



Working Together

Human Rights, the Sustainable Development Goals and Gender Equality

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Abbreviations

CCTP	Conditional Cash Transfer Programme
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CO	Concluding Observation
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
EA	Equality Act
FGM	Female Genital Mutilation
GC	General Comment
GR	General Recommendation
HLPF	United Nations High Level Political Forum on Sustainable Development
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPD	International Conference on Population and Development
ILO	International Labour Organization
LDCs	Least Developed Countries
MDGs	Millennium Development Goals
MPI	Multidimensional Poverty Index
NGO	Non-Governmental Organisation
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
GDP	Gross Domestic Product
SDGs	Sustainable Development Goals
SRHR	Sexual and Reproductive Health Rights
UK	United Kingdom
NI	Northern Ireland
UN	United Nations
US	United States

UN Sustainable Development Goals

GOAL 1: No Poverty
 GOAL 2: Zero Hunger
 GOAL 3: Good Health and Well-being
 GOAL 4: Quality Education
 GOAL 5: Gender Equality
 GOAL 6: Clean Water and Sanitation
 GOAL 7: Affordable and Clean Energy
 GOAL 8: Decent Work and Economic Growth
 GOAL 9: Industry, Innovation and Infrastructure

GOAL 10: Reduced Inequality
 GOAL 11: Sustainable Cities and Communities
 GOAL 12: Responsible Consumption and Production
 GOAL 13: Climate Action
 GOAL 14: Life Below Water
 GOAL 15: Life on Land
 GOAL 16: Peace, Justice and Strong Institutions
 GOAL 17: Partnerships for the Goals

Executive summary

This report considers the extent to which human rights and the UN's Sustainable Development Goals (SDGs) can work together to further substantive gender equality. It argues for a synergistic approach, which requires a reconfiguration of both development goals and human rights. The report highlights the central differences between a human rights approach to gender equality and that of the SDGs, but argues that there are nevertheless crucial spaces for synergies between the two systems.

One of the risks of placing empowerment of women at the centre of the development agenda is that they will be regarded primarily as carrying the responsibility for development. Because the evidence shows that women are likely to prioritise their children's welfare in using available resources, they are frequently seen as the key agents for poverty alleviation. For the SDGs to be truly transformative for women, it is therefore crucial to ensure that they are infused with a transformative understanding of gender equality. Rather than simply focussing on like treatment or aggregate outcomes, this requires attention to be paid simultaneously to four dimensions of equality: redressing disadvantage; addressing stereotyping, stigma, prejudice and violence; facilitating voice and participation; and systemic or institutional change. The report uses the lens of transformative equality to compare the ways in which the SDGs and human rights address two main issues: women and reproductive health, and women and poverty. The aim is to construct an evaluative framework based on a multi-dimensional understanding of substantive equality and apply it to selected topics to illuminate areas of potential synergy.

The report emphasises that furthering transformative gender equality requires a concerted effort on many fronts. The SDGs, with their many interlocking goals touching on gender equality, represent great promise. However, their focus on aggregate outcomes pays too little attention to the qualitative dimensions of substantive gender equality; while the inadequacy of the accountability mechanisms leaves the attainment of the SDGs vulnerable to political will. The human rights framework, for its part, adds a greater level of accountability and more attention to the individual, as well as aiming to put in place ways to achieve the ultimate goals, and checking that these in turn are human rights compliant. However, the substance of human rights, through the prism of gender equality, is still contested, particularly in relation to women in poverty. Moreover, the accountability structures, while in principle legally binding, are only as strong as the political will of signatory states to implement them.

Thus the report closes by reasserting that it is crucial for the two structures to work together in a synergistic manner to achieve transformative gender equality and to ensure that the ambitious promises of the SDGs are not simply fleeting hopes. This in turn depends on sustained civil society action, to hold governments to account both for their promises under the SDGs and under the human rights structure, mobilising all relevant forums both internationally and domestically.

The importance of bringing together the SDGs and human rights within a framework of transformative gender equality can be seen by considering an issue of pressing importance: adolescent pregnancy. Pregnancy and childbirth complications are the second most prevalent cause of death among 15 – 19-year-olds, with as many as 70,000 adolescents affected every year. Early and unintended pregnancy also has major detrimental effects on adolescent girls' social and economic opportunities, as well as that of their families and future generations. Addressing these issues requires a holistic approach encompassing all the dimensions of substantive equality. It has been shown that for each additional year of education, there is a 10 per cent reduction in fertility. At the same time, pregnant girls need to be supported to remain in school. Redressing

disadvantage (the first dimension) needs to be accompanied by addressing stigma and violence (the second dimension), for example by providing safe school environments for girls, and protecting them against stigma if pregnant at school. This in turn entails facilitating girls' inclusion in school and broader society, and ensuring their voice is heard (the third dimension). Behind this is a need for systemic change (the fourth dimension), including the provision of comprehensive sexuality education for both boys and girls, access to contraception and health services, and reducing child marriage. Both the SDGs and the human rights framework bring important resources to achieve these goals, but they need to be aligned and shaped to work together to achieve substantive equality in all its dimensions. Thus addressing adolescent pregnancy is a facet of SDG 1 on eliminating poverty, SDG 3 on promoting healthier lives, SDG 5 on gender equality and SDG 16 on building peaceful and inclusive societies. These set the aggregate goals to be achieved by 2030. But it is through the right to education, the right to health, the right to gender equality and the rights of the child that the specific measures become binding obligations on the State. If all these resources can be aligned and made to work together to achieve the overriding vision of substantive equality for adolescent girls, then the SDGs will be more than a set of grandiose but ultimately empty promises.

Introduction

In 2015, the world committed itself to the Sustainable Development Goal Agenda, an ambitious 15-year programme to eradicate poverty in all its forms and dimensions. Spurred on by the disappointing record of its predecessor, the Millennium Development Goals (MDGs), the 2030 Agenda for Sustainable Development sets out a ‘supremely ambitious and transformational vision.’¹ Gender equality plays a central role, both as a self-standing goal and as an aspect of several others. In a crucial step forward, the Sustainable Development Goals (SDGs) also make an explicit commitment to protect human rights. Thus *Transforming our World: the 2030 Agenda for Sustainable Development* proclaims that the SDGs ‘seek to realise the human rights of all and to achieve gender equality and the empowerment of all women and girls.’² The relationship between binding human rights and the SDG agenda, however, remains contentious and underdeveloped. Equally contentious, in both spheres, is the meaning of gender equality. This report considers the extent to which human rights and the SDGs can work together to further substantive gender equality. It argues for a synergistic approach, which requires a reconfiguration of both development goals and human rights.

The report begins with a brief comparison between a human rights approach to gender equality and that of the SDGs. It then turns to a more detailed examination of how a synergistic approach might work in relation to two key issues: reproductive health and gendered poverty.

1 ‘Transforming our World: the 2030 Agenda for Sustainable Development’, agreed on 25 – 27 September 2015, para. 7, <https://sustainabledevelopment.un.org/post2015/transformingourworld> (accessed 25 Mar 2018).

2 Ibid.

Part 1: The Architecture of Development Goals and Human Rights: The Space for Gender Equality

There is no tool for development more effective than the empowerment of women. No other policy is as likely... to raise economic productivity, or to reduce infant and maternal mortality... No other policy is as sure to improve nutrition and promote health... No other policy is as powerful in increasing the chances of education for the next generation (Kofi Annan, 2005).

In recent years, women have featured prominently in the development agenda. Because the evidence shows that women are likely to prioritise their children's welfare in using available resources, they are frequently seen as the key agents for poverty alleviation. As epitomised by Kofi Annan's statement above, empowering women is framed in instrumental terms, as the most effective 'tool for development.' While some regard this as strengthening women's agency, others see the development agenda as placing unacceptable burdens on them. Chant argues that by putting women in the frontline in dealing with poverty,³ women are being made to work for development, rather than development working for women.⁴ Have the SDGs reoriented this instrumental view of development by injecting a human rights based approach into the development agenda?

This requires more attention to be paid to two crucial differences between human rights and development goals, both of which fundamentally shape their content and impact. The first concerns the differences between an individual and an aggregate approach. The second concerns how to monitor compliance and in what ways States are required to be accountable for fulfilling their promises.

Individual versus aggregate

Firstly, and foundationally, human rights are premised on the intrinsic value of each human being, insisting that humans cannot be regarded as a means to an end. Correspondingly, human rights are individual entitlements. Development goals, by contrast, measure success through the improvement of aggregate welfare. In this sense, they are more concerned with how much of the goal has been achieved than the welfare of each individual. This is well illustrated by a closer look at the MDGs. MDG 2 promised that, by 2015, 'children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.' On aggregate, there was clear progress. Enrolment in primary education in developing regions increased from 83% in 2000 to 91% in 2015. However, there were still as many as 57 million children of primary school age out of school in 2015.⁵ Moreover, statistics refer to enrolment rather than completion. In fact, the MDG 2015 report states that almost 100 million adolescents are still not completing primary school.⁶ While aggregate figures are hailed as a success for the development goals, a human rights perspective gives a different picture. The fact that there are 57 million out of school children means that there are 57 million children whose rights are

3 S. Chant, 'The 'Feminisation of Poverty' and the 'Feminisation' of Anti-Poverty Programmes: Room for Revision?' (2008), 43 *Journal of Development Studies*, p. 176.

4 *Ibid.*, at p. 183.

5 See <http://www.un.org/millenniumgoals/education.shtml> (accessed 2 June 2017).

6 *Ibid.*

being breached. Nor do aggregate figures reveal the quality or type of education received. They also mask other complexities. As the report itself states, more girls are receiving tertiary education but they are still not finding employment.

This raises the question of how the aggregate approach to monitoring the SDGs can be reconciled with the individual nature of human rights. On the one hand, the SDGs have the potential to take a systemic approach to key social and economic rights, such as health, food and housing. They can also bring powerful rhetoric towards the mobilisation of resources. On the other hand, the aggregate approach could conceal inequalities, discrimination and exclusion of the most disadvantaged.⁷ In their important critical evaluation of the MDG targets, entitled *The Power of Numbers*, Fukuda-Parr, Yamin and Greenstein argued that ‘while quantification is the key strength of global goals, it also involves simplification, reification and abstraction, which have far-reaching implications for redefining priorities.’⁸ This reductionism of the MDGs, they argue, risked reversing the progress made in the 1990s to see development not just as economic performance, but as improving human well-being, with human rights at their centre. Instead, they suggest, the methodology of setting targets and selecting indicators needs to go beyond numerical criteria. It also need to give information on equity, participation, transparency and accountability. This requires both quantitative and qualitative targets and indicators. Since the values of equity, participation, transparency and accountability are central to a human rights approach, this opens up important opportunities for synergies.

Monitoring compliance and holding States accountable

The second major difference between development goals and human rights relates to how compliance is monitored, and how States can be held to account for fulfilling their promises. Human rights are legally binding obligations, with a corresponding apparatus, both internationally and at domestic level, to achieve compliance. States that have ratified international human rights instruments are required to provide periodic reports to the relevant treaty monitoring body, and this has more recently been complemented by the opportunity for individuals to complain to these bodies about breach of their rights. This international framework for monitoring States’ compliance and holding them accountable is underpinned by the obligation of individual States to give effect to human rights and to provide effective remedies at domestic level for human rights breaches.⁹ Human rights treaty bodies have stressed that the values of transparency, responsibility, accountability, participation and responsiveness are central to human rights.¹⁰

By contrast, development goals are political commitments, which can wax and wane depending on political priorities. Indeed, much of the development agenda has traditionally been seen as concerning transfers of aid and other assistance from developed to developing countries. This was particularly true of the MDGs, which were predominantly concerned with developing countries. Thus the final goal, MDG 8, was a call to developed countries to extend support to developing countries to achieve the other seven goals. Moreover, the commitment to the MDGs clearly wavered during its 15-year period. Thus, although Official Development Assistance (ODA) rose in the earlier MDG period, it fell back in 2011 and 2012 as political and economic commitments were reprioritised. Despite some rebound in 2013, ODA still fell well below the UN target of

7 K. Donald and S. Way, ‘Accountability for the Sustainable Development Goals: A Lost Opportunity’ (2016), 30 *Ethics and International Affairs*, pp. 201–213.

8 S. Fukuda-Parr, A. Yamin and J. Greenstein, ‘The Power of Numbers: A Critical Review of the Millennium Development Goal Targets for Human Development and Human Rights’ (2014), 15 *Journal of Human Development and Capabilities*, p. 105.

9 ICCPR, Article 2.

10 Office of the High Commissioner for Human Rights, ‘The Role of Good Governance in the Promotion of Human Rights’ (Commission on Human Rights Resolution 2000/64).

disbursing 0.7 per cent of donor gross national income at the end of the MDG period.¹¹ Accountability structures were correspondingly weak.

It was hoped by advocates of a human rights-based approach to development goals that some of these weaknesses would be addressed by an express reference to human rights in the SDGs.¹² In the run-up to the formulation of the new Agenda in 2013, the UN High Commissioner for Human Rights, Navi Pillay, argued that the post-2015 Agenda should link accountability to existing human rights mechanisms, including the UN treaty bodies, special procedures and the Universal Periodic Review.¹³ At the very least, there should be systematic sharing of information with existing human rights mechanisms.

In the event, the accountability system set up by the SDGs only tangentially refers to the parallel human rights edifice.¹⁴ In a particular salient contrast with human rights mechanisms, the 2030 Agenda makes it clear that follow-up and review processes are voluntary and State-led.¹⁵ States are encouraged to conduct regular reviews of progress at the national level ‘which are country-led and country-driven.’¹⁶ At global level, the task of oversight of follow-up and review processes is given to the United Nations High Level Political Forum on Sustainable Development (HLPF), a mechanism which was mandated in 2012 and met for the first time in September 2013. Regular reviews by the HLPF are voluntary and State-led, and are expected to be based on the national reviews, which are themselves voluntary. Follow up and review at the HLPF is informed by an annual SDG report to be prepared by the UN Secretary General.¹⁷

This raises the question of how much scope there is for civil society and the private sector to contest state reports to the HLPF. In the international human rights treaty monitoring system, the role of civil society in bringing issues to the attention of the relevant committee through shadow reporting has been central to the committees’ ability to hold States to account for human rights implementation. All treaty bodies have well established ways of interacting with NGOs, and this is now an integral part of the monitoring process.¹⁸ Indeed, as was pointed out in a 2006 report, ‘treaty bodies highly value the interaction that has developed with civil society representatives.’¹⁹ There were hopes of a parallel process to the HLPF. However, while reviews by the HLPF should include civil society and the private sector,²⁰ the latter are encouraged to report only on how they have contributed to implementation, rather than assessing a government’s performance, as is the case for periodic reporting under the international human rights system.²¹ Even in this highly voluntary form, the HLPF is severely under-resourced. In 2017, the HLPF met for eight days to consider 43 voluntary national reviews. There were 77 Ministers, Cabinet Secretaries and Deputy Ministers present, together with 2458 registered stakeholder representatives.²²

This does not in itself preclude human rights treaty bodies from taking some responsibility, in their own right, for monitoring SDGs. In particular, there is scope for international treaty bodies, without going beyond their mandate, to insist that States

11 MDG Gap Task Force Report 2014, ‘Millennium Development Goal 8: The State of the Global Partnership for Development’ (United Nations, New York, 2014), pp. 2-4; see also ‘The Millennium Development Goals Report 2015’ (United Nations, New York, 2015), p. 62-4.

12 OHCHR, First Open Letter from the High Commissioner for Human Rights on ‘Human Rights in the Post-2015 Development Agenda,’ 6 June 2013 www.ohchr.org/Documents/Issues/MDGs/Post2015/HCOpenLetterHRPost2015Agenda.pdf.

13 Ibid.

14 Donald and Way, p. 206, see supra note 7.

15 ‘Transforming our World,’ para. 74a, see supra note 1.

16 ‘Transforming our World,’ para. 79, see supra note 1.

17 ‘Transforming our World,’ para. 83, see supra note 1.

18 Concept Paper on the High Commissioner’s Proposal for a Unified Standing Treaty Body, UN Doc. HRI/MC/2006/CRP.1, (2006), para. 56.

19 Ibid.

20 ‘Transforming our World,’ para. 83, see supra note 1.

21 Donald and Way, p. 206, see supra note 7.

22 See <https://sustainabledevelopment.un.org/hlpf/2017> (accessed 27 March 2018).

report on how implementation of the SDGs is being used to further States' responsibilities under the relevant treaty. The Committee responsible for monitoring the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has already instituted such a system. Concluding Observations (COs) now regularly include a call for 'the realisation of substantive gender equality, in accordance with the provisions of the Convention, throughout the process of implementation of the 2030 Agenda for Sustainable Development.'²³ The Committee also comments on the domestic framework set in place to implement the 2030 Agenda.²⁴ Similarly, in dealing with gender-based violence, the Committee refers both to its own General Recommendations (GRs) and SDG 5.2.²⁵ However, thus far, the Committee's insertions of SDGs into its own Concluding Observations are somewhat formulaic. The call for the realisation of substantive gender equality in the implementation of the SDGs is identically worded in a series of COs, coming immediately after a similar formula in relation to the Beijing Declaration and Platform of Action.²⁶

The Committee on Economic, Social and Cultural Rights (CESCR) has taken a somewhat different angle to the CEDAW Committee, reflecting concern that the SDGs might be implemented in ways which are not compliant with ICESCR obligations. Thus, in its recent Concluding Observations, it has included a paragraph recommending that when the State Party implements the 2030 Agenda, it should fully take its obligations under the ICESCR into account. As well as generally ensuring that SDG implementation is compliant with the ICESCR, it specifically refers to the human rights obligations of establishing independent mechanisms and treating beneficiaries of public programmes as rights-holders. Moreover, it emphasises that 'implementing the Goals on the basis of the principles of participation, accountability and non-discrimination would ensure that no one is left behind.'²⁷

Many commentators who have advocated a human rights-based approach to the SDGs have been critical of the deficiencies of the SDGs in this regard. In particular: they highlight the continuing absence of the human rights requirements of participation; and the absence of an accountability framework which stresses individual entitlements - a result which arguably reflects States' reluctance to see development goals as binding commitments. However, it should not be assumed that human rights have answers to these challenges which always advance substantive gender equality. Reproductive health and even the prohibition on gender-based violence have only recently been recognised as binding human rights. Infringements related to poverty, as we shall see below, are also only tangentially recognised. Poverty, as we shall see, is only tangentially recognised. Moreover, there are also potential conflicts of rights. Human rights recognise a right to gender equality, health and security of the person but also protect a right to freedom of religious belief and thought. The vocabulary of human rights has been used forcefully to prevent reproductive rights and abortion.²⁸

In addition, the international human rights accountability mechanisms, while stronger than that of the SDGs, remain heavily dependent on the credibility and persuasiveness of the various monitoring bodies. The enforcing committees can only make recommendations, leaving it up to States to follow in good faith. This is true too for the

23 For example CEDAW Concluding Observations Chile (2018), para. 53; CEDAW Concluding Observations Korea (2018), para. 49; CEDAW Concluding Observations Fiji (2018), para. 65; CEDAW Concluding Observations Malaysia (2018), para. 57.

24 CEDAW Concluding Observations Chile (2018), para. 8.

25 CEDAW Concluding Observations Korea (2018), para. 23; CEDAW Concluding Observations Fiji (2018), para. 28.

26 For example CEDAW Concluding Observations Korea (2018), para. 48; CEDAW Concluding Observations Fiji (2018), para. 64; CEDAW Concluding Observations Malaysia (2018), para. 56.

27 CESCR Concluding Observations Colombia (2017), para. 71; CESCR Concluding Observations Russian Federation (2017), para. 62; CESCR Concluding Observations Sri Lanka (2017), para. 74; CESCR Concluding Observations Uruguay (2017), para. 61; CESCR Concluding Observations Pakistan (2017), para. 91; CESCR Concluding Observations Australia (2017), para. 61.

28 See <http://ohrh.law.ox.ac.uk/conservative-mobilization-in-latin-america-and-its-impacts-on-womens-and-adolescents-human-rights>.

individual communications procedures, which now allow individuals to bring complaints against States. It is at the national level that the main potential for enforcement lies; and this depends on the openness of domestic courts and legislatures to absorbing international norms. Perhaps the high-water mark of domestic receptiveness was a recent landmark decision, in which the Spanish Supreme Court broke new ground by holding that the views expressed by UN human rights treaty bodies in individual complaints are binding on the State.²⁹ The complaint had been brought by Ángela González after the tragic murder of her daughter by her estranged husband. Despite years of abuse of herself and her daughter, which the Spanish authorities were aware of, a judge had ordered unsupervised visits by the father without appropriate safeguards, during the course of which the child was killed. After unsuccessfully pursuing her claim in the Spanish courts, Ángela González submitted a complaint to the CEDAW Committee, which concluded that the Spanish authorities had failed to act with due diligence and had thereby violated her rights. In July 2018, the Spanish Supreme Court held that the lack of a specific procedure to execute the views of the CEDAW Committee constituted a breach of Spanish law. It ordered the government to pay Ángela €600,000 in compensation. However, this remains an exceptional response, and in any event referred only to the Committee's recommendations for compensation of the individual complainant, to the exclusion of the Committee's wider recommendations for systemic change.

Arguably, then, both the human rights mechanisms and the SDGs should be seen as important focus points for collective organisation through NGOs and grassroots movements at local, national and international level. Through shadow reporting to the human rights monitoring groups, as well as publicity and political pressure in the home countries, collective organisation can leverage binding human rights commitments to put pressure on governments to comply. The SDGs are capable of performing a similar function. All of these should be fed into domestic political activity and domestic human rights frameworks, which are more likely to be binding, although also may be challenging so far as remedies are concerned. It is, therefore, of great importance to find appropriate synergies between the SDGs and human rights, so that each is capable of giving added weight to the other.

Winkler and Williams are perhaps overly optimistic: 'Sustainable development provides the framework for addressing all these challenges in an interconnected and comprehensive manner. It goes beyond piecemeal measures that only address the symptoms. Making the connections and finding comprehensive solutions is complex – but that is the strength of having the 2030 Agenda grounded in human rights. International human rights law provides a scaffolding, and accountability mechanisms, that allow a systems-based and consistent response to sustainable development that can bring about transformative, structural change to reduce inequalities and challenge power imbalances.'³⁰ For this change to be truly transformative for women, it is first necessary to identify how to evaluate substantive gender equality. It is to this that we now turn.

29 Judgement, July 2018, see particularly pp. 23-28.

30 I. Winkler and C. Williams, 'The Sustainable Development Goals and Human Rights: A Critical Early Review' (2018), 21 *The International Journal of Human Rights*, pp.1023-1028.

Part 2: Through Different Prisms: Gender Equality, Human Rights and the SDGs

Transformative equality: a four-dimensional approach

Ultimately, both the SDGs and human rights remain arenas for contestation and evolution. In this report, the background principle of transformative gender equality is used to evaluate both systems, and to suggest ways in which each can be evolved, synergistically, to come closer to this end. This section sets out a framework for such evaluation.³¹

Equality as an ideal has been an arena for deep dispute and its meaning remains hotly contested. This is even more so in relation to gender. The Aristotelean understanding of equality, which simply requires likes to be treated alike, has proved to be too limited to address the deep-seated structural inequalities facing women. This is for several reasons. The first is that it requires an initial recognition that women and men are relevantly alike, triggering the obligation to treat them alike. Yet even such a recognition is far from universal. There remain a significant number of countries in which women do not have equal rights with men, often through plural legal systems where personal law is governed by religious or customary laws which deny women equal rights to inheritance, to divorce, to maintenance, or to guardianship and custody of their children. Such differences are still justified by governments on the basis that women and men are complementary rather than alike.³² Even where there are no formal legal differences, the ‘likes should be treated alike’ formula has been used to decline women protection of the right to equality. Dismissal or refusal to employ pregnant women, on the grounds that there are no male equivalents, is an example which has been found in many different jurisdictions.

It has, therefore, been widely accepted that a conception of substantive equality is required to give real meaning to the right to equality for women. While ‘equality of opportunity’ and ‘equality of results’ have been used to denote substantive equality, I argue for a four-dimensional approach, which incorporates the benefits of these conceptions but overcomes their drawbacks. This requires an understanding of gender equality which goes beyond striving for the same treatment for women as men, on the one hand, and the preoccupation with outcome data, as envisaged by the SDGs on the other. A substantive conception of equality, to be capable of achieving gender equality and women’s empowerment, as promised by the SDGs, needs to address women’s inequality in a multi-dimensional way. Four dimensions of equality, and their interaction with each other, all need to be taken into account. They are: *redressing disadvantage (the redistributive dimension)*; *addressing prejudice, stigma, humiliation and violence (the recognition dimension)*; *facilitating voice and agency (the participative dimension)*; and *accommodating difference by transforming structures (the transformative dimension)*.³³ This framework has been adopted in domestic and international human rights law. Specifically it was used by the Equality Act (EA) 2010, UN Women and most recently by

31 See S. Fredman, ‘Substantive Equality Revisited’ (2016), 14 International Journal of Constitutional Law, p. 712.

32 See, for example, the Malaysian government’s statement in its periodic report to CEDAW in 2016: ‘the principle of “equality” as expounded in the said articles has to be considered within the realm of the Shari’a which guarantees to a spouse complementary rights and responsibilities in order to preserve the sacred bond of matrimony.’ See also Combined Third to Fifth Periodic Report, Malaysia, CEDAW/C/MYS/3-5, (2016), para. 185.

33 Fredman, see supra note 31.

the Convention on the Rights of Persons with Disabilities (CRPD) in its General Comment on equality and disabled persons.³⁴

The distributive dimension

The first dimension, the requirement to *redress disadvantage (distributive dimension)*, is a frankly asymmetric view of equality. Rather than assuming that men and women should be treated alike, its focus is on the disadvantage which attaches to gender. This means that affirmative action, or special measures to redress disadvantage, do not constitute a breach of equality, but rather a means to achieve it. To understand disadvantage it is not sufficient to consider income poverty. It is important to take a holistic approach to disadvantage, examining what access women have to a range of assets, including social protection, property, and credit. This in turn requires a consideration of the power relations which impede such access, particularly within the family. Moreover, understanding disadvantage needs to confront women's different social locations, recognising the interacting roles of class, race, ethnicity, disability, sexual orientation, religion and gender in creating gendered disadvantage.

The recognition dimension

The second dimension of substantive equality is to *address stigma, stereotyping, prejudice and violence (the recognition dimension)*. One of the primary sources of stereotyping is the assumption that women should take on primary responsibility for care and domestic work. Women's stereotyped role in relation to unpaid care and domestic work has wide effects. It undervalues caring and domestic work on the assumption that, even if performed in the paid labour market, such work can in principle be performed unpaid at home. This creates and sustains widespread gender pay gaps. Productive work which is for subsistence or part of a family enterprise is similarly undervalued. Furthermore, the need to perform care work and domestic work makes it difficult for women to participate in full-time work, precipitating them into precarious work and undermining decent standards of work. This dimension also manifests in terms of stereotyping of women as sexual beings, all too frequently expressed as sexual harassment and violence, in the home, at work or on the streets. These in turn are a fundamental negation of women's right to dignity and recognition.

Addressing stigma, stereotyping, prejudice and violence does not, however, posit a male norm, whereby caring work remains unacknowledged in the private realm. Instead, it requires proper recognition of the social and personal value of care, and of each individual's dignity and value. The Domestic Workers' Convention is a striking example of the ways in which a reorientation and characterisation of domestic work can change the value attached to such work. Thus, instead of being regarded as 'part of the family', or a 'servant', the Convention requires domestic workers to be recognised as workers and given appropriate terms and conditions.

The participative dimension

The third dimension of substantive equality is to *facilitate participation and voice (the participative dimension)*. Formal equality, or the principle that likes should be treated alike, treats the individual as if she were prior to and separate from her society and her relationships with others. For example, formal equality aims to disregard an individual's gender or race, so that she can be treated exclusively on the basis of her 'merit.'

34 UK Equality Act 2010, p.149; UN Women, 'Progress of the World's Women. Transforming Equalities: Realizing Rights' (2015-16), Chapter 1; Committee on the Rights of Persons with Disabilities, General Comment No. 6 (2018), on Equality and Non-discrimination, para. 11.

Substantive equality, by contrast, recognises that individuals are social beings, whose identity is developed through their interaction with others. It is, therefore, not possible to abstract individuals from their identities. Indeed, merit itself is a function of an individual's social position and status. Young argues that the focus of theories of justice should therefore be on structures which exclude people from participating in determining their actions.³⁵ Fraser puts particular emphasis on participation, regarding parity of participation as the normative core of her conception of justice.³⁶ Substantive equality is, therefore, based on the principle that to be fully human includes the ability to participate on equal terms in community and society more generally.

The participative dimension places emphasis on individual agency in that it encourages and values each person's right to have her choices respected and have a say over decisions that affect her. At the same time, substantive equality recognises that individual choices are moulded and constrained by circumstances. Moreover, such choices affect others and are affected by others. Thus, participation also entails the facilitation of solidarity and social mobilisation.

Participation on a collective level is nevertheless challenging, in that it risks giving more weight to louder voices. It is, therefore, essential that it is combined with the other dimensions, in particular the need to redress disadvantage. The combination of these dimensions highlights the need to interrogate the representativeness of different voices, and specifically pays attention to those who are often not heard. In particular those who fall at the intersection of different identities, such as racialised women and women with disabilities, should be given greater opportunities to participate.

The transformative dimension

The final dimension of substantive equality is to address structural barriers and achieve *structural change*. This is the *transformative dimension*. Structural change needs to recognise the dynamic interaction between reproduction and production, not just for women, but also for men. Reconstructing gender relations requires both that women can enter the paid workforce on equal terms, and that men take on caring roles in the home. Similarly, this dimension prompts a radical reconstruction of the public-private divide, which recognises that the workplace can be at home, in public spaces, in other people's homes and virtual, through the internet. It also requires closer attention to be paid to the provision of public services, ensuring that caring is recognised as a social function, to which everyone should contribute.

The multi-dimensional approach to equality requires attention to be paid simultaneously to all four dimensions when designing policy interventions or legal change. For example, conditional cash transfers might redress disadvantage but entrench gender stereotypes. If they are too small, they might mitigate against structural change because they divert public money away from investment in publicly available services. To achieve substantive equality, cash transfers would need to be unconditional; they would need to include women's voices in their design, and they would need to co-exist with proper investment in public facilities. Similarly, provision of paid maternity leave might redress disadvantage. But unless accompanied by equal paternal or parental leave, it might entrench stereotyping and reinforce existing structures, whereby full-time working is the paradigm and best protected form of work. Organisation into trade unions or other kinds of mobilisation might similarly facilitate voice, but it would not redress disadvantage unless the most marginalised were given sufficient voice. The multi-dimensional

35 I. Young, 'Justice and the Politics of Difference' (1990), pp. 31-32.

36 N. Fraser, 'Social Justice in the Age of Identity Politics' in A. Honneth and N. Fraser, 'Redistribution or Recognition?' (2003), pp. 36-77.

approach also invites the reconciliation of different ideologies, cultures or religions: such differences should be accommodated under the fourth dimension, provided they do not perpetuate disadvantage or stigma, stereotyping, prejudice or violence under the second and third dimensions. Crucially, such accommodation needs to ensure that the voices of those affected, particularly marginalised women, are heard and paid attention to.

Having set out a framework of transformative equality by which to evaluate gender equality, the following section considers the extent to which the SDGs and human rights framework respectively meet its criteria.

Applying transformative equality: the SDGs

SDG5, the stand-alone goal on gender equality, commits the world to achieve gender equality and empower all women and girls. As with all the SDGs, these broad goals have been broken down into a range of specific targets. Certainly on the face of it, these targets attempt to address several of the facets identified above. The first dimension, *redressing disadvantage*, is addressed to some extent through the target requiring States to undertake reforms to give women equal rights to economic resources as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources. However, there is a notable caveat, namely that this should be in accordance with national laws. In addition, the targets include a commitment to ensuring universal access to sexual and reproductive health and reproductive rights.

The second dimension, *redressing stigma, prejudice and violence*, is expressly addressed through the commitment to eliminating all forms of violence against all women and girls as well as harmful practices. The third, *participatory dimension*, is addressed through the target requiring that full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life be ensured. There is also some commitment to the fourth, *transformative dimension*, most saliently through the commitment to recognise and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household.

Gender is also centrally affected by a number of other goals. Goal 1 commits the world to end poverty in all its forms everywhere. Goal 2 requires States to end hunger and achieve food security and improved nutrition; Goal 3 commits to good health and well-being and Goal 4 to quality education. Goal 6 concerns clean water and sanitation; Goal 7 refers to affordable and clean industry, and Goal 8 requires states to promote employment and decent work for all. Gender is also of course implicated in the goals committing to infrastructure, sustainable cities, the environmental goals and the promotion of just, peaceful and inclusive societies.

However, these goals need to be read in the context of substantive gender equality so that the gender dimension is clearly visible and the specifics of gender inequality can be addressed. Otherwise, the slogan that no-one will be left behind will be a meaningless mantra in relation to women and girl children. For example, Goal 8.7 commits States to eradicate modern slavery, including forced marriage. Although this appears neutral on its face, it needs to be read in the light of statistics which show that 71% of the 40 – 45 million people affected are women. Moreover, of the estimated four million adults and one million children sexually exploited for commercial gain, a shocking 99% were identified as female.³⁷ Similarly, poverty for women extends beyond income poverty, and

37 Walk Free Foundation, International Labour Organization, and International Organization for Migration (2017), 'Global Estimates of Modern Slavery: Forced Labour and Forced Marriage'.

is also shaped by specifically gendered factors such as imbalances of power within the household and women's stereotyped role as carer and domestic worker.³⁸ The goals of ending poverty and hunger, clean water and sanitation, and decent work for all therefore need to be assessed in relation to the extent to which they redress gendered disadvantage, address gendered stereotypes and gender-based violence, facilitate women's participation both socially and politically, and bring about structural change. Part 2 will make similar points in relation to women's health and well-being and specifically in relation to reproductive rights. Goal 4 on education has been similarly analysed by the author elsewhere.³⁹

Applying transformative equality: the human rights framework

How then does a human rights approach fare under the lens of transformative gender equality? The most advanced understanding of gender equality is found in CEDAW. Adopted in 1979, the culmination of more than 30 years' work by the UN Commission on the Status of Women, CEDAW now has as many as 189 State Parties and two further signatories, with only six countries in the world having taken no action. The multi-dimensional approach to equality is clearly reflected in some of the key elements of CEDAW. As a start, it is expressly asymmetric. Instead of outlawing discrimination on grounds of sex or gender, CEDAW aims at the elimination of discrimination specifically against women. According to the CEDAW Committee: 'The Convention goes beyond the concept of discrimination used in many national and international legal standards and norms. While such standards and norms prohibit discrimination on the grounds of sex and protect both men and women from treatment based on arbitrary, unfair and/or unjustifiable distinctions, the Convention focuses on discrimination against women, emphasising that women have suffered, and continue to suffer from various forms of discrimination because they are women'.⁴⁰ Nor is it sufficient to provide formal equality, or to open up opportunities which women are unable to utilise. The emphasis is on ensuring that women are actually in a position to make use of their rights.⁴¹

This is further reflected in its approach to affirmative action. Although affirmative action is referred to as 'temporary special measures' in Article 4(1), giving the impression that measures specifically directed at women are an exception to equality, General Recommendation 25 makes it clear that affirmative action is by no means a breach of equality, but may be necessary to achieve substantive equality.

The second dimension, the *recognition dimension*, is reflected in several different elements of CEDAW. This is particularly seen in relation to the cluster of rights in respect of reproduction and childcare. The preamble sets the tone by stating that 'the role of women in procreation should not be a basis for discrimination'. This is accompanied by a requirement to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children.⁴² Accordingly, provisions for maternity protection and childcare are proclaimed as essential rights and are incorporated into all areas of the Convention, whether dealing with employment, family law, health care or education. Society's obligation extends to offering social services, especially childcare facilities that allow individuals to combine family responsibilities with work and participation in public life. Special measures for

38 S. Fredman (and below), 'Women and Poverty - a Human Rights Approach' (2016), 24 *African Journal of International and Comparative Law*, p. 494.

39 S. Fredman, 'Women and Education: the Right to Substantive Equality' in S. Fredman, M. Campbell and H. Taylor (eds.), 'Human Rights and Equality in Education', Policy Press (2018).

40 CEDAW General Recommendation No 25: On Temporary Special Measures, para. 5.

41 CEDAW, Article 1.

42 CEDAW, Article 5(b).

maternity protection are recommended and ‘shall not be considered discriminatory.’⁴³ The Convention also affirms women’s right to reproductive choice. Notably, it is the only international human rights treaty to mention family planning. State Parties are obliged to include advice on family planning in the education process⁴⁴ and to develop family codes that guarantee women’s rights ‘to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights’.⁴⁵ The recognition dimension is also strongly reflected in relation to the right to education. Thus, Article 10(c) requires the ‘elimination of any stereotyped concept of the roles of men and women... by encouraging coeducation and... in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods’.

The recognition dimension is also reflected in the robust affirmation by the CEDAW Committee of violence as an aspect of gender discrimination. Although there is a surprising absence of direct reference to violence against women, the CEDAW Committee has made it clear that gender-based violence clearly falls within the definition of discrimination in Article 1, since it inevitably impairs or nullifies the enjoyment by women of human rights and fundamental freedoms.⁴⁶ In its General Recommendation 19 of 1992, the Committee shows how violence is implicated in most of the Convention rights, even when not expressly mentioned. The duty of the State extends to the protection of women against violence perpetuated by culture and tradition, such as female circumcision, dietary restrictions for pregnant women and preference for male children.⁴⁷ This has now been updated and elaborated by General Recommendation 35 on gender-based violence in 2017.

Thirdly, CEDAW takes particularly seriously the importance of representation of women in decision-making, the *participative dimension* of substantive equality. This includes not just the bare right to vote in elections, but also the right to participate in the formulation of government policy, to hold public office and to participate in non-governmental organisations.⁴⁸ There are also specific provisions on the right to participation of rural women, taking into account the particular difficulties of these women to be heard and taken seriously. Nor is CEDAW limited to negative duties, or duties of restraint on the state. It requires States Parties to take ‘all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men’.⁴⁹ The state has positive duties to ‘protect, promote and fulfil this right to non-discrimination for women and to ensure the development and advancement of women in order to improve their position to one of de jure as well as de facto equality with men’.⁵⁰

Fourthly, CEDAW does not demand conformity as a price for equality. Instead, it demands structural change, the *transformative dimension*. Most importantly, the Convention actively addresses the public/private divide, and the social and cultural assumptions and prejudices which keep women in the private sphere. Article 5 is particularly transformative in its approach, requiring State Parties to take all appropriate measures ‘to modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and other practices which are

43 CEDAW, Article 4.

44 CEDAW, Article 10(h).

45 CEDAW, Article 6(e).

46 CEDAW, General Recommendation No 19: Violence Against Women, para. 7.

47 Ibid., para. 19–21.

48 CEDAW, Article 7.

49 CEDAW, Article 3.

50 CEDAW, para. 4, see supra note 40.

based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women'. All discrimination against women in matters relating to marriage and family relations must be eliminated, including rights to property, guardianship of children and inheritance.⁵¹

There are nevertheless aspects of CEDAW which continue to fall short of full transformative equality.⁵² While key aspects aim to reconfigure gender relations, there are others which appear to be premised on a simple requirement that women be treated the same as men. For example, Article 11(a) refers to 'the right to work as an inalienable right of all human beings'. Article 11(b) gives women the right to the *same* employment opportunities, including the application of the *same* criteria for selection in matters of employment. On one level, this could be seen as giving women the right to exit the private sphere and thereby to attain economic independence. On the other hand, it is premised on an intensely male model of work, the assumption being that 'work' equates with paid work outside of the home. For women to be in a position truly to exercise the right to paid work outside of the home, the structure of paid work must itself be transformed, so that both men and women participate in parenting and perform unpaid work in the home. Otherwise, their continuing responsibility for unpaid work in the private sphere will necessarily inhibit their ability to find good quality paid work. Again, Article 11(e) gives women the equal right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age, and other incapacity to work, as well as the right to paid leave. Here, too, women will not achieve de facto equality unless eligibility criteria and contribution requirements are changed to reflect women's interrupted work patterns. Particularly challenging is the application of social security to the numerous women who work in the informal sector. Moreover, despite its assertion that the common responsibility of men and women should be recognised, CEDAW stops short of full structural change. This is because its emphasis on maternity rights, without corresponding rights for fathers, could reinforce the assumption that it is women who are primarily responsible for childcare.

CEDAW is also, on the surface at least, premised on an assumption of a gender binary. Although it is asymmetric, its use of men as the comparator appears to regard men as the only other gender identity recognised in the Convention. Otto notes that there is the potential for a more fluid approach, given the ways in which gendered stereotypes are challenged and re-set. However, she argues that 'in refusing the insight that sex/gender/gender identity are all given substance by the same matrix of gendered social relations, the CEDAW Committee completely fails to recognise the transformative potential of CEDAW'. Instead of regarding gender as rooted in biology, it should see gender as 'performative', constituted by regulatory social norms. Such an approach, in her view, would embrace the transformative potential in CEDAW, and 'develop a fuller account of the diversity of gendered relations of power and the heteronormative interests they serve.'⁵³ The SDGs are even further behind CEDAW in this respect.

Having set out the general framework for evaluation of each these sources, this report now turns to focus on two main issues: women and reproductive health, and women and poverty. These two topics have been chosen for two reasons. Firstly, they reveal contrasting strengths and weaknesses of the SDGs and human rights respectively. On the one hand, the SDGs lag behind human rights on reproductive and sexual health rights. On the other hand, the SDGs put poverty at the heart of their mission; whereas poverty has only tangentially been regarded as a human rights issue. This means that in both

51 CEDAW, Article 16.

52 S. Fredman, 'Engendering Socio-Economic Rights' in A. Hellum and H. Sindig-Aasen (eds.), 'Women's Human Rights', Cambridge University Press (2013).

53 D. Otto, 'Queering Gender [Identity] in International Law', *Nordic Journal of Human Rights* (2015), p. 229–318.

these areas, there is rich potential for synergies. Secondly, both are cross-cutting issues, in that they implicate many interlocking aspects of gender inequality. Women's role in childbearing and caring is at the heart of their inequality in a wide range of aspects of life, particularly for women living in poverty. Focussing on these two topics, therefore, casts a wider spotlight on numerous linked issues. This is not to say that these are the only two topics which cry out for analysis. It is beyond the scope of this report to address the many other crucial aspects of the inter-relationship between the development goals and human rights in the context of substantive gender equality. The hope is that the analysis suggested here can be developed and extrapolated to other areas.

The discussion below uses the lens of transformative equality to compare the ways in which the SDGs and human rights address each of the two main issues, and to explore potential synergies. In relation to reproductive health, I examine maternal mortality, sexual and reproductive rights and abortion. For women and poverty, I focus on social protection and care-work to examine contrasting approaches and consider ways of working together. The analysis is not meant to be comprehensive; nor could it be, considering the breadth of the field and the many complex interlocking issues. Instead, the aim is to construct an evaluative framework based on a multi-dimensional understanding of substantive equality and apply it to selected topics to illuminate areas of potential synergy.

Part 3: Women and Reproductive Health

The urgent imperative which should inform the SDGs and human rights must surely be to eliminate the unacceptable scourge of maternal mortality, including abortion-related deaths. In 2015 as many as 303,000 women died during and following pregnancy and childbirth. Maternal mortality is the second leading cause of death among women aged 15 to 49 after HIV. These global figures obscure vast inequalities. The lifetime risk of dying from pregnancy and childbirth-related complications, including unsafe abortions, is 80 times higher in low-income countries than it is in high-income countries.⁵⁴ As well as differences between countries, there are vast distinctions between the wealthiest and the poorest within countries, reflecting the importance of access to high quality health services.⁵⁵ Nor is this only an issue for developing countries. The US has the highest maternal mortality ratio in the developed world. Unlike most countries, maternal mortality in the US is in fact on the rise. Even worse, it is concentrated among poor women and black women. Black women in the US are three to four times more likely to die from pregnancy complications than white women.⁵⁶

Yet the shocking reality is that most of these deaths could be averted using simple and affordable means. There are several key elements to effectively address maternal mortality consistent with substantive equality. It is well established that the presence of skilled birth attendants can significantly improve outcomes. As the HLPF thematic review of SDG 3 in 2017 states: ‘In all countries that have achieved reduction in maternal death, professionally trained midwives and others with midwifery skills have been a key to success.’⁵⁷ Yet only 76% of women in developing regions receive skilled care during childbirth.⁵⁸ This should be accompanied by available emergency obstetrics services in case of need. Quality health care should, moreover, be available before and after childbirth. This would be the minimum needed to address the first dimension, *redressing disadvantage*. This is, however, not sufficient.

The second dimension, *redressing stigma, prejudice, stereotyping and violence*, requires attention to be paid to the quality of the treatment received by women. There is increasing evidence of widespread prevalence of obstetric violence, where health-care workers mistreat women in labour or immediately afterwards. In addition, for the many adolescents who become pregnant while still at school, there is a crucial need to provide a non-stigmatic environment within which they can combine their pregnancy with continuing their studies. More broadly, as the HLPF thematic report stresses, ‘The unequal status of women and girls remains an underlying cause for the inability or delay in care seeking. Lack of access to knowledge, decision making and financial powers, often due to discrimination in law and practice, as well as violence against women and girls and gender stereotypes, are social barriers that need to be addressed alongside health system interventions.’⁵⁹ Substantive gender equality in relation to reproductive rights requires this to go even further and address stereotypical gendered roles around parenting.⁶⁰ Sexual education should be provided to both girls and boys and the role of men in parenting needs to be stressed and encouraged.

54 Figures in this section are taken from A. Chapman, ‘Evaluating the Health-Related Targets in the Sustainable Development Goals from a Human Rights Perspective’ (2007), 21 *International Journal of Human Rights*, p. 1103.

55 *Ibid.*

56 World Health Organization, *Trends in Maternal Mortality: 1990 to 2015: Estimates by WHO, UNICEF, UNFPA, World Bank Group and the United Nations Population Division 70–77* (2015), http://apps.who.int/iris/bitstream/10665/194254/1/9789241565141_eng.pdf?ua=1; <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pmss.html>; A. Creanga et al., ‘Racial and Ethnic Disparities in Severe Maternal Morbidity: a Multistate Analysis’ (2014).

57 High Level Political Forum 2017 Thematic Review of SDG 3, (henceforth HLPF SDG 3) pp. 2–3.

58 *Ibid.*

59 *Ibid.*, p. 3.

60 For a very recent example of how stereotypical assumptions about women can be used to block access to contraception or abortion, see the CEDAW report of the Inquiry into Northern Ireland (23 February 2018), para. 50.

The third dimension, *participation and voice*, requires attention to be paid to women's own choices. As Hunt points out, the availability of facilities for giving birth is not a sufficient measure of substantive gender equality if women's voices are not heard as to whether they wish to give birth in such facilities. For example, there is evidence that Roma women do not want to give birth in hospitals where they feel discriminated against or even at risk of sterilisation.

The fourth dimension, *the transformative dimension*, is particularly searching. This requires a recognition of the structural barriers which continue to lead to high maternal mortality rates. In particular, quality contraceptive services must be made available to prevent unwanted pregnancies. As well as being important in its own right, such access would avert the need for desperate women to resort to dangerous backstreet abortions, many of which lead to significant maternal mortality or morbidity. This is particularly important for adolescent girls. It is well known that complications in pregnancy are the leading cause of death among adolescent girls in developing countries; and this is also the second leading cause of death among adolescent girls globally. Adolescent girls are more likely to undergo unsafe abortions than adults: statistics show that as many as three million unsafe abortions occur annually among girls aged 15-19.⁶¹ Yet the global rate for adolescent births remains high, with more than 20 births per 1,000 adolescent girls, in two thirds of the countries of the world.⁶² This further demonstrates the acute need for comprehensive sexual education for both girls and boys, in a stigma free environment. It also demonstrates the importance of protection for pregnant learners at school. There is still a widespread practice of expelling pregnant learners from school and making no accommodation for young parents. Whereas mothers are generally unable to return to school, there is little effort made to ensure that young fathers take appropriate responsibility, without prejudicing their own educational opportunities.

There is thus an acute need for an effective synergy between the development goals and human rights in the arena of reproductive health. The following sections examine the approach of the SDGs to reproductive health rights while the subsequent section contrasts this with a human rights approach. It will be seen that the development approach thus far has focussed on narrowly-defined outcomes. This has made it difficult to pay proper attention to all the different dimensions of substantive gender equality. The human rights framework can play a crucial role in providing this qualitative depth to the development goal agenda. At the same time, the defined timetable and a potential strong political impetus could mean that the development goals give added political weight to the human rights agenda.

61 HLPF SDG3, pp. 2-3.

62 Ibid., pp. 5-6.

The SDGs and sexual and reproductive health

The tendency of the development approach to focus on narrowly-defined outcomes was particularly pronounced in the MDGs. Thus MDG 5 (to improve maternal health) concentrated exclusively on reducing maternal mortality ratios as an end in itself. In the belief that simplicity would be the most effective strategy, its primary target was to reduce the maternal mortality ratio by three quarters between 1990 and 2015. It was only half way through the MDG period that some attention was paid to the means to achieving this end, and a new indicator was added, which measured the availability of skilled birth attendants. Although a welcome move, this was still not sufficient. By the end of the MDG period, the ratio had only fallen by 45%.⁶³

This shortfall was not surprising. The concentration on a single-dimensional target obscured the systemic issues related to gender and social inequalities which continue to sustain the appallingly high levels of maternal deaths in childbirth. The result of this was to ignore the need to address some of the key mechanisms inhibiting change. In their trenchant critique of the reductionism of this approach, Yamin and Boulanger point out that issues crucial to the advancement of sexual and reproductive health rights, such as comprehensive sex education, were left out of funding priorities. Moreover, the estimated 13% of maternal mortality due to unsafe abortions was often explicitly excluded from the data indicating maternal mortality ratios.⁶⁴

The development goals approach contrasts strikingly with the concerted effort of women's rights groups to develop a more holistic understanding of maternal mortality, based in a deeper recognition of its structural causes. During the 1990s, an intensive campaign by women's groups situated maternal and reproductive health in the broader context of women's rights. In a crucial breakthrough in 1994, the programme of action adopted at the International Conference on Population and Development (ICPD) recognised that 'advancing gender equality and equity and the empowerment of women, the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility, are cornerstones of population and development-related programmes.'⁶⁵ Reflecting the four dimensional approach to substantive gender equality above, it regarded as crucial to any population strategy that existing inequities and barriers to women in the workforce should be eliminated. In addition, women's participation in all policy-making and implementation, their access to productive resources and right to inherit property should be strengthened, and governments should invest in education and skill development of women and girls.⁶⁶ Most importantly, it called for fundamental changes in gender relations and underlying social structures which were not easily reduced to quantifiable outcome measures.⁶⁷

The SDGs took an important step forward, therefore, by situating maternal mortality as part of a more general commitment to gender equality and the empowerment of women and girls, as well as making a specific commitment to sexual and reproductive health rights. Nevertheless, the 2030 Agenda has only marginally broadened the approach of its predecessor.⁶⁸ Target 3.1 aims to reduce the global maternity mortality ratio to less than 70 per 100,000 births.⁶⁹ This is a highly ambitious goal, given that the maternal mortality

63 See <http://www.un.org/millenniumgoals/maternal.shtml> (accessed 28 March 2018).

64 A. Yamin and V. Boulanger, 'Why Global Goals and Indicators Matter: The Experience of Sexual and Reproductive Health and Rights in the Millennium Development Goals' (2014), 15 *Journal of Human Development and Capabilities*, p. 225.

65 Programme of Action Adopted at the International Conference on Population and Development (ICPD) Cairo 5 -13 September 1994, adopted at the 21st special session of the General Assembly, New York, 30 June 1999, <https://www.unfpa.org/publications/international-conference-population-and-development-programme-action> (accessed 29 March 2018), Principle 6.

66 *Ibid.*, para. 3-18.

67 Yamin and Boulanger, see *supra* note 64.

68 Chapman, see *supra* note 54, p. 1090.

69 One of the targets of Goal 3 which aims to 'ensure healthy lives and promote well-being for all at all ages'.

ratio (MMR) stood at 2016 per 100,000 live births in 2015. To achieve Target 3.1, this ratio will need to be reduced annually by at least 7.3%, more than three times the annual rate of reduction achieved between 1990 and 2015.⁷⁰ It is all the more disappointing that the two main indicators, the maternal mortality ratio (3.1.1) and the proportion of births attended by skilled health personnel (3.2.2), simply replicate the MDG indicators. This means that the risk remains that inequalities and rights violations will be obscured.⁷¹ Obstetric violence will still not feature in the statistics showing an increase in skilled birth attendance. Emergency obstetric care, also seen as key to decreasing women's mortality and morbidity in childbirth, is not mentioned. Particularly glaring is the absence of any mention of abortion, which is a key contributor to maternal death in childbirth.

A more holistic picture is found in relation to sexual and reproductive rights. Target 3.7 commits the world to ensuring 'universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes.' The specific indicators are the proportion of women of reproductive age who have their need for family planning satisfied with modern methods (3.7.1) and the adolescent birth rate per 1,000 women within the age range 10 – 14 and 15 – 19 (3.7.2). This is augmented by Target 5.1, which promises to ensure 'universal access to sexual and reproductive health and reproductive rights in accordance with the Programme of Action of the International Conference on Population and Development (ICPD) and the Beijing Platform for Action and the outcome documents of their review conferences.' Here the indicators are the proportion of women aged 15 – 49 years who make their own informed decisions regarding sexual relations, contraceptive use and reproductive health care (5.6.1) and the number of countries with laws and regulations that guarantee full and equal access to women and men aged 15 years and older to sexual and reproductive health care, information and education (5.6.2). However, here too the SDG indicators focus on outcomes rather than the means to achieve those outcomes and do not grapple with some of the deep-seated obstacles to full reproductive rights for women. In particular, the SDGs are not able to identify or address the role of religion in undermining gender equality in this respect. For example, as will be seen below, countries such as the Philippines have not permitted modern birth control, for religious reasons.⁷²

The challenges in this respect remain huge. The 2017 HLPF thematic report shows that, globally, the proportion of women of reproductive age who were married or in-union who had access to modern family planning methods only increased marginally from 74.5% in 2000 to 76.7% in 2017. In least developed countries, this figure stood at only 57.1% in 2017, albeit showing a significant increase from 39.3% in 2000.⁷³ This comes in the wake of the severe cuts in available funding for reproductive health resulting from the reinstatement and extension by President Trump of the policy prohibiting US health funding to foreign NGOs that perform abortions in cases other than a threat to the life of the woman, rape or incest. Known as the 'Global Gag Rule,' this policy also prohibits funding to foreign NGOs that provide advice, information or counselling for abortion, which provide referrals for abortion, or which lobby to make abortion legal or more available in their own country, even if these activities are performed with funding from other, non-US government sources.⁷⁴ This has also dealt a serious blow to international services dependent on US funding, with severe effects for the poorest.⁷⁵

70 HLPF SDG 3, p. 2.

71 Chapman, see supra note 54, p. 1090.

72 See CEDAW Committee report on Inquiry into the Philippines (23 June 2015).

73 HLPF SDG 3, pp. 5–6.

74 See <http://trumpglobalgagrule.pai.org/what-you-need-to-know-about-the-protecting-life-in-global-health-assistance-restrictions-on-u-s-global-health-assistance/> (accessed 19 June 2018).

75 Winkler and Williams, see supra note 30, p. 1024; see also 'The Sustainable Development Goals and Human Rights: A Critical Early Review' (2017), 21 *International Journal of Human Rights*, pp. 1023–1028; see also CEDAW Concluding Observations, the Philippines (2017).

Human rights and sexual and reproductive health

To what extent, then, can a human rights approach add qualitative depth to the SDGs? CEDAW gives the most detailed attention to reproductive rights. Article 12 requires State Parties to eliminate discrimination against women in the field of health care and to ensure equal access to health care services including family planning. State Parties have an obligation to ensure appropriate services to women in connection with pregnancy, confinement and the post-natal period. This includes granting free services where necessary, as well as adequate nutrition during pregnancy and breast-feeding.⁷⁶ This right extends specifically to rural women.⁷⁷ In addition, its General Recommendation 24 (GR24) on the right to health expressly situates its approach to women's reproductive rights in the ICPD programme and the follow-up Beijing programme of action.⁷⁸

The ICESCR does not refer specifically to reproductive rights. However, in its General Comment 22 (GC22) on reproductive health in 2016, the CESCR locates sexual and reproductive health in a cluster of rights, which include the rights to health, life, education, just and favourable working conditions and the right to be free from violence and discrimination. It also expressly includes civil and political rights, specifically, privacy; security of the person; freedom from torture and other cruel, inhuman or degrading treatment. Notably, GC22 refers not just to the ICPD programme of action but also the fact that the 2030 Agenda for Sustainable Development includes targets and goals to be achieved in relation to sexual and reproductive health.⁷⁹

Under the International Covenant on Civil and Political Rights (ICCPR), by contrast, sexual and reproductive health rights (SRHR) have been characterised primarily under the right to privacy, protected by Article 17 of the Covenant. The Human Rights Committee, which monitors the ICCPR, has also suggested that there may be occasions in which Article 6 on the right to life, and Article 7 on the right not to be subjected to torture, might be engaged.⁸⁰ As will be seen below, this has most recently been applied in relation to abortion.

Cumulatively, these instruments go some way to addressing the requirements for substantive gender equality and augmenting the SDG approach, as briefly elaborated below.

(i) Redressing disadvantage

Both CEDAW and ICESCR pay specific attention to redressing disadvantage. This complements the SDGs' exclusive focus on outcome measures by paying attention to the means to achieve those outcomes. For example, under CEDAW, it is not sufficient to report solely on outcome data. In addition, States must report on how they supply free services where necessary to ensure safe pregnancy, childbirth and post-partum periods for women. The more in-depth approach to redressing disadvantage in the human rights framework is particularly notable in relation to the right to emergency obstetric services, which, as we have seen, was not included expressly in the SDGs. CEDAW's GR24 emphasises that the duty of State Parties to ensure women's right to safe motherhood

⁷⁶ CEDAW, Article 12(1).

⁷⁷ CEDAW, Article 14(2)(g).

⁷⁸ General Recommendation No. 24: Article 12 of the Convention (Women and Health) Adopted by the Committee on the Elimination of Discrimination Against Women (1999), para. 3.

⁷⁹ For a definition of reproductive health, see ICPD Programme of Action Chapter 7. The WHO define sexual health as 'a state of physical, emotional, mental and social well-being in relation to sexuality.' WHO, *Sexual Health, Human Rights and the Law* (2015), 1.1.

⁸⁰ Human Rights Committee General Comment No. 28 on Article 3 (The Equality of Rights Between Men and Women), Office of the High Commissioner for Human Rights (29 March 2000), HRI/GEN/1/Rev.9 (Vol. I) para. 20; UN Human Rights Committee Views Adopted by the Committee under Article 5(4) of the Optional Protocol, concerning communication No 2324/2013 (9 June 2016), CCPR/C/116/D/2324/2013.

includes the right to emergency obstetric services. It also re-emphasises the duty on States to allocate resources to the maximum available extent.⁸¹ The CESCR General Comment goes even further. Far from simply ignoring the importance of emergency obstetric services, as the SDGs do, it declares that lack of emergency obstetric care services constitutes a violation of the right to life and can amount to cruel, inhuman or degrading treatment.⁸²

Redressing specifically gendered disadvantage is also central to the human rights approach to abortion. Although the CEDAW Committee does not refer directly to abortion in its General Recommendation, it states pointedly that States should not criminalise medical procedures only needed by women or punish women who undergo these procedures.⁸³ It also emphasises that it is discriminatory for a State Party to refuse to provide under its laws for the performance of certain reproductive health services for women. For example, where a health service provider conscientiously objects to performing such services, women should be referred to alternative health providers.⁸⁴ Equally importantly, in its concluding observations, the CEDAW Committee scrutinises the State Party's abortion laws, and, given that unsafe abortion is a leading cause of maternal mortality and morbidity, regularly calls on States to legalise abortion at least in cases of rape, incest and severe foetal impairment, and to decriminalise it in all other cases.⁸⁵ For example, in its Concluding Observations in relation to South Korea in 2018, the Committee reiterated its concern that, even though abortion was legal under some circumstances, such as in cases of rape and incest, it remained a punishable offence. It repeated its previous recommendation that the State Party should legalise abortion in cases of rape, incest, threats to the life and health of the pregnant woman or severe foetal impairment and remove punitive measures against women who undergo abortion.⁸⁶ So far as Chile was concerned, the Committee welcomed legislation passed in 2017 legalising abortion on three specific grounds.⁸⁷ At the same time, it expressed its concern that illegal and unsafe abortion may continue to place women at risk, especially in relation to conscientious objection.⁸⁸ In both cases, the Committee went further than simply requiring a law to be in place. The CEDAW Committee made the link between gendered disadvantage and the criminalisation of abortion particularly clear in its report of its inquiry into Northern Ireland. In its report into the inquiry, it found that the UK was responsible for grave and systemic violations of the rights of women in Northern Ireland by unduly restricting their access to abortion.⁸⁹

Like the CEDAW Committee, the CESCR regards a denial of abortion, because it frequently leads to maternal mortality and morbidity, as a violation of the right to life and potentially a breach of the right not to be subjected to torture or cruel, inhuman or degrading treatment. The CESCR also reinforces the CEDAW Committee's insistence that unavailability of goods and services due to ideologically based policies, such as conscientious objection, should not be a barrier to accessing services. An adequate number of willing health-care providers should always be available within reasonable geographic reach.⁹⁰ Similarly, essential medicines should include medicines for abortion

81 GR 24, para. 27.

82 CESCR General Comment 22, para. 10.

83 CEDAW GR 24, para. 14.

84 *Ibid.*, para. 11.

85 Concluding Observations on the Eighth Periodic Report on the Republic of Korea (9 March 2018), para. 42–3.

86 *Ibid.*

87 Concluding Observations on the Seventh Periodic Report of Chile (9 March 2018), para. 4.

88 *Ibid.*, para. 38.

89 CEDAW, 'Report of the Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' (23 February 2018), UN Doc CEDAW/C/OP8/GBR/1 (11), (26), (72), (83).

90 CESCR General Comment 22, para. 14.

and post-abortion care.⁹¹ The failure to provide the appropriate abortion medication is regarded as jeopardising the quality of care.⁹² Among the duties designated as immediate, the General Comment stipulates the obligation to repeal or reform laws which criminalise or restrict abortion.⁹³ One of its core commitments is to take measures to prevent unsafe abortions and provide post-abortion care and counselling for those in need.⁹⁴

The CESCR Committee is also able to target its requirements much more closely to differently disadvantaged groups than the SDGs. As we have seen, the SDGs simply require disaggregated data on several major axes. By contrast, the CESCR requires States to ensure facilities are accessible to everyone, especially disadvantaged and marginalised groups such as people living in rural and remote areas, persons with disabilities, refugees and internally displaced persons, stateless persons and persons in detention. This goes well beyond the SDG disaggregated groups. Moreover, this is not just a question of data disaggregation. The General Comment requires the specific barriers faced by different groups to be addressed.⁹⁵ Furthermore, the Committee recognises that aggregate data outcomes will not be achieved unless appropriate means are put in place. This means at the very least that sexual and reproductive health services be affordable for all. Essential goods and services should be provided at no cost or States should ensure that people without sufficient means are given the support to cover the costs, and this includes essential goods and services relating to the underlying determinant of sexual and reproductive health.⁹⁶ To this the Committee adds the right to information on sexual and reproductive health. All of this must be of good quality, by which it means that the information is evidence-based and up-to-date.⁹⁷

The CEDAW Committee has likewise emphasised the ways in which disadvantage in reproductive rights magnifies and is magnified by other sorts of disadvantage. In its recent report on its inquiry into Northern Ireland, in a key recognition of the need to recognise the specific impact on poverty, the Committee highlighted the particularly adverse effect of the criminalisation of abortion on women in situations of poverty. In comparison with rest of the UK, it found that Northern Ireland experienced the highest fertility rate, the highest and most persistent levels of child poverty, a higher proportion of single earner households, lower wage rates and living standards together with the highest childcare costs outside of London, and higher prevalence of poor mental health. It expressly drew the link ‘between the low control that NI women have over their fertility and the disproportionate risk of poverty faced by large families.’⁹⁸ This is a crucial linking of the mission of the SDGs to eliminate poverty with the human rights approach to individuals’ rights to autonomy over their own bodies.

(ii) Addressing stigma, stereotyping, prejudice and violence

Stereotypical assumptions about women’s role in childbearing and caring are a central factor driving high levels of maternal mortality and deprivation of reproductive rights. Measures which shift these stereotypes are, therefore, central to achieving substantive gender equality. CEDAW comes closest to addressing this issue. Article 5(b) requires States to ensure that ‘family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children.’ This comes together with the broader

91 CESCR General Comment 22, para. 13.

92 *Ibid.*, para. 21.

93 *Ibid.*, para. 31.

94 *Ibid.*, para. 49.

95 *Ibid.*, para. 24.

96 *Ibid.*, para. 17.

97 *Ibid.*, para. 21.

98 *Ibid.*, para. 34.

statement in Article 5(a), that States should take all appropriate measures to ‘modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.’

In its monitoring role, the CEDAW Committee has further emphasised the relationship between such stereotypes and the denial of reproductive rights to women. In its report on Northern Ireland in February 2018, the Committee posited that the many statements by politicians and government officials, ‘including the characterisation of a woman’s primary role as a mother, have reinforced gender stereotypes steeped in patriarchy, thereby contributing to the belief that it is acceptable to deny women reproductive choice.’⁹⁹ It therefore found that ‘the inadequacy of State-provided family planning support as driven by socio-religious considerations, coupled with a political culture which circumscribes the role of women, places NI women and girls in a double jeopardy effectively depriving them of any control over their fertility.’¹⁰⁰

This dimension of substantive gender equality further requires specific attention to be paid to the ways in which stereotypical assumptions lead to violence against women, negating their personal integrity and dignity, as well as causing physical harm, anguish and suffering. The ICESCR Committee makes this connection explicit. GC22 requires action to shield individuals from gender-based violence which denies them their full sexual and reproductive health, such as FGM, child marriage, and domestic and sexual violence.¹⁰¹ This is further reinforced in CEDAW’s 2017 General Recommendation 35 on gender-based violence.¹⁰² In GR35, the CEDAW Committee expressly characterises violations of women’s sexual and reproductive health and rights as forms of gender-based violence. It lists a range of such violations, ranging from forced sterilisation and forced abortion, to forced pregnancy; forced continuation of pregnancy; abuse and mistreatment of women and girls seeking reproductive sexual and reproductive health information, goods and services; criminalisation of abortion; and denial or delay of safe abortion and post-abortion care.¹⁰³ The General Recommendation expressly situates gender-based violence in the deep-rooted stereotypes about women and men. Thus it states: ‘The Committee regards gender-based violence against women to be rooted in gender-related factors such as the ideology of men’s entitlement and privilege over women, social norms regarding masculinity, the need to assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable female behaviour. These factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered as a private matter, and to the widespread impunity for it.’¹⁰⁴

The absence of reproductive choice in relation to the criminalisation of abortion has also been characterised by several UN treaty bodies as amounting to torture or cruel, inhuman or degrading treatment, especially where there are no exceptions for rape or fatal foetal abnormality. Thus in its inquiry into Northern Ireland, the CEDAW Committee found that the UK was responsible for grave and systemic violations of the rights of women in Northern Ireland by unduly restricting their access to abortion.¹⁰⁵ According to the Committee, a ‘restriction affecting only women from exercising reproductive choice, and

99 CEDAW, ‘Report of the Inquiry Concerning the UK and Northern Ireland’, (CEDAW/C/OP.8/GBR/123 February 2018), para. 50.

100 *Ibid.*, para. 51.

101 CESCR General Comment 22, para. 29.

102 Committee on the Elimination of Discrimination against Women: General Recommendation No. 35 on Gender-based Violence Against Women (CEDAW/C/GC/35, 14 July 2017).

103 *Ibid.*, para. 18.

104 *Ibid.*, para. 19.

105 CEDAW, see *supra* note 99.

resulting in women being forced to carry almost every pregnancy to full term, involves mental and physical suffering constituting violence against women and potentially amounting to torture or cruel, inhuman and degrading treatment', in violation of several articles of the CEDAW.¹⁰⁶

Even the ICCPR, usually deferent in relation to reproductive rights, has been successfully invoked in support of the view that the denial of the right to abortion for a pregnant woman carrying a foetus with fatal abnormalities is a violation of her rights not to be subjected to inhuman treatment or torture.¹⁰⁷ In this case, the complainant discovered at 22 weeks that the foetus she was carrying suffered from a serious heart defect and would either die in utero, or shortly after birth. She travelled to the UK for an abortion, but because of shortage of resources, had to return within 12 hours of the procedure, despite being weak and very distressed. She argued that her right not to be subjected to cruel or inhuman punishment or torture under the ICCPR was violated by having to leave Ireland, without the support of her family and friends, or the Irish medical system, or else remain in Ireland and wait for her foetus to die in utero or shortly after birth. The Committee on Human Rights upheld all her claims. The legislative framework, it held, subjected her to 'conditions of intense physical and mental suffering', exacerbated by having to choose between 'continuing her non-viable pregnancy or travelling to another country while carrying a dying foetus, at personal expense and separated from the support of her family, and to return while not fully recovered; the shame and stigma associated with the criminalisation of abortion of a fatally ill foetus; the fact of having to leave the baby's remains behind and later having them unexpectedly delivered to her by courier; and the State's refusal to provide her with necessary and appropriate post-abortion and bereavement care'.¹⁰⁸

The need to prevent stigma and stereotyping is particularly marked for adolescent girls. Absence of proper sexual education and lack of availability of contraception at schools, together with the high prevalence of violence against girls in this age-group, significantly increase the risk of adolescent pregnancy, unsafe abortions and complications at birth. Moreover, in many areas, pregnant learners are still excluded from school, and even if they are de facto permitted, no accommodation is made to facilitate their continued education. According to a 2014 Report by the Centre for Reproductive Rights, mandatory pregnancy testing and expulsion of pregnant school girls continues in a number of African countries, including Tanzania, Ghana, Kenya, Nigeria, Sierra Leone, Uganda and Zimbabwe.¹⁰⁹ There is, therefore, a crucial need to provide a non-stigmatic environment within which pregnant learners can combine their pregnancy with continuing their studies.

Some progress on this issue has been made within the human rights framework. From her earliest report, the first UN Special Rapporteur on Education, Katerina Tomasevski, consistently drew attention to the pervasiveness of the exclusion of pregnant learners from school, highlighting the practice as a breach of the right to education and non-discrimination.¹¹⁰ More recently, the Committee on the Rights of the Child, noting the pervasiveness of such practices, made it clear that 'discrimination based on adolescent pregnancy, such as expulsion from schools, should be prohibited, and opportunities

106 Ibid., p. 65.

107 UN Human Rights Committee Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Concerning Communication No 2324/2013 (9 June 2016), CCPR/C/116/D/2324/2013.

108 Ibid.

109 Centre for Reproductive Rights Submission for Half-Day of General Discussion and Draft General Recommendation on the Right to Education (14 June 2014).

110 Statement by Special Rapporteur on the Right to Education, Commission on Human Rights, Geneva, 22 March – 30 April 1999, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=2185&LangID=E> (accessed 24 February 2015); UN Commission on Human Rights. 1999: Preliminary Report of the Special Rapporteur on the Right to Education, Ms Katarina Tomaševski, submitted in accordance with Commission on Human Rights Resolution 1998/33, E/CN.4/1999/49 (Geneva: Economic and Social Council).

for continuous education should be ensured.¹¹¹ This has also been a common refrain on the part of the CEDAW Committee, which on numerous occasions has expressed concern at the exclusion of pregnant learners and urged states to ensure that they are able to stay in school.¹¹² A particularly emphatic declaration by the Supreme Court of Colombia underlined that ‘the conversion of pregnancy... into a ground for punishment violates fundamental rights to equality, privacy, free development of personality and to education.’¹¹³

(iii) Voice and participation

The third key element of substantive equality is to facilitate voice and participation. Both CEDAW and ICESCR give particular attention to voice and participation. Article 16 CEDAW requires states to assure women and men the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.¹¹⁴ This is reinforced by GR24, which makes it clear that States should not restrict access to health care on the basis that women do not have the authorisation of husbands, partners, parents or health authorities.¹¹⁵ Similarly, the CESCR locates reproductive health in autonomy, and specifically on the right to be in a position to make free and responsible decisions. This is particularly true in relation to abortion. The CESCR General Comment requires the removal of third-party authorisation requirements, such as parental, spousal or judicial consent to access abortion and contraception, as well as biased counselling and mandatory waiting periods for access to abortion services, and the exclusion of such services from public or donor funding. All of these are increasingly common, even in countries where abortion is permitted in given circumstances. This is further borne out by the jurisprudence of other committees.¹¹⁶

This is augmented by obligations to provide information, an essential element of true participation rights. The right to education in Article 10 CEDAW includes a duty to give access to information and advice on family planning. This is reinforced by the reporting requirement set out in GR24, which requires particular attention to be paid to education of adolescents on all methods of family planning.¹¹⁷

111 Committee on the Rights of the Child, General Comment No. 15: The Right of the Child to the Enjoyment of the Highest Attainable Standard of Health, Article 24.

112 See CEDAW Committee, Concluding Observations: Chile, para. 29(a), U.N. Doc. CEDAW/C/CHL/CO/5-6 (2012); CEDAW Committee, Concluding Observations: Saint Lucia, para. 28, U.N. Doc. CEDAW/C/LCA/6 (2006).

113 Corte Constitucional de Colombia, *Crisanto Arcangel Martinez Martinez y Maria Eglina Suarez Robayo v. Colegio Cuidad de Cali*, No. T-177814, 11 November 1998; cited by K. Tomasevski ‘Girls’ Education Through a Human Rights Lens’, <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4349.pdf> (accessed 24 February 2015).

114 Article 16(1)(e).

115 GR 24, para. 17.

116 See Human Rights Committee Communication No. 1153/2003, *Karen Noelia Llantoy Huamán v. Peru*, Views Adopted on 24 October 2005; Committee on the Elimination of Discrimination against Women Communication No. 17/2008, *Alyne da Silva Pimentel v. Brazil*, Views Adopted on 25 July 2011; CAT/C/SLV/CO/2, para. 23; and CAT/C/NIC/CO/1, para. 16.

117 GR 24, para. 23.

(iv) Structural change

Both CEDAW and ICESCR take seriously the importance of structural change, the fourth dimension. Article 11 CEDAW, which concerns equal rights at work, requires protection from dismissal on grounds of pregnancy; protection during pregnancy from harmful types of work; maternity leave and pay; and general protection of the function of reproduction in relation to health and safety at work. States should also encourage the provision of supporting social services to enable both parents to combine family obligations with work.

The CESCR General Comment goes further and expressly recognises the extent to which the right to sexual and reproductive health is affected by the ‘social determinants of health’, such as social inequalities, inequalities of power based on gender, ethnic origin, age, disability and other factors, as well as poverty and income inequality.¹¹⁸ This means that reproductive autonomy entails not just freedom from actual coercion, but genuine access to a range of facilities, services and information in a context in which imbalances of power are recognised and addressed. The difference between this approach and that of the SDGs is highlighted by the way the General Comment deals with maternal mortality. More than just the bare outcome measure of maternal mortality rates, it insists on thoroughgoing attention to the causes and prevention of unwanted pregnancies. This requires the State to adopt measures to guarantee access for everyone to affordable, safe and effective contraceptives. It includes access for everyone to comprehensive sexuality education, including for adolescents. It requires also a liberalisation of restrictive abortion laws, safe abortion services and respect for the right of women to make their own decisions about their sexual and reproductive health.¹¹⁹

A qualitative approach: monitoring reproductive rights

This more detailed approach to substantive gender equality is reinforced through the monitoring and compliance framework of CEDAW and ICESCR. States must give a detailed account to the CEDAW Committee of their qualitative compliance with CEDAW obligations, making the human rights approach more nuanced than the SDG dependence on aggregate data. Issues which are detected under this level of scrutiny would be missed in a set of aggregate numbers. For example, the CEDAW Committee’s insistence on changes in the law, and then its examination of implementation of the law is far more specific and nuanced. In its Concluding Observations in relation to South Korea in 2018, the Committee expressed its concern that sexual and reproductive health and rights narrowly focussed on married and pregnant women. Furthermore, CEDAW obligations are concerned with the means of achieving the goals, rather than just the outcomes. As a result, it is clear that the means should not be permitted to infringe human rights. For example, obstetric violence by birth support assistants may not be picked up by the SDGs but would under CEDAW.

The qualitative nature of the human rights monitoring framework is illustrated by the CEDAW Committee’s decision in the case of *Alyne da Silva Pimentel Teixeira v Brazil*.¹²⁰ Alyne da Silva Pimentel Teixeira was a young African descendant Brazilian woman, who died of pregnancy-related complications after her condition was severely neglected in a Brazilian health clinic and hospital. Her story was a tragic catalogue of mismanagement and neglect. Having presented at her local health centre with severe nausea and abdominal pain, it took a further two days before doctors realised that her 27-week foetus

¹¹⁸ CESCR General Comment 22, para. 9.

¹¹⁹ CESCR General Comment 22, para. 28.

¹²⁰ ‘Alyne da Silva Pimentel v Brazil’ 2011 (Communication No. 17/2008), Committee on the Elimination of Discrimination Against Women.

had died in utero, requiring induced labour. She continued to suffer severe symptoms, including haemorrhaging and low blood pressure for several more days, until the health centre attempted to transfer her to nearby public and private hospitals with better facilities. Only one municipal hospital had available space, but refused to use its only ambulance to transfer her at that hour. Alyne da Silva waited in critical condition for eight hours, having slipped into a coma, before being transported to the hospital by ambulance. Although she arrived in a grave condition and had to be resuscitated, the hospital left her in a makeshift area in the emergency room hallway where she died less than 24 hours later. Since her medical records had not been transferred with her, the hospital was unaware of her recent stillbirth.

In a communication to the CEDAW Committee, her mother argued that her daughter's equality rights, and in particular her rights to life and health, had been violated. Crucially, the communication situated the plight of her daughter in the deep structural inequalities in the Brazilian health system. The claimant argued that the duty to reduce maternal mortality was a key obligation entailed by the right to health. Yet they pointed to statistics showing that over 4000 maternal deaths occurred each year in Brazil, representing one third of maternal deaths in Latin America as a whole. This figure was considerably higher than those of countries with lower levels of economic development. This, they argued, constituted a systematic failure to prioritise and protect women's basic human rights. In response to the State's submission that a national health strategy was in place to eventually achieve improvement, the claimant argued that the requirement that health facilities be available on a non-discriminatory basis was an obligation of immediate effect. Moreover, the mere adoption of a national health strategy was not sufficient to fulfil the progressive elements of the rights. In addition, the strategy had to be implemented and periodically reviewed on the basis of a participatory and transparent process.¹²¹ The position was materially aggravated by inexcusable delays in the Brazilian judicial system, which routinely failed to provide adequate remedies for women in vulnerable groups such as Alyne da Silva Pimentel Teixeira and her family. Women from lower socio-economic backgrounds and women of African descent faced widespread difficulties in accessing remedies in relation to acts of violence and discrimination committed against them.¹²² The State, on the other hand, attempted to argue that this was an individual case of negligence, not of its own making, but attributable to the private health facilities which had been responsible for her care. Indeed, it went so far as to claim that Alyne da Silva's death was not a maternal death, but resulted from 'digestive haemorrhage.'

In upholding the complaint, the Committee accepted both the individual breach and the more systemic violations. The Committee held that it was not sufficient to have policies in place – policies must be adequately funded, and both action- and result-oriented. Moreover, the policy should ensure that there are strong and focused executive bodies to implement such policies. In addition, the Committee rejected the State's claim that the private health-care institution where she was treated was responsible for the poor level of medical care, rather than the State. Instead, it held, the State was directly responsible for the actions of private institutions when it outsourced medical services; and that indeed the State always retained the duty to regulate and monitor them. On the basis of Article 2(e) of the Convention, the State Party had an obligation of due diligence to take measures to ensure that private actors' activities in relation to health policies and practices were appropriate.¹²³

121 Ibid., (5.6).

122 Ibid., (5.5).

123 Ibid., (7.5).

At the same time, the CEDAW Committee went further and emphasised the crucial gender equality dimensions of the case. As a start, the Committee made it clear that it regarded this as a case of maternal death. This is important in that the Brazilian government's refusal to classify it as such was symptomatic of widespread misclassification and under-reporting of maternal deaths. Moreover, and particularly importantly, the Committee was able to recognise the role of intersectional discrimination in this case.¹²⁴ In accepting the author's argument that Alyne da Silva was subjected to multiple discrimination, as a woman of African descent and on the basis of her socio-economic background,¹²⁵ the Committee has come to one of the very few decisions in which intersectionality has been concretely applied.

The Committee, therefore, held that Brazil had violated its obligations under CEDAW. As well as recommending that the State provide reparations to Alyne da Silva's surviving daughter, the Committee made some structural recommendations. These included ensuring women's right to safe motherhood; the right to affordable access for all women to adequate emergency obstetric care; and the provision of adequate professional training for health workers, especially for women's reproductive health rights. The State is also required to ensure access to effective remedies for the violation of such rights. In addition, the State must ensure that private health care facilities comply with international and national standards on reproductive health care. Most importantly, the State should reduce preventable maternal deaths through implementing its own policies effectively and throughout all the regions of Brazil.¹²⁶

The detailed manner in which the human rights monitoring bodies are able to address disadvantage in relation to reproductive rights can be further seen in the report of the inquiry carried out by the CEDAW Committee in relation to the Philippines in 2012. The inquiry procedure is a particularly good forum for the Committee to hold states to account because it is specifically aimed at grave and systematic violations of the Convention. The inquiry was triggered by a complaint concerning an Executive Order promulgated in Manila discouraging the use of contraception and declaring that the City of Manila take 'an affirmative stand on pro-life issues and responsible parenthood'. This resulted in the withdrawal by local government-funded health facilities of provision of artificial contraceptives. In addition, women were refused family planning information and counselling; and supplies of modern contraceptives were discontinued. Although a further Executive Order in 2011 proclaimed that couples could exercise their own discretion in deciding on family planning, the same Order prohibited any provision of financing for artificial birth control, making it practically impossible to acquire contraceptives.

The CEDAW Committee found that the State Party was responsible for grave and systematic violations of Convention rights.¹²⁷ Lack of access to the full range of reproductive and sexual health services severely affected women's lives and health, leading to unplanned pregnancies, unsafe abortions and unnecessary maternal deaths. These harms were intensified for disadvantaged groups of women. Adolescent girls were exposed to an increased risk of unwanted pregnancies. In addition, the policy had severe effects on poor women, whose lack of means to control their own fertility was directly linked to high poverty levels in Manila. The Committee called on the Philippine

124 General Recommendation No. 28 on the Core Obligations of State Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women CEDAW /C/GC/28 (December 2010).

125 'Alyne da Silva Pimentel v Brazil' (7.7).

126 Ibid., (8).

127 Committee on the Elimination of Discrimination Against Women, 'Summary of the Inquiry Concerning the Philippines under Article 8 of the Optional Protocol to the Convention on the Elimination of Discrimination Against Women', CEDAW/C/OP.8/PHL/1 (22 April 2015). The Inquiry found violations of the right to access to family planning services in Article 12(1) and the right to information and advice on family planning in Article 10(h) CEDAW.

government to immediately and fully improve access to contraception and other sexual and reproductive health services and information, and to repeal all discriminatory laws, including the two Manila City Orders, clarifying that women have a right to contraceptive information and services.

This is not to say that the CEDAW Committee has the ability to achieve immediate compliance. For example, in its concluding observations on the Philippines in 2016, a year after its report, the CEDAW Committee noted that no express measures had been taken to implement the inquiry's finding.¹²⁸ The dominant Catholic Church has consistently blocked contraception, together with abortion and divorce, leaving the country, and especially poor women, facing high fertility rates and consequent poverty. However, in January 2017, the president of the Philippines signed an Executive Order directing government agencies to expand access to contraception, with the aim of achieving 'zero unmet need' for modern family planning leading to full access for all poor households in 2018. This suggests that the CEDAW Committee's intervention must be seen as part of a process in which a variety of actors participate. In both Northern Ireland and the Philippines, the CEDAW Committee has given a much needed fillip to the ongoing struggle to achieve reproductive rights. However, it is only one element in what is inevitably a multi-pronged strategy, centred on civil society's activities on the ground. Both the SDGs and the human rights framework should play a role.

The role of the Committee in fleshing out the substantive content of the right to gender equality as including the right to contraception, sex education and reproductive autonomy is a crucial contribution to the partnership between human rights and the SDGs in uncovering obstacles to achieving the SDG targets and insisting they be removed. This is not something that either could achieve on their own.

128 Committee on the Elimination of Discrimination Against Women, 'Concluding Observations on the Combined Seventh and Eight Periodic Reports of the Philippines', CEDAW/C/PHL/CO/7-8 (25 July 2016).

Part 4: Women and Poverty

While the human rights approach to reproductive rights gives much needed depth to the SDG commitments, it is the SDGs that take the lead on poverty. However, neither the human rights framework nor the SDGs fully addresses all four dimensions of substantive gender equality. UN Women's most recent report confirms yet again the well-known fact that women form the majority of those living in extreme poverty. In the 89 countries with available data surveyed in the report, women and girls accounted for 330 million of those living on less than \$1.90 a day. This is 4% more than men. Moreover, more than half of urban women and girls in developing countries live in conditions in which they lack at least one of the four most basic needs: access to clean water, improved sanitation facilities, durable housing or sufficient living area.¹²⁹

Women's over-representation among the extreme poor is not purely accidental. Instead, women's risk of poverty is specifically affected by their gender.¹³⁰ Whereas for men, this risk is predominantly connected to exclusion from the labour market, whether due to low skills, previous unemployment or lack of regional job opportunities, for women, these risks are compounded by other, gender-based factors. In particular, women's poverty is closely linked to their role in the family, especially their caring roles.¹³¹ Unpaid caring roles significantly limit women's access to decent paid work, leaving many women with no choice but to accept precarious and low paid work.¹³² In some developing regions, 75% of women's paid work is informal and unprotected.¹³³ Part-time work is particularly at risk of low pay;¹³⁴ yet part-time workers are predominantly women.¹³⁵ Women also predominate in the informal sector, especially in the lowest-paid segment – as homeworkers or industrial outworkers.¹³⁶ Caring roles have an ongoing and cumulative impact on women's lifetime earnings, which in turn significantly affect pension entitlements. Furthermore, divorce, widowhood, separation and teenage motherhood are major triggers of women's poverty in a way they are not for men.¹³⁷

This is aggravated by lack of power. For example, household income may bear no relation to women's poverty because women may not be able to access it.¹³⁸ This is aggravated by the fact that some countries still have legal restrictions on women's ability to access economic resources, such as land, property and financial services, which could provide greater protection and enhance their bargaining power within the household. Even in countries in which the law has been changed, such restriction can remain deeply embedded in social structures. Women are falling even further behind because of the challenges they face in accessing information and communication technologies, which could unlock opportunities for them in education or paid work. The HLPF thematic review on SDG 5 in 2017 reported that women in low and middle-income countries are 21% less likely to own a mobile phone than men. Women's internet usage in 2016 was 12.2% lower than that of men, and this figure climbs steeply to 30.9% for women in the

129 'Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development' (2018), www.unwomen.org/en/digital-library/sdg-report (accessed 8 April 2018), p. 115.

130 This section is taken from S. Fredman, 'Engendering Socio-economic Rights' (2009), 25 *South African Journal of Human Rights*.

131 HLPF Thematic Review on SDG 5, para. 5.4; B. Goldblatt, 'The Right to Social Security', 35 *Women's Social and Economic Rights*.

132 G. Rosenblatt and K. Rake, 'Gender and Poverty' *Gender and Poverty* (2003), Fawcett Society, http://www.fawcettsociety.org.uk/documents/pov_000.pdf.

133 UN Women, 'Progress of the World's Women' (2015).

134 J. Hills et al., 'Anatomy of Inequality in the UK' (Government Equality Office, 2010), pp. 11–13.

135 LP Commission, 'National Minimum Wage Report' (2009) 98; Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee, and the Committee of the Regions, 'Equality Between Women and Men' (2009), p. 4.

136 International Labour Office, 'Global Employment Trends for Women: 2009' (2009), pp. 10–12; World Development Report (2011): Gender Equality and Development (2011), pp. 79–80.

137 Rosenblatt and Rake, see *supra* note 132, p. 3.

138 S. Chant, 'Rethinking the Feminisation of Poverty' (2006), 7 *Journal of Development and Capabilities*, pp. 201, 208.

least developed countries (LDCs). Even more worrying is the fact that the global gender digital divide has widened by 1.2% since 2013, which translates into approximately 257 million more men online than women. As the review puts it: 'Women are not adequately represented as stakeholders, co-creators, and beneficiaries of technology-based interventions and often lack access to technology, digital skills, and media and information literacy.'¹³⁹

Women's poverty cannot, therefore, be characterised solely in terms of income poverty.¹⁴⁰ It has also to do with inequality in relation to time and labour input;¹⁴¹ continuing discrimination in relation to property, succession and family law; customary practices such as 'property grabbing' from widows; inadequate education; exposure to gender-based violence and lack of full political participation.¹⁴² Domestic violence and divorce are some of the biggest precipitants of women into poverty. Thus as Brodsky and Day powerfully argue, 'poverty is a sex equality issue because women's poverty is a manifestation of persistent discrimination against women'.¹⁴³ It is also crucial to take an intersectional approach. Not all women are similarly situated. The experience of poverty of racialised women, women with disabilities and migrant women, for example, should be specifically taken into account.

In order to address gendered poverty, therefore, a nexus of interlocking factors needs to be addressed: women's disproportionate responsibility for care, both unpaid and through the global care chain; women's labour market insecurity and their predominance in the informal sector and among precarious workers; women's lack of access to basic property and participation rights; and women's marginalisation in relation to social protection schemes. All of these are compounded by violence against women. It is immediately apparent that these challenges are not easily met; and neither the development goals agenda nor human rights have adequately surmounted them. How then can they work together? The following section considers the contrasting approaches of the SDGs and human rights in relation to these pressing issues. The cross-cutting theme of violence against women has been dealt with in detail by UN Women's report, to which the reader is referred.¹⁴⁴ This issue will, therefore, not be addressed specifically here.

139 HLPF Thematic Report on SDG 5 (2017), p. 3.

140 Chant, see supra note 138, p. 174.

141 Ibid., p. 182.

142 S. Fredman, *Discrimination Briefing Paper World Development Report* (2013).

143 G. Brodsky and S. Day, *Canadian Journal of Women and the Law* (2002), p. 189.

144 UN Women, *Progress of the World's Women* (2015).

Rendering gendered poverty visible

At the very minimum, recognition of the specific nature of gendered poverty is essential. However, this is at best only tangentially achieved by either the SDGs or the human rights approach. This is despite the fact that poverty is centre stage in the SDGs. *Transforming our World* declares in ringing tones that all countries and stakeholders, acting in collaborative partnership, are ‘resolved to free the human race from the tyranny of poverty and want’ and to end poverty and hunger, in all their forms and dimension. Its central motif is that ‘no-one will be left behind.’ This is given concrete form in SDG 1, which aims to end poverty in all its forms everywhere.

However, Targets 1.1 and 1.2 are disappointing. Target 1.1 aims to eradicate extreme poverty, measured by the number of people living below the international poverty line. At \$1.90 a day, however, the international poverty line is extremely low. Even worse, Target 1.2 only aims to reduce by half the proportion of men, women and children living in poverty in all its dimensions according to national definitions. The same is true for SDG 10, which aims to reduce inequality within and among countries. Target 10.2 aims to empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status. It is to be measured by the proportion of people living below 50% of median income, by age, sex, and persons with disabilities. However, it does not say clearly how much progress should be achieved by 2030.

More problematically, none of these targets grapple with the specificity of gendered poverty. SDG 1 itself does not refer to gendered poverty. The only reference to the possibility of a difference between men and women comes in the indicators. Thus indicator 1.1.1, which measures the proportion of the population living below the international poverty line, must be disaggregated by sex, age, employment status and urban/rural geographical location. More helpful for the targeting of gendered poverty is Target 1.2, which aims to reduce by half the proportion of men, women and children living in poverty ‘in all its dimensions according to national definitions.’ This refers to the multidimensional poverty index (MPI), which has been used since 2010 in human development reports. The MPI complements monetary measures of poverty by considering overlapping deprivations suffered by individuals at the same time across three key dimensions of human development: health, education and standard of living. Health is measured according to nutrition and child mortality; education by data on years of schooling and the numbers of children enrolled; and the standard of living according to the availability and nature of cooking fuel, toilets, electricity, whether or not people live in homes with a floor, and their assets.¹⁴⁵ Women’s poverty is illuminated much more clearly through this multidimensional approach than through a focus solely on income.

However, the availability of data to measure progress is still extremely limited. UN Women’s 2018 report shows that while nearly 65% of countries have data on the proportion of the population below the poverty line since 2000, no countries have data on any of the other indicators mentioned above.¹⁴⁶ In addition, the ways in which data is collected might have significant effects on the outcomes. For example, as UN Women’s report points out, labour force surveys that ask only about the respondent’s ‘primary economic activity’ might not capture the contributions of women who regard their paid work as secondary to their unpaid domestic and care work.¹⁴⁷ The enormous investment required simply to gather the data to monitor gender-specific progress towards the goals does not bode well for the prospects of attaining them by 2030. As Bradshaw et al point

145 See <http://hdr.undp.org/en/content/multidimensional-poverty-index-mpi>.

146 UN Women (2018), p. 261.

147 UN Women (2018), p. 58.

out, the risk is that ‘rather than conceptual advances driving the search for better data, the absence of data up to the task of measuring differences in how women and men experience poverty seems to be driving ever more narrow conceptualisations of gendered poverty.’¹⁴⁸

As was the case for reproductive rights, the individual focus of human rights may compensate to some extent for the aggregate nature of the development goals. However, the international human rights framework does not specifically give a right not to be poor. Nineteenth century notions of poverty as being due to individual failings rather than being the responsibility of the State still permeate the structure of human rights, despite the recognition of poverty as a social, structural and systemic issue. Although the Universal Declaration of Human Rights declared freedom from want to be one of the highest aspirations of the common people, this shift in the understanding of poverty has not been captured through an explicit reference to poverty in the international human rights canon. Instead, the closest the international human rights framework comes to protection against poverty is through socio-economic rights such as the rights to a decent standard of living, to housing, to work and to social security.

Even CEDAW does not expressly mention poverty.¹⁴⁹ The closest it comes to doing so is in relation to rural women. Article 14 CEDAW requires States to take into account the particular problems faced by rural women, and the roles they play in the economic survival of their families. This is elaborated in the CEDAW Committee’s 2016 General Recommendation on the rights of rural women,¹⁵⁰ which pays specific attention to the ways in which gender shapes poverty for women in rural areas. Thus it points out that: ‘Globally, and with few exceptions, on every gender and development indicator for which data are available, rural women fare worse than rural men and urban women and men, and rural women disproportionately experience poverty and exclusion. They face systemic discrimination in access to land and natural resources. They carry most of the unpaid work burden owing to stereotyped gender roles, inequality within the household and the lack of infrastructure and services, including with respect to food production and care work. Even when formally employed, they are more often engaged in work that is insecure, hazardous, poorly paid and not covered by social protection. They are less likely to be educated and are at higher risk of being trafficked and forced into labour, as well as into child and/or forced marriage and other harmful practices... They are more likely to become ill, suffer from malnutrition or die from preventable causes, and are particularly disadvantaged with respect to access to health care.’¹⁵¹ However, these insights are not extended to gendered poverty more widely.

Thus, there is much work still to be done in drawing attention to gendered poverty both in relation to the SDGs and the human rights framework. How then can we draw on other elements in each of these two frameworks together to address gendered poverty? The remainder of this section considers social protection and valuing caring work as two potential arenas for synergistic functioning.

148 S. Bradshaw, S. Chant and B. Linneker, ‘Gender and Poverty: What We Know, Don’t Know and Need to Know for Agenda 2030’ (2017), 12 *Gender, Place and Culture*, pp. 1687-1683.

149 M. Campbell, ‘Women, Poverty, Equality: The Role of CEDAW’ (2018).

150 CEDAW General Recommendation No. 34 (2016) on the Rights of Rural Women.

151 *Ibid.*, para. 5.

Social protection

Social protection is particularly important for poor women because of their over-representation in precarious and informal work. However, the traditional model of social security is largely targeted at formal sector workers, and specifically at permanent, full-time workers. Contributions-based social security schemes are premised on a lifetime of continuous employment, which excludes those who have interrupted work-lives and those who are chronically unemployed or work in the informal sector. Means-tested payments might fill the gap to some extent, but these are often very low cash transfers, and regarded as a hand-out or charity rather than a genuine human right. Traditionally too, many social security schemes have been premised on an assumption that the beneficiary is the household as a whole. Where there is a male ‘head of household’, this renders invisible the intra-household division of power and resources. More recently, there has been a strong push to make women the primary beneficiary of social security, on the premise that they are more likely to use cash transfers for the benefit of their families. However, as we will see, this in its own way risks reinforcing stereotypical assumptions about women.

There are four main references to social protection in the SDGs. Firstly, under SDG 1 (end poverty) Target 1.3 requires States to ‘implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable.’ The social protection indicator requires disaggregation by sex, pregnancy, age and other factors revealing intersectional poverty. However, the specific obstacles to women’s equal enjoyment of social security are not addressed expressly. Secondly, under SDG 8 (decent work and economic growth), indicator 8.B.1 requires measurement of total government spending in social protection and employment programmes as a proportion of national budgets and GDP. The third reference is in SDG 10 (reduce inequality within and among countries). Target 10.4 requires the adoption of fiscal wage and social protection policies to progressively achieve greater equality. However, neither of these last two indicators mentions the shape of social protection, or the proportion spent on women. The only explicit link to gender is made in Goal 5.4, which sees social protection policies as a means of recognising and valuing unpaid care and domestic work, together with the provision of public services, infrastructure and the promotion of shared responsibility within the household. Although this is a welcome gesture towards gendered poverty, it only addresses one aspect of the role that social protection should play in furthering substantive gender equality.

Can a human rights approach inject the necessary gendered perspective into social protection? The right to social security was recognised in the Universal Declaration of Human Rights in 1948;¹⁵² and subsequently incorporated into CEDAW (although only in respect of rural women), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Rights of the Child (CRC).¹⁵³ Under Article 9 of the ICESCR, State Parties recognise ‘the right of everyone to social security, including social insurance.’ In its General Comment 19, adopted in 2007, the CESCR emphasised that social security plays an important role in poverty reduction and alleviation, as well as being of central importance in guaranteeing human dignity.¹⁵⁴ However, it was concerned at the low levels of access to formal social security. Of the large majority (80%) of the population without access to social security, 20% lived in extreme poverty. Nevertheless, particularly at domestic level, there is still little acknowledgement of social security as a fundamental human right. Instead, it is still largely regarded as a matter for politics or charity.

152 Universal Declaration of Human Rights (1948), Article 22.

153 CEDAW Article 11(1)(e); ICERD Article 5(e)(iv); CRC Article 26.

154 CESCR General Comment No. 19 ‘The Right to Social Security’ E/C.12/GC/19 (4 February 2008), para. 1-3.

Social protection floors

Some added energy has been given to the right to social security by the development of the principle of social protection floors, which is consciously aimed at preventing poverty and reaching informal workers. The UN Special Rapporteur on Extreme Poverty, Philip Alston, regards the implementation of the right to social protection through the adoption of social protection floors as ‘by far the most promising human rights-inspired approach to the global elimination of extreme poverty.’¹⁵⁵ In his view, it should be seen as an initiative not only to promote socio-economic rights but also to improve the civil and political rights of hundreds of millions of people.¹⁵⁶ The concept originated with the International Labour Organization (ILO). In its Social Protection Floors Recommendation in 2012,¹⁵⁷ the ILO set out the basic social security guarantees which should be put in place to ensure effective access to essential health care and basic income security throughout the life cycle. The social protection floor, defined at the national level, should provide basic income security for children, for persons in active age who are unable to earn sufficient income, and for older persons, as well as access to essential health care, including maternity care.

The Social Protection Floor initiative is particularly important in that it consciously moves away from the traditional view of social security as a tool for protecting workers in the formal sector only. It is also significant in its objective of allying human rights approaches with labour standards on the one hand, and social policy on the other. Thus, the ILO Recommendation stresses that States should respect the rights and dignity of all those covered by social security guarantees; as well as requiring social protection floors to be defined in a participatory manner, respecting principles of universal, non-selective protection; non-discrimination; gender equality and social inclusion.

However, like the development goals, the ILO Recommendation does not incorporate a gender perspective. As Lamarche convincingly demonstrates, the Recommendation simply amalgamates all poor people into one category of ‘vulnerable’ individuals, therefore neglecting to take into account the specific burden carried by poor women because of their gendered role. Apart from requiring free prenatal and postnatal care, the Recommendation does not address ‘the structural inequalities that women are victims of in a globalised and “new” economy’ and does not even mention care and domestic responsibilities.¹⁵⁸

This is somewhat mitigated by the CESCR statement endorsing the principle of a social protection floor. In a paragraph devoted to women, the Committee recognises that women are often not entitled to social security benefits and pensions because they are in the informal economy; they have difficulty meeting eligibility criteria; or are engaged in unpaid work that is not recognised as a contribution to their societies. Moreover, they are often considered primarily as dependent on a male partner. However, the Committee’s solution is limited to highlighting that several of the basic guarantees included in national social protection floors, such as maternal health, child care and maternity benefits, decrease gender inequalities.¹⁵⁹ While this might shift disadvantage to some extent, it is far from a transformative approach to gendered poverty. Indeed, it endorses women’s role in the care economy.

155 Report of the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, on the Implementation of the Right to Social Protection Through the Adoption of Social Protection Floors (A/69/297, 2014) (henceforth Alston Report), para. 2.

156 Alston Report, para. 4.

157 ILO Social Protection Floors Recommendation, (2012), No. 202.

158 L. Lamarche, ‘Unpacking the ILO’s Social Protection Floor Recommendation (2012) from a Women’s Rights Perspective’ (UNRISD, 15 September 2014), <http://www.unrisd.org/80256B3C005BE6B5/search/31DAC54759E2780DC1257D540043F205?OpenDocument> (accessed 10 April 2018).

159 CESCR ‘Statement on Social Protection Floors: an Essential Element of the Right to Social Security and of the Sustainable Development Goals’ (E/C.12/54/3, 6 March 2015), para. 9.

Conditional cash transfer programmes

The importance of integrating substantive gender equality into social protection policies is highlighted in relation to one of the most popular recent programmes, namely conditional cash transfer programmes (CCTPs).¹⁶⁰ Because the evidence shows that women are likely to prioritise their children's welfare in using available resources, they are now seen as the main vehicle for poverty alleviation and therefore the main recipients of welfare rights. Such programmes typically make cash transfers conditional on women taking their babies to child clinics or sending their children to school.¹⁶¹ The World Bank describes such programmes enthusiastically as increasing women's bargaining power and agency,¹⁶² and as reinforcing women's independence within the family.¹⁶³ However, evaluating such programmes from a perspective of substantive gender equality reveals a different picture. The redistributive dimension requires us to examine not just generalised distributive gains, but also the particular redistributive issues which affect women, such as the distribution of power within the family and the distribution of time. The World Bank Report argues that 'attaching strings to the transfers by mandating specific human capital investments could strengthen the mother's bargaining position and reinforce her ability to shift household spending and time allocation decisions.'¹⁶⁴ However, there is also evidence suggesting that if women bring more resources into the family, men withhold more of their own resources for personal consumption.

Similarly, CCTPs might worsen time poverty, an aspect of poverty which is particularly gendered.¹⁶⁵ Given the extensive demands on women's existing time, conditions with a high time burden may well increase women's disadvantage by intensifying their burdens.¹⁶⁶ This means that the amount of the cash transfer can only be evaluated in terms of its net value to the woman once time burdens are accounted for. Moreover, the imposition of conditions is by its nature disempowering. Indeed, research seems to suggest that if empowerment of women is indeed the aim, it is far better achieved by giving resources to women without conditions. Thus, research by Patel et al into the Child Support Grant in South Africa, which until very recently has been unconditional, found that giving women resources enhanced women's power and control over household decision-making in financial matters, general household spending and child well-being.¹⁶⁷ Similarly, a study in Malawi showed that girls who received unconditional cash transfers of the same monetary value had similar health and schooling outcomes as those receiving conditional transfers.¹⁶⁸

Conditional cash transfers score particularly badly on the recognition dimension of substantive equality. Not only are women stereotyped as being the primary child-carers, but men are given no corresponding responsibility. As Molyneux argues: 'With fathers marginal to childcare and further marginalised by the design of the programme, the state plays an active role in re-traditionalising gender roles and identities.'¹⁶⁹ This comes together with the

160 A. Fiszbein and N. Schady, 'Conditional Cash Transfers: Reducing Past, Present and Future Poverty' (A World Bank Policy Research Report, World Bank, 2011), p. 4.

161 S. Bradshaw, 'From Structural Adjustment to Social Adjustment: A Gendered Analysis of Conditional Cash Transfer Programmes in Mexico and Nicaragua' (2008), 8 *Global Social Policy* 188. The online version of this article can be found at: <http://gsp.sagepub.com/content/8/2/188>, p. 192.

162 Fiszbein and Schady, see supra note 160, p. 9-10.

163 M. Carmona, Independent Expert on the Question of Human Rights and Extreme Poverty, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, UN Doc A/HRC/11/9, (27 March 2009), para. 68.

164 Fiszbein and Schady, see supra note 160, p. 59.

165 Chant, see supra note 138, p. 178.

166 Bradshaw, see supra note 161, p. 56.

167 L. Patel, T. Hochfeld, J. Moodley and R. Mutwali, 'The Gender Dynamics and Impact of Child Support Grant in Doornkop Soweto' (2012), Centre for Social Development in Africa: Johannesburg.

168 L. Aber and L. Rawlings, 'North-South Knowledge Sharing on Incentive-based Conditional Cash Transfer Programs', SP Discussion Paper No. 1101, World Bank (2011), p. 10.

169 M. Molyneux, 'Mothers at the Service of the New Poverty Agenda: Progres/Oportunidades, Mexico's Conditional Transfer Programme' (2006), 40 *Social Policy and Administration*, pp. 425-449.

assumption that without the conditions, women would not take the specified actions. As described by the World Bank, the aim of CCTPs is to target families who are under-investing in the human capital of their children. One reason why they are under-investing, in this view, is ‘imperfect altruism.’ The assumption that women’s behaviour needs to be modified if they are not sufficiently altruistic is highly problematic.¹⁷⁰

More fundamentally, it is doubtful whether conditionality can ever be regarded as compatible with human rights. The rights-bearer should not have to behave in a prescribed manner in order to ‘earn’ the right. While it is true that breach of the law can lead to loss of basic rights, such as freedom of movement, this can only take place after a proper trial has established illegal behaviour. If failure to send your child to school is regarded as a breach of the law, then penalties should be evenly imposed on all wrongdoers, not just the poor. Conditional cash transfers transform welfare from a right to a reward. Instead, a gendered approach would regard the removal of benefits from the very poorest in society as a breach of the basic human right to welfare.¹⁷¹

Nor do CCTPs pay enough attention to the participatory dimension. As the Special Rapporteur on extreme poverty stresses, ‘due to the asymmetry of power between the beneficiaries of programmes and the authorities that administer them, beneficiaries are often unable to protect their rights. Without fair and effective mechanisms that enable beneficiaries to actively participate, CCTPs are vulnerable to political manipulation.’¹⁷² She also argues that participation can improve the effectiveness and sustainability of programmes through feedback from its users; and garner social and political support for cash transfer programmes.¹⁷³ Moreover, participation means more than just consultation. In the context of poor women, it is important to be sure that women’s lack of voice in the family or community is taken into account. If there are already obstacles to participation for vulnerable groups, then it is easy for participation structures to give the impression of giving voice, while in practice reinforcing existing power structures. The Special Rapporteur suggests that, to compensate for asymmetries of power, participation should, therefore, include civil society organisations that can play a role in advocating the rights of beneficiaries, and not just beneficiaries themselves.¹⁷⁴ At a more individual level, participation entails allowing women to make their own decisions about how they look after their children, without being subjected to scrutiny.

So far as the fourth transformative dimension is concerned, there is a real risk that CCTPs have serious counter-transformative effects. As a start, CCTPs may become a substitute for investment in good service provision. The World Bank acknowledges that health and education provision are often dysfunctional.¹⁷⁵ Aber and Rawlings conclude that ‘the introduction of CCTPs has not resolved long-standing issues of quality, efficiency and effectiveness within social sector ministries, across the myriad of often uncoordinated social assistance providers, and in often outdated and financially insolvent social insurance programs.’¹⁷⁶ As the Special Rapporteur points out, CCTP programmes might in fact be a disincentive to improve such services, since families are compelled to use them.¹⁷⁷

Equally seriously, as we have seen, claims that CCTPs may change gender power relations within the family do not have a sound empirical basis. To the contrary, far from being

170 Bradshaw, see supra note 161, p. 199.

171 Carmona, see supra note 163, p. 51.

172 Ibid., p. 51.

173 Ibid., p. 52.

174 Ibid., p. 54.

175 Fiszbein and Schady, see supra note 160, p. 24.

176 Aber and Rawlings, see supra note 168, p. 10.

177 Fiszbein and Schady, see supra note 160, p. 20.

transformative, CCTPs might entrench existing gender roles. As Bradshaw puts it, ‘Targeting resources at women means that men’s behaviour is implicitly recognised as problematic but is not addressed, while the personal deprivation suffered by women through their altruism is not problematised but explicitly reinforced as the social norm.’¹⁷⁸ A truly transformative approach would be that signalled by CEDAW, which requires States to promote ‘a common responsibility of men and women in the upbringing and development of their children.’¹⁷⁹

The example of CCTPs is used to demonstrate that a truly gendered perspective means that a welfare programme should address all four dimensions of the multi-dimensional model of substantive equality advocated here. It must focus on alleviating gender-based disadvantage as well as poverty per se. It must address the specifically gendered stigmatic and prejudicial consequences for women. It must ensure the voices of the women are clearly heard and taken into account. And it must ultimately address the structural causes of inequality rather than either requiring women to conform to the male norm, or cementing gender-based stereotypes of caring roles. At the same time, a gender perspective should not obscure the reality of poverty for both men and women. The answer is not necessarily to shift responsibility to women, but to universalise the burden through State provision of services. Real substantive equality is most likely to be achieved not through making women bear the burden of breaking the inter-generational cycle of poverty but through universal, free access to good quality State schools, health clinics and other essential services. It should be emphasised that the gendered framework for evaluating social welfare rights needs to be sensitive to the great variety of women’s experience, and in particular to the cumulative or synergistic disadvantage experienced by older women, girl children, ethnic minority women or women with disabilities. Moreover, gendered expectations of men also need to be scrutinised.

Care work: recognise, reduce and redistribute

UN Women argue that to make Social Protection Floors work for women, much can be done to integrate gender concerns into the design of social security programmes. However, a long-term solution requires a wider vision, with policies enabling women to access decent work as its centrepiece.¹⁸⁰ Yet the goal of decent work is more elusive than ever. Globally, women’s participation rate in the workforce has been stubbornly lodged at 63% of women aged 25 to 54 for the last 20 years compared to 94% of men. It has, in fact, fallen to 37% in Central and Southern Asia, compensated by the rise in Latin America and the Caribbean (from 57% to 68%).¹⁸¹

A key to this lack of progress is the fact that women continue to carry a disproportionate share of caring responsibilities. Women still spend, on average, three times as much time on unpaid domestic and care work than men, according to survey data from 83 countries and areas. The time spent on domestic chores accounts for a large proportion of the gender gap in unpaid work.¹⁸² Moreover, recent cuts to public services due to austerity have increased women’s unpaid work, particularly for low-income women, as well as removing important opportunities for paid caring work for women. The unequal burden of caring work is of particular concern for women living in poverty. It has been shown that the amount, intensity and drudgery of unpaid care work increases with poverty. Poor women often live in inadequate housing, where basic cleanliness and hygiene require great and unremitting exertion. They do not have the resources to invest in

178 Bradshaw, see supra note 161, p. 195.

179 CEDAW, Article 5(b).

180 UN Women Policy Brief No. 1, ‘Making National Social Protection Floors Work for Women’.

181 See <http://www.unwomen.org/en/news/in-focus/women-and-the-sdgs/sdg-8-decent-work-economic-growth>.

182 Report of the Secretary-General, ‘Progress towards the Sustainable Development Goals’, E/2017/66.

labour-saving technology, and might not even have access to electricity or running water to operate washing machines, vacuum cleaners or cookers. Because of lack of access to contraception and family planning services, women in poverty are also likely to have more children.¹⁸³ This is exacerbated for women in rural areas, who additionally have the gruelling tasks of collecting fuel and water. Unpaid caring work is a lifetime responsibility for women, from girls taking care of younger siblings, to grandmothers with primary responsibility for grandchildren.¹⁸⁴

To achieve substantive equality, specific attention needs to be paid to the mechanisms which sustain the unequal division of caring tasks and the ways in which these can be changed. This requires, firstly, that the disadvantage attached to caring be redressed (the first dimension). The need to redress disadvantage begins with securing the right to education, both in protecting pregnant learners and in preventing domestic work from interfering with girls' school attendance. For those in the formal workforce, properly paid maternity leave should be accompanied by compensatory payments to make up for lost pension contributions and opportunities for training and catch-up in paid work. Pregnancy discrimination is still rife in many countries, regardless of development status.¹⁸⁵ Nor is it sufficient for better paid women to redistribute their caring roles to poorly paid domestic workers, many of whom are migrants, and the vast majority of whom are women. Domestic work needs to be regarded as valued work, with properly regulated terms and conditions.¹⁸⁶ In addition, for women working in precarious work and in the informal sector, social protection should provide sufficient income to sustain them while carrying out caring tasks.

This dimension, on its own, is not, however, sufficient. Indeed, left to itself, it could entrench roles, thus infringing the second dimension (redressing stereotypes). The second dimension requires more attention to be paid to the value of caring. Caring can be regarded as valuable at several different levels. At an instrumental level, humankind needs to procreate to survive, so that child-care is foundational to our continued existence. Moreover, reproductive work is essential to facilitate paid work in the market, perpetuated by the rigid divide between private and public, home and market place. One way to render the fundamental importance of care and domestic work visible has been to place a monetary value on it. Thus, feminist economists have helpfully demonstrated that unpaid care and domestic work contributes between an estimated 10 to 39% to GDP. A similar and popular approach is to provide wages for housework. However, it is important to emphasise not just the instrumental value of care, but also its intrinsic worth. Care is the bond that holds society together. The second dimension of substantive equality requires that it be valued in its own right. While the costs of caring, its unequal distribution and the drudgery associated with domestic work need to be reduced, this should all be in the context of a powerful reaffirmation of the intrinsic worth of care.

At the same time, however, caution should be exercised to avoid entrenching stereotypes. Valuing care for its intrinsic worth should not be a pretext for assigning caring roles to women, but rather an impetus for asserting the responsibility of everyone, including men and the State, to share that responsibility. Similarly, measures to recognise the value of care, such as wages for housework, could simply reinforce women's primary responsibility for housework, unless it was made clear that such payments are conditional

183 M. Carmona and K. Donald, 'What Does Care Have to do with Human Rights? Analysing the Impact on Women's Rights and Gender Equality' (2014), 22 *Gender and Development*, p. 441.

184 *Ibid.*, p. 444.

185 For a very recent account of this phenomenon in the US, see https://www.nytimes.com/interactive/2018/06/15/business/pregnancy-discrimination.html?emc=edit_th_180617&nl=todaysheadlines&nid=405504080617 (accessed 17 June 2018).

186 S. Fredman, 'Home from Home: Migrant Domestic Workers and the ILO Convention on Domestic Workers' in C. Costello and M. Freedland (eds.), *Migrants at Work: Immigration and Vulnerability in Labour Law*, Oxford University Press (2014).

on equal sharing of such work between men and women in the household.¹⁸⁷ Instead, substantive equality requires more wide-ranging changes. Central among these is the right to equal pay for work of equal value. The concept of equal value is itself a radical one, exposing the ways in which caring work, because it can be done unpaid in the labour market, is severely undervalued in the paid workforce. For example, in the UK, the work of predominantly female home helps was found to be of equal value as much better remunerated refuse collectors.¹⁸⁸ In addition, maternity leave should be accompanied by equivalent paternity leave, and child-care and elder care services should also be considered a public responsibility.¹⁸⁹ Equivalent protections are also required for women in the informal sector and unpaid family workers.

A further key to change is to ensure that women are included in decision-making on these issues. This is the third dimension of substantive equality (facilitating voice and participation). Disproportionate burdens of care and domestic work impede women's ability to participate in public and political life, and conversely, their lack of voice renders the need to reduce, redistribute and revalue caring work invisible.

Drawing together the need to redress disadvantage with proper recognition of the value of care work and greater participation of women makes it clear that deep-seated structural changes are needed. This is the fourth dimension, transformation. In particular, patterns of full-time working which demand a rigid choice between caring and paid work need to be changed to allow more fluid interactions for both men and women to undertake both kinds of activities.¹⁹⁰ This comes together with the pressing need for public services to take on some responsibility for caring work. The challenges in this respect are great. Early childhood and care services are sparse. In OECD countries, as few as 33% on average of children under the age of two are enrolled in education and caring services.¹⁹¹ Public investment in caring services for old people is similarly patchy and often of low quality. Similarly, improved infrastructure, particularly in the form of water and electricity to areas where they are not available, will radically reduce the huge burden on women in households without water or electricity. Elson points out that estimates from 25 countries in sub-Saharan Africa show that a total of 16 million hours are spent by women per day collecting water.¹⁹² Women and girls in areas without electricity spend large amounts of time gathering wood and other material for fuel. Research from South Africa shows that rural electrification significantly reduced women's time spent on such tasks, increasing their participation in paid work by 9%.¹⁹³

It is in the context of these particularly complex challenges that a synergistic approach, combining the strengths of the SDGs with those of the human rights framework, is particularly pressing. Both frameworks make some contribution, but neither is sufficient on its own. The remainder of this report considers each of these in more detail.

The need for recognition of unpaid care and domestic work was one of the central demands of women's groups in the negotiations over the SDGs.¹⁹⁴ This campaign yielded some important successes. Target 5.4 calls on States to 'recognise and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household

187 D. Elson 'Recognize, Reduce, and Redistribute Unpaid Care Work: How to Close the Gender Gap' (2017), 26 *New Labor Forum*, p. 55.

188 S. Fredman, 'Reforming Equal Pay Laws' (2008), 37 *International Law Journal*, pp. 193-218.

189 S. Fredman, 'Reversing Roles: Bringing Men into the Frame' (2014), 10 *International Journal of Law in Context*, pp. 442-459.

190 *Ibid.*

191 D. Elson, see *supra* note 187, p. 56.

192 *Ibid.* p. 56.

193 *Ibid.* p. 56.

194 For a seminal intervention, see M. Sepulveda Carmona, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights: Unpaid Care Work and Women's Human Rights' (August 2013), available at <https://ssrn.com/abstract=2437791> or <http://dx.doi.org/10.2139/ssrn.2437791>.

and the family as nationally appropriate.’ There is much promise in this formulation. Importantly, it brings together the need to provide public services, infrastructure and social protection, with the promotion of shared responsibility. SDG 5’s emphasis on participation is a further integral part of the drive to address caring work. Target 5.5 requires States to ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.

This is augmented by other SDG goals and targets. Target 8.5 under SDG 8 (decent work) includes the requirement of equal pay for work of equal value. Although there is no specific reference to gendered poverty, SDG 6 (water and sanitation) and SDG 7 (access to affordable energy) are particularly important for women who are subject daily to the drudgery of carrying water and finding fuel. Target 6.1 sets the goal of achieving universal and equitable access to safe and affordable drinking water for all by 2030; and Target 7.1 aims to ensure universal access to affordable, reliable and modern energy services by then. The same is true for SDG 11 (sustainable cities). Target 11.1, by ensuring access for all to adequate, safe and affordable housing and basic services, will have a particular benefit for women, whose primary responsibility for domestic work means that they are especially heavily burdened by poor housing conditions.

However, there are some important gaps. Target 5.4 is limited by the reference to ‘nationally appropriate’, which gives States many opportunities to roll back on this commitment. Moreover, the only indicator is the proportion of time spent on unpaid domestic and care work, by sex, age and location. However, this indicator is, at best, too bland. As a start, time-use surveys are not available in many countries. In any event, it is difficult to distinguish between unpaid domestic work and care work, as they often overlap.¹⁹⁵ More fundamentally, it does not measure the provision of public services, or infrastructure, or the promotion of shared responsibility. Even more problematic, Target 5.4 is not time-specific. Similarly, although Target 5.5 requires states to ensure women’s full and effective participation, the two indicators - the proportion of women in managerial positions, and the proportion of seats held by women in national parliaments and local governments - are too narrow. Top-down leadership should be augmented by collective organisation of workers and support for grass-roots organisations which can articulate women’s various diverse concerns in relation to caring and domestic work. SDG 8’s generalised reference to an increase in national compliance with labour rights, including freedom of association and collective bargaining, albeit disaggregated by sex, is also not sufficient in itself. All of these targets and indicators need to be infused with a gendered approach to ensure women’s voices can genuinely be heard. Particularly challenging is the need to find ways of organising women in the informal sector.

These drawbacks are not compensated for in the other relevant goals and targets. The indicator for target 8.5, which includes equal pay for work of equal value, requires measurement only of average hourly earnings of female and male employees, by occupation, age and persons with disabilities. Although an important measure, it will not on its own capture the different ingredients of hourly earnings discrepancies, which include job segregation, lack of seniority, undervaluation of work and lack of access to lucrative overtime and bonus opportunities. This makes it difficult to create effective pathways to change. Moreover, by focussing on employees, it entirely leaves out of account workers who fall outside of the formal sector and are precarious. The same can be said for SDG 6 (water and sanitation) and SDG 7 (energy). Target 6.1, it will be recalled, aims at universal and equitable access to safe and affordable drinking water for all; while Target 6.2 aims to achieve access to adequate and equitable sanitation and hygiene for all, paying special attention to the needs of women and girls. However, the indicator

looks only at the proportion of the population using safely managed drinking water services, without taking into account distance from water services or investigating who is responsible for fetching water. The indicator for Target 6.2 is even blander, measuring the proportion of the population using safely managed sanitation services, including a hand-washing facility with soap and water. Since it leaves the gender dimension entirely out of the picture, it will not be able to detect key requirements for women and girls. Most urgent is the need for girls to have access to safe and clean toilets at schools. Otherwise, menstruating girls will continue to choose not to go to school, or, if they do go, risk the discomfort and potential humiliation of dealing with menstruation without proper sanitation.

To what extent can qualitative depth be provided to these broad outcome goals to further substantive gender equality by the human rights framework? In many respects, the SDGs are ahead of the human rights framework in their explicit acknowledgement of care and domestic work, and the need both to value care for its own sake, while also reducing the drudgery associated with domestic work and redistributing care between men and women and society more generally. To add qualitative depth requires us to piece together different aspects of CEDAW. Article 11 CEDAW addresses the first dimension (redressing disadvantage) by requiring State Parties to take all appropriate measures to eliminate discrimination against women in the field of employment. Dismissal on grounds of pregnancy or maternity leave should be prohibited, and maternity leave with pay must be introduced without loss of former employment, seniority or social allowances. The second dimension (addressing stereotypes) is addressed by Article 5, which requires State Parties to ensure that family education includes a 'proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children'. This is augmented by Article 11's requirement of the right to equal treatment in respect of work of equal value as well as, importantly, in the evaluation of the quality of work. Article 7 emphasises the participation dimension, requiring equal participation in the formulation of government policy, and participation in non-governmental organisations and associations concerned with the public and political life of the country.

CEDAW also goes some way towards structural change (the fourth dimension) in its requirement, in Article 11, that States should encourage parents to combine family obligations with work responsibilities and participation in public life, especially through promoting the establishment of a network of child-care facilities. However, a truly transformative approach would need to go much further than the sum of each of these elements. It would need to pay much more attention to the need for paternity leave with a level of remuneration which positively incentivises fathers' taking of the leave. It also needs to be clearer that it is not sufficient for caring responsibilities to be delegated to low-paid women workers. This is addressed to some extent in the CEDAW Committee's recommendation on women migrant workers,¹⁹⁶ who increasingly carry the burden of domestic work in the global care chain. More focussed is the ILO Domestic Workers Convention,¹⁹⁷ which requires Member States to ensure, inter alia, that domestic workers, like workers generally, enjoy fair terms of employment and decent working conditions.¹⁹⁸ Although it does not specifically refer to women, it is clear that the vast majority of its beneficiaries will be women. Disappointingly, however, only 25 countries have thus far ratified it, and these do not include the UK, the US, France, or most of the Southeast Asian countries with large numbers of domestic workers, apart from the Philippines.

196 CEDAW General Recommendation No. 26 on women migrant workers (CEDAW/C.2009/WP.1/R. 5 December 2008).

197 Convention No. 189, Domestic Workers Convention, ILO (2011), entered into force on 5 September 2013.

198 Ibid., Article 6.

Conclusion: Creating Synergies

Furthering substantive gender equality requires a concerted effort on many fronts. The SDGs, with their many interlocking goals touching on gender equality, represent great promise. However, their focus on aggregate outcomes pays too little attention to the qualitative dimensions of substantive gender equality; while the inadequacy of the accountability mechanisms leaves the attainment of the SDGs vulnerable to political will. The human rights framework, for its part, adds a greater level of accountability and more attention to the individual, as well as aiming to put in place ways to achieve the ultimate goals, and checking that these in turn are human rights-compliant. However, the substance of human rights, through the prism of gender equality, is still contested, particularly in relation to women in poverty. Moreover, the accountability structures, while in principle legally binding, are only as strong as the political will of signatory states to implement them.

It has been argued here that it is crucial for the two structures to work together in a synergistic manner to achieve substantive gender equality and to ensure that the ambitious promises of the SDGs are not simply fleeting hopes. This, in turn, depends on sustained civil society action, to hold governments to account both for their promises under the SDGs and under the human rights structure, mobilising all relevant forums both internationally and domestically. As Winkler and Williams put it: ‘Because the world adopted the SDGs, they offer one of our best, contemporary global opportunities to oppose social injustices that human rights advocates can use as a tool.’¹⁹⁹ To do so, however, requires both the SDGs and human rights to be deliberately imbued with the perspective of substantive gender equality.

The importance of bringing together the SDGs and human rights within a framework of transformative gender equality can be seen by considering an issue of pressing importance: adolescent pregnancy. Pregnancy and childbirth complications are the second most prevalent cause of death among 15 – 19-year-olds, with as many as 70,000 adolescents affected every year. Early and unintended pregnancy also has major detrimental effects on adolescent girls’ social and economic opportunities, as well as that of their families and future generations. To address these issues requires a holistic approach encompassing all the dimensions of substantive equality. It has been shown that for each additional year of education, there is a 10 per cent reduction in fertility. At the same time, pregnant girls need to be supported to remain in school. Redressing disadvantage (the first dimension), needs to be accompanied by addressing stigma and violence (the second dimension), for example by providing safe school environments for girls and protecting them against stigma if pregnant at school. This, in turn, entails facilitating girls’ inclusion in school and broader society, and ensuring their voice is heard (the third dimension). Behind this is a need for systemic change (the fourth dimension), including the provision of comprehensive sexuality education for both boys and girls, access to contraception and health services and reducing child marriage.

Both the SDGs and the human rights framework bring important resources to achieve these goals but they need to be aligned and shaped to work together to achieve substantive equality in all its dimensions. Thus, addressing adolescent pregnancy is a facet of SDG 1 on eliminating poverty, SDG 3 on promoting healthier lives, SDG 5 on gender equality and SDG 16 on building peaceful and inclusive societies. These set the aggregate goals to be achieved by 2030. But it is through the right to education, the right to health, the right to gender equality and the rights of the child that the specific measures become binding obligations on the State. If all these resources can be aligned and made to work together to achieve the overriding vision of substantive equality for adolescent girls, then the SDGs will be more than a set of grandiose but ultimately empty promises.

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The report is complemented by a working paper, produced by Meghan Campbell at the University of Birmingham, which outlines the multi-layered accountability structure at the UN and analyses the role of these accountability bodies, the legal authority of their outputs, their different activities and their potential to participate in realising the SDGs. This working paper is available at www.thebritishacademy.ac.uk/justice-rights-equality.

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Sandra Fredman is a Fellow of the British Academy and Rhodes Professor of the Laws of the British Commonwealth and the USA at the University of Oxford. She became a Queen's Council (honoris causa) in 2012. In the same year, she founded the Oxford Human Rights Hub, of which she is the director. She has published widely in the fields of gender equality, labour law and human rights. Her books include *Comparative Human Rights* (OUP, 2018); *Human Rights Transformed* (OUP, 2008); *Discrimination Law* (OUP, 2nd ed., 2011); *Women and the Law* (OUP, 1997); *The State as Employer* (Mansell, 1988) with Gillian Morris and *Labour Law and Industrial Relations in Great Britain* (2nd ed., Kluwer, 1992) with Bob Hepple. She edited *Age as an Equality Issue* (Hart, 2003) with Sarah Spencer, and *Discrimination and Human Rights: The Case of Racism* (OUP, 2001). She has been an expert advisor on equality for a variety of governments and organisations, including the UK, Northern Ireland, Canada, the ILO, UN Women, the World Bank, the EU Commission, and the UN Working Group on non-discrimination against women in social and economic life. She holds degrees from the University of Oxford and the University of the Witwatersrand, South Africa.

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