



Reproductive Health Matters

An international journal on sexual and reproductive health and rights

ISSN: 0968-8080 (Print) 1460-9576 (Online) Journal homepage: <https://www.tandfonline.com/loi/zrhm20>

The shifting politics in multilateral development and human rights negotiations and the absence of accountability

Stuart Halford & Sandeep Prasad

To cite this article: Stuart Halford & Sandeep Prasad (2014) The shifting politics in multilateral development and human rights negotiations and the absence of accountability, *Reproductive Health Matters*, 22:44, 109-113, DOI: [10.1016/S0968-8080\(14\)44813-4](https://doi.org/10.1016/S0968-8080(14)44813-4)

To link to this article: [https://doi.org/10.1016/S0968-8080\(14\)44813-4](https://doi.org/10.1016/S0968-8080(14)44813-4)



© 2014 Reproductive Health Matters



Published online: 30 Dec 2014.



Submit your article to this journal [↗](#)



Article views: 163



View Crossmark data [↗](#)



Citing articles: 1 View citing articles [↗](#)

The shifting politics in multilateral development and human rights negotiations and the absence of accountability

Stuart Halford,^a Sandeep Prasad^b

^a Senior Representative to the United Nations in Geneva, Sexual Rights Initiative, Geneva, Switzerland.
Correspondence: stuart@srigeneva.com

^b Executive Director, Action Canada for Sexual Health and Rights, Ottawa, Ontario, Canada

The post-2015 development agenda* currently being negotiated at the United Nations in New York will dictate development strategies and influence aid flows for the foreseeable future. It is vital, therefore, that what is agreed during these discussions focuses on the means by which to improve the lives and opportunities of those seeking to escape poverty and all that this entails. Yet negotiations on the new development framework have largely ignored a crucial component for addressing disparities and violations in all corners of the world: *human rights*.

The omission of human rights from the post-2015 framework will have serious consequences for those who already find themselves marginalised, discriminated against, stigmatised, under-served, vulnerable and under-represented, and who can do little more than watch as the development juggernaut passes them by yet again. It is clear that if human rights are kept out of the post-2015 development framework, the mistakes of the Millennium Development Goals (MDGs), which have delivered a lot less than was either hoped for or promised, risk being repeated. For example, MDG 5 Target 5b – Achieve universal access to reproductive health – remains the most off-track of the development goals because of the key omission of sexual and reproductive rights. This is because universal access to reproductive health cannot be achieved without reforms to laws and policies that currently restrict and create barriers to accessing services, such as parental and spousal consent laws, conscientious objection and mandatory waiting periods. Similarly, MDG 5

Target 5a – Reduce by three quarters, the maternal mortality ratio – cannot be achieved without addressing access to safe abortion services, which will require legal and policy reforms in a large number of countries. Furthermore, in regard to both targets, poor and other marginalised women cannot be ignored and disparities in equitable access cannot be hidden in national averages, as has occurred with MDG monitoring. If these inequalities are not addressed in the new post-2015 framework, how can the world hope to make progress in these key areas?

Why is there opposition to human rights within post-2015?

The difficulty in aligning human rights and development in the post-2015 framework is that States can claim they have different human rights obligations. Thus, some have ratified some treaties, while others have not; for example, the USA has not ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) or the Convention on the Rights of the Child. As such, not all States can or will accept reference to human rights being included in the post-2015 framework. It can also be argued, however, that the mention of “rights” in the title of a post-2015 goal is not actually helpful. After all, goals are aspirations while human rights are obligations. If “rights” end up being mentioned in the title of a post-2015 goal, then the obligation becomes an aspiration – and that could serve to undermine the human rights framework. Nevertheless, whatever post-2015 goals are finally agreed by member states, the most important consideration is *how* states will actually achieve those goals.

Clearly, it is important to ensure that all post-2015 targets and indicators for measuring progress

*The post-2015 development agenda refers to a process led by the United Nations (UN) that aims to help define the future global development framework when the UN Millennium Development Goals (MDGs) expire in 2015.

towards the attainment of each goal utilise a human rights-based approach. Human rights-based indicators for post-2015 goals and targets would have States and other stakeholders not only measuring and reporting on outcomes but also on structural and process factors, in addition to other requirements, such as including qualitative indicators and subjective measures. This, too, may be difficult for some States to agree upon, as it would mean they would have to put systems in place such as: stronger transparency and accountability mechanisms; legal and policy reforms; mechanisms to support participation and empowerment; and those focusing on the most marginalised populations, and on policies that could be unpopular with the incumbent government (such as those on sexual and reproductive rights).

In addition, human rights language obviously is used to help bind states to commitments, and this would open governments up to embarrassment on the global stage if these commitments remained unfulfilled. As such, a combination of these factors can make it difficult for some States to agree to these commitments. Hence, the beginnings of a political divide.

How does development impact on human rights and vice versa?

In some senses, this divide is perceived as a power struggle between the so-called global North and global South. But it goes a lot deeper than negotiations on post-2015 and can be seen in negotiations in other multilateral forums. In fact, this power struggle could be considered a lot more balanced than ever before, due to a rapidly changing political and economic landscape.

Nowadays, the global North has less political influence than ever before, with weakened economies that have been ravaged by recession and internal disagreements on the way forward – as is clear from the positions adopted by the Europeans during negotiations in New York. On the other hand, an often-united global South has emerged, with strong formal and informal regional blocs at the Human Rights Council in Geneva, such as the Africa Group and the “Like-Minded Group” of countries. The global South has increased its political influence and financial muscle, spearheaded by the economies of Brazil, Russia, India, China and South Africa (BRICS), whose economies are growing as fast as those of the global North are contracting. This has helped to create the shift

taking place in the balance of power towards the South. Add to this mix the backlash against perceived neo-colonialism, the justifiable anger that some Southern States feel about the North’s attempts to impose unpopular policies, and the North’s historical use of aid conditionality to push through unpopular policies and resolutions.

However, let’s be clear, it is not just the global North that can be accused of using whatever means necessary to force through resolutions. Russia too throws its weight around with developing countries, both economically and politically, and has used this division to help foster panic over “a loss of values” due to “westernisation” and the perceived obsession with sexual and reproductive health and rights. The ensuing sense of panic is in part responsible for some counter-resolutions at the Human Rights Council, such as those on “traditional values” and the “protection of the family”, the latter of which Russia managed to push through via a rare and arguably underhanded procedural tactic called a “No Action Motion”, which prevented discussion on previously agreed inter-governmental commitments to recognise and address the specific needs of “various forms of the family”.

The battle over the approach to development

While both sides in this growing divide will say they agree with and believe in human rights – as is evident from universal participation in the Universal Periodic Review mechanism of the Human Rights Council – it is crucial to recognise that the divide between them focuses as much on their approach to development and what it entails as on the post-2015 development goals themselves. The real power struggle, arguably, lies here.

By and large, the global North is pushing for a “human rights-based approach” to development. This requires addressing challenges in a comprehensive way and confronting persistent patterns of inequality and discrimination by addressing the structural causes that enable exclusion and marginalisation and ultimately, the denial of human rights. This approach, therefore, entails systematically applying human rights principles – non-discrimination, accountability, participation, empowerment, transparency, international assistance, and sustainability. Yet, ironically, while Northern States are pushing this approach they

do not necessarily adhere to it themselves: forced sterilisation of Roma women in Eastern Europe, greater maternal mortality and morbidity rates among African-American women in the USA, and Europe's anti-immigration policies are just a few examples.

As was clear from negotiations at the September 2014 session of the Human Rights Council, some States in the South are pushing for a "right-to-development approach". This also incorporates the principles of participation, transparency, accountability and international cooperation, according to the Declaration on the Right to Development.¹ But it also includes "*the right to sovereignty*" and "*the right to formulate appropriate national development policies*" and recognises that "*consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights*" – with emphasis on civil and political rights.

The divide over the approach to development seems to be manifested in a divide between how civil and political rights, as compared to economic, social and cultural rights, are meant to be realised. Civil and political rights are meant to be implemented immediately if violations are identified, while most economic, social and cultural rights are subject to "progressive realisation". Progressive realisation takes into account a country's lack of resources and capacity to meet these human rights obligations immediately. And it is this distinction that is being introduced in negotiations.

This divide is also emerging in negotiations at the Human Rights Council in resolutions on preventable maternal mortality and morbidity, the death penalty, and child, early and forced marriage and so on. All States are highly selective over which issues they champion and put forward as resolutions – arguably, in some cases, those that do not have a significant impact in their own country and which also create good press for them domestically. This ends up in situations during negotiations where the global North is telling the global South what to do, that the given issue is a terrible civil and political rights violation and as such, action needs to be taken immediately. The global South responds by questioning the legitimacy of the human rights-based approach, saying that it is not agreed language, even though the term is included in resolutions on preventable maternal mortality and morbidity and human rights.²

States from the global South then put forward, as an alternative, the right-to-development approach, subjecting the language in the text to progressive realisation. The South then states that unlike the human rights-based approach, the right-to-development approach *is* agreed language from the Declaration on the Right to Development,¹ reaffirmed in the Vienna Declaration and Programme of Action, and also included in the Rio at 20 Declaration under Principle 3. And this is the crux of the matter.

While both approaches look quite similar on paper, the issue of progressive realisation is becoming central to the divide at the same time as the political tide is turning away from the global North.

This divide emanates from a long-standing historical disagreement in the 1960s on how the Universal Declaration of Human Rights should be translated into legally binding treaties. The West, as it was then, argued for civil and political rights to be given more prominence, while the Eastern bloc argued for more importance to be attached to economic, social and cultural rights. As a consequence, two legally binding treaties emerged – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (CESCR).

Some States from the global South are now suggesting in side conversations that civil and political rights should also be subject to progressive realisation, due to the inability to guarantee certain basic civil or political freedoms. This is highly dangerous, for obvious reasons. In many instances, it can be argued that all human rights (civil and political, and economic, social and cultural) are progressively achieved – if at all – through the systematic strengthening of efforts. However, by applying the principle in more than a *de facto* manner to civil and political rights, there is a greater excuse for non-implementation by governments.

The concept of "development" itself implies that it cannot be achieved immediately, so there is a justifiable reason for a progressive realisation approach to be used in post-2015 negotiations. Similarly, the MDGs as goals are just that, aspirations, and clearly cannot be implemented immediately, i.e. they will be progressively realised.

Even so, we contend that equitable and effective human development cannot be achieved without a human rights-based approach. Hence,

the divide between the global North and the global South finds itself in a complex yet artificial argument around approaches to *development* – which resonates also at the General Assembly where negotiations on development traditionally have their home, such as during the Open Working Group* discussions on the proposals for post-2015 Sustainable Development Goals, where including a human rights-based approach has largely been dismissed.

Holding states accountable for their development commitments

While post-2015 commitments will be subject to progressive realisation and not binding on States, States still need to be held accountable for their development pledges. Clearly much of the substantive content of current and future development frameworks can be found within the binding obligations of international human rights law, which also goes a lot further than existing development frameworks. The Millennium Development Goals did not utilise existing human rights systems to monitor and hold States accountable for their development commitments, yet it did garner a level of response and effort that is unprecedented. To avoid this omission in the next round, and make the post-2015 commitments binding, the existing human rights framework could work from a set of agreed State obligations to guide implementation and ensure accountability.

Holding States accountable, e.g. for sexual and reproductive health and rights obligations, would serve to advance the realisation of development goals. Yet the accountability mechanisms of the international human rights system are vastly under-utilised by sexual and reproductive health and rights advocates. Why? There is a propensity for many non-governmental organisations (NGOs) to focus their advocacy on the Commission on the Status of Women and the Commission on Population and Development. Yet more substantive mechanisms exist in Geneva to hold States accountable for their commitments and obligations, including those related to sexual and reproductive health. Very few NGOs work with the treaty-monitoring bodies, the Special

Procedures or the Universal Periodic Review. Yet there are countless examples which show that each of these mechanisms works very well. Look at CEDAW's Concluding Observations on Hungary in 2013, which chastise the government's imposition of mandatory waiting limits for abortion,³ or CESCR's Concluding Observations on Tanzania in 2012 which criticise the government for the mandatory pregnancy testing of school girls,⁴ or consider the fact that one in four of every recommendation made to States during the first cycle of the Universal Periodic Review focused on an aspect aimed at advancing sexual and reproductive rights.⁵ In any case, very few States actually use the Agreed Conclusions of the Commission on the Status of Women, or the resolution or the chair's summary from the Commission on Population and Development, to inform their policies at the national level. Much more can be done with these human rights mechanisms to ensure governments are held accountable to respect, protect and fulfil sexual and reproductive rights.

To hold States accountable for their commitments at local, national and global levels, accountability must be rooted in human rights principles, and robust and multi-layered, and give effect to the human rights principles of participation, empowerment and transparency. Human rights accountability encompasses and entails multiple forms of accountability. This is a key point to understand. We have heard so many times about the need for greater accountability in international initiatives. But when implemented, the accountability envisioned has been highly restricted and often comes down to monitoring and evaluation of specific indicators or monitoring of spending on commitments. This is not enough.

A seismic shift in thinking is needed for accountability to be effective. Accountability needs to be understood not only in terms of the multiple actors that need to be held accountable, not only the multiple forms of accountability that need to exist, and not only the spheres of accountability at local, national, regional and global levels, but also how to ensure true voice accountability. That means that it is not only civil society voices that must be strengthened and heard within decision-making circles, but also and even more significantly, that women, young people and the most marginalised are empowered to seek accountability

*The Open Working Group consists of 30 members of the General Assembly and is tasked with drafting a proposal on the Sustainable Development Goals.

and claim their rights, including their sexual and reproductive rights.

Conclusion

To advance sexual and reproductive rights, it would be foolhardy to rely on the post-2015 framework as the only vehicle for change. The outcomes of all other relevant processes need to be taken into account, such as the recent 20-year reviews of the ICPD Programme of Action and the Beijing Platform for Action. These also need to be incorporated into a

strong and robust accountability framework that actually helps to inform the implementation of the post-2015 framework.

The post-2015 framework must not repeat the most important mistake of the MDGs, i.e. omitting rights, especially sexual and reproductive rights. The irony is unfortunately all too apparent – States will continue to ignore the human rights of those who are marginalised and vulnerable yet at the same time pledge to do all they can to improve the lives of those very same people through the adoption of an aspirational post-2015 framework.

References

1. UN General Assembly Declaration on the Right to Development. 4 December 1986. Articles 1 and 2. www.un.org/documents/ga/res/41/a41r128.htm.
2. Human Rights Council. Resolution on Preventable Maternal Mortality and Morbidity (A/HRC/18/L.8). http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/18/L.8.
3. Committee on the Elimination of Discrimination against Women. Concluding observations on the combined seventh and eighth periodic reports of Hungary, adopted by the Committee at its fifty-fourth session (11 February–1 March 2013). CEDAW/HUN/CO/7-8. 26 March 2013. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fHUN%2fCO%2f7-8&Lang=en.
4. Committee on Economic, Social and Cultural Rights. Concluding observations on the initial to third reports of the United Republic of Tanzania, adopted by the Committee at its forty-ninth session (12–30 November 2012). E/C.12/TZA/CO/1-3. 13 December 2012. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fTZA%2fCO%2f1-3&Lang=en.
5. See: Lessons From the First Cycle of the Universal Periodic Review: From Commitment to Action on Sexual and Reproductive Health and Rights. UNFPA, 2014. http://www.unfpa.org/rights/docs/Final_UNFPA-UPR-ASSESSMENT_270814..pdf.