

Chapter 7

Gender Equality, the Right to Development, and the 2030 Agenda for Sustainable Development

Flavia Piovesan* and Melina Girardi Fachin**

Learning Objectives:

- To understand the key attributes of the right to development from a ‘gender’ perspective.
- To understand how operationalizing the right to development can help realize the gender-related SDGs in the 2030 Agenda.
- To identify the contemporary challenges to and perspectives on the implementation of the right to development using a gender approach to development.

Introduction

The emergence of development as an instrument for affirmation of human rights calls for contemporising these conceptions which were delimited in the post-war period. Historically, human rights and development existed in parallel¹; only with the reconstruction of these rights and the Universal Declaration of Human Rights of 1948,² development gained a new tone with the human rights approach.

In this context, the right to development (RtD) arises as the right of individuals and peoples to an enabling environment for development that is equitable, sustainable, participatory and in accordance with the full range of human rights and fundamental freedoms. Such an environment is free from structural and unfair obstacles to development domestically as well as globally.³ The current scale and severity of global poverty provides a jarring contrast and adds urgency to

* Professor of Constitutional Law and Human Rights at the Catholic University of São Paulo, Brazil.

** Professor at the Law School of Universidade Federal do Paraná, Brazil.

¹ See: Peter Uvin, *Human Rights and Development* (Bloomfield: Kumarian Press Inc, 2004), p. 47, noting that “Historically, development and human rights have existed entirely separately, at the levels of both discourse and practice. The problem originated from both sides, an act of choice, not a necessity. As a result, practitioners and policymakers have missed great potential for the clarification of mandates, mutual learning, and collaboration on the ground.”

² A/RES/3/217 A

³ See: *Report by the UN High-Level Task Force on the Implementation of the Right to Development*, 8 March 2010, A/HRC/15/WG.2/TF/2. Add 2.

efforts to attain the much sought-after enabling environment – this situation is aggravated when the focus of overlapping discrimination is added. “By adding the gender component the data further demonstrate the discriminatory pattern of vulnerabilities. Women still represent the largest share of the world’s poor population, making up almost 70% of this population”.⁴ In light of this, this Chapter aims to discuss the key attributes of the right to development from a human rights perspective, considering the gender approach.

Firstly, it examines the conceptual bases and legal framework of the right to development. It discusses social justice; participation, accountability and transparency; sustainability and international cooperation. Considering the UN Declaration on the Right to Development, 1986 (DRTD)⁵ as a dynamic, living instrument of enduring value, gives special emphasis to the promotion of diversity.

With regard to plurality, in the second part of the Chapter, difference is presented as a core element giving meaning to development. When looking at development through the lens of human rights, it reinforces the democratic component, focusing on vulnerable and excluded groups, allowing for the pursuit of material equality and non-perpetuation of discrimination.

It is in this sense that the human right to development can be gender comprehensive. The third part of the Chapter is devoted to this aspect. The DRTD emphasizes the non-discrimination clause and adopts a gender approach in Article 8(1) stating that “Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices”.⁶

Finally, this Chapter concludes by highlighting the contemporary challenges and perspectives of the implementation of the right to development, inspired by a development approach to human rights and a gender approach to development.

Conceptual bases and legal framework of the right to development

Among the extraordinary achievements of the DRTD is the advancement of a right to development. As explained in Chapter 3, the RtD integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development, specifically by acknowledging that development itself is a human right.

Although the topic of development has traditionally been monopolised by economists – with an exclusive emphasis on the GDP of States, the meaning of development has been revised since the 1980s, and has come to be guided by the human dimension. Article 2 of DRTD recognises that “The human person is the central subject of development and should be the active participant and beneficiary of the right to development”.⁷

⁴ Jeremy Seabrook, *The No-nonsense Guide to World Poverty* (Oxford: New Internationalist, 2009), p. 27.

⁵ A/RES/41/128.

⁶ Ibid, Article 8(1).

⁷ Ibid, Article 2.

The notion of economic growth has little to do with this renewed vision of development as it goes from the State approach to the Human Rights approach; development is now aimed at peoples, focused in their needs. To Stephen P. Marks,

“the Declaration takes a holistic, human-centred approach to development. It sees development as a comprehensive process aiming to improve the well-being of the entire population and of all individuals on the basis of their active, free, and meaningful participation and in the fair distribution of the resulting process. In other words, recognising development as a human right empowers all people to claim their active participation in decisions that affect them – rather than merely being beneficiaries of charity – and to claim an equitable share of the benefits resulting from the development gains”.⁸

According to Amartya Sen, development has to be conceived of as a “process of expansion of the true freedoms that people can benefit from”.⁹ Arising from this point of view, the libertarian character of the right to development, that is, at the same time, a beginning – because “the realization of development depends entirely on the free status of agent of persons”¹⁰ – and originator because “it also contributes to strengthening other types of agent conditions free”.¹¹ Sen adds: “The basic idea that the expansion of human freedom is both the principal end and the main means of development”.¹²

Thinking along similar lines, Arjun Sengupta, states that the RtD is the “right to a process that expands the capabilities or freedom of individuals to improve their well-being and to realize what they value”.¹³ There are, therefore, two complementary and essential visions of the RtD – a substantial view, as a proper right (the human right to development) related to a “conglomeration of a collection of claims”¹⁴, but also, a procedural view, which concerns the process of

⁸ Stephen P. Marks, *The Politics of the Possible: The Way Ahead for the Right to Development* (Bonn: Friedrich Ebert Stiftung, June 2011), p. 2.

⁹ See Amartya Sen, *Desenvolvimento como Liberdade* (São Paulo: Cia das Letras, 1999), pp. 33–36. Sen further notes that (p. 297), “In this sense, the expansion of liberties is seen both as 1) an end in itself and 2) the main meaning of development. Such ends may be respectively termed the constitutive and the instrumental function of liberty with regard to development. The constitutive function of liberty is related to the importance of substantive liberty for the elevation of human life. Substantive liberties include elementary capacities such as avoiding privation due to hunger, malnutrition, avoidable mortality, premature death and liberties associated with education, political participation, prohibition of censorship, etc. From this constitutive perspective, development involves the expansion of human liberties”.

¹⁰ Mohammed Bedjaoui, “The Right to Development” in Mohammed Bedjaoui (ed), *International Law: Achievements and Prospects* (Paris: UNESCO, 1991), p. 1190.

¹¹ Amartya Sen, *Desenvolvimento como Liberdade*, p. 19.

¹² *Ibid*, p. 71.

¹³ *Third Report of the Independent Expert on the Right to Development, Mr. Arjun Sengupta*, E/CN.4/2001/WG.18/2, paragraph 22.

¹⁴ Amartya Sen, “Human Rights and Development”, in Bard Andreassen and Stephen Marks (eds.), *Development as a Human Right* (Antwerp/Oxford/Portland: Intersentia, 2010), p. 8.

consummation of these needs. In this case, the process is as important as the result since “development is not a finite event but a process over time”.¹⁵

In the search for the minimum substrate that conforms with the RtD, Allan Rosas states “three aspects should be mentioned here. First of all, the 1986 Declaration emphasizes the importance of participation. [...] Second, the Declaration should be seen in the context of basic needs and social justice. [...] Third, there is no escape from the fact that the 1986 Declaration emphasizes both national policies and programmes [...] and international cooperation [...]”¹⁶ Premised on this point, we can summarize as the key elements of this right, adding another perspective to the framework above mentioned:

- a) social justice (through inclusion, equality and non-discrimination, taking the human person as the central subject of development and paying special attention to the most deprived and excluded);
- b) participation, accountability and transparency (through free, meaningful and active participation, focusing on empowerment);
- c) sustainability because the integral, indivisible and interdependent perspective that the right to development demands, inserts the environmental theme; and
- d) international cooperation (as the RtD is a solidarity-based right).

a. Social justice

According to Article 28 of the UDHR, “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”.¹⁷ Social justice is a central component of the RtD. The realisation of this right, inspired by the value of solidarity, must provide equal opportunity to all in access to basic resources, education, healthcare, food, housing, work and wealth distribution.¹⁸

For the DRTD, development comprises an economic, social, cultural and political process, aimed at ensuring the constant improvement of the well-being of the entire population and of all individuals, based on their active, free and significant participation in this process, guided by the fair distribution of the benefits resulting arising from it. In promoting development, equal consideration must be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights. The DRTD urges that proper economic and social reforms should be carried out with a view to eradicating all social injustices. It also adds that States should encourage people’s participation in all spheres as an important factor in development and in the full realisation of all human rights.¹⁹

¹⁵ E/CN.4/2001/WG.18/2, paragraph 22; See also *Report by the Independent Expert on the Right to Development, Arjun Sengupta, A/55/306*, 17 August 17 2000, paragraph 22.

¹⁶ Alan Rosas, “The Right to Development”, in Asbjorn Eide, Catarina Krause and Alan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*, 2nd revised edition (Dordrecht: Martinus Nijhoff Publishers, 2001), p. 126.

¹⁷ A/RES/3/217 A, Article 28.

¹⁸ Alan Rosas, *Economic, Social and Cultural Rights: A Textbook*, p.254–255.

¹⁹ A/RES/41/128, Article 8.

The RtD (inclusive of both the human rights dimensions of development as well as the development dimensions of human rights), was also universally endorsed by the 1993 Vienna Declaration of Human Rights which stresses that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing, adding that the international community should support the strengthening and promoting of democracy, development and respect for human rights in the entire world.²⁰

Effective measures must also be adopted to provide women with an active role in the process of development. In the contemporary world order poverty is "feminised", as women constitute 70% of the people who live in poverty. Ensuring the empowerment of women is an essential precondition to advancing on development. Statistics show that the countries with the highest HDI (Human Development Index, which measures a population's quality of life, access to healthcare, education and work) are precisely those with the smallest “gender gap”, that is, the smallest difference between men and women in the exercise of human rights.²¹ According to Amartya Sen, the recognition of political, economic and social participation and leadership of women is crucial to “development as freedom”.²²

b. Participation, accountability and transparency

The principles of participation and of accountability are central to the RtD. The DRTD is the only international instrument that makes the nature of participation in development so explicit, emphasising that States should encourage, promote and ensure free, meaningful and active participation of all individuals and groups in the design, implementation and monitoring of development policies.

Political liberties and democratic rights are among the constituent components of development, as spelt out by Amartya Sen. Based on public reasoning, democracy is conditioned not just by the institutions that formally exist but by the extent to which different voices can be heard. The concept of participation and its relevance as a core element of an approach to development that is human rights based requires that democracy be addressed at both a procedural and substantive level.²³

Civil and political rights are cornerstones of empowerment, strengthening democracy and improving accountability. Democracy enriches reasoned engagement through the enhancement of informational availability and the feasibility of interactive discussions. The fact that “no famine

²⁰ United Nations, *Vienna Declaration and Programme of Action*, 25 June 1993, A/CONF.157/2

²¹ Note that Arab countries (such as Morocco, Saudi Arabia and Yemen) have the worst performance in gender disparities and inequalities. In these countries, disadvantages facing women and girls are the source of high inequality levels. See: The World Economic Forum, *The Global Gender Gap Report, 2014*, available at http://www3.weforum.org/docs/GGGR14/GGGR_CompleteReport_2014.pdf, accessed on 26 July 2017.

²² Amartya Sen, *Desenvolvimento como Liberdade*.

²³ Amartya Sen, *The Idea of Justice*. (London, Penguin Press, 2009), p. 347.

has ever taken place in the history of the world in a functioning democracy”,²⁴ is revealing of the protective power of political liberty. Having an effective voice requires material capacities and the material conditions on which meaningful political participation depends.²⁵

It demands the expansion of participatory arenas, strengthening democratic density – which can no longer be limited to *who* participates in the democratic game, but must also include *how* to participate,²⁶ based on the principles of transparency and accountability, highlighting human beings as agents for democracy. The rise of local participatory processes has taken different forms, fostering citizen participation. People should be active participants in development and implement development projects rather than being treated as passive beneficiaries. Every democracy entails agents and their consequent dignity as moral beings who deserve to be treated with full consideration and respect.

In addition to being active and free, participation should be meaningful as an effective expression of popular sovereignty in the adoption of development programmes and policies. Meaningful participation and empowerment are reflected by the people’s ability to voice their opinions in institutions that enable the exercise of power, recognizing the citizenry as the origin and the justification of public authority, especially from marginal groups such as women.

Women make up only 20% of parliamentarians worldwide. According to the 2012 UN report on the MDGs focusing on gender inequality: “At the pace registered during the last 15 years, it will take nearly 40 years to reach the parity zone”²⁷. The principle of participation demands an increase in the role of women in policy discussions and decision-making processes at an international level and effective participation of all countries in international decision-making processes.²⁸

c. Sustainability

The broad notion of sustainable development emerges from the voices of the international community which certifies: "A world in which poverty and inequality are endemic will always be prone to ecological and other crises. Sustainable development requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life”²⁹. It is, therefore, necessary to understand sustainable development with a holistic character that departs from a strictly economic conception of development and can be understood as the process by

²⁴ Ibid, p. 343.

²⁵ Andrew Hurrell, *On Global Order: Power, Values and the Constitution of International Society* (Oxford: Oxford University Press, 2009), p. 316.

²⁶ Norberto Bobbio, *Democracy and Dictatorship: The Nature and Limits of State Power*, Translated by Peter Kennealy (Minneapolis: University of Minnesota Press, 1989).

²⁷ United Nations, *Millennium Development Goals Report: Gender Chart, 2012*, available at <https://mdgs.un.org/unsd/mdg/Resources/Static/Products/Progress2012/MDG-Gender-2012.pdf>, accessed on 26 July 2017.

²⁸ See: United Nations, *Right to Development Criteria and Operational Sub-Criteria*, A/HRC/15/WG.2/task force/2.Add.2, Annex I. 2 February 2010.

²⁹ See: World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987).

which societies manage the material conditions of their reproduction, redefining the ethical and socio-political principles that guide the distribution of its environmental resources.

The concept of sustainable development is compatible with an integral and inter-relational conception of human rights. Full enjoyment of these rights presuppose a healthy environment as a precondition to human existence itself. The discourse and practice of sustainable development are premised on the indispensability and interconnection of the environmental, economic, social and political dimensions in the process of seeking better conditions for people to live. For contemporary protection of human rights, these multiple dimensions cannot be seen in isolation, as recognized in Article 4 of the DRTD: “Sustained action is required to promote more rapid development of developing countries”³⁰.

There is a deep connection between human rights and the environment. Both are, at the same time, the container and the content, which add to the complete and material protection of human dignity. This close relationship is underscored by the UN Human Rights Council, which recognizes the impact of environmental change on the realization of human rights, especially those of the most vulnerable groups: “Environmental degradation intensifies inequality through adverse impacts on already disadvantaged people and how inequalities in human development amplify environmental degradation. Human development, which is about expanding people's choices, builds on shared natural resources. Promoting human development requires addressing sustainability – locally, nationally and globally – and this can and should be done in ways that are equitable and empowering”³¹.

Development gains new potential when linked to a sustainability perspective in the need for protection, promotion and precaution in relation to the human environment necessary for the survival of present and future generations. “Sustainable human development is the expansion of the substantive freedoms of people today while making reasonable efforts to avoid seriously compromising those of future generations”³².

Human development, in its sustainability aspect, demands the reinforcement of international cooperation since environmental damage transcends the limits of space and time.

d. International cooperation

Besides social justice and participation, the RtD makes international cooperation imperative. The RtD demands that globalisation be ethical and solidary. In the understanding of Mohammed Bedjaoui, “In reality, the international dimension of the right to development is nothing more than an equitable distribution with regard to global social and economic well-being. This reflects a crucial question of our age, in so far as four fifths of the world's population no longer accept the fact that a fifth of the world's population continues to build its wealth on the basis of the

³⁰ A/RES/41/128, Article 4.

³¹ United Nations Development Program (UNDP), *Human Rights Development Report 2011* (New York: UNDP, 2011), p.1.

³² *Ibid*, p.2.

remainder's poverty”.³³

According to the DRTD, States have the primary responsibility for the creation of national and international conditions favourable to the realisation of the right to development and the duty to cooperate in ensuring development and eliminating obstacles to development. States also have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realisation of the right to development. Considering that the RtD has both national and international dimensions, it is essential to focus on the joint and external responsibilities of States in the realisation of the right to development as a solidarity-based right.

In the light of the “international rule of law”³⁴, it is important to identify the extent and degree of the international responsibilities of States in the realisation of the RtD, and to include the duty to cooperate within the traditional human rights doctrine which endorses the duty to respect, protect and fulfil human rights as States’ obligations. Considering that the DRTD should be perceived as a dynamic and living instrument, it is important to consider how to strengthen the States’ duty to cooperate to implement the RtD in the global arena.

Right to Development: Promoting Differences

The promotion of diversity is imperative to the construction of the RtD, In this sense, emphasizing the elements of heterogeneity in social constitution – such as the gender dimension – is fundamental to this development and rights perception.

To fulfil its democratic component, the RtD must entail social plurality in its multiple dimensions and manifestations. It is in this aspect that the counter-majoritarian character of democratic practices appears in the constructive dialogue with human rights, providing privileged protection to excluded and vulnerable groups. The imbrication between democracy and minority rights is emphasized by Amartya Sen:

“Attention must be paid to the extensive evidence that democracy and political and civil rights tend to enhance freedoms of other kinds (such as human security) through giving a voice, at least in many circumstances, to the deprived and vulnerable. That is an important issue, and closely links to democracy's role in public reasoning and in fostering 'government by discussion'. Democracy's success in preventing famines belongs to democracy's many-sided contributions in advancing human security, but there are many other fields of application as well”.³⁵

The DRTD itself recognizes the need to give voice to these groups, as Article 8 (1) makes it explicit that States should ensure that people take “an active role in the development process”³⁶.

³³ Mohammed Bedjaoui, “The Right to Development”, p.1182.

³⁴ Tom Bingham, *The Rule of Law* (London: Penguin, 2010), p. 110.

³⁵ Amartya Sen, *The Idea of Justice*, p.348.

³⁶ A/RES/41/128, Article 8(1).

It is clear from the international consensus that there is no right to development without democratic guarantees, sufficient to give effective participation to the most vulnerable.

The human right to development in a participatory manner recognizes the differences and affirms the multiple social identities, especially those historically ignored or diminished.³⁷ Thus, the politics of recognition, along with distributive politics, is fundamental to ensure the real conditions of democracy.³⁸ In this way, Boaventura de Sousa Santos states: “Emancipatory policies and the invention of new citizenships are thrown into the tension between equality and difference, between the demand for recognition and the imperative of redistribution”.³⁹

The prohibition of discrimination and the adoption of a complex policy on equality, based on inexorable differences, are essential elements in the democracy encompassed by the RtD. It is in this respect that General Comment No 20 of the UN Committee on Economic, Social and Cultural Rights emphasizes the role of non-discrimination and equality in asserting the rights of all members of the social body with a view to building an inclusive society: “Discrimination 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”⁴⁰.

The principles of equality and non-discrimination reflect immediate and cross-cutting obligations under international human rights law. Heterogeneity, proper to complex social conformations, must be embraced as the starting point of the substantial conception of human development. Putting diversity at the heart of concerns means going beyond normative policies of formal recognition – an important first step, but not enough to eliminate discriminatory and undemocratic treatment.

Specifically on women, the CEDAW Committee clarifies these ideas in its General Comment No 23 on female participation in political life:

“The principle of equality of women and men has been affirmed in the constitutions and laws of most countries and in all international instruments. Nonetheless, in the last 50 years, women have not achieved equality, and their inequality has been reinforced by their low level of participation in public and political life. Policies developed and decisions made by men alone reflect only part of human experience and potential. The just and effective organization of society demands the inclusion and participation of all its

³⁷ Nancy Fraser, “Redistribución, reconocimiento y participación: hacia un concepto integrado de la justicia”, in *Informe Mundial sobre la Cultura 2000-2001* (Montevideo: UNESCO).

³⁸ Nancy Fraser and Axel Honneth, *Redistribution or Recognition?: A political-philosophical exchange*. (London: Verso, 2003), p.2.

³⁹ Boaventura de Sousa Santos and João Arriscado Nunes, “Introdução: para ampliar o cânone do reconhecimento, da diferença e da igualdade”, in Boaventura de Sousa Santos (eds.), *Reconhecer para Libertar: os Caminhos do Cosmopolitanismo Multicultural* (Rio de Janeiro: Civilização Brasileira, 2003), p.63.

⁴⁰ See: United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in Economic, Social and Cultural Right*, E/C.12/GC/20.

members. No political system has conferred on women both the right to and the benefit of full and equal participation. While democratic systems have improved women's opportunities for involvement in political life, the many economic, social and cultural barriers they continue to face have seriously limited their participation. Even historically stable democracies have failed to integrate fully and equally the opinions and interests of the female half of the population. Societies in which women are excluded from public life and decision-making cannot be described as democratic. The concept of democracy will have real and dynamic meaning and lasting effect only when political decision-making is shared by women and men and takes equal account of the interests of both. The examination of States parties' reports shows that where there is full and equal participation of women in public life and decision-making, the implementation of their rights and compliance with the Convention improves."⁴¹

In this context, unsustainable prejudice and discrimination based on race and sex grounds gain special prominence.⁴² This is because there are universal systematic contrasts in the enjoyment of substantial freedoms that women experience in different societies. Although the data replicate incoherencies (because they reflect the lack of attention many countries have given to these issues), in many parts of the world, with disparate cultural traditions, these vulnerable groups are underprivileged with respect to the conditions of support for a worthy life.

Considering the reality of the *feminicisation* of poverty, it is necessary to adopt, alongside universalist policies, specific policies capable of giving visibility to the subjects of law with a greater degree of vulnerability, aiming at the full exercise of the right to social inclusion. If the pattern of violation of rights has a disproportionately harmful effect on women, adopting gender-neutral policies means perpetuating this pattern of inequality and exclusion.

In addition to the intrinsic component of these differences, they are aggravated by the socio-economic element. Special attention should be given to overlapping discrimination, which translates into other forms of discrimination. The gender focus must be added in the search for social openness to plurality as a path to democracy.

The democratic component of human development therefore calls for the prevention, reduction and elimination of perpetrating conditions and attitudes of *de jure* or *de facto* discrimination,⁴³ through actions both internally and internationally in legitimate and indispensable sum of forces:

“In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress *de facto* discrimination and are discontinued when substantive equality has been sustainably achieved. Such positive

⁴¹ See: United Nations Committee on the Elimination of Discrimination against Women, *General Recommendation No. 23: Political and Public Life*, A/52/38.

⁴² Amartya Sen, *Inequality Reexamined* (Cambridge: Harvard University Press, 1992), p. 125.

⁴³ Silvia Pimentel, *Comitê CEDAW: experiências e desafios* (Brasília: Secretaria Especial de Políticas para Mulheres, 2008), p.25.

measures may exceptionally, however, need to be of a permanent nature, such as interpretation services for linguistic minorities and reasonable accommodation of persons with sensory impairments in accessing health-care facilities”.⁴⁴

The ineliminable and irreducible plurality must be considered as an elementary aspect and promoter of the notion of democracy that human development sustains. The guarantee of equality, also understood as inclusion and recognition of differences, is an elementary condition for the full development of human potentialities.

Gender and the RtD

The history of women's human rights does not differ from that of human rights more generally. Women's rights are, like all human rights, processes of historical construction. They reflect the history of a struggle, through processes that open and consolidate spaces of struggle for human dignity,⁴⁵ as the feminist movement invokes in its complexity and dynamics in its plural trajectory.

In this struggle, still today, international law concerning gender is mainly about silences.⁴⁶ International law was traditionally defined by patriarchy and including gender in this equation requires one to ask all the fundamental questions again – starting from the basics such as language,⁴⁷ all the way up to the meanings.

Human rights and international development law needs “a view outside the cocoon of patriarchy”⁴⁸. It is not only the norms and texts that should change but all the structure that works in the chain – who votes, who chooses, who judges, who enforces...international law, does not properly represent women; it is not made by women, it is not for women and it is seldom about women.

Even the key Conventions on women’s rights were mainly male deliberations, such as the CEDAW – Convention on Eliminations of all forms of Discrimination against Women, in 1979. This was the Convention that received one of the highest number of reservations from the signatory States – this reinforces the fact that the implementation of the human rights of women is still paradoxical: it reflects a broad adherence that imposes the importance of the theme, but the many reservations show the difficulties of breaking with the androcentric culture of human rights.

This is why certain individuals and certain violations require a specific and differentiated response. Women must be seen in the specificities of their social condition.

⁴⁴ See: United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 20*.

⁴⁵ Joaquín Herrera Flores, *A (Re)invenção dos Direitos Humanos* (Florianópolis: Boiteux, 2009).

⁴⁶ Marilyn Waring, *Gender and International Law: women and right to development*, available at <http://www.austlii.edu.au/au/journals/AUYrBkIntLaw/1989/8.pdf>, accessed on 24 July 2017.

⁴⁷ For instance, the UDHR calls for a spirit of ‘brotherhood’, see: A/RES/3/217 A, Article 1.

⁴⁸ Marilyn Waring, *Gender and International Law*, p. 2.

Thus, three strands stand out with regard to the conception of equality, as Nancy Fraser points out: a) formal equality, reduced to the equality before the law formula; b) material equality, corresponding to the ideal of social justice; and c) substantial equality as a policy for the recognition of identities (equality based on gender).⁴⁹

In this context, the right to difference, accentuating respect for diversity, must stand along with the right to equality. The RtD is an important tool in this regard, with its holistic understanding of expanding people’s capabilities.⁵⁰ It empowers women in critical aspects, above all in removing economic obstacles and political participation.

The “capabilities approach” expounded by Martha Nussbaum,⁵¹ creates the conditions to achieving substantial democracy: “It concentrates directly on freedom as such rather than on the means to achieve freedom, and it identifies the real alternatives we have. In this sense it can be read as a reflection of substantive freedom (...), capability represents a person's freedom to achieve well-being”⁵².

It is, therefore, the capacities nurtured by the emancipatory right to development that leads to substantial freedom. In other words, as described by Martha Nussbaum: “they are not just abilities residing inside a person but also the freedoms or opportunities created by a combination of personal abilities and the political, social, and economic environment”.⁵³

With regard to the economic justice component, globally, there is more female unemployment, and even when they work, women have lower incomes (pay gap). On average, they have a monthly income that is 30% lower than that of men, in more vulnerable jobs. Despite the difference in earnings observed, women often work longer hours than men. So, any development agenda must focus on women because they are 70% of the world’s poor.

In the sphere of political participation, female citizenship is still very limited; it does not stem from the lack of women capable of competing, but rather from the way spaces and political parties are organized. The world of politics reflects the patriarchies of society. In this scenario, it is difficult to think of public policies and even legislation on women's issues without the presence of women in the legislature.

As emphasized by the UN Report on Realizing the Future We Want for All: “The global development agenda should seek not only to address and monitor the elimination of specific gender gaps, but also to transform the structural factors that underpin the widespread persistence

⁴⁹ Nancy Fraser and Alex Honneth, *Redistribution or Recognition*, p. 2.

⁵⁰ Martha Nussbaum, *Woman and Human Development: the Capabilities Approach*, (New York: Cambridge University Press, 2008), p.18. She points out that “I prefer the term 'Capabilities Approach', at least in many contexts, to the term 'Human Development Approach', because I am concerned with the capabilities of non-human animals as well as human beings. The approach provides a fine basis for a theory of justice and entitlement for both non-human animals and humans”.

⁵¹ Ibid.

⁵² Amartya Sen, *Inequality Reexamined*, p. 49–50.

⁵³ Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Harvard: Harvard University Press, 2011), p. 22.

of gender inequalities, gender-based violence, discrimination and unequal development progress between women and men, girls and boys. The empowerment of women and girls and the protection of their rights should be centre-pieces of the post-2015 agenda”⁵⁴.

In a forward-looking perspective, the 2030 Agenda and 17 Sustainable Development Goals (SDGs), have several implications on gender equality and the prohibition of gender-based discrimination, besides a stand-alone Goal on gender equality and the empowerment of women and girls in SDG 5.

SDG 5 calls for the achievement of gender equality and empowerment of women and girls. This focus on gender equality and women’s empowerment is present throughout the 2030 Agenda with the principle of “leaving no one behind” guiding all the goals. The Agenda recognizes that “Women’s empowerment is a powerful multiplier of well-being and a prerequisite for sustainable development”.⁵⁵

RtD, SDGs and Women

At the dawn of the new millennium, the United Nations General Assembly adopted the Millennium Declaration and Millennium Development Goals (MDGs), which set out the theme of development comprising several dimensions. The fundamental values highlighted in the Millennium Declaration were strengthened in specific objectives with emphasis on development practice in the new millennium, with centrality of the human right to development approach, associated with the promotion of fundamental values, and perceived as essential to international relations in the 21st century. It is, however, equally true that this centrality ascribed to “making the RtD a reality for everyone” enshrined in the Millennium Declaration did not get reflected in the MDGs which emanated therefrom.⁵⁶

With a more holistic and human rights based approach, the General Assembly adopted, in 2015, the 2030 Agenda and its 17 Sustainable Development Goals (SDGs) that apply to all countries, not only developing countries. The SDGs have a wider scope incorporating the economic, environmental and social dimensions, including gender equality.

Beyond SDG 5 on women’s and girl’s rights, all the SDGs can have repercussions on gender issues. The phenomenal task of ending poverty and associated economic empowerment demands increased attention to women’s rights. As UN Women stated, “The end of poverty can only be

⁵⁴ United Nations, *Realizing the Future we Want for All: Report to the Secretary General by the UN System Task Team on the Post-2015 UN Development Agenda*, available at http://www.un.org/millenniumgoals/pdf/Post_2015_UNTTreport.pdf, accessed on 23 July 2017.

⁵⁵ Food and Agriculture Organization (FAO), *Sustainable Development Goal 5*, available at <http://www.fao.org/sustainable-development-goals/goals/goal-5/en/>, accessed on 23 July 2017.

⁵⁶ Mihir Kanade, “Operationalizing the Right to Development for Implementing the SDGs”, Presentation at the panel discussion to commemorate the 30th Anniversary of the Declaration on the Right to Development, 32nd session of the UN Human Rights Council, Geneva, United Nations, 15 June 2016. Available from <http://www.ohchr.org/EN/Issues/Development/Pages/PaneldiscussionCommemoration30thAnniversary.a.spx> (accessed on 26 July 2017).

achieved with the end of gender-based discrimination. All over the world, gender inequality makes and keeps women poor, depriving them of basic rights and opportunities for well-being”⁵⁷.

As a marginalized and vulnerable group, women are more susceptible to rights violations. Hunger affects more women – even though they are responsible for the preparation of 90% of the meals worldwide; they are more susceptible to sickness and less likely to obtain medical care because of their lower incomes; 60% of the illiterate globally are women who have the basic right to education denied to them. These are only some examples as to how all the SDGs address gender issues as the first four goals are about: no poverty, zero hunger, good health and well-being and high quality education.

Nevertheless, SDG 5 seeks to transform women’s course in the 21st century, concentrating on key challenges such as poverty, inequality, and violence against women. In a global overview, 143 out of 195 countries guarantee gender equality in their domestic legislation. This means that almost a quarter of the countries still have legal norms which do not provide the normative environment for gender equality and non-discrimination.

On the other hand, even in those countries with equal treatment under the law, it does not necessarily mean that there is real equality and opportunities for women and girls, and there are many obstacles in the economic, political, social, cultural and family arenas.

Women earn less money, but work more hours. As data shows: “today 48 per cent of women are being paid wages. Yet, globally, women still work at lower rates than men. Gender stereotypes often define what ‘women’s work’ is, and can channel women into some of the worst jobs. Among 143 countries, at least 90 per cent have some legal restriction on women’s employment.”⁵⁸

Women are underrepresented in national political structures. “As of August 2015, only 22 per cent of all national parliamentarians were female, a slow rise from 11.3 per cent in 1995”, reported UN Women.⁵⁹

In the private domain, the most horrifying form of discrimination is violence. One in every three women suffers violence in her domestic and familiar ambience. Gender-based violence is recognised as a pandemic worldwide. 35% of women experienced physical or sexual violence from an intimate partner.⁶⁰

Operationalizing the RtD (as discussed in the preceding sections) can help to achieve those SDGs relating to women in a better manner. The RtD seeks to achieve material equality based on the realization of economic and social rights, as well as the non-perpetration of discrimination marked by the phenomenon of endemic poverty.

⁵⁷ UN Women, *Women and Sustainable Development Goals*, available at <https://sustainabledevelopment.un.org/content/documents/2322UN%20Women%20Analysis%20on%20Women%20and%20SDGs.pdf>, accessed on 26 July 2017.

⁵⁸ Ibidem.

⁵⁹ Ibidem.

⁶⁰ Ibidem.

In this sense, Alan Rosas opines that “These aspects of the right to development relate, of course, to the concepts of non-discrimination and equality and the whole range of protection of economic and social rights. The eradication of extreme poverty and the question of income distribution are issues that cannot be neglected in such a context”⁶¹.

Conclusion: Contemporary Challenges

The RtD depends on and enables the active and effective political participation of all individuals and peoples. Thus, the ties between democracy and human rights that are self-imposed and mutually dependent have been emphasized. Democracy is projected beyond the state level, especially as regards the duties of transparency and accountability, exposing and bringing together the diversity of society.

Contiguously, the element of socio-economic justice which provides a minimum material basis on which people can live a life that they value, has been established. From the threshold of the guarantee of minimum material conditions, individuals are empowered to lead and realize their own rights.

Associated with this order of ideas, the concept of sustainability of human development was highlighted. This gains new significance when linked to the environmental perspective requiring a focus on the survival of present and future generations with dignity.

It was emphasized that plurality of content is only possible when there is a sum of forces to support the realization of the RtD concomitantly in the domestic and international levels of human rights protection. The RtD framework essentially requires that human rights obligations are seen through the lens of international cooperation and solidarity, and is not confined within the geographical limits of States.

It was from this perspective that the link between gender and development was made. *Misrepresentation, misrecognition and maldistribution* are barriers that need to be removed in the path of ensuring the expansion of womens’ capabilities and the development of all societies advanced by female protagonism.

In this sense, the SDGs can play an important role as the new development policy framework. Gender equality is central to development goals because women and girls have a fundamental role in achieving all of the goals. As such, if on the one hand, women can help achieve sustainable development, on the other, development as understood as a human right as explained hereinabove, empowers women and helps to operationalize gender equality and to inhibit discrimination. As explicitly recognized: “Women have a critical role to play in all of the SDGs, with many targets specifically recognizing women’s equality and empowerment as both the objective, and as part of the solution”⁶².

⁶¹ Alan Rosas, *Economic, Social and Cultural Rights: A Textbook*, p. 128.

⁶² UN Women, *Women and Sustainable Development Goals*.