

# Women, human rights and development

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*One half of the world's population is systematically discriminated against and denied opportunity, for the 'crime' of having a female chromosome.<sup>1</sup>*

## I. Introduction

Women's equal right to development has been called a universal good.<sup>2</sup> However, the realization of their right to development is beset by challenges rooted in the inequalities that pervade their lives.<sup>3</sup> For women, the right to development does not simply require consideration of how income poverty, understood as lack of money and resources, influences their ability to enjoy their human rights; human poverty, in the sense of women's lack of voice and participation in decision-making within their families and societies, also impacts upon their lives and further reinforces their powerlessness.<sup>4</sup>

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<sup>1</sup> Kevin Watkins, *The Oxfam Poverty Report* (Oxford, Oxfam Publishing, 1995), p. 2.

<sup>2</sup> United Nations Development Programme (UNDP), *Human Development Report 1995: Gender and Human Development* (New York, Oxford University Press, 1995); World Bank, *Engendering Development: Through Gender, Equality in Rights, Resources, and Voice* (New York, Oxford University Press, 2001), p. 100; Nicholas D. Kristof and Sheryl WuDunn, *Half the Sky: Turning Oppression into Opportunity for Women Worldwide* (London, Virago, 2010), pp. xxi-xxii.

<sup>3</sup> See the reports of the Secretary-General entitled "Effective mobilization and integration of women in development: gender issues in macro-economic policymaking and development planning" (A/50/399); "Women in development" (A/62/187); and *World Survey on the Role of Women in Development* (A/64/93).

<sup>4</sup> These categories are based on UNDP, *Human Development Report 2000: Human Rights and Development* (New York, Oxford University Press, 2000), p. 17, where "human poverty" is defined as "deprivations in a long and healthy life, in knowledge, in a decent standard of living, in participation". The policy objectives on gender and development of the international development organization Oxfam focus on issues pertaining to both money and human development. See Oxfam, *The Oxfam Handbook of Development and Relief*, D. Eade and S. Williams, eds. (Oxford, Oxfam

This chapter aims at analysing the historical evolution of the relationship between women, the right to development and human rights based-approaches, with reference to the main theoretical components that have supported the debate on women's issues, the fight for gender equality and the progressive development of international law in this regard. In order to do so, the chapter starts with a historical overview of the conceptual approaches to women and development as they evolved within the framework of the United Nations Decade for Women. It proceeds to analyse the Declaration on the Right to Development from a gender perspective. It then goes on to examine the adoption of a human rights-based approach to development before moving on to an assessment of the efficacy of the right to development for women. Thereafter, the chapter attempts to integrate a gender perspective into human rights at the international as well regional (African) levels. Finally, the United Nations Millennium Declaration and the Millennium Development Goals are also examined from a gender perspective.

## II. From development to women's rights in the United Nations system

Equality, peace and development were central themes of the United Nations Decade for Women

GB, 1995), pp. 171-172; Sakiko Fukuda-Parr, "The human development paradigm: operationalizing Sen's ideas on capabilities" in *Amartya Sen's Work and Ideas: A Gender Perspective*, Bina Agarwal, Jane Humphries and Ingrid Robeyns, eds. (New York, Routledge, 2005), pp. 303-320; "Montréal Principles on Women's Economic, Social and Cultural Rights", *Human Rights Quarterly*, vol. 26, No. 3 (2004), pp. 760-780.

(1976-1985). This period was characterized by increased attention to the economic disenfranchisement and poverty of women and their deprivation of related rights, due in part to the influence of feminist development practitioners.<sup>5</sup> Since the numbers of women in governmental delegations have been small, women's organizations and movements have played an important role in bringing the views of women into the United Nations.<sup>6</sup> Women's movements have been pivotal not only for mainstreaming women's rights and gender issues in general but also for promoting the transition from each of these approaches to the other, continuously aspiring for greater equality and empowerment.

During the Decade for Women, there was a conceptual evolution from women in development (WID), to women and development (WAD) and, finally, to gender and development (GAD).<sup>7</sup>

The first United Nations-sponsored women's conference, held in Mexico City in 1975, assessed conditions leading to women's poverty and highlighted the importance of integrating women into development.<sup>8</sup> The focus reflected the women in development critique of the prevailing development model. Ester Boserup had argued that the existing development discourse ignored women's contribution to national production. She further argued that this was the case as a result of gender-based stereotyping which located women solely within the domestic sphere: "Various colonial and post-colonial governments had systematically bypassed women in the diffusion of new technologies, extension services and other productive inputs."<sup>9</sup>

The women in development approach is considered a landmark in the critique of development models from a women-based perspective. Female economic activities were critically examined and new light was shed on existing conceptions of traditional housework. The approach exposed how the conven-

tional economic rationale for work involving women undermined their work and masked the magnitude of their economic role in society. Under the rubric women in development, the recognition that women's experience of development and of societal change differed from that of men was institutionalized and it became legitimate for research to focus specifically on women's experiences and perceptions.<sup>10</sup> Naila Kabeer has noted that Boserup and other women in development advocates were crucial in shifting the focus of development discourse from welfare to equality.<sup>11</sup>

Apart from creating a fresh outlook for women in the economic arena, the Mexico City conference also called for the drafting of the Convention on the Elimination of All Forms of Discrimination against Women.<sup>12</sup> It set targets for the enactment of equality legislation and declared the following 10 years the United Nations Decade for Women. Targets were also set for the improvement of women's access to economic, social and cultural rights, including improvements in health, reproductive services and sanitation. After the conference, the General Assembly adopted several resolutions relating to women in development.<sup>13</sup>

The period after the conference was taken up with drafting the Convention, which was adopted in 1979.<sup>14</sup> The Convention's preamble states that a "new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women". The women in development approach is embodied in article 14 of the Convention, which focuses on rural women and calls on States to ensure that women "participate in and benefit from rural development" and also that they "participate in the elaboration and implementation of development planning at all levels".<sup>15</sup> Participation is an important component of the right to development, as discussed below. The article also emphasizes the importance of women having access to education, health care, marketing facilities and appropriate tech-

<sup>5</sup> Typical of this influence was the "buzz" generated by Ester Boserup's *Women's Role in Economic Development* (London, Earthscan, 1970).

<sup>6</sup> Charlotte Bunch, "Women and gender: the evolution of women specific institutions and gender integration at the United Nations" in *The Oxford Handbook on the United Nations*, Thomas G. Weiss and Sam Daws, eds. (Oxford University Press, 2007). An edited version of the chapter is available at [www.rci.rutgers.edu/~cwgl/globalcenter/charlotte/UN-Handbook.pdf](http://www.rci.rutgers.edu/~cwgl/globalcenter/charlotte/UN-Handbook.pdf).

<sup>7</sup> N. Kabeer, *Reversed Realities: Gender Hierarchies in Development Thought* (London, Verso, 2003), pp. 1-11; Eva M. Rathgeber, "WID, WAD, GAD: trends in research and practice", *Journal of Developing Areas*, vol. 24, No. 4 (1990), p. 489.

<sup>8</sup> World Plan of Action for the Implementation of the Objectives of the International Women's Year, *Report of the World Conference of the International Women's Year, Mexico City, 19 June-2 July 1975* (United Nations publication, Sales No. E.76.IV.1), Part one, chap. II, sect. A, paras. 8, 9, 14, 16, 18, 22, 145, 147 and 163-169.

<sup>9</sup> Kabeer, *Reversed Realities*, p. 6.

<sup>10</sup> Rathgeber, "WID, WAD, GAD", p. 491.

<sup>11</sup> *Ibid.*

<sup>12</sup> World Plan of Action, para. 198. See also A. González Martínez, "Rights of rural women: examples from Latin America," in *The Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination against Women*, Hanna Schopp-Schilling and Cees Flinterman, eds. (Feminist Press, 2007), p. 212.

<sup>13</sup> Resolutions 3522 (XXX) on the improvement of the economic status of women for their effective and speedy participation in the development of their countries; 3523 (XXX) on women in rural areas; 3524 (XXX) on measures for the integration of women in development.

<sup>14</sup> Resolution 34/180, annex.

<sup>15</sup> See F. Banda, "Article 14" in *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*, M. Freeman, C. Chinkin and B. Rudolf, eds. (Oxford, Oxford University Press, 2012), pp. 357-385 and L. Pruitt, "CEDAW and rural development: empowering women with law from the top down, activism from the bottom up", *Baltimore Law Review*, vol. 41 (2012), p. 263.

nology as well as adequate living conditions, including water, electricity, housing and transport and, of course, access to land, loans and credit.

With its focus on modernization through the process of integrating women into pre-existing development practices, the women in development approach was soon criticized for its failure to challenge the gender-biased structuring of many societies and development programmes, the effect of which was to exclude women. It began to be understood as primarily an “add-on” to existing development policies.<sup>16</sup> Specifically, this approach failed to factor women’s reproductive and informal-sector work into its analyses. It also treated women as a homogenized category, missing the impact of intersectional discrimination as a result of class and race.<sup>17</sup> In short, this liberal feminist model failed to have a transformative effect on the lives of women.<sup>18</sup> Gender neutrality ignored gendered structural inequalities which had, and indeed continue to have, negative effects on women. The exclusive economic focus of “integrating women into development” often translated into exploitation of women as the targets of top-down development policies.<sup>19</sup> From these critiques emerged the women and development approach.<sup>20</sup>

The women and development approach was introduced in the late 1970s and considered the economic activities performed by women both inside and outside the home as essential for the survival of the family unit<sup>21</sup> and, as such, part of the development process. The women and development approach further argued that the failure to integrate women as economic actors in their societies contributed to sustaining existing international structures of inequality. It aimed at recognizing the concerns of women as occupying a separate, but overlapping, space with the concerns of development.<sup>22</sup> However, women and development was criticized for overlooking the major influence of the ideology of patriarchy and thus being insufficiently gendered. It was also criticized for its failure to engage with issues of dependency (of third world States and women) on international capital and

the resultant inequalities. The lack of class as a category of analysis was also critiqued.<sup>23</sup>

The next phase saw greater attention being paid to gender. The concept of gender and development was defined as referring to the ways in which roles, attitudes, privileges, and relationships regarding women and men are socially constructed, and how gender shapes the experience of males as well as females.<sup>24</sup> The gender and development approach was theoretically rooted in socialist feminism and focused on the analyses of: (a) the social constructions of gender, questioning the validity of roles, responsibilities and expectations assigned to women and men in different societies; and (b) why women were systematically assigned inferior or secondary roles. Moreover, it saw women as agents of change rather than passive recipients of development assistance. Its ultimate objective was a substantial re-examination and recalibration of social structures and institutions leading to the loss of power by ingrained elites.<sup>25</sup> This approach, which aims at challenging structural discrimination, has remained the dominant approach, including in feminist human rights jurisprudence.<sup>26</sup> It is also the approach adopted by the Committee on the Elimination of Discrimination against Women (CEDAW).<sup>27</sup>

After the initial breakthrough in Mexico, a mid-Decade World Conference on Women was held in Copenhagen in 1980. In addition to providing the now oft-quoted, but since discredited, statistic that while women “represent 50% of the world adult population and one third of the official labour force, they perform nearly two thirds of all working hours, receive only one tenth of the world income and own less than one third of world property”,<sup>28</sup> the conference also served the purpose of launching the Convention, which had then been opened for signature. Held at the height of the debate between developed and developing countries about the need for a new international economic order, the conference resulted in a call for the redistribution of resources and demands that women

<sup>16</sup> Hope Lewis, “Women (under)development: the relevance of ‘the right to development’ to poor women of color in the United States”, *Law and Policy*, vol. 18, Issue 2-3 (July 1996), p. 288.

<sup>17</sup> Rathgeber, “WID, WAD, GAD” (see footnote 7), pp. 491-492; Kabeer, *Reversed Realities* (see footnote 7), pp. 27-39.

<sup>18</sup> S. Fredman, “Engendering socio-economic rights”, *South Africa Journal of Human Rights*, vol. 25, part. 3 (2009), pp. 410-441.

<sup>19</sup> Lewis, “Women (under)development”, p. 293.

<sup>20</sup> Kabeer, *Reversed Realities* (see footnote 7), pp. 40-68.

<sup>21</sup> Gine Zwart, “From women in development to gender and development: more than a change in terminology?” *Agenda*, No. 14 (1992), p. 16.

<sup>22</sup> Lewis, “Women (under)development”, p. 288.

<sup>23</sup> Rathgeber, “WID, WAD, GAD” (see footnote 7), pp. 492-493.

<sup>24</sup> Bunch, “Women and gender” (see footnote 6), p. 1. See also United Nations, *1999 World Survey on the Role of Women in Development: Globalization, Gender and Work* (New York, 1999), p. ix.

<sup>25</sup> Rathgeber, “WID, WAD, GAD” (see footnote 7), pp. 494-495. See also Kabeer, *Reversed Realities* (see footnote 7), pp. 46-64.

<sup>26</sup> R. Holtmaat, “Article 5”, in *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*, pp. 141-167. See also R. Cook and S. Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press, 2010).

<sup>27</sup> See CEDAW, general recommendation No. 25 (1999) on temporary special measures and general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention.

<sup>28</sup> *Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace, Copenhagen, 14-30 July 1980* (United Nations publication, Sales No. E.80.IV.3), chap. I, sect. A, part one, para. 16.

should both participate in and benefit from general and sectoral development programmes.<sup>29</sup> Here, developing countries' calls for a greater focus on socio-economic and cultural rights, including a focus on development, were foregrounded. Hence, the final document, the Programme of Action for the Second Half of the United Nations Decade for Women, reflected both the women and development approach and the move towards the gender and development approach. As a result, it reflected critiques of unidentified obstacles to development, such as the continuation of legal and factual discrimination against women and the lack of recognition of women's productive and reproductive work, especially in the non-monetized sector.<sup>30</sup> The Programme of Action gave high priority to improving the lives of the most disadvantaged groups, including rural women.<sup>31</sup>

The third World Conference on Women, entitled World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, took place in 1985 in Nairobi at the close of the Decade. In the Nairobi Forward-looking Strategies for the Advancement of Women, the conference highlighted the lack of progress made by States in engendering the development process.<sup>32</sup> This shortcoming was attributed to the impact of the economic crisis, unfair trade practices on the part of developed States, lack of participation by women in national development planning and the low priority given to issues affecting women disproportionately or of direct concern to women.<sup>33</sup> There was, on the other hand, a special focus on food, water and agriculture.<sup>34</sup> Recommendations included urging States to ratify the Convention and to increase the participation of women in all sectors of development.<sup>35</sup> Concurrently, in the arena of the right to development, progress was achieved in recognizing the participation of women in development as a human right when, a year later, the General Assembly adopted the Declaration on the Right to Development.

Following the end of the Decade, development rights in relation to women continued to receive attention at other United Nations conferences and other international forums.<sup>36</sup>

While the concept of gender had taken root in both development and feminist academic discourse, the meaning ascribed to the term varied. For academics and advocates the term implied a radical agenda of societal restructuring, but this vision proved difficult to implement in practice. The terms "sex" and "gender" became interchangeable. Even now, gender is often used to mean women. Furthermore, at the institutional level, the term "gender" was contested by conservative elements and religious groups which argued that the term sought to displace the categories male and female and to impose sexual orientation and gender identity issues through the back door.<sup>37</sup> These tensions exploded at the fourth World Conference on Women, held in Beijing in 1995, where the definition of gender was heavily contested, leading to a vague statement by the President of Conference on its meaning.<sup>38</sup>

In Beijing, the issue of women and poverty made it onto the list of 12 critical concerns. The Conference highlighted the fact that women were disproportionately impacted by poverty: "Women's poverty is directly related to the absence of economic opportunities, autonomy, lack of access to economic resources, including credit, land ownership and inheritance, lack of access to education and support services and their minimal participation in the decision-making process."<sup>39</sup>

<sup>29</sup> *Ibid.*, paras. 3, 4, 12 and 43-45. It is now claimed that these statistics were "made up" by a United Nations official. See S. Baden and A. M. Goetz, "Who needs [sex] when you can have [gender]?" conflicting discourses on gender in Beijing", in *Feminist Visions of Development: Gender Analysis and Policy*, C. Jackson and R. Pearson, eds. (Routledge, 1998), pp. 19-38.

<sup>30</sup> *Report of the World Conference of the United Nations Decade for Women*, chap. I, sect. A, part one, paras. 10-16.

<sup>31</sup> *Ibid.*, para. 8.

<sup>32</sup> See *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, 15-26 July 1985* (United Nations publication, Sales No. E.85.IV.10), chap. I, sect. A.

<sup>33</sup> *Ibid.*, paras. 17, 18, 25 and 26.

<sup>34</sup> *Ibid.*, paras. 174-196.

<sup>35</sup> *Ibid.*, paras. 123, 134 and 142.

<sup>36</sup> See, for example, *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda, vol. I); *Report of the World Conference on Human Rights, Vienna, 14-25 June 1993* (A/CONF.157/24 (Part I)); *Report of the World Food Summit, 13-17 November 1996* (Food and Agriculture Organization of the United Nations, document WFS 96/REP); *Report of the World Conference on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002* (United Nations publication, Sales No. E.03.II.A.1); General Assembly resolution 62/136 on improvement of the situation of women in rural areas.

<sup>37</sup> Baden and Goetz, "Who needs [sex] when you can have [gender]?", p. 34.

<sup>38</sup> *Ibid.*, pp. 25-26. See also *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), annex IV. A progressive interpretation of gender was agreed in 1999: see United Nations, *1999 World Survey on the Role of Women in Development*, p. ix.

<sup>39</sup> *Report of the Fourth World Conference on Women*, chap. I, resolution 1, annex II, para. 51. These issues were also identified as key to the realization of women's right to development by UNDP in the *Human Development Report 1995: Gender and Human Development*. See also the statement adopted by the Committee on Economic, Social and Cultural Rights on poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10). See further L. Williams, "Towards an emerging international poverty law", in *International Poverty Law*, L. Williams, ed. (London, Zed Books, 2006), p. 6; D. Narayan and others, *Voices of the Poor*, vol. I, *Can Anyone Hear Us?*, World Bank publication (New York, Oxford University Press, 2000), p. 31; and C. Chinkin, "The United

### III. Women and the Declaration on the Right to Development

Adopted in 1986, the Declaration on the Right to Development is located within the women and development framework and has been criticized for reflecting an offhand, last-minute “add women and stir” approach.<sup>40</sup> Criticisms of the Declaration centred around its failure to engage with the particularities of women’s experiences of dispossession and dislocation in the prevailing development discourse.<sup>41</sup> Women are expressly mentioned in article 8 (1): “Effective measures should be undertaken to ensure that women have an active role in the development process.”<sup>42</sup> The nature and scope of the “effective” measures that the State is required to undertake remain undefined.<sup>43</sup>

The Declaration presents the right to development as an umbrella right,<sup>44</sup> in which all other internationally recognized human rights are taken into account; moreover, it introduces two key elements in the process of development: popular participation and fair distribution of benefits. Article 2 (3) proclaims: “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.” Hence, the Declaration provides that development should be a broadly participatory right, one that requires the State to take special and effective measures to ensure the active role of women. Similarly, fair and equal distribution of resources cannot be accomplished without female as well as male participation in the process (understood as popular participation earlier).<sup>45</sup>

The Declaration is very focused on inter-State (and specifically North/South or, later, West/Rest) framework of wealth redistribution by way of a new international economic order. This appears to be an ongoing focus.<sup>46</sup> The fact that in many regions of the

world, women have little if any contact with State institutions and live their lives in the shadows of what is considered “public” is wholly ignored. There appears to be little engagement with the exclusion of women at both national and international levels from participating, or indeed in addressing the barriers to women’s participation so eloquently analysed during the United Nations Decade. The list of human rights violations in article 5 of the Declaration that States are required to address in order to facilitate development include “all forms of racism and racial discrimination” but, interestingly, not sexism or sex discrimination. While the Declaration is rooted in the international law definition of self-determination (State sovereignty), there appears to be no engagement with women’s lack of self-determination over their own lives.<sup>47</sup> Moreover, while article 2 (2) of the Declaration highlights the “responsibility for development, individually and collectively”, it fails to acknowledge the gendered nature of these responsibilities and specifically the disproportionately unrecognized and unremunerated development work done by women in caring for families, growing, sourcing and preparing food and performing a host of other tasks that go unrewarded.<sup>48</sup> This seems an odd omission, not least because the Declaration was adopted in the same year that the Nairobi conference called on States to take concrete steps “to quantify the contributions of women to agriculture, food production, reproductive and household activities.”<sup>49</sup> Marilyn Waring has argued that “housework is specifically excluded from the definition of work, and nowhere is housework defined, so that housework becomes the generic term for everything that women do in an unpaid capacity”.<sup>50</sup> In short, the Declaration could be described as built on masculinist foundations.<sup>51</sup>

Alternatively, one might view the Declaration as a good start: national independence from the shack-

Nations Decade for the Elimination of Poverty: what role for international law?” *Current Legal Problems*, vol. 54, No. 1 (2001), pp. 553 and 581-582.

<sup>40</sup> See Rathgeber, “WID, WAD, GAD” (see footnote 7).

<sup>41</sup> C. Chinkin and S. Wright, “The hunger trap: women, food and self-determination”, *Michigan Journal of International Law*, vol. 14 (1993), p. 262.

<sup>42</sup> See also the opening paragraph of the preamble and article 6 (1) on non-discrimination, including on the basis of sex.

<sup>43</sup> Cf. article 10 of the Declaration.

<sup>44</sup> Bård A. Andreassen and Stephen P. Marks, eds., *Development as a Human Right: Legal, Political and Economic Dimensions*, 2nd ed. (Intersentia, 2010), p. 11.

<sup>45</sup> Lewis, “Women (under)development” (see footnote 16), p. 299.

<sup>46</sup> See the views of the Group of African States and the Non-Aligned Movement in the report of the Working Group on the Right to Development on

its eighth session (A/HRC/4/47), paras. 18 and 19; cf. the views of European States, noting that the right to development is the primary responsibility of States, but also highlighting the possibility of using a child- and gender-rights focus in a new human rights engagement in development cooperation (para. 20). See also A. Cornwall and C. Nyamu-Musembi, “Putting the rights-based approach to development into perspective”, *Third World Quarterly*, vol. 25, No. 8 (2004), pp. 1415 and 1424-1425.

<sup>47</sup> Chinkin and Wright, “The hunger trap”.

<sup>48</sup> See also CEDAW, general recommendation No. 16 (1991) on unpaid women workers in rural and urban family enterprises and general recommendation No. 17 (1991) on measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product.

<sup>49</sup> *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women*, chap. I, sect. A, para. 120.

<sup>50</sup> Marilyn Waring, “Gender and international law: women and the right to development”, *Australian Year Book of International Law*, vol. 12 (1988-1989), p. 183

<sup>51</sup> Cf. A. Stewart, “Juridifying gender justice”, in *Law and Development: Facing Complexity in the 21st Century*, J. Hatchard and A. Perry-Kessari, eds. (London, Cavendish, 2003), p. 36.



les of colonialism, and the vistas of a new-found sovereign freedom, were the dominant preoccupations of the day. Independence in the international context was an overriding concern. However, given the asymmetries of power, patriarchies and dominant structures that govern(ed) both the international political economy and the gender domain, parallels could be found and extended to, for example, the independence of women. As noted, the preamble and article 6 (1) do mention non-discrimination and explicitly include sex-based discrimination. Moreover, going forward, self-determination as a concept, could also be seen, in a gendered perspective, as the ability of women to determine their own development.<sup>52</sup>

Given this interpretive potential, it is a source of regret that the Working Group on the Right to Development has as yet not taken up some of these themes in its work. Indeed, it has not focused on women at all.<sup>53</sup> Going forward, it may be helpful if greater attention were paid to the impact of discrimination on women's access to resources and power and its impact on their ability to participate in and benefit from development.<sup>54</sup> Specifically, the project would focus on the ways in which women are prevented from accessing, using and owning land; accessing credit and loans; and having independent decision-making over their bodies in both labour and reproductive rights terms while also addressing the disproportionate impact of inadequate water and sanitation facilities on women and girls. including in accessing education.

While there is much rhetorical acknowledgement of women's contributions to national economies, this is not followed through in practice by, for example, changing social security laws to take into account the work that women do in family enterprises and subsistence-level agriculture. Environmental changes and the greater recognition of the need to introduce sustainable development models must take account of women's roles in sourcing food, water and fuel. While there have been many analyses of how violence against women hampers their personal development and the costs entailed, this is an area that remains underrecognized in development discourse and practice. Women's lack of knowledge about their legal entitlements, or indeed how and where to claim them,<sup>55</sup> is fundamental to the fulfilment of their rights.

<sup>52</sup> See Chinkin and Wright, "The hunger trap" (see footnote 41).

<sup>53</sup> Cf. the preliminary study of the Human Rights Council Advisory Committee on discrimination in the context of the right to food (A/HRC/13/32), paras. 32-34.

<sup>54</sup> The Working Group on the Right to Development could work with the Working Group on Discrimination against Women in Law and Practice established by Human Rights Council resolution 15/23.

<sup>55</sup> Federation of Women Lawyers-FIDA Kenya, *Baseline Survey on the Level*

Moreover, also analysed theoretically is the impact of plural laws on women's enjoyment of their human rights. The potential of plural legal systems to both stimulate and stymie development for women and societies at large needs greater focus.<sup>56</sup> The challenge of confronting negative gender stereotyping of women and their integration into cultural and religious norm creation and interpretation is huge, but it must be undertaken, consistently and persistently.<sup>57</sup> Finally, an intersectional approach which embraces women's diversities is crucial.

#### IV. Progress after 2000: an overview

##### A. Assessing the human rights-based approach to development for women

As noted above, in 2000 UNDP focused its annual Human Development Report on the human rights-based approach to development,<sup>58</sup> in which human development, human rights and human rights-centred development are intrinsically intertwined and thus pivotal for the full enjoyment of the right to development. The conceptual interaction between these three reflects underlying common motivations and is presented as follows.

The UNDP report built on Amartya Sen's work on developing human capabilities.<sup>59</sup> On the one hand, human development<sup>60</sup> is understood as both the process and the culmination of enlarging people's choices, achieved by increasing human functioning and the capabilities of people. The three capabil-

*of Awareness and Impact of CEDAW on Rural Women in Kenya* (FIDA, 2006).

<sup>56</sup> Mary Hallward-Driemeier and Tazeen Hasan, *Empowering Women: Legal Rights and Opportunities in Africa* (Washington, D.C., World Bank, 2012) (forthcoming).

<sup>57</sup> See "The empowerment of rural women and their role in poverty and hunger eradication, development and current challenges: report of the Secretary-General" (E/CN.6/2012/3) and R. Cook and S. Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press, 2010).

<sup>58</sup> Human rights-based approaches were brought to the fore in the report of the Secretary-General entitled "Renewing the United Nations: a programme for reform" (A/51/950 and addenda), issued in 1997, and have been adopted gradually throughout United Nations organizations, bodies and agencies since 2003, particularly after the publication of "The human rights-based approach to development cooperation: towards a common understanding among the UN agencies" by the United Nations Development Group.

<sup>59</sup> Amartya Sen, *Development as Freedom* (Oxford, Oxford University Press, 1989). See also M. Nussbaum, *Women and the Human Right to Development: The Capabilities Approach* (Cambridge, United Kingdom, Cambridge University Press, 2000); S. Goonesekere, "A rights-based approach to realizing gender equality", study prepared in 1998 in cooperation with the former United Nations Division for the Advancement of Women and available at [www.un.org/womenwatch/daw/news/savitri.htm](http://www.un.org/womenwatch/daw/news/savitri.htm); and Andreassen and Marks, *Development as a Human Right* (see footnote 44).

<sup>60</sup> UNDP, *Human Development Report 2000*, p. 17.

ities considered essential for people are: (a) to lead a long and healthy life; (b) to be knowledgeable; and (c) to have access to the resources needed for a decent standard of living. Human development as such extends further to cover areas such as participation, security, sustainability and guaranteed human rights. The above-mentioned areas are deemed necessary for promoting creativity, productivity, self-respect, empowerment and a sense of belonging to a community.

On the other hand, a human rights-based approach<sup>61</sup> is a conceptual framework for the process of human development, based on international human rights standards and directed towards respecting, protecting and fulfilling human rights. Furthermore, it aims to analyse inequalities underlying development as well as to redress discriminatory practices and unjust distributions of power that impede development.<sup>62</sup>

As described by Maria Green and Susan Randolph, the human rights-based approach seeks to operationalize two key concepts: first, that the goals identified and pursued by national and international development processes should be shaped by, and congruent with, international human rights standards (including the full range of civil, cultural, economic, political and social rights); and second, that the methods used in pursuing development should equally accord with human rights standards, and in particular with cross-cutting norms around participation, accountability, transparency and access to information, and non-discrimination.<sup>63</sup> Moreover, UNDP has clearly spelled out the centrality of equality to the human rights-based approach:

... inequality matters because it is a fundamental issue for human development. Extreme inequalities in opportunity and life chance have a direct bearing on what people can be and what they can do—that is, on human capabilities. There are also strong instrumental reasons for a concern with inequality. Deep disparities based on wealth, region, gender and ethnicity are bad for growth, bad for democracy and bad for social cohesion.<sup>64</sup>

The human rights-based approach has not managed to deliver the anticipated benefits for women. Many reasons have been put forward for this shortcoming, not least that the lack of conceptual clarity has left practitioners floundering.<sup>65</sup> As noted earlier, there remains a great deal of confusion within the United Nations system about what is precisely meant by gender, about how a gender perspective should be applied in different sectors and what its contribution should or could be.<sup>66</sup> Sari Kuovo asserts that, in the United Nations, gender can be perceived simultaneously as a synonym for sex, as a synonym for women, as an issue with a men-centred focus, or can be isolated and fixed as a sex-related term which can be segregated from other social categories such as race, ethnicity, class, origin and sexual orientation, among others.<sup>67</sup> That mainstreaming has been, or indeed is, seen as a success is questionable. Adopting a gender-based approach in its interpretation of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW notes:

The term “sex” here refers to biological differences between men and women. The term “gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can likewise be changed by culture, society and community.<sup>68</sup>

While the right of women to live free of sex-based discrimination was one of the founding principles of the United Nations, it was recognized from the outset that a great deal of work would be required to make this a reality. However, little such work has in

<sup>61</sup> Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (Geneva, 2006), pp. 15-16.

<sup>62</sup> World Bank, *World Development Report 2012: Gender Equality and Development* (Washington, D.C., 2012).

<sup>63</sup> Maria Green and Susan Randolph, “Bringing theory into practice: operational criteria for assessing implementation of the international right to development”, paper prepared for the high-level task force on the implementation of the right to development (A/HRC/15/WG.2/TF/CRP.5), para. 50. See also chapter 29 of the present publication.

<sup>64</sup> UNDP, *Human Development Report 2005—International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World* (New York, 2005), p. 51.

<sup>65</sup> For a critique of the human rights-based approach to development see, generally, *Third World Quarterly*, vol. 27, No. 7 (2006), Special Issue, *The Politics of Rights: Dilemmas for Feminist Praxis*; D. Tsikata, “Announcing a new dawn prematurely? human rights feminists and the rights-based approaches to development”, in *Feminisms in Development: Contradictions, Contestations and Challenges*, A. Cornwall, E. Harrison and S. Whitehead, eds. (London, Zed Books, 2007), p. 214.

<sup>66</sup> S. Kuovo, “The United Nations and gender mainstreaming: limits and possibilities”, in *International Law: Modern Feminist Approaches*, D. Buss and A. Manji, eds. (Oxford and Portland, Oregon, Hart, 2005), pp. 237-252. See also H. Charlesworth, “Not waving but drowning: gender mainstreaming and human rights in the United Nations”, *Harvard Human Rights Journal*, vol. 18 (2005), pp. 1-18.

<sup>67</sup> S. Kuovo, *Making Just Rights? Mainstreaming Women’s Human Rights and a Gender Perspective* (Uppsala,ustus Forlag, 2004), pp. 310-311. See also Charlesworth, *ibid.*, p. 8. Although there is greater recognition of sexual orientation being a gender concern, there remain pockets of resistance. See the definition of gender in the Rome Statute of the International Criminal Court, art. 7 (3), and compare it with that given in the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (see A/64/211 and Corr.1), para. 20.

<sup>68</sup> CEDAW, general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 5.

fact been done.<sup>69</sup> This has been due in part to an inadequate practical engagement with plural legal systems and the impact of the widely accepted view in certain cultures that women are unable to participate in development on women's ability to participate in development.<sup>70</sup> Proponents of the rights-based approach have called for participation and non-discrimination, yet have not to date developed a vision for, or engaged in the long-term, arduous work of, challenging the gender-based stereotyping that is pervasive in all societies and that leads to the silencing of women's voices and perspectives.<sup>71</sup>

Moreover, neither the human rights-based approach nor right to development practitioners have consistently analysed rights in a gender-sensitive way. For example, the report of the high-level task force on the implementation of the right to development containing right to development criteria and operational sub-criteria (A/HRC/15/WG.2/TF/2/Add.2) identifies a range of priority issues, including the global food crisis. While acknowledging the specific impact of the crisis on poor families, the analyses did not expressly mention the role of women, be it in food sourcing, food preparation, or the self-sacrifice of choosing not to eat so children and other family members can. This seems a startling omission given the centrality of women's role in food production.<sup>72</sup>

## B. Human rights jurisprudence after 2000: an overview

Gender discourse has gradually made its way into the United Nations treaty bodies, which have since 2000 focused increasingly on women's rights. The Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights, marked the millennium by adopting general comment No. 28 (2000) on equality of rights between men and women. This comment is an admirable attempt to integrate a gender perspective into a reading of the International Covenant. Illustrating the different ways in which women experience rights violations, it states in paragraph 10:

When reporting on the right to life protected by article 6, States parties should provide data on birth rates and on pregnancy- and childbirth-related deaths of women. Gender-disaggregated data should be provided on infant mortality rates. States parties should give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions. States parties should also report on measures to protect women from practices that violate their right to life, such as female infanticide, the burning of widows and dowry killings. The Committee also wishes to have information on the particular impact on women of poverty and deprivation that may pose a threat to their lives.

The barriers to women's enjoyment of rights are identified in this comment; it provides States, in paragraphs 3-8, with a comprehensive guide to their obligations to ensure that women do enjoy their Covenant rights. Likewise, the Committee's recognition of the need to move beyond a formal model of equality to one that takes on board socio-structurally embedded inequalities is important.

The Committee on Economic, Social and Cultural Rights followed suit, adopting general comment No. 16 (2005) on the equal right of men and women to the enjoyment of economic, social and cultural rights (article 3 of the International Covenant). Informed by the Montréal Principles on Women's Economic, Social and Cultural Rights, adopted at a meeting of experts meeting in that city in 2002,<sup>73</sup> the general comment recognizes that women are disproportionately impacted by violations of socioeconomic rights and that their experiences of these violations are coloured by gender. Like the Human Rights Committee, the Committee on Economic, Social and Cultural Rights also adopted a substantive definition of equality.<sup>74</sup> The triptych of State obligations to respect, protect and fulfil rights follows through its focus on the ways in which the rights found in the International Covenant should be read in order to apply to women and to reflect women's experiences.<sup>75</sup> Exploring the right to an adequate standard of living, including the right to food, the Committee notes, requires States "to ensure that women have access to or control over means of food production, and actively address customary practices under which women are not allowed to eat until the men are fully fed, or are only allowed less nutritious food".<sup>76</sup> This acknowledgement reflects the still neglected reality of inequality.<sup>77</sup> According to the Food and Agriculture Organization of the United

<sup>69</sup> Chinkin, "The United Nations Decade for the Elimination of Poverty", pp. 586-587; K. Davis, "The emperor is still naked: why the Protocol on the Rights of Women in Africa leaves women exposed to more discrimination", *Vanderbilt Journal of Transnational Law*, vol. 42, No. 3 (May 2009), p. 949.

<sup>70</sup> See C. Nyamu, "How should human rights and development respond to cultural legitimization of gender hierarchy in developing countries?", *Harvard International Law Journal*, vol. 41, No. 2 (Spring 2000), p. 381.

<sup>71</sup> See Cook and Cusack, *Gender Stereotyping* (see footnote 26). See also R. Holmaat and J. Naber, *Women's Human Rights and Culture: From Deadlock to Dialogue* (Intersentia, 2011).

<sup>72</sup> See General Assembly resolution 62/136 proclaiming the International Day of Rural Women. See also E/CN.6/2012/3, paras. 15-19.

<sup>73</sup> See footnote 4 above.

<sup>74</sup> General comment No. 16 (2005), paras. 7-8, 10-14, 15 and 41. See also general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 34.

<sup>75</sup> General comment No. 16 (2005), paras. 18-21.

<sup>76</sup> *Ibid.*, para. 28.

<sup>77</sup> I. Rae, *Women and the Right to Food: International Law and State Practice* (Rome, FAO, 2008). See also A/HRC/13/32, para. 58.



Nations (FAO), women grow between 60 and 80 per cent of the food in developing countries, yet own less than 2 per cent of the land.<sup>78</sup> This vast disparity is the last frontier in discussions of contemporary agrarian grass-roots politics and one that seems tailor-made for the food sovereignty solution<sup>79</sup> that includes women as protagonists in changing food production schemes.

CEDAW has interpreted provisions of the Convention on the Elimination of All Forms of Discrimination against Women on development as calling on all States to integrate a gender perspective into development planning, ensuring that women can participate in all spheres, including trade negotiations.<sup>80</sup> Similarly, in his report to the thirteenth session of the United Nations Conference on Trade and Development (UNCTAD-XIII) in 2011, the Secretary-General of UNCTAD, Supachai Panitchpakdi, stated that explicit references to gender equality in trade agreements could help to increase the political commitment of key stakeholders and could increase the funding available for gender-related programmes of technical cooperation, including the Aid for Trade framework. Such measures could also further encourage developing country Governments to take ownership of gender-related policy options while enhancing the coverage of gender-related trade assessments.<sup>81</sup>

CEDAW also regularly highlights the failure of States to ensure women's access to land and other resources, including credit, loans, education and health care, while noting the role of aid in meeting Convention goals.<sup>82</sup> The Committee also takes an intersectional approach in its work, highlighting how minority and indigenous women sometimes experience multiple forms of discrimination simultaneously.<sup>83</sup>

### C. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

The adoption in 2003 by the African Union of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

marks an important milestone in the recognition that women's right to development is central to their empowerment. It echoes the Declaration on the Right to Development in many respects, but differs significantly in one: its engagement with the specific ways in which women can participate in and benefit from development.<sup>84</sup> Article 19 stipulates that women shall have the right to sustainable development, including the right to land and credit,<sup>85</sup> and that States parties shall "introduce the gender perspective in the national development planning procedures". Participation of women is a leitmotif of the Protocol, which requires States parties to take steps to ensure that women are involved in political decision-making processes, in the construction of cultural values,<sup>86</sup> in "the planning, management and preservation of the environment"<sup>87</sup> and, of course, in the "conceptualization, decision-making, implementation and evaluation of development policies and programmes".<sup>88</sup> Women's independent right to housing irrespective of marital status is guaranteed, as is the right to education.<sup>89</sup>

The Protocol calls on States to recognize the work that women do in the home and in the informal sector.<sup>90</sup> It explicitly recognizes that women carry the heavier reproductive burden and thus guarantees them the right to seek contraception without requiring the consent of spouses, the right to abortion in a limited number of circumstances and, crucially, the right to be protected from HIV and to know the status of their partners within internationally recognized guidelines.<sup>91</sup> The Protocol takes an intersectional approach in recognizing the rights of older and disabled women and those in distress.<sup>92</sup> Like the Declaration on the Right to Development, the Protocol calls for States to spend less on defence and more on social development.<sup>93</sup> Moreover, it calls on States parties to "ensure that the negative effects of globalization and any adverse effects of the implementation of trade and economic policies and programmes are reduced to a minimum for women".<sup>94</sup>

<sup>78</sup> Rajeev Patel, "Transgressing rights: La Vía Campesina's call for food sovereignty", *Feminist Economics*, vol. 13, No. 1 (2007), pp. 87–93, especially pp. 91–92.

<sup>79</sup> *Ibid.*, p. 92.

<sup>80</sup> See the concluding comments of the Committee on Jamaica (CEDAW/C/JAM/CO/5), para 37. See also United Nations Development Fund for Women (UNIFEM), *CEDAW and the Human Rights Based Approach to Programming: A UNIFEM Guide* (May 2007).

<sup>81</sup> "Development-led globalization: towards sustainable and inclusive development paths" (UNCTAD(XIII)/1), p. 65.

<sup>82</sup> See the general statement of the Committee on the Elimination of Discrimination against Women on rural women adopted on 19 October 2011 at its fiftieth session (A/67/38, part two, annex II).

<sup>83</sup> Banda, "Article 14" (see footnote 15), p. 382.

<sup>84</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, arts. 12–21.

<sup>85</sup> Land is also mentioned in article 15 on the right to food security. R. Rebouche, "Labor, land, and women's rights in Africa: challenges for the new Protocol on the Rights of Women", *Harvard Human Rights Journal*, vol. 19 (2006), pp. 235–256.

<sup>86</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 9 (political participation) and art. 17 (culture).

<sup>87</sup> *Ibid.*, art. 18 (2) (a).

<sup>88</sup> *Ibid.*, art. 19 (b).

<sup>89</sup> *Ibid.*, art. 16 (housing) and art. 12 (education).

<sup>90</sup> *Ibid.*, art. 13 (e) and (h).

<sup>91</sup> *Ibid.*, art. 14. See also C. Ngwenya "Inscribing abortion as a human right: significance of the Protocol on the Rights of Women in Africa", *Human Rights Quarterly*, vol. 32, No. 4 (2010), p. 783.

<sup>92</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, arts. 22–24.

<sup>93</sup> *Ibid.*, art. 10 (3).

<sup>94</sup> *Ibid.*, art. 19 (f). See generally African Union, Nairobi Declaration on the

Equally important to facilitating the realization of women's right to development has been the adoption of the Millennium Development Goals.

#### D. Women and the Millennium Development Goals

The United Nations Millennium Declaration and the Millennium Development Goals recognize the importance of women's empowerment by making the connection between development goals and the importance of gender equality. It is also noteworthy that women are the only other group, in addition to children, singled out for special attention: goal 3 provides that States should "promote gender equality and empower women".<sup>95</sup> The high cost paid by women in bearing the reproductive burden is acknowledged in goal 5 on maternal mortality. This goal demands that maternal health be improved and that the maternal mortality rate be reduced by three quarters in the relevant period. This "women focus" is a recognition of the fact that the discrimination experienced by women impacts upon their life chances and their ability to enjoy their human rights.<sup>96</sup> Moreover, as the Millennium Declaration notes, promoting gender equality and empowering women are "effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable" (para. 20).

Admirable as it is that women have been included in the Goals, the lack of progress in their achievement is troubling. This is particularly the case with regard to the aforementioned goal 5.<sup>97</sup> This points to direct discrimination against women, in breach of a multitude of human rights norms guaranteeing life; security of the person; freedom from torture and degrading or inhuman treatment; the right to benefit from scientific progress, education and family planning and information; and, of course, health. Similarly, the general societal failure to regard parenthood as a shared obligation means that failure to realize goal 4 on reducing infant mortality falls particularly heavily on women, who bear a disproportionate burden for child care. In her statement of support commemorating the twenty-fifth anniversary of the Declaration on the Right to Development, the High Commissioner for Human

Rights noted: "We must end discrimination in the distribution of the benefits of development. We must stop the 500,000 preventable deaths of women in childbirth every year ... the Declaration ... calls for equal opportunity and a just social order."

Although receiving greater focus and attention, goal 2 on universal primary education does not look likely to be achieved by 2015. The gendered impact of women's long-term exclusion from education was highlighted in 2008 by the Human Rights Council in its resolution 8/4 in which it noted that of the 774 million adults lacking basic literacy skills, the majority—64 per cent—were women. Education has been linked to a variety of basic goods; among these are access to better employment, the ability to participate in decision-making—with some States requiring a minimum level of education for elected officials—lower birth rates and healthier children who are more likely to receive an education themselves. The denial of an education to women and girls owing to sexual harassment, lack of sanitation facilities, obligation to undertake domestic chores and lack of access to funds is gender-based discrimination which hampers national development and needs urgent attention.

#### V. Concluding remarks

While much has been done to integrate women's experiences into development discourse and human rights, the condition and situation of women in the world today seem to indicate that the knowledge we have gained has not led to any improvement in their lives. In addition to ongoing discrimination, women continue to be excluded from participating in both public decision-making processes and also in decisions about resource distribution, family size and income usage at the family level. That this continues illustrates the lack of State accountability vis-à-vis the delivery of women's human rights, including development-related ones.<sup>98</sup>

This suggests that women are still undervalued. Might it not be time to move beyond rhetoric and yet more elaborate analyses of human rights to actually delivering them, and thereby honouring our collective humanity? Perhaps in time for the fiftieth anniversary of the Declaration on the Right to Development?

African Women's Decade 2010-2020, para. 15.

<sup>95</sup> See generally M. Buvinić and others, eds., *Equality for Women: Where Do We Stand on Millennium Development Goal 3?* (Washington, D.C., World Bank, 2008).

<sup>96</sup> *The Oxfam Handbook on Development Relief*, pp.180-182.

<sup>97</sup> World Bank, *Global Monitoring Report 2011: Improving the Odds of Achieving the MDGs: Heterogeneity, Gaps, and Challenges* (Washington, D.C., 2011).

<sup>98</sup> C. Hayes, "Out of the margins: the MDGs through a CEDAW lens", *Gender and Development*, vol. 13, No. 1 (2005), pp. 67-78. See also United Nations, *2009 World Survey on the Role of Women in Development: Women's Control over Economic Resources and Access to Financial Resources, including Microfinance* (United Nations publication, Sales No. E.09.IV.7).