

Institution: University of Oxford		
Unit of Assessment: 18 – Law		
Title of case study: Defining the right to equality in international human rights law		
Period when the underpinning research was undertaken: 2002–2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Professor Sandra Fredman	Role(s) (e.g. job title): Professor of the Laws of the British Commonwealth and the United States	Period(s) employed by submitting HEI: 01/10/1988 – present
Period when the claimed impact occurred: 2018 – July 2020		
Is this case study continued from a case study submitted in 2014? N		
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Fredman's research advances the understanding of the right to equality, beyond formal equality. This has resulted in a four-dimensional framework for assessing substantive equality, which is being applied at international level through incorporation into the United Nations Committee on the Rights of Persons with Disabilities General Comment No. 6 (2018) on Equality and Non-discrimination (GC6). GC6 sets out criteria for evaluating the progress of states in implementing the right to equality and non-discrimination under the Convention on the Rights of Persons with Disabilities (CRPD), ratified by 181 States. It is regularly referenced by the CRPD Committee in its recommendations to states to improve their compliance with the CRPD. Fredman's four-dimensional framework was also incorporated into the Abidjan Principles on the <i>Human Rights Obligations of States to Provide Public Education and to Regulate Private Involvement in Education</i>. The Abidjan Principles were adopted in February 2019 by 56 international signatories and have been widely endorsed, including by the UN Special Rapporteur on the Right to Education and the African Commission on Human Rights.</p>		
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>The right to equality has traditionally been understood as demanding that likes should be treated alike (formal equality). However, this formulation is limited: it might be satisfied if everyone is treated equally badly; it does not distinguish between measures perpetuating disadvantage and measures redressing disadvantage; and it only reaches acts of individual perpetrators rather than structural inequality. Courts and international bodies have recognized the need for a more substantive concept of equality, but its meaning remains unsettled.</p> <p>In her longstanding programme of research at the University of Oxford, Fredman has developed a framework for assessing substantive equality, based on doctrinal, theoretical, and comparative work, which overcomes the limitations of formal equality. It is based on four dimensions: 1) redressing disadvantage (the redistributive dimension); 2) addressing stereotyping, prejudice, stigma and violence (the recognition dimension); 3) facilitating voice and participation (the participative dimension); and 4) accommodating difference and achieving structural change (the transformative dimension) [R1, R3]. The framework is nuanced and sophisticated while constituting a clear and consistent approach for states in formulating law and policy; for monitoring bodies in evaluating state compliance; and for courts in interpreting the right to equality.</p> <p>The model was first formulated in Fredman's 2002 research paper 'The Future of Equality in Britain' (commissioned by the Equal Opportunities Commission (EOC) [R2]). Drawing on the law and experience of comparable jurisdictions alongside interviews with policy-makers and stakeholders, the research canvassed various understandings of equality, including 'equal treatment', 'equal opportunity', 'equality of results' and 'dignity'. It concluded that none of these conceptions alone was able to capture the full complexity of substantive equality. Equal</p>		

treatment permits equally bad treatment; equality of results is unrealisable; dignity and equality of opportunity, though popular, are vague.

Instead, Fredman's research suggested that the aims of equality should be specified in four dimensions, incorporating the strengths and compensating for the weaknesses of alternative conceptions. Importantly, these dimensions need to be considered simultaneously in evaluating whether a measure advances equality. Where there is a conflict, all dimensions should be optimised. For example, a social benefit system for disabled people, while redressing disadvantage, might require humiliating assessments, exclude the voice of those affected and fail to alter underlying structures. Such measures should be redesigned to take account of all these dimensions so far as possible [R1, R3].

Fredman has continued to refine the model, showing how applying the four-dimensional lens to evaluating equality law in a range of contexts can reveal the extent to which these laws and subsequent jurisprudence achieve or fall short of the four dimensions, and therefore point the way to strengthening these provisions. For example, the analysis of Article 14 of the European Convention of Human Rights [R4] demonstrates that this provision does address stigma and stereotyping (the second dimension) but gives less attention to the need for structural change, suggesting that more attention should be paid to this dimension to better achieve equality. Similarly in R5 the problems of intersectionality are better illuminated by addressing all four dimensions and their interactions. And finally in R6 some of the most complicated tensions, between religious freedom and the right to equality, can be more systematically analysed and resolved by considering the problem under each dimension as well as their interactions.

3. References to the research (indicative maximum of six references)

R1 (Book) S. Fredman, *Discrimination Law* (2nd ed.) (2011), chap 1, (Oxford University Press, Clarendon Law Series (Available on request))

R2 (Research report, external body) S. Fredman, *The Future of Equality in Britain* (Equal Opportunities Commission, (2002) (Available on request))

R3 (Journal article) S. Fredman 'Substantive Equality Revisited' (2016) 14 *International Journal of Constitutional Law* 712 DOI: 10.1093/icon/mow043

R4 (Journal article) S. Fredman 'Emerging from the Shadows: Substantive equality and Article 14 ECHR' (2016) *Human Rights Law Review*, 1 DOI: 10.1093/hrlr/ngw001

R5 (Research report, external body) S. Fredman 'Intersectional Discrimination in EU gender equality and non-discrimination law' (European Commission: European network of legal experts in gender equality and non-discrimination, 2016) DOI: 10.2838/241520

R6 (Journal article) S. Fredman 'Tolerating the Intolerant: Religious Freedom, Complicity, and the Right to Equality' (2020) *Oxford Journal of Law and Religion* DOI: 10.1093/ojlr/rwaa017

4. Details of the impact (indicative maximum 750 words)

Fredman's four-dimensional model for assessing substantive equality set out in R2 proved convincing to the EOC. In the 2006 Equality Act, it became the basis for the general duties of the newly established Equality and Human Rights Commission; and in 2010, it was incorporated in amended form in Section 149(3) Equality Act 2010 which is cited in several UK court decisions, including in the Supreme Court. It has now been applied at international level:

Informed and influenced States' compliance with their legally binding obligations under the UN Convention on the Rights of Persons with Disabilities (CRPD) on equality and non-discrimination through incorporation into the United Nations Committee on the Rights of Persons with Disabilities General Comment No. 6 (2018)

In 2018, the United Nations Committee on the Rights of Persons with Disabilities issued a draft General Comment on equality and non-discrimination and initiated a consultation process. General Comments explicate rights mentioned in a specific human rights treaty and are authoritative interpretations of individual human rights or of the legal nature of human rights obligations. The UN uses them to provide orientation for the practical implementation of human rights and form a set of criteria for evaluating the progress of states in their implementation of these rights.

The Oxford Human Rights Hub at the University of Oxford, led by Fredman, submitted a response to the consultation that the Committee should adopt Fredman's four-dimensional model **[R1, R3] [C1]**. This was accepted by the Committee, which incorporated the model **[R1, R3]** in the final version of the General Comment **[C2]**. Paragraph 11 of GC6 states: *"Inclusive equality is a new model of equality developed throughout the Convention. It embraces a substantive model of equality and extends and elaborates on the content of equality in: (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"* **[C2]**. In 2019, the Chairperson of the UN CRPD, who was responsible for drafting the General Comment, publicly acknowledged *"These four dimensions are almost identical with the components of the transformative model of equality developed by Sandra Fredman and her research team. And ... the Committee was significantly inspired by their written submissions ... in this regard"* **[C3 and Corroborator 1]**.

Since the adoption of GC6 the Committee has reviewed compliance reports from 25 States. The Committee issues Concluding Observations to States to communicate the results of these reviews and to make recommendations for change **[C4, and example reports C4a and C4b]**. The Concluding Observations illustrate how GC6 is being used to inform and influence States. In 15 Concluding Observations, there is explicit reference to GC6 as the guiding document that should inform the State as to how to comply with the obligations arising from the Convention on equality and non-discrimination. States therefore need to consult the GC in order to understand the nature and extent of their obligations. In addition, five categories of recommendations regularly used by the Committee draw directly on Fredman's four dimensions of the right to substantive equality **[R1, R3]**. For example, in 19 countries, the lack of measures in place to protect people with disabilities from intersectional and multiple discrimination reflected the need to redress disadvantage (Fredman's first dimension). This combined with the requirement to address stigma and stereotyping (the second dimension) became a key recommendation to countries including Albania, Australia, El Salvador, Iraq, Kuwait, Myanmar, Norway, Rwanda and South Africa. For example in relation to Kuwait **[C4a]**, the Committee stated: *"The Committee recalls its general comment No. 6 (2018) on equality and non-discrimination and recommends that the State party: ... (d) Remove any derogatory language against persons with disabilities from all legislation, including the Civil Code, the Penal Code and the Code of Civil Procedure."* The duty to adopt reasonable accommodation measures falls under the accommodating dimension of equality (Fredman's fourth dimension). 13 states were called on to fulfil this duty, while one, India, was praised for doing so: *"The Committee welcomes the State party's adoption of legislation recognising and enforcing the rights of persons with disabilities, such as ... protection from discrimination on the basis of disability, including the denial of reasonable accommodation in different areas of life"* **[C4b]**. Similarly, the adoption of affirmative action measures falls under the need to redress disadvantage (Fredman's first dimension). 13 States were praised for adopting measures of this nature while six were recommended to implement this duty. Finally, the call for specific participation of persons with disabilities in political

processes falls under the participation dimension (Fredman's third dimension). Five states were praised for adopting such measures [C4].

Asserted the human rights obligations of States to provide public education and regulation of private involvement in education through inclusion in the Abidjan Principles

Fredman was one of nine individuals who lead the drafting process of the Abidjan Principles [C5]. The Principles are the new reference point for governments, educators and education providers when determining the respective roles and duties of States and private actors in education. They seek to support States and other stakeholders in implementing the right to education by providing detailed guidance based on States' existing legal obligations in international human rights law regarding the delivery of education. Developed by a consortium of international organisations and experts, the Principles were adopted in February 2019 in Abidjan, ratified by 56 international signatories.

Fredman's research [R1, R3] principally informed drafting on Rights to Education and Rights to Equality. Her four dimensional conception of equality was incorporated into Paragraph 23 of the Abidjan Principles: "*States must ensure the realisation of the right to equality in the enjoyment of the right to education, which includes four dimensions: a fair redistributive dimension to address socio-economic disadvantages; a recognition dimension to combat stigma, stereotyping, prejudice and violence, and to recognise the dignity of human beings and the intersectionality of different grounds of discrimination; 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 a transformative dimension to accommodate difference as a matter of human dignity and institute systemic change*" [C6].

The Abidjan Principles have been incorporated and implemented internationally in a number of ways. The UN Special Rapporteur on the right to education, dedicated her April 2019 report [C7], to an analysis of the Sustainable Development Goals (SDG) in accordance with the right to education with particular reference to the significance of the Abidjan Principles. Subsequently, the UN Human Rights Council adopted a resolution recognising the Abidjan Principles [C8] a crucial step which, according to India's representative on the Abidjan drafting committee '*...will provide guidance to State authorities, institutions and courts in protecting and implementing the right to education*' for countless children worldwide [C9]. In June 2019 the African Commission on Human and Peoples' Rights, a quasi-judicial body tasked with protecting human rights throughout the African continent, published a landmark resolution regarding the role of private actors in education and health and recognised the Abidjan Principles as guidelines for States to meet their human rights obligations [C10]. Later in July 2019, the High Court of Uganda held that the government's policy on financing secondary education infringed on the right to equality and freedom from discrimination and required the government to seek guidance from the Abidjan Principles in designing education in the country [C11]. Finally, in November 2019, the Paris Peace Forum announced that the Abidjan Principles were selected out of 716 projects from 115 countries as one of the ten 'most promising governance projects' that will be awarded support for scale-up. This showcases the global importance of the Abidjan Principles as the selection was based on a range of criteria including the 'quality of the project and its importance and relevance to current global governance issues' [C12].

5. Sources to corroborate the impact (indicative maximum of 10 references)

C1: Fredman et al 'Achieving Transformative Equality for Persons with Disabilities: Submission to the CRPD Committee for General Comment No.6 on Article 5 of the UN Convention on the Rights of Persons with Disabilities'

C2: United National Convention on the Rights of Persons with Disabilities: General comment No. 6 (2018) on equality and non-discrimination

C3: Text from *Keynote at the Berkeley Comparative Equality and Anti-Discrimination Law Study Group Annual Conference 2019* by the Chairperson of the UN CRPD. See also **Corroborator 1:** Chairperson of the UN CRPD.

C4: UN Human Rights Treaty Body Database: The database is available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=5 Example reports saved:

C4a – United Nations Convention on the Rights of Persons with Disabilities. Concluding observations on the initial report of Kuwait

C4b – United Nations Convention on the Rights of Persons with Disabilities. Concluding observations on the initial report of India.

C5: Drafting Committee of the Abidjan Principles:

<https://www.abidjanprinciples.org/en/support/drafting-committee>

C6: Abidjan Principles on The Human Rights Obligations Of States to Provide Public Education And To Regulate Private Involvement In Education. https://www.abidjanprinciples.org/s/Online-version_A4_WEB_COUVTEXTE_THE-ABIDJAN-PRINCIPLES_Nov_2019.pdf

C7: Report of the UN Special Rapporteur on the right to education, 10 April 2019:

https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/41/37

C8: UN Human Rights Council Resolution:

https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/41/L.26

C9: Press Release: 'Drafting committee welcomes the recognition of the Abidjan Principles by the United Nations Human Rights Council':

<https://www.abidjanprinciples.org/en/news/2019/7/15/drafting-committee-welcomes-the-recognition-of-the-abidjan-principles-by-the-united-nations-human-rights-council>

C10: African Commission on Human and Peoples' Rights Resolution:

https://www.achpr.org/index.php?url=sessions/64th_os/resolutions/420/

C11: Initiative for Social Economic Rights v Attorney General (Judgement of the High Court of Uganda) paragraphs 23 – 24, 43 <https://iser-uganda.org/images/downloads/scan0020.pdf>

C12: Abidjan Principles awarded support by the Paris Peace Forum 2019:

<https://www.youtube.com/watch?v=hbsMnpSfrRo&feature=youtu.be>