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ABSTRACT

This article discusses the implementation of the Millennium Development Goals, characterizing the gap between human rights and development approaches. It offers a new interpretation for public interest law litigation and budget analysis, requiring closer cooperation between human rights lawyers and development organizations. It urges the adoption of a strategy that articulate a participatory collaboration between government and civil society organizations, including national plans geared to specific aspects of the Millennium Goals – e.g. reduction of poverty – in which a leading role is ascribed to “national councils”. Finally, an appeal is made for the inclusion of refugees and other forced migrants as some of the most marginalized populations that are often excluded from these concerns. [Original article in English.]

REFLECTIONS ON HUMAN RIGHTS APPROACHES TO IMPLEMENTING THE MILLENNIUM DEVELOPMENT GOALS*

Fateh Azzam



The theme for the IV Human Rights Colloquium was whether or not the human rights paradigm as a legal construct can indeed have a role to play in the achievement of the UN Millennium Declaration and Development Goals (MDG),¹ especially as the mid-way evaluation point draws near. As the organizers of this Colloquium have correctly stated, the Millennium Development Goals document makes only passing references to human rights and the rule of law, but does not contain mechanisms for justiciability that citizens can use, nor does it use rights-based language in general. Rather, it is framed as a “compact among nations”, a broadly-framed document that uses demographic and economic data indicators as measures of progress for achievement; a needs-based exercise in number-crunching if you will, and a wish-list of what needs to be done. The assumption is that this is rightly the function of governments who are responsible for the welfare of their citizens.

However, in its Overview of the MDG, the United Nations Development Program perceives a joint responsibility of states, citizens and the international community as a whole in its implementation. It promotes a role for social movements and a civil society mobilized to pressure governments to act, yet it offers little by way of mechanisms.²

* This text is based on a lecture presented by the author at the IV International Human Rights Colloquium. São Paulo, Brazil, on 12 October 2004.

1. See UNGA Resolution, A/RES/55/2, 18 September 2000.

2. “Millennium Development Goals: A Compact among Nations to End Human Poverty”, UNDP, Human Development Report 2003. Available at <http://www.undp.org/hdr2003/pdf/hdr03_overview.pdf>. Last access on 31 January 2005.

It has been demonstrated time and again that pressure from civil society and active claims for entitlements can indeed achieve much despite reluctant governments; after all, the development of the human rights regime itself owes much of its growth and development to non-governmental organizations. In this arena as well, human rights activists, lawyers and NGOs, do indeed have a role to play in the effort to make progress on the MDG, but it is a role that they have to actively carve out for themselves. To play such a role requires a broader vision that must take them beyond the narrow confines of established patterns of activism. They must test their creativity and review some of their strategies, including litigation, to make them more relevant to the task at hand, and seek new strategies that are appropriate and effective. The MDG provides an opportunity and a specific set of somewhat concrete goals that can challenge human rights activism to broaden into new areas of work.

3. UNGA Resolution, A/CONF.157/23, 12 July 1999.

4. For a comprehensive discussion of strategies adopted in several parts of the world, see: International Human Rights Internship Program, "Ripple in Still Water: Reflections by Activists on Local and National-Level Work on Economic, Social and Cultural Rights". Washington: IIE-IHRIP, 1997. For suggestions and proposals on strategies, see also "Circle of Rights". Washington: IIE-IHRIP, 2000.

5. See Willem Van Genugten & Camilo Perez-Bustillo, *The Poverty of Rights: Human Rights and the Eradication of Poverty*. London/New York: Zed Books, 2001.

Characterizing the gaps

That there is a debate on or a perceived disconnect between human rights language and the MDG language is symptomatic of a larger gap between rights-based approaches and needs-based development approaches. Despite the commitment to the universality and indivisibility of human rights, first articulated formally in the Vienna Declaration and Program of Action of 1993,³ the fact is that few human rights organizations have actually articulated effective strategies in the defense and promotion of economic, social and cultural rights beyond presenting shadow reports to the Committee on Economic, Social and Cultural Rights. There are of course some notable exceptions of successful legal advocacy, and strategies and efforts to develop legal work on economic, social and cultural rights are slowly growing.⁴ Indeed a number of interesting programs have been articulated in different parts of the world, especially in the Philippines, Nigeria, Bangladesh and several countries in Latin America.⁵ As a whole, however, the commitment to the indivisibility of rights has remained mostly verbal. Firmly wedded to direct litigation strategies in working on civil and political rights,

human rights lawyers have found it difficult to deal effectively with the softer, and perhaps less clear standards of rights articulated in the International Covenant on Economic, Social and Cultural Rights.

Certainly it is unfair to characterize the divide between the rights and development approaches as one of lack of interest or narrow visions of lawyers. Just as rights are inter-dependent and indivisible, so are the mammoth problems in the developing world which are inter-connected to the degree that we stand almost befuddled before the question: where do we start? Are the problems of failed development simply due to failed leadership, corruption and the lack of political access for the citizenry in isolation from the global context? Would democratization at the national level bring solutions, or would democratization at the international level bring a more equitable distribution of global wealth? Is it an unjust and inequitable world economic system that keeps the South down or simply poor national utilization of available resources in each country and the preponderance of armed conflicts? Will civil and political rights bring sustainable development or will improved economic conditions and the enjoyment of economic, social and cultural rights bring democratization? What comes first, the chicken or the egg?

A case in point is my region, the Middle East and North Africa, where most countries are plagued by authoritarian regimes and the near-total political and economic disenfranchisement of their citizenry because of the lack of democratic participation in decision – making on policies that affect day-to-day life. Authoritarian regimes also mean relatively weak legal systems and the lack of judicial independence, resulting for the most part in a “Law of Rules” rather than the “Rule of Law”. Throw in some corruption in various degrees and it becomes extremely difficult for the state and its institutions to deal effectively with the problems of poverty, even if they want to. This has led most rights activists to prioritize civil and political rights over economic, social and cultural rights in the belief that without democracy and respect for political human rights – broadly defined – none of the other rights can be achievable. Thus we have recently seen a proliferation of

calls for political, economic, legal and other reform, for increased participation in decision-making and policy-setting by ordinary citizens, and, to a lesser extent, decentralization. In our part of the world, most of these calls for reform are made by (and for the most part remain in) the elite political sphere, human rights organizations included. They repeat the same logic of the *statu quo* in their assumption that once change occurs at the top, everything else should trickle down in due time.

The search for creative strategies

So how do we move forward on articulating human rights strategies that may be relevant to the MDG? Are our usual tried-and-true methods, such as documentation and reporting, public shaming and legal aid and litigation on individual cases effective and relevant here? Are there new approaches that we must seek to develop that speak more directly to the needs-based approach of the MDG and add a rights-based approach as well? The following are just reflections on some opportunities that may be available to human rights lawyers and activists, each of which would certainly require much more strategic thinking and planning before they become viable strategies.

Public interest law litigation

The Millennium Development Goals are neither legally binding nor individuated and have no implementation mechanisms, save for a briefly stated requirement that the General Assembly review progress, and for the UN Secretary General “to issue periodic reports for consideration by the General Assembly and as a basis for further action”.⁶ Rather, they are of a comprehensive nature, presented more as appeals and challenges to the international community than as a set of rights. However, it may be possible and even advantageous to consider using public interest law litigation in moving forward on implementing the MDG.

This sort of litigation usually takes the form of class action suits and suits against the state, its organs or against private citizens and companies, “in the public interest”.

6. “Millennium Development Goals ...”, paragraph 31 [op. cit., note 2].

However, class action suits are not an available mechanism in many countries, and public interest law is usually not individuated, i.e., based on a specific person's claims against the state, although individuated law suits may be used as "test cases" to challenge or confirm certain public interest principles or requirements. Public interest litigation is always a risky proposition since one cannot anticipate courts' decisions or expect them always to come out in favor of one's own perceptions of the "public interest".⁷

With these caveats in mind, we can still consider public interest law litigation as a viable strategy for making progress on the MDG. One point of interest here would be the use of indicators, since the MDG can offer a somewhat clear measure of a state's performance and in particular its political will to implement at least some of its obligations in the economic and social rights spheres. The difficulty, however, is in defining the nature of the state's obligations towards its citizens beyond the generally understood framework of progressive achievement within the "maximum available resources". Can human rights lawyers pursue a clearer and more specific legal obligation devolving upon the state that can form the basis for public interest law litigation?

A possible approach may be to utilize the International Law Commission's Draft Articles on State Responsibility, which, while concerned primarily with the relations between states, nevertheless provide interesting and useful analysis that can be adapted to our needs. The ILC presented in the Draft Articles an analysis of the nature of state legal obligations under treaty law. Depending on the obligation in question, the Commission defined two overarching types: obligations of "result", (entailing a duty to ensure that a particular result is achieved) and obligations of "means" or "conduct" (the legal duty to keep working towards achieving a result, whether or not that result is definitively achieved).⁸ Based on this analysis, it can be said that the nature of states' obligation to implement most of the rights guaranteed under the International Covenant on Economic, Social and Cultural Rights is that of an obligation of conduct. The state and its executive, ministries, and other institutions and organs would need to show that indeed all means at

7. For a thorough overview of various public interest law strategies, see Mary M. McClymont & Stephen Golub (eds.), *Many Roads to Justice: The Law Related Work of Ford Foundation Grantees Around the World*. New York: The Ford Foundation, 2000.

8. Articles 20 and 21 of the Draft Articles on State Responsibility: *Yearbook of the International Law Commission*. Vol. 11, Part 1, 1977.

their disposal are being employed within “maximum available resources” until it can be shown that progress is being achieved in the implementation of the rights under the Covenant, if the state is party.

Here the MDG offers intermediate and longer-range benchmarks to help measure such progress. Using for example, a comparative analysis of the number of children in primary school (Goal 2) or the number of girls in primary and secondary schools (Goal 3) in 2000 compared against enrollments in 2005 or 2010 will offer an indicator of whether or not consistent efforts are being made by the state to at least partially meet the MDG, and whether these efforts are succeeding or at least netting some results. Using the concept of a “state obligation of conduct” may strengthen legal arguments towards the progressive realization of economic and social rights, relying on the benchmarks defined by the Millennium Development Goals to which a state is committed by virtue of membership in the UN.

Budget analysis

Another strategy raised in some quarters is the use of budget analysis as a tool to measure states’ commitment to economic, social and cultural rights in general and it can certainly be used in implementing the MDG in particular.⁹ Annual budget allocations by states provide excellent indicators of states’ commitments to achieving progress in the various fields, particularly when compared against military spending. A striking example is provided by Oxfam which estimated in 2000 that it would cost only about US\$ 8 billion more than current annual spending to achieve universal primary education; a figure which is equivalent to approximately four days only of global military spending.¹⁰

Again, using the MDG benchmarks, an analysis of state allocations to health, education, and economic revitalization would provide indicators of attempts by the state to meet the goals. It is admittedly difficult to definitively judge the success or failure of particular state strategies simply by analyzing the amounts of money allocated to each program; throwing money at a problem does not necessarily solve it

9. See Maria Socorro Diokno, *A Rights-Based Approach to Budget Analysis*. Washington: Institute for International Education/International Human Rights Internship Program, 2000.

10. “Education-Africa: Calls for Global Campaign to Abolish Primary School Fees”. Inter Press Service, 6 December 2000. Available at <<http://www.aegis.com/news/ips/2000/ip001209.html>>. Last access on 31 January 2005. See also relevant chart in *Duties sans Frontières: Human Rights and Global Social Justice*. Geneva: International Council on Human Rights Policy, 2003, p. 5. Available at <<http://www.ichrp.org/ac/excerpts/137.pdf>>. Last access on 31 January 2005

and if the state budget for education or health has been doubled it may not follow that the child infant mortality rate would automatically be halved. However, the combination of reviewing strategies and their intermediate effects together with tracking budgets may help assess efforts and give an idea whether or not progress is being made in these fields within the framework of the MDG.

We should note here that budget analysis processes vary greatly and range from the very basic to the extremely complex; the more complex the process is the higher level of skills needed to implement it. Needless to say, such skills are not normally taught in human rights advocacy training, and are rather the purview of economists, demographers and statisticians. Where budget analysis is needed in specific fields like health or education, experts in those fields are much better qualified to consider the data. This is where it becomes crucial for human rights activists concerned with implementing the MDG to build alliances with development and service organizations and experts.

Building bridges with development organizations

The fact that human rights activists and organizations are not expert in all of those fields may explain to some extent why there has been so little human rights work in general around economic, social and cultural rights beyond legal studies on their analysis and scope. Educators, development organizations, health services providers, and more generalist social scientists do have the skills needed for data analysis in their respective fields and this is why we must seek to build bridges and alliances between them and human rights lawyers. Legal activists and activists outside of the specifically-defined field of human rights need to support each other's work by the mutual exchange of a rights-based approach with the data and knowledge necessary to assess progress, strengthen legal arguments and carry out human rights advocacy on the basis of clear and expert knowledge of the real situation on the ground.

I hasten to add that there have been attempts to bring the human rights and development paradigms together. Some development and social service organizations have already

bridged that divide in their increasing use of rights language. For example, organizations concerned with the advancement of women took on new life with the coming into force of the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW). This convention provided them with a clear set of minimum standards and benchmarks that they immediately began using in all of their work, from income-generation activities for women, to education, to the battle against domestic violence and political participation. Similarly, it took almost no time for social service NGOs to seize upon the adoption of the Convention on the Rights of the Child and use it in the same way, and we saw the proliferation of educational programs on children's rights and new claims made for resources to enhance the education and care of children.

Bridges can also be built in the context of the strategy of public interest and impact litigation. Human rights activists can take on the social service organizations as clients in pursuit of one or more of the MDGs, or collaborate with them more generally in joint legal and other strategies to achieve effective change. Moreover, staff of these social service organizations can be trained as paralegals in order to be more directly involved in legal strategies and the provision of legal service and advice to their constituencies, through which test cases may be identified and out of which may come new ideas and approaches to public interest law work.

In short, human rights advocacy would gain from closer working relationships between their lawyers and the experts in the particular fields of health, education, development, etc. Expertise in the social sciences can combine with expertise in human rights, and using the MDG as yardsticks and criteria, can press the state from within the legal system for change and for implementation of the Goals.

It's important to note here that implementing the MDG can add significant strength and argument for ongoing work under the International Covenant on Economic, Social and Cultural Rights. Human Rights organizations have been preparing shadow reports for the Committee on Economic, Social and Cultural Rights, and these reports are stronger where there is cooperation with development and relevant organizations in the field. We have

already seen a clear impact for the Human Development Index reports, and how they already provide significant data and information that has aided the rights activists in their public and legal petitions for change.

National plans of action

Many countries around the globe are adopting “national plans of action” around various themes: for children, for women, for human rights, etc. This strategy commits the state and its citizens to a series of steps at the national level to improve performance and make the necessary enhancements to quality of life for the targets of such plans. It is an especially viable and legitimated strategy where the national plan has been put together as a result of a broad consultative process that includes government, civil society, activist NGOs, academics and sometimes international bodies such as the inter-governmental agencies of the UN. The Millennium Development Goals are by definition long-term and require a sustained multi-year and multi-party effort subject to constant assessment and review. As the UNDP in its Overview reiterates: “National ownership – by governments and communities – is key to achieving the Millennium Development Goals. Indeed, the Goals can foster democratic debate, and leaders are more likely to take the actions required for the Goals when there is pressure from engaged populations”.¹¹

Thus, a national plan of action may be just the mechanism by which implementation of the MDG may be actively pursued. Working with development and social service organizations and other civil society organizations at large but also with governmental agencies, human rights organizations can play a leading advocacy role for articulating a “National Plan for the Millennium Goals” designed to promote the steady implementation of these goals.

There is growing work on what are called “poverty reduction strategies and plans” (PRSP), which aim at developing coherent national plans for reduction of poverty, and by consequence, the implementation of the MDG. PSRPs are now increasingly being demanded of governments and

11. See “Millennium Development Goals ...”, p. 1 [op. cit., note 2].

states as a pre-condition for development aid by donor countries and international financial institutions. However, acrimonious debates have arisen around international trade and market protectionism practiced by the developed countries, the policies of international financial institutions, privatization and structural adjustment requirements as well as tariff policies, all of which have a direct and often deleterious effect on global poverty. The policies of the developed countries in this regard have been highlighted by the UNDP as exacerbating poverty, if not directly causing it, clarifying the need for cooperation on a global level if the MDG were to be implemented.¹²

12. *Id.*, pp. 11-13 for UNDP's view on the role of debt, aid and other international policies that affect implementation of the MDG.

Like the PRSPs, an important element in the potential effectiveness and legitimacy of a national action plan is the manner in which such a plan is developed. A clear consensus has emerged that such plans are most successful when hammered together in a participatory fashion as a result of a collaborative nation-wide effort involving all sectors of society. A coherent and unified national effort in this regard would bridge a number of gaps. It would broaden cooperation between human rights and development organizations, and between them and government. Such an effort would also go a long way towards softening the lines of confrontation between authoritarian states and human rights activists, engendered usually by sharp clashes over civil and political rights. Human Rights activists can find common cause with their governments, assisting, through the national plan, in strengthening governmental efforts to have a voice and negotiate a space in the international economic order.

Yet it is also important for human rights activists to ensure that national plans (be they PRSPs or plans for implementing the MDG) are cognizant of and indeed based on guarantees of the minimum standards in international human rights law on the civil, political, economic, social and all other fronts. Some important work has already been done in this vein that can be useful. For example, clarification can be had from the Office of the High Commissioner for Human Rights, which sponsored in 2002 a comprehensive and detailed discussion in a set of draft guidelines for a human rights approach to poverty reduction.

These draft guidelines include, *inter alia*, definitions, requirements and criteria for human rights action in the field of economic, social and cultural rights as well as discussions of the scope of each of those rights, and finally, the important questions of monitoring and accountability mechanisms.¹³ Another good resource is the excellent and thorough work being undertaken on housing rights and more broadly on economic, social and cultural rights by Habitat International Coalition.¹⁴

National councils

With or without national plans of action, some states have adopted alternate modes to promote work in particular areas or themes. Egypt, for example, has a National Council for Childhood and Motherhood, a semi-official body which has taken on the primary responsibility for promoting family and child welfare. The NCCM has recently cooperated very well with child rights organizations who have added the human rights dimension to its work, as well as with other civil society organizations and intergovernmental agencies like UNDP, UNICEF and UNHCR. The National Council for Women is also active, with women's rights as articulated by CEDAW being quite high on their agenda, including the receipt of complaints and provision of legal assistance and redress.

Such bodies, including national councils for human rights, where they exist, can take a leading role as organized focal points for broad societal efforts towards improving the quality of life for their target groups. In Egypt, these bodies may very well take on the MDG goals related to education, girls and women, for example. As semi-official bodies, they are well placed to encourage and promote cooperation between government and civil society in the articulation and implementation of national plans of action, and to track progress made even without national plans. However, they must be actively pressured to do, especially given that the effectiveness of these national councils has not yet been thoroughly evaluated or assessed. Human activists have an important role here as catalysts and instigators, acting as watchdogs over the work of those national councils generally.

13. See "Poverty Reduction Strategies", Office of the High Commissioner for Human Rights, Draft Guidelines. Geneva, 2002. Available at <<http://www.unhchr.ch/development/povertyfinal.html>>. Last access on 31 January 2005.

14. See especially the draft document: "Holding Donors Accountable: An interactive training program for southern NGOs and grassroots organizations" and other tools and methodologies on housing and other economic and social rights. Available from *Habitat International Coalition, Housing and Land Rights Network – Middle East and North Africa*, at <<http://www.hic-mena.org>>. Last access on 31 January 2005.

A note on refugees and other forced migrants

Refugees and other forced migrants are often a neglected category in our human rights conceptions and we often relegate them to the refugee law regime and exclude them from the broader and more inclusive human rights law arena. According to UNHCR, there were 17.1 million refugees and internally displaced persons at the end of 2003.¹⁵ More than 66 percent of the world's refugees are in developing countries, and half of those are in the 49 Least Developed Countries.¹⁶ These percentages go much higher if we were to include the internally displaced, labor migrants, domestic workers, and the vastly increasing numbers of so-called "irregular movers" and victims of smuggling and trafficking.

Efforts to implement the Millennium Development Goals, which are aimed primarily at the poorest of the poor worldwide, need to include these marginalized populations given the particular difficulty they are in, especially the lack of access to certain privileges that accrue primarily to citizens. Human rights activists in particular need to ensure the inclusion of refugees and other forced migrants, especially when they are reminded that economic, social and cultural rights are universal, and most of them accrue not only to citizens but to everyone within a state party's jurisdiction. Allowing forced migrants to fall outside of the statistics or of national and global advocacy efforts to promote and implement the Millennium Development Goals would be tantamount to creating merely the illusion of progress. Moreover, their inclusion may very well contribute to ameliorating the conditions and root causes of their dispossession and enforced movement on the political, economic or policy levels.

Conclusion

The various strategies and modalities for action suggested above are initial reflections on the role of human rights in implementing the MDG. In these implementation efforts, human rights activists, lawyers and organizations potentially have the important role of catalyst, to galvanize work using the MDG as benchmarks and criteria, bringing the various

15. "Global Refugee Trends".

Geneva, UNHCR,

June 2004, p. 1.

16. Core Group on Durable

Solutions, "Framework for

Durable Solutions for Refugees

and Persons of Concern".

Geneva, UNHCR,

May 2003, p. 9.

actors in society together on a basis of human rights. With human rights as the centerpiece of “the public interest”, activists can analyze budget policies and undertake litigation to monitor states’ obligation to use all means within available resources to implement the MDG and economic and social rights more generally. The clear inter-dependence of rights is an extremely important asset to these activists, and their active participation in giving life to the Millennium Development Goals would be of benefit in further developing their strategies for promoting economic, social and cultural rights, and feed back into their work on civil and political rights as well.

The Millennium Development Goals also provide an opportunity for human rights activists to find common cause with their governments in confronting powerful global economic and political forces. But even where governments are less willing to adopt collaborative strategies, the cooperative efforts of activists with other actors in civil society locally, regionally and globally can articulate strategies and bring quite significant pressure to bear at the local and national level for the amelioration of conditions of poverty.

To undertake all of the above, a broadly comprehensive view and inclusive strategies need to be employed, with a view to integrating rights and integrating actors in all spheres.