TST Issues Brief: Human rights including the right to development[i]

I.   Stocktaking

The Millennium Development Goals (MDGs) have had some success in highlighting key development and human rights issues such as poverty and food, gender equality, health, education, water and sanitation, housing and a global partnership for development. However, the focus of the MDGs on a narrow and somewhat unbalanced set of goals failed to reflect the full ambition of the Millennium Declaration and its commitment to the Universal Declaration of Human Rights. Progress on the goals has been uneven within and across countries, and recent stocktaking exercises have highlighted a number of gaps in what the goals set out to achieve, as well as in the way progress has been measured. Since human rights and sustainable development objectives are closely linked and mutually reinforcing, addressing these human rights gaps will be essential for truly sustainable development.

With regard to **socio-economic issues**, the MDGs have focused on a selection of issues central to the human rights agenda in terms of **economic, social and cultural rights**, but were not fully aligned with human rights standards. For example, goals focused on achieving access to services, but not on access to *quality services*. This is a serious gap and the UN global consultations have detected a "demand from the ground for a greater emphasis on the *quality* of basic services – not just access. It is not just the number of children in schools that matter, but what they are able to learn"[ii]. Ensuring that public social services are not just accessible but are also of good quality is a central principle of all economic and social rights, including the right to health, food, education, water and sanitation, and the right to housing. In the case of the right to education for example, education must be accessible, affordable and of a quality that ensures minimum learning standards. A human rights approach to education also means that rights should be integrated throughout the education system to inculcate the core values of non-discrimination, equality, tolerance and justice in a culturally-sensitive environment. The issue of jobs, and the right to decent work, have been prominent in national and global post-2015 consultations. It has been acknowledged that key components of broad-based, inclusive economic development should include full respect for human rights at work, labour market policies that promote decent work, and social security guarantees.[iii]

Another gap that the MDGs failed to address is the issue of growing **inequalities** within and between countries. The UNDG Inequalities Consultation revealed that, by not devoting sufficient attention to inequalities, the MDGs may have exacerbated the relative neglect of marginalized groups and contributed to widening social and economic inequalities. It is now increasingly recognized that, aside from this being undesirable from a moral and legal perspective, the failure to address excessive inequality and discriminatory practices can also inhibit development outcomes. Dismantling discrimination and reducing inequalities is essential for sustainable development. Research on investing in children's rights to health, nutrition, and learning, particularly of those that are most excluded and marginalized, suggests that this is a social and economic investment which helps reduce the transmission of poverty and inequality from one generation to the next[iv]. Achieving gender equality and realising the rights of women and girls are proven development multipliers[v]. Yet while MDG 3 does focus explicitly on gender equality, progress is tracked through only three indicators which represent important aspects of gender equality (education, employment and

political representation), but are insufficient to achieve the overall goal, as this leaves out crucial aspects of gender-specific discrimination such as violence against women, gender-based wage discrimination, women's disproportionate share of unpaid care work, sexual and reproductive health and rights, women's limited asset and property ownership and unequal participation in decision-making at all levels.

In the context of inequalities, the issue of jobs was again central. Jobs are seen not only as a way out of poverty, but also as giving women and men a sense of self-esteem and dignity, with the absence of job opportunities and exclusion from labour markets increasing inequalities, weakening social cohesion, and diminishing trust in political leadership and democratic institutions. Economic growth is no longer considered sufficient: the quality of growth is key, namely inclusive growth that generates employment and decent work and reduces inequalities, and that is economically, socially and environmentally sustainable.[vi] Growth will not be sustainable, and peace and security may be further undermined, if horizontal inequalities (ie. deep inequalities between ethnic or other social groups) are not explicitly addressed.[vii] Constitutional and other legislative guarantees of non-discrimination, and strong rule of law institutions which empower people to claim their rights, such as through legal aid and legal awareness, are also key for reducing inequalities.

Another important gap that people across the world have highlighted is how the "overall principles and values of the [Millennium] declaration [...] disappeared from view as the MDGs gathered pace", leading to the "neglect of **civil and political rights** and issues such as **political participation, personal security and access to justice**"[viii]. It has long been accepted that freedom from fear is as important as, and interdependent with, freedom from want[ix]. The Rio Declaration (1992), affirmed in the Rio+20 Outcome Document, stressed that individual participation in decision-making, access to information and to judicial and administrative proceedings, including redress and remedy, are essential enablers for inclusive, sustainable development[x]. Access to information has subsequently been endorsed on many occasions, but the other two pillars of Rio Principle 10 (access to justice and remedies) have received less attention. Protecting the rule of law and ensuring that people have access to justice (state systems as well as traditional and other non-state justice systems) are essential for development and the achievement of the MDGs.[xi] The MDGs experience shows that the failure to establish legal frameworks consistent with human rights standards, as well as the existence of democratic, capable and accountable institutions (including an independent justice system) that effectively enforce rules and procedures enable appropriate delivery of social services, can be key factors in countries' failure to meet targets.[xii] Certain civil and political rights indicators (such as indicator 3.3, the proportion of seats held by women in national parliament) were included in the MDGs. But many others were categorically excluded. All rights have measurable dimensions, as the UNDG consultations and UN Task Team report on Statistics and Indicators now affirm.

The MDGs also aimed to promote international cooperation and MDG 8 represents an important effort to strengthen a **global partnership** for development. However, the goal has proven weak in terms of accountability, given the fact that its targets are less specific and not time bound, and it falls short of other relevant international commitments. The **right to development**, agreed by member states in 1986, encompasses all human rights and entails obligations of States towards their own populations.[xiii] It also includes a range of important commitments and obligations to international cooperation and assistance which are not fully reflected in MDG 8. For example, while MDG8 does attempt to address imbalances in the international trade system, it neglects underlying

issues such as countries' unequal participation in international institutions, including international financial institutions. In addition, it is based on an outdated model of donor-recipient cooperation and does thus not encourage alternative sources for financing or effective South-South or triangular cooperation. Nor does it engage with the responsibilities of private actors including international corporations.

Finally, it has been widely acknowledged that shortfalls in the MDGs have occurred not because the goals are unreachable or because time is too short but "because of unmet commitments and [...] a lack of focus and **accountability.**"[xiv] The MDGs established a framework for accountability through periodic reporting by governments. But this has not proven sufficient. Consultations with over a million people suggest that "a data revolution" and a "transparency revolution" are necessary for an accountability revolution. Ensuring freedom of the media to perform their essential role and the right of the public to have access to information will be critical in this endeavour. Accountability and transparency are key principles of the international human rights regime, and offer guidance on how to ensure effective accountability for the post-2015 agenda.

II.   Overview of proposals

The Rio+20 Outcome Document, the report of the SG's High Level Panel, the SG's report and many other key reports over the past year have all noted the importance of ensuring that post-2015 goals (including the SDGs) are consistent with existing international agreements, which include the international human rights and environmental treaty regimes.

In this vein, the Rio+20 Outcome Document reiterated an extensive catalogue of human rights commitments: It recommended that SDGs should be "consistent with international law" (which includes international human rights law) and highlighted a number of specific human rights, including the right to an adequate standard of living, the right to food, the right to water and sanitation, the right to health, the right to education, the right to development, the right to personal security, all human rights in the context of sexual and reproductive health, the right to decent work including fundamental rights at work, gender equality, and the right to self-determination. It also integrated key elements of the human rights-based approach to development, as defined by the United Nations system, including people-centred development, a development centred on culture and identity that respects and incorporates traditional knowledge, attention to root causes, broad public participation, inclusion, accountability, non-discrimination, reducing inequalities, empowerment, the rule of law, democracy, personal security, good governance, access to justice, access to information, an active role for civil society, social protection floors, and effective international cooperation. People across the world have since confirmed the importance of the Rio+20 human rights consensus. The most consistent message that has emerged from the post-2015 global consultations so far is people's "demand that this new agenda be built on human rights, and universal values of equality, justice and security"[xv].

Some proposals for the post-2015 agenda, such as that of the SDSN and the UN Global Compact, have thus advocated for a self-standing goal, or goals, on human rights. But most proposals do not propose a stand-alone goal but rather suggest that human rights be integrated throughout the post-2015 framework, with "a human rights approach underpinning each 'sectoral' goal"[xvi].

A concrete example of how to align and underpin **socio-economic goals** with existing **economic, social and cultural rights** standards comes from the water and sanitation sector, strengthened by the recent recognition by the UN GA of the human rights to safe drinking water and sanitation. Going beyond the narrow focus on improved infrastructure, which was monitored by MDG 7.C, UN Water's proposals for a goal on water, among other things, aim for universal access, target those most excluded, especially those excluded by discrimination, invest in collection of disaggregated data, promote equality, and monitor quality and reliability of water and sanitation services. This builds on criteria drawn explicitly from the human rights standards on safe drinking water and sanitation.[xvii] In relation to science, technology and innovation for sustainable development, proposals for the Post 2015 Development Agenda have emphasized alignment with rights of all people "to enjoy the benefits of scientific progress and its applications" and to "seek, receive and impart information".

With regard to **equality and non-discrimination**, all thematic consultations have drawn attention to the fact that the MDGs' focus on less ambitious "half-way" targets and on average progress has meant that the poorest families, and most deprived and marginalized groups, including minorities, migrants and indigenous peoples, have been left behind, even if the goals may be met in the aggregate at the national or global level. As a result, a strong call for "zero targets" is emerging, i.e. for expressing targets as "reduce to zero" or "100 percent"[xviii], and for disaggregating data in order to identify and redress disparities. Many proposals have also focused on the realization of women's rights and achievement of gender equality as centre-pieces of the post 2015 agenda grounded in human rights commitments and principles.

Most proposals are reasonably balanced in terms of their treatment of civil, political, economic, social and cultural rights, with **civil and political rights** often included within "good governance" or rule of law proposals[xix]. The report of the Secretary-General's High Level Panel on "A New Global Partnership", for example, proposes a goal (Goal 10) on good governance and effective institutions, which includes references to a range of civil and political rights, including freedom of speech and association, the right to information and public participation in political processes at all levels. It also proposes a goal (Goal 11) to ensure stable and peaceful societies which addresses issues of freedom from violence, the administration of justice and the accountability of security forces, police and judiciary. This reiterates the commitments of the Rio+20 Outcome Document which emphasised the importance of democratic governance, based upon the rule of law and of effective and accountable institutions, including independent and accessible justice systems, as necessary requirements for sustainable development.[xx]

The SDSN report was among the few that gave explicit consideration to the **right to development**. However, it did so without reference to the 1986 UN Declaration on the Right to Development, instead using the term (imprecisely) as shorthand for economic growth and convergence in living standards. The 1986 Declaration makes it clear that development is not only about economic growth but rather about the rights of all persons to participate in economic, social, cultural and political development focussed on the constant improvement of human well-being. In order for the post-2015 development agenda to be grounded securely within the right to development as the international community has defined it, the new agenda must direct development efforts to the realization of human rights, including through strengthened rule of law, greater human rights accountability, the active, free and meaningful participation of all people (including women, young

people, migrants, older persons, minorities and persons with disabilities), and enhanced international cooperation. Where indigenous populations are concerned, participation should be governed by the principle of free, prior, informed consent.[xxi]

Many proposals seek to strengthen **accountability** in various ways, for example by highlighting the importance of "continued participation - not just in [the] process to determine the world's priorities, but also to hold governments, business, international organizations and civil society to account for achieving them."[xxii] Specific suggestions for the design of post-2015 goals and accountability arrangements include the recommendation of objective criteria for the identification of post-2015 priorities[xxiii]. It will also be critical to improve capacity for data collection and analysis at all levels[xxiv]. It has been recommended that the new agenda draw on the comprehensive and flexible set of targets and indicators that the human rights framework offers. In terms of monitoring mechanisms, many have argued for a stronger role for international human rights monitoring mechanisms like the Universal Periodic Review of the UN Human Rights Council, the human rights treaty monitoring bodies and the ILO supervisory machinery. Others have highlighted sectoral monitoring mechanisms, such as the WHO Commission on Information and Accountability for Women's and Children's Health, environmental accountability mechanisms, as well as peer review mechanisms, citizen score cards and other social accountability mechanisms through which individuals can engage with service providers[xxv]. While the private sector is mentioned in many proposals for its important contributions to innovation, technology and growth, the accountability of the private sector is often neglected. The UN Global Compact report however, argues that "it is essential for companies to conduct due diligence to identify and address any adverse impacts their operations may have on human rights." The August 2013 Asia-Pacific Ministerial Dialogue "From the MDGs to UN Development Agenda Beyond 2015" also supports this. The UNDG Governance Consultation recommended that the 2011 UN Guiding Principles on Business and Human Rights should be the foundation stone for the accountability of the private sector in connection with the post-2015 agenda.

III.   Possible suggestions on the way forward

The consultations, technical processes and initial discussions among member States have clearly illustrated the strong demand for integrating human rights in the post-2015 agenda. The question is: **how should human rights most effectively be integrated within the Post-2015 Agenda?** One of the key messages from the post-2015 consultations and proposals to date is that development issues are human rights issues, and human rights can help address development challenges. Human rights can help us to identify our priorities and set the standards with which to align goals, targets and indicators and monitoring mechanisms.

Given intimate inter-linkages between human rights and development, a self-standing "human rights" goal would not seem to be called for. In fact, it is seen by many as counter-productive. Rather, human rights can frame and reinforce a post-2015 *vision, goals, targets, indicators, means of implementation,* and *accountability* arrangements, in the following ways:

- **Vision**: People are asking for a transformative post-2015 *human rights vision*.[xxvi] Under a human rights vision, poverty eradication is a matter of justice and obligation, and not only a policy option. A human rights vision is holistic and universal, based on the dignity and equal worth of all human beings, without discrimination, protected through strong and independent rule of law

institutions. It addresses freedom from fear *as well as* freedom from want, in all countries, prioritising those who are most marginalised. In this vision, human rights are the ultimate *ends* of development, as the HLP report exemplifies.

- **Goals**: Member States at Rio+20 agreed that SDGs should, among other things, be consistent with international law and supportive of international human rights standards, which suggests that goals should explicitly refer to the corresponding human rights standards (including the core UN human rights treaties and international labour standards) where applicable, not merely in a rhetorical manner but in a way that imports and reinforces the actual content of those rights as recognised in international law. Aligning goals and targets with existing human rights standards means ensuring that civil and political rights are included, along with economic, social and cultural rights, in a balanced and manageable agenda. Goals should aim for universal access or coverage, and should be applicable to all people everywhere, as many post-2015 proposals have argued. And, while a self-standing "human rights" goal would not be warranted, there are a number of strong proposals for adding new self-standing goals that go beyond socio-economic goals, including to eliminate discrimination and achieve equality, and to ensure good governance and rule of law (including democratic participation, personal security, and access to justice).

- **Targets**:   As with goals, targets should be closely and explicitly aligned with their corresponding human rights standards. While goals should be aspirational, targets should be ambitious but achievable. Wherever practicable, targets should be expressed as "reduce to zero" or "100 per cent", within identified target dates. While human rights treaties recognise that social rights are to be realised progressively, to the maximum extent of available resources, with progress benchmarked over time, shorter timeframes are required for the realisation of rights that are less resource-dependent, and to fulfil immediate obligations such as the elimination of discrimination. At the same time, tailoring or adapting global targets (including target dates) to the national and sub-national levels will also be essential. The MDGs were sometimes unfairly used as a one-size-fits-all metric of progress, comparing progress in countries with very different circumstances and starting points. Human rights criteria can help to overcome this problem. Firstly, participatory processes should be employed to set ambitious, equitable and achievable national and sub-national targets and to subsequently monitor those on a partnership basis, including civil society, employers' and workers' organisations, local government and others. Secondly, human rights and environmental treaty standards that are binding for their parties, and recommendations from those treaties' monitoring mechanisms and ILO supervisory bodies, can guide national tailoring of global goals and targets to individual countries' needs, capacities and existing obligations. The UN Task Team report on Statistics and Indicators discusses these criteria.[xxvii]

- **Indicators and measuring progress**: The MDGs focus on a small number of (mainly) outcome indicators. By contrast, a human rights perspective calls for evidence of commitment and fiscal and policy *effort*, as well as improved outcomes.[xxviii] This necessitates a certain number of key input and output indicators, in addition to outcome indicators, where international treaties and the evidence so require. Post-2015 consultations have confirmed that many dimensions of human rights-based development (including civil and political rights) are adequately measurable for the purposes of a global development agenda. Human rights standards also emphasise availability, accessibility, affordability, acceptability and quality of social services. Many post-2015 proposals have successfully integrated these criteria within the design of goals, targets and

indicators, but much more is still possible. Other implications of human rights for monitoring include: data disaggregation to capture inequalities, exclusion and discrimination against women, children, adolescents and youth, older persons, minorities, migrants, indigenous peoples, persons with disabilities and others; identifying and addressing disparities relating to location (e.g. rural-urban/remote areas/slum locations) and income/wealth; broadening data sources including "big data" as the HLP report and UN Task Team report on Statistics and Indicators recommend, and building national and regional capacities to collect, analyse and use population data for development, including through international partnerships[xxix]; and establishing participatory monitoring processes at all levels, including mechanisms for people-led information generation on progress and performance against targets, indicators and standards.

- **Means of implementation**: Human rights and environmental treaties contain agreed principles for international cooperation and fair burden-sharing[xxx]. The Rio+20 outcome document called for policy coherence at the global level. Integrating human rights within social and environmental impact assessment processes can strengthen policy coherence.[xxxi] Commitments to this effect, and related global partnership commitments and institutional reform measures, could be reflected as process (or output) indicators which could be consolidated within in a new self-standing "global partnership" goal with specific, time-bound targets, and integrated as needed across other goal areas.

- **Accountability**: MDGs accountability mechanisms are relatively weak. Post-2015 consultation processes yielded calls for mechanisms to ensure reporting, redress and accountability. Political, administrative, judicial, quasi-judicial and social accountability mechanisms are important, at global, regional, national and local levels, to ensure that relevant institutions have clear responsibilities, are answerable for them, and are subject to enforceability when delivery fails.[xxxii] Those mechanisms should draw from and build on existing human rights mechanisms as well as experiences with participatory methodologies at national and local levels for budget transparency and the monitoring of development programmes. The UN Global Compact report noted the importance of business undertaking human rights due diligence, within the framework of their contributions to the post-2015 agenda. The 2011 UN Guiding Principles on Business and Human Rights can guide the regulation of business responsibilities in this context, built on a baseline duty of human rights due diligence, as part of a new self-standing "global partnership" goal.

[i] This Issue Brief was drafted by OHCHR, UNICEF, UN Women, UNDP and UNEP with comments from the following agencies: UNESCO, UNAIDS, World Bank, EOSG Rule of Law Unit, PBSO, ILO, UN-DESA, UNFPA, and IOSAA. This Issues Brief complements other Issues Briefs including on Promoting Equality including Social Equity, and Gender Equality.

[ii] UNDG, The Global Consultation Begins: Emerging Views for a New Development Agenda (2013), "A Million Voices", p.v.

[iii] UN, Realising the Future we Want for All, 2012, p.5; "A Million Voices" ibid, pp.5, 22.

[iv] UNICEF (2012), Right in Principle and in Practice: A Review of the Social and Economic Returns to Investing in Children; UNICEF (2013), UNICEF, Sustainable Development Starts and Ends with Safe, Health and Well-Educated Children; WHO, *Women and Children's Health: Evidence of Impact on Human Rights* (2013).

[v] World Bank, *World Development Report 2012: Gender Equality and Development* (WDR 2012); Rio+20 Outcome; World Summit Outcomes 2005, 2010; UN Millennium Declaration 2000; Beijing Platform for Action 1995. On measuring inequality of opportunities in access to jobs see WDR 2012, p.138. WDR 2012 sets rights as the foundation (p. 155).

[vi] "A Million Voices," op cit, pp.11, 125.

[vii] UNDG, Addressing Inequalities: Synthesis Report of Global Public Consultation (March 2013), at http://www.worldwewant2015.org/node/299198; Berg & Ostry, Inequality and Unsustainable Growth: Two Sides of the Same Coin? IMF Staff Discussion Note SDN/11/08, 8 April 2011; World Bank, *World Development Report 2011*, pp.75-80.

[viii] UNDG (2013), "A Million Voices", p. 14.

[ix] UNDP, *Human Development Report 2002: Deepening Democracy in a Fragmented World* (2002), UN Task Team, (2012), "The World We Want", UNDG (2013), UNDG (2013), "A Million Voices".

[x] Rio Declaration 1992, Principle 10: "Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

[xi] The UN Millennium Project identified governance failures, including weak rule of law systems, as one four reasons for the shortcomings in achieving the MDGs.

[xii] Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone.* Volume I, 2008, United Nations, New York.

[xiii] Declaration on the Right to Development (1986) "development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

[xiv] SG, press release SG/SM/12789, 16 March 2010.

[xv] UNDG (2013), « A Million Voices », p.2.

[xvi] Ibid, p. 42. See also HLP Report (Annex II); and UN High Commissioner for Human Rights, Open Letter, Human Rights in the Post-2015 Agenda, 6 June 2012, http://www.ohchr.org/Documents/Issues/MDGs/HCOpenLetterPost2015.pdf.

[xvii] By way of contrast, the HLP proposes a goal on education ostensibly based on the right to education, but does not call for *free* universal primary education as the right to education in international treaties requires.

[xviii] Global Agenda Council on Benchmarking Progress, World Economic Forum, Brookings Institute (2012) "Getting to Zero – Finishing the Job the MDGs Started"; and the UNDG reports on the global thematic consultations on Health, Education, and Addressing Inequalities (2013).

[xix] HLP Report; Open Working Group co-Chairs' interim report 2013; SG report to the GA, 2013.

[xx] Rio+20 Outcome Document, para 10.

[xxi] UN Declaration on the Rights of Indigenous Peoples, A/RES/61/295, paras 10, 11, 19, 28, 29; ILO Convention 169.

[xxii] UNDG (2013); "A Million Voices", p. 2.

[xxiii] UNDG Governance Consultation; OHCHR and Center for Economic and Social Rights, *Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda* (United Nations: Geneva, 2013).

[xxiv] E.g. Governance Consultation, UN Task Team working group on monitoring and indicators, "Statistics and indicators for the Post-2015 Development Agenda" (July 2013).

[xxv] OHCHR and Center for Economic and Social Rights, *Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda* (United Nations: Geneva, 2013); UNDG (2013), "A Million Voices".

[xxvi] UNDG, The Global Conversation Begins (March 2013).

[xxvii] UN Task Team working group on monitoring and indicators, "Statistics and indicators for the Post-2015 Development Agenda" (July 2013), para 53(b).

[xxviii] OHCHR, *Human Rights Indicators: A Guide for Measurement and Implementation* (2012), at http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf; World Bank Study, *Human Rights Indicators in Development: An Introduction* (2010).

[xxix] Report of the UNDG Global Thematic Consultation on Population Dynamics (UNFPA, UNDESA, UN-Habitat, IOM 2013).

[xxx] UNEP, Compilation of internationally agreed environmental goals and objectives, November 2012, available at http://geg.informea.org/wp-content/uploads/2013/04/GEG-Booklet-Jan-2013.pdf; See also, World Bank, *Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessment and Relevance for Development* (2013).

[xxxi] UNDG, Review of Outcomes: Final Meeting of the Global Thematic Consultation on Governance in the Post-2015 Framework (March 2013), p.2, at http://www.worldwewant2015.org/2015report.

[xxxii] UNDG, Review of Outcomes: Final Meeting of the Global Thematic Consultation on Governance in the Post-2015 Framework (March 2013), at http://www.worldwewant2015.org/2015report; OHCHR and Center for Economic and Social Rights, *Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda* (United Nations: Geneva, 2013) at 31-58; UN High Commissioner for Human Rights, Open Letter on Human Rights and the Post-2015 Agenda, 6 June 2013.