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A FEMINIST HUMAN RIGHTS LAW APPROACH FOR ENGENDERING THE MILLENNIUM DEVELOPMENT GOALS

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INTRODUCTION

In 2000, 189 high-level government officials convened at the Millennium Summit to discuss the most serious challenges facing the international community in the new millennium.¹ By the conclusion of the summit, the leaders had produced the Millennium Declaration, an unprecedented agenda for international cooperation on global priorities including sustainable development, human rights, peace, and security. Signatories ambitiously vowed to “spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty.”² With uncharacteristic specificity and determination, the signatories unanimously “resolv[ed]... to halve, by the year 2015, the proportion of the world’s people whose income is less than one dollar a day and the proportion of people who suffer from hunger... [and] who are unable to reach or to afford safe drinking water.”³ With much publicity, the Millennium Declaration was adopted by the United Nations (“UN”) General Assembly at the end of its plenary session.⁴ Within a year, the UN Secretariat issued a fifty-two page “Road Map” to elaborate upon the commitments agreed to by governments at the Millennium Summit.⁵

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¹ The Conference of NGOs in Consultative Relationship with the United Nations (CONGO), *We Will Spare No Effort: A Civil Society Call to Action for the Five Year Review of the Millennium Summit and the Millennium Development Goals* 9 (June 2005) [hereinafter CONGO Report], available at <http://www.ngocongo.org/index.php?what=1&id=326&start=3> (last visited Aug 21, 2007).

² United Nations Millennium Declaration, G.A. Res. 55/2, ¶11, U.N. Doc. A/RES/55/2 (Sept. 18, 2000) [hereinafter Millennium Declaration].

³ *Id.* at ¶19.

⁴ For a collection of press coverage related to the Millennium Summit and the General Assembly’s adoption of the Millennium Declaration, see Millennium Summit Press Releases, available at http://www.un.org/millennium/press_summit.htm (last visited Aug. 21, 2007).

⁵ See The Secretary-General, *Road Map Towards the Implementation of the United Nations Millennium Declaration: Report of the Secretary-General*, U.N. Doc. A/56/326 (Sept. 6, 2001), available at http://mdgs.un.org/unsd/mdg/Resources/Static/Products/SGReports/56_326/a_56_326e.pdf

Annexed to the Road Map were the Millennium Development Goals (“MDGs” or “Goals”), eight concrete development objectives ranging from the eradication of extreme poverty to the reversal of the AIDS pandemic which have become the new international framework for economic development.⁶

Half-way to the date set for achievement of the MDGs political interest is waning and the promises made by world leaders to individuals living in extreme poverty are on track to be broken.⁷ This Note will attempt to reinvigorate the movement to achieve the MDGs by advocating a feminist human rights law approach to economic development. Such an approach addresses two of the major obstacles to achieving the Goals. First, it addresses the lack of cooperation among ideologically opposed factions of the anti-poverty movement, and proposes a feminist methodology for bringing these factions together as equal collaborators in the common project of poverty eradication. Second, it addresses the Goals’ failure to recognize extreme poverty as a deprivation of economic, social, and culture rights (“ESC rights”), and demands an explicit reorientation of the MDG framework to reflect the legal obligations of states and private parties to the individual claimants of ESC rights.

Part I of this Note describes the current framework for MDG advocacy, which focuses on the reduction of countries’ overall poverty levels as measured by per-capita income.⁸ Such an approach ignores the processes of development and justifies policy trade-offs between economic development and gender equality.⁹ The section concludes that this top-down development framework, by ignoring the policies and politics of poverty reduction in the name of rapid development, runs counter to states’ core minimum obligations to protect the ESC rights of all individuals without discrimination.

Part II advances an alternative framework, described as a feminist human rights law approach, for making the MDGs relevant to impoverished individuals. This approach draws on Third World Feminism,¹⁰ as a political strategy both for involving poor people in identifying the various causes of their economic marginalization and in using that knowledge to think themselves out of poverty by contributing to the formulation of local anti-poverty policies.¹¹ The approach also

[hereinafter Road Map].

⁶ *Id.* at 55-58.

⁷ See United Nations Department of Public Information [UNDP], *Africa and the Millennium Development Goals: 2007 Update*, DPI/2458 (June 2007).

⁸ The Secretary-General, *Observance of the International Day for the Eradication of Poverty: Report of the Secretary-General*, G.A. Doc. A/61/150, ¶ 10, U.N. Doc. A/61/308 (Sept. 5, 2005).

⁹ Ceri Hayes, *Out of the Margins: The MDGs Through a CEDAW Lens*, in GENDER AND THE MILLENNIUM DEVELOPMENT GOALS 67, (Caroline Sweetman ed., 2005) [hereinafter Hayes].

¹⁰ The author conceptualizes feminist human rights law based in part on the theoretical work of Third World Feminists, but does not intend to imply that Third World Feminists necessarily endorse the feminist human rights law approach described in this Note.

¹¹ Transformational Third-World Feminists describe a new political culture that involves “thinking oneself out of the spaces of domination, but always within the context of a collective or communal process.” See FEMINIST GENEALOGIES, COLONIAL LEGACIES, DEMOCRATIC FUTURES, (M. Jacqui

draws on human rights law to locate the Goals within the ESC rights regime, thus clarifying the legal responsibilities of states and private parties to the poor.

Part III historicizes the Goals, exploring the early development of ESC rights as separate from and subordinate to civil and political rights, the subsequent movement led by feminist human rights activists to discredit the bifurcation of human rights, and the re-subordination of ESC rights vis-à-vis the promulgation of the MDGs.

Part IV contextualizes the MDGs by considering the economic processes that contribute to extreme poverty and outlining dominant global trends toward market liberalization, deregulation, privatization of national markets, and the growing influence of transnational corporations (“TNCs”). The section queries the connection between neo-liberal economic policies and the exploitation of women in the global economy, including their employment in lesser-paid or unremunerated labor sectors and the negative effects of industry deregulation and public service privatization on their overall economic security. The section concludes that poverty is gendered, and that the success of anti-poverty programs depends on women gaining control over their economic futures.

Part V theorizes a feminist human rights critique of the MDGs, arguing that the Goals’ focus on absolute poverty reduction masks the exclusion of disempowered groups, such as women, from participating in and benefiting from economic development policy.

Finally, Part VI engages in the praxis of feminist human rights law by proposing several concrete legal strategies for engendering the MDGs and improving the likelihood that the Goals will be achieved.

PART I: THE CURRENT APPROACH TO MDG ADVOCACY

While the Millennium Declaration and Road Map from which the MDG framework was derived acknowledge that “human rights should be at the center... of development programs”¹² and that women bear the disproportionate burden of global poverty,¹³ the MDGs make no explicit reference to the human rights and gender equality principles that underpin the Millennium Declaration and the Road Map themselves. Instead, the MDG framework adopts what some human rights proponents have dubbed a “technocratic”¹⁴ approach to poverty reduction that casts development as an economic objective, rather than a rights issue, which can be achieved through eight discrete development goals: (1) reducing extreme poverty

Alexander & Chandra Talpade Mohanty eds., 1997) xxviii [hereinafter FEMINIST GENEALOGIES].

¹² Millennium Declaration, *supra* note 2, at 19.

¹³ *Id.* at 25.

¹⁴ See PHILIP ALSTON, A HUMAN RIGHTS PERSPECTIVE ON THE MILLENNIUM DEVELOPMENT GOALS 27, MILLENNIUM PROJECT TASK FORCE ON POVERTY AND ECONOMIC DEVELOPMENT (2004), available at <http://www.ohchr.org/english/issues/millennium-development/docs/alston.doc> [hereinafter A Human Rights Perspective on the MDGs].

and hunger, (2) achieving universal primary education, (3) promoting gender equality and empowering women, (4) reducing child mortality, (5) improving maternal health, (6) reversing the HIV/AIDS pandemic, (7) ensuring environmental sustainability, and (8) building global partnerships for development.¹⁵ The first seven goals are time-bound and related to the overarching objective of halving poverty by the year 2015.¹⁶ The eighth goal of promoting partnerships between rich and poor countries is not time bound; rather, it is framed as a necessary requirement for achieving the other goals.¹⁷ Each goal is accompanied by specific “targets,” intended to guide the formulation of economic policies to achieve each goal.¹⁸ Rounding out the MDG framework is a set of forty-eight “indicators” that provide benchmarks for measuring progress toward each target.¹⁹

While the organization of the MDGs into overarching goals, narrower policy targets, and measurable indicators is useful for policy makers concerned with quantifying progress, human rights advocates have criticized the framework as arbitrary and under-inclusive.²⁰ Of particular concern to human rights advocates who focus on women’s rights is the segregation of women’s development issues into MDG 3: the goal of gender equality and women’s empowerment. The policy target for MDG 3 is limited to improving girls’ and women’s access to education and excludes other areas essential to women’s empowerment, such as women’s access to safe and fairly remunerated employment, freedom from domestic violence, management of local resources, and equal protection under the law.²¹ Some human rights advocates have also criticized the MDGs for framing the goals as aspirations rather than as rights, since each goal has counterparts in provisions of widely-accepted human rights treaties.²²

¹⁵ See Road Map, *supra* note 5 at 55-58.

¹⁶ See Diana Wagner, *Background to Development of the MDGs 1*, University of Iowa Center for International Finance and Development (2000), available at <http://www.uiowa.edu/ifdebook/faq/MDG.shtml>.

¹⁷ *Id.*

¹⁸ For example, the target for MDG 3 (gender equality and women’s empowerment) is the time-bound objective of eliminating gender inequality in primary and secondary education by 2005, and in all levels of education by 2015. Other goals have more than one target. MDG 8 (partnerships for development) has seven policy targets, ranging from the development of a rules-based and non-discriminatory trading system to developed countries’ cancellation of all bilateral debt owed to them by the forty-nine least developed countries (“LDCs”). See Road Map, *supra* note 5 at 3, 55-58.

¹⁹ For instance, progress toward the education policy target for MDG 3 (gender equality and women’s empowerment) is measured by four indicators: the ratio of girls to boys in all levels of education, the ratio of literate women to men ages fifteen through twenty-four, the percentage of women in non-agricultural wage employment, and the number of women holding seats in national parliaments. See *id.* at 56.

²⁰ See Hayes, *supra* note 9, at 67-78.

²¹ *Id.* at 25.

²² For example, the right to enjoy an adequate standard of living is enshrined in Article 11 of the International Covenant on Economic, Social, and Cultural Rights. See International Covenant on Economic, Social and Cultural Rights [ICESCR] art. 11 adopted Dec. 16, 1966, entered into force Jan. 3, 1976, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (Dec. 16, 1966). As of October 11, 2007 the ICESCR had 157 States Parties. See UNHCHR ICESCR Ratification and Reservations, <http://www.ohchr.org/english/bodies/ratification/3.htm> (last visited Oct. 26, 2007). See generally

The primacy of economic development theory in formulating the Goals and establishing benchmarks for monitoring them is not surprising, as international financial institutions including the International Monetary Fund (“IMF”), World Bank, and Organization for Economic Cooperation and Development (“OECD”) collaborated to produce the final version of the Goals.²³ These organizations’ mandates do not posit poverty as a human rights issue,²⁴ but as an economic development issue to be addressed through fiscal interventions such as conditional aid, market deregulation, and foreign direct investment. International Financial Institutions (“IFIs”) are currently in the process of examining whether human rights should play an explicit role in their development policies.²⁵ Amazingly, the World Bank and IMF have yet to acknowledge that the projects they plan, underwrite, and implement in such fields as economic development, food production, healthcare, and education involve human rights obligations, even though most of the states which comprise these organizations have undertaken minimum core obligations to provide a decent standard of living, adequate food, clean water, accessible healthcare, and universal basic education vis-à-vis their ratification of various human rights treaties.²⁶ The dominant sentiment of the development establishment is summed up by the International Finance Corporation’s (“IFC”)²⁷ fact sheet on human rights: corporate human rights policies are not binding, but help clients create value.²⁸

Many groups within the human rights movement have vehemently criticized the policies of IFIs for promoting global disparities in wealth and for entrenching

UNHCHR Ratification Status, <http://www.ohchr.org/english/countries/ratification/11.htm> [hereinafter Ratification Status Website] (last visited Aug 26, 2007).

²³ See Road Map, *supra* note 5.

²⁴ See World Bank, Frequently Asked Questions, Topic Human Rights, <http://www.worldbank.org/> (last visited Oct. 26, 2007). The website states that:

[a]lthough its policies, programs and projects have never been explicitly or deliberately aimed towards the realization of human rights, the Bank contributes to the promotion of human rights in different areas, e.g., improving poor people's access to health, education, food and water; promoting the participation of indigenous peoples in decision-making and the accountability of governments to their citizens; supporting justice reforms, fighting corruption and increasing transparency of governments.

²⁵ See Rachel Kyte, *Human Rights, IFC, and the Private Sector*, International Finance Corporation HandBook Presentation (2005), available at [http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/Human+Rights+Presentation/\\$FILE/Human+Rights+Presentation+-+02-14-05.pdf](http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/Human+Rights+Presentation/$FILE/Human+Rights+Presentation+-+02-14-05.pdf).

²⁶ See U.N. HIGH COMM. ON HUMAN RIGHTS, ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: HANDBOOK FOR NATIONAL HUMAN RIGHTS INSTITUTIONS at 17, U.N. Sales No. E.04.XIV.8 (2005) [hereinafter UNHCHR HANDBOOK].

²⁷ The International Finance Corporation [IFC] is the private sector arm of the World Bank Group. See International Finance Corporation, <http://www.ifc.org/about> (last visited Aug. 26, 2007).

²⁸ See International Finance Corporation, *Fact Sheet on Human Rights*, [http://www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/HumanRights1/\\$FILE/HUMAN+RIGHTS+FACT+SHEET.pdf](http://www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/HumanRights1/$FILE/HUMAN+RIGHTS+FACT+SHEET.pdf). To the IFC’s credit, the fact sheet frankly acknowledges that a main barrier to integrating human rights law into development policy is that such an approach opens the organization’s projects to legal scrutiny for compliance with human rights standards.

rather than alleviating poverty.²⁹ For example, Jubilee South, a grassroots coalition of faith-based NGOs organized in the Global South, finds that IFI development policy “enshrines economic prescriptions that are standard debt conditionalities,³⁰ including privatization, investment liberalization, promotion of free trade, and the marketization of land and resources. These are the same prescriptions that have ran [sic] the economies of the South to the ground.”³¹ Human rights activists who focus on women’s rights are among the most outspoken critics of IFI development policy.³² One such activist describes the prevailing development system controlled by the IMF, World Bank, and World Trade Organization (“WTO”) as a “disabling environment” for the realization of ESC rights.³³ Another activist laments that “the MDGs do nothing to address the systemic inequities of the Washington Consensus’ macro-economic policy framework.”³⁴ To the extent that the MDGs reflect the dominant macro-economic system without reforming it, they can at most amount to “crumbs that trickle down from market-driven, profit-oriented policies.”³⁵

Frustrated by the sense that Western finance institutions had co-opted the Goals, many human rights advocates have retreated from the MDG project.³⁶ This Note contends, however, that the stakes are much too high for human rights advocates to miss the opportunity to engage the development establishment in devising rights-based strategies for eradicating extreme poverty.³⁷ The statistics are staggering: nearly one half of the world’s six billion inhabitants live on less than two dollars per day, and are thus “poor” by global development standards.³⁸ Of these individuals, over 1.5 billion live in “absolute poverty,” defined as living

²⁹ See A Human Rights Perspective on the MDGs, *supra* note 14, at 18-29.

³⁰ Conditionality was a principal feature of structural adjustment programs (“SAPs”) led by the World Bank and the IMF during the 1980s and 1990s. SAPs demanded that poor countries accept conditions on development loans that required decreased social spending, often resulting in the elimination of such critical services as education, healthcare, and sanitation. See JEFFREY SACHS, *THE END OF POVERTY, ECONOMIC POSSIBILITIES FOR OUR TIME 20* (Penguin Group 2005).

³¹ See Jubilee South, *The Subversion of Development in Monterrey*, JUBILEE SOUTH, Mar. 19, 2002, <http://www.jubileesouth.org/news/EpEyVkJZkyZjaqJLuY.shtml>.

³² See Robert Johnson, *Not a Sufficient Condition*, in *GENDER AND THE MILLENNIUM DEVELOPMENT GOALS* 56-66, (Caroline Sweetman ed., 2005 [hereinafter Johnson]).

³³ Gemma Adaba, *A View From Labor*, in *SEEKING ACCOUNTABILITY ON WOMEN’S HUMAN RIGHTS: WOMEN DEBATE THE MILLENNIUM DEVELOPMENT GOALS* 31 (2004), available at http://www.wicej.addr.com/mdg/SEC_05.pdf. Adaba is the International Confederation of Free Trade Union’s (“ICFTU”) representative to the United Nations.

³⁴ June Zeitlin, *Equity, Equality, and Empowerment at the Core: Linking the MDGs*, in *SEEKING ACCOUNTABILITY ON WOMEN’S HUMAN RIGHTS: WOMEN DEBATE THE MILLENNIUM DEVELOPMENT GOALS* 35 (2004), available at <http://www.wicej.addr.com/mdg/INTRO.pdf>.

³⁵ See Adaba, *supra* note 33, at 32.

³⁶ See Carol Barton, *Introduction*, *SEEKING ACCOUNTABILITY ON WOMEN’S HUMAN RIGHTS: WOMEN DEBATE THE MILLENNIUM DEVELOPMENT GOALS* 3 (2004), available at <http://www.wicej.addr.com/mdg/INTRO.pdf>.

³⁷ See A Human Rights Perspective on the MDGs, *supra* note 14.

³⁸ World Revolution, *State of the World: Brief Introduction to Global Issues*, <http://www.worldrevolution.org/projects/globalissuesoverview/overview2/BriefOverview.htm> (last visited Aug. 28, 2007).

on less than one dollar per day.³⁹ Poverty, however, is more than the lack of income.⁴⁰ It encompasses the deprivation of recognized human rights such as the right to food, health, shelter, and fair-wage employment,⁴¹ as the generalized right to live one's life in dignity.⁴² Furthermore, global poverty is a gender equality issue, as women comprise seventy percent of those living in absolute poverty.⁴³ Global poverty is also an anti-racism issue, as poverty overwhelmingly affects individuals and communities of color. Illustrative of this point is the racialized geography of poverty. While absolute poverty is non-existent in the U.S. and Western Europe, and is decreasing in India and China,⁴⁴ it is accelerating throughout sub-Saharan Africa—the “epicenter” of global poverty.⁴⁵

The inevitable conclusion is that the current approach to global poverty eradication is failing on several fronts. On the political front, development cooperation between rich and poor countries is dastardly. Rich countries' direct financial aid to poor countries, known as official development assistance (“ODA”), is far below the target of 0.7 percent of Gross National Product (“GNP”) to which most rich countries committed themselves at the Financing for Development Conference in 2002 and which economists say is necessary to achieve the Goals.⁴⁶ Moreover, ODA to sub-Saharan Africa lags behind ODA to other regions, even though African countries are most in need of development assistance.⁴⁷ On the programmatic front, the anti-poverty elite tend to compete rather than collaborate to find the “silver bullet” for eliminating extreme poverty.⁴⁸ Development

³⁹ See SACHS, *supra* note 30.

⁴⁰ See The Secretary-General, *Observance of the International Day for the Eradication of Poverty*, ¶ 7, G.A. Doc. A/61/150, U.N. Doc. A/61/308 (Sept. 5, 2005).

⁴¹ These rights are enumerated in articles 11 and 12 of the ICESCR, *supra* note 22. The ICESCR has been signed by 156 countries, of which 149 have ratified or acceded to the treaty and are therefore State Parties bound to its provisions. For a summary of ratification status, see OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RIGHTS, STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES, (June 9, 2004) available at <http://www.unhcr.ch/pdf/report.pdf>.

⁴² See generally ICESCR, *supra* note 22. See also Craig Scott, *Reaching Beyond (Without Abandoning) the Category of “Economic, Social, and Cultural Rights,”* 21 HUM. RTS. Q. 633-660 (1999) [hereinafter Craig Scott 1999].

⁴³ World Revolution, *supra* note 38.

⁴⁴ See SACHS, *supra* note 30, at Chapter 1: *A Global Family Portrait*.

⁴⁵ See Evan Smith, *The End of Poverty*, YALE ECON. REV. (2005), available at <http://www.yaleeconomicreview.com/issues/summer2006/sachs.php>.

⁴⁶ See RONALD LABONTE, TED SCRECKER, DAVID SANDERS, & WILMA MEEUS, FATAL INDIFFERENCE: THE G8, AFRICA, AND GLOBAL HEALTH 324-25 (2004).

⁴⁷ See Nina Munk, *Jeffrey Sachs's \$200 Billion Dream*, VANITY FAIR, July 2007, <http://www.vanityfair.com/politics/features/2007/07/sachs200707>. Sachs laments that many critics of international development attempt to justify rich countries' inadequate levels of ODA by generalizing all African leaders as corrupt and incapable of putting additional aid to legitimate use.

⁴⁸ There are notable exceptions to this generalization. Mary Robinson, former president of Ireland and U.N. High Comm’n for Human Rights from 1997-2002, helped to found Realizing Rights: The Ethical Globalization Initiative, which promotes a human rights approach to international trade and development. See Realizing Rights <http://www.realizingrights.org> (then follow “About Us” link). Robinson lectures at notable conferences around the world to bring attention to poverty and development as human rights issues. See, e.g., <http://www.realizingrights.org/?option=content&task=view&id=48>.

economists approach poverty reduction as a matter of trade, aid, and fiscal reform policies. Human rights lawyers approach poverty as a legal determination of governments' obligations to protect ESC rights, and claimants' strategies to vindicate those rights. Both groups fail to take advantage of opportunities to dialogue with the formidable coalition of civil society organizations that supports the MDGs through political activism, media campaigns, and private donations.⁴⁹ Each of these actors—governments of rich and poor countries, development economists, human rights activists, and civil society organizations—brings a valuable perspective and organizational capacity to the anti-poverty movement. However, these disparate actors have failed to meaningfully *collaborate* around their shared objective of eliminating extreme poverty by 2015. Most regrettably, they have also failed to fully enlist individuals from poor countries, the “beneficiaries” of the Goals, in devising, implementing, and monitoring anti-poverty programs.

This Note proposes an alternative approach—described as a feminist human rights law approach—to revitalize the MDG movement by opening a space for vital collaboration among these disparate actors. Such an approach draws on the theories of Third-World Feminism and human rights law to imagine an economic development policy that is responsive to the experiences of impoverished individuals. Before describing what a feminist human rights law approach entails, it is useful to describe the salient elements of both Third World Feminism and human rights law.

PART II: A FEMINIST HUMAN RIGHTS LAW APPROACH TO MDG ADVOCACY

A. Poverty Eradication and Third-World Feminist Praxis

Third-World Feminism presents a paradigm for recognizing impoverished individuals as agents of social change, rather than victims of social injustice.⁵⁰ The movement developed in part as a response to the invisibility of women of color in western feminism and in Third-World decolonization movements,⁵¹ which were preoccupied with males' experiences of racial oppression.⁵² Recognizing their need to work together to ensure their shared survival in the face of societies that

⁴⁹ See CONGO Report, *supra* note 1. Civil society MDG activism is explored in greater detail *infra* page 29.

⁵⁰ See FEMINIST GENEALOGIES, *supra* note 11, at xxvii.

⁵¹ “Women of color” is a politicized term that draws attention to the racial solidarity of black, brown, and yellow women in confrontation with hegemonic values such as whiteness, EuroAmerican-centricity, masculinity, heterosexism, and capitalism. The label is not intended to suggest a singularity of experience of women of color from different geographical locations and social backgrounds, but to foreground their shared struggle against various systems of oppression. Two prominent Third World Feminists from Trinidad and Tobago and India reflect that they “were not born women of color, but became women of color” upon immigrating to the United States, where the “color of their gender mattered.” See generally, *id.*

⁵² See *id.*

silenced them, Third-World women began forming transnational coalitions, particularly in academia, labor movements, and political spheres.⁵³

Proponents of Third-World Feminism recognize that women of color experience multiple forms of social marginalization based on the intersection of such factors as gender, race, class, and sexual orientation. They employ the label “Third World” because it evokes the “inheritance of colonialisms and contemporary neocolonial economic and geopolitical processes.”⁵⁴ Thus, the label foregrounds the economic violence implicit in colonization and what Third-World Feminists have termed the “re-colonization” of impoverished countries vis-à-vis modern forms of capital exploitation.⁵⁵

A principal element of Third-World Feminism is historicizing hegemony to understand how various forms of discrimination have interlocked to oppress women. Armed with this knowledge, Third-World Feminists engage in feminist praxis—the process of collective political action and reflection—to strategically respond to new forms of domination.⁵⁶ This feminist praxis stresses the principles of social responsibility, accountability, engagement, and solidarity in transforming systems that oppress women in different parts of the world. Third-World Feminists seek to apply their praxis to engagement with powerful institutions such as the World Bank, the IMF, and the WTO so that decision making in these bodies becomes more transparent and open to “feminist participation and scrutiny.”⁵⁷ The movement recognizes the importance of sharing individual experiences, and of becoming knowledgeable about the experiences of others, as a counter-hegemonic tactic that allows individuals who appear to have little in common to identify shared sources of oppression and to organize around dismantling them.⁵⁸ The philosophical principles and organizational strategies that underlie Third-World Feminism provide useful tools in bringing together as equals diverse actors—including individuals from different countries who are affected by poverty, civil society organizations, development economists, and human rights activists—to think themselves out of the global poverty crisis.

B. Poverty as a Violation of Economic, Social, and Cultural Rights

Enhanced collaboration among segments of the anti-poverty movement is only one step toward the realization of the MDGs. Also needed is a mechanism for

⁵³ *Id.* at xvi-xviii.

⁵⁴ Chandra Talpade Monanty, *Women Workers and Capitalist Scripts: Ideologies of Domination, Common Interests, and the Politics of Solidarity*, in *FEMINIST GENEALOGIES*, *supra* note 11, at 7.

⁵⁵ *Id.* In contrast, descriptors such as “underdeveloped world” and “developing world” obscure economic inequalities while naturalizing western conceptions of free-market capitalism as the prescription par excellence for progress and social advancement.

⁵⁶ *FEMINIST GENEALOGIES*, *supra* note 11, at xl-xli. Praxis can also be understood as the process by which theory is turned into practice.

⁵⁷ *Id.* at xli.

⁵⁸ *See generally, id.*

making states and third parties accountable for the violations of ESC rights.⁵⁹ Without such a mechanism, the world's poor must rely on the charity of the rich world and good faith budgetary efforts of leaders from least developed countries ("LDC") to reverse the tide of poverty, neither of which provides sufficient protection when health, equality, liberty, and dignity are at stake.

It must be conceded that there exist several critiques of human rights law. One common critique has to do with the traditional attachment of human rights obligations to state actors alone, and not to businesses and individuals. Legal realists have faulted the state-centric human rights regime as weak and unenforceable, providing inadequate incentives for one country to expend political capital to challenge another country for violating the rights of its own citizens.⁶⁰ Critics further argue that a collective action problem undermines international cooperation for the promotion of ESC rights, since rich countries rely on other actors to provide the bulk of resources required for development.⁶¹

Feminist legal theorists fault the state-centric approach to human rights law for its male bias, claiming that international human rights institutions are populated by males who exclude from mainstream debate issues that are outside their experience, particularly rights violations that occur in the private sphere—such as domestic violence, food security, and access to drinking water—which are of critical importance to women heads of households.⁶² These theorists further argue that international human rights law propagates a traditional male perspective that orders the world through dichotomies, such as public versus private, civil and political rights versus ESC rights, and negative rights versus positive rights.⁶³ These dichotomies, it is argued, make possible the myth that states are the only actors who owe duties to individuals, and that ESC rights are purely progressive and do not entail immediate obligations on the part of the state.⁶⁴

These critiques are valuable because they demonstrate common misunderstandings about the legal nature and content of ESC rights. First, all human rights are indivisible and interdependent.⁶⁵ Since the adoption of the Universal Declaration of Human Rights ("UDHR") in 1948 by U.N. Member States, all human rights—including civil, cultural, economic, political, and social rights—have been recognized as one universal, indivisible, and interdependent

⁵⁹ "Third parties" is used here because it encompasses a wider range of actors than does "private parties," and may include such entities as private individuals, employers, transnational corporations, and international finance institutions.

⁶⁰ See Eric Posner, *International Law: A Welfarist Approach*, 73 U. CHI. L. REV. 487, 521 (2006).

⁶¹ *Id.* at 522.

⁶² Rachel Murray, *A Feminist Perspective on Reform of the African Human Rights System*, 1 AFR. HUM. RTS. L.J. 205, 210 (2001). See also Alice Miller & Meghan Faux, *Reconceiving Responses to Private Violence and State Accountability: Using an International Human Rights Framework in the United States*, 1 GEO. J. GENDER & L. 67-68 (1999-2000).

⁶³ Murray, *supra* note 62, at 210-211.

⁶⁴ *Id.*

⁶⁵ See UNHCHR HANDBOOK, *supra* note 26, at vii-viii.

body of rights.⁶⁶ The UDHR is a non-legally binding declaration that was drafted to serve as a precursor to a single human rights covenant. However, human rights became politicized with the onset of the Cold War, and two separate human rights covenants were eventually adopted: the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”). While most countries have now ratified both treaties, ESC rights continue to be marginalized by critics as merely aspirational, rather than enforceable.⁶⁷ Only recently have the most influential human rights NGOs, including Human Right Watch, Amnesty International, and Human Rights First, begun to focus on ESC rights in conjunction with civil and political rights for a more holistic view of human rights law.

Civil society activists and human rights lawyers have expended much effort to overcome the “falsehood of these arbitrary distinctions” that divide ESC rights from civil and political rights.⁶⁸ ESC rights proponents organized world conferences throughout the 1990s to draw attention to the indivisible nature of all human rights. The Vienna Declaration and Program of Action, adopted by government leaders at the World Conference on Human Rights in 1993, acknowledges that “[a]ll human rights are universal, indivisible and interdependent and interrelated.”⁶⁹ This statement speaks to the equal importance of the realization of all categories of rights for human dignity, and not to the equal importance of all legally recognized rights.⁷⁰ A holistic approach to understanding human rights should not collapse, or “mainstream,” all categories of rights—such as gender equality rights, race equality rights, and ESC rights—into an undifferentiated body of human rights. Rather, the retention of separate categories is necessary to counter the social, political, cultural, and economic power relations in the international order that tend to assimilate all human rights into the human rights most important to those with power.⁷¹ Thus, the discursive act of naming ESC rights, women’s human rights, and racial equality rights brings attention to

⁶⁶ See Universal Declaration of Human Rights [UDHR], U.N.G.A. Resolution 217A(III) (Dec 10, 1948). Only fifty-six countries existed in 1948, when the UDHR was adopted by a vote of forty-eight in favor and eight abstentions.

⁶⁷ See Philip Alston & Gerard Quinn, *The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights*, 9 HUMAN RIGHTS Q. 166-188 (1987). Notably, the United States is among the minority of states that has not yet ratified the ICESCR. *Id.*

⁶⁸ See UNHCHR HANDBOOK, *supra* note 26 at viii.

⁶⁹ Vienna Declaration and Programme of Action, U.N. GAOR, World Conf. on Hum. Rts, 48th Sess. 22d plen. mtg, part I, ¶ 5, U.N. Doc. A/Conf.157/24 (1993) [hereinafter Vienna Declaration].

⁷⁰ Craig Scott 1999, *supra* note 42 at 644.

⁷¹ *Id.* at 645. This article refines the prominent human rights theorist’s former conceptualization of categories of rights as equal and different rights as permeable. In this article, Scott rejects legal formalism that allows certain categories of rights, such as ESC rights or minority rights, to “piggyback” on recognized civil and political rights. He advocates looking at each rights violation in perspective to determine the nature of the violation and the various dimensions of the appropriate remedy. See Scott’s original article, a seminal work on the interdependence of all rights: Craig Scott, *The Interdependence and Permeability of Human Rights Norms: Towards a partial Fusion of the International Covenants on Human Rights*, 27 OSGOODE HALL L.J. 789 (1989).

their marginalization by the human rights establishment throughout much of the twentieth century, and the concomitant need to vigorously protect and promote them. Considering the interrelationship among rights also makes for sounder human rights policy. Many courts have recognized, for example, that for the right to life —ICCPR Article 6—to be meaningful, it must encompass other rights necessary for a basic quality of life, such as the right to health care —ICESCR Article 12—, adequate nutrition —ICESCR Article 11—, and education—ICESCR Article 13.⁷²

Several treaties adopted after the ICCPR and ICESCR further supplement the international human rights framework. These treaties recognize the full range and indivisibility of civil, cultural, economic, political, and social rights, and include the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”),⁷³ the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”),⁷⁴ and the Convention on the Rights of the Child (“CRC”).⁷⁵ Each of these treaties addresses the rights of individuals who historically have been denied complete power over their lives: racial, ethnic, and national minorities; women; and children. Furthermore, each of these treaties recognizes that empowerment of these groups entails promotion and protection of their civil, cultural, economic, political, and social rights. CEDAW, for example, demands equality of the sexes in the “political, economic, social, cultural, civil or any other field.”⁷⁶ CEDAW also requires “States Parties” to take concrete measures to ensure women’s equal enjoyment of human rights, including such rights as equal pay for equal work, access to loans and credit, full voting rights, equal opportunity to participate in government and NGOs, property ownership, family planning services, and access to educational opportunities that are free from gender-stereotyped content.⁷⁷

Another myth that must be overcome is the proposition that human rights laws are not binding. In fact, treaty law is regarded as the “law of the land” in many countries, including the United States, and the ratification of human rights treaties imposes definite obligations on governments.⁷⁸ Human rights treaty obligations are further elucidated by states’ obligations under regional human rights

⁷² See UNHCHR HANDBOOK, *supra* note 26, at 4.

⁷³ International Convention on the Elimination of All Forms of Racial Discrimination [CERD] U.N.G.A. Resolution 2106 (XX) (Dec. 21, 1965). The CERD has 173 States Parties. See Ratification Status Website, *supra* note 22, available at <http://www.ohchr.org/english/countries/ratification/11.htm>.

⁷⁴ Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], Dec. 18, 1979, U.N.G.A. Resolution 34/180 (Dec. 18, 1979). CEDAW has 185 States Parties. See Ratification Status Website, *supra* note 22, available at <http://www.ohchr.org/english/countries/ratification/8.htm>.

⁷⁵ Convention on the Rights of the Child [CRC], 1577 U.N.T.S. 3, (Nov. 29, 1989). The CRC has 193 States Parties. The only two countries that have not ratified or acceded to the CRC are the United States and Somalia. See Ratification Status Website, *supra* note 22.

⁷⁶ See CEDAW, *supra* note 74, at art. 1.

⁷⁷ See generally CEDAW, *supra* note 74.

⁷⁸ See Alston & Quinn, *supra* note 67 at 633.

charters and domestic human rights laws. States that claim human rights are impossibly indeterminate do so as a pretext for failing to protect them, as there exists a wide range of guidance within treaty texts themselves, the jurisprudence of treaty committees, and domestic judicial opinions interpreting the treaties.⁷⁹

The ICESCR regime provides a good example of how states' obligations under human rights law are clarified by reference to the treaty text and the interpretations of the committee charged with overseeing the treaty. Each treaty establishes a committee that is empowered to issue General Comments on the interpretation of the treaty and Concluding Observations in response to mandatory periodic reports submitted by "States Parties."⁸⁰ The Committee on Economic, Social, and Cultural Rights is charged with monitoring states' progress in promoting rights recognized by the treaty, which include adequate housing, free education, and social security.⁸¹ These rights are unique in that they cannot be realized by legislation alone, but also entail fiscal policy, budgetary planning, and monitoring on the part of the state. The resource-intensive rights and government intervention envisioned by such a regime has led many governments and scholars to dismiss ESC rights as purely progressive, aspirational, and non-justiciable.⁸²

On its face, however, the ICESCR creates several binding and immediate obligations on States Parties. Many of these obligations are can be derived from Article 2(1), which states:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including legislative measures.⁸³

First, the obligation to "take steps" entails an "obligation of conduct"⁸⁴ requiring a state's immediate and bona fide actions toward realizing ESC rights. Therefore, a state violates the obligation if it has taken no steps toward protecting the ESC right in question, or if it fails to amend a law that constitute a prima facie violation of an enumerated right, such as eviction without due process in the case of the right to decent housing.⁸⁵

Second, the ICESCR imposes an obligation of international cooperation to

⁷⁹ See generally UNHCHR HANDBOOK, *supra* note 26.

⁸⁰ See, e.g., ICESCR art. 16, *supra* note 22. The Committee on Economic, Social, and Cultural Rights was established by ECOSOC Res. 1985/17 to carry out the monitoring functions assigned to the United Nations Economic and Social Council [ECOSOC] under the Covenant.

⁸¹ See ICESCR art. 11, *supra* note 22, on the right to housing, art. 13 on the right to education, and art. 9 on the right to social security.

⁸² UNHCHR HANDBOOK, *supra* note 26, at viii. See also Alston & Quinn, *supra* note 66, at 159.

⁸³ ICESCR art. 2(1), *supra* note 22.

⁸⁴ Alston & Quinn, *supra* note 67, at 166.

⁸⁵ UNHCHR HANDBOOK, *supra* note 26, at 10.

protect ESC rights.⁸⁶ This requirement recognizes that developing states require economic and technical assistance to fulfill their obligations under the treaty. During the negotiation of the treaty text, U.S. representative Eleanor Roosevelt concluded that it is “quite essential for the Article... to indicate the necessity of international co-operation.”⁸⁷ For decades, the obligation of international cooperation remained vague and void of content.⁸⁸ However, it is now accepted that the obligation includes at least two binding requirements: the obligation of developing countries to *receive* and the obligation of richer countries to *provide*. Thus, a state without the resources to fulfill ESC rights violates its obligation by taking an isolationist position and refusing external assistance. On the flip side, a country with adequate resources violates its obligation by providing inadequate financial assistance to poor countries, or by failing to provide any assistance at all.⁸⁹ States that have not ratified the ICESCR may nonetheless be bound by the duty to cooperate through similar cooperation requirements found in other treaties.⁹⁰ Moreover, the duty of cooperation may develop into customary international law through states’ repeated public pledges to provide levels of assistance required to eliminate extreme poverty, as demonstrated by several General Assembly declarations, including the Millennium Declaration.⁹¹

The ICESCR also requires that States Parties take steps to achieve ESC rights to the “maximum of [their] available resources.”⁹² This obligation emphasizes that poor states may not use poverty as an excuse for noncompliance; rather, they must use what resources they have to ensure maximum compliance with the treaty. This obligation entails making budgetary decisions that prioritize treaty obligations over discretionary or frivolous expenditures.⁹³ It also requires the imposition of a level of taxation to raise adequate revenue for providing basic public services.⁹⁴

Finally, Article 2(2) imposes on States Parties the duty to guarantee the exercise of ESC rights without discrimination based on race, sex, political opinion, nationality, or any other status.⁹⁵ Article 3 reiterates that states must “undertake to ensure the equal right of men and women to the enjoyment of all economic, social

⁸⁶ ICESCR art. 2(1), *supra* note 22.

⁸⁷ Alston & Quinn, *supra* note 67, at 189.

⁸⁸ *Id.*

⁸⁹ UNHCHR HANDBOOK, *supra* note 26, at 14.

⁹⁰ *See, e.g.*, CERD preamble and CEDAW preamble. Under the Vienna Convention on the Law of Treaties, a treaty must be interpreted in good faith in light of its overall context, which encompasses the treaty’s preamble, text, and annexes. *See* Vienna Convention on the Law of Treaties art. 31(1), May 23, 1969, 1155 U.N.T.S. 331. Since the requirement of international co-operation is part of the context of the ICESCR, CERD, and CEDAW, one can argue that it attaches to the interpretation of each individual right under the treaty.

⁹¹ *See, e.g.*, A Human Rights Perspective on the MDGs, *supra* note 14. *See also* Observance of the International Day for the Eradication of Poverty, *supra* note 8.

⁹² ICESCR art. 2(1), *supra* note 22.

⁹³ *See* UNHCHR HANDBOOK, *supra* note 26, at 93.

⁹⁴ *Id.*

⁹⁵ ICESCR art. 2(2), *supra* note 22.

and cultural rights” recognized by the treaty.⁹⁶ The anti-discrimination clauses have been interpreted to require states to prevent any third parties from discriminating in a way that infringes upon the exercise of an individual’s or group’s ESC rights. Thus, if a company engaged in discriminatory hiring practices by preferring or promoting male candidates over equally qualified female candidates, both the state and the company would be in violation of Article 2.2. A useful manner for conceptualizing the joint responsibility of state and third party actors for human rights violations is through a “diagonality analysis,” in which power relations are scrutinized to allocate responsibility between private violators and public violators.⁹⁷

General Comments submitted by the Committee For Economic, Social, and Cultural Rights help clarify the content of states’ minimum obligations under the treaty. The Committee has determined that the ICESCR imposes an affirmative obligation on State Parties to *respect* ESC rights by preventing the state and its instrumentalities from directly violating them, to *protect* rights by preventing their violation by non-state actors through legislation and the provision of adequate redress, and to *fulfill* rights by creating a policy environment that is not antagonistic to their realization.⁹⁸ The jurisprudence of both the ICESCR and the CEDAW committees has repeatedly characterized the scope of a state’s obligation with respect to ESC rights as the obligations to respect, protect, and fulfill.⁹⁹ From this triad of obligations arises what is described as a state’s duty of “due diligence,” or the actions that a government must take to ensure that the rights of individuals within its control are not violated by the state itself or by private actors regulated by the state.¹⁰⁰ Thus, while the ICESCR may not obligate the state to directly provide goods and services associated with ESC rights, it nonetheless obligates the state to create an *enabling* environment for the achievement of these rights.¹⁰¹ At a bare minimum, states must prohibit policies that lead to increased ESC rights violations, and prevent private actors from engaging in activities detrimental to ESC rights.¹⁰²

C. The Feminist Human Rights Law Approach

A feminist human rights law approach merges the strengths of both Third-World Feminism and human rights law to yield a democratized framework for MDG activism. Whereas the current approach disfavors scrutiny of the underlying

⁹⁶ *Id.* at art. 3.

⁹⁷ Craig Scott 1999, *supra* note 42, at 646.

⁹⁸ Margaret Satterthwaite, *Intersecting Protections, Migrating Women: Using Human Rights Law to Empower Women Migrant Workers* 19 (2004) (New York University Center for Human Rights and Global Justice, Working Paper).

⁹⁹ *See also* CESCR, *General Recommendation on the Right to Water* (2002).

¹⁰⁰ *See* Miller & Faux, *supra* note 62 at 67.

¹⁰¹ *See* Satterthwaite, *supra* note 98, at 18-19.

¹⁰² *See* UNHCHR HANDBOOK, *supra* note 26. This minimum core obligation forbids States Parties from taking regressive measures. As an illustration, under this obligation a State Party would be required to withdraw any law that amounted to a patent violation of a treaty-based right.

causes of poverty, a feminist human rights law approach seeks to understand the structural inequalities and power relationships existing in the global economic system, countries, communities, and family units which operate to perpetuate poverty. Such an understanding helps ensure that MDG policies neither exacerbate existing inequalities nor make the poor mere instruments of elite economic policy prescriptions. A solid grasp of power relationships also helps identify the various actors complicit in an ESC right violation, thus enhancing accountability for such violations and creating an environment conducive to the achievement of the MDGs.

MDG advocacy animated by a feminist human rights law approach includes several features. First, it requires engagement among ideologically opposed factions of the anti-poverty movement in theorizing methods of development. Many NGOs, feminist organizations, and human rights activists vilify organizations such as the World Bank, IMF, and TNCs, while at the same time recognizing that the policies of these economic powerhouses can make or break the Goals.¹⁰³ On the other hand, lending institutions and large companies often lack transparency and mechanisms for facilitating input from civil society actors, even when the terms of their lending policies, development projects, and foreign direct investment affect the lives of individuals within a local community directly. A feminist human rights law intervention would regularly and publicly bring together representatives from the development establishment, local civil society groups, and human rights advocacy groups for candid dialogue regarding their own strategies, perceived limitations to each other's strategies, and opportunities for collaboration.

Additionally, a feminist human rights law approach requires that rights violations are both understood and responded to through an intersectional analysis that pinpoints the "multiple marginalities"¹⁰⁴ of individuals living in poverty resulting from discrimination based on interrelated aspects of their identity such as sex, gender, race, age, nationality, and religion. An intersectionality analysis would bring to the surface social relationships preventing certain women from fully benefiting from development policies. For example, a woman who is prevented by cultural or religious norms from working outside of the home would not gain economic self-sufficiency if the only higher wage employment opportunities created in her town were in factories. Similarly, a development policy improving women's overall access to educational, employment, or public leadership might not benefit women who are racial minorities. MDG policies based on feminist human rights principles would be sensitive to intersectional oppressions and would devise policies that not only benefit women, but benefit all women equally. In the first example, a feminist human rights law approach might advocate the creation of home-based entrepreneurial opportunities that allow women to gain the economic

¹⁰³ See generally, Hayes, *supra* note 9.

¹⁰⁴ Kimberlé Crenshaw, *Race-ing Justice, En-Gendering Power: Essays on Anita Hill, Clarence Thomas, and the Construction of Social Reality*, in *WHOSE STORY IS IT ANYWAY?: FEMINIST AND ANTIRACIST APPROPRIATIONS OF ANITA HILL* 402 (Toni Morrison ed., 1992).

self-sufficiency required to challenge patriarchal cultural norms. In the second example, such an approach might advocate a policy to ensure race equitable participation of women in the spheres of education, employment, and public life. Besides improving the content of development policy, an intersectional analysis also highlights the interaction of human rights protected under various interrelated treaties.¹⁰⁵ For example, economic violations against racial minority women are cognizable under the ICESCR, CEDAW, and CERD. Recognizing the interaction of treaties bolsters protections for women's human rights and makes rights violations more visible to various advocacy communities.¹⁰⁶

Finally, feminist human rights law advocacy involves an emphasis on state accountability for eliminating poverty and achieving gender equitable development. Improved accountability standards are a necessary prerequisite for achieving the Goals.¹⁰⁷ Adopting the concept of rights-based poverty eradication makes it possible to identify where the responsibility for achieving equitable development ultimately lies. Under a human rights framework, states bear the primary responsibility for ensuring that the rights of citizens are not violated by the government and third parties. Locating gender equality —MDG 3—within a human rights framework, for example, clarifies the responsibility of each state to prevent discrimination against women by public authorities and private actors in spheres such as political participation, employment, property ownership, and parental rights. Also, legal accountability standards have the power to bind IFIs and make them more transparent, since these organizations are composed of individual states that are bound as States Parties to various human rights treaties.¹⁰⁸ Finally, legal accountability standards clarify the obligation of rich countries to deliver adequate financial and technical assistance to poor countries, not as a matter of charity but as a requirement of the law. A reorientation of the MDG campaign would level the playing field by reducing the relative power of states and IFIs in determining the content of development assistance and policy, thus empowering impoverished individuals to claim ownership over the process by which they develop their communities.

PART III: THE MILLENNIUM DEVELOPMENT GOALS AS THE GLOBAL RESPONSE TO POVERTY

The ESC rights lurking in the shadow of the MDGs are not newcomers to the human rights movement. The UDHR lists several economic and social rights as “inalienable” and inherent to the dignity of “all members of the human family.”¹⁰⁹ Among the economic rights enumerated include the rights to adequate food and

¹⁰⁵ See Craig Scott 1999, *supra* note 42, at 655.

¹⁰⁶ *Id.*

¹⁰⁷ See Hayes, *supra* note 9.

¹⁰⁸ See UNHCHR HANDBOOK, *supra* note 26.

¹⁰⁹ See UDHR, *supra* note 66.

housing, to work, to join trade unions, and to receive social security.¹¹⁰ The UNDHR, together with the ICCPR and the ICESCR, comprise what is popularly known as the “International Bill of Rights.”¹¹¹ Though human rights theorists have long recognized that human rights encompass both civil and political rights as well as ESC rights, and no declaration has ever explicitly prioritized one set of rights over the other, ESC rights have been “marginalized for large parts of the 20th century.”¹¹²

The economic rights movement picked up considerable speed in the 1980s. The shift from civil and political rights activism to ESC rights and anti-poverty activism occurred for various reasons. The end of the Cold War enhanced the ability of individuals from rich countries and poor countries to collaborate around initiatives to address poverty, which increasingly accompanied the era of market deregulation, privatization of formerly public services, and unsustainable debt burdens.¹¹³ Also, the UN established the Committee on Economic, Social, and Cultural Rights to monitor states’ compliance with their obligations under the ICESCR. Further raising the profile of ESC rights were the many international civil society conferences organized around the issues of sustainable development and poverty reduction during the 1990s. The first such conference occurred in 1992 at the UN Conference on Environment and Development (the “Rio Conference”) and its formulation of “Agenda 21,” a framework for global sustainable development.¹¹⁴ Much activism took place with regard to implementing Agenda 21 during the 1990s.

Civil society advocates concerned with women’s issues also organized during the 1990s to articulate a comprehensive vision of women’s empowerment at the Fourth World Conference on Women. As recognized by the 189 governments that unanimously adopted the Beijing Platform for Action (“Beijing Platform”) in 1995:

Absolute poverty and the feminization of poverty, unemployment, the increasing fragility of the environment, continued violence against women and the widespread exclusion of half of humanity from institutions of power and governance underscore the need to continue the search for development, peace and security and for ways of assuring people-centered sustainable development. The participation and leadership of the half of humanity that is female is essential to the success of that search.¹¹⁵

¹¹⁰ *Id.*

¹¹¹ See AMNESTY INTERNATIONAL, *Human Rights for Human Dignity: A Primer on Economic, Social, and Cultural Rights* 13 (2005), <http://web.amnesty.org/library/print/ENGPOL340092005>.

¹¹² *Id.* The marginalization was related to Cold War stratification of civil and economic rights, the latter becoming associated with socialist countries.

¹¹³ *Id.* at 18

¹¹⁴ See Alan Hecht, *Building Blocks*, A.L.I. 312 (2005).

¹¹⁵ Paragraph 17 of the Beijing Platform for Action was adopted at the Fourth World Conference of Women in September 2000. See U.N. Dep’t of Econ. and Soc. Affairs., Div. for the Advancement of Women, The United Nations Fourth World Conference on Women, Beijing Platform for Action, ¶ 17, <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm#framework> (last visited Sept. 30,

By adopting the Beijing Platform, characterized as “soft law” by international legal standards because it is not enforceable on its terms, governments nonetheless acknowledged the link between women’s exclusion from positions of power and development issues such as rampant poverty, environmental degradation, and war. The Beijing Platform spells out twelve “critical areas of concern” to the women’s movement and, much like the MDGs, articulates specific indicators toward measuring progress. The twelve critical areas of concern include poverty, education, health, violence and human trafficking, armed conflict, global economic reform, power and decision making, national mechanisms for monitoring women’s advancement, human rights, gender bias in the media, environment, and the girl-child.¹¹⁶

As the international community completed its five-year review of the Beijing Platform for Action (“Beijing + 5”) and prepared for its ten-year review of the Rio Conference (“Rio + 10”), the Millennium Declaration was adopted, squarely putting gender equitable development at the center of the UN agenda. Anti-poverty activism during the early years of the millennium seemed to evidence a trend toward enhanced recognition of ESC rights: the UN-sponsored conference on Financing for Development occurred in Monterrey, Mexico in 2002; Rio + 10 and the “Johannesburg Plan of Action” occurred in 2003; and the five year review of the Millennium Development Goals, known as MDG + 5, occurred in New York City in 2005.

The victory for activists focused on the promotion of ESC rights has been truncated by the formulation of the MDGs as the dominant framework for implementing the Millennium Declaration. The Goals are designed to measure a country’s bottom-line economic progress, rather than the equitable progress of differentially positioned individuals within each country. This framework is not representative of the commitments undertaken by government leaders who signed onto the Millennium Declaration, who acknowledged the “equality of women and men” and the importance of promoting gender equality to achieve “development that is truly sustainable.”¹¹⁷

Pursuant to the Millennium Declaration, the UN Secretariat issued a fifty-two page “Road Map” to give content to the commitments agreed to by governments at the Millennium Summit.¹¹⁸ The Road Map, like the Millennium Declaration, is divided into eight substantive policy areas and covers a spectrum of human rights concerns: peace and security, poverty eradication, environmental sustainability, human rights and democracy, response to humanitarian emergencies, special needs of Africa, and UN reform.¹¹⁹ Moreover, the Millennium Declaration contains

2007).

¹¹⁶ *Id.*, ¶ 44.

¹¹⁷ Millennium Declaration, *supra* note 2.

¹¹⁸ Road Map, *supra* note 5.

¹¹⁹ *Id.*

twelve references to human rights and specifically situates global development in a rights-based framework by referencing the UDHR and CEDAW.¹²⁰ The Millennium Declaration's conceptualization of development within a matrix of mutually reinforcing civil, political, economic, and social rights was considered progressive by the human rights community.¹²¹ Progressive also was the declaration's acknowledgement of the centrality of women's empowerment to "combat poverty, hunger and disease and to stimulate development that is truly sustainable."¹²²

For human rights lawyers, the Millennium Declaration's framing of economic development as a human rights issue was a political breakthrough, enhancing the viability of legal strategies by which international actors could be made accountable for improving the economic and social welfare of the world's poor. The Declaration's inclusion of civil and political rights principles—such as political participation, non-discrimination, and freedom of information—alongside economic and social rights principles—such as freedom from poverty, hunger, ignorance, and disease—suggests that the indivisibility of all human rights would underpin development strategies in the new millennium.¹²³ But the MDGs, introduced as a three-page annex to the Road Map, have overshadowed the rights-based Millennium Declaration to become the dominant paradigm for global poverty reduction.¹²⁴

While the MDG framework does attempt to measure development progress in certain areas, it ignores the majority of issues the women's movement has prioritized under the rubric of gender empowerment.¹²⁵ Further, the MDG's use of targets and indicators to measure development makes women's comparative progress toward each goal invisible. The methodology of measuring progress is necessary, but not sufficient to ensure gender equitable development:

In one way, the emergence of the MDGs marks the success of global women's movements and broader civil society, which had made the creation of time-bound targets and indicators a key demand for measuring progress on development and rights commitments. The frustration for many has been the concern that the MDGs have met the letter of civil society demands for accountability, but not the spirit. That is, they seek to solve critical problems with measurable targets, without adequately

¹²⁰ *Id.*

¹²¹ See generally Millennium Declaration, *supra* note 2. The bifurcated development of civil and political human rights on the one hand and ESC human rights on the other is ironic, since the first major pronouncement on human rights—the UDHR—enshrines both types of rights, without distinction. See *infra* pp. 17-19 for a more in-depth discussion explaining the branched development of the two sets of rights during the last half of the 20th century.

¹²² *Id.* ¶ 20.

¹²³ *Id.* at Part III (Development and poverty eradication) and Part V (Human rights, democracy and good governance).

¹²⁴ *Id.* at 55-58.

¹²⁵ See Hayes, *supra* note 9.

addressing the roots of these problems.¹²⁶

Despite their conceptual shortcomings, the MDGs offer the most ambitious anti-poverty and development agenda to date. The MDGs have become the “central focus of the UN system”¹²⁷ and the organizing principle of its development activities. The goals have galvanized politicians, development agencies, massive coalitions of grassroots anti-poverty activists, celebrities, and the entire UN system around an economic agenda that reduces complex issues of global development to a clearly articulated, results-oriented plan of action.

Evidence of the popularity of the MDGs abounds. Besides the universal support of governments,¹²⁸ the MDGs are supported by large segments of the NGO community. In May 2000, prior to the Millennium Summit, 1,350 representatives from around the world convened at the Millennium NGO Forum to discuss their vision for the Millennium Declaration.¹²⁹ Over 1,500 civil society representatives attended the Millennium Assembly that September, and NGOs established the “MDG +5 Network” to express their top-priority concerns at the General Assembly’s five year review of the MDGs in September 2005.¹³⁰

Faith-based organizations (“FBOs”), long time advocates of economic justice and outreach to the poor, have also been strong supporters of the MDGs and related debt cancellation campaigns.¹³¹ Sophisticated advocacy groups specifically designed to promote the MDGs have sprung up around the world. The UN Millennium Campaign, a group founded by the UN to mobilize citizens to hold their governments accountable for achieving the MDGs, is prominent among these organizations.¹³² The Millennium Campaign’s “Only With Your Voice” and “Stand Up Against Global Poverty” initiatives have garnered significant media attention, both on television and on the Internet. Among the group’s spokespersons are actors such as Michael Douglas and Alyssa Milano, evangelical leader Pat Robertson, and singer Shakira.¹³³ The Millennium Campaign has partnered with Global Call to Action Against Poverty (“G-CAP”), a similar organization with branches in 100 countries, to promote the white wrist band as the symbol of global

¹²⁶ Barton, *supra* note 36.

¹²⁷ *Id.* at 3. See also Surakiart Sathirathai, *Renewing our Global Values: A Multilateralism for Peace, Prosperity and Freedom*, 19 HARV. HUM. RTS. J. 15 (2006) (characterizing the U.N. MDGs as the “framework for poverty eradication”).

¹²⁸ 189 countries have now signed the Millennium Declaration. See Millennium Declaration, *supra* note 2.

¹²⁹ Congo Report, *supra* note 1.

¹³⁰ *Id.*

¹³¹ See, e.g. Jubilee Debt Campaign, <http://www.jubileedebtcampaign.org.uk/> (last visited Sept. 30, 2007).

¹³² See generally Millennium Campaign, <http://www.millenniumcampaign.org/site/pp.asp?c=grKVL2NLE&b=138312> (last visited Nov. 3, 2006).

¹³³ Millennium Campaign Who’s Doing What, <http://www.millenniumcampaign.org/site/pp.asp?c=grKVL2NLE&b=496093> (last visited Sept. 30, 2007).

solidarity against poverty.¹³⁴

Advocacy around the MDGs is diffuse, taking place in the offices of the World Bank, national development ministries, feminist development organizations, churches, UN agencies, corporate boardrooms, and everywhere in between. However, anti-poverty activists including policy makers, NGOs, and UN country teams charged with monitoring MDG progress have too often ignored and excluded women in their development strategies. Feminist human rights law advocates can bring to bear their specialized knowledge of non-discrimination and equality paradigms, monitoring processes, legislative reform, and strategic litigation to expand the limited conception of development rights as embodied by the MDGs, thus bringing them in line with the human rights principles expressed in the Millennium Declaration, the Road Map, and the broader women's rights movement. Through enhancing collaboration among all segments of the anti-poverty movement, a more coherent strategy for "engendering"¹³⁵ the MDGs can be identified, helping to ensure that the commitments made by world leaders to men, women, and children living in poverty amount to more than empty promises.

PART IV: THE GLOBAL ECONOMIC TERRAIN AND THE FEMINIZATION OF POVERTY

While the poverty eradication movement has generated unprecedented interest from intergovernmental, governmental, and civil society sectors, market liberalization and privatization of public services are operating to further entrench extreme poverty.¹³⁶ The contradiction of accelerated activism and increasing levels of poverty is especially pronounced for women around the world. While overall gains have occurred in relation to some social indicators, such as women's access to education and to the political domain, women's levels of extreme poverty, remunerated employment, and security have not shown similar improvement.¹³⁷

Recent UNIFEM research concludes that global capital flows tend to be concentrated in male dominated "hard" sectors such as infrastructure building and industry.¹³⁸ Other reports demonstrate that when development investment does create jobs for women, these jobs are often in the export-oriented light industry sector, notorious for its low wages, volatility, frequent relocation to areas with cheaper labor, lack of opportunities to learn new skills and lack of upward

¹³⁴ See generally Millennium Campaign, *supra* note 132. The white wristbands have become ubiquitous in religious communities and in schools. The author has observed individuals wearing white wristbands on New York City subways, public school classrooms, and streets.

¹³⁵ The author intends the concept of "engendering" to signify an analysis that considers how a policy differentially affects women and men, here with respect to the MDGs.

¹³⁶ See Thandika Mkandawire, *Social Development Research at UNRISD, 2005-2009*, United Nations Research Institute on Social Development, <http://www.unrisd.org> (last visited Sept. 30, 2007).

¹³⁷ *Id.*

¹³⁸ U.N. Dev. Fund (UNDP), *En Route to Equality: A Gender Review of National MDG Reports 50* (May 2005), <http://www.undp.org.cn/downloads/gender/enroutetoequality.pdf> [hereinafter UNDP 2005 Report].

mobility.¹³⁹ Furthermore, tariff reductions that accompany WTO negotiations have led to decreased taxation and social spending that, coupled with rapid privatization of social services, has decimated social welfare services in most countries. Women disproportionately bear the burden of healthcare crunches as they often complete unremunerated work as caregivers while foregoing employment and education opportunities outside the home.¹⁴⁰

Contextualizing women's poverty requires a broader understanding of the social and economic forces that interact to create a gendered geography of economic deprivation. Preliminary questions include: who are the poor, where do they live, and how have changes in the structure of the global economy contributed to poverty?¹⁴¹ Development economists generally divide poverty into three categories: extreme poverty, moderate poverty, and relative poverty.¹⁴² Individuals living in extreme—or absolute—poverty do not have regular access to the basic necessities of survival, such as adequate food, clean drinking water, shelter, health care, or education.¹⁴³ An estimated one-sixth of the world's population lives in extreme poverty.¹⁴⁴ The World Bank defines extreme poverty as living on less than one dollar per day. Individuals living in moderate poverty can meet their "basic needs... but just barely."¹⁴⁵ Those living in moderate poverty exist with between one dollar and two dollars per day. Unlike extreme and moderate poverty, relative poverty is defined in relation to national income and applies to those who live below a given country's poverty line.¹⁴⁶ It is important to note that extreme poverty exists only in developing countries and not in developed countries such as the United States or those in Western Europe. In developed countries, poverty is characterized as relative poverty.¹⁴⁷ These distinctions are necessary to understand the dynamics of the MDGs, which aim to alleviate extreme poverty and other gross deprivations in developing countries, in part through partnerships with rich countries.¹⁴⁸

The above statistics obscure the geographical disparities underlying modern-day poverty, which disproportionately affects certain countries and regions. Poverty in sub-Saharan Africa is most pronounced. Over one-half of individuals there live in extreme poverty, and this number has risen in the past decade.¹⁴⁹ Thirty-one percent of people living in South Asia experience extreme poverty, as

¹³⁹ See United Nations Research Institute for Social Development (UNRISD), *Gender Equality: Striving for Justice in an Unequal World* 8-9 (2005).

¹⁴⁰ UNDP 2005 Report, *supra* note 138, at 56.

¹⁴¹ SACHS *supra* note 30, at 20.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 19.

¹⁴⁵ *Id.* at 20.

¹⁴⁶ SACHS, *supra* note 30, at 20.

¹⁴⁷ *Id.*

¹⁴⁸ See, e.g. Millennium Declaration, *supra* note 2, at 4-6.

¹⁴⁹ SACHS, *supra* note 30, at 21.

do fifteen percent of those living in East Asia. Ten percent of Latin Americans and four percent of Eastern Europeans also live in extreme poverty.¹⁵⁰ Global disparities in wealth have become more pronounced in the last twenty years, sometimes referred to as the “structural adjustment era.”¹⁵¹ This era has become the rallying point for activists who claim that the policies of the IMF, World Bank, and WTO have failed the poor, enriching international financiers and TNCs at the expense of already impoverished societies. Economists describe four principal features of the structural adjustment era: decreased spending on government programs, privatization of state-owned industries, liberalization of trade policies, and emphasis on democratic governance.¹⁵² These trends deflect responsibility for global poverty from rich countries to poor countries, which are forced to address national poverty crises through “one size fits all” fiscal policy reforms.¹⁵³ While some economists hail the MDG paradigm as a departure from the structural adjustment era, in which economic development was conceived without reference to social welfare policy, some critics claim that the MDGs do not go far enough to repudiate the prior development agenda, and therefore risk perpetuating its weaknesses.¹⁵⁴

Whatever the precise causation of current disparities in global wealth, it remains that one-sixth of the global population is mired in poverty so extreme that individuals cannot meet their daily needs, much less invest in education, health care, technology, and other innovations that would improve their prospects of becoming upwardly mobile. The MDGs represent the international community’s attempt to deal with these devastating statistics. Perhaps because of the gravity of the challenges posed by extreme poverty, the MDGs are framed as ambitious and results-oriented and focus on a country’s ability to decrease its overall levels of poverty, rather than ensuring that each individual in a society has the right to equally reap the benefits of development as required under international human rights law.

PART V: FEMINIST HUMAN RIGHTS CRITIQUE OF THE MDGS

From a legal perspective, the MDG framework adopted to address the poverty crisis is insufficient for several reasons. First, eschewing the conception of rights makes it difficult to identify where responsibility for achieving equitable development ultimately lies. Under a human rights framework, however, it becomes clear that states bear the primary responsibility for ensuring that the rights of citizens are not violated by the government and private actors. Another insufficiency is that divorcing MDGs from human rights standards deprives them

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 81.

¹⁵² *Id.*

¹⁵³ SACHS, *supra* note 30, at 81.

¹⁵⁴ Adaba, *supra* note 33, at 31-32.

of substantial normative content. Human rights treaties and reports from treaty monitoring committees provide valuable insight into the scope of states' obligations in relation to development issues. CEDAW, for example, gives context to MDG 3 by stipulating obligations such as equal educational opportunities for males and females,¹⁵⁵ the elimination of employment discrimination through such measures as prohibiting dismissal due to pregnancy,¹⁵⁶ the introduction of maternity leave benefits,¹⁵⁷ and the option of adopting temporary affirmative action policies to achieve de facto equality between women and men.¹⁵⁸

Finally, the MDGs do not address the structural inequalities that underlie global poverty, and ignore the fact that development strategies designed to increase national wealth may not equally benefit individuals within a society. A feminist development agency describes the nature of the problem:

Over the past decade, the neo-liberal economic model and market-driven policies—particularly trade and finance rules and the deregulation and privatization of public goods and services—have exacerbated poverty, food insecurity and economic exclusion of the majority, while increasing the wealth and over consumption of the privileged few. Gender-blind macroeconomic and national policies keep women concentrated in the informal sector without job or safety protections and in the lowest-paying, most hazardous jobs in the formal wage economy, while rendering their household labor invisible. Women still earn less than men for the same work and remain drastically under-represented in decision-making.¹⁵⁹

While the MDGs envision bringing poor countries into the fold of development through debt reduction and accelerated foreign investment, there is no guarantee that private sector investment will generate decent employment required to escape poverty. When employment is generated, there is no MDG policy urging that it be made stable, regulated, or available to women and men on an equal basis. To the dismay of activists focused on labor rights and women's rights, neither MDG 1 (poverty reduction) nor MDG 3 (gender equality and women's empowerment) includes a policy target or indicator related to the creation of employment for women. This is troubling, since experts recognize decent employment as one of the surest methods of reducing poverty, promoting equality, and improving human rights.¹⁶⁰ To the extent that the MDGs fail to create employment opportunities with substantially equal access for men and women, the

¹⁵⁵ CEDAW, *supra* note 74, at art. 10.

¹⁵⁶ *Id.* at art. 11(2)(a).

¹⁵⁷ *Id.* at art. 11(2)(b).

¹⁵⁸ *Id.* at art. 4(1).

¹⁵⁹ Women's Environment and Development Organization, Women's Empowerment, Gender Equality, and the Millennium Development Goals: A WEDO Information and Action Guide 5 (2003), <http://www.wedo.org/library.aspx?ResourceID=5> [hereinafter WEDO Information and Action Guide].

¹⁶⁰ See MARTHA CHEN ET AL., PROGRESS OF THE WORLD'S WOMEN 2005: WOMEN, WORK, & POVERTY 89 (2005).

ambitious development framework could entrench economic policies that fail the poor and exclude women.¹⁶¹

PART V: FEMINIST PRAXIS FOR ENGENDERING THE MDGs

There already exist several examples of collaboration among segments of the anti-poverty movement to promote a rights-based approach to MDG advocacy. In particular, the UN machinery has mobilized to advocate for increased attention to structural gender inequalities in implementing development strategies and monitoring the MDGs. Such an approach, however, is the exception to the norm. Recipient countries, donor countries, international finance agencies, TNCs, and advocacy groups have yet to “buy in” to strategies that put women at the center of the MDG process. Creative methods for bridging theory and practice are needed to ensure that a focus on gender equality permeates the MDGs. As noted in a recent UN research report, “[i]f gender justice is not to slip down the [economic development] agenda yet again, women’s movements will require new alliances with both governmental institutions and social movements.”¹⁶² The following analysis considers avenues for building such alliances through diverse modes of feminist human rights law advocacy.

A. Amplifying Partnerships With Actors Throughout the UN System

Perhaps the most impressive effort to integrate gender into the MDGs comes from UN Agencies, which have produced sophisticated materials to critique the limited attention afforded to gender equality within the Goals and to advise LDCs on the inclusion of women in framing poverty reduction strategies. Other members of the UN family—such as treaty monitoring committees and the Special Rapporteurs appointed by the Human Rights Council to investigate and to report on various human rights issues—have largely ignored the MDGs. The entire UN system must work harder to ensure that MDGs remain relevant by connecting the gender-sensitive practices of UN Agencies to treaty-based and UN Charter-based human rights reporting processes.¹⁶³

B. UN Specialized Agencies

The MDGs have been most vigorously promoted by UN Agencies that provide technical assistance, resources, and planning for a range of projects to promote development at the national level. UN Agencies are institutions created by the General Assembly to facilitate cooperation in the promotion of human rights and development, two areas falling within the General Assembly’s mandate. While

¹⁶¹ WEDO Information and Action Guide, *supra* note 159 at 5.

¹⁶² Gender Equality: Striving for Justice in an Unequal World, *supra* note 139, at 18.

¹⁶³ UN Charter-based human rights reporting procedures refer to mechanisms established under the UN Security Council, General Assembly, or Secretariat—the three main entities established by the UN Charter.

the UN Agencies' policy recommendations are not legally binding, they are considered authoritative statements of best practices in their area of expertise.

The architecture of the UN Specialized Agencies' work around the MDGs is complex. The agency coordinating system-wide efforts to achieve the MDGs is the United Nations Development Program ("UNDP").¹⁶⁴ The UNDP monitors national MDG policies and reports on global progress. In partnership with other UN Agencies, the UNDP offers assistance in developing country-specific strategies for poverty reduction.¹⁶⁵

The UNDP has interpreted the Goals as a holistic development scheme comprised of "inter-connected and mutually reinforcing goals for sustainable development" in which "gender equality and women's rights underpin all the other goals."¹⁶⁶ The UNDP recognizes that "attempting to achieve the MDGs without promoting gender equality will both raise the costs and decrease the likelihood of achieving the other Goals."¹⁶⁷

The UNDP now issues an annual review in which national MDG reports are evaluated based on the extent to which they (1) incorporate gender perspectives into Goals other than MDG 3; (2) mention women's issues outside of MDGs 3 and 5; and (3) substantively consider gender in Goals other than MDG 3.¹⁶⁸ While select countries have integrated a gender perspective into their evaluation processes, progress has been slow. In 2003, for example, Armenia and Mozambique demonstrated the widest integration of gender perspectives into their MDG Reports. Both countries included an independent gender indicator in the evaluation of MDG 1 (poverty), MDG 2 (education), MDG 4 (reducing child mortality), and MDG 5 (improving maternal health).¹⁶⁹ By 2005, forty-two of the seventy-eight countries that submitted national reports at least mentioned women's specific vulnerability to poverty in the evaluation of MDG 1.¹⁷⁰ Yet challenges persist. Notably, few reports reflect gender considerations in the formulation or evaluation of national policies related to environmental sustainability (MDG 7) or

¹⁶⁴ Other UN Agencies involved in the promotion of the MDGs include the UN Development Fund for Women ("UNIFEM"), which provides technical assistance for women's development. UNIFEM locates its mission within the rights regime established by CEDAW and the Beijing Platform. The UN Children's Fund ("UNICEF") works in five focus areas, including child survival and development, and roots its advocacy in the Convention on the Rights of the Child ("CRC"). Since 1997, the United Nations Development Group ("UNDG"), part of the UN reform strategy, has attempted to coordinate activities of UN agencies at the national level, while linking them more closely with national organizations.

¹⁶⁵ See generally U.N. Dev't Program, Millennium Development Goal, <http://www.undp.org/mdg/> (last visited Sept. 30, 2007) (noting that the UNDP coordinates efforts to achieve MDG's).

¹⁶⁶ United Nations Development Program (UNDP), Millennium Development Goals National Reports: A Look Through the Gender Lens at 1-2 (May 2003), <http://www.un.org/womenwatch/asp/user/list.asp-ParentID=20.htm> [hereinafter UNDP 2003 Report].

¹⁶⁷ *Id.* at 3.

¹⁶⁸ See generally UNDP 2003 Report, *supra* note 166 (analyzing strategies for incorporating gender into MDGs).

¹⁶⁹ See *id.* at 5-6.

¹⁷⁰ UNDP 2005 Report, *supra* note 138, at 8.

partnerships for development (MDG 8).¹⁷¹ These omissions are glaring since women's control over resources and agricultural management have become prominent themes within the UN and development communities.¹⁷²

UN Agencies have produced an impressive body of theory on gender equality and the MDGs, but the extent to which theory is incorporated by advocates outside of the UN system is debatable. For example, UNIFEM recently released a handbook to guide finance institutions and donor countries in promoting gender equality through "new partnership and aid modalities." The report called for financing projects that respond to women's needs, track contributions to heighten accountability, and assess progress by monitoring the effect of development projects on numerous indicators related to women's well-being.¹⁷³ To date, however, it is difficult, if not impossible, to track the "money trail" of where donor aid ends up, how much is devoted to gender programming, and how development projects ultimately affect women.¹⁷⁴

UN Agencies must pursue methods to make their theoretical contributions more useful to MDG stakeholders. Opaque concepts such as "gendered national review procedures" and "gendered aid modalities" have limited normative content to guide donors and recipients in the process of incorporating women's equality into the development process. UN Agencies should clarify that the theoretical underpinnings of gender equitable development reflect the human rights obligations which countries have already undertaken through their ratification of relevant human rights treaties. In other words, the content of a country's obligations with respect to each MDG, target, and indicator can be located in treaties such as ICESCR¹⁷⁵ and CEDAW.¹⁷⁶

There are at least two distinct ways in which ICESCR and CEDAW can clarify countries' obligations to include women within the MDGs. First, as discussed above, the ICESCR imposes an affirmative obligation on States Parties to respect,

¹⁷¹ UNDP 2005 Report, *supra* note 138, at 10; UNDP 2003 Report, *supra* note 167 at 9-10 & 14-15.

¹⁷² See, e.g., COMMONWEALTH SECRETARIAT, GENDER MAINSTREAMING IN AGRICULTURE AND RURAL DEVELOPMENT (2001), available at: http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B6C0400D1-A306-4F06-9AA5-0343A81F4BB8%7D_AgriRuralDev.pdf.

¹⁷³ U.N. Devt Fund For Women (UNIFEM), UNICEF, *Promoting Gender Equality in New Aid Modalities and Partnerships* 2 (2006), http://www.gender-budgets.org/uploads/user-S/11429447581PromotingGenderEqualityInNewAidModalities_eng.pdf.

¹⁷⁴ For example, a visitor to the website of the Millennium Challenge Corporation—a corporation established by the United States government to fund certain LDC development projects—has no way of evaluating whether US dollars are being spent to support gender equitable projects. Absent from the criteria for selecting recipient countries is an indicator addressing whether a government or its proposed development policy promotes substantive gender equality. Rather, recipient countries are selected on their success in achieving benchmarks related to political and economic freedom, investment in education and health, control of corruption, and rule of law. See, e.g. Millennium Challenge Corporation, Selection Indicators, <http://www.mcc.gov/selection/indicators/index.php> (last visited Aug. 22, 2007).

¹⁷⁵ See ICESCR, *supra* note 22.

¹⁷⁶ See CEDAW, *supra* note 74.

protect, and fulfill ESC rights.¹⁷⁷ Second, the treaty requires States Parties to guarantee the Covenant's rights without any kind of discrimination.¹⁷⁸ This obligation is supported by the Committee's General Comment dealing with the nature of governmental duties,¹⁷⁹ and by references to non-discrimination in General Comments related to housing and education.¹⁸⁰ The non-discrimination analysis of the ICESCR gives normative content to the responsibility of state actors to ensure that the basic necessities of development—such as food, education, housing, healthcare, and employment—are made available to men and women on an equal basis. A state's responsibility to consider gender equality within each MDG becomes clear through reference to well-established human rights principles.

Advocates should also demand the use of sex-disaggregated data, which analyzes MDG indicators in relation to women and men.¹⁸¹ In 2003 only one country analyzed progress toward extreme poverty reduction using sex-disaggregated data,¹⁸² while in 2005 seventeen of the seventy-eight reports included such statistics.¹⁸³ So far, the UNDP has not been successful in promoting MDG reporting mechanisms that seriously consider the gendered dimensions of poverty and include sex-disaggregated development data. The omission of substantive gender analysis in national reports is particularly troubling since UNDP country representatives assist in drafting most of the reports produced by LDCs.¹⁸⁴

C. UN Treaty Monitoring Mechanisms

The pre-existing international treaty framework should be used to enhance the MDGs by linking MDG reporting to state reporting requirements under international human rights treaties. Six of the seven major human rights treaties require States Parties to submit periodic assessments of rights-related progress to the relevant treaty committee.¹⁸⁵ The ICESCR and CEDAW overlap significantly

¹⁷⁷ See Satterthwaite, *supra* note 98, at 19.

¹⁷⁸ ICESCR, *supra* note 22, at art. 2(2).

¹⁷⁹ See U.N. Office Of The High Comm'r For Human Rights, CESCR General Comment 3, The Nature of States Parties Obligations (Art. 2, par. 1) para. 1, Dec. 14, 1990 (the Covenant . . . imposes various obligations which are of immediate effect . . . [one of which] is the "undertaking to guarantee" that relevant rights "will be exercised without discrimination").

¹⁸⁰ U.N. Office of the High Comm'r for Human Rights [OHCHR], *International Covenant on Economic, Social, and Cultural Rights [ICESCR] General Comment 7, The Right to Adequate Housing*, ¶ 10, U.N. Doc. E/1998/22, annex IV (June 28, 1998) (On housing); U.N. Office of the High Comm'r for Human Rights [OHCHR], *International Covenant on Economic, Social, and Cultural Rights [ICESCR] General Comment 13, The Right to Education*, ¶ 6(b), U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999) (On education).

¹⁸¹ The author would further recommend that all data be disaggregated on the bases of country geography (to make visible disparities among urban, rural, nomadic, and transborder populations) and ethnicity (broadly defined, to illuminate disparities among ethnic, racial, linguistic, and religious groups existing within a country).

¹⁸² UNDP 2003 Report, *supra* note 166, at 8.

¹⁸³ UNDP 2005 Report, *supra* note 138, at 8.

¹⁸⁴ A Human Rights Perspective on the MDG's, *supra* note 14.

¹⁸⁵ The six treaties establishing monitoring bodies include the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, the International

with the MDG goals. Thus, it is logical for countries to report on their progress toward achieving gender equitable MDGs as part of the larger treaty monitoring process by which independent experts determine whether a state is fulfilling its obligations to promote ESC rights without discrimination on the basis of race, sex, nationality, religion, or any other protected status.

Progress on linking MDG reports to treaty reports so far has been disappointing, as countries have not volunteered MDG-related information in their reports to treaty committees.¹⁸⁶ A review of the Concluding Comments issued in response to CEDAW country reports in 2006 demonstrates that the Committee has begun to request the submission of MDG implementation analyses in subsequent country reports.¹⁸⁷ However, the parameters of requested submissions are not defined, making it unlikely that they will address substantive measures undertaken to engender the MDGs.¹⁸⁸ This is unfortunate, as the CEDAW Committee could direct suggestions to align a country's MDG strategy with its obligations under international law. A clear area for strategic advocacy would be to engage local women's organizations in producing detailed reports on their country's inclusion of women within the MDG framework, to be submitted to both the CEDAW Committee and to the UNDP. Women's rights groups and other non-governmental organizations already employ the tactic of submitting "shadow reports" to supplement the state-authored reports issued to treaty monitoring bodies.¹⁸⁹ Submission of shadow reports that address gender and national development policies would bring gendered poverty to the attention of governments and the United Nations, thereby putting pressure on these actors to respond to gender inequitable development.

Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Practices, and the Convention on the Rights of the Child. The Convention of the Prevention and Punishment of the Crime of Genocide does not establish a treaty monitoring body. See CENTER FOR THE STUDY OF HUMAN RIGHTS, 25+ HUMAN RIGHTS DOCUMENTS (2001).

¹⁸⁶ See A Human Rights Perspective on the Millennium Development Goals, *supra* note 14, at 59.

¹⁸⁷ See database of UNDP MDG Country Reports, <http://www.undp.org/mdg/countryreports2.shtml> (last visited Sept. 20, 2007).

¹⁸⁸ See, e.g. CEDAW/C/PH1/CO/6, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women: Philippines. The boilerplate request for MDG-related information appears in Concluding Comments as follows:

"The Committee also emphasizes that a full and effective implementation of the Convention is indispensable for achieving the Millennium Development Goals. It calls for the integration of a gender perspective and explicit reflection of the provisions of the Convention in all efforts aimed at the achievement of the Millennium Development Goals and requests the State party to include information thereon in its next periodic report."

Id.

¹⁸⁹ See United Nations Division for the Advancement of Women, Guidelines for NGOs Participation in CEDAW Sessions, <http://www.un.org/womenwatch/daw/ngo/cedawngo.html> (last visited Oct. 26, 2007).

D. UN Special Rapporteurs and Representatives

UN Special Rapporteurs and Representatives, empowered by the UN Human Rights Council to monitor areas of critical human rights concern, have largely ignored the MDGs in their reporting on issues such as health, international cooperation, and private enterprise.

A survey of the work of UN Special Rapporteurs by the UN Human Rights Committee (now the Human Rights Council) conducted in 2003 concludes:

[T]he relevance of the MDGs to the work of those Special Rapporteurs... whose mandates are of the most obvious and direct relevance is that the MDGs have not been 'taken on board'... [t]hey have not significantly influenced the analytical frameworks used by the rapporteurs, they do not feature in any applied sense in their recommendations, and there is no sense that the MDG initiative can contribute significantly to the human rights enterprise.¹⁹⁰

Four years later, a survey of the publications and speeches made by Special Rapporteurs and Special Representatives many of whose mandates intersect directly with the MDGs, demonstrates that little progress has been made.¹⁹¹ While the Special Rapporteur on Health and the Special Rapporteur on Violence Against Women have made passing references to the MDGs, they have not offered substantive analysis linking MDG activism with the right to health or the elimination of gender violence.¹⁹² Moreover, the Special Representative on Business and Human Rights and the Special Representative on Human Rights and International Solidarity have so far missed the opportunity to vigorously theorize the MDGs as part of the substance of emerging legal norms related to third party responsibility and the international duty to cooperate.¹⁹³ There is an undoubtedly clear connection between their mandates and MDG 8, which seeks to promote international partnerships for development in areas such as private sector transfer of

¹⁹⁰ See A Human Rights Perspective on the MDGs, *supra* note 14, at 3.

¹⁹¹ The survey was conducted by this author.

¹⁹² See U.N. Office Of The High Comm'r For Human Rights, Special Procedures Assumed by the Human Rights Council, <http://www.ohchr.org/english/bodies/chr/special/index.htm> (last visited Aug. 30, 2007).

¹⁹³ See generally UN Human Rights Council, <http://www.ohchr.org/english/bodies/hrcouncil/> (last visited Aug. 30, 2007). See also Commission on Human Rights, Promotion and Protection of Human Rights: Human rights and international solidarity (Feb. 22, 2006), U.N. Doc. E/CN.4/2006/96 (noting the need to explore connections between international solidarity and MDG 8); Commission on Human Rights, Promotion and protection of human rights: Interim report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises (Feb. 22, 2006), U.N. Doc. E/CN.4/2006/97 (noting that corporate involvement is needed to achieve the MDGs). Professor John Ruggie, the Special Representative for Business and Human Rights, recently stated at the World Bank's International Business Forum that having businesses adopt the MDGs as part of the "rules of the game" would be "a most welcome development." However, the Special Representative has not yet clarified whether the MDGs may impose any legal obligations on third parties. See John Ruggie, *Remarks at the Plenary Session on "Business and the rules of the game: From rule-takers to rule makers?"* (Oct. 9, 2007), available at <http://www.reports-and-materials.org/Ruggie-remarks-World-Bank-9-Oct-2007.pdf>.

affordable medicines and technologies—Target 18—and cooperation to increase development assistance and to cancel poorest countries' debts—Targets 13 and 15. Since Special Rapporteurs and Special Representatives report directly to the Human Rights Council, which is comprised of government representatives from UN Member States,¹⁹⁴ they “have the ear” of global leaders who could significantly scale up commitments to achieve the MDGs.

Special Rapporteurs and Special Representatives should take advantage of their positions of authority to publicly recognize that the MDGs involve cross-cutting human rights issues, which UN Member States must address as a matter of legal obligation rather than as charity. Legal activists from the developing and developed world can attempt to put the issue of gendered poverty on the Human Rights Council's agenda by taking the alternative route of petitioning the Sub-Commission on the Promotion and Protection of Human Rights to consider country-specific instances of gender discrimination as an affront to the MDGs and international legal norms. The Sub-Commission is empowered to report its findings to the Human Rights Council, which uses the Sub-Commission's recommendations to guide its debates and political resolutions.¹⁹⁵

E. National MDG Reports

Most national MDG reports are silent on women's participation in defining national poverty strategies and implementing specific projects, and few provide comprehensive sex-disaggregated data to track women's progress toward the Goals.¹⁹⁶ This phenomenon suggests that UN country teams working at the local level have not fully operationalized the gender-mainstreaming theories promulgated by UNDP and UNIFEM. As suggested above, the theory of applying gender analysis to the MDGs can be accomplished by linking MDGs to treaty-based norms that prohibit governments from engaging in discriminatory economic or social policies that amount to de facto or de jure discrimination against women.

While the integration of the non-discrimination principle is an effective tool for mainstreaming gender into national MDG programs, more than a theoretical paradigm shift is needed to ensure that women's voices are taken into account during the design, implementation, and monitoring phases of the MDG process. There are several strategic openings for such advocacy. First, UNDP should more explicitly connect its statistical bureaus with national human rights institutions and women's ministries. The Beijing Platform called on governments to create women's ministries at the highest level of government to monitor progress toward

¹⁹⁴ See UN Human Rights Council website, <http://www.ohchr.org/english/bodies/hrcouncil/> (last visited Aug. 30, 2007).

¹⁹⁵ See HURST HANNUM, GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 65-76 (2004).

¹⁹⁶ See generally UNDP 2003 Report, *supra* note 166; see also generally UNDP 2005 Report, *supra* note 137.

the advancement of women.¹⁹⁷ The declaration also highlighted the importance of developing methodologies incorporating sex-disaggregated data to assist in the formulation and evaluation of gender responsive programs.¹⁹⁸ To the extent that countries have indeed established such women's ministries, UNDP should partner with them to ensure their participation in the preparation of official MDG reports. Furthermore, NGOs should be consulted in the formulation of official country reports and given technical support to create MDG "shadow reports" designed to accompany national reports. This strategy has been an effective tool for both building the capacity of local organizations and monitoring compliance with human rights treaties.¹⁹⁹ Shadow MDG reports should be made available on the UNDP website, alongside national reports, to ensure that engagement with the MDGs is not confined to UN elites.

F. Donor Countries and TNCs

While donor countries are not required to submit national MDG reports on their activities related to MDG 8—global partnerships for development—eleven countries have chosen to do so: Australia, Belgium, Denmark, France, Finland, Japan, the Netherlands, Norway, Switzerland, Sweden, and the United Kingdom.²⁰⁰ These reports provide useful analysis of the progress toward indicators such as debt relief, levels of official development assistance ("ODA"), and trends in the promotion of foreign direct investment ("FDI"). Overall, however, these reports have failed to report on how development assistance and financial investment have affected women, as compared to men. Has employment been created? Have women been recruited for employment? And have their rights to fair remuneration, a safe work environment, and the right to organize been protected? These issues are not addressed in the donor reports, suggesting that the theoretical guidelines developed by UN Agencies on sex-disaggregated cash flow and gender impact analyses have not been assimilated by the finance ministries of wealthy countries. In a recent report, UNIFEM spelled out what steps countries should take to track their money trails.²⁰¹ However, these measures entail more oversight than most donor countries generally undertake. There exist few incentives for countries to painstakingly track financial assistance to determine how

¹⁹⁷ Paragraph 201 of the Beijing Platform for Action was adopted at the Fourth World Conference of Women in September 2000. See U.N. Dep't of Econ. and Soc. Affairs, Div. for the Advancement of Women, The United Nations Fourth World Conference on Women, Beijing Platform for Action ¶ 201, <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm#framework> (last visited Sept. 30, 2007).

¹⁹⁸ *Id.*

¹⁹⁹ See, e.g., United Nations Division for the Advancement of Women, *supra* note 192.

²⁰⁰ See UNDP, Millennium Development Goals: Country Reports, <http://www.undg.org/content.cfm?cid=79&page=1&detailed=&basic=%BD%03m=all&sort=country&refreshprofile> (last visited Aug. 30, 2007).

²⁰¹ See generally UNICEF, *Promoting Gender Equality in New Aid Modalities and Partnerships*, *supra* note 172

the programs they finance benefit women. Even more challenging is tracking the social impact of non-state actors such as TNCs.²⁰²

Gendered monitoring of development partnerships is a critical element of gender equitable progress toward the MDGs. Despite the daunting nature of engaging powerful economic actors, activism rooted in feminist human rights law can make countries and corporations more accountable for the results of their aid and investment. States have the legal responsibility of taking steps to ensure that TNCs do not violate the human rights of citizens within their borders.²⁰³ While political and civil rights have long been justiciable in most countries, the justiciability of ESC rights is beginning to be recognized by some countries, including South Africa, Finland, India, South Africa, and Portugal.²⁰⁴ Human rights lawyers are theorizing new ways to hold states vicariously liable for the human rights violations of TNCs and impoverished individuals are slowly but dramatically vindicating their ESC rights in national courts.²⁰⁵ Feminist human rights law activists should continue pursuing litigation strategies that expand upon a state's obligations to require third-parties operating within its borders to respect the fundamental human rights of its citizens.

States are also bound by commitments made in treaties and declarations to cooperate in the promotion of non-discriminatory development policies. Litigation strategies to hold states accountable for their duty to provide the resources necessary to achieve gender equitable development are becoming increasingly feasible.²⁰⁶ However, until ESC rights are fully recognized and protected everywhere, advocates must adopt intermediate strategies to make economic engagement between rich and poor countries, as well as between individuals within countries, more equitable.

One strategy for monitoring the gendered effects of donor development is to conduct social impact assessments that evaluate whether or not a particular project advances the rights of women, as defined by treaties, soft law obligations, constitutional standards, and non-discrimination legislation.²⁰⁷ The resulting evaluations would produce for each state a checklist of obligations related to women's empowerment, allowing donors to assess whether or not a project conforms to the recipient state's human rights obligations. If a project does not conform, donor and recipient countries could collaborate to make the project more gender sensitive.²⁰⁸ These evaluations may not have binding legal effect, but they contribute to the transnational legal process by which economic actors become

²⁰² See generally Eugenia McGill, *Poverty and Social Analysis of Trade Agreements: A More Coherent Approach?*, 27 B.C. INT'L & COMP. L. REV. 371, 420-22 (2004).

²⁰³ ALSTON, *supra* note 14, at 17.

²⁰⁴ UNHCHR HANDBOOK, *supra* note 26, at 3.

²⁰⁵ ALSTON, *supra* note 14, at 17.

²⁰⁶ *Id.*

²⁰⁷ McGill, *supra* note 203 at 420-22..

²⁰⁸ *Id.*

sensitized to the gender equitable dimensions of their human rights law obligations.

G. International Finance Institutions

IFIs are composed of states, which are bound by treaty, charter, and domestic law obligations to promote the ESC rights of their citizens and to ensure that women and men benefit equally from development.²⁰⁹ Thus, while there may not be a mechanism to hold the World Bank, IMF, and WTO *directly* accountable for their actions and omissions in the realm of ESC rights, the handful of powerful states that control the policies of these organizations can be held accountable for their support of projects that regress ESC rights or that do not offer economic opportunities on an equal basis to all citizens.²¹⁰

IFIs should make clear their positions on the role, if any, of human rights within their policy formations. IFIs currently pay lip-service to human rights,²¹¹ but refuse to recognize that their work on poverty, nutrition, healthcare, education, and fair-wage employment involves distinct human rights obligations. IFIs should open themselves up to dialogue and consultation with individuals affected by poverty and a wide range of civil society groups to brainstorm inclusive and collaborative rights-based approaches to development. Law advocates should engage rather than ignore IFI leaders by educating them about the determinate content of ESC rights. If such conversations do not occur, the suspicion and contempt of IFIs from the poor world and NGOs will continue to undermine collective action toward achievement of the Goals. Even some members of the so-called Washington Consensus acknowledge the importance of integrating a human rights perspective into the MDG regime. As explained by Ko-Yung Tung, Former Vice-President and General Counsel of the World Bank, “just as the Berlin Wall came down, the wall between politics [in this case human rights] and economics [in this case development] must come down, with the recognition that... in order to meet the Millennium Development Goals, both politics and economics must work hand in glove.”²¹²

H. Engendering Anti-Poverty Activism

A final sector that feminist human rights law activists should not overlook is the grassroots anti-poverty movement. A growing coalition of students, religious organizations, women’s groups, and celebrities who support the MDGs has made

²⁰⁹ See generally ICESCR, *supra* note 22; see also CEDAW, *supra* note 74.

²¹⁰ UNHCHR HANDBOOK, *supra* note 26.

²¹¹ See, e.g. World Bank, *Development and Human Rights: The Role of the World Bank* (1998), <http://www.worldbank.org/html/extdr/rights/hrtext.pdf>. While the slogan for the World Bank is “A World Free of Poverty,” and the organization has its roots in rebuilding Europe and Japan after the devastation of World War II, the organization has been faulted for perpetuating poverty through SAPs and other conditional lending programs. See *supra* text accompanying note 30.

²¹² Ko-Yung Tung, *Shaping Globalization: The Role of Human Rights*, 19 AM. U. INT’L L. REV. 27, 40 (2003).

significant contributions to the anti-poverty movement, particularly in persuading rich governments to forgive much LDC debt and to increase spending on ODA. However, these groups overwhelmingly frame poverty elimination as a *moral* issue, rather than a legal one. Human rights advocates can engage grassroots coalitions in advocacy to highlight the ESC rights obligations that attach to the MDGs. The legal nature of the MDGs could be propounded through media friendly strategies, such as focusing on states' central obligations to (1) respect, protect, and fulfill MDG-related ESC rights; (2) ensure that development opportunities benefit women and men equally; and (3) enlist the poor in developing, implementing, and monitoring anti-poverty programs. An introduction of rights-concepts through popular media and faith-based campaigns could promote popular internalization of poverty as a *rights* issue rather than an issue of charity.

CONCLUSION

Utilizing a feminist human rights law approach, activists can reclaim the MDGs and recast development in terms of substantive human rights protections that have been fought for and won over the past several decades. Strategic legal activism is an important element of this reclamation, as human rights laws that enshrine women's equality give normative content to the barebones MDG framework. With fewer than eight years to accomplish the MDGs, feminist human rights activists who focus on women's rights should engage all sectors of the anti-poverty movement to ensure that women's poverty issues are not sidelined to the detriment of the MDG's success.