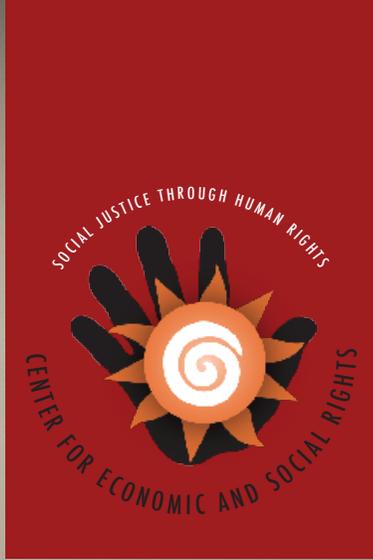


A Matter of Justice

Securing human rights in the post-2015 sustainable development agenda



CENTER FOR ECONOMIC AND SOCIAL RIGHTS

TWENTY YEARS FIGHTING FOR SOCIAL JUSTICE THROUGH HUMAN RIGHTS

A Matter of Justice

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“Like slavery and apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the actions of human beings. And overcoming poverty is not a gesture of charity. It is an act of justice. It is the protection of a fundamental human right, the right to dignity and a decent life.”

~ Nelson Mandela¹

Executive Summary

Barely two years remain before the 2015 deadline for the achievement of the Millennium Development Goals (MDGs), yet it has become painfully clear that many of the targets set out in the MDGs will not be met. With dialogue already underway on the form and content of a successor framework, it is imperative that a more effective sustainable development paradigm be agreed, one that avoids the pitfalls of the current process. While proposals on specific goals and targets are beginning to emerge, the global debate is currently centered on the principles and broad parameters that should underpin the new framework.

A key lesson from the last decade is that any new global development agenda must be more than just an accord between rich and poor governments, with little ownership by people living in poverty themselves. International commitments on their own can support, but will never take the place of, effective national and sub-national processes which compel change. A new sustainable development agenda based on justice must be understood as an indispensable contract between people as human rights-holders, and public and private actors as corresponding duty-bearers—a pact between people and policy-makers which can be practically employed to transform aspirational commitments into real improvements in living conditions.

As an action-oriented normative framework, human rights law sets out measurable standards of conduct and operational principles which in turn delineate what governments and other duty-bearers are responsible for, evaluating their conduct, and incentivizing continuous and participatory reassessment of progress towards agreed targets. To be effective in meeting the new and persistent challenges of our time, CESR believes any future sustainable development framework should be anchored in the essential human rights principles of universality, interdependence, equality, participation, transparency and accountability, and in the duty of all states to guarantee at least minimum essential floors of rights enjoyment, to use the maximum of their available resources to progressively realize rights for all, and to engage in international cooperation for this purpose.

Governments are obliged to uphold these principles under international human rights treaties they have already agreed to be bound by. In practice, however, these obligations have by and large been overlooked in the design and implementation of current development commitments. At best, human rights have been referenced in current development debates as rhetorical abstractions, whose relevance to the

nitty-gritty of social policy formulation has rarely been spelled out. At worst, they have been misperceived as either irrelevant to the development process or too politically-sensitive for inclusion in a global partnership for development.

This briefing argues that human rights principles provide concrete guidance as to how goals and targets are framed and how common but differentiated responsibilities are defined. They also set parameters for how the new commitments are implemented and resourced, how progress is measured and how accountability for the delivery of an effective and just 21st century sustainable development framework can be ensured.

Anchoring the post-2015 sustainable development agenda in the **universality** of human rights implies that the new commitments must apply in rich and poor countries alike, being tailored and adaptable to different national and sub-national circumstances, but in service to and owned by poor people anywhere and everywhere. The **interdependence** of rights requires that freedom from want and freedom from fear be recognized as inseparable. The post-2015 framework must take into account the mutually reinforcing dynamic between promoting economic and social rights (such as the rights to education, health, sanitation, decent work and an adequate standard of living) and guaranteeing civil and political rights (such as freedom of expression, information and association). Interdependence also requires coherence across all areas of economic and social policy – including tax, financial regulation, trade, aid, debt, climate and environmental policy – at both the national and international levels.

Given that the widening chasm between the ‘have-lots’ and ‘have-nots’ is one of the key factors driving poverty and deprivation around the world, it is likewise essential that the new framework promotes the twin principles of **equality and non-discrimination**, in practice as well as in law. Aggregate progress on some of the current Millennium Development Goals has in many countries masked growing disparities along lines of gender, geography, age, ethnicity and disability, amongst others. Reducing inequality in the enjoyment of rights must be a central and cross-cutting goal of the future development agenda.

Guaranteeing a **minimum floor** of socio-economic wellbeing to every member of the population, without discrimination, is one of the most basic of human rights duties, yet one of the most consistently flouted. Any new set of sustainable development goals should spur urgent action to ensure universal access to at least a basic set of social goods and services, such as primary health care or social protection mechanisms.

Due attention to the principles of **participation and empowerment** would not only ensure ordinary people’s ownership of the development process, enabling marginalized groups to influence governments’ policy decisions and resource allocations, but would also reflect the fact that people living in poverty themselves generally view lack of voice and power as the most stigmatizing elements of their deprivation. Addressing **transparency** by guaranteeing equal and sustained access

to quality, useable information – statistical and otherwise – is an essential step towards promoting meaningful participation.

A lack of clearly differentiated responsibilities and the absence of real incentives have undermined **accountability** under the current MDG process. It is therefore critical that the post-2015 commitments are buttressed by effective systems of accountability, through which decision-makers can be held answerable to those affected by poverty and deprivation. These systems include existing institutions of human rights protection as well as other oversight mechanisms that can review whether efforts to meet the renewed development commitments are in line with human rights standards.

The obligation to devote the **maximum available resources** to the swift and progressive fulfillment of human rights obliges decision-makers to demonstrate they have done everything possible both to generate resources in equitable ways and to prioritize the rights of the vulnerable in their allocations. This principle therefore requires fostering a culture of accountability for domestic budget, tax and monetary policy, as well as international assistance. It also requires greater cooperation between countries to tackle issues such as large-scale tax evasion, illicit financial flows, unjust trade policies and poor financial regulation which can impede socio-economic progress.

The duty of **international cooperation and assistance** requires collective action to address the multiple interrelated crises - food, fuel, financial, economic, employment and ecological - which have afflicted the globe since the MDGs were adopted. It is widely accepted that the ‘global partnership for development’ agreed under the current framework has failed. It must be reshaped to ensure coherence between international development assistance policies and other bilateral and multilateral policies in areas such as the environment, trade, investment, debt, finance and taxation, which have had negative human rights impacts.

Taken together, these principles and standards –which almost all countries have already committed to uphold through their ratification of international human rights treaties – can help ensure that the sustainable development commitments agreed in 2015 do not go down in history as yet another set of unfulfilled promises. These principles can also serve as criteria to guide the difficult choices that must be made regarding how issues for inclusion in the new framework are prioritized.

To be sustainable, legitimate and transformative, the new development framework must enable an environment where active and empowered citizens can hold their governments and the international community to account for what they are doing to meet commitments made internationally. Reframing development in human rights terms is not only an ethical and legal imperative; it can also enhance the effectiveness and accountability of future development efforts. Ultimately, human rights principles – turned into practice – can be the normative building blocks of a fairer, more sustainable and more just development paradigm for the 21st century.

A Matter of Justice

Securing human rights in the post-2015 sustainable development agenda

The Millennium Declaration adopted at the turn of the century expressed a global consensus that poverty is a scourge on our common humanity, which all states have a shared responsibility to eradicate. It placed human beings at the center of development, and took human rights as its normative bedrock. As affirmed in international human rights instruments, poverty is not inevitable, but a product of specific legal and policy choices. Ending poverty and its associated patterns of human rights deprivation is a long-standing legal obligation of states—acting individually and through international cooperation.²

The Millennium Development Goals (MDGs) developed to implement the commitments of the Declaration focused attention on some of the most disquieting dimensions of poverty, such as preventable child and maternal death, hunger, disease, homelessness and lack of educational opportunities. In setting out aspirational goals, time-bound targets and indicators to systematically monitor results, the MDG framework helped to stimulate progress, mobilize political will and financing, and incentivize timely action in these areas.

But despite the long-standing commitments to human rights made in the Millennium Declaration, the MDGs in practice did not reflect a human rights conception of poverty, either in the framing of the goals and targets, or in the measures taken to reach these goals. Perhaps the most glaring flaws in the current framework have been its blindness to the issue of inequality and the lack of accountability for failure to deliver on the goals and the human rights obligations underpinning them. This has resulted in markedly inadequate progress on many of the goals, coupled in many cases with widening economic and social disparities within and between countries.³

Although agreed in 2001, the MDGs were still in many ways a product of the 20th century. A diplomatic pact between donor and recipient governments made operational by a team of technocrats, the MDGs in practice harked back to a model of development centered more on charity than a sense of obligation between states, let alone duties of states to their people. The current framework does not reflect 21st century realities in which almost three-quarters of people living in poverty are in middle-income countries (MICs),⁴ and over 170 million people live in poverty in high-income countries.⁵ The compound effects of the food, fuel, financial, economic and

“We recognize that, in addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. As leaders we have a duty therefore to all the world’s people, especially the most vulnerable and, in particular, the children of the world, to whom the future belongs.”

~ Millennium Declaration, Art 1.2

ecological crises, which have affected all parts of the globe over the last decade, have shown the current MDG framework to be ill-equipped to address the deep governance challenges of an increasingly multi-polar, interdependent and volatile world. This new political and economic terrain requires new forms of collective action beyond the limited confines of international development assistance, and has motivated the search for a more holistic sustainable development narrative.

Debates are now underway on the form and content of a successor framework. A series of UN-coordinated thematic and national consultations has created a plethora of platforms for exchange of ideas worldwide. The UN Secretary General's High-Level Panel of Eminent Persons on the Post-2015 Development Agenda is consulting widely to arrive at a set of recommendations to be submitted to the Secretary General in May 2013. The Panel's work will be closely coordinated with that of the inter-governmental Open-ended Working Group on Sustainable Development Goals, created following the Rio Conference on Sustainable Development (Rio+20). The outcomes of both processes will be submitted to UN member states for further deliberation. Global advocacy networks such as Beyond 2015, CIVICUS and the Global Call to Action against Poverty are opening spaces for coordinated civil society consultation on the vision and values that should guide the successor framework, and organizations and movements across the globe are also making specific recommendations for what it should include. These processes, and many more, will converge at the September 2013 UN General Assembly where the broad parameters of the post-2015 agenda will likely be defined.

At all levels of discussion, there has been a resounding call for human rights to be made a central pillar of the post-2015 framework. The UN System Task Team established in 2011 to coordinate support for the post-2015 consultation process across all relevant UN entities and agencies has recommended that the new set of goals should be based on the fundamental pillars of equality, sustainability and human rights.⁶ The Rio+20 conference in 2012 reaffirmed a range of human rights commitments of relevance to sustainable development and proposed that the new goals should be consistent with international law, among other criteria⁷. Broad-based global civil society campaigns such as Beyond 2015 are calling for the framework to be wholly consistent with international human rights standards and principles.⁸ Consultations prior to the High Level Panel's February 2013 consultations in Monrovia "resoundingly called for the post-2015 framework to be anchored in human rights, guided by the range of obligations already agreed to by member states."⁹

But despite the tentative consensus in principle, the concrete, practical implications of embedding human rights in the post-2015 framework are rarely discussed. This briefing aims to move the debate on the role of human rights in the sustainable development agenda one step further by laying out some of the key implications these principles and duties have in practice for the task of articulating a new set of development commitments beyond 2015.

Towards a human rights-centered sustainable development agenda

Human rights are fundamentally concerned with regulating the exercise of authority. They seek to transform the asymmetrical relationships of power that keep people poor, by converting passive ‘beneficiaries’ of development into active rights-holders and drivers of their own destiny, and ensuring that those who wield power are answerable to those whose lives (and deaths) they touch.

A key lesson from the experience of the last decade is that any new development agenda must be more than just a voluntary aspirational agreement between rich and poor governments, with little ownership by people living in poverty themselves, and few means for holding states and the international community responsible for the commitments made. The new framework must function as an instrument of accountability, and as an incentive for governments and international institutions to answer for their efforts to eliminate the barriers preventing those living in poverty from realizing their rights. International commitments on their own will never take the place of effective national and sub-national processes of accountability. But if framed as a contract between human rights-holders and duty-bearers, the new set of goals will stand a better chance than the MDGs of compelling the conditions for policy change at the international, national and local levels.

While human rights treaties do not contain detailed policy prescriptions nor espouse a particular development model, they do offer a universally-recognized set of principles and standards that can serve as a much-needed normative framework for a sustainable development agenda. The sections below outline the essential human rights principles in which CESR believes any future sustainable development framework should be anchored: universality, interdependence, equality, participation, transparency, accountability, meeting minimum essential floors, using maximum available resources, and international cooperation. As explained in the sections below, these principles have direct implications for the selection and framing of post-2015 goals and targets. They also set parameters for how the new commitments are implemented and resourced, how progress is measured and how accountability for their delivery can be ensured.

“Poverty is a human condition characterized by the sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.”
~ UN Committee on Economic, Social and Cultural Rights, 2001¹⁰

These principles apply to the range of sustainable development issues potentially covered by the new framework. Rather than arguing for a stand-alone human rights goal, CESR believes that these cross-cutting human rights principles should inform the way all goals are articulated, targets are set and associated indicators identified. This is vital if the new development agenda is to spur all governments to honour their existing human rights commitments, rather than undermining them.

1. Recognize rights and responsibilities universally

All people living in poverty have inherent human rights, which they are equally entitled to enjoy the world over. The post-2015 development agenda must not exclude certain people living in poverty because they happen to live in industrialized or emerging economies rather than developing countries—categories which make increasingly little sense. The 2008 financial and economic crisis and its aftermath have drawn attention to rising poverty and inequality in middle and high income countries. This has direct implications for the design and implementation of a post-2015 agenda.

Just as all people everywhere are born with inherent human rights, so all countries must recognize their common and differentiated duties to people living in poverty. In this sense, a human rights-centered development agenda would rectify the currently skewed approach which in practice places obligations mainly on low-income countries, without adequately holding wealthier states to account for what they are doing to tackle poverty, inequality and environmental harm within and beyond their borders.

Anchoring the post-2015 sustainable development framework in the *universality* of human rights implies that:

- i. The new agenda must apply *universally*, addressing poverty, inequality and environmental degradation in all countries of the globe, regardless of their level of income per capita. While specific targets and measures of progress may be tailored and adaptable to different national and sub-national circumstances, the framework should be in service to and owned by people experiencing poverty and avoidable deprivation anywhere and everywhere.
- ii. Whatever commitments are made under the post-2015 framework, the differentiated responsibilities of all states and other stakeholders in the development process should be clearly defined and equally accounted for. This includes duties to ensure that trade, investment, debt, tax, financial, monetary, environmental or other policies do not pose grave obstacles to the enjoyment of rights of people living in poverty.

2. Reflect the interdependence of all human rights

The international human rights framework reflects a multi-dimensional conception of human dignity and well-being, and recognizes the practical *indivisibility* of all human rights as socially and legally guaranteed entitlements. Human rights of a civil and political nature, such as freedom of speech and association, equality before the law, and the rights to life and physical security, are dependent upon and mutually-reinforced by human rights of an economic and social character such as education, food, health, water, sanitation, social protection, an adequate standard of living, decent work, a healthy environment and the right to development.¹¹ As they are inherently *interdependent*, a threat to any is a threat to all. Economic inequality, for example, all too often fuels political disempowerment, which in turn breeds further economic and social marginalization. Progress in one area, on the other hand, very often propels progress in others, creating a virtuous cycle of rights realization.

Recognizing the inherent indivisibility and interdependence of human rights post-2015 entails developing a balanced framework that avoids the compartmentalization of the MDGs and addresses some of their most critical gaps. These include the need to better promote and protect civil and political rights as well as economic, social and cultural rights. As witnessed in the revolts that led to the ‘Arab Spring’, the pursuit of economic and social development is not sustainable if it is pursued with a disregard for basic civil and political freedoms.

- i. The post-2015 sustainable development agenda should include explicit commitments to respect the rights to freedom of expression, association and assembly, as well as rights of political participation. Guaranteeing these rights is essential if conditions are to exist in which people can participate in shaping, monitoring and challenging development policies affecting their lives.
- ii. The framework should also include measurable commitments on other civil and political rights of direct relevance to the sustainable development agenda. Priority issues for consideration include the right to physical integrity (including protection from gender-based violence), the right to birth registration and the right to equal protection before the law. The protection of these rights is critical to overcoming the lack of security, voice and access to justice which is so often associated with poverty, and to creating conditions of governance conducive to sustainable development.

The interdependence of human rights also implies that government duties extend beyond the limited confines of social policy or development assistance programs. The new paradigm, in this sense, must recognize and take aim at the structures and measures which keep people poor, no matter from which government department they may arise. A renewed development agenda in line with human rights responsibilities

would promote a more coherent and inter-sectoral approach to assessing the real effects of government's policies on people living in poverty.

- iii. The post-2015 agenda should include commitments by all states to ensure that all laws and policies—including tax, financial regulation, monetary, trade, aid, debt, climate and environmental policy—are aligned and coherent in the common cause to realize human rights for all, including when these laws and policies affect human rights enjoyment beyond their borders.¹² International human rights standards should be the yardstick with which to evaluate policy coherence at both global and national levels, so that all areas of policy—be they social, economic, financial, justice, environmental or other—work in complementarity to uphold governments' respective responsibilities.¹³

3. Make equality and non-discrimination central to all goals

In many countries, aggregate progress on some of the current Millennium Development Goals has masked growing disparities along lines of gender, geography, age, ethnicity, disability, and socio-economic status, amongst others. While child mortality has decreased in the majority of countries, for example, in most cases this has been accompanied by widening inequality in child mortality rates between the top and bottom income groups.¹⁴ It is widely recognized that the current MDG framework failed to address adequately the discrimination faced by women in all spheres of life and the impact this has on their rights and on the development process as a whole. Other forms of discrimination which fuel and exacerbate poverty and exclusion worldwide, such as discrimination on grounds of disability, have also received insufficient attention in MDG efforts. Income inequality has widened in many countries, particularly following the global economic crisis and the measures adopted in its wake.

Reducing inequality in the enjoyment of rights, and ending the discrimination which often fuels it, must be a cross-cutting objective of the future development agenda. A central tenet of human rights law is the obligation to confront and eradicate discrimination in law and in practice. This requires specific, proactive measures and concrete, deliberate steps with accompanying resources to combat structural barriers to substantive equality wherever they exist.

The 21st century development agenda should reflect human rights duties to equality and non-discrimination in a more central manner, both in the way the goals and targets are framed, and how progress is tracked:

- i. All new goals and associated targets must be made equality-sensitive, so as to incentivize action to reduce disparities in rights enjoyment across all thematic areas covered by the new framework. International human rights standards aimed at combating discrimination on such grounds as gender, race, indigenous status

and disability should guide the framing of equality-related objectives, and form the basis for the identification of appropriate indicators to measure progress. While some forms of inequality, such as gender, age or disability, are relevant in all countries of the globe, other grounds of discrimination that objectives or indicators should focus on may vary across sectors and country contexts. The most sector-relevant grounds of discrimination in any given context should be empirically identified and monitored, and space opened for disadvantaged groups themselves to define which are the most salient grounds of discrimination they face at the local and national levels.

- ii. The new agenda should help overcome significant obstacles to assessing inequality and discrimination, such as wide data gaps, weak quality, reliability and comparability of data, and lack of coordination between different institutions responsible for data collection, collation and dissemination. An essential step in dismantling discrimination is adequate assessment and data collection. Injustice and inequality is very often embedded in the ways in which knowledge and information is collected, provided and used. A significant outcome of development agreements post-2015 would be to strengthen across-the-board statistical capacities over-time and in realtime. Qualitative and quantitative data should be collected and be disaggregated as far as possible on the basis of gender and other salient grounds of discrimination to help reveal and expose disparities in outcomes as well as in policy efforts. Relevant lessons can be drawn from UNESCO's World Inequality Database on Education, as well as existing equality benchmarking, and equality monitoring methodologies which enable people to hold their governments to account for progress on commitments made.¹⁵ Data gathering should not be limited to what is currently available, as this will frequently exclude data that is of particular relevance to communities facing discrimination and marginalization. National statistics offices and UN agencies should be enabled to collect the data needed to monitor disparities on the widest possible range of relevant grounds.
- iii. Efforts to reduce income inequality within and between countries must also be central to the post-2015 commitments, which should include specific objectives or targets in this regard. Income inequalities have widened in many countries since the MDGs were adopted, breeding economic dysfunction, political disenfranchisement and social exclusion. Globally, the richest twenty percent of people receive at least 83 percent of global income, while the poorest 1.4 billion receive just one percent of income. At current rates, it will take over 800 years for the bottom billion to achieve just ten percent of global income, according to estimates.¹⁶ Instituting monitorable commitments, assessed against relevant policy efforts to address material inequality, would provide much value in focusing attention on the corrosive trend towards widening socio-economic inequality. This might be usefully tied to prioritizing decent work and addressing wage disparities in the successor framework, as central enablers of other rights.

4. Guarantee an essential floor of rights protection for all

The MDGs, for all their shortcomings, crystallized consensus on the need to ensure that no human being on the planet should live below a certain threshold of dignity.¹⁷ The more than 160 governments which have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) face an immediate duty to “ensure the satisfaction of, at the very least, minimum essential levels of economic, social and cultural rights”.¹⁸ This principle obliges states to strive as a priority to guarantee to all within their jurisdiction at least a basic core of essential goods and services essential for a life with dignity, a floor of material existence below which no one shall be allowed to fall. Any state must demonstrate that “every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations”.¹⁹

Integrating this principle into the post-2015 agenda implies that:

- i. Any new goals and targets are framed in a way that reinforces guarantees of basic minimum essential levels of economic, social and cultural rights universally across different sectors, be they decent work, health, housing, education, food, water, sanitation, social protection, and a healthy environment for all.²⁰ This supports setting targets aimed at universal access to essential social services, as well as ‘zero targets’ for such issues as the reduction of preventable maternal or child death, chronic malnutrition, or lack of access to safe drinking water and sanitation, which are areas of ‘core obligation’ under international human rights standards.
- ii. The post-2015 framework should also promote the provision of a social protection floor as a first step towards comprehensive social protection and a necessary component of any comprehensive development strategy, as promoted by the ILO/WHO Social Protection Floor Initiative²¹ and endorsed in the outcome document of the MDG Review Summit adopted by the General Assembly in September 2010.²² While basic social protection for all has been proven to be affordable by even the most low-income countries, a Global Fund for Social Protection, as proposed by human rights experts, is an appealing mechanism for sustainably and cooperatively financing social protection for all in a climate of increased funding volatility.²³ Basic social and economic floors have been shown to benefit economies, while also being imminently achievable by 2030 should the will, infrastructure and resources be put in place.²⁴

5. Enable the meaningful participation of people living in poverty and promote transparency and access to information

People living in poverty generally see their condition through various manifestations of deprivation that go beyond the economic. They are acutely aware of the lack of voice and power that leaves them open to exploitation and deprivation, under-equipped to influence the manner in which governments allocate rights and distribute resources, and subjected to retaliation and retribution when they choose to question their place in society.

International commitments mean little unless they serve to buttress and strengthen the inherent rights of people to participate in decisions which affect their lives. Global pledges are only truly effective when they are translated, known, owned and advocated for by local actors themselves—including people living in poverty, civil society, parliaments, judges, national human rights institutions, and other country-level development actors. It is through poor people’s ownership over the process and outcomes of development that well-intentioned top-down proclamations can serve to stimulate bottom-up transformations in the quality of people’s lives.

To be sustainable, legitimate, lasting and effectively implemented, the new development framework must promote and enable an environment of *empowered citizen pressure* and advocacy to compel the conditions and the will required on the ground to meet the new aspirational commitments made internationally. It should recognize that those living in poverty must be in the driver’s seat of decisions about their future.

Transparency, along with equal and sustained access to quality information, is a precondition for participatory governance, empowering people to engage in decisions which affect their lives in informed and consequential ways. While openness itself does not necessarily lead to rights-realizing results, it is an essential prerequisite for a robust, informed public debate through which decision-makers become answerable to their people, and rights-holders are enabled to monitor and assess government conduct, including how resources are spent and generated.²⁵ This duty requires governments to take proactive steps to address the weak institutional capacity of national statistical bodies, which can pose a barrier to the collection of quality, reliable and relevant information for all.

International agreements can have a substantial impact in stimulating domestic legal and policy reforms to improve freedom of information. Commitments made on

access to information in Principle 10 of the 1992 Rio Declaration, for example, helped to inspire over 90 countries to adopt framework laws or regulations on access to information.²⁶

A 21st century development agenda based on the human rights principles of participation, empowerment and transparency would involve:

- i. Ensuring that the framework enables those most affected by poverty and discrimination (and their allies) to shape the design, implementation and monitoring of development processes and outcomes. Rather than tokenistic, formal consultations, the perspectives of those living in poverty can enrich development processes by being effectively institutionalized into the decision-making process, with consequent influence on decisions made. Furthermore, the free, prior and informed consent of certain rights-holders, such as indigenous communities, must be respected in any decisions that are taken in the name of economic development.²⁷
- ii. Explicitly reaffirming guarantees of freedom of expression, information and association in law and in practice as an essential prerequisite for meaningful participation and a cornerstone of accountable governance. If the post-2015 agenda is to be legitimate, lasting and effectively implemented, its provisions should also serve to reinforce the capacity of an active, organized civil society to transform these global commitments into lived realities. Domestically, right to information guarantees should enable people living in poverty to obtain the quality, accessible information necessary to meaningfully participate in all stages of the legal reform, budget, fiscal, tax and development policy cycles.

6. Ensure greater accountability within, above & beyond the state

Eradicating poverty is not simply an issue of more development, more growth, or more aid. It is also a question of holding governments – and other responsible actors above and beyond the state – to account. A development agenda based on justice entails putting in place the necessary monitoring and accountability mechanisms so that people can claim their rights and access effective remedies when responsibilities are not met.

Human rights can reinforce accountability in several ways. They bring the clarity and enforceability of law to the identification of responsibilities; they increase the responsiveness of the state to its people; and they make effective redress an integral, constituent element of the governance infrastructure.²⁸ Human rights accountability

obliges persons in positions of power or authority to take responsibility for their actions and omissions, to explain and justify their conduct to those to whom they are answerable, and to be held accountable if their conduct is found to have breached standards of behavior and performance set out in universally-recognized norms.

Human rights mechanisms of accountability afford those who have been deprived of their rights access to transparent and effective means to enforce their claims against those in authority, and to obtain effective remedy if their rights are found to have been put in jeopardy. Courts, parliamentary and independent oversight bodies, and administrative bodies at the national level—reinforced by international accountability mechanisms—have been shown to improve people’s lives and support livelihoods by placing the onus on officials to demonstrate how they have delivered on development commitments.²⁹ In this sense, the ultimate objective of human rights accountability is not simply to punish violations; effective systems of accountability promote conditions of governance in which rights can be more fully enjoyed sustainably over time.

A post-2015 development agenda buttressed by human rights accountability will help to clarify responsibilities, improve answerability to rights-holders, and strengthen robust incentives for sustaining progress and preventing backsliding. This would imply:

- i. Fair, balanced and effective systems of accountability applying a common set of standards against which to assess conduct. Embedding human rights accountability into the post-2015 development agenda would help to clarify the corresponding responsibilities of governments and other relevant power-holders and ensure they are answerable to those experiencing poverty and deprivation. Integrating substantive human rights criteria into assessments of progress towards development goals means placing accountability for policy and budgetary efforts, along with development outcomes, at the centre of monitoring and review processes.
- ii. Greater accountability for policy choices and resource allocations can be supported by ensuring more constructive interaction between the existing human rights accountability mechanisms (at the national and international levels) and the post-2015 monitoring, review and accountability infrastructure. In this way, such bodies can help provide effective remedies to those deprived of their rights through non-fulfillment of development commitments.
- iii. At the national level, independent ‘accountability councils’, working in consultation with a cross-section of relevant actors, could be established. By continually monitoring and evaluating compliance among the various branches of government, and simultaneously acting as a collaborative but autonomous watchdog, such bodies would strengthen the integrity of public institutions, while also enabling

the public to hold both the state and the market to account,³⁰ and elucidating key extraterritorial or transnational obstacles to success. In some contexts, national human rights institutions may be well-placed to play this role.

- iv. In conjunction with such national-level bodies, a global accountability forum could provide a much-needed review mechanism to hold different development actors accountable to their responsibilities, especially those of a transnational nature. Sector-specific independent expert panels could also be established for each goal, as has already been demonstrated by the WHO Commission on Information and Accountability for Women's and Children's Health.
- v. For a global development partnership to have real meaning, international accountability mechanisms must not be limited to monitoring national outcomes and policy efforts; the degree to which states and international institutions are affecting the fulfillment of development and human rights commitments by other countries must also be considered. Constraints preventing countries from achieving their development commitments often have their roots in policy decisions taken by other states in their capacity as donors, trading partners or members of inter-governmental institutions. The obligations of these states to respect, protect and fulfill human rights beyond their borders must be included within the remit of global accountability mechanisms set up under the new framework.
- vi. As confirmed by the UN Special Rapporteur on Human Rights and Extreme Poverty, access to justice for people living in poverty is both a human right in itself, and also an essential precondition for addressing the causes of poverty.³¹ The post-2015 development agenda should therefore encourage governments to improve access to justice for people living in poverty, and monitor government measures to eradicate existing barriers blocking access to justice.
- vii. While governments remain the primary human rights duty-bearers, the post-2015 framework should recognize the concurrent responsibilities of a proliferation of development actors, in particular in the private sector. At the very least, the framework should affirm the current consensus that business enterprises—across all economic sectors, including the financial—have a duty to respect human rights,³² and that governments are responsible for ensuring these actors comply with this 'do no harm' standard.

7. Ensure resources are generated and deployed fully and fairly

The provision of financial resources—raised and invested equitably—is critical to realizing human rights, equality and sustainable development. Recognizing that governments have limited resources, human rights standards place an onus on decision-makers to generate the maximum available resources equitably, and to deploy them in ways which prioritize the rights of the most vulnerable.

Resourcing rights first requires transparent, participatory and accountable budget and fiscal processes. Human rights law obliges governments to subject their fiscal, monetary and budgetary decisions—at all phases of the policy cycle—to the highest standards of transparency, access to information, participation, and accountability. In this sense, the human rights framework can help visualize skewed allocations which too often prioritize the interests of business, political and military elites over development priorities of the majority of the population.

Resourcing rights also requires an analysis of how resources are used and who benefits. Budgets often reflect unequal relations in society. In most countries,³³ in fact, large sums could be made available to invest in human rights-centered sustainable development if measures were taken to reorder priorities in budget allocations.

Consideration of public expenditure to realize human rights is only one side of the coin, however, as revenue-generation is at least as important. In reality, most governments could expand fiscal space through more human rights-centered approaches to tax policy, deficit financing, financial regulation, monetary policy and development assistance.³⁴ Obligations under several human rights treaties oblige governments to assess whether sufficient revenue is being raised and, if not, to increase revenue in equitable, non-regressive ways. Integrating human rights responsibilities into the post-2015 development agenda would animate open discussions on whether fiscal and monetary policies are mobilizing sufficient resources to meet human rights imperatives, whether fiscal space could be widened to maximize available resources for human rights, and how to ensure tax contributions and other resources are fairly and progressively distributed.

Broadening the fiscal and monetary space available to resource rights without threatening other macroeconomic imperatives (such as price stability, debt sustainability or crowding-out of private investment) is, according to UNICEF and others, possible in most countries.³⁵ Along with its revenue function, tax policy is a key pillar of the accountability relationship between state and citizen; it is central to

the distribution of economic gains in ways that combat poverty and inequality, and also has a useful re-pricing function.

In the post-2015 development agenda, ensuring human rights duties are upheld in the processes and outcomes of raising and allocating resources implies:

- i. Stimulating the open, transparent collection and distribution of reliable and comparable information relating to fiscal, monetary and budget policies. With broad participation, especially by those living in poverty, a set of indicators on budget transparency and participation could be integrated into the post-2015 accountability infrastructure, taking inspiration from the Open Budget Index.
- ii. Assessments of budget expenditure and allocation, as well as tax and revenue generation efforts, must be included in all post-2015 monitoring, review and accountability mechanisms. The use of public budget analysis should be encouraged, along with participatory budgeting and benefit incidence analysis tools to identify how resources are distributed across regions, population groups and sectors over time, so as to assess whether resource allocations prioritize reducing disparities or whether they aggravate existing inequalities. Fiscal space analyses and tax incidence analysis can be used to assess the progressive/regressive nature of the tax regime.
- iii. If properly designed and implemented, the post-2015 agenda can address global obstacles to open and transparent budget, tax and fiscal processes, in particular the financial secrecy regimes which encourage illicit financial flows, tax evasion and avoidance, and corruption. Financial secrecy should be directly monitored and governments, businesses and other non-state actors held accountable to their corresponding right to information responsibilities. Meeting these responsibilities requires international cooperation – for example through the automatic exchange of tax information³⁶ and country-by-country reporting³⁷— to expose those who attempt to evade their tax responsibilities.

8. Human rights-proofing the ‘global partnership’ for sustainable development

The MDGs and the Rio+20 commitments are premised on the awareness that achieving sustainable development goals cannot be done through national efforts alone. Human rights treaties reinforce this by affirming that international assistance and cooperation realizing human rights and dignity is, in fact, an express legal obligation.³⁸ Recognizing that different countries face very different capacity constraints, human rights set out the common and differentiated responsibilities of various actors at the national and international levels.

A truly equitable and effectively global partnership for sustainable development, founded in justice and human rights, would stimulate international cooperation and assistance in two ways:

- i. First, to be good-faith partners, governments must ensure legal, policy and regulatory coherence between human rights law, on the one hand, and any laws and policies which might infringe on the enjoyment of human rights in other countries, on the other. Preventing negative policy externalities or extraterritorial impacts of trade, investment, aid, debt, finance, tax or environmental policies which hinder human rights overseas requires due diligence and systematic assessment of both government conduct and the behavior of third-parties, such as businesses under their watch, to ensure private interests do not use their territory and legal protections to abuse human rights in other countries.

Governments have important duties, in this respect, to cooperate in the mobilization of resources.³⁹ No state should be permitted to infringe on another state’s ability to mobilize the resources necessary for fulfilling human rights. A future development agenda aligned with this international obligation to cooperation must encourage a global environment supportive of resourcing rights, through for example increasing transparency, quality, effectiveness and accountability of development assistance, and promoting more equitable financing mechanisms such as financial transaction taxes,⁴⁰ and the Global Fund for Social Protection.⁴¹

At the same time, a development agenda founded on justice must also include a sober assessment of the external obstacles which hinder countries in mobilizing and investing resources in rights-realizing ways. Government laws and policies which have the effect of preventing other countries from resourcing rights in equitable ways (e.g. supporting cross-border tax evasion, improper regulation of abusive private financial actors, private creditors or other business enterprises, aid

or trade conditionalities, and unjustifiable constraints on deficit financing) clearly work against the achievement of common development goals. Consideration of such laws and policies must therefore be central to determining whether development actors are meeting their responsibilities this time around.

- ii. The second dimension of international cooperation and assistance post-2015 involves the need to propel collective action to tackle head-on the interrelated food, fuel, financial, economic, employment and ecological crises through proactive global cooperation beyond the individual policies of sovereign governments. Guaranteeing a basic floor of economic and social rights fulfillment cannot be achieved through 'policy coherence' alone. As affirmed by one human rights treaty body, it is "particularly incumbent on all those who can assist, to help developing countries respect this international minimum threshold" when they are unable to do so themselves.⁴²

Post-2015, a holistic and coherent global partnership for development founded on the principle of international human rights cooperation entails systematic assessment of global policy coherence and the responsibilities of states beyond their borders. States should be required to conduct periodic assessments of the extraterritorial human rights risks of their laws, policies and practices, with reviews being channeled into future development monitoring and accountability mechanisms. This should include independent assessments of the degree to which laws or policies on trade, debt, tax, corporate accountability, fiscal, monetary, financial, environmental and investment matters effectively sustain or undermine the achievement of human rights and future sustainable development goals. Lessons can be drawn from the High-Level Task Force on the Implementation of the Right to Development regarding ways to draw up effective and monitorable indicators illustrating the degree to which governments' laws, policies and programs respect, protect and support the fulfillment of human rights in other countries.⁴³

Charity or Justice for the 21st Century?

Anchoring a set of clear, ambitious, specific, manageable and measurable global goals, together with any associated targets and indicators, in existing human rights treaty standards is not only an ethical and legal imperative. It can help elucidate respective responsibilities for action, improve answerability to human rights-holders, and strengthen incentives for sustained progress. Reframing development goals in human rights terms can therefore help to overcome the accountability gaps in the current MDG process.

In order to be effective, the new set of global development commitments should by necessity be selective and manageable. Given the array of proposals emerging from worldwide consultations on the content of the new framework, decisions about prioritization should be made in a transparent and participatory manner, with reasoned justification given for the choices made. The human rights principles described in this briefing offer a set of universally-accepted normative criteria which should be used to assess proposals for inclusion in the post-2015 sustainable development framework.

Some key questions to ask when evaluating whether the post-2015 framework meets the human rights litmus test are:

- Will the new framework be universally applicable to all people facing poverty and avoidable deprivation, regardless of geographical location? Will it identify universal yet differentiated responsibilities which are equally obligatory on all states?
- Will the successor framework recognize and incorporate the interdependence of human rights in all their dimensions—economic, political, social, cultural and civil—into a balanced and mutually complementary set of goals?
- Will the successor framework help to monitor and reduce inequalities in their many manifestations, and to dismantle forms of discrimination underlying them?

- Will people living in poverty be able to exercise their right to information about decisions made in their name? Will the successor framework enable people in poverty to participate in consequential ways in the design of global and national development policies, in monitoring progress and backsliding, and in challenging implementation flaws that affect their rights?
- Will the successor framework set out appropriate incentives and sanctions so that policy-makers, legislators, executives, businesses and other key actors shaping development policy are responsive, answerable, and ultimately accountable for their decisions?
- Will the post-2015 framework stimulate governments to guarantee a universal minimum floor of economic and social rights protection? Will it address the obstacles, especially of a transnational nature, which obstruct governments from generating and utilizing the maximum of available resources to sustainably finance human rights-centered development?
- Will the successor framework recognize the common and differentiated duties of all duty-bearers to cooperate and assist one another in order to guarantee a life of dignity for all the world's people?

The invitation to envision 'the world we want' post-2015 should not merely result in a long wish-list of desires, but in the creation of a responsive, adaptive and evolving environment of accountability firmly rooted in the solid ground of human rights. Addressing the global challenges of ensuring human rights, equality and sustainability will require that everyone step out of their comfort zones, especially those who are most uncomfortable about being held up to human rights scrutiny.

If the international community is seriously committed to pursuing development as a matter of justice rather than charity, the time has come to wed the sustainable development narrative and agenda to the common aspirations and international legal obligations of human rights. This is the future we owe to one another, and to all future generations.

(Endnotes)

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- 10 Committee on Economic, Social and Cultural Rights, Statement: 'Poverty and the International Covenant on Economic, Social and Cultural Rights', May 2001, UN Doc, E/C/.12/2001/10, para 8.
- 11 The High-level Task Force on the Right to Development has drawn up a comprehensive set of operational criteria and illustrative quantitative indicators to help policymakers and development practitioners assess whether governments' conduct complies with their domestic and extraterritorial ('internal, external and collective') responsibilities in development. Integrating political and human rights commitments, the criteria and indicators embrace

many dimensions of international cooperation which MDG 8 leaves out, including global monetary, economic, agricultural, debt, trade, taxation and financial laws and policies; business-related human rights abuses; capital flight; inclusive global governance processes; and innovative financing for international development. See 'Report of the high-level task force on the implementation of the right to development on its sixth session, Right to development criteria and operational sub-criteria' (8 March 2010), UN Doc. A/HRC/15/WG.2/TF/2/Add.2, at: <http://www2.ohchr.org/english/issues/development/right/docs/A-HRC-15-WG2-TF-2-Add2.doc>.

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- 14 UNICEF (2010), 'Progress for Children, Achieving the MDGs with Equity', no.9, at: www.unicef.org/protection/Progress_for_Children-No.9_EN_081710.pdf.
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About CESR

The Center for Economic and Social Rights (CESR) was established in 1993 to work for the recognition and enforcement of these rights as a powerful tool for social justice. CESR exposes violations of economic, social and cultural rights through an interdisciplinary combination of legal and socio-economic analysis. CESR advocates for changes to economic and social policy at the international, national and local levels so as to ensure these comply with international human rights standards.

CESR serves as a member of the Executive Committee of Beyond 2015, the global civil society campaign which advocates for a strong and legitimate successor framework to the Millennium Development Goals to be adopted in 2015. As part of ongoing global consultations on the post-2015 framework, CESR coordinated Beyond 2015's position paper on governance together with the Global Call to Action against Poverty. CESR's aim is to see a post-2015 framework which reinforces states' compliance with their existing human rights obligations. CESR also works to advance accountability in economic, fiscal and social policy, particularly in the wake of the global economic crisis, and supports the efforts of civil society groups worldwide to engage with human rights accountability mechanisms at the national and global level.

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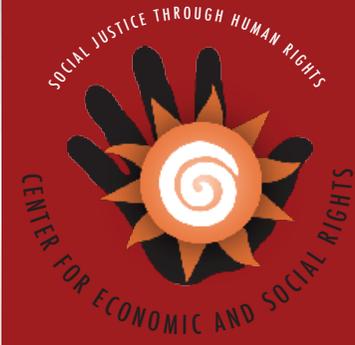
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TWENTY YEARS FIGHTING FOR SOCIAL JUSTICE THROUGH HUMAN RIGHTS