

# SUSTAINABLE DEVELOPMENT AND SOCIAL INCLUSION: WHY A CHANGED APPROACH IS CENTRAL TO COMBATING VULNERABILITY

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*Abstract:* The United Declaration of Human Rights established the fundamental basis of international human rights law. Unfortunately, the overt emphasis on civil and political rights within this agenda restricted greater engagement with questions concerning development. The focus on individual rights and antagonistic relations between states has led to a human rights practice that fails to achieve social inclusion for many and allows vulnerable groups to fall by the wayside. Equally unfortunately, the practice has too often focused on international level actors such as states and other entities, thus failing to take notice of national level policies and initiatives that do help bridge the gap between human rights aspirations and the actual protection of the weak and vulnerable. This article reviews some of the fundamental failings of “business as usual” in human rights practice and hypothesizes where those failings, if left unchecked, will lead in the post-2015 world. Finally, it identifies pathways away from the current model and towards sustainable development, highlighting policies from diverse jurisdictions that have been effective in protecting the vulnerable and that may be worthy of emulation at a global level.

## I. INTRODUCTION

Creating a world where the equal dignity and worth of every individual is respected and valued is simple to articulate but difficult to deliver.<sup>1</sup> In the aftermath of World War II, as the world sought a new paradigm to ensure that mechanisms were created to secure robust protection against human rights violations, the Universal Declaration of Human Rights (“UDHR”)<sup>2</sup> stood as an important standard for the promotion of social inclusion and protection of the vulnerable. It served as a powerful statement

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<sup>1</sup> See generally DAVID HARRIS, INTERNATIONAL HUMAN RIGHTS LAW (Daniel Moeckli et al. eds., 2nd ed. 2013); Jenny S. Martinez, *Human Rights and History*, 126 HARV. L. REV. F. 221 (2013).

<sup>2</sup> See generally THE UNITED NATIONS, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: THE TRAVAUX PRÉPARATOIRES (William A. Schabas ed., 3 vols. 2013) (discussing the Universal Declaration of Human Rights and its value and content).

of intent for what was to become an extensive human rights movement, and, in the intervening years, attempts have been made in every jurisdiction to create legislative, administrative, and judicial mechanisms to ensure the values it presents are upheld.<sup>3</sup> Today, it may be said that a genuinely universal, if aspirational, set of human rights standards have emerged which have the buy-in of states and communities across the globe.<sup>4</sup> At the international level, this has resulted in an exponential growth of human rights and human rights law. States have come together to celebrate the universality of human rights by constructing legal regimes that bind and restrict their own actions and that of future governments and seek to reign in other relevant entities that may violate human rights norms. The success of the universal mechanism for human rights is visible in three ways: the proliferation of human rights legal standards,<sup>5</sup> the emphases placed on human rights within state practice,<sup>6</sup> and the adoption of human rights norms by international institutions.<sup>7</sup> Yet, fundamental questions remain as to whether the international human rights law regime pays adequate attention to questions of development. This article seeks to engage the post-2015 global planning agenda—as articulated in the Sustainable Development Goals (“SDGs”)—and whether it pays adequate attention to questions of social exclusion.

The UDHR attempted to promote a holistic approach to the development of human rights by recognizing both civil and political rights (sometimes referred to as “first generation rights”) as well as socio-economic and cultural rights (also known as “second generation rights”). However, the evolution of human rights protection failed to achieve social inclusion for many, with vulnerable populations often neglected. Rights have been considered to accrue to individuals rather than groups.<sup>8</sup> As a

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<sup>3</sup> See WALTER KÄLIN & JÖRG KÜNZLI, *THE LAW OF INTERNATIONAL HUMAN RIGHTS PROTECTION* (2009) (discussing the extent of the international human rights regime).

<sup>4</sup> See Elvira Domínguez-Redondo, *The Universal Periodic Review of the UN Human Rights Council: An Assessment of the First Session*, 7 *CHINESE J. INT'L L.* 721 (2008) (discussing Universal Periodic Review undertaken by the UN Human Rights Council).

<sup>5</sup> While this can be measured by the growth of regional systems and incorporation of human rights within domestic law, it can sometimes also be viewed as a process of legitimizing political actions. See Jacob Mchangama & Guglielmo Verdirame, *The Danger of Human Rights Proliferation*, *FOREIGN AFFAIRS*, July 24, 2013.

<sup>6</sup> See John H. Knox, *Horizontal Human Rights Law*, 102 *AM. J. INT'L L.* 1 (2008).

<sup>7</sup> See Alison B. Duxbury, *THE PARTICIPATION OF STATES IN INTERNATIONAL ORGANISATIONS: THE ROLE OF HUMAN RIGHTS AND DEMOCRACY* (2013).

<sup>8</sup> See David Alonzo-Maizlish, *In Whole Or In Part: Group Rights, The Intent Element Of Genocide and the “Quantitative Criterion,”* 77 *N.Y.U. L. REV.* 1369 (2002) (discussing a variety of underpinning challenges on group rights). See also Peter Jones, *Human Rights, Group Rights and Peoples’ Rights*, 21 *HUM. RTS. Q.* 80-97 (1999); Joel E. Oestreich, *Liberal Theory and Minority Group Rights*, 21 *HUM. RTS. Q.* 108 (1999). For the extent to which states are enshrining minority rights in their domestic legislation see

consequence, the emerging tools of protection ignored the fact that many human rights violations were often experienced by entire swathes of people, and protecting every individual within them one by one would not generate robust social policy. Instead, the more powerful or resourceful—or those closer to sites of power—would articulate individual claims that may be satisfied, while others in the same situation were ignored due to their lack of access. In addition, as human rights mechanisms developed and became codified into law, they followed Western legal ideology and tended to focus on civil and political rights, rather than the indivisible spectrum of human rights. Economic, social, and cultural rights were often labeled “non-justiciable,” or were subject to the caveat that enjoyment of such rights was subject to “progressive realization.”<sup>9</sup> Thus, rather than being “rights,” socio-economic needs, including development, became mere aspirations for governments. Courts of law were prevented from pronouncing on issues concerning socio-economic rights, including the fundamental goal of eradicating poverty, with significant ramifications for the vulnerable. The professed justification for such exclusion resided in an ideological unwillingness to leave decisions concerning public expenditure to an unelected judiciary—an extension of the separation of powers doctrine that dominates common law jurisdictions.<sup>10</sup> As a result, legal mechanisms in these jurisdictions became less effective in addressing questions of sustainable development and in adjudicating upon the creation of conditions where the socio-economic empowering of communities could thrive. These “rights” failed to make a meaningful contribution to poverty eradication.

This traditional, individualistic, and legalistic approach has engendered antagonistic sentiment between states and human rights advocates. Traditional approaches to rights compliance were borne by a genuine attempt by civil society and libertarians to access rights enshrined in law but denied by states.<sup>11</sup> Thus, traditional human rights activism—driven by international and national civil society<sup>12</sup> and sponsored in the

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Joshua Castellino, *No Room at the International Table: The Importance of Designing Effective Litmus Tests for Minority Protection at Home*, 35 HUM. RTS. Q. 201 (2013).

<sup>9</sup> See Daniel J. Whelan & Jack Donnelly, *The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight*, 29 HUM. RTS. Q. 908 (2007) (discussing the controversy concerning justiciability of economic social and cultural rights). See also Mary Robinson, *Advancing Economic, Social and Cultural Rights*, 26 HUM. RTS. Q. 866 (2004).

<sup>10</sup> See generally M.J.C VILE, *CONSTITUTIONALISM AND THE SEPARATION OF POWERS* (2d ed. 1998).

<sup>11</sup> See David Petrasek, *Global Trends and the Future of Human Rights Advocacy*, 1120 SUR INT'L J. HUM. RTS. ADVOCACY 45-56 (2014); see also Jeremy Perelman, *Transnational Human Rights Advocacy, Clinical Collaborations, and the Political Economies of Accountability: Mapping the Middle*, 16 YALE HUM. RTS. & DEV. L.J. 89 (2013).

<sup>12</sup> See Kerstin Martens, *An Appraisal of Amnesty International's Work at the United Nations: Established Areas of Activities and Shifting Priorities since the 1990s*, 26 HUM. RTS. Q. 1050 (2004); see

international arena by Western states who saw rights compliance failures in other states as damaging to the general compact to improve and legitimize human rights<sup>13</sup>—was antagonistic and confrontational towards states.<sup>14</sup> This generated resentment against sponsoring Western states, often in the form of decrying their intervention as “neo-colonialism”<sup>15</sup>—a claim that has little legitimate basis since international instruments were negotiated and ratified as agreements between consenting states, and a failure to uphold such principles was akin to one party to a contract failing to uphold the norms agreed to within that contract. The fact that many states that sponsored human rights activities happened to be Western was a result of the emergence of the rights discourse in the wake of the impact of World War II in Europe. Thus, even though motivated by a genuine desire to create a fundamental international framework that could withstand states’ recalcitrance and enshrine protections,<sup>16</sup> Western states’ engagement was often looked upon as an extension of colonialism. Western states have had difficulty in the selective articulation of such rights (e.g., China merits criticism while others deemed “allies” are exempt);<sup>17</sup> the rights that Western states focused upon were usually civil and political (ignoring socio-economic rights as being within the exclusive preserve of governmental policy)<sup>18</sup> with emphasis on protection of the individual, rather than groups or communities (a legacy derived from classical dominant legal discourse in Europe).<sup>19</sup> Thus, international human rights have focused on “naming and shaming” states for poor performance compared to pre-agreed standards.<sup>20</sup> This approach has restricted room for collaborative work toward finding and implementing effective solutions between state duty-bearers of human rights, other states keen to engage in the generation of genuine solutions to

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also Sarah B. Snyder, *Exporting Amnesty International to the United States: Transatlantic Human Rights Activism in the 1960s*, 34.3 HUM. RTS. Q. 779 (August 2012).

<sup>13</sup> See Thomas M. Franck, *Are Human Rights Universal?*, 80 FOREIGN AFF. 191 (2001).

<sup>14</sup> See Diana Hortsch, *Paradox of Partnership: Amnesty International, Responsible Advocacy and NGO Accountability*, 42 COLUM. HUM. RTS. L. REV. 119 (2010); see also Katherine E. Cox, *Should Amnesty International Expand Its Mandate to Cover Economic, Social, and Cultural Rights?*, 16 ARIZ. J. INT’L & COMP. L. 261 (1999).

<sup>15</sup> See JOSHUA CASTELLINO & ELVIRA DOMINGUEZ-REDONDO, *MINORITY RIGHTS IN ASIA: A COMPARATIVE LEGAL ANALYSIS* 11-25 (2006) (reviewing the Asian Values debate).

<sup>16</sup> See Sarah Joseph & Adam McBeth, *RESEARCH HANDBOOK ON INTERNATIONAL HUMAN RIGHTS LAW* (2010).

<sup>17</sup> See Randall Peerenboom, *Assessing Human Rights in China: Why the Double Standard?*, 38 CORNELL INT’L L.J. 71 (2005).

<sup>18</sup> See *generally* LAW IN TRANSITION: HUMAN RIGHTS, DEVELOPMENT AND TRANSITION (Ruth Buchanan & Peer Zumbansen eds., 2014).

<sup>19</sup> Antecedents for modern human rights.

<sup>20</sup> Elvira Domínguez Redondo, *The Universal Periodic Review: Is There Life Beyond Naming and Shaming in Human Rights Implementation?*, 4 NEW ZEALAND L. REV. 673 (2012).

intractable issues concerning implementation of rights, and human rights defenders.<sup>21</sup>

Equally problematic to the effective realization of holistic human rights protection to promote social inclusion and protect the vulnerable is donor communities' overt emphasis on "good governance" as a sole criterion for decisions concerning disbursement of aid.<sup>22</sup> This hasty and untested conclusion assumes that mere adoption of "liberal democracy," accompanied by a constitution making civil and political rights justiciable (whether or not there is any recognition of the need for strong protection of economic, social, and cultural rights) is a *prima facie* affirmation of a country's human rights credentials.<sup>23</sup> While not a problem in and of itself, (indeed, there is a correlation between liberal democracy and protection of rights), in a transitional context, this approach fails to understand that liberal democracies can only house a thriving human rights culture that evolves organically, rather than through external and forceful imposition by powerful hegemons.<sup>24</sup> Seeking to construct "liberal democracies" without engaging critical issues that impact social inclusion—such as corruption, unequal power structures within society, the environment, and poverty production—introduces elements that are contrary to longer term interests of building sustainable and inclusive communities.<sup>25</sup> Further, at a macro level, "international engagement" is often driven by the expectation for states to adopt market-based and export-led economies to better integrate into the community of states. However, this fails to highlight the fact that engagement in a deeply flawed world economy dominated by powerful states would not naturally yield an agenda enabling tackling issues of social inclusion and human rights. Instead, poverty reduction and social inclusion strategies are incorporated within a problematic context of "democratic advancement," "structural reform" of the economy, and reduction of the state's interventionist capacities, to the detriment of marginalized communities.<sup>26</sup>

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<sup>21</sup> See Bonny Ibhawoh, *Beyond Naming and Shaming: Methodological Imperatives of Economic, Social and Cultural Rights Advocacy*, 15 AFR. Y.B. INT'L L. 49 (2007).

<sup>22</sup> See GOVERNANCE, DEVELOPMENT AND AID EFFECTIVENESS: A QUICK GUIDE TO COMPLEX RELATIONSHIPS (London: ODI Briefing Paper, 2006).

<sup>23</sup> See, e.g., Sam Agere, PROMOTING GOOD GOVERNANCE: PRINCIPLES, PRACTICES AND PERSPECTIVES (2000).

<sup>24</sup> See CONTESTING 'GOOD GOVERNANCE': CROSS-CULTURAL PERSPECTIVES ON REPRESENTATION, ACCOUNTABILITY AND PUBLIC SPACE (Eva Poluha & Mona Rosendahl eds., 2002).

<sup>25</sup> See GOOD GOVERNANCE ISSUES AND SUSTAINABLE DEVELOPMENT: THE INDIAN OCEAN REGION (Robin Ghosh et al. eds., 1999).

<sup>26</sup> See THE LAW AND DEVELOPMENT INSTITUTE, LAW AND DEVELOPMENT PERSPECTIVE ON INTERNATIONAL TRADE LAW (Yong-Shik Lee et al. eds., 2011).

The existing human rights paradigm produces another critical and negative byproduct: the domination of the human rights discourse by “agents of developmentalism.” These include donor agencies, financial institutions (the World Bank, the IMF), and some development NGOs that connect their work to human rights through the articulation of a “human rights based approach.”<sup>27</sup> While anchoring human rights to the development paradigm is a positive linkage, the loose context in which the analysis and claims are made risks diluting the relevance of human rights as a functional tool to be used in the poverty eradication and associated goals, targets, and indicators. A generalized and non-contextualized approach risks legitimizing historical inequalities and injustices perpetrated against the poor. It also provides a cloak of legitimacy to existing structural exploitation of vulnerable communities. In the name of human rights, the rich and powerful perpetrate or tacitly endorse this approach to affirm their hegemony.<sup>28</sup> International organizations’ positions (e.g., the World Trade Organization (“WTO”)) on key issues such as intellectual property and human rights can have negative effects on poverty reduction, sustainability of food production, environmental conditions, and the health of the poor in developing countries. The WTO framework does emphasize the need to facilitate fair opportunities for developing countries to engage in global commerce.<sup>29</sup> Yet, while the measures within the system may assist the voice of developing nations into WTO processes, a failure to engage adequately with the substantive elements identified above will reduce the extent to which this laudable goal can be achieved.

Finally, existing systems are relatively impotent in tackling the gendered dimension of human rights violations.<sup>30</sup> This is particularly true of discrimination occurring among poor, marginalized, and excluded women living in urban, peri-urban, and rural communities.<sup>31</sup> Overreliance on a system where rights can be challenged, debated, and won in a court of law

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<sup>27</sup> See REINVENTING DEVELOPMENT? TRANSLATING RIGHTS-BASED APPROACHES FROM THEORY INTO PRACTICE (Paul Gready & Jonathan Ensor eds., 2005).

<sup>28</sup> See Michael Ignatieff, *International Justice Possible Only When in the Interest of Powerful States*, ICTJ.ORG (Feb. 9, 2015) <https://www.ictj.org/debate/article/justice-interests-of-powerful-states>.

<sup>29</sup> See ELIMMA C. EZEANI, *THE WTO AND ITS DEVELOPMENT OBLIGATION: PROSPECTS FOR GLOBAL TRADE* (2011).

<sup>30</sup> See HILARY CHARLESWORTH & CHRISTINE CHINKIN, *THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS* (2000) (articulating this critique and explaining the general bias against feminist perspectives in international law).

<sup>31</sup> See *generally* HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES (Rebecca J. Cook ed. 1994); see also WOMEN’S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES (J.S. Peters & Andrea Wolper eds. 1995).

fails to acknowledge the gendered nature of legal institutions.<sup>32</sup> It ignores the underlying gender inequality, gender divisions of labor, and the valuing of the masculine over the feminine, which is institutionalized all over the world. This shortcoming is accentuated in legal systems—at the judicial level and in legislative systems—where overreliance on such mechanisms has become a central part of the problem, excluding women’s voices from socio-legal policy, development, and rights.<sup>33</sup>

Thus, while nonetheless succeeding in creating normative standards, raising awareness of human rights concerns, and placing them firmly within the agenda of the international community, the framework of human rights has not adequately addressed many key issues. Current human rights mechanisms have had limited impact on many of the issues elaborated above due to a host of factors, including the nature and content of the frameworks themselves, the manner in which they have been applied, the failure to heed the voices of excluded communities (especially women as a group and women from excluded communities), and the hesitation on the part of the chief actors—including states and the international community—towards focusing on implementation. In sum, there are seven core failures:

First, the international human rights community has continued to focus on civil-political rights, while leaving socio-economic rights to be largely remedied through market forces. Structural inequalities prevent women and minorities from competing as equals in such markets.

Second, the international human rights community has maintained an overt focus on individual rather than collective rights (derived from Western *laissez faire* governance models), and ignored the fact that confronting social exclusion requires collective solutions because the violations have a communitarian element. Disconnecting human rights from this context will allow stronger voices to gain their rights at the expense of others. Any focus on communitarian and collective rights needs to be mindful of the extent to which stronger voices within communities articulate collective positions to the exclusion of other segments of that population. The impact of this is most visible in the case of women, and thus any indicators developed on collective rights would need to be gender-sensitive.

Third, the human rights community over-relies on legal advocacy as the sole tool available to gain rights. The result is that excluded communities are likely to remain further away from social policy makers;

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<sup>32</sup> See ROBERT L. NELSON & WILLIAM P. BRIDGES, *LEGALIZING GENDER INEQUALITY: COURTS, MARKETS AND UNEQUAL PAY FOR WOMEN IN AMERICA* (1999).

<sup>33</sup> See *THE INTERNATIONAL HANDBOOK OF GENDER AND POVERTY: CONCEPTS, RESEARCH, POLICY* (Sylvia Chant ed., 2010).

they only gain their rights through expensive processes that are often inaccessible. As proposed later, the creation of adequate administrative mechanisms that can be accessed at all levels of society without any specific need for the engagement of legal advocacy is likely to prove more useful in accessing what ought to be basic remedies.

Fourth, the international community over-relies on the generation of remedies through legislative processes. This is ineffective for most women as well as vulnerable communities whose access to such mechanisms is limited by their relatively poor rate of political participation. These groups typically only can access justice when mainstream participants are sensitive to their causes and make laws that seek to promote social inclusion and political participation.

Fifth, the use of human rights as a “naming and shaming” tool with uncertain political support from many countries alienates states and effectively ends their engagement with prospective solutions.<sup>34</sup>

Sixth, the articulation of a “human rights-based approach,” which means different things in different contexts, perpetuates confusion, and allows for many so-called development agencies and international financial institutions such as the World Bank to dominate the discourse of rights without yielding benefits to the disadvantaged.

Finally, an over-emphasis on states as the primary liable actors for rights violations has resulted in missed opportunities with others who may be more sensitive to public pressure, such as the corporate sector. While states are clearly the bearers of obligations under law, not every violation of human rights is the result of state inaction or unwillingness to act.

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<sup>34</sup> See Craig G. Mokhiber, *The United Nations Programme of Technical Cooperation in the Field of Human Rights*, in INTERNATIONAL HUMAN RIGHTS MONITORING MECHANISMS: ESSAYS IN HONOUR OF JAKOB TH. MÖLLER 219-29 (Gudmundur Alfredson et al. eds., 2009). The origins of the technical cooperation program in the field of human rights can be found in an “Action Plan” approved by the former Commission on Human Rights: E/2731-E/CN.4/719 + Corr.1 20th Sess., Supp. No. 6, U.N. Doc. (1955). These services had been provided on an ad hoc basis. See generally G.A. Res. 200 (III), U.N. Doc. A/RES/200 (Dec. 4, 1948); G.A. Res. 246 (III), U.N. Doc. A/RES/246 (Dec. 4 1948); G.A. Res. 305 (IV), U.N. Doc. A/RES/305 (Nov. 16 1949); G.A. Res. 418 (V), U.N. Doc. A/RES/418 (Dec. 1 1950); G.A. Res. 518 (VI), U.N. Doc. A/RES/518 (Jan. 12 1952); G.A. Res. 723 (VIII), U.N. Doc. A/RES/723 (Oct. 23, 1953); G.A. Res. 729 (VIII), U.N. Doc. A/RES/729, (Oct. 23, 1953); G.A. Res. 730 (VIII), U.N. Doc. A/RES/730 (Oct. 23 1953). Cf. G.A. Res 926 (X), U.N. Doc. A/RES/926 (Dec. 14 1955) (UN General Assembly officially approving and consolidating its Advisory Services in the Field of Human Rights, under a single agenda item). The consolidated program remains as agenda item 10 of the Human Rights Council, Technical Assistance and Capacity Building (former agenda item 19 of the United Nations Commission on Human Rights). See also CEES FLINTERMAN & MARCEL ZWAMBORN, NETHERLANDS INSTITUTE OF HUMAN RIGHTS, FROM DEVELOPMENT OF HUMAN RIGHTS TO MANAGING HUMAN RIGHTS DEVELOPMENT - GLOBAL REVIEW OF THE OHCHR TECHNICAL COOPERATION PROGRAMME (2003), <http://www.ohchr.org/Documents/Countries/global-reviewsynthesis.pdf>.

These failures are the result of the way that human rights legal regimes are structured. The framework of international human rights law consists of the UN Charter and treaty-based bodies, which operate in standard setting, implementation, and monitoring. The vast majority of the last six decades have focused on standard setting, with implementation left to the domestic realm of the state parties, and monitoring usually taking the form of “naming and shaming” assisted by increasingly vocal civil society voices.<sup>35</sup> Human rights cases have also been brought before quasi-judicial treaty-based and charter-based bodies though the decisions (usually framed as opinions) handed down by these are non-binding in nature.<sup>36</sup> A small percentage of cases of human rights violations have been adjudicated before international fora such as the European Court of Human Rights,<sup>37</sup> the Inter-American Court of Human Rights,<sup>38</sup> and the African Court of Human Rights.<sup>39</sup> Rather than providing effective solutions, these interactions often result in confrontations and contestations, usually between states and civil society, resulting in subsequent adoption of defensive postures by states and a failure to derive and focus on implementable solutions. The legacy of the previous over-emphasis on civil and political rights has skewed content away from the kinds of issues that are of central concern in terms of social inclusion.<sup>40</sup> Yet, while economic and social rights come first to mind, the realization of civil and political rights remains essential for the eradication of poverty. Key examples of this include the rights to personal security, freedom of movement (e.g., in order to seek jobs), freedom of assembly and association, freedom of expression (essential in order to form and develop social movements to improve their conditions), and political rights (essential to ensure participation).

While the principles of equality and non-discrimination lie at the heart of the human rights project,<sup>41</sup> the great emphasis placed on civil and political rights in the nearly six decades since the UDHR narrowed the human rights remit and restricted accurate diagnoses of all human rights within states. For

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<sup>35</sup> Sociologists have labeled this the paradox of empty promises. See Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalized World: The Paradox of Empty Promises*, 110 AM. J. SOC. 1373 (2005).

<sup>36</sup> See EMILIE M. HAFNER-BURTON, MAKING HUMAN RIGHTS A REALITY 44-66 (2013).

<sup>37</sup> See generally BERNADETTE RAINEY, ELIZABETH WICKS & CLARE OVEY, THE EUROPEAN CONVENTION ON HUMAN RIGHTS (6th ed. 2014).

<sup>38</sup> See generally JO M. PASQUALUCCI, THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS (2nd ed. 2012).

<sup>39</sup> See generally FRANS VILJOEN, INTERNATIONAL HUMAN RIGHTS LAW IN AFRICA (2d ed. 2012).

<sup>40</sup> See e.g., DEJO OLOWU, AN INTEGRATIVE RIGHTS-BASED APPROACH TO HUMAN DEVELOPMENT IN AFRICA 1-9 (2009).

<sup>41</sup> See generally WOUTER VANDENHOLE, NON-DISCRIMINATION AND EQUALITY IN THE VIEW OF THE UN HUMAN RIGHTS TREATY BODIES (2005).

instance, while organizations such as Freedom House can provide relatively accurate pictures of the issue of freedom of speech through its index, this is not necessarily an indicator of the likely pressures within a society and often bears little relation to the prevalence of poverty.<sup>42</sup> There are improvements on this issue with inter-governmental bodies such as UNICEF engaging in data collection and empirical analysis.<sup>43</sup> However these practices are not widespread. Finally, the processes of human rights have placed overt emphasis at international level, while it is clear that major innovations and social policy solutions that are human rights friendly are more likely to emanate at the national and sub-national levels.<sup>44</sup> The cumulative results of these factors have hindered the ability of human rights mechanisms and frameworks to impact the trends highlighted above.

A failure to correct the trajectory of human rights law—to focus it on the needs and challenges faced by women, vulnerable, and other marginalized communities—will allow current inequalities, borne on structural fault-lines, to persist into the future, and issues concerning the environment would be de-linked from the human security dimension of the human condition. A fundamental understanding of how lawmaking transpires in countries also highlights that the structural inequalities are often put in place through legislative mechanisms, and unless this awareness grows through greater articulation of political voices, such an approach would be reproduced endlessly. Essentially, it is vital to grasp the importance of correcting human rights mechanisms' limited reach for those in the "Bottom Billion."<sup>45</sup> "Business as usual" thus risks exacerbating these shortcomings of the prevailing approaches to human rights.

Discussions attendant to the UN's attempt to frame new post-2015 goals has helped articulate a new backdrop against which sustainable development, social inclusion, and human rights can be framed.<sup>46</sup> Nevertheless, as we move further into the twenty-first century, scarcity of resources will intensify competition, with the lack of legal mechanisms to tackle inequality becoming acute in the context of heightened anxieties of such competition. This makes it imperative to emphasize socio-economic issues within the rights context, to eliminate ideological and overtly

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<sup>42</sup> See Arch Puddington, *Freedom in the World 2015: Discarding Democracy Returning to the Iron Fist*, FREEDOM HOUSE (2015), [https://freedomhouse.org/sites/default/files/01152015\\_FIW\\_2015\\_final.pdf](https://freedomhouse.org/sites/default/files/01152015_FIW_2015_final.pdf) (last visited Mar. 30, 2015).

<sup>43</sup> See *Child Well-Being in Rich Countries*, UNICEF, <http://www.unicef-irc.org/Report-Card-11/>.

<sup>44</sup> Joshua Castellino, *No Room at the International Table: The Importance of Designing Effective Litmus Tests For Minority Protection at Home*, 35 HUM. RTS. Q. 201 (2013).

<sup>45</sup> PAUL COLLIER, *THE BOTTOM BILLION* (2009).

<sup>46</sup> ANDERS WIJKMAN & JOHAN ROCKSTRÖM, *BANKRUPTING NATURE: DENYING OUR PLANETARY BOUNDARIES* (2012).

legalistic cloaks of non-justiciability that prevent scrutiny and hinder sustainable development. What is needed is an increased effort to frame human rights from sociological, political, and economic perspectives to understand why violations occur, and to actively seek solutions for how indigent and marginalized communities with limited access to justice can find means to enjoy their legally enshrined rights.<sup>47</sup> A properly functioning human rights regime, designed to suit the historical, developmental, and cultural circumstances of communities, with adequate provision for their agency in identifying rights and implementation mechanisms, could act as a virtuous circle. It would provide ownership and control of process, defeat claims that human rights are merely neocolonialism, reign in corruption by creating greater transparency, ensure better protection of the environment, and allow prioritization on poverty reduction, providing greater access to excluded communities. Embedding these principles into human rights practice will promote increased respect and enjoyment of rights, particularly socio-economic and cultural rights.<sup>48</sup>

Part II of this article focuses on foreseeable difficulties that will arise by staying on the current trajectory of “Business as Usual,” describe above. Such a trajectory will lead to a heightened number of concerns. Part III focuses on antidotes: solutions that have been tried in various parts of the world, that are meritorious of further study and engagement, mainly to test their suitability in contexts far beyond their original one. This article argues that better systems can yield a clearer pathway to sustainable development, and Part III endeavors to demonstrate the utility of such mechanisms in process all around the world.

## II. WHERE BUSINESS AS USUAL HAS GOTTEN US . . . AND WHERE IT WILL TAKE US FROM HERE

Two shortcomings hinder the growth of robust mechanism to actively combat socio-economic inequality: the relative lack of emphasis on socio-economic rights, and the lack of understanding human rights questions from the lens of how they impact communities. Since the process to create new sustainable development goals is envisaged as encompassing a period up to

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<sup>47</sup> See generally JOSHUA CASTELLINO & ELVIRA DOMINGUEZ-REDONDO, *MINORITY RIGHTS IN ASIA: A COMPARATIVE LEGAL ANALYSIS* (2006); see also JOSHUA CASTELLINO & DAVID KEANE, *MINORITY RIGHTS IN THE PACIFIC: A COMPARATIVE LEGAL ANALYSIS* (2009); JOSHUA CASTELLINO & KATHLEEN A. CAVANAUGH, *MINORITY RIGHTS IN THE MIDDLE EAST: A COMPARATIVE LEGAL ANALYSIS* (2013).

<sup>48</sup> Anthony E. Cassimatis, *Developing Countries, Trade and Human Rights: Free Trade Agreements, Development Needs and the European Union's Generalized System of Preferences*, in *LAW & DEVELOPMENT PERSPECTIVE ON INTERNATIONAL TRADE LAW 277* (Yong-Shik Lee et al. eds., 2013).

2030 and beyond, any planning process ought to start from seeking to characterize the challenges that are likely to emanate into the immediate future and beyond. This part seeks to chart the main challenges as they currently exist, and extrapolate them into the future. This kind of extrapolation can help develop the framework necessary to address the trends that are likely to impact gender equality, social inclusion, and human rights well beyond 2050.<sup>49</sup>

#### A. *Environmental Degradation*

Environmental degradation disproportionately impacts vulnerable communities, and this trend will continue as poor and marginalized populations remain further away from accessing potential remedies to such degradation.<sup>50</sup> Vulnerable populations—especially many indigenous communities—tend to depend heavily on the natural environment for their livelihoods, live in areas that may often be prone to environmental degradation and disasters, and are least able to protect themselves against the effect of environmental degradation. While marginalized groups, and women in particular (given their experience of coping with a scarcity of resources), may be well placed to adapt to environmental crises,<sup>51</sup> they may have the least opportunity to do so because their voices may be disregarded.

#### B. *Conflict Over Resources*

Conflict over scarce resources is likely to become more intense. In particular, access to water may become a key point of conflict within and between nations. This will be exacerbated by population pressure, as environmental degradation, and global environmental change combine to put pressure on vulnerable communities. The resulting fragility is particularly evident in the drylands where pastoralist communities often compete with sedentary farmers over scarce water resources and grazing grounds and in mining communities. Such conflicts are already visible among nomadic populations in the Sahara Desert and future planning needs to be mindful of the impact of desertification on such communities.<sup>52</sup>

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<sup>49</sup> See SUSTAINABLE DEVELOPMENT SOLUTIONS NETWORK, INDICATORS AND MONITORING FRAMEWORK FOR THE SUSTAINABLE DEVELOPMENT GOALS (2015).

<sup>50</sup> DEFORESTATION, ENVIRONMENT AND SUSTAINABLE DEVELOPMENT: A COMPARATIVE ANALYSIS 2-5 (Dhirendra K. Vajpeyi ed., 2001).

<sup>51</sup> ROSI BRAIDOTTI ET AL., WOMEN, THE ENVIRONMENT & SUSTAINABLE DEVELOPMENT 2 (1994).

<sup>52</sup> LUIS SANTOS PEREIRA ET AL., COPING WITH WATER SCARCITY: ADDRESSING THE CHALLENGES 66 (2009).

### C. *Population Growth and Fertility Rates*

Population growth and fertility rates tend to be highest in poor countries and among poor people, particularly in rural areas.<sup>53</sup> Care needs to be taken to decouple discussions over reducing fertility rates from discussions of the earth's carrying capacity<sup>54</sup> to ensure poor women, especially from outside Europe and North America, are not constructed as "responsible" for continuing high population growth and environmental degradation.<sup>55</sup> Reducing high fertility is an important goal in and of itself, since, in addition to living in subsistence conditions, high fertility rates place inordinately high burdens on women, effectively curtailing their contribution to every other aspect of community life.<sup>56</sup> There is a greater prospect of increased fertility rates when women are valued primarily as mothers. As a corollary, the failure to view women's reproductive or care roles within a society that places greatest value on monetary contribution ensures their relegation to second-class status within their communities.<sup>57</sup> Having large numbers of children early in life increases maternal mortality, disempowers women, lowers per capita investments in children, increases child mortality rates, and contributes to poor education outcomes. Addressing this imbalance requires tackling of its root causes, namely gender power relations.

### D. *Migration and Dispersal*

Human migratory flows<sup>58</sup> will likely grow in volume and become more dispersed with growing numbers of people seeking refuge in today's emerging economies.<sup>59</sup> Such population flows put pressure on those left behind in host countries, especially if this deprives the sending countries of dynamic and relatively well educated people.<sup>60</sup> Migrant populations may

<sup>53</sup> See generally W.T.S. GOULD, *POPULATION AND DEVELOPMENT* (2009).

<sup>54</sup> See generally BETSY HARTMANN, *REPRODUCTIVE RIGHTS AND WRONGS: THE GLOBAL POLITICS OF POPULATION CONTROL* (rev. ed. 1999).

<sup>55</sup> See generally *POPULATION AND DEVELOPMENT: HIGH AND LOW FERTILITY RATES IN POORER COUNTRIES* (Geoffrey Hawthorne ed., 1978).

<sup>56</sup> See A.O. Tsui, *Population Policies, Family Planning and Fertility: The Record*, in *GLOBAL FERTILITY TRANSITION* (Roldolfo A. Bulatao & John B. Casterline eds., supp. vol. 27, 2001).

<sup>57</sup> See generally JANET MOMSEN, *GENDER AND DEVELOPMENT* (2d ed. 2010).

<sup>58</sup> See generally RONALD SKELDON, *MIGRATION AND DEVELOPMENT: A GLOBAL PERSPECTIVE* (1997) (tracing the contours of this question).

<sup>59</sup> Frank Biermann & Ingrid Boas, *Climate Change and Human Migration: Toward a Global Governance System to Protect Climate Refugees*, in *CLIMATE CHANGE, HUMAN SECURITY AND VIOLENT CONFLICT* 291, 298 (Jürgen Scheffran et al. eds., 2012).

<sup>60</sup> Cf. *INTERNATIONAL MIGRATION, ECONOMIC DEVELOPMENT & POLICY* (Maurice Schiff & Çağlar Özden eds., 2007) (subsuming this point in a more general expose of issues).

find a hostile reception from some in the receiving country who may not recognize migrants' rights; conversely, large-scale migration may create social conflict in receiving country.<sup>61</sup> Another negative and direct consequence of migration is the burgeoning human trafficking industry and corresponding degradation of fundamental human rights.<sup>62</sup> These flows have a downward pressure on wages, with a direct and disproportionate impact on women and those from vulnerable communities within the labor markets.<sup>63</sup> For women "left behind," there is a pressure to take on both parenting roles, while women who migrate may have to take daughters out of school to cover their reproductive role with knock-on, longer term effects.

#### *E. Economic Policies and Practices Privileging Profits Over People*

There is an ill-founded faith that markets left to operate on their own can solve all economic and social problems. It has the unfortunate effect of allowing companies to oppose taxes and regulations and to view government measures that constrain markets as preventing a beneficial economic climate.<sup>64</sup> The shrinking state is forced to rollback state-provided social services, including affordable childcare. States may even remove measures that are constructed as 'distortions' to the market, such as a minimum wage. These rollbacks deny marginalized groups, including women, rights at work rights to work. What is needed is not a change in individual policies one policy at a time, but rather a change in the overall thinking about the economy. The economy should be seen less as an impersonal mechanism that produces efficient outcomes and more as a set of institutions that can be shaped to serve collective needs. That is, the economy should be viewed in its political aspect, rather than as a purely "economic" system.<sup>65</sup>

#### *F. The Private Sector*

The growing importance of the private sector will challenge traditional models of state-led human rights instruments, as governments will need to negotiate policies with business, civil society, and other

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<sup>61</sup> See e.g., Emmanuel Bagenda & Lucy Hovil, *Sudanese Refugees in Northern Uganda: From One Conflict to the Next*, 16 FORCED MIGRATION REV. 14, 14-16 (2003).

<sup>62</sup> See Frank Laczko & Marco A. Gramegna, *Developing Better Indicators of Human Trafficking*, 10 BROWN J. WORLD. AFF. 179 (2003).

<sup>63</sup> Jean-François Maystadt & Philip Verwimp, *Winners and Losers Among a Refugee-Hosting Population*, 62 ECON. DEV. AND CULTURAL CHANGE 769, 777 (2014).

<sup>64</sup> Kenneth Anderson, *Microcredit: Fulfilling or Belying the Universalist Morality of Globalizing Markets?*, 5 YALE HUM. RTS. & DEV. L.J. 85, 87-88, 93 n.18 (2002).

<sup>65</sup> Amy Chua, *Markets, Democracy, and Ethnicity: Toward a New Paradigm for Law and Development*, 108 YALE L.J. 1, 106 (1998).

stakeholders. It is important to reassert that states remain the principal duty bearers and central providers or facilitators of remedies.<sup>66</sup> The dangers of privatizing some elements of basic provision is that they may then be driven by market forces failing to provide basic remedies required by those within vulnerable communities. This is not to discount the role of the private sector, but to ensure that “private public partnerships” are genuinely people-focused. Private public partnerships’ primary responsibilities should be respecting and fostering human rights in their own policies and practices, creating mechanisms to consult and engage with local communities, and assisting the creation of robust mechanism that are geared toward accountability. Thus, emphasis should shift from the creation of non-binding rules (corporate social responsibility) to binding norms to regulate and control corporate activities, particularly in addressing issues of gender imbalance through the provision of decent and worthwhile work for women and men in the communities in which they operate.

#### G. *Changes in Technology*

Technological change offers new opportunities for delivering social services and income opportunities for the poor, but technology endangers the rights and freedoms of individuals, particularly women and workers as the nature of jobs change, the skill premium increases, and a “winner takes all” mentality dominates.<sup>67</sup> These trends may increase inequalities within countries unless counteracted by active policies.<sup>68</sup> Gender-sensitive developmental policies need to pay heed to this element, since technology tends to be harnessed and used to the exclusion of women, especially those in marginalized, excluded, and vulnerable communities. A concerted policy focusing on women and technology, among others, is required to ensure that women are included among the users and beneficiaries of technology, able to contribute to its use, development, and dissemination.

#### H. *Urban Growth*

Estimates suggest that 64.1 percent and 85.9 percent of the developing and developed world, respectively, will be urbanized by 2050.<sup>69</sup>

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<sup>66</sup> John Gerard Ruggie, *Global Governance and “New Governance Theory”: Lessons from Business and Human Rights*, 20 GLOBAL GOVERNANCE 5, 7-9 (2014).

<sup>67</sup> See generally HANS MORTEN HAUGEN, TECHNOLOGY AND HUMAN RIGHTS – FRIENDS OR FOES? HIGHLIGHTING INNOVATIONS APPLYING TO NATURAL RESOURCES AND MEDICINE (2012).

<sup>68</sup> Colin Gordon, *The Computer Did It?: Technology and Inequality*, 61 DISSENT 73, 76 (2014).

<sup>69</sup> Shlomo Angel et al., *The Dimensions of Global Urban Expansion: Estimates and Projections for All Countries, 2000-2050*, 75 PROGRESS IN PLANNING 53, 58-59 (2011).

Urbanization pressures existing communities and their socioeconomic organization. It creates new vulnerabilities for women, children, and the aged, who often have to manage a household's scarce resources or are relegated to work in precarious conditions for wages below subsistence. Family or community-based networks that provided women with limited protection are often eroded in such conditions, and governmental policy would need to actively create alternatives of social protection if a human rights and gender friendly development policy can be framed post-2015. Uncontrollable urban growth threatens the environment and creates a peri-urban culture, usually on the outskirts of cities, where people live in unsanitary conditions that pose major health risks. Additionally, young people are deserting rural communities, leaving only the aged and children behind, which poses a great threat to community sustainability. Efforts by governments to provide basic social amenities in rural communities and incentives to reverse or stall the rural-urban drift will be critical to dealing with this challenge. However, given urban growth's reality, so too will urban planning systems be critical in ensuring cities are built with people, not profits, in mind. Thus, inclusive cities need transport routes that take into account women's as well as men's journeys, and that are focused on creating safe streets. There also needs to be an understanding in discussions of environmental change and crisis that the environment includes the built environment.

### *I. Corruption*

Increasing levels of corruption disproportionately impact those that are further away from the levers of power and influence. According to the African Union, more than USD 148 billion is lost to corruption in Africa every year, equivalent to 25 percent of Africa's GDP.<sup>70</sup> Also, corrupt public officials in developing and transition countries receive between USD 20 to 40 billion in bribes annually, which is equivalent to 20 percent to 40 percent of official development assistance. Further, based on a study conducted in forty-one countries, the Anti-Corruption Catalyst report finds that where more bribes are paid, there is a lower literacy rate among fifteen to twenty-four-year olds.<sup>71</sup> A rise in reported bribery is also associated with higher maternal deaths in sixty-four states, regardless of a country's wealth or how

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<sup>70</sup> U.N. ECON. COMM. FOR AFRICA, COMBATING CORRUPTION, IMPROVING GOVERNANCE IN AFRICA: REGIONAL ANTI-CORRUPTION PROGRAMME FOR AFRICA (2011-2016), at 4 (2011).

<sup>71</sup> THE ANTI-CORRUPTION CATALYST: REALISING THE MDGs BY 2015, Transparency Int'l at 8-9 (2014), available at [http://www.transparency.org/whatwedo/publication/the\\_anti\\_corruption\\_catalyst\\_realising\\_the\\_mdgs\\_by\\_2015](http://www.transparency.org/whatwedo/publication/the_anti_corruption_catalyst_realising_the_mdgs_by_2015).

much it invests in health.<sup>72</sup> Data for fifty-one countries shows that people's access to safe drinking water falls as bribery increases.<sup>73</sup> These statistics and specific examples reveal the deep interconnections between corruption, human rights, and poverty. Suppression of civil and political rights such as access to information, freedom of expression, assembly, and freedom of movement denies citizens the means to expose and prevent corruption while the festering of corruption leads to violations of economic, social, and cultural rights. Curbing corruption is needed as a way of providing social capital for the poor to deal with social exclusion and personal disempowerment.

*J. Vulnerable Populations' Exclusion from Offering Input on Sustainable Development*

Exclusion of vulnerable populations from inputs into sustainable development has in the past meant that discussions around development treat such populations as objects rather than subjects of law.<sup>74</sup> While the number and nature of popular consultations has increased, it is often the same people who participate. Though consultations may include "marginalized groups," including women, there is a need to recognize that women are not a homogenous group and that the intersection of gender with age, ethnicity, sexuality, and other factors inform the identity of each person and their relative position in society. Meaningful consultations require engagement beyond the usual participants, via ongoing dialogue rather than one off conversations. It remains difficult to identify a constituency that speaks for marginalized groups, and policies that stem from such consultations inevitably focus on those with the most voice. The only way around this is to ensure that groups that are otherwise marginalized have a voice in the articulation of development policies post-2015.<sup>75</sup> As news networks have become decentralized, and as information flows have become less regulated with advances in technology, it is now possible to hear many more voices, even if this often results in cacophony. In recent decades, the increased

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<sup>72</sup> *Id.* at 16.

<sup>73</sup> *Id.*

<sup>74</sup> See Russell Lawrence Barsh, *Indigenous Peoples in the 1990s: From Object to Subject of International Law?*, 7 HARV. HUM. RTS. J. 33 (1994).

<sup>75</sup> Extractive industry standards around "Free Prior Informed Consent" have begun to gain traction by engaging with vulnerable communities, though considerable work still needs to be done to ensure community wide consultation. See Cathal M. Doyle & Jill Cariño, *MAKING FREE PRIOR & INFORMED CONSENT A REALITY: INDIGENOUS PEOPLES AND THE EXTRACTIVE SECTOR* (2013); see also Cathal M. Doyle, *INDIGENOUS PEOPLES, TITLE TO TERRITORY, RIGHTS AND RESOURCES: THE TRANSFORMATIVE ROLE OF FREE PRIOR AND INFORMED CONSENT* (2015).

importance placed on listening to these voices has resulted in significant improvements in the direction of policy as a wider range of stakeholders can bring influence to bear on policy making. As the risk of marginalizing communities grows, it is imperative that the mechanisms of the future provide adequate opportunities for civil society actors to engage with emerging processes. Development mechanisms must ensure there are adequate resources to support the participation of the most marginalized.

### III. A NEW PERSPECTIVE: PATHWAYS TOWARD SUSTAINABLE DEVELOPMENT

Stripped to basic principles, the human rights agenda to 2030 and beyond should focus on guaranteeing fundamental equalities, not merely the threshold of “non-discrimination.” Non-discrimination, which requires that systems treat everyone the same, is only sufficient when each individual or community starts with equal access to opportunities and equal needs. Treating different populations identically perpetrates new inequalities undermining the human rights project. Extra attention should be paid to the attainment of all targets and a careful scrutiny of all indicators for impact on vulnerable communities, defined in terms of class, race, ethnicity, religion, language, age, ability, and sexual orientation, among others. Further attention should be paid to women within these communities and to women as a category across all indicators, including in terms of access to healthcare, education, and income differentials as covered by the range of targets and indicators within the articulated development goals. While socioeconomic rights realization may be subject to the caveat that these be progressively realized, there are significant elements and policies that do exist among the world’s social policies that should be explored as potential pathways to sustainable development. These are not completed projects, but suggestions that in their ethos, there are elements that need careful scrutiny with a view to understanding and replicating these to other instances. Practices developed in countries facing significant issues of marginalization and poverty may be better models than those developed and located in the Western world and extended beyond their context.

#### A. *Effective Engagement with Excluded Groups*

Many developing countries have worked on unpicking persistent inequalities that undermine their constitutional promise of equality. For example, China sought to create administrative mechanisms to enable the

ascent from poverty for whole communities numbering in the millions.<sup>76</sup> They achieved this through a series of affirmative action and policy changes in education, political governance, and linguistic rights.<sup>77</sup> These models merit further study and replication. Through affirmative action measures embedded in administrative laws that stem from basic constitutional guarantees of equality, India has sought to challenge culturally-ingrained inequalities that form the basis of caste-based discrimination.<sup>78</sup> New Zealand has worked to establish processes undoing historical violations that placed the Maori in a subjugated position to the Pākehā (settlers) and institute remedies that challenge inequalities.<sup>79</sup> Lebanon has attempted to create administrative processes to calibrate Christian and Muslim influences through consociationalism (a form of power sharing), while underscoring the need for such divisions to disappear over time.<sup>80</sup> Iraq, emerging from one form of oppression and subsequent occupation to another looming oppression, has sought to create mechanisms to accommodate Kurdish ambitions.<sup>81</sup> Numerous African states such as Tanzania and Kenya are engaged in detailed discussions concerning the efficacy of land tenure systems,<sup>82</sup> and South Africa has demonstrated that socioeconomic rights can be made justiciable through, for example, access to anti-retroviral drugs.<sup>83</sup> Colombia has led the way in recognizing indigenous rights<sup>84</sup> with echoes in Mexico<sup>85</sup> and Bolivia,<sup>86</sup> while Brazil has sought mechanisms to put the Bolsa Familia scheme on a firm legal footing.<sup>87</sup> These mechanisms should

<sup>76</sup> See generally POVERTY REDUCTION AND SUSTAINABLE DEVELOPMENT IN RURAL CHINA (Zheng Yisheng ed. 2011).

<sup>77</sup> See JOSHUA CASTELLINO & ELVIRA DOMÍNGUEZ REDONDO, MINORITY RIGHTS IN ASIA 117-36 (2006).

<sup>78</sup> See DAVID KEANE, CASTE-BASED DISCRIMINATION IN INTERNATIONAL HUMAN RIGHTS LAW (2007).

<sup>79</sup> See LIVING RELATIONSHIPS – KOKIRI NGATAHI: THE TREATY OF WAITANGI IN THE NEW MILLENNIUM (K.S. Coates & P.G. McHugh eds. 1998).

<sup>80</sup> See generally KAMAL SALIBI, A HOUSE OF MANY MANSIONS: THE HISTORY OF LEBANON RECONSIDERED (rev. ed. 1990).

<sup>81</sup> See generally ERIC DAVIS, MEMORIES OF STATE: POLITICS, HISTORY, AND COLLECTIVE IDENTITY IN MODERN IRAQ (2005).

<sup>82</sup> See Albert Kwokwo Barume, *Land Rights of Indigenous Peoples in Africa*, IWIGIA Doc. 115 (2010).

<sup>83</sup> Eric C. Christiansen, *Adjudicating Non-Justiciable Rights: Socio-Economic Rights and the South African Constitutional Court*, 28 COLUM. HUM. RTS. L. REV., 321, 368-69 (2006).

<sup>84</sup> See generally Jean E. Jackson, *Rights to Indigenous Culture in Colombia*, in THE PRACTICE OF HUMAN RIGHTS (Mark Goodale & Sally Engle Merry eds. 2007).

<sup>85</sup> See generally TODD A. EISENSTADT, POLITICS, IDENTITY, AND MEXICO'S INDIGENOUS RIGHTS MOVEMENTS (2013).

<sup>86</sup> See generally LAURA GOTKOWITZ, A REVOLUTION FOR OUR RIGHTS: INDIGENOUS STRUGGLES FOR LAND AND JUSTICE IN BOLIVIA, 1880-1952 (2007).

<sup>87</sup> François Bourguignon et al., *Conditional Cash Transfers, Schooling, and Child Labor: Micro-Stimulating Brazil's Bolsa Escola Program*, 17 WORLD BANK ECON. REV. 229, 231-32 (2003).

be studied and where found suitable and culturally appropriate, should be reconfigured as potential solutions in other countries.

*B. Mechanisms to Mobilize Women's Political Participation*

The lack of effective political participation is a key reason why inequality and subordination are perpetuated into the future. Women often participate extensively in grassroots activism; however, the realm of formal politics is often far beyond the reach of the marginalized and vulnerable. As a result, issues germane to their progress receive scant attention.<sup>88</sup>

Incorporating a gender-sensitive, interdisciplinary approach to rights and development would need fundamental recognition of women's gendered rights, paying heed to five central objectives. First, the approach requires implementing every woman's right to live free from violence by eliminating the gender-based violence ("GBV") that destroys communities and prevents women from voicing opinions and influencing decision making. Second, the approach requires a concerted focus on understanding gendered experiences of poverty, how it differs between men and women, and between women, and the establishment of gender sensitive anti-poverty antidotes that reflect these different realities. Third, the approach requires increasing women's access to and control over monetary and non-monetary resources, including recognition of women's rights to own and inherit land and property. Fourth, the approach requires ensuring decent and dignified work for women paying a living wage, along with recognition of women's domestic responsibilities and the provision of adequate and affordable child care, and the valuing of care labor. Fifth, the approach requires recognition of sexual and reproductive rights as rights, to ensure that all women can make decisions about if and when to have children and can enjoy safe and healthy sex lives.

To achieve these objectives and promote women's rights demands more than changes to legal systems, but a fundamental change in attitudes and social norms, recognizing and challenging the unequal gender power relations that limit women's ability for rights fulfillment.<sup>89</sup> Without such an approach a legalistically driven agenda would serve to reiterate and endlessly reproduce existing patriarchic hierarchies. The achievement of these objectives will not only assist poor, marginalized, and excluded

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<sup>88</sup> See e.g., WOMEN'S POLITICAL PARTICIPATION AND REPRESENTATION IN ASIA (Kazuki Iwanaga ed. 2008).

<sup>89</sup> See Andrea Cornwall & Maxine Molyneux, *The Politics of Rights: Dilemmas for Feminist Praxis*, 27 THIRD WORLD QUARTERLY 1175, 1187-88 (2008).

women, but will also ensure that development policies take on a human rights-sensitive approach beneficial to all segments of the population.

One mechanism that has had significant impact on the formal political participation of women and minorities is various forms of quotas. More than 100 countries today have either party quotas, legislative quotas, or reserved seats for women in parliaments.<sup>90</sup> Quota requirements are also proliferating with regard to corporate boards.<sup>91</sup> Countries that have implemented quotas typically have seen a significant jump in the presence of women and minorities in formal politics. A well-known example is India, which introduced gender quotas in local government through a constitutional amendment in 1993, with demonstrated effects on establishing women as leaders and on the types of issues gaining favor in local politics.<sup>92</sup> Another example is Rwanda, where a gender quota instituted in the aftermath of the genocide has led to the highest national rate of women in parliament.<sup>93</sup> Another important mechanism to achieve women's political participation is their mobilization at election time and their inclusion in peace-building. The Women's Platform for Peaceful Elections in Senegal was constituted at the beginning of 2012 to respond to the rising tensions and political violence witnessed ahead of the presidential elections.<sup>94</sup> Femmes Africa Solidarité ("FAS"), which coordinates the network, constituted a task force composed of Senegalese women's organizations, partner international organizations, and women leaders from neighboring countries to launch a strong initiative of women for peace before, during, and after the presidential elections.<sup>95</sup> In accordance with United Nations Security Council ("UNSCR") resolution 1325 on women, peace, and security and its supporting resolutions,<sup>96</sup> the overall mission of the Platform is to mobilize women and youth so as to ensure their active participation in conflict prevention and peaceful and democratic electoral processes. During the elections, activities were focused on enhancing women's participation in peace-building; sensitizing political parties towards understanding the gender agenda; bringing political parties together to establish a non-partisan Situation Room where women work

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<sup>90</sup> See generally WOMEN, QUOTAS, AND POLITICS (Drude Dahlerup ed. 2006).

<sup>91</sup> Anne Sweigart, *Women on Board for Change: The Norway Model of Boardroom Quotas As a Tool for Progress in the United States and Canada*, 32 NW. J. INT'L L. & BUS. 81A, 82A, 84A (2012).

<sup>92</sup> Raghavendra Chattopadhyay & Esther Duflo, *Women as Policy Makers: Evidence from a Randomized Policy Experiment in India*, 72 ECONOMETRICA 1409, 1410 (2004).

<sup>93</sup> Jennie E. Burnet, *Gender Balance and the Meanings of Women in Governance in Post-Genocide Rwanda*, 107 AFR. AFF. 361, 378 (2008).

<sup>94</sup> Gabrielle Bardall, *Gender-Specific Election Violence: The Role of Information & Communication Technologies*, 2 STABILITY INT'L J. SEC. & DEV. 1 (2013).

<sup>95</sup> See FEMMES AFRICA SOLIDARITÉ, <http://www.fasngo.org> (last visited Mar. 31, 2015).

<sup>96</sup> S.C. Res. 1325, ¶ 8, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

together to foster peaceful co-existence; advocating for free, fair, peaceful and transparent elections; and encouraging the active participation of women in democratic processes in Africa as a way to enhance the promotion of gender equality and women's empowerment.<sup>97</sup> The impact of such a movement has been extremely significant in bringing women's voices to the negotiating table at important transitional moments as is worthy of replication across the world.

### C. *Creating Decent Work*

Creating work is a key component of any development model,<sup>98</sup> but in order for such a model to be just, labor conditions need not only to obey core labor standards (including non-discrimination, absence of forced and child labor, freedom of association, and collective bargaining) but also offer fair wages and decent working conditions.<sup>99</sup> In-work poverty<sup>100</sup> is an increasingly important issue within high as well as low income countries. Many people working very long hours under difficult conditions are earning a wage that does not allow them to live free from poverty.<sup>101</sup> While social protection programs can provide additional monetary resources to alleviate their poverty, many of these workers would prefer to be paid a living wage that reflects the work they do.<sup>102</sup> Labor rights have been severely jeopardized in a globalized labor market where firms compete for cheap labor and where unions and workers' rights are considered an obstacle imposing undue cost.<sup>103</sup> In addition, workers within the informal sectors often lack basic labor rights and work under conditions that violate basic standards governing decent work.<sup>104</sup> Trade unions continue to be the most

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<sup>97</sup> See e.g., UN WOMEN WEST AFRICA, <http://unwomenwestafrica.blog.com> (last visited Mar. 31, 2015).

<sup>98</sup> See International Labour Organization, *From Precarious Work to Decent Work* (2012).

<sup>99</sup> Philip Alston, "Core Labour Standards" and the Transformation of the International Labor Rights Regime, 15 EUR. J. INT'L L. 457, 488, 491, 498 (2004).

<sup>100</sup> See Jane Wills & Brian Linneker, *The Costs and Benefits of the London Living Wage* 4 (Oct. 2012), <http://www.geog.qmul.ac.uk/livingwage/pdf/Livingwagecostsandbenefits.pdf>.

<sup>101</sup> See generally Henning Lohmann, *Welfare States, Labour Markets Institutions and the Working Poor: A Comparative Analysis of 20 European Countries*, 25 EUR. SOCIOLOG. REV. 489 (2009).

<sup>102</sup> Fran Bennett, *The "Living Wage," Low Pay, and In Work Poverty: Rethinking the Relationships*, 34 CRIT. SOC. POL'Y 46, 57-59 (2014).

<sup>103</sup> To change the employment relationship, special attention must be paid to the increased use of contract and agency labor. See generally N. De Cuyper et al., *Job Insecurity and Employability in Fixed-Term Contracts, Agency Workers, and Permanent Workers: Associations With Job Satisfaction and Affective Organizational Commitment*, 14 J. OCCUP. HEALTH PSY. 193 (2009).

<sup>104</sup> See generally PRECARIOUS WORK, WOMEN AND THE NEW ECONOMY: THE CHALLENGE TO LEGAL NORMS (Judy Fudge & Rosemary Owens eds. 2006); see also Daniel S.S. Cairns, Comment, *New Formalities for Casual Labor: Addressing Unintended Consequences of China's Labor Contract Law*, 24

effective mechanism for ensuring just wages, decent working conditions and the upholding of the principles of collective bargaining on behalf of the workforce.<sup>105</sup> In recent years new types of unions have developed in particular among women workers that take account of the diverse range of dependencies among workers. For example, the Self-Employed Women's Association in India represents informal sector workers who work on their own account and in subcontracting arrangements. This "union of the self-employed" demands labor rights for its members while at the same time organizing access to credit, child care, and insurance.<sup>106</sup> Another example is the Federación Nacional de Trabajadoras del Hogar de Bolivia.<sup>107</sup> Drawing on legal provisions in CEDAW, this union of domestic workers has successfully achieved legislation giving domestic workers basic rights and is now working to assure that its members can access their rights. These new types of unions contribute importantly to making development socially sustainable.<sup>108</sup>

#### D. *Embedding Macro-Economic Policies*

Sound macro-economic policies are an unquestioned prerequisite for economic sustainability, yet in their neoliberal form they seem to contradict the goal of social sustainability. Rigid market-centered prescriptions over the past decades have generated massive inequality on a global scale.<sup>109</sup> There is an urgent need to re-embed macro-economic and fiscal policy within the broader framework of international social goals so that the measure of sound policy does not depend so heavily on the investor—who may pull capital out of a country. Fiscal policy should emphasize people's (both women's and men's) health and well-being.<sup>110</sup> One interesting example of an effort to re-embed macro-economics into social policy are gender budgets, which analyze public expenditures and the way in which governments raise public revenue.<sup>111</sup> Gender budgets do not start from a

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WASH. INT'L L.J. 219, 248-50 (2015).

<sup>105</sup> See Cairns, *supra* note 104, at 229.

<sup>106</sup> ILO, *LEARNING FROM CATALYSTS OF RURAL TRANSFORMATION* (Geneva: ILO, 2014) 135-167 (offering insights into seven other successful schemes in Latvia, Brazil, Peru, Rwanda, The Occupied Palestinian Territories, Benin and Cambodia).

<sup>107</sup> See generally La Federación Nacional de Trabajadoras Asalariadas del Hogar de Bolivia, *Publicaciones*, FENATRAHOB, <http://fenatrahob.org.bo/index.php/fenatrahob/publicaciones>.

<sup>108</sup> See *Workers and Trade Unions*, SUSTAINABLE DEVELOPMENT KNOWLEDGE PLATFORM, <https://sustainabledevelopment.un.org/index.php?menu=162>.

<sup>109</sup> See generally JOSEPH E. STIGLITZ, *THE PRICE OF INEQUALITY: HOW TODAY'S DIVIDED SOCIETY ENDANGERS OUR FUTURE* (2012).

<sup>110</sup> See generally Anthony B. Atkinson, *PUBLIC ECONOMICS IN AN AGE OF AUSTERITY* (2014).

<sup>111</sup> See generally GENDER BUDGETS MAKE MORE CENTS: COUNTRY STUDIES AND GOOD PRACTICE

narrow premise that public funds need to be allocated on a 50-50 basis. Instead they recognize that different people have different needs in different contexts, and assess whether public budgets are structured adequately to meet such differential needs. Gender budgets keep in view the needs of poor households and take into consideration unpaid care work. Non-governmental organizations in the United Kingdom and South Africa have generated such budgets, showing up inequities in fiscal and macro-economic policy.<sup>112</sup>

### *E. Emphasizing Social Protection Models*

It is clear that in any meaningful, people-centered, future-oriented development planning, an overt focus must lie on the eradication of poverty, which is a human rights violation of itself, and which, in many societies, is the primary obstacle to the enjoyment of all other rights.<sup>113</sup> Social protection mechanisms such as cash transfer schemes, public work programs, school stipends, social pensions, food vouchers and food transfers, and user fee exemptions for health care and education, established in the most unequal societies have demonstrated how persistent inequality can be mitigated.<sup>114</sup> These experiences make a strong case for embedding broad based social protection systems and universal social policies, as already visible in the Productive Safety Net Programme in Ethiopia,<sup>115</sup> the Mahatma Gandhi National Rural Employment Guarantee Scheme in India,<sup>116</sup> the Challenging the Frontiers of Poverty Reduction program in Bangladesh,<sup>117</sup> and the Pilot Social Cash Transfer Scheme in the Kalomo District in Zambia.<sup>118</sup> These programs have improved nutrition levels, enabling greater numbers of

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(Debbie Budlender & Guy Hewitt eds., 2002).

<sup>112</sup> See Diane Elson, *Gender Mainstreaming and Gender Budgeting*, paper presented at the Conference of the Jean Monnet Project on "Gender Equality and Europe's Future," European Commission, Brussels 9-13 (Mar. 4, 2003); see also Women's Budget Group, *International Gender Budgeting Projects*, <http://wbg.org.uk/pdfs/UPDATEDINTERNATGBWORK.pdf>.

<sup>113</sup> See generally JEFFREY SACHS, *THE END OF POVERTY* (2011).

<sup>114</sup> See generally JOSEPH HANLON ET AL., *JUST GIVE MONEY TO THE POOR: THE DEVELOPMENT REVOLUTION FROM THE GLOBAL SOUTH* (2010).

<sup>115</sup> See Daniel O. Gilligan et al., *The Impact of Ethiopia's Productive Safety Net Programme and Its Linkages*, 45 J. DEV. STUDIES 1684 (2009).

<sup>116</sup> See The Mahatma Gandhi National Rural Employment Guarantee Act, No. 42 of 2005, INDIA CODE (2009). See also RIGHT TO WORK AND RURAL INDIA: WORKING OF THE MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE SCHEME (Ashok K. Pankaj ed., 2012) (commenting on Mahatma Gandhi National Rural Employment Guarantee Act's effectiveness).

<sup>117</sup> PAUL STEELE ET AL., *POVERTY REDUCTION THAT WORKS: EXPERIENCE OF SCALING UP DEVELOPMENT SUCCESS* 232, 281-85 (2008).

<sup>118</sup> Bernd Schubert, *The Pilot Social Cash Transfer Scheme Kalomo District – Zambia 7* (Chronic Poverty Research Centre, Working Paper No. 52, 2005).

individuals to enjoy basic human rights. School meal programs in Brazil<sup>119</sup> and Paraguay,<sup>120</sup> and the distribution of food baskets, have played an equally important role in reducing the prevalence of hunger. Social protection programs have also contributed to the realization of the right to education allowing families to absorb costs associated with schooling through school feeding initiatives that provide fee waivers and subsidies as best demonstrated through the Oportunidades program in Mexico.<sup>121</sup> Several studies demonstrate the contribution of such investments to higher school enrolment rates, increasing number of accumulated education years, and creating peer pressure that encourages non-beneficiary families to send their children to school.<sup>122</sup> There is strong evidence collected through the offices of the UN Special Rapporteur on Extreme Poverty and focused on Latin America, to indicate that greater family access to risk management instruments (e.g., unemployment benefits, disability benefits) directly reduces the prevalence of child labor.<sup>123</sup> Such social protection enhances the capacity for individuals to enjoy the fruits of all other rights, with particularly beneficial results in terms of education and health.<sup>124</sup> In the context of health, such transfers have increased the regularity of medical check-ups, reduced child mortality, improved prospects for immunization and reduced regular illness and deaths. One particular program that has had a particularly salutary effect on maternal health has been the cash transfer program entitled Juntos, established in Peru. Juntos is reported to have seen an increase of roughly 65 percent in pre-natal and post-natal visits to health clinics and a reduction of home births in an area that previously showed high levels of maternal mortality.<sup>125</sup>

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<sup>119</sup> See generally U.N. World Food Programme, *Learning from Experience: Case Study Brazil* (2013), <http://documents.wfp.org/stellent/groups/public/documents/newsroom/wfp207485.pdf>.

<sup>120</sup> See generally UNICEF, *Paraguay: Country Programme Document 2015-2019*, E/ICEF/2014/P/L.15, 2d Regular Sess. (Sept. 9-12, 2014).

<sup>121</sup> See generally Dirk Van de Gaer, Joost Vandenbossche & José Luis Figueroa, *Children's Health Opportunities and Project Evaluation: Mexico's Oportunidades Program*, 28 WORLD BANK ECON. REV. 282 (2014).

<sup>122</sup> M. Sanfilippo, C. de Neubourg & B. Martorano, *The Impact of Social Protection on Children: A Review of the Literature* 25 (UNICEF: Office of Research Working Paper WP2012-06, 2012), available at [http://www.unicef-irc.org/publications/pdf/iwp\\_2012\\_06.pdf](http://www.unicef-irc.org/publications/pdf/iwp_2012_06.pdf).

<sup>123</sup> See generally U.N. Human Rights Rep., *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, U.N. Doc. A/69/297 (Aug. 11, 2014).

<sup>124</sup> Naila Kabeer, Caio Piza & Linnet Taylor, *What are the Economic Impacts of Conditional Cash Transfer Programmes? A Systematic Review of the Evidence*, Technical Rep. at 31, University of London (2012).

<sup>125</sup> See generally Fernando Fernandez & Victor Saldarriaga, *Do Benefit Recipients Change their Labor Supply After Receiving the Cash Transfer? Evidence from the Peruvian Juntos Program*, 3 IZA J. LAB. & DEV. 1 (2014).

However, these programs are not gender-neutral and often rely for their success of the largely unrecognized work of women to fulfill the conditions often attached to the cash transfers they provide.<sup>126</sup> While women are the ‘targets’ of the cash transfers, they are often not the intended beneficiaries; instead, the money is to be used to improve the diets of children or to ensure they have the clothes and materials necessary to attend school.<sup>127</sup> Women, too, are the ones who have to make the trips to health centers to attend regular health checks that monitor the development of young children in part to evaluate the success of such programs. The programs, then, reinforce traditional gender roles that cast women as those that should care for children; they construct women first and foremost as mothers,<sup>128</sup> and work on the assumption that they have ‘spare time’ to take on these extra tasks.<sup>129</sup> They increase women’s time-poverty while not reducing their income-poverty, and add extra roles and responsibilities that reinforce rather than challenge existing unequal gendered power relations.<sup>130</sup>

#### *F. Access to Resources in the Form of Credit and Land*

Women are disproportionately represented in agriculture and in the informal sector, where they often work under conditions that trap them in low levels of productivity.<sup>131</sup> Two major factors that maintain this status quo and that need to be challenged are the lack of access to land and credit for women.<sup>132</sup> While the spread of micro-credit programs has begun to address women’s lack of capital, women remain land-poor for various reasons. Some countries still restrict ownership to men; however, more commonly, land registration policies frequently assign ownership to a male household head, and inheritance practices favor the practice, traditional in many contexts, that land is passed down to sons. Some governments have begun to recognize the need for proactive intervention in order to change women’s

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<sup>126</sup> Maxine Molyneux, *Mothers at the Service of the New Poverty Agenda: Progres/Oportunidades, Mexico’s Conditional Transfer Programme*, 40 SOC. POL’Y & ADMIN. 425, 432 (2006).

<sup>127</sup> Sarah Bradshaw & Ana Quirós Viquez, *Women Beneficiaries or Women Bearing the Cost? A Gendered Analysis of the Red de Protección Social in Nicaragua*, 39 DEV. & CHANGE 823, 838 (2008).

<sup>128</sup> Sarah Bradshaw, *From Structural Adjustment to Social Adjustment: A Gendered Analysis of Conditional Cash Transfer Programs in Mexico and Nicaragua*, 8 GLOBAL SOCIAL POL’Y 188, 194 (2008).

<sup>129</sup> Sylvia Chant, *The “Feminisation of Poverty” and the “Feminisation” of Anti-Poverty Programmes: Room for Revision?*, 44 J. DEV. STUDIES 165, 178-79 (2008).

<sup>130</sup> Maxine Molyneux, *Two Cheers for CCTs*, 38 INST. DEV. STUD. BULL. 69, 72 (2003).

<sup>131</sup> See generally CAROLYN E. SACHS, *GENDERED FIELDS: RURAL WOMEN, AGRICULTURE, AND ENVIRONMENT* (1996).

<sup>132</sup> See Stephanie Seguino, *From Micro-Level Gender Relations to the Macro Economy and Back*, in *HANDBOOK OF RESEARCH ON GENDER AND ECONOMIC LIFE* 325, 334 (Deborah M. Figart & Tonia L. Warnecke eds., 2013).

continued exclusion from land ownership.<sup>133</sup> In Ethiopia, the government has distributed over twenty million land use certificates, requiring that land needs to be held jointly by husbands and wives.<sup>134</sup> While questions remain about how this is practically implemented and what happens in the case of a divorce between the couples, the effect of this measure is reported as seeing a degree of has empowerment of women, paired with increases in land-related investments.

### G. *Registering All Births*

Social exclusion, occurring because vulnerable communities are beyond the reach of administrative mechanisms, commences with the failure of registration at birth.<sup>135</sup> Once outside official census figures and bereft of registration, individuals and swathes of communities are left in a void unable to access any of the rights available within that society, and in addition they are not reflected within the statistics for that society. While many international agencies have sought to focus on the registration of the birth of every child, this call has often been less heeded. Yet, in order to tackle social exclusion, birth registration is a vital first step without which another generation would be excluded. Concerted efforts are required to understand the barriers to registration that exist, and to understand the broad geographic element to such failures of registration. Among those who experience failures of registration are the most vulnerable excluded groups: ethnic minorities, indigenous peoples, stateless communities, persons with disabilities, and undocumented migrants.<sup>136</sup> In addition, particular attention needs to be paid to gender within excluded communities, since the lack of registration of the girl child is often linked to the perception that her future sphere of operation is likely to be in the private rather than in the public realm, and thus accorded less value from birth.<sup>137</sup> The antidote to registration failures lies in making such processes free, simple to access and

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<sup>133</sup> See generally Dominique Lallement, *Infrastructure and Gender Equity*, in HANDBOOK OF RESEARCH ON GENDER AND ECONOMIC LIFE 132 (Deborah M. Figart & Tonia L. Warnecke eds., 2013).

<sup>134</sup> See Stein T. Holden et al., *Gender, Low-Cost Land Certification, and Land Rental Market Participation in Ethiopia*, in KLAUS DENINGER ET AL., INNOVATIONS IN LAND RIGHTS RECOGNITION, ADMINISTRATION AND GOVERNANCE 149, 151 (2010).

<sup>135</sup> See Plan, *What if Every Child was in the Picture?*, Plan International (2014), <http://plan-international.org/about-plan/resources/publications/campaigns/what-if-every-child-was-in-the-picture>.

<sup>136</sup> See Plan, *Birth Registration and Children's Rights: A Complex Story*, Plan International (2014), <http://plan-international.org/about-plan/resources/publications/campaigns/birth-registration-research>.

<sup>137</sup> See Plan, *Mother to Child: How Discrimination Prevents Women Registering the Birth of their Child*, Plan International (2012), <http://planinternational.org/aboutplan/resources/publications/campaigns/mother-to-child-how-discrimination-prevents-women-registering-the-birth-of-their-child/>.

understand, and available at the most local of levels. The success of registration processes can be gauged by the cost of such processes and by whether they provide multiple avenues for registration. Technological improvements could easily yield mobile registration units, door-to-door outreach programs, integration of registration services in hospitals, reproductive health services, vaccination programs, local stores, and banks. Cambodia has seen a dramatic improvement in mass registration through such processes—a result of a partnership between the Government and international actors, which resulted in a mass mobile registration campaign, bringing twelve million unregistered people within the fold in 2005. Data from Plan International highlights the variety of measures used, details the reforms that were made to the registration law, and explains the community awareness campaign that enabled full access by ensuring a large volume of volunteers who were mobilized to engage in the mass campaign.<sup>138</sup>

#### IV. ACCESS TO INFORMATION

In the context of the articulation of rights, especially among the poorest communities, little emphasis is placed on accessibility to information, especially legal information.<sup>139</sup> For a system that still relies heavily on legal advocates claiming rights from recalcitrant governments, the lack of information flows concerning rights and remedies harms the prospect of the poorest communities gaining redress through such mechanisms. Mainstreaming rights education and disseminating it through a variety of means, including through adult learning, is crucial for ensuing knowledge of rights knowledge and of the mechanisms to claim rights of excluded communities.<sup>140</sup> Legal and other materials elaborating human rights are often written in complex formats using legal language that excludes accessibility by the most vulnerable populations. There needs to be a concerted effort by all countries to simplify and translate a range of materials into local languages including articulations of constitutional rights and explanations of basic civic and administrative systems, in a bid to ensure that such materials are available to all and comprehensible to those that need it most. Where governments do not provide explanations of laws that are

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<sup>138</sup> See UNICEF, *Cambodia: Birth Registration Campaign Success*, UNICEF (Aug. 8, 2011), <http://www.unicef.org.au/Discover/Field-Stories/August-2011/Cambodia--Birth-registration-campaign-success.aspx>; see also Plan International Country Case Study Cambodia, available at <https://plan-international.org/birthregistration/resources/country-case-studies/cambodia>.

<sup>139</sup> See generally Roy Peled & Yoram Rabin, *The Constitutional Right to Information*, 42 COLUM. HUM. RTS. L. REV. 357 (2011).

<sup>140</sup> See generally Gillian MacNaughton, *Human Rights Education for All: A Proposal for the Post-2015 Development Agenda*, 24 WASH. INT'L. L.J. 537 (2015).

accessible to the majority of the population, NGOs and other groups should be supported in providing these.<sup>141</sup> For example, in Nicaragua the feminist magazine *La Boletina*<sup>142</sup> presents complex legal concepts and explains changes in laws and political processes in a way that is accessible to the majority of the population through writing in language that can be understood by those with only primary education (the average educational attainment).<sup>143</sup> It is equally imperative that public services incorporate mechanisms for advice and complaint using multiple communication channels so as not to leave individuals vulnerable to powerful administrators, and to overcome problems concerning literacy. Even among the poorest groups, special attention needs to be paid to the extent to which any facilities developed are accessible by women, who in many communities remain disadvantaged in multiple ways.

### I. Access to Paralegal and Administrative Remedies

With similar motivations, many societies have worked to create mechanisms to provide paralegal services to the most vulnerable groups.<sup>144</sup> Being educated to a basic level and able to be located close to communities, paralegals have played an essential role in providing administrative remedies that would otherwise be too costly to engage in any other form. Paralegals reduce reliance on free legal aid, leaving such aid for use in the most egregious violations of human rights. The equipping of paralegals with sophisticated skills both concerning the laws in operation as well as on counseling could assist socially excluded communities in accessing processes that would otherwise be unfamiliar to them. In addition, they act to make the legal system more efficient, eradicating the matters that can be addressed more swiftly from the overburdened justice system. In this way paralegals increase efficiency, reduce caseloads, divert untenable claims away from the courts, and improve the effectiveness of judicial and police procedures by holding officials to account. Paralegals could also contribute to educating communities about their rights and making them aware of the

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<sup>141</sup> See Amnesty International, *Combatting Exclusion: Why Human Rights Are Essential for the MDGs*, 12 SUR. INT'L J. ON HUM. RTS. 55, 60-61 (2010).

<sup>142</sup> *Revista Boletina*, PUNTOS DE ENCUENTRO, <http://puntosdeencuentro.org/index.php/es/ver-ediciones>.

<sup>143</sup> See Martha I. Morgan, *The Bitter and the Sweet: Feminist Efforts to Reform Nicaraguan Rape and Sodomy Laws*, 26 U. MIAMI INTER-AM. L. REV. 439 (1995).

<sup>144</sup> See Vivek Maru, *Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide*, 31 YALE J. INT'L L. 427, 464-65 (2006).

range of remedies available to them.<sup>145</sup> The *Kampala Declaration on Community Paralegals* (“Declaration”),<sup>146</sup> passed in 2012, supported by over fifty African organizations and over twenty countries is testimony to the importance given to this issue in Africa. The Declaration urges governments to strengthen access to justice across the continent, seeing this as an important role in the attempt to ensure access to justice. These principles have already been put in place and applied in diverse societies. In Kenya, *Kituo cha Sheria* implements a paralegal project which operates in the Shimo la Tewa prison, specifically fulfilling a gap left by the state’s legal aid system.<sup>147</sup> The organization has trained a total of ninety-five paralegals, including eleven warders, ten persons on remand, and fifty-one convicts; it has drafted over 400 applications and letters to Chief Magistrates; and has a significant volume of applications and appeals before High Courts in Malindi and Mombasa. The high success rate of these petitions has made the work of the Centre for Legal Empowerment worthy of replicating in other settings, and its high profile victory for prisoners’ right to vote in a landmark case in 2010 has also focused attention on this relatively ignored group.<sup>148</sup> The Paralegal Advisory Service in Malawi operates in a similar manner in a country where less than twenty lawyers serve a population of more than 14 million.<sup>149</sup> The service trains individuals in criminal law and procedure, interviewing skills and information management with the ensuing paralegals providing legal advice, training and coordination between different justice agencies. The service has achieved 84 percent coverage of the prison population, and has had dramatic effects in reducing the remand prison population.<sup>150</sup> A similar venture in Sierra Leone run by the NGO Timap for Justice (literally, “Stand Up for Justice”), commenced in 2003, and has had a similar impact in pioneering community-based approaches to solving questions emanating within the judicial system. Timap’s work is supported by lawyers who engage customary litigation mechanisms for

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<sup>145</sup> See Maha Jweied & Miranda Jolicoeur, Expert Working Group Report: *International Perspectives on Indigent Defense* 44 (Washington: US State Department, 2011).

<sup>146</sup> *Kampala Declaration*, NAMATI, available at <http://www.namati.org/news/newsfeed/kampala-declaration/>.

<sup>147</sup> See KITUO CHA SHERIA, <http://www.kituochasheria.or.ke/>.

<sup>148</sup> See generally *Priscilla Nyokabi Kanyua v Attorney General & another* (2010) eKLR (Nairobi Law Courts), available at <http://kituochasheria.or.ke/wp-content/uploads/2015/02/Prisoners-case-Judgement.pdf>.

<sup>149</sup> For more information, see PASI PARALEGAL ADVISORY SERVICE INSTITUTE, <http://www.pasimalawi.org>.

<sup>150</sup> See PENAL REFORM INTERNATIONAL & THE BLUHM LEGAL CLINIC, NORTHWESTERN UNIVERSITY SCHOOL OF LAW, ACCESS TO JUSTICE IN AFRICA AND BEYOND: MAKING THE RULE OF LAW A REALITY 147, 150 (2007); see also Adam Stapleton, *Empowering the Poor to Access Criminal Justice: A Grassroots Perspective*, in LEGAL EMPOWERMENT: PRACTITIONERS’ PERSPECTIVES 4 (Stephen Golub ed., 2010).

redress of intractable legal issues—a capacity that provides greater efficacy to the work of the paralegals. The impact of the organization can be seen in governmental recognition for the need to develop a national paralegal program based on the organization’s work,<sup>151</sup> and has also been validated by the World Bank, who found strong evidence of empowerment in Timap’s work.<sup>152</sup>

### *J. Tackling Gender-Based Violence and Inequality*

While the eradication of poverty needs to remain a central concern given the extent to which poverty hurts the enjoyment of all human rights, an equally strong focus is required to tackle other systemic problems which undermine the capacity of a society to create the preconditions for the equal enjoyment of rights by all. One such systematic problem is that of Violence Against Women and Girls (“VAWG”). The United Nations defines violence against women as any act of gender-based violence (“GBV”) that results in, or is likely to result in, physical, sexual or mental harm, or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.<sup>153</sup> GBV is a widespread phenomenon that adversely impacts levels of poverty, and the enjoyment of fundamental human rights within societies. This has traditionally been a difficult area to tackle since it has often been caught in the crossfire of cultural relativism and the difficult delineations between the private and the public. However, it is clear that these two objections have to be overcome based on the inherent equal dignity and worth of every individual, which creates particular obligations when such dignity is being eroded. GBV is widespread and fundamentally undermines the human rights project ab initio, by failing to tackle the issue which directly hinders the enjoyment of rights by those subject to GBV, failing to counter the strong message regarding equality in all aspects of life, and failing to tackle the creation of a culture of fear and domination that significantly undermines the extent to which girls and women could play a full and equal role within society. Many countries have implemented projects aimed at improving the rate of reporting of gender-based crimes and increasing convictions with

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<sup>151</sup> See Maru, *supra* note 144.

<sup>152</sup> See Pamela Dale, *Delivering Justice to Sierra Leone’s Poor: An Analysis of the Work of Timap for Justice 33* (2009) (World Bank Working Paper 2009/01/01), available at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2009/12/04/000112742\\_20091204184834/Rendered/PDF/518850REPLACEMENT1arch0Report0Nov02009.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2009/12/04/000112742_20091204184834/Rendered/PDF/518850REPLACEMENT1arch0Report0Nov02009.pdf).

<sup>153</sup> MICHAEL L. PENN & RAHEL NARDOS, *OVERCOMING VIOLENCE AGAINST WOMEN AND GIRLS: THE INTERNATIONAL CAMPAIGN TO ERADICATE A WORLDWIDE PROBLEM* 8 (2003).

respect to such crimes through integrated and specialized services to address women's access to justice and more efficient handling of gender-related crimes.<sup>154</sup> These include reforming services at police stations and courts to address the particular circumstances and needs of survivors of sexual violence and abuse. Such measures have aimed to provide police and judicial officers with comprehensive specialized training in GBV, including training on how to treat survivors with respect, as well as on protocols for collecting and collating evidence. The more successful programs are sensitive to the specific needs of women bringing claims of sexual assault or other culturally challenging claims involving family law, property, and inheritance. They employ specially-trained individuals who guide clients through the entire process, including medical treatment, reporting, bringing a claim in court, and assisting in prosecutions. Although such programs can help all women, they are particularly important for women living in poverty, who face more daunting obstacles in access to justice through the traditional channels, and who are also more vulnerable to GBV. In Brazil, the Delegacias Especiais de Atendimento à Mulher, have been set up as women's police stations, operate across 420 local jurisdictions, and provide immediate assistance to survivors of sexual violence, undertaking enquiries and steering cases through Brazil's otherwise complicated criminal justice system. The proliferation of these women's police stations have been credited with raising awareness of violence against women, have increased the reporting of GBV, and have created a high visibility bulwark against the prevalence of the phenomenon in society.<sup>155</sup> In South Africa, the Sexual Offences Courts and the Thuthuzela Centres have streamlined processes of handling and prosecuting cases of sexual abuse against women and children through the instigation of integrated investigatory processes, related dispensation of the necessary health care, and the provision of counseling and legal and police services. This mainstreaming of the phenomenon and the clear message it sends in terms of societal values has already had an impact of increased conviction rates for such crimes, but has also reduced

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<sup>154</sup> See JILL KEESBURY & IAN ASKEW, POPULATION COUNCIL, COMPREHENSIVE RESPONSES TO GENDER BASED VIOLENCE IN LOW-RESOURCE SETTINGS: LESSONS LEARNED FROM IMPLEMENTATION, (2010); see also Rachel Jewkes, What Works to Prevent Violence Against Women and Girls? Evidence Review of the Effectiveness of Response Mechanisms in Preventing Violence against Women and Girls, (2014), (Medical Research Council Working Paper), available at [http://r4d.dfid.gov.uk/pdf/outputs/VAWG/What\\_Works\\_Inception\\_Report\\_June\\_2014\\_Annex\\_H\\_WG4\\_Paper\\_Response\\_mechanisms.pdf](http://r4d.dfid.gov.uk/pdf/outputs/VAWG/What_Works_Inception_Report_June_2014_Annex_H_WG4_Paper_Response_mechanisms.pdf).

<sup>155</sup> See the website of the Government of Brazil, DEFENSORIA PÚBLICA DO ESTADO DE SÃO PAULO <http://www.defensoria.sp.gov.br/dpesp/Default.aspx?idPagina=3355>. See also U.N. DEV. FUND FOR WOMEN, PROGRESS OF THE WORLD'S WOMEN 2011-2012: IN PURSUIT OF JUSTICE, U.N. Sales No. 11.III.F.1 (July 2011).

the average duration of proceedings in such matters to six months, where it would previously take between three and five years.<sup>156</sup> In general it would seem that such a concerted focus on violence against women has salutary effects in providing greater visibility for this crime, providing services for those who most need it, especially for those women who live in deprived areas beyond the reach of the usual legal mechanisms. The advantage of having women at the focal point of such mechanisms is that it potentially providing greater efficacy to the process of gaining rights for all.<sup>157</sup> While such approaches can improve reporting and conviction levels, they are top-down initiatives addressed at policy making at national and sub-national levels. Even when judicial process exists, and even when women can access them and believe they will work to support their legitimate claims, they may not be able to leave an abusive partner since fulfilling the right to live free from violence rests on the fulfillment of other economic, social and cultural rights.<sup>158</sup> Economic rights are more usually cast as needs, yet unless a woman has access to an adequate income and a place to live she cannot live apart from an abusive partner. Similarly, when a woman living alone faces social stigma the social costs of leaving may be too high while in some cultures such actions will not be accepted. If levels of violence are to be reduced and the reduction sustained, fundamental changes are needed in how men and women understand violence. The support for structural change in the form of robust administrative and quasi-judicial mechanisms, could form the catalysts and appropriate framework against which societies drive forward the agenda of the elimination of GBV. The whole of society clearly has a role in achieving this goal, in questioning norms of masculinity and how they are manifest as well as in taking active measures against those who perpetrate the violence. Thus, approaches such as the White Ribbon Campaign (USA)<sup>159</sup> and the Man Up Campaign (Guyana),<sup>160</sup> when

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<sup>156</sup> See SOUTH AFRICAN GOVERNMENT, <http://www.gov.za/welcome-official-south-african-government-online-site>; Shelby Quast, *Justice Reform and Gender*, in GENDER AND SECURITY SECTOR REFORM TOOLKIT 11 (Megan Bastick & Kristen Valasekeds eds., 2008). See the website of UNICEF for more on 'Thuthuzela Care Centres'. *Thuthuzela Care Centres*, UNICEF, [http://www.unicef.org/southafrica/hiv\\_aids\\_998.html](http://www.unicef.org/southafrica/hiv_aids_998.html) (last visited May 21, 2015).

<sup>157</sup> U.N. DEV. FUND FOR WOMEN, *supra* note 155, at 60.

<sup>158</sup> See FRANCINE PICKUP ET AL., ENDING VIOLENCE AGAINST WOMEN: A CHALLENGE FOR DEVELOPMENT AND HUMANITARIAN WORK 104 (2001).

<sup>159</sup> See Michael Kaufman, *The Day the White Ribbon Campaign Changed the Game: A New Direction in Working to Engage Men and Boys*, in CANADIAN MEN AND MASCULINITIES: HISTORICAL AND CONTEMPORARY PERSPECTIVES 139 (Christopher J. Greig & Wayne J. Martino eds., 2012).

<sup>160</sup> Man Up Campaign Delegate Report: Abbas Mancey Guyana, MAN UP CAMPAIGN (Mar. 3, 2014), <https://manupcampaign.org/team-up/455-ted-schulman/videos/video/47-man-up-campaign-delegate-report-abbas-mancey-guyana>.

incorporated against the framework of such administrative mechanisms are likely to have greater impact.

*K. Decolonizing Approaches to Human Rights*

None of the measures discussed above are without imperfections and much is needed on the implementation front for them to be replicable as measures to tackle ingrained inequalities in different societies. However, each with its inherent faults represents a departure from traditional approaches to human rights, involving advocates locked in battle with governments. The UN Human Rights Council's Universal Periodic Review has demonstrated that tools other than "naming and shaming" can be effective in the fight for greater recognition of rights. With many states calling for "technical cooperation," it is these models that need to be enhanced and placed at the behest of policy, always reserving a strong voice for civil society to critique and monitor progress. The genuine pooling of global administrative experiences in various contexts is likely to yield results, and will also give the task of human rights implementation the feel of a shared journey among states, between states and international organizations, and between states, international organizations, and civil society. It needs to be borne in mind that human rights groups, the large international ones, as well as smaller organizations that operate at the grass-root level, work through lobbying governments and keeping pressure upon them to fulfill the international human rights obligations they have taken upon themselves in becoming parties to the various instruments of international human rights law. While "naming and shaming" can highlight the distance between the international standard in question and the behavior of a specific state, it offers little by way of concrete solutions and models to address the implementation gap. In addition, the vast majority of administrative models that exist in states are derived from particular legal systems, usually disseminated, alongside accompanying institutions, through colonial practices. This has restricted the number and types of models available, and has often established Westernized administrative systems in places far removed from their origin, resulting in restricted impact. The administrative systems in over 70 percent of the world's states derive from Western models, and the lack of technology and access in the past, restricted the extent to which south-south models could be studied, adapted and adopted in any given context. Yet many post-colonial societies have struggled long and hard against inequalities and social exclusion and have learned important policy lessons in the process that need to be imbibed and

disseminated. This is perhaps most obvious in the context of the administrative mechanisms that are being developed and applied in various parts of the world.

#### IV. CONCLUSION

This article offers perspectives on why and how the “business as usual” practice of development will fail to address significant concerns of social exclusion into the twenty-first century. It advocates greater awareness of national-level policies as framed in a variety of administrative systems around the world as preferable to the unrealistic hope that human rights may be won in an antagonistic battle against the state in a court of law. While the progress of international human rights law has been spectacular since the creation of the United Nations, much work is still needed to ensure that such rights are articulated specifically in terms of equality of outcomes. The emerging post-2015 sustainable development framework with its focus on people centered development provides the ideal opportunity through which this challenge can be highlighted, especially if this aspect can be strongly featured across goals, targets, and indicators. First, social inclusion must be fundamental to the post-2015 development strategy and this must include specific and focused initiatives to address gender inequalities and redress unequal gender power relations. Second, the indivisibility of human rights is fundamental to progress, with greater emphasis required on socio-economic rights as well as civil and political rights, and a re-balancing of the emphasis on collective as opposed to individual rights. Third, states, civil society, international organizations, and the private sector need a collaborative, not antagonistic, approach in seeking active solutions to social exclusion based on the establishment of true “public-private partnerships” that are people-focused, not profit-focused. Fourth, practices from around the world, especially from the economic south, that have been shown to promote inclusive rights focused societies need to be analyzed and the lessons learned applied. Fifth, there is a real need to create appropriate diagnostic tools to understand rather than criticize competing priorities for state intervention, and follow these up with appropriate models that may be useful starting points. Sixth, a continued dialogue (especially with women and vulnerable groups) about standard setting and monitoring of development goals is needed to ensure that the momentum continues past the initial setting of goals and the process is sustained. These core principles must be fundamental to the new business of human rights, and any metric to guide and index progress should them into account. Finally, it is imperative that

those framing the post-2015 development agenda establish a metric for interstate comparison to guide the target oriented process of the SDGs, not only because such a metric would be useful, but also because it would be an effective diagnostic tool in understanding how social exclusion is constructed within societies, and the impact it has on attainment of basic rights. An index that can facilitate comparison of human rights within states, while catering for competing imperatives such as the opportunity cost of investing in health or other welfare would be most welcome. Such an index would show how technical support and policy change could have significant impact on human rights, gender parity, and social inclusion within each country.

This paper has advocated for human rights to be viewed not through the traditional confrontational lens, but rather as an agenda that promotes active collaboration, as governments, civil society, business and human rights mechanisms realize that promoting such rights lies in their best long-term interests as the only bulwark to promote sustainable communities. In addition it has sought to reiterate the indivisibility of human rights, and would like to call upon the UN Human Rights Council to pay particular attention to how they impact the post-2015 development agenda. What is important to highlight in the post-2015 era is that human rights is no longer a “what” question to be answered by the embellishment of further normative standards, but a “who” question; that is, a question that pertains to the extent to which individuals and communities are excluded from the rights table. In other words, legal mechanisms need to address human security aspects of all, especially the vulnerable, and not focus only on problems faced by failures to gain civil and political rights compliance.