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Keywords

Children, Human Rights Law, International Law: History, Women, Education Law, Right to Education, Gender

HUMAN RIGHTS OF WOMEN AND CHILDREN UNDER INTERNATIONAL LAW—AN INTRODUCTION

VED P. NANDA*

I. INTRODUCTION

The idea of human rights, a powerful idea indeed, has stirred the imagination of people all over the world; it has revolutionized the status of individuals and groups under international law. This is especially evident in the case of women and children, as specific treaties—the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”)¹ and the Convention on the Rights of the Child (“CRC”)²—are aimed at transforming the status of women and children respectively. These treaties have been widely ratified by states,³ and thus states have accepted binding obligations to comply with the treaties implementing the rights enumerated in these treaties. Notwithstanding the wider ratification and the broad scope of the rights under these treaties, women and children still suffer severe violations of basic human rights.

II. WOMEN AND CHILDREN HAVE LAGGED BEHIND IN THE ENJOYMENT OF INTERNATIONAL HUMAN RIGHTS

To test the veracity of this statement, a reliable yardstick is to measure achievements in the implementation of the Millennium Development Goals (“MDGs”) concerning women and children. It may be recalled that in September 2000, U.N. Member States adopted the Millennium Declaration,⁴ in which they resolved that by the year 2015 “children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will

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1. Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

2. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

3. United Nations, Multilateral Treaties Deposited with the Secretary-General, *Convention on the Elimination of All Forms of Discrimination against Women* (Dec. 18, 1979), available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited Aug. 25, 2014) (there are 188 states parties to the CEDAW as of August 25, 2014); United Nations, Multilateral Treaties Deposited with the Secretary-General, *Convention on the Rights of the Child* (Nov. 20, 1989), available at https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Aug. 25, 2014) (there are 194 states parties to the CRC as of August 25, 2014).

4. United Nations Millennium Declaration, G.A. Res. 55/2, U.N. Doc. A/RES/55/2 (Sept. 8, 2000).

have equal access to all levels of education.”⁵ By the same date, they resolved, “to have reduced maternal mortality by three quarters, and under-five child mortality by two thirds, of their current rates.”⁶ Also, by then they undertook to have “halted, and begun to reverse, the spread of HIV/AIDS, the scourge of malaria and other major diseases that afflict humanity.”⁷ They also resolved “[t]o promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable.”⁸

The following summer, a group of staff members from the U.N., World Bank, International Monetary Fund, and the Organization of Economic Cooperation and Development drafted a set of goals highlighting key commitments in the Millennium Declaration. The selection criteria included existing established indicators and reasonable data for those indicators. The process resulted in a framework. Aimed at reducing extreme poverty in its many dimensions, this framework, which contained eight human development goals to be reached by the end of 2015, with eighteen targets and forty-eight indicators, became the Millennium Development Goals framework.⁹ Although the role of women and children is significant in the achievement of all eight goals, the goals specifically referring to them are:

Goal 2 – Achieve universal primary education

Goal 3 – Promote gender equality and empower women

Goal 4 – Reduce child mortality

Goal 5 – Improve maternal health

Goal 6 – Combat HIV/AIDS, malaria, and other diseases¹⁰

With a year and a half to go till the end of 2015, the scorecard shows that, while several MDGs have already been met or are within close reach, many for women and children have not.¹¹ Three recent reports and studies—by the Commission on the Status of Women (March 2014),¹² the Millennium

5. *Id.* ¶ 19.

6. *Id.*

7. *Id.*

8. *Id.* ¶ 20.

9. *What They Are*, U.N. MILLENNIUM PROJECT, <http://www.unmillenniumproject.org/goals> (last visited Aug. 25, 2014) [hereinafter U.N. MILLENNIUM PROJECT]; see also *Official List of MDG Indicators*, UNITED NATIONS STAT. DIVISION, <http://unstats.un.org/unsd/mdg/Host.aspx?Content=Indicators/OfficialList.htm> (last updated Jan. 15, 2008).

10. U.N. MILLENNIUM PROJECT, *supra* note 9.

11. See U.N. DEP'T OF INT'L ECON. & SOC. AFFAIRS, THE MILLENNIUM DEVELOPMENT GOALS REPORT 2014, at 5 (2014) [hereinafter MDGS REPORT 2014], available at <http://www.un.org/millenniumgoals/2014%20MDG%20report/MDG%202014%20English%20web.pdf>.

12. *Challenges and Achievements in the Implementation of the Millennium Development Goals for Women and Girls*, Comm'n on the Status of Women, 58th Sess., Mar. 10-21, 2014, U.N. Doc. E/CN.6/2014/L.7 (Mar. 25, 2014) [hereinafter Status of Women Report].

Development Goals Report 2014,¹³ and the Human Development Report 2014¹⁴—provide ample evidence. It seems appropriate to discuss them in detail.

The Commission on the Status of Women reported at its 58th session in March 2014 “that almost 15 years after the Millennium Development Goals were adopted, no country has achieved equality for women and girls and significant levels of inequality between women and men persist, although the Goals are important in efforts to eradicate poverty and of key importance to the international community.”¹⁵ With regard to Goal 2—achieving universal primary education—the Commission noted

the lack of progress in closing gender gaps in access to, retention in and completion of secondary education, which has been shown to contribute more strongly than primary school attendance to the achievement of gender equality, the empowerment of women and the human rights of women and girls and several positive social and economic outcomes.¹⁶

Regarding Goal 3—promoting gender equality and empowering women—the Commission noted that

progress has been slow, with persistent gender disparities in some regions in secondary and tertiary education enrolment; the lack of economic empowerment, autonomy and independence for women, including a lack of integration into the formal economy, unequal access to full and productive employment and decent work, . . . overrepresentation in low-paid jobs and gender-stereotyped jobs such as domestic and care work, and the lack of equal pay for equal work or work of equal value . . .¹⁷

As to Goal 4—reducing child mortality—the Commission noted that “targets are likely to be missed.”¹⁸ It further noted

with deep concern that increasingly, child deaths are concentrated in the poorest regions and in the first month of life, and further expresse[d] concern that children are at greater risk of dying before the age of 5 if they are born in rural and remote areas or to poor households.¹⁹

Regarding Goal 5—improving maternal health—the Commission noted that “progress towards its two targets, reducing maternal mortality and achieving universal access to reproductive health, has been particularly slow and uneven,

13. MDGs Report 2014, *supra* note 11.

14. UNITED NATIONS DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2014, SUSTAINING HUMAN PROGRESS: REDUCING VULNERABILITIES AND BUILDING RESILIENCE (2014) [HUMAN DEVELOPMENT REPORT 2014], available at <http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf>.

15. Status of Women Report, *supra* note 12, ¶ 12.

16. *Id.* ¶ 20.

17. *Id.* ¶ 21.

18. *Id.* ¶ 22.

19. *Id.*

especially for the poorest and rural sectors of the population, within and across countries.”²⁰

With regards to Goal 6—combating HIV/AIDS, malaria, and other diseases—the Commission said “progress has been limited, with the number of women living with HIV increasing globally since 2001.”²¹ It also noted “the particular vulnerability to HIV infection of adolescent girls and young women, as well as other women and girls who are at a higher risk,” and stressed “that structural gender inequalities and violence against women and girls undermine effective HIV responses and the need to give full attention to increasing the capacity of women and adolescent girls to protect themselves from the risk of HIV infection.”²² It further noted “the challenges faced by women and girls living with HIV and AIDS, including stigma, discrimination and violence.”²³ In the Commission’s view, “despite increased global and national investments in malaria control, . . . malaria prevention and control efforts, particularly for pregnant women, must rapidly increase in order to achieve the Goals.”²⁴

While the Commission observed “that the lack of adequate sanitation facilities disproportionately affects women and girls, including their participation rates in the labour force and school, and increases their vulnerability to violence,”²⁵ it found “the development resources . . . [supporting] gender equality and women’s empowerment . . . inadequate to the task.”²⁶ It expressed concern that the MDGs did not adequately address critical issues such as

violence against women and girls; child, early and forced marriage; women’s and girls’ disproportionate share of unpaid work, . . . women’s access to decent work, the gender wage gap, employment in the informal sector, low-paid and gender-stereotyped work such as domestic and care work; women’s equal access to, control and ownership of assets and productive resources, including land, energy and fuel, and women’s inheritance rights; women’s sexual and reproductive health, and reproductive rights²⁷

The Commission also recognized “that progress on the [MDGs] for women and girls ha[d] been limited owing to the lack of systematic gender mainstreaming and integration of a gender perspective in the design, implementation, monitoring and evaluation of the Goals.”²⁸

The Commission made several recommendations regarding the realization of women’s and girls’ full enjoyment of all human rights: strengthening the enabling environment for gender equality and the empowerment of women, maximizing

20. *Id.* ¶ 23.

21. *Id.* ¶ 24.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* ¶ 25.

26. *Id.* ¶ 26.

27. *Id.* ¶ 28.

28. *Id.* ¶ 37.

investment in gender equality and the empowerment of women and strengthening the evidence base for that, ensuring women's participation and leadership at all levels, and strengthening accountability.²⁹

In a public statement on the Commission's recommendations, Amnesty International especially welcomed the Commission's call "for a standalone goal on gender equality" for inclusion in the set of development goals to follow the MDGs in the post-2015 development agenda.³⁰ In its 2013 report, entitled *Rights Should Be Central to Post-2015 Development Agenda*, Human Rights Watch specifically proposed that:

The post-2015 agenda should promote gender equality and women's rights, including through a requirement on governments to work to end gender discrimination and promote equality in their laws, policies, and practices. It should also require governments to prevent and punish violence against women and ensure adequate services for victims of abuse.³¹

The Millennium Development Goals Report 2014 examined the latest progress toward achieving the MDGs and also pointed to significant gaps and disparities. For example, one in four children under five years of age in the world suffers from inadequate height for her/his age.³² On the goal of achieving universal primary education, the report concludes that although impressive strides forward were made at the start of the decade, "progress in reducing the number of children out of school has slackened considerably,"³³ and that "[c]hildren in conflict-affected areas, girls from poor rural households and children with disabilities are more likely to be out of school."³⁴

As regards the goal of promoting gender equality and empowering women, the report found that gender disparity in the labor market still exists.³⁵ On the goal of reducing child mortality the report found that although substantial progress has been made, "the world is still falling short of the MDG child mortality target,"³⁶ and that out of every five deaths of children under age five, four continue to occur in sub-Saharan Africa and Southern Asia.³⁷ Regarding the goal of improving maternal health, the report found that in 2013 almost 300,000 women died in the

29. *Id.* at 9-20.

30. Public Statement, Amnesty International, 58th Session of the Commission on the Status of Women: Women and Girls Hold Key to a Successful Post-2015 Development Agenda (March 24, 2014), available at <http://www.amnesty.org/en/library/asset/IOR41/003/2014/en/1188028b-bc46-4ab6-8f43-271d5fe26e39/ior410032014en.pdf>.

31. HUMAN RIGHTS WATCH, RIGHTS SHOULD BE CENTRAL TO POST-2015 DEVELOPMENT AGENDA 14 (2013) [hereinafter HRW, RIGHTS SHOULD BE CENTRAL TO POST-2015 DEVELOPMENT AGENDA], available at https://www.hrw.org/sites/default/files/related_material/2013post2015dev-goals.pdf.

32. MDGS REPORT 2014, *supra* note 11, at 8, 14.

33. *Id.* at 16.

34. *Id.* at 17.

35. *Id.* at 21.

36. *Id.* at 24.

37. *Id.*

world due to causes related to pregnancy and childbirth.³⁸ It also found that while “[c]ontraceptive use had increased . . . gaps persisted in meeting the demand for family planning.”³⁹

On the goal of combating HIV/AIDS, malaria, and other diseases, the report found that “still too many new cases of HIV infection” are occurring and that in 2012 almost 600 children died daily of AIDS-related causes.⁴⁰ It observed that an estimated 2.3 million cases of people of all ages were newly infected in 2012, 70 percent of them in sub-Saharan Africa, and 1.6 million people died from AIDS-related causes.⁴¹ An estimated 35.5 million people were living with HIV worldwide, a new record in 2012,⁴² while only 30 percent of people living with HIV are covered by antiretroviral treatment.⁴³

The report noted that also “[i]n 2012, about 207 million cases of malaria occurred” worldwide, with “the disease kill[ing] about 627,000 people,” 80 percent of whom were children under age five.⁴⁴ It found that there were not adequate resources to prevent, diagnose, and treat malaria globally.⁴⁵ President Ellen Johnson Sirleaf of Liberia said that Africa’s progress on the MDGs remains uneven, and although there has been remarkable progress in some areas,

there is ample room for more good news. Some areas have been neglected when they should have been put up-front, for example malaria, the number one killer of children in sub-Saharan Africa and many other places in the world. Additionally, the goal for school enrollment did not take into account the need for quality education.⁴⁶

According to the report, the rate of decline in the incidence of tuberculosis was “very slow,” and “an estimated 1.3 million died from the disease” in 2012.⁴⁷ The report noted that despite good progress, “much more needs to be done. One-third of newly diagnosed tuberculosis patients may not have received proper treatment. Only one-third of the estimated 300,000 multi-drug-resistant cases among notified TB cases in 2012 were diagnosed and treated according to international guidelines.”⁴⁸ It found bridging the funding gap to be a great challenge.⁴⁹

The Human Development Report 2014 finds that “[v]ulnerability threatens human development—and unless it is systematically addressed, [which can be done] by changing policies and social norms,” neither equitable nor sustainable

38. *Id.* at 28.

39. *Id.* at 32.

40. *Id.* at 34.

41. *Id.* at 35.

42. *Id.*

43. *Id.* at 36.

44. *Id.* at 37.

45. *Id.*

46. HUMAN DEVELOPMENT REPORT 2014, *supra* note 14, at 11.

47. MDGS REPORT 2014, *supra* note 11, at 38.

48. *Id.* at 39.

49. *Id.*

progress is possible.⁵⁰ In specifically addressing women's human rights, the report states that "[w]omen everywhere experience vulnerability in personal insecurity. Violence violates their rights, and feelings of personal insecurity restrict their agency in both public and private life."⁵¹ The report provides a Gender Inequality Index for 149 countries,⁵² which, it says, "reveals the extent to which national achievements in reproductive health, empowerment and labour market participation are eroded by gender inequality."⁵³ It states, "[g]lobally, women are disadvantaged in national political representation. On average, they occupy 21 percent of seats in national parliaments. In Latin America and the Caribbean they do better, with around 25 percent of seats. In Arab States parliaments they hold less than 14 percent of seats."⁵⁴

The report adds:

Poor reproductive health services are a major contributor to gender inequality, especially in developing countries. For example, the maternal mortality ratio is 474 deaths per 100,000 live births in Sub-Saharan Africa. Maternal deaths naturally have serious implications for babies and their older siblings left without maternal care, who could be trapped in low human development throughout their life cycle. Adolescent births could also lead to debilitating human development outcomes for young mothers and their babies. In Sub-Saharan Africa there are 110 births per 1,000 women ages 15-19.⁵⁵

The report provides examples from rural Ethiopia and Vietnam as to how gender inequality shapes the school experience. It found that "[i]n rural Ethiopia 15-year-old girls in the lowest wealth quintile scored on average 2.1 of 20 on a math test, whereas 15-year-old boys averaged 7.4. In rural Viet Nam 15-year-old girls averaged 9.4, whereas 15-year-old boys averaged 18.1."⁵⁶

In discussing vulnerability of children the report states:

Too often, poverty disrupts the normal course of early childhood development—more than one in five children in developing countries lives in absolute income poverty and is vulnerable to malnutrition. In developing countries (where 92 percent of children live) 7 in 100 will not survive beyond age 5, 50 will not have their birth registered, 68 will not receive early childhood education, 17 will never enrol in primary school, 30 will be stunted and 25 will live in poverty. Inadequate food, sanitation facilities and hygiene increase the risk of infections and stunting: close to 156 million children are stunted, a result of

50. HUMAN DEVELOPMENT REPORT 2014, *supra* note 14, at 10 (emphasis omitted).

51. *Id.* at 4.

52. *Id.* at 172-75 tbl.4.

53. *Id.* at 39.

54. *Id.* at 40.

55. *Id.*

56. *Id.* at 64 (citation omitted).

undernutrition and infection. Undernutrition contributes to 35 percent of deaths due to measles, malaria, pneumonia and diarrhoea.⁵⁷

The report states further that children with disabilities and those who are psychologically or cognitively vulnerable are at special risk of sexual abuse.⁵⁸ It adds that “[c]hildren raised in institutions may also suffer profound depravation that damages brain development. Even schools may be sources of insecurity. Indeed, when parents fear for the physical and sexual safety of daughters, they are likely to keep them out of school.”⁵⁹

III. SELECTED PROPOSALS REGARDING WOMEN’S AND CHILDREN’S RIGHTS IN THE POST-2015 DEVELOPMENT AGENDA

Among a host of studies on and proposals for the next set of development goals following the target date of the end of 2015 for the completion of the MDGs, only a selected few will be noted here. On the 20th anniversary of the 1992 U.N. Conference on Environment and Development, heads of state and government again met in June 2012 in Rio de Janeiro, Brazil, and issued their final report as the Outcome Document of the conference, *The Future We Want*.⁶⁰ It provided a framework for sustainable development with “the highest priority [given] to poverty eradication within the United Nations development agenda [and to] address[] the root causes and challenges of poverty.”⁶¹ Specifically addressing gender inequality, the participants recognized “that gender equality and the effective participation of women are important for effective action on all aspects of sustainable development.”⁶² They also recognized that, “although progress on gender equality has been made in some areas, the potential of women to engage in, contribute to and benefit from sustainable development as leaders, participants and agents of change has not been fully realized, owing to, inter alia, persistent social, economic and political inequalities.”⁶³ They expressed their support for

prioritizing measures to promote gender equality and the empowerment of women in all spheres of our societies, including the removal of barriers to their full and equal participation in decision-making and management at all levels, and we emphasize the impact of setting specific targets and implementing temporary measures, as appropriate, for substantially increasing the number of women in leadership positions, with the aim of achieving gender parity.⁶⁴

Following the Rio+20 conference, Secretary-General Ban Ki-moon launched several new initiatives on the post-2015 development agenda. One was in July

57. *Id.* at 59 (citations omitted).

58. *Id.* at 61.

59. *Id.* (citations omitted).

60. Rio+20: United Nations Conference on Sustainable Development, Rio de Janeiro, Braz., June 20-22, 2012, *The Future We Want*, U.N. Doc. A/CONF.216/L.1 (June 19, 2012).

61. *Id.* ¶ 106.

62. *Id.* ¶ 242.

63. *Id.* ¶ 237.

64. *Id.*

2012, the establishment of a 27-member High-Level Panel of Eminent Persons co-chaired by the Presidents of Indonesia and Liberia and the Prime Minister of the United Kingdom,⁶⁵ which in May 2013 presented its report, *A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustainable Development*.⁶⁶ Among twelve universal goals, the report recommended two specifically related to women and children: (1) to empower girls and women and achieve gender equality, and (2) to provide quality education and lifelong learning.⁶⁷

Another of the Secretary-General's initiatives was the establishment of the Sustainable Development Solutions Network ("SDSN"), which was aimed at promoting sustainable development.⁶⁸ In its report, last updated in May 2014, *An Action Agenda for Sustainable Development*, SDSN identified ten priority sustainable development challenges that must be addressed at the global, regional, national, and local levels.⁶⁹ One of these challenges was to achieve gender equality, social inclusion, and human rights for all; and another was to ensure effective learning for all children and youth for life and livelihood.⁷⁰

In September 2013 the OECD issued a report entitled *Gender Equality and Women's Rights in the Post-2015 Agenda: A Foundation for Sustainable Development*.⁷¹ The report recommended for the post-2015 framework to more specifically focus on seven issues:

- 1) Addressing girls' completion of a quality education;
- 2) Women's economic empowerment;
- 3) Universal access to sexual and reproductive health and rights;
- 4) Ending violence against women and girls;
- 5) Women's voice, leadership, and influence;
- 6) Women's participation in peace and security; and,
- 7) Women's contributions to environmental sustainability.⁷²

65. *The Secretary-General's High-Level Panel of Eminent Persons on the Post-2015 Development Agenda*, UNITED NATIONS, <http://www.un.org/sg/management/hlppost2015.shtml> (last visited Aug. 25, 2014).

66. HIGH-LEVEL PANEL OF EMINENT PERSONS ON THE POST-2015 DEV. AGENDA, A NEW GLOBAL PARTNERSHIP: ERADICATE POVERTY AND TRANSFORM ECONOMIES THROUGH SUSTAINABLE DEVELOPMENT (2013), available at http://www.un.org/sg/management/pdf/HLP_P2015_Report.pdf.

67. See *id.* at 30-31 (listing all of the goals).

68. *United Nations Secretary-General Announced New Sustainable Development Initiative*, UNITED NATIONS (Aug. 9, 2012), www.un.org/millenniumgoals/pdf/SDSN%20FINAL%20release_9Aug.pdf.

69. SUSTAINABLE DEV. SOLUTIONS NETWORK: A GLOBAL INITIATIVE FOR THE UNITED NATIONS, AN ACTION AGENDA FOR SUSTAINABLE DEVELOPMENT 8-26 (2014), available at <http://unsdsn.org/wp-content/uploads/2013/06/140505-An-Action-Agenda-for-Sustainable-Development.pdf>.

70. See *id.*

71. OECD, GENDER EQUALITY AND WOMEN'S RIGHTS IN THE POST-2015 AGENDA: A FOUNDATION FOR SUSTAINABLE DEVELOPMENT (2013), available at <http://www.oecd.org/dac/Post-2015%20Gender.pdf>.

72. *Id.* at 1.

In January 2013 the U.N. General Assembly established the Open Working Group on Sustainable Development Goals,⁷³ which, after completing 13 sessions, issued on July 19, 2014, its proposal for a set of goals that consider economic, social, and environmental dimensions to improve people's lives and protect the planet.⁷⁴ Introducing the proposal, the Working Group states that these goals, accompanied by targets,

build on the foundation laid by the MDGs, seek to complete the unfinished business of the MDGs, and respond to new challenges. These goals constitute an integrated, indivisible set of global priorities for sustainable development. Targets are defined as aspirational global targets, with each government setting its own national targets . . . taking into account national circumstances.⁷⁵

Several of these goals relate specifically to women's and children's rights. For example, Goal 2, to end hunger, states: "[B]y 2030 end all forms of malnutrition, including achieving by 2025 the internationally agreed targets on stunting and wasting in children under five years of age, and address the nutritional needs of adolescent girls, pregnant and lactating women, and older persons."⁷⁶

On Goal 3, to ensure healthy lives and promote wellbeing for all, the goal is to "reduce the global maternal mortality ratio to less than 70 per 100,000 live births" by 2030.⁷⁷ It also calls for ending "preventable deaths of newborns and under-five children," ending the epidemics of AIDS, tuberculosis, malaria, and other neglected tropical diseases and communicable diseases by 2030, and also by that year to "reduce by one-third pre-mature mortality from non-communicable diseases (NCDs) through prevention and treatment, and promote mental health and wellbeing."⁷⁸

On Goal 4, to ensure inclusive and equitable quality education and promote life-long learning opportunities for all, the goal is to ensure that girls and boys complete primary education, free of charge, by 2030 and that by that date they "have access to quality early childhood development, care and pre-primary education," that there is "equal access for all women and men to affordable quality technical, vocational and tertiary education" and that gender disparities in

73. U.N. President of the G.A., Draft Decision on an Open Working Group of the General Assembly on Sustainable Development Goals, U.N. Doc. A/67/L.48/Rev.1 (Jan. 15, 2013).

74. OPEN WORKING GROUP FOR SUSTAINABLE DEV. GOALS, OUTCOME DOCUMENT (2014) [hereinafter OUTCOME DOCUMENT], available at http://sustainabledevelopment.un.org/content/documents/4518SDGs_FINAL_Proposal%20of%20OWG_19%20July%20at%201320hrsver3.pdf. See also *Outcome Document—Open Working Group on Sustainable Development Goals*, U.N. SUSTAINABLE DEV. KNOWLEDGE PLATFORM, <http://sustainabledevelopment.un.org/focussdgs.html> (last visited Aug. 26, 2014).

75. OUTCOME DOCUMENT, *supra* note 74, at 4, ¶ 18.

76. *Id.* at 6, Goal 2.2.

77. *Id.* at 7, Goal 3.1.

78. *Id.*, Goals 3.2-3.4.

education be eliminated and “equal access to all levels of education and vocational training for the vulnerable, including . . . children,” be ensured.⁷⁹

On Goal 5, to achieve gender equality and empower all women and girls, the Open Working Group calls for ending discrimination and all forms of violence to them, and ending “all harmful practices, such as child, early and forced marriage and female genital mutilations.”⁸⁰ It also calls for recognizing and valuing unpaid care and domestic work, ensuring women’s “full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life,” ensuring “universal access to sexual and reproductive health and reproductive rights,” undertaking “reforms to give women equal rights to economic resources” and access to all of “property, financial services, inheritance, and natural resources in accordance with national laws,” and adopting and strengthening “sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.”⁸¹

It is worth noting that on Goal 5 there is no targeted date for achieving the goal of gender equality. When the Open Working Group issued the “Zero Draft” of its suggested sustainable development goals and related targets,⁸² Human Rights Watch sent a letter to the Group urging the inclusion of target dates. The letter stated: “We are troubled that Goal 5 is the only goal whose targets all lack target dates for completion. We believe this gives the impression of a lack of urgency, and may create an accountability gap for reaching these targets.”⁸³ It also urged the explicit recognition of women’s and girls’ human rights in Goal 5, as it said that “[e]mpowerment of women may be insufficient if their rights are not fully respected by their own government or within society.”⁸⁴

IV. SELECTED WOMEN’S AND CHILDREN’S RIGHTS IN THIS ISSUE OF THE *JOURNAL*

The *Denver Journal of International Law and Policy* makes a valuable contribution to the literature by publishing the four selected articles here, one exclusively on women’s rights, two exclusively on children’s rights, and one that concerns both women and children. The piece on women’s rights studies an issue of grave concern—gender violence. The focus is on migrant victims of domestic violence and their rights. This is a comprehensive survey of the legal and social

79. *Id.* at 8, Goals 4.1-4.3, 4.5.

80. *Id.* at 9, Goals 5.1-5.3.

81. *Id.* at 9-10, Goals 5.4-5.6.

82. OPEN WORKING GROUP FOR SUSTAINABLE DEV. GOALS, INTRODUCTION AND PROPOSED GOALS AND TARGETS ON SUSTAINABLE DEVELOPMENT FOR THE POST-2015 DEVELOPMENT AGENDA: ZERO DRAFT 6-7, Goal 5 (2014), available at <http://sustainabledevelopment.un.org/content/documents/4523zerodraft.pdf>.

83. Letter from Iain Levine, Deputy Exec. Director, Human Rights Watch, to the U.N. General Assembly Open Working Group 12 on Sustainable Development Goals ahead of the 12th Session (June 20, 2014), available at <http://www.hrw.org/print/news/2014/06/20/letter-un-general-assembly-open-working-group-12-sustainable-development-goals-ahead>.

84. *Id.*

support systems of the European Union Member ("EU-M") States for this vulnerable group.

The two pieces on children's rights study juvenile justice and child abduction, respectively, and the article concerning both women's and children's rights specifically deals with the Millennium Development Goal No. 6, which is aimed at combating HIV/AIDS, malaria, and other diseases. This article provides a human rights analysis with its focus on Africa.

The first article, entitled *Juvenile Justice in Belligerent Occupation Regimes: Comparing the Coalition Provisional Authority Administration in Iraq with the Israeli Military Government in the Territories Administered by Israel*, discusses the juvenile justice systems unique to occupation regimes. Dr. Hilly Moodrick-Even Khen, a senior lecturer of public international law in Israel, studies first the objectives of juvenile justice systems under both comparative law and international law and then proceeds to examine how these systems operate in occupied territories and the changes occupation regimes experience from "belligerent occupations" to "transformative occupations" and from those lasting short-term to long-term. She then examines how these transformations affect the legal means for meeting the obligations of the occupying power under international humanitarian law, especially "the duty to ensure the safety and the daily life routine of the occupied population."⁸⁵ She does this by comparing the system in Iraq under the Coalition Provisional Authority Administration and that under the Israeli occupation in the Administered Territories.

After identifying three central principles in juvenile justice—"diminished responsibility, proportionality and room to reform"⁸⁶—the author discusses changes regarding "justice-based" principles of the late 20th century concerned more with responses to the "deed" of the offense rather than the offender's "need." She also identifies the international law norms applicable to juvenile justice, including international conventions and other non-obligatory international instruments regulating juvenile justice systems. The pertinent conventions, of course, are the International Covenant on Civil and Political Rights⁸⁷ and the CRC,⁸⁸ and non-binding instruments include the United Nations Standard Minimum Rules for the Administration of Juvenile Justice,⁸⁹ the United Nations Rules for the Protection of Juveniles Deprived of their Liberty,⁹⁰ the United Nations Guidelines for the Prevention of Juvenile Delinquency,⁹¹ and the United

85. See Moodrick-Even Khen, *infra* p. 120.

86. *Id.* at 121 (citing Josine Junger-Tas, *Trends in International Juvenile Justice: What Conclusions can be Drawn?*, in INTERNATIONAL HANDBOOK OF JUVENILE JUSTICE 505, 510 (Josine Junger-Tas & Scott. H. Decker eds., 2006)).

87. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

88. Convention on the Rights of the Child, *supra* note 2.

89. G.A. Res. 40/33, Annex, U.N. Doc. A/RES/40/33 (Nov. 29, 1985).

90. G.A. Res. 45/113, Annex, U.N. Doc. A/RES/45/113 (Dec. 14, 1990).

91. G.A. Res. 45/112, Annex, U.N. Doc. A/RES/45/112 (Dec. 14, 1990).

Nations Children's Fund Principles and Guidelines on Children Associated with Armed Forces or Armed Groups.⁹²

Before responding to the question of the application of the appropriate legal regime to apply in occupied territories, the author discusses the changes over the last few decades that, in her words, "have witnessed a proliferation of other types of occupation regimes,"⁹³ in addition to belligerent occupation regimes to which international humanitarian law or the law of war applied. These include long-term occupation regimes such as the one administered by Israel in the Territories and transformative occupation regimes such as in the formerly occupied Iraq and in Afghanistan. The latter are aimed at building new societies "as end goals of intervention and to protect the occupied population as consistent with international norms and human rights law,"⁹⁴ and the U.N. typically is involved. Thus the author argues that, "since the aim of transformative regimes is to rebuild the legal infrastructure of the territory they occupy and create a new legal order, the governing laws must allow changes in the existing laws in the occupied territory."⁹⁵ On the other hand, she argues that long-term occupation regimes "may not require permission to change existing laws in the occupied area, but they must consider the need for development of the occupied area."⁹⁶

What follows is a comparison of the obligations of occupiers in formerly occupied Iraq and in the Administered Territories. These include both the traditional and the new obligations. After a thorough examination of these regimes and the application of international humanitarian law and international human rights law, the author suggests that "the co-application of human rights law and international humanitarian law, while taking into consideration the security needs of both the occupying power and the protected persons, would create legal standards that would see the application of more protections for minors in criminal procedures."⁹⁷ Specifically addressing the Israeli occupation in the Administered Territories, acknowledging that it may not end in the near future, she considers it "crucial to maintain that a belligerent occupying power, including a long-term one, should avoid changes that will render it a sovereign."⁹⁸ Her rationale is that although this objective could be justified for a transformative regime, "it works against the purposes of a long-term belligerent occupant."⁹⁹

In the second article, *United Against Gender Violence: Europeans Struggle to Provide Protection for Migrants*, Mimi E. Tsankov, a U.S. immigration judge and adjunct professor of law at both the University of Denver Sturm College of Law

92. UNITED NATIONS CHILDREN FUND., THE PARIS PRINCIPLES: PRINCIPLES AND GUIDELINES ON CHILDREN ASSOCIATED WITH ARMED FORCES OR ARMED GROUPS 4 (2007), available at http://childrenandarmedconflict.un.org/publications/ParisPrinciples_EN.pdf.

93. See Moodrick-Even Khen, *infra* p. 127.

94. *Id.*

95. *Id.* at 128.

96. *Id.*

97. *Id.* at 160.

98. *Id.* at 161.

99. *Id.*

and the University of Colorado School of Law, and Nadja Helm, an Attorney Advisor with the U.S. Department of Justice, provide a survey, both wide and deep, of the EU-M States as they struggle to provide legal and social protections to migrant victims of domestic violence. The authors' aim "to present a snapshot of the European Union's journey towards compliance that may enable human rights observers to gauge where individual EU-M States find themselves on this particular metric in comparison to other states given a variety of contextual factors."¹⁰⁰ They provide data regarding each state to assess how it meets its treaty obligations for these vulnerable people. However, they are cognizant of the difficulties in gathering reliable information on monitoring treaty compliance in the context of human rights. Measuring CEDAW compliance is especially hard because (1) member states are required to act with "due diligence in responding to, preventing, and eliminating all forms of violence against women"¹⁰¹ and (2) appropriate indicators or benchmarks for evaluating due diligence are non-existent.

The authors are, therefore, appropriately cautious and undertake their survey based upon the following four qualitative dimensions: (1) gender equality / inequality; (2) human development; (3) treaty obligations; and (4) domestic legal infrastructure. In each of these categories they have selected the most appropriate measures as contextual tools. They present data as reported by several entities: the EU-M States; the Special Rapporteur on the issue of violence against women appointed by the U.N. Commission on Human Rights in 1994; U.N. specialized agencies; NGO studies; and actual case studies. They have selected a "modest goal" for the article, which is "to summarize (1) the states' international obligations, (2) the legal frameworks providing support to this population, (3) the information that has been reported related to protections for this vulnerable population, and (4) the criticisms that have been lodged."¹⁰² They acknowledge that "[b]ecause states have the prerogative of choosing the timetable under which they implement protections, as well as what they choose to report, a definitive comparison across EU-M States remains elusive."¹⁰³

The authors do not discuss female genital mutilation ("FGM") as it "is not properly considered within a domestic violence analysis, because, while the victim's family is often involved, it is usually a community-based practice."¹⁰⁴ However, the subject is important and thus it is worth noting that the U.N. General Assembly in December 2012 adopted a Resolution entitled *Intensifying Global Efforts for the Elimination of Female Genital Mutilations*.¹⁰⁵ Subsequently, on June 28, 2014, Secretary General Ban Ki-moon remarked at an event in Nairobi on

100. See Tsankov & Helm, *infra* p. 166-67.

101. *Id.* at 244.

102. *Id.* at 184.

103. *Id.*

104. *Id.* at 171.

105. *Intensifying Global Efforts for the Elimination of Female Genital Mutilations*, G.A. Res. 67/146, U.N. Doc. A/RES/67/146 (Dec. 20, 2012). See also U.N. Secretary-General, *Ending Female Genital Mutilation: Rep. of the Secretary-General*, Comm'n on the Status of Women, U.N. Doc. E/CN.6/2012/8 (Dec. 5, 2011).

ending maternal mortality: “Some 20 per cent of girls in Kenya are cut, and in Somalia, the proportion is close to 98 per cent. African Governments are united in opposing female genital mutilation, and the United Nations is giving priority to helping all communities abandon this practice.”¹⁰⁶

The authors study Member States’ compliance and accountability with the European Convention on Human Rights, the CEDAW, and the Council of Europe. They note implementation compliance concerns and evaluate the actions taken by the various countries “to address these limitations and enhance the rights of migrant female domestic violence victims.”¹⁰⁷

The outcome is a very impressive study outlining the protections Member States have provided in compliance with the ECHR, CEDAW, and Council of Europe mandates. The authors conclude that human rights bodies both at the international and regional levels are developing specific standards to address some of the problems these victims face and states are responding with appropriate changes; however, they find that “the pace of reform is uneven across states, and the development of increasingly specific model systems may serve to bring some states that have heretofore been lagging further into line with the more robust and comprehensive state systems that exist today.”¹⁰⁸

The next article, which relates to both women’s and children’s rights, is *Millennium Development Goal 6 and the Trifecta of HIV/AIDS, Malaria, and Tuberculosis in Africa: A Human Rights Analysis*, by Dr. Obiajulu Nnamuchi, an assistant professor of law at the University of Nigeria. The article provides a clear understanding of MDG 6, which is aimed at reducing the incidence of these diseases, and thoroughly examines the circumstances responsible for failure in many African countries to combat them effectively. The author’s suggestions for remedial measures are designed to ensure that African countries attain this goal in a sustainable fashion and are able to secure the human right to health of each person within its borders. He asserts that it is a human right to have access to necessary interventions to combat these diseases.

Professor Nnamuchi is especially critical that the second prong of the HIV/AIDS-related targets, that is, achieving universal access to treatment for all those in need, by 2010, was not met in the African context. He focuses on special population groups—women, sex workers, and prisoners—who are most vulnerable and who have higher incidence of infection than the rest of the population. He specifically underlines the challenges that many of these countries face in getting universal access to anti-retroviral therapy (“ART”). Giving examples from African countries, he discusses the problem of lack of information about HIV/AIDS and risky sexual behavior as especially responsible for the problem. The section on discrimination against people living with HIV/AIDS is especially

106. U.N. Secretary-General, ‘No Woman Should Die While Giving Life,’ Secretary-General Says at Event on Ending Maternal Mortality (June 28, 2014), <http://www.un.org/News/Press/docs/2014/sgsm15984.doc.htm>.

107. See Tsankov & Helm, *infra* p. 189.

108. *Id.* at 245.

poignant as he discusses the pertinent human rights instruments and concludes that such discrimination is an affront to human rights. Similarly, he critically analyzes the huge impact of malaria in Africa and how special population groups, especially children, are severely affected. Challenges pertain to all aspects—prevention, control, and treatment.

After conducting a similar analysis on tuberculosis, Professor Nnamuchi convincingly argues that as we analyze the challenges in the human rights context much more is needed than simply access to medicine. He makes two points pertaining to the obligation of governments in Africa regarding these scourges: first, that MDG 6 does not impose substantially new obligations on these governments. Here he refers to several statements by African governments and the obligations imposed by African instruments such as the Africa Charter on Human and Peoples' Rights. The second point is about conceptualization of health, according to which everyone has a right to the enjoyment of the highest attainable standard of physical and mental health. Thus, a medicine-oriented response to problems related to health without more is not enough. He makes a telling point:

To suggest that human rights should serve as a liberating or emancipating force, freeing vulnerable and other marginalized groups from the cold clutches of poverty, deprivation and other harmful conditions, the consequence of which has been disproportionate burden of HIV/AIDS, malaria, TB, and other largely preventable diseases, is not to reconceptualize the doctrine. Rather, the suggestion merely emphasizes practicalization, the way things ought to be. It is, in reality, about making human rights work to the advantage of its primary subjects, the people who need it most.¹⁰⁹

In conclusion, the author reminds affluent countries of MDG Goal 8, under which international cooperation is required as a means to achieving the MDGs, asserting that the donor countries must hold poor countries accountable for the way money is spent in those countries. This might "force political leadership in Africa to rethink their insensitivity to massive human suffering in the region."¹¹⁰ Along with such effort he emphasizes the role of the civil society as a complementary effort which "involves the people ridding themselves of docility and demanding good governance as a right—the key, ultimately, to real freedom from preventable diseases—be it HIV/AIDS, malaria, TB, or anything else."¹¹¹

The final paper in this special issue is by Colin P.A. Jones, a professor at Doshisha Law School, and entitled *Will the Child Abduction Treaty Become More "Asian"? A First Look at the Efforts of Singapore and Japan to Implement the Hague Convention*. Acknowledging that a comparison between Singapore and Japan as two Asian countries does not suffice to ask the question whether an Asian response to international child abduction could develop, the author suggests that

109. See Nnamuchi, *infra* p. 281.

110. *Id.* at 285.

111. *Id.* at 285-86 (citation omitted)

the more likely answer now is “no,” but that as more countries in the region join the Convention, perhaps in some aspects there might develop an Asian response.

The author begins his analysis by providing an overview of the Hague Convention on the Civil Aspects of Child Abduction (“the Convention”).¹¹² It may be recalled that the Convention assumes that the courts in the jurisdiction where the children have been residing, that is, the jurisdiction of their “habitual residence,” should evaluate their interests, rather than a court in a jurisdiction to which they have more recently moved. Thus the Convention deters unilateral action by one parent, with the goal of protecting the children’s welfare. If a child is removed in violation of “rights of custody” in the child’s jurisdiction of habitual residence, the court must order a return if such rights were being exercised at the time of removal. While almost every country in Europe, North and South America, and Australia and New Zealand, are parties to the Convention, only a handful of African and Asian countries have ratified it.

The author compares and contrasts Singapore and Japan, the former having acceded to the Convention in 2010, while the latter joined it in 2014. He reviews these countries’ demographics, international business and finance, and the number of marriages, divorces, and annulments typical in a year in each country. He then reviews the rights of custody, first in Japan and then in Singapore. Japan’s family register system has several special features—only Japanese citizens have family registries; the family register performs a function analogous to a real estate title register insofar as it primarily facilitates transactions between a family and government agencies or other third parties.

The author notes that marriage is at the heart of the family register system and it primarily deals with the common consensual family transactions such as marriage, adoption, and most divorces. He then discusses Japan’s civil code, under which minor children are under the “parental authority” of their parents, which is jointly exercised by both parents during marriage and solely by one parent after divorce. The civil code provides a vast scope for parental authority. Thus, under the Japanese system, individual families have a large degree of autonomy to manage their internal affairs.

Many Japanese laws and legal institutions are historically based upon Continental European models, contrasted with Singapore’s legal system, which is based upon the English system of Common Law and equity. After reviewing Singapore’s various laws, which include a separate system of Islamic law and a special court for its Muslim minority community, the author discusses how the role of “custody” is changing and a presumption has arisen that usually joint custody will be in the best interest of children in most cases. He discusses case law of Singapore to conclude that Singapore’s courts are interpreting the Convention in light of its peer jurisdictions’ approach. And in reviewing Japan’s implementing legislation, the author finds that among several reasons for the discrepancies between the Convention and Japanese domestic law, the following are noteworthy:

112. Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89.

systems of family law in Japan, especially family mediation and its consensual nature, and the country's civil law foundation. His conclusion seems apt that perhaps the pertinent inquiry to account for the difference between Singapore's and Japan's approach to the Convention lies not in "Western-ness" and "Asian-ness" but is instead between the common law and civil law traditions.

V. CONCLUSION

The main focus of three of the four papers selected here is a human rights-centered approach to the issues they address. The absence of this approach was indeed seen as a major flaw in the MDG framework¹¹³ and as the post-2015 international development agenda is being formulated it is not simply NGOs, such as Amnesty International¹¹⁴ and Human Rights Watch¹¹⁵ that are calling for sustainable development goals to be based on human rights foundations, but even the official proposals regarding the post-2015 development agenda¹¹⁶ echo the same spirit.

113. See generally Ved P. Nanda, *Human Rights Must Be at the Core of the Post-2015 International Development Agenda*, 75 MONT. L. REV. 1 (2014).

114. See, e.g., AMNESTY INT'L, DELIVERING A JUST FUTURE FOR ALL—WHY HUMAN RIGHTS MATTER TO SUSTAINABLE DEVELOPMENT (2014), available at <http://amnesty.org/en/library/asset/ACT35/008/2014/en/66bf8961-23c3-495d-a7bd-100b71a3bbe5/act350082014en.pdf>; Press Release, Amnesty Int'l, Post-2015 Agenda: Human Rights Accountability Key to Progress Amnesty International Tells UN (June 12, 2014), available at <http://www.amnesty.org/en/for-media/press-releases/post-2015-agenda-human-rights-accountability-key-progress-amnesty-internati>.

115. See, e.g., HRW, RIGHTS SHOULD BE CENTRAL TO POST-2015 DEVELOPMENT AGENDA, *supra* note 31; David Mepham, *Putting Development to Rights: A Post-2015 Agenda*, OPEN DEMOCRACY (Jan. 28, 2014), <https://www.opendemocracy.net/david-mepham/putting-development-to-rights-post-2015-agenda> (David Mepham is the U.K. director of Human Rights Watch).

116. For the various proposals urging the primary role of human rights in achieving sustainable development, see, *supra* Part III.