

HUMAN
RIGHTS
WATCH

Discrimination, Inequality, and Poverty

A Human Rights Perspective



*Submission to “The Heart of the Post-2015 Development Agenda and the Future We Want for All,”
Global Thematic Consultation on Addressing Inequalities, 2012*

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Executive Summary

Despite recognition in the Millennium Declaration of the importance of human rights, equality, and non-discrimination for development, the Millennium Development Goals (MDGs) largely bypassed these key principles. The fundamental human rights guarantees of equality and non-discrimination are legally binding obligations and do not need instrumental justifications. That said there is a growing body of evidence that human rights-based approaches, and these key guarantees in particular, can lead to more sustainable and inclusive development results.¹

Discrimination can both cause poverty and be a hurdle in alleviating poverty. Even in countries where there have been significant gains toward achieving the MDGs, inequalities have grown. The MDGs have supported aggregate progress—often without acknowledging the importance of investing in the most marginalized and excluded, or giving due credit to governments and institutions which do ensure that development benefits these populations. Recognition of this shortcoming in the MDGs has brought an increasing awareness of the importance of working to reverse growing economic inequalities through the post-2015 framework, and a key element of this must be actively working to dismantle discrimination.²

The post-2015 framework should be grounded in a fundamental guarantee of equality and non-discrimination. Under international law, this requires states to identify and eliminate discrimination and ensure equality. This may require legislative or administrative reform to repeal discriminatory provisions or address discriminatory practices by the government or private actors, a change in resource allocation, or educational measures. The post-2015 framework should embody the responsibility of states, when acting together or alone, to take proactive measures to identify and address entrenched discrimination, both direct and indirect. It should embody the responsibility of states, international institutions, and corporations to avoid and remedy discrimination for which they are directly or indirectly

¹ Special Rapporteur on the human right to safe drinking water and sanitation. (2012). Office of the High Commissioner for Human Rights. Retrieved December 14, 2012, from <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx>

² Ortiz, I., Fajth, G., Yablonski, J., & Rabi, A. (2010). Social Protection: Accelerating the MDGs with Equity. UNICEF. Retrieved December 4, 2012, from [http://www.unicef.org/socialpolicy/files/Social_Protection_Accelerating_the_MDGs_with_Equity\(1\).pdf](http://www.unicef.org/socialpolicy/files/Social_Protection_Accelerating_the_MDGs_with_Equity(1).pdf)

responsible. The framework should go some way toward achieving this by including goals, targets, and indicators directed at reducing discrimination and ensuring that the social and economic needs of the most marginalized communities are being addressed fairly, and at reducing wealth inequalities more broadly.

Recommendations

Targets and indicators in the post-2015 framework should be designed to reduce existing inequalities, address entrenched discrimination, and realize the social and economic rights of the most in need while also remaining feasible, affordable, and implementable.

- The post-2015 framework should emphasize the importance of development reaching the most marginalized populations, including indigenous peoples. It can go some way toward achieving this by including:
 - A specific target of addressing the social and economic needs of the most marginalized or discriminated against groups in each country. The framework should establish the methodology for identifying marginalized or disadvantaged groups, but the groups identified would vary country to country.
 - Indicators should look to identify structural discrimination, including consideration of discriminatory laws and discrimination by private actors. Considerations should include whether governments have non-discrimination laws that bind public and private entities (with a definition of discrimination consistent with international human rights law), require public and private institutions to develop non-discrimination action plans, and fully implement such laws and policies.
 - Indicators should measure realization of urgent social and economic needs of the most marginalized populations.
 - Indicators should measure respect of indigenous peoples' rights, including land and cultural rights, and recognize free, prior, and informed consent.
 - Indicators which measure the achievement of each target for the most marginalized or discriminated against groups in each country.
 - In order to achieve this, disaggregated data will be essential. It may not be feasible to disaggregate data by all potential grounds of discrimination.³ At a minimum,

³As much as possible, the post-2015 framework should draw from existing data rather than adding questions to household surveys, as experts have expressed concern about the various problems that are likely to result from adding questions. See,

states and international institutions should collect disaggregate by gender, demographic group (i.e. ethnic background, language, religion), locale (rural/urban/slum household, state/territory), age, and disability.⁴ States and international institutions should also analyze all existing disaggregated data.

- The post-2015 framework should emphasize the importance of development reaching the poorest. It can go some way toward achieving this by including:
 - A specific target of addressing the social and economic needs of the poorest two wealth quintiles in each country.
 - Indicators which measure the achievement of each target by wealth quintiles. This will require the collection of data along wealth quintiles.
 - A specific target on reducing income inequalities within countries, with an emphasis on reducing the gap between the richest and poorest quintiles (20:20 gap) or between the top quintile and the bottom two quintiles (10:40 gap).⁵

Satterthwaite, Margaret. Background Note on MDGs, Non-Discrimination and Indicators in water and sanitation. Retrieved January 8, 2013, from http://www.wssinfo.org/fileadmin/user_upload/resources/END-Background-Paper_1.pdf

Decisions around data collection must be considered within the human rights context of any country. For instance, in countries where there are discriminatory laws against people on the basis of sexual orientation or gender identity, or where people are routinely targeted for their sexual orientation or gender identity, any system of data collection disaggregated on these grounds must not put people at risk.

⁴ The urban/rural classification does not capture the experience of slum dwellers, who are often among the most marginalized or deprived.

⁵ Save the Children. (2012). Born equal: How reducing inequality could give our children a better future. Retrieved from http://www.savethechildren.org.uk/sites/default/files/images/Born_Equal.pdf

Populations at Risk of Discrimination

Human rights advocates have long observed the close link between discrimination and poverty.⁶ While disaggregated data is not available with respect to each marginalized group, recently published data suggests that more than two thirds of extremely poor people in low income countries and lower-middle income countries live in households where the head of household is from an ethnic minority group.⁷ It also tells us that more than three quarters of extremely poor people live in rural areas.⁸ Further, more than 80 percent of people with disabilities live in developing countries, illustrating both the confluence of poverty and disability and the importance of proactively addressing the needs of people with disabilities in development strategies.⁹

Human rights law prohibits discrimination on the basis of a wide range of prohibited grounds. The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) prohibit discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or 'other status.'¹⁰ The ICCPR and ICESCR include further an undertaking to "ensure the equal

⁶ See for example, Human Rights Watch. (2012). "Waiting Here for Death": Forced Displacement and "Villagization" in Ethiopia's Gambella Region. Retrieved from <http://www.hrw.org/reports/2012/01/16/waiting-here-death>; Human Rights Watch (2012). "Will I Get My Dues ... Before I Die?": Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation, and Divorce. Retrieved January 8, 2013, from <http://www.hrw.org/reports/2012/09/17/will-i-get-my-dues-i-die-o>

⁷ Sumner, A. (2012). The New Face of Poverty: How has the Composition of Poverty in Low Income and Lower Middle-Income Countries (excluding China) Changed since the 1990s? Institute of Development Studies, 2012(408). Retrieved January 8, 2013, from <http://www.ids.ac.uk/publication/the-new-face-of-poverty-how-has-the-composition-of-poverty-in-low-income-and-lower-middle-income-countries-excluding-china-changed-since-the-1990s>; Sumner, A. (2012). The New Face of Poverty? Changing Patterns of Education, Health and Nutrition in Low and Lower Middle-Income Countries by Spatial and Social Characteristics of Households, 1998 vs. 2007, IDS Working Paper, table reproduced in ODI, Post-2015: the road ahead. Institute for Development Studies, 6-7. "[T]his finding should be viewed as tentative due to data constraints."

⁸ Sumner, A. (2012). The New Face of Poverty? Changing Patterns of Education, Health and Nutrition in Low and Lower Middle-Income Countries by Spatial and Social Characteristics of Households, 1998 vs. 2007, IDS Working Paper, table reproduced in ODI, Post-2015: the road ahead. Institute for Development Studies, 6-7.

⁹ World Programme of Action Concerning Disabled Persons. (2006). UN Enable. Retrieved December 4, 2012, from <http://www.un.org/esa/socdev/enable/diswpao4.htm>, 4.

¹⁰ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 1 (1948), art. 2; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. res. 2200A(XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, arts. 2-3; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. res. 2200A(XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, arts. 2-3, 26.

right of men and women to the enjoyment of all” rights in their respective covenants.¹¹ Children are to be protected against discrimination on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.¹² These lists are far from exhaustive. Other human rights treaties have since prohibited discrimination on the grounds of marital status,¹³ descent or ethnic origin,¹⁴ disability,¹⁵ nationality,¹⁶ age,¹⁷ and economic position.¹⁸ Treaty bodies have interpreted treaties to prohibit discrimination on the basis of geographical residence, health status, and sexual orientation.¹⁹ Human rights law also protects against discrimination on the basis of gender identity, family status, health status (e.g. HIV status), homelessness, or because they engage in sex work.²⁰

In one of the most comprehensive statements of the meaning of discrimination and state economic, social, and cultural rights obligations, the Committee on Economic, Social, and Cultural Rights has stated that “discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of

¹¹ ICESCR, arts. 2-3; ICCPR, arts. 2-3.

¹² Convention on the Rights of the Child (CRC), adopted November 20, 1989, A/RES/44/25.

¹³ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/34/46, entered into force September 3, 1981, art.1; Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), adopted December 18, 1990, A/RES/45/158, art. 1.

¹⁴ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. res. 2106(XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), art. 1. Ethnic origin is also a prohibited ground listed in the CRC, art. 2; CMW, art. 1.

¹⁵ Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006 by G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49 at 65, U.N. Doc A/61/49 (2006), entered into force May 3, 2008, art. 5.; CRC, art. 2. The Committee on Economic, Social and Cultural Rights (CESCR) has also recognized that discrimination against persons with disabilities would require “strict scrutiny,” CESCR. (2009). Report of the High Commissioner for Human Rights on implementation of economic, social and cultural rights. E/2009/90, Retrieved January 8, 2013, from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/362/90/PDF/N0936290.pdf?OpenElement> para. 17.

¹⁶ CMW, art. 1.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ CESCR. (2009). Report of the High Commissioner for Human Rights on implementation of economic, social and cultural rights. E/2009/90, Retrieved January 8, 2013, from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/362/90/PDF/N0936290.pdf?OpenElement> para 17.

²⁰ The UN Committee on Economic, Social and Cultural Rights has emphasized that “[a] person’s social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping,” contrary to international law. CESCR. (2009). General Comments No. 20, Non-Discrimination in Economic, Social and Cultural Rights, Retrieved January 8, 2013, from <http://www2.ohchr.org/english/bodies/cescr/comments.htm> para. 7.

[human] rights. Discrimination also includes incitement to discriminate and harassment.”²¹ Both direct and indirect forms discrimination are prohibited. “Direct discrimination occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground.... Indirect discrimination refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of [human] rights as distinguished by prohibited grounds of discrimination.”²²

²¹ CESCR General Comment No. 20, at para 35. Retrieved January 8, 2013, from <http://www2.ohchr.org/english/bodies/cescr/comments.htm> para 7. See also art. 1, ICERD; art. 1, CEDAW; art. 2 of the CRPD; Office of the High Commissioner for Human Rights (OHCHR). (1989). General Comment No. 18, Non-discrimination. Retrieved from <http://www.unhcr.ch/tbs/doc.nsf/o/3888b0541f8501c9c12563ed004b8doe>, paras 6,7.

²² CESCR General Comment No. 20, at para 10. Retrieved January 8, 2013, retrieved January 8, 2013, from <http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

The Need to Dismantle Entrenched Discrimination and Inequality

Discrimination is a key underlying cause of inequality and needs to be addressed by the post-2015 framework if it is to successfully reduce inequality more broadly. By supporting aggregate progress, the MDGs have rewarded strategies directed at “low-hanging fruit” as much as strategies directed at the most deprived populations.²³ The post-2015 framework should support development strategies which are designed to reach and benefit the most marginalized, excluded and in need populations. This includes addressing the urgent social needs of such populations as well as assessing difficulties that marginalized and excluded groups experience in enjoying economic, social and cultural rights, and taking the necessary steps to address these difficulties.²⁴

Despite significant progress on the MDG on safe drinking water, the UN Special Rapporteur on the human rights to safe drinking water and sanitation, the European Committee of Social Rights (ECSR), the WHO, and others have documented discrimination in access to water and sanitation on the basis of race and ethnicity, including indigenous peoples in Costa Rica and Rwanda; Dalits in Bangladesh; Roma in Slovenia and Portugal; and poor communities of Korean descent in Japan.²⁵

²³ De Albuquerque, C. (2010). Report to the General Assembly. UN Doc. No. A/65/254. Retrieved January 8, 2013, from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/477/84/PDF/N1047784.pdf?OpenElement>;
Save the Children (2011). Effective Aid: Delivering Results for the Poorest People, Position Paper for the Fourth High Level Forum on Aid Effectiveness. Retrieved January 8, 2013, from http://www.savethechildren.org.uk/sites/default/files/docs/High_Level_Forum_Position_Paper_new_template_FINAL_1.pdf;
UNICEF. Reaching the MDGs with equity: Identifying Zambia’s most excluded people. Retrieved January 8, 2013, from http://www.unicef.org/zambia/reaching_the_mdgs_with_equity_final.pdf

²⁴ CESCR, E/2009/90, para. 25.

²⁵ The European Committee of Social Rights has heard several cases on housing and water issues in the context of Roma. In a 2011 case against Portugal, the Committee explicitly refers to the right to water in the context of the right to housing. See, European Committee of Social Rights. (2011). Decision on the Merits, *European Roma Rights Centre v. Portugal*. Retrieved January 8, 2013, from http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC61Merits_en.pdf para 36 and para 61; De Albuquerque, C. (2009). Report of the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, Catarina de Albuquerque: Addendum: Mission to Costa Rica, UN Dec A/HRC/12/24/Add.1; World Health Organization. (2007). Health of Indigenous Peoples: Fact Sheet NO. 326. Retrieved December 14, 2012, from <http://www.who.int/mediacentre/factsheets/fs326/en/index.html> (citing Health of Indigenous Peoples in Africa. (2006). *Lancet Series on Indigenous Health*, Vol. 367, June 2006, 1940); Sepulveda Cardona, M., & De Albuquerque, C. (2010). Bangladesh: UN Human Rights Council, Joint Report of the Independent Expert on the Question of Human Rights and Extreme Poverty, Magdalena Sepulveda Cardona, and the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, Catarina de Albuquerque: Addendum: Mission to Bangladesh (3-10 December 2009), 25, U.N. Doc.A/HRC/15/55; De Albuquerque, C. (2011). Report of the Special

The relationship between discrimination and poverty is overwhelmingly evident in developed as well as in developing countries. As the UN Committee on Racial Discrimination has recognized, in the US, “racial, ethnic, and national minorities, especially Latino and African American persons, are disproportionately concentrated in poor residential areas characterised by sub-standard housing conditions, limited employment opportunities, inadequate access to health care facilities, under-resourced schools, and high exposure to crime and violence.”²⁶ The US Census reported that in 2009, 25 percent of black people and people of Hispanic origin live below poverty level, compared to 14 percent of people of all races.²⁷

Racial and ethnic minorities have long been disproportionately represented in the US criminal justice system.²⁸ While accounting for only 13 percent of the US population, African Americans represent 28.4 percent of all arrests. According to Bureau of Justice Statistics approximately 3.1 percent of African American men, 1.3 percent of Latino men, and 0.5 percent of white men are in prison.²⁹ Because they are disproportionately likely to have criminal records, members of racial and ethnic minorities are more likely than whites

Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque, Addendum: Mission to Slovenia, 33, U.N. Doc. A/HRC/18/33/Add.2; De Albuquerque, C. (2011). Press Statement: Mission to Namibia. Retrieved from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11223&LangID=E>; De Albuquerque, C. (2012). Déclaration à la conclusion de la visite au Sénégal de la Rapporteuse special sur le droit à l'eau et l'assainissement. Retrieved from <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=11625&LangID=F>

²⁶ Committee on the Elimination of Racial Discrimination. (2008). Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, United States of America, CERD/C/USA/CO/6, retrieved January 8, 2013, from [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=5&ved=0CEoQFjAE&url=http%3A%2F%2Fwww.ohchr.org%2Fenglish%2Fbodies%2Ftreaty%2FCFD_Concl_Obs_2008%2FCERD%2F72nd%2520session%2FCERD%2520C%2520USA%2520CO%25206%2520\(e\).doc&ei=ZovrUKDRaK-oAHUnoHQAQ&usg=AFQjCNE3Gnzl6-9LrpcSslj1ycQWfxUQ&sig2=Nt-C5LAJoOAKLqxLxwGDLQ&bvm=bv.1357316858,d.dmQ](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=5&ved=0CEoQFjAE&url=http%3A%2F%2Fwww.ohchr.org%2Fenglish%2Fbodies%2Ftreaty%2FCFD_Concl_Obs_2008%2FCERD%2F72nd%2520session%2FCERD%2520C%2520USA%2520CO%25206%2520(e).doc&ei=ZovrUKDRaK-oAHUnoHQAQ&usg=AFQjCNE3Gnzl6-9LrpcSslj1ycQWfxUQ&sig2=Nt-C5LAJoOAKLqxLxwGDLQ&bvm=bv.1357316858,d.dmQ), para. 16.

²⁷ US Census. (2012). Table 713. People Below Poverty Bly Selected Characteristics:2009.. Retrieved January 8, 2013, from <http://www.census.gov/compendia/statab/2012/tables/12s0712.pdf>

²⁸ Whites, African Americans, and Latinos have comparable rates of drug use but are arrested and prosecuted for drug offenses at vastly different rates. African Americans are arrested for drug offenses, including possession, at three times the rate of white men. See Human Rights Watch. (2009). Decades of Disparity: Drug Arrests and Race in the United States. Retrieved from <http://www.hrw.org/reports/2009/03/02/decades-disparity-o>

In 2008, African American motorists were three times as likely as white motorists and twice as likely as Latino motorists to be searched during a traffic stop. In New York City, 86 percent of persons “stopped and frisked” by the police were African American or Latino, even though they represented 52 percent of the population. According to the New York Civil Liberties Union (NYCLU), 89 percent of those stopped were innocent of any wrongdoing. Human Rights Watch (2012). Human Rights Watch Submission to the Human Rights Committee During its Consideration of the Fourth Periodic Report of the United States. Retrieved from http://www.hrw.org/sites/default/files/related_material/HRW%20Submission%20to%20the%20HRC.pdf p.28

²⁹ Bureau of Justice Statistics. (2011). U.S. Correctional Population Declined For Second Consecutive Year. Retrieved January 8, 2013, from <http://bjs.ojp.usdoj.gov/content/pub/press/plOcpus10pr.cfm>

to experience stigma and legal discrimination in employment, housing, education, public benefits, jury service, and the right to vote.³⁰

In Europe, Roma are among the poorest as well as being among the most discriminated against.³¹ In Bosnia and Herzegovina for instance, Human Rights Watch documented pervasive discrimination against Roma and other national minorities in the constitution, national laws, and public institutions.³² This research shows the wider impact of discrimination on the daily lives of Roma in accessing housing, education, health care, and employment.

The relationship between discrimination, inequality, and poverty can also be seen, for instance, in Burma. Discrimination against certain ethnic minorities is widespread in Burma and addressing this discrimination should be a key element of poverty reduction strategies.³³ The Rohingya, a Muslim minority group, are among the most marginalized in Burma. The Burmese government has long denied Rohingya the right to obtain citizenship in Burma, which has facilitated human rights abuses against them and rendered them stateless, posing a serious obstacle to achieving a durable solution to the sectarian violence in Arakan State and resolving the situation of Rohingya refugees.³⁴ The Rohingya face restrictions on movement, employment and access to opportunity, education, marriage, and on other aspects of their everyday lives.³⁵ For decades they have faced violent abuses by state security forces such as abusive forced labor, rape, arbitrary

³⁰ Human Rights Watch (2012). Human Rights Watch Submission to the Human Rights Committee During its Consideration of the Fourth Periodic Report of the United States. Retrieved from http://www.hrw.org/sites/default/files/related_material/HRW%20Submission%20to%20the%20HRC.pdf. p.5; The Sentencing Project (2013). Felony Disenfranchisement. Retrieved from <http://www.sentencingproject.org/template/page.cfm?id=133>

³¹ Human Rights Watch. (2010). Rights Displaced: Forced Returns of Roma, Ashkali and Egyptians from Western Europe to Kosovo. Retrieved from <http://www.hrw.org/reports/2010/10/28/rights-displaced-o>; Human Rights Watch. (2009). Poisoned by Lead: A Health and Human Rights Crisis in Mitrovica's Roma Camps. Retrieved from <http://www.hrw.org/reports/2009/06/23/kosovo-poisoned-lead>

³² Human Rights Watch. (2012). Second Class Citizens: Discrimination Against Roma, Jews, and Other National Minorities in Bosnia and Herzegovina. Retrieved from <http://www.hrw.org/news/2012/04/04/bosnia-and-herzegovina-roma-jews-face-political-discrimination-o>

³³ Human Rights Watch. (2012). "The Government Could Have Stopped This": Sectarian Violence and Ensuing Abuses in Burma's Arakan State. Retrieved from <http://www.hrw.org/reports/2012/07/31/government-could-have-stopped>; Human Rights Watch (2012). Burma: Satellite Images Show Widespread Attacks on Rohingya. Retrieved December 14, 2012, from <http://www.hrw.org/news/2012/11/17/burma-satellite-images-show-widespread-attacks-rohingya>

³⁴ Ibid.

³⁵ Ibid.

detention and torture, and killings, based on ethnic and religious grounds.³⁶ This discrimination has played a role in pushing Rohingya into increased poverty and is a hurdle in the realization of social and economic rights.³⁷ Discrimination also limits peoples' ability to participate in the development of poverty reduction strategies or government policies and limit access to justice, compounding the problem. As international donors enhance engagement with the Burmese government in response to significant governance and human rights reforms, donors and the government should work to address the urgent social needs of the most in need.

As set out below, dismantling discrimination and addressing inequality requires a range of fully implemented laws, policies and programmes, and may include temporary special measures. It may also require a change in resource allocation, with devotion of greater resources to marginalized groups.³⁸

Enact Laws against Discrimination, Amend Discriminatory Laws

States have a clear obligation to end discrimination under the law and to enact effective laws against both direct and indirect discrimination by both government and private actors, including in access to development assistance.³⁹ Failure to do so may lead to unequal outcomes of development and poverty alleviation programs. Maintenance of state-sponsored discrimination can undermine development activities for specific sectors of the population, even if overall a country is meeting its goals and indicators.⁴⁰

³⁶ Ibid.

³⁷ Household surveys have shown Arakan state to be one of the two poorest in Burma, together with Chin state. UN General Assembly. (2011). Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, A/66/365, retrieved January 8, 2013, <http://www.ohchr.org/Documents/Countries/MM/A-66-365.pdf>. 17; UNDP. (2010). Integrated Household Living Conditions Survey in Myanmar (2009-2010): Poverty Dynamics Report. Retrieved from <http://www.mm.undp.org/ihlca/index.html>

³⁸ CESCR General Comment No. 20, at para 39. Retrieved January 8, 2013, retrieved January 8, 2013, from <http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

³⁹ See, for example, CEDAW, arts. 1-5. See also ICCPR, art. 26, providing a separate guarantee of equality before and of the law and CESCR General Comment No. 20, at para 37, which states: "Adoption of legislation to address discrimination is indispensable in complying with article 2, paragraph 2. States parties are therefore encouraged to adopt specific legislation that prohibits discrimination in the field of economic, social and cultural rights. Such laws should aim at eliminating formal and substantive discrimination, attribute obligations to public and private actors and cover the prohibited grounds discussed above. Other laws should be regularly reviewed and, where necessary, amended in order to ensure that they do not discriminate or lead to discrimination, whether formally or substantively, in relation to the exercise and enjoyment of Covenant rights."

⁴⁰ Swedish International Development Cooperation Agency (Sida). (2008). Sexuality: A Missing Dimension in Development. Retrieved January 8, 2013, from <http://www.sida.se/Documents/Import/pdf/Sexuality-A-Missing-Dimension-in-Development--brief-version1.pdf>

For example, in Bangladesh discriminatory family laws on marriage, separation, and divorce push some women further into poverty—even as the country is seen as a positive example of successful gains related towards meeting the Millennium Development Goals and in poverty alleviation.⁴¹ In 20 years Bangladesh has raised life expectancy by 10 years. It has doubled female primary school enrollment in 10 years, and more than halved infant mortality. According to some studies, both the rich and the poor have benefitted from these gains. However, Human Rights Watch research demonstrated that certain women and families may not benefit from these societal gains due to discriminatory family laws that push them deeper into poverty.⁴²

Human Rights Watch found that family laws in Bangladesh establish greater barriers to divorce for women than men, provide vague guidance on maintenance claims, ignore women’s contributions to households, lack provisions for division of marital property upon divorce, and are incompatible with international human rights law. The United Nations country team in Bangladesh has identified “marital instability” as a key cause of poverty among female-headed households and the Bangladesh Planning Commission has said that women are more susceptible to poverty after abandonment or divorce.⁴³ Yet, current indicators demonstrating Bangladesh’s success towards poverty alleviation obfuscate the impact of these discriminatory laws on poor women.

Dismantle Discriminatory Practices

The post-2015 framework should recognize the importance of identifying, prohibiting, and dismantling discriminatory practices—both of both a direct and indirect nature—for poverty alleviation. Governments should implement the necessary strategies, policies, and action plans, which may include temporary special measures to accelerate the achievement of equality, to address discrimination.⁴⁴

⁴¹ United Nations. (2012, September). The Millennium Development Goals work! Retrieved December 14, 2012, from <http://www.un.org/en/mdg/summit2010/successstories.shtml>

⁴² Human Rights Watch. (2012). “Will I Get My Dues ... Before I Die?": Harm to Women from Bangladesh’s Discriminatory Laws on Marriage, Separation, and Divorce. Retrieved from <http://www.hrw.org/reports/2012/09/17/will-i-get-my-dues-i-die-o>

⁴³ Ibid, 2.

⁴⁴ CESCR General Comment No. 20, at para 38. Retrieved January 8, 2013, retrieved January 8, 2013, from <http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

As the MDGs recognize, access to primary education is a core development goal. Yet millions of children suffer from discriminatory barriers to education and either never attend school or are compelled to leave school early. While MDG 2 highlighted equal education for girls, it did not highlight other discriminatory barriers to education.⁴⁵ Human Rights Watch research has also found that migrant children, children from rural areas, ethnic or religious minorities, internally displaced and refugee children, indigenous children, and low-caste children were often denied equal access to education, or in some cases, access to any education at all.⁴⁶

Human Rights Watch's research on education in Nepal has documented widespread discrimination experienced by children with disabilities, who are prevented from getting access to school and realising their right to education by a range of barriers.⁴⁷ These include inadequately trained teachers, a lack of appropriate materials, no transport provision, and negative attitudes towards children with disabilities. As a result, children with disabilities represent a significant proportion of the 330,000 primary school age children who remain out of school in Nepal. These patterns are replicated elsewhere—globally, children with disabilities are less likely to start school and have significantly lower rates of school completion than non-disabled children.⁴⁸ Development strategies should be directed at ensuring the full agency of persons with disabilities. The government, donors, and international institutions need to take the necessary steps to address the barriers that keep children with disabilities from attending school.

⁴⁵ Social biases against educating girls have caused parents to give priority to their sons over the daughters for schooling, particularly when school fees or poverty make it difficult for parents to send all of their children to school. Girls are also preferred for certain kinds of child labor, particularly domestic work, which typically involves isolation and long hours that are incompatible with schooling. Human Rights Watch. (2010). Rights Displaced: Forced Returns of Roma, Ashkali and Egyptians from Western Europe to Kosovo. Retrieved from <http://www.hrw.org/reports/2010/10/28/rights-displaced-o>; Human Rights Watch. (2007). Bottom of the Ladder: Exploitation and Abuse of Girl Domestic Workers in Guinea. Retrieved from <http://www.hrw.org/reports/2007/06/14/bottom-ladder>; Human Rights Watch. (2012); Lonely Servitude: Child Domestic Labor in Morocco. Retrieved from <http://www.hrw.org/reports/2012/11/15/lonely-servitude>; Human Rights Watch. (2009). Workers in the Shadows: Abuse and Exploitation of Child Domestic Workers in Indonesia. Retrieved from <http://www.hrw.org/en/reports/2009/02/10/workers-shadows>. In Somalia, Islamist forces have created a hostile environment for girls' education. Human Rights Watch. (2012). No Place for Children: Child Recruitment, Forced Marriage, and Attacks on Schools in Somalia. Retrieved from <http://www.hrw.org/reports/2012/02/19/no-place-children>. In many heavily AIDS affected countries, such discrimination is increasing, as girls are often pulled out of school to care for ailing relatives or replace lost income. Human Rights Watch. Failing Our Children: Barriers to the Right to Education. Retrieved from <http://www.hrw.org/sites/default/files/reports/education0905.pdf>

⁴⁶ Ibid.

⁴⁷ Human Rights Watch. (2011). Futures Stolen: Barriers to Education for Children with Disabilities in Nepal. Retrieved from <http://www.hrw.org/reports/2011/08/24/futures-stolen>

⁴⁸ World Health Organization, & World Bank (2011, June 9). World Report on Disability. Retrieved January 4, 2013, from http://www.who.int/disabilities/world_report/2011/en/index.html, 207

Human Rights Watch research has also documented how discrimination and abuse against women and children has impacted their ability to access quality health care. In the area of maternal health, research carried out by Human Rights Watch in South Africa has documented a strong link between the neglect and abuse of women's rights—especially during pregnancy and labor—and poor maternal health outcomes.⁴⁹ The way in which the health MDGs have been framed has encouraged a focus on rolling out proven maternal, newborn, and child health interventions, but they have been less effective at promoting action to tackle more entrenched issues of discrimination that impact maternal and child health outcomes, such as the practice of child marriage.

Similarly, Human Rights Watch found in a 2008 report that efforts to roll out antiretroviral treatment in Kenya had limited impact as they failed to address the discrimination, stigma, abuse, and neglect that many people living with HIV experience. Human Rights Watch identified a range of barriers and forms of discrimination which children faced in accessing HIV testing and treatment. HIV-positive mothers who were victims of violence and property rights abuses were unable to access treatment for themselves or their children because they could not afford transport to health centers or enough food to avoid serious side effects from the drugs. Parents or caregivers lacked accurate information about medical care for children, or avoided testing and treatment because of stigma and discrimination. Orphans also faced neglect and abuse.⁵⁰ Human Rights Watch found that as a result, Kenya's HIV care programs had failed to deliver lifesaving drugs to the majority of children who needed them. HIV testing and treatment programs should work to remove discriminatory barriers to care.

Address Discrimination by Private Actors

Discrimination by private actors in workplaces, the provision of services, or other sectors of society may prevent the enjoyment of human rights. States have an obligation to adopt

⁴⁹ Human Rights Watch. (2011). "Stop Making Excuses" Accountability for Maternal Health Care in South Africa. Retrieved from <http://www.hrw.org/reports/2011/08/08/stop-making-excuses-o>; Human Rights Watch. (2008). A Question of Life or Death: Treatment Access for Children Living With HIV in Kenya. Retrieved from <http://www.hrw.org/reports/2008/12/15/question-life-or-death-o>; Human Rights Watch. (2010). "I Am Not Dead, But I Am Not Living": Barriers to Fistula Prevention and Treatment in Kenya. Retrieved from <http://www.hrw.org/reports/2010/07/15/i-am-not-dead-i-am-not-living>

⁵⁰ Human Rights Watch. (2008). A Question of Life or Death: Treatment Access for Children Living With HIV in Kenya. Retrieved from <http://www.hrw.org/reports/2008/12/15/question-life-or-death-o>

measures “to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.”⁵¹ The post-2015 framework should recognize the importance and legal obligations of identifying, prohibiting and addressing discrimination by private actors for poverty reduction and sustainable development.

Gender-based violence is a form of private discrimination that may prevent some women equal access to the benefits of state or donor-led development programs.⁵² Human Rights Watch found evidence of that in HIV-treatment programs in Zambia.

Zambia is one of many countries setting ambitious targets for rapidly scaling up antiretroviral treatment for HIV/AIDS and is making impressive progress.⁵³ It is currently on track to meet the MDG on HIV by addressing a range of obstacles to treatment and receiving substantial donor support to overcome them. However, in 2007 Human Rights Watch found that women's unequal status in Zambian society gravely undermined their ability to access and adhere to antiretroviral treatment (ART).⁵⁴ Women in Zambia reported that gender-based human rights abuses presented very real barriers to accessing and adhering to treatment. Treatment policies and programs did not take into account the connection between domestic violence or women's insecure property rights, both forms of entrenched discrimination, and women's ability to seek, access, and adhere to HIV treatment—leading to unequal health outcomes for these women.

⁵¹ See, for example, CESCR General Comment 20, para 11.

⁵² The CEDAW Committee, the UN expert body that monitors implementation of CEDAW, stated in General Recommendations 28 and 19 that violence against women constitutes a form of discrimination. A state's consistent failure to address gender-based violence when women are disproportionately the victims amounts to unequal and discriminatory treatment, and constitutes a violation of the state's obligation to guarantee women equal protection of the law. See, CEDAW, art.15 and ICCPR, art. 26. See also, UN Committee on the Elimination of Discrimination against Women (CEDAW Committee). (2010). General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW/C/GC/28. Retrieved from http://www.humanrights.ch/upload/pdf/110524General_recomm._no_28_English.pdf paras. 19 and 34; CEDAW Committee. (1992). General Recommendation 19, Violence against Women, Retrieved January 8, 2013, from <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>; Human Rights Committee. (1994). General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30. Retrieved from <http://www1.umn.edu/humanrts/gencomm/hrcom20.htm>.

⁵³ UNDP. (2011). Zambia Millennium Development Goals Progress Report 2011. Retrieved January 8, 2013, from http://www.undp.org.zm/joomla/attachments/052_compressed%201.pdf?8e2474a80d13c9785641fc2923161380=9ed893f0c897956dofcob12f4c6e33ae.

⁵⁴ Human Rights Watch. (2007). Hidden in the Mealie Meal: Gender-Based Abuses and Women's HIV Treatment in Zambia. Retrieved from <http://www.hrw.org/sites/default/files/reports/zambia1207web.pdf>

Nondiscrimination in the workplace is enshrined as a core labor right and key to addressing inequality and poverty.⁵⁵ Human Rights Watch has documented a state-owned gold company in DRC favoring workers from one ethnic group over another in compensation and promotions, employers in the Dominican Republic discriminating against workers based on their actual or perceived HIV status, and Saudi employers forcibly confining low-paid women migrant workers, including those who work in hospitals and dress shops.⁵⁶ The mistreatment in Saudi Arabia of migrant workers from Asia and Africa also has been aggravated by deeply rooted religious and racial discrimination.⁵⁷

Dismantle Economic Barriers

The post-2015 framework should support the dismantling of economic barriers to the progressive realization of social and economic rights. As the Committee on Economic, Social and Cultural Rights has emphasized, “Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.”⁵⁸ The same can be said for other social, economic, and cultural rights. Human Rights Watch research has shown how user fees and transport costs present a barrier for poorer families are burdened in accessing health care or education.⁵⁹ User fees are prohibited in human rights law for primary education, which also requires they be progressively eliminated in secondary and tertiary education.⁶⁰

⁵⁵ Human Rights Watch. (2008). On the Margins of Profit: Rights at Risk in the Global Economy. Retrieved from <http://www.hrw.org/reports/2008/02/18/margins-profit-o>

⁵⁶ Human Rights Watch. (2004). A Test of Inequality: Discrimination against Women Living with HIV in the Dominican Republic. Retrieved from <http://www.hrw.org/reports/2004/07/12/test-inequality-o>, pp. 17-28; Human Rights Watch. (2005). The Curse of Gold. Retrieved from <http://www.hrw.org/reports/2005/06/01/curse-gold-o>, p. 78; Human Rights Watch. (2004). "Bad Dreams": Exploitation and Abuse of Migrant Workers in Saudi Arabia. Retrieved from <http://www.hrw.org/reports/2004/07/13/bad-dreams-o>, 3, 18, 47-55, 69-71.

⁵⁷ Human Rights Watch. (2004). "Bad Dreams" Exploitation and Abuse of Migrant Workers in Saudi Arabia. Retrieved from <http://www.hrw.org/reports/2004/07/13/bad-dreams-o> 1, 15-16, 55, 70-71.

⁵⁸ CESCR Committee, General Comment Number 14, para. 12.

⁵⁹ Human Rights Watch. (2006). A High Price to Pay: Detention of Poor Patients in Burundian Hospitals. Retrieved from <http://www.hrw.org/reports/2006/09/07/high-price-pay>; Human Rights Watch. (2010). Needless Pain: Government Failure to Provide Palliative Care for Children in Kenya. Retrieved from <http://www.hrw.org/reports/2010/09/09/needless-pain-o>; Human Rights Watch. (2008). A Question of Life or Death: Treatment Access for Children Living With HIV in Kenya (2008). Retrieved from <http://www.hrw.org/reports/2008/12/15/question-life-or-death-o>; Human Rights Watch. (2010). "I Am Not Dead, But I Am Not Living": Barriers to Fistula Prevention and Treatment in Kenya. Retrieved from <http://www.hrw.org/reports/2010/07/15/i-am-not-dead-i-am-not-living>; Human Rights Watch. (2011). A Poisonous Mix: Child Labor, Mercury, and Artisanal Gold Mining in Mali. Retrieved from <http://www.hrw.org/reports/2011/12/06/poisonous-mix>; Human Rights Watch. Failing Our Children: Barriers to the Right to Education. Retrieved from <http://www.hrw.org/sites/default/files/reports/education0905.pdf>

⁶⁰ UDHR, art. 26(1); ICESCR, art. 13(2); CRC, art. 28(1).

The Committee has further recognized that eliminating systemic discrimination and realizing economic, social and cultural rights without discrimination frequently requires greater devotion of resources to traditionally neglected groups.⁶¹

The post-2015 framework should prioritize investment in the poorest and most marginalized populations. It can go some way toward achieving this by including indicators which measure the achievement of targets by wealth quintiles, with a specific target of addressing the social and economic needs of the poorest two quintiles. Several NGOs have suggested also including a specific target on reducing income inequalities within countries, with an emphasis on reducing the gap between the richest and poorest quintiles (20:20 gap) or between the top quintile and the bottom two quintiles (10:40 gap).⁶²

⁶¹ CESCR General Comment No. 20, at para 39. Retrieved January 8, 2013, retrieved January 8, 2013, from <http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

⁶² Save the Children. (2012). Born equal: How reducing inequality could give our children a better future. Retrieved January 8, 2013, from http://www.savethechildren.org.uk/sites/default/files/images/Born_Equal.pdf.

Ensure Development Initiatives Do Not Discriminate or Otherwise Reinforce Discrimination

In addition to proactively addressing discrimination and inequality, governments and international institutions must ensure that their policies do not discriminate—directly or indirectly—against at-risk populations. The post-2015 framework should recognize the risk of discrimination in development policies and actively prevent against it. Human Rights Watch has documented discrimination in the distribution of aid, disproportionate negative impacts of development policies, and failure in project design to consider at-risk groups. We have also documented how development initiatives have violated the rights of indigenous peoples rather than seeking to realize their social and economic rights while respecting their cultural rights.

There is no reference in the MDGs to people being hurt or disadvantaged by development efforts. Nor do many developing country governments, bilateral donors, or the international financial institutions use a human rights framework for understanding, mitigating, and remedying the harm that may result from development efforts. An explicit focus within the MDGs and in development strategies on human rights and associated principles of transparency, consultation, participation, and accountability could have helped to correct this.

Avoid Discrimination in the Distribution of Aid

Too often, government funds or development aid are misused for political gain rather than investing in the realization of social and economic rights. This can come in the form of outright corruption, in discrimination on the basis of political opinion in the distribution of aid, or in investing in areas where politicians will most benefit rather than investing in the areas of greatest need.⁶³

⁶³ See, for example, Human Rights Watch. (2007). *Chop Fine: The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State, Nigeria*. Retrieved from <http://www.hrw.org/reports/2007/01/31/chop-fine>; Human Rights Watch. (2004). *Some Transparency, No Accountability: The Use of Oil Revenue in Angola and Its Impact on Human Rights*. Retrieved from <http://www.hrw.org/reports/2004/01/12/some-transparency-no-accountability-o>; Human Rights Watch. (2010). *Transparency and Accountability in Angola*. Retrieved from <http://www.hrw.org/reports/2010/04/13/transparency-and-accountability-angola-o>

Human Rights Watch has documented discrimination in development projects and policies in Ethiopia on the basis of political opinion.⁶⁴ The government has used donor-supported programs, salaries, and training opportunities as political weapons to control the population, punish dissent, and undermine perceived political opponents. Local officials denied these people access to seeds and fertilizer, agricultural land, credit, food aid, and other resources for development on the basis of their political opinion. For example, local officials offered to “forgive” opposition members in need of food and give them access to a cash-for-work program if they wrote a letter of regret to the administration for aligning with the opposition.⁶⁵

People have also been excluded from development programs, deliberately or inadvertently, because of their religion, ethnic background, gender, sexual orientation, disability amongst other grounds. The post-2015 framework should acknowledge this risk and work to prevent it.

Design Projects to Consider At-Risk Groups and Avoid Adverse Impacts

Governments and donors should ensure that their development strategies and projects are designed to consider at-risk groups and avoid any adverse rights impacts and develop accessible, effective accountability mechanisms for those discriminated against.

For example, Human Rights Watch’s research in the Gambella region of Ethiopia has documented serious human rights abuses against indigenous peoples and other ethnic minorities in the carrying out of the government’s so-called “villagization” programme.⁶⁶ This programme is being carried out in the name of development—transferring tens of thousands of people from their existing homes to new model villages, where they were promised to be provided with improved infrastructure and better services. The scheme is also described as a voluntary one. It is anything but. Our research shows that people are being forced to move against their will and government soldiers have beaten and abused those who have objected to the move. Fear and intimidation are widespread amongst affected populations. Despite government pledges, the land near the new villages still

⁶⁴ Human Rights Watch. (2010). Development without Freedom: How Aid Underwrites Repression in Ethiopia. Retrieved from <http://www.hrw.org/reports/2010/10/19/development-without-freedom-o>

⁶⁵ Ibid, 5.

⁶⁶ Human Rights Watch. (2012). “Waiting Here for Death”: Forced Displacement and “Villagization” in Ethiopia’s Gambella Region. Retrieved from <http://www.hrw.org/reports/2012/01/16/waiting-here-death>

needs to be cleared, while food and agricultural assistance have not been provided. As a result, some of the relocated populations have faced hunger and even starvation.⁶⁷

Indigenous peoples' social and economic rights must be realized while respecting their cultural and other human rights. The post-2015 framework should expressly commit to the protection of indigenous peoples rights and prevent against violations of these rights in the name of development.⁶⁸ This includes recognition of the specific rights of indigenous people concerning their ancestral lands, and their right to free, prior and informed consent concerning projects affecting them or their lands.⁶⁹ Governments, donors, and international institutions should invest in providing education, health care, water and sanitation, and other social and economic rights in ways that are consistent with the cultural practices and values of indigenous peoples.

Also in Ethiopia, Human Rights Watch has documented forced relocations of agro-pastoralist indigenous peoples linked to the creation of 245,000 hectares of state-run sugar plantations along the Omo River. State security forces used intimidation, assaults and arbitrary arrests when people questioned the relocations or refused to move.⁷⁰ The ongoing cost of this development to indigenous groups is massive: their farms are being cleared, prime grazing land is being lost, and traditional livelihoods are being decimated. The Ethiopian government has failed to meaningfully consult, compensate, or discuss with these communities alternative means of livelihoods.⁷¹

⁶⁷ Ibid, 46.

⁶⁸ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted September 13, 2007, A/RES/61/295.

⁶⁹ Ibid.

⁷⁰ Human Rights Watch. (2012). "What Will Happen if Hunger Comes?": Abuses against the Indigenous Peoples of Ethiopia's Lower Omo Valley. Retrieved from <http://www.hrw.org/reports/2012/06/18/what-will-happen-if-hunger-comes>.

⁷¹ Ibid.

The Legal Basis

Development grounded in a human rights-based approach draws upon the principles and legal framework of human rights and requires that respect for the human rights of those affected by aid or development programs is central to planning and operationalizing that activity. It recognizes beneficiaries of aid as rights-holders with legal entitlements and identifies governments and their partners, including international institutions, as duty bearers with correlating obligations to meet those entitlements.

The Principle of Equality and Non-Discrimination

First set out in the Universal Declaration of Human Rights (UDHR),⁷² equality and non-discrimination are foundational principles of the international human rights legal framework. All of the core human rights treaties adopted since the UDHR contain legal obligations related to equality and non-discrimination.⁷³

The human rights legal framework requires states not only to refrain from discrimination, but also obliges them to take appropriate measures to end discrimination by state and private actors and promote equality.⁷⁴ Discrimination in law or in practice may prevent the realization and enjoyment of other rights; therefore, a development approach firmly established in human rights obligates states to confront the systemic and root-causes of discrimination or inequality, while actively working towards the fulfillment of rights without discrimination. This requires states to establish equality under the law and address policies, programs, or even stereotypes that create or perpetuate discrimination.⁷⁵

Development based in human rights needs to emphasize and ensure equality and non-discrimination in both process and outcomes. It requires particular attention to the needs of protected groups, the impact of programs on their respective rights, and the establishment of procedures to ensure accountability and participation in development

⁷² UDHR, arts.1 and 2.

⁷³ ICESCR, arts. 1-3; ICCPR, arts. 1-3; CEDAW, arts 1-5; ICERD, art. 2; CRPD, art. 5.

⁷⁴ See, for example, CEDAW, arts. 2-5; ICERD, art.1.4; CRPD, art. 5.

⁷⁵ See, for example, ICERD, art. 2.

that affects them. It also requires that human rights standards guide all stages of programming.⁷⁶

Millennium Declaration and Millennium Development Goals

While the Millennium Declaration grounded poverty alleviation objectives in principles of human rights, equality, and non-discrimination, these principles were not embodied in the Millennium Development Goals.

In the declaration, states rededicated themselves to “respect for human rights and fundamental freedoms, [and] respect for the equal rights of all without distinction as to race, sex, language or religion,” recognized a “collective responsibility to uphold the principles of human dignity, equality and equity” and recognized that democratic and participatory governance based on the will of the people best assures the right to live life in dignity, free from hunger and from fear of violence, oppression or injustice.⁷⁷ In pledging to the principle of equality, the declaration stated, “No individual and no nation must be denied the opportunity to benefit from development.”⁷⁸

Despite states’ recognition of the centrality of human rights, equality, and non-discrimination to development and poverty eradication in the declaration, the goals largely overlooked them.

Duty-Bearers

The commitment to equality and non-discrimination should extend not only directly from states, but also from donors and multilateral organizations. In compliance with their international obligations, states should respect the enjoyment of human rights in other countries and prevent third parties, through political or legal means, from interfering with

⁷⁶ See, Office of the United Nations High Commissioner for Human Rights (OHCHR). (2006). Frequently Asked Questions on a Rights-Based Approach to Development Cooperation. Retrieved from <http://www.ohchr.org/Documents/Publications/FAQen.pdf>35, citing ‘The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among U.N. Agencies: Attachment 1 to Report of The Second Interagency Workshop on Implementing a Human Rights-Based Approach in the Context of U.N. Reform’

⁷⁷ United Nations. (2000). United Nations Millennium Declaration, retrieved January 8, 2013, from <http://www.un.org/millennium/declaration/ares552e.htm> para. 4.

⁷⁸ Ibid.

the enjoyment of rights.⁷⁹ In furtherance of this obligation, UN treaty and charter bodies have found that states' membership in international organizations should take due account of human rights.⁸⁰ State members of international organizations, including multilateral development banks or other institutions, cannot set aside their obligations to respect, protect, and fulfill human rights. All member states of the United Nations, and UN institutions themselves, carry a fundamental duty to act consistently with the principles of the UN Charter, which requires "[u]niversal respect for, and observance of, human rights and fundamental freedoms for all...."⁸¹

Further, while non-governmental organizations, when operating as non-state actors, do not bear the same international obligations under human rights law as governments do, they do not function in a human rights void and should operate in a manner that promotes human rights.⁸² Governments are also required to ensure they enforce human rights on all within their jurisdiction. Thus, all actors engaged in development should adopt a rights-based approach to their work, which requires a specific action to ensure equality and non-discrimination in process and outcome.

⁷⁹ See, for example, CESCR. (2000). General Comment No. 14, The right to the highest attainable standard of health. E/C.12/2000/4. Retrieved January 8, 2013, from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/439/34/PDF/G0043934.pdf?OpenElement> para. 39.

⁸⁰ See, for example, *Ibid.*, para. 39; Hunt, Paul. (2004). The right of everyone to the enjoyment of the highest attainable standard of physical and mental health. E/CN.4/2004/49. Retrieved January 8, 2013, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/109/33/PDF/G0410933.pdf?OpenElement>, para. 46. Again, these pronouncements were made in regard to the right to health.

⁸¹ Charter of the United Nations, 24 October 1945, 1 UNTS XVI, art. 55.

⁸² See, e.g., standards addressed inter alia to NGOs, including Office for the Coordination of Humanitarian Affairs (OCHA). (1998). Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2. Retrieved January 8, 2013, from <http://www.idpguidingprinciples.org/>; and OHCHR. (2002). Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.1, Retrieved January 8, 2013, from <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>. The evolving status of NGOs and human rights responsibilities has been the subject of significant study, see, e.g., Clapham, A., & Academy of European Law. (2006). Human rights obligations of non-state actors. Oxford: Oxford University Press.

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Discrimination, Inequality, and Poverty

A Human Rights Perspective

Despite recognition in the Millennium Declaration of the importance of human rights, equality, and non-discrimination for development, the Millennium Development Goals (MDGs) largely bypassed these key principles. The fundamental human rights guarantees of equality and non-discrimination are legally binding obligations and do not need instrumental justifications. That said there is a growing body of evidence that human rights-based approaches, and these key guarantees in particular, can lead to more sustainable and inclusive development results.

Discrimination can both cause poverty and be a hurdle in alleviating poverty. Even in countries where there have been significant gains toward achieving the MDGs, inequalities have grown. The MDGs have supported aggregate progress—often without acknowledging the importance of investing in the most marginalized and excluded, or giving due credit to governments and institutions which do ensure that development benefits these populations. Recognition of this shortcoming in the MDGs has brought an increasing awareness of the importance of working to reverse growing economic inequalities through the post-2015 framework, and a key element of this must be actively working to dismantle discrimination.

The post-2015 framework should be grounded in a fundamental guarantee of equality and non-discrimination. The framework should go some way toward achieving this by including goals, targets, and indicators directed at reducing discrimination and ensuring that the social and economic needs of the most marginalized communities are being addressed, and at reducing wealth inequalities more broadly.



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Front Cover: A woman with mobility impairments uses a hand-crank bicycle to move around her village. After 20 years of displacement and war in northern Uganda, women with disabilities - physical, sensory, mental and intellectual - face an even more complex and grueling process of return and relocation than their neighbors. They experience stigma and sexual violence and are often denied access to health care and justice.