Achieving Equal Rights

Lessons from Global Efforts

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Campaigning for president of the United States, Barack Obama spoke in 2008 of the need to move towards “a more perfect union.” At the country’s founding, its citizens were far from equal. The rights guaranteed to “the people” in the Constitution were, in practice, enjoyed primarily by white, male property holders. African Americans, who were enslaved, were considered by the Constitution to have the value of only three-fifths of a human life when it came to being counted for representation. Women had neither equal rights nor the right to vote.

Over time, the country moved closer to offering equal rights to all of its citizens. After the Civil War, the Fourteenth Amendment guaranteed equal protection of the law to all men born or naturalized in the United States, regardless of race. In 1920, the Nineteenth Amendment guaranteed women the right to vote. These constitutional changes were a major step forward, but individuals and groups would still need to actively pursue the implementation of their rights through court cases. Not until 1947, when a state district court ruled in *Mendez v. Westminster* that it was illegal to segregate Mexican American children in Los Angeles into separate schools, did this segregation end locally. Nationally, segregation was ruled illegal only in 1954, when the Supreme Court concluded in *Brown v. Board of Education* that separate education for African Americans was anything but equal and ruled that segregated schooling, a key element of Jim Crow laws, was unconstitutional. Drawing on constitutional
guarantees, over time these cases and others substantially tore away at systemic inequality.

Yet while progress has been made, it has also become clear that more than legal guarantees and landmark cases are needed to achieve equality. Half a century after Brown v. Board of Education, many U.S. schools remain de facto segregated: one-fifth have student populations that are at least 70 percent Latino or African American. These schools are less likely to have credentialed math and science teachers and less likely to offer a challenging curriculum and academic preparation for higher education. Youth who attend these schools also have a lower chance of graduating; school districts where the majority of students are African American or Latino have had high school graduation rates nearly 18 percent lower than those where most students are white.

The history of attempts by the United States to create “a more perfect union” is thus one of both promise and warning. The American story makes it clear that dramatic improvements in equality can take place in the life course of a country and a people; the story makes it equally clear that laws that entrench equal rights and court rulings that uphold them are not enough to guarantee that equality exists in practice.

Many countries share the United States’ experience that making equal rights real takes many steps. Thousands of miles from Topeka, Kansas, where Oliver Brown, whose daughter Linda was forced to attend a segregated school, sued the school district as part of the class-action suit that became the landmark Brown v. Board of Education, Mary-Joyce Doo Aphane went to court in Swaziland to claim her right to register property in her own name. Section 20 of the Swazi Constitution guarantees equality before the law, and Section 28 specifies that men and women have equal economic rights. Nonetheless, the Deeds Registry Act prevented wives from owning and administering property on an equal basis with their husbands. As in the United States, a legal case was required to pursue the equal rights guaranteed in the constitution. In response to Doo Aphane’s claim, the High Court of Swaziland ordered that the Act be amended so that married women
could register property in their maiden names. Much like the victory in *Brown v. Board of Education*, the High Court’s decision cracked a hole in inequality without completely eradicating it. The court’s initial ruling covered only women married in a civil ceremony who had a property agreement, excluding the 80 percent of people in Swaziland who live under customary law.

Mary-Joyce Doo Aphane was not alone in appealing to legal guarantees to pursue equal rights. In Kenya, where customary law prevented girls and women from inheriting property, Mary Rono argued for their right to do so under Kenya’s Constitution, the African Charter, and the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Kenya is a party. The Court of Appeal agreed with her claim and ruled that the children of a deceased man had an equal right to inherit his land, regardless of their gender.

**Snapshots of the Current State of the World**

How the current state of equal rights in the world looks depends on where the camera is pointed and what it focuses on. From a wide-angle perspective, an impressive degree of consensus has been reached at the international level on the content of economic and social rights, as well as the extent to which they should be enjoyed equally by all people regardless of gender, race, ethnicity, religion, language, disability status, age, national origin, or social position. In 1948, the Universal Declaration of Human Rights (UDHR) first outlined the basic rights and freedoms that all human beings possess equally and are entitled to enjoy without discrimination of any kind. Its principles have since received widespread acceptance. In 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) established the equal rights of all people to a decent standard of living, freedom from hunger, fair working conditions, equal pay for equal work, the highest possible standard of health, and education, among other guarantees. The 160 countries that
Recognizing the specific forms of discrimination and structural barriers that can prevent particular groups from exercising their rights on an equal basis, the international community has set out additional protections in targeted conventions. These include the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which entered into force in 1969 and currently has 175 state parties; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 and now agreed to by 187 states; the 1989 Convention on the Rights of the Child (CRC), which has been ratified by all but two UN member states; and the Convention on the Rights of Persons with Disabilities (CRPD), to which 103 state parties have committed since 2006. The United Nations has also issued a number of non-binding declarations on equal rights, including the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the 1985 Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and the 2007 Declaration on the Rights of Indigenous Peoples.

At the national level, a majority of constitutions contain equal rights clauses. The constitutions of 121 countries specifically guarantee equal rights to women, explicitly prohibit discrimination on the basis of gender, or do both. In 111 countries, racial and ethnic minorities are ensured, at a minimum, either equal rights or protection from discrimination; for religious minorities, this protection is offered in 113 countries. On closer examination, however, real and worrying limitations in these international and national legal frameworks appear. Fifty-one of the countries that have signed or ratified CEDAW continue to list reservations. While some of these reservations are relatively minor, such as Spain’s specification that ratification would not affect the country’s rules regarding succession to the monarchy, others are quite significant; for
example, a number of countries have rejected CEDAW’s guarantee of equal rights in marriage because of the perceived incompatibility of this principle with Sharia law. While the majority of constitutions guarantee equal rights or prohibit discrimination on the basis of gender, race, religion, or social position, a number of these provisions have serious limitations. Constitutional guarantees of equal rights for women are significantly weakened when legal superiority is granted to religious or customary laws, which may limit or deny women’s rights. In some countries, while discrimination on the basis of social position or creed is prohibited, it is nonetheless required that individuals possess a minimum amount of property or practise a particular religion in order to run for political office.

Turning the Lens Towards Implementation

At least as great as the concern about gaps in equal legal rights on paper is the concern about the gaping chasms that exist in ensuring that they are implemented in practice. The UN agreements are clear on what equality means. The *Universal Declaration of Human Rights* states:

- “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- “All are equal before the law and are entitled without any discrimination to equal protection of the law.”

When it comes to specific rights, the *Declaration* is no less strong on equality. It makes clear, for example:

- Men and women “are entitled to equal rights as to marriage, during marriage and at its dissolution.”
- “Everyone has the right to own property alone as well as in association with others.”
“Everyone, without any discrimination, has the right to equal pay for equal work.”

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.”

The specific conventions that protect equality for children, women, racial and ethnic groups, people with disabilities, and others also do not shy away from specifying what this equality should mean and what it requires of governments. For example, the Convention on the Rights of the Child states:

- State Parties shall take measures “to diminish infant and child mortality” and “[t]o ensure appropriate pre-natal and post-natal health care for mothers.”
- They shall also “recognize the right of the child to education” and protect children from “performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”
- Furthermore, “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

Although the scope of equal rights and governments’ duty to implement them are outlined clearly in international conventions, this specificity has not been sufficient to ensure implementation. For example, although all but two countries recognize the right to education through ratification of the CRC, realization of this right remains elusive for many. In 2007, 72 million primary-school-aged children were not in school; it is unlikely that 31 million of these children will ever receive any formal education.
These gaps exist even in countries that have ratified a range of relevant conventions. In 59 of the 173 countries that have ratified the International Labour Organization’s Convention on the Elimination of the Worst Forms of Child Labour, more than 10 percent of children aged 5 to 14 are employed. Although CEDAW states that “[t]he betrothal and marriage of a child shall have no legal effect,” in one-fifth of ratifying countries, more than 30 percent of women aged 20 to 24 were married or in a union before the age of 18. The right to equal pay for equal work has been internationally recognized since 1948, but women still earn between 70 and 80 cents for every dollar earned by men in East Asia and the Pacific, Latin America and the Caribbean, North America, and Sub-Saharan Africa.

The implementation of social and economic rights is often inequitable as well as incomplete. For example, CEDAW requires state parties to “ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.” Moreover, state parties to the CRC must work “to ensure appropriate pre-natal and post-natal health care for mothers.” Nonetheless, globally just 60 percent of pregnant women in the poorest economic quintile receive adequate antenatal care, compared with 92 percent of women in the richest quintile. Births are attended by skilled health personnel for 34 percent of low-income women compared with 84 percent of high-income women.

The CRC also requires state parties to ensure “the right of the child to the enjoyment of the highest attainable standard of health,” “to diminish infant and child mortality,” “to ensure the provision of necessary medical assistance and health care to all children,” and “to combat disease and malnutrition … through, inter alia, the application of readily available technology,” among other measures. Yet the gap in immunization rates for children in the richest and poorest quintiles are between 30 and 40 percentage points in sub-Saharan Africa, South Asia, and the Middle East and North Africa, 25 percentage points in Southeast Asia, and 17 percentage points in Latin America and the Caribbean.
It is not merely a matter of whether countries have resources available to close the gaps; social inequalities in ensuring basic rights are great in affluent countries as well as poor ones. An examination of educational outcomes in Organisation for Economic Co-operation and Development (OECD) countries provides one example among many in higher-income countries. The Programme for International Student Assessment (PISA) has conducted comparative reading tests across all OECD countries. The average reading score for those with the lowest socioeconomic status is 332 out of 1,000, compared with 637 out of 1,000 for those with the highest status. Yet these educational inequalities are far from inevitable, and several countries have demonstrated the capacity and commitment to mitigate them. The extent of the socioeconomic gap in scores varies widely among OECD countries, and the percentage of reading score difference that is explained by socioeconomic status ranges from 6 percent in Iceland to 26 percent in Hungary. In some countries with higher than average levels of income inequality in society – such as Estonia, Greece, Israel, Italy and Japan – a lower than average percentage of PISA reading score variation is explained by students’ economic status, while the opposite is true in several countries with low levels of income inequality. Importantly, socioeconomic equity in education does not necessarily come at the expense of quality: Canada, Finland, Korea, and Japan all register higher than average reading scores, as well as a below average impact of socioeconomic factors on students’ chances of success, while Chile, Turkey, and Luxembourg demonstrate lower than average performance and a higher than average impact of socioeconomic status on scores.

The Economic Gains Associated with Equity

Mounting empirical evidence on the positive economic impact of increasing equality counters concerns regarding the feasibility of improving equity and economic outcomes simultaneously. The evidence that increasing equity has economic and other benefits is substantial at both
the macro and micro levels, as is the evidence that inequality comes at a cost. One example is the effect of increasing equity in education on a nation’s wealth.

Countries that have more equitable opportunities for girls in school have stronger national economic outcomes. Data from sixty-five low- and middle-income and transition countries indicate that achieving gender equity in upper secondary education could increase GDP by a total of USD 92 billion annually. Other studies find a similarly positive effect of increasing girls’ schooling in middle- and higher-income countries; specifically, each percentage point increase in female participation in secondary school was found to raise per capita income by 0.3 percent. Achieving gender equality in schooling throughout the Asia-Pacific region would yield USD 16 to 30 billion each year.

Reducing inequalities among socioeconomic groups would likewise produce dramatic societal benefits. It is estimated that closing the socioeconomic achievement gap in education in the United States between 1983 and 1998 would have increased GDP in 2008 by 3 to 5 percent – that is, by USD 425 to 700 billion. Across OECD countries, raising the learning levels of the lowest-achieving students – who tend to be from less affluent households – to a minimum level of proficiency on the PISA scale would produce an estimated USD 193 trillion gain in aggregate GDP by 2090.

Equalizing opportunities at work also pays economic dividends. If women’s participation rates in paid employment equalled those of men, GDP would rise by 9 percent in the United States, by 13 percent in the Euro zone, and by 16 percent in Japan. It is estimated that closing the 17 percent gender gap in pay in Australia would be worth the equivalent of 8.5 percent of GDP each year. In the Asia-Pacific region, eliminating barriers to women’s employment would yield an additional USD 42 to 47 billion annually.

Equity has non-economic benefits as well. In terms of political participation, even when a country’s level of income, education, and civic freedoms are controlled for, more equitable rights and higher levels of
influence for women in political life are associated with decreased levels of corruption.\textsuperscript{53} Greater political participation among women also tends to increase the policy attention paid to issues affecting children and families, positively affecting the development of the next generation of citizens.\textsuperscript{54} The human capital that nations will be able to draw on in the future is also significantly enriched when women have equal chances in education and at work. Children whose mothers have received some schooling have higher rates of immunization and school enrolment, as well as lower rates of malnutrition, morbidity, and mortality, than do the children of uneducated mothers.\textsuperscript{55} Women’s increased control over land, income, and other household resources is also positively associated with increased expenditure on children’s health and education, as well as better health outcomes for children.\textsuperscript{56}

\textbf{Making Equal Rights Real}

This book presents examples from around the world of strategies to increase equality in rights enjoyment. We focused on economic and social rights, not because they are more important than civil and political rights, but rather because civil and political rights have traditionally received more widespread attention in both research and practice, and because we believe that, in the long run, achieving greater equity in one area is inextricably linked with achieving greater equity in the other. This book builds on two initiatives: one in which we engaged leaders from around the world who have dedicated their careers to implementing equal rights, and a second in which we studied initiatives, small and large, that were particularly innovative and effective in increasing equality in rights enjoyment.

Because this book is about both the existence of legal rights and their implementation, the first initiative engaged lawyers, policymakers, civil society leaders, program directors, and academics. The lawyers have worked at every level: negotiating UN conventions, helping countries draft constitutions, and assisting governments with passing and enforcing legislation that embodies essential economic and social rights.