

President of the General Assembly’s High-level Event on “Contributions of Human Rights and the Rule of Law in the post-2015 Development Agenda”

Panel Discussion: 1 “Exploring the contributions of human rights and the rule of law in supporting national and international efforts towards poverty eradication and sustainable development”, 10 June 2014

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Thank you Madame Chair, Excellencies, esteemed panelists and delegates-

My organization the Center for Economic and Social Rights, has worked at the borderlands between human rights and human development for over two decades, and as co-convener of the broad-based Post-2015 Human Rights Caucus from all regions across constituencies, we come to you today with one clear message.

Human rights, including the right to development, **can** and **must** have real operational significance in guiding sustainable development policy and practice this time around.

Let me start briefly with the why.

Besides being standing legal obligations states voluntarily agreed to, human rights **provide value in improving outcomes, tackling inequalities and addressing structural impediments to sustainable development.**

Improving outcomes by transforming the asymmetrical relationships of power that keep people poor, by converting passive ‘beneficiaries’ of development into active rights-holders and drivers of their own destiny; recasting transparency, meaningful participation and public scrutiny of the development process as basic legal imperatives throughout the policy cycle--allowing for course-correction, strengthened accountability and placing the burden of proof on those in power to justify their decisions.

Tackling inequalities of all kinds by an unrepentant focus on the most disadvantaged and deprived in society, rather than the general (aggregate) welfare alone. Human rights instruments provide a sort of a charter for combating ***inequality*** and discrimination on various grounds— a normative cornerstone for our efforts to “leave no one behind” in this age of extreme inequality. Mechanisms for enforcing these instruments meanwhile — from Constitutional courts to people’s budgets to UN Special Rapporteurs—are used daily by disadvantaged communities in countless contexts to fight back against discrimination, and to actively include themselves in societies and economies they would otherwise be expelled from.

Addressing the structural impediments to sustainable development by demanding more democratic and equitable relationships between actors at the international level through human rights-based global governance. With the intense interdependence of today’s global economy, some particularly powerful public and private institutions enjoy inordinate, if not illegitimate, say over the structural conditions for sustainable development. Human rights including the right to development can provide critical checks and balances against the misuse of public and private power trans-nationally, partly by more clearly delineating the common but differentiated duties (and responsibilities) of all development actors across the environmental, economic and social pillars of sustainable development.

Indeed, imagine the counterfactual: human rights-free development, characterized by widespread discrimination and displacement, workers' abuse, increasing inequality and impoverishment, uninformed and authoritarian decision-making by and for those who enjoy the privilege of power. This is what passed for development for too long. It is neither inclusive nor sustainable. And it is the reason why so many civil society voices—and indeed many governments—continue to call resoundingly for the future development framework to be anchored in human rights.

So, the question, in our view, is not *what* human rights can contribute to the post-2015 sustainable development framework and *why*. The question is, in fact, *how* the post-2015 framework and its program of action can be designed to reflect and reinforce existing human rights norms.

I'd like to suggest three key ways in which the post-2015 framework can contribute to human rights-centered sustainable development – in the way the goals are designed, in the means of financing the Goals, and in the infrastructure put into place to ensure accountability of all actors in sustainable development.

First, **human rights can guide how the sustainable development goals, targets and indicators are set.** As the Post-2015 Human Rights Caucus, we are releasing today a new Litmus Test tool. This provides a set of 8 basic questions and more detailed assessment criteria enabling all those involved in the design of the SDGs to more objectively assess whether the proposed post-2015 goals, targets and indicators respect and reflect pre-existing human rights legal standards, including obligations of both a domestic and an international or global nature.

The test aim to assess whether the post-2015 proposals support human rights comprehensively, taking into consideration the *universality* and *mutual interdependence* of economic, social and cultural rights on the one hand, and civil and political rights on the other, in particular the freedoms of expression, association, peaceful protest, political

participation, and guarantees for an enabling environment for civil society and human rights and environmental defenders.

The Test also inquires whether proposals stimulate *full transparency and meaningful participation of all people* without fear in the design, implementation and monitoring of all relevant policies and programs, from local to the global.

We would also need to assess whether goals, targets and indicators as designed ensure *human rights accountability of all development actors*, including the private sector. This would involve provisions on the right to effective remedy at the national level, as well as internationally when state policies and practices have adverse spillover effects across borders. It would also involve mandating independent assessments and periodic public reporting of the human rights and sustainable development impacts by large businesses.

The Litmus Test also asks whether proposals effectively combat inequality and discrimination in all its forms, prioritizing a more ambitious rate of progress for those most disadvantaged groups, and including specific commitments to combat economic inequality within and between countries by protecting fundamental worker's rights, for example, and tackling cross-border tax evasion and other tax and financial abuses.

The degree to which SDG proposals specifically and comprehensively support the human rights of women and girls is also a key criterion. This entails amongst other things including access to sexual and reproductive health services, the prevention of gender-based violence, women's control over productive and natural resources, and reductions in women and girl's burdens of unpaid care work.

In line with governments' immediate duty to ensure the minimum essential levels of economic, social and cultural rights, the Litmus Test also provides a tool to evaluate whether current proposals secure a minimum floor of socioeconomic wellbeing to all, in particular by guaranteeing a quality social protection floor for all, in line with human rights norms and ILO recommendation 202.

Lastly, and as important as all the others, the key question is posed whether post-2015 proposals ensure that any global partnerships for development are aligned with human rights duties of an international nature. This would require amongst other things that human rights-guided policy coherence is ensured, with governments and international financial institutions mandated to conduct independent and periodic public assessments of the human rights and sustainable development impacts of their policies and agreements. Logically, clear, time-bound commitments for all actors in development would also need to be delineated, including by high-income countries, international institutions and large businesses, unlike the MDGs.

And this provides a great segway into the question of how human rights can fruitfully inform the means of implementing the SDGs. We know that a perfect set of post-2015 commitments are just ink on parchment without effective means of implementation—in particular whether the financing strategy is robust and fair, and whether the accountability framework is credible and just. Human rights can usefully support both.

Human rights offer a critical tool for improving how these new goals can be paid for. It is hard to see how an ambitious and transformative set of renewed goals will be realized without putting in place a financing strategy to ensure the sufficiency, the equality and the accountability of resources for sustainable development. Human rights can boost these three fundamental conditions of an effective sustainable development financing strategy.

Starting with *sufficiency*, governments have a legal duty to mobilize the maximum of available resources for human rights—individually and through international cooperation. In our recent study with Christian Aid, ‘A Post-2015 Fiscal Revolution,’ we found that a range of complementary domestic and global fiscal commitments—all buttressed by governments’ human rights duties—could together unleash at least US\$1.5 trillion per year in additional, stable and predictable public funding for sustainable development,

reducing the scramble for private financing without threatening other macroeconomic imperatives or pushing costs onto the general public.

The distributive impacts of how resources are raised and spent are as critical as the amount raised, and so the *equality* of resourcing is thus a second dimension of an effective financing strategy. Human rights law obliges governments to conduct tax and fiscal policies in ways which effectively alleviate the tax burden on the poorest, and progressively increase the low levels of income, capacities and access to essential services which prevent the full realization of human rights of disadvantaged groups. So, concrete steps to more fairly distribute the burdens and the benefits of resourcing sustainable development would have significant value in reducing corrosive levels of socio-economic inequality in all countries.

At the heart of all of these fiscal challenges lie stark imbalances of power in decision-making over how resources are raised and spent which cannot be left unaddressed. *Accountable* financing of sustainable development—the third condition for an effective financing strategy—requires the highest standards of transparency, participation and public and judicial oversight of tax and fiscal policy-making in domestic and global spheres—all of which can be significantly bolstered by existing human rights instruments and institutions.

The third and final point is really the lynchpin of them all. **Human rights (and in fact the rule of international human rights law) can greatly improve the means by which all development actors are held to account for their sustainable development performance.** As evidenced in our publication with the OHCHR last year, “Who’ll Be Accountable?” success or failure in the design of effective accountability mechanisms for the post-2015 development framework will mark the difference between real transformation and yet another set of unfulfilled promises.

Rather than one single new silver-bullet accountability mechanism, we at CESR are proposing a systems-approach, or web of sustainable development accountability where failures in one place are communicated throughout. At present sadly, the development accountability framework still suffers from tremendous fissures and silos between mechanisms, each with their own specific functions and communities but unable to meaningfully engage with others. We need more constructive interaction between different mechanisms at different levels, accounting for the conduct of different actors (states, international institutions and the private sector), providing different functions (monitoring, reviewing and providing remedies), as well as potentially focusing on different sectoral goals (such as health, water and sanitation). One place to start could be at the international level where the accountability gaps are arguably greatest. Benefitting from their respective and in many ways complementary mandates, constructive interaction between the international human rights protection regime (UPR, treaty bodies, Special Rapporteurs, etc.) and the SDG accountability mechanisms (in particular the HLPF) could drive improved accountability. The treaty bodies for example are already monitoring and producing recommendations on governments' extraterritorial conduct, an incredibly rich source of norms and jurisprudence the HLPF could benefit from, and leverage its mandate to strengthen the political will to live up to these recommendations.

Conclusion: Incentivizing SDG achievement through human rights

To conclude, framing the new sustainable development commitments in line with human rights obligations, re-envisioning how these commitments are financed, and bringing the mechanisms of human rights enforcement to bear in boosting performance are surely among the most powerful ways to incentivize the achievement of sustainable development, before it's too late.

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