

Session 4

Equity versus Equality

OBJECTIVES:

- To examine the meaning of the terms “equity” and “equality” and what they signify in international law.
- To consider what the distinctions might be between equity and equality for women’s access to education, jobs and remuneration, property and inheritance, political participation, and other benefits of citizenship and social participation.
- To discuss what the potential ramifications for women are when equitable rights rather than equal rights are pursued.

In This Session:

The terms *gender equity* and *gender equality* are sometimes used interchangeably, but in law they represent two separate paths to advancing women. The clearest distinction between the two is that *equity* is based on subjective criteria, determined by culture, religion, and traditions, while *equality* is based on objective criteria. What is *equity* or *equitable* depends on what someone or some people believe is fair and correct. While ensuring *equality* or what is *equal* is a matter of ensuring that conditions, privileges, or rights are the same. Of course, in reality, even “the same” is open to some interpretation, and in many societies where people are ostensibly treated the same, there is disagreement about whether they truly are.

In the reading selections that follow, experts describe the distinctions they make between when laws and rights are applied equitably versus equally. The short excerpt from the Preamble to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) illuminates the convention drafters’ rationale for aspiring to gender equality rather than gender equity. In some societies, equity takes the form of separating the genders – in school, at work, on public transportation, and in houses of worship, among many examples. Can men and women be treated equally if they are separated? In the United States, that question was put before the Supreme Court regarding race – whether the races could be treated equally if they were separated. In the famous 1954 *Brown vs. The Board of Education* decision, Chief Justice Earl Warren argued that the very act of creating different spaces for black and white children to be educated unavoidably signified that the society held one race

to be inferior to the other. Therefore, Warren stated, the separate systems of education were not equal for black and white children. In this session, we will discuss whether Warren's logic also applies to gender, and whether separating the sexes is also rooted in upholding a social order where women are inferior to men.

Reading Assignments:

Equality or Equity for Women?

Alda Facio and Martha I. Morgan

What is needed to end global discrimination against women? Gender equity or gender equality? These terms, or their respective translations, are at times used interchangeably. However, in the context of women's rights under international human rights law, clarifying the distinction between the terms equity and equality is a point of increasing concern. "Equality" is the terminology of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Convention's concept of equality sets broad and objective standards for Member States. The CEDAW Committee, which monitors compliance with the treaty, has responded to the continuing confusion between these two terms by repeatedly reminding the countries submitting their periodic reports under the Convention of the importance of adhering to CEDAW's "equality" approach rather than substituting the vague and subjective term "equity."¹⁸

What is the Difference between Gender Equity, Gender Equality and Women's Empowerment?

Gender equity is the process of being fair to women and men. To ensure fairness, strategies and measures must often be available to compensate for women's historical and social disadvantages that prevent women and men from otherwise operating on a level playing field. Equity leads to equality. Gender equality requires equal enjoyment by women and men of socially-valued goods, opportunities, resources and rewards. Where gender inequality exists, it is generally women who are excluded or disadvantaged in relation to decision-making and access to economic and social resources. Therefore a critical aspect of promoting gender equality is the empowerment of women, with a focus on identifying and redressing power imbalances and giving women more autonomy to manage their own lives. Gender equality does not mean that men and women become the same; only that access to opportunities and life changes is neither dependent on, nor constrained by, their sex. Achieving gender equality requires women's empowerment to ensure that decision-making at private and public levels, and access to resources are no longer

¹⁸ Alda Facio and Martha I. Morgan, "Equality or Equity for Women: Understanding CEDAW's Equality Principles," IWRAW Asia Pacific Occasional Papers Series, No. 14, 2009 (www.iwraw-ap.org). Facio is a jurist, writer, and international expert on women's human rights, gender violence, and gender analysis. Morgan is Robert S. Vance Professor Emerita of Law at the University of Alabama School of Law.

weighted in men's favor, so that both women and men can fully participate as equal partners in productive and reproductive life.¹⁹

Preamble to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)²⁰

Excerpts

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity. . .

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women. . .

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields. . .

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women. . .

Questions for Group Discussion:

- What is your definition of gender *equity*?
- What is your definition of gender *equality*?
- What are the criteria for measuring equity? How do we know when a law or practice is equitable? Who decides?
- What are the criteria for measuring equality? How do we know when a law or practice is being applied equally? Who decides?
- If equitable means fair, then might the decision about what is fair for men and what is fair for women be different depending on whether men or women make the decision?
- Why does CEDAW call for full equality between men and women, rather than full equity? What do you think the distinction being made in CEDAW is?
- Do you think some people attribute superior qualities to those in positions of power? Why or why not?

19 From the United Nations Population Fund (UNFPA) website: Frequently Asked Questions about Gender, https://www.unfpa.org/gender/resources_faq.htm#2.

20 http://www.ipu.org/PDF/publications/cedaw_en.pdf, p.93.

- In most families, parents decide what chores each of their children is responsible for. Is society like a family in that some people are like “parents” and should decide what is fair, and others are like children and should accept what the parents decide? If so, then who are the parents and who are the children? If not, then what are the differences between society and a family? Are there some similarities and some differences?
- If the CEDAW framers had written that governments should embody the principle of *equity* between men and women in their appropriate legislation, instead of the principle of *equality*, what types of discrimination might result? What are examples of treatment that some people find equitable, but you feel is discriminatory?
- What are some examples of discrimination against women that some people feel are justified? For example, some people believe that it is equitable for a school or sports programs to sponsor teams only for men, and not for women, in some sports – such as track or football. Are there any examples with which you agree? Why?

Reading Assignment:

Brown vs. The Board of Education

On May 17, 1954, the U.S. Supreme Court unanimously ruled in *Brown vs. The Board of Education* that ‘separate but equal’ public schools for blacks and whites was unconstitutional. The claim that schooling could be equitable, separate, and by extension different but still equal, was found to be impossible in practice and in law. The court ruled that separation of services creates an inherent inequality that was discriminatory and harmful to society. Chief Justice Earl Warren²¹ wrote the decision for the court. The following are excerpts from his written opinion:

“Today, education is perhaps the most important function of State and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. . . It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the State has undertaken to provide it, is a right which must be made available to all on equal terms. . .

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other ‘tangible’ factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. . .

²¹ Earl Warren (1891-1974) was the 14th Chief Justice of the United States Supreme Court (1953-69), who presided over some of the country’s most important civil rights cases.

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn.

Segregation with the sanction of law, therefore, has a tendency to retard the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racially integrated school system. . .

We conclude that, in the field of public education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. . .²²

Questions for Group Discussion:

- In the United States in the 1950s, why did separate educations amount to inferior educations? How did the division between blacks and whites in schools, on buses, in restaurants, and in other ways create a legal means of discriminating against black people?
- Chief Justice Warren wrote, "...the policy of separating the races is usually interpreted as denoting the inferiority of the negro group." Does separation of the sexes ever denote the inferiority of females to males? If so, what are those circumstances?
- Do you believe that there are parallels in society between the inferior treatment of blacks in schools in 1950s' America, and the treatment of women today? Why or why not?
- Can women have separate but equal educations and jobs? Can women have separate but equal gender roles? Why or why not?

22 <http://www.nationalcenter.org/brown.html>

Team Exercise:

Divide the group into teams of three to four participants. Ask each team to consider under what circumstances women are provided with separate or different education, healthcare, access to economic opportunities, salaries, promotions, and expectation of duties within the family. For example, girls are often discouraged from studying science or technology while boys are encouraged to do so.

Ask the teams to make a list of situations where women and men, girls and boys, are treated differently. When the list is complete, ask the team to consider whether the different treatment or different expectations of men and women are equitable despite the differences. Are they fair? Are they in the best interest of society in the long run? Ask the team to record its findings for each item on its list and then choose a volunteer to report back to group on what it discussed.

When the group reconvenes, have each team share its findings with the group.

Optional Additional Reading and Exercise:

Laws and policies that advance the rights of women, whether local or international, work in a number of ways to bring about justice and equality for women. Understanding the distinctions between the strategies helps an advocate identify when and why policies fail, and how best to communicate what changes are needed.

Reading Assignment:

How Do Legal Agreements Protect Women and Girls and Provide for Their Advancement and the Welfare of All Society?

Laws, procedures, and practices that aim to protect and advance women do so through a variety of strategies. Which strategies are used depends on many factors, including cultural and legal traditions. The protections the legal agreements offer for women and girls can be roughly divided into three strategies, although these strategies frequently overlap:

Affirmative Action: The first strategy is drafting and enforcing affirmative action laws and policies that make special accommodations to ensure a minimum level of participation by women. Affirmative action is premised on the idea that past discrimination should be redressed through policies that help women ‘catch up’ to men in their contributions and accomplishments. For some advocates, the idea of affirmative action for women is an anathema to equality, while for others it is a necessary strategy to overcome sex prejudice and discrimination. Among the most common, and most hotly debated, affirmative action policies are quotas for women’s participation in government and high-level decision making.

Gender Mainstreaming: The second strategy entails ensuring that women’s perspectives and concerns are part of decision-making at all levels of government and civil society. With gender mainstreaming, laws

and policies are drafted and implemented to benefit men and women equally. In the long run, gender mainstreaming “aims to transform discriminatory social institutions, laws, cultural norms and community practices, such as those limiting women’s access to property rights or restricting their access to public space.”²³ An example of gender mainstreaming is the UN Security Council’s passage of Resolution 1325 (discussed in Session 13) that aims to increase women’s participation in policy-making during times of war, peace negotiations, and rebuilding communities in post-conflict situations.

Enforcement of Equality: The third strategy is enforcing declarations, legislation, and expectations of equality between women and men. Enforcement of equality measures include laws stating that their provisions *apply equally* to women and men; services (social, economic, health, etc.) that are *provided equally* to women and men; community practices such as awarding scholarships and promoting individuals in the workplace being *applied equally* to women and men; and laws and procedures that *enforce non-discrimination*.

It is the last of these three strategies that is frequently considered too radical, or too upsetting to cultures or traditions, to be practical in many societies. Yet equality is the fundamental right that provides the basis for all human rights. Human rights are born out of the elemental belief that all human lives have the same value. In order to manifest this belief, people must be treated equally, with the same rights and protections, regardless of gender or other distinctions.

Group Exercise:

Consider the three strategies for advancing women’s rights described in the reading selection above:

- Affirmative Action – helping women to ‘catch up’
- Gender Mainstreaming – ensuring women’s participation
- Enforcement of Equality – enforcing laws and practices be equally applied to women and men

Brainstorm examples of each strategy. Ask the group to list the pros and cons of each. Consider which strategy works best for different women’s rights objectives. Consider why one strategy might work where another fails.

23 <http://www.unwomen.org/en/how-we-work/un-system-coordination/gender-mainstreaming#sthash.XDVdQuOM.dpuf>