

2011

## Decent Work for All: A Holistic Human Rights Approach

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### Recommended Citation

MacNaughton, Gillian, and Diane F. Frey. "Decent Work for All: A Holistic Human Rights Approach." *American University International Law Review* 26 no. 2 (2011): 441-483.

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## DECENT WORK FOR ALL: A HOLISTIC HUMAN RIGHTS APPROACH

GILLIAN MACNAUGHTON\* & DIANE F. FREY\*\*

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*It is in this, the twenty-first century, that economic, social and cultural rights should come into their own. The world has the resources, wealth and knowledge to make this a reality.<sup>1</sup>*

- United Nations General Assembly, 2007

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1. U.N. Gen. Assembly, *Report on the World Social Situation 2007: The Employment Imperative*, ¶ 129, U.N. Doc. A/62/168 (July 30, 2007) [hereinafter *Report on the World Social Situation 2007*].

## INTRODUCTION

Globalization and the current economic downturn present tremendous challenges, but also opportunities, for advancing human rights such as the right to decent work.<sup>2</sup> It is now widely acknowledged that the past three decades of neo-liberal policy have led to greater economic inequality and insecurity, adversely affecting the ability of people to find decent work to support decent lives.<sup>3</sup> Deregulation, privatization, and the desire for labor-market flexibility have resulted in the spread of informal employment, short-term contracts, loss of worker voice and representation, and an increase in income insecurity.<sup>4</sup> At the same time, there are significantly fewer social protections available to workers.<sup>5</sup>

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2. See Outcome of the Conference on the World Financial and Economic Crisis and its Impact on Development, G.A. Res. 63/303, ¶ 10, U.N. Doc. A/Res/63/303 (July 13, 2009) (expressing hope that the current crisis will serve as a catalyst for advancing global prosperity, increasing access to health and education, and moving towards sustainable development); see also IRENE KHAN, THE UNHEARD TRUTH: POVERTY AND HUMAN RIGHTS 229 (2009) (urging “a real restructuring of the international economic system” following the crisis in a manner that fully respects human rights); Ignacio Saiz, *Rights in Recession? Challenges for Economic and Social Rights Enforcement in Times of Crisis*, 1 J. HUM. RTS. PRAC. 277, 282 (2009) (noting that the current economic crisis “laid bare the shortcomings of the ‘minimal state’ model,” and in so doing, highlighted the importance of upholding socio-economic rights). In particular, Saiz calls upon the Obama Administration to ratify the International Covenant on Economic, Social and Cultural Rights in light of the economic crisis and encourages current states parties to take the additional step of ratifying the Optional Protocol. *Id.* at 285.

3. See, e.g., *Report on the World Social Situation 2007*, *supra* note 1, ¶¶ 4, 78-80 (arguing that twenty-first century policies should emphasize socio-economic security to empower individuals to refuse “degrading or debilitating” labor); Diane Elson, *Gender Justice, Human Rights, and Neo-liberal Economic Policies*, in GENDER JUSTICE, DEVELOPMENT, AND RIGHTS 78, 87-114 (Maxine Molyneux & Shahra Razavi eds., 2002) (exploring how the adverse impacts of neo-liberal policies are borne disproportionately by women, particularly poor women).

4. See *Report on the World Social Situation 2007*, *supra* note 1, ¶ 4 (citing a decrease in collective bargaining as an additional factor contributing to a loss of worker power in the global economy). See generally Int'l Labor Org. [ILO], World Comm'n on the Soc. Dimension of Globalization, *A Fair Globalization: Creating Opportunities for All*, at 45-48 (2004) (describing how some workers, most notably those associated with successful multi-national enterprises, have benefitted from globalization, while most other classes of workers, including unskilled and lower skilled workers, have been adversely affected).

5. See, e.g., *Report on the World Social Situation 2007*, *supra* note 1, ¶¶ 91, 93, 95-97 (relating the negative trends in access to health care, disability benefits,

According to the Director-General of the International Labor Organization (“ILO”), the recent economic crisis is a culmination of decades of unfair globalization and increasing income inequalities in a policy context that minimized the role of the state, and failed to respect the dignity of work and the importance of social protection.<sup>6</sup>

There is no coincidence that this neo-liberal period has coincided with the emergence of economic and social rights back into the mainstream human rights agenda.<sup>7</sup> Although marginalized during the Cold War years, interest in economic and social rights at both the international and domestic levels has grown rapidly since the late 1980s.<sup>8</sup> One recent achievement was the adoption by the U.N. General Assembly in December 2008 of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (“ICESCR Optional Protocol”), which provides the first international complaint mechanism independent of the ILO for violations of economic and social rights, including the right to decent work.<sup>9</sup> The

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unemployment insurance benefits, and the weakening of social insurance systems worldwide).

6. See ILO Director-General, *Tackling the Global Job Crisis: Recovery through Decent Work Policies: Report of the Director-General*, ¶¶ 3, 14-15 (2009) (calling for a Global Jobs Pact to mitigate the negative impact of the economic downturn and to ensure fair and sustainable globalization); see also G.A. Res. 63/303, *supra* note 2, ¶ 9 (recognizing that weaknesses contributing to the economic crisis include: regulatory failures in financial markets, lack of transparency, failure to adequately assess financial risk, and government failure to balance market imperatives with social needs).

7. See Simon Deakin, *Social Rights in a Globalized Economy*, in *LABOUR RIGHTS AS HUMAN RIGHTS* 25, 25 (Philip Alston ed., 2005) (averring that “[o]ne of the side effects of globalization is a growing interest in the field of fundamental social rights”); Judy Fudge, *The New Discourse of Labor Rights: From Social to Fundamental Rights?*, 29 *COMP. LAB. L. & POL’Y J.* 29, 29-31 (2007) (orienting the emergence of economic and social rights within a larger “movement to recognize the social dimension of globalization”).

8. See Malcolm Langford, *The Justiciability of Social Rights: From Practice to Theory*, in *SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW* 1, 7-9 (Malcolm Langford ed., 2008) (suggesting that the recognition of the right to bring collective actions, the constitutionalization of economic and social rights by many states, and the proliferation of regional and international human rights bodies are among the factors contributing to the development of jurisprudence in the field of economic and social rights); see also Saiz, *supra* note 2, at 277-78 (citing the adoption over the last fifteen years of a range of new instruments, such as the Optional Protocol to the ICESCR, to enforce economic, social, and cultural rights).

9. See Optional Protocol to the International Covenant on Economic, Social

advent of the ICESCR Optional Protocol in combination with the current global employment crisis makes it timely to consider the potential for a human rights approach to achieve decent work for all.<sup>10</sup>

The work rights covered by the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) and the new Optional Protocol include, among others,<sup>11</sup> the right to freely chosen work,<sup>12</sup> the right to full employment,<sup>13</sup> the right to fair wages,<sup>14</sup> the right to an adequate standard of living,<sup>15</sup> the right to safe and healthy working conditions,<sup>16</sup> the right to rest and leisure,<sup>17</sup> the right to form and join trade unions,<sup>18</sup> the right to strike,<sup>19</sup> and the right to social security.<sup>20</sup> These ICESCR work rights overlap with the pillars of the

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and Cultural Rights, G.A. Res. 63/117, arts. 1-15, U.N. Doc. A/RES/63/117 (Dec. 10, 2008) [hereinafter ICESCR Optional Protocol] (creating a process for the U.N. Committee on Economic, Cultural and Social Rights to receive and investigate complaints from individuals or groups claiming to be victims of violations of economic, cultural, or social rights). For a detailed history on the ICESCR Optional Protocol, see generally Catarina de Albuquerque, *Chronicle of an Announced Birth: The Coming to Life of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights—The Missing Piece of the International Bill of Human Rights*, 32 HUM. RTS. Q. 144 (2010). The ICESCR Optional Protocol has not yet entered into force, and will only do so three months after the tenth ratification or accession. ICESCR Optional Protocol, *supra*, art. 18. To date, thirty-five states have signed the ICESCR Optional Protocol, however, only Ecuador, Mongolia, and Spain have ratified the agreement. See List of Signatories to the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights, U.N. TREATY COLLECTION, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3-a&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en) (last visited Feb. 1, 2011) [hereinafter List of Signatories to the Optional Protocol].

10. Over the past decade, there has been a growing tendency to recast labor rights as human rights. Judy Fudge notes that, “[a]s the traditional vehicles for labor and social rights—trade unions and the welfare state—have lost their luster, labor and social rights have been cast in the language of international human rights.” Fudge, *supra* note 7, at 40.

11. See *infra* Table 1 (presenting a full list of work-related rights).

12. International Covenant on Economic, Social, and Cultural Rights art. 6(1), Dec. 16, 1966, 933 U.N.T.S. 3 [hereinafter ICESCR].

13. *Id.*

14. *Id.* art. 7(a)(i).

15. *Id.* art. 11(1).

16. *Id.* art. 7(b).

17. *Id.* art. 7(d).

18. *Id.* art. 8(a).

19. *Id.* art. 8(d).

20. *Id.* art. 9.

ILO Decent Work Agenda, as well as with the labor rights in ILO Conventions.<sup>21</sup> The four pillars of the ILO Decent Work Agenda are (1) employment promotion, (2) social protection, (3) social dialogue, and (4) rights at work.<sup>22</sup> The first pillar, employment promotion, corresponds to the right to full employment.<sup>23</sup> The second pillar, social protection, corresponds to the rights to social security and to safe and healthy work conditions.<sup>24</sup> The third pillar, social dialogue, corresponds to the rights to form and join trade unions and the rights of unions to bargain collectively.<sup>25</sup> The fourth pillar corresponds to the ILO four Core Labor Standards: elimination of forced labor, prohibition against child labor, elimination of discrimination in employment, and freedom of association.<sup>26</sup>

These two frameworks—the ILO and the ICESCR—share the aim of protecting work rights and improving the lives of workers and their families. Despite this commonality, there are significant differences between them. There is little doubt that the ILO, which is the U.N. specialized agency focused on work, has the greatest expertise in this area. Thus, the Committee on Economic, Social and Cultural Rights, which is responsible for monitoring state compliance with the ICESCR, “draw[s] heavily on the experience and practice of the ILO mechanisms,” and regularly looks to the expertise of the ILO Committee of Experts on the Application of Conventions and Recommendations.<sup>27</sup>

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21. See Gillian MacNaughton & Diane F. Frey, *Decent Work, Human Rights and the Millennium Development Goals*, 7 HASTINGS RACE & POVERTY L. J. 303, 346 (2010) (indicating work rights in the ICESCR that correspond to each Decent Work pillar, such as non-discrimination, union rights, right to social security, right to opportunity to gain a living, and right to adequate standard of living).

22. ILO Director-General, *Report of the Director-General: Decent Work*, 3 (1999) [hereinafter *Decent Work Report*].

23. See *id.* at 4, 21-30 (explaining that employment promotion means building the capacity of workers and expanding opportunities for employment).

24. See *id.* at 4, 30-38 (addressing the “human conditions of work” in addition to the “vulnerabilities and contingencies” that make it impossible for people to work).

25. See *id.* at 4, 38-44 (noting that this pillar also includes democratic participation as a means of securing and defending work-related rights).

26. *Id.* at 4, 14-20; see ILO Declaration on Fundamental Principles and Rights at Work, June 18, 1998, 37 I.L.M. 1237, 1237-38 (requiring all Members of the ILO to respect these rights, regardless of the specific Conventions to which they are party).

27. Eibe Riedel, *Monitoring the 1966 International Covenant on Economic,*

On the other hand, the ICESCR's human rights approach offers some distinct advantages that may complement the ILO framework. First, the ILO Decent Work Agenda recognizes work rights only in the fourth pillar, although there are human rights obligations underpinning all four Decent Work Pillars. As a result, as the authors have argued elsewhere, the other three pillars appear as mere political commitments without any basis in law.<sup>28</sup> Moreover, the "rights at work" in the fourth pillar are limited to the ILO four Core Labor Standards even though decent work encompasses numerous other rights such as the rights to fair wages, safe working conditions, and reasonable limitations on work hours.<sup>29</sup>

In addition to the limited work rights included in the ILO Decent Work Agenda, many ILO Conventions cover limited groups of workers, such as commerce and office workers, or miners, factory construction, and transportation workers.<sup>30</sup> There are now well over one hundred ILO Conventions, which each address different categories of workers and different aspects of work.<sup>31</sup> Further, many ILO Conventions on aspects of decent work have not been widely ratified.<sup>32</sup> For example, only 101 states have ratified Convention 122

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*Social and Cultural Rights*, in PROTECTING LABOUR RIGHTS AS HUMAN RIGHTS: PRESENT AND FUTURE OF INTERNATIONAL SUPERVISION 3, 4 (George P. Politakis, ed., 2007).

28. MacNaughton & Frey, *supra* note 21, at 348 ("[T]he ILO Decent Work Agenda . . . has turned selective and soft just when the international human rights regime on work and work-related rights has turned holistic and hard . . . . By turning to soft promotional approaches, the ILO appears to transform binding legal obligations into mere policy or programmatic goals.")

29. *Cf. Decent Work Report*, *supra* note 22, at 4 (acknowledging that the ILO's goal is not only increasing the quantity of available jobs, but also ensuring that all jobs are of an acceptable quality).

30. *See, e.g.*, ILO Convention No. 1: Hours of Work (Industry) Convention art. 1, November 28, 1919, available at <http://www.ilo.org/ilolex/english/index.htm> (covering people working in mines, manufacturing, construction and transportation); ILO Convention No. 30: Hours of Work (Commerce and Offices) Convention art. 1, June 28, 1930, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C030> (covering people working in commercial or trading establishments, administrative services, and mixed commercial-industrial establishments).

31. *See generally* ILO, *Official Titles of the Conventions Adopted by the International Labour Conference* (2010), available at <http://www.ilo.org/ilolex/english/conventions.pdf>.

32. *See generally* ILO, *Database of International Labour Standards*, <http://www.ilo.org/ilolex/english/> (last visited Feb. 1, 2011) (listing ratification

concerning (full) employment policy and only 34 states have ratified Convention 158 on (valid grounds for) termination of employment.<sup>33</sup>

In contrast to this piecemeal approach, the ICESCR is a comprehensive international instrument on work rights<sup>34</sup> that has been ratified by 160 states.<sup>35</sup> All states parties to the ICESCR have legal obligations for ensuring the enjoyment of the human rights underlying both ILO Convention 122 and 34, which have significantly fewer states parties.<sup>36</sup> Finally, while ILO Conventions often address specific groups of workers and leave others unprotected, the work rights in the ICESCR are universal. They cover all human beings regardless of their employment status—formal or informal, paid or unpaid—and without regard to their union status or the sector in which they work.

In this context, this article explores the potential of using a holistic human rights approach to achieve decent work for all. This approach reframes decent work as a set of specific legal obligations under international and domestic human rights law in an effort to advance beyond the political commitments in the ILO Decent Work Agenda. Significantly, the human rights framework embraced by the Universal Declaration of Human Rights and the ICESCR includes three key principles: universality, interdependence, and equality of all human rights. Applying these three principles to work rights would serve to integrate the ILO Conventions and Decent Work

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information by state and convention).

33. *Id.*

34. See U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. & Cultural Rights [CESCR], General Comment No. 18: The Right to Work: Article 6 of the International Covenant on Economic, Social and Cultural Rights, ¶¶ 1-2, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006) [hereinafter CESCR General Comment 18] (stating that the ICESCR treats the right to work more completely than other instruments as Articles 6, 7, and 8 fully develop the general, individual, and collective aspects of this right).

35. *List of Signatories to the International Covenant on Economic, Social and Cultural Rights*, U.N. TREATY COLLECTION, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en) (last visited Feb. 1, 2011) [hereinafter *List of Signatories to the ICESCR*].

36. See CESCR General Comment 18, *supra* note 34, ¶¶ 11, 19 (adopting requirements found in ILO Convention 158 requiring grounds for employment termination and declaring that states parties must act quickly to implement measures aimed at achieving full employment).

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Pillars into a holistic framework. After decades of unfair globalization and in this crucial moment of economic crisis, the holistic human rights framework suggests several new strategies for advancing the right to decent work.

Following this introduction, Part I of this article outlines similarities and differences between the ILO social justice approach and the holistic human rights approach to achieving decent work. Part II then explains in more detail the three key features of a holistic human rights approach. Part III gives a brief overview of the work rights protected in the ICESCR. To illustrate the potential value of a holistic human rights approach, the article then discusses four specific strategies to achieve decent work: (1) defining decent work holistically, (2) recognizing the interdependence of rights and of people in seeking to achieve decent work for all, (3) using human rights tools and methods, such as human rights impact assessments, to craft policies that will advance the right to decent work, and (4) building coalitions among people and organizations by linking the right to decent work with other human rights. Based on these illustrations, this article concludes in Part IV that there is great potential for improving regulation, policymaking, and advocacy on decent work by adopting a holistic human rights approach.

## I. SOCIAL JUSTICE AND HUMAN RIGHTS

The promotion of social justice is one of the primary purposes of the ILO. The Preamble to the 1919 ILO Constitution states that “universal and lasting peace can be established only if it is based upon social justice.”<sup>37</sup> Additionally, the Constitution links social justice and work, asserting that “conditions of labour exist involving such injustice, hardship, and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled.”<sup>38</sup> As a result, the Constitution declares that “an improvement of those conditions is urgently required.”<sup>39</sup> The 1944 ILO Declaration of Philadelphia reaffirmed the fundamental ILO principles that peace must be based on social justice, that “poverty anywhere constitutes a danger to prosperity everywhere,” and that

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37. ILO Constitution pmb., June 28, 1919, 49 Stat. 2712.

38. *Id.*

39. *Id.*

the “war against want” must be carried out at both national and international levels.<sup>40</sup> It further declared that all human beings “have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.”<sup>41</sup>

More recently, the 2008 ILO Declaration on Social Justice for a Fair Globalization reaffirms the ILO Constitution’s mandate to pursue “the universal aspiration for social justice,”<sup>42</sup> and in the announcement accompanying the Declaration, the Director-General acknowledged the ILO’s “particular responsibility to promote fair globalization.”<sup>43</sup> The Declaration commits the ILO and its members “to place full and productive employment and decent work at the centre of economic and social policies.”<sup>44</sup> Toward these ends, the ILO and its members adopted the ILO Decent Work Agenda as the overarching framework for achieving the ILO constitutional mandate.

ILO Director-General Juan Somavia introduced the concept of “decent work” in 1999 shortly after assuming his position.<sup>45</sup> The word “work” is intended to be broader than employment or labor, reflecting “the variety of ways in which people contribute to the economy and society.”<sup>46</sup> The word “decent” denotes that work must be of acceptable quality in terms of income, working conditions, job

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40. Declaration Concerning the Aims and Purposes of the ILO §§ I-II, Oct. 9, 1946, 62 Stat. 3485 [hereinafter Philadelphia Declaration].

41. *Id.* § II(a).

42. ILO, *Declaration on Social Justice for a Fair Globalization*, at pmb1., § I.A (June 13, 2008) [hereinafter *Declaration on Social Justice for a Fair Globalization*].

43. The Director-General, Announcement on ILO Declaration on Social Justice for a Fair Globalization, ¶ 3, IGDS No. 1 (Version 1) (Aug. 13, 2008) [hereinafter Director-General Announcement].

44. *Declaration on Social Justice for a Fair Globalization*, *supra* note 42, § I.A.

45. See GERRY RODGERS ET AL., *THE INTERNATIONAL LABOUR ORGANIZATION AND THE QUEST FOR SOCIAL JUSTICE, 1919-2009* 223-24 (2009) (explaining that Somavia saw “decent work” as a strategic way of framing ILO objectives in that the term encompassed the needs of workers and developing countries without alienating employers and industrialized nations).

46. *Id.* at 224; see *Decent Work Report*, *supra* note 22, at 4 (noting that “[t]he ILO is concerned with all workers,” including formally employed workers, “unregulated wage workers, the self-employed and homeworkers”).

security, and rights.<sup>47</sup> Since the introduction of the concept, the ILO's primary goal has been to secure decent work for women and men everywhere.<sup>48</sup> As the Director-General asserted in 1999, decent work "is the most widespread need, shared by people, families and communities in every society, and at all levels of development."<sup>49</sup> More than ten years later in the context of the current employment crisis, his statement is still strikingly relevant.

The 2008 Declaration on Social Justice for a Fair Globalization recognizes the "four equally important strategic objectives" of the Decent Work Agenda: (1) promoting employment, (2) enhancing social protection, (3) promoting social dialogue, and (4) realizing rights at work.<sup>50</sup> The Declaration further recognizes that these four pillars are "inseparable, interrelated and mutually supportive."<sup>51</sup> It thereby institutionalizes, and even constitutionalizes, the ILO Decent Work Agenda as its integrated global strategy to meet the universal aspiration of social justice, which includes achieving full employment and combating poverty and inequality.<sup>52</sup> In this article, the authors refer to the ILO framework set forth in the ILO Constitution, the Declaration of Philadelphia, and the ILO Declaration on Social Justice for a Fair Globalization as "the social justice approach."<sup>53</sup>

A human rights approach to achieving decent work shares with the social justice approach the central concerns for poverty, inequality,

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47. RODGERS ET AL., *supra* note 45, at 224; see *Decent Work Report*, *supra* note 22, at 3-4 (noting that "[t]he goal is not just the creation of jobs, but the creation of jobs of acceptable quality," including forms of work, conditions of work, and the feelings of value and satisfaction from work).

48. See *Decent Work Report*, *supra* note 22, at 3 (declaring "decent work" as a common aim unifying the ILO's "tripartite membership" consisting of government, business, and labor, whose interests have increasingly diverged since the end of the Cold War).

49. *Id.* at v.

50. *Declaration on Social Justice for a Fair Globalization*, *supra* note 42, § I.A.

51. *Id.* § I.B.

52. See Director-General Announcement, *supra* note 43, ¶ 3 (declaring the Decent Work Agenda as the "key policy and operational concept" to carry out the ILO's constitutional objectives); see also *Declaration on Social Justice for a Fair Globalization*, *supra* note 42, § I.A (committing members to implement the ILO's constitutional mandate through the four pillars of the Decent Work Agenda).

53. For a history of the ILO and its social justice mission, see generally RODGERS ET AL., *supra* note 45, at 1-36.

and human dignity.<sup>54</sup> While there are a variety of human rights approaches, they are all derived from the international human rights framework first set forth in the Universal Declaration of Human Rights (“UDHR”)<sup>55</sup> and subsequently implemented in numerous human rights treaties.<sup>56</sup> Stephen Marks explains that the *holistic* human rights approach connects all human rights in a unified system, rather than focusing on distinct components.<sup>57</sup> A holistic human rights approach, therefore, rejects traditional, hierarchical distinctions between civil and political rights on the one hand, and economic, social, and cultural rights on the other, and views with skepticism those governments that claim to endorse human rights in general while ignoring certain categories of rights such as women’s rights, rights of democratic participation, or social and economic rights.<sup>58</sup>

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54. See ECOSOC, CESCR, Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights, U.N. Doc. E/C.12/2001/10 (May 10, 2001) (averring that poverty constitutes a denial of human rights). See generally Stephen Marks, *Health, Development and Human Rights*, in HEALTH AND DEVELOPMENT: TOWARD A MATRIX APPROACH 124, 125-28 (Anna Gatti and Andrea Boggio eds., 2008) (comparing social justice and holistic human rights approaches in the context of health and development, and arguing that while the social justice approach is based on a sense of moral obligation to alleviate poverty, the holistic human rights approach establishes legal principles that bind governments to act in ways that promote such social justice).

55. Universal Declaration of Human Rights, G.A. Res. 217 (III) (A), pmbl., U.N. Doc. A/RES/217(III)(A) (Dec. 12, 1948) [hereinafter UDHR] (recognizing the “inalienable rights of all members of the human family”).

56. E.g., ICESCR, *supra* note 12 (codifying the social, economic, and cultural rights originally enumerated in the UDHR).

57. See Stephen P. Marks, *The Human Rights Framework for Development: Seven Approaches*, in REFLECTIONS ON THE RIGHT TO DEVELOPMENT 23, 24-25 (Arjun Sengupta et al. eds., 2005) (arguing that human rights are so interconnected that it is impossible to make progress on some rights without achieving progress in the system as a whole); Isfahan Merali & Valerie Oosterveld, *Introduction to GIVING MEANING TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS* 1, 1 (Isfahan Merali & Valerie Oosterveld eds., 2001) (noting that the Universal Declaration of Human Rights encompasses a holistic human rights framework in which there is no division or hierarchy of rights).

58. See James W. Nickel, *Rethinking Indivisibility: Towards A Theory of Supporting Relations Between Human Rights*, 30 HUM. RTS. Q. 984 (2008) (recounting the efforts of the U.N. General Assembly and the Office of the High Commissioner for Human Rights to support the indivisibility thesis, requiring countries to endorse all categories of rights); see also Scott Leckie, *Another Step Towards Indivisibility: Identifying Key Features of Violations of Economic, Social and Cultural Rights*, 20 HUM. RTS. Q. 81, 83 (1998) (highlighting the disparity

A holistic approach stresses the universality, interdependency, and equality of all human rights. It recognizes that all categories of rights, include positive and negative components, will require resources, may involve violations, and are essential to human dignity.<sup>59</sup> In the context of decent work, the holistic approach demands consideration of all human rights, not just those work rights that initially appear most relevant.<sup>60</sup> For example, to combat child labor, policy-makers must consider the minimum age for employment as well as the child's right to education, right to health, right to family life, and right to participation in the community, among other rights that may be affected by such policy changes.

The UDHR and several other human rights instruments lend support to the holistic human rights approach.<sup>61</sup> Article 28 of the UDHR states that “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”<sup>62</sup> This provision implies a holistic framework in which social, economic, and political structures at both the national and international level support the full realization of all categories of human rights.<sup>63</sup> The holistic approach is further supported by subsequent U.N. Declarations, including the Declaration on the Right to Development and the Vienna Declaration and Program of Action, which both acknowledge the indivisibility and interdependency of all human rights and call for equal attention to the implementation of civil, political, economic, social, and

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between the international community's consistent commitment to the idea that all human rights are interconnected and the ambivalence of states as demonstrated by their attitudes and practices toward economic and social rights).

59. See Marks, *supra* note 57, at 27 (noting how the exercise of civil and political rights simultaneously advances economic, social, and cultural rights of poor people in the context of development).

60. See *id.* (applying the holistic approach in the context of the right to shelter).

61. See *id.* at 25-27 (listing the UDHR, the 1986 Declaration on the Right to Development, the 1993 Vienna Declaration and Program of Action, and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights as instruments that affirm the interdependent nature of human rights embraced in the holistic approach).

62. UDHR, *supra* note 55, art. 28.

63. See Marks, *supra* note 57, at 25 (arguing that the provision also implies structural changes, altering power relations at both the national and international level, to realize human rights).

cultural rights.<sup>64</sup> Beyond such declarations, the holistic approach is reaffirmed in the preambles to both the ICESCR and the International Covenant on Civil and Political Rights (“ICCPR”). The ICESCR states: “[I]n accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as civil and political rights.”<sup>65</sup>

The holistic human rights approach encompasses the principles expressed in the ILO Declaration of Philadelphia and the ILO Declaration on Social Justice, including the ideas that civil and political rights such as freedom of expression and association are essential to sustained progress, and that the “war against want” requires both national and international efforts to promote the common welfare.<sup>66</sup> Additionally, both the social justice and the holistic human rights approaches encompass “a set of values” for evaluating policy and practice.<sup>67</sup> Moreover, both frameworks are now implemented through international laws with monitoring and accountability mechanisms.

Yet there are significant differences in the two approaches. The holistic human rights approach embraces but also extends beyond the parameters of the ILO social justice approach.<sup>68</sup> First, both

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64. See Declaration on the Right to Development, G.A. Res. 41/128, art. 6, U.N. Doc. A/RES/41/128 (Dec. 4, 1986) (affirming the indivisibility and interdependence of all human rights); World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, ¶ 5, U.N. Doc. A/CONF.157/23 (July 12, 1993) [hereinafter *Vienna Declaration*] (“All human rights are universal, indivisible and interdependent and interrelated.”).

65. ICESCR, *supra* note 12, pmb. The Preamble to the International Covenant on Civil and Political Rights contains substantially the same language. See International Covenant on Civil and Political Rights, pmb., Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

66. See Philadelphia Declaration, *supra* note 40, § I; *Declaration on Social Justice for a Fair Globalization*, *supra* note 42, at 2, 7.

67. Gillian MacNaughton & Paul Hunt, *Health Impact Assessment: The Contribution of the Right to the Highest Attainable Standard of Health*, 123 PUB. HEALTH 302, 302 (2009) (explaining that human rights establish “an ethical and legal framework”).

68. See Riedel, *supra* note 27, at 6 (comparing the human-rights based approach of the CDESCR and the social justice approach of the ILO in the context of work rights and concluding that, though similar, the CDESCR’s approach is broader and transcends the “tripartite relationships” that frame the ILO’s

approaches are concerned with oppressed groups, however, the holistic human rights approach, unlike the social justice approach, encompasses all individuals and groups.<sup>69</sup> Second, the holistic human rights approach extends beyond a limited area of life concerns, recognizing that people value many interrelated dimensions of their lives.<sup>70</sup> Third, the holistic human rights approach requires that political, economic, and social institutions treat these dimensions as equally valuable in the lives of the people that they govern.<sup>71</sup> This holistic framework is notably reaffirmed in the Vienna Declaration:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights

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approach); *see also* Marks, *supra* note 54, at 127, tbl. 7.1 (comparing human rights and social justice approaches and noting that human rights are broadly applicable to all people whereas the social justice approach is primarily aimed at poor and marginalized communities); Marks, *supra* note 57, at 27-31 (examining the relationship between the two approaches and explaining that social justice work often begins with the recognition of the fundamental human rights at stake).

69. *See* Marks, *supra* note 54, at 126-27 (noting additionally that human rights, unlike social justice, does not necessarily depend on a sense of outrage at the treatment of the poor, but rather on a set of agreed-upon limits and affirmative duties of governments). The ILO Decent Work Agenda also incorporates this idea of universality, addressing for need for decent work for all women and men everywhere. *Decent Work Report*, *supra* note 22, at 3. In this respect, the ILO Decent Work Agenda moves beyond traditional social justice approaches and also beyond the traditional focus of the ILO. *See* Amartya Sen, *Work and Rights*, 139 INT'L LAB. REV. 119, 120 (2000) (commending the new ILO vision of "universality of coverage" that includes all workers "not just workers in the organized sector, nor only wage workers, but also unregulated wage workers, the self-employed, and the homeworkers").

70. *See* Marks, *supra* note 57, at 27 (explaining that individuals impacted by an affordable housing project may also have related concerns regarding health, education, information, and work, and that a holistic human rights approach demands consideration of all of these interrelated rights).

71. *See The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies*, U.N. DEV. GRP., [http://www.undg.org/archive\\_docs/6959-](http://www.undg.org/archive_docs/6959-)

[The\\_Human\\_Rights\\_Based\\_Approach\\_to\\_Development\\_Cooperation\\_Towards\\_a\\_Common\\_Understanding\\_among\\_UN.pdf](http://www.undg.org/archive_docs/6959-) (last visited Feb. 1, 2011) [hereinafter *U.N. Common Understanding*] (proclaiming the indivisibility of civil, cultural, economic, political, and social rights because all are inherent in the dignity of every person and therefore hold equal status); *see also* A. Belden Fields & Wolf-Dieter Narr, *Human Rights as a Holistic Concept*, 14 HUM. RTS. Q. 1, 20 (1992) (emphasizing that the holistic approach "mean[s] that all social processes and institutions—political, economic, social, and cultural—must be understood and evaluated in terms of their effects upon human rights").

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globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of the States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.<sup>72</sup>

Most recently, the Optional Protocol to the ICESCR affirms again “the universality, indivisibility, interdependence and interrelatedness of all human rights.”<sup>73</sup>

## II. KEY FEATURES OF A HOLISTIC HUMAN RIGHTS APPROACH

The social justice and holistic human rights approaches have much in common. The latter approach, however, offers some distinct advantages for advancing the right to decent work as a result of its three key features: universality, interdependency, and equality of all human rights.

### A. UNIVERSALITY AND INALIENABILITY

Human rights are universal and inalienable.<sup>74</sup> “Universality” means that all people are entitled to human rights at all times.<sup>75</sup> As Jack Donnelly explains, international law recognizes that “[h]uman rights are, literally, the rights that one has simply because one is a human being.”<sup>76</sup> “Inalienability” means that people cannot voluntarily or involuntarily surrender their own human rights or the human rights of others.<sup>77</sup> For example, a person cannot sell herself or another person into servitude. All individuals are always holders of human rights because “one cannot stop being human, no matter how badly one behaves nor how barbarously one is treated.”<sup>78</sup>

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72. *Vienna Declaration*, *supra* note 64, ¶ 5.

73. ICESCR Optional Protocol, *supra* note 9, pmb1.

74. UDHR, *supra* note 55, pmb1.

75. *U.N. Common Understanding*, *supra* note 71. *But cf.* Fields & Narr, *supra* note 71, at 3 (arguing that historically the concept of “universality” applied to only certain individuals and served the ideological function of legitimizing the agendas of those in power).

76. JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* 10 (2d ed. 2003).

77. *U.N. Common Understanding*, *supra* note 71.

78. DONNELLY, *supra* note 76, at 10.

Numerous international instruments affirm the universality and inalienability of human rights. The Charter of the United Nations requires that all members pledge themselves to the promotion of “universal respect for, and observance of, human rights and fundamental freedoms for all.”<sup>79</sup> In addition to the express references to universality and inalienability in the title and preamble of the UDHR, the language of Articles 1 and 2 imply both principles.<sup>80</sup> The two Covenants, in accordance with the U.N. Charter and the UDHR, similarly recognize the universality and inalienability of all human rights.<sup>81</sup> Finally, more recent instruments such as the 1993 Vienna Declaration simply aver that, “[t]he universal nature of these rights and freedoms is beyond question.”<sup>82</sup>

#### B. INTERRELATEDNESS, INTERDEPENDENCY, AND INDIVISIBILITY

Human rights are also interrelated, interdependent, and indivisible. They are *interrelated* in the sense that they are intricately connected to each other. Johannes Morsink’s analysis of the drafting history of the UDHR highlights the organic interrelatedness of all of the articles, and the drafters’ intention that each article be interpreted in the context of the whole.<sup>83</sup> The relationships between the work rights illustrate this understanding. Article 23 on the right to work and Article 24 on reasonable limits for work hours are closely related to Article 22 on the right to social security, which in turn is closely tied to Article 25 on the right to an adequate standard of living and security in the event of unemployment, sickness or disability.<sup>84</sup> Similarly, the prohibition against slavery in Article 4 is linked to the right to free choice of employment in Article 23; the right to freedom of association in Article 20 is linked to the right to form and join

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79. U.N. Charter arts. 55-56.

80. See UDHR, *supra* note 55, art. 1 (“All human beings are born free and equal in dignity and rights.”); *id.* art. 2 (“Everyone is entitled to all the rights and freedoms set forth in this Declaration . . .”).

81. ICESCR, *supra* note 12, pmb.; ICCPR, *supra* note 65, pmb.

82. *Vienna Declaration*, *supra* note 64, ¶ 1.

83. See JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT* 232 (1999) (“The organic character of the text applies both to how it grew to be what it now is, as well as to a deeper interconnectedness of all the articles.”).

84. See *id.* at 191 (explaining that “because of a clerical error the phrase ‘social security’ was split off from its list in Article 25 and came to stand by itself in Article 22”).

trade unions in Article 23; and the right to “equal pay for equal work” in Article 23 is linked to the “prohibition against discrimination” in Article 2 and the equality between men and women in Article 3.<sup>85</sup>

Likewise, family rights are covered in several interrelated articles of the UDHR, which are also connected to work rights. Article 12 addresses the privacy of family and home; Article 16 addresses the protection of family as the fundamental group of society, and Article 23 addresses just remuneration to ensure human dignity of a worker and his or her family.<sup>86</sup> These family rights are all linked to Article 25, which calls for an adequate standard of living for a family, the right to security in the event of unemployment, sickness or disability, and special assistance for motherhood and childhood.<sup>87</sup> Thus, rather than establishing a hierarchy of rights, the drafters of the UDHR understood that all the individual articles “implicate each other.”<sup>88</sup>

Human rights are *interdependent* in two senses, reflecting (1) the relationships between rights, and (2) the relationships between persons. First, rights are interdependent because the realization of one right may support or reinforce the realization of another right.<sup>89</sup> For example, the right to health is dependent upon the rights to food, water, and housing, as these are underlying determinants of health.<sup>90</sup> The right to health is also closely tied to the right to education because ill health and the absence of health care lower educational achievement by increasing absences and disrupting concentration.<sup>91</sup>

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85. *Id.* at 237.

86. UDHR, *supra* note 55, arts. 12, 16, 23.

87. MORSINK, *supra* note 83, at 237.

88. *Id.* at 236.

89. See U.N. DEV. PROGRAM, HUMAN DEVELOPMENT REPORT 2000: HUMAN RIGHTS AND HUMAN DEVELOPMENT, at 74, U.N. Sales No. E.00.III.B.8 (2000) [hereinafter HUMAN DEVELOPMENT REPORT 2000] (noting that “[t]here are causal links between the realization of one right and that of another”).

90. See ECOSOC, CESCR, General Comment 14: The right to the highest attainable standard of health (Art. 12), ¶ 3, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter CESCR General Comment 14] (linking the right to health to the rights to work, non-discrimination, privacy, freedom of association and assembly, and the prohibition against torture).

91. Paul Hunt & Gillian MacNaughton, *Impact Assessments, Poverty and Human Rights: A Case Study Using The Right to the Highest Attainable Standard of Health* 27 (World Health Organization Health and Human Rights Working Paper Series, Paper No. 6, May 31, 2006), available at <http://www.who.int>

On the other side, the right to education can also enhance the right to health, for example, by improving access to health information. The right to health is also linked to the right to work because ill health may reduce an individual's productivity at work or may limit or prevent that person from working at all.<sup>92</sup> In turn, the right to work bolsters the right to health by assisting in the realization of related rights, such as the rights to food and housing.<sup>93</sup> Indeed, the Commission on Social Determinants of Health, established by the World Health Organization, considers fair employment and decent work as important to living long and healthy lives.<sup>94</sup>

While interdependence is apparent for economic and social rights such as the rights to food, water, housing, education, health, and work, it is perhaps less obvious how these rights interrelate with civil and political rights. In the context of work, the economic and social rights to safe conditions or fair wages, for example, may only be achievable if workers' civil and political rights to free association and expression are secure.<sup>95</sup> Likewise, realizing the social right to health enhances the ability to participate politically and to enjoy the rights to freedom of expression and association.<sup>96</sup> Indeed, this notion of interdependency is evident throughout the work of the ILO as it is

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/hhr/Series\_6\_Impact%20AssessmentsHunt\_MacNaughton1.pdf.

92. *Id.*

93. See CESCR General Comment 18, *supra* note 34, ¶ 1 (expressing the essential nature of the right to work, both as an end in itself because the ability to work allows individuals to "live in dignity," and as a means to achieving a host of related rights); see also Office of the United Nations High Commissioner for Human Rights [OHCHR], *Principles and Guidelines For a Human Rights Approach to Poverty Reduction Strategies*, ¶ 7, U.N. Doc. HR/PUB/06/12 (2006) [hereinafter *OHCHR Principles and Guidelines*] (illustrating the "instrumental relevance" between the right to work and the right to food).

94. See WHO, Comm. on Soc. Determinants of Health, *Closing the Gap in a Generation: Health Equity Through Action on the Social Determinants of Health*, at 5, 72-83 (2008) [hereinafter *Closing the Gap*], available at [http://whqlibdoc.who.int/publications/2008/9789241563703\\_eng.pdf](http://whqlibdoc.who.int/publications/2008/9789241563703_eng.pdf) (explaining how "[e]mployment and working conditions have powerful effects on health and health equity" and presenting employment and poverty data from all regions of the world).

95. HUMAN DEVELOPMENT REPORT 2000, *supra* note 89, at 75 (noting that one study of corporate codes of conduct from twelve countries in Asia and Latin America found that workers who claimed violations of the codes faced retaliation from their employers unless they had proper employment contracts and a guaranteed right to organize).

96. CESCR General Comment 14, *supra* note 90, ¶ 3.

essential to its social justice approach.<sup>97</sup> While civil and political rights, such as the freedom of association, are necessary for establishing effective trade unions and labor organizations, a central goal of such organizations is to promote and secure the economic and social rights of their worker members.<sup>98</sup>

Interdependency is key in a holistic human rights approach in a second sense as well. As Craig Scott explains, interdependence may also be understood in terms of the relationships between people.<sup>99</sup> In the context of work rights, for example, a court deciding whether to grant injunctive relief to prevent the dismissal of a group of workers for seeking to unionize would likely consider the workers' rights to work and organize.<sup>100</sup> Taking a holistic human rights approach—specifically the notion that people are interdependent—the judge might also consider that the rights of the workers' children and other dependents are also at stake.<sup>101</sup> Children are also rights holders in this case, and their rights bolster those of their parents.<sup>102</sup> Recognition of the interdependency between the rights of different people can be observed throughout the international human rights treaties, especially between family members.<sup>103</sup>

In addition to being interrelated and interdependent, human rights are also *indivisible*. The meaning of the “indivisibility” of human

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97. See, e.g., *Declaration on Social Justice for a Fair Globalization*, *supra* note 42, § I.B (contending that the four pillars of the Decent Work Agenda are “inseparable, interrelated and mutually supportive”).

98. See generally ILO, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (5th ed. 2006) (summarizing the decisions of the Fact-Finding and Conciliation Commission on Freedom of Association, an ILO body whose mandate is to examine alleged violations of trade union rights throughout the world).

99. Craig Scott, *Reaching Beyond (Without Abandoning) the Category of “Economic, Social and Cultural Rights”*, 21 HUM. RTS. Q. 633, 645 (1999) (giving the example of human rights defenders whose right to freely call attention to human rights concerns is directly related to protecting the rights of others).

100. *Id.*

101. *Id.*

102. See *id.* at 645-46 (explaining that where children's social and economic rights are well-established, the rights of workers as parents are more likely to be considered).

103. See, e.g., *id.* at 647 (illustrating the point by referring to domestic deportation cases in which noncitizen parents have invoked their own rights as well as those of their citizen children not to be separated).

rights is less obvious than the meaning of “interrelated” or “interdependent” human rights.<sup>104</sup> Jack Donnelly provides a generally accepted understanding of indivisibility, stating that “[t]he Universal Declaration model treats internationally recognized human rights holistically, as an indivisible structure in which the value of each right is significantly augmented by the presence of many others.”<sup>105</sup> The holistic human rights approach taken in this article uses indivisibility in this sense.

Diane Elson also provides a useful definition in terms of the obligations that indivisibility imposes upon governments, which coincides well with Marks’ conceptual framework of the holistic human rights approach. For Elson, “[t]he indivisibility of human rights means that measures to protect, promote, and fulfill any particular right should not create obstacles to the protection, promotion, and fulfillment of any other human right.”<sup>106</sup> Thus, Elson, like Marks, views indivisibility as an essential feature of a holistic approach that treats all human rights as important components of a unified framework—such as that set out in the UDHR. In a practical sense, the idea of indivisibility means that procedures for allocating resources and evaluating outcomes must account for the interdependence and interrelatedness of all rights.<sup>107</sup>

### C. EQUALITY OF RIGHTS

All human rights are inherent to human dignity.<sup>108</sup> As a result, all human rights have equal status, and accordingly, they “cannot be ranked . . . in a hierarchical order.”<sup>109</sup> The opening line of the UDHR states that the “recognition of the inherent dignity and of the *equal*

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104. James Nickel regards indivisibility as a very strong form of interdependency involving “indispensable bidirectional support.” Nickel, *supra* note 58, at 990. For Nickel, two rights are indivisible only if each right is indispensable to the other. *Id.* Further, Nickels argues that indivisibility, as typically conceptualized in human rights law, is overbroad in that it fails to recognize that some rights may be interrelated but not indispensable. *Id.* at 991.

105. DONNELLY, *supra* note 76, at 27.

106. Elson, *supra* note 3, at 80.

107. *See id.* at 79 (“The idea of indivisibility is also an assertion that the procedures for setting priorities for resource use and for judging the effectiveness of resource use must incorporate principles of respect for all human rights.”).

108. *U.N. Common Understanding*, *supra* note 71, at 2.

109. *Id.*

*and inalienable rights* of all members of the human family is the foundation of freedom, justice and peace in the world.”<sup>110</sup> The same words are reiterated in the preambles to the ICESCR and the ICCPR.<sup>111</sup> The equal status of rights was also reaffirmed in the 1993 Vienna Declaration, which urged the international community and national governments alike to treat all human rights “in a fair and equal manner.”<sup>112</sup> In terms of implementation, Elson explains that “there is no hierarchy of human rights as ultimate goals: they are all equally valuable and mutually reinforcing.”<sup>113</sup>

In sum, the holistic human rights approach encompasses all people and all human rights in an equal manner. These are the principles of universality, interdependency, and equality of rights. This approach reflects the original understanding of the international human rights law framework at the time that the UDHR was adopted.<sup>114</sup> As Johannes Morsink noted, “the organic unity” of the UDHR reflects the belief of the drafters “in the fundamental unity of all human rights.”<sup>115</sup> While others have called for a return to the UDHR’s holistic approach,<sup>116</sup> this article explores the potential of this approach for advancing the right to decent work.

### III. STRATEGIES FOR USING A HOLISTIC HUMAN RIGHTS APPROACH TO ACHIEVE DECENT WORK

In a holistic human rights approach, policy must be formulated with a view to its impact on the human rights of individuals, families,

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110. UDHR, *supra* note 55, pmb. (emphasis added).

111. ICESCR, *supra* note 12, pmb.; ICCPR, *supra* note 65, pmb.

112. *Vienna Declaration*, *supra* note 64, ¶ 5.

113. Elson, *supra* note 3, at 79.

114. Unfortunately, the holistic vision reflected in the UDHR framework deteriorated quickly during the Cold War and subsequent decades of neo-liberal policy, and social rights fell to “a secondary status in both international law and the national laws of many countries.” See Daphne Barak-Erez and Aeyal M. Gross, *Introduction: Do We Need Social Rights? Questions in the Era of Globalisation, Privatisation, and the Diminished Welfare State*, in *EXPLORING SOCIAL RIGHTS: BETWEEN THEORY AND PRACTICE* 1, 3-4 (Daphne Barak-Erez and Aeyal M. Gross eds., 2007).

115. MORSINK, *supra* note 83, at 238.

116. See, e.g., Scott, *supra* note 99, at 634 (calling for a return to an interdependent framework of human rights, as originally provided for in the UDHR, and arguing against bifurcation of “civil and political rights” and “economic and social rights”).

and communities. In the context of the right to decent work, this approach suggests several possible strategies including: (A) defining decent work in a holistic manner, (B) recognizing the interdependency of all human rights in regulating for decent work, (C) applying human rights-based methods and tools for policymaking, and (D) building coalitions over common concerns by linking the right to decent work with other rights. Before considering these strategies, however, it is helpful to briefly look at the international human rights law on the right to decent work. This law provides the legal and ethical framework for policymaking, both policy intended to achieve decent work for all, and policy directed at other sectors such as health, education, and transportation that would nonetheless impact the right to decent work.

The ICESCR—the most comprehensive international treaty on work-related rights— includes numerous articles that are obviously work-related<sup>117</sup> and, in turn, relate to other rights enumerated in the Covenant. This interconnectedness between work rights and other economic, social, and cultural rights is shown in Table 1.

TABLE 1: SUMMARY OF WORK-RELATED RIGHTS IN THE ICESCR		
ARTICLE	HUMAN RIGHT	WORK-RELATED ASPECTS
6	Right to Work	<ul style="list-style-type: none"> <li>• Right to freely chosen work</li> <li>• Right to gain a living by work</li> <li>• Right to technical and vocational guidance and training</li> <li>• Right to full and productive employment</li> <li>• Right to conditions of political and economic freedoms</li> </ul>
7	Right to Just and Favorable Conditions of Work	<ul style="list-style-type: none"> <li>• Right to fair wages</li> <li>• Right to equal remuneration for work of equal value</li> <li>• Right of women to conditions not inferior to those of men</li> </ul>

117. *E.g.*, ICESCR, *supra* note 12, arts. 6-11.

		<ul style="list-style-type: none"> <li>• Right to a decent living for the worker and family</li> <li>• Right to safe and healthy working conditions</li> <li>• Right to equal opportunity to promotion based on seniority and competence</li> <li>• Right to rest and leisure</li> <li>• Right to reasonable limitation on working hours</li> <li>• Right to periodic holidays with pay</li> </ul>
8	Union Rights	<ul style="list-style-type: none"> <li>• Right to form and join trade unions</li> <li>• Right of trade unions to establish national and international federations</li> <li>• Right of trade unions to function freely</li> <li>• Right to strike</li> </ul>
9	Right to Social Security	<ul style="list-style-type: none"> <li>• Right to social security</li> <li>• Right to social insurance</li> </ul>
10	Family Rights	<ul style="list-style-type: none"> <li>• Right to protection of the family, particularly while responsible for care and education of children</li> <li>• Right of women to special protection before and after childbirth</li> <li>• Right of working mothers to paid leave or leave with social security benefits</li> <li>• Right of children and young people to be protected from economic and social exploitation</li> </ul>
11	Right to an Adequate Standard of Living	<ul style="list-style-type: none"> <li>• Right to an adequate standard of living for the worker and her family, which includes adequate food, clothing and housing</li> <li>• Right to continuous improvement of living standards</li> </ul>
12	Right to Health	<ul style="list-style-type: none"> <li>• Right to industrial hygiene</li> <li>• Right to prevention and treatment and</li> </ul>

		control of occupational diseases
13&14	Right to Education	<ul style="list-style-type: none"> <li>• Right to technical and vocational secondary education</li> <li>• Right to continuous improvement of material conditions for teaching staff</li> </ul>
15	Cultural Rights	<ul style="list-style-type: none"> <li>• Right of author to protection of interests resulting from scientific, literary or artistic production</li> </ul>

The Committee on Economic, Social, and Cultural Rights (“Committee” or “CESCR”), established to monitor and implement the Covenant, has issued a number of general comments detailing the normative content of these rights as well as the specific state obligations that arise from these rights. General Comment No. 18 on the right to work in Article 6 of the ICESCR declares that “[t]he right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity.”<sup>118</sup> It further explains that Article 6 of the ICESCR sets out a general right to work, Article 7 develops the “individual dimension” of the right to work, and Article 8 addresses the “collective dimension” of the right to work.<sup>119</sup> The Committee also explicitly asserts that “Articles 6, 7 and 8 of the Covenant are interdependent.”<sup>120</sup>

Importantly, the Committee draws extensively on the work of the ILO in detailing the normative content of the right to work and the state obligations arising from it.<sup>121</sup> General Comment No. 18 refers to at least twelve different ILO Conventions, adopting many of the standards those instruments established.<sup>122</sup> In this way, the Committee imposes on all 160 states parties obligations that are defined in ILO Conventions—even upon states that have yet to ratify those ILO Conventions. Further, the Committee urges its states

118. CESCR, General Comment 18, *supra* note 34, ¶ 1.

119. *Id.* ¶ 2.

120. *Id.* ¶ 8.

121. See Riedel, *supra* note 27, at 5-7 (discussing the ILO’s cooperation in the drafting of General Comment 18 as well as other CESCR General Comments).

122. See, e.g., CESCR General Comment 18, *supra* note 34, ¶¶ 11, 12(b)(i) (mentioning specifically ILO Convention No. 158 on the requirement of providing valid grounds for dismissal and ILO Convention No. 111 on equal opportunity and elimination of discrimination).

parties to adopt the ILO Conventions,<sup>123</sup> and encourages them to take advantage of the technical assistance, cooperation, and extensive information offered by the ILO.<sup>124</sup> Finally, the Committee also issued General Comment No. 19 on the right to social security set forth in Article 9 of the ICESCR.<sup>125</sup> This General Comment relies heavily on ILO Convention No. 102, which covers the right to social security, and even adopts its nine principle branches of social security.<sup>126</sup>

Beyond the specific work rights spelled out in Table 1, the ICESCR includes other articles essential to the protection of human rights in the sphere of work, including Article 1 on the right of a person not to be deprived of his/her own means of subsistence, Article 2 on the prohibition against discrimination, and Article 3 on the equal right of men and women to enjoy the rights in the Covenant. Additionally, other articles not directly work-related nonetheless impact work rights, such as Articles 13 and 14 on the right to primary education, Article 12 on healthcare in the event of sickness, and Article 15 on the benefits of scientific progress. The interrelated, interdependent, and indivisible nature of these rights is further explored in the sections below.

#### A. DEFINING DECENT WORK

The CESCR specifies that the right to work in Article 6 means the right to “*decent work*.”<sup>127</sup> It defines decent work as “work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration.”<sup>128</sup> Decent work therefore includes the right to a decent income “allowing workers to support themselves and their families.”<sup>129</sup> It also guarantees the right of access to employment and

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123. *Id.* ¶ 49 (arguing that the ratification of ILO conventions will “strengthen the effectiveness” of the ICESCR).

124. *Id.* ¶ 53.

125. ECOSOC, CESCR, General Comment No. 19: The Right to Social Security (Art. 9), U.N. Doc. E/C.12/GC/19, (Jan. 30, 2008).

126. *Id.* ¶ 12 & n.8; *see also* Riedel, *supra* note 27, at 6 (reiterating that the CESCR’s human rights approach is similar to and in many ways reliant upon the ILO’s work).

127. CESCR General Comment 18, *supra* note 34, ¶ 7.

128. *Id.*

129. *Id.*; *see* ICESCR, *supra* note 12, art. 7(a)(ii).

further the right not to be unfairly deprived of employment.<sup>130</sup> Finally, the right to decent work encompasses all forms of work and is both an individual and collective right.<sup>131</sup>

In contrast to the Committee's definition of decent work under Article 6 of the ICESCR, the ILO's definition, while extending to employment creation, social dialogue, and social protection, narrowly includes only four "rights at work"—the four Core Labor Standards: (1) freedom of association, (2) forced labor, (3) discrimination, and (4) child labor.<sup>132</sup> By recognizing, or at least prioritizing, only these four specific work rights, the ILO's definition of decent work ultimately fails to capture the full panoply of workers' rights recognized in the ICESCR and to recognize that the deprivation of one right is often entangled with the deprivation of other rights.

One way to understand the limitations of the ILO definition as compared to the holistic human rights definition is through an illustration. Consider the story of Gabriella Saavedra, a nineteen year-old Honduran textile worker and the single mother of a nineteen-month-old child, who was interviewed by the McGill University Institute for Health and Social Policy for a report on the relationship between work and health.<sup>133</sup> Gabriella makes clothes for export, working regularly from 7:00 am until 6:00 pm, seven days a week.<sup>134</sup> Despite often working more than seventy-seven hours a week, her weekly paycheck amounts to a mere USD \$26, barely enough to cover formula, diapers, food, and other necessities.<sup>135</sup> Thus, Gabriella has to work even if she or her child is ill because she cannot afford to lose any wages.<sup>136</sup> While at work, Gabriella's ten-

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130. CESCR General Comment 18, *supra* note 34, ¶ 6.

131. *Id.*

132. *Decent Work Report*, *supra* note 22, at 14.

133. Jody Heymann & Magda Barrera, *Addressing Poverty in a Globalised Economy*, PROGRESSIVE GOVERNANCE LONDON, 1, 6-8 (Apr. 2008), [http://www.policy-network.net/uploadedFiles/Publications/Publications/Jody\\_Heymann\\_and\\_Magda\\_Barrera.pdf](http://www.policy-network.net/uploadedFiles/Publications/Publications/Jody_Heymann_and_Magda_Barrera.pdf).

134. *See id.* at 7 (noting that workers at the sweatshop are allowed one fifteen minute lunch break, and that the owners frequently require workers to stay additional hours with no advance warning).

135. *Id.*

136. *Id.*

year-old stepsister cares for her child.<sup>137</sup>

Analyzing Gabriella's employment under the ILO four Core Labor Standards, three of the four standards appear satisfied: child labor, nondiscrimination, and freedom of association. There is, however, a clear violation of the fourth Core Labor Standard prohibiting forced labor because (1) Gabriella's work week exceeds the maximum six-day limit under Honduran law,<sup>138</sup> and (2) the work day in excess of the legal maximum is imposed under threat of dismissal.<sup>139</sup> To regulate and correct the forced labor problem, the government could, for example, enforce the six-day work week limit without exception.<sup>140</sup> Eliminating the seventh day of work will not, however, address the other human rights violations at stake nor will this measure meet the standard of decent work for Gabriella as identified by the CESCR.

On the contrary, correcting the forced labor problem in isolation from other aspects of decent work could make Gabriella's situation worse. If Gabriella's work week is reduced to six days per week, without any hourly wage increase, Gabriella will not earn enough money to feed herself and her child. As it is, she is not able to take sick leave. Thus, she might be forced to take on a second job in order to meet their very basic needs, which may result in her working as many or more hours than she currently works to make ends meet. Gabriella's employment situation cannot be improved by addressing only the forced labor issue because it violates several aspects of

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137. *Id.*

138. See ILO, *Working Conditions Laws Report 2010*, at 22-23 (2010), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_145473.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_145473.pdf) (noting that a weekly hourly maximum limit was "derived from the daily overtime limit and the minimum weekly rest period of one day"); ILO, *Working Time Database* (2006), available at <http://www.ilo.org/travaildatabase/servlet/workingtime?pageClass=org.ilo.legislation.work.web.ReferencePage&LinkId=9265> (noting that there is a 12 hour per day limit on work time and a one-day per week rest period).

139. Cf. Diane F. Frey, *A Diagnostic Methodology for Regulating Decent Work*, 13 (Paper for Conference, International Labour Office, Geneva, Switzerland, July 8-10, 2010), available at <http://www.ilo.org/legacy/english/protection/travail/pdf/rwdpaper11b.pdf> (detailing when violations of work time limitations amount to forced labor using the Honduran context as a model).

140. See *id.* at 13-14 (describing how procedural roadblocks and amorphous categories of exceptions hinder consistent enforcement of hour limits in Honduras).

decent work under the Covenant, including her right to fair wages,<sup>141</sup> her right to a decent living for herself and her family,<sup>142</sup> and her right to rest and leisure.<sup>143</sup> Moreover, whether she works sixty-six or seventy-seven hours per week, the job adversely impacts her dependent child's right to care and education within her family,<sup>144</sup> her right to health,<sup>145</sup> and her right to an adequate standard of living.<sup>146</sup> Finally, the concept of the interdependency of the rights of people embodied in the holistic human rights approach reveals the prohibition against child labor as a potential concern because Gabriella leaves her child in the care of another child.<sup>147</sup>

A brief review of Gabriella's employment situation demonstrates that the concept of decent work must go beyond the ILO's four Core Labor Standards embodied in the Decent Work Agenda. The definition of decent work must address whole jobs, whole people, and whole families. To do so, it must recognize that the various dimensions of people's lives are interrelated, interdependent, and indivisible, and consequently must be addressed in a holistic human rights framework. In this case, Gabriella's human right to decent work has several components outside the scope of the ILO Core Labor Standards that must be addressed and that are interdependent with the human rights of her child and her stepsister. As a party to the ICESCR, Honduras should define decent work under Honduran law to include the broader human rights dimensions implicated in Gabriella's story.<sup>148</sup>

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141. ICESCR, *supra* note 12, art. 7(a)(i).

142. *Id.* art. (7)(a)(ii).

143. *Id.* art. (7)(d).

144. *Id.* art. 10(1) (noting that the widest protection must be accorded to the family "while it is responsible for the care and education of dependent children").

145. *Id.* art. 12.

146. *Id.* art. 11(1).

147. *See id.* art. 10(3) (protecting children from economic and social exploitation of all kinds, and prohibiting their employment in work that endangers their lives, health, or morals, or work that hampers their development).

148. Honduras became a party to the ICESCR in 1981. *List of Signatories to the ICESCR*, *supra* note 35.

B. RECOGNIZING THE INTERDEPENDENCY OF ALL HUMAN RIGHTS  
IN THE REGULATION OF DECENT WORK

Another key component of a holistic human rights approach is to incorporate this understanding of interdependency into strategies for regulation, policymaking, and programming. As Marks and Elson have both explained, taking a holistic human rights approach requires considering the human rights at stake beyond the one right that appears most relevant to a particular situation, and ensuring that measures to enhance enjoyment of one right do not diminish the enjoyment of others.<sup>149</sup> Likewise, a holistic human rights approach to achieving decent work recognizes the interdependency of individuals and their respective rights, particularly individuals within a family. Accordingly, human rights scholars and practitioners include the interdependence of rights as one of the overarching principles of a human rights-based methodology.<sup>150</sup>

A recent study highlights the importance of accounting for the interdependency of work-related human rights and family relationships in policymaking and programming.<sup>151</sup> In the late 1990s the ILO, UNICEF, Save the Children Fund, and the Sialkot Chamber of Commerce and Industry developed a project to eliminate child labor in the soccer ball stitching industry in Sialkot, Pakistan.<sup>152</sup> Essentially, the project shifted stitching from homes, where families worked together, to stitching centers, where labor could be monitored to ensure that children were not participating.<sup>153</sup> International actors widely acclaimed the project as successful, and

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149. See *supra* notes 106-07 and accompanying text (explaining that a holistic human rights approach treats all human rights as essential components in the unified framework).

150. See, e.g., *OHCHR Principles and Guidelines*, *supra* note 93, ¶¶ 20, 27 (explaining how the human rights framework “broadens the scope of poverty reduction strategies” by highlighting the fact that the enjoyment of economic and social rights—the rights traditionally thought most relevant to poverty alleviation—depend upon civil and political rights); see also Hunt & MacNaughton, *supra* note 91, at 34 (including the interdependence of rights as one of seven general principles for human rights-based impact assessment).

151. Farzad R. Khan, Kamal A. Munir & Hugh Willmott, *A Dark Side of Institutional Entrepreneurship: Soccer Balls, Child Labour and Postcolonial Impoverishment*, 28 *ORG. STUD.* 1055 (2007).

152. See *id.* at 1056 (noting that 60-80% of the world’s hand-stitched soccer balls are produced in Sialkot, Pakistan).

153. *Id.* at 1067.

indeed by 2003 the soccer industry in Sialkot was “effectively child labour free.”<sup>154</sup>

While the project was successful in eliminating child labor in Sialkot, its primary goal, the authors also documented the substantial adverse impacts upon women in the stitching families.<sup>155</sup> In interviews conducted subsequent to the project, women disclosed many of the hardships caused by the move from home-based to factory-based stitching, including: (1) they were required to work fixed hours at the factory rather than the flexible hours that they had previously worked at home; (2) they lost time for house work and stitching due to the commute to the centers; (3) they were required to work full-time at the centers while many of them had previously worked part-time at home; and (4) their output was lower at the centers because of the introduction of quality control procedures.<sup>156</sup> In addition to the detrimental work time and conditions, women were also subject to verbal abuse traveling to and from the stitching centers, as stitching is regarded as a low-status, stigmatizing form of work.<sup>157</sup> Further, women reported physical and sexual abuse at the stitching centers.<sup>158</sup> In sum, the move from home-based stitching to the stitching centers came at a heavy cost to women workers. Not surprisingly, there remained only 3,200 left of the estimated 12,000 to 18,000 women stitchers six years after the start of the project.<sup>159</sup> To the women stitchers, home-based stitching was both “more convenient and less humiliating.”<sup>160</sup>

The Sialkot soccer ball case amply illustrates the dangers of evaluating the problem of child labor in isolation rather than starting from the holistic human rights framework. The project achieved its primary goal of eliminating child labor, but it did so at the expense women’s human rights. The women’s lives deteriorated at home, at work, and in the community. Indeed, many women refused to work in the centers because of the adverse impact this employment had on

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154. *Id.*

155. *See generally id.* at 1067-69.

156. *Id.* at 1068.

157. *Id.* (describing the taunts and “nasty” statements from men as women walked to the factories).

158. *Id.*

159. *Id.* at 1068-69.

160. *Id.* at 1069.

their lives. In terms of achieving decent work for all, the project was counterproductive because it failed to account for the interdependency and indivisibility of rights. While it may have improved enjoyment of work rights by some, it clearly harmed the enjoyment of work rights by others. Additionally, NGOs estimated that household income fell by 25-30% in absolute terms, plunging families into deeper impoverishment<sup>161</sup> and jeopardizing the human rights of everyone in these families. A holistic human rights approach requires considering the human rights beyond the one right, child labor, that appears most relevant and ensuring that the measures adopted to address it do not diminish the enjoyment of other rights by the children or others in their families.

### C. APPLYING HUMAN RIGHTS-BASED METHODS AND TOOLS

In the past, human rights advocates relied upon several traditional advocacy methods including litigation, “naming and shaming,” and letter writing campaigns to address violations of human rights.<sup>162</sup> While these traditional methods remain essential to obtaining remedies for human rights violations, in recent years, human rights practitioners have also developed new methods and tools to allow them to take a pro-active role in preventing human rights violations and promoting the full realization of human rights.<sup>163</sup> New tools include human rights-based indicators, budget analysis, and impact assessment.<sup>164</sup> With these “new tools,” human rights practitioners are equipped to participate in policy formulation, implementation, and

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161. Fazad R. Khan & Kamal A. Munir, *How the West was Won: The De-Institutionalization of Child-Labour in Pakistan’s Soccer Ball Industry* (2005) (Working Paper), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=882395](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=882395).

162. MacNaughton & Hunt, *supra* note 67, at 303.

163. See generally U.N. High Comm’r for Human Rights, *Report of the High Commissioner for Human Rights on Implementation of Economic, Social and Cultural Rights*, ¶ 27, ECOSOC, U.N. Doc. E/2009/90 (June 8, 2009) [hereinafter *Implementing ESCR*] (averring that “[l]egislative measures . . . [are] particularly appropriate for giving effect to economic, social, and cultural rights”); MacNaughton & Hunt, *supra* note 67, at 303 (suggesting that the human rights community should seek guidance from other disciplines as it begins integrating human rights into policy-making processes).

164. A recent report of the U.N. High Commissioner for Human Rights provides an overview of each of these three new tools. *Implementing ESCR*, *supra* note 163, ¶¶ 35-54.

monitoring.<sup>165</sup> While these methods and tools have been used primarily by civil society, U.N. human rights bodies have called upon governments to carry out human rights impact assessment and budget analysis to comply with their obligations under international human rights law to progressively realize human rights.<sup>166</sup>

Using these new tools to evaluate and monitor policymaking can contribute to realizing the right to decent work by: (1) raising general awareness of the right to decent work, (2) educating workers, communities, governments, and nongovernmental organizations about the right to decent work, (3) providing a framework for systematic data collection to inform policymakers, human rights practitioners, workers' organizations, and others interested in promoting the right to decent work, and (4) generating legally and ethically legitimate policy and program recommendations based on

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165. MacNaughton & Hunt, *supra* note 67, at 303.

166. *See, e.g.*, Comm. on the Rights of the Child, General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child, ¶¶ 51-52, U.N. Doc. CRC/GC/2003/5 (Nov. 27, 2003) [hereinafter CCRC General Comment 5] (requesting states to identify in their reports to the Committee “the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly”). According to the Committee, states must “make children visible in budgets” in order to ascertain whether they are contributing the maximum available resources to the promotion of children’s economic, social, and cultural rights as required by Article 4 of the Convention on the Rights of the Child. *Id.*; Convention on the Rights of the Child, Sept. 2, 1990, 1577 U.N.T.S. 3. Similarly, the Committee maintains that states are obliged to conduct child impact assessments prior to adopting any new law or budget as well as child impact evaluations following implementation. CCRC General Comment 5, *supra*, ¶ 45. Other United Nations human rights bodies have also called for use of such “new tools” to ensure progressive realization of economic and social rights and to address poverty. *See, e.g.*, U.N. Chairman-Rapporteur, *Economic, Social and Cultural Rights: The Social Forum*, ¶ 72, ECOSOC, Comm’n on Hum. Rts., U.N. Doc. E/CN.4/Sub.2/2005/21 (Aug. 3, 2005) (recommending human rights-based budget analysis, human right-based approach to indicators, human rights impact assessments, and “advocacy around statistics,” to address poverty); U.N. Special Rapporteur, *Economic, Social and Cultural Rights: The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, ¶¶ 82-85, ECOSOC, Comm’n on Hum. Rts., U.N. Doc. E/CN.4/2003/58 (Feb. 13, 2003) (asking states to perform impact assessments prior to adopting new policies in order to ensure consistency with national and international legal obligations for human rights); UNCHR Res. 2003/28, ¶ 16, U.N. Doc. E/CN.4/RES/2003/28 (Apr. 22, 2003) (requesting that the Special Rapporteur consider the role of health impact assessments in the “analysis of the issues of neglected diseases”).

the human rights obligations of governments under international and national laws.<sup>167</sup>

167. Although these tools are relatively new to human rights practitioners, there is already considerable literature published in the field. On human rights-based indicators, see, e.g., Office of the High Comm'r for Human Rights, *Report on Indicators for Promoting and Monitoring the Implementation of Human Rights*, U.N. Doc. HRI/MC/2008/3 (June 6, 2008) (proposing a conceptual and methodological approach for states to select quantitative indicators to be used in their reports to U.N. treaty bodies on their progress in complying with their obligations under international human rights law); ILO, Int'l Labour Office: Employment Sector, *Guide to the New Millennium Development Goals Employment Indicators, including the Full Set of Decent Work Indicator Set* (2009) (reviewing the new employment indicators introduced in 2008 for monitoring progress toward Millennium Development Goal 1); Paul Hunt & Gillian MacNaughton, *A Human Rights-Based Approach to Health Indicators*, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ACTION 303 (Mashood Baderin & Robert McCorquodale eds., 2007) (arguing that U.N. bodies, states, and others should adopt a human rights-based approach to health indicators to monitor the progressive realization of the right to health and to enhance health policies and programs); Maria Green, *What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement*, 23 HUM. RTS. Q. 1062 (2001) (providing an overview of the field of human rights indicators, including a basic introduction to human rights concepts and theoretical issues on measurement); AnnJanette Rosga & Margaret L. Satterthwaite, *The Trust in Indicators: Measuring Human Rights*, 27 BERKELEY J. INT'L L. 253 (2009) (weighing the advantages and disadvantages of using quantitative data when auditing states for human rights compliance).

On human rights impact assessment, see, e.g., Special Representative of the U.N. Secretary-General, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council": Human Rights Impact Assessments – Resolving Key Methodological Questions*, U.N. Gen. Assembly, Hum. Rts. Council, U.N. Doc. A/HRC/4/74 (Feb. 5, 2007) (by John Ruggie) (recognizing the need for transnational corporations and business enterprises to conduct human rights impact assessments in conjunction with traditional environmental and social impact assessments); Saskia Bakker et al., *Human Rights Impact Assessment in Practice: The Case of the Health Rights of Women Assessment Instrument (HeRWAI)*, 1 J. HUM. RTS. PRAC. 1 (2009) (analyzing the potential contributions of human rights impact assessment for human rights practitioners drawing on lessons from experience using a specific tool); Gauthier de Beco, *Human Rights Impact Assessments*, 27 NETH. Q. HUM. RTS. 139, 139-66 (2009) (discussing the purposes of human rights impact assessments, such as holding states and individuals accountable, enhancing compliance, establishing policy, and promoting empowerment); Rebekah Gay, *Mainstreaming Wellbeing: An Impact Assessment for the Right to Health*, 13 AUSTL. J. HUM. RTS. 33 (2008) (comparing health impact assessment and human rights impact assessment, highlighting synergies between the two approaches, and advocating for a multidisciplinary approach to impact assessment).

On human rights-based budget analysis, see, e.g., Ann Blyberg, *The Case of the*

Consider one of these new tools: human rights impact assessment. Human rights impact assessment is a methodology that aims to reveal the unintended consequences of proposed regulations, policies, and programs on the enjoyment of human rights.<sup>168</sup> The purpose of such an impact assessment is to predict the likely effects of a proposal in order to mitigate negative, and maximize positive, impacts.<sup>169</sup> It is a useful methodology for assessing proposals that aim to ameliorate human rights as well as those with other primary aims.<sup>170</sup> Impact assessments are already routinely carried out to evaluate the likely consequences of proposals on, for example, the environment, poverty, and health.<sup>171</sup> The idea of human rights impact assessment is comparatively recent, incorporating a participatory methodology together with the understanding that rights and people are interdependent.<sup>172</sup> Consequently, it is a useful methodology for integrating decent work into a holistic human rights framework.

Human rights impact assessments have been employed to measure the human rights impact of proposed public policies,<sup>173</sup> business

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*Mislaid Allocation: Economic and Social Rights and Budget Work*, 6 SUR-INT'L J. HUM. RTS. 123 (2009) (providing background on the development of human rights budget work and describing the work currently being done in this field); DIANE ELSON, BUDGETING FOR WOMEN'S RIGHTS: MONITORING GOVERNMENT BUDGETS FOR COMPLIANCE WITH CEDAW 17 (2006) (explaining how budget analysis can be used to monitor compliance with CEDAW and how CEDAW can provide the criteria for gender equality in budgets); FUNDAR, INT'L BUDGET PROJECT, & INT'L HUMAN RIGHTS INTERNSHIP PROGRAM, DIGNITY COUNTS: A GUIDE TO USING BUDGET ANALYSIS TO ADVANCE HUMAN RIGHTS (2004) (explaining the use of budget analysis to protect and promote human rights, particularly economic, social, and cultural rights); ANDY NORTON & DIANE ELSON, WHAT'S BEHIND THE BUDGET: POLITICS, RIGHTS AND ACCOUNTABILITY IN THE BUDGET PROCESS 5 (Overseas Dev. Inst., 2002) (explaining public expenditure management and examining how a human rights approach to budget processes can contribute to achieving pro-poor and gender-equitable outcomes).

168. Hunt & MacNaughton, *supra* note 91, at 8.

169. *Id.*

170. *See id.* at 11 (contending that policy domains are inherently interlinked, hence the need for impact assessments which can detect indirect or unintended consequences stemming from a proposed policy).

171. *See, e.g., id.* at 31 (promoting the integration of human rights considerations into existing impact assessment methodologies).

172. *See id.* at 32-34 (outlining the seven general principles for human rights-based impact assessments: (1) explicit human rights framework, (2) progressive realization, (3) equality and non-discrimination, (4) participation, (5) information, (6) accountability, and (7) interdependence of rights).

173. *See, e.g.,* AIM FOR HUMAN RIGHTS, HEALTH RIGHTS OF WOMEN

operations,<sup>174</sup> and international development aid.<sup>175</sup> Impact assessments may be used to measure the impacts on a wide range of human rights, or they may be tailored to a specific right or group of rights. Currently, there is no human rights impact assessment tool designed specifically to assess and monitor impacts on the right to decent work.<sup>176</sup> Nonetheless, human rights impact assessments of foreign direct investment, among others, have revealed impacts on the right to decent work.<sup>177</sup> Some examples demonstrate how this tool might be used more routinely to protect and promote the right to decent work.

One example is the human rights impact assessment methodology

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ASSESSMENT INSTRUMENT 11 (2008) (offering NGOs a human rights impact assessment methodology to assess proposed public policies for the purpose of lobbying).

174. See generally AIM FOR HUMAN RIGHTS, HUMAN RIGHTS IN BUSINESS: GUIDE TO CORPORATE HUMAN RIGHTS IMPACT ASSESSMENT TOOLS (2009), available at [http://www.aimforhumanrights.org/fileadmin/user\\_upload/pdf/HRB\\_Guide\\_to\\_corporate\\_HRIA\\_2009-def.pdf](http://www.aimforhumanrights.org/fileadmin/user_upload/pdf/HRB_Guide_to_corporate_HRIA_2009-def.pdf) (raising awareness on social responsibility in the transnational business context); *HRIA in Business*, HUM. RTS. IMPACT RESOURCE CENTRE, <http://www.humanrightsimpact.org/themes/business-centre/hria-in-business/> (last visited Feb. 1, 2011) (portraying human rights impact assessments as a necessary business tool); *Guidance Material, Impact Assessment*, UNITED NATIONS GLOBAL COMPACT [http://www.unglobalcompact.org/Issues/human\\_rights/Tools\\_and\\_Guidance\\_Materials.html#impact](http://www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html#impact) (last visited Feb. 1, 2011) (listing guides and tools for businesses to conduct a human rights impact assessment); *Human Rights Impact and Compliance Assessments*, BUS. AND HUM. RTS. RESOURCE CENTRE, <http://www.business-humanrights.org/Documents/Impactassessment> (last visited Feb. 1, 2011) (offering examples of company impact assessments).

175. See, e.g., NORWEGIAN AGENCY FOR DEV. COOPERATION (NORAD), HANDBOOK IN HUMAN RIGHTS ASSESSMENT: STATE OBLIGATIONS, AWARENESS & EMPOWERMENT (2001) (guiding international organizations on how to make use of human rights impact assessments at the program level).

176. A search in the Human Rights Impact Resource Center, which collects tools on human rights impact assessment, reveals no entries for toolsets under the topic “labor rights.” *Resource Database*, HUM. RTS. IMPACT RESOURCE CENTER, <http://www.humanrightsimpact.org/resource-database/toolsets/> (last visited Feb. 1, 2011).

177. See, e.g., INT’L CENTRE FOR HUMAN RIGHTS & DEMOCRACY, HUMAN RIGHTS IMPACT ASSESSMENT FOR FOREIGN INVESTMENT PROJECTS: LEARNING FROM COMMUNITY EXPERIENCES IN THE PHILIPPINES, TIBET, THE DEMOCRATIC REPUBLIC OF CONGO, ARGENTINA, AND PERU 90-92 (2007) [hereinafter RIGHTS & DEMOCRACY] (documenting a human rights impact assessment of a mining operation in the Democratic Republic of Congo, which revealed numerous work rights violations).

that was developed and tested by the International Centre for Human Rights and Democracy ("Rights & Democracy"), based in Canada, to assess the impact of foreign direct investment on human rights.<sup>178</sup> One of their case studies examined the operations of the *Société Minière du Katanga Sprl* ("SOMIKA") in the Democratic Republic of Congo ("DRC").<sup>179</sup> This company operates two facilities to process heterogenite, a mineral containing copper and cobalt.<sup>180</sup> There has been strong opposition to SOMIKA operations from the local communities, primarily based on a fear that the installations will contaminate the drinking water in the area.<sup>181</sup> Due to the lack of cooperation from public administrators and a delay in obtaining access to the SOMIKA installations, the human rights impact assessment of this primary concern was not completed.<sup>182</sup> Nevertheless, the researchers gained important information from workers, and preliminary results from the assessment revealed numerous violations of work rights, as well as the need for further investigation of the impact on human rights to health, water, and development.<sup>183</sup>

The DRC is a party to the ICESCR,<sup>184</sup> as well as thirty-six ILO Conventions.<sup>185</sup> However, it has a long history of violent conflict and "a dismal human rights record."<sup>186</sup> The country is rich in natural resources but lacks effective governance, which stunts its development.<sup>187</sup> SOMIKA, the subject of the assessment, employs "550 permanent workers and 1,500 day laborers."<sup>188</sup> The company uses day laborers to avoid a Congolese labor law that protects permanent workers.<sup>189</sup> The preliminary human rights impact assessment uncovered serious violations of work rights including,

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178. *Id.*

179. *Id.* at 87.

180. *Id.* at 84.

181. *Id.*

182. *Id.* at 89.

183. *Id.* at 89-96.

184. *List of Signatories to the ICESCR*, *supra* note 35.

185. *Database of International Labour Standards*, ILO, <http://www.ilo.org/ilolex/english/> (last visited Feb. 1, 2011).

186. RIGHTS & DEMOCRACY, *supra* note 177, at 85.

187. *Id.*

188. *Id.* at 88.

189. *See id.* at 90 (noting that permanent workers, but not day laborers, are guaranteed the right to negotiate wages and social benefits before starting work).

among others: (1) Congolese workers “earn 10 to 20 times less than their foreign counterparts” for equivalent work<sup>190</sup>—in violation of the right to nondiscrimination<sup>191</sup> and the right to fair wages and equal remuneration;<sup>192</sup> (2) the wages of many workers are inadequate to provide a steady and sufficient quantity of food for their families<sup>193</sup>—in violation of the right to an adequate standard of living;<sup>194</sup> (3) using intermediaries, SOMIKA purchases heterogenites from artisanal diggers, about forty percent of whom are children under the age of eighteen<sup>195</sup>—in violation of the prohibition against child labor;<sup>196</sup> and (4) despite orders from national authorities directing all companies to organize elections, SOMIKA has no independent union and worker representatives are chosen by the employer<sup>197</sup>—in violation of the right to freedom of association.<sup>198</sup>

The report on the human rights impact assessment prepared by Rights & Democracy outlines recommendations for the government, SOMIKA, and civil society. It recommends that the international community make any funding for extractive companies contingent upon their respect for human rights.<sup>199</sup> The recommendations for the company relate primarily to work rights, including the call for the company to permit workers to organize union elections.<sup>200</sup> For civil society, the report recommends raising public awareness—among local communities, extractive companies, and political authorities—of domestic mining legislation and international human rights law.<sup>201</sup> Further research is necessary to determine whether the human rights situation at SOMIKA improved following the preliminary human rights impact assessment. In general, human rights impact

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190. *Id.*

191. ICESCR, *supra* note 12, art. 2(2).

192. *Id.* art. 7(a)(i).

193. RIGHTS & DEMOCRACY, *supra* note 177, at 91.

194. ICESCR, *supra* note 12, art. 11(1)

195. RIGHTS & DEMOCRACY, *supra* note 177, at 91.

196. ICESCR, *supra* note 12, art. 10(3)

197. RIGHTS & DEMOCRACY, *supra* note 177, at 92.

198. *See* ICESCR, *supra* note 12, art. 8 (guarding the right to form and join unions, as well as the right of unions to function freely); ICCPR, *supra* note 65, arts. 21-22 (promoting the right to assembly, and addressing the right to freedom of association and the right to form and join trade unions, respectively).

199. RIGHTS & DEMOCRACY, *supra* note 177, at 97.

200. *Id.*

201. *Id.*

assessments involve a follow-up monitoring mechanism to ensure that recommendations are implemented and can be modified as circumstances require. In the context of the DRC, however, researchers were not able to complete the full assessment.

The second example involves a Dutch organization, Aim for Human Rights, which developed a human rights impact assessment tool, the Health Rights of Women Assessment Instrument (“HeRWAI”), to assess impacts on the health rights of women.<sup>202</sup> Numerous nongovernmental organizations around the world have used this instrument.<sup>203</sup> While intended to focus on health rights, a number of case studies have revealed violations of work rights that affect health and have, therefore, resulted in advocacy efforts to change work-related laws, policies, and practices. For example, the Federation of Women Lawyers (“Fida”) used the HeRWAI instrument to assess and challenge the law on maternity leave in Kenya.<sup>204</sup> After concluding that the law discriminated on the basis of gender as well as against specific groups of women, Fida joined with labor unions and other nongovernmental organizations and successfully lobbied to change the law.<sup>205</sup>

Given the close relationship between the right to decent work and other human rights, including the right to health, human rights impact assessment is an excellent tool for social partners to use in evaluating regulatory, policy, and program proposals. Human rights practitioners, workers’ centers, and unions may also find human rights impact assessment to be a useful tool to assess and challenge current laws, policies, and programs that negatively impact work rights as well as to educate people on the human right to decent work. Practically, it may be helpful to develop an instrument

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202. *See generally* Bakker et al., *supra* note 167.

203. Case studies are posted online to the Human Rights Impact Assessment Resource Center. *See HeRWAI Case Studies*, HUM. RTS. IMPACT RESOURCE CENTRE, <http://www.humanrightsimpact.org/themes/womens-human-rights/herwai/reports/> (last visited Feb. 1, 2011) (including case studies from Kenya, Malawi, Uruguay, Puerto Rico, Netherlands, Pakistan, Bangladesh, and Ecuador).

204. *See* MARIJE NEDERVEEN, EFFECT MEASUREMENT REPORT HERWAI 2009 29 (Aim for Human Rights 2010), *available at* [http://www.humanrightsimpact.org/fileadmin/hria\\_resources/HeRWAI\\_Centre/20100118\\_effect\\_measurement\\_report\\_final\\_version.pdf](http://www.humanrightsimpact.org/fileadmin/hria_resources/HeRWAI_Centre/20100118_effect_measurement_report_final_version.pdf) (noting that 127 organizations from twenty-six countries have been trained in HeRWAI since its development in 2005).

205. *Id.*

specifically designed to assess impacts on work rights, just as HeRWAI was designed to address impacts on health rights. On the other hand, the inclusion of work rights in a broader human rights impact assessment may highlight the status of work rights as human rights and bring additional legal and ethical legitimacy to demands for reforms or other mitigation measures. Indeed, impact assessment is an excellent tool to assess the potential human rights impacts of a variety of proposed public policies on workers and their families, as well as to maximize the human rights benefits of such policies.<sup>206</sup>

#### D. BUILDING COALITIONS BY LINKING RIGHTS

The principles of universality, interdependence, and equality of all rights also suggest that the holistic human rights approach provides a strong basis for building coalitions by linking rights. Indeed, a holistic human rights approach calls for enhancing the cooperation between social movements, including labor and human rights organizations.<sup>207</sup> Jane Lethbridge presents a compelling case for building coalitions between labor and health rights groups:

There is much to be gained if trade unions and NGOs work together effectively. For trade unions, NGOs may provide access to a wider economic and social agenda, one where labour issues are very often not the priority. For NGOs, trade unions represent a large number of workers to whom they are accountable — few NGOs have such well-organized constituencies.<sup>208</sup>

Lethbridge documents coalitions between labor unions and NGOs in numerous countries that have collaborated on enhancing health rights, including: (1) the Malaysia Citizens' Health Initiative, composed of community and consumer NGOs as well as healthcare worker unions and the Malaysian Trade Union Congress, which

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206. Human rights impact assessment also provides opportunities to build coalitions among groups with overlapping concerns, such as the coalition formed among women lawyers and unions to challenge the Kenyan law on maternity leave. *See* note 202 and accompanying text.

207. Fields & Narr, *supra* note 71, at 20 (emphasizing the importance of commitment to “change from below” as well as cooperation and information sharing at the international level to promote human rights).

208. Jane Lethbridge, *Combining Worker and User Interests in the Health Sector: Trade Unions and NGOs*, 14 DEV. PRAC. 234, 236 (2004).

campaigned together to stop hospital privatization,<sup>209</sup> (2) the 2002 South African Treatment Congress, organized by the Treatment Action Campaign and the Congress of South African Trade Unions, which collaborated on a campaign for anti-retrovirals,<sup>210</sup> (3) the German Association for the Taxation of Financial Transactions for the Aid of Citizens together with German trade unions, which worked together against the privatization of health services,<sup>211</sup> and (4) the Women's Network of Towns and Neighborhoods in Argentina, which brought together women's and community organizations in alliance with health workers and trade unions to fight for reproductive health rights.<sup>212</sup> By building coalitions based on common concerns, these groups advanced the interrelated rights at issue.

Similarly, the Vermont Workers' Center in the United States is an organization composed of individuals and organizations, including unions, churches, and community groups. In 2008, the Center launched a campaign for healthcare reform, which has reframed healthcare as a human rights issue in Vermont.<sup>213</sup> The goal of the campaign is a universal system of healthcare "in which healthcare is recognized as a public good and provided collectively, rather than as a commodity sold in the marketplace."<sup>214</sup> On May 1, 2010, at a rally on the State House lawn organized by the Center, Vermonter Peg Franzen told reporters, "We really need to have a healthcare system that is based on moral values rather than the market economy."<sup>215</sup> The Center uses a holistic human rights approach to collaborate with a broad coalition of organizations and individuals in advancing the work rights and health rights of all Vermonters. Its human rights

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209. *Id.* at 237-40.

210. *Id.* at 240-43 (explaining that trade unions and NGOs working in the health sector rallied around a common cause, despite major disagreements on important health policy issues).

211. *Id.* at 244 (noting that both groups oppose the reduction of public spending on the health sector, the privatization of hospitals and broader neo-liberal policies).

212. *Id.*

213. See generally Mariah McGill, *Using Human Rights to Move Beyond the Politically Possible*, 44 CLEARINGHOUSE REV. 459 (2011).

214. *About the Campaign*, VT. WORKERS' CENTER, <http://www.workerscenter.org/node/456> (last visited Feb. 1, 2011).

215. Daniel Barlow, *Big Health Care Rally Planned Friday*, TIMES ARGUS, April 28, 2009, <http://www.timesargus.com/article/20090428/NEWS02/904280338/1003/NEWS02>.

campaign for healthcare reform has been highly successful in mobilizing Vermonters and is on the path to bringing about the same kind of positive changes to healthcare that Lethbridge documented such coalitions were able to achieve in other parts of the world.<sup>216</sup>

While many workers' organizations have collaborated with NGOs to advance health rights in the health sector, it is important to emphasize that efforts to improve working conditions advance the right to health just as they help realize the right to decent work. Indeed, the Commission on Social Determinants of Health identified "creating fair employment and decent work" as one of the key determinants of health.<sup>217</sup> While the competition in a globalized market has resulted in efforts to make the workforce more "flexible," evidence indicates that temporary workers have significantly higher mortality rates than permanent workers, and employment insecurity adversely affects physical and mental health.<sup>218</sup>

In short, advancing work rights advances the right to health.<sup>219</sup> In this vein, the holistic human rights approach provides a framework for workers' organizations to collaborate with other groups interested in improving health by realizing the right to decent work.

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216. See McGill, *supra* note 213, at 463-64 (documenting the success of the campaign in pressuring the Vermont Legislature into passing a bill in May 2010 to establish a Commission charged with proposing three universal healthcare models to be considered in the 2011 legislative session); Nancy Remsen, *Vermont Moves Closer to Universal Health Care*, BURLINGTON FREE PRESS, Mar. 25, 2011, <http://www.burlingtonfreepress.com/article/20110324/NEWS02/110324007/Vermont-moves-closer-universal-health-care?odyssey=tab|topnews|text|FRONTPAGE> (recognizing the central role of the Vermont Workers' Center in moving Vermont toward creating the first single-payer healthcare system in the country); Dave Gram, *Vt. House Passes Single-Payer Health Care Bill*, BOSTON GLOBE, Mar. 24, 2011 (noting that Peter Shumlin, the recently elected governor of Vermont, made single-payer health care a key part of his gubernatorial campaign), [http://www.boston.com/news/local/vermont/articles/2011/03/24/vt\\_house\\_resumes\\_debate\\_on\\_health\\_care\\_bill/](http://www.boston.com/news/local/vermont/articles/2011/03/24/vt_house_resumes_debate_on_health_care_bill/).

217. CLOSING THE GAP, *supra* note 94, at 5.

218. *Id.*

219. As noted above, some initiatives, such as the campaign to stop hospital privatization, contribute directly to enhancing both the right to decent work and the right to health. See, e.g., note 208 and accompanying text.

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## CONCLUSION

This paper argues for a return to the original holistic human rights approach embraced in the Universal Declaration of Human Rights and in the ILO Declaration of Philadelphia. Economic and social rights are regaining parity with civil and political rights in the international arena as evidenced by the recent adoption of the Optional Protocol to the ICESCR. With this parity comes the renewal of the holistic human rights framework in the UDHR, which highlights the universality, interdependency, and equality of all human rights.

Indeed, increasingly around the world, the right to form and join labor unions, the right to collective bargaining, the right to a safe and healthy workplace, and the right against discrimination in the workplace, among other work rights, “are considered human rights—not merely rights granted by statutes or collective bargaining contracts.”<sup>220</sup> Advocates are advancing this perspective in the courts where they have invoked international human rights law to support domestic claims alleging violations of economic and social rights, including work rights.<sup>221</sup> In addition to addressing past violations of work rights, however, it is now timely to consider the opportunities for using the holistic human rights framework in a proactive manner in order to achieve decent work for all.<sup>222</sup> This article explores

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220. JAMES A. GROSS, *A SHAMEFUL BUSINESS: THE CASE FOR HUMAN RIGHTS IN THE AMERICAN WORKPLACE* 1 (2010).

221. See Fudge, *supra* note 7, at 43 (opining that as a result of globalization and neo-liberalism, social rights have gained prominence in the courts). For example, in 2007, the Canadian Supreme Court ruled that its long-standing exclusion of the right to collective bargaining from the right to freedom of association, guaranteed by the Canadian Charter of Rights, did not “withstand principled scrutiny and should be rejected.” *Health Servs. & Support-Facilities Subsector Bargaining Ass’n v. British Columbia*, [2007] 2 S.C.R. 391, ¶ 22 (Can.). The Court stated that “[t]he Charter should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified.” *Id.* ¶ 70. Moreover, the Court referred specifically to “numerous interpretations” of the ILO Committees, which, “[w]hile not binding,” shed light on the scope of the right to collective bargaining under the Canadian Charter. *Id.* ¶ 76-77. See generally Margaret Bedggood & Diane Frey, *Work Rights: A Human Rights-Based Response to Poverty*, in *FREEDOM FROM POVERTY* (Geraldine Van Bueren ed., 2009) (documenting case law from around the world on work rights as human rights).

222. See GROSS, *supra* note 220, at 1 (contending that “[t]he concept of workers’ rights as human rights has emerged recently in discussions concerning

several strategies for doing so.

First, the right to decent work is a human right, and it must be defined to encompass human rights concerns beyond the ILO four Core Labor Standards. All work rights are interrelated, and therefore, a few rights should not be pursued at the expense of others. Second, it is essential to recognize the interdependency of rights and of people and to consider these relationships when regulating for decent work. Realizing children's rights at the expense of women's rights, for example, does not bring us closer to achieving decent work for all. Third, human rights scholars and practitioners are developing human rights-based methodologies and tools, such as human rights impact assessment, that have the potential to improve policies, programs, and projects by revealing the likely impacts of proposals on human rights. These tools provide the opportunity to mitigate negative impacts and maximize positive ones, and therefore should be employed to prevent violations and to fully realize the right to decent work. Finally, the holistic human rights approach helps to build coalitions among individuals and groups that share the common aim of achieving decent work for all, realizing the full panoply of human rights, and achieving social justice.

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the state of U.S. labor relations, but it has not influenced the making and implementation of labor policy at any level").