standard of living</i></p>
<p><i>Target 1B:</i> achieve full and productive employment for all, including women and young people</p>	<p><i>the right to work</i></p>
<p><i>Target 1C:</i> halve the proportion of people who suffer from hunger (1990-2015)</p>	<p><i>the right to food</i></p>
<p>Goal 2 - Achieve universal primary education</p>	
<p><i>Target 2A:</i> ensure that, by 2015, all children will be able to complete a full course of primary schooling</p>	<p><i>the right to education</i></p>
<p>Goal 3 - Promote gender equality and empower women</p>	
<p><i>Target 3A:</i> eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015</p>	<p><i>the rights of women to equality and education</i></p>
<p>Goal 4 - Reduce child mortality</p>	
<p><i>Target 4A:</i> reduce by two-thirds the under-five mortality rate (1990-2015)</p>	<p><i>the right to life</i></p>
<p>Goal 5 - Improve maternal health</p>	
<p><i>Target 5A:</i> reduce by three-quarters the maternal mortality ratio (1990-2015)</p>	<p><i>the rights of women to life and health</i></p>
<p><i>Target 5B:</i> achieve by 2015, universal access to reproductive health</p>	<p><i>the rights of women to life and health</i></p>
<p>Goal 6 - Combat HIV/AIDS, malaria, and other diseases</p>	
<p><i>Target 6A:</i> have halted by 2015 and begun to reverse the spread of HIV/AIDS</p>	<p><i>the right to health</i></p>
<p><i>Target 6B:</i> achieve, by 2010, universal access to treatment for HIV/AIDS for all those who need it</p>	<p><i>the right to health</i></p>
<p><i>Target 6C:</i> have halted by 2015 and begun to reverse the incidence of malaria and other major diseases</p>	<p><i>the right to health</i></p>
<p>Goal 7 - Ensure environmental sustainability</p>	
<p><i>Target 7A:</i> integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources</p>	<p><i>the right to environmental health</i></p>
<p><i>Target 7B:</i> reduce biodiversity loss, achieving, by 2010, a significant reduction in the rate of loss</p>	<p><i>the right to environmental health</i></p>
<p><i>Target 7C:</i> halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation</p>	<p><i>the right to water and sanitation</i></p>
<p><i>Target 7D:</i> have achieved by 2020 a significant improvement in the lives of at least 100 million slum dwellers</p>	<p><i>the right to adequate housing</i></p>
<p>Goal 8 - Develop a global partnership for development</p>	
<p><i>Targets 8A-8D</i> cover aid, trade, debt, landlocked and small island states</p>	<p><i>the right to development</i> <i>ESC rights</i></p>
<p><i>Target 8E:</i> in cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries</p>	<p><i>the right to health</i></p>
<p><i>Target 8F:</i> make available the benefits of new technologies, especially information and communications technologies</p>	<p><i>ESC rights</i></p>

It is difficult to judge on empirical grounds the extent to which the MDGs enterprise has contributed to poverty reduction. On one hand, some governments claim that the MDGs have influenced their spending priorities. Kenya's MDG report (2005) states that "the decision by the government to increase funding towards MDG related programmes has seen funding for the health, education agriculture and infrastructure sectors increase."³ Indonesia's MDG Report (2007) claims that in the allocation of provincial budgets for the period 2003-2006, spending priorities of many districts and cities were based on the MDGs framework. Many donor countries, UN agencies and the World Bank similarly claim that development priorities are now more closely aligned with poverty reduction as a result of the MDGs.⁴ In addition, the MDGs appear to have raised the profile of development issues amongst the general public, including the human rights community. The former UN Special Rapporteur on the Right to Health has called for a global campaign on maternal mortality, and Amnesty International selected maternal mortality as one of the two key social rights it will target in its advocacy.⁵

On the other hand, it is not entirely clear how far the progress that has been achieved so far can be attributed to the MDGs. One economist has commented that "Private sector led growth abetted by government has been the engine in Asia, lifting many of the poor with the benefits of steady employment. Where progress is most needed, in Africa and other low income regions, mobilisation to achieve the MDGs has so far seemed to have modest impact."⁶ There is also some evidence to suggest that the MDGs agenda may have some negative impact in areas like slum upgrading, where the lack of emphasis on security of tenure has possibly added legitimacy to slum clearance policies that violate various human rights. The MDGs agenda also seems to have only a limited impact on Poverty Reduction Strategies. Prof. Sakiko Fukuda-Parr pointed out that "economic growth for income poverty reduction and social sector investments (education, health and water) are important priorities in most of the PRSPs; decent work, hunger and nutrition, the environment and access to technology tend to be neglected."⁷

1.2 Relationship with human rights

At first glance, the MDGs appear to be compatible with human rights, particularly in the field of economic and social rights (see Table 1 above). There is a substantial overlap in focus and it has been suggested that the MDGs may give a higher profile to economic and social rights.⁸ The MDGs contain clear quantitative standards to which all governments have made a political commitment. This is significant since

³ Government of Kenya, *MDG Status Report for Kenya, 2005* (Nairobi: UNDP, Government of Kenya and Government of Finland), p. 5.

⁴ For instance, the mission statement of the UK Department for International Development (DFID) is exclusively defined by the MDG: see <http://www.dfid.gov.uk/aboutdfid/missionstatement.asp>

⁵ See for example, Amnesty International USA, *Promote the Human Right to Maternal Health*, available at <http://takeaction.amnestyusa.org/site/c.jhKPIXPCIoE/b.4559095/>

⁶ S. Smith, *The Millennium Development Goals and the Struggle against Poverty Traps*, Presentation at the United Nations Economic and Social Council meeting on "Eradicating poverty and hunger – Joining forces to make it happen", 2 April 2007, p. 1.

⁷ 'Are The MDGs Priority In Development Strategies and Aid Programmes? Only Few Are!', *International Poverty Centre Working Paper*, No. 48 October, 2008, p. 1.

⁸ OHCHR, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (New York and Geneva: OHCHR, 2006), p. 8.

quantitative commitments have so far only been made in the context of labour and social security rights through the International Labour Organisation conventions.

Concurrently, concerns have been raised as to the formulation and implementation of MDGs from a human rights perspective, particularly as the MDGs were decoupled from the broader agenda encapsulated in the Millennium Declaration. It has been queried whether the MDGs have lowered human rights standards in some instances: for instance, Goal 2 does not require primary education to be free, contrary to the near-universally ratified Convention on the Rights of the Child; and the goal of 'fair trade' in the Millennium Declaration was reduced to 'free trade' in the MDGs. Furthermore, most of the quantitative targets are likely to be lower than minimum human rights standards in the case of middle income countries. This can be discerned in the seemingly triumphant tone of national MDG reports of some of these countries when they report on meeting the goals.

In addition, the targets do not pay sufficient attention to inequality, the rights of women and marginalised groups and the poorest of the poor. It is possible to achieve most of the targets without addressing extreme poverty of the most excluded in a society. National and global power inequities appear to have been glossed over and there are no quantitative targets for MDG 8 on global partnerships, for example. Instead, the MDGs tend to reflect a strong technocratic focus.⁹ In one research project, Southern and Northern-based development NGOs and social movements were compared on how they incorporated MDGs and human rights in their activities.¹⁰ The main finding was that MDGs and to a lesser extent human rights were regularly cited by Northern-based organisations. Those in the South had barely engaged with the MDGs and referred more often to human rights. This raises a concern that the MDGs were more a donor-driven agenda,¹¹ although a greater focus on poverty reduction in donors' policies could arguably be seen as a success in itself.

One response to these critiques was to call for States and donors to adopt a human rights approach to the MDGs. This was strengthened by evidence of an almost total absence of human rights in MDG reporting in 2005. A study prepared for the Office of the UN High Commissioner for Human Rights (OHCHR), by Professor Philip Alston, found that "there is a large discrepancy in the ways in which human rights issues are dealt with in the context of MDG reporting" and when "moving from the policy domain to examine the programmatic side, the discrepancy between rhetorical references to human rights and actual program content becomes even more

⁹ See for example, OHCHR, *Claiming the MDGs: A Human Rights Approach* (Geneva: OHCHR, 2008); Ashwani Saith, 'From Universal Values to Millennium Development Goals: Lost in Translation' *Development and Change* 37(6): 1167-1199 (2006). Some of the inherent problems were acknowledged early on by their academic promoters: see R. Black and H. White, *Targeting Development: Critical Perspectives on the Millennium Development Goals* (London: Routledge, 2004).

¹⁰ P. Nelson, 'Human Rights, the Millennium Development Goals, and the Future of Development Cooperation', *World Development*, vol. 35, No. 12 (2007), pp. 2041-2055.

¹¹ ODI notes that there is 'widespread perception of the MDGs as a northern project – despite their adoption by member states', 'Achieving the MDGs: The fundamentals', *ODI Briefing Paper*, September 2008, p. 4. However, this perception is partly based in reality since the UN General Assembly only adopted the MDGs as such in late 2005 and had previously referred to the Millennium Declaration until that time.

marked.”¹² The UN Independent Expert on Minority Issues came to a similar conclusion after examining MDG reports and Poverty Reduction Strategy Papers with regard to indigenous peoples and minorities:¹³

The findings of this survey are revealing. Ethnic or linguistic minorities are mentioned in only 19 of the 50 MDG country reports reviewed. The inequalities experienced by religious minorities are mentioned in only two of the reports. An additional 10 reports mention only indigenous peoples without identifying any other minority groups. The degree to which minorities are mentioned varies widely, with some reports providing a good range of information under several MDGs and disaggregated data. In other cases, minorities are mentioned only in the background section describing the national population but without particular attention to their situation in relation to MDGs. Minorities were mentioned most frequently in connection with Goal 2 on universal primary education. Attention to indigenous peoples is in general significantly higher than attention to non-indigenous marginalised minorities across the reports. While attention to gender issues in many MDG country reports is positive, there is very little consideration of intersectional discrimination experienced by minority women, or targeted policies for marginalised minority women. Minorities are virtually absent from the MDG country reports from donor countries. None of the MDG country reports gives consideration to minorities under each of the eight Goals.

Since 2005, the UN Permanent Secretariat for Indigenous Peoples has analysed MDG reports each year and their findings in 2008 are reprinted in the annexure to this paper. While they indicate that there have been some improvements in focusing on indigenous peoples, they reiterate previous recommendations that governments should include indigenous peoples in the planning of the report, in the discussion of each Goal, their effective participation in the planning processes, implementation, monitoring and evaluation of programmes and projects that will directly or indirectly affect them and should also improve the collection and disaggregation of data regarding indigenous peoples.¹⁴

Amongst others, UNIFEM, UNDP and the OHCHR have issued publications outlining how a human rights approach could be adopted to each MDG. In *Pathway to Gender Equality* (2004), UNIFEM asks whether limiting gender equality and women’s empowerment to primary and secondary education could “send the international community backwards”.¹⁵ They pragmatically conclude that the MDGs should be viewed instead as an opportunity to advance the Convention on the Elimination of Discrimination Against Women. They call for gender equality to be

¹² P. Alston, “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, No. 3 (2005), pp. 755-829.

¹³ Report of the Independent Expert on Minority Issues, Gay McDougall, *Achieving the Millennium Development Goals (MDGs) for Minorities: A Review of MDG Country Reports and Poverty Reduction Strategies*, U.N. Doc. A/HRC/4/9/Add.1, 2 March 2007.

¹⁴ UNPFII, *MDG Reports and Indigenous Peoples: A Desk Review*, No. 3 February 2008, Secretariat of the UN Permanent Forum on Indigenous Issues, prepared by Kelley Laird, p. 50.

¹⁵ UNIFEM, *Pathway to Gender Equality: CEDAW, Beijing and the MDGs* (New York: UNIFEM, 2004), p. 7.

mainstreamed in all MDGs and provide goal-by-goal guidance. In *'Making the Link: The MDGs and Human Rights'* (2007), the UNDP sought to draw on the synergies between the human rights and MDGs agenda. They point out how the human rights approach could improve efforts to reach the MDGs and focus on the importance of setting minimum standards, disaggregation to reveal and address patterns of discrimination, and strengthened strategies for accountability.

'Claiming the MDGs: A Human Rights Approach' (2008) calls for a tailored human rights approach to the MDGs. States and development actors are asked to incorporate human rights in MDG-related planning, implementation and monitoring by:

- (1) *Aligning the Goals with human rights* by harmonising MDG targets and indicators with human rights standards.
- (2) *Being transformational not technocratic* by adopting a human rights-based approach to empowerment and participation.
- (3) *Prioritising rights* by making policy choices and resource allocation within a human rights framework.
- (4) *Claiming the MDGs* by ensuring enforceable rights, accountability mechanisms and sustainable strategies.

1.3 International response

At the international level, there have been some positive responses to the express and implicit calls for closer alignment of the MDGs with legal stipulations and policy consequences of a human rights approach. The 2005 World Summit Outcome contained clear and unprecedented commitments from member States to mainstream human rights in their national policies. In 2007, some of the MDG targets were adjusted and one notable step was the inclusion of a target on reproductive rights under Goal 5. In 2008, the General Assembly resolution on the Triennial Comprehensive Policy Review (TCPR) recognised the close linkages between development, peace and security and human rights. There has also been a general call by the UNDP that countries should adapt goals according to the national context.¹⁶ However, it has not recommended that the contextualisation takes into account a State's human rights obligations.

One particularly positive development came in early 2001. The UN General Assembly supplemented Goal 6 by making a series of detailed commitments. This included: the development and implementation of multisectoral national strategies and financing plans for combating HIV/AIDS by 2003; the integration of HIV/AIDS prevention, care, treatment and support and impact mitigation priorities into the mainstream development planning by 2003; reducing HIV prevalence by 25 per cent among young people in the most affected countries by 2005 and by 25 per cent globally by 2010; and ensuring by 2010 that 95 per cent of young people have access to the

¹⁶ See for example, the *How-to-Guide: MDG-Based National Development Strategies*, 'Part I: Introduction and Overview' (New York: UNDP, 2006) and J. Vandemoortele, *'MDGs: Misunderstood Targets?'*, UNDP International Poverty Centre, January 2007, No.28, available at <http://www.undp-povertycentre.org/pub/IPCOnePager28.pdf>, visited February 2008.

knowledge, education, life skills, and services to reduce their vulnerability to HIV infection.¹⁷

At the same time, there have been some notable global failures. Negotiations on the Doha Declaration to concretise the commitments under Goal 8 to reduce agricultural protectionism have consistently collapsed without resolution. The 2007 revision of the MDG targets and indicators did nothing to address the un-ambitious and misguided target on slum upgrading. A review of the Millennium Project Taskforce Reports reveals wide variances in the extent to which they recommend human rights approaches. The report on child and maternal mortality goals is grounded in a human rights perspective,¹⁸ while the report on water and sanitation only mentions human rights as a *chapeau* concept and the remainder of the report appears rather technocratic in orientation.¹⁹

1.4 Assessing the incorporation of human rights approaches in practice

A greater unknown is the extent to which States and other development actors have adopted a human rights approach at the national level, particularly during the last few years. To help fill this gap, the OHCHR commissioned a series of research papers in June 2008 to review regional and national MDG reports and related strategy documents (such as poverty reduction and sectoral strategies) on the extent to which a human rights approach was incorporated. For this purpose, it was understood that strategy documents are not necessarily explicitly 'MDG-based,' and moreover, that the UNDP emphasises that MDG-based planning ordinarily involves a 2015 timeline.²⁰

An initial examination of the selected MDG reports in most countries under review is not particularly encouraging.²¹ The number of references to human rights or specific human rights or rights of groups is very low or absent in some reports. However, this is not to imply that references to human rights reflect the degree of integration of human rights approaches in development practice but it at least indicates the extent to which human rights discourse has penetrated key development institutions.

This analytical exercise went beyond merely looking for explicit human rights language. Rather, it asked what dimensions of MDG reporting and strategising are consistent with a human rights approach, and what is conflicting or missing. In addition, the papers sought to question how these existing gaps and challenges could effectively be addressed from a human rights perspective and what good practices

¹⁷ The UN General Assembly, Declaration of Commitment on HIV/AIDS, the GA resolution A/RES/S-26/2, August 2001.

¹⁸ See Millennium Project Task Force on Child Health and Maternal Health, *Who's got the power? Transforming health systems for women and children* (London: Earthscan, 2005).

¹⁹ Millennium Project Task Force on Water and Sanitation, *Health, dignity, and development: what will it take?* (London: Earthscan, 2005).

²⁰ See *How-to-Guide: MDG-Based National Development Strategies*, 'Part I: Introduction and Overview' (New York: UNDP, 2006).

²¹ Following country MDG reports were reviewed: Bangladesh (2005), Cambodia (2003), Ghana (2003), India (2008), Indonesia (2004), Kenya (2005), Laos (2004), Liberia (2004), Nepal (2005), South Africa (2005, 2007), Thailand (2004), Uganda (2004), Viet Nam (2005), Zambia (2005, 2008).

and lessons could be identified. Papers were commissioned to focus on the following five areas:²²

- (1) Measurements of income poverty and economic growth strategies (MDG targets 1A and 1B)
- (2) Hunger (MDG target 1C)
- (3) Maternal mortality (MDG target 5A)
- (4) Water and sanitation (MDG target 7B)
- (5) Global partnership commitments (MDG 8)

In general, the analysis in each thematic focus area was based on the two regional MDG reports for Africa and Asia, a sample of six national MDG reports, a sample of six poverty reduction strategy papers and, in the case of the commissioned analysis on global partnerships, a number of MDG donor reports. Primary and secondary human rights literature was used to help evaluate these official MDG-related documents, including reports of the UN human rights treaty bodies as well as civil society documentation and scholarly literature.

This overview paper seeks to draw together the main themes identified in the five analyses as well as trends evident in other MDGs not discussed therein. This paper is organised under the four main elements of a human rights approach to the MDGs, recommended by OHCHR, and examines the main cross-cutting themes under each element.

2. Harmonisation of MDG Targets and Human Rights

'Claiming the MDGs' recommended States to harmonise the targets and indicators with international human rights standards. They placed strong emphasis on aligning them closely with the relevant economic and social right obligations and ensuring that the targets and indicators address the human rights of women and excluded groups. They note that countries could adopt additional human rights-related goals and point to the example of Mongolia, which adopted a ninth goal on democracy and governance. Such adjustment is supported in principle by UNDP and the World Bank who argue that the global goals were always intended to be adapted to the national context.²³

2.1 Positive and negative examples of harmonisation

The most well-known example of adjusting MDG targets to a country situation, and possibly human rights obligations, is Thailand's MDG-plus model which adapted nine of the twelve domestic targets.²⁴ For example, income poverty was to be reduced to 4 per cent of the population and the goal of universal education was extended from primary to secondary education. More specific targets were set for women (such as doubling the proportion of women in the national parliament, administrative organisations and civil service executive positions by 2006) and

²² Commissioned papers will be available at www.nchr.uio.no.

²³ See J. Vandemoortele, *MDGs: Misunderstood Targets?* (See footnote 16 above).

²⁴ See UNDP, *MDG-Plus: a case study of Thailand*, (New York: UNDP, undated).

marginalised regions (reducing by half the under-five mortality rate in highland areas, selected northern provinces and three southernmost provinces by 2015). However, this approach has also been criticised by some local groups.

The Latin American and the Caribbean region, as a whole, amended ‘Target 2A’ to include secondary education with a target of 75 per cent of children to be accorded access by 2010.²⁵ However, it did not indicate whether this meant lower secondary (grades 7-9) or complete secondary education. The Inter-American Development Bank notes that “the region does not appear to be that distant from the more demanding goal of secondary enrolment, if it is understood as encompassing the lower secondary grades. The picture worsens significantly if secondary is defined as the complete post-primary cycle”.²⁶ One of the strong criticisms of MDG monitoring and target-setting in that region is the lack of disaggregated targeting and data, especially for ethnicity.²⁷ Ecuador is one country that has now started to move towards developing MDGs report for Afro-descendants and indigenous peoples and disaggregate data accordingly.

In the case of Africa, one positive innovation is Kenya’s water and sanitation sector. At a multi-stakeholder conference in November 2007, six targets were set for 2008 which included an increase by 10 per cent in coverage in each region of Kenya. Such disaggregated targets are crucial in Kenya in order to ensure that reported improvements in national averages do not mask continuing wide disparities across the eight regions. As the Kenyan MDG report of 2005 made it clear, only 22 per cent had access to safe water in the North-Eastern region compared with an urban average of 89 per cent and a rural average of 49 per cent. However, these urban figures in themselves are highly questionable. Nairobi is listed as having an access figure of 92.6 per cent yet two-thirds of the city is living in informal settlements with no safe access to water – they rely on vendors selling water of variable quality or use polluted dams or illegal connections. It is likely that this group is included in the rural figure and there is a need for the country to disaggregate water and sanitation statistics according to property status, in order for policies to be properly targeted.

In some cases, it is apparent that MDGs and human rights have been harmonised in precisely the wrong direction, with MDG-based strategies serving as a cover to justify the violation of human rights. For example, Marie Hucherzermeyer argues that a provincial slum clearance law in South Africa and moves to replicate it are based on a flawed interpretation of MDG target 7D:

NEWS that the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act will be replicated in other provinces comes as no surprise. Since 2001, national and provincial housing departments have been mandated with achieving this target, which stems from a fundamentally flawed South African interpretation of the United Nations’ Millennium Development Goals of 2000... One of the UN’s MDG targets is to significantly improve the lives of 100-million slum dwellers – 10% of the

²⁵ See Inter-American Development Bank, *The Millennium Development Goals in Latin America and the Caribbean: Progress, Priorities and IDB Support for Their Implementation* (Washington: IADB, 2005), p. 24.

²⁶ *Ibid.*

²⁷ See UNPFII, *MDG Reports and Indigenous Peoples: A Desk Review*, March 2007.

slum population – by 2020. The slogan “Cities Without Slums” accompanies this target... Improving the lives of 10% of slum dwellers by 2020 was conceptualised as a first step to eventually achieve cities without slums.

Huchzermeyer went on to point out that nowhere does the UN suggest it has a target for achieving cities without slums and that the UN-Habitat positively discourages forced eviction and slum clearance policies. Unfortunately, this problematic interpretation of Target 7D is not confined to this case. In its 2005 MDG report, Vietnam lists slum clearance as one of the measures it has taken to reach Target 7D.²⁸ Thus, instead of rectifying the absence of references to secure tenure and participatory upgrading in Target 7D (see OHCHR, 2008), some countries appear to be linking the MDGs agenda with slum clearance policies that appear to conflict directly with their own human rights treaty obligations.

2.2 Income poverty

The *income poverty target* has been attacked by many commentators on a range of grounds.²⁹ Having a dollar per day poverty line was arguably too modest a goal in a historical perspective³⁰ and it is not surprising that this is the goal that is most likely to be reached at the global level by 2015.³¹ In August 2008, the World Bank further confirmed these suspicions by releasing new poverty figures based on 2005 cost-of-living data (previous measurements were based on 1993 data). It showed that a further 400 million people lived below an adjusted poverty measure of \$1.25 per day³² and recent rises in food and oil prices sadly indicate that this number has increased further.

Research commissioned by OHCHR suggests that countries are regularly advised to set national poverty lines to ensure a more contextually appropriate goal and many appear to do so. In the example of Bangladesh, a standard/upper poverty line and extreme/poverty line has been calculated according to the cost of basic needs, although no information is provided either in the MDG report or Poverty Reduction Strategy Paper (PRSP) on how the calculation has been carried out. The PRSP of October 2005 sets specific targets to reduce the number of people living below the upper line to 25 per cent by 2015 and those living in the lower bracket to 9.5 per cent, which is slightly more ambitious than the global target in MDG 1. In Ethiopia, Vietnam and Indonesia, similar modest targets (usually 5-6 per cent below the poverty line halved) can be found. Ugandan poverty targets are more aggressive (10

²⁸ Government of Vietnam, *Vietnam Achieving the Millennium Development Goals*, Fourth MDG Report, August 2005, p. 12.

²⁹ See for example, T. Pogge, ‘The First UN Millennium Development Goal: A Cause for Celebration?’, in A. Føllesdal and T. Pogge, *Real World Justice: Grounds, Principles, Human Rights, and Social Institutions* (Springer, 2005), pp. 317-338.

³⁰ R. Smith, *The Millennium Development Goals and the Struggle against Poverty Traps* (See footnote 6 above), p. 1.

³¹ “The goal of cutting in half the proportion of people in the developing world living on less than \$1 a day by 2015 remains within reach.” United Nations, *The Millennium Development Goals Report* (New York: UN, 2008), p. 6.

³² World Bank Updates Poverty Estimates for the Developing World, 26 August 2008, available at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:21882162~pagePK:34370~piPK:34424~theSitePK:4607.00.html>. This is acknowledged in United Nations, *The Millennium Development Goals Report*, *ibid.*

per cent under poverty line instead of an MDG target of 28 per cent) and Kenya strikingly has the same figures, 10 per cent instead of 28 per cent by 2015.

However, it is questionable whether these adapted targets are adequately linked to a State's obligations to progressively realise the right to an adequate standard of living within a country's maximum available resources as provided for in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, for example. In the case of Kenya, it is perhaps arguable that the goal is too ambitious. Its MDG report actually predicts an increase in income poverty from 56 per cent in 2000 to 65.9 per cent by 2015, making a target of 10 per cent seem rather unrealistic. On the other hand, Vietnam's goal seems under-ambitious. It has reached the MDG goal of halving those living on a dollar per day and has set 10-11 per cent as the proportion of people living under the national poverty line by 2010. With growth at roughly 8 per cent a year something higher could be expected, particularly if poorer regions including those populated by various ethnic groups are to be reached.

The second key criticism of the income poverty target is that it can be attained without improving the situation of the poorest of the poor or excluded groups. One MDG indicator does measure the depth of poverty although it does not reflect the severity of poverty. In any case, neither this indicator nor the dollar-per-day indicator is required to be measured in a disaggregated fashion, and no global targets are set out for reducing the severity or depth of poverty. Such data is possible to collect and it is notable that Kenya's Economic Recovery Strategy, amongst others, provides poverty headcounts by geographic areas with a variance between 6 and 78 per cent across localities. Neither target is set for concrete measures such as coverage of social safety nets. Taking necessary steps to realise the right to social security can play a critical role in reducing income poverty, as the experiences of Brazil, South Africa and South Korea demonstrate. Moreover, the ILO estimated that almost all countries can afford a basic and universal social security package.³³

In the countries sampled, there were few attempts to develop targeted indicators to reach the poorest of the poor or introduce accompanying mechanisms such as social security. Indeed, there is a growing movement to include social protection as a target in the MDGs,³⁴ perhaps from 2010.³⁵ Bangladesh's extreme/lower poverty line and associated target of reducing extreme poverty represents one attempt to reach the poorest of the poor. Moreover, in its recent MDG Mid-Term Progress Report 2007, Bangladesh seems to acknowledge that the MDGs imply halving the share of the poorest quintile in both national income and consumption, and further acknowledges that it is not meeting this target even though it reached the targets of halving income poverty.³⁶ None of the other sample countries attempted to introduce targets for the poorest of the poor and excluded, although Uganda includes

³³ See 'Costing of basic social protection benefits for selected Asian countries: First results of a modeling exercise', Issues in Social Protection, Discussion Paper 17, ILO, 2006 and 'Cash benefits in low-income countries: Simulating the effects on poverty reduction for Senegal and Tanzania', Issues in Social Protection, Discussion Paper 15, ILO, 2006. See also W. Ginnekin, *Social security for the informal sector: Issues, options and tasks ahead* (Geneva: ILO, 1996).

³⁴ OHCHR, *Claiming the MDGs: A Human Rights Approach* (Geneva: OHCHR, 2008), p. 19.

³⁵ Chronic Poverty Research Centre, *The Chronic Poverty Report 2008-9* (Chronic Poverty Research Centre, 2008), p. 6.

³⁶ Government of Bangladesh, *Millennium Development Goals: Mid-Term Bangladesh Progress Report 2007*, December 2007, p. XIII.

a Gini-coefficient (which shows an increase in inequality) while a number of countries disaggregate data by region.

2.3 Hunger

The background analysis on the MDG target 1B noted that the undernourishment indicator is problematic “to the extent that it measures food availability, and whilst there are some adjustments to account for inequality in food distribution, they do not give a very reliable indicator of actual individual food consumption or household food security – and many of the MDG reports make this point”. However, the anthropometric indicator for children underweight under the age of five is acknowledged as a “more reliable measure” but should be supplemented by indicators for child stunting and child wasting.

In MDG reports reviewed, two common features were apparent: the lack of disaggregation, and the need for additional indicators. None provide disaggregated data and hunger data disaggregated by gender, ethnic, indigenous, rural/urban, agro-ecological zones, administrative regions, class, caste, religion. Even linguistic divides can be very important in ensuring that interventions are appropriately targeted. None of the countries introduced additional targets and indicators for policies that would be critical for addressing hunger, such as access to land and social security.³⁷

2.4 Education

Outside Sub-Saharan African region, most countries are ‘on track’ to ensure universal primary education by 2015 or have already largely achieved it. This suggests that the primary education goal was un-ambitious for many countries despite the goal of 100 per cent coverage and certainly below the requirements under international human rights treaties. As discussed above, some countries have already set additional targets for secondary education. The Latin American and Caribbean region introduced a target of 75 per cent in secondary education and Thailand introduced a target of 100 per cent. Setting targets for secondary education in Africa is also feasible despite the slower progress on primary education, and both major political parties in Kenya, for example, have committed themselves to introducing *free* secondary education.

However, it appears that no country has set targets for other aspects of the right to education, for example that primary education be free, compulsory and of a certain quality. Some countries such as Kenya and Malawi have introduced free primary education as a strategy and China has introduced scholarships for poor students,

³⁷ S-A. Way, *Human rights and MDG 1C on Hunger*, draft background paper, October 2008 (on file with author). The paper suggests a number of additional indicators including: “% of people directly or indirectly dependent on agriculture/pastoralism/fisheries for livelihoods, % of landless peasants, (or e.g. in the context of pastoralists, land is less an indicator than the number of livestock a household owns), % bonded labourers, % sharecroppers, % of female-headed households with legal title to land, % of population that are net food buyers, % of income spent on food, % of minimum calorie requirements consumed, % of basic staple starch in calorie consumption (% protein, % vegetables), % of low birthweight infants, % of food insecure covered by food and nutrition programmes, % of food insecure with access to agricultural programmes, % of children exclusively on breastfeeding”.

including free textbooks. China has also emphasised that education is compulsory and along with Viet Nam and Malawi is placing greater attention on the quality of education. However, from a sample of MDG reports, there is no attempt to target and measure the affordability of primary school education.

2.5 Maternal mortality

Almost all MDG reports reviewed adopt the 1990-based MDG indicators of maternal mortality and skilled birth attendants. The former is highly problematic and usually misleading since maternal mortality is highest in those countries where data collection is poor, an issue acknowledged in some MDG reports. The indicator of skilled birth attendants is an improvement but the six indicators included in the 1997 UN Guidelines for Monitoring the Availability and Use of Obstetric Services³⁸ provide more accurate measurement of whether a service is of sufficient quality, available and equitably distributed. A review of some MDG reports and country policies indicates a general trend to begin to recognise the importance of EmOC in strategies but it is generally neglected in MDG reports in terms of indicators or development of targets.

For example, Uganda actually commissioned an EmOC assessment in 2004 that found that the 'national met need' was only 23.9 per cent and acknowledged it should be 100 per cent.³⁹ Scaling-up EmOC was recognised as a strategic priority in Uganda's *Roadmap for Accelerating the Reduction of Maternal and Neonatal Mortality 2006-15*. However, this reorientation towards EmOC is not reflected in Uganda's 2007 report which only reports on skilled birth attendants and does not report this type of assessment. It does mention, in passing, that the first direct intervention needed is improved access to obstetric emergency health care and that there is a problem of 'discrimination' against women by health workers. Uganda has an extremely high and persistent maternal mortality ratio, and Khosla (2008) notes that the Roadmap is yet to be implemented.⁴⁰

In India, EmOC was included as a strategy in its 1997-2002 Reproductive and Child Health-I, but there appears to be no comprehensive data on the unmet need for EmOC and how many EmOC facilities are actually functional. However, the National Family Health survey-III did report on reasons for non-use of such facilities: 26.3 per cent choosing not to deliver at a health centre as they thought it was too expensive, 11 per cent because it was too far and 6 per cent because their husband or family did not allow them. However, the current national plan for health of women and children (2007-11)⁴¹ acknowledges gender bias and a need for special measures to assist women in accessing health facilities. However, discrimination on other grounds seems to be under-measured, for example on the basis of caste and ethnicity.⁴² Bhat

³⁸ See *Guidelines for Monitoring the Availability and Use of Obstetric Services* (UNICEF, WHO and UNFPA, 1997), available at <http://www.who.int>.

³⁹ R. Khosla, *Human rights and MDG 5 on Maternal Mortality – Focus on India*, draft background paper, October 2008 (on file with author).

⁴⁰ Ibid.

⁴¹ Planning Commission of India, *Report of Working Group on Health of Women and Children for the 11th Five Year Plan (2007-2012)*, p. 59.

⁴² Bhat Mari, PN, *Maternal Mortality in India: An Update*. In: *Studies in Family Planning*, Vol 33, No.3, September 2002, pp227-236 at 234. "The maternal mortality ration was more than 600 deaths in east and north central India (where there is a large concentration of marginalised groups) whereas

Mari reports that maternal mortality was higher in areas with a higher number of Dalit communities and Advasi tribal groups and that the level of maternal mortality is clearly strongly related to amenities and infrastructure available in the village'.⁴³ Human rights groups have also reported that pregnant Dalit women have been denied access to health facilities, including in emergencies,⁴⁴ suggesting a critical need to disaggregate the indicators according to caste and tribal groups.

The only country in the sample to report on some aspects of the UN Guidelines was Kenya, which reported that only 9 per cent of its health facilities were equipped to provide Comprehensive Essential Obstetric Care while only 15 per cent could provide Basic Obstetric Care. In one very poor region of Kenya, UNICEF researchers actually found that there was adequate coverage of comprehensive EmOC services but that the quality was poor in terms of number of deaths, and some procedures such as assisted vaginal delivery and removal of retained products were not available and access to essential drugs was limited.⁴⁵

2.6 Water and sanitation

A review of MDG reports and sectoral strategies reveals some attempts to align the MDG target 7C with the right to water⁴⁶ and international and regional human rights standards relating to sanitation,⁴⁷ both explicitly and implicitly. South Africa and Kenya have set targets for universal access to water and sanitation before 2015, while Sri Lanka has set a goal for universal access to 'safe' water by 2025.⁴⁸ Other countries surveyed have not set such targets and it is one of the areas omitted in the Thailand's MDG-plus model.

In the example of South Africa, the Government has committed itself to eradicate the sanitation bucket system in formal areas by December 2007 and ensure universal access to water by 2008 and sanitation by 2010. The Government's constitutional and legal obligations to progressively realise the right to water and sanitation predates the MDGs, which possibly explains why the MDG discourse in South Africa

it was between 300 to 400 deaths in north western and southern India. The survey results also indicate that maternal mortality levels were high among scheduled tribes and scheduled castes... the level of maternal mortality is clearly strongly related to amenities and infrastructure available in the village." Other reports indicate that the mortality rate for nomadic groups in India is twice that of the average population and unmet need for contraceptives is higher amongst Muslims than non-Muslims in India.

⁴³ Ibid. p. 234.

⁴⁴ See Asian Human Rights Commission-Urgent Appeals dated 22 October 2007 located at <http://www.ahrchk.net/ua/mainfile.php/2007/2626/>; Social Exclusion rampant in India's maternal healthcare, One World South Asia, available at <http://www.southasia.oneworld.net>

⁴⁵ L. Pearson and R. Shoo, 'Availability and use of emergency obstetric services: Kenya, Rwanda, Southern Sudan and Uganda', *International Journal of Gynecology and Obstetrics*, Vol. 88 (2005), pp. 208-215.

⁴⁶ For an introduction to the right, including its legal basis, see M. Langford, *Tragedy or Triumph of the Commons? Human Rights and the World Water Crises*, *Human Rights 2006: The Year in Review* (Melbourne: University of Monash, 2007).

⁴⁷ OHCHR, Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, A/HRC/6/3, August 2007.

See also COHRE, UN-Habitat, SDC and Water Aid, *Sanitation: A human rights imperative*, August 2008, available at www.cohre.org.

⁴⁸ A. Khalfan, *Human rights and MDG 7*, draft background paper, August 2008 (on file with author).

is not significant in this sector and elsewhere. However, one of the challenges in South Africa is the level of disconnections of water connections, which are not picked up by MDG indicators, and there is a vigorous national debate over the precise number. This suggests that additional indicators such as the number of disconnections and also affordability are needed to complement standard access indicators. The obligation of progressive realisation also needs to be considered when setting targets. In a number of municipalities in South Africa, there is close to *basic* universal access but those living in informal settlements may have to wait more than a decade before they can have an adequate amount of water due to long queues for upgraded housing.

2.7 Global partnership

The importance of a global partnership in MDG 8 is mentioned frequently in national MDG reports as well as MDG reports of donor countries. There is a marked absence of quantitative benchmarks for this particular MDG, hence it is one of the goals that require significant alignment with human rights. The qualitative targets are matched only with a detailed list of indicators from debt relief to development aid and trade that beg the creation of benchmarks. This is reflected in many donor reports, which tend to list development aid projects and programmes without a detailed assessment of how they are systematically addressing the range of issues raised in MDG 8.

From 2001 to 2008, some achievements have been made in setting actual targets, whether at various international meetings or through objectives established in the policies of donor countries and international financial institutions.⁴⁹ However, the targets are often far from being met and are more restrictive in practice than originally envisaged.

In the case of aid, for example, in 1970 economically developed countries committed themselves at the UN General Assembly to “progressively increase [their] official development assistance to the developing countries and ... exert [their] best efforts to reach a minimum net amount of 0.7 per cent of [their] gross national product at market prices by the middle of the Decade”.⁵⁰ The target was not met in 1975 or by 2000. It was then curiously omitted in MDG 8 with the aid as percentage of GDP being relegated to an indicator, although the G8 Summit at Gleneagles in 2005 resolved to double aid to Africa and made commitments to provide aid for specific MDGs.⁵¹ Between 2002-2006, official development assistance increased but fell in 2007 by 8.4 per cent. Aid to Africa has increased overall – 10 per cent in real terms – but it is not on track to reach the Gleneagles goal.

In the 2005 Paris Declaration, donor countries also set targets on aid effectiveness to be reached by 2010, including halving the amount of untied aid and reducing by two-thirds the number of parallel project implementation units.⁵² However, for a number

⁴⁹ A. Caliori, *MDG 8 and Human Rights: Input to MDG Dialogues for Action*, draft background paper, September 2008 (on file with author).

⁵⁰ *International Development Strategy for the Second United Nations Development Decade*, UN General Assembly Resolution 2626 (XXV), October 24, 1970, para. 43.

⁵¹ See for example, G8 Gleneagles, *The Gleneagles Communiqué: Africa*, 2005.

⁵² The Paris Declaration on Aid Effectiveness, Part III, Indicator 3. It also commits countries to reduce the number of parallel implementation projects by two-thirds.

of African countries, these targets may be under-ambitious, particularly if untied aid is in the realm of 40-50 per cent. In the review of progress at Accra in September 2008, developing and donor countries agreed that the Declaration “created powerful momentum to change the way developing countries and donors work together” but that the “pace of progress is too slow”.⁵³ Research commissioned by OHCHR shows that the percentage of untied aid for Uganda, Kenya and Ethiopia increased between 2006 and 2008 but decreased in Cambodia.⁵⁴ Attaining a global picture is particularly difficult since the status of almost 50 per cent of aid is not reported and some reports indicate that the United States tied 93 per cent of its bilateral aid to 29 countries.⁵⁵

3. Empowerment and Participation

Concepts such as empowerment and participation have become a standard feature of development discourse. The third key recommendation of the Millennium Project Task Force was focused on the need for broad-based participation in implementing the MDGs:

- Developing country governments should craft and implement the MDG-based poverty reduction strategies in transparent and inclusive processes, working closely with civil society organisations, the domestic private sector, and international partners.
- Civil society organisations should contribute actively in designing policies, delivering services, and monitoring progress.
- Private sector firms and organisations should contribute actively to policy design, transparency initiatives and, where appropriate, public-private partnerships.⁵⁶

The human rights dimension was also emphasised in the 2008 Accra Agenda for Action. Developing countries committed to work with parliaments, local authorities and civil society towards an “open and inclusive dialogue on development policies.” Donors would help build the “capacity of all development actors,” and all partners would “ensure their respective development policies and programmes are designed and implemented in ways consistent with their agreed international commitments on gender equality, human rights, disability and environmental sustainability”.⁵⁷

A human rights approach requires a particular focus on the quality and accessibility of such processes. Empowerment requires the recognition that people are the prime agents of development and need to be part of the transformation of the structures and overcoming obstacles that have created and contributed to poverty. Participation

⁵³ 3rd High Level Forum on Aid Effectiveness, Accra Agenda for Action, 2-4 September 2008, Accra, Ghana, para. 6.

⁵⁴ See footnote 48 above.

⁵⁵ *Ibid.*

⁵⁶ UNDP, *The Overview Report: A Practical Plan to Achieve the Millennium Development Goals* (New York: UNDP, 2005).

⁵⁷ 3rd High Level Forum on Aid Effectiveness, Accra Agenda for Action, 2-4 September 2008, Accra, Ghana, para. 13.

includes effective respect for civil and political rights such as the rights to vote, freedom of expression and freedom of association. Indeed, a number of MDG reports make a link between political participation and economic and social development. Kenya's MDG report, for example, partly ties poverty to poor democratic governance under the former regime and commits itself to translate new democratic space into development gains.⁵⁸ However, civil and political rights are only part of the equation. The Chronic Poverty Centre recently noted, in a seemingly contradictory fashion, that "social protection programmes in the South were often created in an electoral context by political parties representing broader political movements"⁵⁹ but that countries that "have less than open political systems" have responded "most effectively" to chronic poverty.⁶⁰

Beyond civil and political rights, specific development-related participatory processes should be critically assessed as to whether:

- there are mutually agreed minimum standards for the participatory process;
- individuals can participate in the design, implementation and monitoring of development strategies that affect them;
- women and marginalised groups are effectively included;
- elite capture is prevented and unjust power relations are challenged;
- the process is transparent and information is accessible, and
- accountability mechanisms ensure that the participatory process is held to the minimum standards.

It is notable that participation as envisioned by the Millennium Project Task Force, quoted above, does not include grassroots and community involvement but seems to be exclusively focused on organisational participation. This contradicts other work in the development field, including by the World Bank, in encouraging community-driven development at scale.⁶¹

At a simplistic level, one can ask what level of participation there was in the preparation of MDG reports. The preparation of MDG reports should be participatory⁶² and it is clear that UNDP has taken steps to encourage multi-stakeholder and NGO participation. For example, in Bulgaria, the government authors of the second national MDG report consulted ministries, academia, NGOs and the UN country team with the assistance of the UNDP.⁶³ In Thailand, the MDG report claims that the report was prepared through broad consultation with government agencies, UN country team, World Bank, UNDP, NGOs and national

⁵⁸ "There is no doubt that there has been a significant opening up of democratic space in the country over the years. The government is committed to translate this space into a positive environment that would contribute to human development." Government of Kenya, *MDG Status Report for Kenya, 2005* (Nairobi: UNDP, Government of Kenya and Government of Finland), p. 9.

⁵⁹ Chronic Poverty Research Centre, *The Chronic Poverty Report 2008-9* (Chronic Poverty Research Centre, 2008), p. 55.

⁶⁰ *Ibid.* p. 3.

⁶¹ H. Binswanger and S. Aiyer, 'Scaling Up Community-Driven Development: Theoretical Underpinnings and Program Design Implications', *World Bank Policy Research Working Paper 3039*, May 2003.

⁶² UNDG, *Country Reporting on the Millennium Development Goals*, Second Guidance Note, October 2003.

⁶³ See http://www.undp.bg/media_room.php?id=2678&lang=en

consultants. This can be contrasted with some other countries.⁶⁴ However, what is clear is that the consultations rarely appear to have extended beyond the capitals, and civil society participation is often confined to professional NGOs and does not include social movements and representative organisations. The Secretariat of the UN Permanent Forum on Indigenous Issues praised Thailand for its specific focus on northeast and southernmost provinces where many indigenous peoples and fisherfolk live, but criticise the apparent absence of “participation from indigenous peoples’ organisations” in the report.⁶⁵

The same tendency is revealed in *national* planning, for example with Poverty Reduction Strategies and other economic and sectoral strategies. An internal World Bank review of participation in poverty reduction strategy papers in 2002 found that national governments tended to hand-pick civil society groups and often ignored ‘non-traditional NGOs and community-based organisations located outside the metropolis or those engaged in niche issues’.⁶⁶ Instead, grassroots and community involvement is generally viewed as only relevant to implementation. For example, the NPP Nutrition Programme in Bangladesh included a participatory element in its design and implementation, but the key focus of participation is the aim to have nutrition services ‘increasingly managed by local communities’. However, there have been efforts to ensure broad-based participation in national planning in some countries, and the recent PRS in Liberia is perhaps a good example as every village in the country was visited.⁶⁷

This problem cannot entirely be sheeted home to national governments. The end game of poverty reduction papers, for example, is the release of funds by World Bank, IMF and other donors.⁶⁸ Moreover, the MDGs agenda is often focused on providing and expanding supply-side development interventions such as school places, bed nets, health facilities and water and sanitation systems.⁶⁹ This approach is of course sorely needed in many countries where the State’s capacities and role have diminished under structural adjustment programmes. However, scaling up successful community practices as part of national planning does not appear to be strongly in focus. Rakodi and Leduka⁷⁰ argue in the area of slum upgrading that governments need to ‘build on the success of large scale informal land delivery, as well as addressing its shortcomings,’ while in the Islamic legal context, Sait and Lim similarly argue that ‘well-intentioned donor-driven efforts to establish modern land

⁶⁴ See for example, *Vietnam Achieving the Millennium Development Goals: August 2005*.

⁶⁵ B. Hartley, *MDG Reports and Indigenous Peoples: A Desk Review*, No. 3, February 2008, Secretariat of the United Nations Permanent Forum on Indigenous Peoples, p. 28.

⁶⁶ The World Bank, *Participation in Poverty Reduction Strategies Papers*, A Retrospective Study, January 2002, p. 9.

⁶⁷ Hon. N. Davis, ‘Community participation and empowerment in the Liberian PRS’, *Dialogues for Action: Human Rights and MDGs*, African Regional Dialogue, Johannesburg, South Africa, 9-10 September 2008.

⁶⁸ Francis Stewart and Michael Wang argue that the earlier PRSP processes had a tendency to empower the World Bank and IMF and disempower national governments given that the content of the documents generally reflected structural adjustment programmes and processes were not particularly participatory: ‘Do PRSPs empower poor countries and disempower the World Bank, or is it the other way round?’, QEH Working Paper Series No. 108, October 2003.

⁶⁹ See for example, Millennium Villages Project and Millennium Project Taskforce.

⁷⁰ C. Rakodi and C. Leduka (2003), *Informal Land Delivery Processes and Access to Land for the Poor in Six African Cities: Towards a Conceptual Framework*, Working Paper 1, Informal Land Delivery Processes in African Cities, University of Birmingham, p. 10.

systems' must not ignore 'the obduracy of informal norms, practices, and processes'.⁷¹ This problem surfaced in some of the major slum upgrading projects related to the MDGs, which have failed to take this account.⁷²

There is, however, a number of positive examples where successful community projects, for example slum upgrading projects in Cambodia and Thailand, have been scaled up to the national level where they are administered by NGOs who passed on government funds and loans according to plans submitted by communities. The same can also be said in the case of maternal mortality. While provision of EmOC facilities is critical in preventing maternal mortality, Anthony Costello found in an empirical study that community-based strategies and context-specific services are crucial in reducing maternal mortality.⁷³

Participation generally tends to be more evident in project implementation, than policy formulation. For example, in all countries reviewed, some provision is made for participation of users in water and sanitation programmes. In Sri Lanka, there are significant policy measures to ensure user participation in the provision of water and sanitation. This is especially the case with rural water supply and sanitation projects, where the prevalent policy is to include the participation of users, planners and policy makers at all levels of sector activities.⁷⁴ Community Based Organisations (CBOs) contribute to the capital investment of water and sanitation facilities, take ownership of the facilities and assets and take full responsibility for sustaining and maintaining them.⁷⁵ Participatory approaches to water and sanitation delivery are only emerging in low income settlements in urban areas however.

Since participation is often understood in the limited sense of involving user groups in service delivery, there is a clear need for participation in decision-making which includes but is not limited to provision for broad information dissemination that reaches the poor, clear standards for participation and for capacity building to ensure active and informed representation of vulnerable and marginalised groups. Participation in decision-making, where it exists, has mostly been limited to established NGOs, rather than active engagement of representatives of vulnerable and marginalised groups.

4. Prioritising Rights in Policy

A human rights approach does not automatically prescribe policy choices or resource allocations. In general, it provides a framework for assessing policy choices and places an emphasis on participation. However, in some cases the international human rights treaties that States have ratified set forth clear requirements on the types of policies States should pursue, such as provision of free primary education.

⁷¹ S. Sait and H. Lim, *Land, Law and Islam: Property and Human Rights in the Muslim World* (London: Zed Books and UN-Habitat, 2006).

⁷² COHRE, *Listening to the Poor: Housing Rights in Nairobi, Kenya* (Geneva: COHRE, 2006), available at www.cohre.org/kenya.

⁷³ A. Costello, 'An Alternative Strategy to Reduce Maternal Mortality', *Lancet*, Vol. 368, Issue 9546, p. 1477.

⁷⁴ National Policy for Rural Water Supply and Sanitation Sector, s. 2 (vi).

⁷⁵ *Ibid*, s. 2 (vii – x).

Furthermore, human rights jurisprudence of UN treaty bodies indicates that some policies always require a high degree of justification such as forced evictions, deliberative retrogressive measures or discriminatory acts, interference with labour rights⁷⁶ as well as interference with civil and political rights. Moreover, States will be asked to justify the absence of reasonable policies or steps towards realising economic, social and cultural rights.⁷⁷

In this section, MDG reports and sectoral strategies will be discussed from the perspective of whether particular choices will:

- result in other human rights being violated
- cause an absolute decline in realisation of rights, contravening the principle of *non-retrogression*
- be adequately directed towards realising human rights and ensuring equality, including gender equality, and
- provide adequate resources and allow sufficient policy space

4.1 Do no harm and avoid retrogressive measures

A number of policies listed in MDG reports and related strategies suggest that some human rights could be directly violated during the policy implementation process. For example, in order to achieve a higher rate of economic growth, in its 2005 MDG report Bangladesh suggested a number of strategies to improve private investment which included reforming 'labour laws to prevent politicisation' and acquiring 'land and then hand over these ... to potential investors for setting up new industries'.⁷⁸ The first measure may be necessary, given high levels of politicisation of the civil service, but there is no discussion on how such proposals might affect labour rights. The second proposal could violate human rights if there is no adequate compensation and resettlement for those affected. The use of expropriation powers to acquire private land (instead of requiring the private sector to undertake the task itself) in situations of poor governance has been increasingly questioned.⁷⁹ In a civil society Peoples' Progress Report on Bangladesh's performance on the MDGs, it is notable that concerns over evictions and lack of use of expropriation powers for the landless registers high among concerns of residents interviewed across the country.⁸⁰

Policies other than economic growth may also have a significant negative impact on human rights. For example, water, environment and energy sector policies under MDG 7 such as protecting forests, conserving water resources or building dams can

⁷⁶ See CESCR, *General Comment 3, The nature of States parties' obligations*, (Fifth session, 1990), U.N. Doc. E/1991/23, annex III at 86 (1991); and *General Comment 7, Forced evictions, and the right to adequate housing*, (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997).

⁷⁷ See CESCR, *General Comment 15, The right to water* (Twenty-ninth session, 2002), U.N. Doc. E/C.12/2002/11 (2003).

⁷⁸ Government of Bangladesh, *Millennium Development Goals: Bangladesh Progress Report 2005*.

⁷⁹ M. Langford and U. Halim, 'The path of least resistance: expropriation and eviction', *Land Reform, Land Settlements and Cooperatives*, No. 1 (2008).

⁸⁰ Peoples' Forum on MDG, *Millennium Development Goals: Peoples' Progress Report on Bangladesh: Main Report*, December 2005, available at <http://www.campebd.org/pfm/DraftProgressReport.pdf>

result in forced evictions.⁸¹ Some policies may have direct effects, for example the draft Indonesian Regulation on Water Usage Rights introduced property ownership over water resources. This is comparatively rare and there is a fear that poor people and the environment may be sacrificed due to the strong emphasis on commodification and commercialisation reflected in the law.⁸²

Concerns have also been raised over new laws in many countries that are designed to prevent the spread of HIV, but can violate human rights and undermine efforts to achieve MDG 6. UNAIDS and UNDP have recently expressed alarm at the growing trend to criminalise HIV transmission and exposure, particularly in West Africa, Central Asia and Europe.⁸³ In some cases, the laws punish pregnant women as well as HIV-positive people who engage in behaviour such as kissing. The broad sweep of the law means that many are unlikely to have their right to a fair trial realised, since they cannot foresee their liability for prosecution. UNAIDS and UNDP note that most prosecutions have been against ethnic minorities, migrants or men who have sex with men. Moreover, many of these laws restrict access to HIV-related services on grounds that appear to be discriminatory – this includes men who have sex with men, sex workers, and drug users.

Other harmful policies fall under the category of ‘deliberatively retrogressive measures’. A general policy reform could mean the rollback of certain economic and social rights for various groups. In such a case, a policy or measure that leads to a decline in realisation of human rights must be strongly justified and the UN Committee on Economic, Social and Cultural Rights has recently called upon States to establish national mechanisms for such assessments.⁸⁴ Indeed, the 2008 Asian MDG report acknowledges that some policies for economic growth can have adverse impact on the poor and the realisation of the MDGs. They specifically note economy-wide institutional and policy reforms such as privatisation, liberalisation, capital account convertibility and promotion of foreign investment.⁸⁵ The Asian MDG Report specifically states that such policies would need to be accompanied by ‘active labour market interventions’ and ‘robust safety nets’. Full compliance with human rights would also require strong regulatory mechanisms for privatisation in areas affecting economic and social rights.⁸⁶ However, a review of poverty reduction strategies and MDG reports in three Asian and three Africa countries reveals that the negative effects of economic growth and agricultural and food policies and mitigating

⁸¹ See for example, Amnesty, COHRE, Hakijamii, KLA and KNCHR, *Nowhere to go: Forced Evictions in Mau Forest, Kenya*, Briefing Paper, May 2007, available at www.cohre.org/kenya

⁸² See KRuHA, ‘RPP Hak Guna Air Mengancam Pemenuhan Hak Atas Air’, Press Release, 28 July 2008.

⁸³ See Criminalization of HIV Transmission, UNAIDS and UNDP, August 2008, available at: http://data.unaids.org/pub/BaseDocument/2008/20080731_jc1513_policy_criminalization_en.pdf
See also Legal Experts Assail Harmful Trends in HIV Laws: South African Judge Warns Against Applying Criminal Law to HIV, available at: http://www.soros.org/initiatives/health/focus/law/news/laws_20080806.

⁸⁴ CESCR, *General Comment No. 19 on the Right to Social Security*, Thirty-ninth session, 5-23 November 2007, U.N. doc. E/C.12/GC/19, 4 February 2008.

⁸⁵ ADB, UNDP and UNESCAP, *A Future Within Reach 2008: Regional Partnerships for the Millennium Development Goals in Asia and the Pacific*, April 2008, p. 47.

⁸⁶ See CESCR, *General Comment No. 15, The right to water* (Twenty-ninth session, 2002), U.N. Doc. E/C.12/2002/11 (2003), paras. 23-24.

measures are generally not considered, with the exception of Ethiopia.⁸⁷ In the case of Vietnam, the World Bank had recommended such measures,⁸⁸ although Anderson and McKay (see footnote 97) noted that even these might require review from a human rights perspective.

Another key policy that often impacts negatively on economic and social rights and the MDGs is charging for services or increase fees to unaffordable levels for the poor. Empirical studies regularly show that fees at health care centres discourage women from giving birth in these centres or attending them during complications.⁸⁹ In India, 26 per cent of women cited this as a reason for not delivering in health centres and the UN Committee on Elimination of Discrimination Against Women has specifically warned India that privatisation of health services may make them more unaffordable.⁹⁰ Elsewhere, sector strategies in the area of water, for example in Sri Lanka and Indonesia, tend to put heavy emphasis on its value as an economic good as opposed to a social good.⁹¹ In Kenya, there have been recent moves to tackle affordability directly with the Water Services Regulatory Board Tariff Guidelines and Model (2007), the goal of which is to establish tariffs that balance commercial, social and ecological interests. They also provide for a “pro-poor” policy that includes the provision of a lifeline tariff for poor households, and specific guidance on kiosk systems used by the poor.

The key challenge for many countries is to ‘join the dots’ on MDG-related policies and the possible harm to human rights. While democratic institutions, wider participation and judicial mechanisms can provide some form of accountability, it is often necessary to integrate specific and targeted processes that address these issues upfront. For example, in many cases it may be necessary to carry out independent human rights impact assessments of policies before they are approved. Zambia has instituted such a system with respect to foreign investment, where a law requires a full and independent assessment of the potential negative effects of foreign investors in particular sectors.⁹² An example of mitigating policies is that of Indonesia, where a medium-term unconditional cash transfer programme was created to reduce the impact of reducing untargeted fuel subsidies.⁹³

4.2 Adequately direct policies towards the realisation of human rights

The UN Committee on Economic, Social and Cultural Rights has stated that steps to realise socio-economic rights must be “deliberate, concrete and targeted as clearly as

⁸⁷ There is to be a ‘voluntary separation package’ for workers in State industries that will be privatized: *MDG Report 2004: Ethiopia*.

⁸⁸ World Bank, Vietnam: aiming high. Poverty Reduction and Economic Management Unit, East Asia and Pacific Region; World Bank, Washington D.C, 2006.

⁸⁹ A Tanzanian study found for example that user fees for health services contributed only 0.6 per cent of the health budget “disproportionately affected the access to health services for vulnerable and poor people”. See ETC Crystal, ‘Equity Implications of Health Sector User Fees in Tanzania’, July 2004.

⁹⁰ CEDAW, *Concluding comments on India* (2007) U.N. Doc. CEDAW/C/IND/Co/3, para. 40.

⁹¹ See MDG Report Indonesia 2004, p. 83.

⁹² G. Mwanza, ‘Growth with equality, policy choices and resource allocation’, *Dialogues for Action: Human Rights and MDGs*, African Regional Dialogue, Johannesburg, South Africa, 9-10 September 2008.

⁹³ UNDP, Mainstreaming human rights-based approach in National Policy Framework for Achieving MDGs, Project Document, 2008.

possible towards meeting the obligations” under the International Covenant on Economic, Social and Cultural Rights.⁹⁴ In expanding upon this obligation, the South African Constitutional Court has given parameters for the conduct of policy-making which one author has summarised as follows:

- The programme must be comprehensive, coherent, coordinated;
- Appropriate financial and human resources must be made available for the programme;
- It must be balanced and flexible and make appropriate provision for short, medium and long-term needs;
- It must be reasonably conceived and implemented; and
- It must be transparent, and its contents must be made known effectively to the public.⁹⁵

Moreover, the Court emphasised that meeting economic and social rights means that the most marginalised cannot be left out:

To be reasonable, measures cannot leave out of account, the degree and extent of the denial of the right they endeavour to realise. Those whose needs are most urgent and whose ability to enjoy all rights is therefore most in peril, must not be ignored by the measures aimed at achieving realisation of the right. *It may not be sufficient to meet the test of reasonableness to show that the measures are capable of achieving a statistical advance in the realisation of the right.*⁹⁶ [Emphasis added]

Policies outlined in MDG reports, PRSs and sectoral strategies are not always reflective of actual policy implementation, but they sometimes do reveal whether or not MDG-related strategies are incorporating a human rights-based approach.

Economic growth policies feature consistently in MDG reports and national planning instruments such as PRSs. Economic growth is obviously one key means of increasing the resources necessary to fund social services and directly decrease income poverty through expanded work and livelihood opportunities. As figure 1 show, in Asia and the Pacific, the decrease in income poverty is strongly correlated with economic growth. However, it also indicates that the relationship with other MDGs is more tenuous with a much weaker relationship with infant and maternal mortality and a negative relationship with education. In some cases, the relationship between growth and income poverty is weak – data from the Ministry of Finance of Cambodia shows that for every 10 percentage points in growth, there is only 1 per cent reduction in income poverty in Cambodia.⁹⁷ Economic growth tends to be concentrated and captured by formal urban areas in a context of a very low tax base.

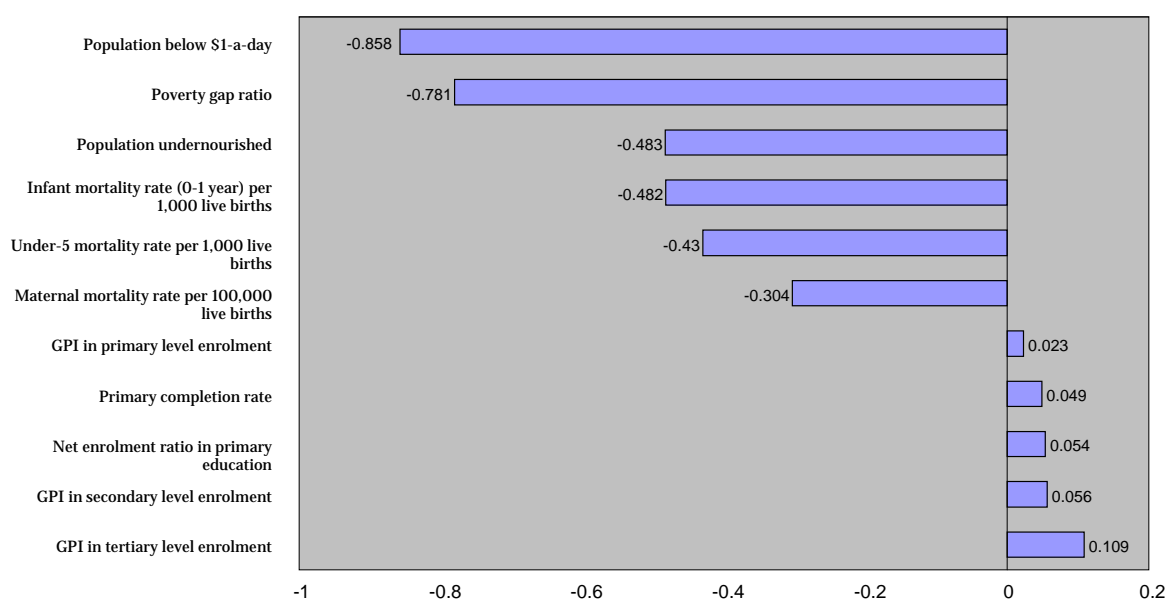
⁹⁴ CESCR, *General Comment 3, The nature of States parties' obligations*, (Fifth session, 1990), U.N. Doc. E/1991/23, annex III at 86 (1991), para. 2.

⁹⁵ See S. Liebenberg, 'South Africa: Adjudicating Social Rights under a Transformative Constitution', in M. Langford, *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (New York: Cambridge University Press, 2008), pp. 73-101, at 85.

⁹⁶ *Government of the Republic of South Africa v Grootboom and Others* 2000 (11) BCLR 1169 (CC).

⁹⁷ Chhau Somethea, *Country experience – Cambodia*, Asian Regional Dialogue, Bangkok, 16-17 October 2008.

Figure 1 – Economic growth and the MDGs in Asia and the Pacific



These empirical findings confirm once again that the type of economic growth and the wider policy and institutional settings remain crucial if the rights of the poorest and most marginalised are to be realised. Anderson and McKay note in a review of seven African and Asian countries that ‘more conventional economic policies for promoting growth in the short-to-medium term are still often centre-stage’.⁹⁸ The emphasis in each is usually on macroeconomic stability, trade liberalisation, foreign investment, infrastructure, privatisation and commercialisation with an assumption that the benefits will ‘trickle down’.

In none of the strategies was there consideration of which sectors might provide more employment even though decent work is one of the MDG targets and a substantive right. This was particularly glaring in the case of Uganda, which had a strong emphasis on agro-processing and commercialisation of agriculture. While this may lead to an increase in the value-added of goods produced, World Bank studies indicate that small farmers are often more productive than larger farmers, and employment gains from investments in small-holder agriculture can be higher.⁹⁹ One positive aspect was the case of Ethiopia (as well as Uganda) in which ‘low class’ roads connecting rural areas were specifically part of road-building plans. Roads are a high priority for rural areas and a poverty impact assessment of the road investment in Ethiopia was carried out in advance. However, the amount of the budget allocated to roads was 2.5 times that of health, although it was roughly the same as for education.

Turning to sectoral policies, a key concern is whether policies in health, education, water and sanitation, food etc. are adequately directed to the poor. For example, as noted above, in the case of maternal mortality and reproductive rights in India, the

⁹⁸ E. Anderson and A. McKay, *Human rights, the MDG income poverty target, and economic growth*, background paper, September 2008 (on file with authors).

⁹⁹ R. Brink, G. Thomas, H. Binswanger, J. Bruce, and F. Byamugisha, *Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa* (Washington: World Bank, 2006).

relevant health services tend to be unavailable or poorly available amongst the most marginalised groups.¹⁰⁰ While the delays in equitably providing EmOC services to women were also noted above, one interesting policy is the JSY scheme which focuses on demand barriers by providing cash assistance to Below Poverty Line women in order to encourage institutional deliveries.

In the case of water and sanitation, Laos is directing its resources to improving access to water and sanitation for the poorest 72 districts,¹⁰¹ which is consistent with the minimum core obligation for the right to water to provide everyone with basic access, and critical also for sanitation. However, there are some concerns regarding the way in which these districts will be provided with water and sanitation. For small isolated ethnic groups, the Government has adopted an approach of relocating the communities to 'accessible service centres' which threatens both traditional livelihoods and culture. Privatisation of the water sector is also envisaged but Laos concedes that it does not yet have a regulatory framework in place to ensure affordable prices and services will be provided to marginalised groups.¹⁰²

4.3 Provide adequate resources

As discussed above, a number of MDG reports make claims that budgetary allocations directed towards poverty reduction have increased.¹⁰³ In its recent MDG report, Indonesia appears to be reorienting some of its public expenditure in a more pro-poor direction with education, health, housing, food security and rural infrastructure slated to receive higher allocations.¹⁰⁴ A similar trend can be seen in Kenya with proportionate increases in social sectors over the past few years.¹⁰⁵ However, it is also clear that not all key sectors and related human rights are covered. In Indonesia, the Government has acknowledged that sanitation is a low priority and the World Bank estimated that to reach the sanitation target requires less than 1 per cent of the investment made in the sanitation sector during last few years.¹⁰⁶ In India, public health investment accounts for only 0.9 per cent of GDP, which is very low by comparison with other countries in the region, and certain other regions as well. A number of UN human rights bodies have recommended that India increase budget allocations as many parts of the population are denied access to basic health services.¹⁰⁷

¹⁰⁰ R. Khosla, *Human rights and MDG 5 on Maternal Mortality – Focus on India*, draft background paper, October 2008 (on file with author) and text at note 40.

¹⁰¹ A. Khalfan, *Human rights and MDG 7*, draft background paper, August 2008, p. 21 (on file with author).

¹⁰² The Government of LAO PDR and the United Nations, *Millennium Development Goals Progress Report Laos PDR*, p. 58.

¹⁰³ See discussion at notes 3 to 5 above.

¹⁰⁴ National Medium Term Development Plan, Section 14, p. 13.

¹⁰⁵ G. Mailu, 'Country experience – Kenya', *Dialogues for Action: Human Rights and MDGs*, African Regional Dialogue, Johannesburg, South Africa, 9-10 September 2008.

¹⁰⁶ *Economic impacts of Sanitation in Indonesia: A five country study conducted in Cambodia, Indonesia, Lao PDR, the Philippines and Vietnam under the Economics of Sanitation Initiative*, Research Report, August 2008, World Bank, p. 16.

¹⁰⁷ For example, see CESCR, *Concluding Observations on India*, U.N. Doc. E.C.12/IND/CO/5 (2008), paras. 51, 73 and CEDAW, *Concluding comments on India* (2007) U.N. Doc. CEDAW /C/IND/Co/3, para. 40.

It is clear that many States face limitations in the extent to which they can allocate resources to meet the MDGs and realise the minimum core of economic and social rights. This includes not only financial resources but human resources as well. Certain African countries face particular difficulties, as emigration and HIV/AIDS have greatly reduced the numbers of health and teaching staff available. In the commissioned analysis on MDG 8, some of the countries under review were entitled to debt relief, which has increased the level of resources available, while others were not. For example, Kenya has not qualified for debt relief under either the HIPC or MDRI initiatives but Uganda was one of the first countries to benefit under HIPC and, in 2005, of the MDRI expansion, and has received debt relief of US\$ 5.37 billion in nominal terms. Ethiopia reached HIPC completion point in 2004 and benefited from debt relief under the MDRI in 2006. In nominal terms, it has received debt relief in the sum of US\$ 6.48 billion. Liberia currently benefits from debt relief in the order of US\$ 2.84 billion. Nepal and Cambodia were never eligible for the HIPC initiative, although Cambodia would be eligible for IMF debt relief under the principles of equal treatment, as they are applied by the IMF.

However, one of the consistent challenges is whether countries' macro-economic frameworks and policies permit the greater allocation of resources towards the social sectors. The IMF has raised concerns over the macro-economic challenges of scaling up aid. For example, exchange rates may fall negatively, affecting exports, or inflation may rise, affecting growth¹⁰⁸ and potentially the cost of living for the poor. In some countries, there is clear evidence of policy conservatism on this issue. For example, in its Medium Term Development Plan, Indonesia places strong emphasis on increasing foreign exchange reserves, reducing inflation from 7 to 3 per cent but few reasons are given to justify this approach. This approach is certainly consistent with the IMF's advice but has been queried by the IMF's Independent Evaluation Office (IEO).¹⁰⁹ While the rise in food and oil prices over the last year makes it difficult to easily trade-off inflation against social spending, restrictions on the use of available resources should be closely examined considering empirical evidence, the national context, whether alternatives are possible and whether the poor are bearing the brunt of the policy choices.

However, there are some indications that future debt may be less tied to international institutions. Ghana, for example, is moving to issue government bonds and asking only for technical assistance as opposed to loans. This may provide countries with more flexibility with respect to their macroeconomic policies to address MDGs and social and economic rights. At the same time, the World Bank's minimum conditions for loans such as avoiding involuntary settlement without compensation are not respected by all countries.

¹⁰⁸ S. Gupta, R. Powell and Y. Yang, *Macroeconomic Challenges of Scaling Up Aid to Africa: A Checklist for Practitioners* (Washington: IMF, 2006).

¹⁰⁹ See Independent Evaluation Office, *The IMF and Aid to Sub-Saharan Africa*, 2007, available at <http://www.imf.org/External/NP/ieo/2007/ssa/eng/pdf/report.pdf>, visited February 2008.

5. Accountability and Sustainability

In many reports, the concept of accountability is often equated with monitoring and evaluation, and mechanisms are not always particularly strong.¹¹⁰ However, it is clear that there are real gaps and challenges in just ensuring basic monitoring of programmes and the collection of data. India has three mechanisms for measuring general mortality but none are particularly reliable, particularly in relation to maternal mortality. The Registrar General of India's report on maternal mortality appears to characterise maternal death as a natural phenomenon, while figures for deaths resulting from abortions are difficult to obtain. It is also notable that some countries do not release their data on MDGs on the premise that it is too politically sensitive,¹¹¹ while data on achievements seems difficult to reconcile with low levels of public investment in MDGs.¹¹²

As far as non-governmental participation in accountability processes and mechanisms is concerned, many countries lack effective, independent and easily accessible complaints mechanisms to address denials of, or interferences with, economic and social rights. However, countries like South Africa and those in South Asia have demonstrated that Supreme and Constitutional Courts can address these issues, whether they are enforceable rights in laws or constitutions.¹¹³ In some countries, litigation has helped to mobilise constituencies to monitor government performance in delivering social services – such as the food schemes in India and Nepal. In Latin America and South Africa, effective access to HIV/AIDS medicines has been greatly facilitated by courts.

But access by individuals is heavily dependent on access to lawyers or access to local administrative mechanisms, and the latter can be heavily biased against marginalised groups. Unfair treatment of the poor in courts and tribunals was acknowledged in the Peoples Forum in their alternative MDG report. In other countries, economic and social rights are not recognised in constitutions or laws which make it difficult to make use of judicial and quasi-judicial mechanisms, although human rights groups are increasingly trying to use adjudication mechanisms. However, provision of effective remedies through legal recognition of all human rights, improvement of the courts, the rule of law, and access to justice should be seen as integral components of the overall development package, for the sake of greater accountability.

¹¹⁰ S-A. Way, *Human rights and MDG 1C on Hunger – Focus on Nepal*, draft background paper, October 2008; R. Khosla, *Human rights and MDG 5 on Maternal Mortality – Focus on India*, draft background paper, October 2008 (on file with authors).

¹¹¹ For example, the Government of Guatemala refused to release figures on the MDG 1c target on hunger during an election period.

¹¹² For example, Indonesia reports that it has reached the sanitation target while at the same time saying that sanitation has a very low priority: N. Colbran, *Are the Targets, Indicators and Strategies Developed by the Indonesian government in Relation to MDG 7 (Water and Sanitation) consistent with the broader human rights framework?*, draft background paper, October 2008 (on file with author).

¹¹³ M. Langford (ed.) *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge: Cambridge University Press, 2008); Varun Gauri and Daniel Brinks (eds.), *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* (New York: Cambridge University Press, 2008).

One way to strengthen accountability is to incorporate clear entitlements into policy and legal frameworks, where denial triggers a concrete and enforceable right. In some cases such schemes are conditional, such as the National Rural Employment Guarantee Act in India, which provides a right to unemployment benefits up to 100 days if the authorities cannot provide adequate work. In some cases, entitlements are non-conditional, such as old age pension schemes in Bangladesh for widowed and destitute women, and schemes for persons above 65 and below the poverty line in India and South Africa. In South Africa, these entitlements have allowed many applicants to use administrative law mechanisms to ensure that payments were made, and were not unfairly suspended.¹¹⁴

An entitlement approach can also be extended to the local level as an integral part of development programming. For example, UNDP Turkey has recently initiated a project on 'Linking the Millennium Development Goals to Human Rights', where a series of workshops in pilot municipalities is intended to lead to the production of a toolkit for City Councils. This will provide guidance on claiming rights and monitoring the progress of municipalities in pursuing the MDGs locally. Among other initiatives, workshops investigate the potential for public interest litigation in administrative courts for failures to fulfil MDG commitments that correspond to human rights, enshrined in the national constitution and international law.

Most reports and strategies under review did not strongly focus on the role of civil society, but in some countries there was clear evidence of active engagement by civil society on integrating human rights and MDGs in the context of accountability. In some cases this is explicit, reflected for example in many alternative MDG reports being issued in Asia, a counterpoint to the alternative human rights reports submitted to UN human rights treaty bodies. In some countries, the State has attempted to encourage such monitoring, for example in the area of local health in India, although the latter schemes are yet to be fully implemented.¹¹⁵

6. Conclusion

This analytical report has set out to provide a brief overview of some of the current trends in the integration of human rights in national target-setting and policy-making in the context of MDGs globally and in a selected sample of developing countries. The report draws from commissioned research papers on specific sectors, analysis of particular MDG reports and secondary literature. While there is some evidence of a human rights approach, the survey is not particularly encouraging and the rather pessimistic quantitative results presented earlier appear to be reflected in the qualitative analysis. Thus, there remains significant potential to increase the inclusion of a human rights-based approach in claiming the MDGs. This should particularly happen through the better alignment of national targets and MDG8-related policies with human rights together with improving participation in policy

¹¹⁴ See Sandra Liebenberg, 'The Judicial Enforcement of Social Security Rights in South Africa: Enhancing Accountability for the Basic Needs of the Poor', in Eibe Riedel (ed.), *Social Security as a Human Right: Drafting a General Comment on Article 9 ICESCR – Some Challenges* (Berlin: Springer-Verlag, 2007), pp. 69-90.

¹¹⁵ R. Khosla, *Human rights and MDG 5 on Maternal Mortality – Focus on India*, draft background paper, October 2008 (on file with author).

design and equality in resource allocation. In addition, States and the international community need to ensure that development projects do not cause more harm than good and that accountability structures are in place to ensure the MDGs outcomes materialise and are sustained.

Annex

MDG Reports and Indigenous Peoples: A Desk Review (2008) ¹¹⁶

This review underscores the importance of the recommendations of the 2005 and 2006 sessions of the UNPFII, which undertook specific examination of MDGs and indigenous peoples and highlighted elements for their greater inclusion. The Secretariat of the UNPFII, under a recommendation of the Forum at its fifth session, undertook this review of country reports on the MDGs to analyse how they address indigenous issues. A total of ten country reports were reviewed from a broad range of countries, which have substantial indigenous populations. The country reports were examined in order to identify elements for inclusion of indigenous issues, general trends and progress achieved, as well as to identify opportunities and challenges for further integrating elements for inclusion of indigenous issues into MDG-based development process. Scant reference was made in the reports explicitly to “indigenous peoples,” but the review considered more broadly any local terminology used that could be interpreted to refer to indigenous peoples. The current review has built upon the conclusions of previous reviews.

Conclusions and recommendations of the review include the following:

1. Twenty percent of the MDG reports reviewed sufficiently include indigenous peoples by consistently reporting on their situation (Nepal and Vietnam). Another 50% address indigenous issues to varying degrees (Guyana, Myanmar, Russian Federation, Suriname, Thailand), while the remaining 30% do not include any mention of indigenous peoples (Kenya, South Africa, and Zimbabwe).
2. None of the country reports under review indicate that they were prepared with consultation from indigenous peoples’ organisations.
3. None of the MDG reports provide disaggregated data for indigenous peoples in a consistent manner, for every goal. Guided by the recommendations of the Fourth and Fifth Sessions of the UNPFII, this review reiterates that the improved disaggregation of data on indigenous peoples is necessary to effectively monitor progress towards MDG achievement, and that this should be a key priority for Governments and the UN System.
4. The two most positive examples of reporting on indigenous peoples (Nepal and Vietnam) most consistently include data on indigenous peoples in the context of the MDGs and recognise that certain groups, including indigenous peoples, are the most disadvantaged and marginalised in the country. At times, they offer mention of specific mechanisms or policies that target the communities. Other reports may include examples of best practices or refer to social challenges faced by indigenous peoples (such as the report of the Russian Federation), but the reporting is not consistent across the MDGs.

¹¹⁶ No.3 February 2008, Secretariat of the UN Permanent Forum on Indigenous Issues (footnotes omitted)

5. While most of the reports include at least some mention of disproportionate development, they are most likely to describe the situation by providing data and examples by provincial, regional, or rural/urban disparities. In these descriptions of disproportionate development, the reports often fail to explicitly acknowledge when the regions or areas that are disproportionately affected correspond to the areas where indigenous peoples live. This omission is problematic and does not provide a clear picture of the situation of indigenous peoples.
6. When the reports do mention indigenous peoples, they most often do so in the context of poverty, education, and mortality rates (MDGs 1, 2, 4, and 6). They usually mention that indigenous peoples live in remote areas that lack access to the same services as other groups, and are thus disadvantaged or are considered vulnerable groups. For the reports where the data allows for some analysis of indigenous peoples and mortality rates, (Guyana, Myanmar, Nepal, Russian Federation, Thailand, and Vietnam), mortality rates for indigenous peoples are significantly higher than the national averages.
7. The situation of indigenous women (in the context of MDGs 3 and 5) is rarely mentioned. The only report that made any more than a passing reference to indigenous peoples in the context of these Goals was the report by Vietnam, which discussed the social challenges in achieving gender parity for indigenous women.
8. Several of the reports (Guyana, Nepal, and Russian Federation) included at least some mention of indigenous peoples in the context of environmental stability (MDG 7). The report by Nepal, in particular, highlights the positive role of indigenous peoples in environmental sustainability, provides an example of their role in land use management, and recommends future action to secure access and benefit sharing to genetic resources. None of the reports mentioned indigenous peoples in the context of establishing a global partnership for development (MDG 8).
9. In future reporting the countries should undertake to include indigenous peoples in the context of meeting each and every Goal. Guided by the UN Declaration on the Rights of Indigenous Peoples, this review recommends that the free, prior, and informed consent of indigenous peoples should be sought in all development initiatives focused upon improving their lives, and countries should comment on this clearly in their MDG reports.
10. Finally, this review reiterates the previous recommendation of similar reviews, as follows: Governments should a) include indigenous peoples in the context of the overall report, including its planning; b) include indigenous peoples in the context of meeting each specific Goal; c) include indigenous peoples' effective participation in the planning process of future interventions, as well as in the implementation, monitoring and evaluation of programmes and projects that will directly or indirectly affect them; and d) improve the collection and disaggregation of data regarding indigenous peoples.