OFFICE OF THE UNITED NATIONS HIGH
COMMISSIONER FOR HUMAN RIGHTS

CENTRE FOR ECONOMIC AND SOCIAL
RIGHTS

THE MILLENNIUM DEVELOPMENT GOALS:
WHO´S ACCOUNTABLE?

Expert Consultation on the joint project between OHCHR and CESR
Geneva, 2-3 November 2011

BACKGROUND DOCUMENT

Summary

This document provides further background on the contents of the forthcoming publication, *The Millennium Development Goals: Who´s Accountable*, to be published jointly by the Office of the High Commissioner for Human Rights (OHCHR) and the Center for Economic and Social Rights (CESR) in late 2012. It is being sent to participants at the Expert Consultation meeting in Geneva on 2 and 3 November in order to inform and guide the discussions at the meeting.

The meeting aims to draw on the perspectives of a range of human rights and development practitioners from the UN, international institutions, academia and civil society as the research for the publication gets underway. The objective of the meeting is to get expert input on the issues to be analyzed in the publication, centering on how the accountability gaps in the existing MDG architecture should be addressed, both in the run up to 2015, and as part of efforts to draw up a new framework of development commitments post-2015.

The background document broadly follows the structure of the publication and the agenda for the meeting. The first section outlines the context in which the initiative has been conceived. The second addresses the contours of accountability understood from a human rights perspective. The third section gives a brief overview of the range of potentially fruitful mechanisms of accountability in the context of the MDGs. Several MDG-specific mechanisms are described in Section 4. The final section presents some of the parameters which OHCHR and CESR consider should guide deliberations on the post-2015 framework. A set of guiding questions on areas on which OHCHR and CESR would particularly welcome input are identified in each section.

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THE MILLENNIUM DEVELOPMENT GOALS: WHO´S ACCOUNTABLE?

> *"The shortfalls have occurred not because the goals are unreachable, or because time is too short. We are off course because of unmet commitments, inadequate resources and a lack of focus and accountability."*
> UN Secretary-General, March 2011[1]

1. Introduction and context of the publication

Taking stock of progress over the last decade in fulfilling the pledges of the Millennium Declaration, there can be little doubt that accountability has been one of the biggest shortfalls in the MDG process.

Progress in achieving the agreed targets has been disappointingly slow by any standard. The reduction in global rates of extreme poverty has largely been due to pre-existing growth patterns in China and India, rather than to policy efforts flowing from the MDGs *per se*. There has been no progress over the last decade in reducing global rates of malnutrition. The number of people who go hungry worldwide has risen to a historic high of one billion. Maternal deaths, though relatively easy to prevent, remain intolerably frequent in sub-Saharan Africa, where access to life-saving reproductive health care has practically stagnated over the last two decades. Where progress has been made, it has often bypassed the poorest and most disadvantaged sectors of the population. In most areas, disparities within countries and between world regions have widened[2].

Much of the blame for this sluggish rate of progress has been attributed to the global economic, food and fuel crises. While the impact of the economic downturn and the rise in fuel and food prices has been far-reaching, it is increasingly clear that domestic and international policy efforts to achieve the MDGs and to safeguard economic and social rights in response to the crisis have been grossly inadequate. Nevertheless, the failure to meet the Millennium commitments, conceived as a minimum floor of achievement rather than a lofty aspiration, has had few if any consequences for UN member states who took them on a decade ago. The costs of failure have been paid instead by the hundreds of thousands of children who have not survived their fifth birthday, the numerous women who have lost their lives in pregnancy or childbirth, and the billions of individuals who will continue to be deprived access to basic education, adequate housing, safe drinking water, decent work and other essential elements of a life with dignity.

Accountability, it is often asserted, is the hallmark of a human rights approach to development. Yet it can also be said to have been the *raison d'etre* of the MDGs. The adoption of time-bound global targets was meant to galvanize poverty-eradication efforts by holding states to account against agreed indicators and quantifiable benchmarks, generating momentum for improved gathering of relevant statistical data to monitor progress or the lack thereof. Framed as a global partnership for development, the MDGs assigned responsibility for meeting the goals to both developing and developed states. A regular reporting regime was also established to facilitate international comparison and periodic review of progress.

Yet accountability of any kind has been largely absent from MDG reporting and planning processes at both the national and international level. The international monitoring

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[1] United Nations Secretary General, "Unmet Commitments, Inadequate Resources, Lack of Accountability Hampering Achievement of Millennium Development Goals, Says Secretary-General", UN Doc. SG/SM/12789-GA/10923-DEV/2791, 16 March 2010, available at: http://www.un.org/News/Press/docs/2010/sgsm12789.doc.htm
[2] United Nations, The Millennium Development Goals Report 2011, New York 2011.

regime set up under the MDGs is limited to a voluntary system of occasional public reporting. Only a small proportion of countries have volunteered to present their progress to the Economic and Social Council's Annual Ministerial Review. Beyond identifying good practices, this mechanism scarcely allows independent monitoring or evaluation of the reports, nor an opportunity to challenge their findings. Domestically, many national reports lack an in-depth assessment of progress and are not regularly updated.

This accountability gap has not only hampered progress in achieving an already reduced set of development commitments; it has undermined the value of the MDGs as a spur to states to strive in tandem for the fulfilment of basic economic and social rights for the world´s most vulnerable populations. After all, accountability without consequences is no accountability at all. As the international community debates what framework of international development commitments should succeed the MDGs, the OHCHR/CESR publication, *The Millennium Development Goals: Who´s Accountable*, to be launched in late 2012, aims to persuade key actors involved to address the accountability deficit as a matter of urgent priority. The publication will identify accountability gaps in the existing MDGs policy and monitoring and evaluation systems, and explain how human rights standards, principles, instruments and mechanisms can help to fill those gaps. The target audience of this publication is principally policy-makers and development partners at global and national level, with a wide secondary audience within the UN system and civil society.

The current moment marks a critical juncture in the MDG process. The outcome document of the September 2010 MDG Review Summit marked a turning point in the recognition by member States that human rights are indispensible to efforts to achieve the MDG commitments. By firmly rooting the MDGs in international human rights standards, and explicitly detailing some of the basic human rights principles underpinning each of the MDGs, the Summit document recognizes that the MDGs should not be considered a matter of charity, or *noblesse oblige,* but a matter of entitlement for individuals and communities, and a matter of obligation for national authorities and the international community. This has been accompanied by an increased acknowledgement that the MDGs will not be met in the absence of effective mechanisms that hold parties to account for their performance. In the words of the UN Secretary General: *"*The time has come for an accountability mechanism between developed and developing countries … and between Governments and their citizens, to ensure that MDG commitments are honoured"[3]. The increased rhetorical commitment to human rights and accountability represents a major paradigm shift compared with earlier stages of the MDG process.

MDG monitoring frameworks that have been developed or discussed since the Summit have increasingly emphasized the need to integrate substantive human rights criteria into assessments of progress and outcomes, and have placed accountability for policy and fiscal efforts at the centre of the monitoring of MDGs 4 and 5[4]. Since the 2010 Summit, other inter-governmental and non-governmental actors have increasingly called for accountability to be made a cornerstone of the MDGs rather than a casualty of the process, as has been the case until now. The imminent 2015 deadline and the process already underway to agree on a successor framework present a unique opportunity to adjust both the direction and pace of progress.

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[3] United Nations General Assembly, *Keeping the promise: a forward-looking review to promote an agreed action agenda to achieve the Millennium Development Goals by 2015: Report of the Secretary-General*, UN Doc. A/64/665, 12 February 2010, paragraph 111.

[4] Commission on Information and Accountability for Women's and Children's Health, *Keeping Promises, Measuring Results*, World Health Organization (May 2011), available at: http://www.who.int/topics/millennium_development_goals/accountability_commission/Commission_Report_advance_copy.pdf

An essential first step towards tackling the accountability deficit is to clarify the meaning of accountability in human rights terms, and its applicability in the context of the MDGs and development practice more broadly. The OHCHR/CESR publication begins by exploring how accountability is understood within the framework of international human rights law, standards and practice. It analyses points of convergence and divergence with understandings of accountability in other disciplines or areas of practice. In particular, it looks at how the concept of "mutual accountability", prevalent in aid effectiveness discourse, can be reconciled with or strengthened by a human rights understanding of accountability.

The publication then examines "who" is accountable, and how the international human rights framework can help to identify those who have duties of various kinds relating to the achievement of particular MDGs. While international human rights law typically governs relations between the State and populations within its territory or effective control, this section also looks at the accountabilities of States beyond their own borders, as well as that of other influential actors such as international organisations, multilateral development, trade and financial institutions, and the private sector and business enterprises. It also examines accountability at global as well as national and sub-national levels.

A central section of the publication deals with "how" human rights accountability can strengthen incentives for the realization of the MDGs, examining a range of accountability mechanisms available to more effectively monitor and strengthen policy-making in areas relevant to the MDGs. While highlighting the central role of judicial and quasi-judicial mechanisms, it argues that human rights accountability can be applied in a variety of forums, such as impact assessment tools in social policy as well as macro-economic, trade and investment agreements, administrative accountability and review mechanisms relevant to national budget processes, social accountability tools, human rights reporting mechanisms, and international accountability and global governance frameworks.

Bearing in mind the debates actively underway towards the post-2015 development agenda, the final section of the publication proposes some criteria and parameters, informed by international human rights law and the lessons of experience, that should guide the negotiation and formulation of a revised framework of global human development goals, targets and indicators, along with suggested means of verification. A number of specific proposals are offered on the framework and content of revised targets and indicators in priority sectors, drawing upon some of the more mature MDG sectoral workstreams where human rights have already been integrated, as contributions to the global post-2015 policy dialogue.

Questions for Session 2:

What lessons can be learnt from the evolution of the MDGs process over the last decade? To what extent can it be argued that the limited progress is due to a deficit in accountability? Where have the principal accountability gaps been found? How significant is the closer alignment with human rights standards and principles reflected in the 2010 Summit outcome document, and what can be done to build on these foundations going forward?

2. Understanding accountability from a human rights perspective

> *"Everybody is talking about 'accountability' - but their meanings are murky. So let us be clear: the human rights framework provides an essential means of accountability. Real accountability means the possibility for people to claim their rights and seek an effective remedy."[5]*
>
> Salil Shetty, Amnesty International Secretary-General & former Director of the UN Millennium Campaign

The language of accountability has become prominent in public policy in the last two decades. Embraced and appropriated for different purposes by a range of actors and disciplines, from donor agencies to professional associations, its many meanings and applications have made it a malleable, even nebulous concept, whose connotations change according to the context and institutional agenda. Nevertheless, despite its broad application in a range of public policy settings, certain common elements of accountability can be identified.

In public administration, the term commonly refers to holding public authorities responsible for their actions in light of established standards of behaviour and performance. It combines elements of responsibility, answerability, responsiveness and enforceability. Clearly-defined lines of *responsibility* for policy decision-making must be assigned, established by law and precisely located. *Answerability* requires those in authority to justify their policy decisions to those who are affected by them, to other institutions tasked with providing oversight, and to the public at large. *Enforceability* implies the monitoring of performance and the imposition of sanctions, and corrective action, when performance fails to meet expected standards[6].

Concern for accountability cannot be considered the exclusive preserve of human rights practice. Since the 1990s, the World Bank and international development actors have strongly linked development accountability to the promotion of "good governance" in the context of many processes of democratic transition and market liberalization across the world. As used by the World Bank, good governance emphasises that the rule of law is vital for investment and the security of private property, that transparent public access to information helps prevent corruption, and that accountability guarantees the proper management of public and aid funds. Some articulations of the "good governance" approach to accountability consider individuals and communities as clients of services that should be delivered as cost-effectively as possible, rather than persons entitled to such services as a matter of rights[7]. The promotion of accountability as "good governance" has therefore tended to reflect an explicit aim to create optimum conditions for foreign investment in recently liberalized economies[8].

A human rights understanding of accountability in development has been often preached but seldom theorized. Given that accountability is considered the bedrock of a human rights approach, it is striking that the term does not appear in any of the core international human rights treaties. Incorporated syncretically from the field of public administration, "accountability" embodies in one word (at least in English) a central concern of human

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[5] Amnesty International, "Salil Shetty: Human Rights Are Key To MDG Success", 23 September 2010, available at: http://www.amnesty.org/en/news-and-updates/salil-shetty-human-rights-are-key-mdg-success-2010-09-23

[6] Newell, Peter, and Shaula Bellour, *Mapping Accountability: Origins, Contexts and Implications for Development*, Brighton, England: Institute of Development Studies (2002), available at: http://www.ids.ac.uk/files/Wp168.pdf

[7] Stapenhurst, Rick and O'Brien, Mitchell. "Accountability in Governance." World Bank, available at: http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/AccountabilityGovernance.pdf>.

[8] Gathii, James Thuo, "Good Governance as a Counter Insurgency Agenda to Oppositional and Transformative Social Projects in International Law", Buffalo Human Rights Law Review, Vol. 5, 107 (1999).

rights: to regulate the exercise of power and ensure that those who wield power are answerable to those who do not. From a human rights perspective, the relevance of the concept of accountability lies in its potential to transform the asymmetrical relationship between those who exercise power and those on whose behalf it is exercised. In the development context, a central feature of accountability from a human rights perspective is therefore that it converts passive beneficiaries of development efforts into "rights-holders" and identifies states and other actors as "duty bearers" that can be held responsible for the discharge of their legal (not merely moral) obligations[9].

Again, the dynamics of power have been a long-standing preoccupation in the field of development[10]. What is distinctive about the human rights perspective on accountability is the additional clarity of focus it brings regarding the "what, who and how" of accountability:

- In the human rights framework, *responsibilities* are defined in terms of the specific legal obligations of "duty-bearers". Although the state is regarded as the prime duty bearer under international law, the state's "duty to protect" includes regulating the conduct of non-state entities such as business actors with power to infringe on the rights of individuals and communities in a development context.

- The standards to which duty-bearers are *answerable* are norms derived from international human rights instruments, including international treaties ratified by states as well as relevant case-law and interpretation. These standards also shed light on the question of "to whom" duty bearers are answerable, specifying the rights and entitlements of particular sectors of the population, including groups of people, such as women and indigenous peoples, who are often overlooked in development practice due to the systemic discrimination they face.

- The human rights framework also affirms that accessible and effective mechanisms (via courts, political institutions, or administrative bodies) should be in place to enable "rights-holders" to make their rights *enforceable* and seek remedy and corrective action when their rights have been violated. Rights of political participation and freedom of opinion, expression, information and association reinforce the ¨how¨ of accountability by creating enabling conditions in which people can claim their rights in practice.

Viewed through a human rights lens, each dimension of accountability (responsibility, answerability, enforceability) acquires a degree of specificity and concreteness that can enrich understandings of accountability in development processes, including the fulfillment of the MDGs. From a human rights perspective, a stronger and more dynamic vision of accountability emerges that highlights the quality of decision-making processes, resources, implementation and monitoring in addition to the eventual outcomes. Integrating human rights accountability into MDG planning can therefore offer much more than just "rhetorical repackaging"[11]. Human rights standards potentially provide a detailed grammar of expected policy conduct and performance in development, while the mechanisms of human rights enforcement are increasingly serving as effective avenues for accountability when standards are breached.

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[9] OHCHR, Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies, available at: http://www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf.

[10] Newell, Peter, and Shaula Bellour, *Mapping Accountability: Origins, Contexts and Implications for Development*, Brighton, England: Institute of Development Studies (2002), available at: http://www.ids.ac.uk/files/Wp168.pdf

[11] Uvin, P, Development and Human Rights (2001). Uvin uses the phrase to critique approaches to development which pay lip-service to human rights but which in practice ignore the their programmatic implications.

2.1   Accountability for what?

A fundamental flaw undermining accountability in the context of the MDGs is the voluntary and non-binding nature of the commitments to which states are nominally accountable. With few consequences attached to their non-fulfillment, states are under little incentive to comply and seldom challenged when they attribute their lack of progress to external factors alone, such as the global economic downturn or inadequate levels of international development assistance.

Human rights advocates have addressed this weakness by emphasizing that the commitments to which states must be held to account are the binding legal obligations that underpin the MDG goals[12]. A failure to meet voluntary charitable commitments does not trigger accountability; a violation of legally-binding human rights obligations does[13]. Human rights law imposes obligations of both conduct and result. That is to say, states are accountable for:

- the human rights *outcomes* they achieve in relation to the MDGs, and
- the adequacy of their *efforts* to attain these, both in terms of the *content* of their policy efforts and the *process* by which they implement them.

Outcomes and policy efforts, and the resources assigned to these, are to be assessed against cross-cutting human rights principles (such as non-discrimination and progressive realization), as well as in light of substantive assessment criteria which have been developed in relation to specific rights, such as the rights to health, education, food and water.

Previous analysis by OHCHR and others has highlighted the extent to which the MDGs are consistent with the binding commitments that states have made under international human rights treaties[14]. While some of the goals undercut human rights standards and can be considered insufficiently ambitious, there is considerable convergence between the two (see box below).

The MDGs can be read as a necessarily skeletal statement of prerequisites that are essential if humanity is to live free of poverty and deprivation. The provisions of core human rights treaties, on the other hand, put substantive flesh on what should be considered minimum universal guarantees for a life with dignity. They provide a complementary framework of substantive and procedural standards, detailing entitlements and obligations which can be readily mapped onto the more sparse framework of MDG commitments.

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[12] OHCHR, *Claiming the MDGs: A human rights approach*, 2005, available at:
http://www.ohchr.org/Documents/Publications/Claiming_MDGs_en.pdf; Amnesty International, *From Promises to Delivery: Putting Human Rights at the Heart of the Millennium Development Goals*. London: Amnesty International Publications, International Secretariat (2010)

[13] Yamin, Alicia E. "Beyond Compassion: the Central Role of Accountability in Applying a Human Rights Framework to Health." *Health and Human Rights*. Vol. 10, No. 2, 1-20 (2008)

[14] OHCHR (2005) and Amnesty International (2010)

Human rights standards give leeway to states to determine the best course of action to fulfil the right to an adequate standard of living, and other economic and social rights that are centrally relevant to development. At the same time, they provide a set of inter-related principles against which the adequacy or reasonableness of a state's development outcomes and policy efforts can be assessed. The scope and nature of the obligations to which states and others should be held accountable have been defined with increasing clarity and specificity over the last 20 years, via international jurisprudence and authoritative interpretation by international and regional human rights bodies (such as the explanatory general comments of the UN Committee on Economic, Social and Cultural Rights (CESCR)).

- ***The obligation to respect, protect and fulfil***: all human rights engage three dimensions of state obligation. States have a duty to *respect* rights, by refraining from active interference (for example, they should not arbitrarily evict people from their homes). They have a duty to *protect*, by preventing interference by third parties in the enjoyment of a right (for example, they should regulate and sanction companies that discriminate against female employees). The duty to *fulfil* requires states to adopt all appropriate legislative, administrative, budgetary, judicial and other measures to achieve the full realization of human rights.

- ***The obligation to progressively realize rights using the maximum of available resources.*** Under the ICESCR, a state undertakes to take steps "to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means". "Available resources" refers to the resources available to the state and to resources that may be made available via international assistance and cooperation.

- ***The obligation to prevent retrogression (backsliding)***. Of particular relevance in a period of economic downturn, this duty may be breached, for example, when cuts in social spending undermine the aim of achieving universal coverage of social services.

- ***The obligation to take steps to ensure the provision of social services of a certain standard***. For example, health services should be sufficiently available, accessible (physically, economically and to all), acceptable (for example, in terms of sensitivity to cultural or gender differences), and of adequate quality.

- ***The obligation to ensure minimum essential levels of economic and social rights.*** The CESCR has stated that states have an immediate core obligation "to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights" regardless of their level of economic development. The Committee has defined minimum core obligations of the rights to food, health, housing, water and education. States should always prioritise the fulfilment of these obligations, above other policy and economic objectives and including when they allocate resources.

- ***The obligation to ensure that no discrimination occurs on grounds of identity or status***. In addition to refraining from adopting discriminatory laws, policies, programs and expenditures, states should take specific, deliberate and targeted measures to ensure rights are enjoyed equally, in practice and in law. Several international instruments set out specific obligations to eliminate discrimination on grounds of gender, race, ethnicity, age, disability and indigenous status, among others.

- ***The obligation to ensure participation in matters of public policy***. The rights to meaningful participation and to freedom of opinion, expression, information and association ensure that individuals and communities are informed, consulted and involved in decisions that affect their lives, and are entitled to monitor and challenge such decisions.

The obligations outlined above provide a collectively-agreed normative basis for the performance standards to which states should answer in the MDG context, as well as a framework of principles that shape and guide (even if they do not conclusively determine) public policy choices. The transformative potential of human rights accountability becomes apparent when one considers the broad policy implications of the above principles.

Applied to the spheres of economic and social policy that are most relevant to the MDGs, human rights standards challenge some of the policy orthodoxies which have tended to dominate mainstream development practice in recent decades. They posit an active role for the state in regulating private behaviour and in ensuring the enjoyment of rights of all under its jurisdiction, even where the services needed to realize those rights are delivered by actors other than the state. They require states to ensure universal access

to minimum essential rights and services, challenging the targeting approach favoured in mainstream social policy over the last decades. The framework is intolerant of inequality in the enjoyment of rights, and requires states to take active measures to redress systemic and historical patterns of social discrimination and asymmetries of power that orthodox welfare economics often overlooks. It requires states to establish fiscal policies whose goal is not simply to maximize cost-efficiency or revenues but maximize the availability and equitable distribution of resources for the fulfilment of basic human rights. Finally, a human rights model of accountability requires the meaningful and active participation of rights holders in development decision-making: participation and access to information are entitlements rather than instrumental process requirements.

2.2   Who is accountable to whom?

Underlying the accountability deficit in the MDG process to date is the absence of clarity about who should be accountable to whom. A widely-aired criticism is that, where accountability *has* been addressed in the current MDG framework, it has been assigned in a partial or skewed manner, placing insufficient emphasis on the responsibilities of wealthier states and multilateral institutions.

The decision to frame the MDG commitments in terms that apply primarily to developing countries is the clearest example of this distortion. Goal 8 (Developing a Global Partnership for Development) is the only Goal that explicitly recognizes that wealthier countries and other international actors have a responsibility to help eradicate global poverty and fulfil the Goals. Though Goal 8 is cross-cutting, covering transnational policy issues such as trade, aid and debt (which have an impact on the ability of all countries to meet all the Goals), it is the only Goal for which no concrete targets or benchmarks are set for 2015. The failure to set similarly time-bound quantifiable measures of compliance for donor states (for example, track increases in aid expenditures) has reinforced the perception of a double standard of accountability and undermined efforts to hold richer states to their commitments.

While the key MDG documents refer to the shared responsibilities of developing and donor states, in practice international development assistance forums have treated accountability as a one-way street with regard to the MDGs. The September 2010 Outcome document reaffirmed a number of previously made donor commitments to enhance financing for development, invigorate trade negotiations, and eliminate agricultural subsidies, among others. However, these commitments are vaguely worded and seldom quantified, making it very difficult to monitor compliance.

The same document reaffirmed the notion of "mutual accountability", a concept that was established by the OECD´s Paris Principles on Aid Effectiveness (2005), further expanded in the Accra Agenda for Action (2008). The notion highlights the accountability of developing states to international donors and the accountability of donors to states that receive their aid. While the effort to define lines of accountability in development assistance is welcome, the emphasis in the Paris Principles on the bilateral accountability relationship between donor states and their partner countries has tended to obscure the accountability that each has under international human rights law to the individuals and communities in question[15]. A human rights approach to the concept of mutual accountability can help ensure that the accountability lines between developing and

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[15] Piron, Laure-Hélène. "Human Rights and Poverty Reduction: The Role of Human Rights in Promoting Donor Accountability". Issue brief. Rights in Action, Overseas Development Institute (April 2005), available at: http://www.odi.org.uk/resources/download/1555.pdf

donor states will ultimately enhance, rather than undermine, the legitimacy and capacity of people in those countries and in donor states to hold their governments to account.

The limited accountability of donor governments and other international actors to developing states is one of the central gaps that need to be addressed in the post-2015 framework. As Alicia Yamin argues: "We must locate the capacity of states to fulfill their ESC rights obligations … in the context of a global political economy in which multi-national corporations, international financial institutions and donor states are often the ones calling the shots".[16]

The exponential growth of cross-border economic, trade and financial relations in recent decades, and the increasing influence of multinational corporations and international financial institutions, have challenged the state-centric focus of human rights law and prompted a quest for effective means of regulating the increasing power of non-state and supra-state actors. The devolution of authority from central to local government has also complicated the landscape of accountability[17]. The roles and influence of numerous actors beyond and alongside the state have evolved faster than the mechanisms for holding them to account.

Nevertheless, international human rights law has evolved significantly in the last decade in response to this gap, particularly in three areas. The first is with regard to the duties of multilateral economic organizations such as the World Bank and the IMF, whose role in overseeing poverty-reduction strategies, debt relief initiatives, fiscal policy and financing of specific projects means that they exert an inordinate amount of influence over the ability of people in developing countries to exercise their basic human rights.[18] The second is the effort to develop or use existing international legal norms to hold business actors, particularly transnational corporations, to account for the harmful impacts their actions may have on the fulfilment of human rights.[19] In many cases—none more apparent than the global financial crisis prompted by reckless practices within the banking system—these impacts have stalled or even reversed progress in achieving the MDGs. Efforts at securing corporate accountability have resulted most recently in the UN Guiding Principles on Business and Human Rights implementing the 'Protect, Respect and Remedy' Framework, as well as an increasing body of case-law[20]. The third and most recent area of legal practice and emerging case law, of particular relevance to the way in which the responsibilities set out in MDG8 may be framed in future, concerns the scope of state's extraterritorial obligations to respect, protect and fulfil human rights beyond their borders.[21] In addressing the responsibilities of non-state and supra-state actors, the OHCHR/CESR publication will highlight the potential for the construction of new legal and practical accountability mechanisms in each of these areas, despite the constraints imposed by the state-centric architecture of human rights.

A second key accountability gap which needs to be addressed, both in the period up to 2015 and afterwards, relates to the question: accountability *to whom*? The current MDG

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[16] Yamin (2008)

[17] International Council on Human Rights Policy (ICHRP), Local Rule: Decentralisation and Human Rights, Geneva: ICHRP (2002), available at: http://www.ichrp.org/files/reports/13/116_report.pdf

[18] Salomon, M. *International economic governance and human rights accountability,* in Casting the Net wider: Human Rights, Development and New Duty-Bearers, Intersentia (2007)

[19] See "Collective Report on Business and Human Rights". Available at: http://www.escr-net.org/usr_doc/BHRCollectiveReport_ESCR-Net.pdf; (2008). Wright, M. and Ruggie, J."Corporations and human rights: a survey of the scope and patterns of alleged corporate-related human rights abuse". A/HRC/8/5/Add.2 Available at: http://www.reports-and-materials.org/Ruggie-2-addendum-23-May-2008.pdf.

[20] Center for Human Rights and Global Justice & ESCR-Net, The Business and Human Rights Documentation Project, http://www.bhrd.org.

[21] Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, September 2011, available at: http://www.icj.org/dwn/database/Maastricht%20ETO%20Principles%20-%20FINAL.pdf

framework acknowledges that policy makers and development institutions must be responsive to the voices and interests of those experiencing poverty and deprivation. However, recasting the latter as ¨rights-holders¨, as opposed to ¨beneficiaries¨ or ¨stakeholders¨ of development, further nuances the understanding of whom policy makers should be answerable to.

A principal shortcoming of the current MDG framework from a human rights perspective is that it is comparatively insensitive to inequalities between population groups. Most of the Goals focus on aggregate targets; the whole framework treats gender inequality in a selective and fragmented manner, and does not disaggregate MDG progress sufficiently. Human rights standards, by contrast, focus explicitly and consistently on inequalities and deprivations that arise from patterns of discrimination and asymmetries of power, for example in relation to gender, race, ethnicity, age, or disability. The normative framework of human rights provides a more differentiated view, because it draws attention to specific disadvantages that particular groups of people face in making their rights effective. Several widely ratified human rights treaties of relevance to the MDGs, combat specific forms of discrimination and urge states to strive towards equality in substantive as well as formal legal terms, by putting in place affirmative measures that will redress systemic discrimination in the enjoyment of economic and social rights.

A question to be explored here is the extent to which the principles of equality and non discrimination as conceptualized in human rights law can be reconciled with (or enhance) understandings of equity in development practice. Although equity has different meanings depending on the context in which it is applied, and is sometimes used synonymously with equality, it has tended to be understood in a development context in terms of equality of opportunity rather than outcome[22]. By contrast, the human rights framework is concerned for substantive equality in the actual enjoyment of human rights (reducing disparities in development outcomes as an obligation) and for the interrelation of multiple forms of discrimination.[23] UN human rights bodies have cautioned that the term equity is too conditioned by subjective criteria to become a substitute for the fundamental legal principle of equality.[24]

Non-discrimination is an obligation of conduct as well as result. States must ensure that groups who face discrimination are adequately informed about, and able to participate in decision-making processes that affect them, as a matter of obligation. From a human rights perspective, participation and empowerment are ends in themselves, and not purely of instrumental value, and are integrally associated with the concept of accountability. Indeed, "empowerment" may be viewed as an expression of the right of people to participate in, be informed about, and influence the actions of institutions that affect their interests, and to hold those institutions accountable. Human rights principles draw attention to the quality and meaningful nature of processes of participation, in contrast to stakeholder consultations that are *ad hoc* or tokenistic. Civil and political rights guarantees such as the freedoms of expression, information, opinion and association are essential prerequisites for the fulfilment of political participation rights, as well as transparent policy formation.[25]

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[22] See for example, World Bank, *World Development Report 2006, Equity and Development, Overview*. Washington, D.C.2005; ODI, *Equity in development: Why it is important and how to achieve it*, November 2009

[23] Committee on Economic, Social and Cultural Rights, General Comment 20, 2009.

[24] Equality or Equality for Women? Understanding CEDAW´s Equality Principles, IWRAW Asia-Pacific, Series 14, 2009

[25] OHCHR, Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies, available at: http://www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf, at 5.

Questions for Session 3: *How does a human rights understanding of accountability add to other understandings prevalent in the context of the MDGs? Why is human rights accountability important in this context? Where is greater conceptual clarity needed? What justifications can we advance for human rights accountability, whether normative/intrinsic or instrumental? What empirical evidence supports these arguments?*

Questions for Sessions 6 and 7: *What challenges are encountered in addressing the accountability of the range of governmental, inter-governmental and non-governmental actors in the MDG context? What are the implications of shifting geo-political power dynamics in terms of the accountability of emerging global players? How have the MDG's "inequality blindspots" manifested in terms of accountability? How does a human rights understanding of participation and equality/non-discrimination complement or enrich analogous concepts (e.g. equity) in development practice?*

3.   Avenues of accountability

A central focus of the publication is to explore the potential of specific accountability mechanisms to hold duty bearers to account in the context of the MDGs, highlighting examples of good practices and analysing the obstacles that have undermined their effectiveness in particular settings.

Accountability is only as effective as the mechanisms available to exercise it. Because of the legal grounding of international human rights standards, accountability in human rights terms is usually thought of primarily in terms of ***judicial accountability***: the entitlement to go to court for redress and sanction when human rights are violated or officials fail to meet their human rights obligations. Their legal enforceability (or "justiciability") is one of the vital and distinctive contributions that human rights make to accountability in development.

Over the last two decades, judicial enforcement of economic and social rights through courts has become more frequent in many countries, including on MDG-related issues such as access to health services. Landmark cases of litigation in Latin America, India and South Africa, among others, have had direct implications for economic and social policy in ways that have gone far beyond the immediate impact on the individuals or communities concerned. In a recent study of the impact of legal accountability mechanisms in five countries, it was estimated that the judicial enforcement of economic and social rights "might well have averted tens of thousands of deaths and has likely enriched the lives of millions of others"[26]. Litigation is particularly effective where legal claims take place within the context of wider processes of social and political mobilization. In many cases, the mere possibility of judicial enforcement has had a deterrent effect and has created greater opportunities for leverage by social movements.[27]

Reflections on the lessons learnt from economic and social rights litigation have also highlighted several challenges regarding effective judicial intervention in the sphere of social policy. In many jurisdictions, courts are wary of encroaching on the role of the executive and legislature when they are asked to interrogate a particular policy choice from a human rights perspective. Courts have at time refrained from determining

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[26] Gauri, V and Brinks, D (eds.), *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, (2008)
[27] Yamin, A and Gloppen, S (eds.), *Litigating Health Rights: Can Courts Bring More Justice to Health?*, 2011.

appropriate policy priorities or budget allocations for fear of distorting the processes of democratic deliberation.

While much litigation in the area of civil and political rights focuses on the identification of violations and remedies, and individual perpetrators, most deprivations in access to health, education, housing and other social rights arise from institutional deficiencies that are structural and systemic. Litigation that focuses only on individual punitive sanctions (for example, the dismissal of a health worker who presided over a maternal death) can be counter-productive, lead to perverse incentives, and divert attention from systemic institutional problems. For this reason, legal accountability for human rights in the field of development should be transformative, aiming to address the structural causes of poor outcomes in health, education and other social sectors.[28] While the approach and practice of courts around the world has varied widely in this respect, an increasing body of court judgments across the globe have proposed remedies implying wide-ranging social policy reform. For example, in 2008 Colombia's Constitutional Court held that reducing the budget for the national health insurance scheme amounted to unlawful retrogression, as it would affect the poorest most, and called for reform of the entire health system, based on a participatory and evidence-based process.[29]

The remedies issued by courts in cases of economic and social rights litigation have proposed a variety of measures of redress and corrective action. In many cases, even when courts have refrained from making far-reaching determinations on policy or expenditure, they have nevertheless issued opinions regarding process. For example, they have asked states to engage in meaningful and participatory consultation to resolve difficult policy trade-offs. Such judicial reviews promote deliberative democracy and increase the accountability of other institutions.[30]

In practice, nevertheless, very few human rights cases are, or can be, taken to court in many jurisdictions, and this is particularly true of the economic and social rights that are most relevant to the MDGs. In many countries, litigation scarcely occurs because these rights are not constitutionally recognized, or because the judicial system is weak or corrupt. Where legal mechanisms are susceptible to cooption by elite interests, distrust of the law and lack of resources to access justice often dissuade the most marginalized from using the legal system to seek redress. Though strategies to legally empower the poor have sought to make judicial accountability mechanisms more accessible, those living in poverty face formidable barriers in using judicial avenues to obtain timely and effective recourse.

Accountability for non-compliance with the human rights obligations underpinning the MDGs must therefore also be pursued through a variety of non-judicial institutional mechanisms. National Human Rights Institutions (NHRIs) such as Human Rights Commissions or Ombuds offices have a unique role to play in promoting accountability of other state institutions with regard to their MDG efforts. Their distinctive range of functions can include a **quasi-judicial accountability** role, including the pursuit of legal redress through *amicus* interventions and public interest litigation, or other forms of oversight, such as advising parliament on the design and monitoring of poverty reduction strategies or budgetary allocations from a rights perspective; advocating for constitutional human rights protections, including economic and social rights; and strengthening accountability by investigating individual complaints of violations. Because of their relationship as a bridge between civil society and state institutions, they are also

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[28] Yamin, A. *Toward transformative accountability: Applying a rights based approach to fulfill maternal health obligations,* Sur International Journal on Human Rights, June 2010

[29] Yamin (2008), Yamin (2009), Gauri and Brinks (2008)

[30] Yamin (2008)

potentially well placed to develop the capacity of rights holders to claim rights denied in the context of MDG-related social policy decisions.[31]

In practice, this potential has only rarely been realized, although some examples of good practice can be found. In Nepal, for example, the National Human Rights Commission convened a committee on economic and social rights to identify complementary rights-based indicators for the MDGs. In the Philippines the Commission is the convener of the committee overseeing implementation of the country's development plan, although it has had to stretch its remit creatively to do so. The effectiveness of a particular NHRI in promoting accountability in this context depends on the scope of its mandate, whether it has powers to address economic and social rights, its capacity to apply appropriate methodologies for monitoring these rights, its degree of involvement in the development and budget planning cycles, and the extent of its political independence.

Among the most relevant mechanisms of *political accountability* in the context of the MDGs are parliamentary oversight bodies able to review and debate the adequacy of government development policy efforts in light of the state's human rights commitments. As elected representatives of the people, parliaments can play a critical role in holding governments to account with regard to the MDGs. They can stimulate and lead public debate, hold inquiries, review the progress of MDG policies by requiring and receiving regular reports, review budgets and expenditure, and draft laws that advance MDG and development objectives. For parliamentary action to be effective, sound reporting mechanisms need to be in place, and the executive must be prepared to provide information and respect parliamentary accountability. This is far from being the case in many countries, and the actual performance of parliaments is consequently uneven. Few countries have heeded the call made by the Inter-Parliamentary Union in 2006 for greater parliamentary oversight of government action to achieve the MDGs and for more direct involvement of parliaments in the preparation and implementation of development strategies and MDG monitoring reports.

Administrative accountability is exercised within government and is arguably the most important determinant of government performance, because no other form of accountability can effectively replace it. Competent, transparent and responsible decision-making cannot be delivered if administrative reporting and accountability procedures fail. Legal or other sanctions, similarly, can act effectively against exceptional misbehaviour, but cannot rectify endemic incompetence, corruption or misconduct. Human rights actors (not least those working in the field of economic and social rights) have generally given less attention to administrative accountability (compared with judicial forms of recourse, for example). As Alicia Yamin has argued in relation to health policy: "Implementation of international human rights norms relating to health at the national level must go beyond legislation, and beyond the traditional law-making and oversight bodies (such as courts and NHRIs) into the ministries … which are charged with designing of social policy, and executing and monitoring programs that affect health".[32]

A range of *social accountability* mechanisms and initiatives has emerged in the context of national and local development processes, Poverty Reduction Strategies and social impact assessments. These initiatives often provide an interface between civil society groups and relevant government institutions, and are sometimes supported by multilateral development organizations such as the World Bank in the name of advancing "good governance", improving government responsiveness and service

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[31] Center for Economic and Social Rights, *National Human Rights Institutions as Enforcers of Economic and Social Rights*, (2011)
[32] Yamin (2008)

delivery while fighting corruption and mismanagement. They are usually complementary to more traditional and formal accountability mechanisms without necessarily supplanting them. Methods include participatory planning and budgeting, public expenditure tracking surveys, citizen report cards, community scorecards, satisfaction surveys and social audits, among others.

These tools have the potential to empower traditionally excluded and marginalized groups to exercise their voice more effectively in development policy and political processes. However, their transformative value will depend on the actual willingness and capacity of governments to manage, or to let civil society manage, genuine mechanisms of social participation. The use of these tools has contributed to reducing leakages in delivery of service sector budgets locally (PETS in Uganda); to exposure of corruption and effectiveness in programme implementation (Social audits in India); to improved public services and redirection of resources to poor communities (participatory budgeting in Brazil); and to greater user satisfaction (Community Scorecards in India, Ghana and Malawi). However, some of these initiatives have not yielded similar results when scaled-up or applied in other countries. They have proven more effective when linked to public information campaigns, or when national and local officials are open to this type of engagement, or when integrated into broader policies or programmes on the MDGs, rather than created as stand-alone initiatives.

More broadly, *public accountability* focuses on the right of members of the public to influence, challenge and if necessary curb the decisions of public authorities. The activities of civil society organizations and the media play a leading role in informing and articulating demands for public accountability. Public exposure of human rights violations by human rights, development and social justice NGOs and networks is itself a form of sanction, obliging public authorities to answer for their acts. Fear of reputational damage can sometimes be a greater deterrent or incentive than criminal sanction.

Finally *international accountability mechanisms* can potentially play an important role in highlighting accountability gaps in at the domestic level in the context of efforts to meet the MDGs. These mechanisms include the human rights monitoring bodies of the United Nations and of regional human rights systems. The UN treaty monitoring bodies have not undertaken a systematic review of how states are complying with their human rights obligations in the implementation of their MDG commitments, although the Committee on Economic, Social and Cultural Rights has questioned developed states on their overseas development commitments and their obligations as members of international financial institutions. The treaty bodies (and certain regional human rights mechanisms) could in principle hear individual complaints about human rights violations in the context of the MDGs where access to remedies have been denied at the domestic level. In practice, no such cases have yet been brought, and many states have yet to ratify the treaties (or ¨optional protocols¨) enabling these mechanisms to hear complaints from their country, including the newly adopted Optional Protocol to the ICESCR. Rarely have states been asked to account for their progress in the course of their reporting to the Human Rights Council´s Universal Periodic Review process every four years.

International mechanisms for human rights monitoring and adjudication have thus been underused, despite the potential of these bodies to address some of the most serious accountability gaps encountered in the MDG context, including the dearth of international forums in which to hold developed states to account for their commitments under MDG8 without fear of politicisation. However, examples of good practice can be found in the work of the UN ¨Special Procedures¨ - thematic experts including the Special Rapporteurs on the Right to Water and Sanitation, the Special Rapporteur on the Rights of Minorities and the Special Rapporteur on Extreme Poverty, who have been at the forefront of efforts to integrate a human rights perspective into the MDG processes

through the lens of their particular mandate and respective MDG goals. In addition to the analytical contribution their reports can make to the debate on refining the future MDG architecture, some of the mandates include the capacity to undertake country visits and to receive complaints, making these a potentially useful vehicles to hold states to account in specific instances.

A wide range of administrative, political, judicial and other accountability mechanisms can therefore be used to monitor and promote human rights compliance more effectively in the context of the MDGs. The different dimensions of accountability do not operate in isolation from one another and can be mutually reinforcing. For example, litigation in defence of economic and social rights has tended to be more effective when spurred or complemented by political mobilization[33]. In practice, however, many of these avenues for human rights accountability have been little used in the context of the MDGs. The challenge is both to promote the relevance of these mechanisms to the process of MDG implementation and to make each of these avenues for accountability more effective.

Questions for Sessions 4 and 5: *How can the above range of mechanisms and processes help to strengthen incentives and accountability for the achievement of the MDGs? What examples of good practice can be identified? What can be learned from such examples in terms of the interplay between various avenues of accountability mechanisms? What are the enabling conditions for such mechanisms to be effective? How does their effectiveness vary across contexts and regions and how replicable successful practices are?*

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4. Towards MDG-specific accountability frameworks

> "*More thought needs to be given to devising appropriate, effective, transparent and accessible accountability mechanisms in relation to the MDGs. If such mechanisms are not devised, the Goals will lack an indispensable feature of human rights — and, more importantly, the chances of achieving the MDGs will be seriously diminished."*
>
> Professor Paul Hunt, University of Essex; former UN Special Rapporteur on the Right to the highest attainable standard of Health.

The OHCHR/CESR publication looks at the role of MDG-specific accountability mechanisms, including initiatives which have emerged since the 2010 Summit, and assesses the extent to which these can foster greater human rights accountability. These mechanisms are outlined below, together with some preliminary observations about the essential features of effective frameworks for human rights accountability in relation to the MDGs.

4.1   National MDG reporting

The system of national, regional and global MDG Reports have been the principle framework to date for measuring and reporting on progress toward the MDG goals. The stated aims of the MDG reports are to provide public information on the results of MDG initiatives and to generate social mobilization of national constituencies around

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[33] Gauri and brinks (2008), Yamin (2008), Yamin and Gloppen (2011)

the goals[34]. Nevertheless, their value as domestic accountability tools has varied greatly, depending on the level of engagement of Governments and the use made of the reports.

In practice, the MDG reports have tended to respond to the information demands of donors and so have primarily served the purpose of fulfilling the requirements of 'mutual accountability'[35]. As highlighted above, the real accountability challenge from a human rights perspective has been to ensure that the various institutional, policy and reporting arrangements gravitating around the MDGs serve the purpose of making governments accountable to their own people. Since 2005, when UN support for the reporting process was decentralized to UN country teams, preparation of MDG reports has been more country-led, with the positive effect of bringing together government officials from different sectoral ministries and agencies around multi-thematic development areas. This greater level of country ownership is reflected in an increasing move towards national adaptation of the MDGs[36].

A major weakness of the MDG reporting system is that reports are produced on a voluntary basis with no indication of a specific periodicity requirement. During the period from 2001 to 2004 when MDG reporting was mainly UNDP-led, over 80% of developing countries had produced at least one MDG report. By contrast, as country leadership in the reporting process increased, the production of at least one MDG report fell to 40% from 2008 to 2010[37].

Inter-governmental MDG follow-up mechanisms set up under the reporting process have also proven a weak vehicle for holding developing or donor states and other international actors to account, and have rarely integrated a human rights perspective in their monitoring role. The UN General Assembly tasked the Annual Ministerial Review (AMR) and the World Development Forum of the Economic and Social Council (ECOSOC) as the two main inter-governmental mechanisms with a mandate to follow-up the implementation of the MDGs[38], in addition to the annual progress reports of the UN Secretary General.

The AMR is the only entity with a mandate to assess country performance based on the submission by States of country reports focusing on a particular MDG topic. Unlike the Universal Periodic Review and the treaty reporting system of the international human rights regime, however, the review of these reports is done on a voluntary basis and does not result in the formulation of concluding observations or recommendations.

The AMR features National Voluntary Presentations (NVPs) to track countries' progress. Theme-specific reports are prepared and countries volunteer to give presentations on lessons learnt in implementing of their national development strategy, which are then discussed with participants, including ministers, senior government officials, international and regional organizations, the UN system, civil society, private sector and academia. Prior to the NVP, states are supposed to draft a National Report as a background document for national consultative meetings with stakeholders from government, civil society and the private sector. However, only a small proportion of countries have presented to the AMR. Its effectiveness is seriously undermined by its voluntary nature and the absence of recommendations which can be monitored and followed up.

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[34] UNDG guidelines on MDG reporting, 2003

[35] MDG monitoring and reporting: a review of good practice, UNDP, August 2005

[36] Cecchini, S and Notti, F. *Millennium Development Goals and Human Rights: Faraway, so Close?*

[37] UNDP (2005)

[38] Outcome document, MDG Review Summit 2010, at 80.

Although it is difficult to draw general conclusions, a preliminary OHCHR assessment has found little evidence to suggest that existing MDG monitoring and reporting arrangements are serving the purpose of making governments more accountable to their own people. What is clear is that different countries are moving forward at different speeds depending on three main factors: (i) their commitment to a nationally owned MDG process; (ii) their capacity to develop effective and coordinated institutions and accountability processes and tools; and (iii) their political will to prioritize the MDGs in budget decisions and to open policies and public accounts to inclusive participation and independent scrutiny.[39]

Resources and capacities are needed to build effective, accessible, reliable and independent accountability systems, including national information frameworks. However, low-income countries subject to serious resource constraints are showing that reaching an acceptable level of accountability is possible if there is the political will and a culture of public service, transparency and social participation. One factor that appears critical is the level of integration of the MDGs within the mainstream national development and financial frameworks and their corresponding information systems. Conversely, MDG accountability will be more effective if information systems provide a bigger picture of government policy and budgetary efforts, beyond the prevailing outcome-based reporting.

4.2 Sector-specific frameworks

A number of significant breakthroughs have taken place since the September 2010 MDG Summit in addressing the accountability deficits with regard to specific MDGs.

Most notable is the work of the Commission on Information and Accountability for Women's and Children's Health (CIAWCH), set up by the Director General of the WHO at the request of the UN Secretary General following the September 2010 launch of the Global Strategy for Women's and Children's Health. The Strategy is aimed at mobilizing policy and financial commitments from the international community, so as to "ensure that the most off-track Millennium development Goals, for maternal and child health, are met by 2015"[40].

Accountability is at the centre of the Commission's work, its importance being "that it contributes to ensuring that all partners honour their commitments, demonstrates how actions and investment translate into tangible results and better long-term outcomes, and tells us what works and what needs to be improved". The emphasis is on accountability at the national level, "with the active engagement of national governments, parliaments, communities and civil society; and with strong links between country-level and global mechanisms." Nevertheless the framework stresses that all partners, including donors, are accountable for the promises they make and the health policies they design and implement.

The commission proposed an accountability framework to monitor and accelerate progress in achieving the maternal and child health goals of MDGs 4 and 5. The Commission framework comprises three interconnected processes: 1) monitoring of results and resources, (2) reviewing data and policies to determine whether pledges are being kept, identifying shortcomings and recommending remedial action, and (3)

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[39] OHCHR, *How does MDG accountability work? Mapping national accountability systems* (2011)
[40] Commission on Information and Accountability for Women's and Children's Health, *Keeping promises, measuring results* (WHO, 2011)

acting on the findings to accelerate progress towards improved health outcomes, including reallocating resources for maximum health benefit. The three steps are aimed at "learning and continuous improvement" and direct attention to the policy cycle and to remedial action as the purpose of accountability.

The framework is remarkable in its explicit grounding in the right to the highest attainable standard of health; in its emphasis on tracking the links between outcomes, policy efforts and resources; in its focus on the accountability of both national governments, donors and other international actors; and in the concrete measures it proposes to overcome "impediments to accountability", including setting up better health information systems, better tracking of resources through indicators of health expenditure, and better oversight mechanisms linking resources to results, both nationally and globally. It proposed the creation of an international Expert Review Group to assess progress in implementing the global strategy and the Commission's recommendations, as well as the creation of effective national monitoring mechanisms.

If implemented at the national and international levels, the accountability framework could have a significant impact in overcoming the obstacles to human rights accountability which fuel maternal and child mortality. Nevertheless, the framework is weak on one critical dimension of human rights accountability: enforceability. The Commission defines national accountability mechanisms narrowly, focusing only on national review of data. Judicial and non-judicial accountability mechanisms such as national human rights institutions and courts can strengthen accountability for women's and children's health, by reviewing not only laws, policies and data but also individual complaints of violations of human rights. Limited access to complaints and redress mechanisms, whether through courts or other means presents one of the biggest challenges in realising the right to health of women and children.

References to remedies and remedial action – included strongly in the report of the Commission's Working Group on Accountability for Results – are diluted in the final Commission report, raising questions as to whether national accountability mechanisms will give due attention to remedies for human rights violations as understood in international law, including measures for restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition. The framework's focus on donor accountability is also limited to reporting on transfers of financial and technical assistance, but does not include mechanisms to ensure that the use of development assistance for delivering women and children's health is consistent with human rights standards (for example, through scrutiny by parliament or international human rights monitoring bodies). Further steps need to be taken to ensure that all governments, development partners and relevant civil society actors implement the framework in a way that is fully consonant with human rights standards.[41]

Initiatives are also underway to address the accountability deficits in relation to other MDGs. The UN Special Rapporteur on the Right to Water and Sanitation has engaged closely with the WHO / UNICEF Joint Monitoring Programme for Water Supply and Sanitation, the main mechanism for measuring progress towards the MDG7 targets on water and sanitation, to explore how the rights to water and sanitation can best be monitored as a means to strengthen accountability for MDG7. Her work with JMP has focused on how to incorporate human rights criteria into its monitoring efforts, giving particular attention to measuring affordability, water quality, accessibility, and non-discrimination, in order to ensure that MDG monitoring assesses compliance with these

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[41] Action Canada for Population and Development, Amnesty International, Center for Economic and Social Rights, Human Rights Watch, International Planned Parenthood Federation, and Ipas, *NGO Response to report of Commission on Information and Accountability,* May 2011

dimensions of states' human rights obligations. This initiative has also begun to influence the design of new goals and targets for the post 2015 development agenda. The Rapporteur's recommendations on the implementation and monitoring of national plans of action are also of central relevance to fulfilment of the commitments under MDG7, and outline a comprehensive "accountability framework" for monitoring outcomes, policy efforts and resource allocations to assess the conformity of government and donor interventions with the key principles and dimensions of the right to water.

An important development with regard to strengthening accountability of developed states and multilateral institutions is the recent announcement by the MDG Gap Task Force to set up an enhanced monitoring mechanism to provide greater accountability for delivery on MDG8 commitments among all stakeholders. Created by the UN Secretary General to improve monitoring of MDG8 by leveraging international coordination, the Task Force includes more than 20 UN agencies, including the World Bank and the IMF, as well as the OECD and the WTO. To be called the Integrated Implementation Framework (IIF), the proposal is expected to be operational by the end of 2011. The Task Force has also given much-needed attention to the need for greater coherence across the range of transnational policy areas covered in MDG8, including aid, trade, finance, employment and the environment, and has supported initiatives by the OECD's Development Assistance Committee (DAC) to improve donor accountability to recipient states through improved pledging practices and monitoring of outcomes[42].

4.3   Strengthening human rights accountability through MDG mechanisms

The sector-specific initiatives outlined above provide promising entry points for greater integration of human rights perspectives in the monitoring of efforts between now and 2015. They may also serve to secure human rights principles and standards as the foundation on which the post-2015 MDG architecture is constructed. Although the more recent mechanisms, such as those recommended by the CIAWCH, have yet to be put in place at the national level, some general observations can be made regarding the prerequisites for MDG-specific monitoring mechanisms to contribute to meaningful human rights accountability. These are based on a preliminary assessment by OHCHR and CESR of the effectiveness of monitoring, reporting and enforcement mechanisms to date.

1. **MDG–based frameworks should be explicitly grounded in and aligned with human rights standards.** As in the case of the CIAWCH, an explicit foundation in human rights standards brings a normative dimension which helps to frame national priorities in terms of enforceable rights and corresponding obligations. Taking into account the indivisibility and interdependence of all human rights, they should reflect the range of rights and multiple obligations underpinning each MDG, including obligations to respect, protect and fufill.

2. **MDG accountability frameworks should comprehensively address all stages of the policy cycle**, from the initial design of policies and programs, their implementation and evaluation, and the remedies provided in the event of incompliance. In what Yamin has described as the "*circle of accountability*", this implies embedding contextually relevant MDG targets in rights-based national plans of action and budgetary frameworks; reviewing policy performance through ongoing monitoring and evaluation mechanisms, assessing progress

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[42] *The Global Partnership for Development: Time to deliver,* MDG Gap Task Force Report 2011

against indicators and benchmarks relating to the different dimensions of state human rights obligations; and ensuring mechanisms for redress which go beyond individual remedies and address the systemic and institutional causes of rights deprivation[43].

3. **MDG monitoring frameworks must not only measure progress in "outcomes" but also include appropriate indicators of "policy effort" and "resource allocation"**. It is the triangulation of these three elements that can enable an assessment of the adequacy or reasonableness of efforts to fulfil economic and social rights within the maximum of available resources. Indicators of policy effort should enable a quantitative and qualitative assessment of policy commitments, policy content and policy processes against human rights standards. Indicators of policy commitment include, for example, the incorporation of human rights standards in domestic legal and policy frameworks. Indicators of policy content should seek to assess whether relevant policy interventions (eg provision of emergency obstetric care to prevent maternal mortality) are available, accessible, acceptable and of adequate quality. Policy processes should be assessed in light of indicators measuring the extent of meaningful participation of rights-holders in decision-making.

4. **Rights-based budget monitoring should integrated into the monitoring process** in order to determine whether policies and programmes are falling short because available resources are not being mobilized and allocated in line with the ICESCR. Indicators of budgetary and fiscal commitment can include proportion of GDP devoted to the specific sector (eg education) or to core human rights priorities within that sector (eg ensuring primary school completion). Appropriate country or regional comparisons can be used to assess reasonableness of allocations and any changes over time. Fiscal policy monitoring must also assess taxation policy and other means of revenue generation, assessed in light of human rights principles. For example, tax incidence analysis can reveal whether the tax structure is regressive, placing a disproportionate burden on the poorest sectors of the population. Progressive fiscal policy reform is a key instrument for reducing economic and social inequalities[44].

5. **The monitoring capacities of planning ministries, national statistics offices, NHRIs and other oversight institutions should be strengthened.** Monitoring progress in how development planning fulfils human rights has required the development of quantitative as well as qualitative indicators and benchmarks. Both are essential to monitor progressive realization and resource allocation. A body of work has emerged in recent years that has developed indicators and indices for assessing ESC rights fulfilment, impact assessment frameworks and tools for rights-based analysis of fiscal and macroeconomic policy. These tools can be applied to integrate human rights accountability at each stage of the MDG policy-making cycle, including: assessment and analysis, planning, budgeting, implementation, monitoring and evaluation, review and remedial action.

6. **Access to quality information is a pre-requisite for transparency and accountability**. Quantitative and qualitative data is needed to assess government performance and its impact. Effective specialized institutions, as

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[43] Yamin (2009)

[44] Stewart, F., *Horizontal Inequalities: A Neglected Dimension of Development*, CRISE Working paper no. 1: available at: http://www.crise.ox.ac.uk/pubs/workingpaper1.pdf)

well as technical capacities of collection, analysis and reporting are must-haves in a national information system. The current set of 60 MDG indicators was based on the availability of existing data and an attempt to keep the list manageable, yet many countries have struggled to generate the required data. National statistical systems often suffer from weak institutional capacity. A particular weakness is in gathering disaggregated data, making it difficult to monitor the impact of MDG strategies on different population groups. Some governments have simply overlooked the requirement to disaggregate data beyond national averages, particularly on grounds of race or ethnicity.

7. **MDG accountability frameworks and their associated mechanisms must be accessible, participatory and inclusive.** A review of the existing MDG reporting processes suggests that this has been a mere technocratic exercise responding more to the demands of multilateral agencies and investors than to representative national institutions and the wider public. Half of the MDG reports reviewed by OHCHR in 2011 remain silent on the issue of whether civil society has had any role in the production of these reports, and no mention is made of the participation of marginalized and excluded groups. The participation of minorities in the elaboration of PRSPs and MDG related strategies is reported to have been limited and tokenistic.

8. **MDG-specific accountability mechanisms must include effective capacity to enforce findings and ensure remedial action**. MDG accountability mechanisms have largely been ineffective because they are entirely voluntary. Many aspects of MDG reporting, including the content and periodicity of reports, or the degree to which states provide disaggregate data, are left to states' discretion in the absence of any mandatory requirements. Moreover, monitoring alone does not constitute accountability. The mechanisms for human rights oversight outlined in the previous section, including National Human Rights institutions, have only rarely fulfilled their potential to provide the checks and balances needed to hold duty bearers to account. In the absence of real external pressure, either in the form of sanctions or incentives, there is little likelihood that governments will voluntarily open to public scrutiny. Accountability must move beyond the realm of voluntary reporting mechanisms and donor-driven incentives if states and the international community are to be held answerable for their MDG commitments, and if the latter are to provide a meaningful vehicle for the enforcement of basic human rights.

Questions for Session 8: *What challenges have been encountered in devising MDG-specific accountability frameworks and grounding these in human rights standards? What essential elements or safeguards need to be woven into these mechanisms in order to ensure their effectiveness? How can the emerging body of tools and methodologies for monitoring economic and social rights in public policy be used to strengthen or complement these frameworks and make them operational? How can international human rights mechanisms be supported to increase their engagement with MDG-specific accountability frameworks?*

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5. Securing human rights accountability in the post-2015 framework

The final section of the publication proposes substantive parameters for discussion of human rights accountability in connection with the post-2015 development agenda.

The aim is to locate human rights accountability within the various different visions and institutional forms that a post-2015 development reform program may take.

Post-2015 reform proposals range on a scale from "one world" or "Global New Deal" visions, right down to minimalist "business as usual" approaches such as extending the timeline of the MDGs in more or less existing form. OHCHR and CESR believe that an ambitious reform agenda is needed now more than ever. A new global deal should be rooted in ethics of universalism, equality, solidarity and global social justice, and framed and buttressed by human rights. However the aim of this particular publication is not to defend any such overarching vision, which would require a very different approach and process. Rather, the objectives of this publication are to suggest key substantive and process parameters for a post-2015 *global monitoring framework*, whatever may be the larger post-2015 institutional and policy agreements. This section also offers specific elements for inclusion in a revised set of global goals, targets and indicators, along with suggested means of verification in particular cases.

The MDGs have been reported to have had a largely positive impact on international development discourse, strengthening the hand of advocates of pro-poor development, and significant even if variable impacts on government action in donor countries, particular in Europe. There has also been observed impact on government action in developing countries, especially aid-dependent countries, to a more modest and qualified degree.[45] The collection and use of statistics and data has also improved, and civil society voices sampled in a number of countries support the idea of a similar, new global compact beyond 2015. Hence, without pre-empting the range of forms and frameworks that a post-2015 development deal may take, it seems both likely and desirable that a global human development monitoring framework should be included.

A number of MDG policy communities are already actively planning for revisions to the post-2015 monitoring agenda. These discussions have provided important inputs to the present publication. Many other consultations are actively underway in academic and policy communities, the U.N. and donor institutions, and civil society. The legitimacy and impacts of any post-2015 global monitoring framework depend greatly on the quality and inclusiveness of the consultations preceding it. The discussion and recommendations which follow should be seen as one set of contributions to a necessarily broad and heterodox dialogue at global, national and local levels, focused particularly on the requirements for human rights accountability in the post-2015 global monitoring framework.

5.1 Agreeing the specific objectives and audiences for a post-2015 framework

The first and perhaps the most vital subject on which agreement will be needed will be on the specific objectives and main target audience(s) to be served by a post-2015 global monitoring framework. Global goals such as the MDGs can have several different purposes. For example, they may serve as long-term normative visions, evaluative benchmarks against which to measure development progress, or alternatively, planning targets to frame priorities for policy and resource allocation.[46] Confusion about purposes dogged the MDGs from the beginning although, arguably, some degree of "creative ambiguity" may paradoxically have had the benefit of facilitating agreement.[47] But excessive ambiguity can be prejudicial, as explained below.

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[45] Richard Manning, Using Indicators to Encourage Development : Lessons from the Millennium Development Goals, Report for Danish Institute for International Studies, DIIS Report No. 2009:01, pp.24-41.
[46] Sakiko Fukuda-Parr.
[47] Manning (2009) at 12-13.

The MDGs, interpreted sensibly, were not intended as national planning targets. To transpose the global MDGs targets and indicators – directly and literally – within national planning frameworks, has resulted in the MDGs sometimes furnishing the basis for praise where it is not warranted, as well as unfair criticism where governments have in fact been making serious efforts within the maximum of their available resources.

As originally conceived, the MDGs were based upon global development trends and were intended as collective (not country-specific) targets. They were designed for a wide audience beyond policy-makers and development practitioners, in order to simplify human development messages and help to generate the political will necessary to translate commitments into action.[48] Global goals and targets must self-evidently be adapted to national conditions and resource constraints. As the experience of the World Summit for Children made clear, global goals "first need to be adapted to the specific realities of each country. [...] Such adaptation of the goals is of crucial importance to ensure their technical validity, logistical feasibility, financial affordability and to secure political commitment and broad public support for their achievement."[49] Adaptation must include measuring disparities, which – with a just a few exceptions – are absent from the MDGs' focus on "global averages."

Hence, taking into account the experience so far, negotiations towards the post-2015 development agenda should reflect an explicit understanding that "global" goals and targets should have very specific and limited, albeit important, purposes, to help raise the public consciousness about important facets of human development and generate political incentives and social mobilisation for action. An explicit human rights focus can buttress arguments for tailoring and customising the MDGs, and successor "global" targets, to the particularities and original conditions of developing countries, in line with obligations in the ICESCR and other relevant treaties.

5.2 Ensuring participatory consultation towards a new global agenda

The principle of participation is central to human rights and development theory, but only selectively observed in practice. The process of formulating the original MDGs was an exclusive and largely technocratic one, limited to a small circle of donors and U.N. insiders. Civil society participation at the 2010 MDGs Summit was also limited.

There was no explicit recognition in the MDGs Outcome Document of participation as a human right, and no specific commitments to guarantee freedom of expression and association or other indispensible human rights guarantees for active, free and meaningful participation. With certain exceptions, in the Summit Outcome document, participation was treated largely in instrumental terms, and often more as a duty or privilege than a right, or alternatively (as in the case of sanitation) as contributions by user groups to service delivery. The Outcome Document encourages "broad consultations and participation of all relevant stakeholders" in the context of strengthening national ownership of development strategies, "as appropriate for each national context." The unfortunate implication seems to be that broad consultations and participation may *not* be appropriate in certain national contexts, at the discretion of the government of the day. Post-2015 negotiations will need to anticipate these kinds of

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[48] Jan Vandemoortele, *The MDG Conundrum: Meeting the Targets Without Missing the Point*, 27(4) DEV. POL. REV. 355-71 (2009) at 363.
[49] UNICEF Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s, New York, UNICEF, 1990, para. 6, cited in Vandemoortele, *Id.*

political blockages and marshal the principles, evidence and coalitions needed to sustain a stronger case for active, free and meaningful participation.

An agreement will be needed urgently on the parameters for inclusive and meaningful consultations at global, national and local levels. The post-2015 debate is underway along many different tracks. Coordinating and consolidating these inputs will be a serious challenge. Vandemoortele and Delamonica have argued for a group of eminent persons led by the global South – called the MDG Peer and Partner Group – to serve as global custodian of the MDGs, to bring pressure on world leaders for progress and guide international negotiations towards a post-2015 agreement.[50] Advocacy networks such as Beyond 2015 have called for oversight by an effective and credible international commission, rather than a high level panel[51]. Such recommendations are consistent with the requirements of participative deliberation and accountability reflected in emerging principles of global administrative law,[52] and will be key determinant of the legitimacy and ultimate impacts of the post-2015 global monitoring framework.

As vital as inclusive processes are, however, the process must be carefully managed in order to avoid ratcheting up the tensions between those urging greater inclusion and comprehensiveness in any successor menu of global development goals, and those arguing that "less is more", that is to say, that a narrow focus on a small set of *measurable* global targets is indispensable for the purposes of statistical rigour, comparability, policy relevance, and communications and political mobilisation objectives.

5.3. Setting the baseline year and timeframe for post-2015 monitoring

Careful deliberation will be needed in selecting the appropriate baseline year for any new set of targets. The 1990 MDGs baseline arguably distorted the picture of global progress in that it admitted consideration of aggregate human development gains attributable to economic growth in the 1990s in China and India, due (self-evidently) to public policies that preceded the MDGs.

Care must also be taken in defining the period of time over which post-2015 targets should be achieved. An excessive time horizon lacks credibility, but an excessively long period exerts little political pressure. The fifteen-year time period for the MDGs appears to have had a useful effect in galvanising action, however from a human rights perspective longer term targets would be needed for universal access.[53] Interim targets should be included for the sake of political accountability.[54] Consideration should also be given as to whether performance is to be expressed as relative or absolute benchmarks,[55] which can significantly affect how progress is portrayed as the controversies around Target 1.A have exemplified.[56]

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[50] Jan Vandemoortele & Enrique Delamonica, *Taking the MDGs Beyond 2015: Hasten Slowly*, 41(1) IDS BULLETIN 60-69 (January 2010) at 60. This recommendation was endorsed in the First Consultation on Post-2015 Monitoring of Water and Sanitation, in Berlin, 3-5 May 2011.

[51] Beyond 2015 letter to the UN Secretary General, October 2011, http://beyond2015.org/news

[52] *See* Benedict Kingsbury, Nico Krisch & Richard B. Stewart, *The Emergence of Global Administrative Law*, 68 LAW & CONTEMP. PROB. 15, 37-42 (2005).

[53] Report of the (former) independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Ms. Catarina de Albuquerque, UN Doc. A/65/254, 6 August 2010, paras. 12-17.

[54] Jan Vandemoortele, *If Not the MDGs, then What?* 32(1) THIRD WORLD Q. 9-25, 10-11 (2011) at 13.

[55] Jan Vandemoortele & Enrique Delamonica, *Taking the MDGs Beyond 2015: Hasten Slowly*, 41(1) IDS BULLETIN 60-69 (January 2010) at 63.

[56] Thomas Pogge, *Millions Killed by Clever Dilution of Our Promise*, CROP Poverty Brief (August 2010) at 2-3.

5.4 Determining the scope and content of the post-2015 monitoring framework

General criteria
Flowing from the above, clear, agreed, transparent and objective criteria should guide the substantive elements to be included in a post-2015 global monitoring framework. Firstly, the post-2015 framework should focus on intrinsically important and widely recognised *ends* of human development, rather than purely instrumental *means*. This criterion would appropriately exclude putative targets for economic growth, infrastructure, electricity and the like, however important the latter may be from an instrumental standpoint. Growth targets had a particularly poor track record in the Development Decades.[57]

Prioritisation should be guided by substantive human rights criteria from a normative or deontological standpoint, as well as empirical evidence of where the major bottlenecks are for any given right (or corresponding global goal or target), what are the most clearly proven interventions in local contexts, and what proxy measures might be feasible for human rights or goals not included in the global list. Statistical feasibility requirements, discussed in the "indicators" section below, and instrumentalist arguments need to be weighed carefully with and not arbitrarily displace normative considerations and deontological reasoning. As vital a variable as statistical rigour is,[58] it cannot be the sole gatekeeper for the post-2015 development agenda, and should not arbitrarily or categorically trump substantive policy considerations.[59]

When considering the breadth of the post-2015 monitoring framework, consideration must take into account the "crowding-out" problem, meaning the potential of global goals to inadvertently occlude attention to objectively important issues that haven't made it onto the global list. The evidence on whether the MDGs – in focusing on the social sectors – have inadvertently diverted attention from the productive sectors (more commonly thought of as means for rather than ends of development) appears to be inconclusive.[60] Nevertheless, at the country level, it may be entirely appropriate to tailor the global MDGs by adding goals or targets relating to agriculture, employment and other critical means for human development.

Correspondingly, hardened by experience, the post-2015 prioritisation exercise should also explicitly anticipate the gaps that may arise in a new global list of goals and targets, and the thematic and operational linkages that such gaps might inadvertently foreclose.[61] It has been argued that the lack of a coherent vision of development in the process leading to the MDGs "generate[d] a poorly aligned means, ends and sometimes competing ideas about normative aspiration (e.g. economic growth vs sustainability), which has made the MDG project less useful than it could have been, since opportunities to link the goals together coherently have been missed and a rigorous approach to assessment has been overlooked."[62]

Goals and targets

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[57] Manning (2009) at 50.
[58] For arguments highlighting the importance of statistical rigour in the context of the health-related MDGs, *see* Amir Attaran, *An Immeasurable Crisis? A Criticism of the Millennium Development Goals and Why They Cannot be Measured*, 2(10) PLoS MEDICINE 955 (October 2005), *available at* www.plosmedicine.org.
[59] For concerns that technical statistical parameters have displaced the "relevance and effectiveness" criteria for the decent work indicators in Target 1.B, *see* Gillian MacNaughton & Diane Frey, *Decent Work, Human Rights, and the Millennium Development Goals*, 7 HASTINGS RACE & POV. L.J. 303, 340-42 (2010).
[60] Manning (2009) at 50.
[61] Lancet & London International Development Centre, *The Millennium Development Goals: A cross-sectoral analysis and principles for goal-setting after 2015*, Sept. 13, 2010, *at* www.lancet.com.
[62] *Id.*, at 18. Drawing from Amartya Sen's theories, it has been suggested (*Id.*, at 18-24) that a guiding conception of development as "a dynamic process involving sustainable and equitable access to improved well-being" could provide a rational and principled structure for post-2015 development goals, based upon five guiding principles: holism, equity, sustainability, ownership and global obligation.

A maximum list of 10 global goals may strike a suitable balance between the objectives of inclusion (for substantive policy purposes) and parsimony (for communications and effective monitoring purposes). Social security, or social protection, is an obvious candidate for inclusion in a revised global list, given recent normative advancements concerning the right to social security and the ongoing and compounding impacts of global economic, environmental and social crises.[63] Decent work, added as target 1.B after the 2005 World Summit, similarly,[64] subject to improved specification of the relevant indicators.

A goal, target and indicators capturing essential civil and political rights prerequisites for public participation and effective and equitable service delivery is desirable on both normative and instrumental grounds, building upon the modest concessions on these issues by member States at the 2010 MDGs Summit. Grassroots aspirations for civil and political rights are being voiced now more loudly than ever, and would presumably come through strongly in any genuinely participatory consultations process. The Arab Spring has put paid to the suggestion, sometimes expressed in debates on the post-2015 MDGs agenda,[65] that MDG performance is itself an adequate proxy for good governance or civil and political rights.

Certain countries have added governance goals to their nationally customised MDGs, but this practice should be strengthened from a methodological standpoint and systematised, and more explicitly aligned with civil and political rights standards. Recent work on human rights indicators offers considerable material and inspiration from which to draw for global monitoring purposes, and in particular when it comes to tailoring globally-agreed indicators to the national and sub-national levels. There is a veritable industry in voice and accountability measurement as well.[66] A self-standing goal on civil and political rights would best highlight the intrinsic importance of these rights, however a plausible alternative might be to group these rights within a self-standing "enabling environment" goal, which may also include global partnership commitments relating to aid, trade, debt relief and investment, to the extent that the latter are not integrated within health-related or other MDGs.[67]

There are also strong arguments to include water and sanitation within a self-standing goal, given the recent recognition by the General Assembly and Human Rights Council of the human rights to water and sanitation, the comparative lack of progress in realising these rights, and the powerful evidence of their fundamental importance for the achievement of other human development goals.[68] A number of countries have tailored their national MDGs accordingly, and there is also new traction on human rights in these sectors at global level. WHO/UNICEF Joint Monitoring Programme for

[63] *See* CESCR, General Comment No. 19, The right to social security (art. 9), UN Doc. E/C.12/GC/19, 39th session (4 February 2008); Malcolm Langford, *Social Security and Children: Testing the Boundaries of Human Rights and Economics*, in FREEDOM FROM POVERTY AS A HUMAN RIGHT 193-218 (Bård A. Andreasson, Stephen Marks & Arjun K. Sengupta eds., Vol. 3, 2009); and *see also* the Report of the UN independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, UN Doc. A/HRC/11/9 (17 March 2009), on the subject of cash transfer programmes, *and* UN Doc. A/65/259 (9 August 2010) on social protection measures to achieve the MDGs.
[64] For arguments on how to strengthen Target 1.B (decent work) and its indicators from a human rights perspective *see* Gillian MacNaughton & Diane Frey, *Decent Work, Human Rights, and the Millennium Development Goals*, 7 HASTINGS RACE & POV. L.J. 303, 340-42 (2010).
[65] For an example of this argument *see* Myles A. Wickstead, *Holding on to the MDGs (For Now),* 41(1) IDS BULLETIN 123, 124-5 (2010).
[66] *See e.g.* Governance and Social Development Resource Centre, Research Report, Voice and Accountability Indexes, Mar. 3, 2009, *available at* http://www.gsdrc.org/docs/open/HD575.pdf; *and* http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/media-room/news-stories/2010/measuring-work-on-voice-and-accountability/.
[67] For a proposal along the latter lines, in the context of a suggested list of twelve post-2015 global goals, *see* Center for International Governance Innovation, *Towards a Post-2015 Development Paradigm (II),* June 20-24, 2011, Bellagio, Italy.
[68] *See* Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Ms. Catarina de Albuquerque, UN Doc. A/65/254, 6 August 2010.

Water and Sanitation (JMP)[69] is the first cab out of the rank insofar as defining the post-2015 monitoring framework is concerned. In May 2011 the JMP and other multilateral and bilateral donor agencies committed to integrate the rights to water and sanitation within the global monitoring framework for the water and sanitation indicators in MDG Target 7.C, exploring how qualitative attributes of these rights – such as affordability, accessibility, continuity and safety – may be factored into MDG monitoring.[70] This may serve as a valuable precedent and source of inspiration for other MDGs.

Without overloading the post-2015 agenda, there is surely also a compelling case to introduce additional specific and time-bound targets on curbing greenhouse gas emissions. Climate change has been characterised as a "profound denier of freedom of action and a source of disempowerment."[71] Inequalities within countries are a likely marker for vulnerability to climate shocks.[72] The human rights dimensions of this issue are the subject of a burgeoning literature.[73] Indicator 7.2 for MDG target 7.A (ensuring environmental sustainability) refers to "CO2 emissions, total, per capita and per $1 GDP (PPP)", although the lack of any quantified time-bound performance benchmark makes this indicator ineffective and unmonitorable. The human impacts and causes of climate change are now very clear to any impartial and informed observer, and the global tipping point towards potentially catastrophic and irreversible harms is likely to occur well within the framework of the post-2015 agenda.[74]

Whether a healthy climate is better characterised as an end unto itself, or alternatively a means to other more significant ends, might seem a churlish question in these circumstances. The fact that climate change is dealt with in a self-standing legal regime is beside the point: so are biodiversity, intellectual property, trade and other issues in the MDGs. It should require no leap of the imagination to develop more meaningful targets and indicators than the embryonic and reductionist offerings of MDG Indicator 7.2. Considerable thought has already gone into devising frameworks for measuring and allocating relative responsibility for global carbon emissions, assessing relative capacity to contribute towards global mitigation and adaptation needs, and adjusting appropriately for in-country inequalities.[75]

A modest rationalisation of the existing health-related goals should help to accommodate a small number of additional priority concerns, although the unacceptable scale of avoidable maternal deaths surely demands that maternal health be given due prominence in the post-2015 list. The integration of donor States' commitments as far as possible within the revised list might also expand the space for

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[69] The WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation is the official United Nations mechanism tasked with monitoring progress towards the MDG 7 targets relating to drinking water and sanitation. *See* http://www.wssinfo.org/.
[70] *See* http://www.wsscc.org/sites/default/files/concept_note_consultation_post_2015_water_and_sanitation_indicators.pdf.
[71] UNITED NATIONS DEVELOPMENT PROGRAM, HUMAN DEVELOPMENT REPORT 2007/8, FIGHTING CLIMATE CHANGE: HUMAN SOLIDARITY IN A DIVIDED WORLD (2007) at 31.
[72] UNDP, Human Development Report 2007/8, at 79.
[73] On the relationships between climate change and human rights *see* CLIMATE CHANGE AND HUMAN RIGHTS (Stephen Humphreys, ed., 2009); SIOBHÁN MCINERNEY-LANKFORD, MAC DARROW & LAVANYA RAJAMANI, HUMAN RIGHTS AND CLIMATE CHANGE: A REVIEW OF THE INTERNATIONAL LEGAL DIMENSIONS 7-8, 47-53 (2011); *and Climate Change and the Human Rights to Water and Sanitation*, Position Paper for the United Nations Special Rapporteur on the human rights to safe drinking water and sanitation, (2010), pp.11-16, 27-31 & 35-7, *available at* http://www.hydrology.nl/images/docs/alg/UNHCR_Climate_Change_Right_Water_Sanitation.pdf.
[74] *See e.g.* James E. Hansen & Makiko Sato, *Paleoclimate Implications for Human-made Climate Change*, forthcoming in CLIMATE CHANGE AT THE EVE OF THE SECOND DECADE OF THE CENTURY: INFERENCES FROM PALEOCLIMATE AND REGIONAL ASPECTS: PROCEEDINGS OF MILUTIN MILANKOVITCH 130TH ANNIVERSARY SYMPOSIUM (A. Berger, F. Mesinger, and D. Šijači, eds., 2011).
[75] Perhaps the best known model that integrates the three vital criteria of relative responsibility, capacity, and equity, is the "Greenhouse Development Rights" framework. *See* PAUL BAER ET AL, THE GREENHOUSE DEVELOPMENT RIGHTS FRAMEWORK: THE RIGHT TO DEVELOPMENT IN A CLIMATE CONSTRAINED WORLD (REV. 2ND ED., 2008).

additional priority issues, rather than quarantining all such commitments within MDG 8. This would help to reinforce the relevance of the MDGs and the reality of poverty in all countries, irrespective of their relative per capita GDP, while recognising the rising proportion of income-poor individuals living in middle-income countries. An integrated structure of this kind may also more effectively communicate the idea of a genuine global partnership for specific human development outcomes.

Indicators

The OECD-hosted Global Project on Measuring the Progress of Societies concluded its 2008 report with four lessons for indicator development: be clear about your objectives and how you expect to achieve them; be realistic about what an indicator set can achieve; never underestimate the importance of the process of designing and agreeing the indicators; and think long-term: be persistent and flexible.[76] Proposed indicators at the global level should be measurable, time-bound, cost-effective to collect, easy to communicate for advocacy purposes, and afford a reliable basis for cross-country comparisons. Data sources should be cost-effective, standardised, population-based, comparable across countries and over time, and contribute to strengthening national monitoring capacity.[77] The process of indicator development should itself observe accountability principles, namely: meeting adequate standards of transparency; participation; reason-giving; legality, including compliance with international human rights law; and providing effective review of decisions.[78]

When weighing the statistical constraints, it should be borne in mind that much data that is presently available at country level – for example through Demographic Health Surveys which are increasingly income- and gender-disaggregated – that is not being used, and much more that could be collected were there the political will to do so, although for the purposes of global monitoring there are limits to the number of additional questions that can be added to existing household survey instruments. The lag time in the generation of baselines and measurement tools for new indicators should also be borne in mind, in terms of any proposals to be put to the Secretary-General's High Level Event in 2013, and subsequently to member States in 2015. Developments in indicator measurement tools could typically take two to five years, for indicators not currently captured in existing data collection systems. These must be applied consistently in a significant number of countries, although with survey cycles taking three to five years, initial reporting on a new baseline could take anywhere from seven to twelve years. Capturing changes following that baseline could take a further five years.[79]

Global MDG indicators, with certain exceptions, express certain important human development "outcomes" (infant mortality, literacy rates and so forth). However the post-2015 should consider going further beyond standard "outcome" measures to include a modest number of indicators that capture human rights commitment as well as key inputs such as fiscal and policy effort, to the extent that these can be generalised across countries. The latter kinds of indicators would help to promote accountability for human development outcomes, by enabling evidence-based

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[76] Manning (2009) at 20.

[77] Presentation of Dr. Tessa Wardlaw, Chief, Statistics and Monitoring, UNICEF, "Monitoring Global Goals and Targets on Drinking Water and Sanitation: An Historical Perspective," First Consultation on Post-2015 Monitoring of Drinking Water and Sanitation, Berlin, Germany, 3-5 May 2011.

[78] Nikhil K. Dutta, *Accountability in the Generation of Governance Indicators*, 22 FLA. J. INT'L L. 401, 419-22 (2010); Benedict Kingsbury, Nico Krisch & Richard B. Stewart, *The Emergence of Global Administrative Law*, 68 LAW & CONTEMP. PROB. 15, 37-42 (2005).

[79] Presentation by Gareth Jones, Strategic Advisory Group member for the Joint Monitoring Programme and the Global Analysis and Assessment of Sanitation and Drinking Water, First Consultation on Post-2015 Monitoring of Drinking Water and Sanitation, Berlin, Germany, 3-5 May 2011.

judgements on the extent to which outcomes (positive as well as negative) are the result of conscious policy choices, or omissions, of human rights duty-bearers (typically, but not exclusively, authorities of the State) or alternatively the result of accident or purely exogenous factors.

Examples of commitment indicators would include human rights treaty ratification and constitutional protection of rights, observance of procedural obligations under the UN Human Rights Council, responsiveness to procedural outcomes,[80] and constitutional entrenchment of rights. The obligation to put in place a national plan for the realisation of particular rights is a core obligation under human rights treaties, as well as a very real necessity in practice if the goal of universal access is to be seriously pursued, especially in notoriously fragmented sectors such as water and sanitation. Indicators of fiscal or policy effort might include the percentage of the national budget dedicated to particular rights or corresponding MDGs. These kinds of commitment and input (or process) indicators are already being collected at the global level for the MDG water and sanitation targets, in addition to comparative data on national policies, institutions, human resource investments, stakeholder coordination and harmonisation, and aid flows. [81]

Indicators relating to the outcomes of human rights claims before national courts might seem intuitively important, although justiciability is just the tip of the human rights accountability iceberg.[82] However efforts to demonstrate the relevance and validity, in statistical terms, of such indicators must confront the problem that redress mechanisms and preconditions for accessing them are most often lacking in countries where violations are most pronounced. As in the field of treaty ratification,[83] there may be significant empirical challenges in demonstrating a cause-effect relationship between inputs and desired outcomes.

However, as with the post-2015 menu generally, the relevance of these kinds of indicators cannot be determined exclusively by the evolving and contested nature of the empirical evidence. There are inevitable limitations on the extent to which we will be able to generalise with any confidence (statistically and otherwise) across countries and societies on the institutional prerequisites for effective pro-poor human rights claims. Nevertheless, rights without remedies ring hollow in theory as well as in practice. The mere fact of the existence of redress mechanisms may strengthen accountability and improve outcomes in ways that standard regression analyses are ill-suited to capture. The programme logic of the post-2015 global monitoring framework would be incomplete without careful analysis of the role of human rights accountability mechanisms, including but not limited to judicial and quasi-judicial forums, within the wider scheme of incentives for better service delivery. Prioritising among the various possible choices of commitment and input (or process) indicators should be somewhat easier than for many outcome indicators given that data for many of the former

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[80] Philip Alston, *Promoting the Accountability of Members of the New UN Human Rights Council*, 15 J. TRANSN'L L. & POLICY 49-94 (2006). Procedural obligations could include compliance with requests for provision of information to Special Procedures of the UN Human Rights Council, whether the country concerned has issued standing invitations to Special Procedures, and timely submission of reports to human rights treaty bodies. Responsiveness could include responses to recommendations flowing from treaty body, Special Procedure and Universal Periodic Review processes.

[81] *See* World Health Organisation, GLAAS 2010: UN-Water Global Annual Assessment of Sanitation and Drinking Water: Targeting Resources for Better Results (2010), *available at* http://whqlibdoc.who.int/publications/2010/9789241599351_eng.pdf.

[82] For authoritative impact assessments *see* COURTING SOCIAL JUSTICE: JUDICIAL ENFORCEMENT OF SOCIAL AND ECONOMIC RIGHTS IN THE DEVELOPING WORLD (Varun Gauri & Daniel Brinks eds., 2008); *and* LITIGATING HEALTH RIGHTS: CAN COURTS BRING MORE JUSTICE TO HEALTH? (Alicia Ely Yamin & Siri Gloppen eds., 2011).

[83] BETH A. SIMMONS, MOBILISING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS (2009) *and* Varun Gauri, *The Cost of Complying with Human Rights Treaties: The Convention on the Rights of the Child and Basic Immunization*, 6 REV. INT'L ORG. 33-56 (2011).

indicators is increasingly available in global databases.[84] It seems appropriate, therefore, to highlight this as a priority field for further empirical investigation and inter-disciplinary debate towards 2015.

Substantive and statistical parameters for given indicators might be permitted a greater degree of flexibility depending upon the relative priority of global communications and advocacy purposes of the post-2015 framework, as distinct from monitoring or planning purposes, with audiences defined accordingly. For example the maternal mortality ratio is a far weaker indicator than measures of coverage such as skilled birth attendance or availability of emergency obstetric care, given well-known problems of mis-reporting and under-reporting of maternal deaths. But nevertheless, under certain conditions and caveats, the latter might still serve useful advocacy objectives for a broad global audience, bringing visible attention to the scandal of avoidable maternal deaths in a way that other measures, alone, cannot.

Recent work on human rights indicators offers considerable material and inspiration from which to draw for global monitoring purposes, and in particular when it comes to tailoring globally-agreed indicators to the national and sub-national levels. OHCHR, at the request of the chairs of human rights treaty bodies, has developed a conceptual framework for indicators along with sample indicator sets and meta-sheets to support States Parties give effect to and monitor their human rights treaty commitments at the national level.[85] The former UN Special Rapporteur on the Right to Health, Paul Hunt, used the same framework, which has been discussed, refined and validated in a range of contexts. This framework draws upon MDGs "outcome" indicators for particular human rights and data from a range of well established sources. In drawing upon this important work for post-2015 purposes, the main challenge for the post-2015 global monitoring framework is prioritisation, taking into account sectoral particularities, opportunities, constraints and constituencies as well as the very specific purposes and strictures of global monitoring discussed earlier.

5.5 Navigating the risks and limitations of quantification

The MDGs were themselves driven by the power of numbers, and the desire for quantifiable expressions of human progress, seen as necessary in order to screen out subjective interpretations and extraneous policy agendas. The desire for quantification can be seen as part of an attempt to find common ground within a wide audience on potentially contentious policy issues, thereby promoting procedural regularity and enhancing public perceptions of fairness.

However critical discussion is needed on the relative importance, limits and opportunity costs of quantitative measurement, and how qualitative criteria and methods may play a more active role. Both are surely needed for a potentially wide range of purposes,[86]

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[84] Todd Landman, *Measuring Human Rights*, 26(4) HUM. RTS. Q. 906-31, 926-8 (2004). Data relating to treaty ratification, periodic reporting, and responsiveness to recommendations of international human rights mechanisms is *available at* www.ohchr.org. The Toronto Initiative for Economic and Social Rights (TIESR) contains a comprehensive set of quantitative information on the constitutional status of economic and social rights in developing countries. *See* http://www.tiesr.org/. *See also* Alston (2006).

[85] UN/OHCHR, Report on Indicators for Promoting and Monitoring the Implementation of Human Rights, UN Doc. HRI/MC/2008/3 (6 June 2008), *available at* http://www2.ohchr.org/english/issues/indicators/docs/HRI.MC.2008.3_en.pdf; and Report of the High Commissioner for Human Rights, UN Doc. E/2011/90 (26 April 2011), *available at* http://www2.ohchr.org/english/issues/indicators/docs/E-2011-90_en.pdf. This framework uses a "structure-process-outcome" taxonomy. While policy-makers, programmers and sectoral specialists might typically think and work in terms of "inputs" rather than "process" indicators, potentially useful synergies between different frameworks can easily be identified.

[86] Ravi Kanbur, Q-Squared? A Commentary of Qualitative and Quantitative Poverty Appraisal, Qual-Quant: Qualitative and Quantitative Poverty Appraisal: Complementarities, Tensions and the Way Forward, Cornell University, Mar. 11-12, 2001, at 1.

including in vetting the issues for inclusion in the post-2015 global monitoring framework. Statistical rigour should be encouraged to the maximum possible extent, although the ideal of objectivity should not too readily be assumed.[87]

But how much faith can be placed in the allure of so-called "hard" statistical data and quantifiable verification? Statistics of course play an indispensible role in informing evidence-based policy-making, allowing measurement over time and space of the various inputs and stimuli that guide, and impede, global human rights progress. However the trade-off is that they have to "shoe-horn complex, moving phenomena into clear categories," with varying degrees of correspondence to actual realities on the ground.[88] There may be a superficial allure in the "power of numbers" and the promise of empirical verification, and contestable assumptions and value judgements within statistical methods and the indicators industry in particular, which should be brought to the surface and discussed. What counts as 'momentum' in the years to 2015 cannot therefore be reduced to statistical indicators, however positive, and trying to ensure still more effective and inclusive anti-poverty measures after the formal end of the MDGs cannot be left to injunctions of 'more of the same, but better.'"[89]

Relatedly, misconceived targets and "results-based management" can distort development priorities, favouring short-term quantifiable and reportable results rather than longer-run qualitative changes. As Saith has argued, "institutionalising targets in bureaucracies and governmental regimes usually invites misuse and manipulation of statistics and the misrepresentation of outcomes."[90] For all these reasons, the post-2015 debate cannot be de-linked from the deeper debates about the values, incentive structures and ideologies underpinning quantitative methods, as well as those animating international development policy and institutions more generally.

Finally, there is a very large statistical capacity building agenda to be addressed at country level. The MDGs do appear to have had an impact in improving the collection of statistics at the national level, however far too much of the growing amount of data cited in high-level reports is "still based on poor quality information, extrapolation and guesswork."[91] There is a further problem that improved data does not always translate to improved analysis and policy choices.[92]

5.6 Setting ambitious global targets commensurate with "maximum available resources"

New global targets should be ambitious but achievable, as was the original intention of the MDGs. In this regard, statistical and technical feasibility concerns need to be assessed in the context of substantive policy considerations, human rights law and moral principles. For example, MDG Target 5.A, calling for a three-quarters reduction in the maternal mortality ratio between 1990 and 2015, has been criticised as over-ambitious, in that it exceeds the demonstrated (and hence presumptively "feasible") rate of progress in the 1970s and 1980s. However is it legitimate, objectively defensible or morally acceptable that our future ambitions should be framed solely by our past

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[87] THEODORE PORTER, TRUST IN NUMBERS: THE PURSUIT OF OBJECTIVITY IN SCIENCE AND PUBLIC LIFE (1995) at 149, 187 and 223.

[88] Ranil Dissanayake, "Lies, Damned Lies and Distorting Normative Characterisation," Aid Thoughts Web Log, posted 29 January 2011, *at* http://aidthoughts.org/?p=2036.

[89] Nana Poku & Jim Whitman, *The Millennium Development Goals and Development After 2015*, 32(1) THIRD WORLD Q. 181-98, 186 (2011) at 187.

[90] Ashwani Saith, *From Universal Values to Millennium Development Goals: Lost in Translation*, 37(6) DEVELOPMENT AND CHANGE 1167-99 (November 2006) at 1174. *See also* Manning (2009) at 34 and 38.

[91] Manning (2009) at 38.

[92] Manning (2009) at 39.

achievements, modest as they are? To calibrate the post-2015 level of ambition as a linear extension of the past trajectory certainly would certainly appear arbitrary, at the least, and inimical to the case-by-case appraisal of fiscal and policy effort called for in the ICESCR and related instruments. From a human rights perspective it is strongly arguable that ambitious targets are especially warranted for issues like maternal mortality and morbidity, which are, after all, determined more by deeply entrenched discrimination and inadequate political will than resource constraints.[93] Even should we fall short, as is patently the case at present, failure may paradoxically have a virtue in exposing the underlying causes of the problem, mobilising public opinion and political pressure for action. Conversely, from a moral as well as legal standpoint, unduly modest targets may constitute complicity in failure.

Hence, if a post-2015 is to mean anything beyond "business as usual", future determinations of the feasibility of global development targets should not take as a given the reasonableness of past development trajectories. Rather, it should be informed as far as possible by country-specific political economy analyses and quantitative assessments of the measure of progress that is objectively reasonable under particular circumstances. In broad terms, assessments of policy effort can be made in three ways: measuring *behind* (by reference to the past rate of progress), *across* (by reference to the progress being achieved by similarly situated countries) and *within* (an objective assessment national capacities, drawing upon economic modelling, costing assessments, and fiscal space analysis). All three methods have distinctive advantages as well as limitations, and should be used together as far as possible. To rely exclusively upon "measuring behind" (the MDGs method) fails to capture critical changes in national circumstances.[94] Tools to guide these kinds of analysis are already in use, including by certain human rights monitoring bodies. However generating demand for the use of such analyses remains a key challenge: for example, in a review of twenty-two PRSPs in 2008, including countries in which national MDG costing exercises were carried out with the UN's support, *none* of the PRSPs referred to these cost estimates.[95] The increased mobilisation of human rights constituencies, communities and social movements around the subject matter of the MDGs, demanding these as a matter of right, may help to generate both the political will and resources for action.

Finally, as an alternative or supplementary means of monitoring, consideration could be given to monitoring rates of progress suitable to a given country's situation. Recent research by Fukuda-Parr and Greenstein shows how this might be done.[96]

5.7 Integrating non-discrimination and equality across all goals

Since the year 2000, inequality has increased for most countries, for most MDGs. The "equity-blindness" of the MDGs is probably the feature that has provoked the strongest criticism. The global MDGs on their face provide global assessments of human development progress based upon "average" outcomes. To this extent the MDGs may inadvertently occlude analysis of differential outcomes for populations in the upper versus lower income quintiles and the particular barriers faced by women, children, indigenous peoples and minorities, persons with disabilities, and other groups who may

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[93] U.N. Doc. A/HRC/14/39, 16 April 2010.
[94] *See* Edward Anderson & Andy McKay, *Human rights, the MDG income poverty target and economic growth*, Background Paper prepared for the OHCHR Study, *Global Analytical Survey of MDG reports and MDG-related strategies from a human rights perspective*, 2009, pp.3-5.
[95] Manning (2009) at 37.
[96] Sakiko Fukuda-Parr & Joshua Greenstein, *How Should MDG Progress be Measured? Faster Progress or Meeting Targets?* Working Paper No. 63, International Policy Center for Inclusive Growth (May 2010) *available at* http://econpapers.repec.org/paper/ipcwpaper/63.htm.

be discriminated against. Taken literally, the MDGs may easily be achieved in many countries without any effort to reach the most marginalised populations. In the worst cases, this can divert attention disproportionately to the "lowest hanging fruits" and populations that are easiest to reach, thereby exacerbating existing inequalities.

Inequality is first and foremost a moral issue, as well as undermining MDG progress in its own terms. Most people value notions of equity (or fairness) and equality, whether expressed in human rights terms or otherwise. Hence equity, and the goal of substantive equality (not merely formal equality of opportunity, irrespective of the justice of existing conditions) should be at the centre of the post-2015 debate. Non-discrimination and the goal of substantive equality must be integrated more effectively into all goals, and the necessary investments must be made at both national and global levels for the additional data required to be collected, in line with member States' commitments at the MDGs Summit.

Disaggregation by income quintiles and gender, and to some extent age and ethnicity, already occurs through some of the major survey instruments, such as Demographic Health Surveys and UNICEF's Multiple Indicator Cluster Surveys, although these surveys often bypass the growing ranks of people living in informal settlements. The latter deficiencies need to be addressed as a matter of priority, and disaggregated data collected more systematically. Additional grounds of discrimination should be included in line with evidence of where social exclusion is greatest in the sectors corresponding to the MDGs, while taking into account the prohibited grounds of discrimination under human rights treaties.[97] This involves a delicate balance between normative concerns and the statistical feasibility parameters discussed earlier, including reliability and comparability. Data availability is another constraint, although including additional fields for data collection, linked to human rights standards, may help to create national demand for that data.[98]

Of the many grounds of discrimination covered by the human rights treaties, renewed efforts are needed to capture discrimination on the grounds of ethnicity, and ideally also religious or political belief. Patterns of exclusion along ethnic and racial lines have been documented in many countries where MDGs progress is – in aggregate terms – otherwise broadly on track. As Frances Stewart notes, a dearth of international statistics on ethnic exclusion reflects, as well as causes, this lack of focus.[99] These are obviously thorny issues, not helped by the limited guidance from the UN system. Yet Demographic and Health Surveys have included an ethnic variable in fifty-five of the seventy-seven countries covered to date,[100] and many countries in the Latin American, Asian and Oceania regions (less so in Europe and Africa) collect data on ethnicity in their national censuses.[101] The experience in Latin American countries where social and economic inequalities can be extreme shows that disaggregation by ethnicity is possible even in the most egregious situations given minimal political will, although clearly the overall record is crying out for improvement.[102] Disaggregation by regions within a country may offer a viable proxy measure, in some circumstances.

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[97] Committee on Economic, Social and Cultural Rights, General Comment No. 20, Discrimination in economic, social and cultural rights, UN Doc. E/C.12/GC/20, July 2, 2009.

[98] Indeed, this has been the experience of the Joint Monitoring Programme in collecting new data for the global monitoring of water and sanitation targets. Informal communication from the JMP, May 2, 2011.

[99] Frances Stewart, *Horizontal Inequalities as a Cause of Conflict: A Review of CRISE Findings*, World Development Report 2011, Background Paper (20 August 2010), at 5.

[100] Stewart, *Id.* at 5. However Stewart also notes that these surveys lack many relevant variables and are not conducted at sufficiently regular intervals.

[101] *See* United Nations Statistical Division, *Ethnicity: A Review of Data Collection and Dissemination* (August 2003), *available at* http://unstats.un.org/unsd/demographic/sconcerns/popchar/Ethnicitypaper.pdf.

[102] Simone Cecchini & Francesco Notti, *Millennium Development Goals and Human Rights: Faraway, so Close?* 12 J. HUM. DEV'T & CAPABILITIES 121-33 (2011)

Disaggregation by disability is another issue meriting full attention in view of the UN's recent global survey suggesting that more than a billion individuals today experience disability with attendant impacts on health, education achievement, economic opportunities and poverty. Disability disproportionately affects those already poor or otherwise vulnerable, and discrimination is among the drivers for exclusion from economic and social life. Much more is now known about the kinds of legal and policy measures, services and investments to realise the human rights of persons with disabilities. However, lack of rigorous and comparable data on disability and evidence on programmes that work do, to varying degrees, continue to impede understanding and action.[103] The post-2015 development negotiations offer an important opportunity to redress these imbalances and injustices, built on the normative framework of the Convention on the Rights of Persons with Disabilities.

Self-evidently, inequalities in society cannot be adequately addressed on a piecemeal, indicator-by-indicator basis.[104] The constraints of space preclude a full discussion of how to correct equity-related deficiencies in the MDGs and integrate non-discrimination and substantive equality within the post-2015 global monitoring framework. Nevertheless, there is a range of possible approaches to draw from, relating to the design and adaptation of global goals and targets. Fukuda-Parr, for example, has argued for the introduction of an additional goal on reducing inequality within and between countries.[105] Weighting quintile-specific values in a way that rewards progress in the lower income quintiles,[106] and disaggregating by regions or sub-national units, are among the options to be considered. Thailand's MDG-plus framework, for example, adds specific targets for disadvantaged regions in the country. The government of Kenya has set targets for each region in that country to improve water and sanitation access by ten per cent each year. Uruguay has targets for reduction of inequalities by specific percentages for the various MDGs. And Bangladesh has introduced targets corresponding to indicators for depth and severity of income poverty.[107]

Finally, "affordability" is a cross-cutting normative criterion as well as critical enabling factor for many human rights (including but not limited to ESCR), as well as the MDGs.[108] Devising appropriate, reliable and cost-effective methods to assess affordability of basic services across countries should therefore be seen as part of the equity challenge. Taking water and sanitation as an example: the Millennium Summit committed States to "halve the proportion of people who are unable to reach or to *afford* safe drinking water," however the affordability element was dropped by the UN expert group due to its lack of measurability.[109] Recent work on affordability indexes based on household expenditures on water and sanitation as a proportion of household income, with differential benchmarks for developing and industrialised countries, might give inspiration to post-2015 MDG deliberations on this issue,[110] subject to more

[103] WHO and World Bank, *World Disability Report* (2011) at 191-2.

[104] Manning (2009) at 22.

[105] Sakiko Fukuda-Parr, *Reducing Inequality – the Missing MDG: A Content Review of PRSPs and Bilateral Donor Policy Statements*, 41(1) IDS BULLETIN 26, 34 (2010).

[106] Jan Vandemoortele & Enrique Delamonica, *Taking the MDGs Beyond 2015: Hasten Slowly*, 41(1) IDS BULLETIN 60-69 (January 2010) at 64-7.

[107] *See* Malcolm Langford, *A Poverty of Rights: Six Ways to Fix the MDGs*, 41(1) IDS BULLETIN 83 (2010) at 86-7. The value of sub-national targeting is borne out in UNDP's analysis of Thailand's MDGs progress, noting regional and other inequalities: *see* Ellen Dorsey, Mayra Gómez, Bret Thiele & Paul Nelson, *Falling Short of our Goals: Transforming the Millennium Development Goals into Millennium Development Rights*, 28(4) NETH. HUM. RTS. Q. 516 (2010) at 517.

[108] On the constraints of user fees in the context of promoting access to maternal health services, *see* Margaux Hall, Aziza Ahmed & Stephanie Swanson, *Answering the Millennium Call for the Right to Maternal Health: Eliminating User Fees*, 62 YALE H.R. DEVT. L.J. 62 (2009).

[109] Jan Vandemoortele, *The MDG Story: Intention Denied*, DEVELOPMENT & CHANGE 1-21 (2011) at 4. The affordability criterion was retained only indirectly and implicitly in target 7.C's acknowledgement of the requirement for "sustainable" access.

[110] *See* HENRI SMETS, DE L'EAU PORTABLE A UN PRIX ABORDABLE (2008).

rigorous investigations into the validity and comparability of national benchmarks, cross-subsidisation effects, and potentially viable proxy measures.

5.8 Aligning particular global targets with corresponding human rights standards

Aligning and tailoring global MDG targets to duly ratified international human rights treaty obligations, as outlined above, are essential steps towards strengthened accountability for human development outcomes. Contextually relevant targets, established through participatory processes, should be embedded in national plans of action and legal and budgetary frameworks, with clearly defined institutional responsibilities, benchmarks, indicators, and monitoring and redress mechanisms. The conceptual framework for what Yamin has called "transformative accountability" addresses human rights obligations at global, national and local levels, and includes national planning and budgetary processes as well as judicial and informal accountability mechanisms, and is relevant to how we may wish to envision a practical accountability framework for the MDGs and post-2015 development targets generally. "Constructive accountability" mechanisms at the facility level are critical as well in public health and other sectors.[111]

While national and local redress mechanisms will usually (but not always) be most proximate and practically useful, States should more systematically reflect progress towards the MDGs within their national reports to the international human rights treaty bodies and Universal Periodic Review process of the United Nations Human Rights Council, and States which have not yet done so should adhere to the Optional Protocol to the ICESCR in order to permit individual complaints.[112]

In certain cases, the specific formulation of particular MDGs may conflict with or undermine international human rights treaty standards. For example, MDG 2 (universal primary education) omits the requirement that primary education be free-of-charge, in an about-face from previous summit commitments and in defiance of overwhelming empirical evidence on how formal and informal fees reduce school attendance and completion rates.[113] There is an obvious difference between the elimination of school fees as a legal obligation, rather than a matter of good policy. This is not a case of an explicit and direct conflict, however it does at the very least underscore the need to interpret the MDGs in line with corresponding international human rights standards.

Target 7.C has also drawn criticism in this respect. This target commits States to "halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation." All MDGs are to functionally related to varying degrees, and water and sanitation are critical for achieving education, food, health-related and child mortality goals, in particular. The right to water under Article 11 of the ICESCR, as interpreted by the Committee on Economic, Social and Cultural Rights and recently accepted by the U.N. General Assembly and Human Rights Council, includes an

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[111] Alicia Yamin, Towards *Transformative Accountability: Applying a Rights-based Approach to Fulfil Maternal Health Obligations*, 12 SUR: INTERNATIONAL JOURNAL ON HUMAN RIGHTS 95-121, 103 (2010); *and* Lynn Freedman, *Human Rights, Constructive Accountability and Maternal Mortality in the Dominican Republic: A Commentary*, 82 INT'L J. GYNECOLY & OBSTETRICS 111-14 (2003).

[112] For recommendations to this effect *see* Report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Ms. Catarina de Albuquerque, UN Doc. A/65/254, 6 August 2010, and for a more detailed set of recommendations addressed to human rights treaty bodies *see* Philip Alston*, Ships Passing in the Night: The Current State of the Human Rights and Development Debate as Seen Through the Lens of the Millennium Development Goals*, 27(3) HUM. RTS. Q. 755-829 (August 2005) at 821-7; Margaux J. Hall, *Using International Law to Promote Millennium Health Targets*, 28 WIS. INT'L L.J. 74-107 (2010).

[113] UNICEF, *Progress for Children: Achieving the MDGs with Equity*, No. 9 (September 2010) at 34; United Nations, *Millennium Development Goals Report* (2011) at 17; UNESCO, *Education for All Global Monitoring Report: Reaching the Marginalised* (2010) at pp.45, 165-66 & 186-90; Dakar Framework for Action, UN Doc. ED-2000/WS/27, para. 7(ii), *available at* http://unesdoc.unesco.org/images/0012/001211/121147e.pdf.

explicit concern for safety and quality of water, as well as affordability.[114] The Millennium Declaration, in paragraph 19, had referred to halving the number of people unable to access or afford "safe" drinking water. However as with the affordability criterion, the safety criterion was reflected in the title of the target but *not* the indicators which measure only access to an "improved source" (such as a protected well or piped water).

The critical problem with the above formulation is that "improved" sources are not necessarily safe in practice; that is to say, water can be piped into an improved facility from a contaminated source. UNICEF rapid surveys in six countries found that fifteen to thirty-five per cent of "improved" water sources actually contained contaminated water.[115] Moreover, pilot studies by the United Nations Human Settlement Programme (UN-Habitat) show that if other normative components of the right to water are monitored – in particular affordability and regularity of water supply – the true picture regarding water accessibility worsens quite dramatically.[116] Taking the key human rights criteria into account, lack of access to safe water may actually be closer to three billion people rather than the official estimate of 900 million![117]

The United Nation's unduly glowing portrayal of global progress towards "safe" water does no service to these problems and complexities: "Progress to improve access to clean drinking water has been strong. Globally, coverage increased from 77 per cent in 1990 to 87 per cent in 2008. If this trend continues, the MDG drinking water target of 89 per cent coverage will be met—and likely surpassed—by 2015."[118] The report contains some discussion of rural/urban disparities and differential progress by wealth quintile (though nothing on gender-based disparities), however the upbeat headline observations are based solely upon measurements of improved infrastructure rather than whether the drinking water from improved sources is actually safe – or alternatively life-threatening – in practice.

Target 7.D is perhaps the most inappropriately framed and unambitious of all MDG targets, commiting States to "achieve a significant improvement in the lives of at least 100 million slum-dwellers," a mere ten per cent of those living in slums worldwide. UN-Habitat has reported that 227 million people have moved out of slum conditions since 2000; but at the same time, the total number of people living in slums has actually increased during this period, to over one billion in 2005, and 828 million in developing countries alone in 2010. Target 7.D fails to refer to secure tenure, which is the foremost consideration for most people in informal settlements.[119] A number of countries have misinterpreted this Target, or misappropriated the "Cities Without Slums" slogan as the target, and certain countries have even reported on slum clearances as a policy measure to achieve MDG 7.[120] Conscious of these gaps, the United Nations now

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[114] UN Doc. A/Res/64/292, 28 July 2010; *and* A/HRC/15/L.14, 30 September 2010. The ICESCR interprets the right "entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses." *See* General Comment No. 15 (2002), The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2002/11 (2003).

[115] Presentation of Dr. Tessa Wardlaw, Chief, Statistics and Monitoring, UNICEF, "Monitoring Global Goals and Targets on Drinking Water and Sanitation: An Historical Perspective," First Consultation on Post-2015 Monitoring of Drinking Water and Sanitation, Berlin, Germany, 3-5 May 2011.

[116] Virginia Roaf, Ashfaq Khalfan & Malcolm Langford, *Monitoring Implementation of the Right to Water: A Framework for Developing Indicators*, Global Issue Papers, No. 14 (Berlin: Heinrich Boell Foundation, 2005).

[117] Presentation of Mr. Gérard Payen, Chair of the United Nations Secretary General's Advisory Board on Water and Sanitation Monitoring Group, "Access to Water and Sanitation: Indicators to Support Post-2015 Global Goals," First Consultation on Post-2015 Monitoring of Drinking Water and Sanitation, Berlin, Germany, 3-5 May 2011.

[118] United Nations, *Millennium Development Goals Report* (2011) at 53-4.

[119] UN/OHCHR, *Claiming the MDGs: A Human Rights Approach* (Geneva: United Nations, 2008) at 40-42; United Nations, *Indicators for Monitoring the Millennium Development Goals*, UN Doc. ST/ESA/STAT/SR.F/95 (2003), at 68-9.

[120] *See e.g. Viet Nam Achieving the Millennium Development Goals* (August 2005), available at http://www.undg.org/archive_docs/6623-Viet_Nam_Fourth_MDG_Report.pdf, at p.50. *See also* UN/OHCHR, MDGs and Human Rights in Practice: A Review of Country Reporting (2010) at 9; *and* MARIE HUCHZERMEYER, FROM SLUM

encourages States to go beyond MDG Target 7.D in terms of the ambition of their targeting at national, regional and local levels as well as in promoting "access to affordable land with secure tenure and to create the conditions in which people are able to carve out and sustain a livelihood."[121]

But perhaps the most obviously defective Goal on its face is MDG 8 ("global cooperation"), which stands apart as the sole MDG which has no quantifiable, time-bound targets. This bald omission prevents MDG 8 from offering any basis to hold richer countries and donor organisations to account for poverty in poorer countries to which the former may, in particular cases and to varying degrees, bear some measure of moral if not legal responsibility. Moreover, the international commitment towards "fair" trade in the Millennium Declaration was "lost in translation" to the MDGs, with MDG 8 now referring only to "free" trade. This is not to suggest that human rights accountability should categorically swing the way of extra-territorial obligations of donor countries: while some poorer countries are genuinely unable to realise even "minimum essential levels" of ESCR despite good faith efforts, in the great majority of cases governments can and ought to be doing a great deal more for their own populations. MDG 8 can and should not be seen as a get-out-of-jail-card for any country in respect of its international human rights obligations. But the fact that quantitative, time-bound targets are confined to developing countries' obligations – alone – results in a lop-sided "global partnership" for poverty reduction, and a seriously imbalanced framework for global accountability.

5.9 Guarding against extraneous policy agendas

Finally, and perhaps most fundamentally, beyond defective formulations in the global monitoring framework lies the problem that the actual economic and social policies through which States have purportedly pursued the MDGs still appear overwhelmingly to be circumscribed within a long discredited neo-liberal economic growth model. Defying all evidence to the contrary, the global development policy debate remains dominated by the implicit formula: "*faster economic growth + more foreign aid + better governance = MDGs*." The fact that inequality has increased in the majority of countries, for the majority of the MDGs, is, in Vandemoortele's view, "either ignored or dismissed as a passing phase."[122]

In this regard it is sobering to note that global progress towards the MDGs, and the income poverty target in MDG 1.A, in particular, has been driven largely by aggregate gains through economic growth policies in China and India, based upon policies that pre-dated the MDGs. The drive towards higher growth rates is all the more evident in the continuing fallout of the global economic crisis. If growth continues as the dominant policy objective as an end unto itself, without sufficient concern for its complex and contingent theoretical and empirical relationships with inequality,[123] and with insufficient appreciation of the reverse causal relationship between social investments and growth, the recipe for the future might well be increasing global and national inequalities, insecurity and human rights violations.[124]

ERADICATION AND URBAN COMPETITIVENESS TO A RIGHT TO THE CITY IN AFRICA (forthcoming 2011), Chapter 2, "Informal settlements, global governance, and Millennium Goal 7, Target 11."

[121] *See* United Nations, *Millennium Development Goals Report* (2011) at 57.

[122] Jan Vandemoortele, *The MDG Conundrum: Meeting the Targets Without Missing the Point*, 27(4) DEV. POL. REV. 355-71 (2009) at 363-4.

[123] *See e.g.* Andrew G. Berg & Jonathan D. Ostrey, *Inequality and Unsustainable Growth: Two Sides of the Same Coin?* IMF Staff Discussion Note, SDH 11/08, Apr. 8, 2011

[124] On the empirical relationship between group-based inequalities and conflict, *see* HORIZONTAL INEQUALITIES AND CONFLICT: UNDERSTANDING GROUP VIOLENCE IN MULTIETHNIC SOCIETIES (Frances Stewart ed., 2008); and WORLD BANK, WORLD DEVELOPMENT REPORT 2011: CONFLICT, SECURITY AND DEVELOPMENT (2011) at 30, 75-6.

This fact demands special justification for any proposed addition to the global monitoring framework relating to the means, rather than ends, of human development. Both means and ends can legitimately be contested, but only the latter deserve priority in a necessarily parsimonious global monitoring framework. Proposals for free (rather than fair) trade, liberalisation of markets (disregarding middle-income and richer countries' diverse development paths and selective embrace of liberalism in practice), strict intellectual property guarantees (which may have profound human rights contradictions), deserve particularly close scrutiny and public debate. Holding the line on the 2010 MDGs Summit commitment to "respect" international human rights law in MDG policy should be a minimum requirement, to ensure greater coherence between human rights and development, trade, investment and environment policy. Human rights impact assessments, integrated with environmental and social impact assessment processes, are necessary for policy coherence, as an input to (rather than substitute for) public debate and policy space at the national level.

Questions for Session 9:
What should be the overall objectives of the post-2015 framework? What process of consultation should be followed towards the new global agenda? Which baseline year should be selected for monitoring? How broad should the post-2015 monitoring framework be and which issues is it essential to include? How should we guard against limits and risks of quantification? How should targets take into account resource availability? How could inequality be more centrally and transversally addressed in the new framework? How can targets be better aligned with corresponding human rights standards? How to guard against extraneous policy agendas in the process of constructing the post-2015 framework? What would be our accountability redlines in view of the resistance by member States to additional reporting 'burdens'?