



Social Protection and the Millennium Development Goals: Towards a Human Rights-based Approach

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Social protection has become a centre piece for development, because it is an indispensable ingredient for empowering people to participate in society in all its dimensions – social, political, economic and cultural. This is the basic idea behind the Social Protection Floor (SPF) that is defined as guarantees that secure the availability and provision of and access to an essential level of quality social protection and services to all (UNDP-ILO, 2010). On the supply side, this includes availability of quality health services, education services, water, sanitation, housing and food. On the demand side, people are empowered to access these services through rights-based entitlements to in-kind or cash transfers.

The adoption of the Millennium Development Goals (MDGs) marks the first time in history that the world community has accepted to be accountable for the achievement of objectives that can be measured with a series of outcome indicators. The MDGs can be considered a first “claim” of the poor towards global society and a first component of a global social contract. This claim is legitimate and feasible, because the global economy produces huge benefits, which are distributed very unequally. The social dimension of globalization requires that everyone is entitled to some of the benefits produced (ILO, 2004). Social justice plays a role here, but also political realism. The monitoring and evaluation of MDGs has unleashed commitment and energy, in particular in low- and middle-income countries.

The human rights approach reinforces this aspect of claims and entitlements, which needs to be developed further and operationalized. Almost all countries in the world have ratified the basic human rights treaties, including civil and political, as well as economic, social and cultural rights. While in earlier years the emphasis was on civil and political rights, there is now increasing awareness that the human rights approach can also be implemented for economic, social and cultural rights.

This paper is an attempt to outline the possible implications of a rights-based approach to social protection and the MDGs in general. It will start with some remarks on the role of social protection and human rights in a new global social contract. It will then give some examples as to how the rights-based approach can be operationalized – for the four main human rights principles and using structural, process and output indicators. The third section will show how this approach can help in better attaining the MDGs before 2015, and how it could help defining the approach towards MDGs after 2015. In addition, it will point out the potential role of the UN Human Rights Council in monitoring MDGs in the future. The paper will end with some concluding remarks.

1. Social protection and human rights in a new global social contract

Social protection – as defined in the SPF - provides the basis for citizen empowerment, in that it strengthens the capacity of workers and citizens to participate in economic, social, political and cultural life. Social protection is particularly important for vulnerable people who have little or no access to services and transfers that boost their empowerment. Social protection is not just a residual safety net, but it is one of the building blocks for a peaceful society in which economic and social development can flourish. It can also contribute over the longer run to more just and equitable social outcomes.

John Rawls (1972) is one of the great contemporary philosophers on the question of a just society. His theory of justice starts from what he calls the “original position”, which is characterized by the “veil of ignorance”. For people to make the necessary decisions to arrive at a just social contract, each person must select rules to live by without knowing whether s/he would be prosperous or destitute in the society governed by the rules s/he chose. In other words, societies are just when they bring the best long-term outcomes for the weakest in society. And this means that social and economic inequalities are just only to the extent that they serve to promote the well-being of the least advantaged.

Sen (1999) has expanded this theory by giving more attention to freedoms and capabilities. For Sen the just society provides all people with the capabilities to be free actors who with adequate social opportunities can effectively shape their own destiny and help each other. Freedom of different kinds can strengthen one another. Political freedom (in the form of free speech and elections) helps to promote economic security. Social opportunities (in the form of education and health facilities) facilitate economic participation. Economic facilities (in the form of opportunities for participation in trade and production) can help generate personal abundance as well as public resources for social facilities. In order to achieve this all, there is need for democracy, but he points out that it is also crucial to safeguard the conditions and circumstances that ensure the range and reach of the democratic process. In other words, the achievement of social justice depends not only on institutional forms (including democratic rules and regulations), but also on effective practice of democracy.

Human rights are “basic moral guarantees that people in all countries and cultures allegedly have simply because they are people” (Fagan, 2006). These are global values that go beyond considerations of strict national sovereignty. Calling these guarantees “rights” means that each individuals can invoke them, that they are of high priority, and that compliance with them is mandatory rather than discretionary. Even though almost all countries in the world have ratified the seven basic human rights treaties, in many countries the development of moral rights has not yet been concretized as legal rights in national legislation. In such a situation the reference to human rights is often used in social struggles of oppressed classes or vulnerable groups to obtain justice, as is for example brought out in the social theory of human rights by Baxi (2005). However, when human rights, and in particular economic and social rights, are recognized as a legal right they become claimable and operational.

The rights granted under the human rights instruments do, in principle, cover the whole population. These rights can be divided into two main categories, according to the nature of the legal obligation they generate, i.e. an obligation of conduct and an obligation of result. Depending on the level of economic development the International Covenant of Economic, Social and Cultural Rights (ICESCR) allows countries the “progressive realization” of the rights conferred by the Covenant (the obligation of conduct), but they cannot use this article 2 as a pretext for non-compliance. Member States have therefore some flexibility in the way they can implement the provisions of the Covenant, but it does impose a strict obligation of the gradual realization of the respective rights. In addition, every State party to the Covenant has a basic obligation to ensure a minimum level of enjoyment of every

right. According to the Commission on the Economic, Social and Cultural Rights, the minimum core content of each right constitutes a floor below which conditions should not be permitted to fall in any State party.

Social protection programmes are tools that can assist States in fulfilling their obligations under international human rights law, such as with regard to the right to an adequate standard of living, including food, clothing and housing and the right to social security. They may also facilitate the realization of many other rights, such as the right to education and the right to the highest attainable standard of health, as well as the right to take part in the conduct of public affairs. These legally binding obligations refer to the final outcome as well as to the process that is used. Social protection programmes should therefore not only increase the enjoyment of key human rights by their beneficiaries, but also avoid any violation of human rights in their implementation (Sepúlveda, 2011).

The underlying structural, social and political drivers of poverty, vulnerability and inequality have to be addressed in the context of a broad development strategy, in which social protection plays an important part. Social protection, such as cash transfers, can have an important direct impact on the reduction of poverty. However, the impact of such transfers on inequality may depend on the way these transfers are financed – by progressive income and wealth taxes or by more regressive taxes on products and services. On the other hand, by providing the equal distribution of basic capabilities for all to participate in society social protection can set the stage for policies that promote equality and fair distribution. Finally, it can contribute to key societal goals, such as employment, health and durable development – through appropriate design and implementation of social protection policies and programmes.

2. Operationalizing the rights-based approach

While the State is the principal duty-bearer with respect to the human rights of the people living within its jurisdiction, all major social, economic, political and cultural groups in society have a shared responsibility for the achievement of human rights enjoyments for everyone. The international community at large also has a responsibility to help realize universal human rights. Thus, monitoring and accountability procedures should extend to global actors—such as the donor community; intergovernmental organizations, such as the United Nations and various regional organizations; as well as donors, international NGOs; and transnational corporations (TNCs) — all of whose actions affect the enjoyment of human rights in any country (van Ginneken, 2010).

In order to operationalize the rights-based approach it is necessary to develop a conceptual framework that is aimed at measuring the accountability of the various actors in realizing human rights. Part of this framework consists of the four main human rights principles that need to be respected in the implementation of all human rights (subsection 2.1). Moreover, there is the need to define for each right a few characteristics and a corresponding configuration of structural, process and outcome indicators. The structural and process indicators measure the effort of duty-bearers to achieve the outcome indicator – which is the enjoyment of human rights (see

subsection 2.2). Subsection 2.3 illustrates the application of this framework to the right of social security.

2.1 Four main human rights principles

When designing, implementing, monitoring and evaluating social protection (and other development) programmes States must ensure compliance of four main human rights principles (Sepúlveda, 2011), including (a) equality and non-discrimination; (b) participation, (c) transparency and access to information and (d) accountability.

Respecting the principle of equality and non-discrimination means first of all that nobody should be unfairly excluded. Targeted schemes can be accepted as a form of prioritization of the most vulnerable and disadvantaged groups within a longer-term strategy of progressively ensuring universal protection. Two issues are of particular relevance here: (i) that exclusion errors are minimized; and (ii) that failure to comply with conditionalities or co-responsibilities is not used for punishing the beneficiaries, but to provide them with services that correspond with their needs.

Implementing the principle of equality and non-discrimination also means that all services and benefits are accessible and available – geographically and financially. There are many specific obstacles to the accessibility of services - related to the conditions of particular groups, such as old people, persons with disabilities and women. Finally, States must remove administrative barriers that prevent people from accessing social protection, such as requiring identification documents for registration when such documents are costly or may not exist when many people are not registered a birth.

The participation of people from vulnerable groups in legislation, policies and programmes that affect them, is a key condition for successful social protection programmes. This participation can create a better understanding with professionals and institutions, and therefore make these programmes more effective. The ultimate stage of the participation process is the monitoring and assessment of the success or failure of these strategies and policies so that the State and other duty-bearers can be held accountable for their obligations. This process should be an on-going cycle so that the solutions that are proposed and put in place can be constantly evaluated with those whom they are designed to benefit. Appropriate institutional arrangements are needed for such participation to be possible (van Ginneken, 2010).

Transparency and access to information are essential elements of accountability. States must implement programmes in a manner that allows individuals to easily recognize and understand (a) the eligibility criteria, (b) the specific benefits they will receive, and (c) the existence and nature of complaints and redress mechanisms. When accountability and redress mechanisms are in place social protection programmes are more likely to be understood in terms of entitlements and rights and to avoid stigma.

2.2 Structural, process and output indicators

To make human rights policies operational, it is necessary to define indicators that can measure the realization of human rights. Many human rights indicators are

standard indicators of socio-economic progress, but some - especially those relating to civil and political rights - do not usually figure in measures of socio-economic progress. Essentially, what distinguishes a human rights indicator from a standard disaggregated indicator of socio-economic progress is less its substance than (a) its explicit derivation from a human rights norm and (b) the purpose to which it is put, namely human rights monitoring with a view to holding duty-bearers to account.

The Office of the High Commissioner for Human Rights has started to develop a set of human rights indicators (OHCHR, 2008). The first task is to translate the narrative on the normative content of human rights (based on related provisions of international human rights instruments and general comments by treaty bodies) into a few (4-5) characteristic attributes. Moreover, there is a need for a conceptual framework, which explains the impact of the various input indicators on the eventual outcome – the enjoyment of human rights. For example, the right to housing (see table 1) can be subdivided into four operational attributes, i.e. habitability, accessibility to services, housing affordability and security of tenure. “Structural” indicators measure the commitment of the State (the main duty bearer) towards realizing human rights, such as through ratification of international instruments and inclusion in national legislation, as well as through the adoption of national policies and corresponding time frame. “Process” indicators measure the efforts and resources that the duty bearer uses to achieve the enjoyment of human rights, which is measured by “outcome” indicators. By identifying a process indicator as a measure that links a State’s effort to a specific “policy action – milestone relationship”, the framework makes it possible to measure and enhance a State’s accountability in implementing human rights.

Because of the indivisibility and interaction between rights and their attributes, the “outcome” indicator for one right could be the “process” indicator for another right. For example, access to drinkable water and sanitation is an “outcome” indicator for “accessibility of services” (one of the four attributes of the right to adequate housing), whereas it is a “process” indicator for the “natural and occupational environment” attribute of the right to health (the outcome of which is measured in terms of “prevalence of deaths, injuries, diseases and disabilities caused by unsafe natural and occupational environments”).

2.3 The example of the right to social security

The right to social security is fundamental to the realization of social protection for all. The four characteristic attributes for the right to social security are: “income security for workers”, “affordable access to health services”, “support for families, children and dependent adults” and “social assistance schemes” (table 2). While the characteristic attributes shown in table 1 have universal application, this is generally less so for the structural, process and outcome indicators presented in table 2.

The structural indicators in table 2 have a universal aspect, because they are generally part of national and international legislation. However, the way the right to social security is included in that legislation will be particular to the country concerned. The process indicators also have a universal aspect, but much depends on the level of economic and social development, as to how much inputs and resources

are needed to achieve universal coverage and at what level of benefits. Finally, the outcome indicators are generally country-specific. The definition of the national poverty line for example depends on the level of the country's economic developments and its social priorities.

3. The human rights-based approach towards MDGs before and after 2015

The MDGs are time-bound development targets that address many dimensions of poverty, such as hunger, disease, inadequate water supplies and lack of education. These targets are similar to human rights indicators, and this section will therefore examine how a rights-based approach could help in better achieving MDGs before and after 2015 (van Ginneken, 2009). This section will also examine the potential role of the UN Human Rights Council in monitoring MDGs.

3.1 The situation before 2015

By the year 2010, there had been good progress with regard to a number of MDGs. The objective of halving the number of people living in extreme income poverty between 1990 and 2015 is likely to be achieved, mainly through the good results in China and South Asia. The Millennium Goals Report (United Nations, 2010a) also mentions big gains in getting children into primary schools in many low-income countries particularly in sub-Saharan Africa, as well as strong interventions in addressing AIDS, malaria and child health and a good chance to reach the target for clean drinking water. But it also mentions that a variety of disadvantages that hurt the poorest, those living in remote areas or with a disability, or due to ethnicity of gender, has sapped progress on many other fronts.

The MDG agenda has been criticized from a human rights point of view, for example for not sufficiently focusing on the poorest of the poor. MDG target 1 focuses on halving extreme poverty, while from a human rights point view, any person who lives in extreme poverty represents a violation of human rights. Another criticism refers to the absence of social security and social protection in the MDG targets (ILO, 2010; and Langford, 2010). Moreover, a number of MDG targets are not consistent with human rights and potentially diminish gains enshrined in international human rights treaties. For example, MDG target 2 ignores the crucial requirement of free primary education, which is an immediate obligation in international human rights treaties, and which cannot be postponed to 2015. Other concerns include the lack of effective accountability mechanisms for the MDGs, particularly for donor countries (United Nations, 2008).

Never-the-less, the content of MDGs partly resembles some economic and social rights, and both provide tools to hold Governments accountable. They can also reinforce each other, since MDGs potentially provide benchmarks for economic and social rights. In addition, human rights strategies can offer enhanced legitimacy, equity and sustainability to the types of policies needed to achieve the MDGs. As noted by Alston (2003), the breadth of the economic and social rights is enormous, but the specificity of the MDGs, backed up by indicators that can measure accountability, makes them a most relevant tool. This fits in with Vandemoortele's

comment (2011) that after 2015 the MDGs should continue to focus on a limited number of targets that measure development outcomes.

3.2 Perspectives for after 2015

There are various advantages to defining the MDGs for the period after 2015 in the context of a human rights framework. Human rights cover many dimensions of society – economic, social, political and cultural, and therefore contribute to a holistic approach to eradicating poverty and promoting development (Sepúlveda, 2011). Human rights standards may also assist in building social consensus and mobilize political commitments at the national, regional and international levels. As noted before, the human rights approach also focuses on holding governments, and other actors, accountable for their actions, and by doing so promotes a more efficient use of resources (by promoting access to information and fighting corruption). Lastly, a human rights approach promotes and enhances the empowerment of those living in poverty and makes them visible.

The challenge is therefore to define a limited number of outcome indicators that measure the enjoyment of some key human rights. Among the 60 official MDG indicators about half could be considered outcome indicators, mainly related to targets 1 to 7. Some human rights, such as the right to social security, as well as the four human rights principles (equality, participation, transparency and accountability) also need to be operationalized with outcome indicators. It will then be up to individual States and other actors to develop coherent plans of action that also includes structural and process indicators. In defining the outcome indicators it would be good to make use of the so-called “Guiding Principles on Extreme Poverty and Human Rights”, which are presently being elaborated and are to be adopted in 2012 (United Nations, 2010b).

In my view, the international political context for the adoption of the next (and probably last) round of MDGs is changing. One factor is that many previously low-income countries have become middle-income countries which have the resources to achieve the realization of MDGs through a human rights approach. And many presently low-income countries will be able to achieve that over a period of 10-15 years after 2015. The new global contract would then consist of the promise by high-income countries to provide progressively diminishing financial support, and by middle-income countries to provide technical advice, for the realization of the MDGs - on the understanding that by 2025 or 2030 all presently low-income countries would be able to finance, manage and achieve the realization of the new round of MDGs. At the same time, this process could be supported in coordination with other new global contracts on trade, migration and the environment.

3.3 The potential role of the UN Human Rights Council

Monitoring and accountability require development outcome indicators, but also indicators that individuals or groups of individuals can use to claim their basic human rights, in particular economic and social rights. As noted before, for this purpose we have to define precisely the various attributes of these rights and the circumstances and time horizon according to which these rights can be claimed and realized. Moreover, the question of “justiciability” comes in, i.e. indicators should be

identified that reflect not only the scope and recourse to judicial remedy, but also the potential role of non-judicial (administrative), judicial and quasi-judicial (e.g. national human rights institutions) actors in implementing human rights (OHCHR, 2006).

One step forward in this process has been the adoption in 2008 of the so-called Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR). This Protocol has so far been signed by 35 States, and ratified by three States; 10 ratifications are necessary for the Protocol to be in force. When in force, the Optional Protocol will empower individuals and groups representing them to complain about violations of economic, social and cultural rights. If MDGs were to be formulated and implemented in a human rights framework, this protocol could be used as an extra tool for accountability.

The greatest advantage in having an Optional Protocol is that the Committee on Economic, Social and Cultural Rights (CESCR) can then develop a case law, thus helping to interpret the Covenant and supplementing the work under the State reporting procedure. The Optional Procedure also underlines the position that every single right in the Covenant contains some justiciable elements that are capable of being directly applied (Riedel, 2007). The adoption of the optional protocol also corrects the current imbalance in the international human rights system, whereby individuals can submit complaints about violations of civil and political rights but not of economic, social and cultural rights. Finally, it provides an important forum for victims, and lends support for national, regional and international initiatives, such as MDGs, to improve the implementation of economic, social and cultural rights.

Every country that has ratified the ICESCR has the obligation to provide every five years a report on the realization of these rights. Such a report can have a galvanizing impact on discussions within that country as to how to improve the fulfilment of economic, social and cultural rights. It would also be most useful if this reporting were included in the Universal Periodical Reviews (UPR) in which every member country of the UN Human Rights Council is held to participate every four years. Both reporting procedures could be used for monitoring the implementation of MDGs, if they were to be defined and implemented in a human rights framework.

4. Concluding remarks

This paper has focused on the role of social protection and the MDGs in creating a just new global contract between high-, middle- and low-income countries, as well as between national governments and their citizens. Our global economy has created many benefits which are very unequally distributed both between and within countries. While a variety of aspects of the global economy need to be reformed, such as through the introduction of a financial transaction tax, the social and political sustainability of our global society and economy will need to be supported by a greater emphasis on human rights. A human rights perspective ensures that all inhabitants of our planet will share in the benefits of globalization.

The underlying structural, social and political drivers of poverty, vulnerability and inequality have to be addressed in the context of a broad development strategy, in which social protection plays an important part. By providing the equal distribution

of basic capabilities for all to participate in society social protection can set the stage for policies that promote equality and fair distribution. It can also contribute to key societal goals, such as employment, health and durable development – through appropriate design and implementation of social protection policies and programmes.

Social protection programmes are tools that can help States in fulfilling their obligations under international human rights law, with regard to specific rights, such as to health, social security, housing food and education, but also to the way they realize social protection (and other development) programmes. There are four human rights principles that should guide the design, implementation, monitoring and evaluation of these programmes: (a) equality and non-discrimination; (b) participation, (c) transparency and access to information and (d) accountability.

Respecting the principle of equality and non-discrimination means that nobody should be unfairly excluded. Within a longer-term strategy of progressively ensuring universal coverage, social protection schemes that target the most vulnerable and disadvantaged groups can be accepted under two conditions: (i) that exclusion errors are minimized; and (ii) that failure to comply with conditionalities or co-responsibilities is not used for punishing beneficiaries, but to provide them with services that correspond with their needs. The ultimate stage of the participation process is the monitoring and assessment of the success or failure of social protection strategies and policies so that the State and other duty-bearers can be held accountable for their obligations. Transparency and access to information are essential elements of accountability, which is a key aspect of national and international social contracts. States must implement programmes in a manner that allows individuals to easily recognize and understand (a) the eligibility criteria, (b) the specific benefits they will receive, and (c) the existence and nature of complaints and redress mechanisms. When accountability and redress mechanisms are in place social protection programmes are more likely to be understood in terms of entitlements and rights and to avoid stigma.

For a variety of reasons this paper also pleads for a human rights approach towards achieving the MDGs before and after 2015. The main challenge for the MDGs after 2015 is to continue to define them in terms of a limited number of outcome indicators that measure the enjoyment of some key human rights. Some human rights, such as the right to social security, as well as the four human rights principles (equality, participation, transparency and accountability) also need to be operationalized with outcome indicators. It will then be up to individual States and other actors to develop coherent plans of action. The use of structural and process indicators, which have been examined in this paper, will contribute to making these plans more effective. The new global social contract with regard to MDGs would then consist of the promise by high-income countries to provide progressively diminishing financial support, and by middle-income countries to provide technical advice, for the realization of the MDGs - on the understanding that by 2025 or 2030 all presently low-income countries would be able to finance, manage and achieve the realization of the new round of MDGs. At the same time, this process could be supported in coordination with other new global contracts on trade, migration and the environment.

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TABLE 1: CHARACTERISTIC ATTRIBUTES OF SELECTED ECONOMIC, SOCIAL, CIVIL AND POLITICAL RIGHTS					
<i>Right to</i>	<i>Attribute 1</i>	<i>Attribute 2</i>	<i>Attribute 3</i>	<i>Attribute 4</i>	<i>Attribute 5</i>
<i>Adequate food</i>	Nutrition	Food safety & consumer protection	Food availability	Food accessibility	Child mortality and health care
<i>Health</i>	Sexual & reproductive health	Accessibility to health facilities and essential medicines	Natural & occupational environment	Prevention, treatment & control of diseases	
<i>Education</i>	Universal primary education	Accessibility to secondary and higher education	Curricula and educational resources	Educational opportunity and freedom	
<i>Housing</i>	Habitability	Accessibility to services	Housing affordability	Security of tenure	
<i>Social security</i>	Income security for workers	Affordable access to health care	Support for families, children and dependent adults	Social assistance schemes	
<i>Work</i>	Access to decent and productive work	Just and safe working conditions	Training and skill development	Protection from forced labour and unemployment	
<i>Liberty and security</i>	Effective review by court	Security from crime and abuse by law enforcement officials	Administrative deprivation of liberty	Arrest and detention based on criminal charges	
<i>Participation in public affairs</i>	Universal and equal suffrage	Exercise of legislative, executive and administrative powers	Access to public service positions		

Source: OHCHR (2008)

TABLE 2: LIST OF ILLUSTRATIVE INDICATORS ON THE RIGHT TO SOCIAL SECURITY				
	Income security for workers	Affordable access to health services, including health insurance (HI)	Support for families, children and dependant adults (in cash and in kind)	Social assistance (SA) schemes
Structural	<p>International human rights and ILO treaties relevant to the right to social security ratified by the State.</p> <p>Date of entry into force and coverage of the right to social security in the Constitution or other forms of superior law.</p> <p>Date of entry into force and coverage of domestic laws for implementing the right to social security, including in the event of sickness, old age, unemployment, work injury, maternity, paternity, disability, survivors, health care and family & child support.</p> <p>Time frame and coverage of policy or strategy for universal implementation of right to social security.</p>			
	<p>Proportion of received complaints on the right to social security investigated, adjudicated and acted upon by the government.</p> <p>Proportion of eligible population informed on its entitlements and benefits (in cash and in kind) under the applicable social security schemes.</p>			
Process	<p>Number of workers registered</p> <p>Number of enterprises registered</p> <p>Benefits requested and provided</p> <p>Complaints about benefits</p>	<p>Persons contributing to HI</p> <p>Incidence of co-payments</p> <p>Household expenditure on health services</p> <p>Geographical accessibility</p>	<p>Public expenditure on support measures</p> <p>Percentage of support in household income</p> <p>Accessibility of child care centres</p>	<p>Public expenditure on SA</p> <p>Density of offices providing SA</p> <p>Proportion of SA requests reviewed and met</p>
Outcome	<p>Benefits received</p>	<p>Personal coverage by health insurance schemes</p> <p>Persons with affordable access to health services</p>	<p>Percentage of families receiving support</p>	<p>Percentage of population in specific need situations receiving support for food, housing, health care, education, emergency or relief</p>
	<p>Proportion of individuals below national poverty line before and after social transfers</p>			

Source: adapted from OHCHR (2008)