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# ENGENDERING HAITI'S RECONSTRUCTION: THE LEGAL AND ECONOMIC CASE FOR MAINSTREAMING WOMEN IN POST- DISASTER PROGRAMMING

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**Abstract:** On January 12, 2010, an earthquake of devastating magnitude shook Haiti, killing over 250,000, reducing much of the country's infrastructure to rubble—including its government—and leaving millions of people without homes and livelihoods. As Haiti lurches toward an era of rebuilding and renewal, the ways in which priorities are set and resources spent can either accelerate the rate at which Haitians are able to emerge from poverty and achieve economic development—or they can substantially inhibit the country's path toward recovery. One of the most critical factors that will determine which path Haiti takes is the extent to which gender concerns are brought to the fore in the reconstruction process. Gender mainstreaming, as a technical term in the development field, involves ensuring that gender perspectives and attention to the goal of gender equality are *central to all activities*, from policy development to legislative drafting. Such a women-focused approach is not only imperative from a moral justice and human rights perspective, but also a vital component of a successful economic development strategy.

**Keywords:** Haiti, gender mainstreaming, development, post-disaster, women's rights, reconstruction

## Introduction

On January 12, 2010, an earthquake of devastating magnitude shook Haiti, killing over 250,000, reducing much of the country's infrastructure to rubble—including its government—and leaving millions of people without homes and livelihoods. More than a year and half later, more than 650,000 people still live in makeshift tents in 1,000 displacement camps dotting Port-au-Prince and neighboring areas.<sup>1</sup> The earliest storms of the 2011 hurricane season have flooded 30 camps, forcing dwellers to flee and leaving 28 people dead. Vulnerable camp populations, as well as those in nearby urban slums, routinely face forced evictions, criminal violence, and poor sanitation and chronic health problems. Currently, close to 80 percent of Haitians live in poverty,

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<sup>1</sup> Press Release, International Organization for Migration, Fewer Haitians Leaving Displacement Camps Than Before (June 23, 2011), <http://www.haitispecialenvoy.org/press-and-media/press-releases/fewer-haitians-leaving-displacement-camps/>. See also UN Security Council, Report of the Secretary General on the United Nations Stabilization Mission in Haiti, S/2011/183 (Mar. 24, 2011) ¶ 30 (estimating 680,000 as of March 2011) [hereinafter UN SC Report 2011].

and two-thirds of the labor force lack formal employment.<sup>2</sup> As Haiti continues to transition out of the physical and psychological trauma brought about by the earthquake, it lurches toward an era of rebuilding and renewal. And yet the nascent stages of reconstruction present a valuable opportunity for Haitians to shape—and in some cases, reinvent—their political, social, and economic systems. Architectural planning is needed on the ground, but also from 30,000 feet, on the more philosophical or conceptual plane. First-order decisions made at this juncture will play a significant role in setting the pace and parameters of Haiti’s long-term development.

The ways in which priorities are set and resources spent can either accelerate the rate at which Haitians are able to emerge from poverty and achieve other development goals—or, by contrast, substantially inhibit their path toward recovery and toward broader economic and social progress. One of the most critical factors that will determine which path Haiti takes is the extent to which gender concerns are brought to the fore in the reconstruction process. For reconstruction to be successful and thoroughgoing, addressing issues of gender must be a priority from the very beginning; it must be a guiding principle at every possible turn and across policy areas. Local women’s rights groups have been the leading voice on this front,<sup>3</sup> although often their calls have been overlooked or passed over by policymakers. While the United Nations (UN) took the laudable early step of acknowledging the value to be gained by gender mainstreaming during the immediate humanitarian response to the earthquake,<sup>4</sup> the Haiti Reconstruction Fund and its implementing partners must address and fulfill a similar obligation in the context of designing and effectuating reconstruction.

Gender mainstreaming, as a technical term in the development field, “involves ensuring that gender perspectives and attention to the goal of gender equality are *central to all activities*: policy development, research, advocacy/dialogue, legislation, resource allocation and planning, and implementing and monitoring of programs and projects.”<sup>5</sup> Gender mainstreaming would not mean sidelining men and boys, but rather making women—their needs, their perspectives and their capabilities—a central focus of reconstruction planning and programming. Successful mainstreaming is evidence-based; it requires collecting sex disaggregated data, improving gender analysis of existing data and identifying data gaps. Gender-responsive budgeting for public health expenditures, for instance, is driven by a statistical analysis of men and women’s distinct needs for doctors’ services and medicines, and their relative access to adequate care facilities. Resource allocation then accounts for this information, as well as empirical data elucidating best practices for fulfilling women’s unmet needs for services like family planning and natal care—

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<sup>2</sup> CIA WORLD FACTBOOK: HAITI (Mar. 2011), <http://www.cia.gov/library/publications/the-world-factbook/geos/ha.html>. Of the 80 percent of Haitians living live below the poverty line, 54 percent live in abject poverty. *Id.*

<sup>3</sup> Some of the most avid and vocal grassroots advocacy on behalf of Haiti’s women has been done by Dwa Fanm (Women’s Rights), ENFOFANM (The National and International Center for Documentation and Information on Women in Haiti), FAVILEK (Women Victims Get Up Stand Up), Kay Fanm (Women’s House), KOFVIV (The Commission of Women Victims for Victims), KONAMAVID (National Coordination of Direct Victims), MUDHA (The Haitian’s Women’s Movement in the Dominican Republic) and SOFA (Haitian Women in Solidarity). By no means is this exhaustive.

<sup>4</sup> See UN GENDER IN HUMANITARIAN RESPONSE WORKING GROUP, GENDER MAINSTREAMING IN THE HUMANITARIAN RESPONSE IN THE AFTERMATH OF THE EARTHQUAKE IN HAITI (Feb. 24, 2010), *available at* <http://ijdh.org/archives/11386>.

<sup>5</sup> UN Women, Gender Mainstreaming, *at* <http://www.un.org/womenwatch/osagi/gendermainstreaming.htm> (last visited July 17, 2011).

practice methods that maximize returns for saving lives and enhancing nutrition.<sup>6</sup> Policies that deliver microcredit loans to women-owned businesses, or separate sanitation facilities for girls in school, or incentive structures or quotas that boost female representation in political bodies, classrooms, and the labor market provide additional examples of entry points for gender mainstreaming and the array of forms it can take. To this end, toolkits and practical guidelines on how to mainstream gender in particular issue areas are widely available from the UN and many of its agencies,<sup>7</sup> as well as NGOs and scholars.<sup>8</sup>

It is important to emphasize that such a women-focused approach to reconstruction would in fact substitute for gender-neutral policies or efforts to assist “the community” as a whole. Around the world, such a one-size-fits-all tact is becoming less popular, and for good reasons. First and paramount, women-focused approaches to reconstruction are imperative from a moral justice and human rights perspective.<sup>9</sup> As such, they have strong support in emerging norms and standards of international law, and in a few cases are legally required. Second, it is by now well-established amongst experts that women-specific initiatives are an instrumental component of successful development strategy. To take economic development as an example: empirical studies demonstrate that economic development is driven by women.<sup>10</sup> Whereas women’s economic empowerment is a catalyst for poverty reduction and faster growth that benefits all of society, “women’s lack of economic empowerment imperils growth and poverty reduction” and is associated with “a host of other negative impacts, including the faster spread of HIV/AIDS and less favorable education and health outcomes for children.”<sup>11</sup> Reconstruction approaches that are

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<sup>6</sup> See UN POPULATION FUND AND GUTTMACHER INSTITUTE, *ADDING IT UP: THE COSTS AND BENEFITS OF INVESTING IN FAMILY PLANNING AND MATERNAL NEWBORN HEALTH 13-15* (2009) (listing the benefits to individual families, such as the prevention of high-risk pregnancies and healthier newborns, and the benefits to society at large, such as increased potential for economic growth).

<sup>7</sup> See UN Women Watch, Directory of UN Resources on Gender and Women’s Issues (collecting and providing links to reports by UN agencies), at [http://www.un.org/womenwatch/directory/gender\\_training\\_90.htm](http://www.un.org/womenwatch/directory/gender_training_90.htm) (last visited Mar. 14, 2011); UN Women, Secretary-General’s Reports on Gender Mainstreaming, at <http://www.un.org/womenwatch/osagi/oSGreports> (last visited July 17, 2011); UN Women, Gender Responsive Budgeting: Resources (linking to training manuals), at <http://www.gender-budgets.org/> (last visited Mar. 12, 2011).

Some of the institutional manuals are largely conceptual, although increasingly they are providing concrete recommendations and step-by-step prescriptions for how to mainstream gender in different policy areas. Compare, e.g., UN DEVELOPMENT PROGRAM, *UNDP GENDER MAINSTREAMING LEARNING MANUAL* (Jan. 2001); UN HABITAT, *GENDER POLICY*, at <http://ww2.unhabitat.org/pubs/genderpolicy/foreword.htm> (last visited Mar. 12, 2011), with UNICEF, *Gender Mainstreaming in Water and Sanitation*, at [http://www.unicef.org/wash/index\\_main\\_streaming.html](http://www.unicef.org/wash/index_main_streaming.html) (last visited Mar. 12, 2011); UN WORLD FOOD PROGRAM, *WORLD FOOD PROGRAM GENDER POLICY AND STRATEGY: PROMOTING GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN IN ADDRESSING FOOD AND NUTRITIONAL CHALLENGES* (Jan. 2009).

<sup>8</sup> See, e.g., Elaine Enarson, *A Gendered Human Rights Approach to Rebuilding After Disaster*, Appendix: Guidelines for Gender-Sensitive Recovery, in *REBUILDING SUSTAINABLE COMMUNITIES FOR CHILDREN AND THEIR FAMILIES AFTER DISASTERS 13, 24-28* (Adenrele Awotona, ed. 2010); KATERINE LANDUYT, *INTERNATIONAL LABOR ORGANIZATION, GENDER MAINSTREAMING: A HOW-TO MANUAL* (1998).

<sup>9</sup> See generally, MARTHA NUSSBAUM, *WOMAN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH* (2000).

<sup>10</sup> See *infra*, Part III.

<sup>11</sup> WORLD BANK, *GENDER EQUALITY AS SMART ECONOMICS: A WORLD BANK GROUP GENDER ACTION PLAN at 2* (Sep. 2006) [hereinafter *WORLD BANK GAP*] (making the business case for increasing women’s competitive participation in four key markets: product, financial, land, and labor). But see Elaine Zuckerman, *Gender Action, “Critique: Gender Equality as Smart Economics: A World Bank Gender Action Plan”* (Jan. 2007) (leveling several

not geared toward bringing women's economic opportunities in line with their capabilities are thus severely inefficient.

Despite the rationality of prioritizing women and their needs in Haiti's post-earthquake recovery and rebuilding, it has yet to happen. Policies and investments have hardly matched gender mainstreaming rhetoric. In the earliest phase of humanitarian relief, programs like Cash for Work and Food for Work provided jobs for nearly 200,000 people, yet only 35 percent were women (women represent 52 percent of Haiti's population).<sup>12</sup> Available data and anecdotal evidence suggest that not much headway has been made since then. There is scant indication that the Haiti Reconstruction Fund is integrating comprehensive gender equality principles into its key deliberations, agenda-setting, and funding decisions. A recent report by a nongovernmental organization dedicated to monitoring how investments by international financial institutions impact gender justice found that the World Bank and the Inter-American Development Bank (IDB), two of Haiti's largest and most influential donors, have repeatedly failed to implement gender-inclusive and gender-targeted reconstruction policies.<sup>13</sup> Despite the banks' own gender policies and action plans, "few World Bank and IDB grants to Haiti are explicitly gender sensitive."<sup>14</sup> The result has been a series of missed opportunities—opportunities to prevent sexual violence, to involve women in decision-making, and to set in motion short- and long-term economic growth strategies for lifting Haiti's rural poor (many of whom are women) out of poverty.<sup>15</sup> Meanwhile, the situation facing girls and women in Haiti remains unyieldingly grave: unemployment is stagnant; food insecurity and hunger are chronic; and gender-based violence,

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important critiques at the World Bank's gender work, including the bank's singular focus on "Smart Economics" as a reason for empowering women, at the expense of a human rights-based framework).

<sup>12</sup> UNIFEM, Fact Sheet: At a Glance—Women in Haiti (July 2010), at

[http://www.unifem.org/materials/fact\\_sheets.php?StoryID=1146](http://www.unifem.org/materials/fact_sheets.php?StoryID=1146) [hereinafter UNIFEM Fact Sheet].

<sup>13</sup> GENDER ACTION, WORLD BANK AND INTER-AMERICAN DEVELOPMENT BANK HAITI POST-EARTHQUAKE TRACK RECORD ON GENDER, AGRICULTURE AND RURAL DEVELOPMENT (Fall 2010) [hereinafter GENDER ACTION, TRACK RECORD]. At the international donors conference that took place in March 2010, donors pledged over \$10 billion over ten years to help Haiti stabilize, recover, and rebuild from the earthquake. Of the \$4.6 billion that was pledged for recovery activities in 2010 and 2011, as of this writing only \$1.74 billion (37.8 percent) has been disbursed. Of that which has been disbursed, over 99 percent has been channeled to a combination of: donors' own civil and military disaster response entities, international agencies and NGOs, and other private contractors; less than 1 percent has gone directly to Haitian public institutions. This discrepancy prompted Paul Farmer to remark that with the circumvention of national governance, "the already challenging task of moving from relief to recovery—which requires government leadership, above all—becomes almost impossible." Paul Farmer, *Forward to OFFICE OF THE SPECIAL ENVOY FOR HAITI, HAS AID CHANGED? CHANNELING ASSISTANCE TO HAITI BEFORE AND AFTER THE EARTHQUAKE*, (June 2011). See also INTERNATIONAL CRISIS GROUP, *POST-QUAKE HAITI: SECURITY DEPENDS ON RESETTLEMENT AND DEVELOPMENT, POLICY BRIEFING 1* (June 28, 2011) (noting that the Interim Haitian Recovery Commission—the "hybrid body" designed to coordinate the disbursement of humanitarian assistance—has "enabled donors and government officials to exchange plans, but decision-making and donor disbursement have been mostly slow, particularly outside the capital").

<sup>14</sup> GENDER ACTION, TRACK RECORD, *supra* note 13, at 1. The Gender Action Report also notes that key reconstruction projects fail to either provide sex-disaggregated data or require its collection, omissions that further evince inattention to the crucial role of women in Haiti's social and economic life and their potential contributions as agents of reconstruction. *Id.* at 2-3.

<sup>15</sup> *Id.* Nearly two-thirds of Haiti's population live in rural areas and most of the population is dependent on agriculture for their livelihood. See UN Food and Agriculture Organization, Gender and Land Rights Database: Haiti (2010), at <http://www.fao.org/gender/landrights/report/?country=HT>.

much of which is preventable, plagues IDP camps.<sup>16</sup> Haitian women continue to be unrepresented in policymaking and left out of deliberative processes.<sup>17</sup>

This paper will start with a discussion of the legal basis for mainstreaming gender, as Part I focuses on Security Council resolutions, treaties, and patterns of consensus within the international community. Part II will turn to the relationship between gender and development, drawing from theory and empirical analyses to demonstrate the role of gender equality in achieving individual development goals. Even outside a rights-based framework—strictly in terms of maximizing social welfare—mainstreaming women in reconstruction programming is common sense. Empowering women, economically and politically, raises long-term productivity and household incomes, improves children’s welfare, reduces disease, and strengthens numerous other indicators of development progress. The reverse, however, is also true: reconstruction efforts that do not target women as both participants and beneficiaries will inhibit Haiti’s long-term development and have serious cost implications.

## I. Legal Support for Gender Mainstreaming in Reconstruction

The need for women-focused initiatives in disaster reconstruction has been recognized by international organizations around the world. The UN General Assembly and Security Council have called for gender mainstreaming by resolution,<sup>18</sup> and various other UN bodies have integrated and expanded upon the principles embodied therein. Among the UN agencies that have developed policy statements and field manuals pertaining to gender mainstreaming are UNICEF, UNIFEM, UNHCR, UN Population Fund,<sup>19</sup> UN Office for International Strategy for Disaster Reduction<sup>20</sup> and the UN Human Settlements Program.<sup>21</sup> In addition, the European

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<sup>16</sup> Despite advocacy groups’ repeated calls for concrete steps to be taken that could dramatically improve security for women and girls in displacement camps—such as the provision of more lighting, flashlight batteries, night watch personnel, prosecutorial investigations, and so on—few of their recommendations have been implemented. *See* CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE AT NEW YORK UNIVERSITY SCHOOL OF LAW, SEXUAL VIOLENCE IN HAITI’S IDP CAMPS: RESULTS OF A HOUSEHOLD SURVEY 1 (Mar. 2011), (noting that most camps still have “no lighting at all or inadequate lighting at best”) [hereinafter CHR&GJ Survey]; MADRE, OUR BODIES ARE STILL TREMBLING: HAITIAN WOMEN’S FIGHT AGAINST RAPE (July 2010) (calling for a range of measures to protect women and provide redress to victims) [hereinafter MADRE Report]. *See also* UN SC Report 2011, *supra* note 1, at ¶ 31 (acknowledging the prevalence of sexual and gender-based violence and citing “weaknesses in the capacity and the functioning of the Haitian National Police and the judiciary” as inhibiting the state’s response); *id.* at ¶¶ 31-34 (discussing MINUSTAH’s own efforts to respond).

<sup>17</sup> In the only approved World Bank post-earthquake investment project with a rural focus, the target goal for women’s participation in the project’s community-based development councils was only 15 percent. GENDER ACTION, *supra* note 11, at 2. *See also* UN SC Report 2011, *supra* note 1, at ¶ 53 (reporting that “[w]omen’s representation in decision-making remains a challenge” and citing figures).

<sup>18</sup> *See, e.g.*, G.A. Res. 58/214, U.N. Doc. A/RES/58/214 (Feb. 27, 2004) (recognizing “the importance of integrating a gender perspective as well as of engaging women in the design and implementation of all phases of disaster management”).

<sup>19</sup> *See* Statement by Thoraya Ahmed Obaid, UN Population Fund (UNFPA) Executive Director, “Gender Mainstreaming,” Joint Meeting of the Executive Boards of UNDP/UNFPA and UNICEF (Jan. 20, 2005) (discussing gender imbalances in post-disaster environments and the need for interagency coordination on mainstreaming).

<sup>20</sup> The Secretariat of the International Strategy for Disaster Reduction has expressed repeatedly the ISDR’s commitment to women-focused disaster-mitigation and reconstruction initiatives. *See* Statement of Sálvano Briceño, Director, ISDR Secretariat, “Gender Equality and Disaster Risk Reduction,” Commission on the Status of Women High-Level Panel on the Occasion of the International Women’s Day (Mar. 8, 2005).

Union,<sup>22</sup> the International Labor Organization<sup>23</sup> and numerous other organizations have issued appeals for women-specific approaches to disaster relief and reconstruction.<sup>24</sup>

In terms of formal prescriptions, Security Council Resolution 1325 is the cornerstone of a requirement to mainstream women's needs and abilities in post-disaster situations.<sup>25</sup> The resolution, which was passed unanimously by the Security Council in 2000, "stress[es] the importance of [women's] equal participation and full involvement in all efforts for the maintenance and promotion of peace and security" and "[r]ecogniz[es] the urgent need to mainstream a gender perspective into peacekeeping operations."<sup>26</sup> The resolution also expressly calls for: increased representation of women at all decision-making levels in conflict prevention and resolution; increased attention to the particular needs of women in conflict, including refugees; and enhanced support for protecting women and girls from sexual and gender-based violence.<sup>27</sup> To accomplish prominent and meaningful participation by women in reconstruction efforts, the resolution further calls for states and UN actors to support and facilitate communication with local women's initiatives.<sup>28</sup>

SC 1325 insists upon a conflict prevention model that is anchored by (1) women-specific issues and (2) women as negotiating actors. Although the resolution deals explicitly with conflict zones and peacekeeping, the objectives of this model, and its underlying rationale, apply with similar force to post-disaster settings.<sup>29</sup> The parallel application of SC 1325 in this way becomes even more appropriate and compelling given the states of crisis and deprivation that emerge after natural disasters. Haiti provides an illustrative example in this regard. In strictly quantitative terms, the number of persons killed and displaced by the earthquake, and the amount of infrastructure destroyed, exceed that of many armed conflicts that have triggered Security Council action in recent decades. And the state of crisis continues. It is by now well-documented that poverty throughout the country remains acute and widespread; millions of individuals and

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<sup>21</sup> See, e.g., UN-HABITAT, HANDBOOK ON GENDER AND POST-CRISIS RECONSTRUCTION (DRAFT 0) (Mar. 2007), available at <http://www.unhabitat.org/list.asp?typeid=3&catid=286>.

<sup>22</sup> See European Union Ministers, "Ministerial Declaration of the Conference of Ministers of Gender Equality" ¶ 4 (Feb. 4, 2005) (a collective statement by the Ministers of the 25 EU Member countries acknowledging the importance of addressing women's specific needs in post-disaster relief and reconstruction and committing the EU to serving those needs).

<sup>23</sup> See, e.g., International Labor Organization, Gender: Equality Between Men and Women (linking to various ILO reports and policies on gender mainstreaming), at <http://www.ilo.org/public/english/gender.htm> (last visited July 12, 2011); Elaine Enarson, *Gender and Natural Disasters*, ILO Working Paper 1 (Sep. 2000) [hereinafter Enarson, *Gender*].

<sup>24</sup> See, e.g., OXFAM INTERNATIONAL, GENDER MAINSTREAMING DURING DISASTERS: THE CASE OF THE TSUNAMI IN INDIA (Mar. 2007) [hereinafter OXFAM].

<sup>25</sup> S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000). While only Security Council resolutions passed under Chapter VII of the UN Charter are legally binding upon Member States, all resolutions (including 1325) are binding upon UN agencies and employees.

<sup>26</sup> *Id.*

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

<sup>28</sup> *Id.* ¶ 8.

<sup>29</sup> See Payal K. Shah, *Assisting and Empowering Women Facing Natural Disaster: Drawing From Security Council Resolution 1325*, 15 Colum. J. Gender & L. 710, 715-17 (drawing analytical connections between the history and purpose 1325 and justifications for foregrounding a gendered perspective in post-disaster settings); *id.* (citing instances where aid groups and international organizations have applied 1325 to post-disaster contexts, or argued for its application).

families remain displaced, over 630,000 live in crowded and unsanitary displacement camps; a cholera outbreak that was first confirmed in October 2010 has since killed over 4,000 people and over 200,000 cases have been reported; and women and girls, especially those residing in the camps, live under the constant threat of rape and other forms of sexual abuse.<sup>30</sup> This day-to-day state of affairs, along with the urgent attention it requires, mirrors in significant respects the volatile and ravaged post-conflict environments over which SC 1325 expressly governs. Moreover, in the preamble of SC 1325, the Security Council emphasizes the disproportionate “adverse effects” that befall women and children in the aftermath of armed conflict, including their increased risk of being targeted by ongoing violence. So too have Haiti’s women and children, especially girl-children, been disproportionately harmed and made vulnerable by the earthquake and its ripple effects. A reconstruction approach that foregrounds the needs and perspectives of Haiti’s women will thus advance the aims and concerns of the Security Council.

On the other hand, failing to pursue a gender mainstreaming approach to Haiti’s reconstruction would run counter to the purpose of SC 1325, thereby undermining the clear goals and priorities of the Security Council.<sup>31</sup> It would also stand in stark contrast to the effective adherence (or compliance) of other humanitarian efforts to SC 1325. Since the resolution was passed, it has guided the actions of the UN and its partners around the world, in places that are currently undergoing transitions and/or rebuilding under UN auspices. For example, SC 1325 has helped give rise to legislation in Kosovo addressing domestic violence, as well as to policies in the Democratic Republic of Congo and Liberia, respectively, aimed at combating sexual violence.<sup>32</sup> It has spurred the increased participation of women in political decision-making in Burundi, Somalia, and East Timor,<sup>33</sup> and continues to play an important role in anchoring women’s active involvement, across sectors, in Afghanistan’s reconstruction.<sup>34</sup> The UN and the Haitian government, as well as other stakeholders involved in planning and carrying out Haiti’s reconstruction, would do well to follow this movement toward fulfilling the tenets of SC 1325. They would do even better by taking on a leadership role, setting an example for how the resolution should be operationalized in future post-disaster situations.

Two additional Security Council resolutions articulate the obligation of international and national actors to prioritize women’s needs and voices during reconstruction. Foremost is Security Council Resolution 1892 (2009) on Haiti, which was adopted under Chapter VII of the

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<sup>30</sup> See MADRE, *supra* note 15; AMNESTY INTERNATIONAL, AFTERSHOCKS: WOMEN SPEAK OUT AGAINST SEXUAL VIOLENCE IN HAITI’S CAMPS (Jan. 2011). A January 2011 household survey conducted by the Center for Human Rights and Global Justice at New York University School of Law demonstrates the persistence of high levels of sexual violence in the camps, bolstering the findings of previous reports and anecdotal evidence. CHR&GJ Survey, *supra* note 15.

<sup>31</sup> At least one commentator has argued for the Security Council to pass a formally binding resolution that would unambiguously bring natural disasters under the “threats to the peace” umbrella that circumscribes the jurisdiction of the Security Council under the UN Charter. See Shah, *supra* note 27, at 715-17 (arguing for a resolution, along the lines of SC 1325, that would ensure gender-mainstreaming in disaster prevention, aid, and reconstruction).

<sup>32</sup> See *id.* at 720 (citations omitted).

<sup>33</sup> See Press Release, UN Security Council, Security Council Reaffirms Support for Enhanced Women’s Role in Conflict Prevention, Resolution, U.N. Doc SC/7191 (Oct. 31, 2001) (commemorating and reiterating support for 1325, and noting its role in improving women’s participation in government institutions in East Timor, Burundi, and Somalia).

<sup>34</sup> See Jessica Neuwirth, *Women and Peace and Security: The Implementation of UN Security Council Resolution 1325*, 9 DUKE J. GENDER L. & POL’Y 253, 254-59 (2002).

UN Charter and is therefore binding on all member states, as well as relevant UN agencies.<sup>35</sup> The resolution, which predates the earthquake, specifically emphasizes “the need for increased efforts to support the participation of women in the political process.”<sup>36</sup> It also calls on the Secretary-General to “take the necessary measures to ensure full compliance of all [UN personnel in Haiti] with the United Nations’ zero-tolerance policy on sexual exploitation and abuse.”<sup>37</sup> This admonition echoes the language and tone of Security Council Resolution 1820, an earlier, broader resolution, in which the Council resolutely calls on “the Secretary-General and relevant United Nations agencies, *inter alia*, through a consultation with women and women-led organizations as appropriate, to develop effective mechanisms for providing protection from violence, including in particular sexual violence, to women and girls in and around UN managed refugee and internally displaced persons camps.”<sup>38</sup> Given the spate of gender-based violence in Haiti—which has only increased since the earthquake—failing to consult women’s groups throughout the reconstruction phase would violate the letter and spirit of SC 1820 and SC 1892, and effectively ignore the Security Council’s express concern for the rights of Haiti’s women and girls.

The aforementioned Security Council resolutions are very useful in shoring up the obligation to mainstream gender, however they are not essential. A number of treaties and other multilateral agreements mandate gender mainstreaming in post-disaster contexts, including Haiti’s. Most pertinent are the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child, and the Beijing Platform for Action. Together, these instruments form the core international legal framework for protecting and promoting the human rights of women and girls. Haiti, as well as many states that are providing financial and other humanitarian aid to Haiti, are either a party to or ratifier of all three agreements.<sup>39</sup>

To outline briefly the contents of these agreements: CEDAW articulates a range of women’s rights,<sup>40</sup> as it reflects a broader commitment to ensuring that women have equal access to and enjoyment of all the rights enumerated both within the Covenant and elsewhere in public international law, from the political and civil rights set forth in the International Covenant on Civil and Political Rights and Convention Against Torture, to the rights to health, education, and employment affirmed in the International Covenant on Economic and Social Rights. The fact that CEDAW complements rather than substitutes for previous treaties bespeaks the necessity of paying deliberate and systematic attention to women’s needs wherever their rights are compromised in a structural way. The Convention on the Rights of the Child (CRC) is the most widely ratified of all UN human rights treaties. It seeks to protect children from practices that endanger their welfare, including all forms of sexual exploitation and abuse. The CRC makes

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<sup>35</sup> S.C. Res. 1892, U.N. Doc. S/RES/1892 (Oct. 13, 2009).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* ¶ 20.

<sup>38</sup> S.C. Res. 1820 ¶ 10, U.N. Doc. S/RES/1820 (June 19, 2008). Since 1820 was not passed under Chapter VII of the UN Charter, it only binds UN agencies, not Member States.

<sup>39</sup> Although the Platform is not legally binding, its endorsement signals a state’s commitment to abide by and give force to its text.

<sup>40</sup> Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. Doc. A/RES/34/180 (Dec. 18, 1979) [hereinafter CEDAW]; Optional Protocol to the Convention on the Elimination of Discrimination against Women, G.A. Res. 54/4, Annex, U.N. Doc. A/RES/54/4 (Oct. 6, 1999).

plain that the development of reconstruction policy must take into account the best interests of Haiti's children.<sup>41</sup> Building on the foundational principles laid out in CEDAW and CRC, the 1995 Beijing Platform for Action prescribes an agenda for "removing all the obstacles" to women's enjoyment of their fundamental rights in public and private life, especially their participatory rights. Central to this agenda is the adoption of proactive measures that broker women's full and equal share in economic, social, political, and cultural decision-making.<sup>42</sup> In addition, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, which Haiti has ratified, provides a similar regional legal framework for advancing the rights of women and girls.<sup>43</sup>

Several additional instruments reinforce the growing international consensus on the imperative to prioritize women's concerns in post-disaster reconstruction, and do so in more pointed terms. Statements by the CEDAW Committee,<sup>44</sup> along with the Commission on the Status of Women's *Agreed Conclusions and Environmental Management and the Mitigation of Natural Disasters*, provide a thematic blueprint for amplifying women's voices and needs, at both first-principle and granular levels of policymaking.<sup>45</sup> The *Conclusions* note the urgency of ensuring the "full participation of women in sustainable development decision-making and disaster reduction management at all levels."<sup>46</sup> They further call on all NGOs, governments, and other stakeholders to, *inter alia*, "design and implement gender-sensitive economic relief and recovery projects and ensure economic opportunities for women, including both in the formal and non-formal sectors, taking into account the loss of land and property, including housing and other productive and personal assets."<sup>47</sup>

While an analysis of all international agreements calling for gender quality is beyond the scope of this paper, a number of additional instruments speak directly to the issue of mainstreaming women's perspectives and needs in reconstruction efforts. Notable among these, although non-binding, are the Johannesburg Declaration on Sustainable Development (2002),<sup>48</sup> the UN Millennium Development Declaration (2000),<sup>49</sup> the Accra Agenda for Action (2008),<sup>50</sup> the Paris

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<sup>41</sup> Convention on the Rights of the Child, G.A. Res. 44/25, Annex, U.N. Doc. A/RES/44/25 (Nov. 20, 1989).

<sup>42</sup> See Beijing Declaration and Platform for Action, UN Fourth World Conference on Women, U.N. Doc. A/CONF.177/20 (1995) & A/CONF.177/20/Add.1 ¶¶ 131-49 (1995).

<sup>43</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará), entered into force Mar. 5, 1995, 35 I.L.M. 1534 (1994).

<sup>44</sup> Committee on the Elimination of Discrimination Against Women, "Statement by the Committee on the Elimination of Discrimination Against Women in Regard to the Tsunami Disaster that Occurred in South-East Asia on 26 December 2004," Annex II ¶ 2, U.N. Doc E/CN.6/2005/CRP.1 (Feb. 8, 2005) [hereinafter CEDAW Tsunami Statement].

<sup>45</sup> Commission on the Status of Women, *Agreed Conclusions and Environmental Management and the Mitigation of Natural Disasters*, 46th Session of the Commission on the Status of Women, E/2002/27 (Mar. 2002) [hereinafter CSW *Agreed Conclusions*]. See also CEDAW Tsunami Statement, *supra* note 42 (inviting the UN General Assembly to draft a "comprehensive action-oriented resolution on the gender perspectives of disaster relief and humanitarian assistance, following the example of Security Council Resolution 1325").

<sup>46</sup> CSW *Agreed Conclusions*, *supra* note 43 at ¶ 7(c).

<sup>47</sup> *Id.* at ¶ 7(l).

<sup>48</sup> The Johannesburg Declaration on Sustainable Development and Plan of Implementation, World Summit on Sustainable Development, U.N. Doc. A/CONF.199/L.6/Rev.2 (2002), revised by U.N. Doc. A/CONF.199/L.6/Rev.2/Corr.1 (2002).

<sup>49</sup> UN Millennium Declaration, G.A. Res. 55/2, Supp. No. 49, at 4, U.N. Doc. A/55/49 (Sep. 8, 2000) [hereinafter Millennium Declaration].

Declaration (2005),<sup>51</sup> and the UN Economic and Social Council's Agreed Conclusions on Gender Mainstreaming (1997).<sup>52</sup> The Accra Agenda and the Paris Declaration deal specifically with the provision of development assistance, further underscoring the obligation of actors involved in Haiti's relief and reconstruction to align their objectives with those of Haiti's women. To accelerate this process, both instruments call on stakeholders to harmonize gender mainstreaming initiatives across reconstruction projects, and to facilitate and ensure meaningful participation by local women's groups throughout the reconstruction process.

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SC 1325 and SC 1820 govern all UN agencies, including those involved directly with disaster relief. SC 1892 has an even broader scope of authority that encompasses Member States, including Haiti. Of the aforementioned conventions, only a handful are legally binding on national governments and their affiliates. And yet the conventions' overlapping rights- and development-based objectives underscore the same point: women's needs and perspectives should significantly guide aid policy discussions within and outside of the UN, in both post-conflict and post-disaster settings. The collective force of these instruments validates the important evolution of gender mainstreaming as a norm in development law and policy. This framework itself has emerged in response to the traditional marginalization of women in reconstruction and development endeavors, which *ab initio* violates women's civil, political, and economic rights.

## II. Gender Mainstreaming as a Determinative Factor in the Success of Reconstruction and Development

*Gender equality is not only a women's issue, it is a development issue. Women's ability to benefit from investments in roads, energy, water, extension and financial services will profit not only women, but also men, children and society as a whole, as the economy grows and poverty is reduced.*

—Paul Wolfowitz, President of the World Bank Group<sup>53</sup>

Gender mainstreaming is imperative for Haiti's social and economic development. Indeed, the ability of any developing society to achieve social and economic progress is dependent upon the extent to which its development policies adequately serve the unmet needs and cater to the untapped abilities of its women. Of course, this is not to say that women are currently underperforming, but rather that they go undercompensated for their work, and that their capacities are being underutilized and underdeveloped. In fact, women "do two-thirds of the world's work [in terms of hours], earn one-tenth of the world's income, and own less than one-

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<sup>50</sup> Accra Agenda for Action, Sept. 4, 2008, *reprinted in* OCED, THE PARIS DECLARATION ON AID EFFECTIVENESS AND THE ACCRA AGENDA FOR ACTION, *available at* <http://www.oecd.org/dataoecd/11/41/34428351.pdf> [hereinafter OCED] (last visited Mar. 12, 2011).

<sup>51</sup> Paris Declaration on Aid Effectiveness, Mar. 2, 2005, *reprinted in* OCED, *supra* note 48.

<sup>52</sup> UN Economic and Social Council (ECOSOC) Resolution, Agreed Conclusions: 1997/2, U.N. Doc. A/52/3 (July 8, 1997) (listing guiding principles and recommendations for ensuring a gendered perspective is taken into account in all its work, including the work of its functional commissions).

<sup>53</sup> Speaking to a convening of Iraqi women and civil society groups in Baghdad, September 2003. Quoted in ANNEMARIE BRENNAN, BUILDING A NEW IRAQ: WOMEN'S ROLE IN RECONSTRUCTION 9 (2004).

hundredth of the world's property [measured by means of production].”<sup>54</sup> The primary reasons for this lie in reinforcing cycles of systemic gender inequality and poverty. By delimiting the legal and cultural spaces within which women can work, existing norms (formal and informal) curtail the fiscal returns women are able to capture for themselves and for their families. If women were able to realize these benefits, their increased wealth would, in turn, generate vast positive spillover effects for the rest of society; these effects, known in economic terms as positive externalities, are the indirect result of increasing female participation in the market economy. As discussed further below, women's income is spent disproportionately on children, which generates higher social returns than how males typically spend their income.<sup>55</sup> Thus given space to emerge and actualize, women's economic contributions can be transformative in terms of reducing poverty, improving health and welfare, and meeting other development goals. Even discrete policy reforms directed at benefiting women—such as changes to land titling laws or the establishment of literacy programs or small business loans—can generate multiplier effects, rippling across continents to benefit the global economy, as well as across generations.

This principle is true in all developing contexts; however it takes on heightened urgency and force in post-conflict and post-disaster situations where reconstruction offers rare opportunities to restructure public—and often even private—institutions. For better or worse, reconstruction endeavors will lay the foundation for future development and set its pace. For reasons more fully described below, reconstruction efforts that adopt a gender-focused approach are inherently more likely to achieve their stated goals and thus portend a course of fruitful long-term development. Alternatively, reconstruction programs that fail to sufficiently coalesce around women's needs or rely on women's input, will actually inhibit development, as they reinforce existing gendered systems and use up valuable resources. There is also a significant opportunity cost inherent in having missed the chance to invest capital in programs that would have promoted development more fully.

Gender mainstreaming is important not only because it furthers women's equality and empowerment, which are goals in themselves, but also because it is crucial to achieving all other development goals.<sup>56</sup> Women make up over half the population in Haiti, and serve as the heads

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<sup>54</sup> CATHARINE A. MACKINNON, ARE WOMEN HUMAN? AND OTHER INTERNATIONAL DIALOGUES 21 (2006) (citing UNITED NATIONS, THE STATE OF THE WORLD'S WOMEN (1979)).

<sup>55</sup> See generally Shelley Phipps and Peter S. Burton, *What's Mine is Yours? The Influence of Male and Female Incomes on Patterns of Household Expenditure*, 65 *ECONOMICA* 260, 599-613 (1998). See also Section III pp 16-20 and fns 74-96.

<sup>56</sup> The notion of gender equality endorsed here relates to the men and women's respective “capability for functioning,” meaning it is concerned with equality in the distribution of resources and opportunities that determine one's quality of life. This ‘capabilities approach’ contrasts with development theories or ethics that use strictly economic or subjective utility measures to determine growth. See Amartya Sen, *Equality of What?*, The Tanner Lectures on Human Values 195 (Sterling M. McMurrin ed., 1980), reprinted in CHOICE, WELFARE AND MEASUREMENT 353 (1997); Martha C. Nussbaum, *Human Capabilities, Female Beings*, in WOMEN, CULTURE, AND DEVELOPMENT 61 (M. Nussbaum and J. Glover eds., 1995). It follows that gender equality and gender mainstreaming in reconstruction have overlapping elements. Gender equality, as defined by the World Bank, encompasses “equality under the law, equality of opportunity (including equality of rewards for work and equality in access to...[resources]), and equality of voice (the ability to influence and contribute to the development process).” WORLD BANK, *ENGENDERING DEVELOPMENT THROUGH GENDER EQUALITY IN RIGHTS, RESOURCES, AND VOICE* 2-3 (2001) [hereinafter WORLD BANK, *ENGENDERING DEVELOPMENT*]. Thus both concepts have to do with access to and distribution of material goods, such as food, shelter and health necessities. Both are committed to due attention

of nearly half its households.<sup>57</sup> Women are often a family's primary income generator, as well as the primary rearer of children—roles that in a fundamental sense make them “the major wealth producers” of the economy.<sup>58</sup> And yet, as a result of legal, societal, and cultural norms, Haiti's women have long endured unequal positions vis-à-vis men in myriad aspects of life. Prior to the earthquake, 60 percent of female headed households lived in extreme poverty, and 26 percent of all women and all girls (15+ years old) had been victims of sexual and gender-based violence.<sup>59</sup> The disparities between men and women are well-documented and cut across sectors, but to be more explicit: historically, women have been vastly underrepresented in political institutions; even before the earthquake only 3.6 percent of Haiti's parliament were women.<sup>60</sup> Gender inequality has been no less pronounced in economic sectors—as of 2009, most Haitian women worked in the informal economy earning less than half of what men earned<sup>61</sup>—as well as educational sectors.<sup>62</sup> As a whole, women in Haiti historically have enjoyed less access than men to productive resources, social services and civic affairs.<sup>63</sup>

The earthquake has exacerbated these disparities. This is not unusual in societies forced to cope with a natural disaster, where pre-existing gender paradigms render women more vulnerable to a disaster's immediate and accumulated effects. Women, for example, typically comprise the majority of the dead and wounded: nearly 80 percent of the Indonesians killed during the December 2004 tsunami that struck South East Asia were women.<sup>64</sup> This asymmetry in fatalities is caused largely by differences in gender roles, including women's occlusion from early

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being paid to women's particular needs and abilities and both require the participation of women in decision-making.

<sup>57</sup> EQUALITY NOW ET AL., THE HAITI GENDER SHADOW REPORT: A COALITION GENDER SHADOW REPORT OF THE 2010 HAITI POST-DISASTER NEEDS ASSESSMENT 15 (2010) [hereinafter GENDER SHADOW REPORT].

<sup>58</sup> ANN CRITTENDEN, THE PRICE OF MOTHERHOOD: WHY THE MOST IMPORTANT JOB IN THE WORLD IS STILL THE LEAST VALUED 2 (2001) (discussing the role of parents, especially mothers, in modern economies) (quotations and citation omitted).

<sup>59</sup> See Office of the UN Special Envoy for Haiti, Women and Gender: Key Statistics Prior to the 2010 Earthquake, at <http://www.haitispecialenvoy.org/about-haiti/women-gender/> (last visited July 10, 2011).

<sup>60</sup> Even before the earthquake, Haiti ranked among the lowest in the Latin American/Caribbean region for presence of women in government; 3.6 percent of parliament members were female, compared to the regional high of 28 percent in Cuba. UNIFEM, UNIFEM IN HAITI: SUPPORTING GENDER JUSTICE, DEVELOPMENT AND PEACE 3 (July 2004) [hereinafter UNIFEM GENDER JUSTICE]. Prior to the earthquake, women comprised less than 13 percent of Haiti's Senate and 4 percent of the Lower Chamber. OECD Online, Social Institutions & Gender Index, Gender Inequality and Social Institutions in Haiti, at <http://genderindex.org/country/haiti> (last visited July 11, 2011) [hereinafter OECD Index]. Against the backdrop of strict gender norms and broad cultural acceptance of gender-based violence, many Haitian women view political participation as a dangerous activity. UNIFEM Fact Sheet, *supra* note 10.

<sup>61</sup> In 2009, the average annual income for Haitian women was US\$626, compared with US\$1,695 for men. UNIFEM Fact Sheet, *supra* note 10 (citing UNDP's Human Development Report 2009).

<sup>62</sup> Historically, large differentials have existed between Haitian boys and girls in terms of primary and secondary levels of educational achievement. See UNIFEM GENDER JUSTICE at 4 (citing data); GENDER SHADOW REPORT, *supra* note 54 at 14-17. The literacy rate among adult women stands at 64 percent. UNIFEM Fact Sheet, *supra* note 52.

<sup>63</sup> Much of the gender discrimination in Haiti is premised on traditional family structures and rigid social norms about the proper role of women, rather than formal law. See Constitution de la République d'Haïti, Art. 18 (1987) (prohibiting discrimination). Inequality is, however, institutionalized as a matter of law in several spheres, including family law and property rights. See OECD Index, *supra* note 57 (discussing how the Haitian family code and penal code and property law are disfavorable to women).

<sup>64</sup> See OXFAM INTERNATIONAL, THE TSUNAMI'S IMPACT ON WOMEN 2 (Mar. 2005).

warning systems and other measures of disaster-preparedness. Immediately after a disaster strikes, women have less mobility than men; given their role as principal caretakers for children and the elderly, women are less able and less willing to flee for their own safety.<sup>65</sup> In the wake of a disaster, chaos and disorganization put women at further risk of violence and neglect of health problems.<sup>66</sup> And since informal and agricultural sectors are often the most impacted by disasters, frequently women constitute a disproportionate number of the unemployed following a disaster. Here again, women's caretaker responsibilities restrict their freedom to migrate away from home to look for alternative sources of income. It is not uncommon for males, however, to migrate away from their homes after a disaster; this "flight of men" phenomenon renders many women the sole income earners for their families.<sup>67</sup> In severe crisis situations like Haiti's, this already implacable economic isolation is compounded by the fact that many families, as a result of their houses being destroyed, are forced to relocate to shelters that lack adequate hygienic facilities for basic daily tasks such as cooking and bathing. This confluence of events means that a woman's domestic burden increases at the same time as her economic burden, further constraining her ability to seek employment or healthcare. Adding more weight to these hardships, incidence of domestic abuse and sexual violence tend to spike in the wake of disasters.<sup>68</sup>

All of these negative trends have borne out in Haiti. Since January 2010, Haiti's women have had to endure more than their demographic share of rising poverty levels, as well as sharp increases in their already alarming exposure to health problems and sexual violence.<sup>69</sup> Studies by various grassroots and international NGOs confirm that high incidence sexual violence occur in the displacement camps.<sup>70</sup> In recent household survey conducted in the camps, 70 percent of respondents reported being more worried about sexual violence after the earthquake than before.<sup>71</sup> The severity of harms to women during and after the earthquake would alone suffice to justify a gender-focused approach to reconstruction, as would the economic and socio-cultural gender inequalities that predated the disaster. The fact that all these circumstances are manifest at the same time makes the need to mainstream gender absolutely essential, both to shorten the term of relief efforts and to ballast a successful long-term development strategy.

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

<sup>66</sup> For more detailed discussions of the myriad ways in which women are disproportionately impacted by natural disasters, see Enarson, *Gender*, *supra* note 21; OXFAM, *supra* note 22.

<sup>67</sup> Enarson, *Gender*, *supra* note 21 at 10 (citing sources documenting the phenomenon).

<sup>68</sup> Patterns of post-disaster increases in violence against women are well-documented. *See generally* World Health Organization, *Interpersonal Violence and Disasters Fact-Sheet 2* (2005) (citing sources), *available at* [http://www.who.int/violence\\_injury\\_prevention/publications/violence/violence\\_disasters.pdf](http://www.who.int/violence_injury_prevention/publications/violence/violence_disasters.pdf).

<sup>69</sup> Despite laws criminalizing rape and domestic violence, gender-based violence continues to be a serious issue in Haiti. Even prior to the earthquake, data suggested domestic violence was widespread and on the rise; one study found that eight out of every ten Haitian women are victims of domestic violence, and the latest Demographic and Health Survey (DHS), conducted in 2005-06, reported that nearly one-third of Haitian women believe that wife-beating is justified in certain situations. *See* OECD Index, *supra* note 57 (citing sources). The DHS survey contains comprehensive information on the status of maternal and child health in Haiti before the earthquake. *See* 2005-2006 *Enquête Mortalité, Morbidité, et Utilisation des Services IV (EMMUS-IV)* (documenting the worsening of Haitian women's nutritional status over the past twenty years, in addition to other welfare indicators), *available at* <http://www.measuredhs.com>.

<sup>70</sup> *See supra* note 28 and accompanying text; CHR&GJ Survey, *id.*, (elaborating upon the tendency toward the under-reporting of sexual abuse, the correlation between food insecurity and sexual violence, and apparent increases in transactional or "survival sex" in Haiti's IDP camps).

<sup>71</sup> CHR&GJ Survey, *supra* note 28 at 4.

Women's empowerment and improvements in gender equality are crucial to advancing the eight Millennium Development Goals (MDGs) set forth at the global Millennium Summit in 2000: eradicating poverty and hunger, achieving universal primary education, reducing child mortality and improving maternal health, combating malaria and other diseases, ensuring environmental sustainability, and developing a global partnership for development.<sup>72</sup> Thus while empowering women and promoting gender equality constitute the third of the eight MDGs, making inroads toward that one (the third) is essential to realizing progress in all of the others.<sup>73</sup> In other words, gender equality and women's empowerment are indispensable development tools as well as development goals in and of themselves.

Women's potential contributions to development are varied and legion. Given the number of women and their pivotal roles in society as economic actors and as primary caretakers of a nation's next generation, *and* the degree to which their capabilities have been tempered systemically by legal and social norms, women constitute a developing society's most powerful untapped resource. Within the development literature, the assertion that women-focused policies are imperative to development has gained universal recognition. Its appeal lies in the rationale behind it, which is grounded not merely in theory, but also robust evidence across continents, collected by economists, demographers, and other social scientists.<sup>74</sup>

Economic empowerment provides a clear illustration of how advancing gender equality can catapult societies toward more tangible development goals, accelerating the mutually reinforcing link between them. As one scholar puts it, the maxim that improving gender equality improves economic growth has "'now achieved 'motherhood' status, in virtue of the accumulating evidence confirming what has long been available at an intuitive level, which is that 'investing in women,' especially in the areas of health and education, is likely to generate payoffs or 'positive externalities' for the well-being of children, the household, and the economy as a whole.'"<sup>75</sup> The payoffs for children carry singular importance in terms of ensuring that development gains carry over and build upon themselves. Where one generation succeeds in reducing poverty and securing rights related to basic needs such as food, water, and freedom from sexual violence, the next becomes freer to exercise subsidiary rights, such as educational or participatory rights, more fully.

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<sup>72</sup> Millennium Declaration, *supra* note 47.

<sup>73</sup> For more comprehensive discussions of the interrelation between gender equality and achievement of each MDG, see WORLD BANK, GENDER EQUALITY & THE MILLENNIUM DEVELOPMENT GOALS (April 2003) [hereinafter WORLD BANK, GENDER EQUALITY]; and WORLD HEALTH ORGANIZATION, ADDRESSING VIOLENCE AGAINST WOMEN AND ACHIEVING THE MILLENNIUM DEVELOPMENT GOALS (2005) [hereinafter WHO].

<sup>74</sup> The World Bank has produced a volume of reports substantiating women's role in economic and social development. See World Bank, Gender and Development, Reports and Publications, at [http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTGENDER/ 0,,contentMDK:20242971~menuPK:489489~pagePK:210058~piPK:210062~theSitePK:336868,00.html](http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTGENDER/0,,contentMDK:20242971~menuPK:489489~pagePK:210058~piPK:210062~theSitePK:336868,00.html) (last visited Mar. 12, 2011); WORLD BANK, ENGENDERING DEVELOPMENT, *supra* note 53. See also JANET MOMSEN, GENDER AND DEVELOPMENT (2010).

<sup>75</sup> Anita Bernstein, *Pecuniary Reparations Following National Crisis: A Convergence of Tort Theory, Micro-Finance, and Gender*, 31 U. PA. J. INT'L ECON. L. 1, 49-50 (2009) (quoting Kerry Rittich, *Engendering Development/Marketing Equality*, 67 ALB. L. REV. 575, 580 (2003)).

Reconstruction and development policies that proactively enhance women's economic opportunities will significantly advance all seven substantive MDGs.<sup>76</sup> In particular, such policies will have a direct impact on goals related to poverty reduction, education, health and nutrition. This is because, as a general rule, when low-income women have access to financial resources, such as household income, they are likely—more likely than men, in fact—to invest it in their children, by spending it on goods and services like food, healthcare and schooling, as well as their own health needs.<sup>77</sup> Low-income women tend to contribute all of their income to their households, whereas similarly situated men tend to spend significant portions of theirs consuming cigarettes, beer and other items of pleasure.<sup>78</sup> For instance, researchers in Kenya and Malawi found that among sugarcane farmers, the more women controlled household income, the less money was spent on alcohol and the higher a family's caloric intake.<sup>79</sup> In Africa, researchers examining microfinance programs were able to put a dollar amount on the discrepancy, finding that “women reinvest[ed] in their communities at greater rates than men—at eighty-nine cents on the dollar versus sixty cents, respectively.”<sup>80</sup> In Haiti, relief workers tasked with handing out emergency food coupons for the UN World Food Program after the earthquake instituted a women-only distribution policy after realizing that, not atypically, the men were less reliably using the coupons to feed their families.<sup>81</sup> Thus even in the short-term, reconstruction programs that grow economic opportunities for women will improve the day-to-day lives of children. These opportunities can be delivered in numerous ways. Examples include reserving paid jobs for women, especially in rural or urban infrastructure projects, providing vocational training to women, and awarding loans and construction contracts to women-owned businesses.

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<sup>76</sup> In theory, gender mainstreaming should also further—albeit more indirectly—the eighth MDG, that of developing a global partnership for development. *But see* ASSOCIATION FOR WOMEN'S RIGHTS IN DEVELOPMENT, DISCUSSION PAPER: DEVELOPMENT COOPERATION BEYOND THE AID EFFECTIVENESS PARADIGM—A WOMEN'S RIGHTS PERSPECTIVE 2 (Jan. 2011) (arguing that MDG8 “is being subsequently eradicated due to non-implementation”).

<sup>77</sup> *See, e.g.*, Agnes Quisumbing and John Maluccio, *Resources at Marriage and Intrahousehold Allocation: Evidence from Bangladesh, Ethiopia, Indonesia, and South Africa*, 65 OXFORD BULL. OF ECON. AND STAT. 3, 283-327 (2003); Naila Kabeer and Simeen Mahmud, *Globalization, Gender and Poverty: Bangladeshi Women Workers in Export and Local Markets*, 16 J. INT. DEV. 1, 93-109 (2004); Seema Vyas and Charlotte Watts, *How Does Economic Empowerment Affect Women's Risk of Intimate Partner Violence in Low and Middle Income Settings?: A Systematic Review of Published Evidence* 21 J. INT. DEV. 5, 577-78 (2009) (citing sources); Crittenden, *supra* note 55 at (culling the literature). The emergence of microfinance and microcredit institutions that target women has been helpful in isolating data reinforcing this point. Muhammad Yunus, the Nobel prize-winning founder of Grameen Bank, states it simply: “Money entering a household through a women brings more benefits to the family as a whole.” *Quoted in* Anita Bernstein and Hans Dieter Seibel, *Reparations, Microfinance, Gender: A Plan, With Strategies for Implementation*, 1 CORNELL INT'L L. J. 44 (forthcoming 2011) (citation omitted) (on file with the author). In the words of a prominent sociologist: “The best way to raise the living standard of poor children is to increase the amount of money over which their mothers have control.” Crittenden, *supra* note \_\_\_ at \_\_\_ (quoting Jan Pahl, *MONEY AND MARRIAGE* 171 (1989)).

<sup>78</sup> *See* Crittenden, *supra* note 55 at 121-22 (collecting studies); Charlotte E. Lott, *Why Women Matter: The Story of Microcredit*, 27 J.L. & COM. 219, 230 (2009) (surveying the literature).

<sup>79</sup> Crittenden, *supra* note 55 at 121 (female-headed households in Malawi spent 25 to 50 percent less on alcohol than male-headed households) (citation omitted).

<sup>80</sup> Bernstein and Seibel, *supra* note 74 (quoting Sarita Gupta, *Microfinance in Africa: Harnessing the Potential of a Continent*, 9 MICROFINANCE INSIGHTS 12,14 (2008)).

<sup>81</sup> David Schaper, *New Program for Food Aid in Haiti Targets Only Women*, NPR Morning Edition (Feb. 1, 2010), available at <http://www.npr.org/templates/story/story.php?storyId=123202099>. A spokesman for the World Food Program informed reporters: “Our experience around the world is that food is more likely to be equitably shared in the household if it is given to women.” *Id.*

Avenues for improving women's long-term economic prospects will arise, and must be capitalized on, in every facet of a reconstruction process. Land use policies must account for women's involvement in subsistence agriculture and women's property ownership rights. (If women have title to their land, they can use it as collateral for credit.) Decisions about where to build schools and water treatment plants, or particular modes of transportation, must be made with knowledge of gender-based divisions of labor. (In communities where girls are relied upon to assist with agricultural or domestic labor, such as procuring clean water,<sup>82</sup> the construction and placement of infrastructure like sanitation systems can have a dramatic impact on girls' school attendance.) Women's reproductive healthcare needs should influence how hospitals are rebuilt, as well as new workplace safety legislation. Special attention should be paid to the impact of donor-funded projects on Haiti's agricultural sector, which is predominantly female, and especially to the farming cooperatives that benefit large numbers of women.<sup>83</sup> Regardless of the focus area, one unifying theme must be the consultation of local women. Local women must be brought into deliberative processes, and assured roles in policy implementation. Their participation is important not only for its own sake, but also because it is the only way to ensure that reconstruction programs address their specific needs and bestow their capabilities with enough room to flourish.<sup>84</sup>

It is perhaps obvious that investing in children and in policies that improve their welfare generates higher social returns than other investments. What should also be obvious, but in the political realm has not proven so, is that prioritizing women is the most effective and cost-effective way to invest in children, leading directly to more schooling for children, better health outcomes, and higher incomes long-term. In studies conducted around the world, investing in education for women and girls has been shown to raise per-capita labor productivity, improve health outcomes, and reduce poverty.<sup>85</sup> Educated women are more likely to be formally employed, earn higher wages, make use of healthcare, and participate in civic affairs. They pass on these returns to their children. Dividends appear in intergenerational literacy patterns,<sup>86</sup> as well as strong negative associations between low maternal levels of education and child

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<sup>82</sup> See Center for Human Rights & Global Justice at New York University School of Law, *WÒCH NAN SOLEY: THE DENIAL OF THE RIGHT TO WATER IN HAITI* (2008) (demonstrating legal and practical barriers to Haitians' ability to exercise their right to water, including discrimination and burdens faced by women and children in particular).

<sup>83</sup> See GENDER ACTION, *supra* note 11, at 5 (also noting the immediate dangers of privatizing agricultural production).

<sup>84</sup> There are numerous ways to facilitate women's participation and reconstruction planners should weigh the appropriateness of alternative options. Among the mechanisms that should be considered are quotas, double quotas, reserved seats, indirect elections, caucuses, special appointments, and political party mandates. Longer-term strategies may focus on voter outreach, registration, and education, as well as the cultivation of female political candidates through networking and training opportunities. Some tools may be better suited for fostering female representation in particular spheres. Quotas, for instance, have been generally successful in advancing women's participation in legislatures, but have proven less helpful in economic areas. See WHO, *supra* note 70 at fn 9 ("Quotas that seek only to increase number of women and not to change the conditions and structures that allow free full participation... will have limited success-and may even increase women's burden."). For an illustrative discussion of how various tools have been used to enhance women's participation in post-conflict African nations, see UNIFEM, *Beyond Numbers: Supporting Women's Political Participation and Promoting Gender Equality in Post-Conflict Governance in Africa* (Jan. 2006).

<sup>85</sup> See, e.g., WORLD BANK, *ENGENDERING DEVELOPMENT*, *supra* note 53.

<sup>86</sup> Cycles of intergenerational poverty can be matched by cycles of intergenerational development. For instance, children of literate mothers in India have been shown to spend two more hours studying each day than children of illiterate mothers. *Id.* at 7.

malnutrition and child mortality.<sup>87</sup> One recent study projects that a country failing to meet the MDG gender educational target would experience, by 2015, a deficit in per capita income of 0.1-0.3 percentage points.<sup>88</sup> Empirical findings from diverse countries demonstrate that women who have primary education marry later than those who have no education, leading to smaller and healthier families; just one additional year of schooling has been shown to reduce a woman's fertility rate by 5-10 percent.<sup>89</sup> Yet, without interventions that are specifically engineered to integrate women into productive sectors, existing gender disparities and institutionalized inequalities will leave this human capital dormant. In Sub-Saharan Africa, for example, if the necessary policy reforms were implemented so that women's access to land and other agricultural inputs equaled that of men, total agricultural outputs could increase between 6-20 percent.<sup>90</sup>

Enhancing female participation in formal labor markets increases the size of the economy overall, one benefit of such growth is that it moves producers down the average cost curve, meaning that goods cost and services will cost less per unit to make or provide.<sup>91</sup> This is a classic advantage of having a bigger economy. The dramatic increase in women's involvement in the labor force is considered one of the most significant sources of economic growth in the United States from 1970-2000.<sup>92</sup> Studies show that eliminating gender inequality in Latin America's labor market would increase women's wages by close to 50 percent, and increase national output by 5 percent.<sup>93</sup> Women-focused reconstruction and development policies can spark a similar period of immense economic growth for Haiti. Anecdotes from various countries offer more personal examples of how creative and refined such policies can be. In Peru, a well-tailored program aimed at helping rural women develop basic computer skills has enabled one group of women to evolve their baking business to take orders online from customers abroad.<sup>94</sup> These

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<sup>87</sup> *Id.* at 8.

<sup>88</sup> *Id.* at 4-5 (citing DINA ABU-GHAIDA AND STEPHAN KLASSEN, THE COSTS OF MISSING THE MILLENNIUM DEVELOPMENT GOAL ON GENDER EQUITY (World Bank 2002)).

<sup>89</sup> WORLD BANK, GENDER AND DEVELOPMENT IN THE MIDDLE EAST AND NORTH AFRICA: WOMEN IN THE PUBLIC SPHERE 28 (2004).

<sup>90</sup> *Id.* at 7.

<sup>91</sup> See Oded Galor and David N. Weil, *The Gender Gap, Fertility, and Growth*, 86 *Am. Econ. Rev.* 3, 374 (June 1996) (modeling the interrelationship between women's wage earnings, fertility, and national economic growth). See also Claudia Goldin, *The U-Shaped Female Labor Force Function in Economic Development and Economic History*, National Bureau of Economic Research, Working Paper No. 4707 (April 1994) (discussing the economy-wide effects of educated women entering the labor force in developing countries).

<sup>92</sup> See Federal Reserve Bank of San Francisco Economic Letter, "Labor Force Participation and the Prospects for U.S. Growth," No. 2007-33 (Nov. 2, 2007) (noting that growth in the US labor force added about 1.7 percentage points per year to the national average annual growth in potential real GDP from 1948 to 2001, driven by the emergence of baby boomers and the entry of women); U.S. Bureau of Labor Statistics, *The Editor's Desk: Women in the Labor Force, 1970-2009* (Jan. 5, 2011). See also Gary S. Becker, *Human Capital, Effort, and the Sexual Division of Labor*, 3 *J. of Labor Econ.* 1, S33 (Jan. 1985) (noting that the major cause of women's increased participation in the labor market in the twentieth century was their increased earning potential, but arguing that "responsibility for child care, food preparation, and other household activities also prevents the earnings of women from rising more rapidly").

<sup>93</sup> UNIFEM, "Investing in Women-Solving the Poverty Puzzle: Facts and Figures 2" (Oct. 17, 2007) (citing a 2001 report by the UN Office of the Special Adviser on Gender Issues and Advancement of Women), available at [http://www.womenfightpoverty.org/docs/WorldPovertyDay2007\\_FactsAndFigures.pdf](http://www.womenfightpoverty.org/docs/WorldPovertyDay2007_FactsAndFigures.pdf).

<sup>94</sup> *Id.*

stories provide but a glimpse of the economic gains to be had through women-targeted initiatives.

Violence against women is another place where gender equality and sustainable development intersect, such that reducing violence against women and achieving development targets are mutually reinforcing enterprises.<sup>95</sup> (Gender-based violence acts as a barrier to development, while economic empowerment lowers women's risk of exposure to such violence.<sup>96</sup>) And in Haiti, as with everywhere else, violence against women causes negative externalities, or exacts costs, that extend far beyond individual households to be borne by society. Indeed, most economic costs of gender-based violence are borne by society, rather than by the victim or her abuser.<sup>97</sup> In developing societies, such violence is also intimately associated with broader, deleterious social conditions such as poverty, illiteracy, child mortality and HIV/AIDS.<sup>98</sup>

Gender-based violence is also, however, rooted in a complex network of interrelated factors: cultural acceptance of violence as a means of mediating conflict and the persistence of gendered systems, stereotypes and expectations that devalue women. Thus, wherever possible, reconstruction and development programs should be conceived with an eye toward preventing and delegitimizing violence against women. Schools provide an illustrative example of how gender-focused policies can strategically serve this nexus of interests. School design can impact significantly whether girls and boys enjoy equal access to education. Being duly mindful of gender-relevant education delivery attributes like the presence of female teachers, safe transport between school and home, and sex-segregated facilities can increase girls' enrollments substantially.<sup>99</sup> Studies show that "[w]hen a country educates both its girls and boys, economic productivity tends to rise, maternal and infant mortality usually fall, fertility rates decline and the

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<sup>95</sup> Around the world, violence against women is recognized as a social, health and human rights problem. *See* WHO, *supra* note 70.

<sup>96</sup> *See* Vyas and Watts, *supra* note 74 at 577-602 (surveying the effects of economic development and poverty reduction on rates of intimate partner violence).

<sup>97</sup> These wide-ranging costs are: direct medical and mental health care costs, including hospitalizations and doctor visits; lost productivity and days of paid or household work; criminal justice costs (police reports, arrests and detainment, etc.); provision of social services such as transitional housing and counseling. The non-quantifiable effects are no less significant, including psychosocial effects and a lower quality of life for victims and their children. Childhood exposure to gender-based violence has myriad short- and long-term adverse effects on children, such as maladjustment and lower social competencies and cognitive skills, as well as reduced educational attainment, productivity and quality of life. *See generally* Lesley Laing and Natasha Bobic, *Literature Review: Economic Costs of Domestic Violence*, AUSTRALIAN DOMESTIC & FAMILY VIOLENCE CLEARINGHOUSE (April 2002) (collecting studies). *See also* Audra Bowlus and Shannon Seitz, *Domestic Violence, Employment, and Divorce*, Queen's Economics Department Working Paper, No. 1075 (2005) (affects on wage and employment status); Bowlus and Seitz, *Role of Domestic Abuse in Labor and Marriage Markets; Observing the Unobservables*, University of Western Ontario Department of Economics Working Paper, No. 9801 (Feb. 1998); Susan Lloyd, *The Effects of Domestic Violence on Women's Employment*, 19 LAW & POLICY 2 (Apr. 1997); Scott Carrell and Mark Hoekstra, *Externalities in the Classroom: How Children Exposed to Domestic Violence Affect Everyone's Kids*, AMERICAN ECONOMIC JOURNAL: APPLIED ECONOMICS 2010. Vol. 2 No. 1, 211-228 (Jan. 2010); Robert A. Pollak, *An Intergenerational Model of Domestic Violence*, 17 J. OF POPULATION ECON. 4, 311-329 (2004); John Fantuzzo and Wanda Mohr, *Prevalence and Effects of Child Exposure to Domestic Violence*, 9 DOMESTIC VIOLENCE AND CHILDREN 3, 21-32 (Winter 1999).

<sup>98</sup> *See generally*; WORLD HEALTH ORGANIZATION AND LONDON SCHOOL OF HYGIENE & TROPICAL MEDICINE, PREVENTING INTIMATE PARTNER AND SEXUAL VIOLENCE AGAINST WOMEN: TAKING ACTION AND GENERATING EVIDENCE (2010); UNICEF, *Domestic Violence Against Women and Girls*, Innocenti Digest, No. 6 (June 2000).

<sup>99</sup> WORLD BANK GENDER EQUALITY, *supra* note 70 at 12.

health and educational prospects of the next generation are improved.”<sup>100</sup> Moreover, when girls attend school at rates equal to their numbers, it conveys to everyone the message that females are as important as males, shifting social expectations and norms about gender hierarchies.<sup>101</sup>

## Conclusion

Rational policymaking exhorts actors involved in Haiti’s reconstruction to prioritize the needs of Haiti’s women and ensure their meaningful participation throughout the reconstruction process. In some cases, international treaties or Security Council Resolutions may require gender-focused policymaking. In any event, the empirical data is conclusive: empowering women and pursuing gender quality are essential to accelerating economic growth and achieving other development goals. And yet crippling gender imbalances permeate nearly every sector of Haitian society. They are entrenched by legal and cultural norms that have historically marginalized and restrained Haiti’s women; the earthquake has exacerbated the adverse consequences of these norms. Against this backdrop, if gender equality and female empowerment are to be pursued seriously—both as goals in themselves and as development tools—then there can be no such thing as gender-neutral reconstruction efforts in Haiti. A failure to proactively focus on women as participants and beneficiaries of reconstruction programs will prolong women’s victimization, both as it existed before the natural disaster and afterward. Such myopia will also set back development goals, by leading to programs that are inured to misallocate valuable resources and have limited effectiveness.

Reconstruction offers a precious opportunity to use rights enshrined in international law as constituent measures of development, and to lay the foundation for Haiti’s long-term growth. Provided with entry points, Haiti’s women can drive reconstruction—the reconstruction of not only Haiti’s physical infrastructure, but also its families and communities. Initially, reconstruction policies must focus on meeting women’s immediate needs: food, clean water and security. At the same time, however, all reconstruction efforts must be designed with an eye toward the future, toward enhancing women’s capacities in ways that foster spillover effects for children, thereby propelling intergenerational economic and social progress. Going forward, the Haiti Reconstruction Fund, the Interim Haiti Recovery Commission,<sup>102</sup> and all international

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<sup>100</sup> *Id.*

<sup>101</sup> Placing political power in the hands of women yields payoffs for development, as well as international affairs. Gender parity in general, and women’s political participation in particular, have been linked to political stability and more peaceful relations between states. See CHERYL BENARD ET AL., WOMEN AND NATION-BUILDING 7-9 (RAND 2008) (citing studies). According to a World Bank report, there is a “robust correlation between domestic gender inequality and external aggression,” such that “gender equality is not merely a matter of social justice but of international security.” *Id.* at 8 (citation omitted). Additional studies from the United States and other western democracies suggest that as a rule, women policymakers introduce and promote more child-focused legislation and public expenditures than their male counterparts. See Crittenden, *supra* note 55 at \_\_\_ (citing sources); Bernstein and Seibel, *supra* note 74 (citing sources). These trends point to the conclusion that women’s participation in political and civic affairs alters public policy substantively, in ways that bode well for peaceable relations with other countries as well as for domestic social welfare.

<sup>102</sup> The Haiti Reconstruction Fund (HRF) was created by the World Bank, the Inter-American Development Bank, and the United Nations, with a mandate to coordinate the distribution of multi-donor funds and make sure they are used to finance high-priority projects. All allocations of HRF dollars must be approved by the Interim Haiti Recovery Commission, which Haiti’s president established by decree in April 2010 in order to oversee all recovery projects and programs, including those underwritten by private interests. The Commission is co-chaired by Prime

financial investment institutions should routinely and systematically involve Haitian women's groups in each phase of reconstruction, including the design, implementation, and evaluation of projects.<sup>103</sup>

More than any other development strategy, unlocking women's human capital can help a country transition out of a crisis and chart a future based on stability, economic growth, welfare betterment, and equality. Reconstruction policies that mainstream gender, both procedurally and substantively, are crucial to this pursuit. They will also be crucial to sustaining its momentum long after this peak period of humanitarian aid to Haiti is over.

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Minister Jean-Max Bellerive and President William Clinton and, as of this writing, is set to receive a 12-month extension on its mandate, thus securing the Commission's authority to heighten and accelerate gender mainstreaming in Haiti's reconstruction. *See* News, Interim Haiti Recovery Commission, "Seventh IHRC Board Meeting," July 22, 2011, *available at* [www.http://en.cirh.ht/seventh-ihrc-board-meeting.html](http://en.cirh.ht/seventh-ihrc-board-meeting.html).

<sup>103</sup> Given the U.S.'s sizeable financial contributions to Haiti (the U.S. has pledged \$1.15 billion to post-earthquake reconstruction) and the U.S.'s singularly powerful role in international financial institutions, there are concrete steps that the U.S. Congress and federal agencies could take to advance the call for effectual mainstreaming argued herein. For specific recommendations on how the U.S. can help ensure that all Haitian redevelopment projects adequately address women's needs, contain proper gender analyses, and encourage the participation of women, including in leadership roles, see publications by Gender Action, *e.g.* "Gender Impacts of International Financial Institutions Grants & Loans," (July 2010), *available at* <http://www.genderaction.org/regions/lac/Haiti.html>.