The MDGs and international human rights law: a view from the perspective of minorities and vulnerable groups

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This paper argues that neither the growth of a stronger regime of human rights, nor the fulfilment of the Millennium Development Goals (MDGs), would automatically guarantee an amelioration of the plight of vulnerable groups. Drawing on examples from Vietnam, Mexico and Ghana, this paper, rather than critique the ‘standards’, endorses each regime/programme with the suggestion of an inclusionary caveat: that both pay special attention to the plight of minorities and indigenous groups, and that the extent to which either process is deemed successful be measured against the extent to which it addresses the plight of vulnerable groups such as indigenous peoples and minorities within states.

Keywords: Millennium Development Goals (MDGs); human rights-based approach; minorities; indigenous peoples; Ghana; Vietnam; Mexico

Introduction

The importance of the human rights movement cannot be overstated in terms of its significance in establishing one very fundamental principle: that of the ‘inherent dignity and equal worth of every human being’. Prior to its articulation in this particular form, legal systems in every part of the world, and at international level, inevitably discriminated either directly or indirectly against particular individuals on the basis of their membership of a group: be it gender-based, ethnic or ‘racial’ groupings, linguistic groupings, on the basis of their being settled or nomadic or other related grounds.

This is not to suggest that there was no awareness within international society about the plight of particularly vulnerable groups or those who could be differentiated from the majority of the population of the state on the basis of their membership of a group. Indeed international legal standards addressing the plight of minorities have existed since at least the Promise of St. Louis of France in 1250. In that particular treaty St. Louis promised the Maronites safe passage across Europe, believing them to be a vulnerable group in need of special protection. Since then minority rights law has grown in and around Central and Eastern Europe, as manifest in a series of inter-state treaties all seeking to guarantee the rights of particularly vulnerable minorities in the face of possible threat from more dominant groups. A list of these treaties is instructive from a modern perspective since it includes a series of communities who continue or have continued to remain under threat. It could in fact be argued that along with the growth of diplomatic law and the laws of
occupation, minority rights law is one of the streams along which international law itself has developed.

Despite this it is also equally clear from a reading of history that minorities and indigenous peoples have been the most at risk in terms of the gross violations that have been perpetrated in human history. The perpetration of the crime against crimes, genocide, inevitably takes place against minorities whose very existence is deemed, for one reason or another, to be particularly offensive to a particular regime. Thus in the Armenian genocide, the Holocaust and the Rwandan genocide, members of particular groups were targeted for elimination solely on the basis of their membership of a group. Nor do these legally ‘accepted’ genocides reveal the full picture of violations against minorities: the dispossession of indigenous peoples of their territories, the ethnic cleansing that has become common in modern parlance, and what many refer to as ‘cultural genocide’ that continues to threaten minority and indigenous groups, decimating their culture, destroying their ways of life and threatening the community. Some argue that the inevitable processes of globalisation suggest that stronger cultures will win over weaker cultures and that this has been a trend visible throughout history. The human rights movement is not seeking to fight against this trend: rather it is merely positing that a belief in the equal dignity and worth of every human being necessitates the extension to these individuals of protection against encroachment on all of their rights, including cultural rights.

Against the success of the human rights movement in bringing the rights based approach to the fore, and in highlighting the importance of the need to guarantee the rights of all, lies one inevitable and crucial caveat: minorities and indigenous peoples, despite the best statement of principle, lie at the bottom of the hierarchy in most societies around the world in terms of being able to gain access to the fruits of such rights. For the purpose of this paper a minority will be classed as:

A group, numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

This definition is problematic for several reasons that are beyond the scope of this paper. However, it is offered here as a proxy for ‘vulnerable groups within society’, defined more widely, not solely in terms of ethnic, linguistic or religious identifiers that may bind a group, but in terms of their common experience of discrimination and lack of access to the fruits of human rights law.

The fact is that there is a fundamental difference in the de jure statement of equality and the de facto situation facing many vulnerable groups. While there are gross differences in the extent to which they can enjoy their civil and political rights, the bigger more fundamental differences lie in the extent to which they enjoy economic, social and cultural rights. However, rather than this being the focus of human rights law, difficulties over justiciability and ideology have meant that these issues are relegated to a lower level while civil and political rights regimes are further strengthened. It has been clear from the outset, as stated in the 1948 Universal Declaration of Human Rights, that human rights are indivisible. More recently economic and social rights have begun to develop at global level once again
with a further articulation of the substance of the right to food, the right to education and other socio-economic rights.

The fundamental question though remains: are the human rights of minorities, especially their socio-economic rights, ever likely to be met and fulfilled through the articulation of legally binding standards? Even if these standards are embraced by all governments, does the structure of societies allow for the more even distribution of socio-economic resources? Further, in a more individualised, market-driven competitive society, is adequate attention likely to be paid to the needs of those who start the competition in a disadvantaged position? The direction of the human rights movement per se has once again moved towards the further articulation of standards: thus new standards have come into being with much fanfare, aiming to protect individuals and communities against impunity, in the shape of the Rome Statute of the International Criminal Court. Inevitably these standards of criminal law will benefit minorities and indigenous peoples: since it is these groups that tend to be the focus of wide-scale crimes against humanity and genocide. However, the nature of the proceedings themselves make it patently clear that by the time the ICC deals with any such violation of a minority or indigenous group’s rights, it will inevitably also be too late for that particular generation of the minority or indigenous group in question.

The question then arises as to what aspect or segment of international society is dealing with the socio-economic rights of minorities and indigenous peoples. From within the United Nations it is clear that the United Nations Development Programme (UNDP) has the mandate to address general issues of ‘under-development’. This has enabled the UN, in the name of solidarity and international co-operation, both technical and non-technical, to seek to ensure the spread of development from north to south. The UNDP has survived through the generous endowments of some wealthy states, and on the principle of concern for ways in which it can provide communities with the basics necessities of a ‘normal’ life. While the UNDP has done sterling work in many situations at grass-root level, it is also clear that its impact on eroding poverty and creating a thriving ambience of development has been limited.

In keeping with the theme of this special issue, this paper will seek to critically assess the human rights regime and the system created by the Millennium Development Goals (MDGs) from the perspective of minorities and indigenous peoples. Other papers in this collection have described the respective regimes and the overall structure within which they are placed: the purpose of this paper is to test the efficacy of the extent to which the two separate edifices of human rights and development act in relation to the manner in which the governments of three states, Vietnam, Mexico and Ghana, report to international bodies vis-à-vis their international obligations before the regimes. Due to the constraints of space this paper will not delve into the detail of any of the three countries, but will rather seek to emphasise the extent to which each government views the rights and goals respectively, as adhering specifically to the rights of minorities and indigenous peoples. For this purpose materials will be drawn from international reports on the performance of these states, but also from the significant self-reporting that is required under each of the systems.

This paper begins by briefly sketching the relevance of each of the regimes to minorities. The second section will then briefly identify the minorities and indigenous groups in each of the states and the extent to which they are officially recognised in the governmental submissions. The third section will focus on the steps taken in each of the three countries towards achieving Goal 1 of the MDGs. This goal has been selected since arguably the achievement of this would go a significant way towards the enhancement of the rights of marginalised communities, which could have further impact on the achievement of the other goals. The conclusion, offered through a series of suggestions, will address
the issue of bringing the two regimes closer together in addressing the particular needs of minorities and indigenous peoples.

I. The human rights regime, the MDGs and minorities and indigenous peoples

It could be argued that the failure to agree a universal standard specifically protecting minorities and indigenous peoples at international level is a significant lacuna that haunts the international regime of human rights. The entire modern regime was built as part of the international community’s response to the events of World War Two where the Jews and other minorities were subjected to the ultimate crime: genocide, based on their membership of a group. Yet the issue of minority rights, while at the centre of the human rights agenda, has never had a universal legally binding standard. Instead, it was argued that minorities could be better protected by ensuring that their human rights were protected through the general human rights measures. Thus the Declaration on the Rights of Ethnic, Linguistic and National Minorities remains aspirational, and does not create any binding legal obligations on the international community.

Notwithstanding this it would be incorrect to state that the human rights regime does not address the rights of minorities. There are only two specific references in the existing human rights treaties to minorities: Article 27 of the International Covenant on Civil and Political Rights, and Article 30 of the Convention on the Rights of the Child. The latter is concerned with ensuring that children from minority communities have adequate means to an appropriate education. The former, on the other hand, is considered a vital means for protecting minorities. It reads:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. 8

There is a wealth of writing on the inadequacy of this provision, which remains beyond the scope of this paper. 9 Many argue that the International Convention for the Elimination of All Forms of Racial Discrimination is a more useful instrument towards highlighting the plight of minorities and indigenous peoples. This convention, passed in 1965, is the first legally binding international human rights document, and is perhaps its most ambitious. It is premised on the belief that persistent discrimination based on race, colour, descent or ethnic or national origin is often the precursor to the outbreak of violence, and that it is important to enshrine legal systems capable of stamping out such discrimination. 10

In terms of socio-economic rights the International Covenant for Economic, Social and Cultural Rights makes no explicit mention of minorities and indigenous peoples, not even in the context of Article 15, the right to culture. Instead, the general provision of non-discrimination, existent in all international conventions, is the only way in which the rights of minorities are covered under the Covenant.

Each of the existing human rights treaties creates reporting obligations on states, fulfilled through the submission of a regular periodic report that is scrutinised by special bodies set up by the treaties themselves. 11 These reports provide materials submitted by the government indicating their performance against each of the obligations contained in the treaties. A general scrutiny of each of these reports submitted to the treaty bodies shows how states can easily fulfil this obligation without any special obligation towards revealing the extent to which the rights of minority and indigenous peoples are protected.
The MDGs offer a different approach than human rights law, mainly since they consist of a series of distinct targets with measurable indicators of progress. Thus the eight goals are broken down into a further 18 targets which are viewed through the lens of 48 recommended indicators of progress towards the targets and goals. Five of these specific indicators require the disaggregation of data by sex (especially in the context of Goal 3). However, there is no requirement for disaggregated data on the grounds of ethnicity or other identifiers. As stated by Gay MacDougall, the Independent Expert on Minority Issues:

Without this kind of data, the impact of MDG strategies on different groups cannot be measured accurately. A marginalized ethnic or religious minority group may be experiencing increased levels of poverty as resources are diverted to meet the needs of the ‘less poor’; in the absence of disaggregated data, this negative impact may go unnoticed.12

According to MacDougall, the four key minority rights can be summarised as consisting of (i) the right to exist, (ii) the right to non-discrimination, (iii) the right to cultural identity, and (iv) the right to participate in public life. According to her each of these four rights is in principle catered for in the MDGs, though in each instance there is a need to link these better, as will be raised in the conclusion to this paper.13 Her report consisted of a sampling of the reports of 50 countries to the MDGs, seeking to examine the extent to which they adequately reported on minority and indigenous peoples’ rights. Interestingly two of the countries that are the subject of discussion here, namely Vietnam and Mexico, were singled out for praise in terms of the extent to which their reports sought to address the plight of minorities and indigenous peoples, as will be discussed below.

II. Who are the minorities and indigenous peoples in the target countries?

Vietnam

Vietnam is a country of great ethnic and linguistic diversity that has been struggling to create a strong national identity that will unify the country in the aftermath of a devastating war that decimated it. In reporting to the Human Rights Committee under the obligation to guarantee freedom of belief and religion, Vietnam describes itself as comprising six major religions (Buddhism, Catholicism, Protestantism, Muslim, Cao Dai and Hoa Hoa), whose followers account for a third of the population of the state.14 There appear to be strong provisions in place for the protection of the freedom of religion, though the complaints before the Special Rapporteur on Religion and Religious Intolerance cast some doubt on the implementation of these provisions. Like other countries in this region and like China, Vietnam specifies its minorities,15 describing itself as ‘a unified nation comprising 54 ethnic communities’, and, with the majority Kinh population accounting for nearly 86.8% of the population, the remaining 53 minority and indigenous groups are extremely small.16 The bulk of these consist of mountainous and highland communities, living in relative isolation from each other and from urban areas. There are several programmes that have been developed specifically to tackle the development of many of these minorities with a special committee, the Committee on Ethnic Affairs and Mountainous Regions, given an overall mandate for the management of the issues concerning these communities throughout the country. The agency is envisioned as a conduit between feeding information to the government in terms of the needs of the communities and in turn implementing the policies handed down at grass-root level.

In reporting on minorities the government of Vietnam lists five specific decrees that have been put in place.17 These focus on aspects of economic and social rights, and to
that extent also reflect the living conditions of many of the mountainous communities. This overwhelming focus in the state reporting on economic and developmental aspects is also accompanied by an assurance that measures are in place to provide media access to the different ethnic groups, though it seems clear that there are significantly fewer provisions in this respect beyond a general regime of non-discrimination. In scrutinising Vietnam’s submission the Human Rights Committee highlighted concerns with regard to the treatment of the Degar (Montagnard) population, where it suggested that serious violations of Articles 7 and 27 of the Covenant were occurring. These comments also allude to the difficulty of access not only to information but also to the region itself for human rights monitors and non-governmental organisations.18

Mexico
As the Minority Rights Group Intentional Report, State of the World’s Minorities 2007, puts it:

From the beginning of European settlement, indigenous communities in the Americas have been affected by successive attempts at extermination, enslavement, massacres and violent dispossession by those wishing to claim their lands and the terrestrial and subterranean wealth they provide. From the outset, indigenous populations have faced two main survival choices: either total cultural assimilation or complete marginalization and exclusion from a mainstream society that is heavily oriented towards European socio-cultural values and life choices, and that negatively prejudices and discriminates against the culturally different.19

Mexico, with 62 groups numbering over 15 million people, has the largest number of indigenous people of any country in the region. This accounts for nearly 15% of the total Mexican population. In addition there is a significant component of mestizos who may or may not be considered indigenous but nonetheless face much of the discrimination faced by their indigenous cousins. In many instances it could be argued that the mestizo population is worse off than the indigenous peoples since in many instances they cannot benefit from schemes specifically designed for indigenous peoples. A third tier of Mexico’s indigenous and minority groups are those of Afro-Caribbean origin. Like many countries in the region this population is largely invisible in terms of Mexican governmental statistic, and is not recognised as a distinct ethnic group.20 As a result there is little data available on this particular group, as we shall see in the context of the examination of Mexico in terms of its reporting to the international community on the achievement of the two selected goals.

Ghana
Ghana describes itself as:

an extremely diverse country, home to numerous ethnic groups, over 100 indigenous languages and a wide variety of cultural and religious practices. Despite this, the people of Ghana have always endeavoured to live in peace, harmony and friendship with each other, avoiding severe ethnic conflict.21

There are over 15 major ethnic groups in the state, with each having a distinct language, culture and traditional practices. The largest of these groups and the politically most dominant are the Akan, who account for just over 50% of the state’s population. They are further
subdivided along tribal lines into the Asante (17.6%) and Fanti (12.9%). The minorities in the state include the Ewe (12%), the Ga-Adangbe (10%) and a host of smaller minorities such as the Guan, the Hausa, the Dagomba, the Gussi and the Dagarti, along with smaller tribal groupings that by themselves account for nearly 12% of the population of the state.\textsuperscript{22} Many of these groups are concentrated in specific territories (e.g. over 70% of the Ewe live in the Volta region of Ghana), though there is a sizeable population of each group also represented in the population in Accra. In addition to the ethnic faultlines in society there is also a considerable religious diversity, with the Christian majority (over 70%) sub-divided into Catholic, Pentecostal, Presbyterian, Methodist, Spiritualist and Anglican, with a significant presence of various other Christian sects. The Muslims in Ghana account for nearly 12% of the population, with a further 8% following more traditional religions.\textsuperscript{23}

In scrutinising the situation in Ghana the Committee for the Elimination of Racial Discrimination expressed concern over an undercurrent of ethnic discrimination in society, based on the response to a 1997 survey where as many as 25% of respondents felt discriminated against on the basis of their tribal origins.\textsuperscript{24} In addition there have continued to be sporadic outbreaks of ethnic violence that are reflective of inter-ethnic tension. The Committee also expressed concern about discrimination against women from ethnic minorities in the context of inter-ethnic marriage and also of the Trokosi cultural system that was prevalent in society and that is degrading to the health and dignity of women.\textsuperscript{25}

\textbf{III. Measures towards the eradication of poverty and elimination of hunger}

Overall several MDG reports acknowledge that minorities face higher rates of poverty. There are several causes for this, usually tracing back to the historical exclusion of minorities and indigenous peoples from the development of the ‘nation-state’. Most states around the world have been dominated by a majority who have at various points in time sought to subjugate the minorities within the territory with a view to harnessing and buffering their own status within the state. Reversing this trend is a significant challenge. At the outset it requires strong political will on the part of the government, who in many instances continue to adopt policies that may still seek to ensure their dominance. However, even in cases where there is strong political will seeking to address inequalities in society along the traditional identity fault-lines, there are deep structural problems to overcome. This includes physical problems such as the lack of infrastructure and investment in minority-dominated regions; unequal and unjust land rights regimes that result in many minorities and indigenous peoples living as second-class citizens in their own homelands; and the lack of social services whether in health, education, housing or other key socio-economic indicators. In addition the persistent exclusion of minorities and indigenous peoples also means that these groups are disadvantaged in terms of the manner in which they can now access ostensibly evolved systems; and, inevitably, the few who do manage to access the regime of legal rights created do so with little skill, a high degree of trepidation and often great suspicion. In addition in most instances, irrespective of governmental policy, minorities and indigenous peoples face current levels of discrimination that continue to negatively impact on their situation. This discrimination, as pointed out by MacDougall, is an ‘overarching factor’ that can:

decrease access to health, education, financial credit, housing and employment – each compounding the likelihood of living in poverty. Due to a lack of disaggregated data,
the inequalities experienced by minorities usually are invisible in public policy discourses, where minorities also often lack a strong political voice.\textsuperscript{26}

According to the overview presented by MacDougall, positive action taken in reporting on the MDGs includes:

- Publishing disaggregated data on poverty
- Undertaking baseline studies on the experiences of poverty by minorities
- Adopting national strategies to reduce poverty for the poorest minorities
- Using affirmative action policies to increase public employment opportunities for minorities\textsuperscript{27}

It is instructive to note that both Vietnam and Mexico would be included in this study as examples of good practice. In the case of Vietnam the government has presented data on grounds of ethnic identity; has undertaken specific baseline studies on the experiences of poverty by minorities, specifically the hill peoples; has clearly adopted a range of development strategies that have, as their stated goal, the reduction of poverty among minorities; and does make some use of affirmative action policies towards increasing public employment opportunities for minorities.

\textbf{Vietnam}

Vietnam’s report claims that its implementation of socio-economic development and poverty reduction strategies have begun to reap significant benefit for its mountainous and ethnic minorities. The report highlights some of these achievements as:

- The building of over 25,000 infrastructure facilities and nearly 500 communal clusters in extremely disadvantaged communes
- Roads connecting 95\% of the extremely disadvantaged communes to communal centres and marketplaces
- A range of benefits in healthcare,\textsuperscript{28} the electrification of villages, the installing of post-offices, and access to the media (broadcasting and print)\textsuperscript{29}

The report is particularly mindful of the importance of physical infrastructure in the context of poverty reduction among its minorities:

An important system of infrastructure has been built under development policy-based programs – this is a considerable physical factor causing changes to the appearance of the rural areas, contributing to increase of income, poverty reduction and creation of a pre-condition for moving towards industrialization and modernization in the mountainous and ethnic minorities regions. By integrating policies, programs and projects, the life of the ethnic minorities, especially the communes under Program 135, has been gradually stabilized and even enjoyed strongly positive shifts. Production has started moving towards the commodity-oriented and diversified model, the poverty rate has also been reduced.\textsuperscript{30}

But in addition it also stresses the need to overcome more personal barriers to poverty reduction. Thus:

Many localities have efficiently used accessible loans and credits to help the people find out appropriate livelihoods and develop production. The ethnic minorities households have used
preferential loans in production; as a result, they could improve their income level and living standards, and step-by-step came out of poverty; many households have even become rich and wealthy. By this time, in the extremely disadvantaged communes, the rate of poor households has quickly reduced from 50–60% to 23.1%; on the average, the poverty rate is reduced by more than 5% every year (even 7–9% in some areas). In the ethnic minorities areas, in general there are not any more households suffering from chronological (sic) hunger; more than 50% of the communes under Program 135 have achieved the poverty rate of less than 25%. Poverty reduction was especially successful in some extremely disadvantaged communes, shown in the clear evidence that the poverty rate was reduced to less than 15% in 2004.\textsuperscript{31}

The overall result of this is, in the words of the report:

to improve the accessibility of the people to social services and contribute to the improved spiritual life of the ethnic minorities in the far and remote areas.\textsuperscript{32}

Yet, despite these efforts, there are serious concerns about Vietnam’s treatment of minorities. As highlighted by some human rights groups, there remain serious questions about the extent to which the hill peoples are free from governmental harassment. In addition there is the real issue, as in many other states with declared minorities,\textsuperscript{33} about the criteria for the selection of certain groups for inclusion within the ‘minority’ label. While it is clear that there is little global support for the assertion by one human rights body over the need for the acceptance of self-identification,\textsuperscript{34} there is a fear nonetheless that governmental selection of the groups to be included under the label ‘minority’ might itself exclude particularly marginalised groups.

\textit{Mexico}

The case of Mexico is similar in many respects. Like its Vietnamese counterpart, the state has made a genuine effort to design programmes that seek to emancipate its indigenous population. This includes a range of measures including autonomy for Oaxaca. In terms of its reporting obligation to the MDGs it publishes data disaggregated on poverty; has undertaken studies on the experience of poverty among indigenous peoples; has adopted a range of national strategies for the reduction of poverty; and has used affirmative action measures to increase public employment for minorities. Yet the yawning gap in terms of Mexico lies in the decision of who to include and report on. Thus while the government is to be commended for its efforts in terms of the uplifting of indigenous populations, the vulnerable Afro-Caribbean population remains un-catered for, and thus invisible in terms of an overview of Mexico’s policies. Even in the context of indigenous peoples, the government admits that:

\begin{quote}
The national indigenous population lives in a situation of extreme marginalization . . . they are excluded from the average conditions in which citizens live and reproduce. These include drainage, drinking water, electricity, roads and quality healthy services.\textsuperscript{35}
\end{quote}

To tackle this inequality the government has had a special line in the budget since 2002 specifically towards the creation of measures and programmes aimed at development in indigenous communities.\textsuperscript{36}

The Mexican government has acknowledged that one of the most significant barriers to overcoming poverty is the lack of opportunities for employment among indigenous peoples. Thus the Minister of Labour and Social Welfare (STPS) has made a concerted effort to seek to deliver such opportunities among the marginalised sections of society.\textsuperscript{37}
The measures undertaken are geared towards providing access to and remaining within the sphere of employment.\textsuperscript{38} As highlighted in the Mexican Report to the Committee of Economic, Social and Cultural Rights (CESCR),

\[\text{This} \text{ task derives from the National Development Plan, which states that the task of the Government of Mexico is} \text{ to increase equity and equality of opportunities, using criteria which recognize the differences and inequalities in society in order to frame social policy strategies designed to extend and offer equality of opportunities to every man and woman in Mexico's population.}\textsuperscript{39}

In human rights terms the Mexican government has taken the appropriate measures in its legislative, administrative and judicial efforts to seek to address the notion of discrimination in general,\textsuperscript{40} and \textit{vis-à-vis} the access of socio-economic rights for all Mexicans.\textsuperscript{41} In addition it has also put in place specific standards that address the specific needs of indigenous Mexicans.\textsuperscript{42}

Of these it is worth highlighting that the General Social Development Act 2004 is a wide-ranging piece of legislation that seeks ‘development’ in its broader context and makes a genuine attempt to address the goal of poverty reduction. For instance it focuses on the need for such development to take on the principle of distributive justice (‘a guarantee that every person will receive a fair share of the benefits of development in accordance with his merits, needs and abilities and those of others’\textsuperscript{43}). In addition it specifically tackles the notion of the ‘free self-determination and autonomy of indigenous peoples and their communities and transparency’. This is explained in the Mexican Report as consisting of:

\begin{itemize}
  \item recognition within the constitutional framework of the internal forms of coexistence and organization; the scope of application of their own systems of standards; election of their authorities or representatives; means of preserving and enriching their languages and culture; means of preserving and improving their habitat; preferential access to natural resources; election of representatives in local authorities and full access to the jurisdiction of the State.\textsuperscript{44}
  \item In addition Article 6 of the Act also specifically recognises the importance of non-discrimination in the context of the rights to education, health, food, housing, the enjoyment of a healthy environment, work and social security.\textsuperscript{45}
  \item The range of policies adopted by the Mexican government towards the amelioration of the situation of indigenous peoples has focused on: (a) the promotion of employment and self-employment among indigenous peoples; and (b) integration of indigenous peoples within the general Mexican labour population.
  \item According to the Mexican government this has involved specific programmes designed for employers calling for recognition and awareness of indigenous rights and also towards highlighting the unequal work conditions facing indigenous peoples.\textsuperscript{46} In terms of the empowerment of the indigenous peoples themselves, the programmes have included:
  \begin{itemize}
    \item Strategic Programme for Self-Employment and Employment for the Indigenous Population 2003; and
    \item Programme for Day Labourers in Agriculture.\textsuperscript{47}
  \end{itemize}
\end{itemize}
with municipal proceedings concerning productive projects designed to promote formal self-employment;

- Promotion of linkages through the signature of agreements with the production sectors participating in the State Council for Dialogue;

- The preparation and distribution of manuals for the formalisation and execution of productive projects for self-employment; and

- Distribution of information on labour rights in indigenous languages.

The government admits that, while it has made dramatic progress in terms of its overall development, overcoming poverty will never be achieved through economic growth alone. What is needed is sustained economic growth and a stable environment, as well as a more even distribution of wealth, which are necessary conditions for achieving a higher standard of living. Thus despite the dramatic improvement of 3.4 million Mexican crossing the threshold of food poverty between 2000 and 2002, the overall proportion of poverty remains significantly high, with indigenous populations dramatically over-represented among these figures.

Other direct measures undertaken to tackle extreme poverty by the government include the Opportunities Programme which seeks to ensure that there are sufficient resources among marginalised communities that could be spent on education, health and appropriate nutrition. In addition the Food Aid Programme has sought to tackle hunger and also to educate the population about nutrition, hygiene and health. As in many other states, the issue of land rights remains a fundamental part of the solution to Mexico’s longer-term problems with poverty. Though protected by Article 27 in the Mexican Constitution, the country, like others, has seen the gradual encroachment on indigenous lands by bigger farmers. The Ministry of Agrarian Reform (SRA) has been seeking to address this issue and uphold the principle of Article 27 through a network of plans. However, while it is clear that these Acts seek to ensure efficient use of land, it is not entirely clear whether they adequately protect the rights of the smaller landholders and indigenous peoples. Nevertheless the Programme for the Certification of Ejido and Land Ownership Titles (PROCEDE) created by the SRA continues to work towards the legalising of social property rights in the context of agricultural settlements.

Ghana

The territory of Ghana is abundant in natural resources, including gold, diamonds and some oil. Despite these resources, it is the agricultural sector (cocoa, timber, pineapples, cotton) that accounts for 60% of the workforce and generates 44% of the GDP of Ghana. Like many other countries the fundamental rights of all are protected in the Constitution, which stipulates that the rights and freedoms provided will be due to ‘every person in Ghana, whoever his race, place of origin, political opinion, colour, religion, creed or gender’. Among the specifically socio-economic rights are: protection from slavery and forced labour, equality from freedom and discrimination, protection from deprivation of property, educational rights, cultural rights, and something labelled as ‘economic rights’ including:

The right to work under satisfactory, safe and healthy conditions, to equal work for equal pay without distinction of any kind, to a reasonable number of working hours and holidays, to form or join trade unions of the workers choice.
In addition equality and freedom of discrimination are protected by Article 17(3), where all persons are deemed equal before the law and discrimination is prohibited on eight specific grounds (gender, race, colour, ethnic origins, religion, creed or social or economic status).

Ghana, however, remains relatively recalcitrant in terms of putting in place a special package of affirmative action measures. The justification given for this is that:

Ghana has been blessed that there has been no single dominate or repressed ethnic or racial faction within its territory; by and large, each racial group enjoys equal status in the decision-making process.

Nonetheless special efforts have been made to close what is described by the government as the ‘education gap’, i.e., the fact that people in the north of the state (in the former colony of Upper Volta) had fewer opportunities that those in the south. Towards this end a Northern Scholarship Scheme has been in place since national independence, though by the government’s own admission the gap nonetheless remains.

While the government goes on to enunciate the different administrative measures that have been put in place to stem discrimination and quell ethnic tensions, all of these tend to be towards the physical protection of the group, rather than any particular measures designed to emphasise the socio-economic rights of minorities and indigenous peoples.

Even in dispensing its reporting obligation under the provisions of Article 5(e) of the International Convention for the Elimination of All Forms of Racial Discrimination, Ghana’s responses tend to re-emphasise the existence of legal provisions to equality, rather than towards any articulation of specific measures targeted towards the marginalised sections of its society. For instance on reporting on the right to work the state submits:

(a) The right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work and to just and favourable remuneration are all protected in the Constitution. Article 24, section (1), reads: ‘Every person has the right to work under satisfactory, safe and healthy conditions, and shall receive equal pay for equal work without distinction of any kind.’ Article 24, section (2), reads: ‘Every worker shall be assured of rest, leisure and reasonable limitation of working hours and periods of holidays with pay, as well as remuneration for public holidays.’

Thus even though required to put in place special legislative, judicial and administrative measures towards the protection of socio-economic rights from discrimination on the basis of identity, Ghana merely points to existing non-discrimination provisions, and in this sense differs widely from Vietnam and Mexico as demonstrated above.

Thus as we can see the three states differ from each other in terms of the way in which they see the challenge of eradicating poverty from among the most vulnerable populations. It could be argued convincingly that this particular MDG is a particularly good measure of the extent to which the state is addressing socio-economic rights. In addition by focusing on a subject (i.e. poverty and hunger) that tends to occur more among vulnerable populations, it is likely that achievement of this goal could significantly enhance the prospects of particularly vulnerable minorities and indigenous peoples. By contrast, Goal 2, of achieving ‘universal primary education’, is bound to be more complex. Unlike the eradication of poverty the issue of primary education overlaps with the identity concerns of minorities and indigenous peoples directly in terms of the provision of an education that respects the cultural and social mores of communities that may be different from that of the majority of
the population of the state. While the notion of ‘universal primary education’ may signify uniformity across the globe, this uniformity is envisaged in terms of quality and access rather than substance. Thus while the statement of the goal is silent on the types of education to be placed on offer, it is clear that there is adequate flexibility for a state to design its national curriculum according to its own needs. For the perspective of minorities and indigenous peoples though there are at least two further challenges:

(a) the extent to which the system of primary education as exists within the state is accessible to members of the communities;
(b) the extent to which the content of this education allows for the development and propagation of their own identity in terms of key features such as linguistic and religious diversity.

Arguably the provision of numeric indicators towards the achievement of this goal can only partly address these dual challenges. It seems trite to suggest that the obvious remedy to overcoming the particularities posed by (b) above is to ensure an adequate engagement and participation from the members of minority and indigenous communities themselves.

What this section has sought to demonstrate is that even on a relatively straightforward goal of the MDGs, states are mixed in the extent to which they are reporting on the impact of poverty eradication policies on their communities marginalised on grounds of identity. Vietnam and Mexico perform particularly well in realising the need to adopt specific policies, programmes and strategies. In the case of the former, however, these remain to be translated to a reality on the grounds for the vulnerable groups, as highlighted by the human rights bodies as well as human rights NGOs. On the other hand, while Mexico can be commended for putting in place specific measures to address the eradication of poverty among its indigenous people, the failure to recognise another vulnerable minority, i.e. the Afro-Caribbean population, suggests that the measures are not adequate from the perspective of minority rights law. Meanwhile Ghana, a state with significant diversity, does not appear to have placed any specific onus on the design of special packages to guarantee that development occurs uniformly.

**Conclusion**

The invisibility of the economic, social and political status of minorities is generally in evidence through many of the of the MDG reports. This invisibility means that data specifically aggregated on minorities is difficult to unearth, and this in turn acts as a barrier to a thorough understanding of the actual socio-economic situation in countries as pertaining to its more vulnerable groups. Thus it is difficult to track the extent to which overall progress towards the goals is being reflected along the traditional fault-lines in society. One way to overcome this is to adopt the kind of reporting policy undertaken by Romania, which specifically includes minority-specific targets.

As indicated in the MacDougall report, the Romanian example could be supplemented to include a formal set of criteria, labelled ‘MDG Plus Targets and Indicators’. Among these could be:

- Specific territorial targets for areas where minorities are concentrated
- Specific targets for minorities under particular goals with a view to addressing inequality
Specific targets addressing the particular challenges of minorities and indigenous groups (e.g. illiteracy)\textsuperscript{77}

From the perspective of the international human rights mechanisms, states could also be asked to report, or more specifically, to disaggregate their data on minorities more clearly. The weakness of the UN human rights treaty monitoring system is reflected in the fact that there is only one direct reporting requirement for minorities (under Article 27) of the International Covenant on Civil and Human Rights. However, it is clear that such data could be requested and is often requested and provided by state parties under the headings of other related articles under the Covenant. In addition the Human Rights Committee could certainly ask more general questions of States in terms of disaggregated data under Article 2 of the Covenant, especially in the context of development projects and their impact on marginalised communities.

Under the International Covenant on Economic Social and Cultural Rights there is no specific minority provision. Nonetheless as is apparent, minorities and indigenous peoples provide key litmus tests about the efficacy of socio-economic rights within a state. In terms of the state reports, some data regarding minorities is available under the heading of Article 15 (culture) but too often this is merely an opportunity for a state to present vignettes of encouragement of its national or minority culture. For the covenant to adequately address the socio-economic status of minorities and indigenous peoples it would need to specifically ask for disaggregated data under each of the substantive articles in the Covenant. Under the reporting guidelines states are currently asked to provide information specifically concerning minorities under education,\textsuperscript{78} in terms of the right to culture\textsuperscript{79}; and for indigenous peoples in terms of the right to culture,\textsuperscript{80} and under the standard of living.\textsuperscript{81}

The International Convention for the Elimination of All Forms of Racial Discrimination is clearly the most useful of the human rights covenants when dealing with minority and indigenous peoples issues. The mandate of the Covenant\textsuperscript{82} makes it clear that this issue is fundamental to the regime. States have from time to time sought to question the extent of this mandate,\textsuperscript{83} but the robust responses from the body and the development of general recommendations that clearly target group rights\textsuperscript{84} and the increasing use of the early warning mechanism\textsuperscript{85} suggest that the body is more than aware of the need to specifically focus on minorities and indigenous peoples. A study of the reports over the last ten years, however, does indicate a predominant focus on the civil and political rights of such groups, though the provisions of Article 7 make some progress towards the universal primary education norm.

Changing the way in which treaty bodies assess states can be a challenging task, and also raises questions about the mandates of each of the bodies. Since these are clearly articulated in treaties it may be more difficult to re-orient the treatment of the issues of minorities and indigenous peoples through these mechanisms. However, that is not the case with the Special Procedures. As has been highlighted in this panel, several special procedures specifically tackle socio-economic issues. One suggestion for making these procedures work in better harmony with the UNDP and the MDGs would be to encourage states to consider issuing a standing invitation for the procedures to conduct country visits.\textsuperscript{86} If the information gleaned from these visits could then be shared between the institutions’ programmes and processes associated with the UNDP, the MDG and the PSRP respectively, the data scrutinised by these various mechanisms is more likely to tackle the issues of minority and indigenous peoples’ rights in a concerted fashion, thereby making significant inroads into the dual and interlinked challenges facing perpetration of human rights and development.
Notes


10. The motivation for the creation of the treaty was the threat seen in the anti-semitism that had begun to emerge in Europe in the 1960s. Having lived through the horrors of World War Two, European leaders decided to make a concerted push for a global standard that would ‘eliminate’ discrimination before it began to grow into a wider, more violent movement with disastrous consequences. Newly independent African and Asian states were keen to sign up to this new standard since they believed in the importance of making a statement against the apartheid regime of South Africa, while at the same time highlighting the plight of their own nationals in Europe and the rest of the Western world, who often lived as second-class citizens in the West. Thus the convention was born with the hope and belief that strong measures put in place in the national laws of each country would provide a bulwark against genocidal movements. For a general reading on the convention see Michael Banton, International Action Against Racial Discrimination (Oxford: Clarendon Press, 1996); also see Theodore Meron, ‘The Meaning and Reach of the International Convention for the Elimination of All Forms of Racial Discrimination’, American Journal of International Law 79, no. 2 (1985): 283–318.
16. See UN Doc. CERD/C/357/Add.2., para. 1.
17. This includes: Decision No. 35/TTg of 13 January 1997 of the Prime Minister approving the programme to build cluster centres for mountainous and highland communes; Decree No. 20/1998/ND-CP of 31 March 1998 of the Government on the development of commerce in the mountainous islands and ethnic regions; Decision No. 135/1998/QD-TTg of 31 July 1998 of the Prime Minister on the programme of socio-economic development in certain remote communes facing special difficulties (called Programme 135); Decision No. 133/1998/QD-TTg of 23 July 1998 of the Prime Minister approving the programme of support to ethnic areas facing special difficulties, known as Programme 133 (within the framework of the National Target Programme on Hunger Elimination and Poverty Reduction); and Decision No. 727/TTg of 9 November 1995 of the Prime Minister approving the master plan for investment in socio-economic development in Muong Te district, Lai Chau province, for the 1996–2000 period. For more on each of these programmes see CERD/C/357/Add.2.
23. Ibid.
25. For more see ibid., paras 10–12 CERD concluding observations/comments.
27. Ibid. See Box 5, ‘Good Practice on Poverty Reduction’.
28. E.g. The report states, ‘The ethnic minorities have been provided with initial health care services, dangerous diseases have been controlled and stamped out, especially HIV/AIDS prevention and control activities are informed even to the grassroots level.’ United Nationa, ‘Vietnam Report’, UN Doc. CCPR/C/VNM/2001/2, 14 May 2001, 53.
29. Ibid., 53.
30. Ibid.
31. Ibid., 53–4.
32. Ibid., 53.
33. For a similar example see the discussion on ‘minority rights’ in China in Castellino and Domínguez Redondo, *Minority Rights in Asia*, 104–8 and 113–7.
34. See CERD General Recommendation VIII Identification with a Particular Racial or Ethnic Group (Article 1, paras 1 and 4), 22 August 1990.
37. According to the Mexican Governmental report these are identified as: ‘young persons, older persons, handicapped persons, sufferers from HIV/AIDS, day-wage labourers, members of indigenous groups, persons deprived of liberty and other groups’: see The Fourth Periodic Report submitted by Mexico to the UN CESCR UN Doc. E/C. 12/4/Add. 16 (25 February 2005) para. 71.
38. Ibid.
39. Ibid. para. 76.
40. E.g. see the Constitution of Mexico, which ‘prohibits discrimination on grounds of ethnic or national origin, gender, age, difference in abilities, social condition, state of health, religion, opinions, sexual preferences, civil status or any other grounds deleterious to human dignity and having as its object the annulment or restriction of individual rights and freedoms...’, Article 1 of the Political Constitution of the United Mexican States. Also see the Federal Act for the Prevention and Elimination of Discrimination as reported in The Fourth Periodic Report submitted by Mexico to the UN CESCR UN Doc. E/C. 12/4/Add. 16 (25 February 2005) para. 140. This report also lists as Appendix I a series of legal instruments in Federal law that enshrine the right against discrimination.
41. See e.g. Act Covering Religious Association and Public Worship 1992; Act Concerning the Rights of Older Persons 2002; General Social Development Act 2004; and the Act Concerning the National Institute for Women, among others.
44. Ibid.
45. Ibid.
46. Ibid., para. 252.
47. Ibid.
48. Ibid.
49. See Gillette Hall and Harry Anthony Patrinos, eds., Indigenous Peoples, Poverty and Human Development in Latin America: 1994–2004 (London: Palgrave Macmillan, 2005). According to figures provided by the government by 2002, the total proportion of those affected by nutritional poverty has dropped to 20.3% (from 24.2 in 2000); those living below the capacities development threshold improved to 26.5% (31.9); and those below the patrimony development threshold fell to 51.7% (53.7). The fact that these are such high numbers is indicative of the scale of inequality that nonetheless remains in Mexican society.
50. According to Mexican government figures the average life expectancy at birth is now 74.9 years; the rate of illiteracy stands at 8.5%; there is 100% enrolment in primary school; drinking water is accessible to 89.2% of the population, 76.9% can access sewage disposal systems and polio and diphtheria have been eradicated (in 1990 and 1991 respectively). See The Fourth Periodic Report submitted by Mexico to the UN CESCR UN Doc. E/C. 12/4/Add. 16 (25 February 2005) para. 409.
52. The measures undertaken to tackle the issue of housing could also be argued as falling under this heading, though it is outside the scope of this particular discussion. For more on the measures adopted in Mexico see ibid. paras 456–92.
53. Ibid., para. 424.
54. Ibid., para. 446.
56. Information about this regime can be had at www.sra.gob.mx (accessed 29 July 2007); also see The Fourth Periodic Report submitted by Mexico to the UN CESCR UN Doc. E/C. 12/4/Add. 16 (25 February 2005) para. 454.
57. Since Ghana has not ratified the International Covenant on Civil and Political Rights (ICCPR) nor the International Covenant on Economic and Social Rights, it does not have the same data set as Vietnam and Mexico. Additionally the lack of an express minority rights provision in documents other than the ICCPR means that at no time is Ghana expressly required to report
on its minorities. The material used here is taken from Ghana’s last report under the International Convention for the Elimination of All Forms of Racial Discrimination viz. Seventeenth Periodic Report of Ghana to CERD UN Doc. CERD/C/431/Add.3, 10 October 2002.

58. Hence its colonial name, ‘Gold Coast’. It is interesting to note that, contrary to the usual pattern of decolonisation, the state of Ghana was formed by the merging of two former colonies: that of the Gold Coast and Upper Volta. For more on this process see Rigo Sureda, The United Nations and Self-determination (Leiden: Sijhoff, 1973).


65. These are described, including: ‘the right to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion, so long as they conform to the provisions of the Constitution and do not dehumanise or are injurious to the physical or mental well-being of persons’, Constitution of Ghana 1992, chap. 5 (m).


67. According to Article 17(3) ‘to discriminate’ is defined as: [giving] different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation, religion or creed, whereby persons of one description are made subject to disabilities or restrictions to which persons of another description are not made subject, or are granted privileges or advantages which are not granted to persons of another description’.


69. This is a legal obligation under article 2(2) for all states that are party to the International Convention for the Elimination of All Forms of Racial Discrimination 1969.

70. Report of Ghana to CERD, para. 53.

71. This is attributed to the British use of the northerners as the labour reserve, as well as the southerners benefiting from an education system, ibid.

72. Ibid.

73. Ibid., paras 54–66.

74. Ibid., para. 72 (a). The state makes similar submissions under article the right to join and form trade unions (paragraph 72(b)); housing (72(3)); public health (72(4)); education (72(5) and participation in cultural activities (72(6)). In each case the state points to existing laws guaranteeing equality.

75. The Independent Expert on Minorities, Gay McDougall reviewed a sample of 50 state reports and selected Poverty Reduction Strategy Papers submitted to the World Bank and found that only 19 of these reports made any mention of ethnic or linguistic minorities. The range of countries reviewed was broad: Afghanistan; Bangladesh; Belize; Bhutan; Bolivia; Botswana; Brazil; Bulgaria; China; Denmark; Dominican Republic; Ecuador; Ethiopia; Finland; Honduras; Hungary; Indonesia; Iran; Kazakhstan; Kenya; Kosovo; Lao; Lebanon; Malaysia; Mexico; Namibia; Nepal; Netherlands; Nicaragua; Nigeria; Norway; Occupied Territories of Palestine; Pakistan; Peru; Philippines; Romania; Rwanda; Senegal; South Africa; Sudan; Sweden; Switzerland; Tanzania; Thailand; Turkey; Uganda; United Kingdom; Uruguay; Venezuela; and Vietnam.

76. Thus the Romanian MDG report under Goal 2 has an additional target entitled ‘Reduce Illiteracy among the Roma’.


78. See Reporting Guidelines to CESCR, para. 5(b).

79. See Reporting Guidelines, article 15 question 1(d).

80. See Reporting Guidelines, article 15 question 1(d).

81. See Reporting Guidelines, article 11, question 2 (right to adequate food) 2(a)(i), which lists vulnerable groups but does not include minorities.

83. E.g. India engaged in a battle with the Committee on whether caste-based discrimination could come within the terms of the Convention. While there is no express mention of caste, the committee determined that this was covered under the provision for ‘descent’ and subsequently also issued a general Recommendation on ‘descent based discrimination’; see CERD General Recommendation 29: Article 1, paragraph 1 of the Convention (Descent), 1 November 2001. For a discussion of this episode see Patrick Tornberry, ‘The Convention on the Elimination of Racial Discrimination, Indigenous Peoples and Caste/Descent-Based Discrimination’, in International Law & Indigenous People, ed. Joshua Castellino and Niamh Walsh (Leiden: Martinus Nijhoff, 2005), 17–52.


86. E.g. in our select case studies Mexico has issues such as an open permanent invitation to all the UN Special Procedures. Arguably, this indicates a voluntary submission to international scrutiny, and a genuine political willingness to tackle the issue of human rights violations. See The Fourth Periodic Report submitted by Mexico to the UN CESCR UN Doc. E/C. 12/4/Add. 16 (25 February 2005) (2004) para. 7.