

Meeting 1: Human rights and the Millennium Development Goals: contradictory frameworks?

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Chair: Baroness Whitaker



Meeting Summary

Simon Maxwell opened the meeting series by asking whether the existence of either a human rights-based approach or the Millennium Development Goals (MDGs) makes the other superfluous. Whilst acknowledging that human rights is not one of the intellectual frameworks generally utilised to discuss the MDGs, he emphasised that the MDGs are anchored in the Millennium Declaration and a wider discourse on poverty reduction, and that both of these have strong affiliations with the human rights framework. Maxwell outlined some of the potential risks emanating from the MDG construction but argued that it also has elements that adds to the human rights framework. A synthesis would be of benefit to both approaches. Maxwell concluded by outlining why these are in fact complementary agendas.

The second speaker, Robert Archer, reminded us of the difficulties involved in inter-disciplinary conversations, not least because of the challenge of reconciling their diverse historical traditions. However, Archer also believed that there is no inherent conflict between human rights and the MDGs as long as the MDGs are situated within

their historical context, in particular the Millennium Declaration. What does cause difficulties from a human rights perspective is the presentation of the MDGs as global aspirations rather than as practical tools based on political consensus. Nevertheless, Archer believed that the foundations of the human rights and development traditions are essentially compatible and this makes convergence possible. He summarised the added value of the human rights framework as being its legal precision and authority, its objectivity and legitimacy, and its emphasis on fairness and accountability.

The call for a common language to be found across disciplines was echoed during the discussion, as was the need for human rights and development practitioners to engage in each other's processes. The appropriate level for human rights obligations was raised and, in particular, the overemphasis on national, rather than international, obligation was questioned. Finally, a plea was made to situate discussions about rights within the (local) context in which poor people actually experience them.



Simon Maxwell

There are two questions implicit in the title of this meeting.

First, if we have the Millennium Development Goals (MDGs), can we just dispense with a rights-based approach? That is, if we are strongly focused on reducing poverty and meeting the other MDGs, does anything useful remain in rights?

Conversely (and equally cheeky), why bother with the MDGs at all if we have a rights-based approach that already does the job? Would it not have been much better if, first, the Development Assistance Committee (DAC) of the OECD and then others, such as Clare Short and the United Nations, had not bothered with the MDGs, but had instead focused on the Universal Declaration of Human Rights, the 1966 Covenants,¹ the Convention on the Elimination of Discrimination against Women and the Convention on the Rights of the Child.

These are the questions that we are going to try to explore during the course of this series.

I am going to say something quickly about our trajectory on rights at ODI, because it raises some points and makes some links, for example to work by DFID. I will then say something about the MDGs and, finally, will come to the question of whether either the MDGs or a rights-based approach are superfluous or whether they can actually work together.

ODI work on rights

ODI last looked at the question of rights-based approaches to development in 1999, with a series of meetings entitled ‘What Can We Do with a Rights-based Approach to Development?’² We did not have the MDGs in 1999 but we did have something very similar – the International Development Targets (IDTs) – which eventually became the MDGs. These were already in the public domain and had been the basis of DFID’s 1997 White Paper, so this was not a trivial question. We were looking at the question of whether there was ‘value-added’ to a rights-based approach (and I will return in a moment to the question of whether the answer to that question was ‘yes’).

We then had a series of projects at ODI on rights, including: *To Claim Our Rights*, led by Andy Norton (Moser et al., 2001), which looks at the links between rights and livelihoods; a paper commissioned by Andy on the work of Amartya Sen on rights, *Economic Theory, Freedom and Human Rights*, written by Polly Vizard (ODI, 2001); and another paper, again led by Andy Norton, *What’s Behind the Budget* (Elson and Norton, 2002), which looks at the relationship between rights, politics and accountability in the budget process.³ Out of that body of work, we now have a cross-cutting programme at ODI on ‘Rights in Action’⁴ led by Laure-Hélène Piron and her colleagues, who are responsible for this series.

The core rights framework is well-known.⁵ This is a list of the six debates that we focused on the last time we looked at this question, in 1999:

- i. Are some rights more important than others, particularly whether civil and political rights outrank or trump economic, social and cultural rights?
- ii. How can individual and collective rights be balanced?
- iii. Can we unpack ‘progressive realisation’ – a key phrase in the human rights literature, that acknowledges that we cannot immediately achieve every right and directs attention to how to get there step by step.
- iv. Who are the duty-bearers? A key feature in the whole debate on rights is that some people have rights and others obligations, and that those with obligations are usually taken to be the governments who sign the treaties and the covenants - but are there any other duty-bearers, for example, the World Bank, the international aid donors and, perhaps, some NGOs?
- v. How can accountability be discussed without performance standards?
- vi. Does accountability imply justiciability?

At the end of our 1999 series we came up with a series of principles to guide our further discussion on rights. These were that:

- it was worthwhile to take a holistic approach, including both civil and political and economic, social and cultural rights;
- we needed to look at the relationship between individual and collective rights;
- the international community had, at least, a moral duty, if not a legal duty, to support rights in partnership with states;
- performance standards were needed; and
- although justiciability is at the heart of the debate, there are also many other complementary initiatives that should be undertaken, involving reporting, monitoring, public debate and greater citizen participation.

DFID work on rights

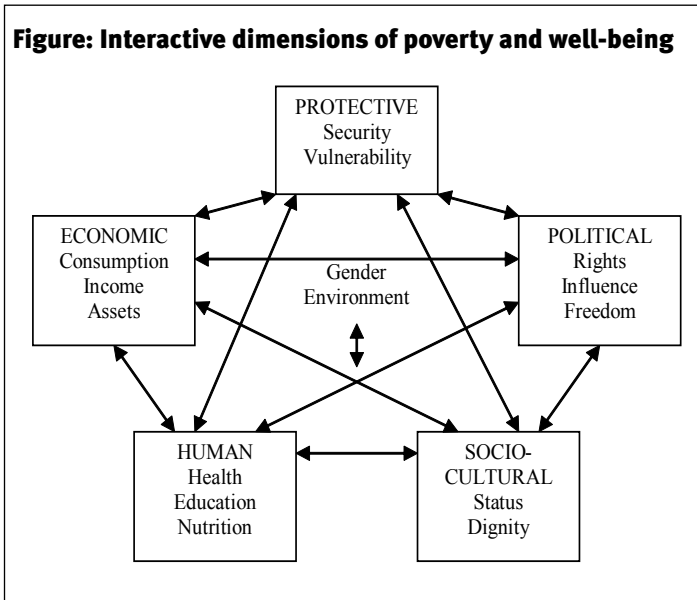
Work by DFID provides a useful illustration of how these issues can be applied in practice.

In 2000, DFID produced a policy brief, *Realising Human Rights for Poor People* (DFID, 2000), which reflects many of these debates and principles, and focuses on three key ideas that we would like to take forward in this series of meetings: the importance of participation; the importance of inclusion; and the idea of fulfilling obligations. These reflect a compromise between two different perspectives within the rights discourse. One is ‘rights as struggle’, as a vehicle for mobilising people and raising the level of participation. The other is ‘rights as law, administrative practice and justiciability’.

A recent review of the integration of human rights in DFID’s work, carried out by Laure-Hélène Piron

‘... human rights are practical and real and help us to do things that we might not have otherwise done.’

and Francis Watkins (2004), provides very interesting case studies and examples of what is being done at country level. They examine (i) the normative framework, (ii) the analytical framework and (iii) the operational issues involved in taking rights seriously. This body of work illustrates an approach and a set of principles that takes the ideas of human rights, which are sometimes very abstract, right down to the level of country programming and individual projects. And, as the examples in the DFID review demonstrate, human rights are practical and real and help us to do things that we might not have otherwise done.



An alternative approach: the MDGs

So, what is different about the MDGs and the streams of programming associated with them?

The goals are well known and have also stimulated new programme ideas. A good example is the work of the Millennium Project in New York, led by Jeff Sachs. The Millennium Project’s taskforce reports go through the subjects topic by topic (Millennium Project, 2005). It is interesting to ask: how many times is the word ‘rights’ mentioned? Some of the reports do not mention the word ‘rights’ at all but some of them do. In particular, rights appear in the hunger report, in the context of a discussion about land rights and access to water, and in the HIV/AIDS and the child and maternal health reports, because there is quite a discussion in these about reproductive rights. But I think it is fair to say that the rights discourse is not the driving motor behind the discussion of how to reach the MDGs. Rights appear but they are not the most important intellectual framework for discussing the MDGs.

So, are we setting off on a different trajectory altogether? Well, not entirely. The MDGs are, of course, part of something much bigger. They sit at the top of a pyramid, underneath which is a strategy for reaching the goals, which can be found in the World Development Report 2000/2001 (World Bank, 2000) or the OECD’s DAC guidelines on poverty reduction (OECD, 2001). This strategy is implemented through Poverty Reduction Strategy Papers and a whole series of technologies for delivering aid – Medium-Term Expenditure Frameworks, General Budget Support, and so on – all underpinned by results-based performance evaluation (Maxwell, 2003).

Through the discussion about the MDG debate within ODI over the past few years, we have identified a number of risks with this construction (ibid.). Four are relevant to the rights debate and illustrate why a dialogue between the two communities is worthwhile:

- i. The very idea of targets is controversial, not just in the development field, but also more widely within public administration. They tend to oversimplify and distort and there is a risk of distorting development practice.
- ii. There is a question about where citizenship and participation fit in. In the MDGs debate, participation and citizenship are sometimes viewed more instrumentally – as a way of reaching the target of halving income poverty by 2015 – than they would be in the human rights debate. However, in broader definitions of poverty, for example that adopted in the DAC guidelines, participation features as an end in its own right.
- iii. The question of who participates, on what terms and to what effect, and whose views are weighted and the method for doing this, is present in both rights and MDG debates.
- iv. And, finally, the issue of partnership, which is much debated within the MDG discussion and echoes the question about duty-bearers and rights-holders in the human rights debate. Who actually has the right to expect what of the international aid donors when they try to pursue the MDGs?

‘... in terms of the basic ideological framework there is not a great deal to choose between the rights and MDG agendas.’

Comparing rights and the MDGs

We are now in a position to compare the rights and MDG agendas and highlight conflict and complementarities between the two.

Rights	MDGs
Good on participation	Good on participation
Good on inclusion	Good on inclusion
Comprehensive	Selective
Obligatory	Optional
Clear national accountability (but not international)	Undefined accountability (except through partnership)

‘... can we have the best of both worlds. Is it possible to be comprehensive, target-driven and accountable?’

First, at least with a broader view of poverty, there is not much to choose between the rights agenda and the MDGs on participation and inclusion. Sometimes rights people will argue that participation and inclusion will not get onto the agenda without a rights-based approach. In a narrow interpretation of the MDGs that might be true but I prefer to go back to the Millennium Declaration, passed by the UN in 2000, which the MDGs are embedded within. This has a much stronger vision of inclusion and participation, citizenship if you like, than simply the narrow income target of the MDGs. The implication is that in terms of the basic ideological framework there is not a great deal to choose between the rights and MDG agendas.

Second, however, the MDGs are much more selective in practice than the rights-based approach, for example focusing on poverty reduction, primary education, maternal mortality and other key indicators. It is worth debating whether this matters or not. Perhaps we have to be selective in order to be practical but, if so, what is in and what is out? What is missing from the MDG agenda that is in the rights agenda? Maybe, if we were writing the MDGs again, there would be some elements we would want to pull out of the rights list and bring into the MDG list.

Third, another difference is that the rights agenda is relatively open-ended whereas the MDG agenda is much more target-driven. Now, I am usually quite critical of targets, for reasons that I have explained very briefly and have written about more generally, but it is also quite difficult to be stuck with a very open-ended commitment to progressive realisation. The rights literature and legislation, and the work of the human rights bodies in Geneva, talk about taking measures that are deliberate, concrete and targeted. There are some famous cases in the courts around the world where those words have been tested – the well-known South African housing case is often cited in this connection – but progressive realisation is a bit fuzzy, is it not? On the other hand, having targets mean that planners have something to get their teeth into. There is some value in that. And so, in that sense, I think the MDGs are adding something and making something more concrete that helps the rights discourse.

Fourth, the MDGs are essentially optional. They rely on the political leadership of governments and on the way that they are driven from below by campaigns such as the ‘Make Poverty History’

campaign. The rights agenda offers us something very different and that is a sense of duty-bearing: an obligation that people have to meet rights. That leads into a very different kind of conversation, not ‘wouldn’t it be nice if all children went to school’, but ‘children have a right to go to school’. There is an obligation, at least on national governments, to move towards that and to ask ‘how to do it?’.

Finally, there is the question of accountability. In the rights discourse, there is clear accountability at the level of national governments, but it is much fuzzier at the level of NGOs, international agencies, etc. In the MDG case, there is no formal accountability at any level, other than through political process. Partnership becomes a key word but, as we know from discussions over many years, the way that partnership is used in the development context does not have very many obligations embedded in it. DFID is now moving towards having independent arbitration of partnership agreements with some of its big recipients, where there is a commitment on both sides that is subject to independent verification (Rwanda is one), but that is still some way from having the kind of appeal to the European Court of Human Rights that might arise with a rights approach. The Cotonou Agreement is probably the strongest example of a legal partnership to be found in the aid world, but even that is relatively weak. So, here we have a strong illustration from the rights discourse of how we could take the MDGs forward.

Looking down this list, there are some areas where rights are strong and others where the MDGs are better. The challenge we face over the coming weeks in this meeting series is to see whether we can have the best of both worlds. Is it possible, for example, to be comprehensive, target-driven and accountable? We can make progress in bringing these two agendas together, which is why I finish by saying that these are not contradictory agendas: they are complementary frameworks.

Endnotes

- 1 The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
- 2 <http://www.odi.org.uk/speeches/index.html#spr1999>.
- 3 <http://www.odi.org.uk/rights/publications.html>.
- 4 www.odi.org.uk/rights
- 5 See ODI (1999) and Appendix 1.

Robert Archer



First of all, let me just say where I come from. For the past seven years I have been Director of the International Council on Human Rights Policy, which looks at policy issues confronted by organisations working in the field of human rights. We have been doing some work on governance, poverty and rights and also on poverty reduction programmes and rights. Where our interest has really been is in that difficult, but interesting, frontier between human rights and other disciplines – the difficulties with communication and the issues with reconciling historically different institutional conditions. My own background, coming from human rights, but not as a lawyer, and also having a background in development, influences the remarks that I am going to make today. I am going to begin by making some comments about the Millennium Development Goals (MDGs) and the Millennium Declaration. I will then say something about Poverty Reduction Strategy Papers (PRSPs) (and therefore go outside of the limited framework) and conclude by talking about what rights can offer and where it may still have weaknesses.

International Development Targets

Let me begin by taking a step back. It is useful, I think, to mention the International Development Targets (IDTs). They were introduced by the OECD governments at a time after the Cold War when, at national level, governments were adopting a poverty focus in their development work and also coming to grips with notions of good governance. This was a good half dozen years before the Millennium Declaration (UN, 2000).

There are three interesting things to note about the IDTs:

- i. when those reforms were made and policies were introduced by the OECD DAC, human rights were absent from the picture. I think those discussions were largely irrelevant to human rights organisations and human rights organisations were largely irrelevant to those debates;
- ii. these decisions were made voluntarily. The OECD governments, without any external political pressure, undertook the initiatives. They reflected what they felt were the limits of the politically possible rather than what was economically possible. As such, they were, in my view, a quite imaginative and courageous step to take and the key advantage is that they are focused targets; they are practical objectives;
- iii. the language that was adopted when they were introduced was the beginning of the language of participation and consultation, of ownership and partnership. The first reaction of my NGO colleagues was to say, 'hang on a minute, governments are stealing our clothes. We have fought for these ideas for twenty years and they will dilute them and probably distort them'. There was feeling that there was seizure of legitimate authority by governments.

Millennium Development Goals

However, six years later, when the MDGs were adopted, much had changed. Firstly, they were adopted by heads of state and, secondly, by that time there had been a great deal of change in terms of human rights. It was the same period that Kofi Annan mainstreamed human rights and the UN agencies began to struggle to bring human rights into their programming. Also by that time, many national governments, including the UK, had signalled their willingness to integrate human rights within foreign and development policy. So there was an important transformation, not only of the scale and legitimacy of the goals but in their relationship to human rights.

The mainstreaming process has been very difficult. It has been complicated and not only at UN level. It has also been very difficult at national and NGO level. There are complex cultural and intellectual issues to address and, in most cases (and I would say this was certainly true of Office of the High Commissioner of Human Rights), institutions were not ready and were not willing to begin a process of operationalising human rights principles within their work. And we are still, in my view, at the beginning of that process. I think where people position themselves in the different debates about the MDGs and human rights, and indeed about the relevance of human rights to development, depends on the time-scale in which this discussion is taking place and my own view is that we are at the beginning of a very long process.

In this context, what then can be said about the MDGs and the Millennium Declaration? My first general comment is that they are, at the moment, hybrid animals. They are both practical, politically-calibrated targets identified by the DAC and, at the same time, they are increasingly framed as global aspirations, emblematic expressions of moral intent. We are ceaselessly asked to unite around them; they are being reified (if not deified). This is potentially very damaging because, as aspirations, they are wholly inadequate. We cannot aspire to *halve* the number of people who are destitute. Many critics of the MDGs react so negatively precisely because of this shift and human rights organisations are no exception.

However, the position is even more difficult than that because many human rights activists are not familiar with the history of development and they are unaware of the complexity of thinking that underlies the bold headline statements that are given publicity. And this is one of the key issues for us to address in the current phase of discussion – the simple lack of knowledge of the history and internal debates within different disciplines. Human rights activists and intellectuals are unfamiliar with the history of development and it is characteristic that, for example, many of them think they have brought ideas such as empowerment, participation and accountability

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to the attention of development and governance experts. Of course that is not true but, if that is the thinking, it creates many tensions and this really needs to be shared and understood.

A more specific issue arises in relation to the form the MDGs take. They are not written in human rights language. This is for the obvious reason that they were drafted for another purpose – for a development purpose and in a development context. In principle this is not problematic but it does mean that it is very important to read them, firstly, in terms of their practical and tactical purpose and, secondly, alongside the Millennium Declaration. However, it is true, I think, that the language as it stands, and as it is given publicity, lends itself to a narrow quantitative understanding of development and draws attention away from qualitative dimensions. I think that we are, to some extent, seeing this in the reporting for the MDGs and this is an area where the absence of the language of rights is one indicator of a trend that needs to be reversed. I also think that, as it stands, the language is a lost opportunity for education. We are asked to put the MDGs at the forefront of the public eye but, abstracted from an analytical and qualitative context, they have little explanatory meaning. So, the general position is that the MDGs are valuable and important but that they need to be understood for what they are; they should not be turned into fixed, static objectives but, rather, be seen as way marks in the process and I think that, if we do not do that, there will be damaging consequences.

Millennium Declaration

Let me turn now to the Millennium Declaration. This is an important but classically imperfect text, particularly from the human rights perspective. It does affirm human rights principles and, if the MDGs are framed by the Millennium Declaration, that is extremely helpful. But it affirms those principles in very general terms. It mentions some areas of human rights specifically but in a scattered and haphazard manner. Just to give one example. Employment is mentioned – a huge issue for economic and social development and also for human rights – but only once and then only to urge governments to address youth employment. You could not build a coherent strategy in relation to work – or the right to work – on the basis of the specific commitments in the Millennium Declaration. You could only do it (though you could do it) by referring to the very general affirmations in the Universal Declaration on Human Rights.

So, from a human rights perspective, there is a difficulty on two grounds. Firstly, the document is in a sense arbitrary and incomplete, however understandable that may be given its political character. Secondly, it therefore fails to reflect the systemic character of human rights law and thinking and, in particular, its emphasis on the links between all human rights. Again, this is not a problem if the Millennium Declaration is not read as a complete agenda for action, still less as a statement of human rights priorities. Like the MDGs, it should be seen for what it was: an

important moment of consensus that reaffirmed certain very general values and highlighted other issues of contemporary concern. It is important but unbalanced.

Human rights and development: conversion or convergence?

Let me turn now to the place of human rights in these discussions and their relevance to development and poverty reduction programmes. Qualitative dimensions of development have again come to the fore because of the new approach that the World Bank and governments have adopted in the PRSPs. In many ways, the PRSP debate has revived some of the battles about ownership of values, which I mentioned earlier. There are vertical contests, if you like, around notions of participation, ownership and partnership between civil society organisations, national governments and the World Bank. But there are also interesting struggles for leadership between disciplines. In particular, following mainstreaming, human rights is perceived by some development economists, medical professionals, environmentalists, etc. to have made a (legitimate or illegitimate) claim for intellectual leadership – and, it must be said, some human rights advocates support this claim.

At its broadest, however, there are two main schools: those who follow a conversion model and those who believe in convergence. While the first group considers that human rights should trump other values and traditions, the second considers that development, governance and other policy frameworks are capable of, or have been, converging with the human rights framework, and that the foundations of their traditions are highly compatible. They therefore tend to think that debate should focus on consistency and complementarity rather than competition. I guess people in this room will belong to both parties. To be clear, I am a converger.

Poverty Reduction Strategy Papers

Thinking about that, it is helpful to make a few remarks about PRSPs, considered in relation to previous generations of poverty reduction programmes. The first is that we should be careful not to fight old wars and, in doing so, fail to assess the new environment correctly. Current arguments – both vertical and horizontal – often turn on who legitimately owns values. Who decides when ‘national ownership’ has been achieved or that ‘consultation’ or ‘participation’ has been accomplished satisfactorily? In these discussions, it is very easy to fall into a lose-lose debate, when each side lays claim to be the arbiter of a standard and in so doing denies the legitimacy of others. Yet, without some degree of agreement, it is clear that everyone will lose. If no one can tell whether communities have been properly consulted, no policy based on consultation is likely to be successful.

These are in fact the new policy challenges set by the poverty reduction strategy model. The approach itself should be welcomed. In

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principle, it is a considerable step forward, an enormous advance relative to early structural adjustment programmes. But, as with each previous generation of programmes, it will set new challenges and we have not begun to answer those questions clearly and, until we do, national governments, as well as the World Bank and other donors, will find themselves engaged alongside civil society in extremely unproductive arguments about legitimacy.

It will not be an easy discussion. If we speak about consultation or participation in decision-making, for example, quantitative or simple democratic criteria will not be adequate. Different levels and types of consultation should be expected for different categories of decision and different voices should expect to be given different weight. When choosing between two sites for a bridge, who is consulted about what aspects of this decision and whose word has more decisive weight? If a community voices opposition to a decision, which is nevertheless taken by government, when can that decision still be considered democratically legitimate (and when not)? No government manages these questions perfectly or even well; yet PRSPs seem to expect poor countries and poor communities to engage successfully in complex negotiations of this sort. To what degree are these expectations fair, testable or even rationally constructed?

Strengths of the human rights framework

I think in answering these questions, the human rights principles and methods that have been developed offer the most complete and holistic framework that is available to the international community for assessing performance in areas of social policy and participation. If we want to judge whether decision-making systems are participatory, inclusive, non-discriminatory, consultative, etc., it is at least one of the best points to start from. Its standards are universally applicable (or attempt to be), which underpins its claim to fairness and legitimacy, and also objectivity. Moreover, states have accepted that its standards are legitimate; they have legal status, certainly when governments have ratified them. In addition, because they have legal status, they are relatively precise in their formulation and remit. Authorities can determine what conduct is or is not required, because terms are shared, negotiation is possible and eventually, yes, judicial procedures can settle disputes and provide remedies.

I am not arguing that the new challenges raised by PRSPs or their successors will be settled in a clear way by glancing at human rights standards. This is clearly untrue; these issues will generate difficulties at least as great as those already associated with mainstreaming. But, if criteria draw upon human rights standards and principles, their elaboration is likely to acquire a higher degree of legal authority, political legitimacy and precision. And justiciability is only one, often subordinate, element in that mix of qualities. This is the first strength of human rights.

The second strength of human rights is fundamental to its value to the development process, though, if not contextualised, it can also be a point of analytical weakness. Development, however framed, is a long, mucky process in which the fortunes and prospects of some individuals and communities are enhanced while those of others are threatened or harmed and, in all circumstances, thrown about. If applied well, what human rights principles and methods do is to prevent slow large-scale progress from masking the loss or marginalisation of individuals or minorities. However positive development progress is, the human rights framework encourages or requires planners and observers to identify and do something about the people whose interests or prospects suffer. This is, notoriously, something that big development has been bad at. It is the point of sharpest friction between grassroots activists and central planners. It is the Achilles heel of the World Bank and multilateral institutions. It is the point where policy commitments to participation and inclusion are perceived by 'beneficiary' communities to collapse into rhetoric.

Human rights does not, of course, solve all the problems of loss and cost that minorities and individuals suffer when development is successful in promoting sustainable progress for large numbers of people. Essentially, however, it requires authorities to:

- identify people at risk and assess the cost and damage they have suffered;
- accept certain responsibilities towards those people, including their right to remedies in many cases; and
- be accountable for what has been done (or not done) on both the above counts.

Accountability is at the heart of remedy and it is impossible without transparent communication of information. These two things, as well as the requirement that the dignity and interests of all people should be considered, are at the centre of the human rights framework. Again, justiciability is an element in its application but often a subordinate one. It is indeed important to be able to settle disputes and provide redress through courts; actually doing so may not be the most important thing, however.

It will be said that other approaches share this interest in accountability and transparency – governance theory, for example. This is quite correct. Similarly, development thinkers have independently identified the importance of participation and consultation, even if human rights activists do not always know this. The point is that this should be expected. Certainly, if human rights really are of universal application, it would be astonishing if good governance and good development practice were not broadly consistent with human rights principles. Indeed, if they were not convergent, it would be a rather persuasive reason for suspecting that human rights principles did not have the wide application and legitimacy that their adherents claim. Where

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human rights add value is in the areas I mentioned earlier: its legal precision; its legal authority; its legitimacy, both at the level of governments and for the public; its objectivity – its emphasis on fairness and equity for all human beings; and its central focus on accountability of those in positions of authority. This means, in practice, that, if a fault of omission or violation of rights can be shown, it can also be shown that someone can be held responsible or has a duty to take remedial action. Other frameworks share many of the same values but have not been elaborated legally and politically or been accorded legal and political authority to the same extent. These are the strengths of human rights.

Weaknesses of the human rights framework

Let me briefly address areas where I believe human rights have potential or practical weaknesses.

- First of all, human rights tend to think in one tense. They emphasise individual violations now; it is not very good at thinking about long-term progress or deferred progress. Therefore, compared with development thinking, there are real problems of communication.
- A second weakness is that human rights activists find it difficult to negotiate. Owing to the fact that the human rights framework is inherently systemic, which most other intellectual frameworks are not, human rights specialists make judgements on particular matters taking account of the whole body of human rights laws and principles; hence, the importance of indivisibility to them. Therefore, whilst human rights actors take a decision in the context of an entire system of thought, other disciplines find the acceptance of certain principles difficult. This undoubtedly makes communication very difficult.
- A third criticism is that, in a world of limited

resources, human rights analysts find it difficult to choose between two goods or two imperfect goods – between building a school or a hospital or a road. Again, the belief that rights are interdependent makes it very hard for human rights specialists to set aside one right in order to benefit another. This is partly a matter of practice, of developing experience in taking such decisions, but partly it is inherent because one of the core strengths of human rights is focus on disadvantage and discrimination. Rights activists will always tend to be more alert to the right that is set aside.

- I find two other criticisms of human rights not very serious. One, that human rights are ‘political’, is not very interesting because aid conditionality is also highly political and is, in practice, less objective and open more open to the criticism. The other criticism is that human rights are ‘normative’.

In conclusion, whether we are talking about the MDGs or about the larger discussion between human rights and poverty reduction, there has been an enormous movement in the last ten years. A great deal of thought is now going on and a great deal of progress is occurring but there is still a very long way to go, and it is very indicative that most of the reports that are coming out on the MDGs, and most development reports, still do not engage in a consistent and deep way with human rights. Many of them do not mention human rights at all. But, equally, human rights writing do not engage very well with the MDGs or some of the most interesting and creative thinking coming out of development. There is still a wide gap; even when people are talking to each other, communication is difficult. There is not adequate engagement. So we have come a long way but there is further still to go.

‘... if human rights really are of universal application, it would be astonishing if good governance and good development practice were not broadly consistent with human rights principles.’

Girls' education through a human rights lens: What can be done differently, what can be made better?

Katarina Tomasevski*

1. Introduction

If rights-based, education can be a means to attain gender equality. Otherwise, it tends to transmit gender inequality to the next generation. Rights-based education is a passkey for full and equal enjoyment of all human rights, which adds a qualitative dimension to the existing global focus on quantitative targets. At the turn of the millennium, global strategies converged around the goal of eliminating gender disparities in basic education by the year 2005.¹ Statistically speaking, this target will not be attained. Moreover, previous experiences have shown that it is easier to attain gender parity than to sustain it. Human rights can help in sustaining progress by enforcing equal rights of girls and reinforcing the corresponding governmental obligations.

An illustration of what can happen without human rights protection is the case of Tatu Shabani, who was sentenced in 2003 to six months in prison for not attending school.² Tatu had been a pupil of Mkuyuni primary school in Morogoro, in Tanzania. She was expelled after she became pregnant: pregnancy was a disciplinary offence. After her expulsion, she could no longer go to school. Tatu was in a 'Catch-22' situation, in breach of the law on compulsory school attendance but unable to comply with that law. It is not clear how Tatu's case will figure in education statistics but, legally, she became a delinquent by the mere fact that she had become pregnant as a primary school pupil. Pregnancy ended both her childhood and her education.

This case highlights the rationale behind a human rights approach to education, that of dealing with obstacles beyond – not only within – education. There has been an endless stream of policies and statements on what can be done. Human rights spell out what should be done, using as a yardstick global minimum standards that most states in the world have accepted. Thus, human rights complement and strengthen development priorities. The key features of human rights law are outlined in Table 1, through a comparison with the Millennium Development Goals (MDGs) as the best known blueprint for prioritising development efforts.

Table 1: Differences between human rights law and MDGs

Who?	Obligations of the state International human rights obligations form part of the law of the land. They pertain to the state and are not affected by changes of government.	Political commitments of a government Changes of government through electoral or non-democratic means routinely alter political commitments.
What?	Human rights are grounded in the rule of law Guaranteed rights can be claimed by the population as well as by other states since they form a part of international law.	No remedy for the lack of performance Where monitoring reveals that targets have not been attained, there is no access to justice for those who would have benefited, because MDGs do not create entitlements.
When?	Obligations are immediate Minimum global standards are binding upon governments. If beyond their capacity, they can seek international aid.	Long-term goals The year 2015 takes away the immediacy characterising human rights.
How?	Legal responsibility Human rights bestow upon individuals the right to hold government legally responsible for violations, both domestically and internationally.	Monitoring Accurate and up-to-date data do not exist where they are most needed, while attainment benchmarks anticipate continued deprivation and rights deficit.
How much?	All rights for all girls and women Full and equal enjoyment of all human rights and the elimination of all forms of discrimination against women have not yet been attained anywhere, and are therefore continuous obligations of all governments.	Specified quantitative targets Benchmarks have been defined as 'feasible in even the poorest countries' (UN, 2004: para. 77) leaving out too many quantitative (e.g. prevalence of child marriage) and all qualitative benchmarks (e.g. aims and contents of education).

Differences highlighted in Table 1 do not undermine the core that is shared by global development strategies and international human rights law. Indeed, the focus on poverty reduction enables the right to education to be a powerful tool in making a

change in the lives of girls and women. Poverty has been universally affirmed as a key obstacle to the enjoyment of human rights, and it has a visible gender profile. The main reason for this is the fact that poverty results from violations of human rights, including the right to education, which disproportionately affect girls and women. Various grounds of discrimination combine, trapping girls in a vicious downward circle of denied rights. Denial of the right to education leads to exclusion from the labour market and marginalisation into the informal sector or unpaid work. This perpetuates and increases women's poverty. This circular relationship requires human rights mainstreaming.

The focus of global strategies on the means of education, i.e. all girls should start and finish primary school, can be usefully complemented by specifying the ends of their education. In addition, since education is a lever to provide girls with choices in life, primary schooling may not be enough. Worse, it can in fact obliterate choice if a girl is taught that her destiny is to be a submissive wife and mother. In the words of Sheikh Abdul-Aziz al-Aqil, 'the Muslim woman is a precious jewel whom only her rightful owner can possess, for he has paid dearly for that' (Hirst, 1999).

2. Applying human rights law to mould education: step by step

International human rights law lays down a three-way set of criteria, whereby girls should have an equal right to education and equal rights in education, and their equal rights should be promoted through education. The first step in meeting these requirements consists of overcoming their exclusion from education. The global priority for girls' education has made large indents into this exclusion, with promises to bring it to an end. The subsequent step is often the segregation of girls into separate schools. The third step typically comprises assimilation of girls into schools designed for boys, then moving towards adapting education to suit girls.

Separate schools for girls and boys were an international norm as late as 1960. At the time, the UNESCO Convention on Discrimination in Education legitimised separation on the grounds of sex, religion and language. The rapporteur for that Convention explained that 'the separation of schools for pupils of the two sexes was still too widespread in practice for the Convention to be able to affirm that, at the international level, it amounted to a proscribed form of discrimination' (Juvigny, 1963: 18). For various reasons, segregation in education persists, despite the fact that (in the famous words of the US Supreme Court) separate is always unequal. However, its human rights impact is not assessed.

Integrating girls into mainstream schools without altering curricula and textbooks perpetuates the stereotypes that impede gender equality. School textbooks tend to portray women as staying at home while men are making history. A survey regarding women in primary school textbooks has revealed that in Peru, for example, women are mentioned ten times less than men (Valdes and Gomariz, 1995: 105). In Croatia, a study of secondary school textbooks has shown that sons are the subject of 42% of the material on family life, and daughters of only 17%.³ A study of school textbooks in Tanzania revealed that girls doing domestic chores constituted the favourite topic for explaining to children English and Kiswahili grammar (Mbilinyi, 1996: 93-94). This type of analysis is the first step towards change, which is taking place rapidly in many countries and in all regions of the world. There are, however, obstacles.

The change of terminology, from 'sex' to 'gender', challenges the historically constructed inferior role of women in public and private life, in politics and in the family, within and outside of school, in the labour market and in the military. The purpose of human rights is to challenge and change this discriminatory heritage. However, difficulties begin with the very language: in many languages, the term 'gender' cannot be translated. And the necessary process reaches far beyond linguistics, into investigating the ways in which different societies perceive what gender relations are and what they should be.

At a lower level of abstraction, an illustration of obstacles is governmental response to girls or female teachers wearing headscarves. Turkey's commitment to secularism in education has brought about a ban on headscarves; breaching this ban entails denial of access to education. The International Labour Organization (ILO) has assessed negative effects of lack of education on women's employment: 'women's level of education is very low in Turkey (one out of every two women jobseekers has only a primary school education), as is their level of participation in the workforce' (Tomasevski, 2002: paras 57-58).

Adapting education to the equal rights of girls necessitates women's voices in decision-making. In the Philippines, for example, 'women's disproportionate under-representation in top-level positions continues to be evident. This is particularly observed in the education sector where women constitute the majority of the schoolteachers but are not equitably represented as the positions go up' (CEDAW, 1996: para. 162).

3. School first: freeing girls from child marriage

Human rights research has demonstrated that the biggest obstacles to girls' education lie beyond the education sector. Indeed, those most frequently identified by governments in their reports under human rights treaties are early marriage, pregnancy and unpaid household work (Tomasevski, 2002).

As the respective governments themselves have reported, in Gabon ‘children aged 10 could be married’ (CRC, 2001a: para. 71), although the legally set minimum age is 15. In Eritrea, the minimum age for marriage is 18 but ‘girls are often betrothed between the ages of 8 and 14’ (CRC, 2002: para. 70). Tanzania has stated that ‘Islamic law in Zanzibar seems to recognise the possibility that girl children may be married before they reach puberty and without their consent’ (CRC, 2000a: para. 161). In Niger, girls are married at puberty, as young as nine (CRC, 2001b: para. 18). A similar situation has been described by Mozambique (CRC, 2001c: para. 69).

Rural communities usually consider that a girl is no longer a child when she has her first menstruation. This is when initiation rites take place or are concluded and she is ready for married life. Some rural communities practise initiation rites on girls even before their first menstruation, sometimes when they are only seven years old.

Through marriage, girls of primary school age not only are precluded from school, but also lose their rights as children. Child marriage transforms a school girl into an adult, even if she is only seven years old. As the Committee on the Rights of the Child noted regarding Madagascar, married girls are ‘considered as adults and therefore no longer eligible’ to enjoy the rights they should have as children, including the right to education (CRC, 1996a: para. 235). Cutting off girls’ education so early deprives them of adolescence and burdens them with adult responsibilities long before they are able to cope. The child rights rationale requires prolonging the rights of the child to the age of 18. Applied in education, this would alter not only the practice but also the very design of education strategies.

4. Opposing legalised discrimination against girls

The process of change does not always head in the direction of raising the minimum age for marriage. Yemen has exemplified this by lowering the age from 18 to 15 so that the age is the same for boys and girls: ‘The minimum age of maturity for men [is set] at 10 years, on the attainment of puberty, and for women at 9 years, also on the attainment of puberty’ (CRC, 1998: para. 6). In the Democratic Republic of Congo, ‘the marriageable age has been reduced from 16 to under 14 years’ (CRC, 2000: paras 69 and 81).

As well as a marriage age which can be much too low, a comparison of domestic laws reveals that legalised discrimination continues in many parts of the world. Table 2 highlights how often the minimum age for marriage is lower for girls than for boys.

Table 2: Minimum ages for marriage for girls and boys

Americas	Asia	Western and other
Argentina 16/18	Armenia 17/18	Austria 15/18
Bolivia 14/16	Cambodia 18/20	Japan 16/18
Chile 12/14	China 20/22	Liechtenstein 18/20
Guatemala 14/16	Indonesia 16/19	Luxembourg 16/18
Mexico 14/16	Korea 16/18	Moldova 14/16
Nicaragua 14/15	Kyrgyzstan 17/18	Monaco 15/18
Suriname 13/15	Turkey 14/15	Poland 16/18
	Uzbekistan 16/17	Romania 15/18
	Vietnam 18/20	

Note: In a slowly increasing number of countries there is no difference in the minimum age for marriage.
Source: Melchiorre (2004).

The discriminatory practice of setting a lower minimum age for marriage for girls than for boys demonstrates that a global consensus, necessary for the elimination of child marriage, has yet to be attained. The wording of two pertinent human rights treaties nudges governments to prohibit and eliminate child marriage. However, the Convention on the Elimination on All Forms of Discrimination against Women (CEDAW) has been accompanied by reservations regarding the continuation of religious and customary laws, especially with respect to marriage and family (Tomasevski, 1999: 16 and 37). The Convention on the Rights of the Child (CRC) has triggered similar reservations regarding laws and practices that legitimise girls being married when they should be at school (Tomasevski, 1995: 275-81). Peer pressure has proved to be an effective way of translating human rights law into practice. This is comprised of governmental objections to such reservations as incompatible with global human rights standards, and of assistance in removing obstacles which impede change.

The Committee on the Rights of the Child constantly reminds governments of the necessity to bestow equal rights upon girls. For India, it has noted that ‘religion-based personal status laws perpetuate gender inequality in areas such as marriage’ (CRC, 2000c: para. 64). In Bangladesh, the statutory minimum age of marriage set at 18 does not apply to the majority of the population. Official statistics record 10 as the minimum age for marriage: ‘5 per cent of 10-14-year olds and 48 per cent of 15-19-year olds are currently married’ (CRC, 2001d: paras 208 and 222).

5. Education of child mothers for the sake of the rights of both children

The Charter on the Rights and Welfare of the African Child requires states to ensure that girls who become mothers before completing their primary education ‘have an opportunity to continue with their education on the basis of their individual ability’ (Organization of African Unity, 1990: Article 11(6)). Translating this obligation into practice necessitates enforcing the right to education of pregnant girls and child-mothers. The Supreme Court of Colombia has confirmed that there should be an alteration of school regulations which envisaged penalisation of pregnancy by suspension from education. The Court has found that ‘the conversion of pregnancy - through school regulations – into a grounds for punishment violates fundamental rights to equality, privacy, free development of personality, and to education’.⁴ The Committee on the Rights of the Child has formulated its view on the expulsion of pregnant schoolchildren by using Lesotho as the case in point: ‘such action is not only discriminatory against girls but also a violation of the right to education’ (CRC, 2001e: para. 53).

Change is neither fast nor easy, and therefore requires governmental prioritisation. There are frequent clashes between societal norms, which pressurise girls into early pregnancy, and legal norms, which aim to keep them in school. In Malawi, ‘girls are encouraged to marry early and ridiculed if they continue with their education’ (CRC, 2001f: para. 66). Parents, teachers and community leaders tend to support the expulsion of pregnant girls from school, rationalising this choice by stating the need to uphold moral norms that prohibit teenage sex; pregnancy is treated as irrefutable proof that this norm has been breached. Adult men, including teachers, who seem to be responsible for most teenage pregnancies have remained beyond the remit of punishment. Societal norms are not automatically changed through the adoption of international or domestic guarantees of equal rights for girls, nor are they altered through democratic decision-making, in which girls would not have a voice in any case. Law provides a powerful lever for change.

The law, however, cannot supplant the resources that are needed to eliminate discrimination against girls exacerbated by poverty. Indeed, poverty is closely associated with adolescent childbearing: ‘In Indonesia, the Philippines and Viet Nam, the poorest adolescents are nearly seven times as likely to have children as their better-off counterparts.’ (UNFPA, 2002: 37.) Donor priorities can transform girls’ right to education from rhetoric into reality, supporting the elimination of financial obstacles so that all girls – no matter how poor – can complete their schooling.

6. Eliminating gender discrimination through investment in prolonged girls’ education

Research into the effects of education on poverty reduction has demonstrated the importance of continuing with secondary education, as opposed to just completing primary education. Moreover, without secondary and university education there will be a lack of teachers, meaning primary education is doomed to extinction. For girls in many countries, the problem of a shortage of female teachers is not the only issue here. Similar research findings show that secondary education helps to eliminate child marriage and/or early childbearing. Education statistically decreases fertility levels when it is at least seven years long (UN, 1995; Singh and Samara, 1996: 153).

The length of schooling is, of course, only one component; the content of education is crucially important. A statement by the government of Laos, whereby ‘women’s duties include bringing up children, as well as other household duties’ (CRC, 1996b: para. 74) illustrates continued resistance to changing gender roles. Governments should take the lead here, because parental investment in a daughter’s education may be negatively influenced by custom. In Bangladesh, ‘marriage of a female child often entails a considerable financial burden on the parents, and it is often perceived that investments made in the education of the girl child may not benefit her own family but the family of her husband and in-laws’ (CRC, 1995: para. 52).

Education is not financially self-sustaining, especially basic schooling for the poor. Hence, it has been made into governmental responsibility. What girls can do with their education later determines whether such education will prove to have been financially sustainable. Moreover, education influences private choices made by the parents and the girls themselves. If women cannot be employed or self-employed, own land, open a bank account, or get a bank loan, if they are denied freedom to marry or not to marry, if they are deprived of political representation, education alone will have little effect on their lives. All other human rights – or the lack thereof – profoundly affect education.

The right to education has been shown to act as a corrective to the free market, with a growing acceptance of the necessity for government intervention. The importance of free public education for girls has been summarised by the government of Lebanon thus (CRC, 2000: para. 209):

It is worth pointing out that there is a connection between the preponderance of females over males in free education, as females outnumber males in State education in particular (and most of them are from low-income families). By contrast, there is a higher ratio of males to females in private fee-paying education (and the proportion of those from middle- and high-income families is appreciably higher than is the case in State education). This suggests that males take preference over females when the family has to pay fees to educate their children. The high cost of education and the diminishing role of the State school may therefore result in the practice of discrimination against females, as well as breaches of the

principle of equal educational opportunities for both sexes.

The unwillingness of parents to send their daughters to primary school has often been traced to the absence of an economic rationale for investing in their daughters' education. Parental motivations for sending children to school can be undermined by 'a double loss: first they cannot participate in farming and herding and thus contribute to subsistence, and, second, they might be able to get a job after school but would be unwilling to accept farming again' (Hagberg, 2000: 38). This has also been noted by the parents in Burundi: 'Since girls cannot get jobs if they have only primary education, parents ask: why pay for them to sit six years in classroom, when they could be at home working?' (Jackson, 2000: 29). Similarly, research in South America has confirmed that, in rural areas, 'a sizeable proportion of parents perceive education as irrelevant to their children's future and thus prefer that they work' (Salazar et al., 1998: 148). Such obstacles to parental motivations do not disappear spontaneously with growing wealth, as Saudi Arabia illustrates: 'Is there any logical justification for spending huge amounts of money on women's education when thousands of female graduates face the prospect of either remaining at home or entering a single profession, girls' education, which is already overcrowded?' (Al-Rashid, 1999).

Human rights provide helpful guidance, requiring examination of the entire legal status of girls and women in society, as well as the sources of law which determine it. In many countries, interpersonal relations between individuals, and within families and communities, are governed by religious law or societal custom. In duty-based societies, communitarian values take precedence over realisation of individual rights. Hence, a broad range of factors, and their confluence, shape the effects and impacts of educational strategies. Inconsistencies among education laws, and laws regulating family status and women's economic and labour status, impede effective and self-sustaining change (UN, 1997: 42). Human rights mainstreaming makes a huge difference. It brings all the rights of all girls and women to bear on the way that education is designed and practised. The economic rights of girls and women, in particular, influence the effectiveness of education in poverty reduction.

7. Summary

Rights-based education necessitates moving equal rights of girls and women from the margins to the core of education strategies. The reason for this is that education operates as multiplier, enhancing the enjoyment of all rights and freedoms where the right to education is effectively guaranteed, as opposed to depriving people – especially girls and women – of the enjoyment of many – if not all – rights and freedoms where the right to education is violated.

The ultimate goal is ambitious. Increasing the quantity of education for increased numbers of girls and women does not necessarily have a positive impact on equality. Rather, the impact can be negative if the girls are taught about their own unworthiness, if they are precluded from applying their education to enhancing their political or economic rights and their freedom from forced or child marriage (Tomasevski, 2001). Rights-based education necessitates adjustment of the purpose and content of education to the equal rights of girls and women, no less than translating human rights into educational strategy and practice, and moving beyond equal access to education and equality in education, to education for equality.

Endnotes

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- 1 The Education for All (EFA) strategy includes a commitment to eliminating gender disparities in primary and secondary education by 2005 and achieving gender equality in education by 2015 (World Education Forum, 2000). This commitment has been reinforced through its adoption as one of the Millennium Development Goals. For an overview of all globally agreed targets regarding gender equality, see UNIFEM (2003: 4-5).
- 2 Criminal case No. 322 of 2003 at the Primary Court in Morogoro Region, Tanzania.
- 3 Summarised results of the research project, entitled *Portrayal of Women in Croatian Textbooks*, carried out by a team led by Branislava Baranovic of the Institute for Social Research, are available on the website of women's human rights group B.a.B.e. (Be active, Be emancipated) at <http://members.tripod.com/~CRWOWOMEN/augustoo.htm>.
- 4 Crisanto Arcangel Martinez Martinez y Maria Eglina Suarez Robayo v. Colegio Ciudad de Cali. No. T-177814, 11, Corte Constitucional de Colombia (November 1998).

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