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# Improving the Implementation of International Development Law: Replacing the SDGs with INDCs

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*Improving the Implementation of International Development Law:  
Replacing the SDGs with INDCs*  
by  
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Submitted in partial fulfillment of the requirements of the  
Kings Scholar Program  
Michigan State University College of Law  
under the direction of  
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## INTRODUCTION

International development featured prominently in 2015 with the adoption of the Addis Ababa Action Agenda on Financing for Development, the 2030 Agenda for Sustainable Development with a new set of Sustainable Development Goals, and the Paris Agreement under the United Nations Framework Convention on Climate Change.<sup>1</sup> Following this year of making commitments, 2016 is focused on implementation.<sup>2</sup> As recognized by the United Nations Department of Economic and Social Affairs and the United Nations Development Programme: “Today’s challenge is chiefly implementation. . . . [A] gap exists between stated commitments to sustainable development and the reality of implementing sustainable development policies and programmes in all countries and regions . . . .”<sup>3</sup> This is similar to where the world was in 2000: “[D]espite significant progress in each conference . . . there was a sense of overload, over

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<sup>1</sup> *Officials Highlight AAAA, 2030 Agenda, Paris Agreement at 70th UNGA Anniversary*, International Institute for Sustainable Development (Jan. 11, 2016), available at <http://sd.iisd.org/news/officials-highlight-aaaa-2030-agenda-paris-agreement-at-70th-unga-anniversary/>.

<sup>2</sup> Nathalie Risse, *Implementing the 2030 Agenda and its SDGs: Where to Start?*, International Institute for Sustainable Development (Feb. 4, 2016), available at <http://sd.iisd.org/policy-updates/implementing-the-2030-agenda-and-its-sdgs-where-to-start/>.

<sup>3</sup> UNDESA & UNDP, *SYNTHESIS OF NATIONAL REPORTS FOR RIO+20*, 2 (2012), available at [https://sustainabledevelopment.un.org/content/documents/742RIO+20\\_Synthesis\\_Report\\_Final.pdf](https://sustainabledevelopment.un.org/content/documents/742RIO+20_Synthesis_Report_Final.pdf).

engagement and summit fatigue with too many recommendations on too many subjects . . . .”<sup>4</sup>

Though sixteen years of trial and error separate where the world was in 2000 and where we are today, the international community continues to apply the same procedures while hoping for a different outcome.<sup>5</sup>

In 2000, the international community decided to implement the numerous commitments of the 1990’s (e.g. the 300-page Agenda 21<sup>6</sup>) using the Millennium Development Goals (“MDGs”).<sup>7</sup> The MDGs were a novel approach to implementation using the “SMART” goal format: Specific, Measurable, Achievable, Realistic, and Time-bound.<sup>8</sup> For example, the MDGs took a commitment to end poverty and created a goal of “[halving], between 1990 and 2015, the proportion of people whose income is less than one dollar a day.”<sup>9</sup> In addition to this goal, the MDG framework also included indicators to measure progress towards achieving the goal: the proportion of the population below \$1.25 (PPP) per day, the poverty gap ratio, and the share of poorest quintile in national consumption.<sup>10</sup> Though the MDGs look great on paper, they were not successful.<sup>11</sup> Despite this, the international community decided to replace the MDGs with a new set of goals, the Sustainable Development Goals (“SDGs”).<sup>12</sup>

Rather than repeating a process that has not worked in the past, the international community should try something new. One option for a new implementation model is the

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<sup>4</sup> David Hulme, THE MILLENNIUM DEVELOPMENT GOALS (MDGs): A SHORT HISTORY OF THE WORLD’S BIGGEST PROMISE, 11-12, available at <http://hummedia.manchester.ac.uk/institutes/gdi/publications/workingpapers/bwpi/bwpi-wp-10009.pdf> (quoting Colin Bradford, *Towards 2015: From Consensus Formation to Implementation of the MDGs - The Historical Background, 1990-2002* 4 (unpublished mimeo, 2002)).

<sup>5</sup> This being a common definition of insanity.

<sup>6</sup> UN General Assembly, Agenda 21, U.N. Doc A/Conf.151/26 (Aug. 12, 1992).

<sup>7</sup> See, e.g., Ryan Brenner, *Global Goal-Setting: How the Current Development Goal Model Undermines International Development Law*, 24 Mich. St. Int’l L. Rev. 145 (2015); Hulme, *supra* note 4.

<sup>8</sup> See, Mark Murphy, ‘SMART’ Goals Can Sometimes Be Dumb, *Forbes* (Jan. 8, 2015), available at <http://www.forbes.com/sites/markmurphy/2015/01/08/smart-goals-can-sometimes-be-dumb/#6a1f58ce142c>.

<sup>9</sup> The Millennium Development Goals Indicators, <http://mdgs.un.org/unsd/mdg/Host.aspx?Content=indicators/officialist.htm> (last visited May 10, 2016).

<sup>10</sup> *Id.*

<sup>11</sup> See, *infra*, at 8.

<sup>12</sup> UN General Assembly, *The Future We Want*, U.N. Doc. A/RES/66/288, at ¶¶ 246-48 (Sept. 11, 2012).

implementation mechanism created by the Paris Agreement: the Individually Determined National Contribution (“INDC”).<sup>13</sup> Under this model, States agree to an overarching, international goal (e.g. limiting the increase in global average temperature) and then create their own, State-specific implementation plan outlining how they, individually, will contribute to achieving that goal.<sup>14</sup> Applying this model to international development, the international community already has a plethora of goals and legal obligations, so States could easily take these international objectives and draft their own implementation plans following similar procedures and requirements established by the INDCs.<sup>15</sup> Though it is still too early to assess whether the climate change INDCs will be a success, it is better to try something new to implement international development than apply a process that has already proved to be a failure.

## **I. OBLIGATION TO ENGAGE IN INTERNATIONAL DEVELOPMENT**

In its simplest form, international development is about economic growth. A more holistic view aims at improving standards of living by addressing such issues as livelihoods, education, health care, and housing. However, “[d]evelopment is more than improvements in people’s well-being: it also describes the capacity of the system to provide the circumstances for that continued well-being.”<sup>16</sup> More recently, sustainability has been incorporated into development such that the traditional objectives are now meant to be achieved without compromising environmental integrity.

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<sup>13</sup> UNFCCC COP, Paris Agreement, U.N. Doc. FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015).

<sup>14</sup> *Id.*, at ¶13.

<sup>15</sup> *See, infra*, at 24.

<sup>16</sup> Owen Barder, *What Is Development?*, Center for Global Development (Aug. 16, 2012), *available at* <http://www.cgdev.org/blog/what-development>.

There are a number of reasons for a State to engage in development. Domestically, one of the reasons governments exist is to promote the public welfare.<sup>17</sup> Thus, working to improve the lives of citizens at home is a logical endeavor. Spending locally collected taxes on improving the lives of people abroad, however, is not intuitively beneficial. However, meeting the basic needs of people abroad reduces instability and promotes a more secure and peaceful global community.<sup>18</sup> Additionally, economic development abroad creates new markets for a State's exports.<sup>19</sup> Aside from these practical justifications, morality suggests that wealthy States should aid poorer States and justice may require reparations for past colonization and exploitation.<sup>20</sup>

International development not only plays a role in a State's discretionary foreign policy, it is also codified throughout international law. The dominant obligation<sup>21</sup> to facilitate development comes from Article 55 of the United Nations Charter:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- (a) higher standards of living, full employment, and conditions of economic and social progress and development;
- (b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.<sup>22</sup>

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<sup>17</sup> “[T]he purpose of government as such, which is the public good and preservation of property.” John Locke, *SECOND TREATISE OF GOVERNMENT*, ¶239 (1689).

<sup>18</sup> See OECD, Development Assistance Committee, *SHAPING THE 21ST CENTURY: THE CONTRIBUTION OF DEVELOPMENT CO-OPERATION*, 6 (1996), available at <http://www.oecd.org/dac/2508761.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> “In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.” UN Charter art. 103.

<sup>22</sup> *Id.* at art. 55.

Article 56 builds upon this statement of purpose by requiring all Member States of the United Nations “to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.”<sup>23</sup> What this essentially means is that Member States of the United Nations are required to take actions towards the achievement of international development.

To outline some of the requirements of Article 55, the United Nations drafted the Universal Declaration of Human Rights. Under the Declaration:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.<sup>24</sup>

The Declaration proclaims that this rights is a “common standard of achievement” and that “every individual and every organ of society . . . shall strive . . . to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.”<sup>25</sup>

The International Covenant on Economic, Social and Cultural Rights further describes the requirements of Article 55 by taking the Universal Declaration of Human Rights, a General Assembly resolution, and establishing a legally binding treaty with more specific obligations. The Covenant reiterates the requirements of the Declaration by stating: “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

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<sup>23</sup> *Id.* at art. 56.

<sup>24</sup> UN General Assembly, Universal Declaration of Human Rights, art. 25, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

<sup>25</sup> *Id.* at prmb.

improvement of living conditions”,<sup>26</sup> but also expands the coverage to a number of other economic, social, and cultural rights. The Covenant then goes a step further by obligating States Parties “to take steps . . . , to the maximum of [their] available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means . . . .”<sup>27</sup>

More recently, General Assembly conferences and summits have reaffirmed the obligation to engage in international development. The outcome document of the 1992 United Nations Conference on Environment and Development (known as the Rio Declaration) provides: “All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.”<sup>28</sup> Agenda 21, another agreement from the United Nations Conference on Environment and Development, contains over 300 pages of objectives, activities, and means of implementation to further sustainable development.<sup>29</sup> The Millennium Declaration, which is the outcome document of the 2000 Millennium Summit and one of the bases for the MDGs, states:

We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected. We are committed to making the right to development a reality for everyone and to freeing the entire human race from want.

We resolve therefore to create an environment – at the national and global levels alike – which is conducive to development and to the elimination of poverty.<sup>30</sup>

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<sup>26</sup> International Covenant on Economic, Social and Cultural Rights, art. 11, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.

<sup>27</sup> *Id.* at art. 2.

<sup>28</sup> UN General Assembly, Rio Declaration, Principal 5, U.N. Doc. A/CONF.151/26 (vol. I) (June 13, 1992).

<sup>29</sup> Agenda 21, *supra* note 6.

<sup>30</sup> UN General Assembly, Millennium Declaration, ¶¶ 11-12, U.N. Doc. A/RES/55/2 (Sept. 18, 2000).

The outcome document of the 2002 World Summit on Sustainable Development (known as the Johannesburg Declaration) provides: “We commit ourselves to act together, united by a common determination to save our planet, promote human development and achieve universal prosperity and peace.”<sup>31</sup> And most recently, the outcome of the 2012 United Nations Conference on Sustainable Development (known as “*The Future We Want*”) states:

We also reaffirm the need to achieve sustainable development by: promoting sustained, inclusive and equitable economic growth, creating greater opportunities for all, reducing inequalities, raising basic standards of living; fostering equitable social development and inclusion; and promoting integrated and sustainable management of natural resources and ecosystems that supports inter alia economic, social and human development while facilitating ecosystem conservation, regeneration and restoration and resilience in the face of new and emerging challenges.<sup>32</sup>

Calls for international development also show up in much less expected fora. For example, the preamble to the General Agreement on Tariffs and Trade notes that “the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods . . . .”<sup>33</sup> The Agreement further calls on States Parties to “collaborate in analysing the development plans and policies of individual less-developed contracting parties and in examining trade and aid relationships . . . .”<sup>34</sup> In fact, two of the listed purposes of the International Financial Institutions created at Bretton Woods are:

(i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or

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<sup>31</sup> UN General Assembly, Johannesburg Declaration, ¶ 35, U.N. Doc. A/CONF.199/20 (Sept. 4, 2002).

<sup>32</sup> *The Future We Want*, *supra* note 12, at ¶ 4.

<sup>33</sup> General Agreement on Tariffs and Trade 1994 (GATT 1994), pmb1., 1867 U.N.T.S. 187.

<sup>34</sup> *Id.* at XXXVIII (2)(c).

disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries. . . .

(iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories.<sup>35</sup>

This all goes to show that, throughout the international legal system, there are numerous ambitions, commitments, and legal obligations to promote the objectives of international development.

## II. THE FAILURE OF THE MDGs

With so many international commitments and re-affirmations, it is a wonder that there are still people living in abject poverty. However, words on paper do not automatically translate to results on the ground: effective implementation is needed to effectuate the aspirations of international development. The MDGs were created as an attempt to do just that, but failed to make much change.

Looking first at the goals themselves, many of the targets were missed in many parts of the world.<sup>36</sup> While the goals did increase levels of development aid, it “is more difficult to calculate the impact of the Millennium Development Goals on actual development outcomes.”<sup>37</sup>

Comparing the progress made from 2000-2015 to historical trends, “in no case is there an

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<sup>35</sup> United Nations Monetary and Financial Conference, Bretton Woods, New Hampshire, July 1-22, 1944 Final Act and Related Documents, art. 1, Department of State publication 2187, Conference Series 55; also, Department of State publication 2511, Treaties and Other International Acts Series 1502.

<sup>36</sup> See UN, THE MILLENNIUM DEVELOPMENT GOALS REPORT 2015 (July 2015), available at [http://www.un.org/millenniumgoals/2015\\_MDG\\_Report/pdf/MDG%202015%20rev%20\(July%2015\).pdf](http://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%2015).pdf).

<sup>37</sup> Charles Kenny, *MDGs to SDGs: Have we Lost the Plot?*, Center for Global Development (May 27, 2015), available at <http://www.cgdev.org/publication/mdgs-sdgs-have-we-lost-plot>.

obvious sign of a significant trend-break towards faster progress since 2000.” This would suggest that, at best, the MDGs helped maintain the status quo while, at worst, the MDGs did absolutely nothing or even stalled potential accelerations.

Even the few examples of a “somewhat faster” rate compared to historical averages, such as the increase in global income levels, break down when the data is disaggregated by region.<sup>38</sup> Digging even deeper into the apparent successes shows that external variables, like the economic growth of the BRICS (accomplished by implementing policies outside the scope of the MDGs), account for much of the increase.<sup>39</sup> As noted by one scholar: “[T]he world me[eting] the first goal – halving extreme poverty – in 2010, five years ahead of the MDGs’ deadline, was mainly the doing of two countries that barely paid attention to them.”<sup>40</sup> Moreover, the rates for some indicators, such as reductions in maternal mortality rates, actually slowed during 2000-2015 when compared to historical rates.<sup>41</sup>

Next, the “SMART” structure of the goals adds an additional layer impracticality. One study concluded that the major flaws with the MDGs were that development priorities are too complex for the simplification forced by the MDGs, SMART goals inherently leave out non-measurable objectives, and the focus on tangible outcomes ignores many important aspects of development (such as capacity building).<sup>42</sup> Another scholar added that “[q]uantitative targets also ignored quality considerations: as Malawi’s former president Joyce Banda said: ‘We are all

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<sup>38</sup> *Id.*

<sup>39</sup> See Matthew Lockwood, *What Have the MDGs Achieved? We Don’t Really Know...Heretical Thoughts from Matthew Lockwood*, OXFAM Blogs (Aug. 31, 2012), available at <http://oxfamblogs.org/fp2p/what-if-we-applied-the-results-agenda-to-the-mdgs-quasiheretical-guest-post-from-matthew-lockwood/>.

<sup>40</sup> Alan Beattie, *The New UN Development Goals, Still Missing the Point*, Financial Times Beyond BRICS (Aug. 21, 2014), available at <http://blogs.ft.com/beyond-brics/2014/08/21/the-new-un-development-goals-still-missing-the-point/>.

<sup>41</sup> Lockwood, *supra* note 39.

<sup>42</sup> Sakiko Fukuda-Parr, Alicia Ely Yamin, & Joshua Greenstein, *The Power of Numbers: A Critical Review of Millennium Development Goal Targets for Human Development and Human Rights*, 15 J. OF HUM. DEV. & CAPABILITIES, 105, 113 (Apr. 2015).

racing towards achieving education for all by 2015. But did we have classrooms in Malawi? Did we have desks? Did we have teachers? The MDG demands that we get as many children as possible into school – but what about quality?”<sup>43</sup>

Additionally, “target-setting can also unintentionally distort priorities by displacing attention from other objectives, disrupting ongoing initiatives and alliances, creating perverse incentives, and undermining alternative policy analyses.”<sup>44</sup> When selected properly, this may not be as problematic. However, the MDG drafting process was essentially an arbitrary cherry-picking session that selected only eight objectives from the hundreds created during the 1990s and significantly modified these objectives to be much less ambitious.<sup>45</sup> Thus, these arbitrarily decided targets deviated from established legal requirements and then displaced attention from the legal requirements and the existing programs in place attempting to implement them.<sup>46</sup>

The structure of the MDGs also created a number of perverse incentives. For example, Target 7D calls on States to “achieve[] a significant improvement in the lives of at least 100 million slum dwellers.”<sup>47</sup> To achieve this goal, one developing State cleared-out its slums claiming that eliminating slums was an improvement.<sup>48</sup> Thus, the literal letter of the goal is followed without actually doing what is best from a development and human rights perspective. Likewise, the format of a goal-set suggests that the best course of action is to achieve as many goals as possible. Whether a State is a donor promoting international development abroad or is implementing the goals at home:

“[C]hecking off” one really hard target ends up looking just the same as “checking off” one really easy target[;] “checking off” two

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<sup>43</sup> Beattie, *supra* note 40.

<sup>44</sup> Fukuda-Parr, *supra* note 39, at 106.

<sup>45</sup> *Id.* at 112.

<sup>46</sup> See, e.g., Brenner, *supra* note 7.

<sup>47</sup> The Millennium Development Goals Indicators, *supra* note 9.

<sup>48</sup> Malcolm Langford, *A Poverty of Rights: Six Ways to Fix the MDGs*, 41 INST. DEV. STUD. BULL. 83, 86 (2010).

targets looks better even than “checking off” one, even if the one target was much harder to achieve and lead to a more significant impact. Thus, the incentive is to focus on the areas (either substantive or geographic) that are just below the target. This is because it will take less effort to push the indicator into compliance, yet the same political gain of meeting a target is achieved. This incentive to focus on the “close” areas is coupled with a disincentive to focus on the really “far” areas: success is only measured by achieving a goal, so getting “really close” is a failure. . . . This set of incentives funnels support away from the areas that need it most.<sup>49</sup>

Altogether, these incentives take away from the overall purpose of international development and create a rat race to achieve arbitrary objectives by an arbitrary deadline.

These problems have led one scholar to claim that the MDGs are inherently unfair to Africa. William Easterly took issue with the numerous statements made during 2000-2015 noting that “Africa . . . is the only continent not on track to meet any of the goals”, so he analyzed the MDGs from a Sub-Saharan African context.<sup>50</sup> The review found that the MDGs made Africa look worse than other regions because the goals focused on absolute changes, were “change targets” instead of “level targets”, and focused on positive rather than negative indicators.<sup>51</sup> For example, the poverty target calls on States<sup>52</sup> to “halve, between 1990 and 2015, the proportion of people whose income is less than one dollar a day.”<sup>53</sup> However, in 2000 States in Latin America had poverty rates of 5-10% while States in Africa had poverty rates of 35-50%: to meet the goal, Latin American States only had to address 2.5-5% of their populations while African States had to address 17.5-25% of their populations.<sup>54</sup> This format is even more skewed due to Africa’s

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<sup>49</sup> Brenner, *supra* note 7 at 27 (citing Langford, *supra* note 48).

<sup>50</sup> William Easterly, *How the Millennium Development Goals are Unfair to Africa*, 37 *WORLD DEV.* 26, 26 (2009).

<sup>51</sup> *Id.* at 27.

<sup>52</sup> The MDGs actually do not specifically call on States to meet the objectives themselves. A goal to “halve, between 1990 and 2015, the proportion of people whose income is less than one dollar a day” could refer to a halving of the entire world population collectively, or it could refer to a State halving their own population. The international community took the latter approach when reviewing progress.

<sup>53</sup> The Millennium Development Goals Indicators, *supra* note 9.

<sup>54</sup> Easterly, *supra* note 50, at 28.

higher population densities and growth rates.<sup>55</sup> In attempting to decrease poverty, Africa's economy grew by approximately 5% each year; higher than any other region's average growth in history, yet short of the 7% necessary to meet the goal.<sup>56</sup> Despite what would otherwise be classified as a monumental success, Africa was deemed a failure.

Problems also exist with the goals structured as absolutes. For example, Goal 2 is "achieve universal primary education."<sup>57</sup> States that had universal or near universal primary education in 2000 had basically already achieved the goal before it was even set whereas States in Africa with much lower enrollment had much more work to do to avoid being "a failure".<sup>58</sup> Though many States in Africa did end up "failing", the rate of primary enrollment in Africa far exceeded that of Western States when they were developing.<sup>59</sup> Easterly concludes by noting the demoralizing aspect of being labeled a failure and suggests that the MDGs make Africa appear more negative than is justified given its tremendous progress.<sup>60</sup> The wider problem with this determination is that "it might have real consequences for things like private foreign investment to reinforce the stereotype that 'Africa always fails.'"<sup>61</sup>

Looking at the experience of a State in Africa confirms that this bias was felt on the ground. Scholar Mwangi Waituru worked extensively with the Kenyan government and reported on the view of the MDGs "as an external requirement guiding access to international aid, rather than a shared commitment to core development priorities."<sup>62</sup> This is due to the top-down aspect of the agenda which meets the interests of donors yet is "far removed from the possible business

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 29.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 33.

<sup>61</sup> *Id.*

<sup>62</sup> Mwangi Waituru, *Lessons from the Implementation of MDGs in Kenya: Options for a Post-2015 Framework*, 44 IDS Bul. 30, 30 (Sept. 2013).

of Government”.<sup>63</sup> As a developing State working with many other programs and legal obligations, Kenya is particularly aware of the “lack of coherence between the MDGs and other instruments for development planning.”<sup>64</sup> In fact, “[a] recent consultative meeting on post-2015 saw one senior government officer asking why the government should pursue distractive global frameworks when it had a national development agenda to pursue. Some complained that the donors had not produced funds to support ‘their’ MDGs, whilst others argued that Kenya had spent too much on reporting, monitoring and evaluation that had been required elsewhere.”<sup>65</sup>

These findings all suggest that the MDGs were poorly drafted, poorly received, and poorly implemented. Though the world is certainly a better place now than in 2000 for a number of indicators, the MDGs did very little to help. A study of the MDGs and goal-setting in general found that “indicators exert influence in two ways: by setting performance standards against which progress can be monitored, rewarded or penalized; and by creating a ‘knowledge effect’ where the indicators intended to reflect a concept effectively redefine it.”<sup>66</sup> Given the much broader and more ambitious field of development objectives, the most negative effect of the MDGs is likely their redefining of development as eight simple goals. Failing to meet ambitious goals while still making the world a better place is still admirable, but distracting efforts from greater initiatives while still failing to accomplish the goals is a setback for development.

### **III. REPLACING THE MDGs WITH THE SDGs**

#### *A. MANDATING THE SWITCH*

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<sup>63</sup> *Id.* at 31.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Fukuda-Parr, *supra* note 39, at 106.

The MDGs were essentially a product of chance, developed mostly outside of the United Nations system, that took a product of the OECD States and applied it to all of development.<sup>67</sup> The drafting process focused solely on a fifteen year period (all of the MDGs have a 2015 target date) without considering a long-term strategy. This lack of foresight was largely due to the scrambling and disconnected negotiations needed to establish the MDGs in the first place; there simply was not enough time to create a bigger, more well-thought-out plan. The consequence of this process, though, was a large degree of uncertainty regarding the requirements post-2015. For example, the goal of halving the number of people living on less than a dollar a day by 2015 was just that: a standalone goal to halve the number of people living on less than a dollar a day by 2015. It is not clear whether the drafters assumed meeting the MDGs would be sufficient to satisfy existing legal obligations or whether the MDGs were meant to be the first goal-set in a series of goal-sets striving for even more ambitious objectives (e.g. zero people living on less than a dollar a day). As the year 2015 approached, the United Nations had to answer for these uncertainties.

To start preparing for the post-2015 period, the High-level Plenary Meeting of the United Nations General Assembly on the progress towards the Millennium Development Goals, which met in 2010, requested the Secretary-General to study issues of development beyond 2015 and make recommendations to the General Assembly.<sup>68</sup> In responding to this request, the Secretary General wrote the following in his 2011 *Accelerating Progress Towards the Millennium Development Goals* report:

Sustainable development goals need to remain at the centre. Not all Millennium Development Goals are expected to be achieved by 2015, but even if they were, much further progress would be needed to achieve higher levels of sustainable development beyond

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<sup>67</sup> See, e.g., Brenner, *supra* note 7; Hulme, *supra* note 4.

<sup>68</sup> UN General Assembly, G.A. Res. 65/1, ¶ 81, U.N. Doc. A/RES/65/1 (Sept. 22, 2010).

2015 (to eradicate, rather than halve, poverty, for example, as called for in the Millennium Development Goals agenda). Discussions could focus on whether and in what sense goals need to be broadened or accelerated (e.g., more focus on quality and absolute numbers rather than percentages; also focus on the issues raised below), and whether to change the system to monitor progress and delivery on commitments.<sup>69</sup>

A year later at the United Nations Conference on Sustainable Development, in 2012, the General Assembly took these recommendations, “recognize[d] the importance and utility of a set of sustainable development goals”, and “resolve[d] to establish an inclusive and transparent intergovernmental process . . . with a view to developing global sustainable development goals to be agreed by the General Assembly.”<sup>70</sup> Thus, the SDGs were conceived.

### *B. THE DRAFTING PROCESS*

Whereas the MDG drafting process was mostly exclusive, secretive, and unplanned, the SDG drafting process “has been marked by an orgy of consultation and debate.”<sup>71</sup> Moreover, while “the MDGs were essentially about focusing aid on the poorest and most disadvantaged in a few narrow areas, [the SDGs are] about everyone on the planet[;] a holistic vision of human flourishing that is inclusive of the myriad concerns of sustainability.”<sup>72</sup> These changes of increased inclusivity, openness, and planning led to a fairly complex drafting process.

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<sup>69</sup> UN Secretary-General, *Accelerating Progress Towards the Millennium Development Goals: Options for Sustained and Inclusive Growth and Issues for Advancing the United Nations Development Agenda Beyond 2015*, U.N. Doc. A/66/126 (July 11, 2011).

<sup>70</sup> The Future We Want, *supra* note 12, at ¶¶ 246-48.

<sup>71</sup> Kenny, *supra* note 37.

<sup>72</sup> *Id.*

In addition to the report mentioned above recommending SDGs to the General Assembly, the Secretary-General responded to the High-level Plenary Meeting's request by appointing a Special Advisor on Post-2015 Development Planning<sup>73</sup> and creating an “an informal senior coordination group” made up of the Assistant Secretary-General for Economic Development in the United Nations Department for Economic and Social Affairs, the Assistant Secretary-General for Development Policy for the United Nations Development Programme, the Assistant Secretary-General for Policy and Programme at United Nations Women, and the new Special Advisor on Post-2015 Development Planning.<sup>74</sup> These institutions within the United Nations Secretariat began developing the Post-2015 Development Agenda as, at the time of their creation, the SDGs were not yet mandated.

In January of 2012 (still before the SDGs were mandated), the Secretary-General brought together a group of over 60 United Nations agencies to form the United Nations System Task Team on the Post-2015 Development Agenda.<sup>75</sup> The Task Team served as a forum for collaboration and led to the creation of a number of technical reports.<sup>76</sup> In June of 2012, the Task Team produced a report, *Realizing the Future We Want for All*, recommending strategies for the Post-2015 Development Agenda.<sup>77</sup> Like the Secretary-General's report produced a year earlier, the report endorsed the development goal approach but stressed that “[t]he purpose of a global

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<sup>73</sup> *Ban appoints special adviser on post-2015 development planning and head of Burundi office*, UN News Center, [http://www.un.org/apps/news/story.asp?NewsID=42174#.VG1ICfnF\\_5U](http://www.un.org/apps/news/story.asp?NewsID=42174#.VG1ICfnF_5U) (last visited May 10, 2016).

<sup>74</sup> *Process Overview*, UN Department of Economic and Social Affairs Development Policy and Analysis Division, [http://www.un.org/en/development/desa/policy/untaskteam\\_undf/process.shtml](http://www.un.org/en/development/desa/policy/untaskteam_undf/process.shtml) (last visited May 10, 2016) [hereinafter *Process Overview*, UN DESA].

<sup>75</sup> *Id.*

<sup>76</sup> *Preparing for the Development Agenda Beyond 2015*, UN Department of Economic and Social Affairs Development Policy and Analysis Division, [http://www.un.org/en/development/desa/policy/untaskteam\\_undf/](http://www.un.org/en/development/desa/policy/untaskteam_undf/) (last visited May 10, 2016) (linking to a pdf list of all members) [hereinafter *Preparing for the Development Agenda Beyond 2015*, UN DESA].

<sup>77</sup> *See generally* UN System Task Team on the Post-2015 Development Agenda, *REALIZING THE FUTURE WE WANT FOR ALL* (2012), available at [http://www.un.org/millenniumgoals/pdf/Post\\_2015\\_UNTTreport.pdf](http://www.un.org/millenniumgoals/pdf/Post_2015_UNTTreport.pdf).

development agenda is thus not to prescribe specific development strategies or policies, but to provide guidance for priority setting at all levels (global, regional, national and sub-national).<sup>78</sup>

In February of 2012, the Secretary-General also hosted an Experts Group Meeting to extend the collaboration beyond the United Nations.<sup>79</sup> Experts from forty-five organizations within the United Nations and from nineteen organization outside the United Nations met to discuss development post-2015.<sup>80</sup> The expert input from academia was implemented on a more permanent basis in August of 2012 with the creation of the Sustainable Development Solutions Network out of Columbia University.<sup>81</sup>

After the General Assembly decided to replace the MDGs with the SDGs at the United Nations Conference on Sustainable Development in June of 2012, the Secretary-General created the High-level Panel of Eminent Person on the Post-2015 Development Agenda in July of 2012.<sup>82</sup> Co-chaired by the presidents of Indonesia and Liberia and the Prime Minister of the United Kingdom, the High-level Panel brought together government, civil society, business, and academia to travel the world and assess the best ways to implement development in the post-2015 period.<sup>83</sup> In March of 2013 the High-level Panel published a report, *A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustainable Development*, that listed the first set of goals to consider for the SDGs.<sup>84</sup>

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<sup>78</sup> *Id.* at 2.

<sup>79</sup> *Preparing for the Development Agenda Beyond 2015*, UN DESA, *supra* note 76.

<sup>80</sup> *Id.*

<sup>81</sup> *Interactive Timeline of Post-2015 and Post-Rio+20 Processes*, Sustainable Development 2015, <http://www.sustainabledevelopment2015.org/index.php/timeline> (last visited May 10, 2016) [hereinafter *Interactive Timeline*, Sustainable Development 2015].

<sup>82</sup> *Process Overview*, UN DESA, *supra* note 74.

<sup>83</sup> *Id.*

<sup>84</sup> High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, *A NEW GLOBAL PARTNERSHIP: ERADICATE POVERTY AND TRANSFORM ECONOMIES THROUGH SUSTAINABLE DEVELOPMENT* (June 2013), *available at* [http://www.un.org/sg/management/pdf/HLP\\_P2015\\_Report.pdf](http://www.un.org/sg/management/pdf/HLP_P2015_Report.pdf).

In addition to mandating the SDGs at the Conference on Sustainable Development in June of 2012, the General Assembly also created the Open Working Group on Sustainable Development Goals to actually draft the goal-set.<sup>85</sup> The formal procedures and program of work for the Open Working Group was passed by the General Assembly in January of 2013.<sup>86</sup> The Open Working Group then met thirteen times from March 2013 to July 2014.<sup>87</sup> Within each session, a deliberative group of thirty seats was informed about development topics and drafted a goal.<sup>88</sup> Each of the thirty seats was represented by one to four United Nations Member States (set by the resolution) with each group of States determining how the seat would act within the Open Working Group (e.g. which States would be present, which State would speak, how the seat would vote, etc.).<sup>89</sup>

Once the Open Working Group began meeting, the focus of the other entities in the Post-2015 Development Agenda shifted towards the drafting process by providing reports and hosting side events in an effort to exert some influence. For example, the United Nations System Task Team established a subgroup called the inter-agency technical support team to support the Open Working Group to serve as a liaison between the Task Team and the Open Working Group by providing technical support, analytical service, expert panelists, and background material based on the work of the Task Team.<sup>90</sup>

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<sup>85</sup> The Future We Want, *supra* note 12, ¶ 248.

<sup>86</sup> See *Open Working Group On Sustainable Development Goals*, Sustainable Development Knowledge Platform, <https://sustainabledevelopment.un.org/owg.html> (last visited May 10, 2016) (discussing how G.A. decision 67/555 implemented the Draft Decision Submitted by the President of the General Assembly on Open Working Group of the General Assembly on Sustainable Development Goals, U.N. Doc. A/67/L.48/Rev.1).

<sup>87</sup> *Interactive Timeline*, Sustainable Development 2015, *supra* note 81.

<sup>88</sup> *Id.* (explaining the deliberative process); see also Draft Decision Submitted by the President of the General Assembly on Open Working Group of the General Assembly on Sustainable Development Goals, U.N. Doc. A/67/L.48/Rev.1 (Jan. 15, 2013) (allocating the thirty seats).

<sup>89</sup> *Id.*

<sup>90</sup> *Process Overview*, UN DESA, *supra* note 74.

Adding to the “orgy of consultation and debate” the United Nations Development Group (a group of “UN funds, programmes, specialized agencies, departments, and offices that play a role in development”<sup>91</sup>) conducted national consultations in over sixty countries and global consultation based on eleven different themes.<sup>92</sup> Similarly, the United Nations Regional Economic Commissions hosted a series of discussions within their respective regions.<sup>93</sup> In addition to State representation, the United Nations also engaged with the business community through the Global Compact<sup>94</sup> and with average citizens through a survey on the website “My World” where people could prioritize development issues.<sup>95</sup>

To take-stock of these processes, as well as the non-SDG development processes such as the Financing for Development meetings, High Level Political Forum, and General Assembly debates and high level events, the Secretary-General issued another report in July of 2013 called: *A Life of Dignity for All: Accelerating Progress Towards the Millennium Development Goals and Advancing the United Nations Development Agenda Beyond 2015*.<sup>96</sup> Within this report, the Secretary-General noted that “[t]he many consultations and reports suggest that a single, balanced and comprehensive set of goals, universal to all nations, which aims to eradicate all forms of poverty and integrate sustainable development in all its dimensions, should form the core of the agenda.”<sup>97</sup>

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<sup>91</sup> *About the UNDG*, UN Development Group, <https://undg.org/home/aboutundg/> (last visited May 10, 2016); see also *UNDG Members*, UN Development Group, <https://undg.org/home/aboutundg/members/> (last visited May 10, 2016) (listing all of the current members).

<sup>92</sup> *Process Overview*, UN DESA, *supra* note 74.

<sup>93</sup> *Id.*

<sup>94</sup> *Interactive Timeline*, Sustainable Development 2015, *supra* note 81.

<sup>95</sup> *My World 2015*, UN, <http://vote.myworld2015.org/> (last visited May 10, 2016).

<sup>96</sup> UN Secretary General, *A Life of Dignity for All: Accelerating Progress towards the Millennium Development Goals and Advancing the United Nations Development Agenda Beyond 2015*, U.N. Doc A/68/202 (July 26, 2013).

<sup>97</sup> *Id.* at 109.

The Open Working Group's final meeting was held in July of 2014.<sup>98</sup> A preliminary list of SDGs was then adopted by the Open Working Group and presented to the General Assembly.<sup>99</sup> The General Assembly accepted the preliminary list and initiated an intergovernmental negotiation process to formalize the goal-set.<sup>100</sup> To kick this process off, the Secretary-General issued a synthesis report in December of 2014, *The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet*, outlining all of the processes conducted.<sup>101</sup> Member States then met every month from January to July in 2015 debating, negotiating, and refining the SDGs.<sup>102</sup> Additionally, the General Assembly hosted several high-level debates and an informal hearing with civil society.<sup>103</sup> Finally, in September of 2015, the United Nations hosted a special summit<sup>104</sup> where the official SDG list was adopted.<sup>105</sup> The list was then ratified by the General Assembly in October.<sup>106</sup>

### C. EVALUATION OF THE NEW GOALS

While the United Nations should be commended for improving the inclusivity and transparency of the drafting processes, there are still a few issues. Following the Secretary-General's recommendation, the Member States implemented "a single, balanced and

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<sup>98</sup> *Interactive Timeline*, Sustainable Development 2015, *supra* note 81.

<sup>99</sup> UN General Assembly, Report of the Open Working Group of the General Assembly on Sustainable Development Goals, U.N. Doc. A/68/970 (Aug. 12, 2014).

<sup>100</sup> UN General Assembly, Res. 68/309, U.N. Doc. A/RES/68/309 (Sept. 12, 2014).

<sup>101</sup> UN Secretary General, *The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet*, U.N. Doc A/69/700 (Dec. 4, 2014).

<sup>102</sup> *Interactive Timeline*, Sustainable Development 2015, *supra* note 81.

<sup>103</sup> *Id.*

<sup>104</sup> *United Nations Sustainable Development Summit 2015*, Sustainable Development Knowledge Platform, <https://sustainabledevelopment.un.org/post2015/summit> (last visited May 10, 2016).

<sup>105</sup> UN General Assembly, Transforming our World: The 2030 Agenda for Sustainable Development, U.N. Doc. A/Res/70/1 (Oct. 21, 2015).

<sup>106</sup> *Id.*

comprehensive set of goals, universal to all nations”.<sup>107</sup> What this means, though, is that the United States, Denmark, and Japan have the same set of goals as Syria, Haiti, and South Sudan: either some goals are under-ambitious for the most development States or the least developed States have no hope of achieving the full set. Moreover, though the SDGs are fairly holistic, they are still a prioritization. Prioritization is inherently about ensuring that the most important tasks are completed first, which is problematic when each State has different areas of development they need to prioritize. Even with the most participatory and informed process, it is impossible to take into account every local situation and form a universal goal-set equally applicable to all.

Moreover, various examinations of the MDGs have suggested that this is not the best way to go forward. From the Kenyan case study discussed above, the author came to the conclusion that “[i]f the results of the new development agenda are to achieve transformative change for the majority of Kenyans, it is important that the MDG/SDG frameworks are grounded in human rights and reinforce existing state commitments to international human rights commitments.”<sup>108</sup> Though the existing frameworks were consulted, the drafting process of the SDGs did not ensure that international legal objectives were effectively incorporated. Thus, many of the same problems of the MDGs will be perpetuated during this 2015-2030 period. The Kenyan case study similarly concludes: “There is a risk that MDG/SDG frameworks will fall short of the standards and goals already framed in international treaties, thus providing a convenient distraction, and a basis on which states can fall short of the human rights standards already agreed.”<sup>109</sup>

The specific SDG targets, themselves, have also been extensively criticized. The most common criticisms include the sheer number of goals (169 targets compared to 18 for the

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<sup>107</sup> UN Secretary General, *supra* note 96, at 17.

<sup>108</sup> Waituru, *supra* note 62, at 32.

<sup>109</sup> *Id.*

MDGs) and the impracticality of attaining them.<sup>110</sup> As noted by one scholar “[t]he targets are a mixture of the arbitrarily precise – ‘sustain per capita economic growth...in particular at least 7 per cent per annum GDP growth in the least-developed countries’ – and the comfortingly vague – ‘by 2030 achieve sustainable management and efficient use of natural resources.’”<sup>111</sup> Similarly, the targets do not even follow the UN’s own estimates.<sup>112</sup> For example, Target 3.1 calls for less than 70 maternal deaths per 100,000 when the current ratio is about 210 per 100,000: a reduction that the World Health Organization does not believe is feasible.<sup>113</sup> Such impossibility is extensive throughout the goal-set:

According to the Open Working Group, in just sixteen years’ time we will have been able to end poverty in all its forms everywhere; achieve full and productive employment and decent work for all; end hunger and malnutrition; attained universal health coverage; wipe out AIDS, tuberculosis, malaria, and neglected tropical diseases; provide universal secondary education and universal access to tertiary education; end gender discrimination and eliminate all forms of violence against all women and girls; ensure adequate and affordable housing, water, sanitation, reliable modern energy, and communications technology access for all; and (strangely) both prevent and significantly reduce marine pollution of all kinds alongside preventing species loss. If that’s not enough, we will have also eliminated all discriminatory laws, policies, and practices.<sup>114</sup>

If the point of implementation is to make international development work on the ground, the goals should at least be feasible. Beyond that, though, the international community should learn from its experiences and improve upon the MDGs. As the SDGs are functionally an expanded

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<sup>110</sup> Kevin McCracken, *The UN’s Sustainable Development Goals – Laudable, but how Realistic?*, International Policy Digest, (Oct. 6, 2015), available at <http://intpolicydigest.org/2015/10/06/the-un-s-sustainable-development-goals-laudable-but-how-realistic/>.

<sup>111</sup> Beattie, *supra* note 40.

<sup>112</sup> McCracken, *supra* note 110.

<sup>113</sup> *Id.*

<sup>114</sup> Kenny, *supra* note 37.

version of the MDGs, there has been no significant improvements in the implementation plan meaning the results of the SDGs will be similar to the failures of the MDGs.

#### **IV. CREATING THE INDCs UNDER THE UNFCCC**

The United Nations Framework Convention on Climate Change (“UNFCCC”) was adopted at the 1992 United Nations Conference on Environment and Development.<sup>115</sup> As a framework convention, the UNFCCC basically just establishes principles and goals and then leaves the specifics of implementation for future protocol negotiations.<sup>116</sup> The overall purpose of the UNFCCC is to “achieve . . . stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”<sup>117</sup> Since its adoption, the States Parties have been negotiating various ways to achieve this purpose.

To facilitate these negotiations, States Parties meet annually at a Conference of the Parties (“COP”).<sup>118</sup> At the 1997 COP held in Kyoto, the States Parties adopted the first protocol to implement the UNFCCC: the Kyoto Protocol.<sup>119</sup> Under the Kyoto Protocol, the industrialized States (listed in Annex I of the UNFCCC) were required to reduce greenhouse gas emission by an average of five percent below 1990 levels by 2012.<sup>120</sup> The Annex I States could achieve this reduction through an emissions trading scheme (i.e. cap and trade), the clean development mechanism (i.e. finance sustainable development in developing States), or through joint

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<sup>115</sup> *UNFCCC -- 20 Years of Effort and Achievement*, UNFCCC, <http://unfccc.int/timeline/> (last visited May 10, 2016) [hereinafter *Timeline*, UNFCCC]

<sup>116</sup> Luke Grunbaum, *From Kyoto to Paris: How Bottom-Up Regulation Could Revitalize the UNFCCC*, GEO. ENVTL. L. REV. ONLINE (Nov. 30, 2015).

<sup>117</sup> United Nations Framework Convention on Climate Change, art. 2, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107.

<sup>118</sup> *Id.* at art. 7.

<sup>119</sup> *Timeline*, UNFCCC, *supra* note 115.

<sup>120</sup> *An Introduction to the Kyoto Protocol*, UNFCCC, [http://unfccc.int/essential\\_background/kyoto\\_protocol/items/6034.php](http://unfccc.int/essential_background/kyoto_protocol/items/6034.php) (last visited May 10, 2016).

implementation (i.e. employ something similar to EPA's bubble concept to combine emissions of multiple States).<sup>121</sup> Non-industrialized States were not required to do anything and could actually increase emissions as they developed.<sup>122</sup> Due to concerns over the perceived inequity of the common but differentiated responsibility scheme, the Kyoto Protocol failed to gain the support of the world's top emitters and has therefore failed to facilitate significant emission reductions.<sup>123</sup> Responding to this failure, the States Parties at the 2007 COP in Bali decided to replace the Kyoto Protocol with some other tool to include more States and established a two year deadline on those negotiations.<sup>124</sup> Two years later at the 2009 COP in Copenhagen, however, the Parties failed to reach an agreement.<sup>125</sup> In 2011 at the COP in Durban, after creating a second commitment period under the Kyoto Protocol with a new deadline of 2020, the Parties tried again by creating a working group "to develop a protocol, another legal instrument or an agreed outcome with legal force" to be implemented after the second commitment period of the Kyoto Protocol ended in 2020.<sup>126</sup> This working group then created an entirely new mechanism, the INDCs, and invited States to prepare an INDC for the 2013 COP in Warsaw based on what they were willing to contribute.<sup>127</sup> At the following year's COP in Lima, the Parties formalized the INDC process by listing what must and what should be included in an INDC.<sup>128</sup> Specifically, States needed to list the scope of their plan, the timescale of

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<sup>121</sup> *Id.*

<sup>122</sup> Duncan Clark, *Has the Kyoto Protocol Made Any Difference to Carbon Emissions?*, The Guardian (Nov. 26, 2012), available at <http://www.theguardian.com/environment/blog/2012/nov/26/kyoto-protocol-carbon-emissions>.

<sup>123</sup> Grunbaum, *supra* note 116.

<sup>124</sup> *Summary of the Paris Climate Change Conference*, International Institute of Sustainable Development (Dec. 15, 2016), available at <http://www.iisd.ca/download/pdf/enb12663e.pdf>.

<sup>125</sup> John Vidal, Allegra Stratton, & Suzanne Goldenberg, *Low Targets, Goals Dropped: Copenhagen Ends in Failure*, The Guardian (Dec. 18, 2009), available at <http://www.theguardian.com/environment/2009/dec/18/copenhagen-deal>.

<sup>126</sup> UNFCCC COP, Report of the Conference of the Parties on its Seventeenth Session, held in Durban from 28 November to 11 December 2011, U.N. Doc. FCCC/CP/2011/9/Add.1 (Mar. 15, 2012).

<sup>127</sup> International Institute of Sustainable Development, *supra* note 124.

<sup>128</sup> <http://climate-l.iisd.org/policy-updates/indcs-foundation-for-a-successful-outcome-in-paris/>

implementation, and their proposed methods.<sup>129</sup> Additionally, they needed to state how the overall plan contributed to the achievement of the objectives of the UNFCCC.<sup>130</sup> Developing States could list their needs, financial and capacity-based, and provide conditional goals based on the amount of funding they receive.<sup>131</sup> The INDCs were then officially adopted as the next tool to implement the UNFCCC at the most recent COP in Paris in 2015.<sup>132</sup>

Under this new agreement, States are required to send to the Secretariat “their intended nationally determined contributions towards achieving the objective of the [UNFCCC] as set out in its Article 2” (“achieve . . . stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”).<sup>133</sup> The Secretariat is then to make all of the INDCs publicly available.<sup>134</sup> States are to update their INDCs every five years<sup>135</sup> with each successive contributions representing a progression beyond the previous one.<sup>136</sup> During implementation, States are to track their progress and report biennially “including good practices, priorities, needs and gaps”.<sup>137</sup> Additionally, periodic technical expert reviews of the INDCs and implementation will “identify areas of improvement”.<sup>138</sup>

In other words, States are creating, committing to, and publicizing plans for what they, individually, are going to do to achieve the objectives of the UNFCCC. Each individual State’s goal-set then combines with all of the other goal-sets to achieve the international goal of stabilizing the greenhouse gas concentration in the atmosphere. Plans are progressively updated

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<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Timeline*, UNFCCC, *supra* note 115.

<sup>133</sup> Paris Agreement, *supra* note 13, at ¶ 13.

<sup>134</sup> *Id.* at ¶ 14.

<sup>135</sup> *Id.* at art. 4, ¶ 9.

<sup>136</sup> *Id.* at art. 4, ¶ 3.

<sup>137</sup> *Id.* at art. 13.

<sup>138</sup> *Id.*

by the States and are subject to international review. States must also keep the international community informed as to how they are performing.

This new “bottom-up” strategy allows for more flexibility than a traditional “top-down” model, it includes considerations of a State’s internal circumstances, and it respects State sovereignty.<sup>139</sup> In fact, this tool has already gained support from the US (which is not a party to the Kyoto Protocol) and China (which is not required to do anything under the Kyoto Protocol) with both States submitting an INDC.<sup>140</sup> As for the ambition of the INDCs, many of the current submissions actually do implement most, if not all, of the factors considered by the Intergovernmental Panel on Climate Change, and some even add extra considerations.<sup>141</sup> However, when added together, the current INDCs fail to meet the international goal of keeping global temperature increase below 2 degrees Celsius, the indicator States have agreed to as “achieve[ing] . . . stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”<sup>142</sup> Thus, while States are cooperating with the INDC process and following the procedural requirements, the INDCs, themselves, are not currently ambitious enough to achieve the treaty’s objectives.

## V. REPLACING THE SDGs WITH INDCs

### A. *THE NEED FOR SOMETHING NEW*

The field of international development already has overarching objectives and principles in place serving as a high-level ambition to improve the world. These goals and ideas are then

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<sup>139</sup> Grunbaum, *supra* note 116.

<sup>140</sup> *Id.*

<sup>141</sup> Leila Mead, *INDCs: Foundation for a Successful Outcome in Paris?*, International Institute for Sustainable Development (Nov. 16, 2015), available at <http://climate-1.iisd.org/policy-updates/indcs-foundation-for-a-successful-outcome-in-paris/>.

<sup>142</sup> Pilita Clark, *UN Says Countries Must Do More to Combat Climate Change*, Financial Times (Oct. 30, 2015), available at <http://www.ft.com/intl/cms/s/0/512445de-7ef6-11e5-98fb-5a6d4728f74e.html>.

backed by decades of legal obligations and commitments to implement these ambitions and make them reality. What is missing is a realistic, feasible plan to take the ideas from the chambers of the United Nations and actually achieve them on the ground.

Now, this is no easy task and there is no magic bullet that will provide a simple solution. Moreover, political will and resource availability have the potential to thwart even the most well thought-out plan. However, the MDGs, despite being ambitious and well-intentioned, are not the best option. As discussed above, the idea of creating a set of prioritized goals that are meaningful, achievable, and tailored to what actually matters is functionally impossible when States are at different stages of development and localities are facing a variety of very different issues to a varying degree of severity. When such a prioritization was attempted through the creation of the MDGs, inequitable results occurred where, for example, sub-Saharan African States had much more work to do than the OECD States to achieve the MDG targets. This inequity not only paints much of Africa as a development failure, it also suggests that OECD States do not need improvement. Both of these implications are incorrect as shown by the amazing amount of progress made in States across Africa and by the unacceptable levels of inequality and greenhouse gas emission occurring in the “developed” world.

Since the MDGs were not successful, or even a good model in the first place, the international community should look for a different tool to implement international development priorities rather than replace the MDGs with yet another goal-set. One management study found that goals can “cause systematic problems in organizations due to narrowed focus, increased risk taking, unethical behavior, inhibited learning, decreased cooperation, and decreased intrinsic

motivation.”<sup>143</sup> Though the study is not completely dismissive of goal-setting, it notes that goals that are too specific can blind people and narrow their focus, goals that are too challenging can harm motivation and productivity, externally created goals are less likely to be followed, goals that are too focused on the short-term may harm long-term productivity, systemic failure to meet goals may cause harmful and unproductive behavior in an attempt to meet the goal at any cost, and individualized goals may cutoff cooperation as people focus on achieving their own objectives rather than helping the organization as a whole succeed.<sup>144</sup> Many of these “negative side effects” featured prominently during the MDG period.

Productive work management, on the other hand, specifies what needs to be done, determines how performance will be measured, and establishes a timescale.<sup>145</sup> If goals are involved, they should include employee participation and take into account the knowledge of those actually doing the tasks, be ranked and evaluated by difficulty and priority, cascade from company-level goals to individualized goals, and make appropriate connections so that cooperation is promoted and conflict is avoided.<sup>146</sup> Additionally, borrowing from the field of resource conservation, adaptive management suggests that successful projects are continuously reevaluated and revised throughout their implementation.<sup>147</sup>

## *B. INDIVIDUALIZATION*

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<sup>143</sup> Lisa D. Ordóñez, Maurice E. Schweitzer, Adam D. Galinsky, & Max H. Bazerman, *Goals Gone Wild: The Systematic Side Effects of Overprescribing Goal Setting*, 23 *Academy of Management Perspectives* 6, 16 (Feb. 2009).

<sup>144</sup> *Id.* at 15.

<sup>145</sup> Thompson Reuters, HR Series: Policies and Practices, § 72:4 (May 2016).

<sup>146</sup> *Id.*

<sup>147</sup> *See, e.g.*, US Department of the Interior, ADAPTIVE MANAGEMENT (2012), *available at* <http://www2.usgs.gov/sdc/doc/DOI-Adaptive-Management-Applications-Guide-27.pdf>.

Based on these best management practices, the best option for implementation of development objectives would be one that is individually derived; based on local circumstances, abilities, and needs; and is continuously evaluated and revised. This model actually matches the implementation contemplated by many international agreements. For example, the International Covenant on Economic, Social and Cultural Rights requires States to “take steps . . . , to the maximum of [their] available resources, with a view to achieving progressively the full realization” of the Covenant’s goals.<sup>148</sup> This means that States are not required to end poverty immediately, but instead take steps towards the progressive realization of that goal. Likewise, the Covenant requires States to take these steps to the maximum of their available resources. This implies that a State like the United States and a State like Haiti should be doing very different things. The MDGs did not follow this model as they imposed some middle ground goal where the wealthiest States could easily achieve the targets and the poorest States were almost inevitably going to fail.

Moving forward, the INDCs can serve as a model to improve implementation of development objectives. Within the field of climate change law, there is the overall objective established by the UNFCCC to “achieve . . . stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”<sup>149</sup> Agreements made under this framework defined this objective as “[h]olding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels”.<sup>150</sup> Then, instead of implementing a top-down approach like the Kyoto Protocol or the MDG/SDGs to reach this objective, the Paris Agreement allows States to put forth individually-created INDCs.

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<sup>148</sup> International Covenant on Economic, Social and Cultural Rights, *supra* note 26, at art. 2.

<sup>149</sup> United Nations Framework Convention on Climate Change, *supra* note 117, art. 2.

<sup>150</sup> Paris Agreement, *supra* note 13, at art. 2.

Implementing such a plan in the development context could start with a broad requirement like the right to an adequate standard of living, which is already codified in numerous sources of international law. Then, the international community could set an acceptable criteria for what achieving that objective looks like. Once that is established, States would locally develop plans of action outlining the steps they will take to contribute to or meet an international objective. The international community could also set requirements for what these plans need to include, review each plan and make comments and recommendations, and require each State to report on progress towards implementation; the Paris agreement requires all of this for the INDCs.<sup>151</sup> Moreover, unlike the uncertainty of transitioning from the MDGs to the SDGs and from the SDGs to an unknown post-2030 development agenda, this process could require plans be reevaluated and progressively updated every five years, just like the INDCs.

What this would do is allow for an individualized goal-set based on the capacity and needs of the locality. It would also require an actual commitment, since the State is required to actively draft the plan itself rather than just passively sign on to an agreement. Once implemented, the technical advice given to the State would be based on the specific needs of the State and not on the steps required to meet some arbitrary internationally-derived objective: instead of figuring out how to cut poverty in half as required by the MDGs, a State could learn how to reduce as much poverty as it is capable of in the most efficient manner possible. Follow-up goal-sets would also take into account what worked and what did not work and move forward accordingly whereas, under the current model, even the States that failed to meet the MDGs now have more ambitious targets in the SDGs.

This model is not perfect. Almost certainly there will be some INDCs that are under ambitious or do not include critical aspects that would be included in a set of internationally-

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<sup>151</sup> See *supra* at 26.

derived development goals. However, ambitious goals that are unachievable are not useful, and States are going to do what they want regardless of what is included in a non-binding goal-set: if a State would leave a topic out of its INDC, it will probably ignore that topic in an international goal-set as well. Moreover, implementation should be about putting in place what has already been agreed. The INDC model would not replace the role of treaties or resolutions, so those instruments would continue to set the bar high and bind states to legal obligations. The INDCs would simply attempt to make previous agreements a reality and help States achieve their legal obligations. As such, implementation should not be the forum for dealing with States that do not follow through with their legal obligations and public commitments.

## CONCLUSION

The call for reform and a localization of development is not new. The scholar studying MDG implementation in Kenya concluded that “[t]he strongest message from communities is a deep desire for the power to make decisions on issues that affect their lives; for access to equal opportunities; and for an enabling environment to sustain livelihoods.”<sup>152</sup> Likewise, realization that the SMART model may not be appropriate has also been acknowledged. A comprehensive study of the MDGs concluded that “the essence of the MDGs is that they frame the concept of development as a set of basic needs outcomes, rather than as a process of transformative change in economic, social and political structures.”<sup>153</sup> Despite these numerous observations, critiques, and warnings, the international community went ahead and replaced the MDGs with the SDGs, yet another goal-set.

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<sup>152</sup> Waituru, *supra* note 62, at 33.

<sup>153</sup> Fukuda-Parr, *supra* note 39, at 111.

Using nationally-derived plans, like the INDCs under the UNFCCC, would likely improve the success of international development. First, localized plans take into account the actual issues and capacity of the locality and are therefore more likely to lead to successful results. Second, States creating their own plans will likely cause changes in actual policy since the plans reflect the State's interests; the external goals like the MDGs/SDGs result in governments just doing whatever the international community is willing to fund. While this proposal is not a perfect solution and does have some potential for abuse, requirements can be placed on the INDCs, the international community can review plans for adequacy, and the power to "name and shame" exists with just as much force as the current MDGs/SDGs. Though the international community has already accepted the SDGs as a goal-set for the next 15 years, the implementation of the SDGs and the creation of the post-2030 development agenda should pay close attention to the success of the INDCs.