ARTICLE: The *Millennium Development Goals*: Milestones or Millstones? Human Rights Priorities for the Post-2015 Development Agenda

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**LexisNexis Summary**

... Derided by their most ardent detractors as “Major Distracting Gimmicks,” critics of the MDGs have pointed to the secretive circumstances of their birth, their technocratic and reductionist nature, their lack of ambition, their failure to address root causes of poverty, their failure to factor in legal obligations pertaining to social rights, their gender-blindness, their failure to address poverty in rich countries, their weak accountability mechanisms, their limited uptake by social movements in the Global South, the potentially distorting character of target-driven policymaking, and the propensity of the MDGs to “crowd out” attention to important issues that didn’t make it into the global list, for example, social security or social protection. ... Whether national poverty lines are consistent with internationally recognized human rights standards depends on a number of factors including whether they: (a) capture relevant dimensions of the right to an adequate standard of living; (b) reflect the depth and severity (rather than just the incidence) of poverty; (c) are disaggregated to capture the grounds of discrimination prohibited under human rights treaties; (d) include indicators for monitoring important poverty-reducing policies (in addition to MDG indicators which typically monitor the outcomes of policy measures); and (e) are sufficiently ambitious. ... The Summit Outcome includes welcome commitments to provide sustainable access to safe drinking water and basic sanitation in the context of health and environment-related MDGs, but fails - in these specific contexts - to commit to affordable and culturally appropriate services, which are normative attributes of the rights to water and sanitation as well as critical determinants of access to water and sanitation services in practice. ... These are among the reasons why human rights have historically gained such little traction in inter-governmental development debates, and conversely, why the consensus on so many other aspects of the human rights agenda in the Summit Outcome is so notable. ... In a recent sampling of country progress in Asia and the Pacific, for example, a decrease in income poverty was found to be strong, but not uniformly, associated with economic growth, but there was a much weaker relationship with infant and maternal mortality, and only little impact on education targets. ... Comparative contributions of human rights principles and economic reasoning to policymaking The preceding analysis, while necessarily nuanced in terms of its findings on the impacts of human rights claims, and while expressly limited to just one of many spheres of human rights claiming (viz legal claims through the formal court system), helps to dispel absolutist assumptions about the role and contributions of human rights in public policymaking. ... Instead, more modestly, Daniels focuses upon the requirements for fair deliberative processes that meet four minimum conditions: (1) the “publicity condition,” which calls for public access to the rationales for priority-setting decisions, and public justification; (2) the “relevance requirement,” assuring that stakeholders agree on what kinds of reasons are relevant to setting priorities, which involves adequate participatory processes, evidence-gathering and vetting of reasons and arguments by all those affected by a decision; (3) the “revision and appeals” condition, guaranteeing mechanisms for challenges and dispute, and opportunities to revise policies in line with new arguments; and (4) the “regulative condition,” which calls for public regulation of the process to ensure that the preceding three conditions are met. ... The human rights framework itself doesn’t resolve difficult trade-offs and questions about prioritisation of limited resources, but it does offer a value framework that complements and in some respects challenges the dominant assumptions of neoclassical economics. ... While national and local redress mechanisms will usually (but not always) be most proximate and practically useful, states should more systematically reflect progress towards the MDGs in their national reports to the international human rights treaty bodies and Universal Periodic Review process of the United Nations Human Rights Council. ... Candidate Goals and Targets A post-2015 global monitoring framework should include a
goal, target(s) and indicators capturing essential civil and political rights prerequisites for public participation and effective and equitable service delivery. … Non-discrimination and the principle of substantive equality must be integrated more effectively into all goals, and the necessary investments must be made at both national and global levels for the additional data required to be collected, in line with Member States’ commitments at the MDGs Summit. … The aid lobby will no doubt be challenged to some extent by the emerging research revealing the growing proportion of poor people living in middle-income countries, demanding a more explicit focus on individuals (rather than countries), inequalities, and distribution within countries, as well as a reconceptualisation of the architecture and purposes of aid in different contexts in the medium to long term.

Highlight

“Not everything that can be counted counts, and not everything that counts can be counted.” Albert Einstein

Text

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Introduction

In September 2010, world leaders met for the High Level Plenary Meeting on the Millennium Development Goals ("MDGs Summit"). The MDGs Summit took place with great fanfare, attracting close to 140 heads of state and government, as well as leaders from civil society, foundations and the private sector.¹ It launched important aid initiatives and generated unprecedented agreement by Member States on the importance of human rights in efforts to achieve the Millennium Development Goals ("MDGs").² But how successful was this event, measured against its goals, and what are the human rights implications of the MDGs Summit with regard to future development and aid policy?

Global summits have not enjoyed an easy ride in the court of public opinion.² Global summitry has been a veritable industry since the 1990s, convened at great expense to the international taxpayer, generating (and recycling) a great wealth of largely pre-scripted and partially implemented promises to improve the human condition. Global promises are, it has been noted, “easily set but seldom met.”³ If past global summit commitments had been achieved, we would all have been healthy by 2000, trade would be “fair,” and twenty-four thousand children would not be dying each day through poor sanitation and easily preventable causes.⁴ Given this track record of unmet goals, why should the MDGs Summit continue to merit our attention?

Certain global conferences have enjoyed comparatively strong political support, have established institutional frameworks for long-term cooperative action, and, arguably, have contributed positively to global social progress.⁵ The


² See, e.g., James Gustave Speth, Red Sky at Morning: America and the Crisis of the Global Environment 8-9 (2004); Bill Jamieson, Global Summitry Exposed for the Sham it Plainly Is, Scotland on Sunday, Sunday, July 22, 2001; Cf. Richard Jolly, The MDGs in Historical Perspective, 41 IDS Bulletin 48 (2010) (arguing that there has been more progress in implementing global development goals than is commonly recognised).


The MDGs comprise eight time-bound, measurable human development goals, with eighteen globally agreed targets and forty-eight indicators. Examples include: (1) between 1990 and 2015, halving the proportion of people suffering hunger and living on less than USD1 per day; (2) achieving universal primary education; (3) halting and beginning to reverse HIV/AIDS by 2015; and (4) reducing by three-quarters the maternal mortality ratio. Significantly, in MDG 8, donor countries agreed to a number of commitments in connection with aid, trade, debt relief, and access to essential medicines and technology transfer. The inclusion of donor commitments in this global compact for poverty reduction helps to explain why the MDGs have attracted broader support than their predecessor, the "International Development Goals" produced by the Organisation for Economic Cooperation and Development (OECD) in the 1990s. Secluded from public view in the months following the MDG Summit, the architects of the MDGs could scarcely have imagined their eventual impact on the global development discourse, if not development policy on the ground.

The MDGs bring a number of advantages to development work, and indirectly also to human rights. Notably, the MDGs embody a wide international consensus, and provide a framework for mobilising resources to help realise a
small but significant number of socio-economic rights. The manageable scope and quantifiable character of the MDGs theoretically makes them amenable to “costing” at the national level, which in turn facilitates analysis of the “fiscal space” and resources required for their realisation, including through official development assistance (ODA), where domestic resource constraints so require. At least implicitly, in these respects, the MDGs challenge “Washington Consensus” economic policies and ideologically-driven fiscal conservatism, which have imposed unwarranted constraints on domestic policy space and budgets for social spending in many poorer countries.

The MDGs harness the power of numbers to provide a framework for evidence-based policymaking and the power of simple ideas to mobilise public opinion. This is supported by a global Millennium Campaign. The MDGs provide global benchmarks for accountability, and facilitate cross-country comparisons of human progress. Some have claimed the MDGs have improved data collection, statistical methods and monitoring of important attributes of human well being beyond crude surrogates such as per capita Gross Domestic Product (GDP). Some have also claimed the MDGs have facilitated cross-sector collaboration in development work. Perhaps more controversially, the MDGs have also been credited as the catalyst for increased pro-poor public expenditure, debt cancellation in over thirty countries, steady increases in aid levels, improvements in child mortality, education enrolments, and representation of women in parliament, and helping nearly half a billion people escape “dollar-a-day” poverty. As to their normative attributes, it has also been argued that the MDGs - interpreted in line with other international declarations and world summit outcomes - have strengthened the claims of certain socioeconomic rights as binding norms of customary international law.

Some claim that high among the MDGs’ virtues are their simplicity, statistical rigour, and feasibility. In principle, a relatively small list of human development goals more readily mobilises public opinion and political action than a lengthy list. With a number of notable exceptions, as will be demonstrated later in this paper, the issues included in most MDGs are clear, and have solid indicators with robust data sets at the national level with which to facilitate monitoring. This serves to reduce interpretation bias. The “feasibility” of the MDGs is said to draw from the fact that the (usually) 2015 endpoint for the various goals is defined by reference to the rate of progress that actually oc-

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11 ODA refers to official aid undertaken with the promotion of economic development and welfare as the main objective on concessional financing terms. For a full definition see OECD, Glossary of Statistical Terms, available at http://stats.oecd.org/glossary/detail.asp?ID=6043.


13 See Naim, supra note 12 (criticising the conceptualisation and implementation of this policy package).


16 Salil Shetty, Countdown 2015: Accelerating Progress on the MDGs, Presentation, Stockholm, Sweden (Mar. 24, 2010). However Shetty also observes that political will is the most valuable commodity of all, noting that financial bailouts in 2009 totalled USD 18 trillion, whereas total aid given in the last 49 years has been less than USD 2 trillion. Id. For more qualified assessments of the impacts of the MDGs, suggesting that impact is more evident in re-framing development discourse than in mobilising resources in donor and developing countries, see Richard Manning, The Impact and Design of the MDGs: Some Reflections, 41 IDS Bulletin 7 (2010); see also Andy Sumner & Claire Melamed, Introduction - The MDGs and Beyond: Pro-Poor Policy in a Changing World, 41 IDS Bulletin 1, 2-3 (2010) (noting the methodological difficulties of proving and attributing positive impacts to the MDGs).


18 Vandemoortele, supra note 14, at 10-12, 14-16.
curred between 1965 and 1990. In other words, the operative assumption is that if the world was able to achieve aggregate progress at a certain rate between 1965 and 1990, continued progress at the same rate through to 2015 should be “feasible.”

B. Human Rights Critiques of the MDGs

Notwithstanding the suggested benefits outlined above, not everybody sees the MDGs as an unalloyed boon for human development, let alone human rights. Derided by their most ardent detractors as “Major Distracting Gimmicks,” critics of the MDGs have pointed to the secretive circumstances of their birth, their technocratic and reductionist nature, their lack of ambition, their failure to address root causes of poverty, their failure to factor in legal obligations pertaining to social rights, their gender-blindness, their failure to address poverty in rich countries, their weak accountability mechanisms, their limited uptake by social movements in the Global South, the potentially distorting character of target-driven policymaking, and the propensity of the MDGs to "crowd out" attention to important issues that didn’t make it into the global list, for example, social security or social protection.

These critiques are relatively well rehearsed, however there are a number of trenchant problems that deserve particular attention when considering the lessons to be drawn for the post-2015 development agenda. These are: tensions between MDG progress and authoritarian governance; procedural and legitimacy concerns; problems relating to poor specification; inappropriate scale of ambition based upon unreliable and arbitrary assumptions about feasibility; misinterpretation and misapplication of the MDGs at the national level; the failure to address growing inequalities; tensions with international human rights legal standards; and colonisation of the MDGs by economic growth and aid lobbies.

1. The MDGs can provide a fig leaf for authoritarian regimes

Recent events in the Middle East, and what has become known as the Arab Spring, have put into sharp relief the uncomfortable juxtaposition between MDG achievement and authoritarian governance in various parts of the world. Tunisia, for example, was an international poster-child of the MDGs, right up until its revolution of early 2011. This is not a mere problem of appearances. While no country has a clean human rights slate, lavishing praise where it is not due offers a fig leaf of legitimacy to authoritarian regimes, masks underlying inequalities and structural discrimination and oppression, and de-oxygenates local emancipatory struggles. Of course, one could argue that

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21 According to the UNDP, Tunisia was the 7th fastest mover on the "Human Development Index" (HDI; a composite measure of education, health and income indicators) in 2010. United Nations Development Program, Human Development Report 2010: The Real Wealth of Nations, at 3, 29, 47 (2010) (hereinafter HDR 2010). However, the UNDP noted problems of inequality and lack of political freedom. Id. at 54, 69. MDGs "success stories" showcased at the September 2010 MDGs Summit included Ethiopia and Rwanda, whose MDGs achievements (which in Rwanda’s case include the world’s highest representation of women in Parliaments, a notable achievement indeed, see id. at 91) sit uncomfortably with broad human rights critiques emerging through the Human Rights Council’s Universal Periodic Review process. See Universal Periodic Review, http://www.ohchr.org/EN/HRBodies/UPR/PAGES/ETSession6.aspx (Ethiopia, 6th session, 2009) and http://www.ohchr.org/EN/HRBodies/UPR/PAGES/RWSession10.aspx (Rwanda, 10th session, 2011), respectively. See also Amnesty International, The State of the World’s Human Rights (2011) at 140-42 (Rwanda), available at http://www.amnesty.org/en/library/assets/POL10001/2011/en/519da037-1497-4620-9ed5-cac8d1c8091/pol100012011en.pdf. These two countries are also among the lowest ranking countries on UNDP’s inequality adjusted HDI “empowerment” table (a composite measure of agency, accountability, and certain political freedoms and civil liberties) and “Multidimensional Poverty Index” (MPI). The MPI measures ten indicators in three dimensions of human development (health, education and living standards), beyond income poverty. Critically, the MPI index captures not only the share of people who are "multidimensionally poor" but also the intensity of their poverty. See HDR 2010 at 95-97, 154, 163, 167.
the democratic movements in Tunisia, Egypt and elsewhere may not have taken root without the education (including girls’ and women’s education) and health gains achieved with the support of resources and incentives associated with the MDGs campaign. But this is a weak palliative without proper analysis of the complex counterfactuals and claims of the rights-holders themselves, and without considering how modest revisions to the MDGs framework as proposed further below might correct such biases.

2. The MDGs emerged from a faulty process and are poorly specified

Substantive deficiencies in the MDGs have been widely remarked upon, and certain of these will be elaborated further below. These, to some extent, are linked to the process that brought them into being. The lawyer-poet John Godfrey Saxe, in a quote popularised by Otto von Bismarck, remarked: “Laws, like sausages, cease to inspire respect in proportion as we know how they are made.” A similar comment might pertain to the MDGs, hatched behind closed doors and shaped by special interests and the proclivities of particular development agencies as much as by any coherent conceptual design or consistently rigorous statistical parameters.

The problem of poor specification is perhaps most notorious in connection with the income poverty target in MDG 1. Target 1.A commits states to “halve, between 1990 and 2015, the proportion of people whose [\*62] income is less than one dollar a day.” Income is clearly a crude poverty measure, and states are expected to monitor poverty by reference to national poverty lines that more capture aspects of multi-dimensional poverty. Whether national poverty lines are consistent with internationally recognized human rights standards depends on a number of factors including whether they: (a) capture relevant dimensions of the right to an adequate standard of living; (b) reflect the depth and severity (rather than just the incidence) of poverty; (c) are disaggregated to capture the grounds of discrimination prohibited under human rights treaties; (d) include indicators for monitoring important poverty-reducing policies (in addition to MDG indicators which typically monitor the outcomes of policy measures); and (e) are sufficiently ambitious. The poor specification of Target 1.A has permitted a wide range of subjective interpretations, justifying a dramatic upward revision of headcount poverty estimates by the World Bank in 2008 at the same time that researchers elsewhere concluded that Sub-Saharan Africa’s progress towards Target 1.A was on track. Clearer specification would reduce the range of such wildly different interpretations.

3. The definition of “feasible” progress is arbitrary and unambitious

Other methodological ambiguities are equally troubling, relating to the baseline year for the MDGs and the assumptions underpinning their desired level of ambition. Target 1.A is, again, illustrative. It is a little known fact, outside the MDGs cognoscenti, that Target 1.A was preceded by a more ambitious pledge at the 1996 World Food Summit in Rome, to “halve the number [rather than proportion] of extremely poor people between 1996 [rather than 1990] and 2015.” The reformulation of this pledge in Target 1.A, referring to “proportion” rather than absolute numerical reduction, and moving the baseline year back to 1990 from 1996, were not matters of mere semantics. First, a proportionate, rather than absolute, reduction is less ambitious given the effects of population growth. As Thomas Pogge explains: “The proportion of extremely poor people is a fraction that has the number of extremely poor people in the numerator and some reference population in the denominator. A fixed reduction in the value of such a fraction, here by one-half, can come about through a decrease in the numerator and/or through an increase in the denominator. The greater the increase in the denominator, which occurs simply through \([\*63]\) population growth, the less

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23 William Easterly, Was Africa Set Up to Fail on the Millennium Development Goals? Aidwatch (June 1, 2010), http://aidwatchers.com/2010/06/was-africa-set-up-to-fail-on-the-millennium-development-goals/, (noting the different methodological approaches to measuring various MDG targets, and the different consequences that this may have in terms of how progress (or the lack of it) is characterised, depending upon a given country’s starting point and resource constraints); see also Vandemoortele & Delamonica, supra note 15, at 61-62.


26 Jan Vandemoortele, Do the MDGs Really Need More Targets on Human Rights, in Langford et al., eds., supra note 20.
of a reduction needs to be achieved in the numerator.”

Second, moving the baseline back to 1990 makes it legitimate to measure the effects of income poverty reduction in China between 1990-1996, making the goal more achievable. Yet, China’s large reduction was based upon strong growth performance and public policies that self-evidently preceded and had nothing to do with the MDGs. With these factors in view, Pogge argues that the recalibrated MDG Target 1.A, if fulfilled, would reduce the number of extremely poor people by only twenty per cent between 1996 and 2015, compared with the target of a fifty per cent reduction under the 1996 World Food Summit. By lowering the MDG 1.A bar, the number of extremely poor people deemed morally acceptable in 2015 rises by 496 million (from 828 to 1,324 million) and shrinks by more than half (from 828 to 332 million) the reduction pledged in 1996. The result, in Pogge’s assessment, is an additional six million morally acceptable deaths from poverty-related causes annually.

A further illustration of the feasibility concern, beyond Target 1.A, is MDG 5 on maternal health, which is the goal least likely to be met in global terms. Maternal deaths occur on a shocking scale in many countries, from 200 to over 1,000 deaths per 100,000 live births in various areas of Africa and South, East and Central Asia on best available estimates. This is largely preventable and occurs due to deeply ingrained discrimination, although rarely is adequate and disaggregated data collected or are deaths investigated. MDG Target 5.A (“reduce by three quarters, between 1990-2015, the maternal mortality ratio”) is more ambitious than most of the other MDGs 1 to 7, as a three-quarters reduction would constitute more rapid progress than was achieved between 1960 to 1990. For this reason, MDG Target 5.A has been criticised in some quarters for its over-ambition (in departing from the presumptively “feasible” line of progress between 1960 and 1990), at the same time as the U.N. High Commissioner for Human Rights has criticised its lack of ambition, arguing, in line with the logic of Pogge’s critique of Target 1.A, that most maternal deaths are easily avoidable and that even if Target 5.A were met 125,000 women and girls will still have died needlessly.

[*64] The foregoing critiques of Targets 1.A and 5.A reveal the potentially momentous moral implications of ostensibly technical and statistical assumptions and methodological choices, given a certain minimum will to translate policy commitments into action. Tensions between ambition and feasibility, or principle and pragmatism, underpin many of the human rights critiques of the MDGs. An assessment of compliance with socio-economic rights obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) calls for an objective assessment of the adequacy, or in some national jurisdictions, the “reasonableness,” of a government’s fiscal and policy efforts. Governments bear the onus of demonstrating that they are doing the best they can within the maximum extent of available resources. There is a range of tools and techniques to help evaluate compliance, without pretense at precision, and a rich body of comparative jurisprudence at national, regional and international levels from which to draw. In broad terms, assessments of policy efforts can be made in three ways: measuring behind (by reference to the past rate of progress), across (by reference to the progress being achieved by similarly situated countries) and within (an objective assessment of national capacities, drawing upon economic modeling, costing assess-

28 Id. at 377-82, 389-90; Thomas Pogge, Millions Killed by Clever Dilution of Our Promise. CROP Poverty Brief 2-3 (2010), available at www.crop.org/viewfile.aspx?id=218. Pogge’s calculations are based upon the assumption, drawn from WHO and UNDP data, that thirty percent of all human deaths are caused by poverty-related causes such as starvation, diarrhea, tuberculosis and other preventable diseases.
30 Vandemoortele, supra note 14, at 14.
ments, and fiscal space analysis). If the “feasibility” of the MDGs at a global level is determined by mere extension of the rate of progress between 1960 and 1990, one may well ask: “why bother with the MDGs at all?” After all, human development progress prior to 1990, such as it was, occurred without the benefit of the MDGs “global compact.” Committing to a continuation of past global trends seems singularly unambitious from this point of view, and in any case, such global extrapolations offer an entirely inadequate basis for measuring national progress.

4. The MDGs have been misinterpreted, or misused, in practice

Some of the other more serious concerns relate not to the formulation of particular MDGs, but to the manner in which they have been interpreted or applied at the national level. The MDGs, interpreted sensibly, were not in-

adequate political will than by resource constraints.

The relevance of the “global” MDGs as human rights benchmarks, and proxies for specific obligations under human rights treaties, is deeply dubious without tailoring to national conditions and resource constraints, and without disaggregating data and monitoring progress at the sub-national level across different population groups.

5. The MDGs are equity-blind and may have exacerbated global and country-level inequalities

The “equity-blindness” of the MDGs is probably the feature that has generated the strongest criticism. In this article the term “equity” refers generally to notions of fairness and distributive justice. The global MDGs pro-

See Hamid Tabatabai, MDG Targets: Misunderstood or Misconceived? International Poverty Centre, One Pager, No. 33, Apr. 2007. For some targets, such as reducing child mortality, successful trajectories are more likely to follow an S-shaped than linear curve, reflecting the relative effort and inputs required at different stages of progress. See William Easterly, How the Millennium Development Goals are Unfair to Africa, 37 World Dev. 26 (2009). In a more radical departure from traditional measurement techniques, other commentators have argued that the focus should be on the rate of progress, rather than meeting MDG-based targets themselves. See Sakiko Fukuda-Parr & Joshua Greenstein, How Should MDG Implementation be Measured? Faster Progress or Meeting Targets?, (International Policy Centre for Inclusive Growth, Working Paper No. 63, 2010).


For example, the co-chair of the U.N. inter-agency expert group responsible for the MDGs, Jan Vandemoortele, has consistently argued for tailoring the global MDGs to national conditions. See, e.g., Vandemoortele, supra note 19. But U.N. reports have frequently stated, or at least implied, that the global MDGs are intended to be taken literally as national targets. See, e.g., United Nations, Millennium Development Goals Report 14 (2011) (hereinafter U.N. MDGs Report 2011) (“Trends observed in South-Eastern Asia, Eastern Asia and Latin America and the Caribbean suggest that they are likely to meet the hunger-reduction target by 2015… . Based on current trends, sub-Saharan Africa will be unable to meet the hunger-reduction target by 2015.”).

See United Nations Development Programme, Human Development Report 2011: Sustainability and Equity: A Better Future for All (2011) (discussing the philosophical origins of the term equity in liberal theory and the capabilities approach to human development, and distinguishing inequities from inequalities in social outcomes). Not all inequalities are “inequitable,” or unfair, in this...
vide global assessments of human development progress based upon "average” outcomes. As a result, the MDGs may inadvertently occlude analysis of differential outcomes for populations in the upper versus lower income quintiles, or overlook the particular barriers faced by women, children, indigenous peoples, minorities, persons with disabilities, and other groups who may face discrimination. Taken literally, the MDGs may easily be achieved in many countries without any effort to reach the most marginalised populations. In the worst cases, this can divert attention disproportionately to the “lowest hanging fruits” and populations that are easiest to reach, thereby exacerbating existing inequalities.

Since the year 2000, inequalities between and within countries have been increasing. Recent research by UNICEF showed that in eighteen out of twenty-six developing countries with a decline in under-five mortality (U5M) of ten percent or more, inequality in U5M between the poorest twenty per cent and richest twenty per cent either increased or stayed the same, and in ten of these countries inequality increased by ten percent or more. UNICEF’s research showed that immediate efforts to reach the most excluded groups are efficient in the longer run, contrary to popular assumptions, apart from compelling normative and moral considerations.

Certain MDG indicators, notably the U5M and net enrolment ratio indicators, do compare progress between the bottom and top income quintiles. The indicators for Target 7.C, monitoring access to improved water sources and sanitation facilities, call explicitly for disaggregation between urban and rural areas, and the official guidance on MDG indicators asks that data for all MDGs be disaggregated “as far as possible” by sex and disparities between urban and rural areas. But disaggregation is inadequate in practice. The official guidance on MDG indicators provides little if any instruction on disaggregation along many other potentially relevant axes of discrimination prohibited under human rights treaties. On disparities between ethnic groups, the U.N. handbook only remarks that “analysing data on specific ethnic groups may be a sensitive issue in the country,” without any guidance as to why monitoring disparities along ethnic or other lines might nevertheless be essential, and how sensitivities might be addressed, or what proxies might be feasible where necessary.

Gender equality is a particular concern. At the Millennium Summit, Member States committed themselves to promote “gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable.” Seventy per cent of people living in poverty are women, and nearly two-thirds of the 780 million people who cannot read are women. However, MDG 3 ("promote gender equality and empower women”), Target 3.A, focuses only on eliminating gender disparities in primary and secondary education, “preferably by 2005,” and in all areas of education by 2015. Two of the three indicators include the share of women in paid employment in the non-agriculture sector, and percentage of women in parliament. But this ex-
cludes many other areas - including the private sphere - where women and girls experience discrimination. Data shortages are certainly a critical constraint in many countries. But this is often more a matter of political will than resource constraints. Discrimination issues, including violence against women and other root causes of marginalisation, should be better reflected in the structure of the MDGs, within applicable statistical parameters, as well as in national reporting. 48

6. Certain MDGs may undermine international human rights law [68] standards

In certain cases, the specific formulation of particular MDGs may conflict with or undermine international human rights treaty standards. For example, MDG 2 (universal primary education) omits the requirement that primary education be free-of-charge, in an about-face from previous summit commitments and in defiance of overwhelming empirical evidence on how formal and informal fees reduce school attendance and completion rates. 49 There is an obvious difference between the elimination of school fees as a legal obligation, rather than a matter of good policy. This is not a case of an explicit and direct conflict. However, it does at the very least underscore the need to interpret the MDGs in line with corresponding international human rights standards.

Target 7.C has also drawn criticism in this respect. This target commits states to “halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation.” 50 All MDGs are functionally related to varying degrees, and water and sanitation are critical for achieving education, food, health, and child mortality goals. The right to water under Article 11 of the ICESCR, as interpreted by the Committee on Economic, Social and Cultural Rights (CESCR) and recently accepted by the U.N. General Assembly and Human Rights Council, includes an explicit concern for safety and quality, as well as affordability, or water for domestic or personal use. 51 The Millennium Declaration, in paragraph 19, had referred to halving the number of people unable to access or afford “safe” drinking water. However the affordability criterion did not survive translation to the MDGs beyond the implicit acknowledgement of the requirement for “sustainable” access, and the safety criterion was reflected in the title of the target but not the indicators, which measure only access to an “improved source” (such as a protected well or piped water). The critical problem with this formulation is that “improved” sources are not necessarily safe in practice; that is to say, water can be piped into an improved facility from a contaminated source. UNICEF rapid surveys in six countries found that fifteen to thirty-five percent of “improved” water sources actually contained contaminated water. 52 Moreover, pilot studies [*69] by the United Nations Human Settlement Programme (U.N.-Habitat) show that if other normative components of the right to water are monitored - in particular, affordability and regularity of water supply - the true picture regarding water accessibility worsens quite dramatically. 53 Taking the key human rights criteria into account, the number of those who lack of access to safe water may actually be closer to three bil-


50 See official list of MDG indicators, supra note 7.


lion people rather than the official estimate of 900 million. The U.N.’s unduly glowing portrayal of global progress towards “safe” water does no service to these problems and complexities.

Target 7.D is perhaps the most inappropriately framed and unambitious of all MDG targets. Target 7.D, emanating from the “Cities Without Slums” initiative of the Cities Alliance, as reflected in paragraph 19 of the Millennium Declaration, commits states to “achieve[] a significant improvement in the lives of at least 100 million slum-dwellers,” a mere ten percent of those living in slums worldwide. U.N.-Habitat has reported that 227 million people have moved out of slum conditions since 2000; but at the same time, the total number of people living in slums has actually increased during this period, to over one billion in 2005, with 828 million in developing countries alone in 2010. Target 7.D fails to refer to secure tenure, which is the foremost consideration for most people in informal settlements, along with other important attributes of the right to housing. A number of countries have misinterpreted this Target, or misappropriated the “Cities Without Slums” slogan as the target, and certain countries have even reported on slum clearances as a policy measure to achieve MDG 7.

But perhaps the most obviously defective Goal on its face is MDG 8 ("global cooperation"), given its lack of any quantifiable, time-bound targets. This bald omission prevents MDG 8 from offering any basis to hold richer countries and donor organisations to account for poverty in low-income countries to which the former may, in particular cases, bear varying degrees of factual, moral, and legal responsibility. Moreover, the international commitment towards “fair” trade in the Millennium Declaration was “lost in translation” to the MDGs, with MDG 8 now referring only to “free” trade. This is not to suggest that human rights accountability should categorically swing the way of extra-territorial obligations of donor countries. While some poorer countries are genuinely unable to realise even minimum levels of socioeconomic rights despite good faith efforts, in the great majority of cases governments can and ought to be doing a great deal more for their own populations. MDG 8 can and should not be seen as a get-out-of-jail-free-card for any country with respect to its international human rights obligations. But the fact that quantitative, time-bound targets are confined to developing countries’ obligations alone results in a lopsided global part-

55 U.N. MDGs Report 2011, supra note 39, at 53-54; “Progress to improve access to clean drinking water has been strong. Globally, coverage increased from 77 per cent in 1990 to 87 per cent in 2008. If this trend continues, the MDG drinking water target of 89 per cent coverage will be met - and likely surpassed - by 2015.” The report contains some discussion of rural/urban disparities and differential progress by wealth quintile (though nothing on gender-based disparities), however the upbeat headline observations are based solely upon measurements of improved infrastructure rather than whether the drinking water from improved sources is actually safe - or alternatively life-threatening - in practice.
57 U.N./OHCHR (2008), supra note 20, at 40-42. Under Article 11 (1) of the ICESCR, States parties “recognize the right of everyoneto an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” The CESC defines the right to adequate housing as “the right to live somewhere in security, peace, and dignity,” including requirements of adequacy, affordability, habitability, accessibility, availability of essential services and infrastructure, and protection against forced evictions. See CESC, General Comment 4, The Right to Adequate Housing, 6th Sess., U.N. Doc. E/1992/23, PP 7-8 (Dec. 19, 1991); CESC, General Comment 7, The Right to Adequate Housing: Forced Evictions, 16th Session, 1997, U.N. Doc. E/1998/22, Annex IV (May 20, 1997). The U.N.’s handbook on monitoring the MDGs does include discussion of the “proportion of households with access to secure tenure” as an indicator relevant to the predecessor to MDG 7, Target D, although this is not in the official list of MDG indicators, and as at 2003 it was recognised that data for this indicator were not generally available. See United Nations, supra note 44, at 68-69; the official list of MDG indicators, available at http://unstats.un.org/unsd/mdg/Host.aspx?Content=Indicators/OfficialList.htm.
58 See, e.g., Viet Nam Achieving the Millennium Development Goals 50 (Aug. 2005), available at http://www.unde.org/archive_docs/6623-Viet_Nam_Fourth_MDG_Report.pdf. See also U.N./OHCHR, supra note 45, at 9; Marie Huchzermeyer, Cities with "Slums": From Informal Settlement Eradication to a Right to the City in Africa 34-45, 167-223 (2011). Conscious of these gaps, the United Nations now encourages States to go beyond MDG Target 7.D in terms of the ambition of their targeting at national, regional and local levels as well as in promoting “access to affordable land with secure tenure and to create the conditions in which people are able to carve out and sustain a livelihood.” See U.N. MDGs Report 2011, supra note 39, at 57.
59 Supra note 9.
60 Cf. Thomas Pogge, World Poverty and Human Rights (2nd ed., 2008) (positing an institutional cosmopolitan theory of global social justice premised upon our shared participation in global economic institutions, and the inequitable distribution of resources and opportunities mediated through those institutions).
nership for poverty reduction, and a seriously imbalanced framework for global accountability. 61

7. MDGs have been co-opted by the growth and aid lobbies

More fundamentally still, beyond defective formulations in the global monitoring framework, is that the actual economic and social policies through which states have purportedly pursued the MDGs still appear overwhelmingly to be circumscribed within a long discredited neo-liberal [67] economic growth model. 62 Defying all evidence to the contrary, 63 the global development policy debate remains dominated by the implicit formula: “faster economic growth + more foreign aid + better governance = MDGs.” The fact that inequality has increased in the majority of countries, for the majority of the MDGs, is, in Vandemoortele’s view, “dismissed as irrelevant or a passing phase.” 64

In this regard it is sobering to note that global progress towards the MDGs, and the income poverty target in MDG 1, in particular, has been driven largely by aggregate gains through economic growth policies in China and India, based upon policies that pre-dated the MDGs. The drive towards higher growth rates is all the more evident in the continuing fallout from the global economic crisis. If growth continues as the dominant policy objective as an end unto itself, without sufficient concern for its complex and contingent theoretical and empirical relationships with inequality, and with insufficient appreciation of the reverse causal relationship between social investments and growth, the recipe for the future might well be increasing global and national inequalities, insecurity and human rights violations. 65

C. Conclusions on the MDGs’ Impacts

The MDGs emerged from obscurity but have influenced development discourse and policy to a degree far beyond the expectations of their architects, supporting a vision of development in line with Amartya Sen’s human capability theories rather than per-capita GDP growth. The MDGs’ impacts on national poverty reduction policies and human development outcomes have been variable and more difficult to assess. Nevertheless, improvements in statistical methods and global monitoring of human development goals may to some degree be attributed to the MDGs. But human rights shortcomings are evident as well. Human rights advocates have responded to the MDGs in different ways: some continue to condemn the MDGs, some ignore them entirely, and others pragmatically engage with the MDGs as potential vehicles for human rights realisation. Most of the human rights treaty bodies and Special Procedures of the U.N. Human Rights Council concerned about the MDGs fall into the third category.

However, many of the critiques appear to reflect differing understandings about what the MDGs were intended to be. As originally conceived, the MDGs were intended as collective (not country-specific) targets. They were designed for a wide audience beyond policymakers and development practitioners, in order to simplify human development messages and to help generate the political will necessary to translate commitments into action. In the words of one of their architects and main proponents, the MDGs were designed to be “useful servants but poor masters,” and those who would criticise particular countries (or entire regions, such as Sub-Saharan Africa) for missing the goals are “missing the point.” 66 Global goals and targets must self-evidently be adapted to national conditions and particu-

61 See Aldo Caliari & Mac Darrow, International Cooperation, MDG 8 and Human Rights, in Langford et al., eds., supra note 20, for a human rights critique of MDG 8.


63 See, e.g., HDR 2010, supra note 21 (rejecting economic policy templates and illustrating the many economic development trajectories that have achieved reasonable human development outcomes in practice).


66 Vandemoortele, supra note 64, at 359, 363.
rarities. As the experience of the World Summit for Children made clear, global goals “first need to be adapted to the specific realities of each country….” Such adaptation of the goals is of crucial importance to ensure their technical validity, logistical feasibility, financial affordability and to secure political commitment and broad public support for their achievement. 67 Adaptation must include measuring disparities, which - with a just a few exceptions - are absent from the MDGs’ focus on global averages.

But for a great many governments and constituencies, the need to tailor or contextualise the MDGs to national conditions is not self-evident. Even when tailoring has been undertaken, for example in setting more ambitious targets or sub-national targets to capture disparities between regions, or adding “governance” targets, human rights questions and contradictions remain. 68 What role should human rights play, therefore, in the articulation or adaptation of MDGs targets at the national level, and in their implementation? This has been the subject of an extensive literature since the year 2005, and was also on the agenda for the negotiations leading to the September 2010 MDGs Summit in New York, the subject of the next Section of this Article.

[*73]

III. MDGs Summit Outcome Document

The MDGs Summit Outcome Document (“Summit Outcome”) 69 represents a significant advance in terms of U.N. policy and inter-governmental agreements on human rights and development issues. Human rights have been a highly politicised issue in inter-governmental debates on development, particularly in recent years in the United Nations General Assembly’s (G.A.) Triennial Comprehensive Policy Review process (TCPR, now the Quadrennial Comprehensive Policy Review or QCPR). 70 Previous World Summit and global conference outcomes have been rich in human rights content, including for example the Millennium Declaration and 2005 World Summit Outcome, 71 which is not the case for those focusing on development or aid issues specifically, such as the TCPR and Monterrey Consensus 2002 on financing for development. 72 This Section of the Article offers a short review of the salient features of the Summit Outcome from a human rights perspective, along with its weaknesses, as the basis for conclusions about its significance as a platform and framework for international negotiations towards the post-2015 development agenda.

A. The Summit Outcome Contains Many Explicit Human Rights References and Commitments

The Summit Outcome contains an impressive number of explicit human rights references and commitments, as well


68 Viet Nam and Cambodia are examples of national tailoring in terms of the content and level of ambition of the MDGs. Thailand and Kenya are among the countries that have adopted sub-national targets, and Mongolia adopted an additional MDG 9 on “human rights, good governance and anti-corruption.” See U.N./OHCHR, supra note 45, at 9-14. None of these countries have been immune from human rights criticism in the international media and human rights monitoring bodies, including on grounds of structural inequalities and discrimination against particular groups of people. Mongolia’s MDG 9 includes a target to “develop a zero-tolerance environment to corruption in all spheres of society” which, while presumably well-intended, gives rise to obvious human rights risks in terms of heavy-handed law enforcement policy.


as quite an impressive degree of congruence with substantive human rights policy recommendations as reflected in the jurisprudence of international human rights bodies. There are certainly a range of areas where the document could have been strengthened, especially in terms of the lack of succinctness in the overall vision of development portrayed in the document, and the generality of many of the Action Agenda commitments. The total number of commitments (over one hundred) hardly constitutes a succinct statement of development priorities, and there are real questions as [*74] to how much of the aid pledged at the MDGs Summit was actually “new,” and how much will actually be delivered. However, in the context of an intergovernmental negotiation of this kind, and the difficult compromises that this entails for both the Global North and South, the explicit human rights commitments are significant in principle and, potentially, in practice.

The introductory part of the Summit Outcome (paragraphs 1-35) is replete with human rights references. While it is customary for human rights to permeate preambular parts of global conference outcome documents, it is unusual for this to occur with the frequency and specificity exhibited in the Summit Outcome. Beyond recognising the purposes and principles of the U.N. Charter and linkages between human rights, development, and peace and security, (the so-called “3 pillars” of the U.N. system), states indicate that they will be guided by the U.N. Charter “with full respect for international law and its principles.” *74* Moreover, states explicitly recognise the importance of human rights for achieving the MDGs, specifically, as well as for development generally. *75* General human rights and development linkages are commonly recognised in summit outcome documents, but not human rights and MDGs links in particular. Moreover, in a stocktaking of successful policies for achieving the MDGs, states note the importance of “respecting, promoting and protecting all human rights, including the right to development; increasing efforts to reduce inequality and eliminate social exclusion and discrimination; [and] enhancing opportunities for women and girls and advancing the economic, legal and political empowerment of women.” *76* These are notable advances, although the document does not reiterate the 2005 World Summit Outcome commitments to mainstream human rights in national development policies and the work of the U.N. *77* in the same clear terms.

The Action Agenda (paragraphs 36-81 of the Summit Outcome) is also strong in terms of textual references to human rights. Paragraph 70(u) of the Summit Outcome reaffirms “the right of everyone to have access to safe, sufficient and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.” *78* Paragraph 71(a) commits states to “realizing the right of everyone to education and reemphasizing that education shall be directed at the full development of the human personality and the sense of its dignity and [*75*] shall strengthen respect for human rights and fundamental freedoms.” In relation to Goal 5, states commit themselves to “taking steps to realize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including sexual and reproductive health.” *79* On health more generally, states commit themselves to a number of measures relating to health education and literacy to ensure respect for human rights, and promote and protect human rights in combating HIV. *80*

There are a number of explicit human rights commitments relating to gender equality and women’s empowerment in the Summit Outcome, including commitments in sub-paragraph 72(a) to take actions to achieve the goals of the Be-

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*74* Summit Outcome, supra note 69, P 2.

*75* Id. PP 3, 12, 13, 53, 54.

*76* Id. PP 23 (j), (k), (l). Taken as a whole, paragraph 23 reads like a check-list for a human rights approach to achieving the MDGs, calling for (among other things) setting targets for universal access to social services, ensuring adequate participation, non-discrimination and accountability, among other measures.

*77* 2005 World Summit Outcome Document, supra note 71, P 126.

*78* See CESCR, General Comment 12, The Right to Adequate Food (Art. 11), U.N. Doc. E/C.12/1999/5, PP 7-13 (May 12, 1999) (which elaborates on the normative content of the right to food under the ICESCR, and includes criteria relating to the adequacy and sustainability of food availability and access).

*79* Summit Outcome, supra note 69, P 75(a).

*80* Id. PP 75(i), 76(b).
jing Declaration and Platform for Action and Cairo Conference on Population and Development, as well as to fulfill States Parties’ obligations under the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). These commitments are especially noteworthy in the context of a U.N. inter-governmental agreement on development issues, specifically recalling and reinforcing legally binding commitments of states under human rights treaties. States also commit to strengthening their laws and programmes to prevent and punish violence against women and girls, in conformity with international human rights law, as well as to “equal access to adequate housing, property and land, including rights to inheritance.”

Beyond the explicit references to human rights discussed above, there are other respects in which the substantive policy recommendations in the Summit Outcome are consistent with human rights standards as interpreted by international human rights monitoring bodies. For example, there is a consistent focus in the Action Agenda on accessibility, affordability and quality of social services, as well as on universal access to basic social services, consistent with international human rights jurisprudence. The draft repeatedly calls for an analysis and assault on the “root causes” of lack of access to basic services, including barriers caused by discrimination, which is a core normative attribute of internationally recognised socio-economic rights.

B. The Summit Outcome Also Has a Number of Weaknesses

Perhaps unsurprisingly, there are also a number of human rights omissions, ambiguities and tensions in the text. For example, as is the case for MDG 2 itself, as was seen in subsection II.B.6, supra, eliminating user fees is listed among policy options to achieve universal primary education, but states did not reaffirm the human right to universal free primary education under the ICESCR and CRC. On MDG 5, there is no explicit requirement that states repeal laws that discriminate against women and girls, notwithstanding the continuing evidence of their harmful impacts. The lone commitment of Member States on the “worst forms of child labour” framed the issue principally as a matter of international cooperation, to the neglect of more localised and immediate imperatives to prohibit and punish such unconscionable practices. The Summit Outcome includes welcome commitments to provide sustain-


82 International Conference on Population and Development, Cairo, Egypt, Sept. 5-13, 1994, Report of the International Conference on Population and Development, U.N. Doc. A/CONF.177/13 (1994). This conference was significant, among other reasons, for the commitments of states to recognise and protect sexual and reproductive rights, which is essential not only for their own sake, but also for the achievement of the maternal health targets under MDG 5. See U.N. Doc. A/HRC/14/39, supra note 29.

83 GA Res. 34/180 (Dec. 18, 1979).

84 GA Res. 44/25 (Nov. 20, 1989).

85 Summit Outcome, supra note 69, PP 72(g), (k).

86 Id. P 72(d).


88 See, e.g., Summit Outcome, supra note 69, PP 71(d), 75(d).

89 See CESC, General Comment 20, supra note 40.


91 Summit Outcome, supra note 69, P 70(f) commits States to take “appropriate steps to assist one another in the elimination of the worst forms of child labour, strengthening child protection systems and combating trafficking in children through, inter alia,
able access to safe drinking water and basic sanitation in the context of health and environment-related MDGs, but fails - in these specific contexts - to commit to affordable and culturally appropriate services, which are normative attributes of the rights to water and sanitation as well as critical determinants of access to water and sanitation services in practice. These are hardly fundamental shortcomings in the larger scheme of the MDG Summit negotiations, however they are worth underscoring in view of the recent recognition of the human rights to water and sanitation by the U.N. General Assembly and Human Rights Council, and the very poor record of achievement by Member States on the sanitation target, in particular.

More problematical, however, are contradictions - or at least latent tensions - between the Summit Outcome’s environmental commitments and the right to adequate housing under the ICESCR. On its face, there are clearly a number of virtuous features in the material provision of the Summit Outcome (paragraph 77(k)), in which states commit themselves to accelerated progress towards MDG 7 (environmental sustainability) through means including participatory national urban planning strategies and promoting equal access to public services. The problem, however, is that the main goals expressed in this commitment are not necessarily internally consistent: that is, to "[work] towards cities without slums, beyond current targets, through reducing slum populations and improving the lives of slum-dwellers." If we take into account the misinterpretation or misappropriation of Target 7.D that has occurred in the past, the given formulation risks encouraging a disproportionate focus on "reducing slums" rather than slum upgrading, with no reflection of the right to security of tenure, which is a right critical to most if not all people living in slums. This language might lead to slum clearance policies unless the need for slum upgrading and the security of land tenure are stated more explicitly. In implementing this commitment and in connection with negotiations towards the post-2015 development agenda, it is vital to emphasize the commitment in the 2005 World Summit Outcome to prioritize slum prevention and slum upgrading policies, as opposed to slum clearance policies, and interpret such commitments in line with the minimum procedural and substantive guarantees associated with the right to adequate housing under the ICESCR.

C. Principles of Equality and Non-discrimination Feature Prominently, Far More than Principles of Participation and Accountability

Beyond evoking specific human rights standards, the Summit Outcome also recalls and reinforces certain operational principles characteristic of a human rights-based approach to development, notably, equality and non-discrimination, participation, and accountability. The principles of equality and non-discrimination feature prominently and systematically throughout both the introductory part as well as the Action Agenda. Commitment to equality enhanced international cooperation and assistance, including support for social and economic development, poverty eradication programmes and universal education.” See ILO, Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ILO Convention 182, 87th Sess., June 1999 (June 17, 1999), which rightly recognises that poverty causes and contributes to child labour, and that education is part of the solution (preamble, and Art. 8). However the "worst" forms of child labour covered by the Convention include such practices as slavery and procurement of children for armed conflict, prostitution, pornography and drug trafficking (Art. 3). In these circumstances, immediate actions to prohibit, monitor and criminalise such practices should surely have been prioritised (Arts. 1, 5 and 6).

92 Summit Outcome, supra note 69, PP 73(d), 73(f), 74(f), 77(h).
94 Summit Outcome, supra note 69, P 77(k) commits States to "[work] towards cities without slums, beyond current targets, by reducing slum populations and improving the lives of slum-dwellers, with adequate support of the international community, by prioritizing national urban planning strategies with the participation of all stakeholders, promoting equal access for people living in slums to public services, including health, education, energy, water and sanitation and adequate shelter, and by promoting sustainable urban and rural development."
95 Vietnam Achieving the Millennium Dev. Goals, supra note 58 and accompanying text.
96 On the sources and content of the right to adequate housing, see CESCR, Gen. Comment 4, supra note 57.
97 World Summit Outcome, supra note 71, P 56(m), commits States "to achieve significant improvement in the lives of at least 100 million slum-dwellers by 2020, recognizing the urgent need for the provision of increased resources for affordable housing and housing-related infrastructure, prioritizing slum prevention and slum upgrading, and to encourage support for the United Nations Human Settlements Foundation and its Slum Upgrading Facility." 98 For a discussion of these and other principles see United Nations Common Understanding on a Human Rights Based Approach to Development Cooperation (2003), available at http://www.undg.org/archive_docs/6959-The_Human_Rights_Based_Ap-
and non-discrimination is particularly strong in the context of gender equality and gender mainstreaming\(^99\) and in relation to the goal of "sustained, inclusive and equitable economic growth,"\(^100\) as well as in commitments to guarantee universal access to social services and social protection\(^101\) and promote "more equitable access to economic opportunities and special services."\(^102\) The principles of equality and non-discrimination are also implicit in commitments to ensure universal access to food, education, decent work, HIV treatment and health (including reproductive health) services.\(^103\) Member States also committed themselves explicitly to eliminate social exclusion and discrimination,\(^104\) "combat[] inequality at all levels,"\(^105\) focus on the poor and "vulnerable" including persons with disabilities,\(^106\) take steps to ensure the rights of indigenous peoples on the basis of equality and non-discrimination,\(^107\) address the root causes of inequalities, disparities, exclusion, and discrimination affecting children in education,\(^108\) end discrimination against women and girls in education,\(^109\) address the root causes of maternal mortality and morbidity including violence against women,\(^110\) and address the stigmatization and discrimination of people living with HIV.\(^111\) Importantly, there is also repeated recognition of the need for disaggregated data and strengthening [\*79] of national statistical systems, to improve and monitor public policies and address discrimination.\(^112\) These commitments, if implemented, would fill significant gaps in the MDGs framework.

The principle of participation is reflected reasonably strongly in relation to the empowerment and participation of women in political and economic decision-making processes, as well as in the commitment of states to encourage participation in national urban planning strategies under MDG 7.\(^113\) But beyond this, the references to participation in the Summit Outcome appear to be quite tokenistic and technocratic. Participation is highlighted as an instrumental need in connection with the improvement of national health governance and sanitation,\(^114\) and more generally in connection with promoting the "involvement" of people living with HIV/AIDS in national HIV strategies.\(^115\) At the global level, there is recognition of the importance of increasing the voice and representation of poorer countries on the governing bodies of the international financial institutions.\(^116\) Member States also call for civil society organisations (CSOs) and non-government organisations (NGOs) to "enhance their role in national development efforts,"\(^117\) however governments’ duties to enable such participation are not mentioned.

\begin{itemize}
  \item [99] Summit Outcome, supra note 69, PP 3, 12, 72.
  \item [100] Id. PP 23(b), 41, 70(b).
  \item [101] Id. PP 51, 70(g).
  \item [102] Id. P 28.
  \item [103] Id. PP 70(j), 71(a), 72(d), 76(j), 73(a), 75(c) respectively.
  \item [104] Id. P 23(k).
  \item [105] Id. P 5.
  \item [106] Id. P 28.
  \item [107] Id. P 55.
  \item [108] Id. P 71(d).
  \item [109] Id. P 72(b).
  \item [110] Id. P 75(d).
  \item [111] Id. P 76(c).
  \item [112] Id. PP 23(s), 68, 72(h), 73(j).
  \item [113] Id. PP 72(f), 77(k) respectively. The former commitment compensates to a modest degree for the relatively weak MDG 3 commitments in relation to women’s empowerment, as discussed supra subsection II.B.5.
  \item [114] Id. PP 73(h), 77(j) respectively.
  \item [115] Id. P 76(c).
  \item [116] Id. P 40.
  \item [117] Id. P 17.
\end{itemize}
There is no explicit recognition in the Summit Outcome of participation as a right, and no specific commitments to guarantee freedom of expression and association or other indispensable human rights guarantees for active, free and meaningful participation. With the two exceptions mentioned above, participation is treated more as a duty or privilege than a right, or alternatively (as in the case of sanitation) as contributions by user groups to service delivery. The Summit Outcome encourages “broad consultations and participation of all relevant stakeholders” in national development strategies, but this comes with the caveat “as appropriate for each national context.” The unfortunate implication, therefore, is that broad consultations and participation may not be appropriate in certain national contexts, at the discretion of the government of the day. This falls well short of the interpretation of “national ownership” reflected in the OECD’s policy guidance on this subject, and is a far cry from the idea of participation as a human right.

These flaws are regrettable, but hardly surprising in the context of an inter-governmental negotiation of this kind. The idea of participation is honoured more in the theory than practice of development, and is rarely embraced and implemented as a human right. In the context of the MDGs and the delivery of basic social services, participation is especially prone to instrumentalisation or colonisation, often reduced to the involvement of communities and user groups in service delivery (or cheap labour, in crude terms), rather than control over policy choices. This is not to trivialise the challenges involved in making participation effective in any given context. “Active, free and meaningful” participation is by definition threatening to those in positions of power, whatever the demonstrated benefits for human development. From donor organisations’ perspectives, creating space and capacities for effective participation is often seen to run against the grain of financial disbursement and results-based management imperatives. These are among the reasons why human rights have historically gained such little traction in inter-governmental development debates, and conversely, why the consensus on so many other aspects of the human rights agenda in the Summit Outcome is so notable.

As with participation, the Summit Outcome reveals a number of shortcomings insofar as the principle of “accountability” is concerned, which mirror deficits in MDG accountability mechanisms in practice.

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118 Supra note 113 and accompanying text.

119 Summit Outcome, supra note 69, P 36.


122 Cf. U.N./OHCHR, supra note 45, at 28.


124 The principle of accountability has relatively well-defined content in light of international human rights standards. See, e.g., Darrow & Tomas, supra note 98, at 511-14; U.N./OHCHR, Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies, supra note 121, at 17-19. The General Assembly carries out an annual development dialogue on the follow-up to the Millennium Declaration and the 2005 World Summit Outcome, and States are invited to make presentations of their progress towards meeting the MDGs to the Economic and Social Council’s Annual Ministerial Review. See G.A. Res 60/265, 91-56, U.N. Doc. A/RES/60/265 (July 12, 2006). The biennial “Development Cooperation Forum” of the U.N. Economic and Social Council (ECOSOC) also reviews global trends and progress on development cooperation relating to the MDGs: World Summit Outcome, supra note 71, P 155(b). Global, regional and national MDG reports are also produced by, or with the support of, the United Nations, and as of November 2011 the United Nations was establishing an “Integrated Implementation Framework” as a global platform to monitor the delivery on commitments from the September 2010 MDGs Summit, see http://www.un.org/News/Press/docs/2010/sgsm13244.doc.htm. However, the established MDG accountability mechanisms are notoriously weak. There is no independent monitoring or evaluation of national MDG reports, no forum for complaints, and only seven countries chose to give presentations to the ECOSOC Annual Ministerial Review in 2009. Salil Shetty, supra note 16.
“Accountability” is the leitmotif of human rights approaches to development; however it can mean many different things to different people. For present purposes, drawing from principles of public administration, human rights and global administrative law, accountability refers to policymakers and other duty-bearers being held to transparent and objective performance standards, informed by international human rights law, against which they are answerable to those affected by their decisions and actions. The three closely related purposes of accountability, under this definition, are to strengthen incentives for delivering on global and national legal and policy commitments, improve policymaking and service delivery, and ensure that those whose rights are infringed have timely and effective redress.

The Summit Outcome refers to accountability - and more generic “good governance” or rule of law principles - in a number of contexts, including in relation to healthcare, sustainable development and the eradication of poverty, and hunger, as well as gender equality, women’s human rights and empowerment. Anti-corruption commitments also feature in the document, and there are references to the idea of “mutual accountability” between developing and donor states, although these references could have been strengthened by explicitly prioritising accountability of both developing and donor governments directly to individuals affected by the aid relationship. However, the most obvious accountability deficiencies relate to the lengthy and undifferentiated nature of the commitments themselves. The commitments of states in the Action Agenda are generally expressed to be non-inclusive, and a list of over one hundred commitments is more difficult to monitor than a shorter, prioritised list. The poor or vague formulation of certain recommendations is another problem, although these kinds of deficiencies are hardly novel or surprising within the challenging constraints of a political negotiation of this kind. The idea that there should be effective (or any) redress for failure to achieve the social rights embodied in the MDGs is anathema.

As for donor country accountability more particularly, the commitments in the “MDG 8 - Global Partnership” part of the Action Agenda are numerous. Commitments in the latter part include: reaffirming international aid commitments from previous global conferences; implementing the Doha "development" round of trade negotiations and Gleanegles commitments on aid to Africa; ensuring access to affordable medicines through public health flexibilities under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); and eliminating agricultural subsidies. However, these commitments are not necessarily new. While they may offer a guide to the interpretation of MDG 8 going forward, they do not cure structural accountability defects in MDG 8 and its lack of time-bound monitorable targets and do not offset the poor implementation record in practice.


Summit Outcome, supra note 69, P 63.

Id. P 11.

Id. PP 12, 72.

Id. P 78(c) for example recognises “that the commitments made by developed and developing countries in relation to the Millennium Development Goals require mutual accountability.” The term “mutual accountability” is a term of art in aid effectiveness jargon; however, the challenge in practice is to ensure that accountability between donor States and organizations and partner country governments does not displace the accountability of each towards the supposed subjects and beneficiaries of development, that is to say, individuals and communities in the partner country. See, e.g., Marta Foresti, David Booth & Tammie O’Neil, Aid Effectiveness and Human Rights: Strengthening the Implementation of the Paris Declaration, 53-61 (2006), available at http://wwwodi.org.uk/resources/download/1538.pdf.

For example, it is hard to see how a government could be held to account for failure to implement "forward-looking economic policies,” see Summit Outcome, supra note 69, P 70(b), or to implement “political, economic, social, financial and technical solutions in the short, medium and long term” in response to the global food crisis, id. P 70(n).

D. Conclusions Concerning the Human Rights Significance of the Summit Outcome

The Summit Outcome reflects a number of significant strengths from a human rights point of view, but also a number of clear weaknesses. However, the limitations discussed in Section III.A, while noteworthy, are not fatal to the conceptual integrity of the document as a whole, and should not detract from the remarkable inter-governmental consensus on human rights being indispensable for the realisation of the MDGs. Whatever the particularities and trade-offs of the Summit Outcome negotiating process, the resulting human rights commitments deserve to be taken seriously. The main focus should now be on determining how best to capitalise upon the document’s strengths, while marshalling international human rights law in order to fill gaps and help resolve ambiguities. In this regard, the document asks that the General Assembly review the MDGs annually, “including in the implementation of this outcome document.” 134 In effect, this may be taken to mean that the MDGs should be interpreted, implemented and monitored in light of the Summit Outcome’s human rights commitments. [*83] The U.N. Secretary General is also asked to report annually on progress, and the President of the General Assembly is asked to organise a Special Event on the MDGs in 2013. 135 These provisions provide important milestones and entry points for the more effective positioning of human rights in the lead-up to negotiations on the post-2015 development agenda.

IV. Problematising and transcending the “value added” paradigm

Ever since human rights entered the development lexicon in the 1990s, their proponents have been pressed to demonstrate the “value added,” in instrumental and presumptively quantifiable terms, of human rights in development. Rightly or wrongly, this remains the dominant framing of human rights in development debates. While the text of the Summit Outcome document reflects both consequentialist and deontological justifications for human rights, 136 the former justifications by definition appeal to the more pragmatic dispositions of negotiators, economists and policymakers. Hence the debates about the substantive justifications for human rights, in an already complicated international development landscape, can be expected to intensify towards 2015.

There is of course nothing in the human rights regime that precludes consequentialist justifications outright, 137 and no reason why those asserting the relevance, or even primacy, of human rights should not be put to proof. The development marketplace is crowded and heterogeneous, hardened by history and ideological conflict, and inured to passing theories, charlatans and fads. Those who have been toiling for decades in development’s name are surely entitled to understand what, precisely, newer entrants into the marketplace are bringing, what the distinctive contributions of any putative new paradigm are, and exactly where - according to the new paradigm - prevailing theories and orthodox methods of development work are falling short. The problem does not lie in the legitimacy of the “value added” question; rather, what may be problematic are the assumptions underpinning the question, and the failure of many participants in the human rights and development debate - particularly from within the field of neo-classical economics but also many human rights practitioners - to exhibit the degree of critical self-reflection, [*84] humility, and spirit of open inquiry necessary for effective engagement on complex interdisciplinary questions.

This Section begins by outlining three contestable assumptions or problems relating to the “value added” challenge, specifically: (1) the assumption that human rights necessarily require a wholesale paradigm shift (the absolutist assumption), (2) ideological assumptions inconsistent with human rights (free market fundamentalism), and (3) the assumption or contention that the “value added” of human rights lies in their contribution towards economic growth (the confusion of means with ends). Once traversing these problematic premises, the discussion moves to a deeper analysis of the principles, processes, and mechanisms through which human rights may influence service delivery and policymaking relevant to the MDGs. This part of the discussion draws upon a growing empirical literature on the impacts of social rights litigation in different countries and regions, as well as theoretical accounts of the relationship

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134 Summit Outcome, supra note 69, P 79.
135 Id. PP 79, 81.
136 Consequentialism refers to theories that hold that the outcomes of one’s conduct are the appropriate basis for moral judgments about that conduct, whereas deontology derives the rightness or wrongness of conduct from the character of the behaviour itself. Empirical justifications of human rights in development are more readily conformable to the former kind of reasoning. The Summit Outcome recognises both kinds of justification, although more explicitly in the former (consequentialist) case. Supra notes 74-75 and accompanying text. For justifications reflecting deontological reasoning, at least implicitly, see, for example, id. P 2 (States indicate that they will be guided by the U.N. Charter “with full respect for international law and its principles.”).
between human rights and neo-classical welfare economics. The Section concludes by offering a nuanced and synthetic articulation of decision-making principles drawn from the theory and practice of human rights, focusing on the role of human rights in revaluing policy debates, challenging problematic assumptions of neoclassical economics, correcting market failures, strengthening accountability for policy choices, and re-politicising development, thereby opening space for social change. In doing so, this Section exposes and transcends the reductionism and pure consequentialism inherent in the “value added” challenge, and frames a case for more focused interdisciplinary dialogue leading towards 2015.

A. The Absolutist Assumption

The first problem relating to the “value added” challenge is that it may implicitly convey the assumption that the validity and relevance of human rights to development depend upon all features of the human rights framework being unique and hitherto unknown in development. This is partly a substantive problem, and partly one of poor communication. Responsibility for this problem lies at least in part at the feet of those who would advocate for a categorical paradigm shift based uniquely on human rights. Unduly categorical claims may foreclose legitimate critical inquiry into potentially contentious premises of the international human rights regime, such as the theoretical universality of human rights and questions about the indivisibility and inter-dependence of rights in practice, and may overlook well-established human development theories and practice that run in very similar directions. One of the more significant contributions of the 2003 U.N. Common Understanding on a Human Rights Based Approach to Development Cooperation was to recognize a distinction and *[84]* a synergistic relationship between attributes of the human rights regime that are distinctive and “essential” to development programming, as against “good development practices” generally. Whilst arguably too categorical a distinction in the abstract, the underlying intention is sound: to encourage a healthy degree of humility and thorough understanding of the policy and operational context within which human rights arguments should be located.

B. Ideological Blinkers and Free Market Fundamentalism

The second problem concerning the “value added” challenge stems from the comparative power of the epistemic communities within the development field, and the dominance of neo-classical economics in particular. From the perspective of the latter, human rights - and social rights in particular - may be disparaged as abstract or purely aspirational norms or categorical ethical imperatives with an anti-market bias, promoted by idealists blissfully disconnected from the hard trade-offs necessary in a world of limited resources. Human rights may be categorically dismissed as inherently subjective and value-laden, compared with the putatively objective and value-neutral science of economics, and hence deserving of a particularly high standard of proof. For example, the World Bank Chief Economist for Africa recently argued that human rights were “neither necessary nor sufficient” for achieving education or health outcomes. Human rights, the Chief Economist contended, are “not necessary because countries that score very low on human rights indicators (for civil and political rights), such as China and Cuba, score high on various health and education indicators.” Human rights are “not sufficient because countries that have constitutions with well delineated and judicially enforced human rights, such as India and South Africa, have relatively poor human development.

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139 Supra note 98.


141 Critics have questioned the value-neutral stance of neoclassical economics, pointing to its political and ideological assumptions. See, e.g., George DeMartino, Global Economy, Global Justice (2003); Conrad P. Waligorski, The Political Theory of Conservative Economists (1990).

Certain fallacious assumptions in this reasoning are immediately apparent. For instance, the author appears to equate human rights with civil and political rights alone, and limits the scope and significance of human rights to constitutional entitlements and legal enforcement. Moreover, contrary to well-established doctrine and practice relating to social rights, the author appears to equate social rights categorically with positive entitlements and direct service provision by the state. But the more striking problem, and perhaps the most revealing irony, lies in the author’s apparently categorical rejection of public action in favour of the market. This privileging of the market runs contrary to the nuance reflected in the World Bank’s prior research on pro-poor service provision, and does so without a corresponding evaluation of market failures. A balanced and credible analysis would require acknowledgement of the profound contradictions embedded within the history of the “free market” myth; the value-laden assumptions and mythologies of neo-classical welfare economics; the many damning evaluations of privatisation programmes in various contexts, which show that private actors can also fail in service provision; and continuing fallout from regulatory failures in global financial, energy, commodities and other markets in recent times, demanding, at a minimum, capable regulatory states. Indeed, even prior to the 2008 global financial crisis, a former director of the IMF’s Economics Department called attention to the unacceptable degree of abstraction to which the private sector should be doing everything. For a critique, see Tim Kessler, Review of the 2004 World Development Report, jacket, Bretton Woods Update No. 75 (Apr. 5 2011), available at http://www.brettonwoodsproject.org/art-567917; and World Health Organisation, Closing the Gap in a Generation: Health Equity Through Action on the Social Determinants of Health, Final Report of the Commission on the Social Determinants of Health (2008) at 132-44; and U.N. Doc. A/HRC/15/31, Jun. 29, 2010 (an authoritative and nuanced analysis of the topic of private sector participation in the delivery of water and sanitation services); Tony Judt, Ill Fares the Land 188-92 (2010) (a deeper philosophical reflection).

Free market ideology, the unwarranted downgrading of public action, and simplistic assumptions about the anti-

143 Id.
144 Id.
146 See Rodrik, supra note 41 (tracing the history and contemporary legacies of Keynesian economic thought and the idea of the regulated market, and noting the contradictions between free market dogma and the history of industrial policy and state-supported economic development in Europe, the U.S.A., Asia and elsewhere).
market bias of human rights suggest what behavioural economists call “over-confidence bias” or “Pygmalion complex” in psychological terms - a state in which we become intoxicated by our own disciplinary perspective, over-estimate our analytical rigour, and fail to be sufficiently self-critical or humble in the face of deep complexity. 152 It may also indicate “confirmation bias,” which is the tendency to discount contradictory data and remain committed to original assumptions despite conflicting evidence. 153 Dani Rodrik draws a distinction within economics between “hedgehogs” who believe in the singular idea that freeing up markets is always the right solution no matter what the context, and “foxes” who embrace complexity and believe the devil is in the detail. 154 In Rodrik’s view “an honest practitioner of academic economics should respond with a blank stare when asked what the implications of his work are for policy. ‘That depends on so many other things,’ would be the appropriate answer … When the hedgehog’s stylized models become the basis for one grand narrative, the world needs to run for cover.” 155

C. Confusing Means with Ends - Human Rights As Inputs To Growth Objectives

[*88] The final and perhaps most obvious problem with the “value-added” challenge lies in the question-begging assumptions buried within it: value-added in terms of what? In posing the value-added question, we do not always explicitly disclose our frame of reference. Should the legitimacy and relevance, or “added value,” of human rights depend upon their contribution to economic growth, as many influential voices have argued? For example, former Lead Economist Jean-Pierre Chauffour, in the World Bank’s International Trade Department, has argued for a limited set of “economic freedoms” and civil and political rights, the latter based upon the Freedom House indices, as, supposedly, empirically, sufficiently prerequisites for sustained economic growth drawn from a sample of one hundred countries over a thirty-year period. 156 By contrast, so-called “entitlement rights,” the stuff of the MDGs, are negatively associated with economic growth, as they imply greater government intervention, which is simplistically assumed to automatically restrict growth. 157 A detailed review of this strongly “minimal state” libertarian thesis is beyond the scope of this article, 158 but appears difficult to reconcile with the policies of the faster growing economies in recent history. From the industrializing Global North in the early twentieth century through to the so-called “Asian Tigers,” economic rises and recoveries have relied as much upon active industrial policy, labour market regulation and (in Malaysia’s case) capital controls, as upon the magic of the marketplace alone. 159 Indeed, neo-liberal [*89] orthodoxy

153 Id.
154 Rodrick, supra note 41, at 114-23. The hedgehog and fox metaphor is attributed to the Greek lyric poet Archilochus (Seventh Century BC): “The fox knows many things, but the hedgehog knows one big thing.”
155 Id. at 134.
157 According to Chauffour, protecting certain limited economic, civil and political “freedoms” demands an effective but limited state. “Since economic freedom is essentially restricted by the extent of state coercion (usually by means of taxation and regulation), the scope of the state should not trespass beyond the level necessary for citizens to protect and maintain liberty itself.” Chauffour, supra note 156, at 85. However, the fact that liberty, as well as entitlements, depend on taxes, is not sufficiently recognised. Cf. Stephen Holmes & Cass R. Sunstein, The Cost of Rights: Why Liberty Depends on Taxes (1999).
159 See Rodrik, supra note 41, at 16-17 (noting the complementary role of the market and the state in the history of economic globalization and the fact that governments have in fact expanded along with markets in industrialised economies in order to provide social protection and other institutional prerequisites for a functioning open economy); Robert Wade, Governing the Market: Economic Theory and the Role of Government in East Asian Industrialisation 297-331 (2003) (providing an authoritative and nu-
was what made the financial crisis worse for some of these countries in the first place. Those countries that have benefited most from free-market globalization are those that have embraced its precepts only selectively. The greater and more tragic irony is that countries pursuing neoliberal policies aimed at diminishing state intervention in the economy have often done so through vigorous state intervention with authoritarian tendencies.

These obvious contradictions bring to mind the over-confidence and confirmation biases discussed in Section IV.B, supra, and strong echoes of the “growth is good for the poor” debates of the early 2000s, which assumed that focusing only on economic growth would be sufficient to improve human development. In 1999, two World Bank economists, David Dollar and Aart Kraay, published research purporting to show that the incomes of the poor rise in tandem with overall growth, suggesting that the best way to raise their incomes is to stimulate growth. Their research found a ready audience among neo-classical economists but a decidedly cooler and more critical reception elsewhere, on methodological and ideological grounds. Tellingly, when forced to confront the complexity and uncertainty of the causal relationships between growth and poverty, Kraay conceded that based on the available data his paper could equally have been entitled “Growth is Good for the Rich!” Controversies of this kind underscore the contested and potentially subjective character of economic justifications for both growth and human rights, even when supported by putatively “hard” econometric evidence. Even if the growth and poverty reduction relationship were clearer, suggesting that we should prioritise growth as a policy objective, there is simply no consensus on the policies necessary to achieve growth in different country situations. But more fundamentally, for many heterodox economists and human rights and development practitioners, valuing human rights as mere inputs to economic growth trivialises and instrumentalises human rights and ignores central tenets of human rights theory and lessons from claiming rights in practice. It also obscures critical distinctions between the deontological and consequentialist conceptual foundations of human rights and economics, and confuses and arguably inverts the proper direction of the inquiry.

The empirical arguments about economic growth and human rights are evolving and contested; however, the available evidence does seem to support a number of headline propositions. The first of these is that while economic growth strategies have lifted many people out of poverty, they have often failed to redress the situation of the poorest of the poor and have even exacerbated existing inequalities. Son and Kakwani found that during 237 growth spells in

anced analysis of the complex interactions between the State and the market in Taiwan, South Korea, Japan and Hong Kong; Joseph Stiglitz, Globalisation and Its Discontents 89-132 (1999) (arguing that neo-liberal economic policies contributed to the East Asian crisis in the late 1990s). See also supra, note 147 and accompanying text. Chauffour’s short discussion “The Scope of the State” freely cites libertarian thinkers such as Milton Friedman and Friedrich Hayek, but strangely fails to engage with Wade’s seminal work “Governing the Market,” resulting in a skewed portrayal of the East Asian development experience. Chauffour, supra note 156, at 85-89.

Stiglitz, supra note 159.

Rodrik, supra note 41, at 3-46, 142-49.


David Dollar & Aart Kraay, Growth is Good for the Poor, 7(3) J. Econ. Growth 195 (2000).


Sumner, supra note 164 at 1177 n. 21.

See, e.g., Rodrik, supra note 41, at 174; William Easterly, The Elusive Quest for Growth: Economists’ Adventures and Mis-adventures in the Tropics 21-140 (2001). The author is grateful to Varun Gauri for discussions on this theme.

For example, by way of analogy, Amartya Sen has argued that certain human freedoms are constitutive, or a defining attribute of development. See Amartya Sen, Development as Freedom (1999). The question of the “added value” of those freedoms to development is self-evidently circular, at best, under this conception of development.
eighty countries, only twenty-three per cent led to pro-poor outcomes. Conversely, many poorer countries have demonstrated that significant human rights progress is possible even with limited resources, through political commitment and re-prioritising public spending.

Second, an analysis of development experience over the last several decades shows remarkably low correlations between economic growth and human development (comprising a subset of human rights), with cases where economic growth did not advance human development, and conversely, where there were impressive gains in human development without consistent strong growth. Third, there is no consistent relationship between economic growth and the achievement of the MDGs, more specifically. In a recent sampling of country progress in Asia and the Pacific, for example, a decrease in income poverty was found to be strongly, but not uniformly, associated with economic growth, but there was a much weaker relationship with infant and maternal mortality, and only little impact on education targets. Fourth, growth that exacerbates inequalities cannot be considered sustainable, and may even generate or fuel violent conflict. The extent to which growth translates to poverty reduction depends, among other things, on existing levels of inequality: the more unequal a society, the less impact that improved growth will have on reducing poverty. Higher income inequalities within countries has also been correlated with higher poverty headcount, higher unemployment, higher crime, lower average health, weaker property rights, elite capture of public services and rule-setting forums, and lower social mobility. Finally, suggestions that democratic transitions may undermine economic performance or that growth should precede democracy seem myopic, self-serving and anecdotal, at best. Empirical studies have affirmed the importance of political rights for economic growth. Conversely, higher income inequalities within countries have been associated with slower transitions to democratic regimes and more fragile democracies. Lessons from the Arab Spring (whether or not democratic reforms are consolidated) may contribute valuably to our knowledge of these complex relationships, subject to the inevitable methodological limitations and problems in generalizing across country situations.

Correspondingly, there is increasing evidence indicating that countries will enjoy better opportunities for economic growth if people are able to enjoy their socio-economic rights. For example, between thirty to fifty percent of Asia’s economic growth from 1965 to 1990 has been attributed by the World Health Organisation to improvements in health and in the immediate aftermath of transitions to democracy. Using annual frequency data to examine the within-country effects of democratization on economic growth, Rodrik and Wacziarg contend that “major democratic transitions have, if anything, a positive effect on economic growth in the short run.” Id. at 2. According to the authors, “this is especially true for the poorest countries of the world and those that are marked by sharp ethnic divisions. Democratizations tend to follow periods of low growth rather than precede them. Moreover, democratic transitions are associated with a decline in growth volatility.”

170 UNDP, supra note 21, at 45-64.
171 United Nations & Asia Development Bank, A Future Within Reach: Regional Partnerships for the Millennium Development Goals in Asia and the Pacific 41 (2008). The notable exception to the correlation between growth performance and the income poverty target was Cambodia where, based upon 2008 data, there was only a one percent reduction in income poverty for every ten percentage points in growth.
174 See Wade, supra note 41, at 674-81.
175 Dani Rodrik & Romain Wacziarg, Do Democratic Transitions Produce Bad Economic Outcomes, (Working Paper, Dec. 2004), available at http://www.hks.harvard.edu/fs/drodrick/Research%20papers/democracy.pdf. The authors observe that cross-country regression analyses typically find that democracies are associated with no statistically significant changes in economic growth, but with significant reductions in economic volatility. However these studies do not help us understand what happens during and in the immediate aftermath of transitions to democracy. Using annual frequency data to examine the within-country effects of democratization on economic growth, Rodrik and Wacziarg contend that “major democratic transitions have, if anything, a positive effect on economic growth in the short run.” Id. at 2. According to the authors, “this is especially true for the poorest countries of the world and those that are marked by sharp ethnic divisions. Democratizations tend to follow periods of low growth rather than precede them. Moreover, democratic transitions are associated with a decline in growth volatility.”
177 Wade, supra note 41, at 675.
in reproductive health and reduction in infant and child mortality and fertility rates. Conversely, the failure to invest in basic social and economic rights can be very costly indeed; for example, maternal and newborn deaths slow growth and lead to global productivity losses of $15 billion each year. The World Bank has estimated that economic losses from the failure to invest in basic sanitation ranged from two to seven per cent of national GDP, in a recent sampling of Southeast Asian countries.

Of course, none of this is to impugn economic growth per se, far from it. Buffeted by global economic and financial crises, it is clear that many states will need to improve growth performance in order to create jobs and achieve sustainable improvements in social conditions. Member States at the MDGs Summit highlighted economic growth as an important condition for sustainable and equitable development, and committed themselves to the goal of “sustained, inclusive equitable” economic growth. But implicit in this recognition is the proposition that growth in and of itself is not sufficient, and will not automatically translate to human rights improvements. To conclude otherwise confuses means with ends. If internationally recognized human rights are an imperfect proxy for the good life, economic growth, alone, is far less so. Growth should always be understood as a means towards the ends of social justice, human dignity and well-being, rather than the ends of a sound economic policy, or as a proxy indicator of good governance or fiscal and policy effort.

D. The Relevance and Impacts of Human Rights on Public Policy and Service Delivery

The preceding discussion suggests three important weaknesses in the “value added” challenge. But, more specifically and pertinently, what does the evidence say about the impacts of human rights, and social rights (commensurate with the MDGs), on human well-being? And how do human rights standards, principles and accountability mechanisms influence policy and service delivery, relevant to the MDGs? This Section first examines the available empirical evidence on the impacts of social rights litigation - as one of the better-studied theatres and modes of human rights claiming - on resource allocations in the social sectors and human development outcomes. While the more authoritative studies are relatively recent, and while the data and methodological gaps are considerable, the discussion shows that legalised human rights claims have now become an increasingly prominent feature in policymaking. Taking account of this evidence, such as it is, this Section then explores broader currents of thinking about the ways in which human rights standards, principles and accountability mechanisms can influence policymaking and service delivery, noting tensions as well as possible points of articulation with economic perspectives.

1. Impacts of social rights litigation - what does the evidence say?

There are many levels at which one could address an inquiry into the outcomes of human rights claims. Human rights claims are commonly asserted through a range of means, such as social mobilisation, political campaigning, educational and advocacy initiatives, litigation and referral to international courts and tribunals. Legal claims may be filed on either an individual or a collective basis, using either constitutional or international law as a basis. While the outcomes of individual cases are limited, the process of bringing claims to court can be an important mechanism for building awareness, raising civil society capacity and assuring respect for human rights. The experience of court proceedings can be transformative both for claimants and for civil society and can, in themselves, contribute to improvements in the living conditions of individuals and communities.

178 WHO and the Partnership for Maternal, Newborn and Child Health, supra note 188, at 3.


180 There is extensive literature on the limitations of per capita Gross Domestic Product (GDP, the sum total of the goods and services produced in a year) as a measure of a society’s well-being, including within the emerging science of “happiness” studies. See, e.g., Richard Layard, Happiness: Lessons from a New Science (2005) (exposing weaknesses in conventional economic theory through clinical insights from psychology and behavioural economics, and challenging neo-classical assumptions about market behaviour and the fixed and individualised nature of preference formation). Among the more significant and consistent findings is that experience of day-to-day happiness is relational, and less correlated with income than is subjective life evaluation. See Daniel Kahneman & Angus Deaton, High Income Improves Evaluation of Life but not Emotional Well-Being, Proceedings of the National Academy of Sciences, Sept. 21, 2010, available at www.pnas.org. See also the final report of the Stiglitz-Sen-Fitoussi Commission at http://www.stiglitz-sen-fitoussi.fr/documents/rapport_anglais.pdf (proposing ways of measuring multi-dimensional well-being beyond the per capita GDP proxy).
and social accountability mechanisms 182 at national and sub-national levels, as well as formal court claims and accountability mechanisms under global or regional human rights treaties. Surprisingly, comparatively little of this wide field of practice has been subjected to serious quantitative investigation. 183 Nevertheless, there is an emerging comparative literature on the impacts of social rights adjudication in national court systems from which one may draw certain illuminating albeit nuanced conclusions on the relevance of human rights to 194 policymaking, with the strong caveat that this is but one small part of the overall human rights accountability picture.

Claiming basic social services as a matter of human right has made an empirically observable difference in many countries, although the conclusions from the more credible studies are necessarily nuanced. 184 Disentangling cause and effect, and quantifying outcomes, are notoriously difficult in this context. The complexity of the analytical and interpretive challenges and counterfactuals is compounded in predatory states and societies marked by long legacies of deeply entrenched discrimination, where political institutions are corrupt and where litigation - whatever the weaknesses in the court system - may be among the few avenues for expressing grievances. The distributional impacts of litigation are highly dependent on the character of the legal system, not just the claims made, and the interpretation of the claims. The evidence is not helpful for ordinary causation studies, and even for distributional studies, the experiences of states and countries, as well as of court systems, differ in fundamental ways.

Subject to these caveats, the record to some extent seems to confirm the intuition that lawyers and formal court processes may sometimes be part of the problem rather than the solution for those suffering greatest discrimination, particularly in many poorer countries. In some countries and for some issues it seems that human rights claims through the formal court system may have distorted public spending towards the middle and lower-middle classes, thereby possibly exacerbating existing inequalities. 185 The Colombian Constitutional Court famously has issued a raft of programmatic orders in social rights cases with potentially significant budget implications, provoking concerns about negative externalities and the proper limits of the judicial role. 186 Judicial decisions can have both positive and negative (intended or unintended) effects, both directly and indirectly, as well as systemic effects beyond the parties to a dispute. Often the decision itself may be of secondary importance in the context of a broader social movement and political strategy for social change. Causation and attribution are especially challenging in such complex multivariate regressions, particularly over a period of time sufficient to evaluate social outcomes.

Yet, relative advances in accountability may sometimes be traced to the actions of courts in a manner that suggests that the force of judicial decisions can, at least in some situations, bring about changes in policy or behavior. The empirical work in this area suggests that the potential for social rights litigation to promote accountability varies considerably among different contexts, and that success in various social rights cases may depend on various factors, including institutional context, economic conditions, and the political will to act on the judgements.

The most authoritative and illuminating empirical investigations of the effects of social rights litigation are Gauri & Brinks eds., supra note 34, and Yamin & Gloppen eds., supra note 34. For a wide-ranging and thorough comparative jurisprudential analysis of human rights claims, see Langford ed., supra note 34, and for an exploration of social rights litigation in juxtaposition with democratic politics, see Courts and Social Transformation in New Democracies: An Institutional Voice for the Poor? (Roberto Gargarella, Pilar Domingo & Theunis Roux, eds., 2006).

182 These include public expenditure reviews, social audits, “community scorecard” initiatives and suchlike, wherein individuals and communities are able to hold governments and private authorities to account for service delivery.

183 See, e.g., Gauri, supra note 126. Gauri examines three kinds of redress procedures - administrative venues within government agencies, independent institutions outside government departments, and courts. Gauri remarks on the paucity of policy research on “redress” or grievance procedures in service delivery, id. at 2, while noting nevertheless the importance of “rights consciousness” as a requisite to the effectiveness of legalized rights claims and judicial review, id. at 7.

184 The most authoritative and illuminating empirical investigations of the effects of social rights litigation are Gauri & Brinks eds., supra note 34, and Yamin & Gloppen eds., supra note 34. For a wide-ranging and thorough comparative jurisprudential analysis of human rights claims, see Langford ed., supra note 34, and for an exploration of social rights litigation in juxtaposition with democratic politics, see Courts and Social Transformation in New Democracies: An Institutional Voice for the Poor? (Roberto Gargarella, Pilar Domingo & Theunis Roux, eds., 2006).


186 Right to health litigation in Brazil, India and Colombia has been questioned on this basis. See, e.g., Octavio Ferraz, The Right to Health in the Courts of Brazil: Worsening Health Inequities? 11 Health & Hum. Rts. 33 (2009); Daniel M. Brinks & Varun Gauri, A New Policy Landscapes: Legalising Social and Economic Rights in the Developing World, in Gauri & Brinks eds., supra note 34, at 309, 314; Ottar Maested, Lise Rakner & Octavio L. Motta Ferraz, supra note 185, at 274, 299. The latter authors note that the distributional impacts of health rights litigation depends upon a range of factors, such as the type of claim (individual or collective), the judicial system (civil or common law, access to courts, interpretation of the right to health), and various attributes of the health system itself. Ottar Maested, Lise Rakner & Octavio L. Motta Ferraz, supra note 185, at 300. On the issue of inequalities, the authors conclude that “the litigation wave has not yet matured to a stage where its long-term effects can be properly judged,” but that “with regard to those cases that seem to have increased inequalities, in a historical perspective, rights have always been first claimed by the middle classes and later extended to the general populations.” Id. at 300-01.

187 See, e.g., Rodrigo UprimnyYepes & Diana Rodriguez Franco, Acertos e insuficiências da sentença T-760 de 2008: implicaciones para el derecho a la salud en Colombia, 18 Observatorio de la Seguridad Social (2008). For a response to some of these concerns, see Alicia Ely Yamin & Oscar Parra Vera, Judicial Protection of the Right to Health in Colombia: From Social Demands to Individual Claims to Public Debates, 33(2) Hastings Int’l & Comp. L. Rev. 101-30 (2010); Yamin, Parra-Vera & Gianelli, supra note 162, at 116, 120-22, 124-25, 127 (In relation to the Colombian Constitutional Court’s most ambitious judgment
Conversely, in their recent empirical study of health and education claims in Brazil, Indonesia, India, South Africa, and Nigeria, Gauri and Brinks concluded that human rights law has become a "permanent and prominent part of the policymaking landscape," and that "legalizing demand for [socio-economic] rights might well have averted tens of thousands of deaths [in the five countries studied] and has likely enriched the lives of millions of others." 190 In South Africa approximately one million life years were estimated to have been saved through court-ordered access to low-cost medication to prevent mother-to-child transmission of HIV. 190 While courts are hardly the most progressive forums, and are as susceptible to elite capture as any institution, public interest litigation and the indirect effects of individual claims have been shown to bring substantial benefits for the poor in particular cases. 191 The results of social rights jurisprudence have tracked constitutional rights to an appreciable degree, 192 suggesting the instrumental importance of explicit formal human rights protections. And while national and local accountability mechanisms are in principle the most proximate and accessible forums for redress for most people, recent statistical and case study research suggests, with certain important qualifications, that the ratification of human rights treaties may lead to better human rights practices on average. The research covers areas of specific relevance to the MDGs in the fields of health, reproductive rights, education, and child rights.193

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189 Brinks & Gauri, supra note 186, at 303. For an insightful analysis of the preconditions for the effective adjudication of social rights claims, see Malcolm Langford, The Justiciability of Social Rights: From Practice to Theory, in Langford ed., supra note 34, at 3-45.


191 Brinks & Gauri, supra note 186, at 305, 338-40. By way of illustration the authors estimate that "about 350,000 Indian girls a year are newly enrolling in school as a result of the indirect effects of the right-to-food litigation" in that country, id. at 328. By way for further example, "reports in Costa Rica trace an 80% decline in AIDS mortality to the constitutional chamber's decisions to mandate the provision of ARVs. Moreover, the mere possibility of judicial enforcement can produce different political behavior and opportunities for negotiation for social movements." Alicia Ely Yamin, Beyond Compassion: The Central Role of Accountability in Applying a Human Rights Approach to Health, 10(2) Health & Hum. Rts. 1, 6 (2008).

192 Brinks & Gauri, supra note 186, at 317; Langford, supra note 189, at 44. The supra-constitutional status of human rights treaties has been identified as an enabling factor in Costa Rica's social rights jurisprudence. See Bruce M. Wilson, Costa Rica: Health Rights Litigation: Causes and Consequences, in Yamin & Gloppen, supra note 34, at 142.

But the relevance of human rights to development is not, or should not be, straitjacketed within the evolving contours of the empirical debates. This is not an objection to “evidence” per se, of course, which is indispensable for good policymaking. Rather, it is a comment on the faith we place in the predictive ambitions of hard science, within a far wider and more complex normative and value-based framework of decision-making, whether those values are explicit or implicit. As Gauri and Brinks remind us, “We should not … allow scepticism born of methodological rigidity to convert us into the proverbial drunkard who loses his keys at the doorstep but searches under the lamppost where the light is.” 194 The objectivity of [97] quantitative methods 195 and “evidence-based” policymaking is often over-stated. Statistical assumptions may be marshalled to support many conflicting ideologies and policy preferences. 196 Some of the more prominent and influential development policy agendas, including the failed policies of the structural adjustment era, can hardly be said to have been evidence-based, even though they were at one time widely accepted and continue to be revived, including in the MDGs context. 197 It is important to know, and as far as possible quantify, the respects in which human rights do or do not contribute to other important public policy goals, or at least those policy goals that are more obviously amenable to definition without reference to human rights. But commitments to eliminate malnutrition, child labour, violence against women and avoidable maternal deaths should not depend upon empirical justifications expressed in terms of contributions to development or economic growth. Whatever the empirical arguments, from normative or deontological perspectives, investing in and respecting these and other vital human rights is justified on moral or legal grounds, without more.

The international human rights framework does not, self-evidently, occupy the entire field of emancipatory potential. 198 The universality of internationally recognised human rights is legitimately a matter of vigorous theoretical and empirical debate. 199 and the meanings of human rights in [98] practice are dynamic, evolving and contested. 200 It may well be possible to identify a set of values to which the great majority of individuals and communities worldwide

194 Varun Gauri & Daniel Brinks, Introduction: The Elements of Legalization and the Triangular Shape of Social and Economic Rights, in Gauri & Brinks eds., supra note 34, at 25. The authors were commenting on the empirical challenges in quantifying the indirect benefits flowing from the legalisation of social rights claims.

195 Definitions of quantitative, as distinct from qualitative, methods of analysis are many and varied. However, in general terms, “analyses which are based on non-numerical information, which are specific and targeted in their population coverage, which in their design require active involvement from the population covered, which use inductive methods of inference and which operate in the broad framework of social sciences other than economics, we tend to label as ”Qualitative.’ Those which are based on numerical information, which are general in their population coverage, which require only passive involvement of the population covered, which use deductive (usually statistical) methods of inference and which rely on the neo-classical economic framework, we tend to label as “Quantitative.’” Ravi Kanbur, Q-Squared? A Commentary on Qualitative and Quantitative Poverty Appraisal, in Qual-Quant Qualitative and Quantitative Poverty Appraisal: Complementarities, Tensions and the Way Forward, 1, 7 Cornell University, (Ravi Kanbur, ed.) Mar. 11-12, 2001, 7, available at http://www.arts.cornell.edu/poverty/kanbur/1QZ.pdf.

196 See, Vandemoortele & Delamonica, supra note 15, at 62; and discussion supra Sections IV.A-C.

197 UNDP, supra note 21, at 46-50; see also supra notes 62-64 and accompanying text, and discussion supra Sections IV.B-C.


at a given time would subscribe, but this could never be captured in a static fashion within a single set of global legal standards. For those governments that are sincere about implementing their international human rights treaty commitments, there are often very significant challenges in translation and norm socialisation.

Similar caveats apply to claiming human rights in practice. While the legalisation of rights claims has exerted powerful and positive influence in many cases, as we have seen, empirically verifiable conclusions about adjudicating rights claims are necessarily tentative and qualified. There have been many qualitative studies and comparative jurisprudential analyses of social rights litigation in recent years, but comparatively few reliable impact studies, embracing relatively few rights. Even for a particular type of human rights claim within a particular jurisdiction, there may be limits to which conclusions are generalisable. Successful and pro-poor rights claims depend on a wide range of factors, including legal and political opportunity structures. Many of the examples of successful rights claims have been observed where the claims take place within the context of wider processes of social and political mobilisation. But disentangling the causal significance of the various factors involved in vindicating rights can be challenging, especially when assessing indirect systemic effects of rights claims over the longer term. Similar caveats apply to recent empirical investigations of the impacts of human rights treaty ratification.

None of these nuances appear to have stemmed the tide of human rights policy statements in bilateral and multilateral donor agencies, nor the proliferation of human rights-based approaches by a wide range of development actors at global, national and local levels. This reminds us that the world will still turn, guided by values, observed experience, and best available evidence, even without resolving the myriad “unappeasable ambiguities” in quantitative terms. Nevertheless, further empirical work and evaluation in the above areas will provide valuable inputs into the longer-term project of ensuring that human rights are valued and integrated appropriately in development policymaking, including in connection with the process and design of the post-2015 development agenda.

2. Comparative contributions of human rights principles and economic reasoning to policymaking

The preceding analysis, while necessarily nuanced in terms of its findings on the impacts of human rights claims, and while expressly limited to just one of many spheres of human rights claiming (viz legal claims through the formal court system), helps to dispel absolutist assumptions about the role and contributions of human rights in public policymaking. Within the constraints and parameters discussed above, international human rights should be seen not as an extraneous and utopian political project, but rather, a comparatively objective and feasible framework of claims and obligations corresponding to minimum substantive guarantees for a life with dignity, and an increasingly important vocabulary and toolkit for empowerment. Human rights have tangible - even if not necessarily prescriptive - implications for development policymaking. The practical relevance of international human rights in any context will depend on a great many factors including the degree to which individuals and communities are aware of their entitlements and can be enabled to voice their claims, and the existence of effective and accessible administrative, judicial and other mechanisms hold duty-bearers (usually, but not exclusively, the state) to account.

While the human rights legal framework itself is not a template or blueprint for policymaking, it does require that the policy choices and difficult trade-offs involved in policymaking satisfy minimum procedural and substantive standards, quite apart from the relative strength of their empirical claims. Articulating the distinctive principles, channels and institutional mechanisms through which human rights may positively influence public policymaking is a quintessentially context-specific undertaking, in relation to which the jurisprudential lessons surveyed above are but one

201 See, e.g., Deepa Narayan et al., Voices of the Poor: Can Anybody Hear Us? (2000); Voices of the Poor: Crying out for Change (Deepa Narayan, Robert Chambers, Meera K. Shah & Patti Pettesch eds., 2000); Voices of the Poor: From Many Lands (Deepa Narayan & Patti Pettesch eds., 2002) (discussing the results of a multi-country research initiative and participatory poverty assessments that reveal quite a striking consonance between experiences of poverty in different countries and regions, and showed the importance, in particular, of voice and power in people’s own definitions of poverty).


203 The studies surveyed in this article suggest that positive indirect effects on policymaking, for a wider population, have been more commonly observable in common law jurisdictions, where judges observe precedent (obviating claimants from filing multiple claims in relation to similar matters), and where the legal infrastructure permits class claims. “Symbolic” impacts have also been observed in certain cases, relating to both “the redefinition of the issue and transformation of public opinion about the problem.” Yamin, supra note 188, at 363.

204 The term in quotations was borrowed from a discussion of some of the more intractable dilemmas of social rights adjudication. See id. at 336.
dimension. Promoting a deeper and broader dialogue and appreciation of the techniques of reasoning in the fields of economics [*100] and human rights, and their relative contributions to policymaking, will continue to be a significant challenge during international negotiations towards the post-2015 development agenda. The fact that the human rights field is not bound within any particular discipline no doubt complicates the task. [*205] There is, nevertheless, extensive literature on this topic, and a diversity of approaches to consider, drawn from the comparative jurisprudential studies surveyed in Section IV.D.1, supra, as well as social sciences, and political and moral theory more generally.

Varun Gauri, for example, argues that there is much in common with a social rights and economic approach to service delivery, particularly in the fields of education and health. Both approaches are concerned with participation, transparency and accountability in service delivery, for different but to some extent overlapping motives. Certain distinctive policy consequences do accompany the choice of approach, however. In Gauri’s analysis there are three “important, but not irreconcilable” differences in social rights and economic policy. The first difference lies in the intrinsic (rather than instrumental) importance and morally compelling nature of the mechanisms and processes for the delivery of health and education services under a rights approach. Second, rights approaches are preoccupied with distributions in outcomes, which may be evidence of discrimination, rather than average outcomes. Finally, in Gauri’s view, rights approaches are better able to accommodate “adaptive preferences,” defined as “the habit of individuals subject to deprivation to lower their standards regarding what they need, want, and deserve.” Economics, by contrast, “does not easily accommodate individuals who do not maximise their own welfare,” though many solutions proposed by economists do in fact help to improve information and strengthen service delivery in ways that can change individuals’ sense of what they have and what they deserve. [*206] Nevertheless, Gauri is skeptical about the contributions of social rights to resolving complex trade-offs in public policymaking, given the “incommensurability” (or indivisibility and inter-relatedness) of rights. [*207] Gauri suggests that resolving competing rights claims in a large population is “inevitably an activity without a formula, and one that relies on judgement guided by principle.” [*208] although his rejection of social rights as “binding constraints” on policymaking [*209] may be unduly pessimistic in light of subsequent research into social rights claims in developing [*101] countries. [*210]

Other commentators have since gone further in attempting to reconcile the economics and human rights perspectives. Seymour and Pincus offer an engaging reconciliation of decision-making principles drawn from neo-classical welfare economics and human rights theory. [*211] The authors explore contested premises of welfare theory, challenging the ethical biases embedded in the “Pareto optimality” criterion [*212] and the “voluntariness” of voluntary exchange as the basis for determining socially optimal outcomes. They argue that the disciplines of welfare economics and human rights are not inherently contradictory, but instead, that the human rights framework furnishes normative principles relevant to decision-making (for example, that child labour is a bad thing irrespective of efficiency gains to production). This in turn aids economists in dealing with issues of exploitation and power relations, while the field of welfare economics provides tools to guide specific policy choices and trade-offs. [*213]

Langford, on the other hand, suggests a more “nuanced” approach to assessing the boundaries of human rights and eco-


[*207] Id. at 80-81. See also Yamin, supra note 188, at 364-65 (discussing the false consciousness problem and importance of human rights in the context of empowering individuals to demand change).

[*208] Gauri, supra note 206, at 81.

[*209] Id. at 71.

[*210] See, e.g., Gauri & Brinks, supra note 34.

[*211] Seymour & Pincus, supra note 148.

[*212] Pareto optimality is the basic choice rule in economics under which a policy change is to be preferred if it leaves at least one person better off and no one worse off than other possibilities. Id. at 391.

[*213] Id. at 403-04.
nomic claims. Taking the example of social security policy, Langford questions the extent to which the reasoning and analytical tools of welfare theory may be relied upon to determine policy choices between different models of child grants, where empirical claims either way are weak or heavily contested. In these kinds of circumstances, he argues, the meaning of human rights legal standards may be capable of being ascertained with sufficient precision, reliability, and, at least implicitly, legitimacy, to shape public policy and help resolve such challenging trade-offs.

A further approach worthy of consideration, originating in the public health field from the ethicist Norman Daniels, is the "accountability for reasonableness" decision-making framework. This approach appears to reflect the "reasonableness" test applied by courts in determining social rights claims in different parts of the world, with South Africa as the emblematic case. However, the author makes no such explicit connection. Daniels' approach is premised upon certain specific attributes of a human rights approach to health, including the mobilising power of a human rights claim, broadening the policy arena in which health is pursued (to include underlying and social determinants of health, such as environmental, cultural, political and social factors), and a focus on accountability, monitoring, and good governance. However Daniels eschews the relevance of any unifying philosophical justification for human rights in the context of resolving problems of conflict and prioritisation in decision-making. He argues that such a theory is elusive and overly general. For this reason, the human right to health (as recognised in international law) does not feature to any appreciable extent in Daniels' analysis.

Instead, more modestly, Daniels focuses upon the requirements for fair deliberative processes that meet four minimum conditions: (1) the "publicity condition," which calls for public access to the rationales for priority-setting decisions, and public justification; (2) the "relevance requirement," assuring that stakeholders agree on what kinds of reasons are relevant to setting priorities, which involves adequate participatory processes, evidence-gathering and vetting of reasons and arguments by all those affected by a decision; (3) the "revision and appeals" condition, guaranteeing mechanisms for challenges and dispute, and opportunities to revise policies in line with new arguments; and (4) the "regulative condition," which calls for public regulation of the process to ensure that the preceding three conditions are met. While the conditions outlined above are already entrenched in many expressions of a human rights approach to public health, as well as emerging principles of international public administrative law, Daniels suggests that they are not sufficiently integrated into priority setting. The advantage of the "accountability for reasonableness" process is the fact that it makes explicit reasonable moral disagreements among people on policy choices affecting health, and it is said to offer a superior claim to legitimacy in resolving disagreements.

However there are weaknesses in Daniels' approach as well. The first problem is more a question of what is left out of Daniels' approach, rather than what it includes. Daniels' procedural model lays claim to superior legitimacy, however the premises and preconditions through which credible and inclusive processes may lead to fair limit-setting decisions in health care (an important objective of accountability for reasonableness) are not explained. As Yamin has warned, the same conditions that have been shown to cause market failure in the health sector, such as moral haz-

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215 Id. at 212-13.


218 Id. at 315.

219 Id. at 315.


221 In their founding paper for their Global Administrative Law Research project at New York University, Kingsbury, Krisch and Stewart argue that accountability can be promoted by ensuring that administrative bodies meet adequate standards of procedural participation and transparency, reasoned decisions, legality in accordance with substantive standards, and by providing effective review of their decisions, drawing to various degrees on principles of international human rights law. See Kingsbury et al., supra note 125, at 37-42.

222 Id. at 329.
ard, asymmetrical information between health providers and patients, and [*103] decisions under conditions of scientific uncertainty, will also likely cause partial democratic failure when the debate is situated within the wider public.  

Preconditions for active, free and meaningful participation include, at a minimum, guarantees of free expression and association. The habit of individuals suffering discrimination to internalise their condition and revise their expectations downwards (Gauri’s “adaptive preferences” 224), are a more fundamental cause of market failure. A human rights framework of analysis may help expose structural causes of exclusion, build individuals’ “capacities to aspire,” 225 and help to level the playing field for a conversation more likely to generate outcomes that are genuinely fair from the perspective of the most marginalised members of society. 226

The second, closely related problem concerns Daniels’ justification for marginalising the human right to health as recognised in international law on the grounds that we lack a global consensus on the philosophical justifications for the right to health. There undoubtedly is no global consensus on a completely theorised right to health, and in a pluralistic moral universe it’s hard to see how there could be. Daniels’ premise therefore seems to offer a dubious basis for subordinating the right to health as recognised in international law. This is particularly so in light of alternative theories plausibly advanced by Sunstein, Tobin and others on the legitimacy and comparative practical importance of “incompletely theorised agreements” and by implication the quixotic character of the quest for moral absolutes. 227 The latter theories are not new. Engaging with them would have strengthened the conceptual foundations of Daniels’ framework.

The third problem, flowing from the above, is that Daniels’ account offers no clear path to incorporating judicial reasoning and substantive law from national courts and regional and global human rights monitoring bodies. 228 These obligations go well beyond process duties privileged in [*104] Daniels’ conceptual approach, to include substantive obligations relating to the accessibility, quality, affordability and cultural appropriateness of services and suchlike. States also have obligations to “take steps” to implement social rights within the maximum extent to available resources, to avoid and rectify discrimination, to prioritise essential minimum service levels, and to oblige organs of the state to justify - on the basis of objective evidence - any retrogressions and limitations on rights. 229 Substantive standards are also explicitly part of the framework for transparent participation, public justification and remedies under emerging principles of global administrative law. 230

There is no reason why human rights law and jurisprudence should be exempt from the requirement of deliberative discussion. To the contrary, the role of the judiciary and the legalisation of rights claims are vital matters of debate in any society, whatever its democratic credentials. The jurisprudence of international human rights monitoring bodies, while achieving increased impacts in the adjudication of claims in national courts, has attracted considerable criti-

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223 Yamin, supra note 188, at 356.
224 Gauri, supra note 206, at 79-80.
227 Cass Sunstein, Incompletely Theorised Agreements, 108 HArv. L. Rev. 1733, 1748 (1995). Analysing the philosophical literature, John Tobin argues for a “social interest theory” of human rights (or more particularly, the right to health), building upon “interest theories” of Joseph Raz, Amartya Sen and Charles Beitz, but recognising the contested and historically contingent nature of interests advanced in support of human rights claims, and relying upon the process of deliberation as the principal source of moral justification. See Tobin, supra note 137, at ch. 2.
228 See Tobin, supra note 137 and the references supra note 34, discussed in this Section of the article.
229 For additional analysis of these kinds of obligations in the context of public policymaking in the health field, see Tobin, supra note 137, at ch. 5.
230 Kingsbury et al., supra note 125, at 37-42, noting substantive requirements for administrative decision-making such as proportionality and the requirement of a remedy, drawn from human rights jurisprudence.
cal debate.  But the fact that the state has voluntarily assumed obligations in relation to the subject matter of rights under treaty law surely warrants that those obligations are given due prominence in framing and informing public debate. The fact that human rights, including numerous social rights, are now reflected in the great majority of constitutions reinforces this view.

Substantive human rights obligations are contemplated, at least implicitly, among the many inputs to participatory deliberative processes under the “relevance” condition (principle three of Daniels’ framework), and indeed, Daniels and Gruskin do venture exactly this kind of synthesis between “accountability for reasonableness” and human rights-based approaches.  But in terms of the “accountability for reasonableness” framework per se, strong justification is surely warranted for overlooking the specific and legally binding articulations of the normative content and obligations relating to human rights of different kinds, which emerge with surprising consistency across jurisdictions, regions and legal systems. The desired justification certainly does not emerge from the accountability for reasonableness framework as originally posited.

3. Conclusions on the contributions of human rights to policymaking

The discussion in this Section sought to address problems inherent in the “value-added” challenge to human rights in development policymaking. This Section exposed and refuted some of the more objectionable ideological premises and methodological pitfalls of the neoclassical economic and libertarian critiques of rights. It also sought to analyse the pathways through which human rights may influence service delivery and policymaking in practice, and to critically review some of the more promising theoretical reconciliations of economics and human rights.

The most obvious conclusion to be drawn from the foregoing analysis is that there is no simple formula for governing the integration of human rights within development policymaking and service delivery. The purpose of the present discussion is not to reconcile the various conceptual models surveyed, but rather to probe their premises, nuances and interstices, and to illustrate the superficial and reductive nature of the “value added” question as a banner for purely consequentialist reasoning and instrumentalist approaches. The privileging of one form of reasoning over another is as artificial as it is myopic: as Seymour and Pincus observe, “when confronted with real life choices, we intuitively seek to reconcile [deontological and consequentialist] perspectives.” To do otherwise is sheer methodological zealotry.

Taking into account the conceptual approaches previously discussed, along with comparative jurisprudential trends, human rights contribute to policymaking by ensuring informed, free and meaningful participation, providing forums for dialogue, enriching democratic deliberation, re-valuing policy discussions and unsettling the myth of technocratic expertise. Human rights are fundamentally about power: the human rights normative framework provides principles, vocabularies and tools for contestation, helping to destabilise prevailing power relations, reshape the field of political possibilities, repoliticise development, and open up space for social change. Human rights are also about responsibility: beyond the atomistic paradigm of individual responsibility in neoclassical economic models, the human rights framework helps to delineate and strengthen responsibilities of governments, institutions and other rel-

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231  A good example is the current debate concerning the jurisprudence of the Committee on Economic, Social and Cultural Rights on the “minimum core” concept. See Tobin, supra note 137; Katharine Young, The Minimum Core of Economic and Social Rights: A Concept in Search of Content, 33 Yale J. Int’l L. 113 (2008).

232  For a comprehensive survey of the constitutionalisation of economic and social rights in Africa, Latin America, Asia and Eastern and Central Europe, see database of the Toronto Initiative on Economic and Social Rights (TIESR), available at http://www.tiesr.org/data.html.

233  Daniels & Gruskin, supra note 220, at 1576.

234  Langford, From Practice to Theory, supra note 189, at 43-44 (noting certain key commonalities in approach, as well as divergences, in a review of over two thousand judicial and quasi-judicial decisions from twenty-nine national and international jurisdictions).

235  Seymour & Pincus, supra note 148, at 398.

236  Brinks and Gauri characterise the judicial role in social rights adjudication-- which informs but does not constitute the framework of the present inquiry - as dialogical and "iterative experimentation" (rather than a "command and control" caricature). This echoes Sabel and Simon’s analysis of experience from U.S.-based public interest litigation wherein litigation "upsets the status quo, creating the context for a joint search for new solutions to ongoing problems." Sabel & Simon, supra note 186, at 323. See Charles Sabel & William Simon, Destabilization Rights: How Public Law Litigation Succeeds, 117 Harv. L. Rev. 1015, 1101 (2004).
evant actors to regulate the affairs of the state in a manner compatible with agreed fundamental values. Finally, hu-
man rights are about accountability: human [*106] rights strengthen the culture of public justification for policy choices
based upon transparent and objective criteria, 237 requiring accessible and effective mechanisms of redress when
rights are violated.

The concept of human rights rarely operates as a “trump card,” automatically taking precedence over other social
goals, and neither does it proffer a blueprint for policymaking. The human rights framework itself doesn’t resolve dif-
ficult trade-offs and questions about prioritisation of limited resources, but it does offer a value framework that comple-
ments and in some respects challenges the dominant assumptions of neo-classical economics. The human rights
framework helps to: (1) correct political market failures, (2) call into question the justice of original distributions of
power and resources underpinning the Pareto rule, (3) interrogate the “revealed preferences” of the putatively self-
interested rational individual, and (4) resolve principal-agent problems 238 and asymmetries in access to information.
Human rights argumentation may also help to re-frame and re-value technocratic cost-benefit calculations, expose ideologi-
cal biases in policymaking, 239 and challenge decisionmakers to justify simplistic inter-temporal or horizon-
tal trade-offs and assumptions about short-term pain for longer-term gain.

The analytical frameworks and approaches surveyed above lay down important markers for continuing interdisciplin-
ary dialogue on the comparative contributions of human rights, economics and other social sciences in policymak-
ing, augmented and enriched by a burgeoning body of comparative social rights impact studies. A continuing commit-
tment to dialogue and interdisciplinary collaboration, particularly at the sectoral level where specific policy and
operational implications of human rights can more effectively be worked through, will be indispensable for a more pro-
ductive synthesis between human rights and the MDGs in a post-2015 development agenda.

V. Recommendations for the post-2015 development agenda and global monitoring framework

The September 2010 MDGs Summit produced a general understanding of the direction of international development co-
operation going forward, rather than a clear vision statement or a roadmap of the future of international develop-
ment. The large number of commitments obscures the fact that many of the promises and aid pledges are not new,
and do little to [*107] cure the accountability shortcomings in MDG 8. But the extensive catalogue of human rights
commitments is nonetheless noteworthy; intergovernmental negotiations on development issues are often highly po-
liticized, and consensus can be hard to achieve. The human rights consensus in certain areas - including women’s
rights and gender, reproductive rights, right to food, health, and promoting universal access to basic services - is sig-
nificant. This consensus offers a potentially useful advocacy platform for integrating human rights within national
MDG strategies, tailoring the MDGs to national conditions, and summoning political will and resources to collect dis-
aggregated data and strengthen national statistical systems.

The Summit Outcome was to some extent the product of its own circumstances, yielding uncertain implications for fu-
ture inter-governmental negotiations on development issues. Nevertheless, the challenge now is to grasp the Sum-
mit Outcome and make use of it in creative ways, mobilising to ensure that the human rights consensus is actually imple-
mented in practice, and is not undermined or forgotten in the negotiation of successor agreements. Building upon
the Summit Outcome and its aftermath, this Section of the article identifies a number of human rights priorities for
the post-2015 development agenda. The discussion begins with a number of general parameters regarding the need to
align and tailor global goals and targets to human rights standards, calibrate an appropriate level of ambition, and
strengthen accountability mechanisms and participatory processes. It then considers in more detail the substantive and
statistical criteria that should guide prioritisation in the post-2015 agenda. It also discusses possible new goals and tar-
gets to be included within a successor global monitoring framework, parameters for indicator development, and fi-
nally, proposals for addressing discrimination and promoting substantive equality.

A. Strengthening Accountability and Participation

237 Langford, supra note 189, at 43.

238 Principal-agent theory in political science and economics deals with problems of moral hazard (wherein a party insulated
from risk behaves differently from how it would behave if it were fully exposed to the risk), as well as conflict of interest and in-
adequate or asymmetrical access to information in agency relationships - problems which are inherent in situations of delegated leg-
islative authority to executive agencies.

239 See, e.g., Yamin, Parra-Vera & Gianella, supra note 162, at 107, 110; Yamin, supra note 188, at 340-42 (discussing the
track record and future potential of courts to act as bulwarks against ideologically-driven liberalisation, commodification and pri-
vatisation policy agendas).
An explicit human rights focus can buttress arguments for tailoring and customising the MDGs, and successor "global" targets to the particularities and original conditions of developing countries, in line with obligations in the ICESCR and other relevant instruments. Future determinations of the feasibility of development targets should not assume the reasonableness of past development trajectories, or too readily assume that progress should be linear. Rather, such assessments should be informed by country-specific political economy analyses and quantitative assessments of the measure of progress that is objectively reasonable under particular circumstances. Tools to guide this kind of analysis are already in use, including by certain human rights monitoring bodies. However, generating demand for more widespread use remains a key challenge; for example, in a review of twenty-two Poverty Reduction Strategy Papers (PRSPs) in 2008, including countries in which national MDG costing exercises were carried out with the U.N.'s support, none of the PRSPs referred to these cost estimates. The increased mobilisation of human rights constituencies, communities and social movements around the subject matter of the MDGs, demanding these as a matter of right, may help to generate both the political will and resources for action.

The human rights framework may also strengthen arguments for participatory decision-making processes, equitable outcomes, and accessible and effective accountability mechanisms at all levels, including administrative and judicial mechanisms, as discussed in Section III.C. Aligning and tailoring global MDG targets to duly ratified international human rights treaty obligations, as outlined above, is an essential step towards strengthened accountability for human development outcomes. Contextually relevant targets, established through participatory processes, should be embedded in national plans of action and legal and budgetary frameworks, with clearly defined institutional responsibilities, benchmarks, indicators, and mechanisms for monitoring and redress. Participation is not only a right, but can help cure some of the "ownership" deficiencies in the MDGs. While national and local redress mechanisms will usually (but not always) be most proximate and practically useful, states should more systematically reflect progress towards the MDGs in their national reports to the international human rights treaty bodies and Universal Periodic Review process of the United Nations Human Rights Council. States which have not yet done so should adhere to the Optional Protocol to the ICESCR in order to permit individual complaints.

[*109] Within and beyond the U.N. system, the thinking regarding post-2015 global arrangements is already well underway. In 2012 the United Nations Secretary General appointed a Task Team to carry out consultations and propose a vision and road map for the post-2015 development agenda. In the spring of 2012, a High Level Panel of Eminent Persons will be appointed by the Secretary General to advise on practical measures to overcome global

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240 See supra notes 34-35 and accompanying text.
241 PRSPs are medium-term poverty reduction national plans that the World Bank and International Monetary Fund require to be in place as prerequisites for concessional loans and financial assistance.
243 See discussion supra Section III.C.
244 See U.N./OHCHR, supra notes 20, 45. See also Alicia Yamin, Towards Transformative Accountability: Applying a Rights-based Approach to Fulfil Maternal Health Obligations, 12 Sur: International Journal on Human Rights (2010); Lynn Freedman, Human Rights, Constructive Accountability and Maternal Mortality in the Dominican Republic: A Commentary, 82 Int’l J. Gynecology & Obstetrics 111 (2003) (proposing a framework for transformative accountability in the context of maternal health (MDG 5), addressing human rights obligations at global, national and local levels, and including national planning and budgetary processes as well as judicial and informal accountability mechanisms, as well as “constructive accountability” mechanisms at facility level). See discussion supra Section III.C.
246 For recommendations to this effect, see U.N. Doc. A/65/254, supra note 53, and for a more detailed set of recommendations addressed to human rights treaty bodies, see Alston, supra note 17, at 821-27. See also Margaux J. Hall, Using International Law to Promote Millennium Health Targets, 28 Wis. Int’l L.J. 74 (2010) (discussing the potential utility of the complaints procedure under the Optional Protocol to the CEDAW Convention). Significantly, on August 10, 2011 the CEDAW committee handed down the first decision of any treaty body in relation to a maternal mortality communication. The Committee found that the (deceased) applicant had suffered discrimination in accessing maternal health services on the grounds of her sex and ethnic origin, and recommended that the government of Brazil (the respondent) provide reparations to the victim’s family and implement a range of other legal and policy measures. U.N. Doc. CEDAW/C/49/D/17/2008, Aug. 10, 2011 (Restricted).
**development** challenges, taking into account the U.N. Task Team’s report. The report of the High Level Panel of Eminent Persons will inform inter-governmental deliberations on the post-2015 **development** agenda, including a "special event" on the MDGs in 2013. Drawing from the lessons of the **Millennium** Declaration and 2010 MDGs Summit, in which space for civil society participation was minimal, it will be critical for a post-2015 agreement to be more inclusive, led by representatives from the Global South rather than Northern donors. While civil society uptake and ownership of the MDGs in the Global South has been uneven at best, recent surveys indicate a clear grassroots demand for a post-2015 **development** framework. The quality of the consultation process will be a key determinant of the legitimacy and ultimate impacts of the post-2015 global monitoring framework.

**B. Prioritisation and Triage - Criteria for Determining the Scope of the Post-2015 Agenda**

As vital as inclusive processes are, however, the post-2015 consultation process must be carefully managed in order to avoid inflaming tensions between those urging greater inclusion in future global **development goals** and those arguing that less is more - i.e., that a narrow focus on a small set of measurable global targets is indispensable for the purposes of statistical rigour, comparability, and political mobilisation. Human rights critiques of the MDGs often argue for the inclusion of additional **goals**, targets and indicators into the global list. This has resulted in the expansion of the MDGs in 2007 to encompass decent work and sexual and reproductive health (the latter having originally been excluded in 2000 by a strong [*110*] political and faith-based coalition), as well as calls for **goals** and targets on such matters as economic growth, governance, climate change, secondary education, infrastructure and even electricity. But a "badly decorated Christmas tree" laden with **goals** would serve no useful purpose. Strong leadership, clear communication and effective management of expectations throughout the consultations process are therefore crucial.

In preparing for the discussions ahead, many human rights proponents will be forced to do something that they do not like doing: prioritise. The same applies to all other stakeholders. A clear vision of **development** could help define the boundaries and parameters for the prioritisation exercise. The 2010 MDGs Summit experience shows how challenging the quest for a succinct and coherent negotiated vision statement can be. Nevertheless, a clear concept and definition would help structure the various consultation exercises underway, promote coherence, and identify synergies within a manageable list of post-2015 **goals** and targets. With or without a clear conceptual chapeau, agreement will be needed on the specific purposes and audiences for a post-2015 global monitoring framework. A critical distinction must be made at the outset between the parameters and requirements for monitoring at the global level, as opposed to at the national and sub-national levels. There needs to be a clear agreement that any global monitoring framework requires explicit tailoring to national conditions and resource constraints, in line with international human rights treaty standards. The failure to be clear about the MDGs’ purposes was certainly among its most regrettable shortcomings from the outset.

248 Id.

249 Summit Outcome, supra note 69, P 79.


251 See Vandemoortele, supra note 26.


254 It has been argued that the lack of a coherent vision of development in the process leading to the MDGs "generated a poorly aligned means, ends and sometimes competing ideas about normative aspiration (e.g. economic growth vs. sustainability), which has made the MDG project less useful than it could have been, since opportunities to link the goals together coherently have been missed and a rigorous approach to assessment has been overlooked.” Lancet & London International Development Centre Commission, supra note 15, at 1008. Drawing from Amartya Sen’s theories, it has been suggested that a guiding conception of development as "a dynamic process involving sustainable and equitable access to improved well-being” could provide a rational and principled structure for post-2015 development goals, based upon five guiding principles: holism, equity, sustainability, ownership and global obligation.”Id. at 1008-11.
Subject to this threshold question of objectives, discussion will then be needed on the relative importance, as well as limitations and possible drawbacks, of quantitative measurement, and how qualitative criteria and methods may play a more active role. Both are surely needed for a potentially wide range of purposes, \footnote{111} including vetting the issues for inclusion in the post-2015 global monitoring framework. Statistical rigour should be encouraged for the sake of objective monitoring and evidence-based policymaking. \footnote{111} The desire for quantifiable expressions of human progress can be viewed as an attempt to create a basis for mutual accommodation in a context of suspicion and disagreement, thereby promoting procedural regularity and enhancing public perceptions of fairness. \footnote{112} However, the ideal of objectivity should not too readily be assumed. \footnote{113}

When weighing the candidates for inclusion in a post-2015 global list, consideration must also be given to the “crowding-out” problem, meaning the potential of the MDGs to inadvertently overshadow other important issues that have not made it onto the global list. Prioritisation should be guided by substantive human rights criteria from a normative or deontological standpoint, as well as empirical evidence of where the major bottlenecks most commonly are for any given right (or corresponding global goal or target). Prioritisation should take into account what the most clearly proven interventions are in local contexts, and what proxy measures might be feasible for human rights or goals left out of the list. Hardened by the MDGs experience, the post-2015 prioritisation exercise should also explicitly anticipate the gaps that will likely arise in a new global list of goals and targets, and the thematic and operational linkages that such gaps might inadvertently foreclose. \footnote{113}

Agreement on a succinct set of ten goals may offer a path between the Scylla of MDG proliferation and the Charybdis of the status quo. Consistent with the rationale behind the existing list, any additional global goals should be capable of expressing widely recognised ends, rather than means, of human development. \footnote{260} Careful deliberation will be needed to select the appropriate baseline year for any new set of targets and the period over which they are to be achieved: an excessive time horizon lacks credibility, but an excessively long period exerts little political pressure. Consideration will also be needed on whether performance is to be expressed in relative or \footnote{112} absolute benchmarks, \footnote{261} mindful of the controversies relating to Target 1.A discussed in subsections II.B.2 and II.B.3. Interim targets should be included for the sake of political accountability, \footnote{262} with longer-term targets aiming for universal access. \footnote{263}

\footnote{111} Kanbur, supra note 195 at 1. As Ravi Kanbur explains: "Numerical information can be more easily aggregated, but it can miss out on nuance and texture. General coverage aids representativeness, but can lose context. Statistical inference can help in discussion of causality, but misses out on the power of inductive approaches... The key, then, is how to make the best of complementarities while minimizing tradeoffs."

\footnote{260} For arguments highlighting the importance of statistical rigour in the context of the health-related MDGs, see Amir Attar-an, An Immeasurable Crisis? A Criticism of the Millennium Development Goals and Why They Cannot be Measured, 2 PLoS Medicine 955 (2005), available at http://www.plosmedicine.org.


\footnote{113} As Porter points out, quantitative analysis is often subject to "pressures to reify its terms, to deny the validity of human judgement, to lust after the impersonality of purely mechanical objectivity." Id. at 187. See also Dutta, supra note 156, at 415-16.

\footnote{261} See supra note 254 and accompanying text.

\footnote{262} An ideal set of global targets is one that expresses the many dimensions of human well-being yet includes a limited number of targets; that addresses the complexity of development yet exploit the charm of simplicity; that embodies agreed principles yet allows for quantitative monitoring; that reflects global priorities and universal standards yet is tailored to the domestic situation and local challenges; and that specifies the destination yet spells out the journey for getting there." Vandemoortele, supra note 14, at 9-10.

\footnote{263} See U.N. Doc. A/65/254, supra note 53, PP 12-17 (arguing for the importance of setting targets for universal access in the context of the rights to water and sanitation). Others commentators have ventured more far-reaching arguments for the concept of universalism in the context of social policy, challenging the approach of targeting in the MDGs and aiming for a re-politicisation of the development agenda. See, e.g., Andrew M. Fischer, Towards Genuine Universalism within Contemporary Development Policy, 41 IDS Bulletin 36 (2010); Thandika Mkandawire, Targeting and Universalism in Poverty Reduction, U.N. Research Inst. For Social Development, Social Policy and Development Programme Paper No. 23 (2005).
The requirement that post-2015 goals should focus on ends rather than means would appropriately exclude putative targets for economic growth, infrastructure, electricity and the like, however important the latter may be from an instrumental standpoint. A modest rationalisation of existing health-related goals should help to accommodate a small number of additional priority concerns, although the unacceptable scale of avoidable maternal deaths surely demands that maternal health be given due prominence in the post-2015 list. The integration of donor states’ commitments as far as possible within the revised list might also expand the space for additional priority issues, rather than quarantining all such commitments within MDG 8. This would also help to reinforce the relevance of the MDGs and the reality of poverty in all countries, irrespective of their relative per capita GDP, while recognising the rising proportion of income-poor individuals living in middle-income countries. An integrated structure of this kind may also more effectively communicate the need for a genuine global partnership and policy coherence in order to achieve specific human development outcomes.  

C. Candidate Goals and Targets

A post-2015 global monitoring framework should include a goal, target(s) and indicators capturing essential civil and political rights prerequisites for public participation and effective and equitable service delivery. The inclusion of civil and political rights guarantees can be justified on both normative and instrumental grounds, building upon the modest concessions on these issues by Member States at the 2010 MDGs Summit. Certain countries have added “governance” goals to their nationally customised MDGs. However this practice warrants critical review from methodological and ideological perspectives, given the inherent elasticity of “governance” concepts and the dubious motives that governance agendas may conceal, as well as more explicit human rights conflicts. Recent work on human rights indicators offers considerable material and inspiration from which to draw for global monitoring purposes, particularly when it comes to tailoring globally-agreed indicators to the national and sub-national levels. There is a veritable industry in voice and accountability measurement as well. Grassroots aspirations for civil and political rights are being voiced as loudly now as ever, and would presumably come through strongly in any

264 For arguments along these lines, see Caliari & Darrow, supra note 61. Target 8.E (“In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries,” supra note 7) is the most obvious target for rationalisation and integration within a revised global health goal, however there may be further potential for rationalisation, for example in relation to indicators dealing with sectoral targeting of ODA.

265 It has sometimes been suggested, too categorically, that “democratic accountability, human rights and the rule of law” are indispensible for achieving quantitative targets such as those expressed in the MDGs, and that therefore, at least implicitly, the MDGs can be taken as a proxy measurement for the former (qualitative) concerns. See Myles A. Wickstead, Holding on to the MDGs (For Now), 41 IDS Bull. 123, 124-25 (2010). The recent uprisings in star MDG performers in the Arab region have strongly rebutted this assumption, reaffirming the intrinsic importance of all human rights - civil, social, cultural, economic and political, whatever their instrumental relationships. However, for an indication of some of the conceptual and methodological challenges relating to standardised global human rights indicators, see Kate Raworth, Measuring Human Rights, 15 Ethics & Int’l Aff. 111, 113-15, 128-31 (2001); Nancy Thede, Human Rights and Statistics: Some Reflections on the No-Man’s Land Between Concept and Indicator, 18 Stat. J. U. N. Econ. Comm. for Eur. 259, 265-69 (2001) (referring variously to problems of conceptualisation, contextualisation, relativity, interpretation, subjectivity, feasibility, and data limitations). A composite "Human Rights Accountability Index" offers one potentially practical means of overcoming such limitations, bringing together indicators relating to States’ formal adherence to human rights treaties, respect for procedural obligations, and responsiveness to outcomes of human rights monitoring procedures. See Philip Alston, Promoting the Accountability of Members of the New U.N. Human Rights Council, 15 J. Transnt’l L. & Pol’y 49-94, 87-93 (2006).


genuinely participatory post-2015 consultations process. A self-standing goal on civil and political rights would best highlight the intrinsic importance of these rights; however, a plausible alternative might be to group these rights within a self-standing “enabling environment” goal, which may also include global partnership commitments relating to aid, trade, debt relief and investment, to the extent [*114] that the latter are not integrated within health-related or other MDGs. 269

Social security, or social protection, is another obvious candidate for inclusion in an updated list of global human development priorities, given recent normative advancements concerning the right to social security 270 and the importance of securing a social protection floor in the midst of global economic, environmental, and social crises. Safeguarding the right to work is also vital in times of crisis, and a number of countries have included employment-related goals in their national plans. 271 Youth unemployment has ignited or intensified anti-authoritarian and anti-globalisation movements worldwide. Normative advances concerning the right to work strengthen the case for its inclusion in a post-2015 agreement, 272 although some commentators have questioned how far “decent work” objectives could usefully be advanced through a post-2015 global agreement as distinct from national policies. 273

There are also strong arguments to include water and sanitation as a self-standing goal, given the recent recognition by the General Assembly and Human Rights Council of the human rights to water and sanitation, the comparative lack of progress in realising these rights, and the powerful evidence of their fundamental importance for the achievement of other human development goals. 274 The human rights traction in these sectors is now strong. In 2011 the WHO/UNICEF Joint Monitoring Programme for Water and Sanitation (JMP) 275 and a number of influential multilateral and bilateral donor organisations launched a work programme to help define the post-2015 monitoring framework in the water and sanitation sectors. In May 2011 the above organisations committed to integrate the rights to water and sanitation into the global monitoring framework for the water [*115] and sanitation indicators in MDG Target 7.C, exploring how qualitative attributes of these rights - such as affordability, accessibility, continuity and safety - may be factored into MDG monitoring. 276 This may serve as a valuable precedent and source of inspiration for other MDGs.

Finally, no post-2015 agreement could be credible or effective without meaningful commitments to deal with the problem of climate change. Climate change is a quintessential tragedy of the commons, a global market failure fuelled by the failure of national politics. Climate change has been characterised as a “profound denier of freedom of action and a source of disempowerment.” 277 The human rights dimensions of this issue are the subject of a burgeoning lit-
erature. Indicator 7.2 for MDG target 7.A (ensuring environmental sustainability) refers to “CO2 emissions, total, per capita and per USD1 GDP (Purchasing Power Parity, or PPP),” although the lack of any quantified time-bound performance benchmark makes this indicator ineffective and un-monitorable. However, addressing climate change cannot be reduced to developing new targets and indicators. Climate change fundamentally challenges prevailing consumption patterns, commercial and political incentives, and ways of thinking about both human rights and development. The human impacts and causes of climate change are now very clear to any impartial and informed observer, and the global tipping point towards potentially catastrophic and irreversible harms is likely to occur well within the framework of the post-2015 agenda. Inequalities within countries are a likely marker for vulnerability to climate shocks, hence any principled and effective post-2015 agreement will need to take into account not only national capacities and relative responsibilities for greenhouse gas emissions, but also in-country inequalities. Financial requirements for mitigation in developing countries are estimated to reach $140-175 billion a year by 2030 with associated financing needs of $265-565 billion, and the additional investment and financing required for climate change adaptation purposes may be between $30-100 billion annually. Sustainable transitions to clean energy pathways also require rapid progress on technology transfer. Hence, international cooperation is essential. Unsustainable consumption patterns in both the Global North and South, and what Henry Shue termed “luxury emissions,” are clearly difficult topics of political discussion, as the slow progress of global climate change negotiations attests. But the failure of the post-2015 development agenda to grapple with these issues would constitute a shameful missed opportunity and an abrogation of human rights responsibilities.

D. Indicators for the Post-2015 Global Monitoring Framework

The OECD-hosted Global Project on Measuring the Progress of Societies concluded its 2008 report with four lessons for indicator development: (1) be clear about one’s objectives and how one expects to achieve them; (2) be realistic about what an indicator set can achieve; (3) never underestimate the importance of the process of designing an indicator in a Divided World 31 (2007). As the authors of Human Development Report observe, “one section of humanity - broadly the poorest 2.6 billion - will have to respond to climate change forces over which they have no control, manufactured through political choices in countries where they have no voice.” Id.


279 For an alarming but credible assessment of the latest scientific evidence, see James E. Hansen & Makiko Sato, Paleoclimate Implications for Human-made Climate Change, in Climate Change at the Eve of the Second Decade of the Century: Inferences from Paleoclimate and Regional Aspects: Proceedings of Milutin Milankovitch 130th Anniversary Symposium (A. Berger, F. Mesinger & D. <hac S>ijaci, eds., 2011). On recent projections, in order to avoid dangerous levels of greenhouse gas emissions, the total amount of global emissions needs to fall by 2050 by at least 50 to 85 percent from 2000 levels. This means that heavily polluting OECD countries will need to cut their emissions by 80 to 90 percent, and developing countries will probably need to cut their collective emissions by 30 to 60 percent, having peaked by the year 2025. Stephen Humphreys, Conceiving Justice: Articulating Common Causes in Distinct Regimes, in Humphreys, ed., supra note 278, at 305.


281 Perhaps the best-known model that integrates the three vital criteria of relative responsibility, capacity, and in-country inequalities, is the “Greenhouse Development Rights” framework. See Paul Baer et al., The Greenhouse Development Rights Framework: The Right to Development in a Climate-Constrained World (Rev. 2d ed. 2008).


and agreeing the indicators; and (4) think long-term: be persistent and flexible. 286 Indicators in general terms should be valid, relevant and effective in measuring what they purport to measure. They should also be reliable, enabling consistent application across different contexts by different groups of people at different times. Proposed indicators at the global level should be measurable, time-bound, cost-effective to collect, "easy to communicate for advocacy purposes, and open to cross-country comparisons. The process of indicator development should itself observe accountability principles, including transparency about data sources and methodology. 287

Data sources themselves should be cost-effective, standardised, population-based, and comparable across countries and over time, and contribute to strengthening national monitoring capacity. 288 All relevant data sources should be explored - events-based data relating to observable human rights violations, standards-based data expressed in quantitative ordinal scales, national socioeconomic and administrative statistics, and survey-based data - within their respective limitations. 289 When considering the statistical parameters, it should be borne in mind that much data that are presently available at country level - for example through Demographic Health Surveys, which are increasingly income and gender-disaggregated - are not being used. Much more data could be collected were there the political will to do so, although for the purposes of global monitoring there are limits to the number of additional questions that can be added to existing household survey instruments. The lag time in the generation of baselines and measurement tools for new indicators should also be borne in mind in terms of any proposals to be proposed to the Secretary General’s High Level Event in 2013, and subsequently to Member States in 2015. 289

As vital a variable as statistical rigour is, however, it cannot be the sole gatekeeper for the post-2015 development agenda, and should not arbitrarily or categorically trump substantive policy considerations. 291 "To foreswear the use of available, though imperfect, data does not advance scholarship," and does little to redress the worst excesses of human behaviour. 292 Moreover, the weight that one may place on statistical parameters might vary, to some extent, depending upon the relative priority of global communications and advocacy purposes of the post-2015 agenda, as distinct from its monitoring or planning purposes. For example the maternal mortality ratio (an outcome or impact indicator) is a far weaker indicator than measures of coverage such as skilled birth 293 attendance and availability of emergency obstetric care (an input, effort, or process indicator), given the well-known problems of underreporting and misreporting of maternal deaths. 293 But under certain conditions and caveats, the former indicator might nevertheless serve useful advocacy objectives for a broad global audience, bringing visible attention to the scandal of avoidable maternal deaths in a way that other measures, on their own, cannot.

There may be deeper problems with indicators from the perspective of public management theory. For example, in the context of the MDGs, Rosga and Satterthwaite warn of the potential for the human rights indicators project “to close space for democratic accountability and purport to turn an exercise of judgement into one of technical measure-

286 Manning, supra note 242, at 20 n. 22.
288 JMP Post-2015 Consultation Report, supra note 52, at 41.
290 Developments in indicator measurement tools could typically take two to five years, for indicators not currently captured in existing data collection systems. These must be applied consistently in a significant number of countries, although with survey cycles taking three to five years, initial reporting on a new baseline could take anywhere from seven to twelve years. Capturing changes following that baseline could take an additional five years. JMP Post-2015 Consultation Report, supra note 52, at 42-43.
291 Supra notes 253-66 and accompanying text. For concerns that technical statistical parameters have displaced the “relevance and effectiveness” criteria for the decent work indicators in Target 1.B, see MacNaughton & Frey, supra note 271, at 340-42.
293 See UNICEF, WHO, & UNFPA Guidelines for Monitoring the Availability and Use of Obstetric Services (1997) at 7-14, available at http://www.childinfo.org/files/maternal_mortality_finalgui.pdf. There are two indicators for Target 5.A: Indicator 5.1 is the maternal mortality ratio, and indicator 5.2 is the proportion of births attended by skilled health personnel. As an illustration of the problem of indicator validity and misreporting, a decline in the former ratio may in fact reflect improved surveillance rather than declining maternal deaths. For other problems, see Attaran, supra note 256, at 957-58.
In a similar vein, within a deeper critique of the political economy of the MDGs, Poku and Whitman question the utility, and even the possibility, of measuring and costing the MDGs, and argue that “what counts as ‘momentum’ in the years to 2015 cannot … be reduced to statistical indicators.” The debates on post-2015 indicators would do well to heed these critiques.

More specifically, global MDG indicators should go beyond standard “outcome” or impact measures (U5M, maternal mortality ratio, literacy rates and so forth) to include a modest number of indicators that capture human rights commitment as well as fiscal and policy effort and inputs necessary to achieve desired outcomes, to the extent that these can be generalised across countries. The latter kinds of indicators promote accountability for human development outcomes by providing the basis for evidence-based judgments on the extent to which outcomes (positive as well as negative) are the result of conscious policy choices, or omissions, of human rights duty-bearers (typically, but not exclusively, authorities of the state), or alternatively the result of accident or purely exogenous factors. Examples of commitment indicators would include human rights treaty ratification and constitutional protection of rights, observance of procedural obligations under the U.N. Human Rights Council, and responsiveness to procedural outcomes. Indicators of fiscal or policy effort might include the percentage of the national budget dedicated to particular rights or corresponding MDGs. The obligation to put in place a national plan for the realisation of particular rights is a core obligation under human rights treaties, as well as a very real necessity in practice if the goal of universal access is to be seriously pursued, especially in notoriously fragmented sectors such as water and sanitation.

Indicators relating to the outcomes of human rights claims before national courts might seem intuitively important, although justiciability is just the tip of the human rights accountability iceberg. However, efforts to demonstrate the relevance and validity, in statistical terms, of such indicators must confront the problem that redress mechanisms and preconditions for accessing them are most often lacking in countries where violations are most pronounced. As in the field of treaty ratification, there may be significant empirical challenges in demonstrating a cause-effect relationship between inputs and desired outcomes. In Colombia and Brazil, as discussed in sub-section IV.D.1, judicialised dispensation of curative (rather than preventive or basic) health services appears to have distorted public spending priorities towards the middle classes. While these are admittedly unusual cases, they do bear out the possibility that judicial redress, in some conditions, may frustrate rather than further the objectives of a good national health plan.

However, as with the post-2015 menu generally, the relevance of these kinds of indicators cannot be determined exclusively by the evolving and contested nature of the empirical evidence. There are inevitable limitations on the extent to which we will be able to generalise with any confidence (statistically and otherwise) across countries and societies on the institutional prerequisites for effective pro-poor human rights claims. Nevertheless, rights without remedies ring hollow in theory as well as in practice. The programme logic of the post-2015 global monitoring framework would be incomplete without careful analysis of the role of human rights accountability mechanisms, including but not limited to judicial and quasi-judicial forums, within the wider scheme of incentives for better service delivery.

296 On human rights indicators generally, see U.N./OHCHR 2008 and 2011, supra note 267. “It is important to note that process indicators are not poor substitutes for impact indicators. Process indicators, in fact, provide a great deal of extremely useful information that impact indicators do not,” helping to explain variations in outcomes and highlight needed policy interventions. See U.N. Guidelines for Monitoring the Availability and Use of Obstetric Services, supra note 293, at 21.
297 See Alston, supra note 265 at 61-67, 87-96. Procedural obligations could include compliance with requests for provision of information to Special Procedures of the U.N. Human Rights Council, issuance by countries of standing invitations to Special Procedures, and timely submission of reports to human rights treaty bodies. Responsiveness could include responses to recommendations flowing from treaty body, Special Procedure and Universal Periodic Review processes.
298 These kinds of process, effort, or “input” indicators are already being collected at the global level for the MDG water and sanitation targets, in addition to comparative data on national policies, institutions, human resource investments, stakeholder coordination and harmonisation, and aid flows. See World Health Organization & U.N.-Water, supra note 180 at 37-70.
299 Supra note 193 and accompanying text.
300 Supra note 186 and accompanying text.
livery. Prioritising among the various possible choices of "input," "commitment" and "process" indicators should be somewhat easier than for many outcome indicators given that data for many of the former indicators is increasingly available in global databases. It seems appropriate, therefore, to highlight the identification of commitment and policy effort (or process) indicators as a priority field for further empirical investigation and interdisciplinary debate towards 2015.

E. Tackling Discrimination and Promoting Substantive Equality

Perhaps the biggest problem in historical terms, underlying virtually all others, remains inequality. Most individuals and almost every culture, religion and philosophical tradition value notions of equality for its own sake. However, since the year 2000, inequalities have increased between and within countries. The MDGs are certainly not solely responsible for this, but their equity-blindness arguably makes them complicit. This is first and foremost a moral issue, and it undermines the MDGs’ progress on their own terms. Hence, the goal of substantive equality should be at the centre of the post-2015 debate. Non-discrimination and the principle of substantive equality must be integrated more effectively into all goals, and the necessary investments must be made at both national and global levels for the additional data required to be collected, in line with Member States’ commitments at the MDGs Summit.

Disaggregation by income quintiles and gender, and to some extent age and ethnicity, already occurs through some of the major survey instruments, such as Demographic Health Surveys and UNICEF’s Multiple Indicator Cluster Surveys, although these surveys often bypass the growing ranks of people living in informal settlements. The latter deficiencies need to be addressed as a matter of priority, and disaggregated data collected more systematically. Additional grounds of discrimination should be included in line with evidence of where social exclusion is greatest in the sectors corresponding to the MDGs, while taking into account the prohibited grounds of discrimination under human rights treaties. This involves a delicate balance between normative concerns and statistical feasibility parameters, including reliability and comparability. Data availability is another constraint, although including additional fields for data collection, linked to human rights standards, may help to create national demand for that data. Nevertheless, weighing the opportunity costs of household-level data collection is a serious matter. As Manning remarks, we appear to be seeing "a growing mismatch between the multiple demands for monitoring and the ability of local systems to generate credible data. There is a danger that an "MDG Results Industry' could consume a lot of resources to rather little effect."

Of the many grounds of discrimination covered by the human rights treaties, renewed efforts are needed to capture discrimination on the grounds of ethnicity, and ideally also religious or political belief. Patterns of exclusion along ethnic lines have been documented in many countries where MDGs progress is - in aggregate terms - otherwise broadly on track. As Stewart decries, a dearth of international statistics on ethnic exclusion reflects, as well as causes, this lack of focus. These are obviously thorny issues, not helped by the limited and truncated guidance

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301 See Landman, supra note 289, at 926-28. Data relating to treaty ratification, periodic reporting, and responsiveness to recommendations of international human rights mechanisms is available at www.ohchr.org. The TIESR database, supra note 232, contains a comprehensive set of quantitative information on the constitutional status of economic and social rights in developing countries. The latter indicator has some empirical backing given and to the extent that successful human rights litigation tracks explicit constitutional human rights provisions, supra note 192. But the relevance of constitutionalisation of rights as an indicator, and other possible indicators such as the existence of a national human rights institution, may depend significantly upon the national context, calling into question their relevance in the post-2015 global list. See Alston, supra note 265 n. 114 and accompanying text.

302 World Bank, supra note 173, at 18. See also supra note 40 and accompanying text.

303 See supra note 41 and accompanying text.

304 CESCR, General Comment No. 20, supra note 40.


306 Manning, supra note 242, at 38.

from the U.N. system. Yet Demographic and Health Surveys have included an ethnic variable in fifty-five of the seventy-seven countries covered to date, and many countries in Latin America, Asia, and Oceania (less so in Europe and Africa) collect data on ethnicity in their national censuses. The experience in Latin American countries where social and economic inequalities can be extreme shows that disaggregation by ethnicity is possible even in the most egregious situations given minimal political will, although clearly the overall record is crying out for improvement. Disaggregation by regions within a country may offer a viable proxy measure, in some circumstances.

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

Self-evidently, inequalities in society cannot be adequately addressed on a piecemeal, indicator-by-indicator basis. The values of equity and equality need to be hard-wired into the DNA of the post-2015 agreement. Nevertheless, there is a range of ways in which the technical design and adaptation of global goals and targets could better address discrimination issues and promote the goal of substantive equality. Fukuda-Parr, for example, has argued for the introduction of an additional global goal on reducing inequality within and between countries. Certain countries have adopted this approach; for example, Romania’s national MDG report includes an additional target to reduce illiteracy among the Roma, and the government of Vietnam has added targets to its health and education goals in order to close the inequality gap between minorities and other groups. Weighting quintile-specific values in a way that

308 See supra, notes 44-46 and accompanying text.
309 Stewart, supra note 307, at 5. However, Stewart also notes that these surveys lack many relevant variables and are not conducted at sufficiently regular internals.
310 See United Nations Statistical Division, Ethnicity: A Review of Data Collection and Dissemination (Aug. 2003), http://unstats.un.org/unsd/demographic/sconcerns/popchar/Ethnicity_paper.pdf. The number of countries collecting this data is likely higher in 2011, although the census data is generally only collected every ten years and hence not capable of capturing and enabling policy responses to short-term variations. The author is grateful to Nicolas Fasel for discussions on this issue.
311 Simone Cecchini & Francesco Notti, Millennium Development Goals and Human Rights: Faraway, so Close? 12 J. Hum. Dev’t & Capabilities 121, 121-33 (2011) (reporting that 10 out of 25 country reports in the Latin American region provided data on at least one MDG indicator for indigenous people or Afro descendants (typically revealing alarming disparities when this was done), and from the year 2000 most national censuses included questions on the ethnic self-identification of the population).
313 Id.
315 Manning, supra note 242, at 22.
rewards progress in the lower income quintiles and disaggregating by regions or sub-national units are among the other options to be considered. Thailand’s MDG-plus framework, for example, adds specific targets for disadvantaged regions in [§123] the country and Argentina has established targets to reduce inter-provincial inequality by ten percent for child mortality and maternal health goals. The government of Kenya has set targets for each region in that country to improve water and sanitation access by ten percent each year. And Bangladesh has introduced targets corresponding to indicators for depth and severity of income poverty. Devising appropriate, reliable and cost-effective methods to assess “affordability” of basic services across countries should be taken up as part of this challenge. §21

VI. Concluding Reflections

The MDGs symbolise an unprecedented global partnership for poverty reduction. Born in relative obscurity in the wake of the Millennium Summit, the MDGs have exerted an impact on development discourse and policy well beyond the expectations of their architects. Yet, on present indications, they may well prove to be the world’s biggest unmet promise. It is essential to learn from the lessons of this experience as negotiations towards the post-2015 development scenario gather momentum.

A new global deal is needed, rooted in ethics of universalism, equality, solidarity and global social justice, and framed and buttressed by human rights. The main barriers to realising the MDGs are deficits in political will, rather than resources. The human rights framework can help to close the accountability gap and strengthen incentives for action, mobilising individuals and communities to demand the MDGs as a matter of right, rather than charitable dispensation.

But can solidarity and enlightened self-interest trump parochialism and short-run domestic political incentives? The 2015 negotiations will likely occur in a more fractious and divided world compared with the millennial moment that spawned the MDGs. The attacks on September 11, 2001 brought a new era of global insecurity in which human rights violations are increasingly justified, by democratic and authoritarian regimes alike, in the name of “freedom” and “stability.” The financial, food, water and climate crises have been among the other game-changers, imposing disproportionate and unjust burdens upon the poorest populations (often also in low-income countries), in a global scramble for scarce resources and rising inequalities within and between countries. The Arab Spring, backed by the communications revolution, has heralded a welcome re-affirmation of the universality of human rights aspirations while at the same time generating brutal backlashes within and beyond the Arab world. The “occupy” movements joined individuals across the globe in a common struggle against corporate greed, social injustice and rising inequalities. However, the most powerful source of identity for most people remains the community and nation state


320 Langford, supra note 48, at 86-87.

321 The Millennium Summit committed States to “halve the proportion of people who are unable to reach or to afford safe drinking water,” however the affordability element was dropped by the U.N. expert group due to its lack of measurability. Vandemoortele, supra note 253, at 4. Recent work on affordability indexes based on household expenditures on water and sanitation as a proportion of household income, with differential benchmarks for developing and industrialised countries, might give inspiration to post-2015 MDG deliberations on this issue, subject to more rigorous investigations into the validity and comparability of national benchmarks, cross-subsidisation effects, and potentially viable proxy measures. See, e.g., Henri Smets, De L’eau Portable a un prix abordable (2008).


rather than a putative global polity. These tensions, amid shifting configurations of geopolitical and economic power, set an uncertain scene - at best - for negotiating a new global compact against poverty. Holding the line on the 2010 MDGs Summit commitment to “respect” international human rights law in MDG policy should be a minimum requirement to ensure greater coherence between human rights and development, trade, investment and environment policy.

The MDGs have been driven by the power of numbers, and in a climate of policy disagreement and mistrust the drive towards quantifiable and reductive expressions of human progress will certainly continue. Debates on the future of the MDGs will likely include revisiting the global framework of goals, targets and indicators. Appropriately designed targets, with adequate accountability mechanisms, can in principle strengthen incentives for delivery on human rights obligations, as can league tables which permit in-country and cross-country comparisons. Statistics, in turn, play an indispensable role in informing evidence-based policymaking, allowing measurement over time and space of the various inputs and stimuli that guide, and impede, global human rights progress. Towards 2015, we should be talking more about how to measure what we treasure, rather than treasure what we measure.

However there is a superficial allure in the “power of numbers” and the promise of empirical verification. In the well-worn truism: “There are three kinds of lies: lies, damned lies, and statistics.” Statistics have to do shoe-horn complex, moving phenomena into clear categories,” with varying degrees of correspondence to actual realities on the ground. Used uncritically, indicators - which are intended only to “indicate” - may inadvertently supplant the objectives to be achieved. Contestable assumptions and value judgements within statistical methods, and the indicators industry in particular, should be brought to the surface and challenged. Moreover, misconceived targets and “results-based management” can distort development priorities, privileging short-term quantifiable and reportable results over longer-run qualitative changes. For these reasons, deliberations towards a post-2015 global monitoring framework cannot be de-linked from deeper questions about the values, incentive structures and ideologies underpinning quantitative methods, as well as those animating international development policy and institutions more generally.

The world has moved on from the “global planners” understanding of development that, arguably, helped spawn the MDGs and their predecessors, the International Development Goals. Hence the post-2015 discussion needs to be first and foremost about basic values, as well as the incentive systems and accountability structures that may stimulate human rights realisation at the national level. We must also take careful stock of why, as some have claimed, the MDGs have been misinterpreted or misused. Is genuine misunderstanding really at play, or could there also have been conscious misappropriation in order, for example, to paper over unpalatable truths and root causes of development problems? Or to justify entrenched development orthodoxies and ideologies? Or to perpetuate configurations of power under existing aid relationships? How can the MDGs avoid being colonised by the aid and growth lobbies? How might it be possible for the MDGs, and a post-2015 agreement, to operate in practice as a servant for human rights, rather than as a master for extraneous ideological or policy motives?

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325 While this aphorism, popularised by Mark Twain, is frequently attributed to Benjamin Disraeli, it has earlier provenance in an article by Leonard H. Courtney, Baron Courtney of Penwith, To My Fellow-Disciples at Saratoga Springs, 26 The Nat’l Rev. 21-26, 25 (1895), available at http://www.york.ac.uk/depts/maths/histstat/courtney.pdf. The remark was thereafter quoted in the Journal of the Royal Statistical Society. For further history, see University of York, Mathematics Department, Lies, Damned Lies and Statistics, available at http://www.york.ac.uk/depts/maths/histstat/fies.htm.


327 As Saith argued, “institutionalising targets in bureaucracies and governmental regimes usually invites misuse and manipulation of statistics and the misrepresentation of outcomes.” Supra note 20, at 1174.

328 Wade, supra note 41, at 686.

329 Duncan Green, From Power to Poverty, Oxfam Weblog, Nov. 3, 2011 available at http://www.oxfamblogs.org/fp2p/?p=7409 (reviewing some of the main changes in developing thinking and practice since the year 2000, including systems thinking, complexity theory, and the diminishing role of aid, and the consequences that these have for a successor global agreement to the MDGs).

330 Vandemoortele, supra note 19. Cf. Tabatabai, supra note 36 (arguing that poor design, rather than innocent misunderstanding, is the problem). The literal transposition of global goals and targets is said to be the principal manifestation of this “misunderstanding.”
The aid lobby will no doubt be challenged to some extent by the emerging research revealing the growing proportion of poor people living in middle-income countries, demanding a more explicit focus on individuals (rather than countries), inequalities, and distribution within countries, as well as a reconceptualisation of the architecture and purposes of aid in different contexts in the medium to long term. Growth fetishists, similarly, will be challenged to articulate the particular mechanisms through which growth can yield inclusive and sustainable human development outcomes in specific country contexts, given the mounting evidence of the many possible proven pathways to development. But the vested interests behind these lobbies are formidable, and will likely be marshalling at the MDG gates with renewed vigour towards 2015.

The international human rights framework can serve a vital purpose in helping to ensure that the negotiations towards 2015 focus on legitimate ends of human development, corresponding to internationally agreed upon human rights norms, rather than context-specific and contested means. Any successor global monitoring framework must include an explicit understanding that "global" goals and targets have very specific and limited, albeit important, purposes, to help raise the public consciousness about important facets of human development and generate political will and social mobilisation for action. National planning targets are quite a different matter. This may not entirely eliminate wilful misapplication of post-2015 global goals and targets, but it would at least deny the perpetrators a ready excuse for doing so.

Finally, few policy debates will be of greater importance leading towards 2015 than the debates about economic growth versus substantive equality, and the conditions under which growth policies may best contribute to inclusive, sustainable and pro-poor human development goals. These debates are all the more pressing in the circumstances of ongoing and compounding global crises discussed earlier in this Section. Governments principally owe human rights obligations to their own populations. In this respect, the growth of poverty and inequalities in middle-income countries gives fresh impetus and relevance to the international human rights framework. But the causes of poverty are not always endogenous, even in middle-income countries. There are a myriad ways in which good faith human rights implementation efforts continue to be impeded by actions and omissions at the global level. Regulatory failures in global finance, commodity market distortions, and the unfolding calamity of climate change are among the most glaring examples.

The continued relevance and legitimacy of international human rights law will depend, in great part, on the pace and extent to which it evolves to meet these existential challenges of global inter-dependence. This should not be seen as a get-out-of-jail-free-card for governments in lower income countries, which are governed under international human rights law by a specific set of obligations of conduct and result that only partially depend upon international cooperation. Unlike many other international legal regimes, the human rights treaty regime is not a reciprocal one in the sense that a given state’s obligations are contingent upon the performance of others. Nevertheless, to the extent that the causes of poverty are exogenous, richer countries will have fewer and fewer excuses to avoid binding and appropriately calibrated commitments for more effective global cooperation under human rights treaties and post-2015 global partnership arrangements. Whether the MDGs’ successors are a milestone towards global social justice, or a millstone around the necks of the poorest, will depend upon the degree to which governments of richer and poorer countries alike can be held accountable for their human rights obligations.

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332 HDR 2010, supra note 21, at 45-64.