

Protecting Dignity:
An Agenda for Human Rights

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Progress Report of the Eminent Persons Panel
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1. Achievements, Problems and Challenges: Human Rights in Crisis

[1] We know what human rights are, we know the obligations of states and other duty-bearers to respect, protect and fulfil these human rights, and we know that these human rights are systematically violated, disregarded and non-fulfilled in all regions of our planet. Universal standard setting by means of legally binding treaties and universal monitoring of states' compliance with their human rights obligations constitute important achievements from the last sixty years. *The gap between the high aspirations of human rights and its sobering realities on the ground, between human rights law and its implementation, between the lofty rhetoric of governments and their lack of political will to keep their promises is the major problem, and bridging this gap the major challenge of our time.* We know what needs to be done to empower the people of our globalized world to live in dignity, enjoying freedom from want and freedom from fear, and we have the global resources and powers to fulfil this dream.

[2] Nevertheless, *we lack a clear agenda for action and the political leadership to put this knowledge and these resources to use.* The commitment of governments to take effective action to protect people in other countries suffering from gross and systematic human rights violations has weakened since the turn of the century. For various reasons, including a lack of empathy in rich countries for the billions of people suffering from poverty, a North-South divide, and recurring tensions between East and West, *the international community now finds itself in a veritable human rights crisis.*

[3] The experience of the last 60 years teaches us that much can be achieved, and actually has been achieved, in the implementation of human rights, even if a common political will has not always been apparent. When the Universal Declaration was drafted, many peoples in Africa, Asia, the Pacific and Caribbean regions were still living under colonial rule and oppression. On the basis of the right of peoples to self-determination, many peoples around the world gained independence and joined the United Nations as equal members. Fascism was eradicated in Western Europe, apartheid in Southern Africa, military dictatorships were overthrown in Latin America, authoritarian Communist regimes in Eastern Europe, and one party dictatorships in Africa. After the end of the Cold War, the leaders of the world assembled in 1993 at the *Vienna World Conference on Human Rights*, reaffirmed the universality, indivisibility and interdependence of all human rights, adopted the Vienna Declaration with a comprehensive Programme of Action and agreed to create the Office of the *High Commissioner for Human Rights* as the UN official with principal responsibility for facilitating the implementation of the Vienna Programme of Action, which still constitutes the main basis for UN activities in the field of human rights.

[4] For the first time in history, the importance of human rights for the maintenance of *international peace and security* was recognized by the Security Council, and human rights were included as essential civilian components in newly designed peacekeeping and peace-building operations, as well as in UN transitional administrations, such as those established in Kosovo and East Timor. In cases of gross and systematic human rights violations, the Security Council even took enforcement action in accordance with Chapter VII

of the UN Charter by imposing economic sanctions, authorizing military force and establishing *ad hoc* international criminal tribunals for the former Yugoslavia and Rwanda. These tribunals led to the rapid finalization of the Rome Statute of the *International Criminal Court* in 1998. In addition to war crimes, these and other criminal tribunals, such as those in Sierra Leone, East Timor and Cambodia, are competent to deal with the most serious and systematic human rights violations, such as genocide and crimes against humanity, committed both during armed conflict and in times of peace.

[5] Human rights were also linked with the *development discourse*. In 1986, the General Assembly proclaimed the right to development as an “inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”¹. The United Nations Development Programme gradually moved from an essentially macroeconomic notion of development to the concept of human development, which in fact bridged the gap between economic development and the legal human rights discourses. By the end of the century, poverty reduction was regarded by the international donor community, including the World Bank and the International Monetary Fund, as the overarching goal of development cooperation. This process culminated in the unanimous adoption of the UN Millennium Declaration in September 2000 with the *Millennium Development Goals* as a series of time-bound targets for the realization

of essential human rights, such as freedom from extreme poverty and the related rights to food, health, education and gender equality. The MDGs and the fundamental values they seek to protect have come to form a major input into the development philosophy: they provide the framework of the development discourse and the rationale guiding the development activities of many states. Regrettably, the normative force of the MDGs has not, however, been translated into any significant progress in eradicating poverty and realizing essential human rights.

[6] Poverty remains the gravest human rights challenge in the world, with more than one billion people living in conditions of extreme poverty, and a further three billion people around the world robbed of the chance to better their lives and climb out of poverty. All of the targets, such as halving the proportion of people whose income is less than one dollar a day and the proportion of people who suffer from hunger, or achieving universal primary education, were to be fulfilled by 2015. Whilst some limited progress has been achieved during the first eight years of implementing the MDGs, in particular in East and South Asia, we unfortunately must realize that none of these ambitious global goals and targets will actually be reached in the remaining seven years. Indeed, in the face of a global economic slowdown and the food security and oil crisis, these goals have become even less attainable². The recent food crisis illustrated clearly that the number of people suffering from hunger is on the increase rather than decreasing: various policies of states, in particular biofuel substitution policies, have had a most negative impact on the realization of

¹ Declaration on the Right to Development, *A/RES/41/128* of 4 December 1986.

² United Nations, *'The Millennium Development Goals Report 2008'* (United Nations, New York, 2008), p. 3.

the right to food^① and on poverty eradication. The same holds true for access to education, health care, justice and other services essential to enable the poor to lift themselves out of poverty. With the process of urbanization and the growth of megacities, the number of slum-dwellers is rapidly increasing, as is the prevalence of HIV/AIDS and environmental degradation. Sub-Saharan Africa is at the epicentre of this current development crisis.

[7] The plight of the poor is aggravated because they are denied access to justice^②. Other major challenges are security-related, including ethnic and religious tensions and systematic discrimination on various grounds, armed conflicts, organized crime, terrorism and counter-terrorism. In addition, demographic growth, urbanization, climate change, migration, recent developments in science and technology, including biomedicine, and human rights violations by non-state actors represent new challenges which need to be taken into account in a future-oriented agenda for human rights.

2. Human Dignity

[8] The Preamble of the UN Charter makes an explicit link between human rights and human dignity when reaffirming “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”. Even though this link can be interpreted as a reaction to the systematic denial of human dignity during the Nazi Holocaust, it was and remains relevant to the experiences of people in all parts of the world as a consequence of colonialism, slavery and racism. The Declaration emphasized this link in its assertion that “recognition of the inherent dignity

and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Dignity was and still is widely perceived to be the essential feature distinguishing human beings from other creatures. Philosophers grounded the claim of human dignity and the uniqueness of human beings in *human free will, in the capacity for moral choice and individual autonomy*.

[9] *Human dignity, which is inherent in all human beings, is the moral and philosophical justification for equality and other universal human rights. At the same time, only certain violations of human rights constitute an attack on human dignity.* If a journalist has to pay a fine for having published a critical article, this might constitute a violation of her freedom of expression, but it does not necessarily have any effect on her dignity. If she is put into jail, the situation might change. If she is subjected to rape or any other form of torture aimed at extracting a confession or changing her opinion, this constitutes a direct attack on the core of her dignity. This restricts her free will, autonomy and moral choice, making her powerless by means of humiliation and dehumanization.

The ultimate form of powerlessness is slavery as it legally deprives people of their capacity as human beings, including human dignity and autonomy. Trafficking is a modern manifestation of this. As the World Bank study “Voices of the Poor” has shown, powerlessness is also the central theme of poverty. More than suffering from hunger and ill-health, poor people whose rights are not respected suffer from the lack of power to change their situation and lift themselves out of poverty. That is why pushing people into poverty constitutes an attack on human dignity as much as slavery or torture does. The same holds true for discrimination. If human beings are deprived of certain rights only because they are different from

other human beings on the grounds of their ethnic origin, colour, gender, religion, age, sexual orientation or physical or mental disability, they feel powerless, humiliated and deprived of human dignity. Such an attack on human dignity is aggravated if systematic practices of discrimination lead to apartheid, ethnic cleansing or even genocide, as occurred during the Nazi Holocaust, and more recently in Bosnia and Herzegovina and Rwanda.

[10] The notion of *human dignity* as an essential feature of human beings is a *universal concept*. Indeed, the concept of dignity transcends cultural difference and can be found in all major religions of the world. As with the Universal Declaration and most core UN human rights treaties, all major regional human rights instruments are based on the concept of human dignity^③. It follows from a combined reading of various international and regional human rights instruments that, although human dignity serves as a moral and philosophical justification for all human rights, only certain human rights are directly linked to the concept of human dignity. Typical examples of threats to human dignity are poverty and starvation, genocide and ethnic cleansing, slavery, trafficking in human beings, torture, enforced disappearance and other forms of arbitrary detention, racism and similar forms of discrimination, colonialism and foreign occupation and domination.

Powerlessness, humiliation and dehumanization are the essential dimensions of such attacks on human dignity. The present Agenda primarily aims at addressing human rights issues directly linked to human dignity^④.

3. Shared Responsibility: the 21st Century Approach

[11] In 1948 the General Assembly proclaimed the Universal Declaration of Human Rights “as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance...” According to Article 28, “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.” *Under international human rights treaty law, it is primarily states that have direct international obligations to respect, fulfil and protect human rights. The obligation to respect requires states to refrain from arbitrary or unjustified interference with human rights.*

① Resolution on the Negative Impact of the Worsening of the World Food Crisis on the Realization of the Right to Food for All, *HRC Res. S-7/1* of 22 May 2008. ② Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone: Report of the Commission on Legal Empowerment of the Poor, Vol. I* (United Nations, New York, 2008).

③ See, for example, the following major human rights instruments from all regions of the world: Preamble of the American Declaration of the Rights and Duties of Man 1948; Article 5(2) of the American Convention on Human Rights 1969/78; Preamble and Article 5 of the African Charter on Human and Peoples' Rights 1981/86; Preamble and Articles 2(3), 17, 20(1), 33(3) and 40(1) of the Revised Arab Charter on Human Rights 2004/08; Preamble and Chapter I (Articles 1 to 5) of the Charter of Fundamental Rights of the European Union 2005; Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine 1997/99 with two Additional Protocols on the Prohibition of Cloning and on Transplantation of Organs and Tissues of Human Beings. ④ Although genetic engineering, reproductive cloning and similar practices in biomedicine may have consequences directly linked to human dignity, the present Agenda cannot address these problems.

The obligation to fulfil requires states to take the legislative, administrative, judicial and practical measures necessary to ensure that the rights in question are implemented to the greatest extent possible and that violations are prevented. The obligation to protect requires states to take positive measures aimed at preventing and remedying human rights violations committed by private persons. In other words, traditional human rights law does recognize that human rights may be violated by non-state actors, but – apart from individual responsibility under international criminal law for war crimes, genocide and crimes against humanity – does not establish any procedures for holding them directly accountable at the international level.

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This traditional human rights law approach no longer responds to the actual threats to human rights in the globalized world of the 21st century. There are many reasons why *human rights abuses by non-state actors are on the increase*. Policies of deregulation and privatization have led to an erosion of governmental power and responsibilities and the taking over of essential governmental functions by private business, such as in the fields of education, health services, water management, social security, internal security, policing or prison administration. Transnational corporations operate on budgets which by far exceed those of smaller states and are so powerful that they can no longer be effectively controlled by governmental authorities of the home state or the states in which they operate. Internal armed conflicts and transnational organized crime lead to a weakening of governmental power and in some states, above all in Africa, to the phenomenon of fragile or failed states where various non-state actors exercise power without any direct accountability for human rights violations. In post-conflict situations, the United Nations and relevant regional inter-governmental organizations, by means

of highly sophisticated peace-building operations or transitional administrations, in effect exercise governmental functions without being directly accountable under international treaty law. The same holds true for the military, financial and economic power exercised respectively by NATO, the World Bank, the World Trade Organization and similar inter-governmental organizations. The international community must look for ways to make international institutions accountable under international human rights law standards.

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International law, therefore, must move from the model of exclusive state responsibility to a 21st century approach of shared responsibility. Shared responsibility means, first of all, that non-state actors can be held directly accountable for actions that violate human rights. If a transnational corporation, for example, violates international labour standards, resorts to forced labour, child labour, forced evictions of the local population or arbitrary killings by private security forces, it should be held directly accountable, not only under international criminal law, but also under other fields of international law. In addition, it should avoid complicity in human rights violations committed by governments. But *responsibility also includes positive actions aimed at progressively fulfilling human rights.* If a transnational corporation engages in business in an area where the local population is starving and living under conditions of extreme poverty, it has a responsibility to address this situation. This could be done, for example, by means of community development projects in the fields of education, health care or food production.

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In a globalized world, it is no longer sufficient to rely exclusively on national and local governments for the protection and fulfilment of human rights, as they are either unable or unwilling to address human rights violations that their populations suffer because of the

actions or policies of entities beyond their control. All of us, the international community, i.e. inter-governmental and non-governmental organizations, civil society, business, the media, the donor community and other organs of society, foreign governments as well as private individuals, have a shared responsibility to find effective ways to facilitate the implementation of human rights for all. This 21st century approach is what the Universal Declaration envisaged 60 years ago when it created the entitlement to a social and international order in which all human rights can be fully realized. Although the progressive realization of human rights through international assistance and cooperation forms part of international treaty law⁷, the international community is extremely reluctant to interpret these provisions as legal obligations of specific duty-bearers. In 2005, world leaders agreed on their joint “responsibility to protect” populations from genocide, war crimes, ethnic cleansing and crimes against humanity⁸. *It is high time to create a similar international responsibility to protect human beings against other attacks on their dignity, above all extreme poverty and consistent violations of economic, social and cultural rights.*

4. Freedom from Want: Eradicating Poverty

4.1 The Millennium Development Goals

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Today, more than one billion people – one in every six human beings – live in conditions of extreme poverty

without adequate access to food, health, education, shelter, clothing, water and justice, and without protection from discrimination, violence and environmental hazards. Four billion people – almost two thirds of the present world population – are robbed of the chance to better their lives and climb out of poverty because they are excluded from the rule of law⁹. *Poverty is not simply a fate, it is made by human beings and it can be eradicated by human beings.* Poverty is by far the most systematic and dramatic violation of essential human rights, both in the sphere of economic, social and cultural rights as well as in the sphere of civil and political rights. But poverty cannot be eradicated solely by actions taken by national governments of the poor countries in which most poor people live. Eradicating poverty is the most striking example of a human rights obligation which can only be undertaken and implemented effectively by the international community as a whole. It is the most urgent responsibility of all of us.

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Poverty eradication has been accepted as the overarching goal of international development by the World Bank, the International Monetary Fund, the United Nations Development Programme, the Organisation for Economic Co-operation and Development and bilateral donors. To halve by 2015 the proportion of people who suffer from hunger and who live under conditions of extreme poverty constitutes the most prominent of the *Millennium Development Goals* solemnly proclaimed by the world’s leaders during the Millennium Summit of September 2000.

⁷ See, for example, Articles 2(1) and 11 of the [International Covenant on Economic, Social and Cultural Rights](#).

⁸ 2005 World Summit Outcome, [A/RES/60/1](#) of 24 October 2005.

⁹ Commission on Legal Empowerment of the Poor, *supra* note 4.

In 2005, a practical plan to achieve the Millennium Development Goals was presented by the Millennium Development Project¹⁰. In his report “In larger freedom”, the Secretary-General of the United Nations presented a series of far-reaching recommendations to Heads of State and Government on how to reach this ambitious goal, taking into account the development consensus agreed on in 2002 at the International Conference on Financing for Development held in Monterrey, Mexico, and the World Summit on Sustainable Development held in 2002 in Johannesburg, South Africa¹¹. None of these recommendations, addressed both to developing and developed countries and to the international community as a whole, has lost any significance three years later. Now we are more than half way from 2000 to 2015. But the political will to take the action necessary for the effective implementation of the Millennium Development Goals continues to be lacking in both rich and poor countries, and the progress in achieving these goals after eight years is highly disappointing: while the number of people living in extreme poverty decreased in Asia and overall between 1990 and 2005, it rose by 100 million in sub-Saharan Africa; in addition, recent high food prices may have had the effect of increasing the number of poor by over 100 million¹².

Although the Millennium Development Goals are formulated as precise time-bound targets that address many dimensions of poverty and exclusion, including hunger, lack of education and disease, the international human rights framework has not yet played a central role in supporting and influencing development planning to meet the Goals by 2015. Each Millennium Development Goal should be interpreted in the context of human rights and the existing legal obligations of

states to progressively realize rights to food, education and health among others. Increased efforts should be made to ensure that the MDG targets and indicators effectively correspond to economic, social and cultural rights, that gender equality is mainstreamed and that marginalized and disadvantaged groups are prioritized. *We must, therefore, transform the goal of eradicating poverty from a merely voluntary development target into a legally binding human rights obligation of poor and rich countries and other actors of the international community alike.* Such an obligation should equally be incorporated into the national laws of states, whether as a constitutional right or through ordinary legislation, in order that courts and other domestic organs can apply and uphold the international standards in practice.

4.2 A Human Rights Based Approach to Poverty Reduction

One way of achieving this aim is by adopting a *human rights based approach to development and poverty eradication*. In 2006, the UN High Commissioner for Human Rights adopted Principles and Guidelines for a Human Rights Based Approach to Poverty Reduction Strategies¹³. These Principles and Guidelines define poverty from a human rights perspective as “the denial of a person’s rights to a range of basic capabilities – such as the capability to be adequately nourished, to live in good health, and to take part in decision-making processes and in the social and cultural life of the community”. The denial of certain human rights is related to poverty when two conditions are met. First, the human rights involved must be those that relate to the capabilities that are considered basic by a given society. Secondly, inadequate command

over economic resources must play a role in the causal chain leading to the non-fulfilment of human rights¹⁴. According to the Principles and Guidelines, the most fundamental way in which empowerment occurs is through the introduction of the very concept of rights in the context of poverty reduction policy-making. Underpinned by universally recognized moral values and reinforced by legal obligations, international human rights provide a compelling normative framework for the formulation and implementation of poverty reduction strategies. The Principles and Guidelines propose that *human rights principles should inform both the process of formulating, implementing and monitoring a poverty reduction strategy as well as the content of such a strategy.*

The key components of the Guidelines are: the identification of the poor and the participation of all; use of the framework of national and international human rights as a basis for a poverty reduction strategy; equality and non-discrimination; monitoring and accountability of states; and international assistance and cooperation. The content of a human rights-based poverty reduction strategy consists in the integration of specific human rights standards concerning rights which are particularly relevant to the context of poverty reduction: the rights to work, to adequate food and housing, health, education, personal security and privacy, equal access to justice, and political rights and freedoms.

4.3 Access to Justice and the Rule of Law

Another way of empowering the poor to lift themselves out of poverty is a *rule of law approach*. At the end of the Cold War, one of the main conclusions that the Conference on Security and Cooperation in Europe (CSCE) was able to reach at the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE was that human rights are the foundation of freedom, peace and justice, which in turn forms the basis of the rule of law and democracy. The rule of law meant not merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression¹⁵. The rule of law approach has since developed and today informs the international community’s understanding of empowering the poor. According to the recently published report of the Commission on Legal Empowerment of the Poor, “in the 21st century, legal empowerment of the four billion excluded is the key to unlocking vital energies needed to end poverty and build a more stable and peaceful world¹⁶”. The reasons for legal exclusion of the majority of the world’s population are numerous and vary from country to country. However, the Commission identified four major common grounds: Poor people are denied access to a well-functioning

¹⁰ UN Millennium Project, ‘Investing in Development: A Practical Plan to Achieve the Millennium Development Goals’ (Earthscan, London, Sterling Va, 2005). ¹¹ United Nations Secretary-General, ‘In larger freedom: towards development, security and human rights for all: Report of the Secretary-General’ of 21 March 2005 on the occasion of the Follow-up to the outcome of the Millennium Summit, UN Doc. A/59/2005, pp. 55 et seq. ¹² United Nations Secretary-General, ‘MDG Action Points: Addendum to the background note by the Secretary-General on Committing to Action: Achieving the Millennium Development Goals’ (New York, 18 September 2008), p. 2. ¹³ OHCHR, ‘Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies’ (OHCHR, Geneva, 2006). ¹⁴ See OHCHR, ‘Human Rights and Poverty Reduction: A Conceptual Framework’ (United Nations, New York, Geneva, 2004), p. 10. ¹⁵ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen, 29 June 1990) para 2. ¹⁶ Commission on Legal Empowerment of the Poor, supra note 4.

justice system; they lack effective property rights; they suffer unsafe working conditions because their employers often operate outside the formal system; and they are denied economic opportunities because their property and businesses are not legally recognized. Consequently, they cannot access credit, investment, global or local markets.

[21] On the basis of these findings, and having conducted national consultations in 22 countries around the world, the Commission developed a comprehensive agenda for legal empowerment encompassing four crucial pillars that must be central in national and international efforts to give the poor protection and opportunities: *access to justice and the rule of law, property rights, labour rights and business rights*.¹⁷ In practical terms, the Commission suggests that the United Nations Development Programme should take the lead and work with other UN agencies, such as the World Bank, the International Labour Organization, the Food and Agriculture Organization, and UN-HABITAT (the United Nations Human Settlements Programme), to develop a coherent multilateral agenda for the legal empowerment of the poor. This agenda should also become a core mission for regional organizations, regional banks, civil society and community-based organizations, the business community, religious communities and professional associations. *Strengthening democracy is considered essential to legal empowerment of the poor*: no democracy has experienced famine. Similar to the High Commissioner's human rights based approach to poverty reduction strategies, the Commission concludes that "It is time for a renewed anti-poverty agenda aimed at including the vast majority of the world's population in the systems of rights and obligations that have shown their ability to foster prosperity over the past 60 years"¹⁸.

4.4 Preventable Poverty

[22] With almost two thirds of the world's population living in poverty, the elimination of poverty is clearly not achievable in the near future. In light of this, an approach to addressing the actual situation of poverty in which the majority of the world's population live is to *work on creating social security safety nets and to focus on preventable poverty*. Preventable poverty refers to that poverty which could be avoided using the resources already available to the state. Policies of preventable poverty have an essential role to play in protecting against violations of economic, social and cultural rights. States should scrutinize and review what can be done to prevent and reduce poverty by using all available national resources. Moreover, this is not a responsibility which lies with national governments alone. The international community should also accept its responsibility to protect against gross violations of economic, social and cultural rights and to manage preventable poverty. *The international community as a whole should have arrangements and institutions in place to detect and act on situations of consistent patterns of gross violations of economic, social and cultural rights*.

[23] As a corollary of this obligation of national governments and of the international community, those responsible where parts of the population are suffering from preventable poverty must be held to account. Accordingly, *national courts should be vested with the competence to hear claims from victims of poverty* in situations where the government could have acted to prevent this but failed to do so. For this to occur, relevant international human rights obligations must be incorporated into domestic legal systems, either at a constitutional level or through ordinary legislation. Jurisprudence of the Constitutional Court of South Africa¹⁹ and the

Indian Supreme Court²⁰ illustrate the role judicial determinations can play in developing a human rights based approach to tackling poverty as a violation of human rights.

4.5 The Global Economy

[24] Whilst historically the connection between international trade and finance and human rights has not always been apparent, the impact on poverty and powerlessness in a globalized world of international trade agreements and the policies of international financial institutions can no longer be ignored. The issue is partly one of *policy coherence*: the World Commission on the Social Dimension of Globalization noted that different international institutions are assigned responsibility for international finance, development, trade and social policy, and no adequate coordination mechanism between these has been created²¹. This issue can be addressed both at the level of the international institutions, and at a national level, through regular national reviews of the social implications of economic, financial and trade policies²².

[25] *The incorporation of international human rights principles into international trade and finance laws and agreements* has the potential both to mitigate the negative effects of globalization on the poor and to contribute to the eradication of poverty. The responsibility to protect human rights in the context of acceptable trade practices and policies lies

not only with states but also with the international institutions involved.

4.6 Migration and Urbanization

[26] In a globalized world, and often as a result of the negative impacts of globalization on the poor, recent times have witnessed an *increase in migration as a response to poverty*. In this regard, there is a responsibility of states to not only seek to eradicate poverty in all parts of the world, but to mitigate the effects of poverty through their migration policies. *Migration policies should be adopted and implemented in accordance with international human rights obligations*, including principles of non-discrimination and due process, procedural safeguards, and the obligation to ensure that those at risk of persecution not be returned. As migration has an impact on all countries, whether as origin, transit or destination countries, the international community has a shared responsibility in addressing this issue. Related to this phenomenon of global migration is the *growing issue of urbanization and the growing number of slum-dwellers*. By 2030, the level of urbanization in the world is anticipated to increase to 59.9% of the world's population, 13.2% above the level in 2000²³. Research based on current trends shows that by 2050, parallel to rapid urbanization and the growth of megacities, the world slum population is expected to triple from its current level of 1 billion to 3 billion²⁴. A human rights based approach should also be applied by states in formulating policies to manage urban problems.

¹⁷ Ibid., pp. 38-9. Business rights consist of rights to vend, and to have a workspace and related infrastructure and services. ¹⁸ Ibid., p. 11. ¹⁹ See, for example, Government of Republic of South Africa v Grootboom 2001 (1) SA 46 (CC). ²⁰ See, for example, Kapila Hingorani v State of Bihar 2003 (6) SC 1. ²¹ World Commission on the Social Dimension of Globalization, 'A Fair Globalization: Creating Opportunities for All' (ILO, Geneva, February 2004), para 509. ²² Ibid., paras 605-6. ²³ UN-HABITAT, 'Enhancing Urban Safety and Security: Global report on human settlements 2007' (Earthscan, London, Sterling Va, 2007), p. 337. ²⁴ United Nations Secretary-General, 'Committing to action: achieving the Millennium Development Goals, Background note by the Secretary-General' (New York, 25 July 2008), para 50.

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Much more research needs to be done on the effects of climate change and the various mitigation and adaptation policies on the enjoyment of human rights, above all by vulnerable people in poor countries. While rich countries continue to reject the right to development and, in particular, any legal claims of poor people and poor countries against the industrialized world to provide development cooperation, this lack of global responsibility can no longer be sustained in the light of the dramatic present and future effects of climate change on the right of poor people to have access to food, water, housing, health, life and other human rights. It is evident that climate change has been caused primarily by rich countries, while poor people suffer most from its negative human rights consequences. It is, therefore, not just a question of ethics and global justice, but an obligation of rich countries deriving from international human rights to share the major burden of mitigating the causes of climate change and of assisting poor countries in their efforts to adapt to the negative conditions brought about by climate change.

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The human rights effects of climate change reveal the urgent need to move from traditional human rights law with states as the primary duty-bearers to a global human rights regime with many other duty-bearers, including international organizations, the corporate sector and global civil society. Climate change is a major threat to our common global society in the 21st century, and shared responsibility of all has been characterized above as the human rights approach of the 21st century. *But climate change is not only a threat, it also constitutes a major challenge and a window of opportunity for rich and poor countries alike to set aside their disputes about human rights, development and*

security policies and to join their forces in a truly global spirit to protect our planet and humanity against global warming and climate change by effective preventive, mitigating and reactive measures in line with universal human rights, above all those concerning the human rights and dignity of the poor.

7. Addressing the Implementation Gap: Towards a Global Culture of Human Rights

7.1. From Standard Setting and Monitoring to Implementation, Protection, Enforcement and Prevention

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During the second half of the 20th century, much progress has been made in promoting the idea of human rights, in developing a universal normative framework with legally binding rights of human beings and corresponding obligations of states, and in creating effective monitoring bodies and procedures able to assess the actual state of human rights implementation in all countries of our globe. It is exactly our improved monitoring capacity exercised jointly by inter-governmental bodies, independent human rights expert bodies, non-governmental organizations, the media, the academic community and other civil society actors which enables us to realize how large is the gap between legal commitments and the factual situation on the ground.

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The big challenge of the 21st century is to close or at least significantly narrow this implementation gap which clearly undermines the validity and legitimacy of the legally binding universal human rights framework.

We urgently have to move from standard setting and monitoring to genuine protection, implementation and enforcement of human rights and to the effective prevention of human rights violations. At the same time we are in the process of moving from the traditional model of exclusive state responsibility to the 21st century approach of shared responsibility. If human beings are denied enjoyment of the rights to food, housing, property, education, privacy, health, justice, physical integrity or life because of poverty or the effects of climate change, it would be futile and unfair to hold only the state in which they live accountable. Their being displaced from their traditional lands, property and home might have been caused by business practices of transnational corporations, by the rising sea levels due to global warming or by ethnic cleansing policies of rebel groups. Although implementation of international human rights standards remains primarily a task and responsibility of national governments, we must address the implementation gap with remedies that are applicable to all duty-bearers.

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In principle, implementation efforts take place at the domestic, regional and international levels by courts, non-judicial expert bodies and political bodies. Courts are important for dealing with individual complaints against the respective duty-bearers and for providing victims with adequate reparation. At the domestic level, only very few specialized human rights courts exist. However, in various countries specialized courts or panels with special powers, or even government administrative bodies have been created to deal with claims of discrimination, or pertaining to asylum, immigration and employment. Such bodies address claims concerning denial of equal employment opportunities, voting rights, civil rights and denial of

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equal protection. Human rights litigation usually takes place before ordinary courts or, as far as they exist, before constitutional courts. But for many victims, judicial protection is difficult to access, and even in successful cases of human rights litigation, victims are not provided with adequate reparation for harm suffered. It is therefore important that states should establish effective specialized bodies with judicial powers in matters important for the realization of civil and economic rights. At the regional level, there are human rights courts in the Council of Europe, the Organization of American States and recently also in the African Union. However, apart from the European Court of Human Rights, access to these courts is very difficult. Individuals have no direct access to the Inter-American Court of Human Rights and currently hardly any access to the African Court on Human and Peoples' Rights. In addition, these Courts primarily deal with civil and political rights, have only limited powers to provide adequate reparation and cannot be addressed with complaints against non-state actors. Human rights litigation at the UN level takes place before a number of quasi-judicial treaty monitoring bodies with no power to hand down legally binding judgments and to award reparation to victims.

Judicial protection and enforcement constitutes, however, only one method of inducing states and other duty-bearers to implement their international human rights obligations. It is always reactive and only attempts at providing some reparation for harm which has already been suffered by the victims. In the final analysis, the ultimate goal must be prevention. In order to achieve this noble goal, a broad variety of implementation measures are required, which are of a non-judicial nature and should be taken primarily

effective, but the cumulative use of international remedies should be excluded. No appeal from a regional human rights court should, therefore, be admissible. It would, however, be desirable if regional human rights courts were entrusted with similar broad powers, including the power to order appropriate reparation for harm suffered.

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We consider the establishment of a World Court of Human Rights a major goal in the human rights agenda in the coming period and *call for a more detailed study by an expert group to be commissioned by the Secretary-General of the United Nations on ways of advancing towards the establishment of a World Court of Human Rights.*

8. Conclusions and Recommendations

8.1 Achievements, Problems and Challenges: Human Rights in Crisis

[79] Despite significant achievements since the adoption of the Universal Declaration of Human Rights in 1948, and in particular since the end of the Cold War, the international community today finds itself in a veritable human rights crisis in the absence of a clear agenda for action.

[80] The gap between the high aspirations of human rights and its sobering realities on the ground, between human rights law and its implementation, between the lofty rhetoric of governments and their lack of political will to keep their promises is the major problem, and bridging this gap the major challenge of our time.

8.2 Human Dignity

[81] Human dignity is the essential feature which distinguishes human beings from other creatures. Human dignity and the uniqueness of the human being are grounded in human free will, in the capacity for moral choice and individual autonomy. Inherent in all human beings, human dignity is the moral and philosophical justification for equality and other universal human rights.

[82] While all human rights find their moral and philosophical rationale in human dignity, not every violation or denial of human rights also constitutes an attack on human dignity. The present Agenda aims primarily at addressing those core human rights issues directly linked to human dignity, which is characterized by powerlessness, humiliation and dehumanization. This core is composed of fundamental civil, political, social, economic and cultural rights.

8.3 Shared responsibility: The 21st century approach

[83] International law should move from a model of exclusive state responsibility to a 21st century approach of shared responsibility of all actors in order to respond both to the increase in human rights abuses being committed by non-state actors and to the need to involve non-state actors, including international institutions, transnational corporations and faith-based institutions in the international protection of human rights.

[84] Shared responsibility includes not only accountability for actions that violate human rights, but also positive actions aimed at progressively fulfilling human rights.

[85] The international community has a joint responsibility to find effective ways to facilitate the implementation of all human rights for all. The responsibility to protect should therefore extend to all attacks on human dignity, and above all, to extreme poverty, consistent patterns of violations of economic, social and cultural rights and the negative effects of global climate change.

8.4 Freedom from want: Eradicating poverty

[86] The goal of eradicating poverty must be transformed from a merely voluntary development target into a legally binding human rights obligation of rich and poor countries and of other actors in the international community alike.

[87] Eradicating poverty is a human rights obligation which can only be undertaken and implemented effectively by the international community as a whole; national governments of the developing countries in which most poor people live need solidarity to help eradicate poverty.

[88] Poverty can be eliminated by adopting and implementing a human rights based approach to development and poverty eradication. Human rights principles should inform both the process of creating, implementing and monitoring a poverty reduction strategy, as well as the content of such a strategy.

[89] The poor must be empowered to lift themselves out of poverty through a rule of law and access to justice approach. Access to justice, equal and fair property rights, labour rights and business rights, as well as the strengthening of democracy are essential to enable the legal empowerment of the poor. [90]

Poverty should be addressed preventively – states should reduce poverty by creating social security nets and employing all available national resources, and national courts should be vested with the competence to hear claims from victims of poverty where the government could have acted preventively but failed to do so. Moreover, the international community should take responsibility to protect against gross violations of economic, social and cultural rights.

[91] International human rights principles should be incorporated into international trade and finance laws and agreements to mitigate the negative effects of globalization on the poor. A human rights based approach should also be applied in formulating policies relating to the problems of urbanization, the growing number of slum-dwellers and global migration flows.

8.5 Freedom from fear: Enhancing human security by preventing violence

[92] Threats to human security should be combated preventively, by addressing the root causes of such threats with effective early warning systems and early action strategies making use of the full range of instruments available as part of the security, development and human rights agendas.

[93] During and following armed conflicts, the applicability and relevance of human rights protection must be maintained by the international community. In particular, human rights principles should inform the development of post-conflict societies in the establishment of effective democratic structures and systems for the administration of justice.

[94] More should be done to implement the ‘responsibility to protect’. In the context of genocide, war crimes, ethnic cleansing and crimes against humanity, the United Nations should enhance its early warning mechanisms by fully integrating the system’s multiple channels of information and monitoring. In addition, the United Nations should establish military standby capacities as a first step towards the creation of a standing rapid deployment force as an early action mechanism. The United Nations should support the prosecution of the perpetrators of gross violations of human rights and humanitarian law by international and national criminal courts and tribunals.

[95] Terrorism undermines core human rights values and the international rule of law. Much more needs to be done in taking concerted efforts to address the root causes of global terrorism, including poverty, global injustice and unresolved conflicts, as well as the reasons for increasing religious fundamentalism and intolerance. The security-dominated strategy for addressing terrorism should be tempered by consideration of the obligations of states under international human rights, refugee and humanitarian law.

[96] Trafficking in human beings, which directly affects human dignity as the most widespread modern day manifestation of slavery, should be addressed by governments and the international community through the application of a human rights based approach and by shifting the focus from anti-migration to anti-trafficking policies.

[97] The use of imprisonment as a punishment for crime, pre-trial detention and other forms of lawful deprivation of personal liberty must balance the right to personal liberty against legitimate state interests

and such measures must be necessary and appropriate. Detention should only be permissible if no less intrusive measures serve the purpose of achieving a legitimate goal, the detention must be subject to judicial control, must be for no longer than absolutely necessary, and must be under conditions that ensure dignity and justice for detainees.

[98] Millions of detainees and prisoners worldwide are kept in conditions amounting to inhuman or degrading treatment. Prison conditions in violation of civil, political, economic, social or cultural rights should be improved through national and international efforts so that prisoners can live in dignity.

[99] Arbitrary detention, inhuman conditions of detention, torture and enforced disappearance constitute direct and serious attacks on human dignity. States should take preventive measures by opening up places of detention to inspection and unannounced visits by national preventive mechanisms. Moreover, the international community has a responsibility to ensure that there exists no safe haven for perpetrators of these practices, or for those under whose military or political responsibility such practices are tolerated.

8.6 Climate change: A global challenge to security, development, human rights and human dignity in the 21st century

[100] Climate change is a global problem requiring a global solution. Climate change causes human rights violations – particularly concerned are the rights to food, water, shelter, property, health and life; and climate change raises major concerns about equality and global social justice – having a greater impact on the poor.

[101] Thus, a human rights based approach to climate change is needed, which will sharpen the focus of climate change policies on their effects on the fulfilment of human rights, and which will acknowledge not only the role of states, but also the roles of international organizations, the corporate sector and global civil society as duty-bearers.

[102] Mitigation policies – in particular biofuel substitution policies – should assess the effects of crop conversion on food security, in particular in poor countries.

[103] Adaptation policies should be focussed on supporting poor countries less able to protect their populations from the effects of climate change.

[104] More research must be conducted on the effects of climate change and consequent mitigation and adaptation policies on the enjoyment of human rights.

8.7 Addressing the implementation gap: Towards a global culture of human rights

[105] It is imperative that the international community close, or at least significantly narrow, the implementation gap between the legal and political commitments of governments and the international community to respect, protect and fulfil human rights, and the contrasting situation on the ground. This is the biggest challenge of the 21st century.

[106] We must urgently move from standard setting and monitoring to genuine protection, implementation and enforcement of human rights, and to the effective prevention of human rights violations.

[107] Non-judicial as well as judicial human rights

implementation bodies, and national human rights institutions in particular, should be established in all states, and should be independent and have as broad a mandate as possible in order to prevent and combat human rights violations and to ensure the domestic implementation of international human rights obligations.

[108] To build an effective national protection system for human rights, a Global Fund should be established to support and strengthen all national human rights protection systems, ranging from national human rights institutions to the police, prisons and courts.

[109] Transnational corporations should adopt action plans, with clear targets and benchmarks, aimed at respecting and fulfilling human rights.

[110] A fully independent World Court of Human Rights should be created, as a counterpart to the newly established Human Rights Council, entrusted with the judicial protection of human rights against all duty-bearers.

[111] The World Court of Human Rights should be a permanent court established by a multilateral treaty under the auspices of the United Nations. It should be competent to decide in a final and binding manner on complaints of human rights violations committed by state and non-state actors alike and provide adequate reparation to victims.

[112] The United Nations Secretary-General is requested to commission an expert study on ways to advance towards the establishment of a World Court of Human Rights.