



SDG 5 on Gender Equality: Contributions of International Law, Policy and Governance

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I. INTRODUCTION

Sustainable Development Goal 5 (SDG 5 Gender) addresses gender issues, establishing the goal of “achiev[ing] gender equality and empower[ing] all women and girls.” Included in SDG 5 Gender are generally based targets, such as “end[ing] all forms of discrimination against women and girls everywhere,” as well as more specific ones, such as the elimination of public and private violence against women and girls; ensuring the ability of healthcare and education for women and girls particularly as they relate to reproduction and family planning; ensuring equality of choice in marriage decisions for women and girls and ending underage marriage; ending trafficking of women and girls, particularly sex trafficking; ensuring that women have equal access to economic resources and capabilities; and ensuring the public participation of women in policy and decision making processes.

This Issues Brief succinctly analyzes the roles that selected key international treaties and instruments can play in securing the ambitious targets in SDG 5 Gender, as well as the obstacles and issues that exist in terms of fully and meaningfully achieving and implementing SDG 5 Gender. The Issues Brief begins with an outline of the international law mechanisms that support SDG 5 Gender before delving into the legal challenges related to its implementation. These discussions are followed by a review of areas where institutional and governance arrangements, as well as international policy coordination, can contribute to the implementation of SDG 5 Gender. Finally, the Issue Brief discusses national policies relating to SDG 5 Gender that can assist in its full implementation.

II. CONTRIBUTION OF INTERNATIONAL LAW, POLICY AND GOVERNANCE TO SDG 5 ON GENDER

Gender is a cross-cutting and intersectional issue encompassing legal, policy and governance concerns ranging from international human rights law, to environmental law and sustainable development, to domestic and international health law. The complex character of gender issues is clear throughout SDG 5 Gender and the targets it establishes. With this in mind, it is important to examine the intersectionality of international human rights regimes, international environmental law regimes, and the principles of sustainable development in order to determine how existing mechanisms and structures contribute to the implementation of SDG 5 Gender.

CEDAW

Perhaps the most important human rights treaty for the purposes of SDG 5 Gender is the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), provides

a vital legal basis for the wide-ranging terms and protections in SDG 5 Gender, particularly with respect to ending discrimination against women and girls, arguably a necessary precursor to all other targets in SDG 5 (see Box 1). CEDAW's broad definition of "discrimination against women" as any positive and negative action that "impairs or nullifies the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."¹ Target 5.1 of SDG 5 Gender finds support in Article 1 of CEDAW (defining discrimination), Article 2 (which condemns discrimination against women and requires State Parties to take active steps to combat it), and Article 3 (which states that "Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men)."² Additionally, Article 7, relating to discrimination against women's participation in national and sub-national political processes;³ and Article 15, requiring state parties to ensure that men and women have "equality before the law," are important provisions to the realization of SDG 5 as they enable and promote the effective participation of women over decisions and institutions that directly affect their lives and well-being, and that of their families.⁴

Box 1: SDG 5 Gender Equality – Achieve gender equality and empower all women and girls

5.1 End all forms of discrimination against all women and girls everywhere

5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation

5.3 Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation

5.4 Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate

5.5 Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life

5.6 Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences

5.a Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws

5.b Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women

5.c Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels

The aim of Target 5.2 is to "Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation." CEDAW provides several avenues of support for this target, notably in Article 6 which states that "Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."⁵ Target 5.3 establishes the aim to "eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation." The primary provisions of CEDAW supporting this target are found in Article 5(a), requiring state parties to take measures "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles

¹ *Convention on the Elimination of all Forms of Discrimination Against Women*, Article 1.

² *Ibid* at Article 3.

³ *Ibid* at Article 7.

⁴ *Ibid* at Article 15(1).

⁵ *Ibid* at Article 6.

for men and women.”⁶ The aim of Target 5.4 is to “recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.” CEDAW provides widespread support for this, such as in Article 2 as well as Article 5(a).

The aim of Target 5.5 is to “ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.” This is strongly supported by CEDAW Article 7(b), providing that “State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government.”⁷ CEDAW also supports Target 5.5 in Article 2, Article 3 and Article 14, relating to the rights and abilities of indigenous women to contribute to and participate in the governance of their communities and acts that impact them.⁸

The aim of Target 5.6 is to “ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences.” In addition to receiving full support from the Beijing platform itself,⁹ this target is supported in CEDAW Article 5(b), providing that “States Parties shall take all appropriate measures: (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.” The Target is also directly supported by CEDAW Article 12(1), requiring that “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”¹⁰

Target 5.a aims for state parties to “Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.” CEDAW Article 2 offers general support to this target, as does Article 3. Article 13 provides support for the fundamental elements of Target 5.a, providing that “States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (b) The right to bank loans, mortgages and other forms of financial credit.”¹¹ Similarly, Article 14’s assurances that indigenous women are able to participate in the economic lives of their communities provides another avenue of support to Target 5.a.¹²

Target 5.b is somewhat less oriented toward law and instead shifts the focus to state parties’ policy functions and their abilities to foster relationships with private entities. Specifically Target 5.b provides that state parties will “enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women.” CEDAW relates to this target by requiring state parties to provide for equality and non-discrimination in

⁶ *Ibid* at Article 5(a).

⁷ *Ibid* at Article 7(b).

⁸ *Ibid* at Article 14.

⁹ *Ibid* at Article 5(b).

¹⁰ *Ibid* at Article 12(1).

¹¹ *Ibid* at Article 13(b).

¹² *Ibid* at Article 14.

education, which is necessary to allow women to participate in the use and development of technology by and for women.¹³ Finally, Target 5.c aims for state parties to “adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.” This is supported throughout CEDAW and in specific areas such as education and health.¹⁴

CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

In addition to CEDAW, the Convention on the Rights of the Child (CRC) provides essential legal support to SDG 5 Gender, particularly in matters that affect the girl-child. Supporting Target 5.1, all children, regardless of gender, are to be protected against discrimination by CRC state parties under Article 2.¹⁵ The importance of all children in decisions affecting them and the legitimation of their interests and preferences is protected in both the “best interest of the child” standard created in Article 3¹⁶ and the “evolving capacities” standard created in Article 12.¹⁷ This directly supports Target 5.1 in terms of ensuring that the girl-child is not subject to discrimination or unequal treatment in legal and other matters that impact her. Target 5.2 is supported by CRC Article 11 regarding the international illicit transfer of children¹⁸ and by Article 34, under which “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.”¹⁹ Target 5.2 is also bolstered by the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.²⁰ Targets 5.3 and 5.6 receive support from the extensive CRC provisions in Article 24 relating to the rights of all children to the highest attainable standard of care, including family planning information.²¹ Article 24 should be seen as working in tandem with Article 23, which provides for the rights of all mentally or physically disabled children – regardless of gender – to health care and to protection against discrimination.²² Further, the entirety of SDG 5 Gender is supported by CRC Article 28, which sets requirements for equality and non-discrimination in educational access and opportunity for children.²³

ICESCR & ICCPR

The two bedrock human rights treaties – the International Convention on Economic, Social and Cultural Rights (ICESCR) and the International Covenant in Civil and Political Rights (ICCPR) – provide support to SDG 5 Gender as well. ICESCR Article 12, providing “Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health,”²⁴ reinforces Targets 5.3 and 5.6, as does Article 10, providing that “Protection and assistance should be accorded to the family. Marriage must be entered into with the free consent of both spouses. Special protection should be provided to mothers....”²⁵ ICESCR Article 13’s provision that

¹³ *Ibid* at Article 10.

¹⁴ *See generally* *ibid*.

¹⁵ *Convention on the Rights of the Child* Article 2.

¹⁶ *Ibid* at Article 3.

¹⁷ *Ibid* at Article 12.

¹⁸ *Ibid* at Article 11.

¹⁹ *Ibid* at Article 34.

²⁰ *See generally* *Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography*.

²¹ *Convention on the Rights of the Child* Article 24.

²² *Ibid* at Article 23.

²³ *Ibid* at Article 28.

²⁴ *Ibid* at Article 12.

²⁵ *Ibid* at Article 10.

“everyone has the right to an education” is supportive of the majority of SDG 5 Gender Targets.²⁶ ICCPR’s Article 8 provisions forbidding anyone from being held in slavery of any sort lends support to Targets 5.2, in regard to sexual slavery, and Target 5.4, in regard to unpaid “care and domestic work.”²⁷ Article 23(3) provides “No marriage shall be entered into without the free and full consent of the intending spouses,”²⁸ supporting Target 5.3 on forced marriages.

INTERNATIONAL ENVIRONMENTAL LAW AND SUSTAINABLE DEVELOPMENT

Turning to international environmental and sustainable development mechanisms concerning gender, one of the earliest articulations, Principle 20 of the Rio Declaration explicitly states “women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.”²⁹ This Principle supports SDG 5 Gender and its Targets and lends them further legitimacy. The United Nations Convention to Combat Desertification (UNCCD) requires that state parties create and implement National Action Programmes related to desertification and its mitigation.³⁰ Included in the requirements for these Programmes is that they “provide for organizations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organizations, in policy planning, decision-making, and implementation and review of national action programmes.”³¹ This supports SDG 5 Gender Targets 5.1, 5.5, and 5.c. Further, the UNCCD’s “capacity building, education and public awareness” requirements stress the need for the involvement of women in all steps related to these three essential aspects of coordination and implementation.³²

It should also be noted that the recent Paris Agreement resulting from the United Nations Framework Convention on Climate Change COP in 2015 contains statements regarding gender equality in its preamble that generally support SDG 5 Gender.³³ Additionally, Article 7(5) provides that adaptation methods and plans should take into account gender issues and be “gender-responsive,”³⁴ and Article 11(2) also imparts gender-responsiveness into capacity-building.³⁵ Each of these provisions supports SDG 5 Gender and demonstrates that it works in tandem with developing international environmental law and policy.

INTERNATIONAL LABOUR CONVENTIONS

Because of the ILO’s unique tripartite structure which adopts international instruments with input from delegates from workers’ and employers’ organizations as well as governments, its standards are frequently more tailored to the effective application of international standards in the private sector globally, especially in areas of its core competence such as forced labour and gender discrimination in the workplace. Relevant ILO Conventions can significantly contribute to ending violence and discrimination against women, particularly with regards to forced labour and sexual trafficking (Targets 5.1 and 5.2), recognizing the value of unpaid care and domestic work in social protection programs (Target 5.4), ensuring women’s full and effective participation in economic and public life (Target 5.5), women’s equal rights to economic resources (Target 5.a), and the

²⁶ *Ibid* at Article 13.

²⁷ *Ibid* at Article 8.

²⁸ *Ibid* at Art 23(3).

²⁹ *Rio Declaration on Environment and Development* Principle 20.

³⁰ *United Nations Convention to Combat Desertification* Article 10(1).

³¹ *Ibid* at Article 10(2)(f).

³² *Ibid* at Article 19.

³³ *Paris Agreement* preamble.

³⁴ *Ibid* at Article 7(5).

³⁵ *Ibid* at Article 11(2).

adoption and advancement of policies for the promotion of gender equality (Target 5.c). The Forced Labour Conventions³⁶ and related instruments³⁷ are areas of the ILO's core competence for the estimated 11.4 million women and girls who are victims of forced labour, of which 4.5 million are forced into sexual exploitation.³⁸ International labour standards on equal pay,³⁹ and equality of opportunity and treatment⁴⁰ also provide for national policies to promote equality of opportunity and treatment in respect of employment and occupation,⁴¹ promoting equal access to education and vocational training, and terms and conditions of employment, with a view to eliminating gender discrimination across social and economic sectors.⁴²

III. LEGAL OBSTACLES FACING THE IMPLEMENTATION OF SDG 5 ON GENDER

Despite the wide-ranging international law support for the terms contained in SDG 5 Gender and its associated Targets, there are many constraints to its full realization. CEDAW and the CRC have been in existence for several decades and yet have been unable to achieve their goals fully, in many instances due to the unwillingness or inability of national lawmakers to implement the legal and societal changes necessary. Beyond the level of national lawmakers, issues of gender equality, women's rights and non-discrimination, and the rights of the girl-child represent core aspects of society and require concerted efforts at re-examining both traditional beliefs and newly emergent issues in many communities. These efforts extend beyond the abilities of formalistic law, requiring considerations of a number of social and legal constraints to be translatable to the many differing beliefs, institutions and ideologies held across different states and the international system. This certainly does serve to form a sizeable challenge to SDG 5 Gender implementation.

IV. INTERNATIONAL POLICY, INSTITUTIONAL AND GOVERNANCE ARRANGEMENTS TO COORDINATE DELIVERY OF SDG 5 ON GENDER

The treaties that support and have the ability to assist in the meaningful implementation of SDG 5 Gender are interrelated in their concerns regarding the inclusion of women in policy making and legislation as well as in granting rights – albeit of different natures – to women. The implementation of each of these treaties is overseen and furthered by a Secretariat as well as a Conference of the Parties – such an overlap in jurisdiction and interests has the potential to be an obstacle to the implementation of SDG 5 Gender. However, it is also possible for SDG 5 Gender to be advanced by these overlapping entities since each brings with it a knowledge base and expertise that is necessary to craft meaningful and durable laws and policies in the realm of gender equality, non-discrimination and advancement.

V. SDG 5 GUIDING DOMESTIC ACTION ON GENDER

Policies and practices relating to SDG 5 Gender are numerous at the national and international levels. Some of these policies and practices have distinctly local impacts, some national, and others reach regional and international levels. A recent example of one national program that advanced elements of SDG 5 Gender was the collaboration between the Government of Malawi

³⁶ ILO Forced Labour Convention, 1930 (No. 29), 14th ILC session (28 Jun 1930) [178 State Party ratifications]; Abolition of Forced Labour Convention, 1957 (No. 105), 40th ILC session (25 Jun 1957) [175 State Party ratifications].

³⁷ Protocol of 2014 to the Forced Labour Convention, 1930 (Entry into force: 09 Nov 2016), 103rd ILC session (11 Jun 2014); Recommendation on supplementary measures for the effective suppression of forced labour; 103rd ILC session (11 Jun 2014).

³⁸ See ILO, "Forced Labour, Human Trafficking and Slavery," available at: <http://www.ilo.org/global/topics/forced-labour/lang-en/index.htm>.

³⁹ Equal Remuneration Convention, 1951 (No. 100), 34th ILC session (29 Jun 1951) [172 State Party ratifications].

⁴⁰ ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) [173 State Party ratifications].

⁴¹ ILO Convention No. 111, at Art. 2.

⁴² *Ibid.* at Art. 3.

and UNEP-UNDP PEI Malawi to foster the use of energy efficient stoves by Malawian households.

The project was the result of research and analysis highlighting “that forest resources provide livelihood opportunities for a majority of Malawians, especially women and also meet 93% of the national energy demand.” Because the previous “unsustainable use of these resources through firewood collection and the burning of charcoal to fuel rural households, has led to high rates of deforestation thereby resulting in decreased livelihood opportunities,”⁴³ Malawi and PEI undertook a series of pilot projects for “the production, marketing and distribution of energy efficient stoves and briquettes in four districts.”⁴⁴ As a result, “the introduction of briquettes has eased the rate of deforestation and provided cleaner technology for energy production. The ceramic stoves, made from locally sourced clay, are estimated to save one ton of wood per household annually. The stoves use wood fuels instead of crop residue which reduce smoke when cooking and are safer than an open fire.”⁴⁵ The undertaking, which drew further funding from the national government and international community,⁴⁶ demonstrated the important livelihood and customary links between women and the environment which when recognized can bolster sustainable solutions that benefit both (see Box 2).

VI. CONCLUSION

SDG 5 Gender is a complex and intricate portion of the SDGs, one that is linked to a number of legal and policy areas and relies on many different forms of actors to have meaningful impact. It is at once quite simple – requiring women and girls not be subject to discrimination – and yet quite

BOX 2: NATIONAL IMPLEMENTATION

The measures necessary to achieve the SDGs need to be incorporated into each country's growth and development strategy. Therefore, the strategy for achieving SDG 5 to achieve gender equality and to empower women and girls to be driven by leadership at the national level that creates a clear roadmap for implementing, monitoring and coordinating action around the SDG. This strategy needs to be supported by a sufficient budget, so the involvement of the finance ministry, as well as the presidential office, is essential. Additionally, given the nature of the issues involved, it is essential that the national health ministry and education ministry be active participants in the national implementation plan.

The measures adopted to achieve gender equality and empower women and girls can overlap significantly with measures that will also be necessary to meet a number of other SDG goals and certain of their targets, particularly SDG 1 (End poverty in all its forms everywhere), SDG 2 (End hunger, achieve food security and improved nutrition and promote sustainable agriculture), SDG 3 (Ensure healthy lives and promote well-being for all at all ages), SDG 4 (Ensure inclusive and equitable quality education for promote lifelong learning opportunities for all), SDG 6 (Ensure availability and sustainable management of water and sanitation for all), SDG 8 (Promote sustained, inclusive and sustainable economic growth, full and productive and decent work for all), SDG 10 (Reduce inequality within and among countries), and SDG 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels). While some of these SDGs are more immediately connected to SDG 5 Gender, for example SDG 1 and SDG 3, they all play an important role in fully realizing the targets established in SDG 5 Gender.

In order to accomplish the targets and aims in SDG 5, countries could strengthen existing mechanisms for gender mainstreaming and securing women's human rights within national government entities – such as ministries of health and education – and could create a cross-cutting body that coordinates the response to and implementation of SDG 5 Gender across portfolios. Countries could also vest this body with the ability to designate an ombudsman to evaluate legislative and regulatory proposals and existing practices regarding SDG 5 Gender at the national level and also at the local level. The cross-cutting (MAYBE NEED TO EXPLAIN THIS TERM HERE) body could be given mandatory reporting requirements and be required to solicit the views of the public on issues surrounding the implementation of SDG 5 Gender in a process similar to a public comment period for administrative agencies.

Similarly, countries could ensure coordination of practices and requirements regarding gender at the local level through the cross-cutting (HERE) coordinating body as well as through the strengthening of education regarding SDG 5 Gender within each relevant portfolio. Within these efforts at coordination, it is also essential that all necessary stakeholders, not only those from governmental circles, have a voice given the sensitive nature of gender roles and discrimination in different aspects of society.

⁴³ United Nation Environment Programme, Energy Efficient Stoves, online: <http://www.unep.org/gender/Inspiringexamples/TheMalawiGovernmentbuildsonPEIpiilotprojects/tabid/1059895/Default.aspx>

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

complex in the implementation of its many targets and non-discrimination requirements. This complexity is apparent in the number of international treaty mechanisms that can be used to support the implementation of SDG 5 Gender and in the governance systems for these mechanisms that have a relationship to their functioning. This complexity is also evidenced by the many forms of government levels at which SDG 5 Gender and its Targets must function.

Despite this, international law provides a number of treaties and treaty mechanisms that support SDG 5 Gender. These treaties and mechanisms represent established yet evolving practices in international law, as evinced by the ways in which they have addressed certain key issues that have emerged since their creation through the use of optional protocols as well as policy guidance. Taken together, these fields and mechanisms provide powerful support for SDG 5 Gender and its targets. At the same time, local, national, regional and international activities and policies to support the advancement of women through law as well as those working through quotidian social and environmental actions are essential. Taken together, international law and policy provide foundational mechanisms upon which SDG 5 Gender may be constructed in order to bring about meaningful change.

Authors and Acknowledgements

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