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**The Office of the High Commissioner for Human Rights**  
**Human Rights, Poverty Reduction and Sustainable Development:**  
**Health, Food and Water**

**A Background Paper**

**World Summit on Sustainable Development**  
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*“Human rights cannot be secured in a degraded or polluted environment. The fundamental right to life is threatened by soil degradation and deforestation and by exposures to toxic chemicals, hazardous wastes and contaminated drinking water. ... Environmental conditions clearly help to determine the extent to which people enjoy their basic rights to life, health, adequate food and housing, and traditional livelihood and culture.”<sup>1</sup>*

## **1. Introduction**

The draft Plan of Implementation for the World Summit on Sustainable Development, recognizes poverty eradication as the greatest global challenge facing the world today and an indispensable requirement for sustainable development.<sup>2</sup>

It is now widely accepted that – on the one hand - poverty should not be seen only as a lack of income, but also as a deprivation of human rights, and – on the other hand - that unless the problems of poverty are addressed, there can be no sustainable development. It is equally accepted that sustainable development requires environmental protection and that environmental degradation leads directly and indirectly to violations of human rights.

The Secretary General has called for the World Summit to focus on achieving concrete results in five areas. These are; water and sanitation, energy, agricultural productivity, biodiversity and ecosystem management and health. (WEHAB)<sup>3</sup>. This background paper examines how human rights as both a normative framework, and as strategic tools can strengthen three of the WEHAB areas; health, food and water.

The Secretary-General’s WEHAB initiative follows the path of the United Nations Millennium Declaration. The Millennium Declaration sets out an agenda for peace and

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<sup>1</sup> Klaus Töpfer, Executive Director, UNEP addressing the 57th session of the Commission on Human Rights

<sup>2</sup> Para. 6 of the draft Plan of Implementation, 12 June 2002.

<sup>3</sup> See “Towards a Sustainable Future”, Annual Environmental Lecture, The American Museum of Natural History New York 14 May 2002.

security, sustainable development, the protection of the environment, and human rights, democracy and good governance. The Declaration specifies eight commitments relating to development, poverty reduction, and global partnership known as the Millennium Development Goals. It also contains six commitments for promoting human rights, democracy and good governance. Most if not all of the strategies to achieve the Millennium Development Goals operate within a human rights framework. Therefore the Millennium Development Goals and the Millennium human rights commitments are complementary and mutually-reinforcing. Both the WEHAB and the Millennium Declaration underscore the connections between all of the global challenges facing humanity in pursuing sustainable development.

### Sustainable development and human rights

In 1987, the World Commission on Environment and Development (the Brundtland Commission) defined sustainable development as:

“...development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

At the 1992 Earth Summit in Rio de Janeiro, the international community adopted Agenda 21, an unprecedented global plan of action for sustainable development. Agenda 21 was a landmark achievement in integrating environmental, economic and social concerns into a single policy framework. It identified three components of sustainable development – social development economic development, and environmental sustainability – as interdependent and mutually reinforcing pillars.

The World Summit on Sustainable Development provides the international community with the opportunity to review progress on implementation of Agenda 21 and to reactivate a global commitment to sustainable development, building now on the international development and human rights goals set by the Millennium Summit and Declaration.

Limited reference to human rights was made in the Rio Declaration and Agenda 21.<sup>4</sup> However, in the decade since the 1992 Rio Conference, the normative and conceptual links between human rights and sustainable development have been clearly identified and the use of human rights as strategic tools to realize sustainable development objectives has been better understood. In 1993, the Vienna Declaration recognised the indivisibility and equal priority of all rights - economic, social, cultural, and civil and political – and underscored that democracy, development and human rights are interdependent and

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<sup>4</sup> The Rio Declaration formulated the link between human rights and the environmental protection element of sustainable development largely in procedural terms. Public participation was also emphasized in Agenda 21(Chapter 23). Otherwise, Agenda 21 provided few direct references to human rights, notably in respect of youth, women and indigenous peoples (Chapter 24.1, Chapter 25.8, and Chapter 26.1-2.)

mutually reinforcing.<sup>5</sup> Progress has been made in defining the content of specific social and economic rights, such as food, health, and education, as well as the instrumental role of civil and political rights in their realisation and protection. Both categories of rights are of importance in the design of effective strategies to achieve sustainable development<sup>6</sup>. These normative developments have been given practical effect in linking human rights and sustainable development, through the United Nations Secretary General's 1997 Program for Reform, with its call for the integration of human rights into all United Nations activities and programs.<sup>7</sup>

## 2. Poverty Eradication and Human Rights

What does a human rights approach add to efforts to eliminate poverty? Our answer is that a human rights approach to poverty reduction provides a conceptual framework for the process of sustainable human development. It is a normative framework derived from internationally accepted human rights standards and it is one that can be operationally directed towards promoting and protecting the human rights of people living in poverty.

### Empowerment of the poor

A human rights approach to poverty is about empowerment of the poor. One of the clearest and most persistent themes in the World Bank series *Voices of the Poor* is powerlessness.<sup>8</sup> *Crying Out for Change* examines the "ten interlocking dimensions of powerlessness and ill-being (that) emerge from poor people's experiences."<sup>9</sup> It concludes:

"[T]he challenge for development professionals, and for policy and practice, is to find ways to weaken the web of powerlessness and to enhance the capabilities of poor women and men so that they can take more control of their lives."<sup>10</sup>

Empowerment occurs through introducing the concept of rights. When human rights are introduced in policy making, the rationale of poverty reduction no longer derives only from the fact that the poor have needs but is based on the rights of poor people – entitlements that give rise to obligations on the part of others that are enshrined in law.

The different components of a human rights normative framework can contribute to the empowerment of the poor. The most relevant components are; the concept of

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<sup>5</sup> Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, 14-25 June 1993, A/Con.157/24 (Part I) at 20 (1993)

<sup>6</sup> The Universal Declaration of Human Rights 1948 includes rights and freedoms in each of these categories. Subsequently two international treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights have made these rights part of international law. These instruments have now been ratified by 149 and 145 States respectively.

<sup>7</sup> « Renewing the United Nations: A Program for Reform », Report of the Secretary General, 14 July 1997 (A/51/950).

<sup>8</sup> In three volumes, published jointly by the World Bank and Oxford University Press, 2002

<sup>9</sup> Page 235.

<sup>10</sup> See, for example, article 21 UNDHR, article 25 ICCPR and article 13(1) ICESCR.

accountability, the principles of non-discrimination, equality, and participation, and the recognition of the interdependence of rights.

### Equality and non -discrimination

By introducing the dimension of international legal obligation, such as the standards on equality and non- -discrimination, a human rights perspective adds legitimacy to poverty eradication as a primary goal of policy-making.

The right to equality and the principle of non-discrimination is the foundation of international human rights law. The poor are usually victims of discrimination based on various and often multiple grounds, such as birth, property, national or social origin, ethnic origin, color, gender and religion.

As discrimination causes poverty, poverty also causes discrimination. In addition to other grounds of unequal treatment, the poor often suffer discrimination because they are poor.

Where governments are responsible for any form of discrimination, they are under an obligation imposed by international law, to end it immediately through removing all discriminatory laws and practices. Where discriminatory attitudes result from deeply rooted attitudes of the population, governments should take the lead in inducing change through education and should adopt and enforce laws prohibiting any discrimination by private citizens or groups. Governments must in addition take special measures in order to provide to their most vulnerable, discriminated and socially excluded groups, including the poor, effective protection against discrimination by governmental authorities as well as by private actors.

### The equal relevance of civil and political and economic social and cultural rights to poverty reduction

Recognition of the complementary relationships between civil and political rights on the one hand and economic, social and cultural rights on the other, can strengthen as well as broaden the scope of poverty reduction strategies. In particular, it helps dispel the misconception that civil and political rights and freedoms are luxuries that are relevant only for affluent societies. A human rights approach insists that guarantees to ensure civil and political rights are necessary components of poverty reduction strategies.

### Accountability

A crucial contribution of the human rights approach is the emphasis it places on the accountability of policy-makers and other actors whose actions have an impact on the rights of people. Rights imply duties, and duties demand accountability. It is, therefore, an intrinsic feature of the human rights approach that any poverty reduction strategy should build into it institutions and legal/administrative provisions for ensuring democratic accountability.

## Participation

A human rights approach to poverty also requires the active and informed participation of the poor including in for example the formulation, implementation and monitoring of poverty reduction Strategies (PRSs).

The international human rights normative framework includes the right to take part in the conduct of public affairs.<sup>11</sup> Although free and fair elections are a crucial component of the right to participate, they are not enough to ensure that those living in poverty enjoy the right to participate in key decisions affecting their lives. Specific mechanisms and detailed arrangements for the enjoyment of the right to participate will vary greatly from one context to another: one size does not fit all. It must be recognised that some traditional elites are likely to resist the active and informed participation of the poor in decision-making.

The enjoyment of the right to participate is therefore dependent on the realisation of other human rights. For example, if the poor are to participate meaningfully in PRSs, they must be free to organise without restriction (right of association), to meet without impediment (right of assembly), and to say what they want without intimidation (freedom of expression); they must know the relevant facts (right to information) and they must enjoy an elementary level of economic security and well-being (right to a reasonable standard of living and associated rights).

### **3. Health, food and water as human rights concerns**

In addition to the “value-added” of employing human rights as strategic tools in developing policies and programs aimed at poverty reduction, a human rights approach can offer a breakdown of the normative content of the substantive human right that is in issue in poverty reduction strategies. This is illustrated here by three of the areas identified for practical action by the Secretary General- health, food and water.

#### **A. Health**

Health is a prerequisite for sustainable human development, with direct implications for poverty reduction, social welfare, political stability and economic growth. As the Secretary General has noted the links between the environment and human health are powerful.<sup>12</sup> Health is also a fundamental human right, and a right whose realisation is necessary for the exercise of other human rights and freedoms.<sup>13</sup> In short, health and human rights are complementary and interconnected approaches towards sustainable human development and the advancement of human well-being.

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<sup>11</sup> See, for example, article 21 of the Universal Declaration on Human Rights, article 25 of the International Covenant on Civil and Political Rights and article 13(1) of the International Covenant on Economic, Social and Cultural Rights.

<sup>12</sup> “Towards a Sustainable Future”, Annual Environmental Lecture, The American Museum of Natural History New York 14 May 2002.

<sup>13</sup> Committee on Economic, Social and Cultural Rights, General comment 14: *The right to the highest attainable standard of health*, E/C.12/2000/4, 12 August 2000.

The relationship between health and human rights is multifaceted. Diseases such as HIV/AIDS, tuberculosis and malaria disproportionately affect people living in poverty, whose living conditions are made worse as a consequence of ill health. Human rights violations, such as violence against children or harmful traditional practices, may have serious health consequences. Health policies or programmes also may affect the enjoyment of human rights, in particular where those most directly affected are not actively involved in their design and implementation.

The Committee on Economic, Social and Cultural Rights<sup>14</sup> has explored the normative content of the right to health, in some detail<sup>15</sup> In its General Comment 14, the Committee notes that the right requires governments to take measures to develop and implement policies and action plans which will lead to available and accessible health care for all in the shortest possible time. It requires them to make *available* and *accessible* functioning public health and health-care facilities, goods and services, and programmes to everyone without discrimination.

As defined by the Economic Social and Cultural Rights Committee, the right includes:

*‘a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to underlying determinants of health, such as food and*

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<sup>14</sup> The Committee on Economic, Social and Cultural Rights (CESCR) is the body established by the International Covenant on Economic, Social and Cultural Rights to monitor compliance by States parties with its provisions. In carrying out this task, the Committee formulates general comments, which are authoritative interpretations of rights under the Covenant. Their purpose is to assist States parties in fulfilling their reporting obligations and to provide greater interpretative clarity as to the intent, meaning and content of the Covenant.

<sup>15</sup> General comment 14: *The right to the highest attainable standard of health*, E/C.12/2000/4, 12 August 2000. Para 8. The most elaborate statement on the right to health, is reflected in article 12 of the International Covenant on Economic, Social and Cultural Rights, which outlines the measures to be taken by the States Parties to achieve the realization of the right to the highest attainable standard of health. These include steps necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.<sup>15</sup>

States’ obligations with regard to the right to health are reflected in various international human rights instruments, including the Universal Declaration of Human Rights which states in article 25(1) that “everyone has a right to a standard of living adequate for the health of himself and his family, including food, clothing, housing, and medical care and necessary social services.”

*nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment*'.<sup>16</sup>

In other words, the realisation of the right to health depends upon the realisation of other human rights. In the Committee's analysis these include the rights to food, housing, work, education, non-discrimination and equality, as well as on the implementation of freedom of association, assembly and movement and the right to privacy and access to personal information<sup>17</sup>

In April 2002 the Commission on Human Rights reaffirmed the right to the highest attainable standard of health and called for the appointment of a special rapporteur on the right to health.<sup>18</sup> The Commission also emphasised the importance of access to medication as a component of the right to the highest attainable standard of health. They called upon all countries to pursue policies that promote the availability, accessibility and affordability of scientifically appropriate and good quality pharmaceuticals and medical technologies used to treat HIV/AIDS.

### HIV/AIDS

HIV/AIDS provides a striking example of the inter-relationship between health, human rights and sustainable development. AIDS and poverty are now mutually reinforcing negative forces in many developing countries and are impediments to economic growth in the hardest hit areas. AIDS is the leading cause of death in sub-Saharan Africa, where life expectancy is now around 47 years, and is the fourth largest killer world-wide. The epidemic is concentrated among people in the most productive years of their lives and, as a result, is causing a loss of human resources at an alarming rate. In some areas HIV/AIDS is depleting a generation of mothers, of teachers, of bus drivers, of law-enforcement officials and of health care providers. It is also producing a generation of orphans, who are particularly vulnerable to discrimination, exploitation and abuse. Women continue to be disproportionately affected by the epidemic, largely due to the persistence of gender inequalities: they suffer the highest rate of infection in certain countries, while they also bear the burden of caring for ailing family members and a growing number of orphans.

HIV/AIDS-related stigma and discrimination continue to be a primary driving force sustaining the AIDS epidemic.<sup>19</sup> Stigma and discrimination prevents those in need from accessing care, treatment and support, and increases the vulnerability of others to HIV infection. Tackling the root causes of vulnerability to HIV/AIDS therefore requires that particular attention be paid to the causes of stigma and discrimination, and of how they reinforce stereotypes and inequalities related to gender, ethnicity, race, sexuality and social status. Equally a human rights response calls for freedom of expression and open

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<sup>16</sup> Ibid. para 4.

<sup>17</sup> Ibid para 3.

<sup>18</sup> E/CN.4/RES/2002/31

<sup>19</sup> See Report on the Global HIV/AIDS Epidemic 2002, UNAIDS, July 2002, Chapter 3.



public discussion to increase public awareness and responsibility towards those affected by the disease.

#### National experience - Brazil

Good practice experience in Brazil for example, demonstrates how safeguarding human rights through the adoption of comprehensive strategies may contribute to reducing vulnerability to HIV infection and alleviating the negative impact of the epidemic. At the national level, the introduction of free universal access to HIV-related medicines in 1996 has led to a four-fold increase in the number of patients using anti-retroviral medication in Brazil, a 50 percent decrease in the number of AIDS-related deaths and sharply reduced treatment costs. At the international level, Brazil has been at the forefront in promoting a comprehensive approach to prevention, treatment and care, based on respect for human rights; strong civil society participation; universal public health system; and a commitment to combating HIV/AIDS-related stigma and discrimination. *International Guidelines on HIV/AIDS and Human Rights* provide important policy guidance for States and other groups in developing and implementing effective rights-based strategies for combating HIV/AIDS.<sup>20</sup> An example of the ideas in the guidelines is the proposal for creative education, training and media programmes to change attitudes of discrimination and stigmatization associated with HIV/AIDS.

#### **B. Food**

Under-nutrition and hunger are constitutive of poverty. Thus, the right to adequate food has a crucial role to play as a strategic tool in policies aimed at eradicating poverty.

The importance of the right to adequate food is underlined by the Millennium Development Goal that aims to halve, by the year 2015, the proportion of people who suffer from hunger.

While the Secretary General's call to increase agricultural productivity is concerned primarily with increasing food availability by way of reversing the decline in agricultural productivity, while reducing environmental degradation, the human rights framework adds the concern of equality of food accessibility. As the Committee on Economic, Social and Cultural Rights observed in General Comment No. 12, "the roots of the problem of hunger and malnutrition are not lack of food but lack of *access* to available food, inter alia because of poverty, by large segments of the world's population."<sup>21</sup>

#### Scope of the right to adequate food

The right to adequate food is the right of all individuals, alone or in community with others, to enjoy physical and economic access to adequate food or the means for its

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<sup>20</sup> These Guidelines were developed at the Second International Consultation on HIV/AIDS in 1996 and published by OHCHR and UNAIDS in 1998.

<sup>21</sup> General Comment No. 12, para. 5.

procurement.<sup>22</sup> It should be understood primarily as the right to feed oneself, rather than the right to be fed. The right to be free from hunger is the minimum essential level of the right to adequate food.

The core content of the right to food implies: (a) the *availability* of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances and acceptable within a given culture; and (b) the *accessibility* of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.<sup>23</sup>

The ‘availability of food’ refers to the possibilities of either feeding oneself directly from productive land or other natural resources, or a well-functioning distribution, processing and market system that moves food from the site of production to where it is needed in accordance with demand.

The ‘accessibility of food’ encompasses both economic and physical accessibility. ‘Economic accessibility’ implies that personal or household costs associated with the acquisition of food for an adequate diet should be at such a level that the satisfaction of other basic needs is not compromised. ‘Physical accessibility’ implies that adequate food must be accessible to everyone, including the vulnerable. If access to their ancestral lands is threatened, indigenous peoples have a particular vulnerability.

The notion of sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations. The notion of ‘sustainability’ incorporates the notion of long-term availability and accessibility.<sup>24</sup>

The right to adequate food also encompasses food safety and food security. Food safety implies that food shall be free from adverse substances whether from adulteration, poor environmental hygiene or other causes.

The Special Rapporteur on the Right to Food appointed by the UN Human Rights Commission has stressed that the term “food” covers not only solid foods but also the nutritional aspects of drinking water. He also pointed out that water - like food - is vital for life. Clean drinking water is an essential part of healthy nutrition and also a necessary condition for the enjoyment of other human rights (such as the right to life and to health). In his reports, the Special Rapporteur has stated that, as a component of the right to food, access to safe, clean drinking water and basic irrigation water must be protected, including through international cooperation.<sup>25</sup>

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<sup>22</sup> The right to food is guaranteed in Article 11 of the International Covenant of Civil and Political Rights.

<sup>23</sup> CESCR, “General Comment No. 12: The Right to Adequate Food” (E/C.12/1999/5).

<sup>24</sup> *Ibid.* para. 7.

<sup>25</sup> “Report by the Special Rapporteur on the right to food” submitted pursuant to Commission on Human Rights resolution 2000/10 (E/CN.4/2001/53). “Report by the Special Rapporteur on the right to food” submitted pursuant to Commission on Human Rights resolution 2001/25 (E/CN.4/2002/58).

### Strategic steps

In practical terms the right to food can be employed in a variety of ways in policies aimed at poverty reduction, depending on the circumstances of a particular community, region or country. In order to ensure food both food availability and accessibility, an effective land registration system could be developed and the land record be put in the public domain - including through the internet - so that more powerful members of society cannot easily usurp the lands of the poor with impunity. Another example would be efforts to be to ensure the effective protection of indigenous people's right to the lands (including forests, grazing lands, and other common property resources) on which they depend for their food.

### The right to food and international trade

The connection between the right to food and international trade is apparent in a number of fields, most notably agricultural trade, but also in trade-related aspects of intellectual property protection. Agricultural trade offers enormous potential for development and food security, above all for developing countries. However, developing countries still have difficulty in obtaining access for their products to the markets of member countries of the Organization for Economic Cooperation and Development (OECD). At the same time, the liberalization of agricultural trade in developing countries, especially net food-importing developing countries, has increased the vulnerability of local markets to international price fluctuations and has failed to take sufficient account of the food security of the poor and vulnerable such as poor farmers and farm workers.

In her report on globalization to the Commission on Human Rights in 2002, the High Commissioner for Human Rights proposed a right-to-food approach to agricultural trade in the framework of the WTO's Agreement on Agriculture.<sup>26</sup> While noting that the Agreement on Agriculture is only a first step to more openness in developed country markets, the report highlighted the fact that the Agreement does not sufficiently take into account the concerns of the poor and vulnerable or of net food-importing developing countries. A right-to-food approach to the Agreement would stress the human rights principle of non-discrimination and consequently encourage affirmative action for the poor, allowing certain special trade rules for the protection of vulnerable people.

The report's recommendations underlined the need for targeted food aid, the importance of operationalizing special and differential treatment for developing countries, the need for greater openness in wealthy countries to agricultural products from developing countries and the need for assistance to developing countries in negotiations at the WTO. In this connection, the report welcomed the commitments at the Fourth WTO Ministerial Conference in Doha to substantial improvements in market access and reductions in all forms of export subsidies with a view to phasing them out, as well as the commitment to make special and differential treatment an integral part of the rules and disciplines of the Agreement on Agriculture.

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<sup>26</sup> E/CN.4/2002/54.

## C. Water

Water is crucial to development.<sup>27</sup> The human right to drinking water is fundamental for life and health. Sufficient and safe drinking water is a precondition for the realization of all human rights. Overcoming the world water crisis – achieving water, food and environmental security simultaneously – is one of the most formidable challenges for sustainable development.<sup>28</sup>

People living in poverty are inevitably more affected by the ever-increasing competition for water: Women and girls often have to walk farther in search of water to meet minimal household needs; In the poorest countries, one in five children dies before the age of five mainly from water-related infectious diseases arising from insufficient water availability, in both quantity and quality;<sup>29</sup> An estimated 1.1 billion persons lack access to an adequate water supply (the overwhelming majority of these persons live in rural areas)<sup>30</sup>, while 2.3 billion persons each year suffer from diseases linked to water;<sup>31</sup> Almost 4 billion are without adequate sanitation services;<sup>32</sup> Drinking water access and quality continue to be a fundamental problem, since some 3 billion people are expected to suffer water shortages by the year 2025; Many of the world's current conflicts are caused, or exacerbated, by the lack or insufficiency of water;<sup>33</sup> Moreover, the continuing deterioration of water resources is exacerbating existing poverty and discrimination.

Realizing the human right to water in a sustainable manner must therefore be considered a vital component of poverty reduction policies to achieve sustainable development.

### Scope of the Right to Water

The right to drinking water and sanitation is both a human right in itself and a basic requirement for the implementation of other rights including food and health.<sup>34</sup>

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<sup>27</sup> E/CN.4/Sub.2/2002/10, para. 37.

<sup>28</sup> "No Water no Future: A Water Focus for Johannesburg", HRH the Prince of Orange, 14 February 2002.

<sup>29</sup> "A Framework for Action on Water and Sanitation", WEHAB Working Group, August 2002.

<sup>30</sup> WHO, the Global Water Supply and Sanitation Assessment 2000, Geneva, 2000, at p. 1.

<sup>31</sup> UN Commission on Sustainable Development, Comprehensive Assessment of the Freshwater Resources of the World, Report of the Secretary General, New York, 1997, at p. 39.

<sup>32</sup> E/CN.4/Sub.2/2002/10, para. 4.

<sup>33</sup> This examination of the right to water and the most immediately related rights, does not explore in any detail how other human rights, including some of the procedural rights, can be instrumental in implementing the right to water in a sustainable manner, or to what extent the right to water needs to be balanced against possible competing rights.

<sup>34</sup> "Relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation", Preliminary report submitted by Mr. El Hadji Guissé in pursuance of decision 2002/105 of the Commission on Human Rights and resolution 2001/2 of the Sub-Commission on the Promotion and Protection of Human Rights, E/CN.4/Sub.2/2002/10, par. 19.

Although the International Covenant on Economic, Social and Cultural Rights does not expressly refer to the word “water”, the right to drinking water is clearly essential for realizing the right to an adequate standard of living, including food.<sup>35</sup> The right to drinking water entitles everyone to *safe, sufficient, affordable* and *accessible* drinking water that is adequate for daily individual requirements (drinking, household sanitation, food preparation, and hygiene).<sup>36</sup> The adequacy of drinking water should be interpreted in a manner consistent with human dignity, and not in a narrow way, by mere reference to volumetric quantities and technologies, or by viewing water primarily as an economic good<sup>37</sup>.

Importantly, the Committee on Economic, Social and Cultural Rights stresses that the manner of the realization of the right to drinking water must also be sustainable, ensuring that the right can be realized for present and future generations.<sup>38</sup>

The right to drinking water is directly related to the right to the highest attainable standard of health (Art. 12.1).<sup>39</sup> In its General Comment 14 on the right to health, the Committee on Economic, Social and Cultural Rights notes that “safe and potable drinking water”, as an underlying determinants of health, has to be made available in sufficient quantity within the State party through functioning public health and health-care facilities, goods and services, as well as programs. The committee has also stressed that States must ensure equal access for all to potable drinking water.

Human rights obligations related to environmental hygiene, as reflected in article 12.2(b) of the Covenant, require States to take steps to prevent threats to health from unsafe and toxic water conditions. States parties should ensure that natural water resources are protected from contamination. Likewise, States parties should combat harmful substances and microbes, including malaria and dengue that are present in water sources or stagnant water in, or proximate, to human living environments.<sup>40</sup>

The right to drinking water is also closely related to the rights to adequate housing and adequate food (Art. 11.1).<sup>41</sup> The right should also be seen in conjunction with other rights

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<sup>35</sup> Article 11.1 of ESCR reads as follows: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right...”

<sup>36</sup> See draft General Comment No. 15 on the right to water (Articles 11 and 12 of the international Covenant on Economic, Social and Cultural Rights), E/C.12/2002/11, 29 July 2002.

<sup>37</sup> E/C.12/2002/11, para. 7.

<sup>38</sup> Ibid.

<sup>39</sup> Article 12.1 of the ESCR reads as follows: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” See also the General Comment No. 14 on the Right to Health by the Committee on Economic, Social and Cultural Rights (paras. 11, 12(a), 12(b), 12(d), 15, 34, 36, 40, 43 and 51).

<sup>40</sup> See draft General Comment No. 15 on the right to water (Articles 11 and 12 of the international Covenant on Economic, Social and Cultural Rights), E/C.12/2002/11, 29 July 2002 para. 46.

<sup>41</sup> See respective General Comment No. 4 (para. 8(b)) and the Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2001/25, E/CN.4/2002/58.

enshrined in the Universal Declaration of Human Rights, foremost amongst the right to life and human dignity.<sup>42</sup>

At the regional level, regional standards have been developed governing the right of access to drinking, which are complementary to those developed by the United Nations system. Latin American states have endorsed a universal right to live in a healthy environment and to have access to basic public services.”<sup>43</sup> In Africa, the African Commission on Human and Peoples Rights has held that failure by a government to provide basic services such as safe drinking water constituted a violation of the right to health under Article 16 of the Charter.<sup>44</sup> In Europe, there is a body of jurisprudence which in effect applies a right to clean water.<sup>45</sup>

#### 4. State obligations

##### General

To complete a human rights analysis of the rights in focus in this paper a brief treatment of the nature and content of the obligations accepted by States in respect of those rights should be added.

Under the Covenant on Economic, Social and Cultural Rights, States parties are obliged to take steps, utilizing their maximum available resources, to progressively achieve the realization of the rights contained in the Covenant, adopting appropriate legislative and other measures towards this end.<sup>46</sup> The precise obligations that arise in respect of the rights considered in this paper- food health and water- vary over time in relation to the same state (progressive realization), and from one state to another (because of differing resource availability). However, the duty to ‘take steps’, together with the obligation to guarantee the right without discrimination (Art. 2.2), constitute obligations of immediate effect.<sup>47</sup>

States parties have a constant and continuing duty, in accordance with the obligation of progressive realization, to move expeditiously and effectively towards the full realization of the rights. Realization of the rights should be feasible and practicable, since all States parties exercise control over a broad range of resources, including water, technology,

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<sup>42</sup> Articles 3 and 1 respectively of the Universal Declaration of Human Rights.

<sup>43</sup> The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador), signed on 17 November 1988 and entered into force on 16 November 1999.

<sup>44</sup> The African Commission on Human and Peoples’ Rights, established under the auspices of the African Charter on Human and Peoples’ Rights, *Communications 25/89, 47/90, 56/91 and 100/93 against Zaire*.

<sup>45</sup> The right to drinking water is not explicitly mentioned in the European Convention for the Protection of Human Rights and Fundamental Freedoms. However, the European Court of Human Rights already has a substantial body of precedents which in effect apply a right to clean water. Examples are the case of Zander v. Sweden (1993) concerning the probable pollution of a drinking water well from a nearby dump and the case of López Ostra v. Spain in which the court recognized that “severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely.

<sup>46</sup> Article 2.1

<sup>47</sup> See General Comment No. 3.

financial resources, and international assistance. There is a strong presumption that retrogressive measures taken in relation to the right, or failure to exercise due diligence to prevent retrogressive measures taken by third parties, are prohibited under the Economic Social and Cultural Covenant.<sup>48</sup>

### Special legal obligations

#### *Non-discrimination and equality*

The obligation of States parties to the Covenant to guarantee that the rights are enjoyed without discrimination (Art. 2.2), and equally between men and women (Art. 3), pervades all Covenant obligations. States parties should take immediate steps to adopt legislative and other measures to eliminate discriminatory acts or omissions that have the intention or effect of nullifying or impairing the equal enjoyment of the rights, on the grounds listed in Article 2.2.

States parties should take steps to remove *de facto* discrimination on the prohibited grounds, where individuals and groups are deprived of the means or entitlements necessary for realizing the rights. Whereas the rights applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising the rights, including women, children, minority group, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees.

#### *Obligations to Respect, Protect and Fulfill*

All human rights impose three types or levels of obligations on States parties: the obligations to *respect, protect and to fulfill*.

The obligation to *respect* requires that States parties refrain from interfering directly or indirectly with the enjoyment of the rights in question. This obligation would be violated, for example, if the State arbitrarily deprived an individual of his/her land in a case where the land was the individual's physical means of securing the right to food. The obligation to *protect* requires State parties to prevent third parties from interfering in any way with the enjoyment of the rights. Third parties include individuals, corporations and other entities as well as agents acting under their authority. The obligation includes, *inter alia* adopting the necessary and effective legislative and other measures. The obligation to *fulfill* requires States parties to adopt the necessary measures directed towards the full realization of the rights. The obligation to *fulfill (facilitate)* means that States must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood. And it is only when individuals or groups are unable, for reasons beyond their control, to enjoy, for example, the right to adequate food by the means at their disposal, that States have the obligation to *fulfill (provide)* that right directly.

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<sup>48</sup> See General Comment no. 3, para. 9.

### *Minimum obligations*

All States parties have an immediate obligation to ensure satisfaction of, at the very least, the minimum essential level of the right to drinking water. In its General Comment No. 3 the Committee for Economic, Social and Cultural Rights asserted that even in times of severe resource constraints, vulnerable or marginalized groups must be protected by the adoption of relatively low-cost targeted water programs.

### Progressive realization, indicators and benchmarks

The progressive realization of the rights under discussion requires the use of human rights indicators and benchmarks. The Committee on Economic Social and Cultural Rights has encouraged reporting States to adopt this approach in implementing the Covenant<sup>49</sup>. Briefly, a bundle of disaggregated indicators are identified for each human right that is subject to progressive realization. Realistic time-bound national benchmarks (or targets) are set in relation to each indicator. The poor should participate in the identification of these benchmarks. If, for example there are ten right to health indicators, then ten right to health benchmarks will be set in relation to a particular state. Over time, the right to health in that state will be monitored by reference to those national benchmarks. As the benchmarks are achieved, more ambitious ones will be set. In this way, the progressive realization of the right to health can be measured and monitored.

## **5. Conclusion**

It is a generally accepted thesis that sustainable development cannot be achieved without a substantial reduction in the number of people who are poor. Much of the effort of the World Summit on Sustainable Development will therefore be concentrated on elaborating policy frameworks and strategies aimed at poverty reduction, if not poverty eradication.

This paper has shown that as poverty reduction is essential for sustainable development, human rights are essential components of poverty reduction. The paper has argued for a right-based approach to poverty reduction and has showed how human rights - being underpinned by a comprehensive international legal framework and realized in a sustainable manner - can be employed as strategic tools in poverty reduction strategies.

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<sup>49</sup> See for example, General comment 14: *The right to the highest attainable standard of health*, E/C.12/2000/4, 12 August 2000, General Comment No. 12: *The Right to Adequate Food*" (E/C.12/1999/5).