



## Transformative Shift to Equality?

“Transformative” is a word that is found frequently in the stream of texts related to the forthcoming adoption of the Sustainable Development Goals (SDGs) which, from 2016, will supersede the current Millennium Development Goals (MDGs). On 24 September 2014, the first day of the UN debate on the SDGs, the president of the General Assembly, Sam Kutesa, called on member states to work tirelessly over the next 12 months to agree “a truly transformative agenda” in the new set of development goals that are due to be adopted next year, at the 2015 session of the Assembly.

The language of transformation firmly entered the development goals discourse after the 2013 Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda,<sup>1</sup> which set the tone for countless consultations in the framework of the UN, as well as related academic research and stakeholders’ advocacy. The Panel calls for the new post-2015 goals to drive five big “transformative shifts”, the first of which, summed up in the slogan “Leave No One Behind”, is about equality. More precisely, it is about shifting from the equality-blind approach of the MDGs to an approach in which equality is central. As the former UN High Commissioner on Human Rights, Navanethem Pillay, stated:

“[T]he imperative of **equality** must underpin the entire framework. Doing so will require the replacing of now widely-discredited approaches that focus on narrowly-conceived notions of economic growth, with a

dedicated focus on remedying the gross disparities that characterise our societies, and that undercut true development.”<sup>2</sup>

The months ahead, with negotiations between governments gaining speed and aimed at adopting the new SDGs in September 2015, will undoubtedly make it clear that the word “transformative” is a false common locus of quite disparate political visions: what will be seen as “transformative” by some will be the opposite of what will be “transformative” for others. And yet, certain trends are clear, for example: a) an increasing consensus about the interconnectedness of development with peace, global finance, environmental justice, climate change, anti-corruption – to name just a few areas – thus driving a more integrated, potentially holistic approach; b) a recognition of the need for universality, in the sense that development is no longer seen just as pertaining to developing countries in the global South receiving aid from the global North, but as relevant to all countries albeit in differing country-specific ways; c) a slowly growing acknowledgement that development should be rights-based, not just in words as it has been for a while, but in practice; d) and – what is of paramount interest to the Equal Rights Trust and is chosen as the theme of this issue – an acceptance that “equality must underpin the entire framework”.

The challenge is that “equality”, like “transformative shift”, means different things to different people. If we look for guidance again from Ms Pillay, she has stated:

“The new framework must advance the three closely-related but distinct concepts of equity (fairness of distribution of benefits and opportunities), equality (that is, substantive equality of both opportunity and result, under the rule of law), and non-discrimination (prohibition of distinctions that are based on impermissible grounds and that have the effect or purpose of impairing the enjoyment of rights).”<sup>3</sup>

I hope it is reasonable to expect that of these three concepts, non-discrimination will be the least problematic and will survive all controversy. I am afraid, however, that the second concept, that of “equality (substantive equality of both opportunity and result, under the rule of law)” may become a more or less explicit sticking point. It will be what the Germans call a *kampfbegriff* – a conceptual battlefield where different visions will have to clash and be accommodated. No surprises here: the differences will be, as ever, about how much socio-economic equality we want. There will hardly be, unless I am unfor- givably naïve, any overt and aggressive principled enemies of equality in general among the governments of the world. But even those who are unhappy about growing in- equalities will have hard time to reach agree- ment. Some, in the spirit of Thomas Piketty (and mind you, he is an egalitarian, relative to mainstream economists), will actually not mind inequality of results, as long as it is fair, e.g. based on merit, and will be contented with taming the wilder streaks of inequality. There will be various versions of utilitarian approaches to equality: equality is welcome because it is a means to sustainable develop- ment ends, rather than an end in itself. And there will be those who want more equality for the sake of equality – see, for example, the programmatic paper of the Association of Women in Development (AWID) published in this issue and calling for a radical transfor- mation of the current global status quo.

The textual basis of the negotiations which started this month in New York is the so called “zero draft”<sup>4</sup> put together by the Open Work- ing Group and publicised in July 2014. Let us see how this fundamental document reflects the concepts of non-discrimination and equal- ity, and while doing this, let us be attentive to whether the relevant goals and targets for- mulated in the “zero draft” represent the legal rights to equality and non-discrimination al- ready recognised in international human rights law, or aspirations that go beyond these rights.

Regarding non-discrimination, target 5.1 reads: “end all forms of discrimination against all women and girls everywhere”, and there is a non-discrimination aspect in target 10.3: “ensure equal opportunity and reduce ine- qualities of outcome, including through elimi- nating discriminatory laws, policies and prac- tices and promoting appropriate legislation, policies and actions in this regard”. We also have the somewhat vague goal 16.b: “promote and enforce non-discriminatory laws and pol- icies for sustainable development”.

Clearly, target 5.1 lies squarely within exist- ing legal obligations of states under interna- tional law. So does target 10.3, provided it is true that reducing inequalities of outcome is a corollary of ensuring equal opportunity (which I take it to be). The pedants will say here that “reduce” is not a target but a direc- tion of movement, but let us recall that these targets are universal, and that it is more re- alistic – given the 15 year time frame of the SDGs – to have this “target” quantified on a country-specific basis.

“Equality” is used in the following senses and contexts in the zero draft:

(i) Equality within and among countries, found in “**Goal 10. Reduce inequality with- in and among countries**”. This is the broad-

est sense in which the concept of equality is used in the document. As formulated, it documents a potential global consensus in favour of equality and against inequality, whatever these concepts mean. This in itself is very significant, and not only within the development field. A similar broad meaning is implied in target 10.4: “adopt policies especially fiscal, wage, and social protection policies and progressively achieve greater equality”.

(ii) Equality as empowerment and inclusion, implied in target 10.2: “by 2030 empower and promote the social, economic and political inclusion of all irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status”.

(iii) Equality of opportunity: this is a target specifically in respect to women’s leadership, under goal 5 (gender equality): target 5.5 “ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life”; as well as broadly, vis à vis all groups, under target 10.3 quoted above: “ensure equal opportunity and reduce inequalities of outcome, including through eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and actions in this regard”.

(iv) Equality of outcome meant in a general sense, in the same target 10.3.

(v) Equal rights to economic resources, a target found under Goal 1 which relates to poverty reduction: target 1.4 “by 2030 ensure that all men and women, particularly the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership, and control over land and other forms of property, inheritance, natural resources, appropriate new technology, and financial services including microfinance”; similarly, the gender

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

(vi) Equality of access, a target found under Goal 2 related to hunger and food security. Target 2.3 reads: “equal access to land, other productive resources and inputs, knowledge, financial services, markets, and opportunities for value addition and non-farm employment”; also under goal 4 related to education, target 4.3 reads: “by 2030 ensure equal access for all women and men to affordable quality technical, vocational and tertiary education, including university”; target 4.5 is “by 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples, and children in vulnerable situations”; and finally, under goal 16 related to justice, target 16.3 reads: “promote the rule of law at the national and international levels, and ensure equal access to justice for all”.

(vii) Gender equality – Goal 5 and several other mentions, in particular goal 5c: “adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels”.

(viii) Equal pay: target 8.5 reads “by 2030 achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value”.

(ix) Equal employment for all – but this is only mentioned in the Introduction, Para 11. It probably means an equal right, or equal access, to employment.

A careful conceptual analysis of the above goals and targets would confirm, in my

view, that all aspects and elements of equality referred to in the “zero draft” are already enforceable legal rights under existing international human rights law. I would challenge anyone to point at an element that is not currently a recognised “right”, but something else, perhaps a political or ethical value, like “full equality of income”, for example. Within the recognised rights in the equality area, some may make more actionable targets than others, but none are purely aspirational.

Let me make explicit what is implied above. Equality can be seen as a right and/or as something other than a right. Within international human rights law, it is a right which is fundamental, central and cross-cutting. But imagine a culture in which the very notion of “rights” is missing or underdeveloped. Still, it could perfectly include equality among its basic values or organising principles. Or, imagine a rights-based culture, which recognises the right to equality as central, but which, for reasons of solidarity, humanity, religious love, whatever – aspires for more equality than a rights framework can deliver at present.<sup>5</sup>

In view of the above, the “zero draft” does nothing more than to confirm a right to equality whose scope and content lie within but are narrower and poorer than the currently recognised right to equality under international human rights law. The draft could have been much better in this regard, i.e. in reflecting the currently recognised right to equality, if it had included a far more robust target of adoption of comprehensive and effective national equality legislation (included in target 10.3 but through the vaguer “promoting adequate legislation”). It might have helpfully spelled out the essential elements of such legislation which the Equal Rights Trust has advocated consistently<sup>6</sup> and which, in our view, are not yet well understood.

In this case, do we have a “transformative shift” to equality here?

I think the answer is positive, but in the very limited sense that the development framework is finally trying to break its box and catch up with modern equality, with its evolving aims and frameworks.<sup>7</sup> This is a shift in the right direction, but there is some more catch-up to do.

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1 United Nations, *A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustainable Development: The Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda*, 2013.

2 UN High Commissioner for Human Rights, *Open Letter on Human Rights and the Post-2015 Agenda*, June 2013, p. 3.

3 *Ibid.*

4 Open Working Group on Sustainable Development Goals, *Introduction to the Proposal of The Open Working Group for Sustainable Development Goals*, 2014.

5 It is not so difficult to imagine the space “beyond rights”, or which is not yet reached by “rights”. Rights have expanded historically and may continue to expand, or not. Aiming at more equality in areas like health, genetics, or natural disasters, can require something more than enforceable rights.

6 See the Trust’s position paper re-published in the Special of this issue.

7 On this, see, for example, Hepple, B., *Equality: The New Legal Framework*, Hart Publishing, Oxford and Portland, Oregon, 2011.