



## **Social Inclusion & Human Rights: Implications for 2030 and Beyond**

Background paper for the  
High-Level Panel of Eminent Persons on the Post-2015 Development Agenda

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Creating a world where the equal worth of every individual is respected and valued is simple to articulate, but difficult to deliver. The *Universal Declaration of Human Rights* (1948) was a powerful statement of intent, and in the intervening years, attempts were made in every jurisdiction to create legislative, administrative, and judicial mechanisms to ensure these values were upheld. At the international level, this resulted in exponential growth of human rights law, judged against three indicators: (a) proliferation of human rights legal standards; (b) emphases placed on human rights within state practice; and (c) take-up of human rights norms by international institutions.

Human rights mechanisms tend to focus primarily on civil and political rights, instead of the full spectrum of human rights including socio-economic and cultural rights. As a result these mechanisms have been relatively ineffective in addressing issues of social inclusion, empowering communities in socio-economic terms, or making contributions to ending poverty. The mechanisms have not had solutions for those in the 'Bottom Billion', nor have cogent legal systems been implemented for inter-generational rights, enabling focus on the environment and challenges raised by planetary boundaries. Viewed from the lens that planetary boundaries may create competition over scarce resources, it is likely that these mechanisms will be unable to stop the furthering of inequality caused by such competition. A further central element that needs to be borne in mind is that human rights mechanisms have traditionally been antagonistic to states, focusing on naming and shaming them for what is deemed poor performance, rather than working collaboratively with them towards finding and implementing effective solutions.

A long-term perspective to 2030 and beyond needs to address some of the following trends which are likely to impact gender equality, social inclusion and human rights<sup>1</sup>:

- **Ongoing environmental degradation** will have a strong impact on the poor and marginalized populations since they tend to (i) depend the most on natural resources for their livelihoods, (ii) live in areas that are particularly prone to environmental degradation; and (iii) are least able to protect themselves against the effect of environmental degradation.
- **Conflict over scarce resources** will become more common as population pressure, local environmental degradation, and global environmental change (in particular climate change) combine to put pressure on vulnerable communities. The resulting fragility is particularly evident in the drylands where pastoralist communities often compete with sedentary farmers over scarce water resources and grazing grounds.
- **Population growth** and fertility rates tend to be highest in poor countries and among poor people, particularly in rural areas. Having large numbers of children early in life increases maternal mortality, disempowers women, lowers per capita investments in children, and therefore increases child mortality rates and poor education outcomes.
- **Human migratory flows** will likely grow in volume and become more dispersed with growing numbers of people seeking refuge in today's emerging countries. Such flows create misery for many migrants, put pressure on weaker populations in host

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<sup>1</sup> See the framework for sustainable development prepared by the Leadership Council of the SDSN for a fuller discussion of some of these trends.

countries and deprive the migrant countries of dynamic and relatively well educated people (“brain drain”).

- **The growing importance of the private sector** will challenge traditional models of state-led human rights instruments, as governments will need to negotiate policies with business, civil society, and other stakeholders.
- **Technological change** offers new opportunities for delivering social services and income opportunities for the poor, but it also changes the nature of jobs, increases the skill premium, and promotes the “winner takes all” effect. As a result, inequalities within countries are likely to rise unless counteracted by active policies.
- **Unprecedented urban growth** puts pressure on traditional communities and their organization.

### The Main Concerns

The framework of human rights has not adequately addressed the issues raised above, while nonetheless being ‘successful’. The main reasons for this failure concern the nature of the framework, its contents, and how it has been applied. Thus the framework itself consists of UN Charter and Treaty based bodies, which operate in standard setting, implementation and monitoring. The vast majority of the last six decades have focused on standard setting, with implementation left to a state party, and monitoring usually taking the form of ‘naming and shaming’ assisted by increasingly vocal civil society voices. Rather than assisting solutions however, these interactions have all too often been framed as confrontations resulting in defensive postures and a failure to focus on implementable solutions. The over-emphasis on civil and political rights has skewed content away from the kinds of issues that are of central concern in terms of social inclusion. This has narrowed the human rights remit and restricted accurate diagnoses of human rights within states. For instance, while organizations such as Freedom House can provide relatively accurate pictures of the issue of freedom of speech through its index, this is not necessarily an indicator of the likely pressures within a society. Finally, the processes of human rights have placed overt emphasis on the international level, while it is clear that major innovations and social policy solutions are more likely to emanate at national level. The cumulative result of these factors mean that human rights mechanisms and frameworks have had little impact on the trends highlighted above.

A failure to correct the trajectory of human rights law, to make it focus on the needs and challenges faced by vulnerable communities, including women, would mean that inequalities would persist into the future, and issues concerning the environment would be de-linked from the human security dimension of the human condition. ‘Business as usual’ risks exacerbating the following shortcomings of the prevailing approach to human rights:

- (a) Excessive reliance on civil/political rights, while ignoring issues concerning socio-economic rights as occurring in a marketized sphere where women and minorities, due to structural inequalities, are less likely to be able to compete as equals;
- (b) Over-reliance on advocacy as a tool to gain rights, with the result that excluded communities are likely to remain further away from social policy makers, and only gain their rights through expensive processes;
- (c) Overt focus on individual rather than collective rights, derived from western origin laissez faire governance models, while issues confronting social exclusion need collective solutions;

- (d) An overt reliance of generating remedies through parliamentary processes is ineffective in terms of vulnerable communities whose access to such mechanisms is limited by their relatively poor rate of political participation;
- (e) Using human rights as a “naming and shaming” tool with uncertain political support from many countries, alienates them;
- (f) The articulation of a ‘human rights-based approach’ which means different things in different contexts perpetrates confusion;
- (g) Over-emphasis on States as the primary liable actors for rights violations.

## **Pathways Towards Sustainable Development**

Stripped to basic principles, the human rights agenda to 2030 and beyond ought to be focused on guaranteeing fundamental equalities, and not ‘non-discrimination’. Non-discrimination requires that systems treat everyone the same –only valid when each individual or community starts from the same premise of equal access to opportunities. Treating unequals as equals perpetrates new inequalities undermining the human rights project. In terms of any potential framing of goals, this requires that extra attention is paid specifically to the attainment of targets among vulnerable communities, defined (i) in terms of ethnicity, religion and/or language with further attention to women within these communities; and (ii) to women as a category across all indicators.

Many developing countries have worked on unpicking persistent inequalities undermining their existence. For example, China has sought to create administrative mechanisms to enable the ascent from poverty of communities in millions. This has been achieved through a series of affirmative actions and policy changes in education, political governance, and linguistic rights. India’s affirmative action measures stem from basic constitutional guarantees of equality, and have challenged culturally ingrained inequalities that form the caste system through administrative processes. New Zealand has worked to create processes undoing historical violations placing the Maori in a subjugated position to the Parekha (settlers) and instituting remedies that challenge inequalities. Lebanon has attempted to create administrative processes to calibrate Christian and Muslim influences through consociationalism (a form of power sharing), while underscoring the need for such divisions to disappear over time. Even Iraq, emerging from the shadow of oppression and subsequent occupation, has sought to create mechanisms to accommodate Kurdish ambitions. Numerous African states such as Uganda and Kenya are engaged in discussions concerning the efficacy of land tenure systems, and the South Africans have demonstrated that socio-economic rights can be made justiciable through access to anti-retroviral drugs. Colombia has led the way on recognizing indigenous rights with echoes in Mexico and Bolivia, while Brazil has sought mechanisms to put the *Bolsa Familia* scheme on a firm legal footing.

These measures each with inherent faults nonetheless represent a departure from time-honed approaches to human rights, involving advocates locked in battle with governments. The UN Human Rights Council’s Universal Periodic Review has demonstrated that ‘naming and shaming’ is not the only human rights tool available. Instead, the pooling of genuine administrative experiences in various contexts is much more likely to yield results.

## Two Proposals

With this in mind the High Level Panel is urged to:

- Ensure that the language of human rights, articulated specifically in terms of equality of opportunity and the removal of inequality, features strongly in the post 2015 framework;
- That the post 2015-framework emphasize the importance of deriving and developing the use of comparative administrative legal frameworks conducive to combatting inequality;
- Emphasize the need for active collaboration, and not antagonism, between human rights mechanisms, governments, civil society and business;
- Urge the UN Human Rights Council to be ever more mindful of the indivisibility of human rights, and to pay particular heed to how they impact the development agenda post 2015.

The SDSN Thematic Group on “Challenges of Social Inclusion: Gender, Inequalities, and Human Rights” will explore how it might launch two important initiatives, one to serve as an accurate diagnostic tool, and the other to focus on the generation of solutions to intractable human rights issues:

- (a) Develop the measurement of human rights capacities in a manner conducive to problem-solving rather than naming and shaming, with particular attention to the socio-economic needs of communities, as well as the rate of access to these among vulnerable groups.
- (b) Create and maintain a database of existing administrative mechanisms, such as the ones identified above, and to develop these and others as models that could be applied in conjunction with the range of other solutions being proposed.

With (a) above, human rights metrics have been negligent in creating accurate diagnostic tools. As a result human rights criticism is all too often rhetorical and single dimensional. The idea is to develop a human rights index to create a diagnostic tool enabling adequate comparison of human rights within states, while catering for other competing imperatives such as the opportunity cost of investing in health or other welfare. Such an index would show how technical support and policy change could have significant impact on human rights, gender parity, and social inclusion within each country.

With (b) above, the vast majority of legal models perpetrated throughout the world have derived from the limited experiences of countries such as the United States of America, the United Kingdom, Canada, France, Germany, and to a lesser extent, Italy and Japan. These models are unsuited to many developing countries. The proposed initiative will make available the models and lessons from a much broader range of countries.

The two processes in tandem will enable genuine assessment of performance, identification of areas of concern, and reliance on social policy models that may be appropriate, drawn from other contexts.

We would welcome to partner with any members of the High-Level Panel who are interested in contributing to either of these initiatives.

## **Conclusion**

In short, to tackle the 2030 and 2050 agendas, the HPL's report ought to emphasize the following points:

- (a) Social inclusion is fundamental to the post 2015 development strategy;
- (b) States, civil society, international organizations and the private sector need a collaborative (not antagonistic) approach in seeking active solutions to social exclusion;
- (c) The indivisibility of human rights is fundamental to progress, with greater emphasis required on socio-economic rights within the 2015 framework;
- (d) The need for the generation of appropriate legal frameworks to the multi-faceted solutions proposed post 2015;
- (e) The importance of deriving solutions drawn from state practice around the world, especially in the economic south;
- (f) The need for the creation of appropriate diagnostic tools to understand rather than criticize competing priorities for state intervention, and follow these up with appropriate models that may be useful starting points.

In endorsing this approach, the High Level Panel could make a significant contribution in highlighting that human rights is not a 'what' but 'who' question. In other words, legal mechanisms need to address human security aspects of all, especially the vulnerable, and focus only on problems faced by failures to gain civil and political rights compliance.