

# THE CONTRIBUTION OF THE UN SPECIAL PROCEDURES TO THE HUMAN RIGHTS AND DEVELOPMENT DIALOGUE

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## 1 Introduction

Human rights and development actors equally acknowledge that human rights play an essential role in the sphere of development and broadly agree on the fact that there are synergies between the human rights and development agendas. Despite this increasing recognition, there appears to be significant scepticism when it comes to developing constructive, operational strategies bridging the two paradigms. The human rights community has severely criticized development frameworks, such as the Millennium Development Goals (MDGs) project for neglecting human rights, while the development community pointed to an overall low level of substantive engagement by human rights actors (ALSTON, 2005; DOYLE, 2009). The article argues that the United Nations special procedures have taken up the challenge of contributing, in a substantive and concrete manner, both to the clarification of the nature of the relationship between human rights and development and to the integration of a human rights perspective in their specific focus areas.

By drawing on concrete examples from the work of the special procedures, and using the MDGs as a lens on the subject, this article assesses how the special procedures have engaged with the development agenda. This article provides an overview of the MDG project (part I) followed by an analysis of its relationship with human rights (part II), and sketches the contours of a dialogue between the human rights and MDGs agendas (part III). Part IV analyses the approaches adopted by the special procedures in their efforts to bridge development discourse and human rights perspectives. Part V addresses how the special procedures have begun to grapple with the post-2015 global development agenda.

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## 2 The Millennium Development Goals

Among the different levels of development policy frameworks, the article focuses on the Millennium Development Goals (MDGs), as they have dominated the last decade as the most prominent initiative on the international development agenda. The United Nations (UN) Millennium Summit, from which the MDGs emerged, was an unparalleled event in which 198 world leaders signed the Millennium Declaration, committing their nations to combating “abject and dehumanizing conditions of extreme poverty” and “making the right to development a reality for everyone” (UNITED NATIONS, 2000). In practice, the MDGs are a set of quantifiable goals to be achieved by 2015. The eight MDGs are designed to: eradicate extreme poverty and hunger (MDG 1); achieve universal primary education (MDG 2); promote gender equality and empower women (MDG 3); reduce child mortality (MDG 4); improve maternal health (MDG 5); combat HIV/AIDS, malaria and other diseases (MDG 6); ensure environmental sustainability (MDG 7); develop a global partnership for development (MDG 8). In order to define the goals with greater precision and make their attainment quantifiable, a set of corresponding targets and indicators have been inserted in each goal.

With less than three years to go to the MDGs’ target date of 2015, the picture sketched from available reports can be considered to be all but homogeneous. While progress has been achieved on a number of goals, setbacks can be identified as far as others are concerned (UNITED NATIONS, 2012). According to the latest Millennium Development Goals Report, advances can be noted for several health-related goals. As far as tuberculosis is concerned, projections suggest that the 1990 death rate from the disease will be halved by 2015, and global malaria deaths have declined (UNITED NATIONS, 2012, p. 44, 42). New HIV infections continue to decline and access to treatment for people living with HIV increased in all regions, although the 2010 target of universal access was not reached (UNITED NATIONS, 2012, p. 38-42). Yet, progress on gender equality can still be considered rather modest, with continuing discrimination in access to education, work and economic assets, and participation in government (UNITED NATIONS, 2012, p. 20-25). Although income poverty has decreased, the fight against hunger stagnates with slow progress in reducing child malnutrition (UNITED NATIONS, 2012, p. 72). Nearly half of the population in developing regions still lacks access to improved sanitation facilities and, by 2015, the world will have reached only 67 per cent coverage, which falls short of the 75 per cent needed to achieve the MDG target (UNITED NATIONS, 2012, p. 52-57).

### 3 Fencing off the playing field: the MDG-Human rights dialogue

The chosen focus is on the MDG initiative, as it provides an excellent lens through which to gauge the status of the debate on human rights and development. A fairly large body of literature has been devoted, over the last decade, to unearthing the overlaps and complementarities between human rights, the MDGs, and development discourse more generally. At a core level, human rights and human development share the ultimate objective of promoting human wellbeing, and both bury their

philosophical roots in the idea of developing capabilities enabling individuals to lead a free and dignified existence (UNITED NATIONS, 2007a). Moreover, most MDGs can be reframed in terms of international human rights norms on economic, social and cultural rights as enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR). In 2001, the UN Secretary-General explicitly stated that, “economic, social and cultural rights are at the heart of all the Millennium Development Goals” (UNITED NATIONS, 2001). These can be identified as the right to health, the right to education, the right to food, the right to housing, the right to water and sanitation, and the right to an adequate standard of living. If we take the right to health as an example, we can note that nearly half of the MDGs that focus on health-related issues touch upon fundamental aspects of the right to health (specifically, MDG 4, MDG 5, and MDG 6). Additionally, most of the other MDGs address the so-called “underlying determinants” of health, such as poverty and hunger, education, gender equality, empowerment of women, and access to safe drinking water and sanitation (ZAIDI, 2010, p. 122).

Goal 1 on the eradication of extreme poverty and its connected targets can be perceived as reflecting the right to an adequate standard of living, the right to social security, the right to work and the right to food. The relevance of the right to education is evident in Goal 2, as is the right to water and sanitation in Target 7.C. and the right to adequate housing in Target 7.D.<sup>1</sup> Parallels have also been drawn between MDG 8, which calls for the creation of a global partnership for development, and the obligations of international assistance and cooperation provided by Article 2(1) of the ICESCR (SEPULVEDA and NYST, 2012; SEPULVEDA, 2009). The foregoing overlap has been defined in relevant literature as factual convergence, as the intersection of the two paradigms does not automatically entail that the objectives of the MDGs will be aligned, at a *substantive* level, with the corresponding human rights obligations (MCINERNEY-LANKFORD, 2009, p. 52-53). In the words of another scholar, working out the multifaceted relationship between development and human rights requires more than simply stating that one “automatically implies, equals, or subsumes the other” (UVIN, 2002, p. 3).

Despite elements of factual convergence, practical convergence has been slow to come (ALSTON, 2005, p. 762). From the standpoint of the human rights community, in the course of the last decade several reasons have been advanced to explain this degree of separation. Some of the most frequently voiced concerns include the MDGs’:

*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 [...] the potentially distorting character of target-driven policy-making, and the propensity of the MDGs to ‘crowd out’ attention to important issues that didn’t make it into the global list.*

(DARROW, 2012, p. 60. *See also:* UNITED NATIONS, 2010; YAMIN, 2010; SAITH, 2006; AMNESTY INTERNATIONAL, 2010; CLEMENS et al., 2004; LANGFORD, SUMNER and YAMIN, 2010; POGGE, 2004; MCINERNEY-LANKFORD, 2009; LANGFORD et al., 2012).

Other critics point out that civil and political rights appear to be disregarded (ALSTON, 2005), targets are designed and implemented in a top-down manner (YAMIN, 2012), and the aggregates and averages which are employed by the MDGs actually conceal – and, therefore, may reinforce – inequalities (UNITED NATIONS 2010).

One of the most widely acknowledged criticisms levelled against the MDG initiative is, however, that the project has largely ignored human rights at the outset, both in the conceptualization and in the articulation of the goals: the MDGs neither refer to human rights explicitly, nor to international human rights treaties. Although the Millennium Declaration, the formal document which the MDGs build upon, makes substantial references to human rights, and contains a commitment to respect “all internationally recognized human rights and fundamental freedoms, including the right to development” (UNITED NATIONS, 2000), the actual MDGs are not expressed in a human rights language and do not advocate a rights-based approach to development (ALSTON, 2005; LANGFORD, 2010). The conclusion which appears to have been often reached is that convergence, both factual and practical, is ultimately limiting if it remains confined to a superficial, rhetorical level or if it is not anchored in normative, enforceable standards that generate obligations (MCINERNEY-LANKFORD, 2009, p. 54).

In response to such critiques, a large body of literature has emerged in recent years on the importance of ensuring that development endeavours like the MDGs are implemented in a way that is respectful of human rights, and the importance of using human rights obligations and techniques as concrete legal tools by which to advance the achievement of the goals (SANO, 2007; KURUVILLA et al., 2012). In particular, it has been argued that human rights, and in particular economic, social and cultural rights (ESC rights), provide not only solid “guiding principles,” but concrete “operational strategies” to tackle the problems which lie at the very core of development concerns: poverty, hunger, slum-dwelling, lack of education, gender inequality and disempowerment of women, child mortality, maternal ill-health, safe drinking water, and the need for environmental sustainability (UNITED NATIONS, 2002; UNITED NATIONS, 2008).

#### **4 Human rights and MDGs: Still ships passing in the night?**

Notwithstanding the criticism voiced by human rights advocates, it must be acknowledged that, at least on paper, the Millennium Development Goals Summit Outcome in 2010 marked a significant shift in vocabulary. The Outcome Document contains an explicit recognition that “respect for all human rights” is an essential prerequisite for the attainment of the MDGs, as well as development in general (UNITED NATIONS, 2010). The Document reaffirms the pledge of UN member states to “continue to be guided by the purposes and principles of the Charter of the United Nations and with full respect for international law and its principles” (UNITED NATIONS, 2010). Such commitments appear in the introduction of the document and are repeated throughout the text.

Despite the formal insertion of human rights commitments, it can still be questioned whether this represents a genuine step towards substantive convergence or whether adherence remains on the merely rhetorical plane. With the 2015 deadline approaching, the lack of practical action to truly situate the MDGs in a human rights framework and give human rights a concrete, operational significance points towards missed opportunities. Human rights seem, if anything, to be part of “the general policy narrative” rather than specific legal obligations deriving from binding international instruments (MCINERNEY-LANKFORD, 2009, p. 59). In conclusion, while P. Alston’s metaphor of “ships passing in the night” may, regrettably, still be a fitting general description for the dialogue between human rights and development (ALSTON, 2005), a number of ways forward in terms of mutual reinforcement can be identified within the remit of human rights actors. In this regard, the next section uncovers the contribution of the UN special procedures to bringing human rights commitments to the core of development.

## 5 The engagement of the special procedures vis-à-vis the MDGs

### *5.1 The mandate of UN special procedures*

The UN special procedures on human rights are independent experts mandated by the Human Rights Council to promote and protect human rights. They include special rapporteurs, independent experts, special representatives of the Secretary General and working groups. Their mandates can be thematic, for example on torture or the right to food, or cover all human rights in a specific country.

The first special procedures were created in the 1970s and 1980s by the UN Commission on Human Rights to promote and protect civil and political rights (NIFOSI, 2005, p. 16). In 2006, the Human Rights Council replaced the Commission on Human Rights with the overall responsibility to enhance the protection and promotion of all human rights civil, political, economic, social and cultural rights, including the right to development. The mandate of the Human Rights Council was based on the recognition that “development and human rights are the pillars of the United Nations system, and [...] that development, peace and security and human rights are interlinked and mutually reinforcing” (UNITED NATIONS, 2006).

The Human Rights Council upheld the system of special procedures, and today, out of the thirty-five existing thematic special procedures, eight deal specifically with ESC rights and related issues: the Special Rapporteur (SR) on the right to education (1998), the SR on extreme poverty and human rights (1998), the SR on the right to adequate housing (2000), the SR on the right to food (2000), the Independent Expert on the effects of foreign debt (2000), the SR on the right to health (2002), the SR on the rights to water and sanitation (2008), and the Independent Expert in the field of cultural rights (2009). In addition, some special procedures have a cross-cutting mandate which involves addressing economic, social and cultural rights.<sup>2</sup>

Several typologies have been proposed to describe the methods employed

by the special procedures in their work. In 2005, the Office of the High Commissioner for Human Rights (OHCHR) listed the following activities: country visits or fact-finding missions; sending communications to governments; preparing thematic studies; recommending programs of technical cooperation; and interacting with the media (UNITED NATIONS, 2005). In recent articles, their activities have been described in terms of promoting and protecting human rights and undertaking country missions (GOLAY, MAHON and CISMAS, 2011; PICCONE, 2012). The non-confrontational approach guiding the activities of the special procedures may place them in the privileged position of meeting half-way the human rights discourse, with its legally binding normative content, and development discourse, with its emphasis on technical assistance and cooperation. The combination of legal and diplomatic skills provides the special procedures with the flexibility required to sustain dialogue concerning development programmes and the MDGs with a variety of stakeholders in the public and private realms (DOMÍNGUEZ REDONDO, 2009, p. 38).

Turning to the topic under scrutiny, the UN special procedures can be singled out, among UN human rights actors, as the most active in bridging the conceptual and practical distances separating human rights and the MDGs. They have played an important role both in the clarification of the framework to analyse the relationship between human rights and MDGs to the extent that it relates to their specific focus areas, and in the proposal of concrete ways in which a human rights approach can bring tangible benefits to development endeavours. A decade ago, the special procedures formally welcomed UN efforts to put into effect the MDGs and expressed their willingness to assist and contribute to the process through the functions of their mandates (UNITED NATIONS, 2002). At that time, however, their mandates provided no explicit competence to engage in the analysis of the relationship of human rights and development. Only the first SR on the right to health, P. Hunt, documented in 2004 and at his own initiative the relationship between the right to health and related MDGs (UNITED NATIONS, 2004). The absence of a clear mandate may be one of the reasons underlying the observations made by P. Alston, who noted with disappointment that, at that time, the MDGs discourse was “barely visible” in the work of the special procedures, and that no thorough examination of the MDGs had been undertaken.

In recent years, the Human Rights Council has supplemented the mandates of certain special procedures with the competence to make recommendations on strategies to achieve the MDGs.<sup>3</sup> A review of reports submitted by a number of special procedures disclose a rather changed scenario from Alston’s depiction: it can now be stated that MDGs and wider development considerations are no longer merely mentioned or inserted as cursory remarks, but rather, substantive analyses have been performed and the topic has been subjected to in-depth scrutiny. This can be viewed as a welcome trajectory, especially if placed against the background of continuing exhortations on the need for “integration, mainstreaming, collaboration and analysis” between the two fields (UVIN, 2002, p. 1) and of the lack of a real dialogue as described above.

## 5.2 *The UN special procedures' analysis of the Relationship between Human Rights and MDGs*

The analysis performed by the special procedures hinges on the conviction that the measures taken to achieve the MDGs benefit from being firmly embedded in legal and institutional human rights frameworks. Under such frameworks, the beneficiaries of the measures addressing the MDGs become rights-holders, while the states and other development actors bear the responsibility for allocating resources in a manner that is respectful of human rights (UNITED NATIONS, 2010a, para. 69). In an article published in *The Guardian* on 21 September 2010, when world leaders were meeting in New York at the Millennium Development Goals Summit, the SR on the right to food, O. de Schutter, commented that a “major deficiency of the MDGs is their failure to recognize human rights as essential to any sustainable development strategy.” For the UN Special Rapporteur:

*The world's one billion hungry people do not deserve charity: they have a human right to adequate food, and governments have corresponding duties, which are enshrined in international human rights law. Governments that are serious about making progress on development objectives should be asked to adopt a legislative framework for the realization of economic and social rights, such as the right to food or the right to health care.*

(DE SCHUTTER, 2010).

Other examples of this core commitment can be found in reports by SRs on health, education and human rights, and extreme poverty. The SR on the right to health, A. Grover, advocated for a “claims and not charity” approach to development and explained that, in reframing development issues through the incorporation of a human rights framework, a shift occurs to a “more self-sustaining approach that imbues the former targets of development with genuine agency”, and this allows for realization of an entire set of rights previously considered “secondary, or less realizable” (UNITED NATIONS, 2011, para. 49). In sharing such a view, the SR on human rights and extreme poverty used a practical illustration: if states are concerned only with achieving Goal 2, namely universal primary education, then policies aimed at increasing the number of children registered in school would *prima facie* be sufficient in order to achieve the set objectives (UNITED NATIONS, 2010a, para. 71). However, disregard for considerations such as quality and equal access to education constitutes one of the main setbacks of these policies. If, in contrast, state policies address the circumstances that prevent children from accessing educational services, such as discriminatory practices, poverty, or lack of infrastructure, then states would not have only attained the MDG at stake, but would have also substantively improved the wellbeing of individuals concerned and advanced in their realization of human rights commitments (UNITED NATIONS, 2010a, para. 71).

In their 2002 Joint Statement on the MDGs, the special procedures on ESC rights and the Committee on Economic, Social and Cultural Rights agreed that the central role to be played by human rights in development endeavours has several hallmarks: providing a strong normative framework reinforced by binding legal

obligations; increasing the level of empowerment and participation of individuals; ensuring non-discrimination and attention to vulnerable groups; providing means of monitoring and accountability of various stakeholders involved in the development process through independent mechanisms; and reinforcing what they refer to as the “twin principles” of global equity and shared responsibility (UNITED NATIONS, 2002). A review of reports dealing with MDGs and development reveals that the parameters used by the special rapporteurs as their conceptual containers reflect the above principles, with a focus on non-discrimination, accountability, and participation. As will become apparent in the following sub-sections (a, b, and c), these three key principles are effective if they guide all the phases of the programming process, from assessment and analysis to policy and programme design and planning (including setting of goals, objectives, and strategies), implementation, monitoring, and evaluation (UNITED NATIONS, 2003).

It needs to be stressed that the MDGs are objectives to be achieved progressively over time. Human rights law, especially as it relates to ESC rights, also accommodates the principle of progressive realization of such rights. Nevertheless, the Committee on Economic, Social and Cultural Rights, which is the body entrusted to interpret and monitor the implementation of the ICESCR, stated that certain obligations under the ICESCR are of immediate application. Thus, when implementing policies and programmes in relation to the MDGs, states and development actors need to be mindful neither to undermine the realization of the human rights obligations of immediate nature, nor to unreasonably postpone the realization of those obligations of a progressive nature (UNITED NATIONS, 2011, para. 19). In their work in relation to the MDGs, special procedures have often advocated for the use of indicators to monitor this progressive realization, and they have insisted on the need to improve the efficiency of international cooperation and assistance (see the following sub-sections: d and e).

### 5.2.1 Principle of non-discrimination

As previously mentioned, one of the most often cited shortcomings of the MDGs lies in their aggregated formulation, which conceals the specific concerns of individuals or groups predisposed to discrimination, marginalization, exclusion, or vulnerability. Hardly visible in Goal 3 on promoting gender equality, the wording of the MDGs generally fails to address social discrimination and exclusion of minorities and marginalized groups (UNITED NATIONS, 2007b, para. 59) despite their recognition in the Millennium Declaration (UNITED NATIONS, 2000). At the time of writing (July 2012), the only MDG Report of the Secretary-General addressing the realization of the MDGs in respect to minorities and indigenous peoples is that of 2005. In this report, a passing reference is made in the context of Goal 2, where it is pointed out that a larger proportion of children belonging to minorities or indigenous peoples are not enrolled in school (UNITED NATIONS, 2005a). This reference is generic and does not contain any further indication as to the particular groups concerned. For this reason, in the design of development policies, development actors need to identify and address pockets of marginalization and exclusion. Ensuring that these persons



are considered as rights-holders in development policies may contribute to breaking patterns of discrimination faced by many of them.

From a human rights perspective, a genuine commitment to non-discrimination requires that the collection of data be disaggregated according to the prohibited grounds of discrimination. Development programming should also consider the employment of such data, which can be instrumental in identifying those groups or individuals who are marginalized and who are most vulnerable. Failing to take such an approach may contribute to keeping the aforementioned categories invisible and to widening the divide between those living in extreme poverty and those living in the proximity of the poverty line (UNITED NATIONS, 2010b, para. 36; UNITED NATIONS, 2007b, para. 22). If we turn to an example from the work of the special procedures, the SR on the right to adequate housing, when considering forced evictions, noted with concern that discrimination appears to have a considerable impact on forced eviction cases as ethnic, religious, racial and other minorities, as well as indigenous people, are far more likely than others to be evicted (UNITED NATIONS, 2004a, para. 39). Moreover, women belonging to minority groups suffer severe repercussions as a result of forced evictions. These consequences are reflected not only in the loss of homes, but also in the disruption of “livelihoods, relationships and support systems they were used to, breakdown of kinship ties, physical and psychological trauma and even increased morbidity and mortality” (KOTHARI, 2006).

The MDG reports reflect a strong preoccupation with the analysis of disparities characterizing urban and rural regions, although more needs to be done, as the grounds of sex, race, disability, political and religious belief, or age need to be incorporated in any serious scrutiny of discrimination practices. On this basis, the SR on the right to water and sanitation identified, in relation to target 7.C (halving, by 2015, the proportion of people without sustainable access to safe drinking water and sanitation) certain groups that may be potentially more vulnerable or marginalized: “women, children, inhabitants of rural and deprived urban areas as well as poor people, nomadic and traveller communities, refugees, migrants, people belonging to ethnic or racial minorities, elderly people, indigenous groups, persons living with disabilities, persons living in water-scarce regions and persons living with HIV/AIDS” (UNITED NATIONS, 2010b, para. 38). Similarly, the first SR on the right to food, J. Ziegler, placed considerable emphasis on the need to protect the most vulnerable groups in many of his reports. Amongst others, he focused on developing the legal framework of the right to food in relation to women, children, indigenous people, farmers and peasants, fisherpeople, and refugees from hunger (ZIEGLER et al., 2011, p. 23-67).

Moreover, the multiple forms of discrimination affecting women need to be addressed, as do asymmetrical power relations in the public and private spheres. The implementation of development programmes needs, therefore, to be preceded by comprehensive and disaggregated gender analyses assessing the vulnerabilities of women, girls, boys, and men. Gender sensitivity in programming for the achievement of the MDGs contributes not only to the attainment of the specific goals, but also to the mitigation of the root causes of the phenomena addressed by the goals, *inter alia* extreme poverty, illiteracy, child mortality, or inequalities between women and

men. To illustrate the emphasis placed by the special procedures on the importance of gender analysis, it is worth mentioning the call of the SR on extreme poverty and human rights for greater visibility of gender-specific issues and recognition of the need for gender equality as a development objective.

Efforts to shed light on the condition of disadvantaged, marginalized or discriminated groups should not be limited to addressing the cases of direct discrimination. The special procedures call for increased attention towards ensuring substantive equality in the enjoyment and realization of human rights for all. Societal practices, stereotypes, or legislative measures or policies that may hinder the enjoyment of human rights by certain individuals and groups need to be tackled. On this note, the SR on extreme poverty and human rights documented the difficulties of minorities or persons living in extreme poverty to access social protection programmes because of requirements of expensive identification documents or of birth registration documents in areas where birth registration is not practised (UNITED NATIONS, 2010a, para. 77). This illustration highlights the importance of analysing the implications of development programmes for local communities and the need to integrate human rights in the design of measures implementing such programmes.

### 5.2.2 Accountability

Accountability is undoubtedly one of the cornerstones, or the “raison d’être,” of a human rights-based approach to development (UNITED NATIONS, 2008, p. 15), and it has been argued that it is the element that “provides the clearest value-added” (GREADY, 2009, p. 388). Predictably, the majority of special procedures have tackled the issue when addressing the MDGs. It is beyond the scope of this article to delve into the multiple levels and avenues of accountability in a human rights context, however, in its simplest form, accountability from a rights-based standpoint emphasizes legal obligations and “requires that all duty-holders be held to account for their conduct” (UNITED NATIONS, 2004, para. 36). A rights-based approach considers the duties of “all relevant actors, including individuals, states, local organizations and authorities, private companies, aid donors and international institutions” (DARROW; TOMAS, 2005, p. 511).

If we once again return to the characteristics of the MDGs that make the project sit uneasily with human rights advocates, the “accountability gap” critique is quite high on the list, and some of the setbacks, or lack of progress, on the MDGs have been attributed to this lacuna. The monitoring framework set up under the MDGs is primarily constituted by a voluntary reporting scheme, which has more to do with the provision of information and “awareness advocacy” than with holding states and other relevant actors accountable (UNITED NATIONS, 2004, para. 39). Moreover, it is increasingly acknowledged that it will be difficult to attain MDG objectives without strong mechanisms to hold parties accountable for their performance (or non-performance) in connection with the goals, as “accountability without consequences is no accountability at all” (OHCHR; CESR, 2011, p. 3). Once again, at least formally, this rather large stumbling block has been acknowledged as, in 2010, the UN Secretary General stated that “The time has come for an accountability mechanism between

developed and developing countries [...] and between governments and their citizens, to ensure that MDG commitments are honoured” (UNITED NATIONS, 2010, para. 97).

For these reasons, the SRs commonly agree that human rights mechanisms can accommodate the requirements for strengthening accountability in relation to the MDGs. The SR on the right to health observed that, not only could existing human rights accountability mechanisms examine states’ actions in the implementation of the MDGs, but they would also constitute a “constant reminder of the crucial importance of accountability in relation to the Millennium Development Goals” (UNITED NATIONS, 2004, paras. 40-41). General agreement can be detected among the special procedures on the fact that the implementation of programmes in relation to the MDGs that fail to respect the human rights of beneficiaries need to be submitted to the scrutiny of independent and effective judicial, quasi-judicial, or administrative mechanisms. The availability of such mechanisms and their accessibility by all members in society implies that all individuals are equal actors in development, and that they are entitled to redress when their rights are violated. The accountability mechanisms need to meet certain technical requirements, especially to ensure that the more disadvantaged and disempowered individuals can access them. These include “guaranteeing confidentiality, allowing for individual and collective complaints, being sufficiently resourced, being independent from political interference, and being culturally appropriate and gender-sensitive” (UNITED NATIONS, 2010a, para. 91). According to the SR on water and sanitation, domestic courts, national human rights institutions, public expenditure reviews, or human rights impact assessments, as well as the UN Treaty Bodies and the special procedures, may inject existing MDG monitoring with crucial accountability dimensions (UNITED NATIONS, 2010b, para. 54; UNITED NATIONS, 2004, paras. 37-41).

In seeking to tackle accountability, dimensions that transcend domestic borders have also been addressed. For example, P. Hunt noted with concern that accountability is especially weak in relation to Goal 8 (a global partnership for development), as the existing MDGs monitoring scheme appears to be imbalanced towards scrutinizing developing countries, while developed countries escape accountability when failing to fulfil their international commitments (UNITED NATIONS, 2004, para. 43).

The conclusion that can be drawn from the foregoing discussion is a clear invitation by the special procedures towards giving more thought to the development of an appropriate, effective, transparent, and accessible framework for accountability, in the absence of which the chances of achieving development objectives are severely undermined.

### 5.2.3 Participation

Another core requirement of a rights-based approach rests on genuine participatory processes that include all the parties involved in and affected by development programmes and strategies. SRs have not only noted that development programmes may display participatory dimensions, but have also signalled that local communities are engaged in an inconsistent manner and in imbalanced power relationships (UNITED NATIONS, 2011, para. 51). This finding may also be derived from a reading of

the 2010 Outcome Document, which maintains uncertainty on whether participation is envisaged only as a matter of privilege in development programmes, or as a fully-fledged human right.

The SR on the right to health stated that participation contributes to the ownership of the programme by community members belonging both to majority groups as well as minority, marginalized, or vulnerable ones (UNITED NATIONS, 2011, para. 51). On this note, the Independent Expert on Minority Issues advocated for the establishment of meaningful dialogue with representatives of minority communities in the context of advisory committees or similar consultative bodies (UNITED NATIONS, 2007b, paras. 85, 104). Thus, participation is neither confined to consultations, nor to ensuring the mere presence of persons suffering discrimination, marginalization, or exclusion in the decision-making bodies. Effective participatory arrangements need to be streamlined in local decision-making structures (UNITED NATIONS, 2004, para. 25) and be supported by transparency and timely access to information (UNITED NATIONS, 2011, para. 18h). Therefore, participation plays an essential role in ensuring that all undertakings aimed at the achievement of the MDGs are “empowering and transformative, rather than the result of technocratic, top-down State policies” (UNITED NATIONS, 2010a, para. 89).

Furthermore, development planners also need to integrate gender-sensitive participatory methods. The actual and meaningful participation of women in the design of development programmes and measures, and in decision-making structures at community, regional, and national levels, is essential in order to amend recurrent situations of discrimination, realize women’s rights, and achieve gender equality and the empowerment of women as prescribed in Goal 3. The special procedures call for awareness-raising with regard to the challenges faced by women in becoming effective actors in development processes. The SR on water and sanitation added that an:

*[a]nalysis of the political, economic, cultural and social causes of exclusion is required as part of any serious effort to promote genuinely participatory processes, including with a focus on literacy levels, language constraints, cultural barriers and physical obstacles*

(UNITED NATIONS, 2010b, para 47).

#### 5.2.4 The use of indicators for monitoring and evaluation

Effective monitoring and evaluation is another hallmark of the human rights-based approach to development, and efforts in this regard should be solidly anchored on human rights principles. In order to collect and correctly interpret disaggregated data, the process of setting adequate indicators is crucial not only at the preliminary stage of development programmes when needs are evaluated, but also at the stage of monitoring the implementation of the projects in question. Recent advances on human rights indicators, conducted under the auspices of the Office of the High Commissioner for Human Rights, may provide solid foundations and a source of inspiration for monitoring purposes, as well as a strong conceptual framework

(OHCHR; CESR, 2011, p. 67). A number of SRs, such as P. Hunt, C. de Albuquerque, and K. Singh, have contributed significantly to the development of indicators as they relate to the rights associated with their mandates.

In connection with the MDGs, the SR on the right to adequate housing emphasized that indicators attached to monitoring the implementation of the MDGs should not be confined to the targets established by the goals, but they should instead “capture the normative content” of rights (UNITED NATIONS, 2003a, para. 53). The SR on water and sanitation emphasized that the indicators used to monitor the progress made on achieving target 7.C were falling short of reflecting the full dimension of the normative content of human rights regarding availability, acceptability, accessibility, affordability, and quality. When this framework is applied to the MDG indicators, in the words of the SR on water and sanitation, “a much bleaker picture emerges” (UNITED NATIONS, 2010b, para. 32). To focus on one example, access to safe drinking water and sanitation can be merely viewed as physical access, but recast in human rights terms, physical accessibility is but one facet of the question. Physical access becomes meaningless if people cannot afford water and sanitation services, or if women cannot use them because they are not sex-separated, or if their privacy is not ensured (UNITED NATIONS, 2010b, para. 27). Furthermore, the Independent Expert on minority issues found that the collection of data on poverty with an individual or household focus falls short of capturing groups and social dimensions of poverty. The dynamics of poverty across groups is not well illustrated in analyses of vertical inequalities (UNITED NATIONS, 2007b, para. 39).

The special procedures are also aware of difficulties in gathering data corresponding to the established benchmarks and indicators. According to the SR on water and sanitation, persons living in informal settlements, internally displaced persons, certain ethnic minorities, migrants, or persons with disabilities may not be adequately reflected in national censuses, administrative records, or household surveys (UNITED NATIONS, 2010b, para. 39). The collection of disaggregated data may require tactful methods informed by the situation of sensitivity towards asking individuals to publicly assert their ethnicity, religion, or mother tongue, especially in areas where such elements have been the object of discriminatory practices or even violence (UNITED NATIONS, 2007b, para. 68). Emergency situations and conflicts also decrease the capacity to collect data and obscure the assessment of humanitarian aid required (UNITED NATIONS, 2011a, para. 89). Nonetheless, where data is collected, the process ought to involve members of the community with methods and indicators that are relevant for the individuals concerned. Thus, human rights criteria provide an essential tool for the development of “more specific and contextually appropriate indicators” (UNITED NATIONS, 2010b, para. 33), targets, and benchmarks to ensure that development objectives are achieved in practice.

### 5.2.5 International assistance and cooperation

The implementation of human rights and of the MDGs is conditional upon the provision of adequate resources. In this sense, the ICESCR sets out obligations regarding international cooperation and assistance, while the MDGs, particularly

Goal 8, envisages the establishment of global partnerships for development. The common preoccupation of both frameworks to ensure access to resources consolidates the view that, only through collective efforts, societal grievances affecting individuals worldwide can be effectively tackled. In the absence of such resources, the SR on water and sanitation observed that not only certain aspects on the realization of the right to water remain dependent on resources provided for through international cooperation, but also that the realization of target 7.C lags behind as it is inadequately resourced (UNITED NATIONS, 2010b, para. 20).

A similar concern is shared by the SR on the right to education, who acknowledges the fact that resource constraints add to the factors impeding the full realization of the right to education and of progress in the achievement of Goals 2 and 3 (UNITED NATIONS, 2011a, paras. 4-6). The SR on the right to education added that the right to education, as stipulated in the ICESCR and in the formulation of Goal 2 and its related targets and benchmarks, leaves no doubt that all direct or indirect costs hindering the realization of this right need to be removed (UNITED NATIONS, 2011a, para. 20). In addition, the SR stressed that the need to ensure gender parity has to be accounted for in the provision of financial resources.

The SR on extreme poverty and human rights further commented that donor states are under the requirement to ensure coordination, predictability, and a long-term perspective in the provision of assistance (UNITED NATIONS, 2010a, para. 96), while recipient states are bound to an effective and optimal utilization of the resources (UNITED NATIONS, 2011a, para. 44), as well as to their distribution, taking into account regional socioeconomic disparities (UNITED NATIONS, 2011a, para. 46) and situations of emergency (UNITED NATIONS, 2011a, para. 60). The Independent Expert on foreign debt specified that only human rights-based approaches to aid programmes provide sufficient guarantees to meet the development challenges in recipient countries and concomitantly act towards the protection of the human rights of the individuals in those countries (UNITED NATIONS, 2011b, para. 93). The application of human rights approaches to aid programmes may contribute to the achievement of the MDGs while tackling the root causes of poverty, inequality, discrimination, exclusion and disempowerment (UNITED NATIONS, 2011b, para. 93). The recommendations of the Independent Expert for donor States focus on the conduct of human rights impact assessments to inform the design, implementation, monitoring and evaluation of their development progress (UNITED NATIONS, 2011b, para. 95). The SR on water and sanitation and the SR on the right to health also agree that the obligations arising in the framework of international cooperation are not limited to financial or technical assistance, but that rather they should be channelled towards creating an environment conducive to alleviating resource constraints (UNITED NATIONS, 2004, para. 32).

### *5.3 Methods employed by the special procedures*

Having examined the principles that provide the conceptual and normative underpinnings for the special procedures' analyses, this section explores the methods employed to perform such analyses. The undertaking of the special procedures to assess the relationship between human rights and the MDGs reveals individual

initiatives, but also common approaches with regard to the structure of the thematic reports, development of arguments, outcomes, and methodologies.

To explore the relationship between human rights and MDGs, the special procedures have resorted to a variety of methods. As far as country visits are concerned, the Independent Expert on the effects of foreign debt conducted country visits to Australia and the Solomon Islands in 2011 (UNITED NATIONS, 2011b) and to Burkina Faso in 2008 (UNITED NATIONS, 2008a), where the primary objective was to assess the domestic development programmes and policies implementing the MDGs against the realization of ESC rights.

The dialogues initiated by the special procedures at the national level, coupled with recommendations stemming from country missions are extremely valuable, as they are context-specific and provide national authorities, civil society organizations, and other regional and international bodies with an understanding of whether the undertaken processes are adequately integrating human rights and pursue equally the realization of human rights and progress towards the achievement of the MDGs. These recommendations may also constitute a starting point for further advocacy policies, as well as legislative, political, administrative, or other measures.

Special procedures have also involved a number of stakeholders in the discussions concerning human rights and MDGs in the context of participation to seminars, forums, consultations at domestic, regional and international level, and dialogues with UN agencies, programmes and funds, as well as the OHCHR and treaty bodies. In this regard, the SR on the right to water and sanitation has worked closely with the WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation, the main UN mechanism for assessing progress on Goal 7, on how to incorporate human rights criteria when discharging its monitoring functions, giving particular attention to measuring affordability, water quality, accessibility, and non-discrimination, in order to ensure that MDG monitoring assesses compliance with the normative dimensions of human rights obligations. It is reported that such an effort has also begun to pave the way for the elaboration of new goals and targets in relation to the post 2015 development agenda (OHCHR; CESR, 2011).

The thematic reports of the special procedures have also been informed by research studies and consultations with domestic actors. The Independent Expert on minority issues based her analysis and recommendations with regard to addressing the challenges faced by minority groups in the process of implementation of the MDGs on a comprehensive study of 50 MDG Country Reports and a number of Poverty Reduction Strategy Papers (UNITED NATIONS, 2007c). Another method to obtain concrete information at a national level on the implementation of the MDGs involved issuing questionnaires to national authorities. This method was used by the SR on extreme poverty and human rights and the Independent Expert on minority issues (UNITED NATIONS, 2010a, para. 5; UNITED NATIONS, 2007b, para. 13). They requested information on legislation, policy and practices for the identification of the most vulnerable groups, and specific initiatives taken to respond to the identified needs with a view to ensure participation and accountability in the context of their thematic concern.

Some SRs have actively engaged in negotiations for the advancement

of human rights-based approaches to the implementation of the MDGs and development programmes, in general. Since the beginning of his mandate in May 2008, the SR on the right to food, O. De Schutter, has urged states and international organizations to integrate the right to adequate food in their responses to the global food crisis, which seriously threatened the achievement of MDG 1 (UNITED NATIONS, 2008b; UNITED NATIONS, 2009a). In May 2008, he persuaded the Human Rights Council to organize a special session on the right to food and the global food crisis, in which Member States adopted a resolution at unanimity, calling for a rights-based approach to the fight against hunger (UNITED NATIONS, 2008c; UNITED NATIONS 2008d). A few months later, at a high-level meeting on food security held in Madrid on 27 January 2009, the UN Secretary General proposed to add the right to food as a ‘third track’ in the strategy to fight food insecurity and malnutrition.

## 6 Looking towards the future

The special procedures have also demonstrated a willingness to engage with the post-2015 development agenda, and to provide a human rights dimension to the formulation of new human development goals, targets, and indicators. Moving beyond individually led initiatives, a group of SRs and Independent Experts came together in view of the UN Conference on Sustainable Development (Rio+20 Conference) held in June 2012. The special procedures drafted an *Open Letter* concerning the practical integration of human rights in a sustainable development framework (UNITED NATIONS, 2012a). Their contributions are inspired by the understanding that policies targeted at the fulfilment of human rights, particularly ESC rights, also foster the achievement of development goals. In the document, they call upon the integration in the Rio+20 Outcome Document of *all* human rights, thus moving beyond a right-specific thematic approach. The special procedures stress that the implementation of the commitments emanating from the Rio+20 Summit needs to be carried out “through an inclusive, transparent and participatory process with all relevant stakeholders, including civil society” (UNITED NATIONS, 2012a). Moreover, they also propose a number of practical recommendations, including the establishment of accountability mechanisms both at the international and national levels for monitoring the objectives agreed upon at the Rio+20 Conference.

At the international level, the special procedures advocate for the establishment of a ‘Sustainable Development Council,’ modelled on the Universal Periodic Review of the Human Rights Council, in order to monitor progress towards the achievement of the Sustainable Development Goals (SDGs), which, at the time of writing, are under discussion. Likewise, at the national level, the special procedures recommend the establishment of participatory accountability mechanisms “through which people’s voice can be reflected and independent monitoring can be conducted” (UNITED NATIONS, 2012a). To reinforce their common position, the SRs O. De Schutter and C. de Albuquerque submitted specific proposals aimed at ensuring the coherence of the Rio+20 commitments with commitments in terms of the right to adequate food and right to safe drinking water and sanitation (UNITED



NATIONS, 2012b; UNITED NATIONS, 2012c). M. Sepulveda also contributed with a note on the role of comprehensive rights-based social protection in facilitating equitable and sustainable development (UNITED NATIONS, 2012d).

The joint contribution of the special procedures to the negotiations held during the Rio+20 Conference voiced the human rights concerns in the ambit of a forum bringing together UN Members States, UN agencies, and representatives of business and industry, children and youths, farmers, indigenous peoples, domestic NGOs, and local authorities.

## 7 Conclusion

It is widely acknowledged that the special procedures play a critical role in shaping the normative content of human rights, while at the same time assessing how states comply with such rights in practice and proposing concrete measures to improve respect for them (PICCONE, 2012). This role equips the special procedures with a rather unique opportunity to bridge normative work and practical, operational aspects concerning the implementation of human rights “on the ground.” In turn, this places the special procedures in an ideal position to scrutinize the intersection between human rights and development.

What has emerged from our survey is a gradual but steady willingness on the part of the special procedures to grapple, albeit at different levels, with development from a human rights standpoint. In particular, what has surfaced in the analysis is a commitment by the special procedures to strengthen the role of human rights in the process of implementation of the MDGs. This has yielded several positive results, among which we can highlight the outlining of a human rights-based normative framework to address the MDGs and other development activities, the identification of distinct challenges and stumbling blocks, the acknowledgement of best practices, and the recognition of opportunities for closer collaboration among the different thematic procedures. As an overarching consideration, when performing their analyses, most special procedures have actively sought to remove rights “from the heights of abstract declaration” and bring them towards “the front-lines of application” (GREADY, 2009, p. 385).

In responding to criticisms regarding the absence of a meaningful dialogue between human rights and development, and a lack of practical cooperation by actors on both sides of the disciplinary divide, the present article outlines how one category of human rights actors attempted to transcend rhetorical discussions and concretely engage with the development agenda. On a more general level, the article sketches a preliminary approach to look for concrete ways in which actors in the human rights field can play a role in development endeavours and pave the way for meaningful collaborations, with a hope that development actors will, in turn, engage with existing mechanisms provided by the international human rights architecture. The on-going, fervent discussion on potential successors to the MDGs in the post-2015 scenario and on how to shape a new development paradigm provides a fresh opportunity for genuine mutual engagement, and for human rights to be placed at the very core of the future global development agenda.

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## NOTES

1. Target 7.C. sets out to halve, by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation, while Target 7.D. seeks, by 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers.
2. A presentation of their mandates is available on OHCHR's website, at [www.ohchr.org/EN/HRBodies/SP](http://www.ohchr.org/EN/HRBodies/SP).

3. Human Rights Council, Resolution 8/11 establishing the mandate of the Independent Expert on extreme poverty and human rights, 18 June 2008, para. 2(d); Resolution 6/2 establishing the mandate of the Special Rapporteur on the right to food, 27 September 2007, para. 2(e); Resolution 6/29 establishing the mandate of the Special Rapporteur on the right to health, 14 December 2007, para. 2(h).

## RESUMO

Contra o pano de fundo de críticas sobre a ausência de um verdadeiro diálogo entre direitos humanos e desenvolvimento e sobre a fraca cooperação substantiva entre os atores de ambas as disciplinas, o presente artigo expõe a forma pela qual uma categoria de atores de direitos humanos tenta concretamente se envolver com a agenda de desenvolvimento. O estudo analisa as contribuições de diversos detentores de mandato dos procedimentos especiais das Nações Unidas (ONU), particularmente aqueles com mandatos relacionados aos direitos econômicos, sociais e culturais (ESC), ao trazer princípios fundamentais específicos dos direitos humanos para o núcleo do marco do desenvolvimento, com um foco específico nos Objetivos de Desenvolvimento do Milênio (ODMs) da ONU. Ao concentrar-se na não-discriminação, na participação e na responsabilização (*accountability*), no uso de indicadores e nas obrigações surgidas no âmbito da assistência e da cooperação internacionais, argumenta-se que os relatores especiais e especialistas independentes da ONU começaram a pavimentar o caminho para a convergência substantiva dos direitos humanos e dos paradigmas de desenvolvimento.

## PALAVRAS-CHAVE

Procedimentos especiais da ONU – Relatores especiais da ONU – Especialistas independentes da ONU – Objetivos de Desenvolvimento do Milênio – Direitos econômicos, sociais e culturais – Direitos humanos – Desenvolvimento

## RESUMEN

En medio de críticas relativas a la ausencia de un verdadero diálogo entre los derechos humanos y el desarrollo y una débil cooperación en temas de fondo entre los actores de ambas disciplinas, el presente artículo describe la forma en que una categoría de actores de los derechos humanos intentó comprometerse en forma concreta con la agenda del desarrollo. El estudio analiza los aportes que han hecho diversos titulares de mandato de los procedimientos especiales de las Naciones Unidas (ONU), particularmente los que tienen un mandato relacionado con los Derechos Económicos, Sociales y Culturales (DESC), en pos de acercar los principios fundamentales específicos de las normas internacionales de derechos humanos al núcleo de los marcos de desarrollo, con especial atención a la agenda de los Objetivos de Desarrollo del Milenio de la ONU. Haciendo foco en la no discriminación, la participación y la rendición de cuentas, el uso de indicadores y las obligaciones que surgen en el ámbito de la asistencia y la cooperación internacionales, se argumenta que los procedimientos especiales de la ONU han comenzado a allanar el camino para una convergencia sustancial entre los paradigmas de los derechos humanos y del desarrollo.

## PALABRAS CLAVE

Procedimientos especiales de las Naciones Unidas – Relatores especiales de las Naciones Unidas – Objetivos de Desarrollo del Milenio – Derechos Económicos, Sociales y Culturales – Derechos humanos – Desarrollo