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ARTICLE



Claiming women's social and economic rights in Australia

Beth Goldblatt ^{a,b,c}

^aFaculty of Law, University of Technology Sydney, Sydney, NSW, Australia; ^bAustralian Human Rights Centre, Faculty of Law, University of New South Wales, Sydney, NSW, Australia; ^cSchool of Law, University of the Witwatersrand, Johannesburg, South Africa

ABSTRACT

The article discusses the status of social and economic rights within Australia and why these rights have special significance for women, particularly under neoliberalism. It argues that unless these rights are realised, women's equal and meaningful participation within our democracy will remain constrained. The article examines the issues that advocates have raised regarding these rights through international and domestic avenues. It suggests that despite their limited enforceability, framing women's claims in terms of social and economic rights has some value within struggles to achieve women's equality and deepen democracy in Australia.

KEYWORDS

Social and economic rights; women; International Covenant on Economic, Social and Cultural Rights; neoliberalism; poverty; equality

Introduction

Full and equal participation in society rests on access by all people to the basic rights and freedoms that make democracy possible. While civil and political rights are essential, on their own they are not enough to ensure this participation. Social and economic rights that guarantee, amongst other things, people's access to education, work, health, shelter and livelihood are also prerequisites for meaningful contributions to democratic citizenship (Marshall 1959). Many Australians have benefited from universal education, health care, fair employment, and social security, which have enhanced their citizenship opportunities. But certain groups with less access to these benefits, such as people with disabilities, Indigenous Australians and single mothers, experience exclusion and disadvantage that undermine our democracy. The neoliberal era has seen attempts to trim and tighten elements of the welfare state in Australia (Saunders and Deeming 2011). The austerity agenda has become more explicit in recent years, accompanied by an ideological campaign against welfare reliance (Mendes 2017). In our wealthy country, almost three million people are living in poverty, and the numbers of poor children are growing (Australian Council of Social Service, ACOSS 2016b, 11).¹

Women are more likely to face poverty due to lower employment and the gender pay gap,² child care responsibilities, and smaller superannuation savings (ACOSS 2016b, 32). Women are also more likely to be sole parents, and face homelessness and domestic violence, all of which impact on their employment opportunities and income. Sole

parents, the vast majority of whom are women, are significantly poorer than the average with almost a third of these households living below the poverty line (ACOSS 2016b, 19). Domestic violence is the leading cause of homelessness for women and children in Australia with services having to turn thousands away each year (Homelessness Australia 2016). Federal funding cuts to family violence and community legal services have seen tens of thousands of violence victims turned away from these services (Homelessness Australia 2016). Domestic violence also impacts on women's work performance, opportunities, and income (McFerran 2011). By failing to deliver the equal rights and entitlements owed to all, Australia is limiting the opportunities of women to fully participate in our democracy.

The structural disadvantages confronting Australian women lead to an obvious interest by their advocates in using the full range of democratic accountability mechanisms to challenge these inequalities. As van Ham and Chappell (2017 (in this special issue)) explain in the introduction to this special issue, these accountability mechanisms take vertical (electoral), horizontal (courts) and diagonal (civil society) forms. This article considers the use, by women's groups, of formal human rights avenues at the international/United Nations (UN) level, along with some of the (limited) domestic human rights mechanisms (in particular, the Parliamentary Joint Committee on Human Rights). The international legal framework provides for some horizontal accountability between States although not necessarily within a State's domestic legal framework. In Australia, where international human rights are not fully incorporated into our law, this international oversight has limited force. The Parliamentary Committee is a scrutiny body that operates as both a horizontal oversight accountability mechanism to test proposed legislation against Australia's human rights commitments, and is also a small diagonal space for public engagement with Australia's federal legislative process.

This article begins by examining the way in which neoliberalism intrudes into women's social and economic rights. It argues that this has negative implications for women's democratic participation. It suggests that claims by women for their social and economic rights are also attempts to deepen their access to democracy and full citizenship of Australia. The chapter then briefly outlines the nature and status of social and economic rights. It discusses how women's rights advocates have identified these rights as a space for engagement and development. Thereafter it sets out the status of social and economic rights in Australia. The article surveys and discusses some of the issues implicating social and economic rights that have been raised by advocacy groups in domestic and international fora. This survey demonstrates how diagonal and horizontal accountability mechanisms are being used by civil society within Australia and at the international level. The article concludes by suggesting that despite the constrained legal framework and limited space for vertical or horizontal accountability on human rights, claiming women's social and economic rights remains of some value within struggles to address gender inequality and realise women's citizenship entitlements in the face of neoliberalism.

Neoliberalism, women, democracy and rights

Feminist economists and political theorists have explored the way neoliberalism has undermined women's social and economic rights while limiting ideological space for

engagement with alternatives to it (Elson 2002). It has led to a crisis in capitalism that is 'in large part a *social crisis*, as untrammelled marketization endangers the fund of human capacities available to create and maintain social bonds' (Fraser 2013, 228). Neoliberalism is more than just a system of economic rules but is a 'governing rationality that disseminates market values and metrics to every sphere of life and construes the human itself as *homo oeconomicus*' (Brown 2015, 174). The economic and social impacts are accompanied by a destructive commodification that extends even to the social reproductive spheres of child and elder care and education (Folbre 2001; Fraser 2013, 228). Gender subordination is both deepened and fundamentally changed under neoliberalism: Public provision of welfare is removed or privatised leaving individuals, primarily women, to carry the cost (Brown 2015, 105). Wendy Brown (2015, 106–107) notes that:

The persistent responsibility of women for provisioning care of every sort, in and out of the household, mean that women both *require* the visible social infrastructure that neoliberalism aims to dismantle through privatization and *are* the invisible infrastructure sustaining a world of putatively self-investing human capitals.

While economic necessity has increasingly pushed Australian women into the workforce, it has not adequately relieved them of their household and care obligations.³ Time-use scholars studying the harmful impact of care inequalities between men and women in Australia have found that women feel more 'rushed' and pressured than their male partners (Craig and Brown 2017). If the experience of balancing work and care is a growing challenge for women in couple relationships, then sole parents are far more severely affected. Single mothers are, according to Brown (2015, 107), designed to fail because they cannot fit the frame of a 'responsibilized neoliberal subject', particularly in the context of ever increasing withdrawal of public support. These women are meant to be economically engaged while solely responsible for the care of their children, yet, in the context of under-employment, limited and costly child care, lower pay and high costs of living, this is close to impossible for many single mothers. In Australia, where extreme austerity measures have been avoided due to our greater weathering of the financial crisis, there has nevertheless been a systematic cutting back of sole parents' welfare benefits over the past decade (Phillips and Joseph 2016; Goldblatt 2017a).

Other groups such as Indigenous women, older women, women with disabilities, survivors of domestic violence, and refugee and migrant women face particular challenges in Australian society due to poverty, inadequate or inappropriate services and intersectional discrimination. For example, girls with disabilities face significant barriers in their access to education (WWDA 2013) and the numbers of Indigenous women being jailed, often for 'economic offences' such as non-payment of fines and unlicensed driving, is increasing (MacGillivray and Baldry 2015).

All of these barriers prevent what Nancy Fraser (2008) calls 'participatory parity', which is required for a just society. Social exclusion occurs, even within a democracy, where there is distributive injustice or economic inequality; status or cultural inequality; and inadequate (or mis-) representation where not everyone has an equal voice in community decision-making. Social and economic rights violations are 'maldistributions' that contribute, along with other gaps in our cultural and political landscape, to the exclusion of women from equal participation in our democracy and to the full benefits

of a just society. Economic disadvantage limits democratic participation either because women are so immersed in survival struggles that they cannot fully participate as active citizens or because barriers such as sexual harassment in the workplace and educational institutions impede their 'effective participation in political life' (Nussbaum 2002, 45). At the same time, unequal political power at the household level and in the wider society results in unequal gender distributions (Liebenberg 1999; Fredman 2011, 16). Brodsky and Day (2005, 162) note that '[p]overty perpetuates women's under-representation in governments and in decision-making and their lack of political influence'. Struggles to realise social and economic rights by women in Australia are not simply aimed at accessing the resources to which they are entitled. Fundamentally, they are also struggles for the means to fully engage in society and in the democratic life of this country.

Social and economic rights

Social and economic rights emerged out of struggles for fair workplaces, economic redistribution and welfare safety nets in the 18th and 19th centuries.⁴ They first appeared in national constitutions early in the 20th century. They were included in the 1948 Universal Declaration of Human Rights (UDHR) alongside civil and political rights but because of divisions between the major powers over their status, civil and political rights were separated from social and economic rights in the process of drafting binding treaties. The rights in the resultant treaties, the International Covenant on Civil and Political Rights (ICCPR 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966), have, however, been recognised as being 'indivisible' in terms of the Vienna Declaration (1993, para 5).

Despite their contested beginning, most countries of the world (165 in February 2017) have ratified the ICESCR. Social and economic rights are also present in many of the specific human rights treaties such as those dealing with race, women and children⁵ and appear in regional human rights instruments. In recent decades there has been a marked increase in the number of national constitutions that contain social and economic rights. In 2013 more than 90% of 195 constitutions contained at least one social or economic right (Jung, Hirschl, and Rosevear 2014, 1053), the most common being the right to education.

Despite this dramatic increase in the legal acceptance of social and economic rights, in many respects they retain their second-class status: they are often misunderstood, and even neglected. According to Philip Alston, the UN Special Rapporteur on extreme poverty and human rights, social and economic rights are paradoxically widely acknowledged in the international and expert realm yet 'largely invisible in the law and institutions of the great majority of States' (Report of the Special Rapporteur on extreme poverty and human rights 2016, 4). While they may appear in national constitutions they are not always justiciable, and even where they are, there is inadequate evidence to show that they are achieving significant changes to the allocation of resources to those in need (Report of the Special Rapporteur on extreme poverty and human rights 2016, 12). In addition, they are being undermined in some cases by 'the use of regional integration, bilateral and multilateral trade and investment agreements, or international financing arrangements, to privilege competing interests that effectively trump human rights considerations' (Report of the Special Rapporteur on extreme poverty and human

rights 2016, 13). Alston calls for greater recognition, institutionalisation and accountability of social and economic rights at the national and international levels. He argues that ideological opposition to these rights by those wishing to maintain economic and political power is an ongoing challenge to their realisation.

Alston and many others working in the field of social and economic rights recognise that such rights should be marshalled in a range of non-legal strategies to bring about change but that the legal articulation of these rights remains an important part of their power. He refers in his report to the view of Karl Klare (2015; quoted in Report of the Special Rapporteur on extreme poverty and human rights 2016, 20–21).

Contemporary movements for social change cannot avoid working in the legal medium. There are no “law-free” zones in modern societies to which activists can repair so as to avoid entanglement with law and system. . . . Legal entitlements (including those formulated as “rights”) strongly influence the distribution of wealth and power and partially construct identities. Social change movements cannot avoid engagement on this terrain, and it is difficult to see how they can do this effectively without some type of “higher law” discourse of the kind captured in the idiom of fundamental rights.

Social and economic rights provide an opportunity for those tackling poverty and inequality today both within the horizontal accountability mechanisms such as courts and through diagonal mechanisms that engage civil society in opposing injustice. Where such rights become part of political discourse they may also impact on the vertical accountability mechanisms of representative democracy. These rights can be used to frame social and political struggles and as claims within which to articulate entitlements. This is, undoubtedly, a contested process, and the claim to rights as well as the interpretation of the rights themselves requires continual struggle over their status and meaning.

Women’s social and economic rights

Although social and economic rights were included in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW 1979), feminist lawyers only really began giving these rights close attention in the early 2000s. The ‘Montreal Principles on Women’s Economic, Social and Cultural Rights’, drafted by a group of experts in 2002, stressed the close connection between social and economic rights and non-discrimination and the equal rights of men and women to enjoyment of the rights in the ICESCR.⁶ They noted that without the full realisation of economic and social rights, women would remain unequal, and the promise of equality would result in formal changes alone. The Montreal Principles were in part aimed at informing the drafting of a General Comment by the Committee on Economic, Social and Cultural Rights (CESCR 2017) on the equal enjoyment of the rights in the Covenant by men and women. The CESCR produced this General Comment⁷ a few years later and took a more symmetrically ‘gendered’ rather than women-centred approach (Otto 2014, 223–224). Thus, the General Comment recognised that men could suffer gender discrimination while also recognising the systemic nature of women’s inequality. A range of other commentary by treaty body committees and UN Human Rights Council special procedures mandate holders deals with various social and economic rights and their gender

dimensions. Of the latter, the Working Group on Discrimination Against Women in Law and Practice has been most comprehensive in its 2014 report on women in economic and social life.⁸

There is a growing literature on women's social and economic rights (Goldblatt 2017b; Chinkin 2016; Goldblatt and McLean 2011; Farha 2008; Women and Poverty 2002; Liebenberg 1999). This writing takes a number of approaches to thinking about women's social and economic rights. It is broadly in agreement that poverty is gendered and that women's inequality shapes their access to income, property and their experiences of the workplace and public provision. Some writers argue that a fully developed concept of equality should be able to address the social and economic disadvantages that women face (Brodsky and Day 2002). Others focus on the relationship between equality and social and economic rights as a means of ensuring that underlying inequality between men and women is addressed through the realisation of social and economic rights (Fredman 2011), while others stress the importance of developing the gender content of each social and economic right so that the meaning of these rights takes account of women's experiences (Otto 2002). These approaches are not necessarily in conflict with each other and reflect both conceptual and strategic variations within an overall approach that marshals rights to address women's access to the material conditions that will allow them full and equal social, economic and political membership (Goldblatt and Lamarche 2014, 12).

Social and economic rights have been claimed by women at international and regional treaty body levels. They have also been claimed within the framework of national constitutions for issues such as access to water and sanitation for school girls, access to HIV medication to prevent mother to child transmission, access to child care, and the prevention of sexual harassment in the workplace (Goldblatt 2017b). They are also built into legislation at various levels of government in some countries of the world.

The status of social and economic rights in Australia

Australia is a party to most of the major human rights treaties including the ICESCR and CEDAW and some of the key fundamental and technical International Labour Organization (ILO) conventions.⁹ While Australia became a party to the CEDAW Optional Protocol in 2008, it has not yet joined the ICESCR Optional Protocol. Thus far, no Australian has used the CEDAW Optional Protocol. It is unclear why this opportunity to lodge individual complaints has not been taken given that a range of civil society groups are regularly involved in preparing shadow reports to the treaty committees. It may be that there is a lack of knowledge or capacity about this mechanism¹⁰ or because these groups do not feel that the effort is merited.

In addition to treaty body reporting, Australia submits itself to a four-yearly review (the universal periodic review) of its human rights record. The Human Rights Council provides special mandates to independent experts to consider thematic issues. Their reports may follow country visits or engagement with particular countries and concern rights violations by those countries within the mandate areas. Some of these have considered Australia's human rights record in certain areas including social and economic rights.

This list of international fora for engagement around social and economic rights includes a range of opportunities for women's groups in Australia. However, there is a real concern with the lack of enforceability in relation to these mechanisms. While Australia's rights violations can be exposed, and it can face criticism from other states parties and UN treaty committees, these do not result in any additional consequences that might compel action by it as a violating state. This has led some to dismiss international human rights mechanisms as toothless and therefore not worth engaging with. Others, however, see the value of registering protest, creating a record of violations, potentially shaming the government and denting its reputation at the international level where it may wish for greater influence. To some degree, the need to use these less than effective international avenues is related to the lack of strong domestic mechanisms for human rights recourse within Australia. Civil society groups are effectively forced to engage the horizontal accountability mechanisms at the international level for lack of adequate domestic alternatives.

Despite its status as a responsible international citizen with a proud liberal democratic tradition, Australia performs poorly in terms of domestic human rights avenues for its inhabitants. This is particularly so in relation to social and economic rights. Australia is one of a small number of countries without a bill of rights and one of only 16 countries in the world with no constitutionally protected economic, social and cultural rights (Jung, Hirschl, and Rosevear 2014, 1053). There are, however, two state and territory human rights acts (in the Australian Capital Territory (ACT), and Victoria) with the ACT legislation containing a single social and economic right, the right to education.¹¹

The idea of comprehensive federal human rights legislation was canvassed in 2008 by a government-initiated national human rights consultation (under the Brennan Committee) but recommendations for such legislation (National Human Rights Consultation Committee 2009) were not followed.¹² Instead, the government introduced the more limited *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) which requires human rights compatibility statements to accompany all proposed legislation and a Parliamentary Joint Committee on Human Rights (PJCHR) with powers to examine proposed and existing legislation for their compatibility with Australia's international human rights obligations, including the ICESCR. In a small number of instances the Committee has undertaken inquiries into particular pieces of contentious legislation. The public has been invited to make submissions to these inquiries. Since its powers are only recommendatory, the Committee offers a limited space for human-rights-based challenges to Australian laws. As with international treaty bodies, the Parliamentary Committee offers a space to challenge and possibly shame the government (while also educating parliamentarians, Ministers and their departments on human rights), but has no real teeth. Accordingly, it combines diagonal and horizontal accountability mechanisms in that it has some oversight function and includes some public input.

There are various Australian laws that protect social and economic rights, including labour rights in the *Fair Work Act 2009* (Cth), and outlaw discrimination in areas of social and economic life under anti-discrimination legislation such as the *Sex Discrimination Act 1984* (Cth) and the *Racial Discrimination Act 1975* (Cth). The latter act has, however, been suspended in instances where the government wished to introduce laws in conflict with it (Williams 2015, 2–3), which means that the rights it protects are vulnerable to legislative override. The *Sex Discrimination Act 1984* (Cth) has been criticised for its

inadequacies in addressing gender inequalities at a more systemic level (Allen 2016). The legislation defining the mandate of the Australian Human Rights Commission (AHRC) does not give it direct jurisdiction over ICESCR; however, it is arguable that responsibility for social and economic rights is part of its function.¹³

Both the UN level and the Parliamentary committees are quite limited mechanisms in the Australian system where courts have little scope to adjudicate human rights, and electoral processes have not traditionally engaged meaningfully with human rights issues. The lack of constitutional human rights protections presents difficulties for those wishing to use the courts to challenge laws or government action. Australia commits itself to international human rights law by way of treaties but many of the obligations these generate, particularly in relation to social and economic rights, are not incorporated into our domestic law. This means that the courts are constrained in their ability to adjudicate human rights matters (Williams 2015). One of the consequences of restricted domestic human rights accountability has been the emphasis on civil society advocacy for law reform via Parliament rather than a focus on legal change through the courts, as occurs in some countries with bills of rights. While women's groups are vocal in advocating for improved policies concerning their social and economic position within domestic debates, these are rarely framed in human rights terms. This may be because human rights discourse has little currency or history in these debates and, more specifically, because social and economic rights are not well understood within the Australian political landscape. The lack of legislated or entrenched social and economic rights restricts public engagement with the meaning and value of such rights, while civil and political rights such as freedom of speech have received more prominence in public debates.

Women's social and economic rights claims in Australia

Despite these obstacles, women's rights advocates have engaged with the international human rights accountability mechanisms as part of a range of strategic interventions on social and economic rights issues. While the government frequently ignores the condemnation of international human rights bodies, these advocates continue to see this work as necessary. This is perhaps because they see value in putting rights violations on the international record and because they retain hope that there may be some, albeit limited, shaming function of these bodies. Australia continues to display some ambivalence towards the UN human rights processes by ignoring or underplaying some of the negative findings against it, but at the same time aiming to be a major actor in putting itself forward for a seat on the Human Rights Council. There is some skepticism about the value of civil society interventions as well as fears that international law potentially co-opts feminist actors (Charlesworth 2011); however, many advocates continue to argue that the international human rights terrain remains a necessary avenue for struggles against women's oppression and disadvantage (Merry 2006). Social and economic rights, in particular, offer a normative basis for claiming constraints on the market by the state (and transnational bodies) and for the development of redistributive and emancipatory policies for women in a neoliberal context (Elson 2002). These rights may have value for Australian women facing poverty and disadvantage both in framing their demands

in internationally acknowledged terms and in their claims directed at domestic and international fora.

At the domestic level advocacy groups have approached the PJCHR to challenge laws that violate women's social and economic rights.¹⁴ The following sections focus on challenges to Australia's violations of its international commitments to women's social and economic rights at the international level and domestically through the PJCHR.

Australia: international human rights compliance

This section surveys the most recent reports of some of the key UN human rights treaty bodies on their references to women's social and economic rights in Australia.¹⁵ The reports of some of the Human Rights Council special mandates holders that concerned women's social and economic rights in Australia are also surveyed. Before looking at the concluding observations, recommendations and reports of a selection of these, the article discusses the most recent universal periodic review of Australia in relation to the country's record on women's social and economic rights. The aim of this survey is to demonstrate that advocacy groups are using these fora to raise a range of problems facing Australian women where service provision is inadequate or discriminatory, or has been reduced on the basis of 'austerity' arguments. The arguments and evidence in support of it have been used to urge international bodies to sanction the government for these violations. The UN bodies have responded with some strong recommendations on women's social and economic rights for the government to address. It is difficult to evaluate how effective such interventions are and what weight the government attaches to them. It seems possible that they provide one source amongst a number of sources of pressure on the government to act, and that together with pressure from civil society domestically, they sometimes contribute to policy shifts.

Universal periodic review

The universal periodic review of Australia, concluded at the end of 2015, made two broad recommendations regarding women's social and economic rights (Human Rights Council 2016). These related to closing the gender pay gap and improving women's economic position, and addressing violence against women with support services, housing and education. These recommendations point to a recognition that Australia, despite its developed and successful economy, is not doing enough to tackle the sexual division of labour and the poverty that results from violence experienced by women whose political agency in the home and workplace is constrained. The recommendations paid attention to the diversity of women and girls who should be protected from violence including women in remote areas, women from culturally and linguistically diverse groups, women with disabilities, indigenous women, and women migrants and refugees.¹⁶ The intersection of race and gender discrimination and its impacts on women's social and economic outcomes is clearly evident to the international audience. Generally, Australia was encouraged by some countries to treat economic, social and cultural rights as equivalent to civil and political rights, and to improve its domestic human rights framework.¹⁷

These recommendations were in all likelihood strongly influenced by the civil society shadow reports that highlighted a range of issues concerning women's social and

economic rights. The Human Rights Council compiled a summary of the 22 stakeholder submissions, which included the AHRC and various individual and joint submissions, including one from key human rights groups in Australia on behalf of a Non-Governmental Organisations Coalition (NGO Coalition) of 190 signatory organisations.¹⁸ The summary referred to the AHRC view that (para 9):

the gender pay gap had widened and recommended that Government: implement measures to close the gender pay gap, strengthen the representation of women in leadership and managerial roles, value and recognize unpaid caring work, and address the gap in retirement savings to assure women economic security in later life.

It also noted the AHRC's concern that violence against women was 'endemic and community attitudes to violence against women had not substantially improved' (para 12). The AHRC recommended implementation of the National Plan to Reduce Violence against Women and Their Children, which must reflect 'the diversity of women, include adequate and sustained funding for programmes and services and independent monitoring and evaluation' (para 12). It also noted the need for laws to prevent non-consensual sterilisation of people with disabilities (para 21). These references to violence against women implicate a range of human rights including social and economic rights and stress the role of state resourcing of services in a context where funding has been inadequate.

The stakeholder report also pointed to the following human rights concerns that affect women's social and economic rights: the increasing rate of incarceration of indigenous women; the lack of adequate child care; gendered poverty, particularly of older women (29% of over 65s were living below the poverty line); lack of adequate housing for people fleeing family violence (the most common cause of homelessness); the higher rates of violence against women in indigenous communities and the higher risk of assault to women with disabilities alongside funding cuts to services for gender-based violence; the need for greater resources to address trafficking; consistent decriminalisation of sex work and measures to end discrimination against sex workers. This report demonstrated the impacts of neoliberalism on Australian society through service gaps or cuts in critical areas of social need. It also showed how economic disadvantage was underpinned by patriarchal attitudes and practices that together shape the gendered life experiences of Australian women. Advocacy groups provided important evidence and sophisticated arguments to explain the complexity of intersectional gender disadvantage and effectively framed these as systemic rights violations.

Treaty committees

The reports of some of the treaty committees, informed by shadow reports from civil society, regarding Australia's performance in relation to women's social and economic rights, point to a range of concerns.

The Committee on the Rights of Persons with Disabilities (CRPD Committee) called for strategies to increase disabled women's labour force participation (2013, 7). This followed the active participation of Women With Disabilities Australia (WWDA), an advocacy group that was included as part of a small delegation to Geneva to make representations to the CRPD Committee in 2013 (WWDA 2013). Evidence by the same group to the Committee Against Torture (CAT) assisted the Committee to link violence against women, intersectional vulnerability, and poverty.¹⁹ The CAT noted the high

incidence of violence against women in Australia, particularly affecting Indigenous women and women with disabilities, and recommended greater provision of health, housing, and welfare services (2014, 3).

The Committee on the Rights of the Child (CRC Committee) recommended a review of the government's paid parental leave scheme to enable working women to breast-feed exclusively for six months (2012, 15). This may have been in response to submissions by a breast-feeding advocacy group.²⁰ It also recommended improved programmes to educate adolescents on sexual and reproductive health, particularly within Indigenous and 'socioeconomically disadvantaged communities' (16). It called for improved early childhood care and education, finding Australia's current provision inadequate (19).

The Committee on the Elimination of Racial Discrimination (CERD) expressed concern about inequitable access to services by minority communities, particularly Muslim women and the growing rate of incarceration of Indigenous women (2010, 2, 4). This followed evidence from an NGO Coalition on discrimination faced by women that impacted their access to housing and public transport (2010, 106) and data on the growing numbers of Aboriginal women in prison (72).²¹ Another major representative NGO submission²² that detailed issues of gender inequality in Australia and linked civil and political violations to social and economic issues (2008, 62–68) appeared to influence the Human Rights Committee (HRC). The NGO Coalition included immigrant and Muslim women's groups. The HRC Report referred to the high levels of violence against women and the particularly high incidence amongst Indigenous women as well as a concern regarding trafficking of women in Australia (HRC, 2009, 3).

The Committee on the Elimination of Discrimination against Women (CEDAW Committee) raised a range of concerns about the gender segregation in Australia's labour force and the pay gap, the lack of superannuation provision for women on parental leave as well as the limited duration of this leave (2010, 6–7). It also raised concerns about violence and disadvantage facing Indigenous women and girls in accessing education, health and social services and the economic difficulties facing migrant women (6–7). One of the NGO shadow reports, prepared by the YWCA and Women's Legal Services, was endorsed by 135 organisations including the major women's advocacy bodies across a range of sectors.²³ It highlighted key areas of discrimination facing Australian women that impacted on their social and economic rights and appears to have been influential on the Committee. It noted that care work in Australia is 'feminised' and undervalued and recommended increased funding to the community sector (YWCA and Women's Legal Services 2009, 51). The report also noted the disproportionate burden of unpaid caring work by women workers (53). This is significant analysis and evidence that accords with critiques of the growing disadvantages facing women under neoliberalism.

Lastly, the Committee on Economic, Social and Cultural Rights (CESCR 2017) noted its concern that 'women continue to experience disadvantages across key areas, including work, health, education, and housing' (2017, 5). It recommended that Australia increase its efforts to reduce the gender wage gap by ensuring women's access to male-dominated fields and by promoting the sharing of family responsibilities (5). It also recommended greater provision of accommodation and services, including legal services for victims of domestic violence (7). It expressed concern at violence against women with disabilities in institutional settings and the problem of obesity facing low-

income women (7, 10). These recommendations were informed by shadow reports including from an NGO Coalition representing 46 peak and civil society organisations including a number of women's groups.²⁴ The report provided detailed evidence and analysis on the gender wage gap and the impact on women's economic security on retirement (NGO Coalition 2017, 30–31). It also referred to the legislative measures that have been taken by successive governments to reduce the social security benefits of single parents and the consequent feminisation of poverty, including amongst older women (32–33). It also covered issues such as parental responsibilities, pregnancy leave and child care (33–36). The report linked the issue of violence against women to marginalisation and poverty and noted the gaps in service provision and housing (36–41). This comprehensive and insightful report undoubtedly informed the conclusions of the Committee.

The various treaty committees have, in their most recent reports, provided a clear set of recommendations to Australia on a range of issues relating to women's social and economic rights as highlighted to them by women's rights advocates. These issues concern the imbalances in workplace rights and opportunities for women in particular relating to the gender pay gap, pregnancy leave, child care and superannuation (itself a result of women's disrupted work lives and lower pay). Despite their growing workforce participation, women are still expected to supply the bulk of the social reproductive labour upon which neoliberalism depends (Brown 2015). Where disability, Indigenous or other minority status, youth or old age intersect with gender, women in these groups face even harsher challenges. The prevalence of violence against women compounds these difficulties. The need to properly fund social services for women confronting these challenges is a responsibility that the Australian state is not adequately meeting. Clearly the social and economic disadvantages impact politically on the participation of women in government, business and other areas of leadership.²⁵ At the same time, vulnerable and marginalised groups such as Indigenous women and women with disabilities have limited political capacity to challenge the conditions that deepen their inequality. The shadow reports have effectively focused the attention of a range of international human rights bodies on the complex intrusions into Australian women's social and economic rights.

Special procedures mandates holders

The treaty committee reports have been supplemented by reports on specific issues by some of the Human Rights Council special procedures mandates holders regarding Australia's human rights violations of women's social and economic rights. These follow consultations with civil society groups to gather information on issues of human rights concern where women's advocates have often been vocal. For example, the Special Rapporteur on trafficking in persons, especially women and children (2016), Joy Ngozi Ezeilo, reported that there was a growth in trafficking in Australia, particularly of sex workers, but also other forms of trafficking such as forced and exploitative labour, forced marriage and some cases of exploitative domestic labour (2012). The human rights framing of this issue may have informed the introduction by government of anti-trafficking and slavery legislation in 2013. In another case, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya, reported on the situation of Indigenous Australians with a particular focus on the Northern Territory Emergency Response, which concerned the alarming levels of

violence against women and children in that area of the country (2010). While welcoming some of the efforts to address this violence he raised concerns about women's access to legal services and the need for housing and social services. He also questioned the conditional welfare measures that were causing stigmatisation of women in the Northern Territory. The domestic and international condemnation that greeted these measures failed to shift the government (Goldblatt 2016, 143–149). A request by NGOs to address the Australian government on the issue of proposed cuts to single parents' welfare in 2012, led the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, to write a letter, together with the Chair of the Working Group on the issue of discrimination against women in law and practice, to the Australian government asking them to address a range of questions about the proposed legislation.²⁶ The desperation of single mothers faced with reductions to their social security in the wake of the global financial crisis led this group to appeal to human rights bodies alongside other advocacy efforts to stop the cuts, although with little success.

This survey has pointed to a range of UN reports that challenge the Australian government to improve the social and economic rights of women in this country. All of these reports have been prepared with reference to civil society briefings that highlight and provide evidence of non-compliance by Australia of its human rights obligations. Thus civil society, in operating within the international horizontal accountability mechanisms, is contributing to one source of pressure being exerted on the government. This framing of issues in rights terms and claiming social and economic rights as women's rights through the international mechanisms is part of efforts to influence government in the absence of more direct means of doing so domestically.

Australia: domestic human rights compliance

As noted above, there are some avenues to bring limited challenges to violations of women's economic, social and cultural rights within Australia, including under the *Fair Work Act 2009* (Cth) and the *Sex Discrimination Act 1984* (Cth). The Parliamentary Joint Committee on Human Rights (PJCHR) is most directly concerned with evaluating whether laws are consistent with international human rights, including social and economic rights. As discussed, its powers are limited to fulfilling a scrutiny function, and the Committee's findings do not bind Parliament. Nevertheless, in the absence of other domestic horizontal accountability mechanisms, civil society groups have looked to this Committee as a possible space for intervention on human rights issues. These interventions are seen as one amongst a range of attempts to challenge government alongside efforts to achieve electoral change and law reform. This section draws out two examples of women's social and economic rights considered by the PJCHR based on a survey of instances where the Committee conducted specific inquiries and received comment from the public,²⁷ as well as regular reports of the Committee during 2016. The latter do not involve public input, and in these instances civil society has no ability to advocate for its views. In this situation the Committee is simply an internal Parliamentary oversight body functioning as a limited horizontal accountability

mechanism. In the former case, where the Committee seeks public comment, its function is supported by diagonal accountability through civil society participation.

One of the issues that came to the Committee for consideration in 2016 was a Bill to amend the Paid Parental Leave Act 2010 (Cth) called the Fairer Paid Parental Leave Bill 2015 (Cth). Consideration of the Bill involved the ordinary internal processes of the Committee rather than an inquiry open to the public. The aim of the Bill was to prevent new parents from claiming paid parental leave from both government and the employer. Where an employer was already paying in terms of an enterprise or some other agreement, employees could not claim from the government. The Bill was presented as an equity measure but was obviously a budget saving measure in the context of an already ungenerous parental leave scheme relative to that of many other developed countries. The Committee recognised that the measure was retrogressive in attempting to remove an entitlement that had been provided but found that this was legitimate in that it would produce budgetary savings and even out benefits rather than remove them (PJCHR 2016a, 44). The Committee seemed to take little account of the counter-arguments that the original design of the scheme was to be complementary to existing payments won by certain employees that would allow them to extend their leave beyond 18 weeks (an amount viewed by many as too short). The rights of women and their children to retain the workplace entitlements that government had provided for them after years of struggle were seemingly ignored by the Committee, which focused on creating 'evenness' for those with employee benefits and those without. This was effectively a leveling down of benefits in the context of a hard-won but somewhat minimalist maternity leave provision. Australia was one of the last developed countries to introduce paid maternity leave in 2011 despite international condemnation. Levelling down to achieve 'equity' has proved a common argument by governments looking to cut welfare budgets. The neoliberal ideological frame puts economic 'rationality' above human need where the poor, often disproportionately constituted by women, must bear the cost. This example illustrates the problem with the legislative mandate of a Committee that, in conducting its scrutiny functions, does not consider arguments from those affected by proposed legislation but only considers whether government ministers' arguments meet a human rights test. Of course, the Bill was also debated in the broader Parliament and in the media, and was the subject of advocacy by civil society groups following significant controversy. It did not pass in 2015 and after being re-introduced in 2016 again failed to pass and was finally taken off the table when the Senate failed to accept the changes in 2017. In this instance, the Parliamentary process informed by the public response led to a positive outcome for women's economic rights.

The inquiries of the Committee do, however, provide more opportunity for alternative views. This seems to have led to more nuanced recommendations by the Committee. In the inquiry into social security cuts for sole parents the Committee found that the legislation implicated women's rights to equality and social security and questioned its compatibility with human rights (PJCHR 2012, 2013a). This finding followed submissions by advocacy groups and experts who advocated against the measures in terms of their retrogressive nature and incompatibility with human rights (Goldblatt 2016, 139). The turn to human rights by advocacy groups that had previously focused on political appeals arose from the new space created by the

existence of the PJCHR. For example, the participation of the National Council for Single Mothers and Their Children in the inquiry followed a growing appreciation by this group of the human rights dimensions of their fight for fair social security. Their evidence of women's and children's experiences of hardship exposed the Committee to the human dimensions of the cuts and their erosion of human rights. Parliamentarians on the Committee appear to have become more informed about the human rights implications of laws that were previously seen as unconnected to such rights, particularly social and economic rights.

Despite the recommendations of the Committee, Parliament passed the legislation cutting payments to thousands of single parents, and demonstrating the limitations of the PJCHR as a check on legislative intrusions into human rights. The budget-saving agenda of neoliberalism again trumped the rights of needy parents, the bulk of whom are women taking on the unpaid caring functions necessitated by the economic system and supporting its maintenance as described by Brown (2015).

In the inquiry into income management in the Northern Territory the Committee accepted that blanket imposition of such measures restricted the rights of Indigenous welfare recipients, the majority of whom are women (PJCHR 2013b, 60). It found that (PJCHR 2016b, 61):

The income management measures engage and limit the right to equality and non-discrimination, the right to social security and the right to privacy and family. Although the committee considers that under certain conditions income management is a legitimate and effective mechanism, evidence before the committee indicates that compulsory income management is not effective in achieving its stated objective of supporting vulnerable individuals and families.

Again, the findings of the Committee failed to alter the government's direction on this issue. Attempts to control the welfare spending of a vulnerable group with little political capacity to resist these unfair measures accorded with the government's ideological approach to demonising the poor and marginal in order to control their access to the social and economic benefits of citizenship (Cox 2011).

The PJCHR is a small space within which to engage Parliament on the human rights implications of its laws (whether by its own members or in specific cases by the public). Women's social and economic rights, particularly the right to social security, have been quite central to some of the Committee's deliberations. Even where its findings have been favourable, the Committee has had little impact in altering the direction of Parliament in passing laws that are at variance with women's social and economic rights. It is therefore understandable that this Committee is not regarded by civil society as a critical venue for the monitoring and protection of human rights. The AHRC has noted in a submission to the CESCR that the PJCHR is often ignored by Parliament and does not replace the need for 'full incorporation of the obligations in ICESCR into domestic law, such as through a national human rights act or charter of rights' (2017, 3). It appears to be used, alongside a range of other forms of advocacy aimed at government, opposition parties and the public, as one channel for engagement. It is probably not viewed by any advocacy groups as a key site for activism in the way that a horizontal mechanism like a court might be viewed in a country where the courts are empowered to determine human rights compatibility.

Conclusion

The lack of enforceability of social and economic rights in Australia has resulted in limited public understanding of their nature and content. This status affects their value for those articulating claims. While women's groups have been vocal about cuts to services or the lack of affordable housing for violence survivors, they do not always foreground human rights violations in these cases. If they are aware of the human rights dimensions, they may be reluctant to use this language because it has limited currency or purchase and little effect without proper mechanisms for redress. This reflects the form of constitutional system operating in Australia that, while democratic, does not contain comprehensive human rights guarantees and does not give courts a significant role in adjudicating human rights.

Rights are most likely to be referred to as a form of official complaint at the international level designed to document problems, register concern and shame governments within the international community. At the domestic level there has been some reference to these rights by civil society groups approaching the PJCHR but this is seen as an even more limited avenue than the international one. Nevertheless, social and economic rights continue to be invoked by some women's advocates within these international and domestic horizontal accountability mechanisms as one strategy amongst a number to frame entitlements and to assert claims.

While rights claims may have little impact in terms of domestic or international legal avenues, there may be normative impact in highlighting that economic and social issues do not just concern policy choices but implicate fundamental entitlements (such as maternity benefits). This serves to challenge the neoliberal language of budget deficits, spending cuts and belt-tightening by introducing ideas of agreed universal principles based on commonly held values. As Alston notes (Report of the Special Rapporteur on extreme poverty and human rights 2016, 6):

Whether in the home, village, school or workplace, or in the political marketplace of ideas, it makes a difference if one is calling for the realization of collectively agreed and internationally recognized and defined rights to housing or education, rather than merely making a general request or demand.

Human rights can be mobilised not simply to assert claims but to highlight the underlying causes of rights violations in the neoliberal economic system and to frame transformative responses. Kabeer (2015, 8) explains the critical importance of 'framing' in social struggles:

It is not simply the resources that organizations are able to marshal that determines their effectiveness in getting claims heard but also the extent to which they are able to shape the information, arguments, signs, symbols and images at their disposal into compelling narratives that have the capacity to mobilize wider support for these claims and resonate with those who have the power to act on them.

Challenging neoliberalism's harsh impacts on women, particularly those most marginalised, requires a range of strategies. One of these should include the claim for social and economic rights by women's groups in Australia, linking the denial of such rights to the undermining of democracy in its broad participatory sense for those

facing disadvantage and vulnerability. While some women's issues have been framed in terms of social and economic rights claims, others could be more fully developed: for example, the rights of women migrants and international students to equal treatment within the workplace, educational institutions and communities; the relationship between violence against women and social and economic rights; and the causes and consequences of child removal and incarceration of women in Indigenous communities from a social and economic rights perspective. The systemic roots of these violations and their links to neoliberal policies as well as their damaging impacts on women's participation should be more explicitly exposed. The transnational dimensions of social and economic rights claims also require greater thought as they apply to women inside and outside of Australia. These might concern sex workers trafficked into Australia; workers outside our borders working for Australian companies or part of supply chains; and the way our international aid program addresses women's rights in other countries. Care labour has become increasingly transnational with profound impacts on women's rights within the global care chain (Ehrenreich and Hochschild 2003; Yeates 2012; Fudge 2011). The greater focus on human rights and women's rights in particular, within the Sustainable Development Goals (Fredman, Kuosmanen, and Campbell 2016) is also an opportunity to demand increased attention to women's social and economic rights by the Australian government, not just through aid but within domestic laws and policies.

Notes

1. The main unemployment payment, Newstart, has not been increased in real terms since 1994 (ACOSS 2016a).
2. Currently 16.2% according to the Workplace Gender Equality Agency: <https://www.wgea.gov.au/addressing-pay-equity/what-gender-pay-gap>
3. According to the latest Census data, the 'typical' Australian women spends between 5 and 14 hours per day on housework while the 'typical' man spends less than 5 hours per day on housework: <http://www.abs.gov.au/websitedbs/D3310114.nsf/home/2016+Census+National>
4. However, this history is more complex and is currently being examined by scholars of international legal history, such as the 'Socioeconomic Rights in History Network': <http://www2.warwick.ac.uk/fac/arts/history/ghcc/research/serhn>
5. International Convention on the Elimination of All Forms of Racial Discrimination (1965); Convention on the Elimination of All Forms of Discrimination against Women (1979); Convention on the Rights of the Child (1989).
6. The group comprised women's rights academics and activists and was independent of UN structures (Montreal Principles on Women's Economic, Social and Cultural Rights 2004).
7. CESCR. 2005. *General Comment No 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (art 3 of the International Covenant on Economic, Social and Cultural Rights)*. Human Rights Council, Thirty-fourth session. E/C 12/2005/4.
8. Working Group on the issue of discrimination against women in law and in practice (2014). *Thematic Report on Discrimination against Women in Economic and Social life, with a Focus on Economic Crisis: Annotated Version*. Human Rights Council, Twenty-sixth session. 1 April. A/HRC/26/39.
9. It has, however, failed to join some significant treaties such as ILO Domestic Workers Convention 2011 (No. 189); ILO Social Security (Minimum Standards) Convention 1952 (No. 102); and ILO Maternity Protection Convention (Revised) 1952 (No. 103).

10. Although, the AHRC has provided useful resources to assist individuals and organisations wishing to use the CEDAW Optional Protocol: <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/mechanisms-advancing-women-s-human-rights-guide-using>
11. *Human Rights Act 2004* (ACT) s 27A.
12. In any event, the proposed legislation did not include social and economic rights (Byrnes 2010).
13. *Australian Human Rights Commission Act 1986* (Cth). See <https://www.humanrights.gov.au/rights-and-freedoms-right-right-0>
14. Additional avenues open to these groups include the limited horizontal accountability mechanisms of the *Fair Work Act 2009* (Cth) and anti-discrimination legislation; or to lobby parliamentarians and advocate for change on human rights issues (diagonal accountability).
15. The treaty bodies surveyed include: The Human Rights Committee (HRC), the Committee Against Torture (CAT), the Committee on the Rights of Persons with Disabilities (CRPD), the Committee on the Rights of the Child (CRC), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination against Women (CEDAW), and the Committee on Economic, Social and Cultural Rights (CESCR).
16. There was strongly voiced concern by many countries that Australia continues with its refugee policy involving offshore detention, indefinite detention, pushing back boats and mistreatment of asylum seekers including sexual violence against women in immigration detention.
17. It was also encouraged to ratify various international human rights treaties to which it is not a party including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) and the Optional Protocol to the ICESCR (2009).
18. Human Rights Council Working Group on the Universal Periodic Review. 2015. *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Australia*. Human Rights Council, Twenty-third session. 2–13 November. A/HRC/WG.6/23/AUS/3.
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25. Women comprise one third of the members of federal, state and territory parliaments according to the Parliamentary Library: http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/5154545/upload_binary/5154545.pdf;fileType=application%2Fpdf#search=%22Party%20politics%22

Women make up one quarter of the members of ASX 200 boards according to the Australian Institute of Company Directors: <http://aicd.companydirectors.com.au/advocacy/board-diversity/women-on-asx-200-boards-on-the-rise>

26. The letter can be found at: [https://spdb.ohchr.org/hrdb/22nd/public_-_UA_Australie_19.10.12_\(2.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/public_-_UA_Australie_19.10.12_(2.2012).pdf)

For a discussion of this advocacy and the response by the UN mandate holders, see Goldblatt 2016, 135–143). The government passed the legislation concerned resulting in significant cuts to the benefits of single parents (Goldblatt 2017a).

27. These concerned social security legislation, legislation relating to refugees, and legislation on the Stronger Futures programme in the Northern Territory (the successor of the Northern Territory Emergency Response).

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Notes on contributor

Beth Goldblatt is an Associate Professor in the Faculty of Law at the University of Technology Sydney. Her research focuses on feminist legal theory, equality and discrimination law, comparative constitutional law, transitional justice, disability, family law, and economic and social rights, particularly the right to social security. She is a Visiting Fellow of the Australian Human Rights Centre in the Faculty of Law at the University of New South Wales and a Visiting Associate Professor in the School of Law at the University of the Witwatersrand.

ORCID

Beth Goldblatt  <http://orcid.org/0000-0003-4687-3176>

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