
Engendering socio-economic rights

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1 Introduction

‘Human development if not engendered, is endangered.’¹ This was the verdict of *Gender Development*, the 1995 Human Development Report devoted to gender. In this chapter I examine whether the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) can make a unique contribution to international human rights law by ‘engendering’ human rights. In most human rights documents there is a provision prohibiting discrimination on grounds of sex in the enjoyment of the rights therein.² The implicit assumption is that the rights are given, and should simply be extended to women. But, it is argued here, this does little to address the gendered nature of social institutions and structures. Instead, human rights should be ‘engendered’ or infused with substantive gender equality. The CEDAW, by contrast, through its express focus on women, goes a long way towards engendering human rights. But it still does not go far enough. As a point of reference for women in all societies and contexts, it is of great importance that we continue to develop the CEDAW in the direction of engendered human rights, particularly

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¹ United Nations Development Programme (UNDP), *Gender Development* (Oxford University Press, 1995) at 1, available at: <http://hdr.undp.org/en/reports/global/hdr1995/chapter> (last accessed 8 February 2013).

² See, for example, Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); Articles 2(2) and 3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); Article 3 of the International Covenant on Civil and Political Rights (ICCPR).

through the medium of General Recommendations and the developing jurisprudence under the Optional Protocol.

What then does the concept of ‘engendered socio-economic rights’ entail? As a start, it is necessary to recognise the distinctive nature of women’s experience of poverty and disadvantage. This suggests that it is not sufficient simply to extend human rights to women. Instead, rights need to be recast in the light of the demands of substantive gender equality. Substantive equality goes beyond treating women in the same way as men and requires transformative measures. This in turn entails reconceptualising the rights themselves. This chapter begins by considering the gendered nature of women’s disadvantage. The second part examines the meaning of equality in the context of gender and argues that a substantive notion of equality requires a recharacterisation of the rights themselves. The capabilities approach of Amartya Sen and Martha Nussbaum is helpful in this process because it requires attention to be paid to the extent to which women are able to be and do what they value. But the capabilities approach needs to be tempered by valuing caring and responsibility together with agency and choice. In the third part I compare and contrast the extent to which socio-economic rights are engendered in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the CEDAW respectively. It is concluded that the CEDAW’s unique contribution to international human rights law lies in its potential to engender human rights, a potential which has thus far been only partially realised.

2 Gendered disadvantage

2.1 *Gendered barriers to economic participation*

For men, the risk of poverty is predominantly connected to exclusion from the labour market, whether due to low skills, previous unemployment or lack of regional job opportunities. For women, however, there are other, gender-based factors leading them into poverty and keeping them there. In particular, women’s poverty is closely linked to their role in the family, particularly their caring roles. Unpaid caring roles can significantly limit women’s access to decent paid work, leaving many women with no choice but to accept precarious and low-paid work.³ Part-time

³ G. Rosenblatt and K. Rake, ‘Gender and poverty’, Fawcett Society 1, available at: www.fawcettsociety.org.uk/index.asp?PageID=759 (last accessed 6 March 2013).

work is particularly at risk of offering low pay; yet women predominate in part-time work. In the EU most of the increase in women's employment over the past decade has been through part-time and precarious work.⁴ Women also predominate in the informal sector. In sub-Saharan Africa 84 per cent of non-agricultural workers who are women are informally employed compared to 63 per cent of men. Moreover, the informal economy is segmented by employment status and by sex. The highest-paid segment – micro-entrepreneurs who hire others – is predominantly male, while women are overrepresented in the lowest-paid segment of the informal economy – as homeworkers or industrial outworkers.⁵ Furthermore, divorce, widowhood, separation and teenage parenthood are major triggers of women's poverty in a way that they are not for men.⁶

Women's continuing primary responsibility for home work and child-care also affects the value attached to women's market work. Because domestic work and childcare can in principle be done for free at home, much of women's paid work is seriously undervalued. This includes catering, cleaning, caring work and subsistence agricultural work. Thus while women's participation in paid work has increased worldwide, occupations remain highly segregated, with women clustering in low-paid, low-status jobs.⁷ In addition, women predominate in agricultural work, particularly in sub-Saharan Africa.

The result is that although women's participation in paid work has increased, this has not necessarily improved their economic status.⁸ As Floro and Meurs demonstrate, '[w]orking conditions, such as job security, health and occupational safety and pay do not automatically improve for women as employment increases; indeed, these conditions may deteriorate under the pressure of global competition'.⁹ In all countries, women's

⁴ European Commission, *Equality between Women and Men – 2009*, Report submitted to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions; International Labour Organization (ILO), *Global Employment Trends for Women: 2009* (Geneva: ILO, 2009).

⁵ WIEGO, *Women and Men in Informal Employment*, available at: <http://wiego.org/sites/wiego.org/files/resources/files/Women-Men-in-Informal-Employment.pdf> (last accessed 6 March 2013).

⁶ G. Rosenblatt and K. Rake, *Gender and Poverty* (London: Fawcett Society, 2003) 1–5 at 3.

⁷ F. Bettio and A. Verashchagina, *Gender Segregation in the Labour Market: Root Causes, Implications and Policy Responses in the EU* (European Commission, 2009).

⁸ International Labour Organization, *Global Employment Trends*, *supra* note 4.

⁹ M. S. Floro and M. Meurs, 'Global trends in women's access to "decent work"', Occasional Paper No. 43, ILO (2009) at 13.

average earnings lag considerably behind that of men's,¹⁰ and the pay gap is particularly large in the informal sector. Thus while paid work can bring with it a modicum of agency and independence, women are often in a position where they have no option but to accept precarious and exploitative pay and other working conditions. With no economic value given to unpaid activities, women's contribution remains invisible,¹¹ as does their role in facilitating men's ability to access work.¹² This affects not just their actual income but also their ability to act as equal partners in most economic transactions, such as property ownership or their ability to offer collateral for bank loans. Moreover, because women are for the most part engaged in low-paid work in the small-scale retail sector, informal sector or small farming, they are particularly vulnerable to economic downturns, public spending cuts and privatisation of public utilities such as water and electricity.¹³

The fact that the traditional household division of labour has remained intact despite women's increased participation in paid work means that women work longer hours than men in nearly every country,¹⁴ and a significantly larger proportion of their working time than that of men is spent on unpaid activities.¹⁵ As a recent study put it: '[i]nstead of replacing time in reproductive work with time in paid work, and shifting compensating amounts of reproductive work to men, it has been found that women tend to increase their total work time'.¹⁶ However, the solution is complex. For example, one way to release women from time-consuming

¹⁰ B. Rodenberg, 'Gender and poverty reduction', Working Paper 4, German Development Institute (2004) at 2; European Commission, *Equality between Women and Men – 2009*.

¹¹ UNDP, *Gender Development* at 93.

¹² *Ibid.* at 97. The UNDP estimates that if the value of unpaid work performed by women and men were seen as market transactions at prevailing wages, and the value of underpayment of women's work was included, a further 70 per cent or \$16 trillion would be added on to the officially estimated \$23 trillion of global output. This figure demonstrates the extent of the undervaluation of women's contribution.

¹³ Rodenberg, 'Gender and poverty reduction' at 5.

¹⁴ The UNDP (in *Gender Development* at 88) reported in 1995 that women carry 53 per cent of the burden of work (including both paid and unpaid) in developed countries and 51 per cent in developing countries. See generally Floro and Meurs, 'Global trends'; UNDP, *Human Development Report 2007/2008* (New York: Palgrave Macmillan, 2007) at 342, Table 32.

¹⁵ Of men's total work-time in industrial countries, roughly two-thirds is spent on paid activities and one-third on unpaid activities, while the converse is true for women. In developing countries, more than three-quarters of men's work takes place in market activities: UNDP, *Gender Development* at 88. For the more recent figures for the EU, see European Commission, *Equality between Women and Men – 2009*.

¹⁶ Floro and Meurs, 'Global trends' at 6.

unpaid work for middle-income households is to employ domestic workers. Yet domestic workers are themselves predominantly low-paid women, who are particularly vulnerable to exploitation. This solution is not, in any event, available to the vast majority of women, who cannot afford paid domestic help. Instead, women who juggle paid and unpaid work may need to enlist children to perform the work, and these in turn are typically girls, who are removed from school to care for younger children and do domestic work.¹⁷ The specifically gendered nature of disadvantage is therefore replicated through the generations.

2.2 *Gender-based violence*

A further way in which women experience gender-specific disadvantage is in the context of gender-based violence, both physical and psychological. Violence and the threat of violence remain widespread in most countries, from infanticide and selective abortions of girl babies, to childhood sex abuse, forced prostitution, genital mutilation, forced marriage, marital abuse, sexual harassment at work and rape.¹⁸ The persistence of violence against women reflects the absence of fully effective legal systems as well as continued cultural and social power imbalances.

2.3 *Limited agency*

Particularly important is the impact of gender on the power to control important decisions in one's life.¹⁹ Although this lack of agency is also felt by poor men, gender continues to have a specific impact on such power. For example, as Chant notes, '[i]nequitable resource allocation can often lead to "secondary" poverty among women and children in male-headed households, and, as such, for many women the capacity to command and allocate resources may be more important than the actual resource base in

¹⁷ *Ibid.*

¹⁸ UNDP, *Gender Development* at 7. Amnesty International reports that approximately one in three women globally has been a victim of gender-based violence and that gender-based violence 'kills and disables as many women between the ages of 15 and 44 as cancer, and its toll on women's health surpasses that of traffic accidents and malaria combined'. See Amnesty International, *Violence Against Women: A Fact Sheet* (2005), available at: www.amnestyusa.org/sites/default/files/pdfs/vaw_fact_sheet.pdf (last accessed 8 February 2013).

¹⁹ C. Sweetman, 'Editorial' in C. Sweetman (ed.), *Gender and the Millennium Development Goals* (Oxford: Oxfam, 2005) 2–8 at 3.

their households'.²⁰ In particular, Chant argues that 'women's mounting responsibilities for coping with poverty do not seem to be conferring any leverage in respect of negotiating greater efforts on the part of men'. The result is that 'while responsibilities for dealing with poverty are becoming palpably feminized, there is no corresponding increase in women's rights and rewards. Indeed, the self-same rise in women's burdens seems to have curtailed the resources at their disposal to negotiate gains of any description.'²¹

2.4 *Restricted access to socio-economic goods*

Women's ability to access socio-economic rights, such as housing, education and access to healthcare and protection, is also shaped by the gendered nature of social institutions, including legal, cultural, customary and traditional factors. For example, in respect of housing, Farha argues, 'the gendered nature of social and economic relations within and outside the household means that women experience discrimination and inequality in virtually every aspect of housing.'²² Women's housing inequality is exacerbated by their exclusion from policy development with respect to housing; by customary practices (that are sometimes enforced by law), which prevent women from inheriting land and housing; and by domestic violence.²³

A similar argument can be made in respect to the right to education. Barriers to girls' education are frequently specifically gendered. One example is the widespread practice of expelling pregnant girls and child mothers. As Tomasevski, the previous Special Rapporteur on Education, has forcefully argued, schools must be adapted to child parents if the right to education is to be meaningful for many girl children.²⁴ Similarly, menstruating girls who cannot afford sanitary towels will not go to school if there are no latrines or access to water.²⁵ Nor will they go to school if their parents regard it as more cost-beneficial for them to do domestic work at

²⁰ S. Chant, 'Rethinking the "feminization of poverty" in relation to aggregate gender indices', *J. of Human Development* 7:2 (2006) 201–20 at 208.

²¹ *Ibid.* at 207–8.

²² L. Farha, 'Is there a woman in the house? Re/conceiving the human right to housing', *Canadian J. of Women and the Law* 14:1 (2002) 118–41 at 121–2.

²³ *Ibid.* See also Ikdahl, Chapter 9 this volume.

²⁴ K. Tomasevski, 'Rights-based education as pathway to gender equality' in I. Boerefijn *et al.* (eds.), *Temporary Special Measures* (Antwerp: Intersentia, 2003) 151–72 at 155.

²⁵ E. Unterhalter, *Gender, Schooling and Global Social Justice* (London: Routledge, 2007).

home.²⁶ More generally, the benefits of education may be curtailed if other social structures are not changed. 'What girls can do with their education determines the attractiveness of schooling. If women cannot be employed or self-employed, own land, open a bank account, get a bank loan, if they are denied freedom to marry or not to marry, if they are deprived of political representation, education alone will have little effect on their plight.'²⁷ Thus girl children and women may require different forms of provision to achieve the condition of being educated.²⁸

Also specifically affected by gender is access to social protection. Social benefits are frequently only available to those in formal employment and therefore women may have less access to them. The right to social security, if it is to be effective for women, therefore needs to be detached from formal work and made available to workers in the informal sector.²⁹ The ability to access old-age pensions is also gendered, if this is linked to contributions through paid work. For women who have interrupted working lives, this significantly impedes their access to pensions.³⁰

3 From formal to substantive equality

3.1 *The limits of formal equality*

The above strongly suggests that it is not sufficient simply to extend rights to women. If the gender-specific factors causing women's disadvantage are fully to be addressed, rights must be infused with substantive gender equality. What would this entail? As a start, it is necessary to move away from a concept of equality that simply demands that women be treated in the same way as men. There are several familiar reasons for this.³¹ Firstly, such a formal conception of equality expects women

²⁶ Tomasevski, 'Rights-based education' at 156.

²⁷ *Ibid.*

²⁸ Unterhalter, *Gender, Schooling and Global Social Justice* at 49.

²⁹ See F. Lund, 'A framework for analyzing social protection for workers in the informal economy' in C. Piras (ed.), *Women at Work: Challenges for Latin America* (Washington DC: Inter-American Development Bank, 2005).

³⁰ European Commission, *Equality between Women and Men – 2009* at 4; European Parliament, Resolution of 3 February 2009 on Non-discrimination Based on Sex and Intergenerational Solidarity (2008/2118(INI)) paras. 5 and 9, available at: www.europarl.europa.eu/oeil/FindByProcnum.do?lang=en&procnum=INI/2008/2118 (last accessed 8 February 2013).

³¹ See generally S. Fredman, *Discrimination Law*, 2nd edn (Oxford University Press, 2002) Chapters 1 and 5; C. McCrudden, 'Merit principles', *Oxford J. of Legal Studies* 18:4 (1998) 543–79.

to conform to male-oriented social structures. It does nothing to challenge the structures themselves. For example, women will only be entitled to equal pay or equal treatment to men if they can do the same jobs and work the same hours as their male counterparts. Women with childcare responsibilities will be excluded from equal treatment unless they are able to find other women to look after their children, and the latter are invariably low paid. Formal equality is particularly ill-suited to deal with pregnancy and parenthood: clearly pregnant women are different and should be given specific rights, but to achieve real change requires in addition that fathers are given parental rights in the same way as mothers.

Secondly, formal equality assumes that the aim is to treat everyone on their merits, regardless of their gender. But treating gender as irrelevant merely ignores the ongoing disadvantage experienced by women. The result is to entrench disadvantage. For example, simply extending the right to social security to women on equal terms with men ignores the fact that women have interrupted work patterns and are often engaged in precarious and informal work. Such an approach would not assist those who most need it. This means that equality might demand, not identical treatment, but very different treatment. As Sen has argued: '[e]qual consideration for all may demand very unequal treatment in favour of the disadvantaged. The demands of substantive equality can be particularly exacting and complex when there is a good deal of antecedent inequality to counter.'³²

Finally, formal equality is a relative concept. It requires only that two similarly situated individuals be treated alike. This means that there is no difference in principle between treating men and women equally badly and treating them equally well. It is here that equality can be no substitute for substantive rights. For example, if women's right to equal pay is based on the pay of men in a very low-paid occupation, equality holds out little promise. Substantive rights to minimum wages are far more valuable. Moreover, because formal equality is agnostic as to the substantive outcome, it can be fulfilled by removing benefits from men rather than extending benefits to women.³³ The result is that women are worse off and men are not better off.

³² A. Sen, *Inequality Re-examined* (Oxford University Press, 1992) at 1.

³³ S. Fredman, *Women and the Law* (Oxford University Press, 1997) at 356–7.

3.2 Substantive equality

Substantive equality goes some way to addressing these problems. Firstly, substantive equality moves beyond the need for a male norm. In its transformative form, substantive equality requires social institutions to change, rather than expecting the individual to conform. Secondly, substantive equality takes into account existing power structures and the role of gender within them. Far from being irrelevant, gender may be highly relevant in addressing inequalities in society. This means that substantive equality does not simply aim at equal treatment. Where equal treatment leads to disadvantage for women, it may be necessary to treat women differently in order to achieve equalities of outcome. Thirdly, substantive equality is not neutral as to the outcome. Equality cannot be achieved by treating all equally badly, or by removing benefits from the advantaged class. It is substantive in the sense that it advances individuals, rather than formal in ensuring only consistency. What that substance is, however, remains controversial. This section considers in more detail what substantive equality might entail in the context of gender, and in particular in relation to engendering socio-economic rights.

There is a temptation to reduce substantive equality to a single dimension, such as dignity,³⁴ or to redefine equality in terms of equal opportunity or equality of results. Each of these is problematic. While dignity can function as a core rationale for substantive equality, it should not be the central component of its definition. Similarly, equality of opportunity on its own is too vague to function as a legal component of substantive equality. While it is possible to remove barriers at the point of entry, this will not guarantee that women are in a position to make use of these opportunities. Nor will it transform structures that lead to the inequality in the first place. For example, the opportunity to work part-time might

³⁴ The Canadian Supreme Court and the South African Constitutional Court both understand that equality and the prohibition on discrimination need to be founded on respect for human dignity. See for example *Law v. Canada* [1999] 1 SCR 497 (Canadian Supreme Court), para. 51: '[e]quality means that our society cannot tolerate legislative distinctions ... that offend fundamental human dignity'; *Hoffmann v. South African Airways* 2000 (1) SA 1 (South African Constitutional Court) para. 27: '[a]t the heart of the prohibition of unfair discrimination is the recognition that under our Constitution all human beings, regardless of their position in society, must be accorded equal dignity'. However, the Canadian Supreme Court has recently raised doubts about the use of dignity as the basis of the prohibition on discrimination. See *R v. Kapp* [2008] 2 SCR 483 (Canadian Supreme Court), para. 22: 'human dignity is an abstract and subjective notion' and 'it has also proved to be an *additional* burden on equality claimants' (emphasis in original).

make it possible for more women to enter the workforce, and equal pay for equal work for part-time workers might improve their conditions, but the predominance of women in part-time work will not change. Indeed, this might increase their burden of combining paid work with family work, unless the division of labour in the home is changed and men take on equal responsibility for childcare. Equality of results is more quantifiable than equality of opportunity and, correspondingly, more effective. However, on their own, policies aiming simply at results are also insufficiently transformative. 'Feminisation of work' is often associated with decreasing pay and status. For example, in the UK an increase of women in managerial positions in catering coincided with a decrease in pay.

Each of these concepts has its strengths and should not be downgraded. But none can function on its own to constitute the substantive core of equality. I argue instead that substantive equality should be regarded as having four different dimensions.³⁵

3.2.1 The redistributive dimension

Firstly, substantive equality concentrates on remedying disadvantage, rather than achieving gender neutrality. Disadvantage is both material and social. As we have seen, gender-based disadvantage includes the lack of empowerment of women within the context of family and social relations. Thus substantive equality aims to redress disadvantage in its specifically gendered context, including women's subordinate position in the family and reproduction, in the paid workforce and in other relationships of power. In particular, substantive equality contemplates different treatment in order to redress disadvantage. This means that affirmative action measures in favour of women do not breach the principle of equality as long as their aim is to redress discriminatory disadvantage.

3.2.2 The recognition dimension

The second dimension is that of respect, recognition and dignity. Including dignity as a facet of substantive equality means that, as well as socio-economic disadvantage and distributive wrongs, account is taken of what Nancy Fraser calls 'recognition' wrongs. The concept of 'recognition' is based in the Hegelian notion that our identity is constructed (at least partially) in terms of the ways in which others regard us. 'Recognition' wrongs consist in 'misrecognition' or inequality in the mutual respect

³⁵ See S. Fredman, *The Future of Equality in Great Britain*, Working Paper No. 5, Equal Opportunities Commission, Manchester (2002).

and concern that people feel for one another in society.³⁶ This dimension of substantive inequality includes, in particular, stigma, stereotyping, humiliation and violence on grounds of gender. Such wrongs can be experienced regardless of relative socio-economic disadvantage. Therefore, it is important to recognise the need for respect, recognition and dignity as a separate element of substantive equality, in addition to the first aim of correcting disadvantage. It has the important practical advantage of preventing the right to equality from being fulfilled by treating everyone equally badly, as might be possible under a formal definition of equality. At the same time, recognition, dignity and respect should not be regarded as the sole factor in defining substantive equality.

3.2.3 The transformative dimension

The third dimension of substantive equality is the way it deals with difference. The problem is not so much difference per se, but the detriment that is attached to difference. Substantive equality should therefore aim to respect and accommodate difference, removing the detriment but not the difference itself. Thus instead of requiring women to conform to male norms, substantive equality requires transformation of existing male-oriented institutions and social structures. With this comes the imperative to transcend the public–private divide, recognising the ways in which imbalances in power in the family can reinforce power imbalances in the public sphere and vice versa. Substantive equality also requires the accommodation of differences between women.

3.2.4 The participative dimension

The final dimension of substantive equality is the importance it attaches to women's agency and voice. As has been recognised in several jurisdictions, equality should specifically compensate for the absence of political power of groups 'to whose needs and wishes elected officials have no apparent interest in attending'.³⁷ Substantive equality requires decision-makers to hear and respond to the voice of women, rather than imposing top-down decisions. The challenges of giving women voice cannot be underestimated. Articulating women's interests from a gendered perspective requires closer attention to the diversity of women's voices,

³⁶ N. Fraser, 'Social justice in the age of identity politics' in N. Fraser and A. Honneth (eds.), *Redistribution or Recognition? A Philosophical Political Exchange* (London and New York: Verso, 2003) 7–109 at 29.

³⁷ J. H. Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge, MA: Harvard University Press, 1980) at 46.

to the possible disjuncture between those who speak and those who are affected, and to the need to ensure that the least vocal are nevertheless heard. Moreover, as much as women's voice should be heard in engendering socio-economic rights, so socio-economic rights are necessary to give women the capability of articulating their perspectives. Substantive equality also has the important effect of imposing positive duties on the State, to treat women differently, provide opportunities for participation and restructure institutions appropriately.

4 Engendering socio-economic rights

When interpreted in the light of substantive equality, human rights for women cannot remain untouched. Substantive equality requires a transformation of the right itself. It is helpful in this respect to draw on the capabilities theories developed by Amartya Sen³⁸ and Martha Nussbaum.³⁹ The capabilities approach focuses not on an objective formulation of rights as a set of material goods but on whether people are able to be and do what they have reason to value. This is promising in the context of gender equality in that it stresses agency and choice. But it differs from equality of opportunity, because it takes into account the extent to which women are actually able to exercise their choice. For Sen, constraints on freedom include not just political oppression or interference, but also socio-economic and personal circumstances: '[w]hat people can achieve is influenced by economic opportunities, political liberties, social powers and the enabling conditions of good health, basic education, and the encouragement and cultivation of initiatives'.⁴⁰ Capabilities refer to valued goals that are feasible for an individual to pursue. It is not enough to have the formal opportunity to pursue one's chosen goals; 'capability' crucially denotes feasible options.⁴¹ This means that for human rights to be meaningful, the State must take positive steps to remove barriers and facilitate the exercise of such rights.⁴²

At the same time, to fully engender socio-economic rights, the emphasis on choice in the capabilities approach needs to be tempered by including values, such as caring and responsibility, that are not a matter of choice.⁴³

³⁸ A. Sen, *Development as Freedom* (Oxford University Press, 1999).

³⁹ M. Nussbaum, *Women and Human Development* (Cambridge University Press, 2000).

⁴⁰ Sen, *Development as Freedom* at 5.

⁴¹ *Ibid.* at 75. ⁴² *Ibid.* at 3.

⁴³ See further S. Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford University Press, 2008) at 15–16.

Sen's normative framework places as its highest value the individual's ability to do or be what she has reason to value. This risks focusing too much attention on what individuals can achieve, giving the impression that the only function of positive duties is to facilitate the ability of individuals to realise their own goals. It is important that this should not eclipse other human rights values, which are not based on choice but on interpersonal relationships and interdependence. Central among these is the value of caring, which comes, not as a matter of choice, but of responsibility. In fact, the needs of the person who is cared for might limit, inevitably and appropriately, the capabilities of the person doing the caring. In the context of gender, it is of great significance that value is attached, not just to choices, but to relationships for themselves. Thus engendering socio-economic rights does not merely require that women looking after children have more childcare options, enabling them to undertake paid work. It also requires that caring activities in themselves are valued and protected, for example through appropriate social security benefits, health services, housing and protection against vulnerability to violence. Giving greater social recognition to caring work might also encourage a fairer division of caring work among men and women.

In the context of gender, the capabilities approach can be developed to take into account the gendered nature of constraints on women. For example, the right to work as it stands is generally equated with paid work. But as we have seen, the right to paid work does not necessarily enhance the range of feasible options open to women. In fact, it might further constrain women. This is because the right to paid work does not take into account the constraints on women due to the interaction between women's work in the paid workforce and their unpaid work in the home. To fully engender the right to work, it is necessary to render unpaid work visible and address the relationship between paid and unpaid work. Otherwise, women are simply required to conform to existing structures. Similarly, the right to social insurance must be transformed so that it no longer privileges those with male patterns of work, who can amass higher levels of contributions than women with broken work histories. In this way, the right is shaped in ways that ensure that women are equally able to access it. The very recognition of non-gainful employment is an important start.⁴⁴ A similar analysis can be applied to rights to health, housing and education.

⁴⁴ *Report on Equality between Women and Men – 2009*, Report from the European Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, Com (2009) 77 Final.

Particularly important in redefining the interface between paid work, unpaid work and childcare is the way in which rights to maternity leave, parental leave and childcare are structured. Women's biological role in reproduction needs to be separated from their social role in parenting. While the former needs to attract rights specific to women, it is essential that the latter yields entitlements and indeed responsibilities for fathers as well as mothers. An ILO review of maternity protection in 2004 showed that 167 countries had some legislation in place.⁴⁵ However, it is still rare to have paternity or parental leave. The availability of subsidised childcare is again crucial to women's ability to balance paid and unpaid work, but close attention needs to be paid to the way in which it is set up. In particular, the vast majority of childcare workers may themselves be low-paid women.

5 Socio-economic rights and equality: the ICESCR approach

This section considers the extent to which gender equality is considered as an 'add-on' to existing rights within the ICESCR. As well as a general non-discrimination clause,⁴⁶ the ICESCR includes Article 3, which states: '[t]he States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant'. It should be stressed that equality can enhance socio-economic rights even as an 'add-on'. As the Committee on Economic, Social and Cultural Rights (CESCR) puts it in the General Comment on Non-Discrimination issued in 2009: '[d]iscrimination undermines the fulfilment of economic, social and cultural rights for a significant proportion of the world's population. Economic growth has not, in itself, led to sustainable development and individuals and groups of individuals continue to face socio-economic inequality, often because of entrenched historical and contemporary forms of discrimination.'⁴⁷ Moreover, equality can be a powerful partner to socio-economic rights. While the duty of States Parties is only to realise the socio-economic rights in the Covenant progressively and subject to the maximum of its available resources,⁴⁸ 'the equal right of men and

⁴⁵ ILO, *Maternity at Work*, 2nd edn (Geneva: ILO, 2004), available at: www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_124442.pdf (last accessed 6 March 2013).

⁴⁶ Article 2(2) ICESCR.

⁴⁷ CESCR, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights, UN Doc. E/C.12/GC/20 (2009), para. 1.

⁴⁸ Article 2(1) ICESCR.

women to the enjoyment of economic, social and cultural rights is a mandatory and immediate obligation of States Parties'.⁴⁹ However, it is argued that the ICESCR does not go far enough to engender socio-economic rights in the sense understood above.

5.1 Equality as an 'add-on'

In many contexts, equality is regarded as simply extending rights in the ICESCR to women. The *Travaux Préparatoires* state that Article 3 was included in the Covenant to indicate that 'the *same* rights should be expressly recognized for men and women on an equal footing',⁵⁰ suggesting a formal and additive approach. But at the same time they refer to the need for 'suitable measures [to] be taken to ensure that women had the opportunity to exercise their rights'.⁵¹ The CESCR claims that it has taken particular note of factors negatively affecting the equal right of men and women to the enjoyment of socio-economic rights in many of its General Comments, including those on the right to adequate housing, the right to adequate food, the right to education, the right to the highest attainable standard of health and the right to water.⁵² However, Leilani Farha demonstrates that women's perspectives, particularly on housing, were not reflected in the 'gender neutral documents' being adopted by the UN.⁵³ This is particularly true of General Comment No. 4 on the Right to Housing,⁵⁴ where, she argues, the attempt at gender neutrality has the effect of rendering women's specific experience of housing invisible. For example, although the Comment states that all persons should possess a degree of security of tenure, it fails to capture the particular causes of women's insecure tenure, such as domestic violence and discriminatory inheritance laws, customs and traditions.⁵⁵

The tendency to regard gender equality as an add-on to otherwise neutral rights is also demonstrated through Fleur van Leeuwen's valuable analysis

⁴⁹ CESCR, General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights, UN Doc. E/C.12/2005/4 (2005) para. 16; see also CESCR, General Comment No. 3: The Nature of States Parties Obligations, UN Doc. E/1991/23 (1990) para. 1.

⁵⁰ Emphasis added.

⁵¹ General Comment No. 16 para. 2.

⁵² *Ibid.* para. 4.

⁵³ Farha, 'Is there a woman in the house?' at 120.

⁵⁴ CESCR, General Comment No. 4: The Right to Adequate Housing, UN Doc. E/C.12/1991/4 (1991) para. 6.

⁵⁵ Farha, 'Is there a woman in the house?' at 128.

of the practice of the CESCR. She finds that whereas the Committee is sensitive to women's specific experiences, it does not examine whether these are caused by structural discrimination against women. For example, in relation to women's physical security, the Committee has done valuable work in emphasising that abortion should not be prohibited for women who have been raped or whose lives are endangered by the pregnancy. However, it does not go further and insist that abortion services in fact be provided.⁵⁶ If the CESCR were to adopt a capabilities approach as advocated here, it would be obvious that merely removing legal prohibitions on abortion would not be sufficient to be sure that women are in fact in a position to choose an abortion. A further step needs to be taken to make these choices feasible. The Committee should formulate appropriate obligations to this effect.

Van Leeuwen concludes that, as a result, the CESCR deals with the symptoms but not the causes of human rights abuses against women. The four-dimensional notion of equality suggested here would take the CESCR further towards truly engendering human rights. In particular, it would require structural changes to healthcare services, such as the provision of proper maternal health and reproductive care, which empower women within their communities and aim at equal respect and concern for women.

5.2 *Traces of substantive equality*

More recently, the CESCR has produced two General Comments, one on equality for women and one on equality more generally.⁵⁷ The General Comment on Equality for Women makes it clear that equality should be understood in a substantive way that goes beyond apparent gender neutrality: '[f]ormal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.'⁵⁸ However, in the examples it gives of the ways in which Article 3 applies to other rights in the Covenant, so there remains a strong inclination to regard equality as an 'add-on'. This can be seen clearly in respect of Article 6(1), the right

⁵⁶ Van Leeuwen, Chapter 8 this volume.

⁵⁷ CESCR, General Comment No. 16; CESCR, General Comment No. 20.

⁵⁸ CESCR, General Comment No. 16 para. 7.

to work, and Article 7, the right to just and favourable conditions of work. According to the General Comment, '[i]mplementing Article 3 in relation to Article 6 requires inter alia, that, in law and in practice, men and women have equal access to jobs at all levels and all occupations and that vocational training and guidance programmes, in both the public and private sectors, provide men and women with the skills, information and knowledge necessary for them to benefit equally from the right to work'. There is little sense here of the need to modify the structure of work itself to fully engender the right to work as argued above. Similarly, in relation to equal pay and working conditions, the General Comment states, that:

Article 3 in relation to Article 7 requires, inter alia, that the State party identifies and eliminates the underlying causes of pay differentials, such as gender biased job evaluation or the perception that productivity differences between men and women exist ... The State party should adopt legislation that prescribes equal consideration in promotion, non-wage compensation and equal opportunity and support for vocational or professional development in the workplace.

Here, too, the approach seems simply to attempt to slot women into existing male-dominated structures. Thus, the ICESCR, as interpreted through the General Comments, still stops short of engendering the right to work. This is because it does not address the relationship of unpaid work to market work; nor does it expressly require recognition of such work.

Somewhat more hopeful is the approach to reconciling work and family. The General Comment states that the State Party should reduce the constraints faced by men and women in reconciling professional and family responsibilities by promoting adequate policies for childcare and care of dependent family members. In addition, it regards the right to parental leave as applying to fathers as well as mothers, although it does not specify whether such leave should be paid or not. It is through Article 10, the right to protection for the family, that the Comment comes closest to formulating an engendered approach. Particularly important is the recognition that 'gender based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality'. This enables the Comment to identify the ways in which ICESCR rights should be interpreted so as to protect women's substantive rights to dignity, to widen the range of feasible options open to women, and endorse and value their interrelationships with others.⁵⁹

⁵⁹ *Ibid.* para. 27.

It is in the reports of the UN Special Rapporteur on Adequate Housing that the possibility of an engendered approach is particularly evident.⁶⁰ His approach to formulating the right incorporates many of the elements of substantive equality set out above. The first element, the need for an asymmetric approach that recognises gender disadvantage, is central to his analysis. Thus he emphasises the inadequacy of formal guarantees of equality to women by demonstrating that, whereas in many countries women's rights are legally protected, in practice women are socially and economically disadvantaged and face de facto discrimination in the areas of housing, land and inheritance rights. In particular, gender-neutral laws are interpreted and implemented in ways that discriminate and disadvantage women.⁶¹

Particularly important is the fourth element above, namely the commitment to give voice and agency to women. Indeed, it is because he has instituted wide-ranging consultations, and listened to testimonies received from women at grass-roots level, that he has succeeded in formulating the right from a particularly gendered perspective.⁶² Women's testimonies also revealed the importance of the second dimension, dignity or recognition, and particularly the central role of violence. The Special Rapporteur emphasises in his reports that the historically unequal power relations between men and women on both individual and societal levels are the root cause of gender-based violence.⁶³ Indeed, he takes this one step further and concludes that 'persistent poverty, where women and others are forced to live in inadequate and insecure housing and living conditions, is itself a form of violence'. Violence both results from and causes inadequate and insecure housing. Since women have comparatively fewer educational and employment opportunities, they can be disproportionately dependent on family, informal support networks, or a partner or spouse to meet their housing and economic needs. Due to such dependency, fear of homelessness makes many women vulnerable to violence and other forms of exploitation within the family. The need to

⁶⁰ See A. Aggarwal, 'UN Special Rapporteur on Adequate Housing: strengthening gendered norms for the right to adequate housing', *Australian J. of Human Rights* 10:1 (2004) 8, available at: www.austlii.edu.au/au/journals/AUJHRights/2004/8.html (last accessed 8 February 2013).

⁶¹ M. Kothari, *Women and Adequate Housing: Report by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination*, UN Doc. E/CN.4/2006/118 (2006) para. 9. See also Ikhdal, Chapter 9 this volume.

⁶² Kothari, *Women and Adequate Housing* paras. 8, 12.

⁶³ *Ibid.* para. 32.

accommodate difference is recognised in the Special Rapporteur's recognition of the role of multiple discrimination, for example against disabled women and Roma women.⁶⁴

It is also important to note that the Special Rapporteur does not necessarily characterise the right to adequate housing as a right to a particular bundle of goods, in this case a house, but as a right to action by the State to protect and expand the range of feasible options available to women, such as the development of gender-sensitive housing policies and legislation, access to affordable utilities such as water, electricity and heating as well as to education, employment and health facilities, and protection against violence.⁶⁵ This is a particularly clear example of the way in which engendered socio-economic rights aim to take account of the power relations in which rights are exercised, in order to enhance the set of feasible options open to women, while at the same time valuing and supporting their roles within a complex network of interdependence.⁶⁶ Ingunn Ikdahl's research underscores this point:⁶⁷ formal rights to property may be meaningless to women because they are overlaid by a web of social, cultural and possibly religious norms.

6 The CEDAW

The CEDAW differs from the ICESCR in that it regards gender equality and socio-economic rights as interdependent, recognising that gender inequality must be addressed at least in part by providing justiciable socio-economic rights. However, on closer inspection it can be seen that the CEDAW speaks with two voices. Parts of the CEDAW, and its interpretation in later General Recommendations, go beyond simply extending given rights to women, and instead reframe the rights themselves in the light of substantive equality. However, other parts of the CEDAW simply extend given socio-economic rights to women.

6.1 *Engendered rights*

The more progressive voice can be heard in some of the salient elements of the CEDAW. As a start, it is expressly asymmetric. Instead of outlawing discrimination on grounds of sex or gender, the CEDAW aims at the

⁶⁴ *Ibid.* paras. 47–53. ⁶⁵ *Ibid.* para. 11.

⁶⁶ Aggarwal, 'Strengthening gendered norms'.

⁶⁷ Ikdahl, Chapter 9 this volume.

elimination of discrimination specifically against women. According to the CEDAW Committee:

[t]he 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, emphasizing that women have suffered, and continue to suffer from various forms of discrimination because they are women.⁶⁸

Nor is it sufficient to provide formal equality, or to open up opportunities that women are unable to utilise. The emphasis is on ensuring that women are actually in a position to make use of their rights.⁶⁹

This commitment to equality does not merely impose negative duties, or duties of restraint, on the State. Instead, 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'.⁷⁰ 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'.⁷¹

Secondly, the CEDAW does not demand conformity as a price for equality. Instead, it demands structural change. Most importantly, the Convention actively addresses the public/private divide, and the social and cultural assumptions and prejudices that keep women in the private sphere. Article 5 is particularly transformative in its approach, requiring States 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 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.⁷²

⁶⁸ Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 25: Temporary Special Measures (Thirtieth Session, 2004), para. 5.

⁶⁹ Article 1 CEDAW. ⁷⁰ Article 3 CEDAW.

⁷¹ CEDAW, General Recommendation No. 25 para. 4.

⁷² Article 16 CEDAW.

Thirdly, the CEDAW takes particularly seriously the importance of representation of women in decision-making, the fourth dimension of substantive equality identified above. 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.⁷³

These three elements reflect the CEDAW's commitment to a conception of substantive equality that is sensitive to women's distinct experience of disadvantage. This engendered approach is reflected in many of the socio-economic rights contained in the Convention.

The cluster of rights in respect of reproduction and childcare demonstrate an understanding of rights as enhancing women's feasible options, while at the same time valuing their caring roles. 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.⁷⁴ 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, healthcare 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 maternity protection are recommended and 'shall not be considered discriminatory'.⁷⁵ The Convention also affirms women's right to reproductive choice. Notably, it is the only international human rights treaty to mention family planning. States Parties are obliged to include advice on family planning in the education process⁷⁶ 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'.⁷⁷

An engendered approach to socio-economic rights further requires that violence against women be recognised and addressed within the substance of the rights themselves and not just as an 'add-on'. The absence of direct reference to a prohibition on violence against women in the CEDAW

⁷³ Article 7 CEDAW. ⁷⁴ Article 5(b) CEDAW.

⁷⁵ Article 4 CEDAW. ⁷⁶ Article 10(h) CEDAW.

⁷⁷ Article 16(e) CEDAW.

itself is startling. Nevertheless, 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.⁷⁸ In its General Recommendation No. 19 of 1992, the Committee shows how most of the Convention rights must read in a way that addresses gender-based violence, even when not expressly mentioned. Thus States Parties are required by Article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women. Consistent with the second dimension of substantive equality identified above, the Committee stresses that these practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity.⁷⁹ Similarly, gender-specific violence includes sexual harassment at the workplace, which can seriously impair equality for women in the workplace. Violence against women is clearly a breach of the right to equal access to healthcare services, which is part of States' duties under Article 12. 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.⁸⁰

Also central to an engendered approach is the recognition that equal treatment of men and women may not be sufficient to achieve equality in practice, hence the central importance of mandatory affirmative action in the CEDAW. As originally drafted, however, the reference to 'temporary special measures' in Article 4(1) gave the impression that measures specifically directed at women were an exception to equality, even when they were aimed at redressing previous disadvantage. However, after detailed consultation with women's groups and others,⁸¹ the Committee issued General Recommendation No. 25. In a comprehensive affirmation of substantive equality over formal equality, the Recommendation makes it clear that affirmative action is by no means a breach of equality, but may be necessary to achieve substantive equality. This reaffirms the asymmetry of substantive equality.

The development of substantive equality within the CEDAW has, in some important respects, reshaped the right itself. This can be seen in

⁷⁸ CEDAW, General Recommendation No. 19: Violence Against Women (Eleventh Session, 1992) para. 7.

⁷⁹ *Ibid.* paras. 13–14.

⁸⁰ *Ibid.* paras. 15–16.

⁸¹ See I. Boerefijn *et al.* (eds.) *Temporary Special Measures*.

relation to the right to property. In General Recommendation No. 21, the Committee has recognised that property rights on the break-up of marriage should not depend only on the financial contributions of spouses. This ignores the unpaid work of women. Instead, the right to property should also reflect the contribution of women through their unpaid domestic and reproductive work.⁸² Similarly, as Ingunn Ik Dahl points out, the CEDAW Committee has required ways to access land that are typical for women to be translated into property rights.⁸³

Particularly important is the way in which engendering human rights affects women's right to health. It is not sufficient simply to make health-care services available to women in the same way as they are to men. Instead, States Parties must develop services that are responsive to women's reproductive capacities and particular vulnerabilities, and should recognise barriers that particularly prejudice women, such as the requirement for preliminary authorisation by spouse, parent or hospital authorities, high fees, distance from health facilities and birth clinics, lack of skilled birth attendants and absence of safe public transport.⁸⁴ These aspects of the right to health protection are analysed by Henriette Sinding Aasen in Chapter 10 in this volume.

6.2 Limitations

In other respects, however, a closer look at the Convention reveals that in key areas it still regards gender equality as an 'add-on' to given socio-economic rights. This is particularly evident from the wording of the major socio-economic rights, namely the rights to work,⁸⁵ and credit, benefits and recreation.⁸⁶ Both are formulated as if it is sufficient simply to add equality to socio-economic rights, rather than transforming them through the principle of equality. Thus, in each case the State Party is required to 'take all appropriate measures to eliminate discrimination against women ... in order to ensure on a basis of equality of men and women, *the same rights*'.⁸⁷

The problems with regarding equality as simply an add-on or extension of a fixed right in this manner can be seen by taking a closer look at the

⁸² CEDAW, General Recommendation No. 21: Equality in Marriage and Family Relations (Thirteenth Session, 1994), para. 32; see Ik Dahl, Chapter 9 this volume.

⁸³ Ik Dahl, Chapter 9 this volume.

⁸⁴ CEDAW, General Recommendation No. 24: Women and Health (Twentieth Session, 1999), para. 21.

⁸⁵ Article 11 CEDAW. ⁸⁶ Article 13 CEDAW. ⁸⁷ Emphasis added.

rights to work and to education. 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. As we have seen, 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.⁸⁸ 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.

Similarly, the right to education in Article 10 speaks with two voices. The first is the voice of formal equality. Article 10 gives the right to:

- (a) [t]he *same* conditions for career and vocational guidance, for access to studies and for the achievement of diplomas ...
- (b) [a]ccess to the *same* curricula, the *same* examinations, teaching staff with qualifications of the same standard and school premises and equipment of the *same* quality ...
- (d) [t]he *same* opportunities to benefit from scholarships ... and
- (e) [t]he *same* opportunities for access to programmes of continuing education, including adult and functional literacy programmes.⁸⁹

On the other hand, the voice of substantive equality, although muted, is nevertheless found in Article 10(c), which requires the ‘elimination of any

⁸⁸ See further United Nations, *Beijing Declaration and Platform for Action*, Fourth World Conference on Women, UN Doc. A/CONF.177/20 (1995) para. 181: ‘Governments [shall] ... [p]romote the equal sharing of responsibilities for the family by men and women’; International Labour Conference, *Gender Equality at the Heart of Decent Work* (Geneva: ILO, 2009) para. 79: ‘The achievement of gender equality requires a context in which men and women work together, and work and family responsibilities are shared.’

⁸⁹ Emphasis added.

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'. Curricula that continue to depict girls in stereotypical household roles will perpetuate fixed roles and limit girls' self-expectations. It is this voice that needs to be developed and strengthened. As we have seen, far more is necessary truly to engender women's rights to education. The same is true for other CEDAW rights, particularly rights to health and housing.

Similarly, despite its assertion that the common responsibility of men and women should be recognised, the 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. In addition, as Ikdahl concludes, 'while the CEDAW Committee has provided detailed analysis of women's unequal property rights within the family, it has not yet engaged systematically with the effects on women's unequal right to [housing]'.⁹⁰

7 Conclusion

It has been argued here that if socio-economic rights are to have a real effect on achieving equality for women, they need to be infused with substantive equality. This requires a reformulation of the rights themselves, to take into account and address the gender-specific constraints that women experience in exercising these rights. More specifically, it requires greater attention to be paid to the ways in which the rights to respect, protect and fulfil are formulated.

Both the ICESCR and the CEDAW are still in parts wedded to a formal or additive approach to gender equality. However, the CEDAW goes a long way towards embracing an engendered conception of socio-economic rights based on substantive equality, requiring States to transform the underlying power structures that contribute to women's disadvantage. As a result, the CEDAW requires more than merely extending socio-economic rights to women. This is its primary 'added value'. Nevertheless, there remain important parts of the Convention that need continued engagement to ensure that the voice of substantive equality is the dominant one.

⁹⁰ Ikdahl, Chapter 9 this volume.