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ABSTRACT

The Millennium Development Goals (MDGs) are the most prominent initiative on the global development agenda and have a great deal in common with human rights commitments. But neither the human rights nor development communities has embraced this linkage with enthusiasm or conviction. This article explores the reasons why the two agendas resemble ships passing in the night, even though they are both headed for very similar destinations. The empirical evidence examined includes analyses prepared by a range of human rights NGOs, the MDG National Plans adopted by many developing countries, and the relevant analyses undertaken by UN human rights treaty bodies and special rapporteurs. The author calls upon the human rights community to engage more effectively with the development agenda, to prioritize its concerns rather than assuming that every issue needs to be tackled simultaneously, and to avoid being overly prescriptive.

I. INTRODUCTION

The Millennium Development Goals (MDGs) have become the single most important focus of international efforts to promote human development and

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dramatically reduce poverty.¹ The MDGs derive from the Millennium Declaration, a statement adopted by the UN General Assembly in 2000 at a special meeting attended by 147 heads of state or government.² The Goals were intended not only to mark the coming of the second millennium, but also to set out a strategic vision for the United Nations to pursue for the first part of the twenty-first century and to breathe life into efforts to realize a number of fundamental goals that had been endorsed by a series of world conferences over the preceding decade or more. For all the time and effort invested in those conferences, too little had been achieved in concrete terms for the poorest members of society and the MDGs were designed to remedy that failure.

In brief, the eight MDGs aim to: (1) eradicate extreme poverty and hunger; (2) achieve universal primary education; (3) promote gender equality and empower women; (4) reduce child mortality; (5) improve maternal health; (6) combat HIV/AIDS, malaria, and other diseases; (7) ensure environmental sustainability; and (8) develop a global partnership for development. In order to make these goals more precise and their achievement more measurable they have been accompanied by eighteen targets and forty-eight indicators. The Goals and targets are reproduced in Appendix 1 below.

In several respects the MDGs represent a major departure from previous efforts to set development objectives, and these differences help in part to explain why the Goals have succeeded in capturing both the imagination and a great deal of the energy of the international development agencies, as well as the governments of many developing countries. First, the Goals are limited and selective and thus prioritize certain objectives over the many others endorsed every year by the international community. Second, they are deliberately designed to be measured and thus to provide a basis for accountability. Third, they are time-bound, thereby bringing greater precision to goals that might otherwise be said only to be subject to “progressive realization.” Fourth, an extensive institutional apparatus has been set up to promote them. It includes: (a) the Millennium Project, a large network of policy-makers, practitioners, and experts led by Professor Jeffrey Sachs as Special Adviser to the Secretary General;³ (b) the Millennium Campaign which seeks to mobilize a wide range of civil society actors;⁴ (c) efforts to

¹ UN Millennium Development Goals, available at www.un.org/millenniumgoals/ [hereinafter MDGs].
produce National MDG Reports in every developing country;\(^5\) and (d) highly focused efforts by virtually every major international development agency. Finally, under the relatively innocuous heading of developing “a global partnership” (Goal 8) the MDGs hold out the incentive that the industrialized countries will provide significant additional resources to developing countries in return for concerted efforts by the latter to meet the MDGs within their own countries.

In a recent assessment, UN Secretary General Kofi Annan asserted that the MDGs have “transformed the face of global development cooperation” and have “generated unprecedented, coordinated action” on the part of the United Nations, the World Bank, the International Monetary Fund, the major donors of international development assistance, and the developing countries at which the Goals are targeted.\(^6\) A rather more skeptical view was expressed by the Economist magazine. While it conceded that “discussion among governments about aid and development has been completely reordered by the MDG initiative,” it went on to observe that “[h]igh-level conferences, working groups, declarations, strategies and programmes, all swearing allegiance to the MDG idea, are multiplying fantastically. In this sense, at least, the concept is a runaway success.”\(^7\)

The starting point for the present article is the proposition that the MDG initiative is of major relevance for human rights. This conclusion follows from a range of considerations. In the first place, the broader international legal framework of human rights featured prominently in the Millennium Declaration itself, although not in the specific Goals. As noted in the analysis that follows, a good deal has been written about the importance of ensuring both that the MDGs are implemented in a human rights sensitive manner and of using human rights norms and techniques as means by which to promote the Goals. Moreover, a vast amount of energy and resources are being devoted to the campaign, which has indeed reordered priorities across the development spectrum. If human rights are not seen to be part of that agenda, the rhetoric of the past couple of decades about the integration or mainstreaming of human rights into development efforts will have come to little.

The MDG initiative is also particularly important in human rights terms because it provides an ideal lens through which to assess the current state of

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5. These reports are described in detail below. See infra notes 127–52 and accompanying text.
7. Ends without Means, ECONOMIST, 11 Sept. 2004, at 90. The article focuses mainly on the fact that the proclamation of the MDGs was not accompanied by the provision of the funds needed to meet them. It concludes that it is questionable “whether the MDG exercise, with its unimpeachably good intentions and its proliferating bureaucratic overhead, has done any good at all, on balance.” Id.
the ongoing debate over human rights and development, including the right to development. More specifically it provides a valuable opportunity to evaluate the extent to which the international development and human rights communities have taken one another’s priority concerns on board in their own work. There are several reasons why it is ideal for this purpose. First, the MDG and human rights agendas overlap very considerably, although we need to evaluate critically the nature of that overlap. Second, there are now many national MDG reports and an extensive number of international development agency analyses detailing state practice in this area. Third and last, there has been a significant degree of engagement on the part of NGOs and other actors in the human rights field with the MDGs.

The UN General Assembly has scheduled a major review of the successes and failures of the MDGs to take place at the end of 2005. This also provides an important occasion on which to ensure that the human rights dimension of the initiative is carefully considered. For, at the end of the day, if the human rights agenda is unable to make a significant impact on the content and shape of an MDG initiative that has been declared to be determinedly human rights friendly, there is no reason to believe that it will be able to penetrate any other aspect of the overall development agenda very effectively.

After discussing the relevance of the MDG initiative to human rights, the article then explores many of the human rights critiques that have been made of the MDGs initiative. These focus on issues such as the perceived technocratic nature of the process, the limited goals that are set, the lack of a full human rights framework especially in relation to civil and political rights, a failure to address the private sector, the perception that a commitment to the MDGs would absorb too much of the time, energy, and resources currently devoted to human rights campaigns, and inadequate monitoring and follow-up. The analysis argues that most, if not all, of these criticisms can be dealt with adequately within the MDG framework.

This article next examines the legal status of the MDGs, and particularly the claim that they reflect customary international law and are thus binding on all governments. Linked to this is the complex and controversial issue of whether Goal 8 implies some form of international legal responsibility on the part of industrialized countries to finance the meeting of MDGs in poor countries. It then considers the relationship between the MDGs as currently promoted and the two sets of human rights. It argues that the civil and political rights dimension has been largely neglected. In relation to economic, social and cultural rights, it tackles the controversial issue of whether poverty is, per se, a human rights violation. It then turns to look at the role accorded to human rights in reporting on the MDGs and contrasts the dramatic difference between the theory, as represented by some of the
major UN system reports, and the practice as illustrated by the great majority of national MDG reports.

Against this background the article tackles the two major issues of how the MDG process can be made more human rights aware and how the human rights framework can enhance the effectiveness of the MDG initiative. It begins with a critique of existing human rights based approaches and calls for a significant modification in the way such approaches should be formulated and pursued, at least in the MDG context. Finally, the article notes the new emphasis on accountability in development literature and sets out ways in which the international human rights machinery, including the UN Commission on Human Rights and the principal treaty monitoring bodies, could make a major contribution to the realization of the MDGs.

II. THE RELATIONSHIP BETWEEN THE MDGS AND HUMAN RIGHTS

An initial question concerns the nature of the relationship that exists between the principles and processes reflected in the MDG initiative and those contained in international human rights law. A range of alternative propositions might be put forward: (i) they are entirely consistent with one another; (ii) they are potentially complementary; (iii) they are not necessarily inconsistent; (iv) they are duplicative; or (v) they actually represent competing alternatives. Support for each of these characterizations can be found in the now burgeoning literature.

The Human Development Report 2003 (HDR 2003) made the case for the first option: The Millennium Development Goals not only “mirror the fundamental motivation for human rights,” but they also “reflect a human rights agenda—rights to food, education, health care and decent living standards.”8 The UN High Commissioner for Human Rights also reported in 2002 that “[t]he strategies to reach the Millennium human rights goals and the Millennium development goals reinforce and complement each other.”9 In her view, “[m]ost if not all of the strategies to achieve the [MDGs] operate within a human rights framework.”10

Indeed it is often assumed that the MDGs and human rights are not just significantly overlapping and mutually reinforcing, but fully compatible and

10. Id.
complementary. They are seen as a natural fit, driven by the same objectives, using very similar means, facing common obstacles, and relying on closely related constituencies and political dynamics in order to make progress. As Selim Jahan stated, the MDGs “are solidly anchored, both in terms of substance as well as process, into human rights.”

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

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

The response to the MDGs on the human rights side has not been perfect either, as detailed below. The MDGs have drawn remarkably limited attention in the context of either the UN General Assembly’s deliberations on human rights matters, or those of the UN Commission on Human Rights.

14. See infra notes 127–52 and accompanying text.
While some of the latter’s Special Rapporteurs have made occasional reference to the MDGs, their focus has been neither systematic nor sustained, and none of them has sought to make strong use of the Goals as a basis for his or her work. The human rights treaty monitoring bodies have also paid only scant attention to the MDGs, and human rights NGOs, while not hostile, seem to have been wary of them. The major NGOs have acknowledged their existence but done little more. Thus, for example, the Secretary General of Amnesty International observed in her foreword to the organization’s Annual Report 2004 that “there is a real risk that the targets of UN Millennium Development Goals . . . will not be achieved because international attention and resources have been diverted to the ‘war on terror.'” Many women’s rights groups have engaged directly with the MDGs, but a significant number has also expressed strong reservations about the desirability of full engagement. Children’s rights groups have generally failed to make systematic use of the MDGs, although an increasing number of critiques of the Goals from a children’s rights perspective is starting to emerge.

The result of the limited convergence between the agendas of those dealing with the MDGs and those dealing with human rights is that while a potential commonality of interest has been acknowledged, not enough has yet been done in concrete terms to explore the exact nature of the relationship. From the perspective of the human rights community this amounts to a major missed opportunity given that the realization of the MDGs is arguably the single most important and pressing initiative on the international development agenda and that there are a great many possible points of mutual reinforcement. From a development perspective it is equally problematic given the extent to which the MDG agenda could be promoted in the context of the multifarious activities undertaken at both the domestic and international levels to encourage respect for human rights. Yet there are obvious synergies and commonalities of interest between the two, and there is potentially much to be gained if progress can be made towards identifying an acceptable modus operandi.

In this regard, the conclusion reached by the Human Development Report 2000 (HDR 2000) remains entirely apposite to the MDG/human rights relationship:

Human development and human rights are close enough in motivation and concern to be compatible and congruous, and they are different enough in strategy and design to supplement each other fruitfully. A more integrated

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approach can thus bring significant rewards, and facilitate in practical ways the shared attempts to advance the dignity, well-being and freedom of individuals in general.\textsuperscript{17}

III. HUMAN RIGHTS CRITIQUES OF THE MDGS

The appropriate starting point is to recognize that, on both sides of the MDG/human rights divide, various reasons have been put forward for maintaining a large degree of separation between the two agendas. Thus if opportunities for synergy are to be identified one must begin by recognizing the obstacles that exist. This in turn enables the design of a strategy that responds to, and seeks to take account of, at least some of the concerns.

A. Essentialist Critiques of the MDGs

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

Another essentialist critique has been advanced by those who believe


\textsuperscript{18} See Thomas Pogge, Global Justice and the First UN Millennium Development Goal, Evening Address at the University of Oslo Global Justice Symposium (2003), available at www.etikk.no/globaljustice.


\textsuperscript{20} Pogge, supra note 18.
that the setting of goals such as the MDGs is not only wholly unrealistic in terms of international experience to date but is positively counter-productive in the sense of giving rise to false hopes and expectations that will inevitably be dashed. The latter critique is leveled also against human rights and has a rather distinguished pedigree starting with Edmund Burke’s famous critique of the French Revolution for encouraging the common people to erroneously believe that they had rights that did not exist.21 Maurice Cranston’s critique of economic and social rights, first published in the 1960s, runs along similar lines. In his views such matters cannot be the subject of human rights because “[f]or a government to provide social security . . . it has to have access to great capital wealth. . . . The government of India, for example, simply cannot command the resources that would guarantee each Indian an adequate standard of living.”22 It is somewhat ironic in this context that the first MDG might in fact be met on a global basis precisely because of the progress made towards poverty alleviation by India and China.23

Several authors have used comparable arguments to criticize the MDG focus on time-bound universal targets. Clemens, Kenny, and Moss, for example, have warned that the MDGs could end up “undermining the cause by overreaching on the targets and over-selling the efficacy of aid,” by “making the perfect the enemy of the good,” and by “creating a climate of inaccurate pessimism about development and aid.”24 The critique rests on several concerns. One is that many countries are bound to fail to meet the Goals because of their ambitious nature and that, as a result, “[s]ome governments pursuing wise policies and making historically encouraging progress on development indicators could be weakened or delegitimized by the label of ‘failure’ in 2015.”25 Another is that countries that do not receive the scale of aid called for can pass the buck for the failures attributable to their own poor policies. Finally, failure could “undermine constituencies throughout the developing world for necessarily slow but essential reforms toward transparency, accountability, rule of law, and meritocracy.”26 The

24. Id. at 5, 28, 30.
25. Id. at 29.
26. Id. at 30.
authors conclude that the MDGs should be treated not as genuine time-bound targets but as “reminders of the stark contrast between the world we want and the world we have,” or in other words simply as a way of keeping the crisis of world poverty in the headlines.27

In some respects the critiques represented by Pogge on the one hand and Clemens, Kenny, and Moss on the other, might be seen to cancel one another out. The first points to a criminal lack of ambition within the Goals that tolerates continuing neglect, while the second argues that gradualism is the only way to proceed and that reminding governments and others of the extent to which they are neglecting the fundamental needs of their citizens is potentially counterproductive. From a human rights perspective, Pogge is correct in insisting that governments should be held to the standards reflected in their international human rights obligations, although the dimension of resources cannot be left out of the equation. Clemens, Kenny, and Moss are correct in pointing to the potential disillusionment that will follow if the MDGs make little or no difference to the status quo despite efforts to depict them as being fundamentally different from all of the previous broken promises made by governments in international development fora. But of course that is precisely the point of the MDGs. They represent a quest to achieve what has not been achieved before, to transform expectations and results by virtue of a concerted, focused, mobilizing campaign at all levels aimed at addressing the intolerable poverty and misery that has been permitted to persist for so long.

B. Human Rights Based Critiques of the MDGs

In addition to these criticisms, a range of human rights specific critiques have been put forward. The following survey is designed to give a brief overview of the objections that have been raised.28 Some are clearly more significant than others and an attempt to respond to those follows below.

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27. Id. at 1.
1. Processes of Adoption

- The MDG process is a top-down rather than a grassroots effort—it is, in effect, an imposition by governments acting through the UN General Assembly.

2. Content

- The MDGs do not contain any particular focus on rights, thus effectively sidelining rights as though they were a marginal or token issue.
- From a human rights perspective the MDGs are problematic because of their selectivity, which also involves the exclusion of certain rights.
- The MDGs' preparedness to settle for half measures (e.g. halving poverty, instead of eliminating it) is incompatible with the human rights commitment to the right of every individual and the need to seek comprehensive solutions.
- The MDGs represent a one-size-fits-all prescription, and are not tailored to the specific needs of individual countries.
- The MDG definition of poverty is too narrow, and its emphasis on specified goals takes poverty out of its broader context.

3. Focus

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

4. Relationship to other Initiatives

- MDGs are superfluous because the adoption of the alternative framework of a rights based approach to development would take care of all of the issues.
- The MDGs process will be used by governments and donors to distract attention from the real human rights issues.
- The MDGs compete with other frameworks through which NGOs and civil society are already working effectively, such as the Beijing follow-up.
The MDGs framework does not address private actors, including transnational corporations, which often have a major role to play in MDG satisfaction or nonsatisfaction.

5. Monitoring and Follow-Up

- The MDGs do not provide for any in-depth analytical review of progress achieved or of shortcomings.
- Devoting time to the MDGs will distract energy and resources away from existing human rights mechanisms.

C. Responding to the Critiques

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

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

Another general observation prompted by many of the criticisms is that many of the critics tend to view existing human rights arrangements through rose-colored glasses, rather than recognizing that the human rights framework actually shares a number of weaknesses, as well as strengths, with the MDG framework. In many cases the effort required is to strengthen both rather than to sing the praises of the former and then reject the latter as being inadequate. Several examples are pertinent in this regard. The suggestion that the MDG process is a top-down rather than a grassroots one is true in some respects, but equally it is true of the human rights that were first proclaimed in 1948 by the UN General Assembly in the UDHR.29 Similarly some of the criticisms of the shortcomings of arrangements to monitor and promote the MDGs risk overstating the effectiveness of the human rights monitoring system, despite the obvious shortcomings that the latter continues to manifest. On the other hand, the MDG process, for all its non-treaty based informality, has a number of strengths that should not be underestimated, including the possibility of significant domestic constituencies and the potential to mobilize groups such as international donors and multilateral agencies that have scarcely engaged in the human rights enterprise. Finally the allegation that the MDG project reflects a one-size fits all approach can be leveled equally well against the aspirations of a universalist human rights regime. Other various problems that the two approaches have in common include the risk of misuse or manipulation by governments acting in bad faith and the challenge presented by the privatization of human rights. The latter is of sufficient relevance to warrant detailed attention below.30 Whatever their strengths and weaknesses, both frameworks need to identify ways of tailoring and adapting what they have to offer, while not trading off the essentials.

D. The Privatization of Rights

As one author has noted critically in relation to the MDGs, “the identifying of MDGs relating to universal primary education, and maternal and child

29. UDHR, supra note 12.
30. See infra III(D).
mortality in an environment in which these very services are being eroded by a combination of privatization and removal of subsidies . . . seems rather ironic.31 But this objection can be made equally of both the MDGs and of the human rights arena, at least to the extent that no attempt is made to ensure both that the state retains certain responsibilities in relation to public functions and to encompass in some way the activities of private actors. The issue of privatization is of major relevance, and its implications have been recognized in the MDG context. Humphreys and Varshney have recommended in relation to conflict situations that specific measures be taken to address the major role played by the international private sector.32 The policy priorities they recommend in relation to the MDGs are: (i) to make MDG-related development financing conditional upon respect by the recipients of guidelines for corporate action, in particular the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (UN Norms)33 put forward in 2003 by the U.N. Sub-Commission on the Promotion and Protection of Human Rights; (ii) to establish a "monitoring and research unit" within the framework of the UN Global Compact initiative;34 and (iii) to legislate for mandatory disclosure of payments to governments made by corporations involved primarily in the exploitation of natural resources.35

While it is indeed essential to focus on the role of the private sector, it is unlikely to be sufficient to do so only to the extent that corporations are, or might be, involved in conflict zones. Much of the critique of privatization concerns the power now wielded by private actors exercising what were once seen to be public functions such as running schools, prisons, water, gas and electricity companies, public transportation, or even welfare services. These settings are often exclusively national and may or may not involve conflict. Even when directed specifically at the challenge of responding to conflict situations, it will be necessary to have a set of policy recommendations that are of more general application and that address the

31. Sunila Abeysekera, Development and Women’s Human Rights, in SEEKING ACCOUNTABIL-
   ity, supra note 28, at 6, 7.
32. Macartan Humphreys & Ashutosh Varshney. Violent Conflict and the Millennium
    Development Goals: Diagnosis and Recommendations 32 (Paper prepared for the
    meeting of the Millennium Development Goals Poverty Task Force Workshop, Bangkok
33. Norms on the Responsibilities of Transnational Corporations and Other Business
    Norms].
34. For general information about the UN Global Compact Initiative, see the Global
    Compact website, available at www.unglobalcompact.org/Portal/.
35. Humphreys & Varshney, supra note 32.
crucial issues of why, when, and how the private sector can be held directly accountable. Moreover, there are various specific measures that might be more appropriate in conflict situations, such as the invocation of the international criminal responsibility of corporate employees and arguably of the corporations themselves in situations involving war crimes or crimes against humanity. 36

Finally, policy prescriptions that seek to build on both the UN Norms and the Global Compact will need to explain how they aim to reconcile what are generally seen as competing or alternative policy approaches. In this regard the Global Compact is seen as being determinedly voluntary in nature, respectful of the unique role of the private sector and of the characteristics that distinguish it from the public sector, and as not seeking to impose any mandatory accountability per se on the private sector. The UN Norms are, for the most part, a response to what was seen as the inadequacy of such approaches. They are premised upon the assumption that human rights obligations can be imposed directly upon corporations, that some form of monitoring is indispensable, and that consequences, whether civil or criminal, ought to attach to failures to respect any of the Norms.

In the human rights framework, an effective response to the growing role of the private sector in relation to activities impinging upon the realization of the MDGs would involve several different elements. The first is an insistence upon the state as the actor with ultimate responsibility for ensuring respect for human rights. The Human Rights Committee has recently outlined the legal dimensions of this strategy in its General Comment No. 31. 37 It began with the proposition that while the International Covenant on Civil and Political Rights (ICCPR) 38 cannot “be viewed as a substitute for domestic criminal or civil law,” states’ obligations nevertheless require them to protect individuals “not just against violations of Covenant rights by [state] agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons


or entities." The latter qualification is of major importance and leaves open to debate the extent to which certain rights are indeed amenable. The Committee then goes on to offer a potentially more flexible version of a well-established and much cited approach according to which acts violating the Covenant would be characterized as violations by the state in circumstances in which the latter had permitted or failed "to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities." The Committee also recalled several provisions of the Covenant that explicitly impose "positive obligations on States Parties to address the activities of private persons or entities." Amongst these it included "fields affecting basic aspects of ordinary life such as work or housing [in which] individuals are to be protected from discrimination." In other words, states are required to do their utmost to ensure that private actors do not violate human rights, but the Committee is not prepared to go so far as to say that, in the absence of effective action by the state, international law imposes direct obligations on private actors such as private health care or water service providers, or transnational corporations. This may well prove to be an overly cautious approach in the years ahead as efforts evolve to ensure that such private actors are able to be held to some form of direct accountability where there is no effective alternative.

IV. COMPARING THE MDGS WITH HUMAN RIGHTS

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

40. Id.
41. Id.
42. Id.
A. The Legal Status of the MDGs versus that of Human Rights

One of the most important techniques by which innovative approaches become part of international law is through the evolution of customary international legal norms which, although usually not codified in treaty form, have become sufficiently widely accepted in practice that they are arguably binding upon governments despite their original intent not to bind themselves. At first glance it would seem relatively easy to make the case that the aim of ensuring that the MDGs are met within their respective time frames has assumed the status of a binding obligation upon governments by virtue of the fact that they have reiterated the commitment so frequently and on so many solemn occasions. When large numbers of heads of state or government congregate together, along with foreign ministers and other dignitaries, and solemnly declare their abiding commitment to meet a set of MDGs—as they did in the context of the 2000 Millennium Declaration, 43 and again at both the Johannesburg World Summit on Sustainable Development 44 and the Monterrey Consensus, 45 each in 2002—there would seem to be good reason to assume that they meant what they said and that they had thereby undertaken a form of obligation that should have some legal consequences. This, after all, is the trajectory that many commentators argue occurred in relation to the UDHR, 46 adopted on the agreed basis that it did not generate any legally binding obligations, and then claimed by many some decades later to have attained the status of customary law as a result of having been so consistently endorsed and invoked by governments of every kind. 47

It is not surprising therefore that Nankani, Page, and Judge have suggested in a recent analysis that the MDGs “arguably have the status of international customary law.” 48 Before endorsing that position it is salutary to recall that the equivalent claim when made in relation to the Universal

43. Millennium Declaration, supra note 2.
46. UDHR, supra note 12.
Declaration as a whole rather than to a limited range of its component rights is contested by many scholars and not widely endorsed by governments. Perhaps, however, the MDGs are different, in the sense that their universality, their content, and their priority are not contested and in any event the aim is only to assist governments to achieve what they have said is in their own interests. Ironically the view that the Goals are binding has been put forward most vigorously by some of the private groups that are hostile to the UN and to what they see as its ambitions towards world government. In their view, the MDGs have been "automatically [incorporated] into international law" as a result of the signature of the Millennium Declaration by 152 heads of state. The result is said to be to "give the UN all the authority it needs to move ahead and implement all of the changes that are included in the Declaration that do not require a change in the UN Charter."50

There are several questions that need to be considered in this connection. The first is whether the various affirmations of the MDGs by governments appear to satisfy the criteria required for a norm to become a part of customary law. The criteria are consistent state practice combined with opinio juris or an intention to be bound on the part of governments following the norm. Although a number of human rights norms are widely agreed to have achieved this status,51 the difficulty of applying the traditional criteria in order to evaluate the status of human rights norms has frequently been pointed out.52

According to Christian Tomuschat "[t]his list of rights and/or forbidden acts and activities," which in his view includes the right to life, the prohibition of torture, the protection of personal freedom, and the prohibition of racial discrimination, "is not so much based on actual stock-taking of the relevant State practice but rather on deductive reasoning: if human life and physical integrity were not protected, the entire idea of a legal order


50. Id.

51. In a famous judgment, the International Court of Justice cited the prohibition of genocide, protection from slavery and racial discrimination as examples. Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain) 1970 I.C.J. 3, ¶ 34 (5 Feb.). This list was subsequently expanded in the American Law Institute, Restatement of the Law Third: The Foreign Relations Law of the United States, vol. 2, at 161, ¶ 702 (1987), which lists the prohibitions of genocide, slavery or slave trade; the murder or causing the disappearance of individuals; torture; prolonged arbitrary detention; systematic racial discrimination, or a consistent pattern of gross violations of internationally recognized human rights.

would collapse."53 If this test, which is by no means widely accepted, were applied then many of the MDGs could certainly be argued to be essential to the protection of human life and physical integrity and would thus qualify as customary norms.

The problem remains, however, that neither Tomuschat nor the other principal authorities in this area,54 include any economic and social rights per se in their lists of customary norms. While the right to life has sometimes been interpreted as embracing such rights,55 few courts or international human rights bodies have been prepared to follow the logic of such reasoning. This conservative approach has been defended mainly on the grounds that the right to life was intended to deal with direct rather than indirect threats to life and that the indirect threats such as hunger or lack of medical care were dealt with under the rubric of other rights such as the right to food. As the MDGs relate most closely to economic and social rights, most commentators would conclude that because the latter have not become part of customary law, the former could not have either. In seeking to rebut the customary law claim, governments, which are always keen to avoid legal obligations in such matters, could be expected to emphasize the second, and equally important, element in the formation of customary law. Thus, they would say, even if it could be argued that the first element is satisfied by the practice generated by the three Declarations cited above, followed by a slew of other UN General Assembly, Economic and Social Council and other resolutions, it is not clear that these commitments have been made with the requisite intent to be bound (opinio juris).

Still, there are strong arguments that can be made in favor of a more progressive analysis. In the first place, the content of the MDG norms is much more limited than that of economic and social rights and there are good reasons for arguing that it is the actual or potential expansiveness of those rights (the right to an adequate standard of living, or the right to social security, for example) that deter governments from acknowledging their customary law status. By insisting on what is truly a bare minimum selection of those rights, the approach would be in line with what has occurred in relation to civil and political rights—the more expansive and broad-ranging of these rights are generally assumed not to be part of customary law, while a narrow core has taken on that status. In the second place, it can be argued

that the MDGs have been affirmed, reiterated, and restated in ways and forms and with greater frequency and insistence than economic and social rights have ever been. For all the normative strength that economic and social rights derive from the various treaty provisions that address them, it cannot be denied that parts of that corpus of rights continue to be the subject of strong resistance on the part of many governments, at least in practice. The MDGs on the other hand have been endorsed in an endless array of policy documents adopted not only at the international level but in the policies and programs of the national governments to whom they are of the greatest relevance.

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

On the basis of such an analysis it is submitted then that at least some of the MDGs reflect norms of customary international law. A more detailed analysis is beyond the scope of this article, but it can be observed that the case would be most easily made in relation to the first six of the Goals, and parts at least of the seventh would also be strong candidates. The greatest resistance would come in relation to the eighth Goal, that calling for the “development of a global partnership for development.” In so far as the

56. Tomuschat, supra note 53, at 35.
57. MDGs, supra note 1, Goal 8.
official development assistance (ODA) and related commitments are concerned, developed country governments would be expected to resist strongly any suggestion that there are specific obligations enshrined in customary international law. Consideration is thus given to the status of claims relating to the internationalization of responsibility for the fulfillment of the MDGs.

B. The Internationalization of Responsibility

It is suggested with increasing frequency that responsibility for meeting the MDGs should be internationalized. As a result, third states that have not entered into any specific arrangement with a given developing country would nevertheless have some type of obligation to provide resources or other forms of assistance to that country if the latter could show that despite its own concerted good faith efforts it has been unable to meet the Goals. Such a link has been suggested in many of the proposals surrounding the MDGs, and much of the debate at the international level has indeed been premised on the assumption that the international community, the United Nations, and perhaps the Bretton Woods Institutions, or donor countries would step in and provide assistance in such circumstances. The question for present purposes, however, is whether it can be argued that this responsibility has risen to the level of an international obligation. As in the previous section of this article, the argument needed to sustain such a claim would proceed on the basis that a customary law obligation of this kind has emerged. Indeed if one accepts that at least some parts of the first seven Goals have achieved that status, it would follow in many respects that the eighth Goal is also a strong candidate, especially in light of the existence of an international duty to cooperate, as enshrined in the UN Charter and elsewhere.

This theme has been pursued in recent reports. An expert report prepared for the Office of the High Commissioner for Human Rights, entitled Draft Guidelines: Human Rights Approach to Poverty Reduction Strategies, identifies one of the features of a human rights approach to be “that responsibility for poverty reduction becomes a universal obligation.” In addition the HDR 2003 has noted that “Human rights carry counterpart obligations on the part of others” and, after citing Article 28 of the UDHR and Article 2 of the International Covenant on Economic, Social and

58. See supra notes 51–57 and accompanying text.
Cultural Rights (ICESCR),60 suggests that they establish "the counterpart obligations of governments and other actors to contribute to their realization."61 Three sources of an international obligation to cooperate are usually cited: (1) the general undertaking given in the UN Charter,62 (2) Article 28 of the UDHR, which provides that "[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized,"63 and (3) the reference in Article 2(1) of the ICESCR to states’ parties obligation "to take steps, individually and through international assistance and co-operation."64 On these bases, it is argued that wealthy countries are obligated to support those countries lacking the resources necessary to satisfy the economic and social rights of their own citizens. Arguments that wealthy governments are thus left with no choice but to distribute large quantities of aid to other governments, whether they would choose to do so or not, have also surfaced from time to time in the debates over the right to development. In this context the MDGs assume a special significance.

It is perhaps not surprising that some of the industrialized countries, and especially the United States, have made a point of rejecting such suggestions. The United States has warned, for example, that economic and social rights "will not be achieved through shifting blame from a country's government to the international community."65 In other words, such rights do "not give rise to international obligations, . . . nor [do they] diminish the responsibilities of national governments toward their citizens."66 Concern that the obligation to cooperate would be extremely costly for a wealthy country such as the United States has been around at least since the US Senate Committee on Foreign Relations held hearings on the ICESCR in 1979. At these hearings, Phyllis Schlafly asserted that, if ratified, the Covenant "would obligate us to take steps by all measures, including legislation, to distribute food all over the world and to finance a rising standard of living" for other nations.67

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61. HDR 2003, supra note 8, at 28.
63. UDHR, supra note 12, art. 28.
64. ICESCR, supra note 60, art. 2(1).
Despite the concerns expressed by some governments, it must be emphasized that no UN body, nor any group of governments, has accepted the proposition that any given country is obligated to provide specific assistance to any other country. Moreover, the persistent rejection of such a claim by developed countries, and the failure of even the most generous of donors to locate their assistance within the context of such an obligation, would present a major obstacle to any analysis seeking to demonstrate that such an obligation has already become part of customary law.

The nature of any obligation that could reasonably be argued to have emerged from the various commitments to cooperate internationally is, at best, a generic one that attaches to the undifferentiated international community. One illustration of this approach is the proposal emanating from the UN Commission on Human Rights' former Independent Expert on the Right to Development, Arjun Sengupta, in which he proposes that "development compacts" would be drawn up between developing countries and an unspecified and presumably largely self-identified group of donors.68 As long as the former fulfilled their rights based commitments to the best of their ability and capacities, the latter group would undertake to mobilize the necessary resources. Thus, a given country would propose a program outlining both what needs to be done overall and what the country itself can achieve, while a "support group" would "examine the obligations specified and decide on burden-sharing among the members of the international community" to provide the needed assistance.69 The scheme would enable the developing country, once it had satisfied its own commitments, to invoke certain "callable commitments" which would have been made in advance and made dependent upon the required progress by the government concerned.70

It should be noted, however, that the emergence of a growing international consensus around the MDGs provides a strong argument in favor of revisiting this debate in the years ahead. This is a logical consequence of the


emphasis within the MDG context on the mobilization of resources and the need to ensure that countries that are authentically committed to achieving the Goals and have done all within their power to do so will be provided with the additional resources necessary to enable them to meet the MDGs. At some point, the reiteration of such commitments in documents such as the Millennium Declaration,\textsuperscript{71} the Johannesburg World Summit on Sustainable Development,\textsuperscript{72} and the Monterrey Consensus,\textsuperscript{73} will provide a strong argument that some such obligation has crystallized into customary law. It will be difficult for countries to insist that they have persistently objected to such an evolution if they continue to affirm in so many contexts their commitment to assisting developing country governments to achieve targets as tangible and clearly achievable as the MDGs. The correlative obligation would, of course, be confined to situations in which a developing country had demonstrated its best efforts to meet the Goals and its inability to do so because of a lack of financial resources. At that point it would have a plausible claim against the wealthy countries as a group and the argument would be that each of the latter would at least have an obligation to ensure that the assistance required is forthcoming, whether from one country acting alone, from a group of like-minded countries, or from an institutional fund identified by those countries for that purpose.

At the end of the day, however, it must be conceded that progress toward agreement on the part of scholars that such an obligation has emerged is unlikely to have significant practical consequences. This obligation must also be proved through the actual practice of donor countries. One important and useful step in that direction would be for the industrialized countries to provide clear reciprocal undertakings, which will indeed ensure the mobilization of assistance when certain conditions are met and which would subject such undertakings as are given to a sustained system of monitoring and evaluation of the type that developing country governments are expected to accept in relation to the Poverty Reduction Strategy (PRS) initiative,\textsuperscript{74} and in some ways, under the MDG initiative.

C. The Role of Civil and Political Rights within the MDG Framework

Since the end of the Cold War there has been widespread recognition of the indispensable role played by civil and political rights in enabling and

\textsuperscript{71} Millennium Declaration, \textit{supra} note 2.
\textsuperscript{72} Johannesburg World Summit on Sustainable Development, \textit{supra} note 44.
\textsuperscript{73} Monterrey Consensus, \textit{supra} note 45.
facilitating the realization of economic, social and cultural rights. The argument has been well synthesized in the following comment:

An adequate conception of human development cannot ignore the importance of political liberties and democratic freedoms. Indeed, democratic freedom and civil rights can be extremely important for enhancing the capabilities of people who are poor. They can do this directly, since poor people have strong reason to resist being abused and exploited by their employers and politicians. And they can do this indirectly, since those who hold power have political incentives to respond to acute deprivations when the deprived can make use of their political freedom to protest, criticize and oppose.75

The case that the human rights framework can contribute significantly to efforts to promote equitable and sustainable development has been laid out extensively elsewhere.76 In essence the reasons include: the advantage of building upon legal obligations already voluntarily undertaken by governments that have ratified human rights treaties; the mobilizational potential of rights discourse; the added value and credibility brought to the MDGs by applying norms of nondiscrimination and equality to ensure that aggregated approaches do not neglect certain groups of individuals; the specificity given to vague terms such as participation and empowerment when particular civil and political rights norms are invoked; the potential role of human rights institutions that already exist at the national level in many countries; and the potential contribution of increasingly sophisticated international accountability mechanisms in the human rights arena.

While it must be acknowledged that the MDGs, as distilled into the specific goals and targets that have been the principal focus of the process, do not contain explicit civil and political rights dimensions (other than nondiscrimination), those aspects are indeed present in the larger context of the Millennium Declaration.77 The term human rights occurs eight times in the text of the Declaration. In particular the heads of state and government proclaimed that “We will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights.”78 Indeed “freedom” is the first of the “fundamental values” listed in the Millennium Declaration.79 Before it moves to the second value (“equality”) the Declaration defines freedom as follows: “Men and women have the right to live their lives and raise their children in

75. HDR 2003, supra note 8, at 20.
77. See Millennium Declaration, supra note 2.
78. Id. ¶ 24.
79. Id. ¶ 6.
dignity, free from hunger and the fear of violence, oppression or injustice. Democratic and participatory governance based on the will of the people best assures these rights.\textsuperscript{80}

Unfortunately the great majority of analyses undertaken on the MDGs do not approach them as being situated within a human rights framework. This is best illustrated by reference to one of the most important of the many reports devoted to the issue—the World Bank and IMF Development Committee’s Global Monitoring Report 2004 (Global Monitoring Report)—which calls for the acceleration and deepening of reform in many countries if the MDGs are to be realized.\textsuperscript{81} The report identifies four priority areas in which such reforms are essential. While a human rights dimension would appear to be both obvious and unavoidable in relation to each of them, the report succeeds in either ignoring that dimension or addressing it clandestinely.

Thus, for example, the first priority is to improve the enabling climate for private sector activity.\textsuperscript{82} This is to be achieved through, among other means, “solidifying progress on macroeconomic stability, further reducing barriers to trade.”\textsuperscript{83} In addition, however, emphasis is attached to the need to strengthen property rights and the institutions that “establish and enforce the rule of law.”\textsuperscript{84} While the \textit{rule of law} is a term well-known to human rights lawyers, which they define by reference to the full corpus of international human rights law, neither the Global Monitoring Report nor most other reports emanating from the Bretton Woods Institutions reflect such a definition in their use of the term.\textsuperscript{85} Instead, the Global Monitoring Report indicates that rule of law refers to “legal and judicial reform, reduction of bureaucratic harassment.”\textsuperscript{86} Thus, the only reference to rights is to property rights and the rule of law is defined in relation to matters that will facilitate a better business environment. Discussion of property rights in such contexts are generally concerned with the need to provide formal legal title to property owners rather than reallocation of land to the landless or the elimination of discriminatory practices that limit or prevent access by certain groups to property in the first place.

\textsuperscript{80} \textit{Id.}


\textsuperscript{82} \textit{Id.} at i.

\textsuperscript{83} \textit{Id.}

\textsuperscript{84} \textit{Id.} \textsection 27.


\textsuperscript{86} \textit{GLOBAL MONITORING REPORT}, \textit{supra} note 81, at \textsection 27.
In contrast, an authentic human rights perspective on such an objective would include the following tasks, among others:

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

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

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

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

- ways of ensuring free and fair elections;
- actions aimed at promoting and upholding free speech;

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87. Id. at i.
88. Id.
89. Id. ¶ 29.
• the maintenance of a free press;
• the establishment of national institutions to promote respect for, and 
an understanding of, the human rights commitments undertaken by 
the government in question; and
• the creation of institutional arrangements to provide redress to 
aggrieved citizens.

The Global Monitoring Report’s third priority is to scale up infrastruc-
ture investment and improve its effectiveness, and the fourth is to better 
target “education, health, and social assistance services toward poor 
people, addressing governance-related impediments to service quality and 
effectiveness, increasing community participation.”90 The report speaks of 
“participation” in order to avoid any overt reference to the human rights 
implications of what is being proposed. Instead of discussing it as the 
quintessential civil and political rights issue that it is, the report presents the 
problem of grossly unequal rights and capacities to participate in decision 
making in terms of a technocratic challenge to find better techniques for 
“scaling up on the basis of successful programs” such as a handful identified 
in Bangladesh, El Salvador, and Mexico.91 The systematic suppression of 
women’s voices, the exclusion of minorities from the political and eco-

demic spheres, the brutal suppression of dissent, and the resulting preven-
tion of debate over alternative policies to achieve agreed objectives, are all 

90. Id. at i–ii.
91. Id. at ii.
Convention on the Rights of the Child explicitly accepted that there is such a right.\textsuperscript{92} The report does acknowledge that instrumental considerations must be addressed and thus the importance of maternal education for diminishing child mortality rates is noted.\textsuperscript{93} So too is the fact that girls "may be prevented from attending [school] if they spend much of their time fetching water . . . or if adequate and safe means of transport [presumably for the girls to go to school, rather than for the water to be carried in] are lacking."\textsuperscript{94} At a later point it calls for community involvement to ensure that "interventions to educate girls" are "responsive to needs" and observes that "[e]ffective improvement of female access to education . . . requires that design of services reflect gender concerns."\textsuperscript{95} From a human rights perspective, such recommendations are decontextualized. They carefully fail to recognize that the challenge is best responded to through the adoption of measures that have been carefully spelled out and subscribed to by the vast majority MDG-relevant countries in the Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention).\textsuperscript{96}

There are several conclusions to be drawn from this analysis. The first is that efforts to gauge the role accorded to human rights in the MDG context should not be confined to eclectic, conceptually broad-minded, and avowedly human rights sympathetic analyses such as the Human Development Reports but must also focus on the more operational analyses that describe what is actually going on and what tangible policy prescriptions are being sold in the context of the operationalization of the MDG package. The Global Monitoring Report provides pause for reflection in this regard, but an equally significant test is provided by the country MDG reports that are now being produced. These are examined in detail below.\textsuperscript{97}

The second conclusion is that human rights, other than property rights, are entirely absent in terms of explicit references in the Global Monitoring Report. It is not surprising then that the 2003 UN interagency meeting statement on human rights approaches to development noted apprehensively that "[t]here is concern that, taken in isolation, the MDGs might lead


\textsuperscript{93} Global Monitoring Report, supra note 81.

\textsuperscript{94} Id., ¶ 13.

\textsuperscript{95} Id., ¶ 37.


\textsuperscript{97} See infra notes 127–52 and accompanying text.
us back into a technocratic (input/output) approach to development.”98 This also highlights the need to explore, in an open and constructive manner, the reasons why human rights are not seen to warrant attention in such settings.

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

D. The Relationship Between Economic, Social and Cultural Rights and the Equivalent MDGs

It is almost self-evident that there is an extensive overlap between the key indicators used by the UN Millennium Project to assess progress in relation to certain MDGs99 and the economic and social rights recognized in the ICESCR. The following table gives an indication of the extent of that overlap.

Rather that dwelling on this overlap and the opportunities that it provides for synergy between the two frameworks, the remainder of this section will focus on two other issues that are of major importance in the debate on the MDG/human rights relationship: (1) the nature of the link between poverty and human rights and (2) the relationship between economic, social and cultural rights and civil and political rights.

1. Poverty as a Human Rights Violation

Any discussion of the relationship between poverty and human rights taking the UN approach of indivisibility as its starting point must consider the role


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<tr>
<th><strong>MDG Indicators</strong></th>
<th><strong>Principal Relevant Provisions of ICESCR</strong></th>
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<tr>
<td>Malnutrition</td>
<td>“The fundamental right of everyone to be free from hunger.” Art 11(2).</td>
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<tr>
<td>Grain yields per hectare</td>
<td>Measures to be taken include: “To improve methods of production, conservation and distribution of food.” Art 11(2)(a).</td>
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<tr>
<td>Access to clean water</td>
<td>“Right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Art. 12(1).</td>
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<td>Access to sanitation services</td>
<td>Right to health measures to include “The improvement of all aspects of environmental and industrial hygiene” and “The prevention, treatment and control of epidemic, endemic, occupational and other diseases.” Art 11(2).</td>
</tr>
<tr>
<td>Literacy rates</td>
<td>“Primary education shall be compulsory and available free to all” and “Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.” Art 13(2).</td>
</tr>
<tr>
<td>Primary education completion rates</td>
<td>States which have not achieved compulsory, free, primary education for all must “work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.” Art.14.</td>
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<td>Gender equality in school</td>
<td>“States . . . guarantee that the rights . . . will be exercised without discrimination of any kind as to . . . sex,” etc. Art 2(2); and “undertake to ensure the equal right of men and women.” Art 3.</td>
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<tr>
<td>Infant mortality rates</td>
<td>“Special protection should be accorded to mothers during a reasonable period before and after childbirth.” Art. 10(2); Right to health measures to include “reduction of the stillbirth-rate and of infant mortality.” Art. 12(2)(a).</td>
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of both economic, social and cultural rights and civil and political rights. The problems begin, however, when poverty is treated as being synonymous with economic, social and cultural rights, in which case the analysis of the relationship between the two concepts risks becoming tautological. Thus the relevant terms must be defined more precisely.

The need to acknowledge that poverty can potentially involve a major
denial of economic and social rights was underscored in an oft-quoted statement to the 1993 World Conference on Human Rights by the UN Committee on Economic, Social and Cultural Rights (CESCR) which drew attention to:

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

Statistical indicators of the extent of deprivation, or breaches, of economic, social and cultural rights have been cited so often that they have tended to lose their impact. The magnitude, severity and constancy of that deprivation have provoked attitudes of resignation, feelings of helplessness and compassion fatigue. Such muted responses are facilitated by a reluctance to characterize the problems that exist as gross and massive denials of economic, social and cultural rights. Yet it is difficult to understand how the situation can realistically be portrayed in any other way.\(^{100}\)

In recent years this clarion call to take economic and social rights violations seriously has often been encapsulated in the maxim that “poverty is a denial of human rights.”\(^{101}\) A recent United Nations Development Programme (UNDP) report on this theme opens with a quote from Mary Robinson: “I am often asked what is the most serious form of human rights violations in the world today, and my reply is consistent: extreme poverty.”\(^{102}\)

In legal terms this maxim is only true to the extent that a government or other relevant actor has failed to take measures that would have been feasible (“to the maximum of its available resources,” as the language of the ICESCR puts it)\(^{103}\) and that could have had the effect of avoiding or mitigating the plight in which an individual living in poverty finds him or herself. In a country with adequate resources, the proposition will almost always be valid. The only qualification in that context, and it is highly unlikely to be a problem, is that the definition of poverty is not more expansive than the definition of the economic and social rights involved. In a country with very limited resources, it will often also be valid, in the sense


\(^{102}\) Id.

\(^{103}\) ICESCR, supra note 60, art. 2.
that the government has failed to take possible steps to improve the situation and instead has opted to devote scarce resources to other objectives that do not address directly the realization of basic rights.

Consistent with this legal analysis (but also with the reluctance of governments to accept a legal responsibility in relation to poverty) the Vienna Declaration of the 1993 World Conference on Human Rights observed that the “existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights,” and that “extreme poverty and social exclusion constitute a violation of human dignity.”104 Indeed this formulation points to a principal justification of Mary Robinson’s proposition—poverty is incompatible with human dignity, human dignity is the foundation stone of human rights, and in cases where a national government does not have the resources to remedy (extreme) poverty, a human rights based responsibility falls upon the international community. International lawyers might argue on this basis that a violation of human dignity is tantamount to a violation of human rights; however, this is not the message that the carefully negotiated Vienna Declaration language was designed to convey. The HDR 2000 similarly avoided characterizing poverty as a violation of human rights, instead noting that “Poverty eradication is not only a development goal—it is a central challenge for human rights in the 21st century.”105 Finally, the Millennium Declaration also does not characterize poverty as a human rights violation per se. It does, however, resolve to “spare no efforts to free [people] from the abject and dehumanizing conditions of extreme poverty.”106 A recent UNDP practice note suggested that “the definition of poverty is steadily moving towards a human rights-based vision”,107 however, this is not necessarily the case.

The definition of poverty contained in the Millennium Project Task Force 1 on Poverty and Economic Development report embraces three forms of “human poverty”:

1. income poverty, as typically defined by lack of private household income (so-called dollar-a-day poverty); 2. social service poverty, including the lack of public provision of education, health, water and other services; 3. environmental poverty, including the lack of, or degradation of, core environmental resources needed for human well-being.108

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105. HDR 2000, supra note 17, at 8.
106. Millennium Declaration, supra note 2, ¶ 11.
The report notes that this usage is broader than that adopted in the Human Development Reports, which rely mainly upon non-income poverty. It is not clear from this list whether there is room within the definition of poverty for civil and political rights concerns or whether they would fall into an external category of factors facilitating or impeding the reduction or elimination of poverty.

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

2. The Relationship Between Economic, Social and Cultural Rights and Civil and Political Rights

In any analysis of the relationship between human rights and the MDGs there arises a definitional problem requiring clarification if the subsequent discussion is to be meaningful and technically correct from a human rights point of view. Human rights, as defined by all of the major international treaties and other legal instruments, consist of civil and political rights as well as economic, social and cultural rights. In the latter respect, in particular, the international definition is significantly broader than any classical liberal approach to civil liberties or human rights. Specifically economic, social and cultural rights include, among others, labor rights, the right to an adequate standard of living, the right to social security, and rights to food, housing, clothing, education, and health.

Despite the departure from tradition that this broad recognition represented, the inclusion of economic, social and cultural rights was achieved by consensus in the UDHR.109 These foundations were then built upon and reinforced by the adoption of two separate International Covenants in

109. Albeit with a handful of communist countries abstaining on the grounds that economic and social rights were not given sufficient prominence and apartheid South Africa also abstaining, ostensibly on the grounds that “a condition of existence does not constitute a fundamental human right merely because it is eminently desirable for the fullest realisation of all human potentialities” and that if economic rights were to be taken seriously it would be “necessary to resort to more or less totalitarian control of the economic life of the country.” Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation, Comm’n on Hum. Rts., 3rd Sess., ¶¶ 11, 13, U.N. Doc. E/CN.4/82/Add.4 (1948).
1966—the ICCPR\textsuperscript{110} and the ICESCR.\textsuperscript{111} More targeted treaties dealing with racial discrimination,\textsuperscript{112} discrimination against women,\textsuperscript{113} and the rights of the child,\textsuperscript{114} have all included components dealing with both types of rights.

The UN doctrine, restated with unanimity in 1993 by all governments participating in the Vienna World Conference on Human Rights, is that "[a]ll human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis."\textsuperscript{115}

The following analysis taken from the HDR 2000 provides a concise statement of the important ways in which the two sets of rights reinforce one another:

- First, the diverse human rights—civil, political, economic, social and cultural—are causally linked and thus can be mutually reinforcing. They can create synergies that contribute to poor people's securing their rights, enhancing their human capabilities and escaping poverty. Because of these complementarities, the struggle to achieve economic and social rights should not be separated from the struggle to achieve civil and political rights. And the two need to be pursued simultaneously.

- Second, a decent standard of living, adequate nutrition, health care and other social and economic achievements are not just development goals. They are human rights inherent in human freedom and dignity. But these rights do not mean an entitlement to a handout. They are claims to a set of social arrangements—norms, institutions, laws, an enabling economic environment—that can best secure the enjoyment of these rights. It is thus the obligation of governments and others to implement policies to put these arrangements in place. And in today's more interdependent world, it is essential to recognize the obligations of global actors, who in the pursuit of global justice must put in place global arrangements that promote the eradication of poverty.\textsuperscript{116}

\textsuperscript{110} ICCPR, supra note 38.
\textsuperscript{111} ICESCR, supra note 60.
\textsuperscript{113} Women's Convention, supra note 96.
\textsuperscript{114} Children's Convention, supra note 92.
\textsuperscript{115} See Vienna Declaration and Programme of Action, supra note 104, ¶ 5.
\textsuperscript{116} HDR 2000, supra note 17, at 73.
V. THE ROLE CURRENTLY ACCORDED TO HUMAN RIGHTS IN MDG REPORTING

A. The Theory

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

There are a number of very encouraging signs that human rights are indeed an important element within the MDG project. In addition to the eight different references to human rights contained in the Millennium Declaration itself, human rights have been accorded particular prominence in a number of reports produced within the UN system. Upon closer analysis, however, there is a large discrepancy in the ways in which human rights issues are dealt with in the context of MDG reporting. In terms of broad policy documents there are instructive differences to be found by comparing the HDR 2003, which was expressly devoted to the “Millennium Development Goals: A Compact Among Nations to End Human Poverty,” with other reports on the MDGs.117 When moving from the policy domain to examine the programmatic side, the discrepancy between rhetorical references to human rights and actual program content becomes even more marked.

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

HDR 2003 refers to the human rights dimensions of the MDGs in relation to a wide range of issues. As a general rule it asserts that “National programmes must . . . respect human rights, support the rule of law and commit to honest and effective implementation.”118 It goes on to argue that “[w]ithout sound governance—in terms of economic policies, human rights, well-functioning institutions and democratic political participation—no country with low human development can expect long-term success in its development efforts or expanded support from donor countries.”119 In identifying six policy aspects crucial to a country’s ability to emerge from poverty traps, the HDR 2003 includes the need to emphasize human rights and social equity through the promotion of democratic governance. It explains the necessity of these policies as follows:

117. HDR 2003, supra note 8, at 1.
118. Id. at 15.
119. Id. at 16.
In dozens of countries poor people, ethnic minorities, women and other groups still lack access to public services and private opportunities—and so will not benefit even when growth begins to take off. Political institutions must allow poor people to participate in decisions that affect their lives and protect them from arbitrary, unaccountable decisions by governments and other forces. National strategies for the Millennium Development Goals must include a commitment to women’s rights to education, reproductive health services, property ownership, secure tenure and labour force participation. They must also address other forms of discrimination—by race, ethnicity or region—that can marginalize poor people within countries. Deepening democracy through reforms of governance structures, such as decentralization, can enhance poor people’s voice in decision-making.¹²⁰

Finally, the report devotes an entire page to exploring and elaborating upon the links between human rights and the MDGs. It begins by identifying some fundamental values that guide the Goals, including:

- Freedom. Men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice. Democratic and participatory governance based on the will of the people best assures these rights.

- Equality. No individual and no nation must be denied the opportunity to benefit from development. The equal rights and opportunities of women and men must be assured.

- Solidarity. Global challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice. Those who suffer or who benefit least deserve help from those who benefit most.

- Tolerance. Human beings must respect one another, in all their diversity of belief, culture and language. Differences within and between societies should be neither feared nor repressed, but cherished as a precious asset of humanity. A culture of peace and dialogue among all civilizations should be actively promoted.¹²¹

The other two values listed are “respect for nature” and “shared responsibility.”¹²²

The Report also noted several of the advantages of linking the MDGs to the human rights framework. For example, the human rights approach transforms the content of the Goals into obligations rather than soft objectives or “a form of charity.” That approach also serves to highlight that

¹²⁰ Id. at 19.
¹²¹ Id. at 28, Box 1.1 “The Millennium Development Goals, human development and human rights share a common motivation.”
¹²² Id.
the commitment to realize the MDGs places obligations on other countries. Also, in the context of a human rights approach, the policies and institutional reforms required to achieve the Goals are clearer and include elements such as participation in public decision-making, protection for vulnerable groups, and elimination of gender discrimination. Finally, the MDGs provide firm and agreed benchmarks, which are otherwise lacking in a "progressive realization" approach to economic, social and cultural rights.\textsuperscript{121}

Another major report dealing with both the MDGs and human rights in an integrated fashion is the United Nations Population Fund (UNFPA) 2004 State of World Population report (UNFPA Population Report).\textsuperscript{124} The report focuses not only on family planning as a human right or on reproductive rights, but also on gender equality and women's empowerment. It uses the human rights framework in a variety of ways. References to specific human rights norms are plentiful, the relevance of the Women's Convention is acknowledged, the need for legal remedies in cases of the violation of rights is emphasized, the role of human rights institutions is noted, and the broader human rights context of specific objectives is consistently recognized.

The emphasis placed on human rights in the HDR 2003 and the UNFPA Population Report are not matched, however, by a great many other reports on the MDGs produced by the major international actors. For example, a recent report on access to safe drinking water and sanitation,\textsuperscript{125} goals that figure prominently in the MDGs as a whole and in Goal 7 in particular, makes no mention of the human rights dimensions of the issue, either in relation to the status of the human right to clean water or to the role of human rights in securing such access.\textsuperscript{126}

B. The Practice

To understand the complexity of the relationship between the MDGs and human rights, one must first recognize the extent of the gap between theory and practice. This gap is best illustrated by reference to the fifty-nine national MDG reports available on the UNDP website as of August 2004.\textsuperscript{127}

\textsuperscript{123} Id.
With regard to the extent to which they take account of the human rights dimensions of the process, this article surveys fifteen of the country reports. The selected sample includes all reports published in 2004 and covers the principal regions of the world. Unsurprisingly, the reports take a spectrum of approaches ranging from heavy reliance upon a human rights framework, through the inclusion of somewhat token references, to the complete exclusion of any reference to the term human rights. What is surprising, however, is the paucity of analyses in the first of those categories and the extent to which human rights are altogether invisible in a great many of the reports.

At one end of the spectrum is the report on Bosnia and Herzegovina which, in the course of 141 pages, makes 108 references to human rights. Indeed the entire analysis of the MDG situation is located squarely within a human rights framework. The report proclaims that its focus is on "a universal and global programme to secure the welfare of the world's population and protect and promote human rights, a programme around which all development actors should congregate and cooperate."128 The report is also noteworthy for the extent to which it places economic, social and cultural rights at the heart of the analysis, albeit as much for their instrumental value as for their intrinsic worth:

In the immediate post-war period it was reasonable to insist most on respect for certain fundamental rights, from the right to life to the right to vote, in order to allow not only for the return of refugees and displaced persons, but also for a democratisation of society, above all by establishing democratically elected authorities. Little attention was paid to the fact that, in addition to civil and political rights, there are also some fundamental economic, social, and cultural rights that are no less important for the process of democratisation or return. If such rights . . . are not exercised, return and democratisation will remain impossible or incomplete.129

Similarly, the report attaches major emphasis to the gender dimensions of the challenges of meeting the MDGs. It observes that some assessments suggest that gender is "at the heart of the problem of poverty in BiH."130 The report as a whole is one of the most sophisticated examples of a carefully elaborated human rights approach to any set of development issues, not only in relation to the MDGs.

Thailand, on the other hand, presents a very different picture despite the inclusion of fifteen references to human rights in a lengthy report. On closer inspection eight of those references are contained in the text of the

129. Id. at 19.
130. Id. at 22.
Millennium Declaration, which the report reproduces. Of the remaining references, one indicates that the Office of National Human Rights Commission was one of the agencies consulted in the preparation of the report. Another affirms that violence against women is a "human rights issue of the highest concern" and emphasizes that society should understand and support "a system of equal rights, roles, and responsibilities between women and men." The strongest general statement in relation to human rights is:

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

On whole, despite referencing human rights the report fails to effectively integrate relevant human rights dimensions into the operational portions of the report.

Close to the other end of the spectrum are those reports making nothing more than a token reference to human rights. Thus, for example, the report of the Philippines, a country in which a great deal has been done to promote human rights based approaches to development, contains only two references to human rights within a fifty-eight page report. The first occurs in the initial paragraph of the body of the report in which the Millennium Declaration is presented as having renewed "the global commitment to peace and human rights." The second and final reference to human rights comes much later—in discussing the school curriculum the report notes that "the elementary education bureau integrated human rights and sex education modules into the curriculum." Similarly, the report on Ghana contains a single reference, noting only that the Ghanaian PRS aspires to "consolidate democratic governance, strengthen accountability, and guarantee protection of human rights and the rule of law." The report on

132. Id. at vi.
133. Id. at 36.
134. Id. at 57.
136. Id. at 7.
137. Id. at 29.
Gabon contains three references, two of which are to the Millennium Declaration and UN Summits. The third is to the fact that Gabon has ratified the Women’s Convention. The latter reference is, in fact, an advance on many of the other reports.

The Vietnamese Report also contains a single reference to the instrumentalist argument that “[a]ppropriate minimum standards in the provision of education and health services are not only pre-conditions for development, but most importantly basic human rights.” The most token approach appears in the report of Ethiopia, which mentions on the first page the important role of human rights in the Millennium Declaration, but does not contain any further mention of the issue.

Many other reports lie at the end of the spectrum where human rights are completely absent from the picture. They include fairly detailed reports on China, Hungary, Saudi Arabia, the Slovak Republic, Slovenia, the Ukraine, and Zambia. An especially striking example is a lengthy report of some fifty-six pages on Afghanistan, prepared with extensive assistance from UNDP, which engages in a detailed analysis of the challenges faced in seeking to meet the principal goals. The report actually reproduces an abstract of its content on the cover, indicating a range of issues in relation to which some human rights dimension or perspective would have been appropriate and useful. It begins in the following terms:

Four million children have enrolled in school since the fall of the Taliban. Nearly forty percent are girls. An impressive immunization drive has virtually eradicated polio just five years after polio caused more disability than land

mines. A measles campaign has saved nearly 30,000 lives. Afghanistan has a
democratic constitution and is preparing for presidential and parliamentary
elections. In two years, the country has taken important strides towards a more
open society. . . .

[The MDGs] represent a synergy of purpose—a moral and political
commitment to the people of Afghanistan. 149

Still, despite the clear relevance of human rights to so many of the
challenges faced in Afghanistan, there is not a single reference to human
rights in the entire document.

Dissatisfaction with related aspects of the national reports has also been
expressed by the UNFPA. In its 2004 Population Report, UNFPA argues that
the “rights-based agenda” adopted by the International Conference on
Population and Development, held in Cairo in 1994, 150 “deserves the
highest priority” in the context of efforts to achieve the MDGs. 151 UNFPA
goes on to note, however, the relatively low level of recognition of
reproductive health issues in the MDG reports that have been produced up
until 2004. 152

C. Explaining the Gap between Theory and Practice

There is no shortage of explanations as to how it happens that human rights
come so close to being invisible in so many of the MDG Reports. The most
obvious is that the government in question did not wish to include such
references. Another is that their international advisers preferred to use
different language or felt that human rights language might be counter-
productive in some way. Another still is that while the reports do not address
human rights per se, they do address issues that are in fact the subject of
human rights even if discussed in a different terminology. However, the
difference between talking of educational objectives as compared to the
realization of the right to education, or talking of treating people well as
compared to respecting the human right to bodily integrity, should by now
be more widely understood within the development community than seems
to be the case.

The deference accorded to justifications such as these for avoiding the
human rights dimensions are well illustrated by the UNDP Evaluation
Office’s assessment of the national MDG reports. The term human rights appears only three times. In particular, the assessment comments that “it may be unreasonable to expect a government to discuss ‘sensitive’ issues, such as documenting human rights violations, discrimination against marginalized communities, neglect of remote areas, or to discuss unresolved conflicts, especially close to the time of elections.” While the point is made in support of the argument that governments might not be the best source to author the national MDG Report, the principle seems to be applied in practice no less to reports prepared by international agencies themselves, and for the same reason of not wishing to offend the government. This point actually goes to the crux of the human rights critique of MDG reporting. If these reports fail to address, or even acknowledge, existing human rights problems they will often be excluding the very issues that are crucial to understanding the principal obstacles that are inhibiting the realization of the MDGs. If it is not possible to mention sensitive issues such as deeply entrenched discrimination against women, the effective exclusion of certain racial, religious, linguistic or other minority groups from the development process, or the systematic harassment of anyone expressing dissenting or alternative viewpoints, the report not only will be unrealistic in nature but will also be unable to address the critical steps that need to be taken if the MDGs are to be met.

Any approach ignoring human rights altogether or treating them solely in a token fashion, neglects a crucial dimension of the development equation and overlooks the empowerment potential of rights. It also misses an opportunity to acknowledge the wide range of human rights obligations undertaken by the governments concerned and the international standards that are binding upon them as a result. Most problematic in the context of the present report is the fact that such an approach provides little incentive for human rights proponents to engage in the MDG process and lends fuel to the arguments of those who suggest an incompatibility between the way in which the MDGs are sometimes promoted and the human rights framework.

Somewhat ironically this same point is acknowledged in the UNDP assessment. The additional two references to human rights are in fact to the same text, repeated in both the executive summary and in the conclusions and recommendations:

Communication [i.e. public relations materials] on MDGs must re-assure NGOs and others that the focus on MDGs is not intended to displace attention from

154. Id. at 29.
other issues such as violence, child rights abuse, discrimination, human rights violations and the like.\textsuperscript{155}

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

VI. CAN HUMAN RIGHTS BASED APPROACHES PROVIDE THE SOLUTION?

A. Linking Human Rights and Development

Attempts to link human rights and development issues, at least within the UN context, go back at least to the report of Manouchehr Ganji on economic, social and cultural rights,\textsuperscript{156} the thrust of which was endorsed by the first World Conference on Human Rights, held in Teheran in 1968.\textsuperscript{157} The next major step was the proclamation by the UN Commission on Human Rights in 1977 of the existence of a right to development.\textsuperscript{158} Initially there were high hopes that this concept would provide a context in which serious efforts would be made to investigate the complex links between the two sets of concerns. But the subsequent quarter of a century of debates over the implications of the right to development and how it could make a meaningful practical contribution to the quest to link human rights and development has not produced a great deal. The main results seem to be innumerable speeches, major diplomatic battles over the wording of resolutions, and the creation of a UN expert working group followed by a UN governmental working group, followed by a UN independent expert, followed by a new UN working group. At the end of the day it is clear that something, at least, is not working.

In parallel with these rather depressing efforts has been a series of much more active debates among practitioners and academics about rights based approaches to development. Unlike the diplomatic battles over the right to development taking place in isolated UN conference chambers, the debates

\textsuperscript{155} Id. at 9. See also id. at 36.


among practitioners and academics have been actively promoted on the ground and have sought to influence the actual practice of states and of the key international development agencies. Potentially at least, they are of far greater significance than the abstract and often sterile discussions on the right to development.

Within the UN system the spirit of rights based approaches is encapsulated in the “Common Understanding on the Human Rights Based Approach to Development Cooperation,” adopted in 2003 at a meeting involving some ten UN agencies and a wide range of other development agencies, which gave an imprimatur of sorts to such analyses. The three main elements of the “Common Understanding” were:

1. All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.

3. Development cooperation contributes to the development of the capacities of “duty-bearers” to meet their obligations and/or of “rights-holders” to claim their rights.¹⁶¹

Despite the adoption of such statements and programmatic efforts to give them substance, the level of engagement on both sides of the divide between development experts and human rights proponents has nevertheless continued to be uneven at best. In a recent analysis Darrow and Tomas concluded that the “continued credibility of rights-based approaches demands a higher degree of conceptual rigor and clarity than has prevailed in the past, along with a frank appraisal of their relative strengths and limitations.”¹⁶²


¹⁶¹. Id. at 17.

¹⁶². Darrow & Tomas, supra note 76, at 537.
For the most part, the crucial issue is not whether a more integrated approach should be sought, but rather how such an approach might best be fashioned. In particular, two questions need to be answered. How can the MDG process be made more human rights friendly? And how can human rights standards and procedures be mobilized so as to enhance the effectiveness of the MDG initiative?

These questions are not easy to answer. As already noted, the most concerted endeavor to do so has occurred under the rubric of human rights based approaches to development. These approaches, which initially grew out of civil society efforts, have attracted increasing scholarly attention and have been the subject of a range of analyses undertaken by UN agencies and NGOs at the national level. One recent analytical overview of rights based approaches, prepared by the UK Department for International Development, lists human rights as merely a fifth category of rights, preceded by those reflected in living law and customary law, religious law, statutory law, and constitutional law.163 This wide-ranging and eclectic approach is not at all what is generally intended by the expression rights based approaches.

A much more typical definition of a “Human Rights-Based Approach to Programming,” was offered by UNICEF in 2004:

Human rights principles guide all programming in all phases of the programming process, including assessment and analysis, programme planning and design (including setting goals, objectives and strategies); implementation, monitoring and evaluation, . . . .

In a human rights-based approach, human rights determine the relationship between individuals and groups with valid claims (rightsholders) and State and non-state actors with correlative obligations (duty-bearers). It identifies rightsholders and their entitlements and corresponding duty-bearers and their obligations, and works towards strengthening the capacities of rightsholders to make their claims, and of duty-bearers to meet their obligations.164

Darrow and Tomas are more cautious about offering a definition and elaborate on the pitfalls of oversimplifying the challenge. Nevertheless, they observe that such approaches have generally “sought to give tangible expression to human rights ‘principles’ (for example, participation, accountability, transparency, universality, non-discrimination, and so forth) and ‘values’ (the Millennium Declaration lists freedom, equality, solidarity, tolerance, respect for nature and shared responsibility as values, however

others, including equity, democracy, or even human dignity in a broad sense are often included).”

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

Finally, a relatively sophisticated example of the type of approach suggested in the context of such frameworks—*The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies* (Statement of Common Understanding)—was provided by a 2003 UN interagency meeting on human rights approaches to development. It arrived at a set of recommendations, divided into two parts. The first part was said to consist of elements that are “necessary, specific, and unique to a human rights-based approach”:

a) Assessment and analysis in order to identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights.

b) Programmes assess the capacity of rights-holders to claim their rights, and of duty-bearers to fulfill their obligations. They then develop strategies to build these capacities.

c) Programmes monitor and evaluate both outcomes and processes guided by human rights standards and principles.

d) Programming is informed by the recommendations of international human rights bodies and mechanisms.

165. Darrow & Tomas, supra note 76, at 497.
167. Id. at 38–41.
169. Id.
The second part consisted of "other elements of good programming practices" that were characterized as "essential" but presumably not unique:\textsuperscript{170}

1. People are recognized as key actors in their own development, rather than passive recipients of commodities and services.
2. Participation is both a means and a goal.
3. Strategies are empowering, not disempowering.
4. Both outcomes and processes are monitored and evaluated.
5. Analysis includes all stakeholders.
6. Programmes focus on marginalized, disadvantaged, and excluded groups.
7. The development process is locally owned.
8. Programmes aim to reduce disparity.
9. Both top-down and bottom-up approaches are used in synergy.
10. Situation analysis is used to identify immediate, underlying, and basic causes of development problems.
11. Measurable goals and targets are important in programming.
12. Strategic partnerships are developed and sustained.
13. Programmes support accountability to all stakeholders.\textsuperscript{171}

B. Observations on a Human Rights Based Approach to Development

While this is not the place to engage in a detailed critique of such statements as those posited above,\textsuperscript{172} several general observations are prompted by the sort of criteria that are commonly put forward as defining a human rights based approach. The first is that such criteria are often expressed at a level of abstraction and generality that is not uncharacteristic of some human rights discourse but that is likely to seem abstract, untargeted, and untested to the community of development economists. For all their conceptual sophistication and undoubted importance, these frameworks and checklists appear to the latter to offer little guidance in concrete situations and to gloss over many of the complexities of real world decision making and trade-offs.

\textsuperscript{170} Id.
\textsuperscript{171} See Report of the Second Interagency Workshop, supra note 98, at 10. For a more detailed exposition of a human rights based approach see IONSSON, supra note 166.
\textsuperscript{172} For a detailed and challenging evaluation of the role of rights based approaches to development see UVIN, supra note 76. For a brief overview see Rosalind Ebeyen, The Rise of Rights: Rights-Based Approaches to International Development, IDS Policy Briefing 17 (2003), available at www.ids.ac.uk/ids/bookshop/briefs/Pb17.pdf.
The second observation is that some of the formulations do little more than restate the fundamental dilemma and do not actually offer a lot of guidance as to how to resolve it. For example, identifying “the corresponding human rights obligations of duty-bearers,” as one of the above-listed elements suggested, may be extremely difficult to do.\textsuperscript{173} Sorting out the roles of the government, the private sector, the individual right-holders, and the international community will rarely be a routine accounting matter that can be done with ease in the context of complex development strategies. Such an approach might well be viable and helpful at a micro-level but seems less likely to be so in terms of national level planning of macro-economic policies.

Similarly, the Statement of Common Understanding calls for identification of “the immediate, underlying, and structural causes of the non-realization of rights.”\textsuperscript{174} This will usually be even more fraught with difficulty because most human rights problems are subject to diverse and heavily contested causal explanations. It is not hard to find radically different explanations of the structural causes of exploitative child labor, for example, or of the most effective human rights inspired responses to such a problem. In moving from sectoral areas such as child labor to country situations the magnitude of the challenge becomes even more apparent as one encounters wholly inconsistent explanations as to the structural causes of deep-rooted situations of discrimination and so on. This is not to say that structural causal analyses of the type advocated should not be attempted on a grand scale, but it underscores the great complexity that would be generated by any such effort. What is involved is not simply the adoption of a new methodology but also a willingness on the part of governments to address a range of issues that they have systematically refused to confront in such contexts. While the proponents of a rights based approach would correctly respond that this is precisely the point of insisting upon a deeper structural analysis, it is nevertheless necessary to recognize the immensity of the change that is being sought under the relatively innocuous guise of calling for a new methodology.

A third general observation emerging from the criteria posited above is that there is a good deal of optimism implicit in the suggestion that decisions on complicated matters of development programming should be “informed by the recommendations of international human rights bodies and mechanisms.”\textsuperscript{175} At the current relatively embryonic and certainly underfunded stage of development of such bodies and mechanisms, a great

\textsuperscript{173} Statement of Common Understanding, supra note 159, at 19.
\textsuperscript{174} Id.
\textsuperscript{175} Id.
many of the recommendations emerging from them are not at all operational, and some of them are not especially well grounded. 176 Ironically, one of the major advantages of relying significantly on the recommendations of such bodies would be to put the pressure on the treaty bodies and special procedures to spell out more clearly and justify more thoroughly their recommendations.

A fourth observation concerns the disparate items contained in the second list of the Statement of Common Understanding, all of which are said to be essential for a human rights based approach. 177 In many cases, the advice proffered does not seem to follow inexorably from human rights principles per se, but rather to be a reflection of what the authors consider to be sound policy on the basis of their own expertise. For example, local ownership of the development process is not dictated by human rights norms, even if it will usually be a desirable attribute. It is hardly an issue that challenges the right of self-determination unless one is talking of very large-scale external imposition of policies, which is unlikely to be the case. Moreover, the right to participate in the conduct of public affairs is regularly considered to be satisfied when immensely powerful central governments (such as the United States, France, and elsewhere) make major decisions in which the only element of local ownership is the often overridden vote of a local parliamentarian or congressperson.

In other cases, the criteria seem somewhat platitudinous, offer little real practical guidance, or fail to exhibit any clear human rights based origins. For example, the suggestion that “both top-down and bottom-up approaches [should be] used in synergy” tells us very little. It is also arguably misleading because in practice one or the other approach will sometimes need to be clearly dominant if progress is to be achieved. 178 The development and sustenance of “strategic partnerships” would seem to be another injunction based less on any human rights imperative than on the bitter experience of development planners whose designs have been foiled for want of a broader base of support. 179 Finally, some of the criteria, while unquestionably correct, seem to do little more than implicate further questions. To insist that strategies be “empowering, not disempowering” 180 leaves open the question of what strategies are actually empowering,

176. This is not to suggest for a moment that the author would go as far as Uvin who characterizes the UN human rights mechanisms as “some of the most powerless, under-funded, toothless, formulaic, and politically manipulated institutions of the UN.” He adds that “even the human rights NGOs by and large neglect them,” which is demonstrably not the case. Uvin, supra note 76, at 181.

177. Statement of Common Understanding, supra note 159, at 19.

178. Id.

179. Id.

180. Id.
particularly when so few of those pursued in the name of empowerment seem to succeed in any marked way.\footnote{As Woolcock concludes, "The development community has too few examples of demonstrated successes and even fewer examples of how empowerment projects have fared compared with plausible alternatives." See Michael Woolcock, 	extit{Empowerment at the Local Level: Issues, Responses, Assessments, in Power, Rights, and Poverty: Concepts and Connections} 111, 116 (Ruth Alsop ed., UK Department for International Development, 2004), available at sitesources.worldbank.org/INTEMPOWERMENT/Resources/PPFinalText.pdf.} Moreover, how does one resolve the dilemma created by situations in which the result of empowering local communities is the rejection of broader priorities identified in order to ensure compatibility with human rights standards. One only needs to read some of the literature on decentralization to see the complexity of such prescriptions. Decentralization is advocated on the grounds that it enhances local ownership, promotes empowerment of local groups, facilitates accountability, includes more stakeholders, and among others, makes participation more feasible. In practice, however, there are major concerns that national or international mechanisms of accountability are not transferred, that the empowerment of some comes at the price of disempowering others because the transferred power is captured by elite local groups, that human rights mechanisms are not in place, and that various other challenges remain unchecked.\footnote{For example, Mosse observes that decentralization often has the effect of empowering local elites to capture resources from the poor and that this outcome "is consistent with a stream of recent research emphasizing that the existence of a strong center that is able and willing to resist the power of local elites (to earmark funds, support strong local staffing, and so on) is a necessary precondition for decentralization." David Mosse, Power Relations and Poverty Reduction, in 	extit{id}. at 51, 60. For a diverse range of views on the relationship between decentralization initiatives and the protection of human rights see HDR 2003, supra note 8; \textit{International Council on Human Rights Policy, Local Rule: Decentralisation and Human Rights} (2002), available at www.ichrp.org/ac/excerpts/96.pdf; World Bank, East Asia Poverty Reduction and Economic Management Unit, \textit{Decentralizing Indonesia: A Regional Public Expenditure Review Overview Report}, Report No. 26191-IND (2003), available at Inweb18.worldbank.org/eap/rap.nsf/0/30e999786f323f2147256d72001c7bcb?OpenDocument; Dele Olowu, UN Research Institute for Social Development, \textit{Decentralisation Policies and Practices under Structural Adjustment and Democratisation in Africa, Democracy, Governance and Human Rights Programme, Paper No. 4} (2001); \textit{Decentralization & Power Shift: An Imperative for Good Governance, A Sourcebook on Decentralisation Experiences in Asia}, Vol. 1 (Alex Brillantes, Jr. & Nora Cuachon eds., Center for Local and Regional Governance, University of the Philippines, CLRG Working Papers Series 2002/02, 2002), available at www.decentralization.ws/srcbook_main.asp.} A related issue concerns the emphasis on the "marginalized, disadvantaged, and excluded."\footnote{Statement of Common Understanding, supra note 159, at 19.} One of the potentially misleading claims contained in much of the literature about rights based approaches is that they reflect a preference for the poor and disadvantaged or that their purpose is to "set out the rights and entitlements within which the poor and their representatives..."
can make claims.\textsuperscript{184} At one level such a claim is certainly correct in the sense that if the poor enjoyed all of the rights recognized in human rights declarations they would be infinitely better off than they are at present. But at another level, it is almost naive not to acknowledge that human rights systems have historically benefitted the well-off even more than the down-trodden, and that the consequences of highlighting rights will depend very significantly on the power relations that exist within the society or the group. This is easily illustrated by the example of a situation in which women are systematically disempowered. Unless carefully targeted, the promotion of a rights approach in such a setting could well reinforce the rights of those whose are capable of exercising them, in other words those who already have power. In this respect, Alsop and Norton have recently pointed out that “a de-politicized view of empowerment . . . can lead to donor agencies engaging in capacity building activities that may reinforce power relations that are unfavourable to many poor people.”\textsuperscript{185} Without specific measures targeted at the poor in the context of rights based approaches it is highly unlikely that they will benefit disproportionately from the emphasis on human rights.\textsuperscript{186} Nevertheless, it remains the case, even in relation to rights based approaches, that the recognition of the need for such measures “is rarely factored into a decision-making process that remains largely technocratic in character.”\textsuperscript{187}

A more difficult matter is the appropriate limits of the ambitions or aspirations of human rights based approaches to development. A comprehensive change of approach on the part of virtually all national and international agencies is often called for in the development context. The range of addressees is thus vast, moving from international financial institutions such as the IMF, through national donor agencies such as the US Agency for International Development, to planning or other central coordinating agencies in developing countries. All are asked to adopt a human rights analytical framework and to make systematic and effective use of human rights norms, techniques, and institutions. While there is sometimes an element of nuance in what might reasonably be required of each such

\textsuperscript{184} Department for International Development, supra note 163, at 2.


\textsuperscript{186} In terms of legal empowerment more broadly, Woolcock has argued that it is necessary to discover which groups within a community “have the hardest time gaining access to, and a fair hearing from, the court systems, and identifying which groups have to negotiate their way between the largest number of dispute resolution alternatives.” In his view, evaluating the empirical effectiveness of empowerment strategies “requires integrated forms of qualitative and quantitative data,” which would help in identifying appropriate service delivery mechanisms for excluded groups in specific contexts. Woolcock, supra note 181, at 115.

\textsuperscript{187} Alsop & Norton, supra note 185, at 13.
actor, it seems that consideration is rarely given to arguments that their mandates (whether in institutional or legal terms) are limited and make it inappropriate for them to take the lead on human rights issues, that they may lack the institutional expertise to engage fully in a human rights dialogue, or that they prefer to use an alternative analytical framework that better reflects their specific concerns and is capable of being sensitized to at least certain human rights issues but would not pass muster as a human rights based approach.\footnote{188}

C. Strengthening the Human Rights Based Approach

The intention of this analysis is to provoke more self-critical reflection by human rights proponents in order to strengthen, and not in any way to undermine, the fledgling efforts underway to promote broader acceptance of human rights based approaches. Emphasis must fall on positive prescriptions that build on the achievements of these initial efforts.

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

Another policy prescription is that human rights proponents need to be more realistic about the obstacles that impede those working in the area of development from adopting human rights methodologies. A more sympathetic and insightful inquiry into the underlying reasons for the shortcomings

\footnote{188. For a sophisticated and oft invoked version of this argument see W. Michael Riesman, Through or Despite Governments: Differentiated Responsibilities in Human Rights Programs, 72 IOWA L. REV. 391 (1987).}
of efforts to date is necessary. The foregoing survey of the role accorded to human rights in the MDGs context shows that hesitance to use a human rights framework is deeply entrenched, that the shining examples to which human rights proponents can point are generally far from the mainstream, and that the resistance to human rights frameworks by development agencies is based on more than ignorance or bloody-mindedness. There must also be a greater awareness that calling for a rights based approach effectively demands a paradigm shift on the part of the development community. As Uvin puts it, adopting such a strategy is:

[A] radical affair . . . demanding profound changes in choices of partners, the range of activities undertaken and the rationale for them, internal management systems and funding procedures, and the type of relationships established with partners in the public and non-governmental sectors.189

The problem, of course, is that paradigm shifts are rarely achieved on the basis of gentle appeals or of bureaucratic checklists. Two elements will be important in charting the way forward. The first is that the onus will largely be on the human rights community to demonstrate the feasibility of the advocated approaches, to demonstrate their adaptability to different circumstances, and to show a greater engagement with the alternative methodologies employed within the development community. The second is that incremental change is far more likely to succeed than is an approach assuming that a paradigm shift can be achieved almost overnight. A gradualist approach will be more easily incorporated into existing development paradigms, will be less threatening and thus meet less resistance, will be better able to emphasize the benefits of taking some aspects of human rights on board, and is far better able to be monitored and evaluated than is a demand that a fundamentally different methodology should be adopted.

VII. IDENTIFYING THE KEY CHARACTERISTICS OF AN INTEGRATED HUMAN RIGHTS/MDG APPROACH AT THE NATIONAL LEVEL

If the critique of human rights based approaches as being too all-embracing is warranted then it becomes clear that the resulting challenge is to work out what the distinctive and genuinely indispensable elements of a more incremental human rights strategy should be. Some of the criteria on the basis of which those elements should be selected are: the need for a demonstrable grounding in human rights law of any principles put forward; a degree of modesty acknowledging that a human rights approach will not

189. Uvin, supra note 76, at 166.
in fact have clear answers, or perhaps any answers, in relation to at least some of the more intractable problems; the need for a judicious blend of process and outcome requirements; specificity in the sense of a list of requirements that is able to be stated with reasonable certainty or clarity; and manageability in terms of a list of requirements that is not utopian and does not impose impossible demands upon the relevant processes.

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

A. Recognition of the Relevance of Human Rights Obligations

This element has three dimensions. The first and most important consists of recognition of the fact that the international human rights obligations voluntarily undertaken by the country concerned should be one of the key reference points taken into account in MDG planning and implementation. In many respects this element is comparable to the practice of the World Bank in its environmental safeguards policy, which requires that the environmental assessment (EA) required before projects commence should take “into account the . . . obligations of the country . . . under relevant international environmental treaties and agreements. The Bank does not finance project activities that would contravene such country obligations, as identified during the EA.”

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

It would of course be possible to give a more detailed description of obligations, clarifying that such a commitment involves not only international treaty obligations undertaken by the state, but also any customary law provisions, as well as relevant soft law standards. It is important, however, not to view such policy agreements as contractual relationships. Instead, the

MDG context provides an important occasion on which to introduce human rights considerations into the heart of the development planning processes and assume that this point of entry will eventually stimulate appropriate discussions as to the extent of the applicable human rights obligations.

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

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

The third dimension would involve the use of human rights terminology wherever it is clearly applicable. The easiest examples would be to include references to the right to education, the right to adequate food, and the right to health, in the sections dealing with those issues as MDGs. Once again the precise implications of this terminology need not be spelled out in the document. In most cases it will be through a dialogue within the community and particularly between civil society and the government to identify the specific implications in a given location.

191. Alsop & Norton, supra note 185, at 8.
B. MDG Strategies Should Address the Legal Framework in Relation to Human Rights

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

C. The Encouragement of Community Participation Based on Human Rights Formulations

Too many discussions of the need for participation in the development process are hollow and tokenistic. That term, when used in the abstract and not related to a specific context, has remarkably little assured meaning. In development discourse, calls for the informed and active participation of individuals in making decisions that affect them are heard all too often, without any adequate attempt to spell out what this means and how it might be translated into concrete law or policy.\textsuperscript{192} Neither is this problem unknown in the human rights context. Thus the 1986 Declaration on the Right to Development is positively dripping with references to participation.\textsuperscript{193}


\textsuperscript{193} Declaration on the Right to Development, adopted 4 Dec. 1986, G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, at 186–87, U.N. Doc. A/41/53 (1987). In extolling the virtues of participation the Declaration states that: “the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom,” id. at preambular ¶ 2; “development policy should . . . make the human being the main participant and beneficiary of development,” id. at preambular ¶ 13; “every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development,” id. art. 1; “the human person . . . should be the active participant and beneficiary of the right to development,” id. art. 2(1); national development policies must aim at the “constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation,” id. art. 2(3); and “States should encourage popular participation in all spheres,” id. art. 8(2).
But the relationship between that term and the concrete exercise of specified civil and political rights is never spelled out. This was not unintentional—the result enables one side of the debate to assert that participation is in fact a very satisfactory proxy term invoking the whole gambit of relevant civil and political rights, while the other side can insist that it is a much less inclusive term and one that is better understood in the sense of its traditional, more localized, and limited usage in development discourse.

It is true that the most frequently cited human rights text is equally vague. Article 25 of the UDHR states only that “Every citizen shall have the right and the opportunity, [without discrimination] and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives.” But the substance of this statement of the right to participate must be viewed as informed by other rights recognized in the UDHR. They include, among others, the right to freedom of speech, the right to nondiscrimination, the rights to assembly and association, the right to a free press. Any call for participation in relation to setting and implementing MDG strategies must be equally informed by such rights.

To ensure meaningful participation of those affected in decision making, MDG strategies must specify in human rights terminology what participation should mean in practice. The range of issues that might usefully be identified in this regard in any given context is likely too broad to be susceptible of generalized prescriptions. The way forward, therefore, might be to affirm that broad-based and meaningful participation in decision making will be sought, but then to ask those responsible for drawing up the relevant MDG strategy to spell out what this means in the given context. Take, for example, the proposition that it should always include the right to criticize official policy positions. The generality of such a recommendation could be dramatically reduced if it were possible to go further and call for specific proposals to be made in any context in which an international human rights body has indicated that any aspect of the freedom of individuals to participate is currently limited. Such indications might derive from sources such as reports by the ILO in relation to freedom of association, by UN Special Rapporteurs in relation to freedom of the press, freedom of speech, minority rights, and other areas, or by the UN Commission on Human Rights in its overall assessment of the situation in the country in question.

194. UDHR, supra note 12, art. 25.
D. Accountability Mechanisms are the *sine qua non* of a Human Rights Approach

Institutionalized arrangements for monitoring processes and outcomes and for establishing some form of accountability are indispensable in any human rights context and they are equally relevant and necessary in relation to MDGs. Such a dimension is necessary to ensure that the MDG initiative is more than just another bureaucratic scheme that will come and go just as its predecessors have. In the MDG context this would require the setting of explicit targets or benchmarks and then detailed annual or biannual reporting on the progress achieved in relation to those targets. Where the benchmark has not been met, a re-examination of the relevant policies would be triggered. The reporting would also need to be disaggregated to the extent possible, to take account of elements such as gender, regional disparities, and the situation of the most disadvantaged groups in the society in question (who should be identified in the benchmarking process). There is, as noted below, an important role for international human rights mechanisms in this regard, but the first line of support should be at the national level. Thus, in every state in which a national human rights institution exists, the institution should be given an explicit mandate to review and report on the realization of MDG targets at regular intervals. There are now approximately fifty-five such institutions in existence, a dramatic increase from the eight that existed in 1990.\(^{195}\) In states lacking such mechanisms, the MDG strategy could usefully recommend their creation.\(^ {196}\)

The focus of the list of desirable human rights elements presented above is on the process-related aspects of the MDG strategy, in part because the specific outcomes are spelled out in the MDGs themselves. A process orientation is also justified on the grounds that such aspects provide a more focused basis on which to evaluate the human rights content of MDG strategies. Each of the suggested elements or criteria can be measured, at least in a formal sense, even if the adequacy of the content is difficult to assess. The assumption, however, is that even somewhat token gestures in the direction of human rights components will empower civil society and


other interested parties to engage with the government more fruitfully in relation to the key human rights issues that arise.

VIII. MONITORING AND ACCOUNTABILITY: THE ROLE OF THE UN HUMAN RIGHTS MECHANISMS

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

It is thus of particular significance that the need for enhanced monitoring, in the course of 2004 alone, taken a matter of strong concern in a series of internal reviews undertaken by UNDP, the World Bank and the IMF. Yet none of these reviews takes account of the fact that there already exists a relatively sophisticated and comprehensive system of monitoring linked to the international human rights regime. Nor do they focus on the missed opportunity as a result of what is done in the international human rights setting and what is so clearly missing in both the MDG and PRSP settings. The UN Guidance Note on PRS papers, for example, notes that the UN Country Team can help “to establish a poverty monitoring and public expenditure tracking system, the development of country-specific indicators for monitoring the impact of their strategies on poor people and regions, and strengthening national statistical capacity” and to make use of such information to assist the government to “use data, analysis and evaluations effectively, for multiple reports.” Yet much of that information would be relevant in relation to what should be done by countries in the context of their human rights reporting.

The existing arrangements for reporting on progress made in relation to the MDGs are relatively primitive and not especially convincing by most

standards. As noted above, some sixty national MDG reports have now been completed. Notwithstanding rhetorical insistence that such reports will play an important role at the national level, their main consumer seems to be UNDP, which has a procedure for assessing the reports “especially with regard to participation, disaggregation and presentation.”201 In UNDP’s view the reports have two purposes, “public information and social mobilization,” with regard to which the assessment suggests considerable shortcomings on the part of many of the completed reports.202 It is noteworthy that neither human rights NGOs, nor civil society organizations that have a particular involvement in human rights matters (such as women’s and children’s rights groups), are referred to at all in the assessment, despite the finding that “close collaboration with civil society organizations (CSOs) is essential for widening support and consensus around the MDGs.”203 The assessment also attaches considerable importance to tailoring MDG indicators to reflect the particular needs and circumstances of each country, in a way that is reminiscent of the approach advocated in relation to human rights benchmarks. Finally, UNDP concludes that there is a need to “build capacity among government officials, CSOs, parliamentarians, and the media to use data for evidence-based policy-making and programming, as well as for advocacy and campaigning.”204 From a human rights perspective it is striking that the unique mobilizational capacities of human rights standards are considered not to be relevant in this context, while it is assumed that civil society will be able to be galvanized around the relatively bureaucratically formulated MDGs.

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

A human rights based approach to national reporting on MDGs, requires a clear communication plan (about the process and time-table for preparing national reports); to serve as the basis for participatory approaches (which draw upon reports from governmental, nongovernmental, and notably local sources); with clear roles and responsibilities in reporting; disaggregation of national data, (to ensure that no group is left behind in the race to fill national goals and targets); and clear indicators, benchmarks and targets to measure progress.205

202. Id. ¶ 6.
203. Id. ¶ 9.
204. Id. ¶ 12.
But this inconsistency serves mainly to highlight the fact that many of those who are advocating human rights approaches within the leading international development agencies are relatively isolated, that their recommendations have too little impact upon the policies promoted by the institution as a whole, and that little real progress in this direction has yet been made.

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

A. The Roles of the Commission on Human Rights and of Special Rapporteurs vis-à-vis MDGs

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

At a superficial level, the Commission has been assiduous, even admirable, in relation to the Millennium Declaration and the MDGs. By 2004, nineteen of the 125 resolutions the Commission adopted contained an express reference to either the Declaration or the Goals or both. On


208. Id. ¶ 12.

closer examination, however, the result provides no cause for satisfaction for those who would wish to see the development of a substantive link. Twelve of the nineteen resolutions contained only a passing reference in a preambular paragraph to the Millennium Declaration or the MDGs. In some cases, this superficiality was understandable, such as in the resolutions dealing with terrorism,\textsuperscript{210} the trafficking of women and girls,\textsuperscript{211} or human rights education.\textsuperscript{212} In other cases, it was extremely surprising, such as in the individual resolutions dealing with the rights to food,\textsuperscript{213} housing,\textsuperscript{214} education,\textsuperscript{215} and health,\textsuperscript{216} none of which contained a single reference to the MDGs in the operative part of the resolution. Indeed the only relevant action proposed by the Commission in relation to the MDGs was to ask its independent expert on extreme poverty to “pay particular attention to . . . the assessment of . . . the internationally agreed goals contained in the Millennium Declaration.”\textsuperscript{217} Finally, three resolutions—dealing with structural adjustment policies,\textsuperscript{218} international solidarity,\textsuperscript{219} and the rights of the child\textsuperscript{220}—invoke the Millennium Declaration in connection with a call for more resources to be available to developing countries for the purpose of meeting the MDGs.

For their part, the various experts advising the Commission have also not paid a great deal of attention to the MDGs. A brief survey is sufficient to

illustrate the point. The only really significant attention given to the MDGs in 2004 came from the Working Group on the Right to Development, the report of which states that "implementation of the Millennium Declaration . . . and the Millennium Development Goals will contribute to the progressive realization of the right to development."221 Also, in recommending the creation of a "high-level task force on the implementation of the right to development," the working group suggested that the first of the task force’s terms of reference should be to examine the "obstacles and challenges to the implementation of the Millennium Development Goals in relation to the right to development."222

The MDGs are of direct relevance to the work of various of the Commission’s Special Rapporteurs, but in 2004, the topic was barely visible. The Special Rapporteur on housing made no reference to the MDGs in either his general report or the country visit reports, although in previous years he had made a reference to them.223 The Special Rapporteur on the right to food concluded his general report by recommending that "[a]ll Governments take immediate actions to meet their commitments" made, inter alia, in the "Millennium Declaration to reduce the number of victims of hunger by half by 2015."224 The MDGs however were absent from his country report on the Occupied Palestinian Territories,225 and similarly in a report on Bangladesh he observes only that the interim PRS paper prepared by the government does address the MDG targets.226 The Special Rapporteur on the right to education refers to the MDGs twice in her general report.227

222. Id. ¶ 49(a).
although not in a substantive way, and they are not mentioned in her
country reports on Colombia\textsuperscript{228} or China.\textsuperscript{229}

The principal exception among the rapporteurs is the Special Rappor-
teur on the right to health. While he had made only passing reference to the
MDGs in his earlier reports to the Commission, his 2004 report to the
General Assembly includes a very detailed analysis of the relationship
between the right to health and the MDGs. For present purposes the key
points of his analysis were that there is “considerable overlap” between
the right to health and the relevant MDGs, and that the right to health has much
to offer to the latter in terms of its nondiscrimination based focus on the
disadvantaged and vulnerable, and its emphasis on participation and
accountability.\textsuperscript{230} Although it calls for the integration of human rights into
the MDGs the report does not delve into the specifics of what this might
mean.

The conclusion of this survey is that the MDGs have not been taken on
board in any sustained way. They have not significantly influenced the
analytical frameworks used by the rapporteurs, they do not feature in any
applied sense in their recommendations, and there is no sense that the
MDG initiative can contribute significantly to the human rights enterprise.

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

B. Treaty Bodies Role in MDG Monitoring

The evolution of effective monitoring procedures in relation to the major
international human rights treaties has been a long and gradual process, but
the ingredients are now in place for effectively holding governments
accountable for their action or inaction in relation to specific normative
provisions, and there are a great many instances in which these procedures

\textsuperscript{228} The Right to Education: Report submitted by the Special Rapporteur, Katarina Tomasevski:

\textsuperscript{229} The Right to Education: Report submitted by the Special Rapporteur, Katarina Tomasevski:

\textsuperscript{230} The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical
have been able to produce meaningful results. In the development field, efforts have long been made to set specific goals and targets, and to reinforce such steps by the introduction of monitoring mechanisms. The approach reflected in the Declaration adopted at the Children’s Summit in 1990 exemplified both the successes and shortcomings of such endeavors. Clear goals were indeed set, but the monitoring arrangements were relatively ineffectual except in so far as they were applied by a specific agency, such as United Nations Children’s Fund (UNICEF), holding significant resources with which to back up its efforts to pressure states to adopt the agreed measures.

Five years later, the Beijing Conference was again able to agree on targets but not on effective monitoring. Subsequent arrangements have sought to compensate for that deficiency but they have had to be somewhat ad hoc and dependent upon the energy of NGOs and the goodwill of governments.

It is against this background that the proclamation of the MDGs must be viewed. At one level the Goals are more precise and have achieved higher level formal recognition (147 heads of state or government) than any previous development goals. In addition, they have been accompanied by a variety of monitoring arrangements, including national level efforts, sustained analysis and reporting by a range of international agencies, and the elaborate advisory apparatus that the Secretary General has set up to promote the realization of the Goals.

On the other hand, the MDGs have been accused of being taken out of context, and thus of meeting “the letter of civil society demands for accountability, but not the spirit.” Observers taking as their reference point a human rights approach to monitoring would argue that the MDG monitoring arrangements are lacking in several respects, including: adequate opportunities for civil society inputs into the process; a sufficiently clear, comprehensive and integrated set of standards; an open and transparent monitoring process; and the ability to mobilize both public and political

234. This reporting was a major focus of the Bretton Woods Institutions, the UN General Assembly, and the Secretary General.
support in the event that inadequate progress is made. Such critiques raise the question of whether the existing international human rights treaty monitoring framework has so far made a contribution, and whether in the future it could usefully and productively be invoked in order to complement and supplement the other arrangements already put in place in relation to the MDGs.

C. MDGs and the Treaty Bodies up to 2004

None of the treaty bodies thus far appears to make any significant use of any part of the MDG apparatus, which includes the specific commitments undertaken, the plans of action for the achievement of those commitments, and the national reports. A review of the concluding observations adopted by each of the treaty bodies, which represent the principal reflection of the outcome of the dialogue with each reporting state, reveals no references to the MDGs and no attempts to encourage governments to attach any particular importance to their MDG commitments. The assumption seems to be either that the MDGs add nothing to the already available human rights monitoring framework or that the MDG initiative is specialized territory into which the treaty bodies should not stray.

D. A Future Role for the Treaty Bodies

A simplistic answer to the question of how best to encourage the treaty bodies to take note of the MDGs would be to call upon each of them to take full account of the MDG commitments in their work. However, there are several reasons why this would not be especially helpful. First, whenever a special focus arises, the treaty bodies are entreated to pay special attention to it, with the result that many of the calls made meet with all too little responsiveness. Experience to date tends to point to the emergence of a rapid saturation point in reaction to such calls. While each special focus is entirely valid on its own terms, the fact remains that already overloaded committees will be loathe to add to their agendas unless a strong, targeted, case can be made.

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

While one should be careful not to exaggerate the significance of identifying treaty bodies whose potential role in relation to the MDGs seems limited, such a process nevertheless enables increased selectivity through excluding a leading (but not a subsidiary) role for any of the above three committees. That leaves the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Discrimination Against Women (CEDAW), and the Committee on the Rights of the Child (CRC). Each of these three committees requests states parties to submit reports on a five yearly cycle, modified in the case of delays and other unforeseen issues. The reports are comprehensive, but are also expected to take particular account of shortcomings that have been identified in previous reporting cycles.

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

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

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

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

E. A Strategy for the Treaty Bodies

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

Reporting by states: Rather than requesting states in their individual reports to each of the three or six treaty bodies to report on MDG progress, that information to be accorded a special place in the core document that each country now submits for use in connection with its reporting under all of the relevant treaties to which it is a party.236 Proposals to expand the

236. For a list of all of the ‘core documents’ that have been submitted see the UN Treaty Body Database, available at www.unhchr.ch/lbs/doc.nsf/DocumentSet/OPENFRAMESET.
scope of this document have recently been put forward by the UN Secretariat and these proposals include making reference to the MDGs and also including relevant statistical and other data generated by the MDG process. The same report proposes that consideration be given by states to setting up a permanent single institutional framework at the national level for preparing both human rights and MDG reports. The latter approach is sound but is likely to be strongly resisted for precisely the reasons that underlie the deep separation between the two different reporting processes as they currently exist. An alternative suggestion is that states could address MDG reporting in the human rights reports they submit.

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

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

Activities undertaken by national human rights institutions: Such institutions might play an important role in linking the realization of specific MDGs to the activities that they undertake with a view to giving effect to the state's obligations under particular treaties.

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

Concluding Observations: The outcome of the process of considering states' reports is the adoption of a set of concluding observations addressed to each state party, which are also supposed to be widely disseminated by the media in the country in question and are in practice very often taken up by the political process. A recurring criticism of some of the observations is


238. Id., ¶ 31.

239. The same report asserts that MDG reporting "is of particular interest to many of the committees insofar that [sic] each goal impacts on related articles of the treaties" and includes a detailed Appendix listing the human rights instruments and documents that are of direct relevance to each of the MDGs. Id. Appendix 5, ¶ 55.
that they are not sufficiently precise or targeted as to provide a clear indication of measures that need to be taken, but a focus on individual MDGs, combined with explicit recommendations as to what needs to be done, would serve to bring important publicity to the Goals, would help to keep the government's feet to the fire, and would strengthen the hand of government departments and external donors that are advocating greater attention to these particular dimensions. Where appropriate, calls could be made upon international agencies and others to provide relevant assistance needed to ensure the meeting of the Goals.

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

IX. CONCLUSIONS

This article has taken the international development community's single most important preoccupation—the promotion of the MDGs—and used it as a test case to evaluate the current state of the art in the human rights and development debate. The conclusion is accurately reflected by the metaphor of ships passing one another in the night, each with little awareness that the other is there, and with little if any sustained engagement with one another.

This conclusion is not intended to suggest, however, that there has been no progress since the early 1990s when the human rights community began in earnest to persuade development policymakers and practitioners to acknowledge, adopt, and incorporate a human rights dimension in their activities. By the mid to late 1990s this effort to reach out took off under the rubric of "mainstreaming," an effort given strong official imprimatur by Kofi Annan and fully embraced by Mary Robinson after she began her term as High Commissioner in September 1997.240 The emphasis on mainstreaming was born of the realization that the effective instigation of a human rights culture requires a wide-ranging effort undertaken on as many fronts as possible and that it could not be achieved solely or even primarily through the traditional approaches involving mechanisms and procedures that were

240. The Secretary General has recently observed that "[t]he concept of 'mainstreaming' human rights has gained greater attention in recent years, but it has still not been adequately reflected in key policy and resource decisions." In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General, U.N. GAOR, 59th Sess., ¶ 144, UN Doc. A/59/2005 (2005).
largely reactive or curative in nature. It was also motivated by an acknowledgment of the fact that a relatively small part of the United Nations, the Office of the High Commissioner for Human Rights, has significant limits on its funds, capacities, expertise, and influence and that it needs to be able to recruit other agencies to its cause if it is to have an impact beyond its own limited natural sphere of influence. At one level, the results have been impressive as agencies ranging from the UN Development Programme and the UN Conference on Trade and Development through the Office of the High Commissioner for Refugees and even the World Bank have developed important programs for the promotion of human rights within their own work.

By the same token, one of the key conclusions to emerge from the present analysis is that this acknowledgment of the importance of human rights has yet to have a systematic impact upon practice on the ground. Statements of policy at various levels have been encouraging, as illustrated by periodic condemnations of violence against women made by the President of the World Bank, even if the focus is on the fact that it constitutes a "major stumbling block to ... development,"241 rather than a violation of human rights. But when it comes to the operational activities of many of the key agencies, at least in so far as can be judged on the basis of the system’s self-declared major priority—the MDGs—the results are far from encouraging.

The framework within which the MDGs are being promoted at the national level in the great majority of developing countries does not currently take adequate account of the various human rights dimensions. While many of the international agencies involved would say they are conscious of those dimensions but prefer to use a different discourse, the analysis in this article seems to demonstrate a much more deliberate avoidance of the language of rights. However, language as well as context is important. The language of human rights cannot be systematically ignored if claims of human rights friendliness are to be accepted at face value.

It is also clear from the present analysis that responsibility for the current situation does not lie solely with the development community. Despite the importance of the many versions of a human rights based approach to development suggested by a variety of actors, too many of them have tended to gloss over the complexities, to idealize the characteristics of the human rights mechanisms, to be excessively optimistic as to the extent of fundamental changes that may realistically be expected, and to be poorly attuned to the need to set operational priorities. In the future, human rights

proponents need to prioritize, stop expecting a paradigm shift, and tailor their prescriptions more carefully to address particular situations. The key elements in a new approach to ensuring effective complementarity between human rights and the MDGs should be: (i) overt recognition of the relevance of human rights obligations; (ii) ensuring an appropriate legal framework; (iii) encouraging community participation but doing so in a realistic and targeted way; and (iv) promoting MDG accountability mechanisms. All of these elements should, however, avoid being too prescriptive. Instead, what is needed is faith in the dynamism and self-starting nature of the rights framework once it is brought inside the gates of the development enterprise.

Finally, one of the most surprising conclusions to emerge is that the human rights community itself has not been especially supportive of the mainstreaming agenda. Many of its members remain reluctant to venture outside their areas of expertise narrowly defined. They have happily endorsed calls for the development and humanitarian agencies to take on human rights functions but have not seen it to be necessary or even desirable for themselves to reach out with actions that seek to contribute to the overall agenda. In 2002 the High Commissioner for Human Rights reported to the Economic and Social Council that:

human rights law provides a value system, a legal framework, monitoring mechanisms and realistic tools that can strengthen the effectiveness of the implementation of these goals. . . . The elaborate system of the [Commission's] special rapporteurs . . . as well as the expert [treaty] bodies . . . provide a wealth of information that could usefully assist in assessing to what degree the Millennium development goals have been fulfilled.242

In practice the analysis in this article shows that this potential has not been mobilized to any significant extent on behalf of the MDGs. Instead the UN Commission on Human Rights and its Special Rapporteurs have taken minimal account of the MDGs, despite offering a rhetorical embrace. The treaty bodies, which monitor states' human rights obligations have also largely ignored the MDGs, despite the obvious ways in which complementary strategies could be pursued. It is paradoxical that the HR community, which has been so quick to criticize the reluctance of development agencies to take human rights considerations on board, has itself shown a significant degree of obstinacy when it comes to making the necessary outreach to ensure that its own agenda is effectively promoted within the context of the international community's development agenda.

APPENDIX 1: THE MILLENNIUM DEVELOPMENT GOALS AND TARGETS

Goal 1: Eradicate extreme poverty and hunger

- Target 1: Halve, between 1990 and 2015, the proportion of people whose income is less than one dollar a day
- Target 2: Halve, between 1990 and 2015, the proportion of people who suffer from hunger

Goal 2: Achieve universal primary education

- Target 3: Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling

Goal 3: Promote gender equality and empower women

- Target 4: Eliminate gender disparity in primary and secondary education, preferably by 2005, and to all levels of education no later than 2015

Goal 4: Reduce child mortality

- Target 5: Reduce by two-thirds, between 1990 and 2015, the under-five mortality rate

Goal 5: Improve maternal health

- Target 6: Reduce by three-quarters, between 1990 and 2015, the maternal mortality ratio

Goal 6: Combat HIV/AIDS, malaria and other diseases

- Target 7: Have halted by 2015 and begun to reverse the spread of HIV/AIDS
- Target 8: Have halted by 2015 and begun to reverse the incidence of malaria and other major diseases
Goal 7: Ensure environmental sustainability

- Target 9: Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources
- Target 10: Halve, by 2015, the proportion of people without sustainable access to safe drinking water
- Target 11: By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers

Goal 8: Develop a Global Partnership for Development

Some of the indicators listed below will be monitored separately for the Least Developed Countries (LDCs), Africa, landlocked countries and small island developing States.

- Target 12: Develop further an open, rule-based, predictable, non-discriminatory trading and financial system
- Target 13: Address the Special Needs of the Least Developed Countries
- Target 14: Address the Special Needs of landlocked countries and small island developing States
- Target 15: Deal comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term
- Target 16: In co-operation with developing countries, develop and implement strategies for decent and productive work for youth
- Target 17: In co-operation with pharmaceutical companies, provide access to affordable, essential drugs in developing countries
- Target 18: In co-operation with the private sector, make available the benefits of new technologies, especially information and communications.
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