

Sustainable Development Law & Policy

Volume 6

Issue 1 Fall 2005: *Development Goals & Indicators*

Article 1

Volume 6 Issue 1

Sustainable Development Law & Policy

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/sdlp>



Part of the [Education Law Commons](#), [Environmental Law Commons](#), [Health Law and Policy Commons](#), [Human Rights Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Sustainable Development Law & Policy, Fall 2005, 1-88.

This Entire Issue is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Sustainable Development Law & Policy by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

SUSTAINABLE DEVELOPMENT LAW & POLICY



EXPLORING HOW TODAY'S DEVELOPMENT AFFECTS FUTURE GENERATIONS AROUND THE GLOBE

IN THIS ISSUE: DEVELOPMENT GOALS AND INDICATORS

- 1 | EDITORS' NOTE *by Kelly Rain and Kirk Herbertson*
- 2 | BRIDGING THE GAP: HOW THE MILLENNIUM DEVELOPMENT GOALS ARE UNITING THE WORLD IN THE FIGHT AGAINST GLOBAL POVERTY *by Kemal Dervis*
- 4 | POST-CONFLICT CONVERGENCE OF DEVELOPMENT PLANNING: IMPLEMENTATION OF THE SUSTAINABLE DEVELOPMENT RELATED MILLENNIUM DEVELOPMENT GOALS IN AFGHANISTAN *by Belinda Bowling and Dr. Asif Ali Zaidi*
- 8 | EDUCATION AS A LYNCHPIN OF DEVELOPMENT: LEGAL AND POLICY CONSIDERATIONS IN THE FORMATION OF THE EDUCATION FOR ALL – FAST TRACK INITIATIVE CATALYTIC TRUST FUND *by Sophie Smyth and Anna Triponel*
- 13 | THE MILLENNIUM CHALLENGE ACCOUNT: A CRITICAL LOOK AT THE NEWLY FOCUSED DEVELOPMENT APPROACH AND ITS POTENTIAL IMPACT ON THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT *by Melanie Nakagawa*
- 21 | THE POLITICS OF THE MILLENNIUM DEVELOPMENT GOALS IN AFRICA: IS GLOBAL PARTNERSHIP REALLY WORKING? *by Charles Mutasa*
- 27 | ESTABLISHING SOUND CHEMICALS MANAGEMENT: A PREREQUISITE FOR ACHIEVING THE MILLENNIUM DEVELOPMENT GOALS *by Kelly Rain*
- 33 | HARMONIZATION AROUND RESULTS REPORTING: A SYNTHESIS OF FOUR COUNTRY STUDIES *by Elizabeth M. White, Rosalía Rodríguez-García, and Rema Balasundaram*
- 46 | TARGETS, TIMETABLES, AND EFFECTIVE IMPLEMENTING MECHANISMS: NECESSARY BUILDING BLOCKS FOR SUSTAINABLE DEVELOPMENT *by John C. Dernbach*
- 51 | THE MILLENNIUM CHALLENGE ACCOUNT AND THE PROGRAM ASSESSMENT RATING TOOL: THE DIFFICULTIES OF MEASURING ACCOUNTABILITY *by Ayako Sato*
- 54 | ACCESS TO JUSTICE AND THE RIGHT TO ADEQUATE FOOD: IMPLEMENTING MILLENNIUM DEVELOPMENT GOAL ONE *by Marc J. Cohen and Mary Ashby Brown*
- 58 | THE MILLENNIUM DEVELOPMENT GOALS, AID TARGETS, AND THE COSTS OF OVER-EXPECTATIONS *by Michael A. Clemens, Charles J. Kenny, and Todd J. Moss*

<http://www.wcl.american.edu/org/sustainabledevelopment>



AMERICAN
UNIVERSITY

WASHINGTON COLLEGE of LAW



EDITORS' NOTE

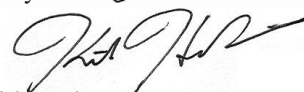
In 2000, world leaders gathered at the United Nations to adopt the Millennium Declaration. The Millennium Development Goals (“MDGs”), which grew out of this Declaration, sought to unify the world around the achievement of eight goals by 2015: (1) eradicate extreme poverty and hunger; (2) achieve universal primary education; (3) promote gender equality and empower women; (4) reduce child mortality; (5) improve maternal health; (6) combat HIV/AIDS, malaria, and other diseases; (7) ensure environmental sustainability; and (8) develop a global partnership for development.

Five years later, in September 2005, world leaders gathered again in New York at the UN World Summit with the intent to review progress towards the MDGs. Although much of the discussion was diverted by concerns with security and restructuring the UN, participants exchanged ideas on the progress of the MDGs, including whether it was even necessary to create a “development agenda.” *Sustainable Development Law & Policy* (“SDLP”) attended several of the events running along side the General Assembly discussions, including “Investing in the Environment to Fight Poverty” and “Achieving the Millennium Development Goals for Water, Sanitation and Hygiene in Africa with a Gender Perspective.” At these events, government officials and leaders from nongovernmental organizations generally agreed that it is necessary to set goals, hold organizations accountable, and translate priority-setting into action.

This issue of SDLP examines the MDGs and the international community’s efforts to establish a global development agenda. Contributors to this issue discuss what is necessary to turn these goals into action, and whether the MDGs are the most effective means to mobilize countries, international organizations, and donors. Are the MDGs successful in unifying countries towards common goals even if they are not achieved? What are the implications for cross-cutting issues such as sanitation and chemicals management that are not addressed in the MDGs? Should aid focus on those countries that already have existing capacity to manage the aid? While it might not be possible to create blueprint solutions for complex issues, global development goals may be able to provide a strategy to alleviate some worldwide problems. Finding a way to link existing global, national, and local development plans may be the best, or only, approach to improving livelihoods worldwide.



Kelly Rain



Kirk Herbertson
EDITORS-IN-CHIEF

FEATURES:

- 12 |** PROMOTING GENDER EQUITY THROUGH GLOBAL EDUCATION TARGETS: THE THIRD MILLENNIUM DEVELOPMENT GOAL
by Nisha Thakker
- 20 |** PROTECTING CHILDREN AND THEIR MOTHERS: THE MILLENNIUM DEVELOPMENT GOALS PUSH LOFTY HEALTH TARGETS *by Frank Pigott*
- 26 |** CONDITIONAL CASH TRANSFERS: PROGRESS TOWARDS THE MILLENNIUM DEVELOPMENT GOALS *by Blase Kornacki*
- 32 |** THE MILLENNIUM DEVELOPMENT GOALS AND HIV/AIDS *by J.C. Sylvan*
- 44 |** KEEPING CELL PHONES AFFORDABLE: REGULATING THE PRIVATE SECTOR’S CONTRIBUTION TO DEVELOPMENT
by Rachael Moshman
- 57 |** WATER PRIVATIZATION AND OBSTACLES TO ACHIEVING MILLENNIUM DEVELOPMENT GOAL SEVEN’S TARGETS FOR SUSTAINABLE DRINKING WATER *by Maria Vanko*
- 66 |** LITIGATION UPDATES *by Rachael Moshman*
- 68 |** BOOK REVIEW: MAKING LAW WORK: ENVIRONMENTAL COMPLIANCE AND SUSTAINABLE DEVELOPMENT
Reviewed by Cari Shiffman
- 69 |** BOOK REVIEW: THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME
Reviewed by Elizabeth Hahn
- 71 |** WORLD NEWS *by Blase Kornacki, Abby Okrent, Jennifer Rohleder, and Mauro Zinner*
- 74 |** BIBLIOGRAPHY
- 85 |** UPCOMING PUBLICATIONS AND EVENTS
- 86 |** SUBSCRIPTION INFORMATION

BRIDGING THE GAP:

HOW THE MILLENNIUM DEVELOPMENT GOALS ARE UNITING THE WORLD IN THE FIGHT AGAINST GLOBAL POVERTY

by Kemal Dervis*

INTRODUCTION

The debates preceding the 2005 World Summit at the United Nations in September 2005 helped us all realize just how much the Millennium Development Goals (“MDGs”) have caught the imagination of the development community and civil society, including non-governmental organizations, young people, and others across the world. Today there is unprecedented global support for achieving the MDGs, the eight goals agreed to by all UN Member States in the year 2000, which include ensuring that all children get a primary school education, reducing the number of child and maternal deaths, combating HIV/AIDS and other diseases, as well as the overarching aim of halving the number of people living in extreme poverty.

Sustainable Development Law & Policy (“SDLP”) is a publication of American University’s Washington College of Law (“WCL”). No portion of this publication may be reprinted without the express written permission of SDLP. The views expressed in SDLP are those of the authors and do not necessarily reflect those of the SDLP staff or WCL. All correspondence, reprinting, and article submissions may be sent to: SDLP, Washington College of Law, American University, 4801 Massachusetts Ave., NW, Suite 631, Washington, D.C. 20016. E-mail: sdlp@wcl.american.edu. Phone: 202.274.4057. Current and back issues are available on our website, at <http://www.wcl.american.edu/org/sustainabledevelopment>. Please see the inside back cover for submissions and subscription information.

American University is an equal opportunity, affirmative action university.

EDITORIAL STAFF:

EDITORS-IN-CHIEF

Kelly Rain Kirk Herbertson

SENIOR EDITORIAL BOARD

John Cossa, Meryl Eschen, Kevin Gallagher, Jane Garrido, Athena Kennedy, Catherine Landers, Juliette Niehuss, Ayako Sato, Cari Shiffman, David Wilhite

STAFF

Mary Ashby Brown, Molly Frank-Meltzer, Letty Guerra, Blase Kornacki, Chris McChesney, Rachael Moshman, Sun Young Oh, Abby Okrent, Frank Pigott, Rekha Rao, Jennifer Rohleder, Alejandra Siles, Yiyuan Su, J.C. Sylvan, Nisha Thakker, Maria Vanko, Élodie Wacheux, Mark Wilson, Mauro Zinner

ADVISORY BOARD

Daniel Bradlow, David Hunter, Kenneth Markowitz, David Newman, Marcos Orellana, William L. Thomas, Glenn Wiser, Durwood Zaelke

AMERICAN UNIVERSITY
WASHINGTON COLLEGE OF LAW

CGIEL

© Copyright, American University, Washington College of Law, 2005. All rights reserved.

Support for the goals was especially apparent at the World Summit when, from the highest levels at the UN General Assembly to the various side events that brought together celebrities, musicians, and artists, all agreed on the urgent need to put in place the policies and resources needed to tackle global poverty. Part of the reason for this widespread backing lies in the fact that the MDGs are so comprehensible. As an economist, I tend to think in terms of fiscal balance, the gross domestic product of countries, and per capita income. While all of these dimensions of development are important, the beauty of the MDGs is the way that they are concrete development objectives that people everywhere can relate to: ensuring that mothers do not die as a result of childbirth; that children live beyond their fifth birthday; that people have access to basic necessities such as clean water and sanitation. These tangible, measurable, and time-bound goals have become globally accepted benchmarks of broad development progress. Supported by donors, developing countries, and civil society, the MDGs have also become a tremendous asset to all of us who work in the development field, mobilizing energy, political support, and resources around the urgent development challenges we face.

THE FEASIBILITY OF THE MDGs

One of the key issues currently being debated is whether the Millennium Development Goals are actually feasible. Is it really reasonable to say that by the year 2015 these objectives will be met? It does of course depend on a range of factors. It depends on the growth performance of developing countries and of the world economy over the next five to ten years. Given that many of the big failures in development are as a result of violent conflict, it depends on whether countries can recover from conflict, or avoid it in the first place. It also depends on key issues such as what kind of progress there is on trade, which is one of the big drivers of economic growth, poverty reduction, and human development. When we look at the facts, I do believe that the MDGs are technically feasible and economically attainable in a very large number of countries. Since 1990 (the benchmark for measuring progress on the MDGs, with 2015 the deadline) much has been achieved in human development. As the United Nations Development Programme’s 2005 Human Development Report details, on average, people in developing countries are healthier, better educated, and less impoverished. There are three million fewer child deaths annually, 30 million fewer children out of school, and more than 130 million people

* Kemal Dervis is the Administrator of the United Nations Development Programme. This article is based on a keynote address delivered at the Center for Global Development, September 22, 2005.

THE UNITED NATIONS MILLENNIUM DEVELOPMENT GOALS

<http://www.un.org/millenniumgoals>

Goal One: “Eradicate Extreme Poverty and Hunger”

Reduce by half the proportion of people living on less than a dollar a day;
Reduce by half the proportion of people who suffer from hunger.

Goal Two: “Achieve Universal Primary Education”

Ensure that all boys and girls complete a full course of primary schooling.

Goal Three: “Promote Gender Equality and Empower Women”

Eliminate gender disparity in primary and secondary education preferably by 2005 and at all levels by 2015.

Goal Four: “Reduce Child Mortality”

Reduce by two-thirds the mortality rate among children under five.

Goal Five: “Improve Maternal Health”

Reduce by three-quarters the maternal mortality ratio.

Goal Six: “Combat HIV/AIDS, Malaria, and the Spread of Other Diseases”

Halt and begin to reverse the spread of HIV/AIDS;
Halt and begin to reverse the incidence of malaria and other major diseases.

Goal Seven: “Ensure Environmental Sustainability”

Integrate the principles of sustainable development into country policies and programs; reverse loss of environmental resources;
Reduce by half the proportion of people without sustainable access to safe drinking water;
Achieve significant improvement in lives of at least one hundred million slum dwellers, by 2020.

Goal Eight: “Develop a Global Partnership for Development”

Develop further an open trading and financial system that is rule-based, predictable, and non-discriminatory; includes a commitment to good governance, development, and poverty reduction—nationally and internationally;
Address the least developed countries' special needs, including tariff- and quota-free access for their exports, enhanced debt relief for heavily indebted poor countries, cancellation of official bilateral debt, and more generous official development assistance for countries committed to poverty reduction;
Address the special needs of landlocked and small island developing states;
Deal comprehensively with developing countries' debt problems through national and international measures to make debt sustainable in the long term;
Develop decent and productive work for youth, in cooperation with the developing countries;
Provide access to affordable essential drugs in developing countries, in cooperation with pharmaceutical companies;
Make available the benefits of new technologies—especially information and communications, in cooperation with the private sector.

who have escaped extreme poverty. These human development gains should not be underestimated. Experience shows that development progress is possible. Never before have we had the resources, the technology, the knowledge and, critically, as support for the MDGs show, the essential public support needed to lift millions of people out of extreme poverty. However, in a world where more than one billion people continue to live in abject poverty on less than one dollar a day, much more remains to be done if the world is to demonstrate it is serious about the fight against extreme poverty and promoting human development for all.

Today there is something of a secondary debate that is related to the question of whether the MDGs are feasible in terms of resources – how important is the volume of aid resources for development? There are those who point to the past and say that in last three or four decades billions of dollars have been spent in developing countries with limited results. When one looks at the data and analyzes aid and growth, it is the case that broadly speaking, the productivity of aid has not been as strong as it could have been. But one should also recall that one major structural feature of the past, which we can hopefully overcome in the future, is that aid was very politicized during the Cold War. For many decades foreign aid often had as its primary purpose – not necessarily the only purpose – political and military objectives. Since the end of the Cold War we have had a chance to refocus these resources firmly on development objectives. If we reform the architecture and conditions of aid with a single minded focus on development and achieving the MDGs, I believe that we can dwarf the results that were possible in the past.

Countries cannot, however, develop without domestic and foreign resources. At least a doubling of global development assistance over the next few years is necessary if countries are to achieve the MDGs. As a former Minister of Economic Affairs, I am all too aware of the budgetary and fiscal constraints governments face. However, compared to other components of budgetary expenditures, the aid component is still relatively small in most rich countries, making incremental increases feasible whilst maintaining overall fiscal responsibility. This is particularly true in a world where for every one dollar rich countries spend on aid, about ten dollars is allocated to military expenditures.

While the deployment of resources by itself does not solve the problem, today the message is: developing countries need additional resources if they are to achieve the MDGs, but the other side of the bargain is that there has to be the reforms.

CONDITIONALITY

I am the first to recognize that, ultimately, development is up to the governments and people of developing countries themselves – to root out corruption, build up institutions able to deliver services to their people, encourage private investment and enterprise, respect human rights, and address inequalities. Thoughtful conditionality can, however, be a tremendously useful instrument in supporting reform in developing countries, and in preventing the moral hazard and failure of the whole aid effort. I do, therefore, believe that there have to be conditions

on aid and relating to macroeconomics, as well as to income distribution and social and human development variables. Social progress – what a country is doing for its people, what health-care and education services are in place – these are all concerns that should be at the heart of the development debate and part of the conditionality of delivering increased resources.

There is, however, one big problem with conditionality, and that is the legitimacy of the institutions that bring it. Without

BRIDGING THE GAP: *Continued on page 7*

POST-CONFLICT CONVERGENCE OF DEVELOPMENT PLANNING: IMPLEMENTATION OF THE SUSTAINABLE DEVELOPMENT RELATED MILLENNIUM DEVELOPMENT GOALS IN AFGHANISTAN

by Belinda Bowling and Dr. Asif Ali Zaidi*

INTRODUCTION

Development was effectively lost in Afghanistan during the period 1979 to 2001: economic growth stagnated, the environmental resource base was severely degraded, millions of people were displaced, and institutional structures were eroded. The sentiment of the Afghan people after the fall of the Taliban regime in 2001 is eloquently articulated by former *Washington Post* correspondent Pamela Constable:

Kabul was still an atavistic city of survivors and refugees, toughened by hardship and violence. People had spent years crouching in caves and waiting for the next bomb to shatter the windows. It was a place where each group of liberators had turned into oppressors, where children had learned to shove and kick and cheat and steal to eat, and where everyone had committed or endured shameful acts to survive. Removing the Taliban did not erase the habits or memories burned into a generation. This was a country with few heroes, only survivors, weighed down by boulders of vengeance and greed and traditions. Change would come slowly, if ever; trust would take a generation to rebuild.¹

Today, all Afghans have high expectations of the new government. Two rounds of elections and government programs, such as the National Solidarity Programme, have brought the government to most villages around the country. International support for Afghanistan remains strong. Yet, despite this progress, the most recent Human Development Index still ranked Afghanistan 173 out of 178 nations.²

Afghanistan is an agrarian-based, arid, least developed country; the population of which is highly dependent on environmental resources, in particular natural resources. The effective implementation of Millennium Development Goal (“MDG”) Seven on environmental sustainability is accordingly of particular importance in the context of development planning and poverty reduction.

Afghanistan’s post-conflict development planning – including the domestic implementation of the MDGs – has been fragmented and, to some extent, uncoordinated. However, four years

*Belinda Bowling is the Environmental Law and International Conventions Expert for the United Nations Environment Programme (“UNEP”) Capacity and Institution Building Programme for Environmental Management in Afghanistan. She is based in Kabul, Afghanistan. She has a BA, LLB, LLM (environmental law) from the University of Cape Town, and has been working for the past seven years in the field of environmental law and policy in developing countries.

Dr. Asif Ali Zaidi is UNEP’s Kabul-based Programme Manager. Dr. Zaidi has worked in the development field in Central Asia for the last fifteen years for UNEP, the World Conservation Union, and the Aga Khan Development Network.

after the end of the period of conflict, a move towards more unified development planning is now visible. This is likely to improve Afghanistan’s chance of meeting its goals in relation to environmental sustainability.

THE ENVIRONMENTAL CONTEXT

In a country where over 80 percent of the population relies directly on the natural resource base to meet its daily needs, widespread environmental degradation poses an immense threat to livelihoods. More than two decades of conflict, military activities, refugee movements, collapse of national, provincial and local forms of governance, lack of management and institutional capacity, and over-exploitation have heavily damaged Afghanistan’s natural resource base. The recent drought has had an additional negative impact. As a result, the country’s vulnerability to natural disasters and food shortages has increased.

Of Afghanistan’s 655,000 square kilometres of total land area, only twelve percent (7.9 million hectares) is arable and four percent irrigated. An additional 46 percent is under permanent pastures and three percent under forest cover. The remaining 39 percent is mountainous. Geographically, nearly 75 percent of the



Loss of vegetation cover has caused serious erosion across Afghanistan, such as in this village.

arable area is concentrated in three of the eight agricultural planning regions of the country – north, northeast, and west. Of the total arable area, not more than half is actually cultivated annually, primarily because of water availability problems.³

Overall, the natural resource base continues to suffer due to:

- competing land use (agriculture, human settlements, forests and rangeland, wetlands and protected areas);
- ambiguous legal status of ownership and access to natural resources (land, water, forests and rangeland,

biodiversity, wetlands, and protected areas);

- lack of enabling policy, legislation, and regulatory framework for managing natural resources, along with weak governance and management of natural resources; and
- negative impact of war, increasing population, human settlements, drought, overexploitation, and landmines on natural resources.

In the urban environment, humans are being placed at risk by poor waste management practices and lack of proper sanitation, which are the main environmental factors affecting human health, and are a major contributory factor to mortality amongst the Afghan people.⁴

Nearly 75 percent of the urban population may be living in slums. Due to the influx of returning refugees from neighboring states, Afghanistan also has the highest rate of urbanization in Asia at six percent a year, which puts an additional burden on the already weak service delivery in urban areas.⁵

Other challenges for natural resource and environmental management include still insufficient institutional capacities and the current absence of legislation in many areas. Linked to this

will be a source of subsequent conflicts. Environmental degradation in Afghanistan, often the consequence of socio-economic inequities, thus is to be seen as a factor contributing to prevalent insecurity.

This environmental background should be viewed now in the context of Afghanistan's development planning frameworks, the home of MDG Seven on environmental sustainability.

POST-CONFLICT DEVELOPMENT PLANNING

After the fall of the Taliban regime in late 2001, representatives of various Afghan factions met in Bonn, Germany under the auspices of the United Nations to map out Afghanistan's future.⁶ After laborious negotiations, the Bonn Agreement⁷ was signed on December 5, 2001. The Agreement represents a schematic, post-conflict roadmap and timetable for establishing peace and security, reconstructing the country, re-establishing some key institutions, and protecting human rights.

By the beginning of 2002, the United Nations had hurried to align "resources, people and actions behind a common nation-building strategy at the field level."⁸ The National Development Framework, born of the Bonn Agreement, was agreed in April as the strategy to map the country's economic needs and direction. The Framework consists of three pillars: human capital and social protection;⁹ physical infrastructure;¹⁰ and enabling environment for development.¹¹ The document soon became the coordinating document for all international and national actors in the country.

Although none of the pillars of the National Development Framework are concerned with the environment *per se*, the environment is nonetheless recognized as an important cross-cutting issue. In this regard, a structure called the Advisory Group on Environment was established, which had as its primary purpose the mainstreaming of environmental issues into the development agenda by means of input provided and recommendations made to the pillar sub-groups. The success of this structure was, however, regrettably limited.¹²

In 2004, after the endorsement of the Millennium Declaration,¹³ the Government of Afghanistan, in cooperation with its international partners, prepared the *Securing Afghanistan's Future: Accomplishments and the Strategic Path Forward* report. The report sets economic growth targets for Afghanistan that are aligned with the MDGs, but are Afghanistan specific.

The report gave rise to the Afghanistan National Development Strategy ("ANDS"), a five-year strategy that complements the MDGs and which will, in due course, replace the 2002 National Development Framework. Through the ANDS, the government will draft plans for full rural development to benefit the poor, and for the building of infrastructure to manage the country's water, and for providing connections to markets. Although the strategy remains a work-in-progress, it is important to note that environment has been highlighted as one of the key components of Pillar One on infrastructure and natural resources, which would indicate that it has been mainstreamed as a priority issue within the development agenda, in line with the MDG approach.

Confusingly; there are therefore currently three applicable development frameworks for Afghanistan: the Bonn Agreement;



Children collect scrap materials at Qamar Qalla dumpsite in Afghanistan.

is the need to develop sound information programs and monitoring systems, which would allow the government to establish a link between the quality of health and environmental conditions. On the part of the communities, there is a lack of awareness on sound environmental practices, which needs to be addressed simultaneously with the improvement of their livelihoods and economic conditions.

A failure to address environmental degradation would negatively impact the population's health and increase poverty and hunger. Environmental degradation, besides hampering economic growth in the agricultural sector, impacts in a particularly negative way on the lives of the poor. More specifically, female-headed households with physically impaired members, and households of landless or those farming small rain-fed plots only are the most affected. Many of the human rights of these people are not fulfilled due to environmental degradation; not least, the right to life. Economic development that leaves out the poor and enhances distributive injustices is not sustainable and

the National Development Framework; and the nascent ANDS.¹⁴

Most signatories to the 2001 Millennium Declaration were able to integrate the MDGs within a short time into their five-year development plans. However, for reasons set out above, this standard approach has not been possible for most post-conflict countries, including Afghanistan.¹⁵

ACHIEVEMENT OF MDG GOAL SEVEN

MDG Goal Seven focuses on environmental priorities related to sustainable development and poverty reduction. The Global MDG Goal Seven framework includes three targets and eight indicators for monitoring the status of forest cover, biodiversity protection, energy use, emissions of carbon dioxide and consumption of ozone depleting substances, use of solid fuels, access to safe drinking water and sanitation systems, and access to secure tenure.

The lack of baseline data on environmental indicators, such as forest cover, protected areas, energy use, and carbon dioxide emissions, and the shorter period of time within which

ed to complement those baseline years for which data exists. In addition, some of the indicators have a 2020 achievement target, rather than a 2015 one.

A further obstacle is that aid assistance from donor countries has been spent primarily on security and democratization. Development is the poor third cousin. Within the development sector itself, most donors do not see the environment as a priority, notwithstanding that Afghanistan is an agrarian-dependent country, the natural resources of which most Afghans depend for their livelihoods. Regrettably, a mere fraction of the national development budget has been allocated directly to the environment.¹⁶

Instability in relation to environmental governance has also been an obstacle to the achievement of environmental sustainability. The environment mandate is a new one, introduced only in 2002, when the interim government was constituted. In May 2005, the mandate was transferred from the former Ministry of Irrigation, Water Resources, and Environment to the newly established National Environmental Protection Agency (“NEPA”), a standalone agency that reports directly to the

President. The sector mandates for water, energy, agriculture, minerals, forestry, biological diversity, public health, urban planning, water, waste and sanitation services, and the like are split amongst the line ministries, unfortunately sometimes with a degree of overlap. Like most fledgling institutions, NEPA now requires time to establish itself properly within the new government structure, and to determine the nature of its relationship with these relevant line ministries.

The absence of any environmental policy or regulatory framework has also contributed towards paralyzing government efforts to achieve environmental sustainability. The imminent promulgation of the Environment Act, framework environmental legislation for Afghanistan, will go some way towards alleviating this development encumbrance, however. In addition to vesting NEPA with institutional identity and regulating the relationships between different government actors in the environment

sector, the Act also sets out frameworks for biodiversity and natural resource conservation and management, water resource conservation and management, integrated environmental management (including environmental impact assessment), pollution prevention and control, and environmental information and education. Importantly, the Act also contains the compliance and enforcement provisions required to allow NEPA to effectively enforce the Act.

Donor-funded, environment focused programs, which will hopefully assist the government in the achievement of the MDG Goal Seven indicators, also exist. The United Nations Environment Programme (“UNEP”) is assisting the government to develop an integrated policy, regulatory, and institutional

Figure One: Afghanistan’s current targets and indicators for MDG Seven

Target	Indicator	Baseline year	Baseline value	2015 target	2020 target
9. Integrate the principles of sustainable development into country policies.	25. Proportion of land area covered by forest	1993	2.1%		
	26. Ratio of area protected to maintain biological diversity to surface area	2004	0.34%	0.5%	
	27. Energy use (kg oil equivalent) per US\$1,000 GDP	2005		TBD	
	28. Carbon dioxide emissions (per capita) and consumption of ozone depleting CFCs	2004	TBD	TBD	TBD
	29. Proportion of population using solid fuels	2003	100% (rural areas)	90% rural and 80% urban	
10. Halve, by 2015, the proportion of people without sustainable access to safe drinking water and sanitation.	30. Proportion of population with sustainable access to an improved water source, urban and rural	2003	23%	23%	61.5%
	31. Proportion of population with access to improved sanitation, urban and rural	2003	12%		66%
11. By 2020 to have achieved a significant improvement in the lives of at least 100 million slum dwellers.	32. Proportion of households with access to secure tenure	2005	TBD		


Afghanistan ought to attain the MDGs (owing to the late adoption of the Millennium Declaration) are two obstacles Afghanistan faces in achievement of Goal Seven. Without data one cannot set targets, many have argued. All data that did exist was in the hands of international organizations, not the government, and much of it pre-dated the 1979 Soviet invasion. Even if the data were robust, the Government would encounter significant hurdles in meeting those targets within the shorter period of twelve years.

Accordingly, the Government has “Afghanized” the MDGs and defined the globally agreed objectives into country specific targets, which balance ambition with realism and incorporate national development priorities. As can be seen from Figure One, the baseline years for each Goal Seven indicator has been amend-

framework (the cornerstone of which is the Environment Act), which will encourage sustainable use and management of natural resources and conservation and rehabilitation of the environment. This framework may be used as the roadmap for achievement of Target Nine, namely integration of the principles of sustainable development into country policies. UNEP is also assisting the government in implementing the multilateral environmental agreements to which Afghanistan is a Party, most notably – for the purposes of MDG Seven – the Climate Change Convention (relating to carbon emissions) and the Montreal Protocol on Ozone Depleting Substances, which will similarly assist in the achievement of this target. Significant investments

are also being made in reforestation initiatives and renewable energy. Other UN agencies, in particular UN Habitat, are assisting the government to achieve Targets Ten and Eleven.

CONCLUSION

In the four years since the demise of a quarter century of war and conflict, the achievement of a single development planning framework for Afghanistan that meets its own unique needs, environmental and otherwise, and also meets its international obligations (including those under the Millennium Declaration) is within reach. Although achievement by 2015 of the MDG on sustainable development is unlikely, significant progress towards its realization is now almost a certainty. 

ENDNOTES: Post-Conflict Convergence of Development Planning

¹ PAMELA CONSTABLE, FRAGMENTS OF GRACE: MY SEARCH FOR MEANING IN THE STRIFE OF SOUTH ASIA 219 (Brassey's Inc: Dulles, Virginia 2004).

² UNITED NATIONS DEVELOPMENT PROGRAMME, AFGHANISTAN HUMAN DEVELOPMENT REPORT (Feb. 2005).

³ UNITED NATIONS DEVELOPMENT PROGRAMME, AFGHANISTAN POST-CONFLICT ENVIRONMENTAL ASSESSMENT (Jan. 2003).

⁴ UNITED NATIONS HABITAT, Meeting Notes (2005).

⁵ *Id.*

⁶ Unlike in Kosovo and East Timor, in which countries the organization had provided peacekeeping forces and served as *de facto* government, the United Nations adopted a “light footprint” strategy in Afghanistan.

⁷ Agreement on Provisional Arrangements in Afghanistan Pending the Reestablishment of Permanent Government Institutions, dated 5 December 2001, endorsed by UN Security Council Resolution 1383 (2001).

⁸ Mark Malloch-Brown, UNDP Administrator at the time, speaking to the UN Economic and Social Council in New York, 18 April 2002.

⁹ This includes sub-groups on refugees and internally displaced persons, education and vocational training, health and nutrition, livelihood and social protection, and culture, media, and sport.

¹⁰ This includes sub-groups on transport, natural resources management, urban management, and energy, mining, and telecommunications.

¹¹ This includes sub-groups on trade and investment, public administration and economic management, justice, national police, law enforcement and stabilization, Afghan National Army, mine action and disarmament, demobilization,

and reintegration.

¹² UNEP's experience was that the Advisory Group model, despite significant efforts, failed to successfully achieve environmental mainstreaming. Although inputs were prepared for submission to the sub-groups, no pressure was brought to bear by the government to incorporate or take account of the recommendations.

¹³ Afghanistan endorsed the Millennium Declaration in March 2004.

¹⁴ Added to this complex web of post-conflict development planning is the World Bank and IMF's requirement that Afghanistan develop a poverty reduction strategy paper. This document describes a country's macroeconomic, structural, and social policies and programs to promote growth and reduce poverty, as well as associated external financing needs. The Government of Afghanistan intends to use the ANDS as the basis for satisfying this requirement. Furthermore, the ANDS will be developed to complement the Post-Bonn Agreement—the sunset of the Bonn Agreement is nigh, and the international community, representing donor countries, has indicated that Afghanistan is not yet at the point where it can become a regular aid consortium country.

Accordingly, the Government of Afghanistan intends to enter into a follow-up agreement, and has requested the United Nations Secretary-General to spearhead the post-Bonn process.

¹⁵ Palestine, in respect of which the State of Israel and the Palestine Liberation Organisation signed the Oslo Accords in September 1993, has encountered similar difficulties.


¹⁶ Afghanistan National Development Budget, available at www.af/mof/budget (last visited Nov. 4, 2005).

BRIDGING THE GAP: Continued from page 3

political legitimacy, conditionality can only achieve limited results. If policy prescriptions are perceived as being driven by “external” actors or interests, it is impossible to build the domestic support necessary to implement them successfully and in a sustainable manner. If policy conditionality is to be perceived as legitimate around the world, and if stakeholders in a country are to be convinced that conditions should be met, development institutions themselves need to be credible. How to build a more legitimate system where good policy advice, conditionality, and cooperation can take place, but not in an environment where developing countries feel it is being imposed from abroad, is a critical challenge for both the United Nations as well as the Bretton Woods Institutions. Without this legitimacy, the whole equation does not work. The grand bargain where, on the one side, rich countries mobilize more resources for development, reform trade rules, and provide enhanced debt relief, and on the other side, developing countries commit to deep reform, tackling corruption, and adhering to

good governance and opening markets, cannot succeed without reform of these institutions so that they are legitimate reflections of the world as it is today. Giving developing countries a much greater say in the decision-making process would provide greater legitimacy for global institutions and the policy prescriptions they offer.

CONCLUSION

The MDGs present us all with ambitious, yet achievable goals. In order to achieve success, the necessary resources and policies need to be in place and the legitimacy of international institutions enhanced. While there is more to development than the MDGs, progress towards meeting the MDGs reflects progress towards human development and building a safer, more prosperous, and more secure world for all. Achieving the Millennium Development Goals is, therefore, one of the most pressing challenges we face today. 

EDUCATION AS A LYNCHPIN OF DEVELOPMENT: LEGAL AND POLICY CONSIDERATIONS IN THE FORMATION OF THE EDUCATION FOR ALL – FAST TRACK INITIATIVE CATALYTIC TRUST FUND

by *Sophie Smyth and Anna Triponel**

INTRODUCTION

Many of us share a common belief in the supreme value of education as a central tool in the fight against poverty, the achievement of growth, and the empowerment of citizens in both the developed and the developing world. As put in the inimitable words of Amartya Sen, “to build a country, build a schoolhouse.”¹ But the provision of education requires resources, and finding those resources is an ongoing challenge. In the case of the developing world, where some 115 million children remain out of school – two-thirds of them girls, and most of them poor or otherwise disadvantaged, this challenge is particularly acute. This need, however, is not being ignored and efforts are being taken at several levels to address it.

The formation of the World Bank’s Education For All – Fast Track Initiative Catalytic Trust Fund is one such effort. This article describes the background to the fund and analyzes the legal and policy issues that arose in its formation. The article concludes with some thoughts on lessons learned from the formation of the fund that are pertinent to the formation of future trust funds for the provision of international development aid.

EDUCATION AS A DEVELOPMENT PRIORITY

Education has long been recognized as a lynchpin of development. Following the end of World War II, the Universal Declaration of Human Rights, the first international instrument ever to list a number of civil, political, economic, social and cultural rights, asserted that “everyone has a right to education.”² Further, in 1945, the United Nations Educational, Scientific and Cultural Organization (“UNESCO”) was founded for the express purpose of contributing to peace and security “by promoting collaboration among nations through education . . .”³

More recently, the importance of education has received renewed impetus. Stark data gathered by UNESCO throughout the 1980s showed, for example, that more than 960 million adults worldwide were illiterate (two-thirds of them women) and that more than 100 million children (60 million of whom were girls) had no access to primary schooling, spurring UNESCO to convene the World Conference on Education for All in Jomtien, Thailand in 1990. The conference, attended by 155 countries and representatives from 150 organizations, gave birth to the Education For All movement (“EFA”). EFA set as its goals a massive reduction in worldwide illiteracy by the end of the decade and, ultimately, the universalization of basic education worldwide.

Ten years later, at the World Education Forum convened by

UNESCO in Dakar, Senegal to review progress in these goals, the 164 countries participating renewed their commitment to the goals of EFA and agreed on six targets for action, the Dakar Framework of Action.⁴ These targets included a commitment to ensure that “by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities have access to, and complete, free and compulsory primary education of good quality.”⁵ This goal was subsequently adopted as Millennium Development Goal Two, in the Millennium Declaration adopted by the United Nations Millennium Assembly in September 2000.⁶

THE NEED FOR FINANCIAL RESOURCES

But education costs money; a lot of it, and the key concern for developing countries concerning EFA was whether the developed world’s renewed emphasis on the importance of education would bring with it the badly needed resources to make access to education a reality. The rhetoric of Dakar held promise, as the Framework for Action stated that “no country seriously committed to Education For All will be thwarted in its achievement of universal primary school completion by 2015 due to lack of resources.”⁷

Further, at the International Finance and Development Conference held in Monterrey, Mexico in March 2002, the developed and developing countries present forged the Monterrey Consensus, according to which the developed countries committed to boost trade opportunities and the availability of development aid to developing countries with sound development policies.⁸ The essence of the Monterrey Consensus was the notion of “performance-driven aid,” namely, that international development aid should follow and support clear evidence of commitment to reform and improvement on the part of the recipient country.⁹ A further component of the Consensus was that international financial institutions and bilateral aid agencies should facilitate and support replication of programs found successful in one region of the world in other regions (known as the process of “scaling up”). Three months after the

* *Sophie Smyth is Senior Counsel in the Cofinancing and Project Finance Unit of the Legal Vice Presidency of the World Bank and is currently serving as Visiting Professor of Law at American University, Washington College of Law. Professor Smyth welcomes comments at ssmyth@worldbank.org.*

Anna Triponel is a Consultant at the EFA – FTI Secretariat at the World Bank and a Member of the Advisory Council of the Public International Law & Policy Group. Ms. Triponel welcomes comments at atriponel@worldbank.org. The views in this article are those of the authors and do not necessarily reflect the views of the World Bank.

Monterrey Consensus was forged, the World Bank launched the Education For All - Fast Track Initiative (“EFA-FTI”), the first attempt to put the principles of the Consensus into practice in a sector-specific way.

The EFA-FTI is designed to accelerate progress towards the attainment of universal primary education by providing enhanced policy, capacity-building, and financial support to countries that have sound poverty reduction strategies and education plans.¹⁰ It is a global, decentralized partnership that includes donor and recipient countries, UNESCO, and the World Bank. It is supported by a small secretariat, housed in the World Bank, which performs a knowledge sharing and coordination role.

The soundness of a country’s poverty reduction strategy (which is developed by a country in consultation with the World Bank) is determined by the World Bank. In accordance with the decentralized nature of the EFA-FTI partnership, however, the soundness of a country’s education plan is determined by the donor agency representatives located in the country, working together as an in-country group (known as a “Local Donor Group”) with whom the country consults whilst developing the plan. Countries’ education plans are assessed by the Local Donor Group in accordance with EFA-FTI assessment guidelines and an Indicative Framework, agreed by the global partnership as a whole.¹¹ Such criteria include the requirement that universal primary education be a priority of the education plan and that the plan focus on completion of primary education and not simply on enrollment.¹²

The idea behind the EFA-FTI was that endorsement of a country’s education plan would operate as a seal of approval and a signal to donors interested in providing aid for education that a country had a plan whose implementation was worthy of support. It was anticipated that countries that had developed such plans would receive resources to implement them. It soon became apparent, however, that relying on existing resources and channels was not enough and that a major infusion of new funds was needed. But several countries worked hard and expended substantial political capital to put together plans endorsed by the Local Donor Group, only to find no resources flowing from any source for implementation. These countries complained of being abandoned and alleged that donor countries had not lived up to their commitments.¹³ The need for funds was particularly acute for those countries which, for historical reasons, have very few bilateral donors, known as “donor orphans.”

Additional pressure for funding arose from the fact that it was becoming increasingly clear to the international community that the Millennium Development Goal of universal primary education by 2015 could not be attained unless more funding was made available to developing countries for education. The Education For All – Fast Track Initiative Catalytic Fund (the “Catalytic Fund”) was formed as a preliminary step towards filling this gap.

THE EDUCATION FOR ALL – FAST TRACK INITIATIVE CATALYTIC FUND

The Catalytic Fund, which is administered by the World Bank as trustee, was initiated in November 2003 when the

Netherlands, Norway, Italy, and Belgium pledged a total of \$49.0 million to support the EFA-FTI.¹⁴ It provides short-term transitional funding to countries¹⁵ that have developed poverty reduction strategies and education plans that meet EFA-FTI criteria but who had too few bilateral donors to enable them to implement those plans, *i.e.* it is targeted to donor orphans.¹⁶ The funding provided is short term, varying from one to three years in duration, because it is intended to have a catalytic effect. The aim is to jump start the funding process for countries starved of funds, with the idea that more long-term, sustained bilateral funding will follow once a recipient of Catalytic Fund resources is seen by the donor community as serious in its commitment to education and capable of building a track record.

THE NOVEL FEATURES OF THE CATALYTIC FUND

A CENTRALIZED FUND TO FINANCE A DECENTRALIZED INITIATIVE

Creating a centralized funding mechanism for a wholly decentralized program, which depended for its credibility and efficacy on being decentralized, presented a challenge. Usually,



Courtesy of World Bank Photo Library

Bangladeshi girl at school.

the provision of funding comes with strings attached. The trick was to prevent any such strings from overwhelming the locally owned and locally driven nature of EFA.

The sustainability of the education plans endorsed by the EFA-FTI derived from the fact that the plans were designed and driven by the countries themselves in consultation with the Local Donor Groups. Ownership of the plans, commitment to, and responsibility for their implementation was vested squarely in the developing countries. The donors to the Catalytic Fund were adamant, therefore, that the fund should simply be a financing mechanism for this pre-existing decentralized process and not become a supreme governing body, dictating additional terms and requirements to countries that had already undergone considerable effort to meet EFA-FTI criteria. This overarching concern of the donors, however, had to be balanced against the concern of the World Bank that it be given adequate authority to discharge the fiduciary duties of a trustee. Managing other people’s money is serious business and the Bank, which serves as trustee for several hundred trust funds,

collectively amounting to over \$9 billion in assets, has established policies and procedures for doing so, from which the Catalytic Fund cannot lightly depart.

INNOVATIONS IN THE DESIGN AND SCOPE OF THE CATALYTIC FUND

Balancing between these competing priorities gave rise to a need for several innovations in the design and scope of the Catalytic Fund. These included: (1) a two-tiered governance structure; (2) an expansive group of eligible recipients, (3) flexibility regarding monitoring and supervision; and (4) flexibility regarding coverage and disbursement procedures.

A Two-Tiered Governance Structure

Under standard World Bank trust arrangements, trust fund donors enter into a trust administration agreement with the Bank as trustee which sets out the broad objectives of the trust. Thereafter, the donors more or less drop out of the picture. The Bank, in its sole discretion, allocates the trust funds in accordance with the objectives, reporting after the fact to the donors on how the trust funds have been spent. The Catalytic Fund donors wanted a more active and ongoing role in the management of the fund than provided by this standard format. Consistent with the importance they attributed to the Local Donor Groups and the close working relationship between those groups and the countries where they were based, they wanted a mechanism that would reflect, in a dynamic way, the input of those groups. To effect this need, it was agreed that the Catalytic Fund should have its own *sui generis* governance structure.

The structure agreed upon provides for the formation of a Strategy Committee (the “Committee”) to define and direct the fund’s assistance strategy and for the allocation and commitment of fund resources in accordance with a two-step process. The Committee is comprised of a senior representative from each donor¹⁷ and a representative from the Bank’s senior management, who serves as the Committee’s chairperson. It meets to select which countries will receive assistance from the fund and how much each selected country will receive. All decisions of the Committee are by consensus. Criteria taken into account by the Committee in choosing between eligible candidates for assistance include: (1) demonstrated commitment on the part of the country’s government to fund primary education; (2) tangible efforts by the government towards achievement of the goal of universal primary education for boys and girls by 2015; (3) capacity to implement the education plan devised; and (4) the relative unavailability of other external donor funding for the country’s primary education program.

The Bank’s concern that it has sufficient discretion to discharge its fiduciary duties as trustee was met by separating the process of selecting recipients and allocating funds from the process of actual disbursement. The Bank wanted to retain the discretion not to disburse funds to an entity if, in its judgment, the entity did not have the financial management capacity to monitor and report on the use of such funds. Thus, although the constituent documents of the Catalytic Fund provide that the Committee will make recommendations on what entity, within a

country selected to receive assistance, should be the actual recipient of any funds provided, the Bank has the final say on who the actual recipient will be. Accordingly, following the Committee’s selection and allocation process, the Bank as trustee, in consultation with the government of the country selected to receive funds, and with the Local Donor Group, and mindful of the Committee’s recommendation, decides which entity will be the actual recipient of allocated funds.

An Expansive Group of Eligible Recipients

A broad range of possible recipients qualify as “Eligible Recipients” of the Catalytic Fund, including: (1) the ministries of “Eligible Countries” (countries that have a poverty reduction strategy and an EFA-FTI endorsed education plan); (2) country-specific trust funds established to support education in an Eligible Country; and (3) aid agencies of governments providing assistance to Eligible Countries and any other Eligible Recipient approved by the Committee. The donors’ goal in having this range of possible recipients was to achieve maximum flexibility so that the fund could function as a supplement to the ongoing coordinated efforts of the EFA partnership and respond to needs identified by the Local Donor Groups as part of that partnership rather than becoming a separate, disconnected initiative.

Flexibility Regarding Monitoring and Supervision

Countries seeking EFA-FTI endorsement of their education plans have to comply with a plethora of substantive requirements set by the EFA. Donors to the Catalytic Fund did not want to require countries that had met such requirements to comply with an additional set of requirements as a condition of receiving funding. It was therefore agreed that the progress reporting requirements on recipients should mirror those required under EFA whereas the financial reporting, which enables the Bank to fulfill its fiduciary duty of reporting back to the donors on the money entrusted to it as trustee, is set by the Bank. Hence, the review of progress is done in conjunction with the country’s regular schedule of reviews of its sector program with the participation of all other donors that support the country’s education sector development program. Team leaders then report back to the EFA-FTI Secretariat on progress concerning the Catalytic Fund, in conjunction with their reporting on Bank support in the sector. However, the World Bank steps in when it comes to fulfilling its duty of financial reporting. These accounting and auditing requirements follow standard operational policies for World Bank adjustment and investment loans and credits. The Bank then ensures the donors receive the financial reporting by making these assessments available to the Strategy Committee.

In its role as Trustee, the World Bank is also traditionally required to supervise the activities financed under the Grant Agreements. The provisions relating to supervision within the Catalytic Fund allow for a certain flexibility as the Bank supervises only when it is best placed to do so. The Bank therefore supervises when the recipient of the funding is a country government or a country specific trust fund for which the bank already acts as trustee. If the money is granted to

another recipient, the Bank is not liable for any supervision, unless the Committee decides to the contrary. As the Steering Committee makes decisions by consensus, this leaves the Bank the last say on whether it is best placed to supervise the activities in question.

Flexibility Regarding Coverage and Disbursement Procedures

Prior to 2003, the Bank's policy was not to finance recurrent expenditures, as by definition, these expenditures were ongoing and a specific objective would never be achieved. This changed in 2003 with the realization that certain objectives could only be met if recurrent costs were financed. Education provides an example of such an objective, as financing teacher's salaries and wages is key in the goal of achieving universal primary education. The Catalytic Fund was established shortly after the change in Bank policy and was hence the first fund in the Bank to finance recurrent expenditures.

The disbursement procedures used by the Catalytic fund are also innovative. When the Bank acts as trustee, grant agreements traditionally follow a project based model whereby funds are disbursed on the basis of receipts of evidence of expenditure. The Catalytic Fund however uses as a preference a policy based lending model that allows for a disbursement directly into the budget. Recipients therefore do not report back on a particular project with receipts of expenditures but report instead on the achievement of certain targets related to education. This enables a fast disbursement and allows the recipient country to use the funding in line with national priorities. This policy based lending however also requires extra caution as there is less certainty on where exactly the funds are being used. Therefore, when there is a high fiduciary risk to using the government's budget systems, the Catalytic fund allows other disbursement methods to be used.

THE EXPERIENCE OF THE CATALYTIC FUND

Total pledges and commitments to the Fund reach \$288 million for the period 2003-2007. Nine developing countries

have been allocated grant assistance from the Fund, including Gambia, Ghana, Mauritania, Guyana, Niger, Nicaragua, Yemen, Madagascar, and Kenya.¹⁸ Additional related trust funds have been established within the EFA-FTI partnership to further the goal of universal primary school completion. In November 2004, for example, the multi-donor Education Program Development Fund was created to make grant funding available to those countries without education plans and weak capacity to provide technical support and build the capacity required to prepare and implement a sound education plan. That fund also finances knowledge sharing activities, designed to spread information on best practices and developing countries' experiences towards the goal of achieving universal primary education. A separate trust fund has also been established to fund the costs of the EFA-FTI Secretariat. More recently, certain donors are pursuing the creation of an EFA-FTI Expansion Fund to provide ongoing support to countries' primary education programs beyond the short-term horizon of the Catalytic Fund.

CONCLUSION

The formation of the Catalytic Fund illustrates how the concrete nature and accompanying timetables of the Millennium Development Goals can serve as a basis for galvanizing action and mobilizing resources. To the extent that such effect results in the flow of additional resources to development aid, the goals serve a positive role. To the extent, however, that the goals result in the re-allocation of existing resources with consequential distortions in priorities, their effect is clearly problematic. Independent of the merits of that debate, however, it is clear that the financing modalities used to handle a spike in aid to an area targeted by the Millennium Development Goals, need careful thought. The goals place a high priority on local ownership and control that has to be balanced against fiscal responsibility. The compromise achieved by the Catalytic Fund's structure, scope and policies, is a starting point for finding the appropriate middle ground between those competing priorities.



ENDNOTES: Education as a Lynchpin of Development

¹ Amartya Sen, *To Build a Country, Build a Schoolhouse*, N.Y. TIMES, May 24, 2002.

² See Universal Declaration of Human Rights, G.A. Res. 217 (III), at 71, U.N. GAOR, 3d Sess., 1st plen. Mtg., Supp. No. 13, U.N. Doc. A/810 (Dec. 12, 1948), at art. 26.

³ United Nations Educational, Scientific and Cultural Organization ("UNESCO") Constitution, Nov. 16, 1945, at http://portal.unesco.org/en/ev.php-URL_ID=15244&URL_DO=DO_TOPIC&URL_SECTION=201.html (last visited Nov. 21, 2005).

⁴ UNESCO, World Education Forum, *The Dakar Framework for Action. Education for All: Meeting our Collective Commitments* (2000), at ¶ 15. The Six Education for All Goals are: expand and improve comprehensive early childhood care and education; ensure universal access to and completion of free and compulsory primary education of good quality; improve learning opportunities for youth and adults; increase adult literacy rates by fifty percent; achieve gender parity in primary and secondary

education by 2005 and gender equality by 2015; and improve all aspects of the quality of education.

⁵ See *id.*, at ¶ 7.

⁶ United Nations Millennium Declaration, G.A. Res. 55/2, U.N. GAOR, 55th Sess., Supp. No. 49, at 4, U.N. Doc. A/55/49 (2000). The United Nations Millennium Assembly was an historic meeting at which 145 world leaders expressed a global determination to end some of the most challenging and vexing problems inherited from the twentieth century. See also, JEFFREY D. SACHS, *THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME* 210 (Penguin Press 2000).

⁷ UNESCO World Education Forum, *supra* note 2, at ¶ 48.

⁸ International Conference on Financing for Development, Mar. 18-22, 2002, *Report of the International Conference on Financing for Development*, U.N. Doc. A/CONF.198/11 (2002).

ENDNOTES: Education as a Lynchpin of Development *Continued on page 75*

PROMOTING GENDER EQUITY THROUGH GLOBAL EDUCATION TARGETS:

THE THIRD MILLENNIUM DEVELOPMENT GOAL

by Nisha Thakker*

Worldwide, young women and girls are routinely denied equal access to education that their male counterparts are privileged to receive. In April 2000, Dakar, Senegal played host to the “Dakar World Forum on Education,” which set a goal of worldwide equality in education by the year 2015.¹ Based on this forum, the United Nations also recognized the disparity in education and made its third Millennium Development Goal (“MDG”) a resolution to remedy gender inequality in primary and secondary education by 2005 “and at all levels by 2015.”²

Achieving this goal by 2015 seems optimistic; the first half of the goal was not fulfilled since a gender gap still exists in primary and secondary education. In a report released in 2003, the United Nations International Children’s Emergency Fund (“UNICEF”) urged that “accelerated action” must be taken to get more girls into school over the next two years, otherwise other MDGs, including goals to reduce poverty and improve the human condition, would also not be realized.³ By keeping the girls away from the classroom, they will lack the knowledge necessary, for example, to keep themselves out of poverty and maintain a lifestyle free from HIV/AIDS.

According to the UNICEF report, at least nine million more girls are kept out of school than boys every year, and those who enroll drop out faster than boys.⁴ The report alleges that girls are the first to be removed from the classroom due to “persistent and often subtle gender discrimination” that is prevalent in many of the societies where enrollment is low.⁵ Many families pull girls out of school when money is tight or when a young girl becomes of marrying age. These instances are telltale signs that the targets may be unrealistic, and explain criticisms that they are “over simplistic and too quantitative” – the targets do not take into account “differences among countries and cultures.”⁶ Unfortunately, there are no firm international statistics for cultural occurrences such as the phenomena of child-brides and violence against women – situations that have a great deal of influence on how girls are educated.⁷

In December of 2003, UNICEF argued that the goal of equal education by 2005 and 2015 could still be met if worldwide donors followed through on their funding promises made in 1990 at the Jomtien Conference and World Summit for Children, and again in 1996.⁸ Despite these promises, total funding to developing countries declined in the 1990s “and bilateral funding for education plummeted even further.”⁹ A United Nations Educational, Scientific, and Cultural Organization (“UNESCO”) report issued in 2002 found that between 1990 and 2001, funding from the international community to education fell from five to four billion dollars.¹⁰ The report also concluded that “an extra \$5.6 billion will be needed annually to achieve the universal primary education and gender goals alone.”¹¹

Most telling about the progress of the goal is that the number of girls left out of school in sub-Saharan Africa has actually increased from twenty million in 1990 to 24 million in 2002.¹² The UN Secretary-General’s annual report on the progress of the goals issued in 2005 admits that the exceptions to achievement of

the primary education goal are sub-Saharan Africa and Southern and Western Asia, and that even less progress is being made in secondary education in those areas.¹³ It is likely that education goals are not being met because of pervasive gender discrimination on all fronts – not just in education.

Gender discrimination in all forms, including ingrained social norms, prejudices, and traditional customs, must also be battled in order to recognize that education is a right, not a privilege. According to the UNICEF report, “eighty-three percent of all girls left out of school live in sub-Saharan Africa, South Asia, East Asia, and the Pacific,” countries where women battle every day for their own safety.¹⁴ To be able to provide equal opportunities to education for these girls, countries should also provide aid to combat HIV/AIDS, violence against women, poverty, and human trafficking.

The goal of achieving gender equality in education cannot stand on its own – it must go hand-in-hand with the eradication of the obstacles standing in young girls’ way to that education. All is not lost, however, with respect to the third MDG. The UN Secretary General’s report found that Eastern Africa, Northern Africa, Asia, and Southeast Asia are all approaching educational equality with over ninety girls per one hundred boys in primary and secondary education classrooms.¹⁵ As countries are given the opportunity and assistance to develop, even more countries will be able to realize the goal of education equality.



ENDNOTES:

¹ UN EDUC., SCI., & CULTURAL ORG. (“UNESCO”), DAKAR FRAMEWORK FOR ACTION, EDUCATION FOR ALL: MEETING OUR COLLECTIVE COMMITMENTS, (Apr. 26-28, 2000), available at http://www.unesco.org/education/efa/ed_for_all/dakfram_eng.shtml (last visited Nov. 3, 2005).

² UNITED NATIONS, MILLENNIUM DEVELOPMENT GOALS, available at <http://www.un.org/millenniumgoals/goals.html> (last visited Oct. 27, 2005).

³ CAROL BELLAMY, THE STATE OF THE WORLD’S CHILDREN 2004, at 20, available at http://www.unicef.org/sowc04/files/SOWC_04_eng.pdf (last visited Oct. 27, 2005).

⁴ *Id.* at 41.

⁵ *Id.* at 17.

⁶ Choike.org, Gender Equality in Education: World Fails to Meet MDG 3, http://www.choike.org/nuevo_eng/informes/3207.html (last visited Oct. 27, 2005).

⁷ *See id.*

⁸ CAROL BELLAMY, *supra* note 3, at 38. International donor countries and financial institutions promised increased funds for education spending at both these conferences in both 1990 and 1996, but have yet to deliver on a majority of these promises.

⁹ CAROL BELLAMY, *supra* note 3, at 46.

¹⁰ UNESCO, INST. FOR STATISTICS, 2002 *Education for All Global Monitoring Report: Is the World on Track?* (June 10, 2003), available at http://www.uis.unesco.org/ev.php?ID=5289_201&ID2=DO_TOPIC (last visited Nov. 3, 2005).

¹¹ *Id.*

¹² CAROL BELLAMY, *supra* note 3, at 41.

¹³ UNITED NATIONS, THE MILLENNIUM DEVELOPMENT GOALS REPORT 2005, at 14-1, available at <http://unstats.un.org/unsd/mi/pdf/MDG%20Book.pdf> (last visited Oct. 27, 2005) [hereinafter MDG Report].

¹⁴ CAROL BELLAMY, *supra* note 3, at 41.

¹⁵ MDG Report, *supra* note 13, at 15.

* Nisha Thakker is a JD candidate, May 2007, at American University, Washington College of Law.

THE MILLENNIUM CHALLENGE ACCOUNT: A CRITICAL LOOK AT THE NEWLY FOCUSED DEVELOPMENT APPROACH AND ITS POTENTIAL IMPACT ON THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

by *Melanie Nakagawa**

INTRODUCTION

On March 14, 2002, while addressing the Inter-American Development Bank, President George W. Bush announced that the United States would increase its foreign development assistance by fifty percent as part of the U.S. commitment to the United Nations Millennium Declaration, which calls for “more generous development assistance” and “enhanced debt relief” for less developed countries.¹ Much of the additional foreign aid from the United States would be administered through the Millennium Challenge Account (“MCA”) to countries that demonstrate they are ruling justly, promoting economic freedom, and investing in their people.² The MCA is implemented by the Millennium Challenge Corporation (“MCC”). While the MCC is an innovative attempt to achieve poverty alleviation, the MCA suffers from problems in its design and presents potentially challenging impacts on other donor organizations given its current implementation scheme. This article seeks to open the door to debate the potential effectiveness of the newly-created, independent institutional home for the MCA funds, the MCC.

As described by the former MCC Chief Executive Officer Paul Applegarth,³ “the MCC was established [on January 23, 2004] as a new innovative foreign assistance program by the United States under the initiative and sponsorship of the President to reduce poverty in some of the poorest countries in the world by promoting sustainable economic growth.”⁴ The MCA attempts to promote sustainable economic growth as a mechanism to reduce poverty by funding results-based projects, targeting countries, and having the financial support of a large grant-based budget. The consequences of these three components have the possibility of exerting a significant influence on how effective the MCA will be at poverty alleviation and economic development.

The approach characterized by the MCA is a departure from the target-setting approach of the Millennium Development Goals (“MDGs”). This article begins with an overview of the MDGs, and how development needs to be structured around these goals, their current status, and why the MDGs are unlikely to be achieved by the target date of 2015. The second section describes the MCA by identifying the key components of the MCA that make it distinct from other donor and development models. The second section also analyzes the differences between the MCA- and MDG-approaches to development assistance, such as the MCA’s country-initiated and country-owned approach. The third section provides examples of how and why the MCA might hinder the progress and efforts of donor organ-

izations to effectively provide foreign aid, specifically addressing the potential tension and friction between the MCA and U.S. Agency for International Development (“USAID”). This article concludes with open questions about how the MCA’s results-based and country-driven approach may have unintended consequences on U.S. development policy, including on donor agencies such as USAID, and encourages debate on these impacts that may extend to similar effects on other organizations such as the World Bank.

THE MILLENNIUM DEVELOPMENT GOALS

At the September 2000 UN Millennium Summit, the international community marked the turn of the millennium by adopting the UN Millennium Declaration, stating that “only through broad and sustained efforts to create a shared future, based upon our common humanity in all its diversity, can globalization be made fully inclusive and equitable.”⁵ Adopted as a General Assembly resolution, the UN Millennium Declaration built upon the international community’s previous commitments including those to human rights, the environment, and poverty alleviation. Over 150 heads of state of developing and developed nations unanimously adopted the Declaration, which pledges “to spare no effort to free all of humanity, and above all our children and grandchildren, from the threat of living on a planet irredeemably spoiled by human activities, and whose resources would no longer be sufficient for their needs.”⁶ The global compact reached by these world leaders endorsed a set of time-bound and measurable targets to combat issues such as poverty, hunger, disease, illiteracy, environmental degradation, and discrimination against women, which became known as the Millennium Development Goals.

The MDGs provide a common language for this global pledge by enumerating eight goals: (1) eradicate extreme poverty and hunger; (2) achieve universal primary education; (3) promote gender equality and empower women; (4) reduce child mortality; (5) improve maternal health; (6) combat HIV/AIDS, malaria, and other diseases; (7) ensure environmental sustainability; and (8) develop a global partnership for development. Goals One through Seven are interconnected and directed at reducing poverty in all forms. Goal Eight provides the means to achieve the first seven goals. The MDGs set out quantifiable targets to measure country progress ranging from halving extreme

**Melanie Nakagawa holds a JD from American University, Washington College of Law and is currently a Masters candidate in International Affairs (2005) from American University, School of International Service. The author wishes to thank Irving Rosenthal and Tamar Gutner for their support and assistance with writing this article. Ms. Nakagawa welcomes comments at mnakagawa@gmail.com.*

poverty to halting the spread of HIV/AIDS.⁷ The targets are to be achieved by 2015. However, every country, whether it is an aid donor or recipient, is responsible for the determination and implementation of policies to achieve these goals.

If reached, the overall impact of the MDGs in the developing world would be unparalleled. For example, if the goals were met in just ten countries, the following would likely occur: almost six million children will go to school for the first time; 24 million more people will be able to drink clean water; for every thousand children under the age of five, one hundred of them would be saved from dying unnecessarily; and more than 25 million people would be raised above the poverty level of one dollar per day.⁸

The international community is far from achieving the MDGs. In particular, the success of achieving the environmentally specific goals has been quite mixed. The United Nations Development Programme's *Human Development Report 2003* provides a comprehensive status report on poverty trends. This Report tracked the progress in achieving the MDGs, which use 1990 as the baseline year for measuring improvement. The Report found that many countries had moved forward in achieving parity between girls and boys in primary school enrollment and universal primary education.⁹ However, the Report also found that many countries' rates of economic growth were not on target to halve income poverty

by 2015.¹⁰ Similarly, in dozens of countries the report found that the standard of living had actually declined since 1990, and that the number of income-poor in sub-Saharan Africa, South Asia, and Latin America combined has increased by approximately ten million people each year over the same period.¹¹ Similarly grim, the Report noted that if developing countries do not accelerate their progress towards creating access to safe drinking water, close to 2.4 billion people will still be without improved sanitation in 2015, a number that is almost equal to the number of people lacking clean water and basic sanitation today.¹²

The international community is in general agreement that current trends indicate that meeting the MDGs by 2015 is not likely. While there are a variety of factors involved in the projected failure of the majority of developing countries to achieve the MDGs, three commonly cited explanations are worth discussing. The first is MDGs are too limited because they lack specific accountability for the developed countries and provide little guidance on how to meet the MDGs in the developing world. Second, developed nations are not implementing the goals in a consistent, coordinated fashion. This fractured approach is exemplified by the United States, which has chosen to break from the MDGs and follow its own plan for development. The third preferred explanation is that the overall amount

of funding is insufficient to achieve the great alleviation of poverty sought by the MDGs.

First, civil society organizations have proposed that the MDGs are too limited because they lack specific accountability for the developed countries and provide little guidance on how to meet the MDGs in the developing world.¹³ The MDGs' limitations primarily result from the fact that countries wanting to achieve the MDGs are not given adequate guidance on how to do so. For instance, the MDGs do not offer policy or economic suggestions, but rather leave the implementation aspects under the purview of each country. Compounding developing countries' frustration in attempting to enlist assistance from the developed world is the fact that the MDGs do not effectively engage the rich, developed countries in this process. Aside from signing a global compact to support the MDGs, the MDGs lack strong incentives or accountability measures for the developed countries to actually implement or promote them.

Second, although world leaders signed onto the MDGs in 2000, the developed nations have not implemented consistent measures to provide resources and funding for the developing world. Few donor countries have met the goal of providing 0.7 percent of their gross national product in foreign aid.¹⁴ This inconsistent implementation of measures to promote the MDGs among developed nations was most recently exemplified by the U.S. attempt to renegotiate the proceedings at the most recent

UN World Summit in September 2005 in New York City. The United States has not only failed to provide anywhere near 0.7 percent of its GNP in aid, but has also broken completely with the strategy for development in the MDGs. Prior to the 2005 UN Millennium Summit meeting, the United States was no longer in agreement with other nations promoting the MDGs as the internationally accepted approach for framing the development agenda. Rather, the United States considered the MDGs one approach among others. The *Washington Post* reported that the "the Bush administration has thrown the [world summit] proceedings in turmoil with a call for drastic renegotiation"¹⁵ by introducing more than 750 amendments to the draft agreement that all the attending world leaders would sign. These amendments called for "striking any mention of the [MDGs]. . . Instead, the United States has sought to underscore the importance of the Monterrey Consensus, a 2002 summit in Mexico that focused on free-market reforms, and required governments to improve accountability in exchange for aid and debt relief."¹⁶ These changes "mark[ed] a final break with the pledge [to support the MDGs] agreed by the Clinton administration."¹⁷

The third explanation for the projected failure to achieve the MDGs is that there is insufficient financial support from the international community. Jeffrey Sachs, head of the Millennium

There is a debate on how [Millennium Challenge Account]'s large budget, new methodology, and country selection process will impact USAID.

Project based at Columbia University, developed teams of experts to examine policies and develop approaches necessary to accomplish the various goals. Sachs believes that it is critical for the developed world to recognize that without sufficient aid, the poorest countries will be unable to generate the capital necessary on their own to develop and will remain in what he calls the “poverty trap.” Sachs mentions that with “good governance, planning, and sufficient funds in place, the final step towards achieving the MDGs is the implementation of specific programs and national strategies.”¹⁸ For instance, experts and engineers at USAID have the capacity to make progress in certain areas such as sanitation and infant mortality, but insufficient funding has limited the application of this expertise.¹⁹ Criticism of Sachs focuses on the fact that his economics-driven approach overlooks the social, political, and physical environments of recipient nations; however, adequate funding is at least one critical factor in achieving effective development assistance.²⁰

With less than a decade left before the target deadline for the MDGs, donor organizations and governments recognize that their current efforts are inadequate. The United States has refocused its development approach by institutionalizing a new methodology and a new agency with a relatively large sum of money for development assistance to address extreme global poverty. This newly focused approach, represented by the MCA, could present a unique opportunity for the current administration to significantly transform U.S. development policy and maximize its global impact, or it could hamper the effectiveness of already existing aid organizations.

THE MILLENNIUM CHALLENGE ACCOUNT

In March 2002, President George W. Bush unveiled a new foreign aid program, the Millennium Challenge Account, to address development aid challenges. The Bush administration hopes the MCA will be an effective mechanism by which the United States can improve some of its foreign aid programs, which have faced much criticism. For instance, USAID has been criticized for its inability to achieve strong results in recipient countries and the lack of accountability among its many levels of bureaucracy. Similarly, USAID is often criticized for its highly bureaucratic nature and competing self interests. Additionally, the United States’ extensive practice of Congressional earmarking has forced USAID to allocate funds for politically popular programs, such as disaster relief, instead of entirely allowing USAID the freedom to determine on its own which programs need funding.²¹ If the MCA proves successful, it is likely to have a great influence on the way future development is implemented.

Domestically, the MCA’s success could lead to stronger Congressional support for aid programs and general initiatives supporting low income countries.²² If implemented properly, the

MCA could yield the most fundamental changes to U.S. foreign assistance policy since President John F. Kennedy introduced the Peace Corps, USAID, and the Alliance for Progress in the early 1960s by providing significant amounts of foreign aid that is bilateral and country-driven.²³ Policies promoting economic growth stimulate a wide range of positive effects on the environment, women, health, and children. Economic prosperity can improve people’s lives by providing families with options that promote sustainable development rather than, for example, unsustainable environmental degradation. If the United States has indeed found a more efficient way to promote economic growth through the MCA, the far-reaching effects will touch on many of the MDGs.

AVOIDING COMMON DONOR DILEMMAS: REDUCING BUREAUCRACY, PROMOTING ACCOUNTABILITY, AND PROVIDING INCENTIVES

The MCA may provide a solution for the three key shortcomings of MDGs: (1) ineffective national implementation; (2) lack of specific accountability; and (3) insufficient funding. The MCA’s streamlined organization and independent status enable it to avoid difficulties associated with other donor programs’ massive bureaucracies. Its results-driven approach addresses the typical problems caused by lack of coordination with recipient-country development strategies and focuses on achieving results rather than initiating sound policy and governance structures.²⁴

The MCA avoids bureaucratic difficulties by channeling its funds through an independent government corporation, the MCC. The MCC requires accountability in recipient countries and is designed to be an accountable and transparent local institution itself. The eligibility criteria for MCA funds also provide an incentive for countries to demonstrate a strong commitment towards “ruling justly, investing in their people, and encouraging economic freedom.”²⁵

Reducing Bureaucracy

The MCA and the subsequent creation of an independent implementation institution, the MCC, represent the United States’ attempt to address and resolve the bureaucratic problems faced by other donor models and organizations. The MCC is designed to be flexible and efficient in its contracts, program implementation, and personnel management. The MCC sidesteps two major bureaucratic obstacles common to other development agencies by being an independent government corporation free from Congressional earmarks, and by maintaining a relatively small staff, congressionally capped at two hundred employees.

The MCC’s corporate structure is also an attempt to reduce the effects of bureaucracy by keeping policy authority centralized in a few people organized as a “Board of Directors.” As a corporation, it is managed by a Chief Executive Officer

It has yet to be seen how coordination and cooperation is progressing between [the Millennium Challenge Account and USAID].

(“CEO”) appointed by the President and confirmed by the Senate. It is supervised by a Board of Directors composed of the Secretaries of State and Treasury, the U.S. Trade Representative, the Administrator of USAID, the CEO of the MCC, and four non-government directors nominated by the President and confirmed by the Senate, with the Secretary of State acting as the Chairman of the Board.²⁶

The Board selects countries eligible for the MCA based on sixteen indicators falling under the three categories: “ruling justly,” “encouraging economic freedom,” and “investing in people.” The Board has discretion to look at other factors drawn in, but not limited to, consultation with experts and supplemental information from the U.S. State Department Human Rights Reports and Transparency International’s Corruption Perception Index.²⁷ In keeping with a streamlined approach and decision making process to allocate development aid, the Board harmonizes the relationship between the recipient country and the MCC by signing “Compacts” with these countries. Compacts are agreements between the recipient country and the MCC where the recipient country has the principal responsibility of managing and implementing the compact, with the assistance of the MCC. Also, because MCA eligible countries are tasked with the responsibility of submitting proposals and providing oversight and monitoring, the MCC can remain a small institution in staff size tasked with moving the MCA to countries signing compacts. Instead of having a significant amount of MCC staff in each country where a compact exists, the MCC relies on each country to report back to them. This operational method has been called a “foundation approach” to development.

Promoting Accountability

The MCA’s means to foster accountability and country responsibility represent departures from other development approaches and foreign assistance programs in four ways. First, the MCA only provides development aid to countries that show a commitment to sound development and economic policies. Second, the MCA proposes greater recipient involvement that includes a “foundation approach” where the MCC receives proposals from governments and chooses which will receive funding. This places the responsibility for program design and implementation on the recipient countries.²⁸ The MCA’s implementing charter, the Millennium Challenge Act of 2003, has focused objectives aimed at economic growth and poverty reduction through country-driven proposals and recipient country-monitored projects, unlike other foreign assistance programs where the agency or organization determines where money should be spent and for what purposes. Third, the MCA focuses on results that require MCA recipients to delineate measurable performance benchmarks in their proposals for each request. The benchmarks must focus on substantive goals, such as increasing test scores; raising immunization rates by a specific amount; and institutional goals, *e.g.* improving auditing systems, strengthening legal codes, or training a certain number of teachers.²⁹ These benchmarks are more specific than the MDGs. Also, each project must incorporate aspects of monitoring and evaluating the proposal’s progress. Fourth, the creation of the MCC to administer the MCA is meant to lower bureaucratic and administrative

costs by maintaining a small accountable staff and providing them with specific guidelines for aid allocation.

Providing Incentives

While MDGs do not delineate a plan for domestic implementation of policies geared towards achieving the goals, the MCC provides incentives for countries seeking MCA funding to demonstrate their commitment to “ruling justly, investing in their people, and encouraging economic freedom.”³⁰ As former MCC CEO Paul Applegarth observed on the eligibility for MCA seeking countries, “if they can get the policy environment right, they will generate growth and capital.” Armenian Foreign Minister Vartan Oskanian testified that this incentive-based approach has had positive effects in that “inclusion in the Millennium program had made [his] country ‘more focused’ on governance, democracy, rule of law, and human rights.”³¹

While critics argue that the MDGs are inadequately funded, U.S. President Bush proposed that the MCA receive funding of five billion dollars per year within three years (by 2007), representing a fifty percent increase in official development assistance.³² The impact of the MCA funding is significant. As Applegarth noted, “[w]hen the program is fully funded, each [MCC] eligible country could receive as much as \$300 million in additional aid per year beyond its current foreign assistance.”³³ Foreign aid and development expert Steve Radelet describes the amount in the following manner:

For the first year, Congress has approved [one billion dollars] in funding. If the administration’s list of first-year qualifiers ultimately includes, say, [fifteen] countries, the average country could receive \$67 million. This is equivalent to about one-sixth of the average total capital inflows (from aid and other sources) of \$384 per country for IDA-eligible countries. Ultimately, if the MCA receives a total budget of, say, three billion dollars (a figure more likely than the [five billion dollars] proposed by the president), and 25 countries qualify, the average per country would reach \$120 million per year, equivalent to about one-third of current capital inflows.³⁴

The MCA’s relatively large budget, combined with the small number of qualifying countries, could create a strong incentive for countries to try to qualify, while enabling the contributions to make a significant impact on the developing countries that do qualify. How effective the MCC will be at achieving poverty alleviation by efficiently and effectively allocating aid is still largely speculation. While many are optimistic about the potential of this new methodology, others are wary that the MCC’s country selection process and relatively small institutional size may have unintended negative consequences on the poor developing nations that do not qualify for the MCA and other donor agencies, particularly USAID.³⁵

CRITIQUES OF THE MCA AND MCC

Critics of the MCA and MCC highlight a variety of problems in its design, as well as potential unforeseen or unintended consequences. The potential design flaws include the indicators for country selection, the administrative priority placed on the

MCC, and the size of the agency. The possible negative consequences include the abandonment of the poorest performing developing countries, and the neglect and undermining of the already established USAID. This section will discuss the critiques of the MCC and MCA's design, as well as the potential effects on the poorest countries. The next section will address the interplay and competition between the MCC and USAID.

The MCA country selectivity attempts to provide an incentive for developing countries to compete to qualify for funding. To ensure that the selection process for countries eligible for the MCA is on their merits, the MCA uses a numerical governance ranking system developed by private research institutes and international agencies. Eligible countries must perform above the average score of all countries in a minimum of half of the indicators within the categories of ruling justly,³⁶ economic freedom,³⁷ and investment in people.³⁸ This median approach is problematic because, as countries develop and improve, the overall median will inevitably rise. If countries grow at comparable rates, those countries developing slower than the average rate will fail to reach the ever rising median score. The effect will be to permanently exclude certain countries from MCA eligibility. Thomas Palley, the Director of the Open Society Institute's Globalization Reform Project, provides the following analogy to illustrate this point:

[T]he problem can be understood in terms of a simple analogy with two runners who are equally fast, but one of which begins with a half mile advantage. Given that they are equally fast, the disadvantaged runner never catches up with his rival, even though both are moving forward. The policy implication is that relying on relative performance (*i.e.* the group median) is problematic, and it is better to find measures that are absolute in character.³⁹

This shifting median may ensure that some countries always narrowly miss MCA eligibility and will only be augmented by the currently proposed yearly expansion in the pool of eligible countries in year three to include 28 nations with average per capita incomes between \$1,435 and \$2,975. Although these countries will be assessed with separate median scores from the countries with average incomes less than \$1,435, nevertheless, "the nations potentially eligible in year three also have much greater access to alternative sources of financing, with higher private capital flows, savings rates, and government revenues . . . including this new group would divert aid resources away from countries with greater needs and fewer financing alternatives."⁴⁰

Two issues remain to be fully examined because the MCC is not yet fully funded or fully staffed: (1) how the

Administration is prioritizing the MCA vis-à-vis other foreign aid programs; and (2) whether the MCA has the staffing capacity to accomplish all it sets out to achieve. If the past year provides any insight, the MCA is high on the Administration's priority list. The first MCA grant or "Compact" was signed on April 18, 2005 with Madagascar, just over a year after the MCA was established. Since then four other Compacts were signed with over \$600 million promised in aid.⁴¹ However, whether this "Compact" approach is successful, and how results-based aid translates into reality, is still unknown, but it is clear that the MCA has momentum.

Some foreign aid scholars have questioned whether the small MCC staff, with a cap of two hundred employees that is one-tenth the size of USAID's staff, will be able to handle all these Compacts.⁴² As Steve Radelet noted, "[two hundred] people

seems inordinately insufficient for a program with an annual budget of [five billion dollars]."⁴³ He has also speculated the MCC has contracted out many services, including monitoring and evaluation, and work through USAID staff in a particular country.⁴⁴ The MCC may also contribute to deeper fragmentation or confusion among U.S. aid programs through overlapping programs. Critics fear the high profile of the MCA could detract resources from other U.S. programs such as USAID. The coming year should shed light

The approach characterized by the [Millennium Challenge Account] is a departure from the target-setting approach of the Millennium Development Goals . . .

on the interplay between the MCC and USAID.

In its current state, the MCA may achieve its own poverty alleviation goals with the best performers of the developing world, roughly the top twenty percent, but this may come at the expense of the other eighty percent that will be left to seek funding from other sources.⁴⁵ Because the country selection process uses a ranking system with a shifting median, some poor performing countries are permanently unable to qualify. These countries, the "basket case" developing countries that do not meet the MCA standards, will be left on the doorsteps of other donor organizations. Other donor organizations will then be faced with more difficult challenges in providing effective aid to countries suffering from a myriad of factors detrimental to utilizing assistance, such as corruption, lack of good governance, and lack of political will. Further, because these countries are poor performers, donor agencies will be required to use additional resources to assist these countries in improving and then effectively utilizing the aid. One study concluded it unlikely that other donors would increase their own commitments to MCA countries in response to the U.S. presence.⁴⁶ This study found it "much more plausible that over time other donors will reduce their assistance to MCA countries . . . and funnel some of their aid to other countries."⁴⁷ The results of this shift can be either

positive or negative. On one hand, more aid is freed up for non-MCA countries when donor organizations move their projects out of MCA countries. On the other hand, donor agencies may find that they are funding non-MCA countries incapable of successfully utilizing aid and therefore adding to the list of failed projects.

MCA IMPACT ON THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

The MCA could fail to achieve its goals in its own right, as well as undermine the efforts of other donor organizations. The MCA's potentially significant impact on the USAID is an example of how the MCA may affect the allocation of development aid. At present, there is a debate on how MCA's large budget, new methodology, and country selection process will impact USAID. It seems inevitable that politics, institutional differences, and overlapping efforts between both agencies will cause friction and tension.

With a budget growing to five billion dollars in 2006, roughly doubling present U.S. spending dedicated to development, the MCA brings significant new resources to qualifying countries. While the USAID budget remains significantly smaller than MCA's, the MCA's expanding funds are not only perceived by many as an affront to USAID, but also as indicative of the Administration's political leanings towards promoting the MCA as a leader in foreign development. It is significant that the Administration chose to create a stand-alone MCC, rather than place it under the administration of USAID or the State Department. This move has the potential to undercut USAID, "by creating the impression that its programs are unlikely to be as effective as those funding by the [MCC]."⁴⁸ The impact the MCC may have on USAID ranges from USAID and the MCC working in harmony to shuttle countries from the Threshold Program⁴⁹ into the MCC's eligible country list, to USAID and MCC in competition for resources and struggling with inter-agency coordination, to USAID disappearing as a stand-alone agency and instead becoming absorbed under another agency, possibly the State Department or the MCC.

The MCA's institutional structure was created to avoid the problems faced by USAID and allow the MCA to function more independently and with less Congressional interference. The MCA has a relatively simple legislative framework governing it with no legislative earmarks. In contrast, USAID faces multiple demands from Congress each year, adding yet another layer of bureaucracy into its aid allocation process. For example, the U.S. Foreign Assistance Act, which determines the terms of international aid, is frequently amended and now contains 33 goals, 75 priority areas, and 247 directives.⁵⁰ USAID often allocates funding for other programs and development projects because Congress frequently engages in "earmarking," where funds are dedicated from the overall budget to specific, politically popular programs.⁵¹ Congress has historically left foreign aid and USAID missions "hamstrung with its annual list of assistance earmarks . . . 274 at last count."⁵² As one former USAID Foreign Service Officer noted, "these earmarks . . . are more driven by pork-barrel politics than developmental vision or knowledge of best practices, and drastically reduce levels of flexibility, respon-

siveness and effectiveness for foreign aid."⁵³ This hinders USAID in its efforts to maintain a consistent and clear budget.

Although the Administration claims that USAID and the MCA will not compete for Congressional funds, both institutions might find themselves in competition for other resources, such as employees and experts. USAID and MCA are independent agencies with separate budgets, and there is speculation that Congress, under Republican leadership, will be more inclined to fund the MCA and augment that budget in lieu of the USAID, given that the MCC is the current administration's initiative. The MCC "is likely to draw staff and resources from USAID, further weakening the agency, possibly engendering some resentment and making cooperation difficult."⁵⁴ On the other hand, others argue that, given the drastically different approaches to aid between the MCC and USAID, USAID's expertise will remain with the agency and with very few employees will move to the MCC.⁵⁵ Therefore, the MCC will be weakened from not having the years of experience in development assistance that some USAID employees could impart on this new agency. It has yet to be seen how coordination and cooperation is progressing between the two organizations, and this is likely to be under scrutiny as more of these Compacts are signed in countries with a strong USAID presence.⁵⁶

There is concern that politically less popular development programs, such as USAID, will suffer from the reduction in the quality of recipient countries after MCA, as a Bush Administration initiative, picks the best performers. The deterioration of USAID recipient countries may increase USAID's difficulty in achieving successful development and lessen its ability to attract Congressional fiscal support, thereby weakening the institution as a whole. In contrast to USAID's struggle to receive funding for growth-oriented projects, the MCA will have five billion dollars for these projects. Therefore, a possible unintended effect may be that USAID will become the organization whose mission will be to assist countries ineligible for MCA funding, particularly the "threshold countries," to improve their domestic policy to become eligible for the MCA. This has already begun with the "Threshold Program,"⁵⁷ where USAID allocated \$40 million to help seven countries achieve MCA eligibility. To complicate the Program, threshold countries may qualify one year and not the next. In this situation, confusion may arise as these countries continually are shuffled between USAID and the MCA.⁵⁸ The ultimate trend signified by this shifting of "threshold countries" is that, for better or worse, USAID could become more of a supporting development agency for countries seeking MCC eligibility rather than as its own independent development agency.

The MCA has instituted a methodology for development aid, an approach that selects only particular countries and is both results-based and country-driven. If the MCA approach succeeds, there is likely to be an increase in pressure to reform USAID and accelerate global demands for greater accountability in recipient governments. The MCA has the potential not only to thwart substantive USAID development aid allocations, but also to force USAID and possibly other institutions to reexamine their current structure and effectiveness in foreign aid assistance.


CONCLUSION

The MCA is a significant attempt by the United States to address poverty alleviation and sustainable development through a different approach than the MDGs. However, the debate surrounding the effectiveness of the MCA and its approach leads to a broader discussion on how to improve the MCA to better achieve its goals and minimize the impact of the MCA on other donor organizations. No easy solution exists, and since the MCA is still in its beginning stages, this article hopes to foster debate and discussion on the potential impacts of the MCA.

The following are a few questions for future consideration, for those interested in how the MCA is impacting foreign development programs. For example, has the United States decreased its financial commitments toward other development organizations such as USAID and the World Bank since the establishment of the MCA? Have donor organizations withdrawn their funding or interest from certain countries as a result of the MCA presence there? Has the World Bank noticed a decrease in countries requesting loans and are these countries instead seeking MCA grants? Has there been a noticeable increase in the num-

ber of developing countries not eligible for the MCA at the World Bank or USAID?

This article has provided an overview of two development approaches, the MDGs' target-setting approach and the MCA's country-driven and results-oriented approach. The MCA is a newly focused mechanism for foreign development aid and provides the United States with an opportunity to reassert global leadership through an effective foreign assistance program. With only five Compacts signed and awaiting allocation of funds to begin implementing the various proposals, the future of the MCA is unclear. The potential problems with the MCC as an institution are still only speculative. Nevertheless the impacts of the MCA could be considerable and merit considerable attention. These include the potential for leaving a significant portion of developing countries at the door steps of other agencies and leaving these agencies with countries where more resources are likely to be needed to be effective.

It is hoped that this article serves as a starting point for what will become a continued analytical discussion on the MCA and its impact on both U.S. and international donor organizations. 

ENDNOTES: MCA and USAID

¹ Amy McFarlane, *In the Business of Development: Development Policy in the First Two Years of the Bush Administration*, 21 BERKELEY J. INT'L L. 521, 522 (2003).

² LAEL BRAINARD ET AL., CTR. FOR GLOBAL DEV. & BROOKINGS INST., *THE OTHER WAR: GLOBAL POVERTY AND THE MILLENNIUM CHALLENGE* ACCOUNT 28 (2003).

³ Paul Applegarth announced his intent to step down as CEO of the MCC on June 15, 2005. MILLENNIUM CHALLENGE CORPORATION PRESS RELEASE, *Millennium Challenge Corporation CEO Paul Applegarth Announces Plans to Step Down in Future* (June 15, 2005), available at http://www.mca.gov/public_affairs/press_releases/pa_061505.shtml (last visited Nov. 1, 2005). President Bush announced his intent to nominate Ambassador John Danilovich to serve as CEO of the MCC on Aug. 11, 2005. MILLENNIUM CHALLENGE CORPORATION PRESS RELEASE, *President Bush Announces Intent to Nominate New Millennium Challenge Corporation CEO* (Aug. 11, 2005) available at http://www.mca.gov/public_affairs/press_releases/pr_081105_danilovich.shtml (last visited Nov. 1, 2005).

⁴ Brookings Inst., *Environment, Poverty, and the Millennium Challenge Corporation: Leveraging U.S. Aid to Improve Natural Resource Management*, (June 24, 2005) available at http://www.brookings.edu/fp/events/20050624_MCCtranscript.pdf (last visited October 30, 2005).

⁵ G.A. Res. 55/2, U.N. GAOR, 55th Sess., 8th plen. mtg., Agenda Item 60(b), at 2, U.N. Doc. A/55/L.2 (2000) available at <http://daccessdds.un.org/doc/UNDOC/GEN/N00/559/51/PDF/N0055951.pdf> (last visited Oct. 30, 2005).

⁶ G.A. Res. 55/2, U.N. GAOR, 55th Sess., 8th plen. mtg., Agenda Item 60(b), at 6, U.N. Doc. A/55/L.2 (2000) available at <http://daccessdds.un.org/doc/UNDOC/GEN/N00/559/51/PDF/N0055951.pdf> (last visited Oct. 30, 2005).

⁷ See UNITED NATIONS, *MILLENNIUM DEVELOPMENT GOALS*, at <http://www.un.org/millenniumgoals/> (last visited Oct. 30, 2005) (Containing more information on all the Millennium Development Goals).

⁸ Erin Chapman, *Meeting the Millennium Challenge*, Debt, AIDS, Trade, Africa (DATA.org Report) 8 (Apr. 2004).

⁹ UN, DEP'T OF ECON. AND SOC. AFFAIRS, *Progress towards the Millennium Development Goals* (June 13, 2005), available at http://millenniumindicators.un.org/unsd/mi/mi_coverfinal.htm (last visited Oct. 30, 2005).

¹⁰ UN DEV. PROGRAM, *Millennium Development Goals: A compact among nations to end human poverty*, HUMAN DEVELOPMENT REPORT 2003, available at <http://hdr.undp.org/reports/global/2003/> (last visited Oct. 30, 2005); Income poverty refers to the percentage of the population living on less than 50% of the median adjusted disposable household income (UNDP, "Human Development Indicators 2003," available at http://www.undp.org/hdr2003/indicator/indic_34_1_1.html (last visited Nov. 1 2005).

¹¹ UN DEV. PROGRAM, *UN Millennium Development Goals Frequently Asked Questions* (2003), at <http://www.undp.org/mdg/faqs.html#Areweontrack> (last visited Oct. 30, 2005).

¹² U.N. DEV. PROGRAM, *supra* note 10.

¹³ John W. Foster, *Montreal Int'l Forum (FIM), The Millennium Development Goals: Instrument for Advance or Diversion of Energies* (Dec. 2003) available at http://www.fimcivilsociety.org/english/3-John_Foster-EN.pdf (last visited Oct. 30, 2005).

¹⁴ The United States has consolidated its position as the world's largest aid donor in volume terms, providing 24 percent of total DAC ODA. It was followed by Japan (thirteen percent), France (eleven percent), Germany (ten percent) and the United Kingdom (nine percent). EU members combined provided 54 percent of total Development Assistance Committee ("DAC") Official Development Assistance ("ODA"). Denmark, Luxembourg, the Netherlands, Norway and Sweden are still the only countries to meet the United Nations ODA target of 0.7 percent of gross national income. Of these, Sweden aims to achieve one percent in 2006, Norway aims to achieve one percent in 2006-09, and Luxembourg aims to reach this level in the long term. Four other countries have given a firm date to reach the 0.7 percent target: Ireland by 2007; Belgium and Finland by 2010; and France to reach 0.5 percent by 2007 and 0.7 percent by 2012. Spain has indicated it may reach 0.7 percent by 2012, and the United Kingdom that it may reach it by 2013. OECD "Final Data for 2003," available at <http://www.oecd.org/dataoecd/19/52/34352584.pdf> (last visited Nov. 2, 2005).

¹⁵ Colum Lynch, *U.S. Wants Changes in U.N. Agreement*, THE WASH. POST, at A01 (Aug. 25, 2005).

¹⁶ *Id.* at A01.

¹⁷ Julian Borger, *Road map for US relations with rest of world*, THE GUARDIAN (Aug. 27, 2005) available at <http://www.guardian.co.uk/usa/story>

ENDNOTES: MCA and USAID Continued on page 76

PROTECTING CHILDREN AND THEIR MOTHERS:

THE MILLENNIUM DEVELOPMENT GOALS PUSH LOFTY HEALTH TARGETS

by Frank Pigott*

The Millennium Development Goals (“MDGs”) contain two important health initiatives relevant to child and maternal welfare: 1) Goal Four calls for the reduction of child mortality by two-thirds; and 2) Goal Five appeals for the reduction of the maternal mortality ratio by three-quarters.¹ The daunting data on child mortality illustrates the need for action. According to the World Health Organization (“WHO”), over ten million children die each year in developing countries.² In addition, children under five in developing countries have a one in ten chance of dying, compared to a ratio of one in 143 in wealthier countries.³

The United Nations *Millennium Development Goals Report 2005* (“UN report”) shows that child mortality is strongly related to poverty level, as poor countries have less access to advances in child survival treatments than wealthier countries.⁴ Five diseases are responsible for fifty percent of all deaths of children under five – pneumonia, diarrhea, malaria, measles, and AIDS.⁵ The data suggests that nutrition is the most important preventative measure, because malnutrition weakens the immune system.⁶ According to the UN report, safe water, better sanitation, education, and higher income levels can also increase a child’s life expectancy.⁷ Other measures to reduce child mortality rates include breastfeeding, immunization, antibiotics for acute respiratory infections, oral rehydration for diarrhea, and use of insecticide-treated mosquito nets and drugs for malaria.⁸

Maternal health, the fifth MDG target, is particularly important because of its interrelation to the reduction in child mortality pushed by Goal Four. Unfortunately, for many pregnant women, giving birth often results in death – over 500,000 each year.⁹ Mothers also face a life of disabling and painful complications developed during childbirth.¹⁰ In sub-Saharan Africa, a woman has a one in sixteen chance of dying during pregnancy or childbirth, compared to a one in 3800 chance in a developed country.¹¹ Much of this difference is due to the disparity in family planning, pre-natal services, and obstetrics care between these two worlds. Thus, developing countries can reduce maternal mortality by providing women increased access to adequate reproductive health care.¹² For example, Egypt reduced its maternal mortality ratio by fifty percent in only eight years by instituting a comprehensive program to improve the quality of medical care through better management of obstetric complications, the presence of skilled attendants at births, and community support and family planning services for pregnant women.¹³

The disparity between developed and undeveloped country mortality rates for children under five and pregnant women demonstrates the need for a strong commitment to achieving MDG Goals Four and Five. As with other MDGs, the key to

achieving these goals is an increase in investments to the targeted regions (e.g. sub-Saharan Africa). The vaccines, nutrition, and proper care needed, though simple and taken for granted in developed countries, must be implemented in the developing countries to ensure equal opportunities for children and mothers. The United States, Great Britain, France, and other developed countries must stand behind their promises to achieve the MDGs and donate the necessary funds and supplies to the regions in danger of not reaching the MDGs. A child’s fate and that of his mother should not be detrimentally predetermined based on the country they live in.



Courtesy of Stuart Briggs (January 2005)

Children in South Africa

ENDNOTES:

¹ UN ECON. & SOC. COUNCIL (“UNESCO”), THE MILLENNIUM DEVELOPMENT GOALS REPORT 2005, 18-23, (May 2005), available at <http://unstats.un.org/unsd/mi/pdf/MDG%20Book.pdf> (last visited Oct. 30, 2005).

² WORLD HEALTH ORGANIZATION, HEALTH AND THE MILLENNIUM DEVELOPMENT GOALS (2005), at 16, available at http://www.who.int/mdg/publications/MDG_Report_revised.pdf (last visited Oct. 30, 2005).

³ WORLD BANK GROUP, Global Data Monitoring Information System, *Millennium Development Goals*, available at <http://ddp-ext.worldbank.org/ext/MDG/gdmis.do> (last visited Oct. 30, 2005).

⁴ See UNESCO, *supra* note 1, at 18.

⁵ See UNESCO, *supra* note 1, at 19.

⁶ See UNESCO, *supra* note 1, at 19.

⁷ See UNESCO, *supra* note 1, at 18.

⁸ See UNESCO, *supra* note 1, at 19.

⁹ WORLD BANK GROUP, *supra* note 3.

¹⁰ See WORLD BANK GROUP, *supra* note 3.

¹¹ See UNESCO, *supra* note 1, at 22.

¹² WORLD BANK GROUP, *supra* note 3.

¹³ UNESCO, *supra* note 1, at 23.

* Frank Pigott is a JD candidate, May 2007, at American University, Washington College of Law.

THE POLITICS OF THE MILLENNIUM DEVELOPMENT GOALS IN AFRICA:

IS GLOBAL PARTNERSHIP REALLY WORKING?

by Charles Mutasa*

INTRODUCTION

Some five years from the Millennium Declaration we are faced with the inevitable need to reassess the current levels of poverty, the instruments that are in place for tackling poverty, and indeed the constraints that must be resolved. The Millennium Development Goals (“MDGs”) represent an unprecedented commitment by all nations and institutions, including the International Monetary Fund (“IMF”) and the World Bank, to implement and realize the MDG targets that need to be emphasized at all stages. The global ability to realize the MDGs is partly dependent on the financing of such development. Aside from being affirmed as part of Goal Eight in the MDGs, such understanding has also been reaffirmed in the 2002 Monterrey Consensus on enhancing financing for development.

MDGs are unique in that they represent the first global compact among the heads of state of developed and developing

“Northern governments are guilty of offering empty promises to the poor when it comes to TRADE, AID, AND DEBT RELIEF. While Least Developed Countries face a complex of problems . . . efforts to combat poverty have been systematically undermined by Northern governments. On trade, the industrialized countries have operated a policy of highway robbery masquerading as market access preferences.”

– Kelvin Watkins, Oxfam International (2002)¹

countries, the United Nations system, the World Bank, and the IMF.² The Goals have clear targets and achievable time-bound indicators of success, which can galvanize support among citizens and governments alike. Throughout 2005, with ten years remaining until the target year of 2015, civil society organizations, governments, and multilateral institutions will be focused on meeting the Millennium Development Goals.

It is often said that global targets are easily set but seldom met, and that for each success story there have been some setbacks. To many, the recent, September 2005 UN MDG+5 review, a summit that evaluated the progress towards the UN Millennium Declaration, was much ado about nothing. Sadly, issues of UN reform, peace and collective security, and human

rights and the rule of law overshadowed the MDGs’ review. Deletions of key commitments to the MDGs, including a deletion of the timeframe of 2015, were the order of the day.⁴ On issues of Official Development Assistance (“ODA”), the developed countries agreed to increase aid by approximately \$50 billion a year by 2010.⁵ This commitment serves to track whether the developed countries will live up to their initial aid commitment level of 0.7 percent of gross national product (“GNP”). No mention, however, was made of the need to replace the much abhorrent Highly Indebted Poor Countries (“HIPC”) debt sustainability framework.

BACKGROUND

Of particular importance to this article is Goal Eight, a late addition to the MDGs, which outlines Northern governments’ commitment to a global partnership for development. If Goal Eight is ignored, it is hard to imagine the poorest countries achieving any of the other seven Goals. Goal Eight addresses debt cancellation; trade justice; equitable governance in global institutions; and political, social, and economic rights for the

“Will the legacy of our generation be more than a series of broken promises?”

– Nelson Mandela, (2001)³

poor. These issues are an indispensable foundation for policies that will enable sustained progress to end poverty in the South. It is an important goal for holding developed countries accountable in advancing the MDGs.⁶ This goal is particularly significant, as it requires richer countries to reform their policies and actions to contribute to the fight against poverty.

Developing countries, especially those in sub-Saharan Africa, will not be able to mobilize enough resources to attain the MDGs by 2015 unless there are radical changes in terms of aid administration, international trade, and the resolution of the burgeoning debt crisis.⁷ One big problem is the conditionality embedded in each country’s Poverty Reduction Strategy Paper (“PRSP”), the center and key to the much needed development aid.⁸ The poorest countries are required to prepare PRSPs, under the guidance of the World Bank and the IMF, in order to qualify for loans or debt relief. The PRSP itself is not an adequate funding criterion, nor is it an important tool in MDG attainment. The PRSP depends on a country having a Poverty Reduction

* Charles Mutasa is Executive Director of the African Forum & Network on Debt & Development (“AFRODAD”).

and Growth Facility (“PRGF”) program and meeting all the conditions and benchmarks in the PRGF, which are not contained in the PRSP, but instead are hidden in the “Letter of Intent” (which lays out the IMF’s recovery plan) between the government and the IMF.⁹ Thus, the content of the Letter of Intent is crucial in attaining the MDGs. Unless the MDG targets are also included in the IMF and World Bank instruments, the attainment of MDGs will remain a dream.

It is important to note that the global structures that maintain poverty and marginalize the rights of the poorest clearly need reform, but the Northern governments’ approaches to the MDGs pay little attention to these major framework issues. The UN should play a strong role in regular monitoring of the donor countries’ progress on attaining Goal Eight. Additionally, the framework for Goal Eight reporting should be revised to include indicators on global governance and participation.

While a more equitable trade system is vital, donor ODA, along with substantial debt cancellation, provides the essential, additional financing capacities. This is particularly true for the poorest countries’ progress in reducing and eliminating poverty. Now is the time for the North to honor mutual commitments and obligations in a spirit of genuine solidarity. Such commitments are encapsulated in the Millennium Development Goals, in particular Goal Eight.

In this article, of particular interest are Goal Eight targets that:

- Further develop an open trading and financial system that is rule-based, predictable, and non-discriminatory. This includes a commitment to good governance, development, and poverty reduction, both nationally and internationally.
- Address the Least Developed Countries’ (“LDCs”) special needs. This includes tariff- and quota-free access for their exports, enhanced debt relief for heavily indebted poor countries, cancellation of official bilateral debt, and more generous ODA for countries committed to poverty reduction.
- Deal comprehensively with developing countries’ debt problems through national and international measures to make debt sustainable in the long term.

Taking Nigeria as an example of an African country embattled with debt, trade, and aid issues, research reveals that four decades after its independence in 1960, Nigeria remains a poor country with a per capita income of \$260 in 2000.¹⁰ At the dawn of the third millennium, approximately 70 percent of the population still lived on less than a dollar a day – an indicator of extreme poverty.¹¹ Real gross domestic product (“GDP”) growth has remained sluggish, averaging 3.5 percent per annum since 2000. Nigeria is also a highly indebted country with total external debt exceeding \$31 billion in 2003.¹² The debt service burden remains crushing. Foreign aid in the form of ODA has been low and has declined during the past decade.¹³ In 2002, ODA per capita was less than two dollars,¹⁴ and total ODA was only 0.4 percent of GNP. Clearly, Nigeria would find it difficult to attain the Millennium Development Goals without massive assistance from development partners in the areas of aid, trade, and debt relief.

KEY CONCERNS WITH MDG GOAL EIGHT

The African Forum and Network on Debt and Development (“AFRODAD”) has identified several key concerns with Northern governments’ commitments to Goal Eight:¹⁵

- Donors have not been responsive to LDCs’ programming processes. ODA disbursement is often late, in most cases coming after the national budget process. This delays the implementation of poverty-reduction programs. Donor funding is also inadequate and does not cover recurrent costs, which comprise the bulk of government expenditure in the priority sectors. For example, Tanzania’s debt burden is increasing at an alarming rate, even though it is on the HIPC Initiative. There is evidence that, even after the HIPC relief, debt sustainability levels will not be reached.
- Donor-imposed “Washington Consensus” policies remain at the heart of PRSPs. Donors increasingly use PRSPs as a guide to achieving the MDGs under the largely rhetorical claim that these strategies are “owned” by developing countries.
- Donor-imposed aid conditions affect the achievability of the MDGs in at least two respects: first, institutions like the IMF and World Bank use aid conditions to channel aid based on their assessments of compliance to their policy prescriptions. Second, bilateral donors channel significant MDG aid resources into highly conditioned budget support for implementing a country’s PRSP, or into sector-wide programs in support of a line-ministry program in education, health, or agriculture.¹⁶
- The MDG approach can potentially encourage the development of a country-owned and credible long-term strategy for growth and poverty reduction. But the policy-making process falls far short of that potential. This is partly because implementation of the MDGs is still driven by the PRGF’s macro-economic framework, and the poverty-reduction strategy is pegged on the widely disguised HIPC initiative. Basic policy priorities and operational frameworks are also lacking and should be pursued under the MDG framework to break from the poverty trap.
- The government’s role in most African economies has changed radically after years of implementing World Bank/IMF structural adjustment programs. From once being a central player in the economy, the government has now been pushed to the sidelines where it is supposed to play the role of facilitator and provide only essential social services. Under the IMF’s Enhanced Structural Adjustment Facility (“ESAF”) and later PRGF, the government has embarked on a wide range of public sector and parastatal reforms.
- Existing macro-economic policies insufficiently address social issues and poverty-reduction. Policy reforms have suffered from serious design weakness-

es in relation to African-type economies because they neglect the impact of structural constraints, the lack of economic and social infrastructure, the weakness of market development and the entrepreneurial class, and the low private-sector production capabilities. As a result, the new policy environment does not deliver high growth rates.

- Genuine ownership of national development policy, including PRSPs, is a meaningless concept without effective state capacities to control aid allocation, formulate policy agendas, and monitor outcomes.¹⁷ It is the lack of coordination on the part of donors' aid projects in individual countries that undermines the sustainability of aid programs and negatively affects resource allocation and growth. Moreover, the volatility of aid-flows can result in financial instability and hinder stable macroeconomic development.

Aid Issues

Linking donor aid disbursements to donor country goods and services affects the quality of aid.¹⁹ It is estimated that aid-tying devalues aid for recipients by up to 30 percent.²⁰ Aid-tying continues to be high for a number of donors, despite a recent Development Assistance Committee (of the Organization for

“There are large areas of the aid system that are in urgent need of reform.”

– Action Aid International (2005)¹⁸

Economic Co-operation and Development) agreement to untie aid to the LDCs. To illustrate, conditions, such as requiring the privatization of water systems in towns such as Dar es Salaam, were placed on aid to Tanzania.²¹ Action like this not only increases water prices but exposes populations to water-borne diseases.²²

Donors dictate policies to countries through aid conditionality; failure to meet these conditions can justify delays in aid disbursement, suspensions of aid, or outright withdrawal. Such policies have made it difficult for poor countries like Malawi, Zambia, and Mozambique to use aid for sustainable development, including poverty reduction. Another problem is that donors' priorities have not always been consistent with the government's priorities.

Poor governance, political interference, and corruption have also affected the effective and efficient use of aid. In regards to aid to Malawi, the Danish Charge D'Affaires, Finn Skadkaer Pedersen, said that “a weak administration” and “systematic intimidation of the opposition” in Malawi have interfered with development programs since 1995.²³ In return, Malawi's former President Bakili Muluzi accused donors of meddling in African politics “by using their aid money to influence political trends on the continent.”²⁴ Relations between Denmark and Malawi worsened late last year when an audit report instituted by Danish ambassador Orla Bakdal revealed anomalies in Malawi's use of Danish aid.²⁵

Debt Issues

Debt continues to inhibit growth and wealth redistribution by reducing the amount of money available to governments for investment in social services and welfare. Debt service has resulted in a decline in the rate of economic growth that, in turn, has been associated with a decline in per capita income.

“Debt is tearing down schools and hospitals. The effects are no less devastating than war.”

– Adabayo Adedeji, African Center for Development Strategy²⁶

According to data reported in the World Development Reports, Malawi's GNP per capita appears to have risen during the 1970s and peaked at \$210 in 1983. It thereafter decreased, reaching \$160 in 1987. It then rose again, reaching the previous peak of \$210 in 1992, ultimately rising to \$220 in 1997. Since then, per capita GNP has fallen continuously and now stands at approximately \$195. The decline in the rate of economic growth has been associated with a decline in education services that make it difficult to attain the MDGs.²⁷ The increase in primary and secondary school enrollments has not been matched with a commensurate expansion in resources. As a result, classroom accommodation is inadequate, with many primary school pupils having to learn in outdoor settings. Boarding accommodation in secondary schools is also insufficient.²⁸

Healthcare has experienced a similar fate. The increase in budgetary allocation to the health sector has been inadequate to meet the needs of a rapidly increasing number of patients. This has resulted in increasing numbers of in-patients per government hospital bed, declining availability of drugs and other materials, and inadequate numbers of doctors in relation to the size of the population. The delivery of medical services in government hospitals and clinics has certainly become inefficient. Instead, government resources must go to debt repayment. The world's poorest countries continue to pay more every year in debt payments than they receive in grants and loans, repaying an enormous £ 100 million every day to the rich North.²⁹

Sustainable debt-financing on the part of the developing countries is an important element for mobilizing resources for public and private investment. Exclusion of domestic debt and contingent liabilities in the debt sustainability analysis are a particular concern for the HIPC countries because of their implications for fiscal resources available for financing poverty reduction.³⁰

The 2005 Gleneagles' G-8 Debt Deal is a step forward and sets an important precedent in terms of granting a full cancellation of debt to all severely indebted poor countries.³¹ However, the deal only represents one-eighth of what Africa needs in terms of debt cancellation, because the deal only cancels \$40 billion out of Africa's burgeoning debt stock of over \$330 billion. The \$40 billion debt forgiveness “represents less than ten percent of debt cancellation required for poor nations to meet the MDGs in 2015.”³² The plan is additionally insufficient in

that it leaves out heavily indebted and impoverished middle-income countries. Furthermore, the eighteen qualifying countries are less than a third of countries that would need full cancellation in order to meet the MDGs by 2015.³³ A prior press release issued by AFRODAD explained this problem:

The G-8 debt agreement does not address the real global power imbalances but rather reinforces global apartheid. The question of creditor-debtor co-responsibility of the South's debt remains unresolved, as issues of odious and illegitimate debts continue to be swept under the carpet. It is not a lasting solution in which all stakeholders-debtors and creditors have a say. It is just a piecemeal measure that seems to deal with the symptoms of the problems and not the causes.³⁴

Trade Issues

Africa's share of global wealth over the last two decades has decreased tremendously on a number of fronts, even in an era of reforms. World trade, world production, net financial flows, and foreign direct investments have been hindered either by poor governance, the heavy debt burden, or by conflict and political instability.

Increased foreign direct investment is unlikely to help sub-Saharan Africa attain the MDGs, particularly, because attracting a constant stream of foreign direct investment is improbable. The strongest critics of foreign direct investment call foreign investors "whimsical," "Afro-pessimistic," and "unreliable partners."³⁵ South African president, Thabo Mbeki, made the following comments:

In our own country, we have been assured that our economic fundamentals are correct and sound. We have developed a stable and effective financial and fiscal system. We have reduced tariffs to levels that are comparable to the advanced industrial countries. We have reformed agriculture to make it the least subsidized of all the major agricultural trading nations. We have restructured our public sector through privatization, strategic partners and regulation . . . Yet, the flow of investment into South Africa has not met our expectations while the levels of poverty and unemployment remain high.³⁶

Market access opportunities for LDCs can only be effective if LDCs are assisted in building their capacities to produce tradable goods of higher value and acceptable quality at competitive costs. Using the foreign exchange earned from primary exports, these countries must survive on exports of raw cashew nuts, coffee, tea, and cotton, while importing everything else in the form of industrial goods from abroad.³⁷

LDCs' chances to attain the MDGs are also harmed by the subsidies for agricultural products in developed countries, which pose an impossible challenge to most developing countries' efforts to export farm produce to European markets. Yet, it is in this area where LDCs have a comparative advantage that would enable them to attain MDGs if given an opportunity for fair competition.³⁸

Under the U.S. African Growth and Opportunity Act ("AGOA"), Africa has increased exports of goods and products to the U.S. market, especially textiles and clothing, nuts, beans, and tobacco.³⁹ However, Africa faces a number of constraints in exporting to the U.S. market that will affect its ability to attain the MDGs. The problems include supply-side constraints, high administrative demands by the U.S. government, the high cost of credit, lack of diversification, and competition from low-cost producers of textiles and clothing (subsequent to the WTO's decision not to subject Chinese exports to quotas.)

RECOMMENDATIONS

To Donors and Developed Countries

The global community needs to realize that placing exclusive emphasis on MDG targets, while delivering only development aid without more sweeping reforms, will serve to shift the blame once again onto the impoverished countries and their people when the MDG targets are not met. Rather, donor countries should instead refocus their actions and policies by using a more inclusive assessment of what it will take to achieve a sustained development away from poverty.⁴⁰

AFRODAD suggests several goals that donors and developed countries should prioritize:⁴¹

- In order to be effective, aid should make a positive impact on income levels and on poverty reduction.
- ODA should be more predictable to allow for better planning. To date, the domestic resource base has proved more reliable and more predictable than external resources.
- Better coordination and harmonization of donor countries' activities and the channelling of more resources through the budget process will ensure that money is used for programs identified as national priorities.
- Aid should be untied and donor countries should provide technical assistance for capacity building. Some donors have completely untied aid while others are still constrained by their national policies and laws.

To LDCs

Similarly, AFRODAD recommends that LDCs focus on the following principles:

- Maintain support to the priority sectors by increasing their budgetary allocations.
- Commit to increasing domestic resource mobilization, upholding the principles of rule of law and good governance, intensifying the fight against corruption, and putting in place an environment conducive to improving the effectiveness of aid and attracting investments.⁴²
- Link trade policy with other government policy documents on poverty reduction and economic growth. Specifically, LDCs need to adopt appropriate measures to safeguard domestic industry and protect investors who are threatened by market liberalization.

To reduce reliance on imports for basic commodities, economic activities need to be protected in order to serve household demands.

- Improve the quality and quantity of exports. Capacity-building of domestic investors is needed to facilitate better product quality and quantity. Foreign direct investment should be encouraged in areas requiring high capital outlay, rather than in low capital sectors that are more appropriate for local investors.
- Retain the right to control investments and exchange rate regimes so that foreign direct investments and transnational corporations serve the needs of people by contributing to locally and nationally determined sustainable human development strategies. Financial liberalization and deregulation have left capital flows elusive to many governments and citizens in the South.
- Take steps to domesticate technical assistance. Much of the debt and ODA goes to technical assistance, but that technical assistance merely funds expatriate consultants and contributed little to domestic capacity.

To Civil Society

While NGOs in the past have concentrated on service delivery, many more are now engaged in social mobilization and advocacy, as well as serving as a bridge between local communities and government. Most donors have begun to regard NGOs as an effective way of reaching the poor and a mechanism for channeling a sizeable percentage of donor funds. AFRODAD recommends that:


- Social activists must pressure the government to undertake an audit (review) of each of the projects/programs for which the loans were incurred. Two reasons warrant such an audit. First, audits would enable the government to truly verify the genuineness of the debts that LDCs are servicing. Second, the responsible officers who contracted the odious loans and/or those who expended them should be prosecuted. Encouraging this action would help social activists signal to the government the seriousness of accountability, as well as cure the country's battered image.

- Take an important and decisive participatory role in the international regulatory and decision-making processes. Locally, governments and transnational corporations must be accountable to their citizens through civil society organizations and locally-elected officials. Top-bottom decision making should give way to a human rights-based approach to development where people are the masters of their own destiny able to make informed choices and decisions about their own development. It is important to remember that people are not developed but that they develop themselves.

CONCLUSION

The implementation of MDGs will require substantial, new, and additional resources from both domestic and external sources. Strong commitments are required from developed countries, LDCs, and civil society.

The key issue in trade development is the need to address supply side constraints. The market access opportunities for LDCs can only be effective if LDCs are assisted in building their capacities to produce tradable goods of higher value and acceptable quality at competitive cost. The MDGs will be difficult to attain for a debt-sustaining African country surviving on exports of raw cashew nuts, coffee, tea, and cotton, while importing everything else in the form of industrial goods from abroad.

For many African governments, close collaboration among the different stakeholders is necessary to meet the MDGs. Key actors include the government, civil society organizations, the private sector, and the donors. At the moment, a framework for collaboration among the various players does not exist, and clarity of roles is lacking. Therefore, a need to develop a collaboration framework will be especially crucial for resource sharing and reviewing progress. MDGs should be explicitly situated within a framework of existing human right treaties, such as the International Covenant on Economic, Social and Cultural Rights, and state rights, such as the right to development. This focus on rights stresses the obligations of all states, including Northern governments, to prioritize their responsibility to take specific steps toward progress on social and economic rights for all. 

ENDNOTES: MDGs in Africa

¹ Press Release, *Rigged Trade and Not Much Aid: How Much Rich Countries Help to Keep the Least Developed Countries Poor*, Kelvin Watkins, Oxfam International (2002).

² Salil Shetty, *Human Rights Perspectives on the MDGs*, Conference Report, 17-18 (Center for Human Rights and Global Justice, Nov. 11, 2003) available at <http://www.nyuhr.org/images/NYUHRGJMDGRE-PORT2003.pdf> (last visited Oct. 27, 2005).

³ UNITED NATIONS DEVELOPMENT PROGRAMME, *The Millennium Goals in*

Africa-Promises and Progress: Report Prepared by UNDP and UNICEF for G8 Personal Representatives for Africa (June 2002).

⁴ See Vitalice Meja, *MDGs in the Just Ended UN Summit: the Role of the Private Sector in Achieving the MDGs*, South African Regional Poverty Network, Oct. 2005, available at <http://www.sarpn.org.za/documents/d0001657/presentation.php> (last visited Oct. 31, 2005).

⁵ See DACNews, *How Much Aid Is Really New Aid?*, OECD, Sept.- Oct. 2005, available at http://www.oecd.org/document/25/0,2340,en_2649_

CONDITIONAL CASH TRANSFERS:

PROGRESS TOWARDS THE MILLENNIUM DEVELOPMENT GOALS

by Blase Kornacki*

The Millennium Development Goals (“MDGs”) set the lofty targets of ensuring universal primary education, reducing poverty, combating infectious diseases, and promoting gender equality.¹ Commitment to similar goals in the past has not met with much success; however, evolving approaches to social welfare give hope that progress towards the MDGs is possible. One such new approach is the Latin American phenomenon of conditional cash transfer programs (“CCTs”).


Conditional cash transfer programs are transforming Latin America’s approach to social welfare.⁴⁵ CCTs provide money to families living in extreme poverty in exchange for the commitment to invest in human capital.⁴⁶ The programs aim at replacing the “traditional supply-side mechanisms” with “demand-side interventions to directly support beneficiaries.”⁴⁷ Traditional mechanisms battled poverty with subsidies or direct investments in public goods, whereas the new approach channels support directly to the people and promotes investment in human capital, using market approaches as an incentive to use social services such as primary and secondary education and local health centers.⁴⁸ Like the MDGs, the CCT programs focus on the long-term benefits of improved education and health services rather than concentrating merely on short-term income objectives. By providing financial incentives to induce school attendance, the programs aim to give children the opportunity to contribute to the family without having to enter the workforce.⁴⁹

Brazil’s *Bolsa Familia* (“family fund”)⁵⁰ is Latin America’s largest CCT program, and is poised to become the largest CCT program worldwide as well.⁵¹ *Bolsa Familia*, like many similar programs across Latin America, combines the educational element that requires 80-85 percent attendance with additional health and nutrition requirements. It provides income to 7.5 million of Brazil’s poorest families, in an effort to offset the need for child-earned income by providing heads of households with a basic monthly payment.⁵² Because the administrators believe women are more likely to invest the money in their children, payments are made every two months to female heads of household.⁵³ In return, recipients must ensure that their children are properly vaccinated and that they regularly attend school. Children who do not meet the program’s school attendance requirements risk suspension of their families’ benefits.⁵⁴

The programs have met with varying degrees of success. Studies show that while recipients of the cash transfers are more likely to attend school, they are not less likely to work.⁵⁵ Instead, children are increasingly expected to juggle both work and school.⁵⁶ Attendance rates have been difficult to gauge, and media allegations of extortion accuse teachers of withholding small grants from the very poor families in exchange for proper reporting of attendance to the authorities.⁵⁷ A further critique of the programs is their emphasis on attendance rather than the improvement of the quality of public education.⁵⁸ While these critiques point out the inefficiencies of the new

approach, CCT’s positive impacts are laying a foundation for the future elimination of these shortcomings.

The statistics show a generally positive effect that CCTs have had on their education goals, particularly in terms of increased enrollment rates for both girls and boys.⁵⁹ Nicaragua’s twenty-two percent increase in primary school enrollment in CCT areas exhibits the most drastic improvement.⁶⁰ Colombia has noted positive effects of CCTs on the enrollment rates in rural areas, but there is no impact in the urban zones.⁶¹ CCTs have also seen some success in narrowing the gender gap in education.⁶² Targeting gender inequality, some countries offer higher grants to females as an added incentive to stay in school.⁶³

The CCT’s positive impacts on school enrollment rates and preventive healthcare attest to the overarching success of the programs. Despite its criticisms, the CCTs’ innovative approach to the delivery of social services gives hope that evolving welfare structures will facilitate the attainment of future targets such as those set forth by the Millennium Development Goals. 

ENDNOTES:

- ¹ UNITED NATIONS, MILLENNIUM DEVELOPMENT GOALS, available at <http://www.un.org/millenniumgoals/goals.html> (last visited Nov. 3, 2005).
- ² See Laura Rawlings, world bank group, *A New Approach to Social Assistance: Latin America’s Experience with Conditional Cash Transfer Programs*, at 1 (Aug. 2004), available at [http://wbln0018.worldbank.org/HDNet/HDdocs.nsf/2d5135ecbf351de6852566a90069b8b6/4bb6997285f65ef585256ee5005e3a75/\\$FILE/0416.pdf](http://wbln0018.worldbank.org/HDNet/HDdocs.nsf/2d5135ecbf351de6852566a90069b8b6/4bb6997285f65ef585256ee5005e3a75/$FILE/0416.pdf) (last visited Nov. 4, 2005).
- ³ *Id.*
- ⁴ *Id.*
- ⁵ *Id.*
- ⁶ See Andre Portela Souza, *The Impact of Cash Transfers on School Attendance and School Progression in Brazil*, at 5 (Feb. 2005), available at <http://www.vanderbilt.edu/Econ/wparchive/workpaper/vu04-w07.pdf> (last visited Nov. 4, 2005).
- ⁷ ECONOMIST.COM, *New Thinking about an Old Problem*, (Sept. 15, 2005), available at http://www.economist.com/displaystory.cfm?story_id=4408187 (last visited Nov. 4, 2005).
- ⁸ Rawlings, *supra* note 2, at 2.
- ⁹ ECONOMIST.COM, *supra* note 7.
- ¹⁰ ECONOMIST.COM, *supra* note 7.
- ¹¹ See Rawlings, *supra* note 2, at Table 2, 21, for information on country-specific conditions placed on recipients of CCTs.
- ¹² See Souza, *supra* note 6, at 7.
- ¹³ See Souza, *supra* note 6, at 7.
- ¹⁴ Simon Schwartzman, *Education-Oriented Programs in Brazil: the Impact of Bolsa Escola*, at 3-4, Paper submitted to the Global Conference on Education Research in Developing Countries, Global Development Network, Prague (Mar. –Apr. 2005), at 4, available at http://www.schwartzman.org.br/simon/pdf/bolsa_escola_eng.pdf, (last viewed Nov. 3, 2005).
- ¹⁵ See *id.* at 23.
- ¹⁶ Rawlings, *supra* note 2, at 9.
- ¹⁷ Rawlings, *supra* note 2, at 9.
- ¹⁸ Rawlings, *supra* note 2, at 9.
- ¹⁹ Rawlings, *supra* note 2, at 5.
- ²⁰ Rawlings, *supra* note 2, at 5.

*Blase Kornacki is a JD candidate, May 2008, at American University, Washington College of Law.

ESTABLISHING SOUND CHEMICALS MANAGEMENT

A PREREQUISITE FOR ACHIEVING THE MILLENNIUM DEVELOPMENT GOALS

by Kelly Rain*

INTRODUCTION

Modern society could not maintain its current standard of living without chemicals; however, sound chemicals management is necessary to prevent harm to human health and the environment. The United Nations Environment Programme – along with governments, relevant intergovernmental groups, nongovernmental organizations, and other stakeholders – has begun the process of establishing a Strategic Approach to International Chemicals Management (“SAICM”). The importance of this process is far-reaching, demonstrated by the fact that hazardous chemicals hinder the achievement of development targets, such as the Millennium Development Goals (“MDGs”).

This article explores the nexus between sound chemicals management and achievement of all eight MDGs, a link not explicitly stated in the MDGs themselves. Sound chemicals management plays a vital role in ensuring that the MDGs are reached. Recognizing this linkage is necessary to achieving the MDGs.

THE NEED FOR A STRATEGIC APPROACH TO SOUND CHEMICALS MANAGEMENT

Virtually every manmade good involves the use of intentionally produced chemicals. It has become clear that global chemicals production has the capability to impact environmental sustainability, human health, and the global economy in both poor and wealthy countries.

The chemical industry accounts for approximately seven percent of global income and nine percent of international trade.¹ Reporting \$587.8 billion aggregated sales in 2004; the global output of chemicals is projected to increase by 85 percent in the next twenty years.² The worldwide chemical industry is highly diverse in terms of size and geographical location. Employing more than ten million people worldwide, the industry has experienced continuous growth over the past 30 years. As a result, the value of chemical shipments has increased and has created a truly global industry with sixteen countries accounting for about 80 percent of global production.³ It is projected that by 2020 one-third of the world’s chemicals production and consumption will occur in developing countries.⁴

With the increase of chemicals on the market, public concern has risen due to various studies linking hazardous chemicals to cancer, respiratory diseases, reproductive diseases, impairment in the physical and emotional development of children, neurological diseases, and more. As a result of this international attention, numerous multilateral environmental agreements have evolved, including the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer,⁵ the 1998 Rotterdam

Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade,⁶ and the 2001 Stockholm Convention on Persistent Organic Pollutants.⁷ However, the international community continues to recognize an increasing need for a global, integrated approach to chemicals regulation since chemicals are produced, consumed, and pollute on a worldwide scale. Such a need was formally addressed at the World Summit on Sustainable Development, held in Johannesburg in 2002. The Johannesburg Plan of Implementation formally recognized the goal that by 2020 use and production of chemicals would be done “in ways that lead to the minimization of significant adverse effects on human health and the environment.”⁸ The action plan encouraged further development of a strategic approach to international chemicals management, encouraging international stakeholders to work closely in this cooperative effort.⁹

The ongoing process of establishing SAICM includes a focus on developing synergies between existing multilateral environmental agreements and programs related to chemicals. SAICM promotes an environmentally sustainable approach to international chemicals management; in particular, assisting developing countries balance an increasing chemical industry, while protecting the environment and human health.

RELATIONSHIP OF THE MDGs TO SOUND CHEMICALS MANAGEMENT

Progress in all eight of the MDGs depends on both the safe and affordable availability of needed chemicals and protection from the environment and health impacts of toxic substances. Recognition of this critical reality will lead to an increased likelihood of achieving the MDGs.

GOAL ONE: ERADICATE EXTREME POVERTY AND HUNGER

A strong and clear connection exists between poverty reduction and sound chemicals management. Poverty has been slowly declining in most parts of the world; for example, in Asia the amount of people living on less than one dollar a day dropped by nearly a quarter of a billion from 1990 to 2001.¹⁰ However, extreme poverty still exists throughout the world with more than one billion people surviving on less than one dollar a day and two and a half billion people living on less than two dollars a day.¹¹

* Kelly Rain is a JD candidate, May 2007, at American University, Washington College of Law. Ms. Rain wishes to thank Dan Magraw and Glenn Wiser, at the Center for International Environmental Law, for their invaluable assistance. Ms. Rain welcomes comments at kelly.rain@gmail.com.

Poor populations are often constantly surrounded by toxic substances. Exposure occurs at home and at work, and the consequence can range from contracting diseases that may interfere with an individual's ability to retain employment to death. The hazards related to chemical exposure are some of the most critical burdens suppressing those trapped in poverty, and without a collective action to manage chemicals, extreme poverty cannot be eradicated. In urban settings, the poor often reside in areas close to landfills, incinerators, hazardous waste sites, or other industrial zones. Wealthier economic classes generally find such areas undesirable, since the environment is often saturated with hazardous chemicals. Unfortunately, most low-income populations lack knowledge of such dangers. Poor populations living in rural areas do not fare any better. Three quarters of the world's poor live in non-urban areas, and most are dependent on the agricultural sector for work.¹² For these laborers, improper use, storage, or management of pesticides and other chemicals increase their exposure to these hazardous materials.

Those living in poverty are often perpetually ensnared in occupations, like agriculture, that constantly expose them to chemicals. The great need for sound chemicals management in the workplace is clear from the fact that the International Labour Organization ("ILO") estimated that, of the 2.2 million workplace fatalities that occur each year, almost 440,000 are caused by chemicals.¹³

Additionally the ILO reports that, of the yearly average of 160 million work-related diseases, 35 million are due to chemicals.¹⁴

At the same time, chemicals play an invaluable role in society. The sound use of chemicals can be essential to improving agricultural and industrial productivity. Over 800 million people do not have an adequate food supply to meet their daily caloric needs.¹⁵ The responsible use of chemicals can improve agricultural yields and help lift people out of poverty and hunger. Therefore, society must strike a delicate balance between sound chemicals management to reduce the risk of unnecessary exposure for those living in poverty and to protect the rights to utilize chemicals to enhance one's livelihood.

Chronic hunger afflicts millions of people and is directly linked to their weakened immune system. In 2002, the number of chronically hungry people in the developing world was 815 million, which is a decrease from 824 million in 1990; however, the amount of persistently hungry people has increased by tens of millions in some of the most critical regions.¹⁶ For example, an increase in hunger is prevalent in areas such as sub-Saharan Africa and Southern Asia.¹⁷ According to the United Nations World Food Programme, sixteen percent of the total population in the developing world is chronically hungry.¹⁸ Exposure to

dangerous chemicals contributes to chronic hunger because those with suppressed immune systems must constantly battle illnesses: this leads to a vicious cycle where the poor are too weak to proactively fight against hunger and rise out of poverty.

Hunger and poverty are pervasive. The effort to eradicate poverty and hunger will prove fruitless if the poor are forced to live in a world contaminated by chemicals. Unless those in poverty and hunger have an opportunity to live in a less toxic environment through sound chemicals management, the cycle will never be broken.

GOAL TWO: ACHIEVE UNIVERSAL PRIMARY EDUCATION

Over 121 million children do not attend school worldwide, and this number has increased since 1990.¹⁹ In developing countries, one in three children do not complete five years of primary education; the majority of these children are girls.²⁰ Although a child's right to education was officially recognized in 1959

when the UN General Assembly adopted the Declaration of the Rights of the Child,²¹ many children are still denied their right to a primary education.

The failure to manage chemicals safely impairs the achievement of universal primary education in numerous ways. First, exposure to toxic substances can have serious and irreversible, adverse effects on children's mental development. Neurodevelopment disorders have been linked with exposure to several common toxic sub-

stances. For example, children prenatally exposed to mercury may have decreased intelligence, memory impairment, poor attention spans, limited language capabilities, and, in some cases, mental retardation.²² Exposure to polychlorinated biphenyls ("PCBs") have been connected to lowered aptitude and behavioral deficits.²³ Additionally, children exposed to lead suffer from cognitive deficits that persist throughout their lives.²⁴ Goal Two's target is to have all children complete a full course of primary education. However, the achievement of universal primary education cannot happen if chemical exposures continue to interfere with children's emotional maturation, intelligence, and ability to focus.

Achieving universal primary education is closely linked to poverty. Many children are robbed of their right to an education because their families need them to work for income, school fees cannot be afforded, or no community resources exist to build education facilities. Children from the wealthiest twenty percent of households in developing regions are three times more likely to attend school than children from the poorest twenty percent of households.²⁵ Since it is clear that poverty will not be alleviated until a process of sound chemicals management is established, universal primary education will not be reached without better chemicals management.

It is projected that by 2020 one-third of the world's chemicals production and consumption will occur in developing countries.

GOAL THREE: PROMOTE GENDER EQUALITY AND EMPOWER WOMEN

Chemical pollution has a disproportionate impact on women because of different susceptibility and the likelihood of exposure. Biologically, women have a higher percentage of fatty tissue in which chemicals accumulate and are stored in the body. Traditional gender roles have also left women in a world saturated by chemicals. Cleaning products, cosmetics, and personal care products expose women to hazardous substances on a daily basis.²⁶ Additionally, women's necessary participation in various kinds of labor increases their exposure to chemicals. For example, in developing countries, women represent approximately 60 percent of the agricultural work force, thus exposing them to dangerous agrochemicals.²⁷ Women cannot be empowered if toxic substances are poisoning them, leaving this goal unobtainable without the acceptance of a process of sound chemicals management.

Goal Three's target is to eliminate gender disparity in primary and secondary education. However, there is still a large gender gap in school enrollments. Southern Asia, sub-Saharan Africa, and Western Asia greatly lack gender equality in primary schools.²⁸ According to data gathered from approximately 65 developing countries, gender parity is attained in about half of primary schools, twenty percent in secondary schools, and only eight percent in higher education.²⁹ Once again, this goal is directly linked to poverty because families that can afford to send only one child to school will most likely overlook girls. Sound chemicals management is needed to preserve women's intellect, maintain health, and continue the hard work necessary to lift herself out of poverty and reach gender equality.

GOAL FOUR: REDUCE CHILD MORTALITY

Child mortality cannot be reduced if children are exposed to chemicals in the womb, and then later born into a world polluted by chemicals. In 2003, 10.6 million children worldwide died before they were five.³⁰ Globally, an estimated 29,158 children under five die daily.³¹ The poisoning of fetuses and children with hazardous chemicals will prevent countries from reaching the target of this goal of reducing the under-five child mortality rate by two thirds.

Persistent organic pollutants ("POPs") are long lasting, bioconcentrate in the food chain, and bioaccumulate in the body. Mothers exposed to these chemicals pass the toxins to their children through prenatal exposures and through breast milk. Thus, virtually all children are born into this world having already been exposed to toxic chemicals. Exposure to chemicals weakens the immune system, leaving these babies more vulnerable to childhood diseases. Since breast milk is the best food for

infants, the contamination of this vital resource is of great concern. Child mortality cannot be reduced sufficiently if babies are being contaminated in the womb.

Toxic substances continue to bombard children after infancy. For example, some children are exposed to industrial pollutants at worksites or ingest pesticide-laced food. Pesticide poisoning is a major public health problem in many countries. In 1999, a group of children in Peru between the ages of three to fourteen ate a government-donated breakfast that was contaminated with the insecticide parathion.³² At least 24 children died, and another twenty required medical treatment.³³ Records from

eight regional hospitals in India indicate that accidental pesticide poisoning occurs in 50-90 percent of children less than five years of age.³⁴

Conversely, a reduction in child mortality is related to nourishment, and the sound use of chemicals can play a vital role in ensuring a safe and adequate food supply. Proper nutrition is a preventative step in the fight against child mortality because malnutrition increases a

child's susceptibility to disease. The sound use of chemicals is needed to assist in providing nourishment to children, without contributing to their early deaths.

GOAL FIVE: IMPROVE MATERNAL HEALTH

The sound, effective use of chemicals can be important for maintaining maternal and fetal health during pregnancy. Proper chemical use can improve nourishment, help facilitate prenatal monitoring and testing, and provide other services needed during a healthy pregnancy. Yet chemical pollution can impair the health of mothers, as it does the health of men and other women. Mothers weakened by chemical contamination are slower to recover from childbirth and more likely to contract other ailments.

Pregnant women exposed to chemicals at work can have serious impacts on maternal health. Exposure to chemicals in the workplace during the last six months of pregnancy may impact the development of the fetus and cause premature labor.³⁵ Additionally, continual workplace exposure reduces the amount of nutrients delivered to the baby.³⁶ In the United States alone, over 75 percent of individuals employed are of reproductive age, potentially exposing these women to workplace contaminants that may lead to reproductive dangers.³⁷

The workplace is not the only pathway to chemical exposure. A recent study confirmed the link between exposure to lead and the occurrence of pregnancy-induced hypertension.³⁸ Additionally, a small groundwork study by scientist in Japan linked the chemical bisphenol-A, which is widely used in plastics, food packaging, cans and dental sealants, to recurrent miscarriages.³⁹

Goal Five's target is to reduce maternal mortality by three quarters. Global progress is being made on this goal—but not in the countries most affected. Women of childbearing age must be

*The transboundary
properties of many
pollutants allow . . .
poisons to spread
worldwide.*

educated about the dangers of unsafe chemicals surrounding them at home and at work, and the amount of hazardous chemicals must be reduced. In 2000, an average of 450 women out of 100,000 live births did not survive.⁴⁰ Developed regions experience less maternal mortality. In order to reduce maternal mortality, and prevent the devastating loss of a parent to a child, sound chemicals management needs to be able to protect women from the hazardous chemicals that currently surround them in many parts of the globe.

GOAL SIX: COMBAT HIV/AIDS, MALARIA, AND OTHER DISEASES

Toxic chemicals contribute to cancer, respiratory distress, birth defects, chronic diseases, and neurodegenerative diseases. Toxic chemicals are most harmful to those with poor nutrition and concurrent diseases. This creates another linkage between the reduction of poverty and the attainment of this goal—those living in poverty are exposed to higher amounts of chemicals, making them more susceptible to disease. As a result, disease can act as a cause of poverty. For example, countries with a high rate of malaria tend to have lower economic growth than countries without malaria.⁴¹ Thus, sound chemicals management is needed in order to improve the health of individuals and help stimulate the economy of developing nations.

Chemical exposure can have serious implications for human health. Studies demonstrate that exposure to some chemicals decreases a person's ability to fight infections. For example, a recent study found individuals infected with the Epstein-Barr virus had been exposed to PCBs more than those not infected with the virus.⁴² Other hazardous chemicals, such as dioxin, have also been shown to have adverse immune effects.⁴³ Impairment of the immune system by chemical exposure can lead to a decreased quality of life, and might not be recognized in developing immune systems until years later.

Each year, diseases extinguish the lives and hopes of millions. Malaria is an example of a global disease. An estimated 350 million to 500 million people are affected by malaria each year.⁴⁴ Restricted use of some toxic substances, such as dichloro-diphenyl-trichloroethane ("DDT"), is vital for disease control in many regions. However, without a process to globally manage chemicals, hazardous substances will cause more harm than good.

Another target of this goal is to halt and begin the reversal of the spread of HIV/AIDS by 2015. Chemicals in the form of medicine and vaccines are essential to controlling the HIV/AIDS pandemic. However, exposure to certain chemicals can impair immunological function, exacerbating HIV/AIDS. Over twenty million people have died since the HIV/AIDS epidemic began; at the end of 2004, an estimated 39 million individuals were living with HIV.⁴⁵ If chemicals are allowed to continue to weaken

the immune systems of individuals worldwide, this is one more factor that will impede the reversal of HIV/AIDS.

GOAL SEVEN: ENSURE ENVIRONMENTAL SUSTAINABILITY

Toxic chemicals contaminate our air, food, land, and water, including our drinking water, rivers, and oceans. Currently, chemicals are present in all complex ecosystems and most of the world's natural resources. Plants, animals, and humans are all harmed by exposure to chemicals; most of these effects are irreversible. On the other hand, the sound use of chemicals can be essential in achieving environmental sustainability. For example, chemicals in the form of pesticides are often used to combat invasive plant species.

The transboundary properties of many pollutants allow these poisons to spread worldwide, leaving no ecosystem untainted and poisoning communities where use of the chemical is unknown. POPs have been discovered accumulating in the fatty tissues of arctic mammals. The levels of some of these chemicals, such as brominated flame retardants, have recently been found to be increasing.⁴⁶ As a result of their diet, indigenous people in the arctic are among the most heavily exposed to POPs in the world. For example, the breast milk of females in Greenland's Inuit population is so heavily polluted with chemicals that it could be classified as hazardous waste.⁴⁷ One of the targets of this goal is to incorporate the principles of sustainable development into country policies and reverse the loss of environmental resources. The situation in the Arctic is a prime exam-

ple of the pressing need for sound chemicals management in reaching this target by 2015.

Another target of this goal is to halve the proportion of the people without sustainable access to safe drinking water and basic sanitation. There was an eight percent increase in the percentage of the population using safe sources of drinking water between 1990 and

2002.⁴⁸ Although this figure sounds promising, as of 2002, over one billion people were still using water from unimproved sources.⁴⁹ Preventing drinking water contamination and, where that is not possible, purifying drinking water of toxic chemicals will not occur unless a process of sound chemicals management is established.

The final target of this goal is to improve the lives of at least one hundred million slum-dwellers by 2020. About one hundred million people are added to developing countries' urban communities through migration or birth each year; this equates to almost one billion people living in urban slums.⁵⁰ The hazardous materials that wealthier populations do not want in their backyard surround those living in urban slums. To help improve conditions of this rapidly growing population and to allow them to maintain their health and strength, toxic chemicals must not be allowed to contaminate their air, water, or land.

*Traditional gender roles
have also left women in a
world saturated by
chemicals.*

GOAL EIGHT: DEVELOP A GLOBAL PARTNERSHIP FOR DEVELOPMENT

Establishing a global partnership for development is dependent on fair and open trade. Yet the global trading rules would collapse if they did not allow countries to protect their citizen's health and environment, including from the effects of hazardous chemicals. Existing and emerging international chemical agreements, such as the Montreal, Stockholm, and Rotterdam Conventions, regulate trade in chemicals in order to deal with safety concerns and ensure availability, where appropriate. Implementation at the national level is necessary for these agreements to be effective, and such agreements frequently include provisions for technical and financial assistance to developing countries.

SAICM plays an essential role in assisting developing countries balance a rapidly growing chemical industry with protection of the environment and human health. In order for developing countries to reap the financial benefits of the chemical industry –

helping alleviate poverty and improve their fiscal economy – international guidelines and support are critical. A process of sound chemicals management can help both developing and developed nations safely benefit from the chemical industry. It can also help maintain our current standard of living. All of this can be achieved without the dire consequence of toxic chemicals suppressing the poor and inhibiting productive development.

CONCLUSION

The nexus between sound chemicals management and development goals must be acknowledged in order to give impetus to fulfilling the MDGs by 2015. Sound management of chemicals should be given consideration in achieving all eight of the MDGs. Progress in each area will depend on the safe and affordable availability of chemicals. The establishment of an integrated approach for international chemicals management will allow for the safe availability of chemicals, when needed, while protecting the environment and health of humans.



ENDNOTES: Establishing Sound Chemicals Management

¹ ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (“OECD”), *Environmental Outlook for the Chemicals Industry*, at 10 (2001) available at <http://www.oecd.org/dataoecd/7/45/2375538.pdf> (last visited Oct. 21, 2005).

² Patricia L. Short, *Global Top 50*, *Chemical & Engineering News*, July 18, 2005 at 20-23, available at <http://pubs.acs.org/cen/coverstory/83/8329/globaltop50.html> (last visited Nov. 5, 2005); OECD, *supra* note 1, at 9-16.

³ See JOHN BUCCINI, *THE GLOBAL PURSUIT OF THE SOUND MANAGEMENT OF CHEMICALS XIV* (World Bank 2004), available at [http://lnweb18.worldbank.org/essd/envext.nsf/50ByDocName/TheGlobalPursuitoftheSoundManagementofChemicals/\\$FILE/GlobalPursuitOfSoundManagementOfChemicals2004Pages1To67.pdf](http://lnweb18.worldbank.org/essd/envext.nsf/50ByDocName/TheGlobalPursuitoftheSoundManagementofChemicals/$FILE/GlobalPursuitOfSoundManagementOfChemicals2004Pages1To67.pdf) (last visited Oct. 21, 2005).

⁴ See UNITED NATIONS DEVELOPMENT PROGRAMME, *MANAGING CHEMICALS-SUSTAINING LIVELIHOODS* (2004), available at http://www.undp.org/gef/undpgef_publications/publications/pops_chemicals_brochure2004.pdf (last visited Oct. 21, 2005).

⁵ The Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 1987, available at <http://hq.unep.org/ozone/pdf/Montreal-Protocol2000.pdf> (last visited Oct. 31, 2005).

⁶ Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Sept. 10 1998, available at http://www.pic.int/en/viewpage.asp?id_cat=0 (last visited Oct. 21, 2005).

⁷ Stockholm Convention on Persistent Organic Pollutants, May, 22 2001, available at <http://www.pops.int/> (last visited Oct. 21, 2005).

⁸ UNITED NATIONS, *REPORT OF THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT, A/CONF.199/20, 19* (2002), available at <http://daccess-dds.un.org/doc/UNDOC/GEN/N02/636/93/PDF/N0263693.pdf?OpenElement> (last visited Oct., 21 2005).

⁹ See *id.* at 19-20.

¹⁰ UNITED NATIONS, *THE MILLENNIUM DEVELOPMENT GOALS REPORT 2005*, at 6 (2005), available at <http://unstats.un.org/unsd/mi/pdf/MDG%20Book.pdf> (last visited Nov. 5, 2005).

¹¹ *THE MILLENNIUM DEVELOPMENT GOALS REPORT, 2005*, at 6; UNITED NATIONS DEVELOPMENT PROGRAMME, *HUMAN DEVELOPMENT REPORT, 2005 4* (2005), available at <http://hdr.undp.org/reports/global/2005/> (last visited Oct. 21, 2005).

¹² See UNITED NATIONS DEVELOPMENT PROGRAMME, *supra* note 4, at 2.

¹³ Dr. J. Takala, *Introductory Report: Decent Work-Safe Work 43* (International Labour Organization 2005), available at <http://www.ilo.org/public/english/protection/safework/wdcongrs17/intrep.pdf> (last visited Oct. 21, 2005).

¹⁴ UNITED NATIONS DEVELOPMENT PROGRAMME, *supra* note 4, at 1.

¹⁵ UNITED NATIONS, *supra* note 10, at 6.

¹⁶ See UNITED NATIONS, *supra* note 10, at 8.

¹⁷ See UNITED NATIONS, *supra* note 10, at 8.

¹⁸ UNITED NATIONS WORLD FOOD PROGRAMME, *Hunger Hotspots* (2003), available at http://www.wfp.org/country_brief/hunger_map/map/hungermap_popup/map_popup.html (last visited Oct. 21, 2005).

¹⁹ CAROL BELLAMY, *THE STATE OF THE WORLD'S CHILDREN 2005*, at 96 (United Nations Children's Fund 2004), available at <http://www.unicef.org/sowc05/english/sowc05.pdf> (last visited Oct. 21, 2005).

²⁰ See *id.*

²¹ Declaration of the Rights of the Child, Nov. 20, 1959, available at <http://www.unhcr.ch/html/menu3/b/25.htm> (last visited Oct. 21, 2005).

²² See UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *American's Children and the Environment, Measure D7: Mental Retardation*, at http://www.epa.gov/envirohealth/children/child_illness/d7.htm (last visited Oct. 21, 2005).

²³ See *id.*

²⁴ Shilu Tong et al., *Lifetime Exposure to Environmental Law and Children's Intelligence at 11-13 years: the Port Pirie Cohort Study*, *BMJ* 312, 1569-1575 (1996), available at <http://bmj.bmjournals.com/cgi/content/full/312/7046/1569> (last visited Oct. 21, 2005).

²⁵ UNITED NATIONS, *supra* note 10, at 12.

²⁶ See Environmental Working Group, *Cosmetics & Personal Care*, <http://www.ewg.org/issues/siteindex/issues.php?issueid=5005> (last visited Nov. 1, 2005).

²⁷ See UNITED NATIONS DEVELOPMENT PROGRAMME, *supra* note 4, at 2.

²⁸ See UNITED NATIONS, *supra* note 10, at 14.

²⁹ See UNITED NATIONS, *supra* note 10, at 15.

³⁰ See CAROL BELLAMY, *supra* note 19, at Intro.

THE MILLENNIUM DEVELOPMENT GOALS AND HIV/AIDS

by J.C. Sylvan*

Of the eight Millennium Development Goals (“MDGs”) set forth by the United Nations, half pertain to public health: Goal Two (education), Goal Four (child mortality), Goal Five (maternal health), and Goal Six (HIV/AIDS, tuberculosis and malaria).¹ A failure to address HIV/AIDS, in particular, would compromise the ultimate success of the entire MDG agenda.² The HIV/AIDS pandemic consistently undermines efforts to fight poverty, illiteracy, and mortality in low- and middle-income countries.

In the countries hardest hit by the epidemic, the problem is compounded by the reality that many national health care systems, which will bear the burden of improving available treatments, are themselves in crisis. In years past, many developing countries, encouraged by international financial institutions and trusting in privatization, cut their health care budgets.³ As a result, health care has been chronically under-funded in many of these countries.⁴ According to a recent report by the UN Millennium Project, “[p]overty, misplaced priorities, and years of externally imposed restrictions on social spending have left health services for over two billion people dysfunctional, inaccessible, or priced beyond the reach of the poor.”⁵ Thus, halting the spread of HIV/AIDS in the developing world will depend to a great extent on success in overhauling health care systems in the world's poorest countries.

Forty-years of gains in public health have been offset in recent years by two factors: the HIV/AIDS pandemic, and the widening health gap between rich and poor nations.⁶ The under-five child mortality rate for the poorest quarter of the world is ten times that of the richest quarter.⁷ In twenty years, AIDS has claimed twenty million lives; 39 million individuals carry the virus worldwide.⁸ If nothing is done, some studies predict 45 million new infections by 2010.⁹ The high prevalence of AIDS and limited availability of treatment reflect the same disparity between rich and poor. A recent World Health Organization (“WHO”) report finds that “globally, 78 percent of mortality from AIDS and 89 percent of people needing treatment” live in the poorest countries.¹⁰ To date, there is neither a cure nor a preventative vaccine for HIV/AIDS. The most effective treatment is antiretroviral therapy (“ART”),¹¹ but only eight percent of people in developing countries who need ART receive it.¹² Some initiatives to provide treatment in low- and middle-income countries have found success. Brazil has provided free ART through its national health care system since 1996.¹³ In December 2003, the WHO and UNAIDS¹⁴ launched the “three by five” initiative to provide ART coverage to three million of the world's poorest by the end of 2005.¹⁵ At that time, 400,000 people were receiving ART. Today one million are under treatment. That figure is well short of the “three by five” target, but these gains show both that progress is possible and that global goal-setting can be a productive enterprise.¹⁶

Meeting the MDG objective of halting and reversing the epidemic will be expensive. Of the \$45 billion needed for glob-

al HIV/AIDS treatment, care, and prevention over the next three years, donors have so far pledged only \$27 billion.¹⁷ Even if funding catches up, money alone will not stop the epidemic. The correlation between levels of government health spending and reduced mortality rates is tenuous.¹⁸ Countries must also increase the productivity of current spending levels by carefully targeting expenditures to services with “spillover” benefits.¹⁹ In order to ensure the long-term viability of AIDS treatment, care, and prevention, governments will have to act strategically in order to make ART more affordable,²⁰ eliminate user fees for such services, provide social insurance, remove bottlenecks in the system, focus on primary care health care, and make a political commitment to populations historically excluded from care, like drug users and sex workers.²¹

As they implement their AIDS treatment plans, developing countries will face very real human resources limitations. For example, countries in Europe and Central Asia have 3.1 physicians per 1,000, while countries in Sub-Saharan Africa have only one for every 10,000.²² Some countries are taking steps to correct for this: Zambia has doubled nursing salaries, and Thailand has financed a “reverse brain-drain program to keep doctors.”²³ Other policies include training community health workers to reduce strains on the system,²⁴ and developing simpler and less costly interventions to extend the reach of local health providers and to reduce mortality in the poorest countries.²⁵ Finally, ART pilot projects have demonstrated the value of the primary health care (“PHC”) model. PHC integrates all aspects of direct health care from prevention to treatment to palliative care. Studies suggest a shift to this integrated approach would promote equity, universal access, and community participation.²⁶ Studies also show that as treatment becomes available, and patients have cause for hope, general interest in HIV/AIDS counseling and testing services also increases.²⁷

HIV/AIDS is a development issue. More than money for treatment is required. A targeted investment in the health systems of the hardest-hit nations is needed to close the global health gap between rich and poor. This sustainable long-term approach represents a paradigm shift for the international community, but supporting the poorest countries in efforts to rebuild their health care infrastructure may help to halt and even reverse the spread of HIV/AIDS.



ENDNOTES:

¹ Adam Wagstaff & Mariam Claeson, World Bank Group, *THE MILLENNIUM DEVELOPMENT GOALS FOR HEALTH: RISING TO THE CHALLENGES*, (2004), at xi, available at <http://siteresources.worldbank.org/INTEAPREGTOPHEANUT/PublicationsandReports/20306102/296730PAPER0Mi1ent0goals0for0health.pdf> (last visited Nov. 4, 2004).

² See WORLD HEALTH ORGANIZATION (“WHO”), *PROGRESS ON GLOBAL ACCESS TO HIV ANTIRETROVIRAL THERAPY: AN UPDATE ON “3 BY 5,”* (June 2005), at 5,

ENDNOTES: MDGs and HIV/AIDS *Continued on page 75*

*J.C. Sylvan is a JD candidate, May 2008, at American University, Washington College of Law

HARMONIZATION AROUND RESULTS REPORTING: A SYNTHESIS OF FOUR COUNTRY STUDIES

by Elizabeth M. White, Rosalía Rodríguez-García, and Rema Balasundaram*

INTRODUCTION

This article discusses “harmonization around results reporting” within the international context of improving aid effectiveness. It seeks to shed light on the inter-relationship between external reporting for donors and internal reporting for national accountability. Harmonization refers to increased coordination and stream-lining of activities by different aid agencies based on the sharing of information in order to promote transparency and improve coordination; gradual simplification of procedures and requirements to reduce their burden on partner governments; and development of common arrangements for planning, managing, and delivering aid. The concept is often expanded, like in this article, to also include issues of alignment and ownership. Examples of such issues are: (1) the government taking the lead in coordinating donor efforts; (2) donors relying on country systems and procedures; and (3) development agencies delivering aid in accordance with partner country priorities.

Section I provides a brief description of the international context for harmonization around results reporting. Section II summarizes the evolution to harmonization in four country cases – Uganda, Tanzania, Mozambique, and Madagascar. Section III proposes three critical factors that shed light on how to deepen efforts for harmonization around results reporting. Each country context is unique and has unique leverage points for action around harmonization. Therefore, this article does not attempt to provide operational steps for moving toward harmonization. Instead it captures experiences and draws lessons that might be applied to these and other countries; mainly, that there is progress, but it is slow and not easy. Additionally, this article assesses three critical factors found to deepen efforts for harmonization around results reporting: (1) developing a reliable basis for reporting; (2) fostering country ownership of results reporting processes – the primacy of country defined results, as opposed to externally driven results; and (3) providing programmatic, rather than project only, coordinated support for national systems.

GLOBAL CONTEXT FOR HARMONIZATION

At the Monterrey International Conference on Financing for Development¹ in 2002, as donors pledged significant increases in aid levels, they recognized the need for development agencies and partner countries to strengthen their focus on results and development effectiveness. They also acknowledged that achieving results requires better use of resources, and that better aid, not just more aid, is part of donor responsibility. Since then, the need to better manage for results—to use information to improve decision-making and steer country-led devel-

opment processes toward clearly defined goals—has become a central element of the global development agenda. This commitment to better manage for results was renewed and increased in the 2004 Marrakech International Roundtable on Managing for Development Results,² the 2005 Paris High-Level Forum on Harmonization, Alignment, and Results,³ and the 2005 G8 Gleneagles Summit.⁴

The 2004 Global Monitoring Report⁵ shows that many developing countries have made progress in accelerating growth and reforming policies,⁶ for instance in the areas of budget, financial management, and corruption in the public service. Yet, while progress has been made, enormous development challenges still face low-income countries, especially in Africa. This is coupled with new commitments to the doubling of aid for Africa, recently made at the Gleneagles Summit, and estimates that aid to all developing countries will increase by around \$50 billion per year by 2010. Much of this will go to low-income countries, through the framework of their national strategies (second generation poverty reduction strategies). There will be increased expectations that these funds will be effectively used in countries and will be driven by participatory and transparent development processes. The resounding theme is that country-owned and -led development is critical to achieving and sustaining results.

EVOLUTION OF HARMONIZATION AROUND RESULTS REPORTING

Efforts to coordinate monitoring and reporting in programs and sector wide approaches (“SWAPs”) played a significant role in the move toward harmonization around results reporting. Traditionally, reporting was concerned mainly with inputs (finance) and outputs according to different donors’ formats and reporting needs. With the introduction of SWAPs, donors were increasingly confronted with more budget-wide financing than project-specific financing. Donors were also faced with the need to better coordinate reporting and use country systems, given the situation that several donors support the same broad sectors or programs in the public sector. This led to reporting requirements at higher, more centralized levels as opposed to reporting in a project-by-project manner. It also led to an enhanced appreciation of the need to strengthen country monitoring systems.

* This study was conducted for the Organization for Economic Cooperation and Development-Development Cooperation Directorate (“OECD/DAC”) Joint Venture on Managing for Development Results. Elizabeth M. White is a Senior Results Management Specialist at the World Bank. Rosalía Rodríguez-García is a Senior Specialist and Consultant to the World Bank. Rema Balasundaram is a Consultant to the World Bank. The views expressed in this article are those of the authors and cannot be attributed to the World Bank.

Numerous other strategies to harmonize reporting results followed SWAPs. The preparation of national development plans (“NDPs”) and/or Poverty Reduction Strategies (“PRS”) provided both an opportunity and a vehicle to expand the dialogue on results reporting to additional sectors and donors. It offered a common basis for donors, government, and civil society to identify a strategic approach to poverty reduction, an operational framework to achieve national goals, and a mechanism to develop cross-sector linkages. Conceptually, the strategy and programs in the PRS could easily translate into a monitoring system for tracking progress. This would enable donors to select indicators associated with policy areas and use these for external reporting. While the principles of the PRS promoted country ownership, participation, and a focus on results, the demand for results reporting was externally driven. During implementation, efforts to harmonize around results reporting had mixed results. The PRS process underscored the need for good reporting and for strengthening countries’ capacity to report on results.

COUNTRY CONTEXT FOR RESULTS REPORTING

Many countries lacked monitoring and evaluation systems for reporting, or the systems that were in place were fragmented and overlapping. There was inadequate institutional and organizational capacity to establish coordinated monitoring systems,⁷ even though for several years prior, donors had supported project monitoring and evaluation. Since few countries had taken a programmatic perspective in developing monitoring and evaluation systems, there was little analytical work on how to coordinate donor support for strengthening country systems in a sustainable way.

Many countries did not yet recognize the value of using results information in policy making processes or in program management.⁸ Instead, they focused on tracking expenditures, monitoring high order socio-economic indicators, and reporting to donors. Countries concentrated less on how results information could be valuable for effective and efficient public sector management. There was little experience to draw on for using results information as part of public sector management and for understanding the different requirements for information and organization in results based approaches.

The introduction of PRS acted as a catalyst for a more coordinated approach to poverty monitoring. The increased demand for reporting on results helped put governments and donors on a forward track in addressing data constraints. This translated into support for poverty monitoring systems, including efforts to increase the participation of civil society and improve access to information. Much of donor support focused on the supply and coordination of data, such as conducting surveys or supporting the census. Donor support otherwise tended to focus on each donor’s own reporting requirements and priorities.⁹ Less attention was paid to how results information would be used for government purposes, such as policy making, budgeting, or management.

ADVANCEMENT TOWARDS A MORE HOLISTIC UNDERSTANDING

There was little apparent recognition that harmonization around results reporting could facilitate or impede progress in

establishing sustainable country systems. Later, analytical work began to evolve that assessed the use of information and the broader institutional setting for monitoring. This included increased attention to expenditure management, the flow of information, and analytical/evaluation skills. This work helped deepen the debate and understanding of the complexities of developing a poverty monitoring system and the importance of balancing the various roles that the monitoring system was expected to serve, such as external accountability to donors, a country tool for policy decisions, and in-country accountability to citizens.

Over the same period, the international community intensified efforts for broadly improving aid effectiveness through better aid coordination and improved harmonization and alignment across a range of activities. At the country level consultative group meetings and other mechanisms for government-donor coordination, such as sector working groups, offered a vehicle for dialogue across specific subsets of donors. At the global level, critical issues of aid effectiveness were being discussed through high level round-tables and the Organization for Economic Cooperation and Development-Development Cooperation Directorate (“OECD/DAC”) collaborative actions. Important topics included improving the predictability and reducing the volatility of aid, rethinking conditionality, and deepening the understanding of country ownership. The international community also recognized the important role of managing for results as a key tool for countries. These global messages and debates were increasingly supported at the country level, by both countries and in-country donors, where the broad principles discussed in the global debates were made operational and provided a useful basis for discussion of harmonization around results reporting.

COUNTRY EXPERIENCES IN HARMONIZATION: THE CASES OF MADAGASCAR, MOZAMBIQUE, TANZANIA, AND UGANDA

All of the contextual factors outlined above played an important role in progress toward results reporting in the four country cases. The evolution of each country was unique and helped to identify a number of elements that served to promote and support harmonization around results reporting.

The experiences in these four countries demonstrate that the development community is evolving in its understanding of the country and international context that comes together in harmonization around results reporting. The four cases show that externally driven results reporting systems present challenges to the country-led model of development, and that a country-led results reporting system can satisfy both the internal reporting needs of countries and the external reporting needs of donors. The cases also show that the donor community and countries are together putting in place systems that serve country and donor needs—albeit sometimes through trial and error. The review of the four country cases shows that harmonization around results reporting is facilitated by robust technical elements such as:

- Strategies and programs designed to enable continu-

ous and systematic assessment against *results-based objectives*.

- Supporting *monitoring systems* with well defined indicators that cover monitoring of resource use (financial and human), tangible outputs (such as efficient extension of services to farmers), intermediate outcomes (such as improved use of inputs and new farming techniques), outcomes (improved yields and reduced losses from weather shocks), impacts (improved agricultural productivity), and links to broader national objectives (such as increased agricultural exports).
- Well defined and *reliable data* that are feasible to collect and simple to monitor.
- *Analytical capacity* to translate routine monitoring information into evidence to support decisions including cost benefits.

Experience is also showing that technical solutions alone are not sufficient. Equally important are the following:

- *Country ownership* of the programs, as well as the existence of *incentives* to use information on results in expenditure decisions (with links to the budget or medium-term expenditure frameworks). This includes balancing country accountability with external accountability.
- *Institutional arrangements* for reinforcing how information flows would be used.
- Understanding of the *political nature of results reporting*.

MADAGASCAR

The highly participatory PRS process, harmonization around sector wide approaches, the drive for enhanced country monitoring systems, and achievement of sustainable results on the ground from the National Environmental Action Plan (“NEAP”) all contributed to an evolution and progress in the harmonization agenda around results in Madagascar. Harmonization around results reporting in this country commenced with the implementation and coordination efforts of a group of donors in the context of environment and biodiversity in the early 1990s. Madagascar’s unique background as an island nation, endemic to many of the world’s endangered species, and highly vulnerable to shocks, provided many lessons on harmonization in the context of the environment and its broader application to issues of results and sustainability for PRSs as a whole. Lessons on harmonization around results reporting were derived from the environment sector and its implementation, even in the context of its PRS program and recent efforts to strengthen the Poverty Monitoring System (“PMS”).

Madagascar was the first country in Africa to elaborate a NEAP. This occurred six years prior to the signing of the Convention on Biological Diversity. The first phase of the

NEAP was initiated in 1991 in the face of a limited conservation baseline with the support of a broad coalition of bilateral donors. These donors included Germany, France, Norway, Switzerland, and the United States; multilateral institutions, such as the United Nations Development Programme (“UNDP”) and the World Bank; and non-governmental organizations, namely Conservation International, World Wildlife Fund, and Wildlife Conservation Society.¹⁰ A Multi-Donor Secretariat, which was co-financed by USAID, France, and the World Bank, was set up during the second phase of the NEAP to carry out coordination and enhance implementation of the program. Multi donor supervision missions have been conducted twice a year since 1996.¹¹ Recently, Japan and the Global Environment Facility (“GEF”) have also joined this group.

Donors began to harmonize budget support assistance in 2003. Several activities in the mid-1990s lay the groundwork for a coherent PMS in Madagascar.¹² Lessons on harmonization around results reporting, and monitoring and evaluation, in the environment sector provided useful lessons for donors in shaping results oriented program formulation, planning, monitoring of results, and evaluation over a period of time. It was not clear that donors and the Government had taken these lessons into account in the design of current programs.

MOZAMBIQUE

The evolution to harmonization around results reporting started with improved links between sector strategies and national results. Mozambique has a long tradition of planning in the public sector. This planning is centrally-driven and relies on a sector-based approach. Historically, sector policies have been aligned with donor priorities. However, over time donors and the government observed a weak link between these sector policies and the national budgeting and priority setting process. In 2001, the introduction of the Plano de Acção de Redução da Pobreza Absoluta (“PARPA”),¹³ Mozambique’s Poverty Reduction Strategy Plan (“PRSP”), helped improve alignment of sector strategies to national objectives. It also brought greater coherence across sectors and improved policy coherence of sector strategies with the government’s overall policy thrust.¹⁴

The PARPA, coupled with the medium-term expenditure framework (“MTEF”) process, which was first formulated in 1998, included detailed plans, timelines, and indicators. This formed the basis for developing monitoring systems that built on already existing mechanisms. Donors supported the PARPA through budget support, sector wide approaches, and project financing. While some form of budget support had been delivered through the 1980s and 1990s,¹⁵ it was linking budget support to the PARPA that led to increased coordination among donors and initiatives in support of harmonization and alignment.¹⁶ In 2002, preparation of a detailed matrix of PARPA activities by sector revealed a need to make information about PARPA priorities more systematic and to monitor a meaningful number of indicators.¹⁷

The Government led a process to define a performance assessment framework, requesting all PARPA sector ministries and those responsible for cross-cutting reforms to identify pri-

orities for the coming three years. This resulted in a 56-page Matrix, called the long Performance Assessment Framework (“PAF”), which was then reduced to a short PAF consisting of two pages of key priorities.

As part of reporting, there were a series of annual exercises that led to issuances of reports to Parliament on the progress in PARPA implementation. The government integrated the required annual progress review (“APR”) of the PARPA into its own regular reviews of implementation. This dual role for the *Balanço do PES* – reporting to Parliament and to donors – simplifies national reporting requirements and “provides an adequate evaluation of the progress made in achieving the PARPA goals.” Unfortunately, a 2004 independent review noted that only a few donors comply with government reporting requirements, and donors have failed in attempts to reduce the government’s administrative burden. While both donors and government have demonstrated a commitment individually and jointly, the future will likely require even greater efforts if progress on harmonization in results reporting is to continue.

TANZANIA

Efforts for harmonization around results reporting in Tanzania started at a low point in government-donor relations in the early 1990s. At this time there was a large donor community, high aid dependency,¹⁸ high transaction costs in dealing with the range of uncoordinated priorities, and the associated procedural and reporting requirements of multiple donors. In 1995, an independent evaluation of donor/government relationships resulted in a commitment to development cooperation and establishment of a mutual accountability mechanism.¹⁹ Tanzania and its development partners were also using sector wide approaches to create opportunities for coordinated work in support of sector specific results. However, weak monitoring systems undermined the utility of the sector wide approaches for harmonization around results reporting.

The donor community had a good grasp of systems and technical issues and wanted to deal with the myriad of systems in place. At the same time, the government was aware that strengthening public financial management systems and introducing effective poverty monitoring was a precondition for persuading donors to allocate more development assistance through budget support.²⁰ In 1999, the introduction of the RSP and focus on PMS provided an opportunity for Tanzania to advance harmonization of results reporting. The PRS included targets and indicators intended to inform programming decisions, and comprehensive institutional arrangements for assembling, analyzing, and disseminating poverty data. The PRS annual progress report provided an opportunity for donors to use government reporting for common results reporting.

In practice, the annual reviews were somewhat insubstantial, resulting in donors working on parallel policy and reporting matrices. Budget support donors developed a performance assessment framework to which budget support instruments were linked, helping to harmonize results reporting for donors. However, there was a disconnect between the donor-driven PAF and the government’s PRS requiring further harmonization of

the PRS action plan and the PAF over a three year period. In 2002, the government and donors created the Tanzanian Assistance Strategy, which included guidance on harmonization around results reporting, such as integration of reporting and accountability systems. It also attempts to better align donor support with the use of country systems. There are on-going efforts to improve the basis for results reporting. However, there remains a lack of incentive to produce good quality data and to use results information in policy and budget decisions. Attempts to link the PMS with public sector management have started.

Finally, in the current budget cycle, the procedure for collecting sector inputs is being modified in a way to put pressure on all sectors to justify their bids in terms of the relevant cluster strategies in the PRS. Sector policy makers have thus an increased incentive to develop outcome-oriented rationales for what they do with their allocations from public resources and make use of data on results.²¹ Tanzania has progressed considerably in moving to a results-based planning and monitoring reporting system.

UGANDA

The move toward poverty reduction and reforms in 1986 and international pressures for demonstrating the effectiveness of aid set the conditions for harmonization around results reporting in Uganda.²² Uganda was able to qualify as the first heavily-indebted poor country (“HIPC”) beneficiary, because as early as 1997, it had put in place a strong domestically owned poverty reduction and development policy framework locally known as the poverty eradication action plan (“PEAP”), later transformed into the PRS.

Except for a few exceptional circumstances in which external development assistance is reported to have been managed below general expectations, Uganda’s case displays a success story of aid effectiveness. This is evidenced through the gains made in recent years, especially in the social (education and health) sectors, where aid resources have had remarkable impact on growth and social development indicators. Most of the achievements in these and other sectors are largely attributable to an improved and enabling policy environment reflected in the budget process and improvements in public finance management, and a series of anti-corruption initiatives accompanied by a high degree of transparency and accountability in the use of public resources.

The evolution of harmonization in Uganda is characterized by a strong country ownership/leadership in undertaking essential reforms and improving management of the aid portfolio to enhance effectiveness. Uganda was one of the first countries in the sub-Saharan African region to have fully developed its own PEAP as early as 1997. This has continued to play a central role in fostering country ownership of the development policy process, especially towards ensuring sustainability of the achievements. PEAP objectives have been increasingly realized through a strong ownership of the development process as led by the Ministry of Finance Planning and Economic Development. Additionally, the PEAP were coupled with the development of a holistic national strategy against

hard budget constraints and anchored in a medium term expenditure framework.

These achievements encouraged development partners to shift their approaches and practices toward a country-led partnership model. Movement toward budget support and sector wide approaches helped reinforce country ownership and donor partnerships. There were efforts by the government to enhance the results orientation of its strategy, monitoring, and processes.²³ Efforts to demonstrate results were institutionalized out of a rational, outcome-oriented budget process focusing on domestic accountability as well as external accountability through mechanisms such as budget support instruments, *e.g.*, the World Bank Poverty Reduction Strategy Credit. A hard budget constraint and the MTEF have been the key financing channels for the PEAP. Uganda's social economic performance highlights the fact that achieving results requires better use of resources. All stakeholders in Uganda's development process have for the last four years actively participated in the national budget formulation process with a view to ensuring that public resources are channeled to those areas where they will have quick and sustained impact on poverty while contributing to sustainable economic growth.

Over time, the quality of the monitoring and evaluation systems supporting results reporting improved and some donors harmonized around results reporting, especially in budget support, sector programs in health/education, and national multi-sector programs such as HIV/AIDs. There are also increased efforts to develop more sector wide approaches in addition to health and education (*i.e.*, water, energy, agriculture, public service reform, and procurement, among others). However, weaknesses in country monitoring and evaluation systems are still a factor in full donor reliance on Uganda's monitoring system for results reporting. There has been recent progress in developing Uganda's monitoring and evaluation system through the National Integrated Monitoring and Evaluation strategy ("NIMES"). Challenges remain in how to make best use of information on implementation of the PEAP in the domestic policy making processes.

KEY FACTORS IN TURNING HARMONIZATION CONCEPTS INTO PRACTICE

As the case-studies demonstrate, much work has been undertaken and countries and donors are moving forward in tackling technical and non-technical dimensions of harmonization around results reporting, but progress is slow and the process challenging. Three critical factors have been identified that shed light on how to deepen efforts for harmonization around results reporting: (1) developing a reliable basis for results reporting; (2) fostering country ownership of results reporting; and (3) ensuring programmatic support for capacity building in monitoring and evaluation.

FACTOR ONE: DEVELOPING A RELIABLE BASIS FOR RESULTS REPORTING

Donors must report on country results of aid financing to their domestic constituencies. The responsibility of donors is to

provide information on fiduciary accountability (money spent and inputs/outputs) and on development effectiveness from the aid provided (what are the benefits of the money spent). In order for donors to use information from country systems for external accountability, the information the systems provide must be reliable. In most countries, the information needed for results reporting is not captured in country monitoring systems or is patchy at best.

The absence of a results orientation often translates into donors – rather than countries – identifying inputs-outcomes links and associated indicators for results reporting, or reverting to reporting on activities or disbursements. A recent review concluded that most indicators in monitoring systems for the PRS are budgetary/expenditure (input indicators) and survey-based measures of well-being, such as impact indicators for poverty reduction.²⁴ Less attention has been paid to articulating important intermediate steps that are responsive to shorter term measurement.²⁵ Thus, while there are many issues with the technical quality of data, a key bottleneck is the weak results orientation in strategies and supporting processes.²⁶ There are two concrete actions that the donor community and countries can take to strengthen this often overlooked dimension of harmonization around results reporting: (1) develop stronger linkages between policy actions and results; and (2) tailor results reporting to government policy processes.

In a results-based approach, there would be well established links between policy choices and intended medium term outcomes, and how these would impact achievement of longer term goals, such as the Millennium Development Goals ("MDGs"). These linkages should be based on sound analysis and identification of key constraints and priorities (evidence-based). For harmonization around results reporting to be useful, indicators would be responsive to program implementation or short term policy actions, not only longer-term high level goals. What does this mean in practice? Take for example a common objective of countries and donors, "to make progress towards the MDG of reducing income poverty." To make progress in that direction, countries will need to achieve the associated goal of increased off-farm and on-farm income through medium term outcomes, such as increased agricultural productivity. Knowing if the country is on track to increased productivity requires short term measures to help donors and governments know whether the interventions, such as new farming techniques, improved land tenure, and use of micro-finance, are working.

The Uganda PEAP provides an example of the difficulties in developing a monitoring matrix that is useful for results reporting and shows how donors and the government worked together to address weaknesses in the basis for results reporting. At design, most sectors did not articulate intended chains of causation. This resulted in monitoring matrices that were heavily skewed toward final outcomes and impacts, missing specification of intermediate results from policy actions. Higher-level indicators of progress towards the PEAP targets could only be measured at relatively long intervals. Even when data was available, it was difficult to discern the causal contribution of the

PEAP to the changes in these indicators or to draw policy lessons from them. Some donors indicated that the PEAP was insufficiently detailed to influence allocation decisions and was unable to relate the expenditure on investment (policy and program decisions) to outputs (observable in the short-term) and intermediate outcomes. This issue was addressed in the latest PEAP revision, and work was initiated on the development of a PEAP results and policy matrix. The PEAP matrix specifies the key developmental results the PEAP is trying to bring about and the annual policy actions that are expected to contribute to these results. Indicators and targets are set both at the level of broad developmental outcomes and at the level of policy actions. The new matrix should ease both the management of PEAP implementation and the monitoring of progress with PEAP implementation. It will also be a useful tool to inform dialogue between Government and a range of domestic and international stakeholders.²⁷

In several other countries, inadequately defined linkages between inputs and expected outcomes in the PRS resulted in donors developing performance assessment frameworks primarily for donor reporting purposes. These donors were then challenged with filling in the missing gaps in information needs. Conceptually, the indicators in the PAF represented a subset of indicators from the PRS. In practice, other indicators were often negotiated by governments and donors providing broad budget support.²⁸ In Mozambique and Tanzania, useful processes for coming to agreement on a set of results indicators and alignment of relevant donors to the budgeting and reporting process of government included discussions on the Performance Assessment Framework (“PAF”) or donor specific results matrices, such as the World Bank Poverty Reduction Support Credit (“PRSC”). In Uganda, the 2004 PEAP introduced a Policy Matrix and a Results and Monitoring Matrix that started to bring the PRSC and other monitoring and evaluation (“M&E”) arrangements in line with the PEAP policy matrix. The PEAP policy matrix will be the only instrument for assessing progress towards attainment of PEAP objectives. This should result in future iterations of the PEAP and supporting PMS to encompass a broader range of results information, thus adding to its usefulness to donors for results reporting.²⁹ These efforts evolved over the initial years of PRS implementation and have been positive steps toward harmonization around results reporting on budget support.

There is a danger that donor negotiations can result in a proliferation of indicators as donors want to include their focal areas or vertical programs with relevant indicators, into the matrix. While there are obvious implications of this in terms of data collection, monitoring, and reporting, the recent World Bank Conditionality Review 2005³⁰ pointed out that this practice could lead to an increase in the number of conditions and “the quality and relevance of the substance could suffer.”³¹ Additionally, this practice, if not done properly, could undermine country ownership, duplicate reporting mechanisms, and miss opportunities to strengthen country capacity to use meaningful indicators for expenditure management and policy deci-

sions. While the details of the debt proposal remain to be worked out, one important result of this initiative will be to shift more resources towards unrestricted budget support rather than to specific projects or programs. This underscores the imperative for establishing processes that are supportive of strengthening country systems.

A key consideration for results reporting is how to make results reporting a subset of a country monitoring and reporting system that feeds into the policy process. Experience has shown that: (1) monitoring systems only function where the participants see them as useful and legitimate; and (2) where the monitoring arrangements emerge out of a common commitment to solving practical problems, they have a much greater chance of success. Without tailoring results reporting to the policy process, the risk is that monitoring results becomes more of a requirement than a useful tool, often precipitating a decline in

BOX 1:
FILLING THE GAP IN POLICY LINKAGES:
TANZANIA POVERTY REDUCTION BUDGET SUPPORT

In Tanzania, the Poverty Reduction Budget Support (“PRBS”) instrument was launched by eleven bilateral partners and the European Commission. These donor partners coordinate support through a Performance Assessment Framework (“PAF”) and Policy Matrix formulated in 2001 as a basis for judging the government’s performance on critical measures. The PAF defines the areas of budget support dialogue and details monitor-able actions, against which participating donors (fourteen) assess progress in program implementation as the basis for financing decisions. This was complemented by a Structured Adjustment Loan (“SAL”) from the African Development Bank and a Poverty Reduction Support Credit (“PRSC”) by the World Bank. The PRSC policy measures were coordinated by donors and the Government to the existing PRBS policy matrix, and the PAF. The PAF was extended to include a greater focus on rural incomes to provide an adequate policy matrix for the PRSC1. During November 2002, a revision of the PAF took place (in an effort to align the PAF and the PRSC), while requirements of the PRSC were incorporated into the Framework. The Framework was expanded to include actions aimed at poverty reduction (agriculture, private sector development, and economic and social outcome indicators) and linked to the MDGs, which are being monitored jointly by government and donors as part of the annual reviews. This resulted in the government and development partners signing a “Partnership Framework Memorandum,” declaring “...the intention of the parties to harmonize the PRS action plan and the PAF completely within three years (by 2005).”

OED/IEO Review of PRSP,
Tanzania Country Study (2004)

the reliability of the information produced by the system. For reliable results reporting, this implies that donors need to foster increased ownership and use of monitoring systems by government by building on country processes.

The PRS established a process for review that provided an opportunity to strengthen the use of country monitoring and reporting systems. Each year, participating governments were expected to produce a review of progress in implementation, based on evidence, known as the APR. These reviews were originally conceived with donor reporting requirements in mind, but many APRs have not provided sufficiently detailed information for donors, focusing primarily on impact and outcome level data. As a result, the APR has not been systematically used by donors (*see* Box 2). Since the APRs were often viewed as an external reporting requirement, they also were not systematically used by governments. A 2004 evaluation of the PRS noted that “governments in most countries are monitoring results as a requirement, and results are not being used to adjust strategies

**BOX 2:
THE USE OF THE APR FOR
HARMONIZATION AROUND RESULTS
REPORTING**

Donors have indicated that the APR is insufficiently detailed to influence allocation decisions. Many donors developed parallel reporting processes. Further complicating matters, it has been reported that the “timing of reporting is not always synchronized with other national processes.” For project based lending, the same survey showed that only 44 percent of donors use Government information for monitoring purposes.

OECD-DAC survey (2004).

or to enhance accountability for performance.”³² Many of the Joint Staff Assessments by the World Bank and the International Monetary Fund (“IMF”) stated that a major constraint for the PRS implementation was weak integration of monitoring systems into the policy making and accountability process. Even in the more successful cases of Tanzania and Uganda, there was less focus on strengthening the links between deriving information for donors and how to make this useful for the Government’s work reporting and policy processes.

There are also examples of harmonization around results reporting in programs and projects. In many cases, harmonization around results reporting has evolved over time in a sector or theme. Madagascar’s NEAP provides a good example of how donors and government have evolved to harmonization around results reporting. As NEAP moves to its third iteration, there is a strong relationship between government and donors, based on an agreed set of expected results and indicators. A joint steering committee: (1) ensures that government and donor investments are defined and implemented in a manner compatible with the

results framework and agreed upon indicators; (2) monitors progress towards agreed upon results; and (3) provides strategic orientation and guidance for the overall program implementation and coordination with other sectoral and development programs. Participating donors (such as the World Bank, United Nations Development Programme, and Global Environment Facility; French, German, Japanese, Swiss, and U.S. bilateral programs; Conservation International, World Wildlife Federation, and Wildlife Conservation Society) are then able to use the M&E system for their own results reporting. The M&E system with common indicators enables a more direct linkage between financial sources and results on the ground, while avoiding the need for donor coordination at the activity and input level. The process is thus conducive to both harmonization around results reporting and the reinforcement of government systems.³³

FACTOR TWO: FOSTERING COUNTRY OWNERSHIP OF RESULTS REPORTING

Country ownership is essential to achieve development outcomes and to foster continuity in priority setting across political cycles. The current context of increased aid flows and the associated need for external results reporting presents a challenge to maintaining country ownership. The MDGs, the G-8 initiative, and vertical programs to achieve specific outcomes (*e.g.* infrastructure, health, education)³⁴ will likely increase pressure on donors to report on progress toward international goals to external taxpayers. This may also encourage a greater funneling of resources through vertical, sector-specific channels rather than through country systems (*see* Box 3). Experience shows that, if ignored, these pressures can translate into results reporting systems that track data for an external audience, but lack legitimacy and ownership by those who are setting policies, implementing

**BOX 3:
SPACE FOR AFRICAN COUNTRIES TO
INNOVATE THEIR OWN FRAMEWORKS
AND PROCESSES**

“We have learnt to come to terms with the reality that development is a process, and that it can only be sustained if it is owned and led by the targeted population. Development cannot be imposed, it can only be facilitated; it requires ownership, participation and empowerment, not harangues and dictates. African countries ... have to assume full ownership and responsibility for their development. Bilateral donors, multilateral agencies and externally-funded NGOs ... are entitled to demand transparency and evidence of results. But they must be ready to genuinely concede enough space for the African countries to innovate, develop and pilot their policy frameworks and processes.”

Tanzanian President Benjamin William Mkapa Keynote speech, Africa Regional Workshop, Harmonization and Alignment (Nov. 2004)

programs, or monitoring results. A recent development committee paper on aid effectiveness and aid financing explicitly notes that “it is important to not undermine country ownership of the development agenda...the use of earmarked funds can cause distortions at the country level in terms of resource allocation, pressure on implementing capacity, increased transaction costs, and misalignment with country-owned mechanisms such as PRSPs.”³⁵ Uganda provides a positive example where external assistance is aligned to the national goals and priorities, as reflected in the PEAP, to ensure aid effectiveness. The government of Uganda has shown consistent leadership in its mode of receiving aid and identification of areas where this aid will be well managed to make significant impact on poverty and economic growth.

When the development objectives of the country and donors overlap, much progress can be made in reporting on results, and more importantly, achieving them. However, when the desires are not congruent, this pressure can lead to results reporting systems with a number of indicators that are not achievable or reflective of country priorities. When these become a condition for disbursement, especially in budget support, there is a potential for decreased predictability and increased volatility, unfocused and perhaps less substantive programs, and erosion of the usefulness of the indicators.

At the agency level, the pressure for measuring progress toward global goals can result in a disconnect between the reporting requirements for donor headquarters and the principles of country ownership and partnership at the country level. This is especially true for bilateral agencies where the pressure from their Parliament or other politicians can result in a reporting system that is focused on attribution to agency programs/projects and in some cases incentives away from harmonization or more programmatic approaches. Due to the governance structure of the multilaterals, pressure from their Executive Boards may work in a similar manner. At the same time many donor agency staff members are being encouraged to manage for results at the operational level; to use and strengthen country systems and draw on those systems for results reporting. This can create a disconnect within the organization. Corporate reporting therefore needs to strike a careful balance between providing a common framework for systematically reporting results and ensuring flexibility in how results are reported in any given context (*see* Box 4).³⁶ Often this is dependent on how well the country office staff has received the corporate messages and applied them innovatively in a country context.

Ultimately donors and country partners are looking at the same results; thus results reporting systems can: (1) supply donors with the reporting for control systems that are fully aligned with country monitoring and reporting mechanisms; and (2) supply donors’ Parliaments and general public with knowledge of the national strategy and how support from donor countries is yielding results. The challenge is how to translate the format and the presentation of results to serve the needs for the country, donors’ agencies, and Parliament/external stakeholders. This is an area to be further explored.

Less often discussed is how the domestic political aspects of reporting results can influence country ownership and in turn the quality of the underlying systems on which results reporting is based. It should be recognized that what donors are promoting in partner countries in terms of a comprehensive results framework is something few Organization for Economic Cooperation and Development members practice. In addition, the political acceptability of a results framework with a longer term perspective is correlated to the stage of development of the political system. It is necessary to understand the political context and how efforts to achieve long term goals (such as universal primary education) can yield, or impede, short term political gains. Policy making is likely to have a perspective that empha-

**Box 4:
ALIGNING COUNTRY OWNED RESULTS
TO EXTERNAL GOALS — SECTOR
EXPERIENCE IN MOZAMBIQUE**

The formulation of the MTEF and the PARPA have helped sector programs improve alignment to national objectives. However, a recent report noted that a large proportion of total assistance coming into the country is made up of a multitude of uncoordinated, often donor-driven, development and technical assistance projects. These projects did not add up to a coherent whole, nor promote the Government of Mozambique’s (“GOM’s”) priorities. In addition, it was found that the GoM had incomplete knowledge of these programs. The same report recommends that Government “turn down low-priority offers of ‘assistance’ [and] be willing to say ‘no’ to donors promoting their pet projects and schemes.”

In the health sector, health related policy formulation is conducted under the lead of the central Ministry of Health, however, the GOM is struggling to upgrade and strengthen its capacities to absorb additional funding and work in the sector. Various vertical projects in malaria, tuberculosis, leprosy, and HIV/AIDS supported by several donors are to be integrated into a larger “communicable diseases” program. There are functioning coordination mechanisms and a single set of indicators to guide monitoring. Yet donors continue to conduct separate evaluations, and separate donor planning and coordination mechanisms also exist. In addition, funding from newer players like GFATM, Clinton Fund, and MAP have taken place outside the MTEF. Multilaterals do not join pools or common funds and continue with vertical funding arrangements.

Tony Killick, Carlos Castel-Branco, and Richard Gerster,
Perfect Partners? (2005);

OECD-DAC, Survey on H & A, Mozambique (2004);

Swedish Agency for International Development Cooperation,
Mapping of SWAPs in the health sector (2003).

sizes short term benefits. Thus, supporting governments in developing a sufficient basis for results reporting must respond to these political dimensions and build political ownership. Above all, results approaches must illustrate their usefulness for achieving advances that are politically valuable in the short term, *e.g.* an electoral cycle. Otherwise, there are risks that politicians will develop alternative efforts that are not consistent with the medium term policy outcomes and, thus, undermine implementation of a strategy. There are several studies that highlight the importance of engagement of Parliament and the cabinet in implementation of MTEF.³⁷ Additional reviews have pointed out that sustainable monitoring and evaluation systems require that more attention be paid to the political dimensions and use of information in the policy process, rather than just technical considerations.³⁸ Yet, according to emerging evidence in some countries, there is a rapidly increasing number of policy measures aimed at short-term political gain, with weak sometimes contradicting links to strategy objectives.³⁹ Therefore, innovative solutions at the country level are needed to inform how to develop results reporting systems that are responsive to political needs.

A key driver for harmonization around results reporting has been earlier efforts to improve aid coordination, increase the relevance of donor programs to country owned goals, and reach agreement on the use of common processes and procedures. Strong government leadership has been essential in engaging external partners in a continuous and successful dialogue focused on making development assistance more effective. For instance, clarity on government priorities and expected results and trade offs made by governments can facilitate donor acceptance of less than total agreement on all strategy dimensions, while still aligning to the country priorities. The 2005 Comprehensive Development Framework (“CDF”) evaluation noted that this strong government leadership resulted in “development assistance agencies [being] more likely to align their support with country priorities, harmonize their working methods with the country’s systems, and avoid supporting overlapping, competing, or non-priority efforts.”⁴⁰

The translation of international commitments, such as the Paris Declaration, from agency headquarters and to field staff is a prerequisite for fostering a conducive environment for country results reporting that respects country ownership and priorities. A recent DAC survey noted that donors are basing their assistance on country priorities, particularly where there is ownership on the part of the country, government capacity to lead the donors, and commitment to work differently by donors. This type of alignment to government priorities is a first step in establishing a similar results reporting system. How this is done in practice varies depending on the country circumstances. In Mozambique, the World Bank country team responsible for piloting a results based country assistance strategy (“CAS”) used the opportunity of a new corporate initiative – piloting the results based CAS as part of the results agenda – to discuss with the Government and other donors how to harmonize around a common set of indicators at the

strategy level. This resulted in a series of discussions among donors and government on the content of the strategy results framework and alignment of this to the Government PARPA. It provided the structure for in-depth examination of goals and expectations from all sides and a discussion of how to monitor and measure those expectations. In many instances, these

**BOX 5:
LEVERAGING THE PARIS AND ROME
DECLARATION FOR MUTUAL
ACCOUNTABILITY – MOZAMBIQUE**

In Mozambique, the Government and fifteen donor partners signed a memorandum of understanding that reflects the spirit of The New Partnership for Africa’s Development (“NEPAD”), the Monterey Consensus, and the Rome Declaration on Harmonization, “in a process of open dialogue and mutual accountability.” The G15 donors followed up on this commitment with a Programme Aid Partners Performance Assessment (“PAPPAP”) framework. The PAPPAP matrix identifies a set of objectives, activities, indicators, and targets for a number of areas for donor performance on using country systems (*e.g.* harmonization and alignment). The partners are committed to providing program aid using Mozambique’s instruments, processes, and systems and follows the Government cycle for planning, implementation, monitoring, reporting, and funding. The PAPPAP allows regular monitoring by peers and GOM to bring discipline and self-management among the budget support group. A survey of the performance over 2003 was carried out in 2004 and is serving as the baseline from which to measure and monitor the trend of donor performance.

Of fourteen indicators of donor performance set in the 2004 PAF matrix, only half were achieved. Respondents to the 2004 Survey on Harmonization and Alignment indicated that there are several areas where greater alignment and harmonization could occur. For example, information about donor activities is currently widely dispersed across various departments of the government and could be better coordinated. The survey noted there is a need to reduce the overlap between sector reviews and the technical teams of the joint review if the high transaction costs facing government are to be reduced. It also found that many of the donors continued to work in isolation on institutional areas. Similar trends were noted by other studies and reviews on Mozambique. These sector study reviews stated that although there was some progress in individual sectors, cross-sectoral coordination was lacking in the ministries.

The number of Memorandum of Understanding PAFs have risen to seventeen, and all PAFs are urged to improve the overall aid effectiveness in the spirit of the MoU and the recent Paris Declaration.

meetings represented the first time that sector representatives had held technical discussions with other ministries or the Ministry of Finance. During this process the World Bank and the Government's team engaged in a process of prioritization and selection and settled for trade-offs that were acceptable to everyone. The team was able to achieve 70 percent alignment of indicators by the time of presentation of the strategy to the World Bank Board, while committing to increase this alignment during implementation. At the same time, the team met guidelines of the corporate reporting system being piloted. This corporate reporting system allowed flexibility in identification of the targets and indicators, while maintaining technical rigor in the method applied to evaluation.

FACTOR THREE: PROGRAMMATIC SUPPORT FOR CAPACITY BUILDING IN MONITORING AND EVALUATION

As countries move to a stronger results orientation in their strategy development and planning processes – supported by the donor community – their capacity to do so must grow exponentially. On the donor side, the evolution within agencies to a stronger results orientation in their assistance strategies and increasing reliance on country monitoring systems further underlines the importance of coordination for capacity building. This is coupled with the probability of budget support playing a much larger role in aid disbursements underpinning the need to strengthen public sector management mechanisms, including project analysis, budgeting, reporting, and M&E. Developing monitoring and evaluation capacity is a long term process and making incremental progress sustainable requires ownership by government.

Monitoring systems by themselves may not contribute very much to the enhancement of development effectiveness, unless procedures are in place for the results from monitoring to feed into policy making and decision-making processes of governments and donors. Institutionalization of the evaluation function is equally important for harmonization around results, as much of evaluation in country is carried out in a somewhat ad hoc manner. The strategies used to introduce results-based management have varied across countries; however, there are similar elements that contribute to a successful shift to a results-based culture, and well-established strategies to move the results agenda forward. These include:

- A clear mandate for deepening the results approach within the governance system. This may include the presence of strong leadership, usually through a strong champion(s) at the most senior level of government. It may also be driven by economic pressures or other incentives for change (often, a concerned citizenry or the need to reduce the cost of burdensome civil service payrolls).
- Clear links to budget and other resource allocation decisions. This implies greater interconnectivity between government institutions and more transparent resource management systems.

- A results oriented culture and supporting organizational structures. The culture within countries may not value a focus on results. Agencies may lack sufficient administrative and organizational structures to support using results-based information for planning, management, and resource allocation decisions.
- Involvement of civil society as an important partner with government.
- Pockets of innovation that can serve as beginning practices or pilot programs.
- The capacity to define a national strategy aligned to sector, regional, and local planning is often weak. The move to an increasing role for local governments in service delivery necessitates better linkages to planning and management at lower levels of government – where capacity may be weak.
- The ability to design and maintain supporting statistical systems is weak and there is not an adequate results-based workforce to develop and support information systems for sustained use. Often, government officials do not have the training or legal frameworks for modern data management to support a results-based management system. In many countries development data are collected by different institutions with little coordination on time periods and statistical methods, thus undermining reliability of results reporting.

There are three actions that the donor community and countries can take to foster country ownership while meeting the need for external reporting. First, the donor community and country can undertake joint assessment of country capacity for monitoring and evaluation capacity that are essential for results reporting. This country capacity should be meaningful in the country context and develop capacity building and includes the identification of relevant and viable indicators, the capacity to organize timely, efficient, “lean” data collection mechanisms, the capacity to assess in a meaningful way what actual observations on those indicators would tell, the capacity to formulate meaningful policy advice on the basis of observed trends, and the capacity to formulate evaluation needs. Second, donors can operationalize joint work and mutual accountability by scaling up M&E systems from project to sector to country level; for example, by supporting the integration of project-level M&E systems into line ministries structures. Third, the donor community and country can sign a memorandum of understanding with development partners on how support for M&E, whether project, program, or institutional, will strengthen country systems in a sustainable manner.

CONCLUSION

The review of the processes and current environment around harmonization of results reporting reveals that the impetus for building harmonized systems around results reporting is

not limited to defining indicators and agreeing on measurement. Instead, harmonization around results reporting is part of a broader political and economic context, both in country and in the international community that points to the necessity to balance the external reporting needs with domestic accountability and position results reporting within the country's development agenda, systems, and capacity to deliver evidence of results. The four cases (Uganda, Tanzania, Mozambique, and Madagascar) and an in depth literature and documentation review drove to identification of factors and actions that are needed to make har-

monization around results reporting work in practice. Against each action the cases provided examples that can be turned into specific interventions for the development community. These factors consider the interrelationship between the country context and the international context in a way that is supportive of improving country systems.



ENDNOTES: Harmonization Around Results Reporting

¹ International Conference on Financing for Development, Monterrey, Mexico, March 18-22, 2002, available at <http://www.un.org/esa/ffd/ffd-conf/> (last visited Oct. 29, 2004).

² The Second International Roundtable on Managing for Development Results Marrakech, Morocco, Feb. 4-5, 2004, available at <http://www.mfdr.org/2ndRoundtable.html> (last visited Oct. 29, 2005).

³ The Paris High Level Forum, France, Feb. 8- March 2, 2005, available at <http://www.aidharmonization.org/ah-wh/secondary-pages/Paris2005> (last visited Oct. 29, 2005).

⁴ G8 Gleneagles 2005, Perthshire, Scotland, July 6-8, 2005, available at <http://www.g8.gov.uk/servlet/Servlet?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1078995902703> (last visited Oct. 29, 2005).

⁵ THE WORLD BANK, GLOBAL MONITORING REPORT, 2004, available at <http://siteresources.worldbank.org/GLOBALMONITORINGEXT/Resources/0821358596.pdf> (last visited Oct. 29, 2005).

⁶ On a whole, there has been relatively solid growth performance in low-income countries over the past ten years, although high population growth rates in low-income countries temper the per capita gains. These aggregate figures disguise substantial variation across countries and volatility over time (World Bank Review of PRSP implementation 2005 forthcoming).

⁷ IEO/OED PRSP Review, 2004. Capacity Building in Africa, An Operations Evaluation Department Review of World Bank Support, Operations Evaluation Department, 2005.

⁸ 2005 REVIEW OF POVERTY REDUCTION STRATEGY APPROACH: BALANCING ACCOUNTABILITIES AND SCALING UP RESULTS, WORLD BANK, IMF, 2005.

⁹ Countries start moving in that direction as they believe that managing for development results ("MfDR") may lead to a more effective and efficient public sector management system and process.

¹⁰ THE WORLD BANK, PROJECT APPRAISAL DOCUMENT, THIRD ENVIRONMENT PROGRAM SUPPORT PROJECT (Apr. 2004).

¹¹ THE WORLD BANK, PROGRAM DOCUMENT, SECOND ENVIRONMENT PROGRAM (Oct. 1996).

¹² THE WORLD BANK, COUNTRY ASSISTANCE STRATEGY (1997).

¹³ Poverty reduction as a key objective of government policy in Mozambique predates the introduction of the PRSP, dating back to the mid-nineties with a succession of Policy Framework Papers.

¹⁴ THE WORLD BANK, OPERATIONS EVALUATION DEPARTMENT (OED), CAPACITY BUILDING IN AFRICA: AN OED EVALUATION OF WORLD BANK SUPPORT, (2005), available at [http://lnweb18.worldbank.org/oed/oeddoclib.nsf/24cc3bb1f94ae11c85256808006a0046/5676a297fe57caf685256fd00692e32/\\$FILE/africa_capacity_building.pdf](http://lnweb18.worldbank.org/oed/oeddoclib.nsf/24cc3bb1f94ae11c85256808006a0046/5676a297fe57caf685256fd00692e32/$FILE/africa_capacity_building.pdf) (last viewed Oct. 31, 2005).

¹⁵ This movement to increased donor coordination started in the 1990s and was formalized in 2000 with the establishment of the Joint Donor Programme for Macro-Financial Support ("JP"), underpinned by an MOU known as the Joint Agreement ("JA"). This agreement provided a common focus and allowed for regular dialogue and an annual review,

known as the Joint Donor Review ("JDR"), between signatories. And, over this period, the donor group grew to the G-15 by 2004.

¹⁶ With the budget support aid modality, donors essentially give up the direct control over resource use that is typical of "project" support. In its place, there is then need for some combination of two factors: the supportive structures (including M&E systems) to ensure that the use of these resources meets the accountability requirements of donors, and, second, a trust and willingness on the part of donors to accept some level of risk regarding the use of those funds by the government. Clearly, with an improved PMS, there is greater ability to measure and monitor results and, subsequently, a greater trust/lower risk in relying on government systems to measure and monitor performance. This aid modality thus serves to work in support of donor use of government systems.

¹⁷ INTERNATIONAL MONETARY FUND AND INTERNATIONAL DEVELOPMENT ASSOCIATION, POVERTY REDUCTION STRATEGY PAPER-PROGRESS REPORT, Joint Staff Assessment, (2003).

¹⁸ Three-quarters of external project assistance distributed outside the budget.

¹⁹ The government took several important steps towards harmonization and alignment to enhance aid effectiveness. These included the establishment of: The Independent Monitoring Group, the formulation of a Tanzanian Assistance Strategy in 2002, a Poverty Reduction Strategy, a Poverty Reduction Budget Support Facility, (with a common Performance Assessment Framework), and a Tanzanian Joint Assistance Strategy.

²⁰ Norway was the first bilateral to commit all its foreign aid through the budget.

²¹ David Booth, *Poverty Monitoring Systems: An Analysis of Institutional Arrangements in Tanzania*, Overseas Dev. Inst., Working Paper 247 (Mar. 2005), available at http://www.odi.org.uk/publications/working_papers/wp247.pdf (last visited Oct. 31, 2005).

²² The focus on poverty and reforms began in 1986, with a CG meeting in 1995 that started discussions on a Poverty Eradication Action Plan (PEAP) 1996/1997.

²³ THE WORLD BANK, TOWARD COUNTRY-LED DEVELOPMENT: A MULTI-PARTNER EVALUATION OF THE COMPREHENSIVE DEVELOPMENT FRAMEWORK, Uganda Case Study, (2003) available at [http://lnweb18.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/4AC98B40DB95F73B85256DAC0059775D/\\$file/country_case_studies.pdf](http://lnweb18.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/4AC98B40DB95F73B85256DAC0059775D/$file/country_case_studies.pdf) (last visited Oct. 31, 2005).

²⁴ David Booth and Henry Lucas, *Desk Study of Good Practice in the Development of PRSP Indicators and Monitoring Systems*, Overseas Development Institute (2001) available at <http://siteresources.worldbank.org/INTPRS1/Resources/PRSP-Review/odi.pdf> (last visited Oct. 31, 2005).

²⁵ It is difficult to attribute short term policy actions to improvements in impact indicators, and many of these indicators change too slowly to be useful for shorter term results reporting or annual decision making.

ENDNOTES: Harmonization Around Results Reporting Continued on page 78

KEEPING CELL PHONES AFFORDABLE:

REGULATING THE PRIVATE SECTOR'S CONTRIBUTION TO DEVELOPMENT

by Rachael Moshman*

INTRODUCTION

One of the targets of Millennium Development Goal Eight, “Develop a Global Partnership for Development,” is to cooperate with the private sector to “make available the benefits of new technologies – especially information and communications technologies.”¹ International development professionals, such as Jeffrey Sachs, have listed numerous benefits that can be brought to the developing world through cell phone technology, including communicating with long-distance family members, increasing communication between different villages, finding employment opportunities, having more options in emergency situations, allowing fisherman and farmers to check market prices before leaving the village, and allowing quick and easy transfer of funds.² Cell phones may also eventually help bring internet into developing countries’ villages and homes.³

THE GROWTH OF THE CELL PHONE MARKET

From 1999 to 2004, cell phone usage in Africa increased from 7.5 million to 76.8 million users, and one in eleven Africans is now a cell phone subscriber.⁴ In South Africa, the number of cell phone users jumped from zero to ten million between 1993 and 2003, and the percentage of this cell phone use in lower-income markets has increased with time.⁵ The market has grown enormously in the last decade, but there is still plenty of available market left to access. Though 77 per-

One reason that cell phone use may be so popular is that with a low-income budget it is easier to manage a pre-paid phone card than to pay for a fixed phone line. Pre-paid cards were made available in South Africa starting in 1997. By 2003, fourteen percent of households making two dollars per head per day had cell phones.⁸ Though the lowest cost handset is currently around forty dollars, handsets can be purchased second hand for much less, and some major chain stores, in South Africa for example, sell cell phones on credit.⁹ Costs may also continue to go down for consumers. Phillips, a semiconductor manufacturer, noting that there is an untapped customer base worldwide of 3.3 million people, has announced plans for a handset that will cost less than twenty dollars.¹⁰

COOPERATION MEANS REGULATION

However, as the cell phone market grows wider in the developing world, encouraged by the development goals of the United Nations, how will the “cooperation with the private sector” help fulfill Millennium Development Goal Eight? Motorola recently won a contract to provide six million cell phone handsets to developing markets. While they noted that profit margins for these inexpensive phones would be “single-digit,” they justified this move based on their intention to make greater profits from the developing markets in the future: “Motorola will use the ultra low tier to attract consumers to its brand and eventually sell up more expensive models.”¹¹ This inevitable reach for greater profit margins is exactly why the private market should be regulated by governments as cell phones are distributed, and come to be relied on, in developing countries.

According to World Bank figures, the gross national income average for low-income countries is \$510, with some 64 countries included in that category.¹² Proponents of distributing cell phones to low-income countries tout a recent study by the London Business School that found that increasing cell phone ownership by ten percent in the typical developing country boosts gross domestic product growth by 0.6 percent.¹³ However, when a family is only making \$510 per year, a 0.6 percent growth means only about three dollars extra per year—this is not enough to allow one to upgrade their cell phone. Without regulation, it cannot be guaranteed that private companies will continue to provide affordable access to the cell phone market.

Tied directly to the need for regulation, another reason that people may be using cell phones in South Africa and

* Rachael Moshman is a JD and MA (International Affairs) candidate, 2006, at American University, Washington College of Law and School of International Service.

Attributed to: Reprinted with permission from World Resources Institute, Washington, DC. See http://images.wri.org/photo_smartcom_large.JPG.



Customers buy prepaid cards for their cell phones from a sari-sari store in the Philippines.

cent of the world’s population is in range of a cell phone tower, only 25 percent are cell phone subscribers.⁶ Commentators agree that more people will use cell phones than fixed land lines for future telecommunications.⁷

other parts of Africa is because the privatization of the telecom industry has made fixed line phones unaffordable. Since privatizing the phone company in South Africa in 1997, two million people have had their phone lines cut because they could not afford to pay for their services.¹⁴ A strong regulatory system implemented by governments to ensure the private sector's cooperation with development goals can reduce the risk that basic services, such as a cell phone, become unaffordable to those who rely on them.

Currently, the private sector is busy setting up more cell phone towers in remote parts of the developing world.¹⁵ They are also lobbying countries to remove barriers to industry development, such as taxes. Some countries are taxing imported handsets, as well as placing high taxes on telecom opera-

Without regulation, it cannot be guaranteed that private companies will continue to provide affordable access to the cell phone market.

tors and users. It is simple to point to government regulations, such as Turkey's 25 percent special communications tax, as interfering with the growth of the market and impacting consumers as well as the private companies.¹⁶ However, there are other government regulations that can contribute to development goals without stunting the growth of the market. South Africa currently, for example, has required cell phone operators to contribute to a Universal Access Fund, community call centers, and free SIM card offers as conditions for licensing their cell networks.¹⁷ Other regulations could include monitoring equitable sector development, and proportional to income customer fees.

Offering access to cell phones does present many advantages to people in the developing world. The push to multiply that access through the growth of private markets, however, cannot be done at the expense of the government-centered regulatory system needed to guide the private sector long-term and cooperatively toward meeting the goals of development.



ENDNOTES:

- ¹ UNITED NATIONS, MILLENNIUM DEVELOPMENT GOALS, (2005), available at <http://www.un.org/millenniumgoals/#>, (last visited Nov. 4, 2005).
- ² See JEFFREY D. SACHS, THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME, 232, 234, 264-65 (Penguin Books, 2005).
- ³ See e.g., Rhett Butler, *Cell Phones May Help "Save" Africa*, Mongabay.com, July 2005, available at http://news.mongabay.com/2005/0712-rhett_butler.html (last visited Nov. 4, 2005).
- ⁴ Sharon LaFraniere, *Cellphones Catapult Rural Africa to the 21st Century*, N.Y. Times Aug. 25, 2005, A1.
- ⁵ David Porteous, THE WORLD BANK, *Making Financial Markets Work for the Poor*, at 52 (Oct. 2004), available at <http://info.worldbank.org/etools/docs/library/128740/Making%20financial%20market%20work%20for%20the%20poor.pdf>, (last visited Nov. 4, 2005).
- ⁶ Press Release, Phillips, Phillips Launches Global Initiative to Develop Solutions for Ultra Low-cost Mobile Phones (June 29, 2005), available at http://www.semiconductors.philips.com/news/content/file_1173.html (last visited Nov. 4, 2005).
- ⁷ Allison Gillwald, *Transforming Telecom Reform for Development*, paper for "ICTs for Poverty Reduction: When, Where and How?" (Sep. 2003), at 5, available at <http://link.wits.ac.za/papers/ag20030920.pdf> (last visited Nov. 4, 2005). Already, the number of cell phone subscribers almost triples the number of fixed land line subscribers in South Africa. *But see*, Porteous *supra*, note 5, at 53, who notes that some predict that the South African market will peak out at 60 percent of the total population (24 million customers) by 2007.
- ⁸ See Porteous, *supra* note 4, at 52, fig. 2.1. See also LaFraniere, *supra* note 4, referring to one Nigerian woman who spends \$1.90 per month for five minutes of pre-paid phone time.
- ⁹ Porteous, *supra* note 5, at 53.
- ¹⁰ See Phillips, *supra* note 6.
- ¹¹ *Motorola Wins Deal for Low Cost Cell Phones*, Reuters, Sept. 27, 2005, available at <http://www.msnbc.msn.com/id/9502612/>, (last visited Nov. 4, 2005). The contract was awarded by GSM Association, which promotes the use of GSM, the primary cell phone standard.
- ¹² WORLD DEVELOPMENT INDICATORS DATABASE, THE WORLD BANK, *GNI Per Capita Income 2004, Atlas Method and PPP* (table), (July 3-4, 2005), at 1-4, available at <http://www.worldbank.org/data/databytopic/GNIPC.pdf>, (last visited Nov. 4, 2005).
- ¹³ *CALLING AN END TO POVERTY*, THE ECONOMIST, Jul. 7, 2005, available at http://www.economist.com/business/displayStory.cfm?story_id=4157618, (last visited Nov. 4, 2005), [hereinafter *CALLING AN END*].
- ¹⁴ See Gillwald, *supra* note 7, at 5.
- ¹⁵ See LaFraniere, *supra* note 4, noting that constructing networks for cell phones in Nigeria costs two and a half times as much as it did in South Africa because there is no pre-existing infrastructure.
- ¹⁶ See *CALLING AN END*, *supra*, note 13.
- ¹⁷ See Porteous, *supra* note 5, at 53.

TARGETS, TIMETABLES, AND EFFECTIVE IMPLEMENTING MECHANISMS:

NECESSARY BUILDING BLOCKS FOR SUSTAINABLE DEVELOPMENT

by John C. Dernbach*

INTRODUCTION

The concept of “sustainable development” provides a framework for simultaneously reconciling and furthering the broad goals of peace and security, economic development, social development, and environmental protection.¹ Most observers recognize that we are more likely to protect the environment when we can show that environmental protection will further security, economic, and social goals, or at least will not interfere with them.² In developing countries, for instance, where poverty causes or contributes to environmental degradation, and where financial resources are especially scarce, environmental protection is much more likely to be accomplished when it is combined with economic development. In developed countries, the greater efficiency and conservation required for sustainable development are more likely to occur when it is plainly more economically attractive than current high levels of materials and energy consumption.³ The concept of “sustainable development,” moreover, is the internationally accepted framework for making these broad goals mutually reinforcing - endorsed through internationally agreed texts such as Agenda 21, a product of the 1992 United Nations Conference on Environment and Development.⁴

This framework, however, needs improvement. There is a virtual absence of effective internationally-agreed goals for environmental protection and social well-being. Few, if any, such goals exist in Agenda 21 or in binding multilateral agreements.⁵ The achievement of sustainable development will require a long-term, continuing global commitment, which is not possible without the implementation of long-term international targets and timetables. This article discusses why effective targets, timetables, and implementing mechanisms are a crucial component in sustainable development.

WHY TARGETS AND TIMETABLES ARE NEEDED

International agreement upon specific environmental and social goals is necessary to achieve sustainable development. “Goals,” in this context, refer to specific, measurable targets achieved by specific dates or according to specified timetables. Thus, a target and timetable is a goal whose achievement or lack of achievement can be determined to a reasonable level of certainty. For example, a target and timetable might be expressed as “achieving A by Year C” or “reducing B by fifty percent by Year C.”⁶

When targets are vaguely defined, timetables can usually be achieved through minimal activity. A goal of “making efforts

toward D by Year E,” for instance, can be met by almost any effort at all. Similarly, without specific timetables, targets are merely aspirational statements of goals. A goal of simply “achieving F” is an example. Without a specific date, in a practical sense, there is nothing to achieve and little incentive to achieve it. There are other ways to water down the commitments contained in targets and timetables, using a variety of qualifying phrases and exceptions. Obviously, the strongest targets and timetables have no built-in escape clauses.

The establishment of effective targets and timetables can accomplish at least six valuable tasks: (1) identifying priorities; (2) clarifying objectives of decision makers; (3) demonstrating commitment to sustainable development and thus giving it greater credibility; (4) giving operational meaning to sustainable development; (5) clarifying the role of law; and (6) for difficult long-term objectives, providing benchmarks of progress through short-term or interim goals. All of these are needed to achieve sustainable development, and none are likely to occur without the establishment of effective targets and timetables.

IDENTIFYING PRIORITIES

The process of setting goals necessarily forces a decision maker to think strategically about how to set and achieve them. A strategy for sustainable development⁷ would identify prioritized issues or goals. In doing so, decision makers reduce numerous pressing tasks into a smaller and manageable number of objectives. Priority setting permits governmental and nongovernmental actors to concentrate their limited time and resources on a smaller number of tasks. Additionally, in principle, priority setting allows those actors to address tasks more effectively.

A threshold dilemma is the existence of more needs and problems than any government or other institution can handle at once. For example, Agenda 21 includes chapters addressing consumption, air pollution (including climate change), land resources, deforestation, desertification, mountain ecosystems, agriculture, biological diversity, oceans, fresh water, toxic chemicals, hazardous wastes, solid wastes, and radioactive wastes.⁸ Agenda 21 also contains chapters on trade, poverty, human health, housing, and biotechnology.⁹ It is difficult to

* John C. Dernbach is a Professor of Law at Widener University School of Law. Professor Dernbach serves as Co-Chair of the American Bar Association Environment, Energy, and Resource Section's Committee on Sustainable Development, Ecosystems, and Climate Change and Sustainable Development. This article was previously published in a longer form in the *William & Mary Environmental Law and Policy Review*, 27 WM. & MARY ENVTL. L. & POL'Y REV. 79, 79-109 (2004).

imagine how any decision maker could give priority to all of these things and still accomplish much of significance.

To address this problem, Agenda 21 states that national governments “will develop their own priorities in accordance with their prevailing conditions, needs, national plans, policies, and [programs].”¹⁰ For every country, priorities are different. Virtually all countries, in varying degrees, are experiencing worsening problems with poverty and environment because of unsustainable development.¹¹ The immediate task then becomes responding to the greatest threats, or “damage control.”

The European Union (“EU”) has adopted a sustainable development strategy with a significant “damage control” element.¹² For example, EU priorities include global warming, public health, poverty, aging of the population, loss of biodiversity, and transport congestion.¹³ These priorities resulted from an analytical process that focused on three criteria: severity of the problem, the extent to which severe and adverse effects are likely to be felt by subsequent generations, and the extent to which the problem is common among EU member countries.¹⁴ The methodology is problem-oriented and is directed against many of the same problems that international sustainable development efforts have targeted, especially climate change, biodiversity, and poverty. For the EU, then, the first step in the strategic process is problem identification and priority setting.

CLARIFYING OBJECTIVES

General descriptions of priorities are useful, but goal setting also requires decision makers to think clearly about what they want. Clarity moves, or ought to move, decision makers beyond rhetoric and generalizations toward goals that are both precise and meaningful. Clarifying objectives is necessary

to ensure that goals make sense, that progress toward goals is measured reasonably accurately, that goals can be achieved within the time specified, and that achievement of the goals will actually address the underlying problems.¹⁵

Any serious effort to foster sustainable development requires the establishment of clearly defined objectives. For instance, the National Research Council's 1999 report, *Our Common Journey: A Transition Toward Sustainable Development*, identifies five key objectives: (1) accelerating fertility reduction so that the world's current population grows only to eight billion by 2050 rather than the nine billion currently projected; (2) providing “adequate water, sanitation, and clean air” for the expected seven billion people who will live in urban areas in 2050, which is two to three times the number of people who now live in urban areas; (3) increasing agricultural productivity in output per hectare by two to three times current productivity levels, on a sustainable basis, by 2050; (4) doubling the historic rate of efficiency improvements for materials and

energy use; and (5) restoring and maintaining the functions and integrity of ecosystems that have been dominated by humans, and protecting the least affected ecosystems from land conversion.¹⁶ The Council describes these goals as necessary, ambitious, and achievable by 2050.¹⁷ The Council's five goals represent an effort to convert the broad goals of sustainable development into achievable program elements. Three of the five are stated in quantitative terms, and the other two (relating to the urban environment and biodiversity) could also be converted into quantitative terms.

Similarly, the EU sustainable development strategy contains more precise objectives for each of its six identified priority areas.¹⁸ The objectives for one priority area are illustrative. For climate change, a primary EU objective is reducing greenhouse gas emissions by eight percent below 1990 levels in the time period of 2008-2012, as specified in the Kyoto Protocol.¹⁹ Describing Kyoto as only “a first step,” the strategy states that the EU should aim for a one percent annual reduction in greenhouse gas emissions until 2020.²⁰ It also calls for a tax on energy products by 2002, the creation of a European system for tradable carbon dioxide permits by 2005, and an end to fossil fuel subsidies by 2010.²¹ These objectives are in addition to

increased research and development concerning renewable energy and more stringent energy conservation standards for buildings and appliances.²² While these objectives would need to be carried out in each individual country within the EU,²³ they nonetheless provide a concrete set of targets and timetables for addressing climate change.

The establishment of achievable objectives moves the debate from generalized to specific

means of addressing problems. As an example of generalized objectives, under the Rio Agreements, countries (particularly developed countries) are to “reduce and eliminate unsustainable patterns of production and consumption.”²⁴ According to Agenda 21, “the major cause of the continued deterioration of the global environment is the unsustainable pattern of consumption and production, particularly in industrialized countries.”²⁵ This unsustainable pattern has led to proposals to increase the efficiency with which materials and energy are used by factors of four²⁶ or ten²⁷ before 2050. These reduction proposals are useful indicators of the magnitude of the challenge, but they do not help answer the question of which materials and energy sources should be covered. Is consumption of electricity from windmills the same as consumption of electricity from fossil fuels? Is consumption of nickel or aluminum the same as consumption of sand? Quite plainly, environmental impacts of consumption depend on what is being consumed, and how it was produced.²⁸ The underlying challenge is understanding the spe-

International agreement upon specific environmental and social goals is necessary to achieve sustainable development.

cific types of environmental impacts that consumption creates and addressing the sources of those impacts directly.²⁹

For the production and consumption of energy in developed countries, Lynn Price and Mark D. Levine suggest the path toward sustainability can be measured according to three indicators: (1) the efficiency with which energy is used; (2) the percentage of overall energy demand that is met by renewable energy; and (3) the level of carbon dioxide emissions.³⁰ Policies addressing energy consumption should directly address these issues and result in greater efficiency, more use of renewables, and lower levels of carbon dioxide.³¹ Progress on the first two indicators, in fact, is essentially captured by progress on the third.³² Thus, sustainable production and consumption of energy depends primarily on reducing carbon dioxide emissions from fossil fuels.³³ Put differently, an international or national objective of reducing fossil fuel emissions by a specific amount by a specific time (like the EU objective) is also a key means of moving energy production and consumption in a sustainable direction.³⁴ Absent a technological breakthrough, reducing carbon dioxide emissions requires reducing the use of fossil fuels,³⁵ particularly fuels like coal, whose burning creates more carbon dioxide emissions than other fossil fuels.³⁶

Clear objectives also help address issues that might otherwise be polarized by competing ideological views. By focusing on carbon dioxide emissions, for instance, decision makers can move away from an abstract discussion of consumption—often an ideological and divisive issue. For some, challenges to consumption are also challenges to “the good life” made possible by a high standard of living.³⁷ Yet for others, challenges to consumption are necessary because gluttony and waste threaten the planet’s future.³⁸ Such debates are not constructive. By focusing not on consumption itself, but on specific objectives, such as carbon dioxide emissions, decision makers can work towards reconciliation among these competing positions.

Targets and timetables provide a way of discussing and deciding how ambitious we want or need to be. An example occurred in the Pennsylvania legislature during the mid-1980s. There, the legislature debated the merits of a proposed program requiring large- and medium-sized municipalities across the state to establish curbside recycling programs for glass, metal, paper, and plastic.³⁹ An important issue in that debate was whether the recycling rate goal for that program by January 1, 1997 should be ten percent or twenty-five percent. The latter was eventually chosen⁴⁰ because it was more serious, seemed to better correspond to the magnitude of the waste problem, and was achievable, even though it was more difficult than the ten percent goal. When the twenty-five percent goal was later achieved, the state set an even higher goal.⁴¹

Specific objectives also focus efforts of governmental and nongovernmental actors over the long term.⁴² Political and other leaders enter and leave office, but properly established targets and timetables remain in place.⁴³ Targets and timetables are particularly important when there are many public and private decision makers whose activities need to be coordinated or, at least, consistent.⁴⁴ Goals are a management tool for focusing the efforts of administrative agencies, corporations and other organizations, and even national governments and the international community. Goals become the basis around which budgets are developed and implemented; personnel are hired and allocated; programs are created, modified, or harmonized; and rewards and punishments are meted out. Specificity and clarity reduce the likelihood of confusion or misunderstanding about what the objectives are and thus increases the likelihood that they will be achieved.

Finally, international targets and timetables help ensure that individual nations are working together and motivated by a

common objective. While national targets and timetables are also necessary, particular countries or groups of countries cannot successfully address global problems such as climate change or the loss of biodiversity themselves. If some major emitters of greenhouse gases reduce their emissions, and others do not, it may be impossible to prevent major climate change. The international cooperation that comes with interna-

tional targets and timetables may also provide developed countries with opportunities to reduce compliance costs and provide a means for developing countries to receive financial or technical assistance.⁴⁵

DEMONSTRATING COMMITMENT

Goals are necessary to measure whether a particular effort succeeds.⁴⁶ Targets and timetables also provide a way of measuring progress or lack of progress toward goals.⁴⁷ Thus, an agreement to a target and timetable is ordinarily a commitment to achieve it.⁴⁸ When a country agrees to adopt a specific goal, it is essentially agreeing to achieve it. For legally binding agreements, the reason is simple: failure to achieve a specific goal or target would put a nation in noncompliance with the agreement.⁴⁹ Failure to comply with specific goals in nonbinding agreements subjects a country to political penalties and other repercussions.⁵⁰ By demonstrating greater commitment, targets and timetables are a way of providing additional credibility to decision makers when they claim to be interested in moving toward sustainability.⁵¹ Perhaps conversely, quantitative targets are so significant that the United States ratified the Climate Change Convention because it did not contain quantitative and, therefore, enforceable targets.⁵² The United States also filed reservations to portions of Agenda 21 (a nonbinding agreement) that contained a quantitative goal.⁵³

Political and other leaders enter and leave office, but properly established targets and timetables remain in place.

GIVING OPERATIONAL MEANING TO SUSTAINABLE DEVELOPMENT

Specific environmental and social goals also provide a way of clarifying the meaning of sustainable development. Much of the criticism directed toward sustainable development is based on the claim that it has multiple meanings or no core meaning at all.⁵⁴ Sustainable development requires the integration of social, economic, and environmental goals in decision-making.⁵⁵ But what, specifically, are those social and environmental goals? Providing context-specific answers to that question, for particular economic sectors, natural resources, countries, or the world, would provide a more precise definition of sustainable development. More basically, goals would provide a way of putting the sustainable development framework into effect.

Another source of ambiguity is the tension between procedural integration and substantive integration, particularly for the environment.⁵⁶ At times, Agenda 21 and the other international texts suggest that sustainable development requires the environment to simply be considered in decision making processes (procedural integration), whatever the substantive outcome.⁵⁷ At other times, the same texts suggest that sustainable development requires not only consideration of the environment, but also the achievement of substantive environmental goals.⁵⁸ Because the transition to a sustainable society is likely to take at least two generations (or fifty years),⁵⁹ and because the substantive goals required for sustainability are in many cases extremely challenging, it is tempting to describe procedural integration as sustainable development.⁶⁰ Specific, substantive environmental and social targets and timetables can correct that tendency by providing a precise method for assessing claims that particular activities are sustainable, and for measuring progress (or lack of progress) in achieving sustainable development. In that way, specific targets and timetables can give credibility, or added credibility, to sustainable development.

Targets and timetables, however, are not a substitute for the conceptual framework provided by sustainable development. In fact, goals can and should be measured against the framework, as set forth in international texts for sustainable development, including Agenda 21 and relevant treaties. Additionally, goals can and should be evaluated by the likelihood that they will achieve the purposes of sustainable development reversing environmental degradation, reducing poverty, and reducing the gap between rich and poor.⁶¹ Still, targets and timetables, if properly established, provide a specific and measurable way of putting the conceptual framework into effect.

CLARIFYING THE ROLE OF LAW

Use of specific objectives clarifies the role of legal and policy instruments. In general, legal and policy instruments provide a means of achieving specific objectives; the instruments themselves are not the ends. As obvious as that may sound, a major problem with the environmental debate in the United States is the extent to which specific legal instruments have become associated with specific positions and objectives. All too often, regulatory reinvention debates in the United States are about economic instruments versus environmental regulation, with

relatively little specific discussion of other instruments.⁶² These debates often sound like, and are, debates about less environmental protection versus more environmental protection, even though specific and substantive environmental goals are often not discussed. The means, in other words, are all too often a stand-in for some unstated environmental objective. This is an extremely confusing and unhelpful way to proceed, and yet it happens all the time.

When we can agree on substantive environmental goals, it becomes reasonably clear that the cheapest, most effective instruments will do just fine, regardless of what they are.⁶³ Successful implementation is more likely if decision makers are willing to be both creative and flexible in understanding what legal and policy tools are available, and in choosing the right mix of laws and policies for their particular purposes.

ACHIEVING LONG-TERM OBJECTIVES THROUGH INTERIM GOALS

Achieving sustainable development is not a short-term objective. The National Research Council's conclusion that a transition to sustainability is possible by 2050⁶⁴ is a daunting statement about the length of the journey. This two-generation period is a realistic time frame within which to set targets, attempt to change course, and measure success or failure. Yet many environment and development stresses will become much more challenging during this period.⁶⁵ A transition toward sustainability is not the same thing as sustainability itself.

Achieving this transition would mean, by 2050, that the world would be in the midst of a "gradual and continuous" shift from an unsustainable society to a sustainable society.⁶⁶ While long-term objectives are important, they are fraught with difficulties. The obstacles appear to be, and often are, extremely challenging. As a result, people can be dissuaded from trying to achieve them. Long-term objectives can also seem so overly ambitious as to suggest that sustainable development is impossible. In addition, long-term objectives are often beyond the time range that decision makers are even willing to consider – beyond their retirement date, beyond their political term of office, and beyond the immediate problems they confront on a daily or weekly basis. For many issues, too, we do not have a very clear idea of what the final sustainable development objective should be. The purpose of the United Nations Framework Convention on Climate Change, for instance, is "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic [human caused] interference with the climate system."⁶⁷ No one is particularly sure what that level is.

Interim or short-term goals are a way of addressing these difficulties. They divide a larger problem into smaller and (if the interim goals are properly set) achievable pieces. They help steer society in a general direction even if the precise destination is not yet known. Thus, the goal-setting process can result in interim goals, whether or not long-term targets and timetables are also established. Interim goals also provide an answer to the claim that sustainable development is impossible. By achieving discrete goals, we can learn how to better address specific problems and gain the confidence and experience necessary to build on initial achievements.

IMPLEMENTING MECHANISMS FOR TARGETS AND TIMETABLES

Targets and timetables are useful only if they are effectively implemented – if the targets and timetables are actually achieved. Monitoring and public reporting of progress (or lack of progress) toward targets and timetables is one way to help ensure that they are met. Legal mechanisms to ensure compliance are also important, and it is far from clear that political commitments are an effective substitute for such mechanisms.

MONITORING AND PUBLIC REPORTING

A widely recognized means of inducing desired environmental outcomes is to require and publicly report information about specific activities.⁶⁸ Public reporting of releases of toxic chemicals into the environment is required under the Emergency Planning and Community Right-to-Know Act in the United States, even though the releases themselves are likely to be legal.⁶⁹ Public reporting of these releases has led companies to significantly reduce the amount of these chemicals released into the environment.⁷⁰ Consequently, the implementation of goals should be accompanied by an effort to gather and publicly disclose information that measures progress in meeting goals.⁷¹ Specific goals, including public reporting of data concerning success or failure in achieving goals, also provide a basis for resisting efforts to undermine those goals by weakening implementation.⁷²

LEGAL VS. POLITICAL COMMITMENTS

The appeal of placing targets and timetables into international treaties is undeniable. The ratification process for a treaty, by which individual countries agree to be bound under international law by its provisions, helps ensure that countries take the commitments in the treaty seriously and have the domestic legal means of implementing it.⁷³ Beyond that, a treaty may contain any number of mechanisms to enhance the likelihood of compliance. These include regular meetings of the conference of the parties; the use of technical bodies to resolve scientific, technical, financial, and other issues; the required use of dispute resolution mechanisms; procedural mechanisms to encourage parties to come into compliance; financial assistance to developing countries to assist their compliance; and even trade restrictions and sanctions.


The challenge of international targets and timetables is that nations usually are unwilling to agree to be bound by them under international law. Benchmarks or measurable standards of environmental performance are used only on a limited basis in international environmental law.⁷⁴ The relatively recent adoption of framework conventions for biodiversity, climate, desertification,

stratospheric ozone, and other problems masks the reality that only one convention (on stratospheric ozone) has resulted in effective and widespread use of targets and timetables.

Targets and timetables contained in other agreements, particularly plans of action adopted at international conferences, tend to lack most of these compliance-inducing mechanisms. Ordinarily, these conferences or meetings result in goals, an action plan to achieve those goals, and perhaps a statement of principles. The lack of a treaty structure makes it impossible to induce compliance through any kind of required procedure, and thus such mechanisms are not used.⁷⁵ While it is true that nations negotiate such agreements, and give their assent to these agreements at conferences, they are not subject to a ratification process and are not legally binding. They are “soft law,” not “hard” or real law. Their effect, if they have one, is primarily political, not legal.⁷⁶ Still, there are reasons to believe that non-binding agreements may work to some degree. As already suggested, the precision of even nonbinding targets and timetables sets them apart from general goals or goals without timetables. Targets and timetables are likely to have greater political importance than vaguer objectives because they make it possible to determine whether the goal has been achieved.⁷⁷ They can also be a focal point for international cooperation even when these targets and timetables are not legally binding. Targets and timetables directed at poverty, for instance, appear to have had some positive effect in reducing global poverty.⁷⁸

Finally, whether binding or nonbinding, the achievement of targets and timetables ordinarily requires some kind of institutional mechanism to monitor and ensure compliance.⁷⁹ For a treaty, this is likely to be the secretariat or administrative body for the treaty. For nonbinding agreements, there often exist agreements to meet again in five years to discuss progress, and a United Nations body may be obliged to monitor and report on efforts in the meantime.

CONCLUSION

Sustainable development will require time and concerted effort to come to fruition in the real world. But this effort is essential because there is no alternative to addressing global poverty and environmental degradation. The challenge is not to simply identify the missing pieces in the framework; the challenge is to fill them in – at the international, national, state or provincial, and local levels. Targets and timetables focus the quest for sustainability on discrete, achievable tasks, and thus should – and hopefully will – provide a means to successfully address the world’s pressing poverty and environmental challenges. 

ENDNOTES: Targets, Timetables, and Mechanisms

¹ John C. Dernbach, *Sustainable Development as a Framework for National Governance*, 49 CASE W. RES. L. REV. 1, 9 (1998) [hereinafter *Framework*].

² See generally, *Framework*, *supra* note 1, at 31.

³ See generally, *Framework*, *supra* note 1, at 49-50.

⁴ UN CONFERENCE ON ENV’T & DEV., AGENDA 21, UN Doc. A/CONF. 151.26 (1992), available at <http://www.un.org/esa/sustdev/documents>

</agenda21/english/agenda21toc.htm> (last visited Nov. 4, 2005) [hereinafter *Agenda 21*]. The participating countries also agreed to a set of twenty-seven principles, known as the Rio Declaration, to guide the implementation of Agenda 21. See U. N. CONFERENCE ON ENV’T & DEV., RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT, UN Doc. A/CONF.151/5/Rev.1 (1992), reprinted in 31 I.L.M. 874 ¶ 8.7, available at <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

ENDNOTES: Targets, Timetables, and Mechanisms *Continued on page 79*

THE MILLENNIUM CHALLENGE ACCOUNT AND THE PROGRAM ASSESSMENT RATING TOOL:

THE DIFFICULTIES OF MEASURING ACCOUNTABILITY

by Ayako Sato*

INTRODUCTION

Few people, no matter their political affiliation, would likely disagree with President George W. Bush's statement that "[t]axpayer money should be spent wisely or not at all . . ." ¹ No one wants taxpayers' dollars to go toward ineffective and inefficient programs. As such, President Bush has instituted a variety of accountability measures within his administration to ensure that taxpayers' dollars are well spent. Two of these mechanisms are the Millennium Challenge Account ("MCA") and the Program Assessment Reporting Tool² ("PART"). This article will compare and contrast the PART and the MCA indicators in hopes of identifying common problems associated with performance measurements generally.

TOOLS TO MEASURE ACCOUNTABILITY

The MCA is an U.S. initiative³ designed to address global problems such as poverty and health by promoting economic development.⁴ The Millennium Challenge Corporation ("MCC"), a government corporation led by a Chief Executive Officer and a Board of Directors ("Board") composed of senior government officials, will administer the MCA. The MCA provides assistance to needy countries in the form of grants, cooperative agreements, or contracts,⁵ and thus far, Congress has appropriated approximately \$2.48 billion to fund the MCA.⁶

However, not all developing countries qualify for MCA funding. Not only does the MCC require per capita income thresholds,⁷ but it also requires a country that receives assistance to demonstrate that it is "ruling justly, investing in [its] people, and encouraging economic freedom"⁸ by scoring above the median on half of sixteen indicators in each of the three areas mentioned.⁹ The MCA also includes an additional indicator for measuring corruption that is scored on a pass/fail basis.¹⁰ Countries must meet or exceed these indicators to obtain funding because, as President Bush stated, "[w]hen nations refuse to enact sound policies, progress against poverty is nearly impossible."¹¹ The Board will then re-evaluate those countries that meet or exceed the indicators and select the finalists that qualify for eligibility.¹² Some organizations, such as the Heritage Foundation, have lauded President Bush's efforts at holding nations accountable for the foreign aid they receive.¹³ Various individuals claim that the MCA has the potential to ensure that foreign aid money is not squandered.¹⁴ Additionally, supporters contend that the MCA may create incentives for governments that did not initially qualify for assistance to make the necessary improvements to qualify for funding in the future.¹⁵

Critics of the indicators, however, raise concerns that funding is not going to the countries that need it most, and they may

be right. For example, Bhutan, one of the countries disqualified from funding during the Fiscal Year 2004 cycle,¹⁶ had one of the lowest literacy rates among the least developed countries in the past.¹⁷ Yet, education is one of the key areas of focus for the MCA.¹⁸ Moreover, critics claim that needy countries, like Bhutan, are not qualifying for funding because the indicators are flawed, and not because these countries are incapable of managing aid assistance.¹⁹ Some of the most common complaints about the indicators are:

- *Too simplistic* – sixteen indicators to measure something as complex as national governance are inappropriate;
- *Not enough data or poor quality of data* – data available is either insufficient or too poor or outdated to accurately assess government performance;
- *Selection for assistance is arbitrary* – some countries that meet the indicator thresholds are not selected, while countries that fail to pass are selected for assistance;
- *Outcomes are difficult to measure* – each of the compacts have performance measures built in, but it is difficult to measure the project's results during the lifetime of the project, and it is equally difficult to attribute the project's success to the MCA.

Since the MCA is relatively new,²⁰ one could assume that the Bush Administration is simply struggling with a new concept of measuring performance through accountability. However, accountability measures have a long and varied history in the federal government.²¹ The Bush administration, like previous administrations, has developed mechanisms to maintain accountability in federal government programs. PART is one of these accountability measures designed to evaluate the effectiveness of federal government programs. Still, the PART suffers from the same flaws as the MCA indicators. Although it is commendable to attempt to eliminate inefficiency and ineffectiveness, a cautious approach is needed to avoid unnecessarily eliminating essential programs that help the most vulnerable in our global society.

TOO SIMPLISTIC

Developing a methodology for evaluating a system's effectiveness can be difficult, especially when applied to major programs like the MCA or PART. The PART, for example, is

*Ayako Sato is a JD candidate, May 2007, at American University, Washington College of Law.

designed to evaluate such disparate programs within the federal government as the Environmental Protection Agency's ("EPA") Drinking Water Research Program and the Department of Labor's Adult Education and Training Activities Program.²² Therefore, the methodology has to be simple enough to evaluate significantly different systems, while at the same time, complex enough to reveal inefficient and ineffective programs.

In the case of the MCA and the PART, the methodologies are so simplistic that they are often either under- or over-inclusive, or produce absurd results. For example, the MCA has sixteen indicators in three broad areas – ruling justly, investing in people, and economic justice.²³ The "ruling justly" and "economic justice" categories each have six indicators, while the "investing in people" category has four indicators.²⁴ A country must score above the median on half of the indicators in each of the categories in order to qualify for funding. However, this approach allows countries, such as China, to qualify for funding despite a poor human rights record.²⁵ This occurs because several of the indicators within a category are highly correlated. For example, as with China, a country can qualify by scoring above the median on half of the indicators relating to governance and corruption, "rendering the remaining indicators that measure political and civil rights in the governing justly area irrelevant."²⁶

The PART is no less controversial for its simple formula. The General Accounting (now Accountability) Office ("GAO")²⁷ found that it is difficult to use performance measurements in evaluating complex federal programs.²⁸ The PART evaluates various aspects of a program by rating specific performance areas using a series of Yes/No questions.²⁹ The performance areas include: (1) purpose and design; (2) strategic planning; (3) program management; and (4) results/accountability.³⁰ Funding decisions can be influenced by a poor rating in the PART

evaluation. In other words, if a program is found "ineffective" or if "results [are] not demonstrated,"³¹ the budget for that program can be slashed or the program can be eliminated altogether. To demonstrate, the Fiscal Year 2006 budget recommendations called for funding decreases for 68 percent of programs deemed ineffective, yet proposed funding increases for 62 percent of programs that rated "effective."³² Critics of the PART argue that such a simple Yes/No survey should not determine the fate of a federal program. The GAO found that the "yes/no format employed throughout most of the PART questionnaire resulted in oversimplified answers to some questions," and that the "yes/no format is a crude reflection of reality."³³

NOT ENOUGH DATA

Another failing of the MCA and the PART is lack of data, or the reliance on inaccurate or poor quality data for evaluating systems. In the case of the MCA, the governance data comes from such readily accessible and reliable sources as Gallup

International and the Price Waterhouse Coopers Opacity Index.³⁴ However, for subjective concepts, such as corruption, collecting or obtaining accurate data is difficult.³⁵ Additionally, data does not exist for some of these indicators. For example, only 87 out of 115 MCA-eligible countries had enough information on the "days to start a business" indicator, and lack of information was a problem for the indicators measuring education and health spending as a percent of gross domestic product.³⁶ The World Bank notes that some low-income countries should be "treated with special care" as data is simply lacking on some of the performance criteria.³⁷ Some countries, such as Kiribati and Sao Tome, did not qualify for funding, and the lack of data in several of the indicators may have contributed to their disqualification.³⁸

Another problem that has been identified with data is that it may be out of date and does not accurately reflect current conditions in the country. For example, the MCC used the Heritage Foundation indicator for trade policy to make selections for Fiscal Year 2005. However, the indicator was based on data that spanned from 2001 to 2003.³⁹ A difference in a few years may not seem like it would make a dramatic difference, but when dealing with developing nations "judging the performance of

the current government, rather than that of some previous administration, matters a great deal."⁴⁰ To illustrate, Bolivia, which qualified for funding under the governance indicator in November 2004, was subsequently embroiled in a political crisis that may have lowered its rating under this performance indicator.⁴¹

Poor quality data or unavailability of data has also been identified as a problem with the PART. The EPA is one federal agency that is struggling with lack of data in measuring performance. A GAO report found that the absence of environmental data has made it

difficult to assess the effectiveness of some EPA programs.⁴² This does not mean that the programs are ineffective; it simply suggests that there is insufficient data to accurately assess whether or not the programs are in fact effective. The EPA has been struggling with the issue of environmental indicators for some time. For example, the EPA has executed efforts to improve water monitoring due to the lack of reliable national data, and the EPA has continued to work on the "environmental indicators initiative" in an effort to track and report environmental conditions and trends.⁴³

SELECTION IS ARBITRARY

Both the MCA and the PART claim to reward high-performance and encourage poor performers to improve, but in practice selection is arbitrary. Nations that do not meet the selection criteria are sometimes selected, while nations that would otherwise qualify are not. For example, in one funding cycle, even though 24 countries qualified for MCA funding, only six-

A cautious approach is needed to avoid unnecessarily eliminating essential programs that help the most vulnerable in our global society.

teen were listed as eligible, and the MCC gave no explanation as to why those sixteen were selected.⁴⁴ Moreover, some countries that did not qualify for funding were selected instead. For instance, Bolivia did not meet the indicator on corruption, but somehow qualified for assistance.⁴⁵ The Board reasoned that Bolivia was reconsidered and ultimately selected based on the fact that the country was championing anti-corruption initiatives in the nation.⁴⁶

The same can be said of the PART. OMB Watch, a non-profit government watchdog organization, found that 154 programs that were recommended for budget cuts or elimination in Fiscal Year 2006 had very little to do with PART scores.⁴⁷ For example, more than two-thirds of those 154 programs never went through the PART reviews.⁴⁸ Furthermore, twenty percent of programs that received the two highest PART scores were eliminated, yet programs that received the lowest possible ratings were not cut at all.⁴⁹

These inconsistencies have raised some questions about the two methodologies. For example, critics of the MCA are concerned that nations are selected not based on need or qualification, but on their geopolitical significance to the United States. For example, Georgia's and Bolivia's selections have been questioned because funding these countries seems to be advantageous to U.S. foreign policy objectives, rather than being motivated by financial need.⁵⁰ Concerns have been raised regarding Bolivia's selection because the United States has a strong stake in Bolivia's counter-narcotics goals.⁵¹ Similarly, critics of the PART question whether programs are eliminated as a result of political motivation due to the lack of transparency in how programs are selected for an increase/decrease in funding or for elimination. OMB Watch is concerned that programs targeted to low-income and vulnerable populations are selected for PART review solely in an attempt to do away with them.⁵²

OUTCOMES ARE DIFFICULT TO MEASURE

Even when a country is selected for funding through the MCA, additional measures outlining the nature of the project ensure that contract proposals include performance measures. For example, monitoring and evaluation must be a "part of every activity for which MCA funds are used."⁵³ Monitoring and evaluation plans must include baseline data against which the activity's progress can be measured, as well as benchmarks for evaluating progress.⁵⁴ The MCA promotes the use of quantitative measures such as results, outputs, and outcomes. Projects may be terminated if they fail to meet financial or accountability standards, or if they fail to attain specific benchmarks.⁵⁵

There are several problems with using quantitative data to measure accountability. First, results are often not available during the project's lifetime. The Brookings Institution, an independent research and policy organization, found that "the real impact of any project cannot be evaluated in outcome terms until after the money has been spent" and that "benefits will continue to accrue for years after the last disbursement of project funds has been made."⁵⁶ Second, even if performance targets are met, the MCA funds may not be entirely responsible for the success, as external factors may influence project results.⁵⁷ On the other hand, often when projects do not meet their targets due to external factors, critics will still blame the MCA for funding ineffective projects.⁵⁸

The PART has also faced many of these same challenges. Recognizing these problems, the Office of Management and Budget ("OMB") has issued guidance on implementing PART reviews.⁵⁹ The OMB guidance acknowledges that results may not be achieved for many years, and suggests that agencies develop short and medium-term steps that will ultimately lead to the long-term outcome goal.⁶⁰ The guidance falls short of stating that outcomes may never be achieved and emphasizes that short-term and medium-term steps "are likely to be output-oriented, prerequisite accomplishments on the path toward the outcome goal."⁶¹ The OMB guidance also recognizes that the program may be one of many factors contributing to the desired outcome. This makes assessment difficult as to whether it is the program or an external factor that is responsible for achieving the results. One suggestion is for the PART to establish a broad outcome goal for a collection of programs and track the goal using national data.⁶² However, as previously discussed, data gaps and lack of credible and accurate data may prevent agencies from establishing a meaningful outcome goal.

CONCLUSION

Performance measures have the potential to ensure accountability. For example, in the first year of the PART, fifty percent of programs were rated as "unable to demonstrate results" but this decreased to 37 percent in Fiscal Year 2005.⁶³ Further still, many advocates of the MCA are hopeful that countries that did not initially qualify for funding will strive to make improvements so that they may qualify in the future. However, there are still significant flaws with performance measures; flaws that are serious enough to raise doubts about the suitability of such mechanisms for measuring accountability, especially when used to evaluate programs that provide aid to those in desperate need of relief.



ENDNOTES: MCA and PART

¹ President George W. Bush, State of the Union Address (Feb. 2, 2005), available at <http://www.whitehouse.gov/news/releases/2005/02/20050202-11.html> (last visited Nov. 4, 2005).

² The Office of Management and Budget released the President's Management Agenda that outlined five government-wide initiatives, and the PART used to judge the effectiveness of federal programs falls under the initiative for "Budget and Performance Integration." See generally

Office of Management Budget ("OMB"), *The President's Management Agenda*, FY2002.

³ See Millennium Challenge Corporation CEO Paul Applegarth's Presentation to African Ambassadors (Feb. 16, 2005), available at http://www.mca.gov/public_affairs/speeches/021605_African_Ambassadors.shtml (last visited Nov. 4, 2005).

ACCESS TO JUSTICE AND THE RIGHT TO ADEQUATE FOOD:

IMPLEMENTING MILLENNIUM DEVELOPMENT GOAL ONE

by Marc J. Cohen and Mary Ashby Brown*

INTRODUCTION

This paper explores the added value of a justiciable right to adequate food for food security and sustainable development. The world is not on track to meet the Millennium Development Goal (“MDG”) hunger target, so new approaches are required. We examine three case studies in this article involving the use of legal institutions to advance the right to adequate food and find that the “rights-based approach to development” is a promising new paradigm.

GLOBAL HUNGER REDUCTION: LOFTY GOALS, DISAPPOINTING TRENDS

The first MDG adopted by the UN General Assembly in 2000 is to “eradicate extreme poverty and hunger,” with a target of “[reducing] by half the proportion of people who suffer from hunger.”¹ The 1996 World Food Summit (“WFS”) had similarly agreed on “reducing the number of undernourished people to half their present level no later than 2015.”²

The reality of the current state of global hunger contrasts starkly with these solemn pledges. According to the Food and Agriculture Organization of the United Nations (“FAO”), 815 million people in developing countries (seventeen percent of the developing world’s population) live in food insecurity, lacking assured access to the calories necessary for active and healthy lives.³ Vitamin and mineral deficiencies afflict over four billion people, reduce school and work performance, and adversely affect public health. Five million malnourished preschool children die annually, and those who survive face impaired mental and physical development.⁴

The overall proportion of food-insecure people in developing countries has dropped since the early 1990s. However, this reduction has slowed as the number of food-insecure people in developing countries increased by twenty million during the second half of the 1990s.⁵ With business as usual, there is no possibility of achieving the 2015 hunger reduction targets.⁶

THE RIGHTS-BASED APPROACH TO DEVELOPMENT

The *rights-based approach* is a new development paradigm that contrasts with conventional approaches to development.⁷ The conventional approach focuses on interventions and service delivery to meet human needs.⁸ It often regards beneficiaries as passive objects of development. By comparison, the rights-based approach emphasizes the realization of internationally recognized human rights that impose obligations on states and empowers rights-holders to assert their claims vis-à-vis state authorities.⁹

The rule of law is a key principle of the rights-based approach. Not only must a legal framework protect and promote

human rights, but rights-holders must have access to competent, impartial, and independent processes that can adjudicate disputes and rule on claims. Put simply, meaningful rights must be enforceable.¹⁰

THE RIGHT TO FOOD AND JUSTICIABILITY

The 1948 Universal Declaration of Human Rights provides both for a right to food and the enforceability of this right through judicial means.¹¹ The International Covenant on Economic, Social, and Cultural Rights (“ICESCR”) of 1966 spells out the rights to adequate food and freedom from hunger.¹² In 1996, the WFS reaffirmed the right to food.¹³ Although such declarations do not create binding international obligations (“hard law”), as statements of international consensus, they do offer guidance for appropriate action (“soft law”).¹⁴

The WFS Plan of Action calls upon the UN system “to better define the rights related to food...and to propose ways to implement and realize these rights..., taking into account the possibility of formulating voluntary guidelines for food security for all.”¹⁵ In response, the UN Committee on Economic, Social, and Cultural Rights (the monitoring body of the ICESCR) adopted General Comment 12 (“GC 12”) in 1999.¹⁶ While the Committee’s General Comments do not create legal obligations, legal experts consider them to have “particular authority.”¹⁷ In addition, GC 12 is unambiguous on justiciability: “Any person or group who is a victim of the violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels.”¹⁸

In 2004, an Intergovernmental Working Group established under FAO auspices agreed to comprehensive voluntary guidelines on implementing the right to adequate food.¹⁹ These guidelines recommend creating “[a]dministrative, quasi-judicial, and judicial mechanisms to provide adequate, effective, and prompt remedies accessible, in particular, to members of vulnerable groups . . .”²⁰

* Marc J. Cohen is a Research Fellow in the Food Consumption and Nutrition Division of the International Food Policy Research Institute in Washington, DC. His current research focuses on policy processes relating to food and nutrition security, with a specific emphasis on the role of legislation and legal systems, global humanitarian aid policy, conflict and food security, post-crisis food security, and the right to adequate food. Cohen received his Ph.D. in political science from the University of Wisconsin-Madison. He is an adjunct faculty member in the International Development Program at the Paul H. Nitze School of Advanced International Studies, The Johns Hopkins University, where he teaches rural development. Please direct any comments and questions to m.j.cohen@cgiar.org.

Mary Ashby Brown is a JD candidate, May 2007, at American University, Washington College of Law.

OBJECTIONS TO JUSTICIABILITY OF THE RIGHT TO ADEQUATE FOOD

Critics argue that implementing justiciable economic, social, and cultural (“ESC”) rights and the right to adequate food in particular would be costly, whereas the realization of civil and political rights entails minimal costs.²¹ However, the realization of civil and political rights, *e.g.*, holding periodic free and fair elections, actually requires substantial public expenditures.

Moreover, the costs of establishing institutions are distinct from the public expenditures needed to implement programs. The legal institutions needed to enforce human rights facilitate sustainable development and good governance.²² Legal institutions are also needed to enforce contracts, uphold property rights, and prevent corruption.²³

Some critics believe that implementation of the right to adequate food requires that governments provide food to all their citizens, irrespective of the availability of resources.²⁴ However, the human rights framework – to respect, protect, and provide – requires that states refrain from violating human rights and undertake measures to prevent other parties from interfering with those rights.²⁵ Therefore, fulfilling the right to food does not translate into the direct provision of food to all citizens but, rather, describes a broader commitment by the state to create an institutional framework in which citizens can achieve freedom from hunger.

Another objection characterizes the focus on legally enforceable rights as a diversion from achieving food security. For example, in its *Action Plan* on the follow up to the World Food Summit, the U.S. government contends that “the best route to food security, particularly in the most food-insecure countries, is not through legal instruments, but through adoption of sound policies that expand food production, encourage economic development, and improve access to food.”²⁶ Yet, those same policies are needed for the progressive realization of the right to adequate food.²⁷ Moreover, legally binding rights to food can contribute to world food security by prescribing sound national and international policies.²⁸ To explore how a justiciable right to adequate food works in practice, we look at the experiences of India, South Africa, and Brazil.

CASE STUDIES OF JUSTICIABILITY OF THE RIGHT TO ADEQUATE FOOD

INDIA

Hunger and malnutrition in India are severe, with 221 million people (21 percent of the populace) considered food-insecure.²⁹ Half of all Indian children are chronically undernourished.³⁰ Hunger persists amid plenty: many Indians cannot afford food, despite the huge cereal surpluses of recent years.³¹

India’s courts have sought to hold the central and state governments accountable for this stark contradiction. Constitutional jurisprudence provides for the justiciability of ESC rights based on “the right to life.”³² This constitutional right was central to the case of *People’s Union for Civil Liberties (“PUCL”) v. Union of India*.³³ In mid-2001, existing public food and employment programs failed to provide food to destitute people in the impoverished and drought-stricken state of Rajasthan. PUCL petitioned the Supreme Court of India to compel the government to respond to the hunger emergency.³⁴

The Court agreed that “it was the primary responsibility of the Central and State governments to ensure that . . . food grains reached the starving people.”³⁵ Additionally, the Court held that a shortage of funds could not excuse the government’s failure to fulfill obligations.³⁶ Although the case still awaits final judgment, interim court orders have directed the central and state governments to provide food to vulnerable groups through existing programs and enroll unemployed, food-insecure people in food-for-work programs.³⁷ The interim orders have elevated the benefits of public food programs to *legal entitlements*. The case also sparked creation of the Right to Food Campaign, which seeks to foster greater public awareness of the right to food in poor areas.³⁸

SOUTH AFRICA

Although South Africa is food-secure in aggregate terms, 35 percent of all households (14.3 million people) are classified as food-insecure.³⁹ The post-apartheid government’s Integrated Food Security Strategy focuses on both short-term food assistance and long-term capacity building, and intends to implement a constitutional right to food.⁴⁰

The 1996 Constitution makes explicit that the state is obligated to respect, protect, and fulfill human rights. Lawmakers and lobbyists in South Africa were divided regarding the inclusion of ESC rights in the Constitution, concerned that the inclusion of these rights would create expectations by the people that could not be fulfilled. However, the inclusion of ESC rights was strongly supported by South African president Nelson Mandela:

The key . . . to the protection of any minority is to put core civil and political rights, as well as some cultural and economic rights beyond the reach of temporary majorities, and to guarantee them as fundamental individual rights. . . . A simple vote, without food, shelter, and health care, is to use first generation rights as a smokescreen to obscure the deep underlying forces, which dehumanize people. It is to create an appearance of equality and justice, while by implication socio-economic inequality is entrenched. We do not want freedom without bread, nor do we want bread without freedom.⁴¹

The South African Constitution recognizes the justiciability of the right to food, and requires that the state take reasonable measures to achieve its progressive realization.⁴² Like the Indian Constitution, South Africa’s Constitution includes a provision for the right to life.⁴³ The Constitutional Court has upheld the justiciability of several ESC rights; however, thus far, litigation has not addressed the right to food.

Cases have focused on housing (*Government of the Republic of South Africa and Others v. Grootboom and Others*, 1999)⁴⁴ and health (*Treatment Action Campaign (“TAC”) v. Minister of Health*, 2002).⁴⁵ In both cases, the court’s opinion centered on whether the government acted “reasonably” in designing, implementing, and budgeting for programs to address the progressive realization of these rights; this determination was held to outweigh the availability of resources.⁴⁶

In *TAC v. Minister of Health*, the court ordered the government to provide drugs “without delay” to public hospitals and

clinics when medically indicated and to take reasonable measures to provide testing and counseling.⁴⁷ This case not only assures poor people access to HIV/AIDS treatment, but also establishes a conceptual framework for court review and enforcement of ESC rights, including the right to food, in South Africa and elsewhere. The Court faulted the government for not having a plan to address the transmission of HIV/AIDS to infants, since formulation of a plan facilitates resource mobilization.⁴⁸

Despite the court's focus on the state's duty to take "reasonable" actions to realize ESC rights, the reality in South Africa is that unreasonable administrative and bureaucratic hurdles exclude many people from public benefit programs. Critics argue that a framework law on the right to food would provide a firmer political commitment and a comprehensive legislative response to rectify current fragmented, poorly coordinated policies, programs, and legislative measures.⁴⁹

BRAZIL

According to FAO, 15.6 million Brazilians (nine percent of the population) are food insecure.⁵⁰ Brazilian government data indicate that 44 million low-income people are vulnerable to food insecurity.⁵¹ As in India and South Africa, food insecurity is not primarily due to lack of availability, with farm output growing rapidly during the 1990s.⁵²

Unlike India and South Africa, Brazil follows the civil law tradition.⁵³ The country ratified the ICESCR in 1992, and the Constitution automatically incorporated the treaty into national law. Brazil's Constitution also guarantees "inviolability of the right of life" and a 2003 amendment explicitly recognizes the right to food.⁵⁴

Although Brazilian courts have tended to defer ESC rights to the executive and legislative branches, the country's "Public Civil Suit Law" permits municipalities and non-governmental organizations ("NGOs"), for example, to sue government agencies, in order to advance individual or collective ESC rights. Suits have secured access to health care, but public prosecutors have yet to file on the right to food.⁵⁵

Since 1988, state and federal prosecutors have also used public civil "inquiries" to protect and promote human rights. These allow prosecutors to investigate violations of human rights and submit evidence to courts for inquiry. Through this mechanism, public prosecutors are able issue recommendations to government agencies on human rights issues.⁵⁶

A number of these inquiries have focused on the right to food. In 2002 and 2003, prosecutors recommended that the Ministry of Health expand food assistance to children uncov-

ered by the state's *Bolsa Alimentação* program, which provides funds to nutritionally vulnerable families in exchange for participation in health and nutrition education. Public prosecutors also pressed the federal government to extend school feeding programs to 2.5 million children excluded due to mismanagement. In 2003, federal prosecutors used a public civil inquiry to join with civil society organizations to monitor policies and expenditures aimed at realizing the right to food.⁵⁷

JUSTICIABILITY VS. POLITICAL MOBILIZATION

In all three cases discussed above, civil society campaigns (such as the Right to Food Campaign, the Treatment Action Campaign, and a broad array of Brazilian civil society organizations) and public interest lawyers (including Brazil's public prosecutors) played an important role in the efforts to protect and promote the right to food and other ESC rights. Often, such groups pursue other means instead of or in addition to litigation, including legislative lobbying, demonstrations, and public awareness activities.

Political mobilization around the right to adequate food can prove especially important in the absence of justiciability, well-functioning legal systems, and in difficult political circumstances. For instance, in Chile during the Pinochet dictatorship, societal pressure prevented the government from abolishing public nutrition assistance.⁵⁸ Obviously, where an independent and effective judiciary exists, a reliance on courts offers an effective and less risky means for redressing rights-related grievances. Even where the rule of law prevails, other public action is likely needed to complement reliance on the justice system.

CONCLUSION

All three country cases examined here illustrate that in very different political contexts and levels of development, constitutional, economic, social, and cultural rights have helped promote poor people's right to adequate food and expand access to public social assistance. In India and South Africa, single cases had far-reaching effects. In all three countries, the existence of a thriving public interest bar proved crucial in assuring poor people's access to justice.

Effective access to legal institutions facilitates the inclusion of marginalized people in the development process, and provides citizens with a means to file actionable grievances against the government for the failure to progressively meet economic, social, and cultural rights. The rights-based approach therefore offers added value in the quest for food security and sustainable development, as well as a very promising tool for achieving the MDG hunger target.



ENDNOTES: The Right to Adequate Food

¹ UNITED NATIONS, MILLENNIUM DECLARATION, G.A. Res. 55/2, U.N. Doc. A/Res/55/2 (Sept. 8, 2000), available at <http://www.un.org/millennium/declaration/ares552e.htm> (last visited Nov. 1, 2005); see also UNITED NATIONS, Press Release, *World Leaders Adopt United Nations Millennium Declaration at Conclusion of Extraordinary Three-day Summit*, UN Doc. GA/9758 (Sept. 8, 2000), available at <http://www.un.org/News/Press/docs/2000/20000908.ga9758.doc.html> (last visited Nov. 1, 2005); UN

Millennium Development Goals, What are the Millennium Development Goals? <http://www.un.org/millenniumgoals/index.html> (last visited Nov. 1, 2005); UNITED NATIONS MILLENNIUM PROJECT, HALVING HUNGER: IT CAN BE DONE, Summary version of the report of the Task Force on Hunger (2005) (prepared by the Earth Institute at Columbia University),

WATER PRIVATIZATION AND OBSTACLES TO ACHIEVING MILLENNIUM DEVELOPMENT GOAL SEVEN'S TARGETS FOR SUSTAINABLE DRINKING WATER


by Maria Vanko*

Privatizing water resources in developing countries calls into question whether Goal Seven of the Millennium Development Goals (“MDGs”) will be met. Under this goal to ensure environmental sustainability, the number of people living without sustainable access to safe drinking water and basic sanitation should be halved by 2015. Meeting this target would connect 350 million people to safe drinking water and 650 million people to basic sanitation services.¹ At any given time, nearly half of the developing world is afflicted with one or more diseases associated with the inadequate provision of water and sanitation.² Access to these infrastructures will not only enable meeting environmental sustainability and health targets, but will speed the achievement of all eight goals, including poverty reduction, disease eradication, and gender equality.³

Water privatization failures across the developing world highlight the problem of placing profits above public health and access concerns. For example, militant uprisings in Cochabamba, Bolivia in 1999 occurred after the private water provider implemented a 300 percent fee increase. In 2003, tariffs increased 700 percent while the water operator’s negligence led to cholera outbreaks in West Manila, Philippines.⁴ Increased prices make safe water unaffordable for vulnerable populations, forcing families to make trade-offs between water, schooling, food, and healthcare.⁵ Private industry is also less likely to participate in areas where recovery of their investment is riskier.

Strong worldwide, public resistance to privatization has made a substantial impact on political leaders’ willingness to champion water privatization and also on international lenders’ attempts to tie aid to the privatization of state resources.⁶ The World Bank’s position that the private sector is more efficient than public-run utilities has shifted: a recent study in Asia concluded that there is only a marginal difference between public and private sectors in service efficiencies.⁷ In an effort to support innovative, grassroots initiatives in solving development issues, the World Bank is currently holding a competition to seek new ideas in providing water and sanitation services.⁸

Generalized alternatives to privatization will unlikely be developed because local conditions and demands vary; however, a focus on the public interest is crucial in implementing successful reforms.⁹ Sustainable and successful water utilities typically share characteristics of accountability, reinvestment of profits to expand connectivity, income differentiated tariff structures, and government political or financial sup-

port.¹⁰ Because the water and sanitation targets are so essential to meeting all eight of the MDGs, exploring alternatives to the private provision of water and sanitation services is crucial. A focus on privatization alone presents a multitude of risks, and calls into question whether meeting the developing world’s growth and public health needs is consistent with the full-cost recovery objectives of the private sector. 

ENDNOTES:

- ¹ See UNITED NATIONS, INVESTING IN DEVELOPMENT: A PRACTICAL PLAN TO MEET THE MILLENNIUM DEVELOPMENT GOALS 1 (2005) available at <http://www.unmillenniumproject.org/documents/overviewEngLowRes.pdf> (last visited Oct. 24, 2005).
- ² See e.g., Sara Jane Marshall, *Flagging Global Sanitation Target Threatens Other Millennium Development Goals*, 82 BULLETIN OF THE WORLD HEALTH ORGANIZATION 234, 234 (Mar. 2004), available at <http://www.who.int/bulletin/volumes/82/3/News.pdf> (last visited Oct. 25, 2005).
- ³ See WORLD HEALTH ORGANIZATION, *International Decade for Action: Water for Life, 2005–2015*, 80 WEEKLY EPIDEMIOLOGICAL RECORD 193, 195 (June 3, 2005), available at <http://www.who.int/wer/2005/wer8022.pdf> (last visited Oct. 25, 2005).
- ⁴ See Sarah Grusky, *Privatization Tidal Wave: IMF/World Bank Water Policies and the Price Paid by the Poor*, MULTINATIONAL MONITOR, Sept. 2001, available at <http://multinationalmonitor.org/mm2001/01september/sep01corp2.html> (last visited Oct. 24, 2005).
- ⁵ See e.g., John R. Luoma, *Water for Profit*, MOTHER JONES, Nov./Dec. 2002, available at http://www.motherjones.com/news/feature/2002/11/ma_144_01.html (last visited Oct. 28, 2005).
- ⁶ See David Hall, et al., *Public Resistance to Privatization in Water and Energy*, 15 DEV. PRAC., 286, 287 (June 2005), available at <http://www.psiu.org/reports/2005-06-W-E-resist.pdf> (last visited Oct. 24, 2005).
- ⁷ See generally Antonio Estache & Martin A. Rossi, *How different is the efficiency of public and private water companies in Asia?* 16 WORLD BANK ECON. REV. 139 (June 2002).
- ⁸ See Press Release, THE WORLD BANK, World Bank Seeks Best Ideas for Water, Sanitation and Energy Projects, (Oct. 3, 2005) at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTWRM/0,,contentMDK:20669151~menuPK:337246~pagePK:64020865~piPK:149114~theSitePK:337240,0.html> (last visited Oct. 24, 2005).
- ⁹ Estache & Rossi, *supra* note 7, at 296.
- ¹⁰ WORLD DEVELOPMENT MOVEMENT, HEADING FOR FAILURE: HOW WATER PRIVATIZATION THREATENS THE MILLENNIUM DEVELOPMENT GOALS, at 12 (Sep. 2005), available at <http://www.wdm.org.uk/resources/briefings/general/failure.pdf> (last visited Oct. 10, 2005).

*Maria Vanko is a J.D. candidate, May 2008, at American University, Washington College of Law.

THE MILLENNIUM DEVELOPMENT GOALS, AID TARGETS, AND THE COSTS OF OVER-EXPECTATIONS

by Michael A. Clemens, Charles J. Kenny, and Todd J. Moss*

INTRODUCTION

In September 2000 at the United Nations, 147 presidents, prime ministers, and monarchs—the largest-ever gathering of heads of state—unanimously adopted the Millennium Declaration, committing themselves to a series of international development objectives to be reached by 2015.¹ Known since 2001 as the Millennium Development Goals (“MDGs”), these eight goals are widely cited as the primary yardstick against which advances in international development efforts are to be judged.² The official MDG website says that the goals “have been commonly accepted as a framework for measuring development progress.”³

After the MDGs were established, a priority became calculating what kinds of resources and actions would be necessary to reach them. There are now several “costing” studies, estimating how much money would be required to reach the goals. In addition to other conditions, such as higher economic growth and the improved economic policies, these studies have concluded that something in the range of \$40-70 billion in extra resources each year will be necessary. Fifty billion dollars is the most commonly cited figure for new annual aid requirements.

Nearly five years after establishing the MDGs, it appears that the global goal of halving poverty may soon be reached because of rapid progress by the two population giants of India and China.⁴ However, it appears almost certain that the majority of developing countries will not meet the country-level poverty targets set by the Millennium Declaration, nor many of the other goals. Of the 47 African countries, 42 are considered “off track” for at least half of the targets and twelve are “off track” for all targets. Meeting the goals for the majority of country indicators would require more than doubling the rate of progress.⁵ For instance, Barbara Bruns, Alain Mingat, and Ramahatra Rakotomalala estimate that 86 out of 155 countries are at risk of not achieving the goal of universal primary education.⁶ Twenty-seven of these countries are not even expected to break the fifty percent completion threshold by 2015. These forecasts exclude the sixteen developing countries with no data—all of which are likely to have extremely low indicators. In the 2003 *Human Development Report*, the United Nations Development Programme estimates that, on current rates of progress, sub-Saharan Africa would not meet the hunger, primary education, and child mortality targets for at least another century.⁷

This apparently bleak state of affairs is already leading to complaints that the rich countries are not living up to their end

of the MDG bargain.⁸ The eighth goal commits rich countries to a global partnership for development, wherein they promise to allow greater trade access, reduce debts, and increase aid. Although there has been substantial progress in debt reduction, rich country trade policies have not significantly changed to be more favorable to developing countries, notably on agricultural market reform. Furthermore, the estimated levels of mobilized resources required have not been forthcoming from donors. Official development assistance (“ODA”) from the main international donors⁹ totaled \$53 billion in 1999, and this figure rose to just \$57 billion in 2002 and \$79 billion in 2004, far from the doubling of aid called for by a range of costing studies. If many of the MDG targets are formally missed in 2015, will we be able to point to the failure of donors to provide resources as the main culprit?

This article discusses the links in the chain of causality between increased aid flows and attaining the MDGs, and suggests that, due to several caveats, the MDGs are unlikely to be reached regardless of new aid flows. The article examines several specific goals to highlight some of these issues. In each case, it appears that there are limits on the role for increased financing to accelerate trends, and many countries are very likely to miss the MDG targets, regardless of rapid progress. There may, in fact, be costs to over-expectations and the manufacture of “failures” to meet the MDGs.

HOW THE MDGS HAVE BEEN INTERPRETED

From the beginning, the MDGs were interpreted as the need for greater donor financing.¹⁰ The 1990 OECD DAC development policy review, which gave birth to the MDGs, stated bluntly, “Development costs money . . . the high-income countries need to supply more aid.”¹¹ The United Nation’s Monterrey Consensus proclaimed that “a substantial increase in [ODA] and other resources will be required if developing countries are to achieve the internationally agreed development goals.”¹²

* Michael Clemens (mclemens@cgdev.org) and Todd Moss (tmoss@cgdev.org) are Research Fellows at the Center for Global Development. Charles Kenny (ckenny@worldbank.org) is a Senior Economist at the World Bank. The authors thank Alicia Bannon for excellent research assistance, and Colin Bradford, Bill Cline, Kim Elliot, Maureen Lewis, Steve Radelet, David Roodman, Markus Scheuermaier, Peter Timmer, Kelly Tobin, Jeremy Weinstein, and John Williamson for helpful comments on an earlier draft. All judgments, opinions, and errors are those of the authors alone and do not represent the views of the Center for Global Development, the World Bank, or either of their respective staffs or boards of directors, nor the countries that the Executive Directors of the World Bank represent. A longer version of this article is available at <http://www.cgdev.org/content/publications/detail/2749>.

Several efforts have been made to estimate the cost to achieve the MDGs. A 2001 study led by former Mexican President Ernesto Zedillo and known as the “High-level Panel on Financing for Development”¹³ estimated that reaching the MDGs would require an additional \$50 billion per year in ODA, plus three billion dollars more in humanitarian aid, and about fifteen billion dollars more for “global public goods.” This brings the total of additional resources to at least \$68 billion, or slightly more than double the current levels of aid. A second widely cited study by Shantayanan Devarajan, Margaret J. Miller, and Eric V. Swanson of the World Bank uses two estimates for costing the MDGs.¹⁴ First, it calculates the additional resources necessary to increase economic growth so as to reduce income poverty. For this it suggests a “financing gap” of \$54-62 billion each year. Second, it estimates the cost of meeting specific goals in health, education, and environment by using country-specific unit costs and then multiplying by the uncovered population. Through this method they find that \$35-75 billion more per year is needed. Based on these two methods, this article concludes that ODA increases in the range of \$40-70 billion are required. Again, this is an approximate doubling of official aid flows, roughly confirming the Zedillo estimate. A series of other papers have also tried to quantify the costs of meeting the MDGs for particular regions, countries, or for meeting an individual goal. Of note are the various estimates for costing universal primary education or Education for All (“EFA”), including nine billion dollars per year¹⁵ and between ten and fifteen billion dollars,¹⁶ respectively.

Most of these costing studies are careful to clarify that the resulting estimates are imprecise and that several caveats apply to their conclusions. The two most commonly cited assumptions, and perhaps the most important, are: (1) the policy environment within developing countries considerably improves; and (2) current bottlenecks and capacity constraints are substantially relieved. Regarding policies, the Zedillo study, for example, assumes that recipients are doing “what’s necessary” to improve policies. Similarly, Alain Mingat, Ramahatra Rakotomalala, and Jee-Peng Tan, in looking at the costs associated with reaching universal primary education for 33 African countries, state that “the implicit assumption is that countries would reform their education sector policies as needed to ensure that resources are used to offer quality services in a cost-efficient manner.”¹⁷ The Devarajan study also explicitly leaves aside the question of developing countries’ capacity to spend aid effectively.

Despite the careful qualifications included in many of these studies, many in the policy, advocacy, and media world have inappropriately focused attention on the bottom line figure: \$50 billion more in aid is needed to achieve the MDGs. The misuse and misinterpretation of the costing studies has added to the impression that resources and aid flows are the critical or even sole determinant of development outcomes.

GOAL ONE: HALVING POVERTY

The first MDG is to halve the 1990 poverty headcount by 2015. On a global scale, this goal is very likely to be reached,

almost entirely because of poverty reduction in India and China.¹⁸ At the same time, the majority of countries appear unlikely to halve poverty by 2015. In addition, it is doubtful that increased aid will sufficiently accelerate growth rates to meet the poverty reduction target. Most of the costing studies use the “financing gap” to calculate the additional aid required for meeting growth targets, but this approach is problematic and raises further doubts about the estimates.

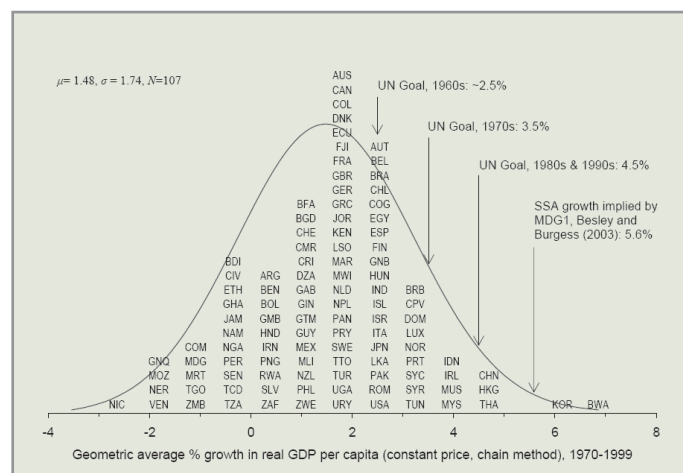
Economic growth is central to the poverty reduction goal because it is the only source of increased income for the poor that can be (comparatively) rapidly achieved. Poor people in developing countries can become wealthier either through receiving a greater share of existing national income (redistribution of wealth from rich to poor) or a similar share of a greater national income (equitable economic growth). However, it is historically very rare to see rapid changes in income inequality (up or down) over time, and so those countries that have achieved rapid and substantial poverty reduction have done so mainly through economic growth.¹⁹ To achieve meaningful poverty reduction, economic growth rates will have to accelerate in the countries where the poor reside.

The World Bank suggests that the typical African economy will need to grow on average at least seven percent for the next fifteen years in order to halve poverty rates.²⁰ This compares to an average regional growth rate of just 2.4 percent for the past fifteen years. High rates of growth are unusual for Africa as well as for the world as a whole. Between 1985 and 2000 only five countries managed to sustain a seven percent growth average.²¹

Figure 1 reveals the stark contrast between UN goals and performance in least developed countries (“LDC”) growth, measured by the Penn World Table. The UN General Assembly resolutions declaring the second and third “development decades”—the 1970s and 1980s—gave explicit goals for average real annual growth in GDP and GDP per capita in developing countries: 3.5 percent and 4.5 percent, respectively. In both cases, population growth was assumed to be 2.5 percent per year.

The UN declarations for the first and fourth “development decades”—the 1960s and the 1990s—only give targets for GDP growth, but we can approximate the implied GDP per capita

Figure 1: Hope springs eternal: Various growth goals compared to growth performance.



growth rate by assuming roughly the same rate of population growth of 2.5 percent. This means that the First Development Decade goal of five percent GDP growth implies roughly 2.5 percent in per capita growth, and likewise implies that the Fourth Development Decade goal of seven percent in GDP growth implies 4.5 percent in per capita GDP growth. Comparing all of these targets to actual LDC performance in the latter three decades of the twentieth century shows an arresting pattern. Every decade or two since the 1960s, the UN has increased its goal for developing country growth by one percent while growth in LDCs has not changed much. This “goal inflation” has, with the MDGs, arrived at the point where expectations of LDCs lie at the very extreme of the distribution. Decades after the first round of goals, we still do not know how to turn Zambia into Botswana, nor how to turn Laos into Korea.

The expectation that unusually rapid growth rates might now be achieved more widely is based on two assumptions: (1) that policy changes will foster growth; and (2) that increased aid in the presence of those good policies will catalyze faster growth. There are problems with both of these assumptions, however. Further caution is required regarding the link between increased donor assistance and higher economic growth. This assumption underlies all of the costing studies that use the financing gap model for estimating how much aid will be needed to reach certain growth targets. These estimates start from a measurement of poverty-income elasticity and current growth rates, which suggests a “growth gap”—the rate at which the economy must grow to see the desired reduction in the poverty headcount—or in the case of reaching the poverty MDG, to halve the poverty ratio by 2015. This approach then uses the incremental capital output ratio (“ICOR”) to calculate the level of investment required to reach the growth levels, and then subtracts domestic savings to get the external financing gap—or the amount of required aid. The problem is that, in practice, the financing gap model does not appear to work.²² As one example, William Easterly demonstrates in a 1999 study that had the financing gap approach worked as expected over the period 1960-1994, Zambia’s per capita income would have been \$20,000, or 33 times the actual figure of about \$600.²³

One recent and more positive contribution to the aid and growth literature is the work of Craig Burnside and David Dollar.²⁴ This highly influential study has been used to make the case that aid can lead to growth under the right circumstances—including the policy environment assumed by many of the costing studies. The results of the Burnside and Dollar study appear to be somewhat fragile—the results tend to weaken when changing the time period, adding new country data, or altering the definitions of “aid” or “good policies.”²⁵ Robert Cassen’s conclusion some ten years ago still seems to hold:

Inter-country statistical analyses do not show anything conclusive—positive or negative—about the impact of aid on growth. Given the enormous variety of countries and types of aid this is not surprising.... If such a relationship does not emerge overall, it only shows the unexciting conclusion that aid may or may not be strongly

related to growth, depending on circumstances.²⁶

More recently, Michael Clemens, Steve Radelet, and Rikhil Bhavnani have found striking evidence of a positive average effect of development aid on growth, once the type of aid analyzed is matched to the time horizon of its expected growth effect.²⁷ While this effect is clear on average, it varies greatly by country and its magnitude is limited to a certain range—two reasons to question whether even unlimited aid could cause a particular high level of growth in any given country.

It seems plausible to assume that the relationship between aid and growth in the presence of good policies holds, at least under some circumstances. Does this suggest that significant increases in aid are likely to help meet the poverty MDG? The answer is still uncertain. This is because most low-income countries with high levels of poverty either have poor policies and weak institutions (and thus are assumed to be unable to use additional aid effectively) or already receive considerable amounts of external assistance. This second factor may be a problem, because even work that accepts a link between aid and growth finds that, above a certain level of aid, the relationship begins to break down.²⁸ Many poor countries thought to have “good policies” already receive substantial aid. Many top-performing countries—such as Ghana, Ethiopia, Uganda, Nicaragua, Honduras, Burkina Faso, and Tanzania—receive aid flows well above ten percent of GDP. Were total ODA levels to be doubled, as called for in the costing studies, the countries that are perhaps best able to absorb large aid increases are India and China, which currently receive minimal aid (0.36 percent and 0.13 percent of GDP, respectively). However, these two countries are both considered “on track.”²⁹ The MDGs do not change the oft-noted irony of aid: those that need it most are frequently the ones least able to use it effectively.

REACHING THE SOCIAL SECTOR GOALS

We turn now to the social sector MDGs. There is already a large literature on the complex relationships between conditions, interventions, and outcomes, but this appears to have been somewhat neglected in public discussion of the MDGs. For example, most health or education variables are quite closely related to income.³⁰ However, studies have shown that over time, progress on these indicators is not correlated with the rate of growth in that country.³¹ Given this, it may be difficult to considerably accelerate progress through policy changes or alteration in resources.

Adding to the complexity of the causal chain between expenditures and outcomes is the fact that certain sector interventions can have impacts on other sector outcomes. Michael Kremer and Edward Miguel, for instance, found that de-worming programs had a strongly positive impact on school attendance in Kenya.³² Gustav Ranis and Frances Stewart, who found that health expenditures appeared to have little or no impact on life expectancy, suggest that increased female primary enrollment did.³³

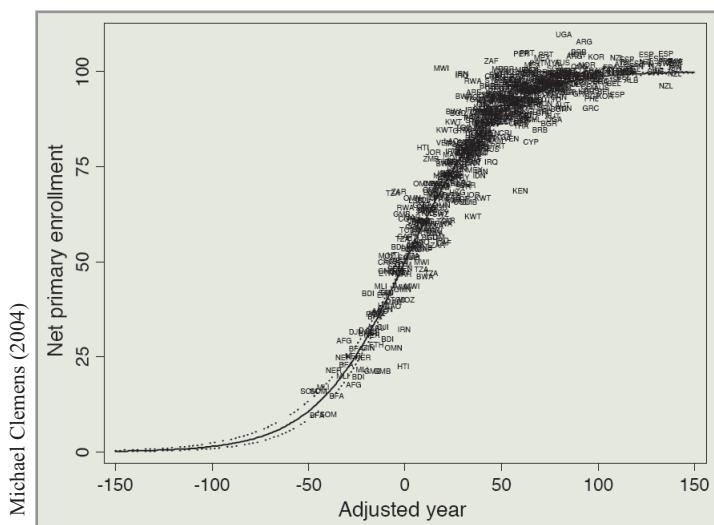
All of this suggests that: (1) additional aid may not be the most important factor in improving social outcomes; (2) sectoral distribution of aid to maximize progress on any particular social

MDG is not clear; (3) unit-cost approaches utilized in costing studies may be dramatically misleading; and (4) “best practices” may not be easily exportable because they are dependent on a range of determining factors that may be difficult to replicate. Of course, some of the costing study authors have suggested such problems themselves, but this has not stopped the widespread misinterpretation of their work. To better illustrate these arguments and the weaknesses in the costing approach to the MDGs, we turn now to the specific social sector goals and the historical record, focusing mainly on the second MDG of achieving universal primary education and, briefly, touching on the other goals.

GOALS TWO AND THREE: UNIVERSAL COMPLETION OF PRIMARY SCHOOL AND GENDER EQUALITY IN EDUCATION

Over the decades, rates of primary enrollment and completion have risen nearly everywhere—even in many of the very poorest countries—and they have risen at remarkably uniform rates. Figure 2 gives an overview of what happened to enrollments between 1960 and 2000. The figure answers the following question: If we were to make the assumption that the growth

Figure 2: Uniformity in the increase of net primary enrollments, 1960-2000.



of primary enrollment across time in all countries followed the same pattern, based on one particular S-shaped curve (or “logistic” curve), what would that curve look like? The figure takes the path that each country followed during those four decades, and lines up each country individually so that, if following that single curve, it would have hit the fifty percent enrollment mark in the same year, that is, “adjusted year” zero.

Two things jump out from the graph. First, our assumption is not that bad; countries’ idiosyncratic paths from low to high enrollment cluster remarkably closely around a single S-curve, whose slope at the halfway mark (or “transition speed”) is about 0.04. There is variation around the curve, but remarkably lit-

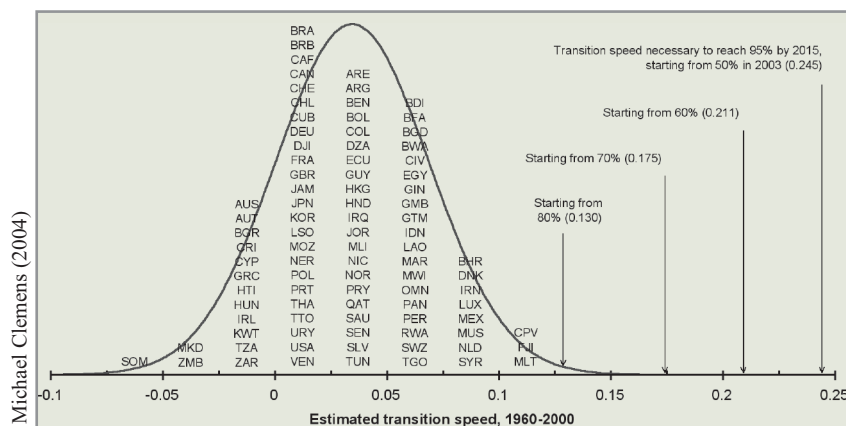
tle given that the countries there include tropical and arctic, rich and poor, socialist and capitalist, war-torn and peaceful. Second, the slope of the curve, or the “typical” transition speed from low to high enrollment, is low compared to growth rates required to meet the MDG target. While the extension of mass schooling in the latter half of the twentieth century was vast, it also took a long time. If it started at fifty percent enrollment, the typical country, whether rich or poor, would have risen to 70 percent after 22.3 years, 80 percent after 36.4 years, and 90 percent after 57.7 years.

Figure 3 shows that for the 90 countries for which we have data—representing a very broad range of wealth and institutional, political, and geographic conditions—no country has a transition speed above 0.13, the rate required to increase enrollment from 80 percent to 95 percent over a fifteen year period. There are 38 countries in this data set that have 2000 enrollment rates below 80 percent. For these countries, and others for which we do not have data, reaching 95 percent enrollment by 2015 (still short of the MDG target) will require historically unprecedented rates of progress.

It appears unlikely that many countries will even manage to approach the 0.13 transition rate. One reason for, or at least a related phenomenon to, the strong historical determinism of primary enrollment growth rates is the strong relationship between parental primary completion and child enrollment. This correlates with more than ten times the amount of cross-country variation in transition speeds than does education spending. This suggests a significant “demand side” element to primary education, with wealthier, educated parents far more willing to send their children to school. Deon Filmer estimates that even if all rural people in a sample of 22 countries lived right next door to a school, enrollment rates would only increase from an average of 49.8 percent to 53.1 percent—suggesting the dominance of “demand-side constraints.”³⁴ Across countries, there is *no* significant relationship between public spending per child on education and the primary school completion rate, once income is controlled for.³⁵

Given that education expenditures do not appear to be a particularly strong historical determinant of enrollment, that not all countries will grow rapidly, and that it is very hard, in a fifteen year period, to dramatically increase parental primary completion rates, it is unlikely that many countries will achieve high transi-

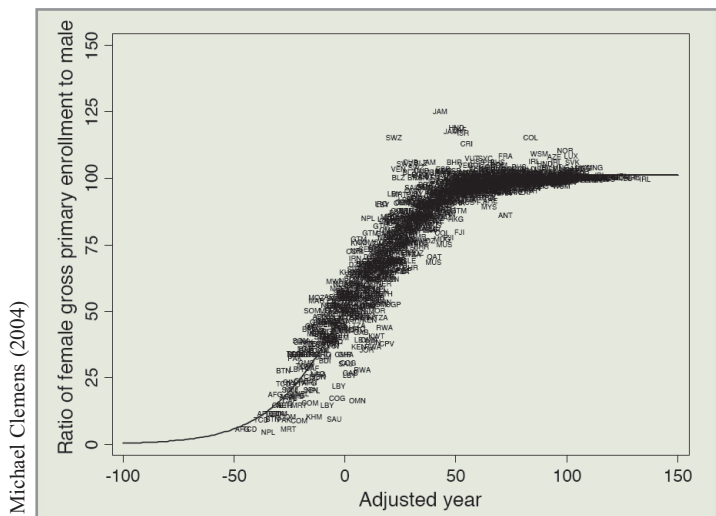
Figure 3: What it would take to meet Goal Two.



tion speeds. Indeed, even most “exceptions to the rule” or “best practices” of rapid increases are, sadly, related to unique circumstances, considerable reductions in quality, or questionable data.³⁶

Turning to gender equality in education, Figure 4 shows the path taken by the female-to-male ratio in gross primary enrollments for all 168 countries in the UNESCO database since 1950. The figure is constructed in a manner identical to that of Figure 2. Once again we see that the assumption that all countries follow the same S-shaped path to gender parity is not strictly true, but neither is it far from the mark. The typical country

Figure 4: Uniformity in the increase in female-to-male gross primary enrollment ratios, 1950-2000.



has taken a long time to reach gender parity in primary school enrollment. The shape of the curve in Figure 4 suggests, for example, that a country whose ratio of girls’ gross primary enrollment to boys’ is 0.8 typically takes 28 years to reach a ratio of 0.95. In 2000, seventeen countries had a ratio of less than 0.8. Nevertheless, the great majority of developing countries are already fairly close to meeting the MDG target of gender equality in education.³⁷ A substantial majority of countries will likely reach this particular goal by 2015. The use of static unit costs in education estimates, as used in the costing studies, is therefore likely to ignore perhaps the most important determinants of enrollment.

GOAL FOUR: REDUCING CHILD MORTALITY BY TWO-THIRDS

In the fourth MDG, governments have committed themselves to reducing child mortality by two-thirds between 1990 and 2015. Assume (as we did with the education goals) that every country follows the exact same S-curve, in this case towards zero infant mortality, but (again) that each country goes through this transition at a different time.

These assumptions once more appear reasonably robust. Figure 5 shows what happens if we take data for 35 rich and poor countries covering roughly the twentieth century, assume that the historically highest level of infant mortality was 350 infant deaths per 10,000 live births, and then horizontally align all the series so that every country passes through fifty percent

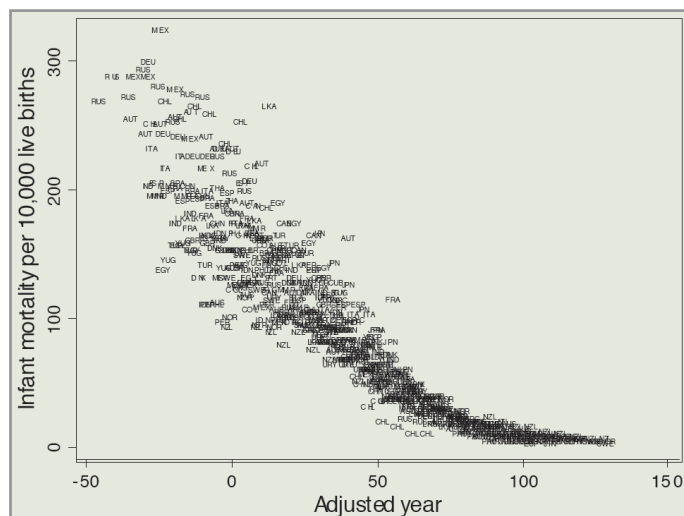
of the maximum—that is, 175—in the same year (“adjusted year” zero). The lessons are familiar from the previous two sections. Immediately we see that: (1) there is remarkably little diversity in the rate at which this has occurred; and (2) the typical experience of a country in the twentieth century was that this transition was slow as compared to the MDG target decline. The slope of the S-curve running through the middle of the cloud, representing the experience of the “typical” country among these 35, is -0.0339 at the inflection point. That means that a country typical of this group, if it started out at one hundred infant deaths per ten thousand live births, would take 40 years to decrease this level by two-thirds. This figure is relatively insensitive to the starting level.

Nor has the story dramatically changed in the late twentieth century, despite technology and economic advances. Although such advances allowed for far lower infant mortality rates essentially everywhere, the speed at which countries made the transition from high to low infant mortality did not change significantly. We will now restrict the sample to the years 1980-2000, and consider all 176 countries for which the *World Development Indicators* provide data. The S-curve will show that a typical country in this group, starting from an infant mortality of one hundred, would take 42 years to lower this figure by two-thirds.³⁸

This suggests that the forces that primarily determine the speed of this transition go beyond public health policy and inputs—a conclusion supported by a number of different studies. It appears that one of the reasons that interventions often do not have the desired outcome is, as Lant Pritchett showed with the relative ineffectiveness of family planning aid,³⁹ that supply-side responses do not address the demand components that are affected by broader social and economic changes. Income inequality, literacy, ethnic composition, and religion are all factors slow to change, at least within a fifteen-year perspective.

None of this is to say that specific public health interventions and large injections of inputs purchased by aid cannot

Figure 5: The course of Infant mortality in 35 countries over roughly the 20th century



Infant mortality is deaths before age one per 10,000 live births. Data are quinquennial and aligned horizontally assuming that all pass through fifty percent of a maximum value of 350 in “adjusted year” zero.

affect infant mortality; obviously they can. Lucia Hanmer, Robert Lensick, and Howard White suggest that while income per capita, education, and gender inequality are all robust determinants in explaining infant and child mortality across countries at a single time, some health spending (particularly on immunization programs) can also have a significant impact.⁴⁰ Rather, the question is whether the rapid increase in the mortality transition rate needed to meet the fourth MDG is accessible to even the wisest and best-funded policy interventions.

LEAPS FORWARD?

It is not that we cannot imagine a scenario where historically unprecedented progress is made towards the MDGs. If effective preventative and treatment interventions available for preventing childhood mortality became ubiquitous, the number of under-age-five deaths worldwide might fall by as much as 63 percent. For instance, one recent cross-country analysis suggests that, in countries with good governance, additional health spending and aid financing can have an impact on health outcomes.⁴¹ Yet this same study suggests how difficult it would be to meet the health MDGs in Africa, and why the MDGs at their current levels are over-reaching. First, the average quality of African government institutions, as measured by the World Bank's Country Policy and Institutional Assessment, would have to leapfrog to one standard deviation above the mean global score (from significantly below the average today). Then government health expenditures as a percentage of GDP would have to reach as much as 16.5 percent – an implausible level greater than that spent by any country in the world.

It may be that progress in meeting some of the other MDGs—perhaps in halting the spread of HIV/AIDS, reversing the incidence of malaria, and halving the proportion of people without sustainable access to drinking water and sanitation—could in fact be rapid enough to meet the MDG timetable. This appears possible because a small number of technological advances, or a significant increase in investment in a particular infrastructure, could have a major effect on these areas in ways not obvious in the other goals. The creation of a malaria vaccine, for example, would have a monumental impact toward meeting the sixth MDG,⁴² but it is difficult to imagine a similar single technological advance that would significantly impact education outcomes.

MAKING THE PERFECT ENEMY OF THE GOOD

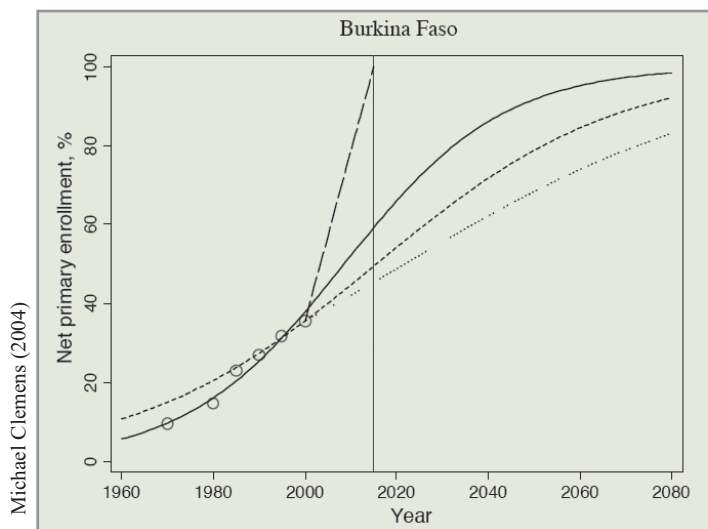
Growing concern that the MDGs will not be achieved should not obscure the bigger picture: development progress in terms of social indicators has been occurring at unprecedented levels throughout the great majority of the world's population over the past thirty or more years. For example, the divergence in life expectancies between rich and poor countries, which had been occurring since perhaps as early as the fifteenth century, has been dramatically reversed in the second half of the last century. Between 1950 and 1999, the population-weighted average life expectancy has risen from 51 to 69 years while the population-weighted standard deviation has fallen from thirteen to seven years.⁴³ Data on infant survival suggests a similar performance. In the second half of

the twentieth century, average global literacy increased from 52 percent to 81 percent, while the weighted standard deviation dropped from 38 percent to seventeen percent. Turning to female literacy as a percentage of male literacy, over the 1970-2000 period, the global average ratio has improved from 59 percent to 80 percent. This reflects a dramatic long-term improvement in social indicators even for countries that have seen limited economic growth. For example, average life expectancy for countries at \$300 GDP per capita in 1999 is slightly higher than that for countries with a GDP per capita of \$3,000 in 1870 (in constant dollars). In other words, it now takes only one tenth the income to achieve the same life expectancy as it did 130 years ago.⁴⁴

It is hard to view this progress as anything other than a dramatic success. Even if divergence continues “big time” with regard to income,⁴⁵ other quality of life indicators suggest historically unprecedented improvement. There are, of course, significant clouds on the horizon—the AIDS pandemic is having a particularly dramatic impact in Sub-Saharan Africa, where life expectancy in the region as a whole has declined in recent years, and is likely to level off only in 2010.⁴⁶ Nonetheless, it is not clear why we should expect progress to halt more broadly.

A continuation of the progress that has characterized the typical developing country of the last fifty years will, by and large, leave countries missing the MDGs in 2015, yet still outperform-

Figure 6: Many countries unlikely to meet the MDG for primary schooling are performing strongly by historical standards



ing the historical trajectories of now-developed countries. In Figure 6, for example, we see the trajectory of primary school enrollment for Burkina Faso. The country is on a trend well above the typical country since 1960 and even further ahead of the typical rich-country transition in the nineteenth century. (The same statement is true of Mali, Senegal, Madagascar, and Nicaragua, among others.) Surely this is not unambitious performance. Despite this success, however, Burkina Faso will fail to meet the MDG target. It is perhaps worth asking whether the success or the target should be questioned.

MOVING FORWARD: RE-INTERPRETING THE MDGs

There is a long history of international goal setting for development. For instance, a steady succession of international conferences since the 1940s has declared universal primary education achievable within a short-time period and pledged to make the necessary investments to do so.⁴⁷ Nevertheless, countries all over the world continue to undergo the slow adjustments of their societies and economies that have allowed more children to go to school. But in setting unrealistic goals and claiming they can in fact be universally met, the MDGs may run the risk of creating a climate of inaccurate pessimism about both development and aid.

THE MDGs AS REAL TARGETS

The MDGs can be understood in two ways. One interpretation is to take the specific goals literally, accept them as the real targets of the development community, and take the costing study estimates as reflective of the amount of aid needed to reach those goals. This view sees the MDGs as an important mechanism for raising aid flows and ensuring accountability for donor promises. This literal interpretation of the MDGs and misreading of the costing studies can lead to the belief that huge aid flows *can* quickly produce epochal change in an array of development indicators across broad regions. Perhaps such outcomes will be achieved, particularly regarding the goals in areas such as water and sanitation, but, as we have seen, the historical evidence suggests it is unlikely that the majority of goals will be reached by the majority of countries.

The determinants of the outcomes embodied by the MDGs are in fact complex. Time itself clearly is an important factor but is not accounted for by universal time-bound goals. Many of the available interventions in terms of policy reforms or increases in resources are supply-side responses. These interventions do little to increase demand, which is linked to longer-term social and economic changes. This does not mean that poor people do not desire better standards of living; rather the range of incentives faced by many poor people lead them to make choices that might contradict the outcomes represented in the MDGs. This is one reason why outcomes seem to change only slowly, and also suggests that there may be a limited potential role for aid in meeting extremely ambitious, universal, time-bound goals. This does not claim in any sense that aid is unimportant or ineffective, but only that aid cannot by itself deliver the MDGs.

THE MDGs AS A SYMBOL

A second understanding of the MDGs is a more nuanced view—that the goals are a symbol of the kinds of outcomes toward which the development community should strive. Similarly, new aid flows are considered just one of several necessary conditions for progress on development indicators. This second interpretation makes the MDGs a tool rather than a practical target. Goals generate discussion, focus attention, and help assign accountability for leaders' pledges. There can be little doubt that the MDGs helped galvanize the aid community and reverse the aid declines after the end of the Cold War. The United States, the European Union, Canada, Norway, and others made promises of substantial aid increases at Monterrey in 2002, a result doubtlessly influenced by the MDG negotiations two years earlier.

IMPLICATIONS OF THESE INTERPRETATIONS

In spite of the notable benefits of the MDGs, even when taken as symbolic rather than literal, there has been almost no discussion so far of potential *costs* of the specific form taken by these goals. These potential costs take two distinct forms: unreasonable expectations about what is likely to be achieved within a short time period, and unreasonable expectations about the role of aid in the development process.

The specific targets of the MDGs have set up many countries for unavoidable "failure." Some governments pursuing wise policies and historically encouraging progress on development indicators could be weakened or de-legitimized by the label of "failure" in 2015. The MDGs confuse interpretation of their performance with universal, time-bound targets that for many countries are, in practice, impossible to reach. Costing studies, by positing that such goals are attainable and asking merely for the resource inputs, contribute to the illusion that the goals are attainable for all countries. Even if most development practitioners know this is not true, they must recognize that the expectations of many have been raised.

Another potential downside is the possibility for adding to donor fatigue and distracting recipient countries from much-needed domestic reforms. If donors provide additional tens of billions of dollars in aid per year sometime in the next few years, and if subsequently many of the goals are still not met, this will provide ammunition to interest groups in rich countries seeking to give up on development assistance. Developing countries will undoubtedly need many decades of sustained assistance—as Korea, Botswana, and other eventual successes have received—and this must not be interrupted by declarations of failure in 2015. However, if the increase in aid does not materialize, a failure to reach the MDGs may help legitimize leaders in the developing world who pursue policies that are anathema to economic growth. "What else could we do," they will ask, "when the rich countries broke their promises?" The ensuing finger pointing could also undermine constituencies throughout the developing world for necessarily slow but essential reforms toward transparency, accountability, rule of law, and meritocracy.

CONCLUSION

Moving forward, the donor community should accept that it is not feasible for the majority of countries to reach the majority of the MDGs. Similarly, the costing studies should not be invoked as evidence that we can simply purchase outcomes with more assistance. The studies themselves make no such claims, and history shows this is highly unlikely to be true. Instead, the MDGs should be presented as useful benchmarks that publicly bring out the stark contrast between the world we want and the world we have, and cause us to redouble our search for points of intervention to close the gap.

The donor community might also consider ways of institutionalizing the recognition of development success. The government of Burkina Faso, for example, should be supported and lauded by the international community for raising school enrollments much faster than most poor and now-rich

countries did in the past, rather than criticized and delegitimized because primary enrollment is less than fifty percent. Country-specific benchmarks can help signal when interventions of some kind are necessary, and they can also provide markers for progress along the way, given a country's circumstances. Instead of focusing time and energy on compiling lists of "off-track" countries, effort should be spent on compiling lists of countries that are "on-track" or better after taking account of their particular circumstances and historical trends. Some kind of institutionalized response by the international community would thus redefine Burkina Faso as the educational success it has been. This would not in any way endorse the fact that half of Burkinabe children still do not enroll in school, nor imply in any way that schooling is not their right. It would, however, bring important international pressure to bear in support of those who for decades have been working to get Burkinabe children into school at a rate faster than many far richer countries have managed.

Lastly, future international development goals might avoid some of these pitfalls. The next round of goals should: (1) be country-specific and flexible, more like today's International Development Association targets; (2) take historical performance into account; (3) focus more on intermediate targets than outcomes; and (4) be considered *benchmarks* to spur action in cases where assistance is not working, rather than technically feasible *goals*.

This last point is worth emphasizing: it is useful to know that a country is raising school enrollments more slowly than the historically typical rate. It can give political support to constituencies in that country seeking changes in national policies, spur donors to intervene, and support change through financial and other means. But this is much different from the effects of declaring that it is feasible for a country to raise enrollments at five times the historically typical rates. Country-specific benchmarks carry the benefits of goal setting without the potential downsides of universal goals. This suggests that goal setting at the global level should be bottom-up rather than top-down—that is, the world targets should start from country goals and then aggregate up, rather than setting global goals and then estimating what countries would need to do to achieve them.

Indeed, for the next round of goals, the donor community might consider avoiding global-level costing studies, especially

for outcomes known to be only tenuously linked to financial inputs. Rough back-of-the-envelope estimates can potentially be useful for identifying the hypothetical scale of resources and also for some limited supply-side interventions. Yet the widespread misinterpretation of the studies suggests that, however narrowly conceived by the authors, misuse appears difficult to avoid. A more direct approach might be to advocate cost-specific interventions and link them to intermediate indicators rather than outcomes; for example, costing an immunization program rather than child mortality. Calculating financing gaps and unit costs for final outcomes appear to merely create more illusion than illumination.

It is worth stressing the caveats attached to our analysis. None of this is to argue against aid or that goal setting is *per se* counterproductive. Aid has clearly been an important part of developmental progress for many countries. Perhaps aid levels should increase by \$50 billion, but not with the expectation that this will cause the MDGs to be met. Similarly, goals should indeed be set to enhance accountability and allocational efficiency, but goals must take history and context into account or potentially risk malign irrelevance.

Perhaps most significantly, we have based most of our argument on historical precedent. History can be a fickle guide to the future. To take two recent development trends as an example, the spread of the Internet has been more rapid than the spread of the mobile phone, which was in turn more rapid than the television, which was in turn more rapid than the fixed telephone. And the spread of democratic institutions in developing countries over the past fifteen years would have been poorly predicted based on a trend of declining democratic freedoms over the thirty years previously. It may be (and we hope it is) the case that policies will improve, that the environment for the effective utilization of aid becomes friendlier, and that technology and policy trends combine to allow historically unprecedented levels of progress across the broad range of development that is encompassed by the MDGs. Even if that is not the case, many countries will reach at least some of the MDG targets. More importantly, it is quite probable that the significant rate of improvement that we are already seeing in developing countries will continue in the next fifteen years, enhancing the lives of billions worldwide.



ENDNOTES: MDGs, AID TARGETS, AND COSTS OF OVER-EXPECTATIONS

¹ United Nations Millennium Declaration, G.A. Res. 55/2, UN Doc. A/RES/55/2 (Sept. 8, 2000).

² In December 2000, the UN General Assembly requested that Secretary General Kofi Annan prepare a "road map" of how to achieve the targets of the Millennium Declaration to which the leaders at the Millennium Summit had committed in September of that year (G.A. Res. A/RES/55/162, ¶18). Annan's response, issued in September 2001 as the *Road Map towards the Implementation of the United Nations Millennium Declaration*, proposed the eight Millennium Development Goals ("MDGs") in their final form and by that name (U.N. Doc. A/56/326), drawing only on elements to which 147 heads of state or government had directly agreed at the 2000 summit.

³ UNITED NATIONS, MILLENNIUM DEVELOPMENT GOALS, at <http://www.un.org/millenniumgoals> (last visited Nov. 2, 2005).

⁴ The leaders at the Millennium Summit committed only to halving *global* poverty, regardless of what happens in any given country or region. They never agreed that each country or region would individually halve poverty by 2015, though the first MDG has often been given this latter interpretation. The UN's *Human Development Report 2003* (pp. 198-202) and the World Bank's *World Development Report 2004* (pp. 254-255), for example, both track individual countries' progress towards halving national poverty by 2015 as indicators of progress towards the first MDG.

⁵ GABRIEL CARCELES, BIRDER FREDRIKSEN, AND PATRICK WATT, WORLD

LITIGATION UPDATES

THE ANTI-PROSTITUTION PLEDGE: LIMITING SPEECH AND DEVELOPMENT

by Rachael Moshman*

INTRODUCTION

DKT International is a Washington, DC-based non-governmental organization (“NGO”) specializing in family planning and HIV/AIDS services. DKT International provides such services to parts of South America, Africa, and Asia and currently serves just under ten million families worldwide.¹ The NGO subsidizes products such as condoms for poor populations,² selling some 390 million condoms last year in eleven different countries.³ DKT International has received United States Agency for International Development (“USAID”) funding for some of its HIV/AIDS programming in the past.⁴ However, in July 2005 DKT International’s Vietnam program was refused future funding from USAID because the DKT International Country Representative in Vietnam refused to sign an “anti-prostitution” loyalty statement for the organization.⁵

THE LEGISLATIVELY REQUIRED ANTI-PROSTITUTION PLEDGE

The United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (“Global AIDS Act” or “GAA”)⁶ places two limitations on organizations that are eligible to receive funding under this Act. First, funding may not be used to “promote or advocate the legalization or practice of prostitution or sex trafficking.”⁷ Second, any organization that receives funding must have a “policy explicitly opposing prostitution and sex trafficking . . .”⁸ The Trafficking Victims Protection Act of 2003 (“TVPA”)⁹ has similar requirements. It states that no funding can be made available to “promote, support, or advocate the legalization or practice of prostitution,”¹⁰ and that any organization receiving funding must state in a grant application or grant agreement that “it does not promote, support, or advocate the legalization or practice of prostitution.”¹¹

The GAA and the TVPA do state, however, that the funding limitations do not apply to certain areas such as delivery of medical care, test kits, and condoms.¹² Though both the GAA and the TVPA are laws welcomed by professionals who work to prevent both HIV/AIDS and human trafficking, the impact of these funding limitations has caused deep concern, ranging from First Amendment limitations on speech to stigmatization of already vulnerable populations.

IMPLICATIONS FOR THE UNITED STATES: FIRST AMENDMENT VIOLATIONS

The implication on First Amendment rights and U.S. development policies arose in DKT International’s recent lawsuit against USAID. DKT International filed suit in August 2005 in the U.S. District Court for the District of Columbia, charging that USAID had violated its freedom of speech rights by making “otherwise eligible organizations ineligible for USAID grants or contracts” because they did not adopt the U.S. position on prostitution.¹³ An opinion letter written by the U.S. Department of Justice’s Office of Legal Counsel was issued in September 2004;¹⁴ the letter advised the U.S. Department of Health and Human Services (“HHS”) that the GAA’s prostitution-opposing policy guidelines, which previously applied only to non-U.S. NGOs, could be required of U.S. NGOs without implicating constitutional or separation of powers violations.¹⁵ Soon after this opinion was issued, HHS, USAID, and the U.S. Department of State began requiring the so-called “loyalty pledge” from all potential grant recipients, including American organizations.¹⁶

USAID subsequently implemented Acquisition and Assistance Policy Directive (“AAPD”) No. 05-04, which was released on June 9, 2005.¹⁷ The AAPD required that any USAID contract that provides funds from the GAA to include language that not only bars funding from being used to support or advocate for the legalization of prostitution, but also asserts that “prostitution and related activities . . . are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.”¹⁸

The Brennan Center for Justice at New York University School of Law (“Brennan Center”) submitted a memorandum on the DKT International case that analyzed from several perspectives the constitutionality of the anti-prostitution pledge requirement.¹⁹ The Brennan Center, as “Of Counsel” to DKT International, conclusively denounced the pledge requirement. At the same time, the memo, analyzing *Rust v. Sullivan*,²⁰ also determined that the government retained the discretion to explicitly oppose prostitution because GAA funding is meant to provide medical and social services to communities impacted by HIV/AIDS.²¹

* Rachael Moshman is a JD and MA (International Affairs) candidate, 2006, at American University, Washington College of Law and School of International Service.

While the majority of organizations that are affected by this policy state that they do not advocate prostitution, they find the U.S. government's new policy requirements more harmful than helpful to HIV/AIDS and trafficking prevention.²² Moreover, the limitations on funding in the GAA and TVPA go further than simply limiting the use of government funds; the acts also prohibit NGOs from using private funds to promote or advocate for the legalization of prostitution.²³

In a response to these limitations, the Brennan Center memo points to cases like *Regan v. Taxation with Representation*, in which the U.S. Supreme Court affirmed that 501(c)(3) organizations could not lobby using federal funds,²⁴ but also affirmed that they had a constitutionally protected right to lobby using separately-held private funds.²⁵ Similarly, in *FCC v. League of Women Voters of California*, the Court found that television stations could not use federal funds to give editorial opinions, but could use private funds to do so.²⁶ Applying similar standards, the Brennan Center argues that Congress and federal agencies should not be able to limit U.S. NGOs from supporting or advocating their positions on prostitution when they use private funds.²⁷

By requiring NGOs to declare an anti-prostitution policy, the government is, according to Count I of DKT International's Complaint, "condition[ing] eligibility for USAID funding for U.S. organizations on expressly adopting the U.S. government's political viewpoint on prostitution."²⁸ The Brennan Center memo reiterates this position by pointing to Supreme Court cases such as *West Virginia State Board of Education v. Barnette*, which found that a public school could not require a child to say the pledge of allegiance in order to maintain the right to attend school. The government may not "... [transcend] constitutional limitations on their power and [invade] the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."²⁹

In September 2005, the Alliance for Open Society International, Inc. ("AOSI") and Open Society Institute ("OSI") filed a similar suit, also charging USAID with First Amendment violations such as those outlined in the DKT International case.³⁰ AOSI is a not-for-profit organization that was formed by OSI in 2003 to work primarily on issues related to Central Asia.³¹ Rather than oppose the USAID policy outright, AOSI chose to sign the anti-prostitution pledge with USAID in August 2005, and then follow that pledge with a lawsuit against the agency. AOSI's lawsuit charged that the pledge requirement: (1) was unconstitutionally vague; (2) violated the First Amendment by forcing the organization to adopt an "entity-wide policy;" (3) violated the First Amendment by imposing the pledge on non-USAID funding; and (4) was too broad to comply with the funding limitation as originally stated in the GAA.³²

DEVELOPMENT IMPLICATIONS INTERNATIONALLY

On the international level, HHS, USAID, and the U.S. Department of State's requirements for funding HIV/AIDS and anti-trafficking programs have had a much broader impact than just limiting NGOs' freedom of speech rights. Besides the fact that non-U.S. organizations do not enjoy the protections of the U.S. Constitution and therefore, cannot argue free speech protections,³³ as mentioned by both DKT and AOSI's complaints, it is difficult to comply with the regulations, which are unconsti-

tutionally vague.³⁴ This charge is based on undefined terms in the acts' funding limitations. For example, it is difficult to understand what is meant by "promote, advocate, support the legalization of prostitution." NGOs that receive GAA and TVPA funding are at risk of violating their commitments for noncompliance without even knowing it because they have not been properly informed of the parameters of the pledge requirements. These NGOs could unknowingly make the wrong policy decision, lose their funding, or have to pay back used funds for inadvertent noncompliance; at worst, they may be prosecuted for violating their agreement with the U.S. government.³⁵ The policy impacts of the anti-prostitution pledge are of great concern to all NGOs, but especially those that work with sex workers worldwide. The threat of violating USAID's terms has already caused NGOs receiving USAID funding to cancel otherwise successful programs, such as one Cambodian program that attempted to provide English-language training to prostitutes.³⁶

The DKT International Vietnam Country Representative declined to sign the anti-prostitution pledge because, according to DKT International's complaint:

DKT has no policy on prostitution and does not wish to adopt one. . . In addition, as an organization working to prevent the spread of HIV/AIDS, it strongly believes it can best do that in the many countries in which it works by maintaining neutrality on the controversial question of how to handle the complex problems that arise at the intersection of the HIV/AIDS epidemic and prostitution.³⁷

Many other non-U.S. NGOs face similar pressures. They believe that adopting anti-prostitution policies will cause a wedge between them and the populations with which they wish to work, or will stigmatize already disadvantaged populations including prostitutes and AIDS victims. Furthermore, as noted, successful programs – such as those that hire prostitutes as peer HIV/AIDS prevention educators³⁸ – may not receive GAA or TVPA funding. The anti-prostitution funding limitations on these NGOs will have a serious impact on their ability to provide direct services to populations vulnerable to HIV/AIDS, prostitution, and trafficking. For example, DKT International was receiving sixteen percent of its funding for their HIV/AIDS programming from USAID.³⁹ The GAA has now appropriated three billion dollars for HIV/AIDS programming for the Fiscal Years 2004 through 2008,⁴⁰ but by refusing to sign the anti-prostitution pledge, DKT International and other NGOs will have no access to these funds.



ENDNOTES: THE ANTI-PROSTITUTION PLEDGE

¹ See Complaint for Plaintiff at 2, DKT Int'l v. U.S. Agency for Int'l Dev. (DKT Complaint), (D.D.C. 2005), available at http://www.globalaidsalliance.org/docs/DKT_Complaint.pdf (last visited Oct. 27, 2005).

² See *id.* at 4.

³ See Michael M. Phillips, *Aids Group Sues U.S. Over Funds*, Wall St. J., Aug. 12, 2005, at B3, available at http://www.globalaidsalliance.org/Wall_Street_Journal_August_12_2005.cfm (last visited

BOOK REVIEWS

MAKING LAW WORK: ENVIRONMENTAL COMPLIANCE & SUSTAINABLE DEVELOPMENT (VOLUMES I & II)

by Durwood Zaelke, Donald Kaniaru, and Eva Kružíková

Cameron May Ltd., 2005

Reviewed by Cari Shiffman*

As populations grow and environmental problems become more pervasive at both a regional and global level, nations must increasingly examine environmental practices and their enforcement. *Making Law Work: Environmental Compliance & Sustainable Development*¹ seeks to address this need through its discussion of sustainable development theory and the legal frameworks necessary to promote environmental goodwill. The book also considers the practical efficacy of such laws.

The compilation, produced by the Secretariat of the International Network for Environmental Compliance and Enforcement (“INECE”), along with the Institute for Governance and Sustainable Development and the Program on Governance for Sustainable Development at the Bren School of Environmental Science and Management, at the University of California in Santa Barbara, is a two volume collection of literature by both academics and practitioners that details the strengths and weaknesses of environmental compliance within legal systems. Editors Durwood Zaelke, Director of the INECE Secretariat, Donald Kaniaru, Managing Partner of Kaniaru & Kaniaru Advocates in Nairobi, Kenya, and Eva Kružíková, co-founder and Director of the Institute for Environmental Policy in the Czech Republic, offer valuable, introductory overviews to each of the topics and articles included in the book, in addition to the included literature. These introductions are a helpful synthesis of the included articles as they incorporate background information on each category and outline the articles. Furthermore, by having editors from both developed and developing countries, as well as from a country with a transitioning economy, the book is able to effectively broach topics important to both the developing and developed world. As such, the book successfully strives to confront concerns in both the global North and South.

The compilation first introduces the theory behind compliance and then presents compliance strategies that build on theoretical understanding. The book further incorporates empirical data on tactics that induce compliance, in addition to discussion of ineffective approaches. *Making Law Work* is unique in its

comprehensive overview of compliance issues relevant to both scholars and practitioners. By including articles from experts and cutting edge sources, this book combines textbook and treatise, incorporating a hybrid legal and policy approach to environmental compliance concerns. *Making Law Work* is arguably the only book that covers the whole arena of environmental compliance and enforcement issues. It is an essential read for practitioners, policy makers, businesses, lawyers, and researchers who are involved with the enforcement and compliance fields, as it includes insights on how to better design effective laws, regulations, and remedies.

The first volume explores everything from good governance and compliance theories to multilateral environmental agreements (“MEAs”) and domestic enforcement strategies to courts, tribunals, and non-governmental organizations (“NGOs”). This first section raises questions on how to strengthen laws regarding the environment and what must be done in order to induce compliance with these laws. The book discusses pressing environmental and humanitarian concerns, and then considers what laws and institutions will be most effective in dealing with these threats.

In order to effectively address non-compliance, the included articles examine why different actors choose to comply with or ignore various environmental laws. The first chapter sets the stage for the rest of the book. This chapter is essential to understanding what solutions can be developed to assist in compliance with laws. The inclusion of compliance theories in the second chapter strengthens the book, by providing a theoretical background to all of the subsequent topics covered. The editors also consider whether MEAs have begun to solve any of the emerging environmental crises, through specific case studies and articles that dissect the efficacy of MEAs. The book includes not only international approaches to environmental

BOOK REVIEW: *Making Law Work* Continued on page 70

*Cari Shiffman is a JD and MA candidate (International Affairs), 2007, at American University, Washington College of Law and School of International Service.

BOOK REVIEWS

THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME

by Jeffrey Sachs

Penguin Press, 2005

Reviewed by Elizabeth Hahn*

An old grandmother sits with her ten orphaned grandchildren in a small, dusty Malawian village. Her home is a mud hut, her granddaughter is sick with malaria, and she does not have enough food to feed her family. Her own children, like the majority of their generation in the village, have died of AIDS. Rather than enjoying a well-earned rest from a lifetime of work, this grandmother must find a way to provide for her family. Ill and hungry, she and her family fight for survival each day.

There are roughly one billion people around the world (almost one-sixth of the world's population) in such a position. These people are the extreme poor. Chronically hungry, unable to access health care, lacking safe water and sanitation, and even rudimentary shelter, these people must fight to survive. As Jeffrey Sachs describes, the areas in which they live are caught in a "poverty trap" of "disease, physical isolation, climate stress, [and] environmental degradation." Many of these individuals are further ensnared by political instability and lack of access to capital, technology, medicine, and education. Releasing them from this trap seems like a daunting task.

However, according to Mr. Sachs, there is a solution. With the right policies and the correct amount of development aid, this type of extreme poverty can be eliminated by the year 2025. His recent book, *The End of Poverty*, provides a comprehensive plan to accomplish that task.

Before explaining his plan, Mr. Sachs provides an historical account of how the poor countries became so impoverished in the first place. He begins by noting that, until the early 1800s, almost everyone worldwide was poor. Then the Industrial Revolution commenced and Western economies rapidly began to grow.

Why did the Western economies grow so rapidly while the rest of the world's growth lagged behind? Some people argue that Western economies only grew at the expense of the poor countries. However, Mr. Sachs refutes that argument. Instead, he theorizes that technology, not exploitation, has been the main force behind the long-term increases in income in the rich world. According to Mr. Sachs, this is good news, because it suggests that poor countries need not resign themselves to their positions. All we have to do, Mr. Sachs argues, is help the countries reach the first rung of the economic ladder, and from there they can ascend.

To help them ascend this ladder, Mr. Sachs contends that we must first overhaul traditional development economic theories and use a new method called "clinical economics." This method, based on clinical medicine, has economists acting as doctors and diagnosing their impoverished countries as "patients." To work effectively, the economists must make a diagnosis based on a myriad of factors: the extent of extreme poverty; the economic and fiscal frameworks; physical geography; governance patterns and failures; cultural barriers; and geopolitics. Then the economists must supply an appropriate treatment regimen specific to that country.

These treatment regimens, while tailored specifically to each individual country, are all based on the infusion of additional capital into the countries. According to Mr. Sachs, countries will then use this capital infusion to improve their citizens' health and nutrition, invest in machinery and facilities for business, improve infrastructure, create healthy soil and arable lands, improve public institutions, and increase technical knowledge.

Some readers may wonder if this capital infusion differs from the paternalistic practices that countries have engaged in for decades. According to Mr. Sachs, that skeptical view is unfounded. The money is not a handout, he argues, and countries will not become dependent on the foreign assistance. Instead, the capital infusion is merely a boost up, an investment in the countries to help them overcome their problems and "get their foot on the ladder of development." Once there, the countries will be able to scale the ladder without additional foreign assistance.

Similarly, Mr. Sachs also refutes the suggestion that his plan of capital infusion ignores the human factors of greed and corruption. This suggestion, he argues, is a prejudice against poor countries "grounded in overt racism." Although there have been corrupt leaders in the past, Africa is not poor because its governance is inept or undemocratic. Rather, "Africa's governance is poor because Africa is poor," and thus governance will improve as countries' incomes rise.

To finance the treatment regimens, Mr. Sachs' plan relies heavily on governments to amass and administer the aid. He

* Elizabeth Hahn is a JD and MA (International Affairs) candidate, 2006, at American University, Washington College of Law and School of International Service.

proposes that each wealthy country contribute 0.7% of its GNP as official development aid (“ODA”). This is not an arbitrary amount; rather, it is the amount to which the United States and other countries agreed at the Rio Summit on Sustainable Development, the Monterrey Consensus, and the World Summit on Sustainable Development. Currently, though, the United States’ ODA only totals about 0.18% of its GNP. To increase ODA, Mr. Sachs argues that the richest of the rich should make up the difference through direct contributions or an increased income tax. The rich, he asserts, will hardly notice the increased income tax. Moreover, it is their duty and responsibility to con-

tribute because they have disproportionately benefited from the economic and tax changes of the past two decades.

Overall, *The End of Poverty* is a fascinating and comprehensive book. It takes many conventional views of economic development and turns them upside down. And although *The End of Poverty* can be technical in places, its moving descriptions of the poorest of the poor inspire and instill a sense of hope in readers. This book is excellent for anyone with a desire to learn more about development economics, no matter their background.



BOOK REVIEW: MAKING LAW WORK *Continued from page 68*

compliance, but domestic strategies as well. This inclusion of domestic solutions to sustainable development concerns strengthens the book considerably, as domestic resolutions are important in addressing sustainable development. Additionally, the first volume of the compilation presents dialogues on the role of the judiciary, both domestically and internationally, and NGOs in ensuring environmental compliance. Although in the section on courts, the included article on domestic courts focuses on New Zealand, the proposed tactic of a specialized court for environmental disputes can be applied in other domestic settings. The compilation further succeeds in exploring how compliance issues at both the international and domestic levels are connected and how they influence each other.

The second volume of this book discusses topics such as access to information, emissions trading, compliance assistance, the indicators necessary to measure compliance, and the success of trans-governmental networks. This section also evaluates the most useful tools for regulators, as well as how firms can benefit from compliance with environmental rules. In particular, Michael Porter’s and Class van der Linde’s important and highly relevant article on their “Porter Hypothesis,” discusses how environmental rules can be designed to induce innovations to offset the cost of compliance that can create profits or save money for firms that comply. The book also highlights that access to information from both governments and the private sector is essential for a thorough understanding of environmental issues and, as the editors point out, to “empower civil society.” Additionally, *Making Law Work* successfully explores the aforementioned emission trading schemes, compliance assistance strategies, and the role of trans-governmental networks. Finally, the second volume includes a significant discussion on utilizing indicators to measure when compliance is working in the sustainable development and environmental continuums. INECE’s project on environmental compliance and enforcement indicators, overviewed in an included article, makes INECE, as one of the sponsors of this book, particularly suited to discuss indicators for environmental compliance and enforcement.

The comprehensive selection of topics allows for a thorough discussion in the field of environmental compliance and enforcement, via articles that examine how nations and individuals can comply with environmental decisions. Furthermore, the book explores the rationales behind non-compliance and then builds on the theoretical understanding of compliance to explore compliance strategies. In terms of improving behavior, the compilation excels at suggesting effective strategies for better implementation and compliance with international and domestic governance. The reader can readily understand how the establishment of the rule of law, good governance, and sustainable development requires compliance. Most significantly, the book raises the critical questions of implementation and compliance, without which laws are ineffective.

The articles, while they lay the groundwork for understanding compliance and sustainable development issues, only overview the key issues and may raise additional questions that readers desire to understand in more detail. For practitioners or researchers who want to delve further into a specific area presented in the book, INECE has listed an extensive bibliography, invaluable for further investigation, with additional readings for each of the subjects explored in the volumes.²

While the articles in *Making Law Work* recognize that not all past solutions to tackle these issues have succeeded, the book as a whole strives to focus on effective strategies and potential improvements. Furthermore, the book encourages all sectors of society to assist in designating successful strategies for environmental compliance and securing future sustainable development. *Making Law Work* provides an essential starting ground for exploring the key factors in the struggle to create legal, economic, and social systems to combat environmental degradation and other dangers to human well-being.



ENDNOTES:

¹ Excerpts from *Making Law Work: Environmental Compliance & Sustainable Development* and ordering information are available at <http://inece.org/makinglawwork.html>.

² The bibliography is available at <http://inece.org>.

WORLD NEWS

by Blase Kornacki, Abby Okrent,
Jennifer Rohleder, and Mauro Zinner*

AFRICA

AVIAN FLU POSES IMMINENT THREAT TO AFRICA

The UN Food and Agricultural Organization (“FAO”) announced that there is an increased risk of the bird flu spreading to North Africa and East Africa.¹ The FAO warns that East Africa in particular will have difficulties containing the flu.² The close proximity between humans and animals in East Africa creates an ideal situation for spreading the flu to people.³ A number of African countries have already responded to predictions of avian flu. For instance, Congo-Brazzaville banned poultry imports.⁴ South Africa’s Department of Health placed an urgent request for the flu medicine Tamiflu to be approved for use in the country.⁵ Kenya has established a surveillance network of the health ministry, veterinarians, and the livestock ministry to monitor incidences of bird flu.⁶

MALAWI FOOD CRISIS WORSENS AND FARMERS ARE UNABLE TO OBTAIN FERTILIZER

Malawi’s food shortage is now at the level of a crisis, brought on by the worst drought in a decade.⁷ During August 2005, the number of people admitted to hospitals for starvation and malnutrition increased between 29 and 40 percent as compared with August 2004.⁸ The president of Malawi declared the entire country a disaster area, and aid agencies are concerned that half of the country’s population could starve by April.⁹ By the time the crisis becomes visible to donor countries it is already too late to save many people.¹⁰

Bad harvests brought on by drought and a delay in seed and fertilizer delivery last year are blamed in part for the crisis.¹¹ Malawi’s president promised subsidized fertilizers; however, the government cancelled a \$30 million deal for subsidized fertilizer from Saudi Arabia when U.S.-based Citibank refused to process the deal.¹² The United States claims that the Saudi Arabian company has ties to al-Qaeda.¹³ Malawi is looking into other options for fertilizer.¹⁴ The UN World Food Programme estimates that it will require \$76 million to feed nearly three million Malawians until the harvest in April.¹⁵

KENYAN NATIONAL PARK PUT INTO TRUST STATUS FOR MAASAI

Kenya’s President Mwai Kibaki announced a plan in early October to hand over a national park to the Maasai community.¹⁶ The decision will downgrade the Amboseli National Park

from national park to national reserve and place it in a trust status for the Maasai.¹⁷ Conservation groups oppose the move, saying that it will harm the country’s international tourism industry.¹⁸ The conservation groups and some government ministers allege that President Kibaki’s purpose in downgrading the park was to woo Maasai votes in a Constitutional referendum.¹⁹ Maasai leaders responded that these conservation groups are just unhappy because they are no longer needed in the park.²⁰ Kenya’s Shadow Attorney-General Mutula Kilonzo believes that President Kibaki violated the Constitution by downgrading the park without the Parliament’s approval.²¹

Amboseli National Reserve has been handed over to the county council, though the Kenyan Wildlife Service will continue running the reserve.²² Local and international wildlife organizations will be given a role in managing the reserve as well.²³

AMERICAS

LICENSING OF THE SÃO FRANCISCO RIVER IN BRAZIL

The Federal Court of Bahia, in Salvador Da Bahia, Brazil, suspended the process of obtaining an environmental license to the Government of Brazil, granting injunctive relief to those who oppose the government’s desire to take advantage of the São Francisco River’s waters to conduct a transposing project to irrigate the north-east desert regions of the country.²⁴ Without this license, it is not possible for the government to begin the irrigation program; thus, the government plans to appeal the court’s decision. According to the Government of Brazil, the project will benefit twelve million people that suffer from the region’s desertified conditions.²⁵ The opponents of the project argue that several major implications of the project were not debated with the local population.²⁶ These issues include the revitalization of the river,²⁷ which is completely deteriorated, and the environmental impact assessment that did not consider the consequences to the “Bacia do São Francisco” (the flow of the river) and to the rivers that will receive its water.²⁸

Luiz Flávio Cappio, a Bahia bishop, became a symbol against the transposition. He performed an eleven day hunger strike against the project arguing, among other point points, the politically tinged intent of the project.²⁹ The São Francisco River runs 1680 miles from the southeast of Brazil to the increasingly dry northeast, and is responsible for 75 percent of the water for that region.³⁰

* Blase Kornacki and Jennifer Rohleder are JD candidates, May 2008, at American University, Washington College of Law (“WCL”). Abby Okrent is a JD and MA (International Affairs), candidate, December 2007, at WCL and American University, School of International Service. Mauro Zinner is an LLM candidate, May 2006, at WCL.

MOUNTAINS OF WASTE IN NEW ORLEANS AFTER KATRINA

The largest and most complicated cleanup in American history has begun in New Orleans, Louisiana in the wake of Hurricane Katrina, which tore through the Gulf Coast in August 2005.³¹ Although New Orleans authorities want its people returned as soon as possible, 22 million tons of waste must still be removed.³² In addition to the material debris, the waste includes toxic household chemicals such as freon and mercury, which have made the city look and smell like a landfill.³³ Many of the residents are wearing gloves to protect themselves from bacteria and germ contamination.³⁴ Authorities estimate that it will take at least 3.5 million truckloads to haul the chemical and material waste away.³⁵

ASIA

THAILAND DEDICATES SUBSTANTIAL CONTRIBUTIONS TO LEAST DEVELOPED COUNTRIES

Thailand demonstrates its commitment to Millennium Development Goal Eight to develop a global partnership for development through the disbursement of its development aid. In comparison to wealthier nations like Japan, Italy, and the United States, which contribute around one-third of their development aid to Least Developed Countries (“LDCs”), Thailand contributes nearly all of its development assistance to LDCs.³⁶ In addition, among developing countries in Asia, Thailand has the lowest tariffs on imports from LDCs, and its imports from LDCs makes up over three percent of its total imports – higher than any other middle-income country.³⁷

EUROPE

PREVENTING CLIMATE CHANGE THROUGH THE AVIATION SECTOR

On September 27, 2005, the European Commission (“Commission”) issued a communication outlining a strategy to reduce greenhouse gas emissions from air travel by admitting aircraft operators to the European Union (“EU”) Greenhouse Gas Emissions Trading Scheme (“ETS”).³⁸ The aviation industry’s overall contribution to EU greenhouse gas emissions is only around three percent; however, its emissions are growing faster than any other sector, which risks undermining the progress made in other industries.³⁹ For example, a roundtrip flight for two between Amsterdam and Phuket in Thailand, produces significantly more carbon dioxide than the average new car produces in an entire year.⁴⁰ The Commission believes that admittance into the ETS will provide a permanent incentive for airlines to minimize their greenhouse gas emissions.⁴¹ The proposed emissions cap applies to both EU carriers as well as foreign airlines operating in EU airports.⁴² The Commission claims that admittance to the ETS will provide the same environmental benefit with a lesser impact on ticket prices or on the rest of the economy when compared to imposing a tax on aviation fuel.⁴³

EUROPEAN SPACE AGENCY CLIMATE CHANGE SATELLITE FAILS TO LIFT OFF

In response to climate modeling that suggests that the frozen parts of the Earth are the most sensitive to climate change, the European Space Agency (“ESA”) had planned to launch an ice-monitoring satellite called CryoSat on October 8, 2005.⁴⁴ The mission, scheduled to last one thousand days, was developed to assess the rate at which the ice caps are thinning and contribute data to the ongoing debate on global warming.⁴⁵ The satellite’s main payload was a radar altimeter designed for ice, making it the first of its kind, as altimeters used in previous missions were designed for use over land and sea.⁴⁶ Due to an unfortunate glitch in the launch sequence, the CryoSat launch failed and the satellite fell into the Arctic Ocean, north of Greenland near the North Pole, with no damage to any populated areas.⁴⁷ The ESA may still consider recreating CryoSat together with industry, depending on cost and other factors to be decided by ESA’s Program Board.⁴⁸

MIDDLE EAST

WORLD FOOD PROGRAM’S FUNDING SHORTFALL IN IRAQ

The United Nations’ World Food Programme (“WFP”) reports that 20-34 percent of Iraq’s population is undernourished.⁴⁹ The WFP launched aid operations in September of 2004 to remedy food shortages in the war torn country.⁵⁰ These operations have recently hit a major roadblock. In a September 21, 2005 press release, WFP announced a 56 percent funding shortfall that is jeopardizing its operations in Iraq. The \$66 million U.S. operation aimed at supporting three million people, half of them children, has only received \$29 million thus far.⁵¹ The operation runs until the end of this year; however, with the current financial problems, it is likely to fall well short of its goals.

Funding for security and reconstruction projects in Iraq has taken precedence over much needed food and health programs.⁵² “Millions of Iraqis are dying and require urgent action and support from the whole world, but politics and security issues have caused people to forget the poor and those desperate for food,” said Ahmed Abdul Walled, a senior official in the Iraq Ministry of Planning and Development Cooperation.⁵³ If further funding does not materialize, the WFP may have to cut back or even cease its operations in Iraq.⁵⁴

STRUGGLING TO MEET THE MILLENNIUM DEVELOPMENT GOALS IN YEMEN

The Human Development Report (“HDI”), which measures life expectancy, school enrollment, literacy, and income, has regularly ranked Yemen among the world’s poorest countries.⁵⁵ The recently published 2005 report placed Yemen two points lower than last year’s ranking.⁵⁶ Yemen ranks 151 out of 177 countries, and ranks last in the Middle East.⁶⁷

According to the United Nations Development Programme (“UNDP”), at its current rate of progress Yemen is

unlikely to meet the Millennium Development Goals.⁵⁸ The Yemeni government blames this year's shortcomings on insufficient donor support.⁵⁹ Yemen's UNDP Resident Representative Flavia Pansieri supports the government's assertions, pointing out that Yemen has only received a third of

the average received by the Least Developed Countries.⁶⁰ Pansieri suggests a redistribution of government funds to remedy the deteriorating situation and recommends a reduction in defense expenditures in exchange for increased funding in the health and education sectors.⁶¹



ENDNOTES: WORLD NEWS

¹ Press Release, Food and Agricultural Organization of the United Nations (Rome), Africa May Face Serious Bird Flu Risk (Oct. 19, 2005), available at <http://allafrica.com/stories/200510190351.html> (last visited Nov. 5, 2005).

² *Id.*

³ *Id.*

⁴ UN IRIN, Congo: Brazzaville Bans Poultry Imports over Bird Flu (Oct. 18, 2005), available at <http://www.irinnews.org/report.asp?ReportID=49622&SelectRegion=Gre at Lakes&SelectCountry=CONGO> (last visited Nov. 5, 2005).

⁵ BuaNews Online, Dept Prepares for Avian Flu (Oct. 17, 2005), <http://www.buanews.gov.za/view.php?ID=05101713451004&coll=buane w05> (last visited Nov. 5, 2005).

⁶ Tony Kago, Kenya Gets Ready for Bird Flu, THE NATION (Nairobi), Oct. 18, 2005, available at <http://allafrica.com/stories/200510180489.html> (last visited Nov. 5, 2005).

⁷ Patrick Barkham, Silently, Malawi Begins to Starve, THE GUARDIAN (UK), Oct. 19, 2005, International Pages, available at <http://www.guardian.co.uk/famine/story/0,,1595431,00.html> (last visited Nov. 5, 2005).

⁸ *Id.*

⁹ See *id.*

¹⁰ Barkham, *supra* note 7.

¹¹ UN IRIN, Malawi: Deal Stopped Over al-Qaeda Could Impact on Input Plan (Oct. 14, 2005), available at http://www.irinnews.org/report.asp?ReportID=49556&SelectRegion=Sout hern_Africa&SelectCountry=MALAWI (last visited Nov. 5, 2005).

¹² Malawi Cancels Fertilizer Deal, SUNDAY TIMES (Johannesburg) Oct. 13, 2005, available at <http://www.suntimes.co.za/zones/sundaytimes NEW/basket6st/basket6st1129198055.aspx> (last visited Nov. 5, 2005).

¹³ *Id.*

¹⁴ Malawi: Deal Stopped Over al-Qaeda Could Impact on Input Plan, *supra* note 11.

¹⁵ Barkham, *supra* note 7.

¹⁶ Bernard Namunane, Jibril Adnan, and Odhiuambo Orlale, Groups Petition Kibaki on Park, THE NATION (Nairobi), Oct. 7, 2005, available at <http://allafrica.com/stories/200510070331.html> (last visited Nov. 5, 2005).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Bernard Namunane and Peterson Githaiga, KWS's Role in Amboseli to Go On, Say Leaders, THE NATION (Nairobi), Oct. 11, 2005, available at <http://allafrica.com/stories/200510110607.html> (last visited Nov. 5, 2005).

²⁰ *Id.*

²¹ Paul Jimbo and Martin Mutua, Council, KWS in Standoff over Amboseli Park, THE EAST AFRICAN STANDARD (Nairobi), Oct. 18, 2005, available at <http://allafrica.com/stories/200510171220.html> (last visited Nov. 4, 2005).

²² Namunane and Githaiga, *supra* note 19.

²³ Namunane and Githaiga, *supra* note 19.

²⁴ GLOBO.COM, A polemica sobre a transposição das águas do Rio São Francisco, [The Polemic Flow of the São Francisco River], available at <http://globo.com/online/pais/170119066.asp> (last visited Nov. 5, 2005,

subscription required).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Ronaldo França, Um rio de dúvidas, [A river of doubts], VEJA ON-LINE, available at <http://veja.abril.com.br>, (last visited Nov. 5, 2005).

²⁹ VEJA ON-LINE, Bispo suspende greve de fome depois de reunir-se com Jaques Wagner, [Bishop suspends hunger strike after reunion with Jaques Wagner], available at <http://www.valoronline.com.br/veconomico/?show=index&mat=3320554&edicao=1200&caderno=99&news=1&cod =41c10451&s=1>, (last visited Nov. 4, 2005).

³⁰ *Id.*

³¹ Jennifer Medina, In New Orleans, the Trashman Will Have to Move Mountains, N.Y. TIMES, Oct. 16, 2005, Sec.1, Col. 1, p. 1.

³² Ellen Wulffhorst, Storm-hit New Orleans faces mountains of garbage, REUTERS ALTERNET.COM, Sept. 28, 2005, available at <http://www.alertnet.org/thenews/newsdesk/N28321138.htm>, (last visited Nov. 5, 2005).

³³ *Id.*

³⁴ Medina, *supra* note 31.

³⁵ Medina, *supra* note 31.

³⁶ Press Release, United Nations Development Programme, Thailand Gives Lion's Share of Aid to Low Income Neighbors (Sept. 13, 2005), available at http://www.undp.or.th/whatsnew/pressrelease_MDG8.htm (last visited Nov. 5, 2005).

³⁷ *Id.*

³⁸ Press Release, Europa, Climate Change: Commission proposes strategy to curb greenhouse gas emissions from air travel (Sept. 27, 2005), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1192> (last visited Oct. 31, 2005).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Europa, *supra* note 38.

⁴² Press Release, Europa, Questions & Answers on Aviation & Climate Change (Sept. 27, 2005), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/05/343> (last visited Oct. 31, 2005).

⁴³ *Id.*

⁴⁴ First European Ice Monitoring Satellite Flies Saturday, <http://ens-newswire.com/ens/oct2005/2005-10-06-03.asp> (last visited Nov. 5, 2005).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ CryoSat Launch Failure Dumps Ice Monitoring Satellite in the Sea, ENVTL. NEWS SERVICE, Oct. 10, 2005, available at <http://ens-newswire.com/ens/oct2005/2005-10-10-05.asp> (last visited Nov. 5, 2005).

⁴⁸ *Id.*

⁴⁹ World Food Programme, Interactive Hunger Map, available at http://www.wfp.org/country_brief/hunger_map/map/hungermap_popup/map_popup.html (last visited Nov. 5, 2005)

⁵⁰ Press Release, World Food Programme, Dismal Shortage of Cash Threatens Hungry Iraqis (Sept. 21, 2005), available at <http://www.wfp.org/english/?n=321&k=1830> (last visited Nov. 5, 2005).

BIBLIOGRAPHY

1. ADAM WAGSTAFF AND MARIAM CLAESON, WORLD BANK, *RISE TO THE CHALLENGES* (2004).
2. Andy Berg and Zia Qureshi, *The MDGs: Building Momentum*, 42 FINANCE AND DEVELOPMENT (Sept. 2005), available at <http://www.imf.org/external/pubs/ft/fandd/2005/09/berg.htm> (last visited Nov. 6, 2005).
3. ANIL B. DEOLALIKAR, *ATTAINING THE MILLENNIUM DEVELOPMENT GOALS IN INDIA: REDUCING INFANT MORTALITY, CHILD MALNUTRITION, GENDER DISPARITIES AND HUNGER-POVERTY AND INCREASING SCHOOL ENROLLMENT AND COMPLETION* (Oxford University Press 2005).
4. D. Messner and P. Wolff, German Development Institute, *The Missing Link in the Sachs Report on the MDGs* (2005) available at <http://www.eldis.org/static/DOC19008.htm> (last visited Nov. 6, 2005).
5. J.W. McArthur and Jeffrey D. Sachs, UNMP, *The Millennium Project: A Plan for Meeting the Millennium Development Goals*, 365 THE LANCET 347 (JAN. 22, 2005) available at http://www.earthinstitute.columbia.edu/images/TheLancetSachs_McArthur.pdf (last visited Nov. 6, 2005).
6. Jeffrey D. Sachs, *Can Extreme Poverty Be Eliminated? More and Better Aid is the Solution to Extreme Poverty*, SCIENTIFIC AMERICAN, SEPT. 2005, AT 56, available at <http://www.earthinstitute.columbia.edu/about/director/documents/SciAmSept05.pdf> (last visited Nov. 6, 2005).
7. JEFFREY D. SACHS, *THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME* (Penguin Press 2005).
8. Joachim von Braun, M. S. Swaminathan, & Mark W. Rosegrant, International Food Policy Research Institute [IFPRI], *Annual Report Essay: Agriculture, Food Security, Nutrition and the Millennium Development Goals* (2004) available at <http://www.ifpri.org/pubs/books/ar2003/ar03e.pdf> (last visited Nov. 6, 2005).
9. KOFFI ANNAN, *IMPLEMENTATION OF THE UNITED NATIONS MILLENNIUM DECLARATION REPORT OF THE SECRETARY-GENERAL*, U.N. DOC. A/59/282 (AUG. 27, 2004).
10. LAEL BRAINARD, CAROL GRAHAM, NIGEL PURVIS, STEVEN RADELET, AND GAYLE SMITH, CENTER FOR GLOBAL DEVELOPMENT, *THE OTHER WAR: GLOBAL POVERTY AND THE MILLENNIUM CHALLENGE ACCOUNT* (Brookings Institution Press 2003).
11. MILLENNIUM ECOSYSTEM ASSESSMENT, *ECOSYSTEMS AND HUMAN WELL-BEING: A FRAMEWORK FOR ASSESSMENT* (Island Press 2003).
12. *THE MILLENNIUM DEVELOPMENT GOALS: RAISING THE RESOURCES TO TACKLE WORLD POVERTY* (Cheru Fantu & Colin I. Bradford, eds., 2005).
13. UN, *Millennium Development Goals Progress Chart*, <http://unstats.un.org/unsd/mi/pdf/MDG%20Chart%20Sept.pdf> (last visited Nov. 3, 2005).
14. UN, *Progress Toward the Millennium Development Goals*, http://millenniumindicators.un.org/unsd/mi/mi_coverfinal.htm (last visited Nov. 3, 2005).
15. UN, *THE MILLENNIUM DEVELOPMENT GOALS REPORT (2005) available at* <http://unstats.un.org/unsd/mi/pdf/MDG%20Book.pdf> (last visited Nov. 6, 2005).
16. UNDG, *Millennium Development Goal Reports by Country*, <http://www.undg.org/content.cfm?id=79> (last visited Nov. 3, 2005).
17. UNDP, *Good Practices in Support of the MDGs: Advancing Country-Level Action*, <http://www.undp.org/mdg/goodpractices.html> (last visited Nov. 3, 2005).
18. UNDP, *HUMAN DEVELOPMENT REPORT (2005) available at* http://hdr.undp.org/reports/global/2005/pdf/HDR05_frontmatter.pdf (last visited Nov. 6, 2005).
19. UNITED NATIONS DEVELOPMENT GROUP [UNDG], *MAKING THE MDGs MATTER: A COUNTRY PERSPECTIVE, REPORT OF A UNDG SURVEY (June 2005) available at* http://www.undg.org/documents/6458Making_the_MDGs_Matter__a_country_perspective.pdf (last visited Nov. 6, 2005).
20. UNITED NATIONS DEVELOPMENT PROGRAM [UNDP], *HUMAN DEVELOPMENT REPORT 2003: MILLENNIUM DEVELOPMENT GOALS, A COMPACT AMONG NATIONS TO END HUMAN POVERTY (2003) available at* http://hdr.undp.org/reports/global/2003/pdf/hdr03_complete.pdf (last visited Nov. 6, 2005).
21. *United Nations Millennium Declaration, G.A. A/RES/55/2, U.N. GAOR, 55th Sess., UN Doc. A/55/49 (Sept. 18, 2000) available at* <http://www.un.org/millennium/> (last visited Nov. 6, 2005).
22. *United Nations Statistics Division, Millennium Development Goal Indicators Database 2005*, http://unstats.un.org/unsd/mi/mi_goals.asp (last visited Nov. 3, 2005).
23. WORLD BANK, *GLOBAL MONITORING REPORT 2004: POLICIES AND ACTIONS FOR ACHIEVING THE MILLENNIUM DEVELOPMENT GOALS AND RELATED OUTCOMES (2004)*.
24. WORLD BANK, *GLOBAL MONITORING REPORT 2005: MILLENNIUM DEVELOPMENT GOALS, FROM CONSENSUS TO MOMENTUM (2005) available at* <http://siteresources.worldbank.org/GLOBALMONITORINGEXT/Resources/complete.pdf> (last visited Nov. 6, 2005).
25. WORLD BANK, *IMPLEMENTING THE MILLENNIUM DEVELOPMENT GOALS* (Margaret J. Miller, ed. 2005).
26. WORLD BANK, *MINIATLAS OF THE MILLENNIUM DEVELOPMENT GOALS: BUILDING A BETTER WORLD (2005)*.
27. WORLD FEDERATION OF UNITED NATIONS ASSOCIATIONS AND THE NORTH-SOUTH INSTITUTE, *THE UN MILLENNIUM DECLARATION AND BEYOND, MOBILIZING FOR CHANGE: MESSAGES FROM CIVIL SOCIETY (2005) available at* <http://www.wfuna.org/docUploads/wtp2005%5Feng%2Epdf> (last visited Nov. 6, 2005).
28. WORLD HEALTH ORGANIZATION [WHO], *HEALTH AND THE MILLENNIUM DEVELOPMENT GOALS (2005) available at* http://www.who.int/mdg/publications/MDG_Report_revised.pdf (last visited Nov. 6, 2005).

ENDNOTES: WORLD NEWS *Continued from page 73*

- ⁵¹ *Id.*
- ⁵² UN IRIN, *Iraq: Food Operation Under Threat*, Sept. 27, 2005, available at http://www.irinnews.org/report.asp?ReportID=49244&SelectRegion=Middle_East&SelectCountry=IRAQ (last visited Nov. 5, 2005).
- ⁵³ *Id.*
- ⁵⁴ Dismal Shortage, *supra* note 50.
- ⁵⁵ UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT INDEX, YEMEN, available at http://hdr.undp.org/statistics/data/country_fact_zsheets/cty_fs_YEM.html (citing to UNITED NATIONS DEVELOPMENT PROGRAM, *Human Development Report 2005*, at 61 and 213) (last visited

- Nov. 5, 2005).
- ⁵⁶ Walid Al-Saqqaf Mohammed Al-Jabri, *Yemen unlikely to reach MDGs: UNDP*, YEMEN TIMES, Oct. 17 2005, available at <http://yemen-times.com/article.shtml?i=887&p=front&a=1> (last visited Nov. 5, 2005).
- ⁵⁷ Interactive Hunger map, *supra* note 56.
- ⁵⁸ Al-Jabri, *supra* note 56.
- ⁵⁹ Al-Jabri, *supra* note 56.
- ⁶⁰ Al-Jabri, *supra* note 56.
- ⁶¹ Al-Jabri, *supra* note 56.

ENDNOTES: EDUCATION AS A LYNCHPIN OF DEVELOPMENT *Continued from page 11*

- ⁹ *Id.*
- ¹⁰ WORLD BANK, FOCUS ON SUSTAINABILITY 2004, 65 (2005).
- ¹¹ Local agencies involved in supporting the education sector nominate a Coordinating Agency to lead the FTI assessment and endorsement process and serve as a liaison with the Ministry of Education and the EFA-FTI Secretariat.
- ¹² FOCUS ON SUSTAINABILITY 2004, *supra* note 10, at 65. EFA-FTI criteria also require that an education plan focus on the quality of the education to be provided and on the sustainability of a country's education system.
- ¹³ Oxfam International, *Education for All: Fast Track or Slow Trickle?* (2003).
- ¹⁴ The Netherlands pledged the lion's share of the funding with \$39.5 million. Norway pledged \$5.9 million, Italy \$2.4 million, and Belgium \$1.2 million for the years 2003-2004. These countries also committed money in 2005 and were joined by \$5.3 million from Sweden and \$6.1 million from Spain (still outstanding). In 2006-2007, pledges have also been made by the EC for \$76.2 million, Ireland for \$1.5 million and the UK for \$64.8 million.
- ¹⁵ Funding from the Catalytic Fund is available only to IDA-eligible countries. The World Bank operates through two main windows: the International Bank for Reconstruction and Development ("IBRD"), which provides loans on near-market terms to middle-income countries, and the International Development Association ("IDA"), which disburses

- highly subsidized loans to poorer countries. Countries are classified for IBRD or IDA funding based on two criterion: 1) income levels, with the IDA cutoff at approximately \$900 (with a few exceptions); and 2) credit-worthiness, based on Bank staff judgments about a country's ability to borrow on private capital markets.
- ¹⁶ In March 2005, the Strategy Committee of the Catalytic Fund agreed that for the purposes of Fund eligibility, a donor orphan would be any IDA-eligible country who received funding from four or fewer bilateral donors contributing a maximum of \$1 million each to that country's education sector. See Minutes of Catalytic Fund Strategy Committee Meeting, July 2005 (on file with authors).
- ¹⁷ Only donors who contribute a minimum of one million dollars may appoint a representative to the Strategy Committed. To date, however, all donors have contributed this minimum amount.
- ¹⁸ To date, Gambia has been allocated \$19.0 million of which \$4.0 million has been disbursed, Guyana \$8.0 million of which \$4.0 million has been disbursed, Mauritania \$9.0 million of which \$7.0 million has been disbursed, Nicaragua \$14.0 million of which \$7.0 million has been disbursed, Niger \$21.0 million of which \$9.0 million has been disbursed, Gambia \$8.0 million of which \$4.0 million has been disbursed, Yemen \$20.0 million of which \$10.0 million has been disbursed, Madagascar \$35.0 million of which \$6.0

ENDNOTES: MDGs AND HIV/AIDS *Continued from page 32*

- available at <http://www.who.int/3by5/fullreportJune2005.pdf> (last visited Nov. 4, 2004)[hereinafter WHO].
- ³ Lee Jong-Wook, *Global health improvement and WHO: shaping the future*, 362 LANCET 2083-88, 2084 (2003), available at http://www.who.int/whr/2003/media_centre/en/lee_lancet_article.pdf (last visited Nov. 4, 2005).
- ⁴ WHO, *supra* note 2, at 24.
- ⁵ UN MILLENNIUM PROJECT, TASK FORCE ON HIV/AIDS, MALARIA, TB, AND ACCESS TO ESSENTIAL MEDICINES, COMBATING AIDS IN THE DEVELOPING WORLD, (2005) at 7, available at <http://www.unmillenniumproject.org/documents/HIVAIDS-complete.pdf> (last visited Nov. 4, 2005)[hereinafter UN MILLENNIUM PROJECT].
- ⁶ Jong-Wook, *supra* note 3, at 2084.
- ⁷ Wagstaff & Claeson, *supra* note 1, at xiii, fig. 1.
- ⁸ UN MILLENNIUM PROJECT, *supra* note 5, at 1.
- ⁹ E.g., John Stover, et al., *Can we reverse the HIV/AIDS pandemic with an expanded response?* 360 LANCET 73-77, 76 (2003), available at [http://www.hsph.harvard.edu/hcpds/documents/follow "Stover Et Al" hyperlink](http://www.hsph.harvard.edu/hcpds/documents/follow%20Stover%20Et%20Al%20hyperlink) (last visited Nov. 4, 2005).
- ¹⁰ WHO, *supra* note 2, at 32.
- ¹¹ WHO, *supra* note 2, at 5.
- ¹² UN MILLENNIUM PROJECT, *supra* note 5, at 1.

- ¹³ WHO, *supra* note 2, at 11.
- ¹⁴ UNAIDS: The Joint United Nations Programme on HIV/AIDS, at <http://www.unaids.org/en/default.asp> (last visited Nov. 4, 2005).
- ¹⁵ For more information on the "3 by 5" initiative, see <http://www.who.int/3by5/en/> (last visited Oct. 24, 2005).
- ¹⁶ WHO, *supra* note 2, at 11-12.
- ¹⁷ See WHO, *supra* note 2, at 17.
- ¹⁸ Wagstaff & Claeson, *supra* note 1, at 7.
- ¹⁹ See Wagstaff & Claeson, *supra* note 1, at 9.
- ²² Wagstaff & Claeson, *supra* note 1, at 15.
- ²¹ Wagstaff & Claeson, *supra* note 1, at 17.
- ²² Wagstaff & Claeson, *supra* note 1, at 13.
- ²³ Wagstaff & Claeson, *supra* note 1, at 13.
- ²⁴ WHO, *supra* note 2, at 23.
- ²⁵ See e.g., Neff Walker, et al., *Meeting International Goals In Child Survival And Hiv/Aids*, THE LANCET, at 5, (April 30, 2002), available at <http://image.thelancet.com/extras/01art9188web.pdf> (last visited Nov. 4, 2005).
- ²⁶ Wook, *supra* note 3, at 2086, Panel 1.
- ²⁷ WHO, *supra* note 2, at 20.

/0,12271,1557488,00.html (last visited Oct. 30, 2005).

¹⁸ Alexander Bardzik, INTERACTION, *Meeting Our Commitment to the Millennium Development Goals*, SUMMARIES OF FORUM 2003 PROCEEDINGS, available at http://www.interaction.org/forum2003/cdpp_sessions.html#MDG (last visited Oct. 30, 2005).

¹⁹ Summary notes from InterAction Forum session on “Meeting Our Commitment to the Millennium Development Goals” available at http://www.interaction.org/forum2003/cdpp_sessions.html#MDG (last visited Oct. 28, 2005).

²⁰ Critics of Sachs’ approach promoting funding the poorest nations, those caught in the “poverty trap,” also argue that his approach is giving money to countries who may not know how to manage the aid due to issues such as rampant corruption. Although Sachs’ theory is a sound logical argument where the poorer a country is, the higher the marginal value of the dollar and arguably in the poorest nations the dollar has a more significant impact, this cannot be done without taking into account additional contextual factors such as the social and political infrastructure of a recipient nation.

²¹ Summary notes from InterAction Forum session on “Meeting Our Commitment to the Millennium Development Goals” available at http://www.interaction.org/forum2003/cdpp_sessions.html#MDG (last visited Oct. 28, 2005).

²² Steven Radelet, CTR. FOR GLOBAL DEV., *Challenging Foreign Aid: A Policymaker’s Guide to the Millennium Challenge Account*, 3 (2003) [hereinafter Radelet Challenging].

²³ *Id.* at 1.

²⁴ *Id.* at 2.

²⁵ LAEL BRAINARD ET AL., CTR. FOR GLOBAL DEV. & BROOKINGS INST., *THE OTHER WAR: GLOBAL POVERTY AND THE MILLENNIUM CHALLENGE ACCOUNT* 28 (2003).

²⁶ See U.S., MILLENNIUM CHALLENGE CORPORATION, available at <http://www.mca.gov/> (last visited Oct. 30, 2005) (Providing more information on the Millennium Challenge Corporation).

²⁷ Elizabeth Spiro Clark, *The Millennium Challenge Account: Spur to Democracy?* FOREIGN SERVICE J. at 31 (Apr. 2005).

²⁸ Steve Radelet, *The Millennium Challenge Account: Transforming US Foreign Assistance Policy?* AGENDA, Vol. 11, No. 1 (2004), 59 available at http://www.cgdev.org/doc/mca%20monitor/Agenda_McLeod.pdf (last visited Nov. 1, 2005) [hereinafter Radelet Transforming].

²⁹ Radelet Challenging, *supra* note 22, at 8.

³⁰ BRAINER, *supra* note 21.

³¹ Glenn Kessler, *Reinventing the U.S. Foreign Aid at Millennium Challenge Corp.* THE WASH. POST, at A17 (Aug. 10, 2004).

³² Lex Rieffel & James Fox, *Moving Toward Smarter Aid*, BROOKINGS INST. POL’Y BRIEF 145 at 2 (Aug. 2005).

³³ Kessler, *supra* note 31.

³⁴ Radelet Transforming, *supra* note 28, at 59.

³⁵ Steve Radelet, *Will the Millennium Challenge Account be Different?* 26 WASH. Q. 2, at 171 (Spring 2003) [hereinafter Radelet Different].

³⁶ Ruling Justly: based on Freedom House rankings of civil liberties and political rights as well as World Bank Institute indices on accountability, governance and control of corruption. MILLENNIUM CHALLENGE CORPORATION, “MCC Selection Policy Indicators: Short Descriptions” available at http://www.mca.gov/countries/selection/short_descriptions.shtml (last visited Nov. 1, 2005).

³⁷ Economic Freedom: determined by credit ratings, inflation rates, business start-up times, trade policies and regulatory regimes as measured by such institutions as the World Bank, the International Monetary Fund and the Heritage Foundation Index of Economic Freedom. MILLENNIUM CHALLENGE CORPORATION, *MCC Selection Policy Indicators: Short Descriptions* available at http://www.mca.gov/countries/selection/short_descriptions.shtml (last visited Nov. 1, 2005).

³⁸ Investment in People: gauged according to public expenditure on

health and primary education, immunization rates and primary school completion rates as recorded by the national governments, the World Health Organization and the U.N. MILLENNIUM CHALLENGE CORPORATION, “MCC Selection Policy Indicators: Short Descriptions” available at http://www.mca.gov/countries/selection/short_descriptions.shtml (last visited Nov. 1, 2005).

³⁹ Thomas I. Palley, *Linking the Community of Democracies with Millennium Challenge Accounts: A Case of Win-Win*, OPEN SOCIETY INSTITUTE (2003), at 10.

⁴⁰ Radelet Different, *supra* note 35, at 178.

⁴¹ At the time of this writing the five Compacts signed are with Madagascar, Cape Verde, Honduras, Nicaragua, and Georgia. Millennium Challenge Corporation available at <http://www.mca.gov/compacts/index.shtml> (last visited Nov. 1, 2005).

⁴² Ross Herbert, *A New Face for US Aid?*, 2 AFRICA (June 2004), available at: <http://www.saiia.org.za/modules.php?op=modload&name=News&file=article&sid=345> (last visited Oct. 30, 2005) (hereinafter “Ross Herbert”).

⁴³ Radelet Different, *supra* note 35, at 180.

⁴⁴ Radelet Different, *supra* note 35, at 180.

⁴⁵ Although Jeffery Sachs would disagree with this notion that leaving these poorer performing countries for USAID and other donor organizations is problematic based on Sachs’ argument that “poverty trapped” countries is where the world should be focusing their attention and not on the upper tier of developing countries—also known as the MCA eligible countries.

⁴⁶ Michael Clemens & Steven Radelet, CTR. FOR GLOBAL DEV. *The Millennium Challenge Account: How much is too much, how long is long enough?* WORKING PAPER NUMBER 23 at 6 (Feb. 2003).

⁴⁷ *Id.*

⁴⁸ Paul Blustein, *Bush to Call for New Foreign Aid Agency*, WASHINGTON POST, at A4 (Nov. 26, 2002).

⁴⁹ The Threshold Program has been established to assist countries that are on the “threshold,” meaning they have not yet qualified for Millennium Challenge Account (“MCA”) funding assistance; but have demonstrated a significant commitment to improve their performance on the MCA eligibility criteria. The Threshold Program is designed to assist countries that are committed to undertaking the reforms necessary to improve policy performance and eventually qualify for MCA funding. USAID is expected to be the primary implementing partner of the Threshold Program. THE MILLENNIUM CHALLENGE CORPORATION, “Threshold Countries,” available at: <http://www.mca.gov/countries/threshold/index.shtml> (last visited Nov. 2, 2005).

⁵⁰ Herbert, *supra* note 42.

⁵¹ *Id.*

⁵² Aaron M. Chassy, *The Millennium Challenge Corporation: Making It Work*, FOREIGN SERVICE J. at 38 (Apr. 2005).

⁵³ *Id.* at 38.

⁵⁴ Radelet Different, *supra* note 35, at 181.

⁵⁵ Chassy, *supra* note 52, at 41 (“USAID, which has considerable experience in dealing with such conflicts of interest [such as reporting too critically on a project’s progress which might preclude themselves from being competitive in a bid for follow-up activity], has many rules and regulations to reduce the frequency of this phenomenon. However, it is these very rules and regulations that motivated the Bush administration to exclude USAID from serving as the MCA’s executing agency.”).

⁵⁶ Radelet Different, *supra* note 35, at 181.

⁵⁷ For more information on the Threshold Program, see the Millennium Challenge Corporation’s website available at <http://www.mca.gov/countries/threshold/index.shtml>. See U.S., MILLENNIUM CHALLENGE CORPORATION THRESHOLD COUNTRIES, available at <http://www.mca.gov/countries/threshold/index.shtml> (last visited Oct. 30, 2005).

⁵⁸ Radelet Different, *supra* note 35, at 181.

33721_35317145_1_1_1_1,00.html (last visited Oct. 31, 2005).

⁶ Brian Tomlinson, *The Politics of the Millennium Development Goals: Contributing to Strategies for Ending Poverty? Part One: The Politics of MDGs and Poverty Eradication*, Canadian Council for International Co-operation (May 31, 2005), available at <http://www.realityofaid.org/themeshow.php?id=14> (last visited Oct. 26, 2005) [hereinafter Tomlinson].

⁷ See generally Ghelawdewos Araia, *Critical Appraisal of Africa's Place in the Global Economy*, IDEA, Nov. 20, 2004, available at <http://www.africanidea.org/critical.html> (last visited Oct. 31, 2005).

⁸ See Charles Mutasa, *Global Partnership, Human Rights and The Global Call Against Poverty in The Context of MDGs*, AFRODAD, 2004, at 7, available at http://www.sahims.net/doclibrary/Sahims_Documents/AFRODAD_2004.pdf (last visited Oct. 26, 2005).

⁹ See e.g., Zaza Curran, *Civil Society Participation in the PRSP: the Role of Evidence and the Impact on Policy Choices?*, Reclaiming Development? Assessing the Contributions of Nongovernmental Organisations to Development Alternatives Conference, June 27-29, 2005, available at <http://www.sed.manchester.ac.uk/idpm/research/events/ngo2005/papers.htm> (last visited Oct. 31, 2005).

¹⁰ THE WORLD BANK, Table 8.1 Country Eligibility for Borrowing from the World Bank 141 from *The World Bank Annual Report 2001* (2001), available at http://www.worldbank.org/annualreport2001/pdf/tab8_1.pdf (last visited Oct. 26, 2005).

¹¹ INTERNATIONAL LABOUR ORGANIZATION, Figure 20b Economies with "Severe" or "Severe-to-moderate" Poverty, Latest Years, from *Key Indicators of the Labour Market*, available at <http://www.ilo.org/public/english/employment/strat/kilm/kilm20.htm> (last visited Oct. 31, 2005).

¹² *Debt – External*, NATIONMASTER.COM (2005), available at http://www.nationmaster.com/graph-T/eco_deb_ext (last visited Oct. 26, 2005).

¹³ ANAP SHAH, THE US AND FOREIGN AID ASSISTANCE, GLOBAL ISSUES, Aug. 20, 2005, available at <http://www.globalissues.org/TradeRelated/Debt/USAid.asp> (last visited Oct. 31, 2005).

¹⁴ *Part 1 – Context*, Development for International Development (Dec. 2004), available at <http://www.dfid.gov.uk/pubs/files/nigeria-cap-1-a.pdf> (last visited Oct. 26, 2005).

¹⁵ AFRODAD, A Critical Appraisal of the Global Partnership for Development (Goal 8): Tanzania and the Millennium Development Goals, (2005), available at <http://www.afrodad.org/archive/MDGs%20Tanzania.pdf> (last visited Oct. 31, 2005) [hereinafter Critical Appraisal].

¹⁶ Brian Tomlinson & Pam Foster, *At the Table or in the Kitchen? CIDA's New Aid Strategies, Developing Country Ownership and Donor Conditionality*, Canadian Council for International Cooperation and the Halifax Initiative (Sept. 2004), available at <http://www.realityofaid.org/themeshow.php?id=19> (last visited Oct. 27, 2005).

¹⁷ UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, LEAST DEVELOPED COUNTRIES REPORT 2000 (2002).

¹⁸ Action Aid International, *Real Aid an Agenda for Making Aid Work*, (2005).

¹⁹ See Tomlinson, *supra* note 6.

²⁰ Reality of Aid, *Reality of Aid 2002 Report 15* (2002), available at <http://www.realityofaid.org/roareport.php?table=roa2002&id=1> (last visited Oct. 27, 2005).

²¹ See Critical Appraisal, *supra* note 18, at 7.

²² *Make History: A Challenge to the British Prime Minister in 2005*, Make Poverty History (2005), at 26, available at <http://www.tearfund.org/webdocs/Website/Campaigning/MPH%20-%20Jan%20Report.pdf> (last visited Oct. 26, 2005).

²³ Raphael Tenthani, 'Malawi corruption' halts Danish aid, BBC News

(Jan. 31, 2002), available at <http://news.bbc.co.uk/1/hi/world/africa/1794730.stm> (last visited Oct. 26, 2005).

²⁴ Tenthani, *id.*

²⁵ Tenthani, *id.*

²⁶ See *Drop the Debt: Why Drop the Debt?*, Jubilee USA, at 1, available at http://www.jubileeusa.org/learn_more/why_drop_the_debt.pdf (last visited Oct. 26, 2005)..

²⁷ See ANDY BERG & ZIA QURESHI, THE MDGs BUILDING MOMENTUM, IMF, Sept. 2005, (finding that achieving the human development MGDs require a major expansion of education and health services), available at <http://www.imf.org/external/pubs/ft/fandd/2005/09/berg.htm> (last visited Oct. 31, 2005)

²⁸ Chipeta Chinyamata, *The Politics of the MDGs. The Case of Malawi; Research Report* (2005) (presented to AFRODAD).

²⁹ THE WORLD BANK, GLOBAL DEVELOPMENT FINANCE 2004: HARNESSING CYCLICAL GAINS FOR DEVELOPMENT (Apr. 2004).

³⁰ See generally *Debt Relief and Poverty Reduction: Meeting the Challenge* (Unicef/Oxfam International Position Paper, 1999) available at www.worldbank.org/hipc/related-papers/addis-related_papers/UN-OXFAM.pdf (last visited Oct. 31, 2005).

³¹ See G8 Finance Ministers' Conclusions on Development, London (June 11, 2005), available at <http://www.g8.gov.uk/servlet/Front?page-name=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1078995903270&aid=1115146455234> (last visited Nov. 1, 2005).

³² Press Release, G-8 Debt Agreement A Step Forward, but Analysis Finds Deal Falls Short of What Is Needed to Address Global Crisis, Jubilee USA (July 8, 2005) available at <http://www.results.org/website/article.asp?id=1662> (last visited Oct. 26, 2005).

³³ *Id.*

³⁴ Press Release, The G8 Debt Deal – A Half-Baked Solution to the Crisis, AFRODAD (2005) available at <http://www.afrodad.org/archive/AFRODAD%20Press%20Statement%20on%20G8.pdf> (last visited Oct. 26, 2005).

³⁵ AFRODAD, A Critical Appraisal of the Global Partnership for Development (Goal 8): The Politics of the MDGs and the Rainbow Nation South Africa (2005) at 21, available at <http://www.afrodad.org/SA%20MDGs.pdf> (last visited Oct. 26, 2005).

³⁶ Thabo Mbeki, President, S. Afr., Address to the Commonwealth Club, World Affairs Council and US/SA Business Council Conference, San Francisco (May 24, 2000).

³⁷ See Mustasa, *supra* note 11.

³⁸ Jakaya M. Kikwete, Minister for Foreign Affairs and International Cooperation of the Republic of Tanz., Statement made at the International Conference on Financing for Development, Monterrey, Mexico (Mar. 21, 2002), available at <http://www.un.org/ffd/statements/tanzaniaE.htm>. (last visited Oct. 26, 2005) [hereinafter Kikwete].

³⁹ African Growth and Opportunity Act, Title I, Trade and Development Act of 2000, 19 U.S.C.A. Sec. 3701 et seq.

⁴⁰ Brian Tomlinson, *The Politics of the Millennium Development Goals: Contributing to Strategies for Ending Poverty? A Summary of the Main Arguments and Conclusions* (2005), p.5, available at http://www.ccic.ca/e/docs/002_aid_2005-05_politics_of_mdgs_summary.pdf (last visited Oct. 26, 2005).

⁴¹ See Critical Appraisal, *supra* note 18.

⁴² Kikwete *supra*, note 41.

ENDNOTES: ESTABLISHING SOUND CHEMICALS MANAGEMENT *Continued from page 31*

- ³¹ See CAROL BELLAMY, *supra* note 19, at Intro.
- ³² LYNN GOLDMAN & NGA TRAN, TOXICS AND POVERTY: THE IMPACT OF TOXIC SUBSTANCES ON THE POOR IN DEVELOPING COUNTRIES 27 (World Bank 2002).
- ³³ GOLDMAN, *id.* at 27.
- ³⁴ GOLDMAN, *id.* at 26.
- ³⁵ NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, THE EFFECTS OF WORKPLACE HAZARDS ON FEMALE REPRODUCTIVE HEALTH, PUBLICATION No. 99-104 (1999), available at <http://www.cdc.gov/niosh/pdfs/99-104.pdf> (last visited Oct. 21, 2005).
- ³⁶ NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, POSTER: FERTILITY AND PREGNANCY ABNORMALITIES, available at <http://www2.cdc.gov/NORA/teamposters/psfpa.html> (last visited Oct. 21, 2005).
- ³⁷ *Id.*
- ³⁸ XK Chen et al., *Environmental Lead Level and Pregnancy-Induced Hypertension*, Environ Res. 2005, available at http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=pubmed&dopt=Abstract&list_uids=16131463&query_hl=1 (last visited Oct. 21, 2005).
- ³⁹ David Adam, *Link found between food packaging and miscarriages*, GUARDIAN, June 11, 2005, available at http://www.guardian.co.uk/uk_news/story/0,3604,1504163,00.html (last visited Oct. 21, 2005).
- ⁴⁰ UNITED NATIONS, *supra* note 10, at 22.
- ⁴¹ WORLD HEALTH ORGANIZATION, ROLL BACK MALARIA, MALARIA IN AFRICA, http://www.rbm.who.int/cmc_upload/0/000/015/370/RBM_Infosheet_3.htm (last visited Oct. 21, 2005).
- ⁴² UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Polychlorinated Biphenyls, Health Effects of PCBs, <http://www.epa.gov/opptintr/pcb/effects.html>.
- ⁴³ UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, INFORMATION SHEET 2, DIOXIN: SCIENTIFIC HIGHLIGHTS FROM THE NAS REVIEW DRAFT OF EPA'S DIOXIN REASSESSMENT (2004), available at <http://cfpub.epa.gov/ncea/cfm/recorddisplay.cfm?deid=87843> (last visited Oct. 21, 2005).
- ⁴⁴ UNITED NATIONS, *supra* note 10, at 26.
- ⁴⁵ UNITED NATIONS, *supra* note 10, at 24.
- ⁴⁶ UNITED NATIONS ENVIRONMENT PROGRAMME, GLOBAL ENVIRONMENTAL OUTLOOK 2004/5, NEW CHEMICALS FOUND IN ARCTIC WILDLIFE AND PEOPLES (2004), available at <http://www.unep.org/geo/yearbook/yb2004/063.htm> (last visited Oct. 21, 2005).
- ⁴⁷ Marla Cone, *Pollutants drift north, making Inuits' traditional diet toxic*, BOSTON GLOBE, January 18, 2004, available at http://www.boston.com/news/world/articles/2004/01/18/pollutants_drift_north_making_inuits_traditional_diet_toxic/ (last visited Oct. 21, 2005).
- ⁴⁸ UNITED NATIONS, *supra* note 10, at 33.
- ⁴⁹ UNITED NATIONS, *supra* note 10, at 33.
- ⁵⁰ UNITED NATIONS, *supra* note 10, at 34.

ENDNOTES: HARMONIZATION AROUND RESULTS REPORTING *Continued from page 43*

- ²⁶ These findings were supported by a 2004 review by OED and IMF evaluation departments which found that the results orientation was the weakest part of the PRSPs reviewed.
- ²⁷ David Booth and Xavier Nsabagasani, *Poverty Monitoring Systems: An Analysis of Institutional Arrangements in Uganda*, Working Paper 246, Overseas Dev. Inst. (Mar. 2005), available at http://www.odi.org.uk/publications/working_papers/wp246.pdf (last visited Oct. 31, 2005).
- ²⁸ This is recognized in the case of Tanzania where the MoU states that the donors will work to align the PAF and PRS.
- ²⁹ *Id.*
- ³⁰ THE WORLD BANK, REVIEW OF WORLD BANK CONDITIONALITY (Sept. 2005), available at <http://siteresources.worldbank.org/PROJECTS/Resources/40940-1114615847489/webConditionalitysept05.pdf> (last visited Oct. 30, 2005). The conditionality review also pointed out the difficulty in linking disbursement volumes directly to outcome indicators. It stated that this is hampered by a number of problems: unavailability of suitable short-term outcome indicators (e.g., for public finance management and private sector development), substantial time lags in data availability, unreliability of data, and the risk of penalizing governments for outcomes that are outside their control. Formulaic application of outcome-based conditionality would also reduce the flexibility and adaptability of the programmatic approach. An increased results orientation should therefore be based on an appropriate mix of performance and policy indicators, and development practitioners generally agree that these indicators should be identified and tracked regularly as part of overall evaluation frameworks. At the same time, country experience and practical concerns suggest that the use of outcome-based indicators as conditions for disbursement should be approached with caution.
- ³¹ The World Bank, *id.* at 17.
- ³² WORLD BANK, OPERATIONS EVALUATION DEPARTMENT, THE POVERTY REDUCTION STRATEGY INITIATIVE: AN INDEPENDENT EVALUATION OF THE WORLD BANK'S SUPPORT THROUGH 2003, 17 (2004), available at [http://lnweb18.worldbank.org/oed/oeddoelib.nsf/24cc3bb1f94ae11c85256808006a0046/6b5669f816a60aaf85256ec1006346ac/\\$FILE/PRSP_Evaluation.pdf](http://lnweb18.worldbank.org/oed/oeddoelib.nsf/24cc3bb1f94ae11c85256808006a0046/6b5669f816a60aaf85256ec1006346ac/$FILE/PRSP_Evaluation.pdf) (last visited Oct. 30, 2005).
- ³³ Note by Guy Razafindralambo and Lisa Gaylord, Co-President, EP3 Joint Steering Committee (Environment/Rural Development Team Leader, USAID/Madagascar).
- ³⁴ G8 Glenagles Summit with additional financial commitments and debt relief matched by steps to improve development effectiveness.
- ³⁵ THE WORLD BANK, AID FINANCING AND AID EFFECTIVENESS 9 (Sept. 2005), available at [http://siteresources.worldbank.org/DEVCOMMIT/Documentation/20651878/DC2005-0020\(E\)-AidFin.pdf](http://siteresources.worldbank.org/DEVCOMMIT/Documentation/20651878/DC2005-0020(E)-AidFin.pdf) (last visited Oct. 30, 2005).
- ³⁶ USAID has some of the longest experience in this area, but experience also points to the danger that the system can become too top-heavy, too costly and time consuming. Operating units and implementing partners in USAID have argued that reporting can compete with the time spent implementing and that reporting upwards for higher-order results reporting is not directly relevant to them (OECD/DAC 2000 p23).
- ³⁷ Garnett (2004); Holmes (2003); Andrews and Moon (2004); Piron and Evans (2004).
- ³⁸ See generally, THE WORLD BANK, OPERATIONS EVALUATION DEPARTMENT, EVALUATION CAPACITY DEVELOPMENT, at <http://www.worldbank.org/oec/ecd> (last visited Nov. 8, 2005).
- ³⁹ Examples include the suspension of Graduated Tax, the cotton subsidy, the "Wealth for All" plan, Agricultural Zoning, and the school-feeding program.
- ⁴⁰ THE WORLD BANK, 2005 COMPREHENSIVE DEVELOPMENT (2005).

(last visited Nov. 4, 2005) [hereinafter *Rio Declaration*] (recommending that countries adopt national strategies for sustainable development).

⁵ BD. ON SUSTAINABLE DEV., POLICY DIV., NAT'L RESEARCH COUNCIL, OUR COMMON JOURNEY: A TRANSITION TOWARD SUSTAINABLE DEVELOPMENT 44 (National Academy Press 1999) [hereinafter OUR COMMON JOURNEY].

⁶ This article focuses on longer-term targets and timetables. A great many environmental treaties require compliance that more or less coincides with the date that these treaties go into effect. My focus, instead, is on timetables that often stretch a decade or more from the present date. Many of the hardest problems we face at the international level need to be addressed in longevity, to achieve even a modicum of success. These include, but are certainly not limited to, poverty, climate change, and loss of biodiversity. *See Framework, supra* note 1, at 32.

⁷ AGENDA 21, *supra* note 4, at ¶ 8.7.

⁸ AGENDA 21, *supra* note 4, at chs. 4, 9-15, 17-22.

⁹ AGENDA 21, *supra* note 4, at chs. 2-3, 6-7, 16.

¹⁰ AGENDA 21, *supra* note 4, at ¶ 8.3. *See also Rio Declaration, supra* note 4, princ. 11.

¹¹ *See* U. N. ENV'T PROGRAMME, GLOBAL ENVIRONMENTAL OUTLOOK 3 (2002), available at <http://www.unep.org/geo/geo3/english/index.htm> (last visited Nov. 4, 2005); The Secretary-General, *Implementing Agenda 21: Report of the Secretary-General, UN Commission for Sustainable Development Acting as the Preparatory Committee for the World Summit on Sustainable Development*, ¶4, 2d Sess., UN Doc. E/CN.17/2002/PC.2/7 (2002).

¹² AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999); *See also* Comm'm of the European Cmty., *A Sustainable Europe for a Better World: a European Union Strategy for Sustainable Development: Commission's Proposal to the Gothenburg European Council* Com (2001) 264 final, at 2 (May 15, 2001), available at http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0264en01.pdf, (last visited Nov. 4, 2005) [hereinafter *European Union Strategy*].

¹³ *European Union Strategy, supra* note 12, at 4.

¹⁴ Comm'm of the European Communities, *Consultation Paper For The Preparation Of A European Union Strategy For Sustainable Development*, at 14, SEC (2001) 517 (Mar. 27, 2001), available at http://europa.eu.int/comm/environment/eussd/consultation_paper_en.pdf (last visited Nov. 4, 2005).

¹⁵ *See* William F. Pederson, *Regulation and Information Disclosure: Parallel Universes and Beyond*, 25 HARV. ENVTL. L. REV. 151, 177 (2001).

¹⁶ OUR COMMON JOURNEY, *supra* note 5, at 12-14.

¹⁷ OUR COMMON JOURNEY, *supra* note 5, at 1-14.

¹⁸ *European Union Strategy, supra* note 12, at pt. III.

¹⁹ *European Union Strategy, supra* note 12, at pt. III; *See* Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, UN Doc. FCCC/CP/197/L.7/Add. (1998), reprinted in 37 I.L.M. 22, available at <http://unfccc.int/resource/docs/convkp/kpeng.pdf> (last visited Nov. 4, 2005) [hereinafter *Kyoto Protocol*].

²⁰ *European Union Strategy, supra* note 12, at pt. III.

²¹ *European Union Strategy, supra* note 12, at pt. III.

²² *European Union Strategy, supra* note 12, at pt. III.

²³ *European Union Strategy, supra* note 12, at pt. 2.

²⁴ RIO DECLARATION, *supra* note 4, at princ. 8; *see Agenda 21, supra* note 4, at ch. 4.

²⁵ AGENDA 21, *supra* note 4, at ¶ 4.3.

²⁶ Business Council For Sustainable Dev., *Getting Eco-Efficient 10* (1993), available at <http://www.p2pays.org/ref/23/22632.pdf> (last visited Nov. 4, 2005) (concluding that industrialized countries may need to reduce materials consumption, energy use and environmental degradation by more than ninety percent by 2040 just to maintain overall impacts at current levels).

²⁷ Factor 10 Club, *Carnoules Declaration* (1994) (concluding that resource productivity in industrialized countries needs to increase by more than a factor of ten in the next thirty to fifty years to achieve sustainability).

²⁸ *See generally* AMIT KAPUR & THOMAS E. GRAEDEL, *Production and Consumption of Materials*, in STUMBLING TOWARD SUSTAINABILITY, (John C. Dernbach ed., 2002) at 63, 65.

²⁹ *See id.*

³⁰ LYNN PRICE & MARK D. LEVINE, *Production and Consumption of Energy*, in STUMBLING TOWARD SUSTAINABILITY, *supra* note 28, at 79, 85-86. *See also* AMUYLA K.N. REDDY, *Energy and Social Issues*, in UNITED NATIONS DEVELOPMENT PROGRAMME, WORLD ENERGY ASSESSMENT: ENERGY AND THE CHALLENGE OF SUSTAINABILITY 38, 41-57 (Jose Goldemberg et al. eds., 2000).

³¹ *See* PRICE & LEVINE, *supra* note 30, at 94-98 (outlining measures to address the three indicators)

³² *See* PRICE & LEVINE, *supra* note 30, at 93.

³³ *See* PRICE & LEVINE, *supra* note 30, at 93.

³⁴ *See* PRICE & LEVINE, *supra* note 30, at 94.

³⁵ *See* PRICE & LEVINE, *supra* note 30, at 81; *see also* Programme for the Further Implementation of Agenda 21, UN GAOR, 19th Special Sess., Annex ¶ 23, UN Doc. A/S-19/29 (1997) ¶¶ 42-46.

³⁶ *Cf.* REDDY, *supra* note 30, at 45.

³⁷ *See, e.g.,* Bradley A. Harsch, *Consumerism and Environmental Policy: Moving Past Consumer Culture*, 26 ECOLOGY L.Q. 543, 556-57 (1999).

³⁸ *Cf.* John R.E. Bliese, *Conservative Principles and Environmental Policies*, 7 KAN. J.L. & PUB. POL'Y 1, 16 (1998).

³⁹ For a brief early commentary on Pennsylvania's recycling program, *see* Mark S. Singel, *State Recycling Program Off to a Good Start*, Harrisburg Patriot, Nov. 9, 1989, at A17.

⁴⁰ Municipal Waste Planning, Recycling and Waste Reduction Act, 53 PA. CONS. STAT. ANN. § 4000.102(c)(1) (West 1997); *See* Thomas J. Elliott, *Annual Survey of Significant Developments in the Law: Environmental Law*, 61 PA. B. ASS'N Q. 13, 13-14 (1990).

⁴¹ Pa. Dep. of Env't. Prot., *Lt. Gov. Schweiker Announces 35 Percent Recycling Goal*, Oct. 24, 1997, <http://www.dep.state.pa.us/dep/deputate/polycomm/update/10-24-97/102497u7.htm>. (last visited Oct. 29, 2005).

⁴² *Cf.* AGENDA 21, *supra* note 4, chs. 23-32.

⁴³ *See* Nat'l Comm'n on the Env't, *Choosing a Sustainable Future* 47 (Island Press 1992) (describing how a goal-based strategy lends continuity to environmental policy).

⁴⁴ *Cf.* Bradford C. Mank, *Protecting the Environment for Future Generations*, 5 N.Y.U. ENVTL. L.J. 444, 446-47 (1996).

⁴⁵ Kyoto Protocol, *supra* note 19, arts. 6, 12, 17. Many international environmental agreements specifically provide financial or technical assistance to developing countries to comply with requirements under those treaties; *See, e.g.,* UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, May 9, 1992, art. 11, S. Treaty Doc. No. 102-38 (1992), 1771 U.N.T.S. 108, reprinted in 31 I.L.M. 849, available at <http://unfccc.int/resource/docs/convkp/conveng.pdf> [hereinafter *Framework Convention*].

⁴⁶ *See* William F. Pederson, *Regulation and Information Disclosure: Parallel Universes and Beyond*, 25 HARV. ENVTL. L. REV. 151, 177 (2001), at 178.

⁴⁷ *See* Robert M. Sussman, *The Government Performance and Results Act and the Future of the EPA: A Second Look*, 29 ENVTL. L. REP. (ENVTL. L. INST.) 10, 347, 10, 355 n.57 (1999).

⁴⁸ *Cf.* Christina S. Chen, *Comment, Persistent Organic Pollutants: Regime Formation and Norm Selection*, 13 CONN. J. INT'L L. 119, 148 (1998).

⁴⁹ *See* LOUIS HENKIN, HOW NATIONS BEHAVE: LAW AND FOREIGN POLICY 54-56 (2d ed. 1979).

⁵⁰ *See id. But cf.* Paul R. Williams, *Can International Legal Principles Play a Positive Role in Resolving Central and East European Transboundary Environmental Disputes?*, 7 GEO. INT'L ENVTL. L. REV. 421, 425 n.13 (1995).

⁵¹ Margot Wallstrom, *Conclusions of World Summit on Sustainable Development in Johannesburg* (Sept. 25, 2002).

⁵² Exec. Rep. No. 102-55, at 14-15 (1992) (Senate Foreign Relations

Committee Report recognizing that some Committee members “think that additional measures are warranted,” but nonetheless supporting the Convention’s ratification).

⁵³ Bureau of Public Affairs, U.S. Dep’t of State, U.S. Statement for the Record on the UNCED Agreements, Dep’t St. Dispatch, Supp. No. 14, July 1992, at 35, 35 (refusing to commit to increasing levels of official development assistance to 0.7 percent of gross domestic product).

⁵⁴ See, e.g., Samudu Atapattu, *Sustainable Development, Myth or Reality?*, 14 GEO. INT’L ENVTL. L. REV. 265, 271 (2002), at 271; Jim Bailey, *Sustainable Development: Searching for the Grail or a Wild Goose?*, 24 ENVTL. L. 1159, 1162 (1994), at 1162; Jennifer McIver, *Environmental Protection, Indigenous Rights and the Arctic Council: Rock, Paper, Scissors on the Ice?*, 10 GEO. INT’L ENVTL. L. REV. 147, 162-63 (1997) at 162-63.

⁵⁵ JOHN C. DERNBACH, *Sustainable Development: Now More Than Ever*, in STUMBLING TOWARD SUSTAINABILITY, *supra* note 28, at 45. [hereinafter DERNBACH, *Now More Than Ever*].

⁵⁶ See *id.* at 51-53.

⁵⁷ AGENDA 21, *supra* note 4, at ¶¶ 8.5-8.6 (calling for environmental impact assessments); See *Rio Declaration*, *supra* note 4, at princ. 17. For additional discussion, see DERNBACH, *Now More Than Ever*, *supra* note 55, at 52.

⁵⁸ See e.g., RIO DECLARATION, *supra* note 4, at princ. 11 (calling for the enactment of environmental legislation by the States); see also DERNBACH, *Now More Than Ever*, *supra* note 55, at 53.

⁵⁹ See OUR COMMON JOURNEY, *supra* note 5, at 3.

⁶⁰ See DERNBACH, *Now More Than Ever*, *supra* note 55, at 52.

⁶¹ Cf. Nat’l Comm’n on the Env’t, *supra* note 43, at 1 (stating that the national goals of sustainable development are “economic growth and environmental improvement”).

⁶² For discussion of recent examples of such debates, see Jonathan Z. Cannon, *EPA and Congress (1994-2000): Who’s Been Yanking Whose Chain?*, 31 ENVTL. L. REP. (ENVTL. L. INST.) 10, 942 (2001); Thomas O. McGarity, *Deflecting the Assault: How EPA Survived a “Disorganized Revolution” by “Reinventing” Itself a Bit*, 31 ENVTL. L. REP. (ENVTL. L. INST.) 11, 249 (2001).

⁶³ See Kenneth R. Richards, *Framing Environmental Policy Instrument Choice*, 10 DUKE ENVTL. L. & POL’Y F. 221, 222 (2000).

⁶⁴ OUR COMMON JOURNEY, *supra* note 5, at 6-7.

⁶⁵ OUR COMMON JOURNEY, *supra* note 5, at 3.

⁶⁶ OUR COMMON JOURNEY, *supra* note 5, at 59.

⁶⁷ Framework Convention, *supra* note 45, at art. 2.

⁶⁸ See generally Bradley C. Karkkainen, *Information as Environmental Regulation: TRI and Performance Benchmarking, Precursor to a New Paradigm?*, 89 GEO. L.J. 257 (2001).

⁶⁹ 42 U.S.C. § 11,023 (2000).

⁷⁰ LYNN GOLDMAN, *Toxic Chemicals and Pesticides*, in STUMBLING TOWARD SUSTAINABILITY, *supra* note 28, at 403, 415-16.

⁷¹ RIO DECLARATION, *supra* note 4, at princ. 10 (stating the importance to sustainable development of public participation, public information, and access to justice). See also THE NEW “PUBLIC”: THE GLOBALIZATION OF PUBLIC PARTICIPATION (Carl Bruch ed., 2002); ELENA PETKOVA ET AL., WORLD RES. INST., CLOSING THE GAP: INFORMATION, PARTICIPATION, AND JUSTICE IN DECISION-MAKING FOR THE ENVIRONMENT (2002).

⁷² Cf. Pederson, *supra* note 15, at 179 (“[L]ack of goals helps perpetuate captivity of [government] agencies to interest group pressure.”).

⁷³ LAWRENCE E. SUSSKIND ET AL., INTERNATIONAL ENVIRONMENTAL TREATY MAKING (1992).

⁷⁴ RICHARD W. PARKER, *Choosing Norms to Promote Compliance and Effectiveness: The Case for International Environmental Benchmark Standards*, in INTERNATIONAL COMPLIANCE WITH NONBINDING ACCORDS 145, 157-58 (Edith Brown Weiss ed., 1998).

⁷⁵ See John C. Dernbach, *Targets, Timetables, and Effective Implementing Mechanisms: Necessary Building Blocks for Sustainable Development*, 27 WM. & MARY ENVTL. L. & POL’Y REV. 79 Part III. B.

⁷⁶ Pierre-Marie Depuy, *Soft Law and the International Law of the Environment*, 12 MICH. J. INT’L L. 420 (1991).

⁷⁷ See Geoffrey Palmer, *New Ways to Make International Environmental Law*, 86 AM. J. INT’L L. 259, 269-70 (1992).

⁷⁸ OUR COMMON JOURNEY, *supra* note 5, at 38-40; Dev. Assistance Comm., Org. For Econ. Cooperation and Dev., *Shaping the 21st Century: the Contribution of Development Co-operation 7-8* (1996), available at <http://www.oecd.org/dataoecd/23/35/2508761.pdf> (last visited Oct. 29, 2005).

⁷⁹ Cf. A. Dan Tarlock, *Ideas Without Institutions: The Paradox of Sustainable Development*, 9 IND. J. GLOBAL LEGAL STUD. 35 (2001).

ENDNOTES: THE RIGHT TO ADEQUATE FOOD *Continued from page 56*

available at http://www.unmillenniumproject.org/documents/HTF-SumVers_FINAL.pdf (last visited Nov. 1, 2005). In September 2005, the UN World Summit reaffirmed support for the MDGs. Some 150 heads of state and government attended this gathering. See UNITED NATIONS, Press Release, *World Leaders Pledge Wide-Ranging Steps on Poverty, Terrorism, Human Rights, UN Reform, As 2005 Summit Concludes in New York*, U.N. Doc. GA/10385 (Sept. 19, 2005), available at <http://www.unis.unvienna.org/unis/pressrels/2005/ga10385.html> (last visited Nov. 1, 2005).

² World Food Summit, Nov. 13-17, 1996, *Rome Declaration on World Food Security and World Food Summit Plan of Action* (Nov. 13, 1996), available at http://www.fao.org/documents/show_cdr.asp?url_file=/DOCREP/003/W3613E/W3613E00.HTM (last visited Nov. 1, 2005); *Appendix: Declaration of the World Food Summit: Five Years Later*, available at <http://www.fao.org/DOCREP/MEETING/005/Y7106E/Y7106E09.htm#TopOfPage> (last visited Nov. 1, 2005).

³ FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (“FAO”), THE STATE OF FOOD INSECURITY IN THE WORLD (2004), available at http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/007/y5650e/y5650e00.htm (last visited Nov. 1, 2005) [hereinafter FAO].

⁴ UNITED NATIONS, SYSTEM STANDING COMMITTEE ON NUTRITION [SCN], 5TH REPORT ON THE WORLD NUTRITION SITUATION, NUTRITION FOR IMPROVED DEVELOPMENT OUTCOMES (March, 2004), available at <http://www.unsystem.org/scn/Publications/AnnualMeeting/SCN31/SCN5Report.pdf> (last visited Nov. 1, 2005); see also FAO, *Malnutrition*, http://www.who.int/water_sanitation_health/diseases/malnutrition/en/ (last visited Nov. 1, 2005).

⁵ FAO, *supra* note 3.

⁶ J. von Braun, *Conclusions of the Workshop Policies Against Hunger* (May 2002), <http://www.verbraucherministerium.de/data/0005C476AC621EDDAAEB6521C0A8D816.0.pdf> (last visited Nov. 1, 2005).

⁷ See Cecilia M. Ljungman, *Applying a Rights-based Approach to Development: Concepts and Principles* (Nov. 2004), http://www.sed.manchester.ac.uk/idpm/research/events/february2005/documents/Ljungman_00.doc (last visited Nov. 1, 2005) (noting that, since the late 1990s, the Secretary General of the United Nations has called for the “mainstreaming of human rights” in all of the organization’s development work).

⁸ For good examples of the conventional approach, see PETER B. R. HAZELL & C. RAMASAMY, THE GREEN REVOLUTION RECONSIDERED: THE IMPACT OF HIGH-YIELDING RICE VARIETIES IN SOUTH ASIA (Johns Hopkins University Press 1991), excerpt available at <http://www.ifpri.org/pubs/fps/fps14.htm> (last visited Nov. 1, 2005); JOHN W. MELLOR, AGRICULTURE ON THE ROAD TO INDUSTRIALIZATION (Johns Hopkins University Press 1995), available at <http://ifpri.org/pubs/books/mellor95.htm> (last visited Nov. 1, 2005).

⁹ Cecilia M. Ljungman, *supra* note 7; D. Patterson, Reviewing Programming on HIV/AIDS, Human Rights, and Development, (Oct. 2002), <http://www.aidslaw.ca/barcelona2002/humanrightsandHIV.pdf> (last visited Nov. 1, 2005).

¹⁰ Cecilia M. Ljungman, *supra* note 7.

¹¹ UNITED NATIONS, OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS [OHCHR] *Fact Sheet No.2 (Rev. 1), The International Bill of Human Rights* (June 1996), available at <http://www.ohchr.org/english>

- /about/publications/docs/fs2.htm (including links to the complete texts of the three component parts of the International Bill of Human Rights) (last visited Nov. 1, 2005). See L. Cotula and M. Vidar, *The Right to Adequate Food in Emergencies*, FAO Legislative Study No. 77. (2003), available at http://www.fao.org/documents/show_cdr.asp?url_file=/DOCREP/005/Y4430E/Y4430E00.HTM (last visited Nov. 1, 2005).
- ¹² *Id.* UNITED NATIONS, INTERNATIONAL COVENANT ON SOCIAL, ECONOMIC, AND CULTURAL RIGHTS, ARTICLE 11, U.N. Doc. A/6316 (1966), available at http://www.unhcr.ch/html/menu3/b/a_ceschr.htm (last visited Nov. 1, 2005); see UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS [CESCR], *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment 12*, Article 11, U.N. Doc. E/C.12/1999/5, (May 12, 1999), available at <http://www.unhcr.ch/tbs/doc.nsf/03d02758c707031d58025677f003b73b9?OpenDocument>. (last visited Nov. 1, 2005) [hereinafter CESCR].
- ¹³ World Food Summit, *supra* note 2.
- ¹⁴ L. Cotula and M. Vidar, *supra* note 11.
- ¹⁵ World Food Summit, *supra* note 2, at ¶61 7.4e.
- ¹⁶ CESCR, *supra* note 12. See UNITED NATIONS, COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS, <http://www.ohchr.org/english/bodies/cescr/> (last visited Nov. 1, 2005).
- ¹⁷ L. Cotula and M. Vidar, *supra* note 11.
- ¹⁸ See *Id.*
- ¹⁹ World Food Summit, *supra* note 2.
- ²⁰ Committee on World Food Security, Sept. 22-27, 2004, *Report on the IGWG*, ¶7.2 CL 127/10-Sup.1 (Sept. 23, 2004).
- ²¹ See U.S. General Accounting Office [GAO] (1996). “Food Security: Preparations for the 1996 World Food Summit.” *Report to Congressional Requesters* GAO/NSIAD-97-44. Washington: GAO.
- ²² J. VON BRAUN AND M.J. COHEN, THE RIGHT TO FOOD AND THE COSTS OF HUNGER, *The Human Right to Food, Economic Growth, and Development* (S. Arnaldi and L. P. Blommestein eds., 2003).
- ²³ M. KHERALLAH, ET AL.. REFORMING AGRICULTURAL MARKETS IN AFRICA (The Johns Hopkins University Press 2002); T. Carothers, *The Rule of Law Revival*, 77 FOREIGN AFFAIRS 95, 106 (1998), available at <http://its.law.nyu.edu/faculty/coursepages/data/Carothers.pdf> (last visited Nov. 1, 2005); UN DEVELOPMENT PROGRAMME (“UNDP”), HUMAN DEVELOPMENT REPORT 2000: available at <http://www.undp.org/hdr2000/english/HDR2000.html> (last visited Nov. 1, 2005); The World Bank, World Development Report: Building Institutions for Markets (2002) available at <http://www.worldbank.org/wdr/2001/fulltext/fulltext2002.htm> (last visited Nov. 1, 2005); COLLECTIVE ACTION AND PROPERTY RIGHTS FOR SUSTAINABLE DEVELOPMENT. 2020 Vision Focus No. 11. (R.S. Meinzen-Dick and M. Di Gregorio eds., IFPRI 2004); M.T. Sadek, *The Public Prosecutor’s Office and Legal Change in Brazil*, 32 IDS BULLETIN 65, 73 (2001).
- ²⁴ Richard Wall, Statement of the United States of America: Item 10, Economic, Social, and Cultural Rights, Address Before the U.S. Government Delegation to the 59th Session of the U.N. Commission on Human Rights (Apr. 7, 2003), available at <http://www.humanrights-usa.net/2003/statements/>, click on 0407Item10 (last visited Nov. 1, 2005).
- ²⁵ See GC 12 on this point: CESCR, *supra* note 12.
- ²⁶ U.S. DEPARTMENT OF AGRICULTURE (“USDA”) U.S. ACTION PLAN ON FOOD SECURITY: SOLUTIONS TO HUNGER (Mar. 1999), available at <http://www.fas.usda.gov/icd/summit/usactplan.pdf> (last visited Nov. 1, 2005).
- ²⁷ A point noted in GC 12: CESCR, *supra* note 12; see also Von Braun and Cohen, *supra* note 22.
- ²⁸ D. Buckingham, *Legal Obligation and Rights to Food: What’s New from Rome?*, 29 CANADIAN JOURNAL OF DEVELOPMENT STUDIES 209, 236 (1998).
- ²⁹ FAO, *supra* note 3. See M. Dev, *Right to Food in India* (Centre for Economic and Social Studies, Working Paper No. 50, 2003), available at http://www.cess.ac.in/cesshome/wp/wp_50.pdf (last visited Nov. 1, 2005).
- ³⁰ FAO, *supra* note 3; SCN, *supra* note 4.
- ³¹ M. Dev, *supra* note 29.
- ³² INDIA CONST. ART. 21; FAO, RIGHT TO FOOD CASE STUDY: India, UN Doc. IGWG RTFG /INF 4/APP.5 (Feb. 2004) (prepared by A. Kundu and S. Jain), available at http://www.fao.org/righttofood/common/ecg/51629_en_Template_case_study_India.pdf (last visited Nov. 1, 2005).
- ³³ PUCL v. Union of India and Others, Writ Petition (Civil) 196 of 2001, available at <http://www.righttofoodindia.org/case/petition.html> (last visited Nov. 1, 2005). See Center on Housing Rights and Evictions [COHRE], *Litigating Economic, Social, and Cultural Rights: Achievements, Challenges, and Strategies* (2003) (prepared by M. Langford), <http://www.cohre.org/library/Litigating%20ESCR%20Report.pdf> (last visited Nov. 1, 2005); M. Dev, *supra* note 29.
- ³⁴ Government relief works are mandatory in times of famine and should not be denied, according to the Famine Code: “Despite being required to give work to ‘every person who comes for work on a relief work,’ the government of Rajasthan followed a policy of ‘labor ceilings,’ which restrict employment to less than 5 percent of the drought affected population, by the government’s own statistics.” Right to Food Campaign, Summary of the Right to Food Petition, http://www.righttofoodindia.org/case/petition_sum.html (last visited Nov. 1, 2005).
- ³⁵ See PUCL v. Union of India and Others, *supra* note 33.
- ³⁶ M. Dev, *supra* note 29.
- ³⁷ The Right to Food Campaign notes some states are ignoring Court orders. See J. Dreze, *From the Courts to the Streets* (2002) <http://www.righttofoodindia.org/data/dreze-courts.pdf> (last visited Nov. 1, 2005).
- ³⁸ FAO, *supra* note 3.
- ³⁹ FAO, *supra* note 3.
- ⁴⁰ Government of the Republic of South Africa, Integrated Food Security Strategy of South Africa (2002), available at <http://www.info.gov.za/otherdocs/2002/foodpol.pdf> (last visited Nov. 1, 2005).
- ⁴¹ NELSON MANDELA, *Address on the Occasion of the African National Congress’s Bill of Rights Conference* (1991), in S. NTHAI, THE IMPLEMENTATION OF SOCIO-ECONOMIC RIGHTS IN SOUTH AFRICA, DE REBUS (Nov. 1999).
- ⁴² S. AFR. CONST. 1996 § 7 [2], 26 [2], and 27 [2].
- ⁴³ S. AFR. CONST. 1996. *id.*, § 10 and 11.
- ⁴⁴ Government of the Republic of South Africa v. Grootboom and Others 2000 (11) BCLR 1169 (CC), 2001 1 SA 46 (CC), *case review available at* http://www.communitylawcentre.org.za/ser/casereviews/2001_1_SA_46.php (last visited Nov. 1, 2005); COHRE, *supra* note 33.
- ⁴⁵ Minister of Health and Others vs. Treatment Action Campaign and Others 2002 (5) SA 721 (CC), 2002 10 BCLR 1033, *case review available at* http://www.communitylawcentre.org.za/ser/casereviews/2002_5_SA_721.php (last visited Nov. 1, 2005); COHRE, *supra* note 33.
- ⁴⁶ *Grootboom*, *supra* note 44, n. 6 para 93-4; see Government of the Republic of South Africa *supra* note 44; COHRE, *supra* note 33 (2003).
- ⁴⁷ Minister of Health *supra* note 45; COHRE, *supra* note 33.
- ⁴⁸ COHRE, *supra* note 33.
- ⁴⁹ Khoza, S., *Protecting the Right to Food in South Africa: The Role of Framework Legislation*, 5 ESR REVIEW (Community Law Center, University of the Western Cape S.A. 2003).
- ⁵⁰ FAO, *supra* note 3.
- ⁵¹ FAO, RIGHT TO FOOD CASE STUDY: BRAZIL, UN Doc. IGWG RTFG /INF 4/APP.1 (Feb. 2004) (prepared by Hernán Gómez Bruera), available at http://www.fao.org/righttofood/common/ecg/51629_en_template_case_study_Brazil_annex.pdf (last visited Nov. 1, 2005).
- ⁵² *Id.*
- ⁵³ Organization of American States [OAS] *The Brazilian Legal System*, http://www.oas.org/juridico/MLA/en/bra/en_bra-int-des-ordrjur.html (last visited Oct. 22, 2005).
- ⁵⁴ FAO, *supra* note 3.
- ⁵⁵ FAO, *supra* note 3; see also Sadek, *supra* note 23.
- ⁵⁶ FAO, *supra* note 3.
- ⁵⁷ FAO, *supra* note 3.
- ⁵⁸ J. DRÈZE AND A. SEN, HUNGER AND PUBLIC ACTION (Oxford University Press 1989).

- ⁴ See Title VI Millennium Challenge Act of 2003 §602(2) (2003); see also Background Paper, Implementing the Millennium Challenge Account (Feb. 5, 2003) [hereinafter Background Paper], available at http://www.mca.gov/about_us/key_documents/MCA_BackgroundPaper_FactSheet.pdf (last visited Nov. 4, 2005). The key areas of focus would include “agricultural development, education, enterprise and private sector development, governance, health, and trade and investment capacity building.” See *id.* at 1.
- ⁵ Title VI Millennium Challenge Act of 2003 §605(b) (2003).
- ⁶ See Larry Nowels, CRS Report RL32427, *The Millennium Challenge Account: Implementation of a New U.S. Foreign Aid Initiative*, July 1, 2005, at 3, available at <http://www.usembassy.it/pdf/other/RL32427.pdf> (last visited Nov. 4) [hereinafter *Implementation*].
- ⁷ See *id.* at 2. For Fiscal Year 2004, nations with per capita incomes below \$1,415 and eligible to borrow from the World Bank’s International Development Association were able to qualify. For Fiscal Year 2005, the per capita income requirement increased to \$1,465.
- ⁸ THE MILLENNIUM CHALLENGE CORPORATION, THE MILLENNIUM CHALLENGE ACCOUNT, at http://www.mca.gov/about_us/overview/index.shtml (last visited Nov. 4, 2005).
- ⁹ See Larry Nowels, CRS Report 31687, *the Millennium Challenge Account: Congressional Consideration of a New Foreign Aid Initiative*, 5-6 (Mar. 19, 2004), available at <http://www.fas.org/sfp/crs/row/RL31687.pdf> (last visited Nov. 5, 2005) [hereinafter *Congressional Consideration*].
- ¹⁰ See *id.* at 6.
- ¹¹ President George W. Bush, Remarks by the President on Global Development Inter-American Development Bank, President Proposes \$5 Billion Plan to Help Developing Nations (Mar. 14, 2002), available at <http://www.whitehouse.gov/news/releases/2002/03/20020314-7.html> (last visited Nov. 4, 2005).
- ¹² FREQUENTLY ASKED QUESTIONS, MILLENNIUM CHALLENGE CORPORATION, at http://www.mca.gov/about_us/faq/index.shtml (last visited Nov. 5, 2005).
- ¹³ See Brett D. Schaefer, *the Millennium Challenge Account: An Opportunity to Advance Development in Poor Nations*, HERITAGE LECTURES, no. 753, (June 27, 2002).
- ¹⁴ Lael Brainard, *Compassionate Conservatism Confronts Global Poverty*, THE WASHINGTON QUARTERLY, 26:2, 150 (Spring 2003), available at http://www.twq.com/03spring/docs/03spring_brainard.pdf (last visited Nov. 5, 2005).
- ¹⁵ See *id.*
- ¹⁶ Sarah Lucas & Steve Radelet, *An MCA Scorecard: Who Qualified, Who Did Not, and the MCC Board’s Use of Discretion*, Center for Global Development, 3 (May 2004), available at http://www.cgdev.org/doc/commentary/MCAScorecard_0528.pdf (last visited Nov. 5, 2005).
- ¹⁷ UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, *A Synthesis Report of Education For All 2000 Assessment in the South and West Asia sub - Region Bangkok*, UNESCO PROAP (June 2000), available at <http://www.unescobkk.org/index.php?id=145> (last visited Nov. 4, 2005).
- ¹⁸ See Background Paper, *supra* note 4.
- ¹⁹ Lucas and Radelet argue that, in the case of Bhutan, the arbitrary method of selection is based on “implicit” indicators. See Lucas & Radelet, *supra* note 16, at 3.
- ²⁰ The MCA was established in 2003 through the Millennium Challenge Act of 2003.
- ²¹ See generally Virginia A. McMurty, *Performance Management and Budgeting in the Federal Government: Brief History and Recent Developments*, CRS Report RL 32164, (Mar. 16, 2005), available at <http://knownet.hhs.gov/performance/performancemanagement.pdf> (last visited Nov. 5, 2005). Performance management and budgeting goes as far back as World War II when the First Hoover Commission promoted the use of performance budgeting in the federal government. See *id.* at 1-2.
- ²² See OMB, *The New Program Assessment Rating Tools Underway – Planned Release with the 2007 President’s Budget* (July 2005), available at http://www.whitehouse.gov/omb/part/fy2005/2005_part_list.pdf (last visited Nov. 4, 2005).
- ²³ See *Congressional Consideration*, *supra* note 9, at 10.
- ²⁴ There are six indicators under “ruling justly” that include: 1) control of corruption; 2) voice and accountability; 3) government effectiveness; 4) rule of law; 5) civil liberties; and 6) political freedom. There are four indicators under “investing in people” that includes: 1) public primary education spending as percent of gross domestic product (“GDP”); 2) primary education completion rate; 3) public expenditure on health as percent of GDP, and 4) immunization rates. There are six indicators under “economic freedom” that include: 1) country credit rating; 2) inflation; 3) three-year budget deficit; 4) trade policy; 5) regulatory policy, and 6) days to start a business. See *Implementation*, *supra* note 6, at 24.
- ²⁵ See Brainard, *supra* note 14, at 158.
- ²⁶ See Brainard, *supra* note 14, at 159.
- ²⁷ As of July 7, 2004, the General Accounting Office (“GAO”) has changed its name to the General Accountability Office. See About the General Accountability Office, available at <http://www.gao.gov/about/namechange.html> (last visited Nov. 4, 2005).
- ²⁸ See generally GAO, GAO-04-439T, *Performance Budgeting: OMB’s Program Assessment Rating Tool Presents Opportunities and Challenges for Budget and Performance Integration*, 6-8 (Feb. 4, 2004).
- ²⁹ See Eileen C. Norcross, *an Analysis of the Office of Management and Budget’s Program Assessment Rating Tool (PART)*, 3 (June 2005), available at <http://www.mercatus.org/pdf/materials/1280.pdf> (last visited Nov. 5, 2005).
- ³⁰ See *id.*
- ³¹ The PART ratings include “effective,” “moderately effective,” “adequate,” “ineffective,” and “results not demonstrated.”
- ³² See Norcross, *supra* note 29, at 23.
- ³³ See GAO, *supra* note 28, at 7.
- ³⁴ See *Congressional Consideration*, *supra* note 9, at 10.
- ³⁵ See *Congressional Consideration*, *supra* note 9, at 16. “Corruption” as an indicator is difficult to measure for a number of reasons. For example, as corrupt transactions are generally illegal and often part of the “informal economy” there are no existing records of them and therefore, not possible to measure directly. See generally Anthony Lanyi, *Measuring the Economic Impact of Corruption: A Survey*, *The IRIS Discussion Papers on Institutions & Development* (IRIS/the University of Maryland, Feb. 2004).
- ³⁶ See *Congressional Consideration*, *supra* note 9, at 16.
- ³⁷ Daniel Kaufmann & Aart Kraay, *Governance Indicators, Aid Allocation, and the Millennium Challenge Account: A Summary*, (World Bank, Dec. 2002).
- ³⁸ See *Implementation*, *supra* note 6, at 9.
- ³⁹ James W. Fox & Lex Rieffel, *The Millennium Challenge Account: Moving Toward Smarter Aid*, 31 (Brookings Institution, July 25, 2005).
- ⁴⁰ See *id.* at 31.
- ⁴¹ See *id.*
- ⁴² Greenwire, *Enviro Policy: GAO Calls for Stronger Federal Effort on Environmental Indicators* (Nov. 18, 2004).
- ⁴³ See *id.*
- ⁴⁴ Council on Hemispheric Affairs, *Bush’s Millennium Challenge Corporation: A New Approach to Overseas Development, or the Same Old Strategy?* (Aug. 16, 2005), available at http://www.coha.org/NEW_PRESS_RELEASES/New_Press_Releases_2005/05.94_the_Millennium_Challenge_Corporation_A_New_Approach_to_Overseas_Development_or_the_same_old_strategy.htm (last visited Oct. 10, 2005).
- ⁴⁵ See *Implementation*, *supra* note 6, at 8.
- ⁴⁶ See *Implementation*, *supra* note 6, at 8.
- ⁴⁷ See OMB Watch, *How Do You Measure Program Results?* (Feb. 22, 2005), available at <http://www.ombwatch.org/article/article-view/2680/1/90> (last visited Oct. 10, 2005).

⁴⁸ See *id.*
⁴⁹ See *id.*
⁵⁰ See *Implementation*, *supra* note 6, at 9.
⁵¹ See *Implementation*, *supra* note 6, at 9.
⁵² See OMB Watch, “PART” and the Federal Budget (Oct. 28, 2002), available at <http://www.ombwatch.org/article/articleview/1161/1/312> (last visited Oct. 10, 2005). OMB Watch lists such programs as the Social Security Disability Benefits program and the National School Lunch Program that were selected for PART review in FY2004.
⁵³ See Background Paper, *supra* note 4, at 4.
⁵⁴ See Background Paper, *supra* note 4, at 4.

⁵⁵ See Background Paper, *supra* note 4, at 5.
⁵⁶ Fox & Riefel, *supra* note 39, at 17.
⁵⁷ See Fox & Riefel, *supra* note 39, at 26.
⁵⁸ See Fox & Riefel, *supra* note 39, at 26.
⁵⁹ See generally OMB, *Performance Measurement Challenges and Strategies* (June 18, 2003), available at http://www.whitehouse.gov/omb/part/challenges_strategies.pdf (last visited Nov. 4, 2005)
⁶⁰ *Id.* at 9.
⁶¹ *Id.*
⁶² See *id.* at 7.
⁶³ See McMurdy, *supra* note 21, at 7.

ENDNOTES: THE ANTI-PROSTITUTION PLEDGE *Continued from page 67*

Oct. 16, 2005).
⁴ See DKT Complaint, *supra* note 1, at 2.
⁵ See DKT Complaint, *supra* note 1, at 6-7.
⁶ The United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, 22 U.S.C.A. § 7631 (2004).
⁷ 22 U.S.C.A. § 7631 (e).
⁸ 22 U.S.C.A. § 7631 (f).
⁹ Trafficking Victims Protection Act, 22 U.S.C.A. §§ 7101-7110 (2005).
¹⁰ 22 U.S.C.A. §7110 (g)(1).
¹¹ 22 U.S.C.A. §7110 (g)(2).
¹² See 22 U.S.C.A. §7110 (g)(2); see also 22 U.S.C.A. §7631(e).
¹³ DKT Complaint, *supra* note 1, at 2.
¹⁴ Memorandum from the U.S. Dept. of Justice to the General Counsel of the U.S. Health & Human Services (Sept. 20, 2004), available at <http://www.populationaction.org/news/views/relatedDocs/DOJtoHHS.pdf> (last visited Nov. 5, 2005).
¹⁵ See DKT Complaint, *supra* note 1, at 3, ¶ 8.
¹⁶ See Memorandum from Burt Neuborne, Rebekah Diller to Interested Parties 4 (June 13, 2005), available at <http://www.nswp.org/pdf/BRENNAN-USAID.PDF> (last visited Nov. 5, 2005) [hereinafter BRENNAN]. The Brennan Center’s memo is an excellent source on the First Amendment issues highlighted by DKT Int’l v. U.S. Agency for Int’l Dev.; see also *Legal and Policy Implications of the Prostitution Loyalty Oath in U.S. Global AIDS and Trafficking Funding*, CENTER FOR HEALTH AND GENDER EQUITY, 2005, available at http://www.genderhealth.org/pubs/2005STP_policyimplications.pdf (last visited Oct. 17, 2005).
¹⁷ Acquisition and Assistance Policy Directive (AAPD) No. 05-04, *Implementation of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 – Eligibility Limitation on the Use of Funds and Opposition to Prostitution and Sex Trafficking*, USAID, June 9 2005, available at http://www.usaid.gov/business/opportunities/cib/pdf/aapd05_04.pdf (last visited Oct. 24, 2005).
¹⁸ See *id.* at 5.
¹⁹ See BRENNAN, *supra* note 16.
²⁰ *Rust v. Sullivan*, 500 U.S. 173, 192 (1991) (finding that a federally-funded doctor could be prevented from speaking about abortion because imposing conditions on government funding did not violate free speech rights because the government “ha[d] merely chosen to fund one activity to the exclusion of the other”).
²¹ See BRENNAN, *supra* note 16, at 6.
²² See e.g., Letter from AIDS Law Project, Centre for Applied Legal Studies, Wits University, South Africa, et. al. to George W. Bush, President of the United States 2 (May 18, 2005) (referring to Cambodian NGOs that have discontinued plans to provide English language training classes for prostitutes out of fear that these programs would be viewed by USAID as supporting prostitutes), available at <http://www.genderhealth.org/pubs/20050518LTR.pdf> (last visited Oct. 20, 2005).
²³ See DKT Complaint, *supra* note 1, at 10-11, Count II.

²⁴ See *Regan v. Taxation with Representation*, 461 U.S. 540, 545 (1983).
²⁵ BRENNAN, *supra*, note 16, at 7.
²⁶ See *Fed. Comm’n Comm’n v. League of Women Voters of California*, 468 U.S. 364, 368 (1984).
²⁷ See BRENNAN, *supra* note 16, at 7.
²⁸ DKT Complaint, *supra* note 1, at 10.
²⁹ *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); see also Brennan, *supra* note 16, at 8.
³⁰ See Press Release, Brennan Center for Justice, Brennan Center Represents OSI/AOSI in Center’s Second Lawsuit Challenging Anti-Prostitution Pledge Requirement on U.S. HIV/AIDS Funding (Sept. 23, 2005), available at http://www.brennancenter.org/presscenter/releases_2005/pressrelease_2005_0923.html (last visited Oct. 20, 2005).
³¹ See Complaint for Plaintiff at 3, Alliance for Open Soc’y Int’l Inc. v. U.S. Agency for Int’l Dev. (S.D.N.Y. 2005), available at http://www.brennancenter.org/programs/downloads/aosi_district_court_complaint.pdf (last visited Oct. 23, 2005) [hereinafter AOSI Complaint].
³² See AOSI Complaint, *id.* at 5 & 15. Testimony by Senate Majority Leader Bill Frist is the only legislative debate on the pledge requirement, and he stated that organizations should oppose prostitution and sex trafficking “because of the psychological and physical risks they pose for women,” which indicates to some that the USAID policy defines the funding limitation too broadly. Some argue that the USAID pledge requirement refuses funding for reasons far beyond preventing the named risks.
³³ *DKT Mem’l Fund LTD v. U.S. Agency for Int’l Dev.*, 887 F.2d 275, 281 (D.C. Cir. 1989). In this case, DKT sued USAID for limitations on funding to foreign NGOs for abortion-related activities found in the Mexico City Policy. The court held that there is not a “public association” between the U.S. government and foreign NGOs that should require the U.S. government to fund foreign NGOs for projects that work against U.S. foreign policy goals.
³⁴ See DKT Complaint, *supra* note 1, at 16, Count III (noting that the vagueness violates the First Amendment and the Administrative Procedures Act); see also AOSI Complaint, *supra* note 31.
³⁵ See Brennan, *supra* note 16, at 4; see also DKT Complaint, *supra* note 1, at 9.
³⁶ See e.g., Letter from AIDS Law Project, *supra* note 22.
³⁷ DKT Complaint, *supra* note 1, at 7.
³⁸ See Press Release, Health GAP, U.S. Sex Worker “Loyalty Oath” (May 2005), available at http://www.healthgap.org/press_releases/05/051705_HGAP_PR_USG_SWP_gfatm.html (last visited Oct. 17, 2005).
³⁹ See DKT Complaint, *supra* note 1, at 8.
⁴⁰ See 22 U.S.C.A. § 7671.

- BANK AFRICA REGION HUMAN DEVELOPMENT WORKING PAPER SERIES, CAN SUB-SAHARAN AFRICA REACH THE INTERNATIONAL TARGETS FOR HUMAN DEVELOPMENT? (2001).
- ⁶ BARBARA BRUNS, ALAIN MINGAT, AND RAMAHATRA RAKOTOMALALA, WORLD BANK, ACHIEVING UNIVERSAL PRIMARY EDUCATION BY 2015: A CHANCE FOR EVERY CHILD (2003).
- ⁷ HUMAN DEVELOPMENT REPORT, UNITED NATIONS DEVELOPMENT PROGRAMME (2003).
- ⁸ See, e.g., Andrew Balls, *Donors fail on education funding*, FIN. TIMES, Mar. 29, 2004.
- ⁹ “Donors” is used here to signify the 23 members of the Development Assistance Committee (“DAC”) of the Organization for Economic Cooperation and Development (“OECD”). All Official Development Assistance (“ODA”) data comes from the DAC.
- ¹⁰ Since 1970 the UN has had an explicit goal to raise ODA to 0.7 percent of gross national income. The origin of the aid target was the 1969 Pearson Commission report, later accepted by the DAC and then endorsed by the UN General Assembly in Oct. 1970.
- ¹¹ OECD, SHAPING THE 21ST CENTURY: THE CONTRIBUTION OF DEVELOPMENT COOPERATION (1986), available at <http://www.paris21.org/betterworld> (last visited Nov. 2, 2005).
- ¹² Int’l Conference on Fin. & Dev., Monterrey, Mexico, Mar. 18-22, 2002, Report, UN Doc. A/CONF.198/11.
- ¹³ International Conference on Financing and Development, Monterrey, Mexico, Mar. 18-22, 2002, Report of the High Level Panel on Financing for Development, available at <http://www.un.org/reports/financing> (last visited Nov. 2, 2005).
- ¹⁴ SHANTAYANAN DEVARAJAN, MARGARET J. MILLER, AND ERIC V. SWANSON, WORLD BANK POLICY RESEARCH WORKING PAPER 2819, GOALS FOR DEVELOPMENT: HISTORY, PROSPECTS AND COSTS (2002) [hereinafter GOALS FOR DEVELOPMENT].
- ¹⁵ ENRIQUE DELAMONICA, SANTOSH MEHROTRA, AND JAN VANDEMOORTELE, UNICEF INNOCENTI WORKING PAPER, IS EFA AFFORDABLE? ESTIMATING THE GLOBAL MINIMUM COST OF “EDUCATION FOR ALL” 87 (2001).
- ¹⁶ GOALS FOR DEVELOPMENT, *supra* note 14.
- ¹⁷ ALAIN MINGAT, RAMAHATRA RAKOTOMALALA, AND JEE-PENG TAN, WORLD BANK, FINANCING EDUCATION FOR ALL BY 2015: SIMULATIONS FOR 33 AFRICAN COUNTRIES ix (2002).
- ¹⁸ Surjit Bhalla claims that poverty has already been halved, *Imagine There’s No Country: Poverty, Inequality, and Growth in the Era of Globalization*, (INT’L INST. OF ECON. 2002); the World Bank disputes this, WORLD BANK, WORLD DEVELOPMENT REPORT (2004) [hereinafter WORLD DEVELOPMENT REPORT].
- ¹⁹ See DAVID DOLLAR AND AART KRAAY, WORLD BANK POLICY RESEARCH WORKING PAPER 2587, GROWTH IS GOOD FOR THE POOR (2001).
- ²⁰ Ricardo Gottschalk, *Growth and Poverty Reduction in Developing Countries: How Much External Financing Will Be Needed in the New Century?* (INSTIT. OF DEV. STUDIES, U. OF SUSSEX, 2000)(estimating an even higher required rate of 8.2 percent for sub-Saharan Africa and 10.2 percent for Latin America); see also WORLD BANK, STRATEGIC FRAMEWORK FOR ASSISTANCE TO AFRICA: IDA AND THE EMERGING PARTNERSHIP MODEL (2004).
- ²¹ Calculated from WORLD BANK, WORLD DEVELOPMENT INDICATORS (2004).
- ²² William Easterly, *The Ghost of Financing Gap: Testing the Growth Model Used in the International Financial Institutions*, 60 J. of Dev. Econ. 423-438 (1999) [hereinafter Easterly 1999].
- ²³ WILLIAM EASTERLY, THE ELUSIVE QUEST FOR GROWTH 43 (MIT Press, 2001).
- ²⁴ Craig Burnside and David Dollar, *Aid, Policies, and Growth*, 90 AM. ECON. REV. 847-868 (2000).
- ²⁵ See e.g. William Easterly, Ross Levine, and David Roodman, *New Data, New Doubts: Revisiting ‘Aid, Policies, and Growth’* (Center for Global Dev., Working Paper 26, 2003); H. Hansen and F. Tarp, *Aid and Growth Regressions*, 40 J. of DEV. STUD. 64(2) (2001), at 101-118; R. Lensink and H. White, *Are there Negative Returns to Aid?*, J. of DEV. STUD. 37(6) (2001), at 42-65; P. Guillaumont and L. Chauvet, *Aid and Performance: A Reassessment*, J. of Dev. Stud. 37(6) (2001), at 66-92.
- ²⁶ ROBERT CASSEN, DOES AID WORK? (Oxford Univ. Press, 1994).
- ²⁷ Michael Clemons, Steven Radelet, and Rikhil Bhavnani, *Counting chickens when they hatch: The short-term effect of aid on growth* (CTR FOR GLOBAL DEV., Working Paper 44, 2004).
- ²⁸ Paul Collier and David Dollar, World Bank Policy Research Working Paper 2403, CAN THE WORLD CUT POVERTY IN HALF? HOW POVERTY REFORM AND EFFECTIVE AID CAN MEET INTERNATIONAL DEVELOPMENT GOALS (2000). However, some suggest that, using the coefficients from Collier and Dollar, the \$50 billion additional aid they suggest could be apportioned only hitting this binding constraint in two countries. Furthermore, if aid were better delivered by donors, this binding constraint might be even higher. See Shantayanan Devarajan, William R. Easterly, and Howard Pack, *Low Investment is not the Constraint on African Development* (Center for Global Dev., Working Paper No. 13, 2002).
- ²⁹ Ray Marcelo, *India Opts to Decline Aid from All but Six Countries*, FIN. TIMES, July 8, 2003.
- ³⁰ Lant Pritchett & Lawrence H. Summers, *Wealthier is Healthier*, J. OF HUM. RESOURCES 31(4) (1996), at 841-868.
- ³¹ See Easterly 1999, *supra* 22; Even if one accepts a close link between improvements in social sector performance and income growth, the rates of income growth required to meet MDG social targets are historically unprecedented – using cross-country variations in child mortality and income in 2000 to calculate elasticities suggests that low income countries would have to grow at 6.7 percent a year to reduce mortality by two-thirds in 2015. WORLD DEVELOPMENT REPORT, *supra* note 18.
- ³² Michael Kremer & Edward Miguel, *Worms: Education and Health Externalities in Kenya* (Nat’l Bureau of Econ. Res., Working Paper No. 8481, 2001).
- ³³ Gustav Ranis & Frances Stewart, *Growth and Human Development: Comparative Latin American experience*, 39 Developing Economies 333-365 (2001).
- ³⁴ DEON FILMER, WORLD BANK, SCHOOL AVAILABILITY AND SCHOOL PARTICIPATION IN 21 DEVELOPING COUNTRIES (2004).
- ³⁵ WORLD DEVELOPMENT REPORT, *supra* note 18.
- ³⁶ Michael Clemens, *The Long Walk to School: International education goals in historical perspective* (Center for Global Dev., Working Paper 37, 2004) [hereinafter *The Long Walk to School*].
- ³⁷ In 2000, the *World Development Indicators 2004* lists data for 131 countries on the ratio of girls to boys in primary and secondary education. Of those countries in that year, only ten remained below the level of 80 girls per 100 boys. *Supra* note 21.
- ³⁸ This figure is not strictly comparable with the above figure for the whole twentieth century, since the sample of countries is quite different and the post-1980 figure includes far more poor countries.
- ³⁹ Lant Pritchett, *Desired Fertility and the Impact of Population Policies*, POPULATION & DEV. REV. 31(4) (1994), at 1-55.
- ⁴⁰ Lucia Hanmer, Robert Lensink, and Howard White, *Infant and Child Mortality in Developing Countries: Analysing the Data for Robust Determinants*, J. OF DEV. STUD. 40(1) (2003), at 101-118.
- ⁴¹ WORLD BANK, THE MILLENNIUM DEVELOPMENT GOALS IN HEALTH: RISING TO THE CHALLENGE (2003).
- ⁴² But see McCarthy, F. Desmond, H. Wolf, and Y. Wu, *The Growth Costs of Malaria* (Nat’l Bureau of Econ. Research, Working Paper 7541, 2000). Looking at determinants of malaria infection rates, McCarthy et al. calculate that weather, latitude, income, poverty and inequality account between them for 4.9 times the variation in infection rates than does access to rural health care; even though this does suggest some role for government expenditure and aid, see also Anne Mills & Sam Shillcutt, *Copenhagen Consensus Challenge Paper on Communicable Diseases* (Copenhagen Consensus Challenge Paper, 2004).
- ⁴³ Charles Kenny, *Why Are We Worried About Income? Everything that Matters is Converging*, World Development (2005) [forthcoming].
- ⁴⁴ *Id.*
- ⁴⁵ Lant Pritchett, *Divergence, Big Time*, J. OF ECON. PERSPECTIVES 11(3) (1997), at 3-17.
- ⁴⁶ Richard Easterlin, *The Worldwide Standard of Living since 1800*, J. OF ECON. PERSPECTIVES 14(1) (2000), at 7-26.
- ⁴⁷ *The Long Walk to School*, *supra* note 36.

UPCOMING PUBLICATIONS AND EVENTS

SDLP WINTER 2006 EDITION ON CLIMATE LAW

SDLP's Winter issue will report on the "Confidence Through Compliance in Emissions Trading Markets" conference that took place on November 17-18, 2005 at American University, Washington College of Law in Washington, DC. This event gathered experts from around the world to identify linkage issues, promote effectiveness, and emphasize the importance of achieving high rates of compliance in emissions trading systems. Materials included in this issue from the Conference will be transcripts, background material, rapporteur reports, and articles by participants. SDLP will also include supplementary articles on current issues in climate law. *Submissions are by invitation only.*

SDLP SPRING 2006 EDITION ON SOUND CHEMICALS MANAGEMENT

The Spring issue of SDLP will focus on the imperative need for sound chemicals management. The world's production and use of chemicals is growing dramatically. How to manage chemicals in ways that protect human health and the environment and contribute to sustainable development has become a pressing domestic and international concern. The SDLP Spring issue will analyze the emergence of the global chemicals industry, the effectiveness of multilateral environmental agreements (MEAs) and other international approaches to chemicals management, the impacts chemicals have on human health and rights, and the impacts of chemicals practices on developing countries. *If you plan to submit an article, please send a summary of your paper topic to sdlp@wcl.american.edu by January 20, 2006.*

"FUTURE OF INTERNATIONAL CHEMICALS MANAGEMENT"

PANEL DISCUSSION – FEBRUARY 22

The program will consist of two panels. The first panel will discuss the current status of the Strategic Approach to International Chemicals Management (SAICM). Environment Ministers are expected to adopt SAICM, an international approach to chemicals management in early February at the International Conference on Chemicals Management in Dubai. Government, industry and NGO individuals will discuss different aspects of SAICM. The second panel will discuss developments in international chemicals management that have, or may, fundamentally change the way chemicals are regulated and managed internationally. For example, the EU parliamentary approved bill on REACH will be discussed along with present, and future, multilateral environmental agreements (such as the Basel Convention on Transboundary Movement of Hazardous Wastes and the Stockholm Convention on Persistent Organic Pollutants). *For additional information, please visit our website at <http://www.wcl.american.edu/org/sustainabledevelopment>.*

SUBSCRIPTION INFORMATION

Sustainable Development Law & Policy (ISSN 1552-3721) publishes articles and essays that focus on reconciling the tensions between environmental sustainability, economic development, and human welfare. The journal embraces an interdisciplinary focus to provide a fuller view of current legal, political, and social developments. Our mission is to serve as a valuable resource for practitioners, policy makers, and concerned citizens promoting sustainable development throughout the world.

Subscriptions are \$30.00 per year. Because our goal is to make *Sustainable Development Law & Policy* available to all practitioners in related fields, if a non-profit organization or individual is unable to meet the subscription price, the publication is available at no cost upon request. All subscriptions will be renewed automatically unless timely notice of cancellation is provided.

To subscribe, please contact us by email (preferred) or at:

Publications Manager
Sustainable Development Law & Policy
4801 Massachusetts Ave., NW, Suite 631
Washington, DC 20016
Tel: (202)-274-4057
Email: sdlp@wcl.american.edu

Sustainable Development Law & Policy is published biannually, with occasional special editions. Back issues are available through HeinOnline, <http://www.heinonline.org>. Current and past issues are also available on our website, at <http://www.wcl.american.edu/org/sustainabledevelopment>.

Printed by Tray Business Systems, Inc.

Volume I and Volume II, Issue 1 are published as *International and Comparative Environmental Law*.

WCL's International Legal Studies Program. Where the World Meets to Study Law.



One of the top international LL.M. programs in the U.S., we offer a truly international setting and unparalleled resources in **WASHINGTON, D.C.**



- More than 45 international law courses each semester.
- A world-renowned faculty.
- A student body from over 70 countries and graduates from more than 100 nations.
- LL.M. research scholarships available.
- Also offering a Doctor of Juridical Science (S.J.D.) program.



AMERICAN
UNIVERSITY

LAW
WASHINGTON COLLEGE of LAW



For information: 202.274.4110

www.wcl.american.edu/ilsp

email: llminfo@wcl.american.edu

AA/EEO

4801 Massachusetts Avenue, NW
Washington, DC 20016-8189

SDLP

AMERICAN UNIVERSITY
WASHINGTON COLLEGE OF LAW
4801 MASSACHUSETTS AVENUE, NW SUITE 631
WASHINGTON, DC 20016-8181

RETURN POSTAGE GUARANTEED
FORWARDING SERVICE REQUESTED

Non-Profit
U.S. Postage

PAID

Permit No. 1158
Washington, D.C.