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### Substantive gender equality

#### Guidance document of the Working Group on discrimination against women and girls

##### *Summary*

Since the adoption of the Universal Declaration of Human Rights, 75 years ago, and the adoption of the Beijing Declaration and Platform for Action, 30 years ago, significant progress has been made in advancing the human rights of women and girls. Despite this progress, gender equality remains an unfulfilled promise, demanding renewed commitment and urgent action. In fulfilling its mandate, the Working Group on discrimination against women and girls focuses on addressing gender inequality affecting women and girls, recognizing the discrimination and disparities they face as manifestations of broader systemic patterns of inequality in political, legal, social, economic and cultural life. In the present guidance document, prepared pursuant to Human Rights Council resolutions 15/23, 41/6 and 50/18, the Working Group reflects on decades of jurisprudence, academic scholarship and interpretative work and, most importantly, on the advocacy and successes of women and girls who have boldly asserted and defended their rights alongside and within their communities and organizations.

In the present document, the Working Group reflects on the formal and substantive approaches to equality and the centrality of gender equality in international, regional and national laws, policies and practices and on the transformative pathways to achieving substantive gender equality and ensuring a life with dignity for all women and girls. Substantive gender equality has materialized in different ways historically, enabling diverse States to make meaningful progress towards fully respecting, protecting and fulfilling the rights of women and girls. In the present document, the Working Group recognizes the many contributors to those developments and introduces the CREATE framework, a feminist human rights-based tool to be used across the spectrum of challenges to gender equality. The framework provides a comprehensive and actionable road map for achieving transformative substantive gender equality; each letter in the name – CREATE – represents a pillar of action that States and other stakeholders are called upon to undertake, namely: (a) counter harmful social norms, discrimination, and violence; (b) redress socioeconomic disadvantages; (c) eliminate legal and structural barriers; (d) adopt proactive laws and policies; (e) transform institutionalized patriarchal power structures; and (f) enhance the participation and agency of women and girls.



## I. Introduction

1. Substantive gender equality lies at the heart of the mandate of the Working Group on discrimination against women and girls.<sup>1</sup> To uphold the human dignity of all women and girls, the Working Group has developed the CREATE framework: a transformative approach designed to support States in advancing and sustaining substantive gender equality. The framework reaffirms the human rights of all women and girls and provides States with concrete strategies for better understanding and fulfilling their obligations under international human rights law. It also serves as a crucial tool for countering gender backlash and preventing continued retrogressions in the realization of the rights of women and girls.

2. Despite the significant strides made in advancing the human rights of women and girls since the adoption of the Universal Declaration of Human Rights 75 years ago and the adoption of the Beijing Declaration and Platform for Action 30 years ago, gender equality remains unrealized. In recent years, even hard-won gains have been threatened by regression, backsliding and severe gender backlash. In its 2024 report to the Human Rights Council, the Working Group defined gender backlash as the “denial of the recognition, enforcement and realization of women’s and girls’ rights or retrogression in that regard”.<sup>2</sup> As early as 2018, the Working Group raised concerns about the urgent need to protect past gains and accelerate progress towards gender equality.<sup>3</sup> In 2024, the Working Group observed that gender backlash was intensifying and had reached extreme proportions in certain countries.<sup>4</sup>

3. These regressions undermine women’s and girls’ fundamental human rights.<sup>5</sup> Gender backlash threatens both the hard-won, tangible achievements in the equality of women and girls, and the very concept of gender as an articulation of the social, cultural and religious roles and expectations placed on women and girls that can generate inequality.<sup>6</sup> This alarming trend requires a unified global response, with States and stakeholders reaffirming their commitment to gender equality and taking concrete action to protect and advance the human rights of women and girls. In the present guidance document, the Working Group offers States and other stakeholders, irrespective of their progress on gender equality, the tools to take immediate and timely action to address gender backlash and realize the equal enjoyment of human rights guarantees for women and girls.

4. The Working Group developed the CREATE framework on the basis of a feminist and human rights-based conception of transformative equality. With the framework, the Working Group seeks to support States and other relevant actors in their efforts to translate existing human rights law into practice, to eliminate obstacles to equity, to fill gaps and to fully realize the normative framework available through robust and effective implementation. By implementing the framework, States can move beyond rhetoric and deliver on the promise of substantive gender equality.

5. Some paradigmatic examples of each of the regions of the world are provided to illustrate the possibility of constructing gender equality in different systems and cultures worldwide.

## II. Understanding sex and gender: a precondition for substantive gender equality

6. Gender-based discrimination, deprivations and denials of human rights are human-made violations and thus can be prevented and redressed. While often linked with biological differences, gender inequality and gender-based discrimination do not stem from

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<sup>1</sup> See Human Rights Council resolutions 15/23, 41/6 and 50/18.

<sup>2</sup> [A/HRC/56/51](#), para. 11.

<sup>3</sup> [A/HRC/38/46](#), para. 16.

<sup>4</sup> [A/HRC/56/51](#), para. 10.

<sup>5</sup> *Ibid.*, para. 12.

<sup>6</sup> See [A/HRC/WG.11/41/2](#).

those differences themselves but rather the cultural, political, social and economic priorities of, and the related choices made by, communities.

7. Gender-based discrimination in its modern conception encompasses previous understandings of sex-based discrimination. The terms “sex” or “sex-based”, in the context of discrimination, have at times caused confusion within the international human rights system and may undermine efforts to achieve substantive equality for women and girls.<sup>7</sup> Numerous bodies, courts and constitutions have clarified that what was termed discrimination on the basis of “sex” in the Convention on the Elimination of All Forms of Discrimination against Women and other treaties is, in fact, gender discrimination, stemming from the sociopolitical treatment of biological differences rather than the differences themselves.<sup>8</sup>

8. This distinction is critical for advancing equality for women and girls. The concept of “sex”-based discrimination often entails a mischaracterization of aspects of women’s biology as burdensome or inherently creating vulnerabilities. The Working Group rejects this essentialist notion. Women’s and girls’ biology itself does not create burdens or vulnerabilities; instead, these arise from the ways societies, cultures and political systems choose to interpret and respond to biological differences through legal norms and practices, such as male-centred policies, a lack of accommodations, and disproportionate allocations of support and resources to men. Addressing those inequalities requires proactive efforts by States, including through governments, legislatures and judiciaries, and by social, political, economic, cultural and religious actors, to dismantle the structures and practices that perpetuate the inequalities.<sup>9</sup>

9. Recognizing that gender inequality is socially and structurally constructed, not biologically determined, is essential for achieving substantive equality for women and girls. Only by shifting legal, social and political frameworks to address these systemic injustices can States and stakeholders realize the promise of human dignity for all.

### III. Substantive gender equality for all women and girls: ending discrimination and ensuring human dignity

10. Human dignity is the *raison d’être* of international human rights law.<sup>10</sup> Dignity is generally understood at the intrinsic worth of every person.<sup>11</sup> When individuals or groups are treated differently in a manner that erodes their rights, it impairs their fundamental dignity

<sup>7</sup> Ibid. See also Marija Antić and Ivana Radačić, “The evolving understanding of gender in international law and ‘gender ideology’ pushback 25 years since the Beijing conference on women” *Women’s Studies International Forum*, vol. 83, November-December 2020.

<sup>8</sup> The Working Group endorses the approach set out by the Committee on the Elimination of Discrimination against Women in paragraph 5 of its general recommendation No. 28 (2010): “Although the Convention only refers to sex-based discrimination ... the Convention covers gender-based discrimination against women. 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 be changed by culture, society and community.” See also Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), art. 3.

<sup>9</sup> See [A/HRC/47/27](#).

<sup>10</sup> International Tribunal for the Former Yugoslavia, *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgment, 10 December 1998, para. 183. See also Mary Wollstonecraft, *A Vindication of the Rights of Woman: With Strictures on Political and Moral Subjects* (1792).

<sup>11</sup> See Christopher McCrudden, “Human dignity and judicial interpretation of human rights”, *European Journal of International Law*, vol. 19, No. 4 (September 2008).

and undermines their equal worth and shared humanity.<sup>12</sup> Equality advances the ultimate goal of realizing human dignity for all. Article 1 of the Universal Declaration of Human Rights underscores the centrality of the dignity of all persons: “All human beings are born free and equal in dignity and rights.” Human dignity is thus the basis for the principles of equality and non-discrimination that underlie the entire international human rights system.<sup>13</sup>

11. While equality and non-discrimination are often conflated, they represent distinct yet interrelated dimensions of the same principle.<sup>14</sup> International human rights law also acknowledges equality before the law and equal protection of the law, addressing not only substantive rights themselves, but also the way they are applied and enforced – a crucial aspect that affects women and girls in their day-to-day lives.

## A. Formal approaches to equality

12. International human rights law establishes formal equality, also known as *de jure* equality, as a foundational principle, mandating that practices, policies and laws apply to men and women, and boys and girls, in a gender-neutral manner.<sup>15</sup>

13. Formal equality plays a crucial role in removing legal barriers for women and girls in areas such as voting, employment, property ownership and public office. Despite the significant contributions made through formal equality measures, gender equality remains unrealized for many women and girls worldwide. Relying solely on identical treatment fails to account for structural disadvantages and systemic factors that sustain inequality. The limitations become evident when structural inequalities persist despite legal reforms.

14. In addition, treating everyone the same without considering intersecting characteristics, such as race, class, disability or age, can inadvertently reinforce discrimination.<sup>16</sup> Furthermore, gender-neutral approaches frequently measure women’s progress against male-centred standards, reinforcing existing inequalities rather than dismantling them.<sup>17</sup>

15. To drive meaningful change, formal equality must go beyond identical treatment and address systemic power imbalances, disproportionate impacts and complex dynamics of discrimination embedded within laws, policies, institutions and practices.

## B. Substantive approaches to equality

16. A substantive approach to equality, often referred to as *de facto* equality, aims to address how inequality is experienced and perpetuated within social, cultural, economic and

<sup>12</sup> See, for example, Supreme Court of Canada, *Egan v. Canada*, Case No. 23636, Judgment, 25 May 1995, p. 543; and Constitutional Court of South Africa, *Prinsloo v. Van der Linde and another*, Case No. CCT 4/96, Judgment, 18 April 1997, para. 33.

<sup>13</sup> See also Francisco J. Rivera Juaristi, “Article 1 – Dignity and equality”, and Aderomola Adeola, “Article 2 – Non-discrimination”, in *The Universal Declaration of Human Rights: A Commentary*, Humberto Cantu Rivera, ed. (Brill, 2023), pp. 12–55.

<sup>14</sup> Gillian MacNaughton, “Untangling equality and non-discrimination to promote the right to health care for all”, *Health and Human Rights*, vol. 11, No. 2 (2009), pp. 47 and 48 (explaining “non-discrimination” as “negative equality” (allowing differences in treatment unless they are based on prohibited grounds) and framing “equality” as “positive equality”).

<sup>15</sup> International Covenant on Civil and Political Rights, arts. 2 (1) and 3; and International Covenant on Economic Social and Cultural Rights, arts. 2 (2) and 3.

<sup>16</sup> Committee on the Elimination of Discrimination against Women, general comments No. 28 (2010), para. 18, and No. 39 (2022), para. 2. See also Kimberle Crenshaw, “Demarginalizing the intersection of race and sex: a black feminist critique of antidiscrimination doctrine, feminist theory, and antiracist politics”, *University of Chicago Legal Forum*, vol. 1989, No. 1; and Kimberle Crenshaw, “Mapping the margins: intersectionality, identity politics and violence against women of color”, *Stanford Law Review*, vol. 43, No. 6 (July 1991).

<sup>17</sup> Committee on the Elimination of Discrimination against Women, general comment No. 28 (2010), para. 16. See also Human Rights Committee, *Chakupewa et al. v Democratic Republic of the Congo* (CCPR/C/131/D/2835/2016), annex I, paras. 3–7.

civil and political contexts.<sup>18</sup> Unlike formal equality, which emphasizes identical treatment under the law, substantive equality approaches are aimed at dismantling the systemic barriers that prevent individuals and groups from fully enjoying their rights. The ultimate objective is to eliminate inequalities and advance human dignity. This approach recognizes that true equality requires more than legal parity: it demands an examination of root causes of disadvantage and of the unequal distribution of power and resources.

17. The contemporary understanding of substantive equality has been shaped by advances in human rights, gender, critical feminist and post-colonial scholarship, and by activism and practice. Theoretical frameworks developed by prominent academics and practitioners and the dialogue in which they have engaged have been instrumental in addressing gender inequality, highlighting its complexity, the importance of making hierarchical structures visible, and the necessity of transformative approaches. Intersectionality-theory and post-colonial feminist scholars have examined how multiple social identities, such as gender, race, class, disability and age, intersect to shape women's and girls' experiences of inequality.<sup>19</sup> Analyses of gender hierarchies and structural dynamics have revealed how societal systems sustain unequal gender relations, often normalizing inequality as natural, benign or inevitable.<sup>20</sup> Scholars have underscored the importance of recognizing context and disadvantage when addressing inequalities, as such recognition enables more accurate assessments of their impact and ensures effective remedies.<sup>21</sup> Equality, in this view, is not a static goal but an ongoing process requiring sustained efforts to drive both attitudinal and institutional change while upholding the principles of the universality, interdependence and indivisibility of human rights.

18. Transformative approaches have also been essential in rethinking international human rights law through a feminist lens to achieve substantive equality.<sup>22</sup> Scholars have emphasized that meaningful transformation requires State and social reform, with a focus on redistributing power and resources to enable all individuals to reach their full potential and participate in their communities.<sup>23</sup> Proposals for reform in law and practice have emerged from feminist organizations across diverse cultural and religious backgrounds.<sup>24</sup> Such proposals have been focused on dismantling systemic barriers, advocating for active transformation at the individual, institutional and societal levels to foster environments where equality can thrive.<sup>25</sup> An often cited four-dimensional model of substantive equality provides a particularly useful analytical framework that encompasses redistribution, recognition (addressing stigma and violence), participation (amplifying marginalized voices) and

<sup>18</sup> See Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004).

<sup>19</sup> See Crenshaw, "Demarginalizing the intersection of race and sex"; Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism* (Routledge, 2005); Saba Mahmood, *Religious Difference in a Secular Age: A Minority Report* (Princeton University Press, 2016); María Lugones, "Toward a decolonial feminism", *Hypatia*, vol. 25, No. 4 (Fall, 2010); and Ashwini Tambe and Millie Thayer, eds., *Transnational Feminist Itineraries: Situating Theory and Activist Practice* (Duke University Press, 2021), p. 17.

<sup>20</sup> Catharine A. MacKinnon, "Substantive equality: a perspective", *Minnesota Law Review*, vol. 96 (2011), pp. 12 and 13.

<sup>21</sup> See Savitri W.E. Goonesekere, *The Concept of Substantive Equality and Gender Justice in South Asia* (2011).

<sup>22</sup> See, for example, Diane Otto, "Women's rights", in *International Human Rights Law*, Daniel Moeckli and others, eds., 4th ed. (Oxford University Press, 2022).

<sup>23</sup> Cathi Albertyn and Beth Goldblatt, "Facing the challenge of transformation: difficulties in the development of an indigenous jurisprudence of equality", *South African Journal on Human Rights*, vol. 14 (1998), p. 249.

<sup>24</sup> See, for example, the work of organizations such as Musawah (<https://www.musawah.org/>) and Red Católicas por el Derecho a Decidir de América Latina y el Caribe (<https://redcatolicas.org/>) and of the Gender Institute of the Council for the Development of Social Science Research in Africa (<https://codesria.org/annual-thematic-institutes-2/>).

<sup>25</sup> See, for example, Catherine Albertyn, "Contested substantive equality in the South African Constitution: beyond social inclusion towards systemic justice" *South African Journal on Human Rights*, vol. 34, No. 3 (2018), p. 462.

transformation (tackling structural inequality).<sup>26</sup> Critical dialogue as to what constitutes human flourishing and how to achieve rights' realization among diverse individuals and communities has advanced broader understandings of how gender and women's rights sit within international law.<sup>27</sup> In addition, feminist economic and social justice theorists have highlighted the necessity of broader structural reforms, demonstrating the interconnectedness of economic, social and institutional systemic change.<sup>28</sup>

19. These developments have produced comprehensive tools for understanding and addressing the root causes of inequality and marginalization. Substantive equality is aimed at ensuring that human rights are not merely theoretical entitlements but lived realities, and requires the challenging of structural barriers, the redistribution of power and resources, the fostering of real opportunities for all and support for civic participation. This approach reaffirms the commitment of the international human rights system to dismantling systemic injustices affecting women and girls, paving the way for inclusive, equitable, participatory and dignified societies.

#### IV. Reaffirming substantive gender equality under international human rights law

20. The international human rights system has progressively shifted from a focus on non-discrimination and formal equality to endorsements of substantive equality as essential to achieving the goals pursued by the system.<sup>29</sup> Formal equality approaches, focused on identical treatment, often overlook the structural, social, cultural and contextual inequalities that sustain discrimination. Conversely, substantive equality approaches seek to redress those inequalities and ensure that laws, policies and practices lead to transformative outcomes. This evolution reflects the imperative to address the systemic and structural dimensions of inequality that have an impact on women and girls.

21. Human rights treaty bodies have consistently underscored the importance of substantive equality, especially in the context of gender equality. In the Convention on the Elimination of All Forms of Discrimination against Women, substantive equality is integrated through the tripartite obligations for States to respect, protect and fulfil women's rights to equality and non-discrimination.<sup>30</sup> The Committee on the Elimination of Discrimination against Women has explicitly stated that a purely formal legal or programmatic approach is not sufficient to achieve women's de facto equality with men.<sup>31</sup> Instead, a substantive approach is necessary in order to prevent the perpetuation of non-identical treatment where it is no longer warranted.<sup>32</sup>

22. The same Committee defines the overarching objective of substantive equality as entailing an effective strategy aimed at overcoming underrepresentation of women and at

<sup>26</sup> Sandra Fredman "Substantive equality revisited", *International Journal of Constitutional Law*, vol. 14, No. 3 (2016).

<sup>27</sup> See, for example, Kapur, *Erotic Justice*; Martha Nussbaum, "Women's capabilities and social justice", *Journal of Human Development*, vol. 1, No. 2 (2010); and Amartya Sen, *Development as Freedom* (Oxford University Press, 1999).

<sup>28</sup> See, for example, Gita Sen and Caren Grown, *Development Crises and Alternative Visions: Third World Women's Perspectives* (Routledge, 1987); Dana Abed and Fatimah Kelleher, "The assault of austerity: how prevailing economic policy choices are a form of gender-based violence" (Oxfam International, 2022); and Juan Pablo Bohoslavsky and Mariana Rulli (coordinators), *Deuda feminista ¿Utopía u oxímoron?* (Editorial de la Universidad Nacional de la Plata, 2023).

<sup>29</sup> Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005), para. 7; and Committee on the Rights of Persons with Disabilities, general comment No. 2 (2014), para. 14.

<sup>30</sup> While article 1 of the Convention reflects a formal approach to equality, article 2 has been described as an account of substantive equality. See Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010), para. 16 (elucidating upon those obligations); and A/HRC/35/29, para. 27 (further explaining States' obligations to respect women's rights and to protect women against discrimination).

<sup>31</sup> General recommendation No. 25 (2004), para. 8.

<sup>32</sup> *Ibid.*, para. 11.

redistributing resources and power between men and women.<sup>33</sup> The Committee has called for measures that address the underlying causes of discrimination against women and that promote a real transformation of opportunities, institutions and systems to ensure that they are no longer grounded in historically determined male paradigms of power and life patterns.<sup>34</sup> This transformative approach extends to addressing the causes and consequences of de facto or substantive inequality,<sup>35</sup> making the principle of substantive equality a cornerstone of the Convention on the Elimination of All Forms of Discrimination against Women.<sup>36</sup>

23. Other human rights treaty bodies have echoed these principles. Two members of the Human Rights Committee have emphasized the need for a “substantive notion of equality that seeks a more transformative outcome”.<sup>37</sup> The Committee on Economic, Social and Cultural Rights has highlighted that equality for women needs to transcend the enactment of laws or the adoption of policies that are, *prima facie*, gender neutral. Such measures, it noted, may fail to address – and may even perpetuate – inequality if they do not account for the existing economic, social and cultural disparities disproportionately affecting women.<sup>38</sup> The Committee on the Elimination of Racial Discrimination has underlined both formal and substantive inequality,<sup>39</sup> and has recognized how racial discrimination can have a unique and specific impact on women.<sup>40</sup> Notably, the Committee on the Rights of Persons with Disabilities has developed a substantive model of equality: “inclusive equality”. The inclusive equality approach encompasses: (a) a fair redistributive dimension to address socioeconomic disadvantages; (b) a recognition dimension to combat stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality; (c) a participative dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society; and (d) an accommodating dimension to make space for difference as a matter of human dignity.<sup>41</sup>

24. Special procedure mandate holders have further elaborated on those principles in their thematic focus areas. The Special Rapporteur on violence against women and girls, its causes and consequences, has indicated that gendered normative and practical measures are required to achieve the international law obligation of substantive equality, as opposed to formal equality.<sup>42</sup> The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has noted that achieving substantive racial equality requires an intersectional analysis of the problem of racial discrimination and intolerance,<sup>43</sup> a point that resonates when addressing obligations to ensure the substantive equality of minority and racialized women and girls. The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has highlighted that discrimination based on sexual orientation and gender identity cannot be effectively tackled without eradicating gender inequality.<sup>44</sup>

25. In developing a substantive equality approach under international human rights law, the treaty bodies have outlined anti-discrimination positions, addressing direct, indirect,

<sup>33</sup> Ibid., para. 8.

<sup>34</sup> Ibid., para. 10.

<sup>35</sup> Ibid., para. 14.

<sup>36</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 37 (2018), para. 30.

<sup>37</sup> *Chakupewa et al. v Democratic Republic of the Congo*, annex I, paras. 5 and 6. See also Human Rights Committee, general comment No. 28 (2000), para. 3.

<sup>38</sup> General comment No. 16 (2005), paras. 7 and 8 (showing that the Committee considers substantive equality as focusing on the effects of laws, policies and practices).

<sup>39</sup> General recommendation No. 32 (2009), paras. 6 and 22.

<sup>40</sup> General recommendation No. 25 (2000), para. 3.

<sup>41</sup> Committee on the Rights of Persons with Disabilities, general comment No. 6 (2018), para. 11; see also para. 36 (examining discrimination against women and girls with disabilities).

<sup>42</sup> A/HRC/26/38, para. 61.

<sup>43</sup> A/HRC/38/52, para. 29. See also E. Tendayi Achiume, “Putting racial equality onto the global human rights agenda”, *Sur International Journal on Human Rights*, No. 28 (2018).

<sup>44</sup> A/HRC/50/27, para. 55.

intersectional and structural discrimination.<sup>45</sup> The Committee on the Elimination of Discrimination against Women has emphasized that States have obligations to prevent both direct and indirect discrimination against women, by both public and private actors.<sup>46</sup> The Committee has acknowledged how indirect discrimination can exacerbate existing inequalities owing to a failure to recognize structural and historical patterns of discrimination and unequal power relationships between women and men.<sup>47</sup> Intersectional discrimination is a critical dimension of substantive equality, as discrimination is often intertwined with discrimination on other grounds.<sup>48</sup> Intersectionality is key to understanding State obligations, as gender discrimination against women and girls often converges with other conditions, including race, ethnicity, religion, class, Indigenous origin, HIV/AIDS status, disability, age, sexual orientation and gender identity, and language.<sup>49</sup> The Committee on the Elimination of Discrimination against Women has stated that States must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.<sup>50</sup>

## A. Substantive gender equality under regional human rights frameworks

26. Regional human rights bodies have spotlighted the importance of a substantive approach to gender equality. The European Court of Human Rights applies a model of substantive equality, recognizing both the need for equal treatment for similarly situated persons and the obligation to provide differential treatment when circumstances require it.<sup>51</sup> It has recognized indirect discrimination, wherein “a general policy or measure has disproportionately prejudicial effects on a particular group”.<sup>52</sup> The Court explicitly rejects gender stereotypes – for instance, the perception of women as primary child carers and men as primary breadwinners – as justification for differential treatment.<sup>53</sup> Considering domestic violence as a form of gender discrimination and inequality, the Court has stressed that States have positive obligations to establish and apply an effective system to punish perpetrators and protect victims.<sup>54</sup>

<sup>45</sup> See, for example, Human Rights Committee, general comment No. 18 (1989), para. 7, in which the Committee states that racial discrimination means any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms. International human rights law has recognized an expanding list of grounds that constitute “other status”. See also Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), paras. 10 and 12 (on direct and indirect forms of discrimination, acts or omissions on the basis of prohibited grounds and pervasive and systemic forms of discrimination).

<sup>46</sup> General recommendation No. 25 (2004), para. 7.

<sup>47</sup> General recommendation No. 28 (2010), para. 16.

<sup>48</sup> Human Rights Committee, general comment No. 28 (2000), para. 30. See also *L.N.P. v. Argentina* (CCPR/C/102/D/1610/2007).

<sup>49</sup> Committee on the Elimination of Discrimination against Women, general recommendations No. 28 (2010), para. 18, and No. 39 (2022), para. 2. See also, for example, Committee on the Elimination of Discrimination against Women, *Kell v. Canada* (CEDAW/C/51/D/19/2008) and *M.E.N. v. Denmark* (CEDAW/C/55/D/35/2011).

<sup>50</sup> General recommendation No. 28 (2010), para. 18. See also Meghan Campbell, “CEDAW and women’s intersecting identities: a pioneering new approach to intersectional discrimination”, *Revista Direito GV*, vol. 11, No. 2 (July–December 2015).

<sup>51</sup> European Court of Human Rights, *Thlimmenos v. Greece*, Application No. 34369/97, Judgment, 6 April 2000, para. 44.

<sup>52</sup> European Court of Human Rights, *Jordan v. the United Kingdom*, Application No. 24746/94, Judgment, 4 May 2001, para. 154; and *D.H. and others v. the Czech Republic*, Application No. 57325/00, Judgment, 13 November 2007, paras. 184–189.

<sup>53</sup> European Court of Human Rights, *Markin v. Russia*, Application No. 30078/06, Judgment, 22 March 2012, para. 143. See also European Court of Human Rights, *Carvalho Pinto de Sousa Morais v. Portugal*, Application No. 17484/15, 25 July 2017.

<sup>54</sup> European Court of Human Rights, *Opuz v. Turkey*, Application No. 33401/02, Judgment, 9 June 2009, paras. 145–149.

27. The Inter-American Court of Human Rights has a rich body of jurisprudence on substantive gender equality.<sup>55</sup> The Court has acknowledged both the formal dimension and a material or substantial dimension of equality, where the latter is focused on positive measures for historically discriminated against or marginalized groups.<sup>56</sup> The Court has observed that, to ensure that “women have real and effective equality ... States must take active and positive measures to combat stereotypical and discriminatory attitudes”.<sup>57</sup> It has also recognized intersectional discrimination<sup>58</sup> and structural discrimination in the context of gender inequality.<sup>59</sup> The Court has also ordered transformative reparations.<sup>60</sup> Furthermore, the Inter-American Commission on Human Rights has highlighted the need for States to guarantee “effective equality” and to refrain from discriminatory norms and practices.<sup>61</sup> The Commission has also recognized that some women may face discrimination on multiple grounds. This may necessitate “reinforced protection” by States, through the development of special measures<sup>62</sup> based on, for example, women’s age or on their race or ethnic origin.

28. The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol) reflects a break from “a formalistic notion of equality” and encompasses structural forms of discrimination.<sup>63</sup> The African Commission on Human and Peoples’ Rights has expressly embraced substantive equality as “the nature of the impact of particular laws or their application on women’s lives” and concerned with “the actual enjoyment of a right and unmasking the factors that hinder attainment of equality in fact”.<sup>64</sup> In addition, the Commission has noted that substantive equality measures seek to “redress existing disadvantage; remove socioeconomic and sociocultural impediments for equal enjoyment of rights; tackle stigma, prejudice and violence; leading to the promotion of participation and achievement of structural change of social norms, culture and law”.<sup>65</sup>

## B. National approaches to substantive equality

29. Developments in international and regional human rights forums are often influenced by national legal systems and State practices. Around the world, States have played a critical role in shaping the contours of substantive equality for women and girls, recognizing that equality in law must translate into equality in lived experiences.

30. In Canada, the Supreme Court has focused on “the impact of the law on the individual or the group concerned”.<sup>66</sup> The Court has highlighted that the purpose of substantive equality

<sup>55</sup> See, for example, *Fernández Ortega et al. v. Mexico*, Judgment, 30 August 2010, para. 200, in which the Court cites paragraph 103 of its Advisory Opinion OC-18/03, entitled “Juridical Condition and Rights of the Undocumented Migrants”. See also *Olivera Fuentes v. Peru*, Judgment, 4 February 2023, para. 96.

<sup>56</sup> Inter-American Court of Human Rights, *Angulo Losada v. Bolivia*, Judgment, 18 November 2022, para. 159.

<sup>57</sup> *Women Victims of Sexual Torture in Atenco v. Mexico*, Judgment, 28 November 2018, para. 218.

<sup>58</sup> *Gonzales Lluy et al. v. Ecuador*, Judgment, 1 September 2015, paras. 285–290; and *Manuela et al. v. El Salvador*, Judgment, 2 November 2021, para. 253.

<sup>59</sup> *González et al. (“Cotton Field”) v. Mexico*, Judgment, 16 November 2009, paras. 450 and 451.

<sup>60</sup> *Ibid.*, para. 451.

<sup>61</sup> *Lenahan (Gonzales) et al. v. United States*, Case No. 12.626, Report No. 80/11, 21 July 2011, para. 109; and Inter-American Commission on Human Rights, *Compendium on Equality and Non-Discrimination: Inter-American Standards* (2019).

<sup>62</sup> Inter-American Commission on Human Rights, *Álvarez Giraldo v. Colombia*, Report No. 122/18, 5 October 2018, para. 165.

<sup>63</sup> See articles 2 and 8 of the Protocol; and Annika Rudman, “Article 8: access to justice and equal protection before the law”, in *The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa: A Commentary*, Annika Rudman, Celestine Nyamu Musembi and Trésor Muhindo Makunya, eds. (Pretoria University Law Press, 2023), pp. 183–185.

<sup>64</sup> General comment No. 6 (2020) on article 7 (d) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, paras. 41 and 42.

<sup>65</sup> *Ibid.*, para. 14.

<sup>66</sup> Supreme Court of Canada, *Andrews v. Law Society of British Columbia*, Case Nos. 19955 and 19956, Judgment, 2 February 1989. See also Canadian Charter of Rights and Freedoms, sect. 25.

is to safeguard against violations of human dignity and freedom,<sup>67</sup> and has evaluated various forms of discrimination by considering “the effect of perpetuating group disadvantage and prejudice” and the imposition of “disadvantage on the basis of stereotyping”.<sup>68</sup> More recently, the Court crystalized its approach to addressing adverse impact discrimination and systemic discrimination. In a case concerning equal pension benefits, the Court considered an intersectional analysis of gender and parenting, explaining that discriminatory laws cannot be shielded by requiring proof of discriminatory intent nor an ameliorative purpose; rather, what matters is the “full context of the claimant group’s situation” and the “results of the law”.<sup>69</sup>

31. The Constitution of Colombia requires the Government to promote conditions such that equality may be real and effective.<sup>70</sup> The Constitutional Court of Colombia has affirmed that the right to equality prohibits direct and indirect discrimination, as well as intersectional and compound discrimination, against women.<sup>71</sup> In a matter in which the taxation of menstrual health products was challenged, the Court highlighted the importance of the context and the disproportionate impact on, and the intersectional consequences of such measures for, women.<sup>72</sup> The Court has applied a substantive equality approach to the criminalization of abortion,<sup>73</sup> focusing on the disparate impacts that measures have on women, especially women from migrant and Indigenous communities, who face additional barriers in accessing reproductive healthcare.

32. In South Africa, equality, as a value and justiciable right, is fundamental to the Constitution. The Constitution was built upon a transformative framework to heal past injustices and build a non-racist and non-sexist society on the basis of human dignity.<sup>74</sup> The Constitutional Court has embraced a substantive approach to equality, in which the Court is enjoined to dismantle past and present patterns of “social differentiation and systematic under-privilege”.<sup>75</sup> The approach takes into account context, including the lingering impact of apartheid, and permits positive, remedial and restitution measures.<sup>76</sup> In a matter involving access by domestic workers to compensation for injury or death in the workplace, the Court’s substantive equality analysis reinforced the importance of an intersectional lens.<sup>77</sup> The Court identified “multiple axes of discrimination”, as domestic workers, who are predominantly black women, “experience racism, sexism, gender inequality and class stratification”.<sup>78</sup>

33. In India, the Constitution similarly enshrines the right to equality, including a prohibition on sex-based discrimination (arts. 14 and 15), and specifies that nothing in its article 15 prevents special provisions for women and children. The Supreme Court of India has developed a substantive equality lens in adjudicating discrimination claims, specifically its systemic and indirect discrimination doctrine, to focus on how the underlying effects of laws and policies have disproportional impacts on women and perpetuate patterns of discrimination.<sup>79</sup>

<sup>67</sup> Supreme Court of Canada, *Law v. Canada (Minister of Employment and Immigration)*, Case No. 25374, Judgment, 25 March 1999.

<sup>68</sup> Supreme Court of Canada, *R. v. Kapp*, Case No. 31603, Judgment, 27 June 2008.

<sup>69</sup> Supreme Court of Canada, *Fraser v. Canada (Attorney General)*, Case No. 38505, Judgment, 16 October 2020.

<sup>70</sup> Art. 13; see also art. 43 (guarding against discrimination against women).

<sup>71</sup> Judgment C-754, 10 December 2015.

<sup>72</sup> Judgment C-117, 14 November 2018.

<sup>73</sup> Judgement C-055, 21 February 2022.

<sup>74</sup> Constitution of the Republic of South Africa, sects. 1 and 9.

<sup>75</sup> South African Constitutional Court, *Minister of Finance and other v. Van Heerden*, Case No. CCT 63/03, Judgement, 29 July 2004, para. 27.

<sup>76</sup> *Ibid.*, paras. 28–30. For an analysis of unfair discrimination, see Constitutional Court of South Africa, *Harksen v. Lane N.O. and others*, Case No. CCT 9/97, Judgement, 7 October 1997.

<sup>77</sup> *Mahlangu and another v. Minister of Labour and others*, Case No. CCT 306/19, Judgement, 19 November 2020.

<sup>78</sup> *Ibid.*, para. 90.

<sup>79</sup> Supreme Court of India, *Lieutenant Colonel Nitisha v. Union of India and others*, Petition No. 1109 of 2020, Judgment, 25 March 2021, paras. 42–50 and 119.

## V. CREATE framework

### A. Building transformative pathways to substantive gender equality

34. The Working Group welcomes the robust and transformative approach to achieving substantive gender equality under international human rights law. This approach has been integral to the Working Group's mandate since its establishment in 2010, when it was tasked with addressing discrimination "in law and in practice". Over the years, the Working Group has consistently analysed States' obligations to construct substantive equality for women and girls across all areas of life, including economic, social, political and public participation, and family and cultural life. This work has been guided by an intersectional and life-cycle approach, which considers the unique and overlapping challenges faced by women and girls at all stages of life. This approach has proven crucial amid global gender backlash.

35. The Working Group has emphasized the urgent need for States and other actors to reaffirm and recommit to advancing substantive gender equality for women and girls,<sup>80</sup> worldwide. Recognizing the growing threats to progress, the Working Group is now introducing a concrete framework to guide those efforts.

36. Rooted in international and regional human rights norms,<sup>81</sup> the framework brings together contemporary scholarly approaches to substantive equality.<sup>82</sup> It outlines concrete, actionable measures for addressing setbacks and advancing the rights, freedoms and dignity of all women and girls. By building in these conceptual insights, the Working Group aims to provide a practical and transformative pathway for achieving substantive gender equality in response to today's challenges.

### B. A transformative framework for substantive gender equality

37. In its framework for substantive equality, which it refers to as the CREATE framework, the Working Group outlines the structural reforms necessary to achieve genuine equality for women and girls. Drawing from its reports and findings, the Working Group urges States and other actors to take proactive, tangible and timely measures to counter global gender backlash and advance substantive gender equality. The comprehensive framework is built on six actionable pillars. They are not to be consecutively or progressively met; rather, they are interdependent and form an integral whole. Therefore, the fulfilment of all of the pillars is required for true substantive gender equality to be achieved. Under the framework, States and other relevant actors are called upon to take the following actions:

- (a) Counter harmful social norms, discrimination and violence, including embedded gender norms, biases, stereotypes, stigma, prejudices and violence against women and girls;
- (b) Redress socioeconomic disadvantages associated with women and girls, including systemic discrimination, through an intersectional and life-cycle perspective, with a focus on those in the gravest conditions of vulnerability and marginalization;
- (c) Eliminate legal and structural barriers by addressing all forms of discrimination in law, policy and implementation, including direct, indirect, intersectional and structural discrimination;
- (d) Adopt proactive laws and policies to promote substantive gender equality;

<sup>80</sup> [A/HRC/56/51](#), para. 74.

<sup>81</sup> *Ibid.* See also Committee on the Rights of Persons with Disabilities, general comment No. 6 (2018), and African Commission on Human and Peoples' Rights, general comment No. 6 (2020), paras. 41 and 42.

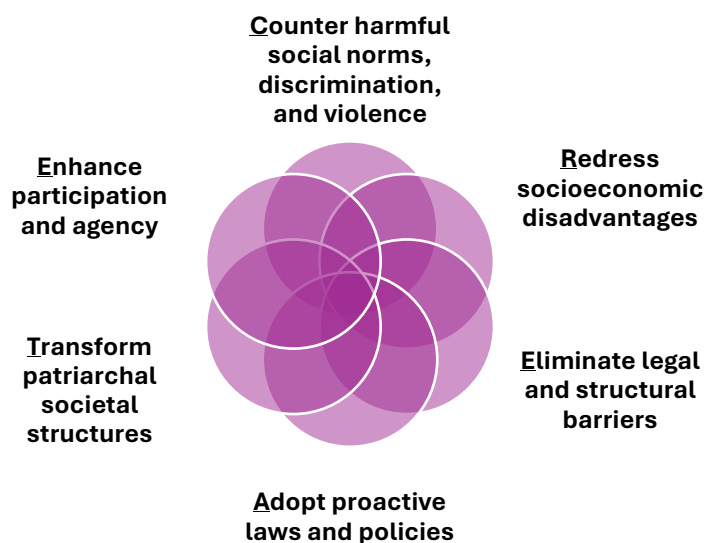
<sup>82</sup> See Fredman, "Substantive equality revisited"; and Sandra Fredman and Beth Goldblatt, *Gender Equality and Human Rights*, Discussion Paper, No. 4 (United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), 2015).

(e) Transform institutionalized patriarchal power structures in order to create inclusive systems that accommodate gender differences and promote equality;

(f) Enhance the participation and agency of women and girls, with a particular focus on empowerment, bolstering agency and ensuring meaningful participation and decision-making.

38. The CREATE framework provides a road map for States and other relevant actors, including international economic institutions and business enterprises, to address both the symptoms and root causes of inequality. It emphasizes the need for transformative and sustainable change. Rather than serving as a rigid checklist, the framework's pillars are fluid, context-specific and mutually reinforcing (see figure below), ensuring that human dignity is upheld for all women and girls.

#### CREATE framework



### C. Six pillars of the CREATE framework

#### 1. Counter harmful social norms to eliminate discrimination and violence

39. Harmful social and cultural norms, biases, stereotypes, stigma, prejudices and all forms of violence against women and girls are deeply embedded in societies and actively shape discriminatory laws, policies and practices. Those norms not only justify discrimination, they institutionalize it, creating systemic barriers that hinder the realization of gender equality. Genuine progress towards equality is impossible unless those norms are dismantled through deliberate and sustained remedial action.

40. As the Committee on the Elimination of Discrimination against Women has noted, gender stereotypes are both a root cause and a consequence of discrimination against women.<sup>83</sup> Those stereotypes create barriers to the realization of human rights and dignity.<sup>84</sup> The Working Group adopts a life-cycle approach and notes that gender stereotypes reflect harmful cultural, religious and social practices that affect women and girls from infancy

<sup>83</sup> *R.K.B. v. Turkey* (CEDAW/C/51/D/28/2010), para. 8.8.

<sup>84</sup> Committee on the Elimination of Discrimination against Women, *A.F. v. Italy* (CEDAW/C/82/D/148/2019), para. 7.5; and *Vertido v. Philippines* (CEDAW/C/46/D/18/2008).

through to older age.<sup>85</sup> It is vital for women and girls to make their own choices, without preconceived ideas and constraints based on gender stereotypes.<sup>86</sup> States have obligations to eradicate harmful traditions that can begin in the family and that can spill over to the workplace and other contexts. This requires States and other actors to reject distorted patriarchal narratives and norms.

41. Violence against women remains a significant barrier to equality; such violence is a consequence of gender discrimination, and also constitutes a form of gender discrimination itself.<sup>87</sup> It serves as a mechanism of control, silencing and subjugating women and girls while restricting their participation in public and private life. Addressing this issue requires, *inter alia*, the adoption and implementation of effective legal and systemic measures to dismantle underlying patriarchal attitudes and stereotypes.<sup>88</sup> States must fulfil their due diligence obligations to prevent, investigate, prosecute and punish acts of gender-based violence, whether perpetrated by State or non-State actors.<sup>89</sup>

42. Dismantling the foundations of gender-based discrimination and violence requires the elimination of damaging stereotypes rooted in harmful cultural, religious and societal practices. Addressing deeply embedded discriminatory social norms requires a collective societal response. This includes launching national awareness and educational campaigns to counter harmful narratives and promote gender equality,<sup>90</sup> integrating human rights and gender equality education into school curricula,<sup>91</sup> and conducting evidence-based studies and data-driven research (with disaggregated data across all key metrics) to reflect women's evolving realities.<sup>92</sup> In addition, ensuring access to effective complaint mechanisms and implementing gender-sensitive training programmes for State officials and other relevant actors are essential steps.<sup>93</sup>

43. States must reaffirm that all religious and cultural practices are to be consistent with women's and girls' human rights, and emphasize that gender equality takes precedence over religious and customary norms, practices and laws.<sup>94</sup> To change deeply embedded patriarchal norms, these efforts must also promote men's accountability for gender equality and actively counter toxic masculinity.<sup>95</sup>

44. States must adopt proactive and sustained measures to combat gender stereotypes and address systemic discrimination effectively. This requires, among other things, launching comprehensive public awareness campaigns, integrating gender-sensitive education into school curricula at all levels and promoting the active participation of women and girls in decision-making processes to shift societal attitudes and power dynamics. Robust legal frameworks and accountability mechanisms must support these efforts to ensure sustained progress, and they must address the root causes of harmful social norms by fostering inclusivity, dismantling toxic masculinity and furthering positive masculinities, and empowering women and girls as active agents of change.

## 2. Redress socioeconomic disadvantages

45. The socioeconomic disadvantages of women and girls are systemic and widespread and deprive women and girls of the fundamental rights necessary for the achievement of

<sup>85</sup> The Working Group adopts the definition of "harmful practices" set out in article 1 (g) of the Maputo Protocol, namely: "all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity".

<sup>86</sup> Committee on the Elimination of Discrimination against Women, general comment No. 28 (2010), para. 22.

<sup>87</sup> Committee on the Elimination of Discrimination against Women, general comment No. 35 (2017), para. 21.

<sup>88</sup> *Ibid.*, para. 30.

<sup>89</sup> *Ibid.*, para. 24 (b).

<sup>90</sup> See, for example, [A/HRC/23/50/Add.1](#), para. 89 (a); and [A/HRC/53/39/Add.2](#), para. 84 (e) and (f).

<sup>91</sup> See, for example, [A/HRC/44/51/Add.1](#), para. 90 (k).

<sup>92</sup> See, for example, [A/HRC/23/50/Add.2](#), para. 70 (d).

<sup>93</sup> See, for example, [A/HRC/29/40/Add.2](#), para. 88 (a).

<sup>94</sup> [A/HRC/29/40](#), para. 73 (a) and (i).

<sup>95</sup> See [A/HRC/WG.11/37/1](#).

equality. The second pillar of the framework – redress – requires States to adopt an intersectional and life-cycle approach in ensuring access to food and nutrition, water and sanitation, housing, education, healthcare (especially sexual and reproductive healthcare) and technological advancements. The Working Group has highlighted how poverty and socioeconomic inequality are gendered phenomena that overlap with other forms of inequality experienced by women and girls.<sup>96</sup>

46. Substantive equality requires addressing both individual and collective dimensions of socioeconomic inequality.<sup>97</sup> The Committee on Economic, Social and Cultural Rights has emphasized the importance of equal access to housing, water and sanitation to overcome discrimination against women and girls.<sup>98</sup> Equal access for women and girls must extend to just and favourable conditions of work, social security, an adequate standard of living, healthcare, education and trade union freedoms<sup>99</sup> and bargaining power. Importantly, women and girls experience greater risks and impacts related to climate change,<sup>100</sup> which must be addressed as part of the development of measures on climate change.<sup>101</sup>

47. It is essential for States to take positive measures to ensure the realization of the socioeconomic rights of women and girls, as those rights are foundational to all rights. Such measures include: providing gender-responsive social protections and gender-sensitive social security entitlements, such as paid maternity and carers' leave;<sup>102</sup> enforcing equal pay for work of equal value;<sup>103</sup> reforming unpaid care work; creating and enhancing legal frameworks to prevent and effectively respond to sexual harassment in the formal and informal employment sectors;<sup>104</sup> ensuring equal rights to land, housing and property and realizing the rights to food and nutrition, water and sanitation, healthcare and decent work conditions.<sup>105</sup> Measures should apply regardless of marital status and participation in the informal sector. Moreover, measures should be tailored to all women and girls, including those in rural settings. For girls and young women, menstruation, pregnancy, marriage and domestic responsibilities should never constitute a barrier to education. States should enact and implement comprehensive laws and policies to guard against child and forced marriage; track girls' attendance rates rather than enrolment or completion rates; ensure adequate sanitation in schools; and eliminate value-added taxes on essential health products (such as menstrual products).<sup>106</sup> The Working Group observes promising practices emerging from various States, such as improving access to technology, supporting women's collective action and recognizing domestic workers as formal employees.<sup>107</sup> In sum, States must provide universal, adequate, accessible and affordable education, healthcare and social services.<sup>108</sup>

48. States must re-examine income and wealth distribution, taking targeted steps to address disparities in power, resources and entitlements.<sup>109</sup> This proactive approach ensures that women and girls, particularly those from marginalized communities, have equitable opportunities to flourish.

### 3. Eliminate legal and structural barriers

49. The third pillar requires States to tackle both direct and indirect discrimination in all its forms, including intersectional and structural discrimination. Laws, as powerful tools for social transformation, have the potential to modify norms and behaviours. States must

<sup>96</sup> [A/HRC/53/39](#), para. 13.

<sup>97</sup> Declaration on the Right to Development, art. 2 (2).

<sup>98</sup> General comment No. 20 (2009), para. 8.

<sup>99</sup> *Ibid.*, para. 3.

<sup>100</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 37 (2018), paras. 2 and 3.

<sup>101</sup> *Ibid.*, para. 54.

<sup>102</sup> [A/HRC/53/39](#), para. 62 (b).

<sup>103</sup> See, for example, [A/HRC/26/39/Add.2](#), para. 43.

<sup>104</sup> [A/HRC/44/51](#), para. 64 (b).

<sup>105</sup> [A/HRC/53/39](#), para. 62 (c).

<sup>106</sup> [A/HRC/26/39](#), paras. 36 and 114.

<sup>107</sup> See [A/HRC/44/51](#).

<sup>108</sup> [A/HRC/41/33](#), para. 81 (a).

<sup>109</sup> [A/HRC/53/39](#), para. 59.

therefore use their domestic legal mechanisms to explicitly prohibit discrimination based on sex, gender and intersecting factors across all spheres of life.<sup>110</sup>

50. Legal frameworks must go beyond symbolic commitments by establishing solid mechanisms for prevention, enforcement, redress and accountability. To ensure that legal mechanisms are truly effective, States must empower women and girls to claim their rights, in particular by eliminating financial, procedural and institutional barriers to justice. States must also provide for accessible complaint systems, appropriate sanctions and reparations. Ensuring that laws and policies translate into meaningful change in the lives of women and girls requires proactive measures. States should conduct regular audits of their legal and policy frameworks to identify and rectify gender discrimination. In addition, they must repeal or modify laws that disproportionality criminalize acts associated with women, particularly laws affecting poor and marginalized women, such as those on access to abortion services and on voluntary sex work.<sup>111</sup>

51. Furthermore, States should ratify, without reservations, the core international human rights treaties (in particular the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto) and engage with United Nations human rights mechanisms.<sup>112</sup> In addition to transposing those international treaties into national legislation, States must provide for inclusive, participatory and meaningful review mechanisms that ensure that their domestic laws comply with their international obligations, and engage with women, girls and affected communities in that regard.<sup>113</sup> This can include conducting training on the Convention on the Elimination of All Forms of Discrimination against Women for State officials, including legislators, judges and prosecutors.<sup>114</sup>

52. Extreme instances of gender backlash and grave violations of women's and girls' rights, such as those the Working Group witnessed in Afghanistan, where systematic, grave and institutionalized discrimination against women and girls is imposed, may prompt extraterritorial State obligations. The Working Group supports the codification of the crime against humanity of "gender apartheid" under international law. It calls upon the international community to take effective action to end such discriminatory and oppressive practices.<sup>115</sup> Ultimately, by eliminating legal and structural barriers, States can create environments where women and girls can fully exercise their rights and that foster conditions for substantive gender equality.

#### 4. Adopt proactive laws and policies

53. Adopting proactive norms and policies is essential for achieving substantive equality for women and girls. While repealing discriminatory laws and reacting to specific violations is important, States must also take affirmative steps to create an enabling environment where equality can thrive. Proactive policies embed gender equality into society's legal, social and institutional frameworks, addressing systemic barriers before they manifest.

54. The Human Rights Committee has noted that States must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women.<sup>116</sup> States have obligations to adopt reasonable, objective and proportional special measures, specifically to redress de facto discrimination.<sup>117</sup> Proactive measures include implementing temporary special measures, referred to in article 4 (1) of the Convention on the Elimination of All Forms of Discrimination against Women, to accelerate de facto equality. These may involve quotas in political and public representation, targeted

<sup>110</sup> See Office of the United Nations High Commissioner for Human Rights and Equal Rights Trust, *Protecting Minority Rights – A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation* (United Nations publication, 2022).

<sup>111</sup> [A/HRC/41/33](#), para. 83 (a); and [A/HRC/53/39](#), para. 62 (k).

<sup>112</sup> See, for example, [A/HRC/32/44/Add.2](#), paras. 8 and 9.

<sup>113</sup> See, for example, [A/HRC/38/46/Add.1](#), para. 67.

<sup>114</sup> See, for example, [A/HRC/35/29/Add.2](#), para. 41.

<sup>115</sup> See [A/HRC/WG.11/40/1](#).

<sup>116</sup> Human Rights Committee, general comment No. 28 (2000), para. 3.

<sup>117</sup> Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 9.

appointment initiatives and resource reallocation for empowering women and girls in the areas of education, health, employment and leadership.<sup>118</sup> The purpose of such measures, ideally based on States' national contexts, should not only be to remedy existing disparities but also to transform power dynamics and create long-term societal change.

55. Beyond temporary special measures, States must develop sustainable policies that address the root causes of inequality. Those policies should foster an enabling environment by promoting gender-sensitive education; dismantling stereotypes; addressing violence as both a cause and a consequence of inequality; and compensating unpaid labour through the provision of childcare, family leave and social protections. To ensure proactive policies, States must anticipate and accommodate the diverse realities of women and girls, particularly of those from marginalized communities. Those policies should reflect a consideration of current issues, including climate change and technology, and the needs of future generations of women and girls.<sup>119</sup>

56. The Working Group emphasizes that such proactive policies must be adequately resourced, regularly evaluated, and adjusted on the basis of context, evidence and feedback from women and girls who are affected. Such efforts demand sustained political will, institutional accountability and long-term investment in policies that dismantle structural inequality. Proactive approaches go beyond reactive solutions to prevent inequality, signalling a deep commitment to fostering environments where women and girls can exercise their rights fully and with dignity.

## 5. Transform institutionalized patriarchal power structures

57. The fifth pillar is focused on how achieving substantive gender equality requires moving past unjust patriarchal power structures that are historically embedded and entrenched within practices, institutions, policies and laws, both in formal and informal settings. Structural change necessitates not only having good laws on the books but also properly implementing laws and practices designed to support the achievement of tangible outcomes in the lived realities of women and girls.

58. The Working Group found that despite the existence of comprehensive legal frameworks on gender equality, implementation lags behind.<sup>120</sup> The Working Group adopts a living-law approach, focusing on how laws and practices contribute to real and sustainable outcomes for women's substantive equality. This approach recognizes that laws must operate within a fully ameliorating environment in order to be implemented meaningfully and effectively.<sup>121</sup>

59. Addressing institutionalized forms of patriarchy requires States: (a) to closely monitor the implementation of gender equality laws and policies; (b) to provide reasonable accommodation for the individual needs of women and girls; and (c) to develop broader structural reforms to ensure fairness and equality, and ensure that such reforms extend to customary and religious, as well as formal, norms and practices.

60. States must monitor the effective and robust implementation of comprehensive gender equality laws. The Working Group has noted that specialized gender institutions, high-level inter-agency working groups, ombudspersons<sup>122</sup> and law reform commissions can play key roles in monitoring implementation. These processes should take into account civil society inputs on the lived experiences of women and girls.

<sup>118</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004), paras. 22, 23 and 37.

<sup>119</sup> See the Maastricht Principles on the Human Rights of Future Generations and the 2030 Agenda for Sustainable Development.

<sup>120</sup> See, for example, [A/HRC/44/51/Add.1](#), para. 12 and [A/HRC/53/39/Add.2](#), para. 58. See also [A/HRC/29/40/Add.1](#), para. 46; [A/HRC/29/40/Add.3](#), para. 103; and [A/HRC/32/44/Add.2](#), paras. 90 (d) and 91 (e).

<sup>121</sup> [A/HRC/35/29](#), para. 26.

<sup>122</sup> See [A/HRC/32/44/Add.2](#), para. 92 (b); [A/HRC/44/51/Add.1](#), para. 15; and [A/HRC/56/51/Add.2](#), para. 12.

61. Reasonable accommodation, as defined in article 2 of the Convention on the Rights of Persons with Disabilities, means necessary and appropriate modifications and adjustments not imposing a disproportionate burden to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.<sup>123</sup> While reasonable accommodation is aimed at addressing individual difference through tailored measures,<sup>124</sup> achieving transformative gender equality requires a substantive, systemic approach. The accommodations should eliminate the disadvantages associated with gender differences, without necessarily erasing the differences themselves. The Committee on Economic, Social and Cultural Rights has emphasized that States must tackle the structural causes of gender inequality, particularly in employment, childcare and social assistance,<sup>125</sup> and has highlighted the interconnected nature of gender and socioeconomic disparities.<sup>126</sup>

62. Beyond accommodations, systemic change involves reshaping economic and social systems that perpetuate inequality. Rather than integrating women and girls into existing unequal systems, States should challenge and remake those systems to uphold the full range of human rights.<sup>127</sup>

63. For example, the Working Group has emphasized the importance of gender-transformative reparations, in both post-conflict contexts and ordinary times, for human rights violations.<sup>128</sup> Where remedies typically aim to restore the status quo ante, the purpose of gender-transformative reparations is to challenge existing conditions and reshape gender-unequal structures. As articulated by the Inter-American Court of Human Rights, reparations should aim not only for restitution but for rectification, challenging the structural discrimination that led to the violation in the first place.<sup>129</sup>

64. The Committee on the Elimination of Discrimination against Women has also embraced gender-transformative reparations in other contexts, such as for victims and survivors of gender-based violence, which may be in the form of monetary compensation or legal, social and health services.<sup>130</sup> It observed that States should implement these reparations to address the underlying discrimination or disadvantaged position that caused or significantly contributed to the violation, taking into account the individual, institutional, and structural aspects.<sup>131</sup> Transformative reparations may include restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition.<sup>132</sup>

65. Patriarchal structures may be transformed by monitoring implementation, providing for reasonable accommodation and developing broad structural reforms. States can thus ensure that their laws and policies do more than mitigate inequality – they can create a foundation for true equality and dignity not only for all women and girls but societies at large.

## 6. Enhance the participation and agency of women and girls

66. Finally, women and girls must be agents rather than passive recipients of reform, with the dignity and autonomy to shape decisions affecting their lives and communities. This pillar is focused on a call for an empowering approach – one that prioritizes agency over protectionism – to advancing the rights of women and girls. States must ensure that diverse

<sup>123</sup> See also Committee on the Rights of Persons with Disabilities, *Jungelin v. Sweden* (CRPD/C/12/D/5/2011) para. 10.4.

<sup>124</sup> Committee on the Rights of Persons with Disabilities, general comment No. 2 (2014), para. 26.

<sup>125</sup> See *Trujillo Calero v. Ecuador*, (E/C.12/63/D/10/2015) and E/C.12/CAN/CO/6.

<sup>126</sup> A/HRC/53/39.

<sup>127</sup> *Ibid.*, para. 14; and Inter-American Court of Human Rights *González et al. ("Cotton Field") v. Mexico*, para. 450.

<sup>128</sup> A/HRC/53/39, para 56.

<sup>129</sup> Inter-American Court of Human Rights, *González et al. ("Cotton Field") v. Mexico*, para. 450.

<sup>130</sup> General recommendation No. 35 (2017), para. 33 (a).

<sup>131</sup> *Ibid.*, para 33 (b). See also Committee on the Elimination of Discrimination against Women, *Alonzo et al. v. Philippines* (CEDAW/C/84/D/155/2020 and CEDAW/C/84/D/155/2020/Corr.1).

<sup>132</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, paras. 17–23.

groups of women and girls have equal, meaningful and effective participation at every stage of decision-making.

67. Temporary special measures, as outlined by the Committee on the Elimination of Discrimination against Women, should be used to accelerate women's equal participation in all fields.<sup>133</sup> The Committee has underscored the importance of women's equal participation and leadership in such areas as: political and public life,<sup>134</sup> including by rural women and girls;<sup>135</sup> conflict prevention;<sup>136</sup> conflict and post-conflict processes;<sup>137</sup> disaster risk reduction and climate change policies and plans;<sup>138</sup> the rights of Indigenous women and girls;<sup>139</sup> development and education contexts;<sup>140</sup> gender equality in judicial and quasi-judicial mechanisms;<sup>141</sup> and harmful practices experienced by girls.<sup>142</sup> In its recent focus on women's representation, the Committee has recognized the impact that such representation has on future generations and has provided a detailed framework for ensuring equal and inclusive participation in public and private decision-making.<sup>143</sup>

68. The Working Group has highlighted the importance of autonomy in sexual health and reproductive decision-making.<sup>144</sup> Restrictions on women's sexual and reproductive health rights not only limit their agency but also hinder their full participation in society, as these rights are deeply interconnected with broader human rights. For girls and young women, fully enjoying rights to public participation, freedom of expression and freedom of peaceful assembly is essential for their personal development, autonomy and contributions to society.<sup>145</sup>

69. States must take all appropriate measures to guarantee safe and enabling spaces for women's and girls' participation, and develop national legal frameworks to ensure they can exercise their activism freely and securely.<sup>146</sup> The Working Group recognizes that some States have developed effective strategies to increase the participation of women in key institutions.<sup>147</sup> In addition, civil society plays a vital role in advancing women's and girls' voices and active participation.<sup>148</sup> As such, States should constructively engage with civil society and strengthen, rather than restrict, platforms for activists. Equally important, States must eliminate laws and practices that criminalize, stigmatize and harm women and girl activists and human rights defenders.<sup>149</sup>

70. The Working Group underscores that recognizing and upholding the dignity and agency of all women and girls is not just a moral imperative – it is the foundation of free, just and democratic societies.<sup>150</sup> States must move beyond fulfilling quotas or treating women as symbolic participants. Instead, they must cultivate an environment where women and girls

<sup>133</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004), paras. 18 and 39.

<sup>134</sup> General recommendation No. 23 (1997).

<sup>135</sup> General recommendation No. 34 (2016), paras. 53 and 54.

<sup>136</sup> General recommendation No. 30 (2013), paras. 30 and 33 (b).

<sup>137</sup> *Ibid.*, paras. 37 and 42–46.

<sup>138</sup> General recommendation No. 37 (2018), paras. 32–36.

<sup>139</sup> General recommendation No. 39 (2022), paras. 23 and 43–46.

<sup>140</sup> General recommendation No. 36 (2017), paras. 63, 65, 73, 75 (c), 81 and 83.

<sup>141</sup> General recommendation No. 33 (2015), paras. 15 (f) and (g) and 56 (c).

<sup>142</sup> Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019), paras. 60 and 63.

<sup>143</sup> General recommendation No. 40 (2024).

<sup>144</sup> [A/HRC/WG.11/41/1](#), para. 24.

<sup>145</sup> [A/HRC/50/25](#), para. 16.

<sup>146</sup> *Ibid.*, para. 75.

<sup>147</sup> See, for example, [A/HRC/38/46/Add.1](#), para. 67; [A/HRC/41/33/Add.2](#), para. 34; and [A/HRC/44/51/Add.1](#), paras. 21 and 53.

<sup>148</sup> See, for example, [A/HRC/35/29/Add.1](#), para. 34; [A/HRC/44/51/Add.1](#), para. 55; and [A/HRC/53/39/Add.1](#), paras. 19–21. In 2022, the Working Group highlighted investing in girl-led and young feminist networks and movements ([A/HRC/50/25](#), para. 75 (c)).

<sup>149</sup> [A/HRC/47/38](#), para. 42. See also [A/HRC/41/33/Add.1](#), paras. 33 and 34.

<sup>150</sup> See [A/HRC/50/25](#). See also “Occupied Palestinian territory and Israel: UN experts call for permanent ceasefire to protect rights and futures of women and girls”, press release, 14 December 2023.

hold substantive decision-making power, and ensure that their diverse experiences and realities are meaningfully represented. True empowerment means actively involving women in shaping policies and governance, guaranteeing that gender perspectives drive the pursuit of substantive equality.

## VI. Conclusions and recommendations

71. Substantive gender equality is crucial for upholding the human dignity of women and girls and fostering just, inclusive and equitable societies. While significant progress has been made, systemic barriers, intersecting forms of discrimination and an escalating global backlash continue to erode advancements in women's and girls' rights worldwide. The Working Group thus developed the CREATE framework, which provides States and other stakeholders with a comprehensive and actionable road map for achieving transformative substantive gender equality.

72. The CREATE framework provides a transformative and integrated approach, emphasizing the interconnection between individual freedoms and systemic change. Its principles build on positive national approaches and are aligned with international and regional human rights standards, offering a holistic approach to addressing inequality. The framework also highlights the need for States to address structural and intersectional barriers, prioritizing the inclusion of marginalized groups of women and girls.

73. The CREATE framework serves as a practical tool for operationalizing substantive gender equality. The six pillars of the framework are mutually reinforcing and require context-specific implementation. This ensures that States and other relevant actors can address the structural and systemic roots of inequality effectively while fostering sustainable and inclusive progress. To that end, States and other relevant actors must tackle socioeconomic disadvantages, which necessitates targeted investment in education, healthcare and technological access for women and girls, particularly in disadvantaged regions.

74. The Working Group calls on all States to reaffirm their commitments under international human rights law, particularly under the Convention on the Elimination of All Forms of Discrimination against Women, and to take immediate, concrete steps to implement the CREATE framework. States must act decisively, especially amid current and growing gender backlash, to uphold their obligations and ensure that women and girls everywhere can fully realize their rights, freedoms and dignity. States must go beyond symbolic measures and demonstrate genuine commitment by engaging civil society, empowering grass-roots organizations and ensuring robust accountability frameworks. Achieving substantive gender equality requires consistent evaluation and adaptive strategies to meet emerging challenges.

75. By embracing the principles of substantive gender equality and applying the CREATE framework, States and other relevant actors can provide urgently needed leadership in building societies where the equal worth and inherent dignity of all women and girls are fully recognized and respected. This is not only a legal obligation but a fundamental step toward achieving peace, justice, equality and human rights for all.