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Aniketh Rao

University of the South Pacific, Suva, Fiji.

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Tackling Menstrual Poverty: A Substantive Equality Approach to the Right to Education

By Aniketh Rao¹

Abstract

The overall purpose of the paper is to analyze the free supply of menstrual items to primary and secondary school girls in New Zealand using the substantive equality principle. The New Zealand government's incentive for free supply of the articles to menstruating girls was their worrying absenteeism at school due to menstrual poverty. Menstrual poverty limits school girls' equal access to their fundamental right to education. In my analysis, I adopt a human rights approach, employing the substantive equality principle to reflect on this rationale to provide menstrual products to school girls who need them. My research cites scholarly texts, organizational and media works from multidisciplinary literature to support the free supply of sanitary products. Using this research, I demonstrate that the supply satisfies the multiple interpretations of substantive equality for the attainment of menstruating girls' equal access to their right to education. The government program addresses menstrual poverty and facilitates the management of menstruation with dignity.

Keywords: Menstrual poverty, School girls, Substantive equality, Right to education, New Zealand

Introduction

Across most cultures and political settings, menstrual or sanitary articles are still a taboo subject² of secrecy. In other words, there is a menstrual taboo. Almost fifty percent of the population in New Zealand menstruate for an average of six years out of the total number of days in their lives, and yet it is merely talked about in highly secret expressions like “the monthly visitor” or “Aunt Flo.”³ Thus, the minimal amount of open discussion about menstruation reinforces the stigma and exacerbates the menstrual taboo in New Zealand.⁴ Even in contemporary New Zealand society, menstruation either exists as a topic in the school syllabus or in a conversation amongst a group of female friends.⁵ Do free sanitary products bridge a gap for a menstruating girl to enjoy her right to education? Unfortunately, this is where menstrual or period poverty comes into the picture. Menstrual poverty and period poverty are used interchangeably, but for the substance of this paper, I use the term menstrual poverty

¹ Aniketh Rao (LLB, LLM, PgCrt LTHE) is a Ph.D. Law candidate in the School of Law and Social Sciences at the University of the South Pacific. His multidisciplinary research areas of interest are human rights law; gender, sexuality and reproductive justice; substantive equality; decolonization of law; and feminist legal approaches. His research mainly engages with the approaches of substantive equality and egalitarianism in law and social justice to explore the content of rights-based responses. He has taught constitutional law, torts law, administrative law, and criminal law.

² Ali Gordon, ‘Period taboo: Why can't we talk about menstruation?’ (2019) <https://www.bbc.com/news/uk-northern-ireland-47254222> (Accessed 4 September 2020). ; Amnesty, ‘Let's talk menstruation – and the women breaking the taboos around it’ (2019) <https://www.amnesty.org/en/latest/campaigns/2019/05/five-activists-breaking-taboos-around-menstruation/> (Accessed 4 September 2021).

³ Vera Alves, ‘Menstrual Hygiene Day 2021: Period stigma still a bloody big deal’ (2021) <https://www.nzherald.co.nz/lifestyle/menstrual-hygiene-day-2021-period-stigma-still-a-bloody-big-deal/NVCG2CSXSEISSOVBJPXJTJ4L7M/> (Accessed 29 December 2021).

⁴ Beh Lih Yi, ‘Menstruation magazine cover sparks censorship row in New Zealand’ (2018) <https://www.reuters.com/article/us-newzealand-women-idUSKCN1IP1N1> (Accessed 29 December 2021).

⁵ World Vision International, ‘Menstrual hygiene rights are human rights. Period.’ (2017) <https://www.wvi.org/blogpost/menstrual-hygiene-rights-are-human-rights-period> (Accessed 29 August 2021).

throughout.

The contemporary reality of menstrual poverty is that girls and women in the low-income bracket struggle to afford sanitary products because they are an economic burden and create financial vulnerability. These products include tampons, sanitary napkins, and more.⁶ Although the issue is identified with conditions of poverty and financial vulnerability that is generally recognized in developing states, the impact of menstrual poverty is also felt in industrialized and developed states. The challenge that young girls face in meeting the expense of sanitary products causes them to stay away from school when they menstruate which leaves a lasting negative impact on their education. The right to education is one of the universally recognized human rights,⁷ which in this case is fundamentally compromised and undermined for girls. This is seen in their financial incapacity to properly manage menstrual hygiene with necessary menstruation-related products. It is contributory to their excessive school absenteeism rates resulting in ineffective educational outcomes.

Nonetheless, in 2020, New Zealand began to provide free sanitary products to school girls with the objective to eradicate menstrual poverty as an existing reason for their school absenteeism.⁸ The rhetoric in this paper stems from this reasoning that the existing concern of menstrual poverty for school girls causes a larger problem—their vulnerability to miss school. As stated in Healthcentral.nz, girls lose their right to education when they cannot afford to attend lessons due to a lack of sanitary items.⁹ This concern lends itself to a human rights approach of substantive equality, which considers the attendant social and/or economic disadvantage at issue, which in this context is menstrual poverty, and subsequently involves a positive duty of the state to respond.¹⁰ Briefly, a substantive comprehension is that menstrual poverty hinders menstruating girls from the enjoyment of their right to education with dignity equal to that of male and/or non-menstruating students or students that can afford sanitary products. In this paper, I articulate that the substantive equality principle underlies the free supply of sanitary products to menstruating schoolchildren aimed at accommodating their equal access to their fundamental human right to education by redressing the disadvantage of menstrual poverty.

In Part A, I define menstrual poverty from the perspective of menstruating girls in the wider context and in the context of New Zealand. Then, I describe the link between school absenteeism and menstrual poverty to indicate deprivation of equal access to the right to education due to the latter. While focusing on the solution of New Zealand, in this section I discuss the global existence of the issue with examples from prominent democracies like India, the United Kingdom, Australia, and the US. Following this, I narrate the case of New Zealand in detail.

In Part B, I define the substantive approach to equality with its multiple interpretations. Then, through wider literature and international human rights standards, I articulate the substantive attainment of equal access to education for menstruating girls with free supply of sanitary products, focusing on New Zealand's initiative. In this section, I also describe current

⁶ United Nations Population Fund, 'Menstruation and human rights' (2021) <https://www.unfpa.org/menstruationfaq#Period%2520Poverty> (Accessed 24 July 2021).

⁷ *Universal Declaration of Human Rights 1948* (UDHR).

⁸ Preeti Kannan, 'New Zealand offers schoolgirls free tampons to fight period poverty' (2020) <https://www.reuters.com/article/us-newzealand-women-health-rights-trfn-idUSKBN23A22H> (Accessed 29 July 2021).

⁹ Healthcentral.nz, 'Taboos and inadequate toilets focus of Menstrual Hygiene Day' (2018) <https://healthcentral.nz/taboo-and-inadequate-toilets-focus-of-menstrual-hygiene-day/> (Accessed 29 December 2021).

¹⁰ Sandra Fredman, 'Providing Equality: Substantive Equality and the Positive Duty to Provide' (2005) *South African Journal on Human Rights* 21(2) 163-190.

initiatives of the states that have initiated free supply of sanitary products. Then, I further unfold the interconnected issues of menstrual stigma and menstrual poverty and their consequence being the deprivation of girls' fundamental right to education. Lastly, using the four dimensions of the substantive equality framework, I demonstrate that the free supply of sanitary products is a resolution for menstruating girls to equally enjoy their right to education.

Part A: Menstrual Poverty Prevents Equal Access to the Right to Education

Menstrual poverty is defined as the financial burden and obstacles that girls and women face in affording menstrual hygiene, period, or sanitary products because either they belong to a low-income bracket or are unable to maintain such expenditure. The inadequacy in the access to menstrual hygiene tools¹¹ is due to financial constraints.¹² Menstruating girls and women that cannot afford sanitary products due to these reasons resort to pillow cases, newspaper, or tea towels for management of menstruation.¹³ Menstrual poverty is not a local or domestic issue limited to undeveloped areas, but rather it is faced by many girls worldwide¹⁴ who struggle to have access to or afford sanitary products.

For instance, menstrual poverty is an existing issue in one of the most influential political systems in the world--the United Kingdom (UK). In a 2017 survey according to Plan International UK, 1 in 10 girls could not afford sanitary products in the United Kingdom.¹⁵ Moreover, the outcome is inclusive of menstruating girls and women throughout high and low-income settings.¹⁶ In the Oceania region, menstrual poverty is also a dire reality for school girls and women in their largest democracy, Australia.¹⁷ In New Zealand, menstrual poverty is a national reality¹⁸ amongst a worrying amount of school girls. Approximately 12% of school girls between the ages of 12 and 18 are unable to afford sanitary products in New Zealand.¹⁹ Therefore, the magnitude of the existing reality of menstrual poverty is largely relevant to their enjoyment of their rights and freedoms.

High absenteeism of girls from school primarily influenced the decision of the New Zealand Government to provide them free sanitary items. Girls' education is one of the main concerns that results from menstrual poverty.²⁰ In actuality, the impairment of their primary or

¹¹ Alexandra Alvares, 'Period Poverty' (2019) <https://www.amwa-doc.org/period-poverty/> (Accessed 23 July 2021).

¹² Royal College of Nursing, 'Period Poverty' (2021) <https://www.rcn.org.uk/clinical-topics/womens-health/promoting-menstrual-wellbeing/period-poverty> (Accessed 2 September 2021).

¹³ BBC, 'Period poverty: Rise in free sanitary products needed in lockdown' (2020) <https://www.bbc.com/news/uk-england-53236870> (Accessed 25 July 2021).

¹⁴ Charlotte Brooks, 'Period Poverty, Safeguarding and Wellbeing' (2020) <https://www.anncrafttrust.org/period-poverty-safeguarding-and-wellbeing/> (Accessed 23 July 2021).

¹⁵ Royal College of Nursing, 'Period Poverty' (2021) <https://www.rcn.org.uk/clinical-topics/womens-health/promoting-menstrual-wellbeing/period-poverty> (Accessed 2 September 2021).

¹⁶ International Federation of Gynecology and Obstetrics, 'Month After Month: Period Poverty' (2019) <https://www.figo.org/news/month-after-month-period-poverty> (Accessed 5 August 2021).

¹⁷ Claire Keenan, 'Period Poverty Exists In Australia Too' (2021) <https://junkee.com/period-poverty-barrier-to-education-australia/286714> (Accessed 1 July 2021).

¹⁸ Eleanor Ainge Roy, 'New Zealand tackles 'period poverty' with free sanitary products for all school girls' (2020) <https://www.theguardian.com/world/2020/jun/03/new-zealand-tackles-period-poverty-with-free-sanitary-products-for-all-schoolgirls> (Accessed 4 July 2021).

¹⁹ Lucia Kenig-Ziesler, 'NEW ZEALAND'S SOLUTION TO PERIOD POVERTY' (2020) <https://borgenproject.org/new-zealands-solution-to-period-poverty/> (Accessed 24 July 2021).

²⁰ Joanna Crishton et al, 'Emotional and Psychosocial Aspects of Menstrual Poverty in Resource-Poor Settings: A Qualitative Study of the Experiences of Adolescent Girls in an Informal Settlement in Nairobi' (2013) *Health Care for Women International* 34(10).

secondary level education opportunities is one of the gravely lasting consequences²¹ of inadequate access to sanitary products for menstruating girls. The matter is often illustrated by countries of the developing world where girls from low-income settings often miss a significant number of days of schooling each month because they cannot afford basic sanitary products. However, irrespective of the national economy,²² menstrual poverty is a reality in every city and town in the world. This section will describe surveys from a global standpoint that menstrual poverty which impedes girls' access to their education is a global problem of concern.

India is the largest democracy in the world²³ where menstrual poverty continues to be a worrying subject because it forces most girls to either be ostracized during their menstrual cycle or even quit early schooling.²⁴ For example, a local non-government organization named Dasra discovered in 2014 that every year almost 23 million girls across India abandon school as a result of not having access to proper menstrual hygiene products.²⁵ Another non-governmental organization (NGO), namely Andheri Hilife based in Bonn, further confirmed that most girls in India quit going to school after they begin menstruating.²⁶ The NGO revealed that more than 80% of menstruating girls and women in India do not have access to sanitary products as a result of their financial circumstances. Menstrual poverty is thus an existing issue in India that stands against girls' equal access to their right to education.

Likewise, it is an issue in one of the leading democracies in the world,²⁷ the United Kingdom. According to the 2017 Plan International UK survey, 1 in 10 girls could not afford sanitary products, 1 in 7 seven girls struggled to afford sanitary products, 1 in 10 girls had to resort to alternative means of menstrual hygiene, and 1 in 7 girls had to borrow sanitary products from a friend.²⁸ It is also estimated that until 2017, more than 137,000 girls were absent from school across the UK as a result of menstrual poverty.²⁹

Another large democracy³⁰ where the disadvantageous situation of menstrual poverty

²¹ Kerina Tull, *Period poverty impact on the economic empowerment of women* (2019).

²² Isabelle Bilion, 'Period poverty hinders children's education globally' (2018) <https://www.studyinternational.com/news/period-poverty-hinders-childrens-education-globally/> (Accessed 28 July 2021).

²³ United Nations, 'Doers of Democracy - Asia and Pacific' (n.d) <https://www.un.org/democracyfund/content/doers-democracy-asia-and-pacific> (Accessed 12 December 2021).

²⁴ Sonia Bhaskar, '23 Million Women Drop Out Of School Every Year When They Start Menstruating In India' (2018) <https://swachhindia.ndtv.com/23-million-women-drop-out-of-school-every-year-when-they-start-menstruating-in-india-17838/> (Accessed 29 December 2021).

²⁵ Dasra, 'SPOT ON!: IMPROVING MENSTRUAL MANAGEMENT IN INDIA' (2015) <https://www.dasra.org/resource/improving-menstrual-health-and-hygiene> (Accessed 21 December 2021).

²⁶ Stephanie Hoppner, 'Free tampons and the fight against period poverty' (2020) <https://www.dw.com/en/free-tampons-and-the-fight-against-period-poverty/a-55731499> (Accessed 23 July 2021). ; Andheri Life, 'Taboo menstruation - girls and women in India suffer' (2018) <https://www.andheri-hilfe.de/informieren/gesundheits-ermoeglichen/tabu-menstruation-in-indien/> (Accessed 23 July 2021).

²⁷ Milan Dinic, 'How democratic is the UK?' (2020) <https://yougov.co.uk/topics/politics/articles-reports/2020/12/04/how-democratic-uk> (Accessed 28 November 2021).

²⁸ Plan International UK, '1 IN 10 GIRLS HAVE BEEN UNABLE TO AFFORD SANITARY WEAR, SURVEY FINDS' (2017) <https://plan-uk.org/media-centre/1-in-10-girls-have-been-unable-to-afford-sanitary-wear-survey-finds> (accessed 23 July 2021).

²⁹ Royal College of Nursing, 'Period Poverty' (2020) <https://www.rcn.org.uk/clinical-topics/womens-health/promoting-menstrual-wellbeing/period-poverty> (Accessed 24 July 2021). ; Women's Agenda, 'New study uncovers reality of period poverty in Australian schools' (2020) <https://womensagenda.com.au/latest/new-study-uncovers-reality-of-period-poverty-in-australian-schools/> (Accessed 25 July 2021).

³⁰ Pranab Bardhan, 'The two largest democracies in the world are the sickest now' (2020) <https://scroll.in/article/971086/the-two-largest-democracies-in-the-world-are-the-sickest-now> (Accessed 29 December 2021).

exists as a national concern is in the United States of America. According to a recent national survey titled *State of the Period* that was sponsored by Thinx and PERIOD, and conducted by Harris Insights and Analytics, 1 in 5 school girls experience menstrual poverty.³¹ The national survey revealed that 1 in 5 girls who were unable to afford menstrual hygiene products dropped their attendance from school completely.³² The 2017 report also highlighted that girls choose to miss their classes during menstruation because they lack access to or cannot afford menstrual hygiene products.³³ The national scope of the survey is demonstrative of menstrual poverty and its impact on girl's education as a national concern in the US and not merely a state-specific issue or two.³⁴ As Okamoto and Molland stated, thousands of school girls across the country miss school or classes during their menstrual cycle because they lack menstrual products and consequently are denied equal learning opportunities.³⁵ This is reflective of former first lady Michelle Obama's emphasis on the relationship between lack of access to sanitary products and girls' school productivity that the Thinx and Period study supported.³⁶ In that view, the voices of menstrual hygiene management have inferred a causal relationship between menstrual poverty and girls' attendance in class.³⁷

Similarly, a piece of more direct evidence with geopolitical proximity to New Zealand was found in the Australian State of Queensland. In 2019, a Queensland University of Technology (QUT) study on 45 Queensland high schools involved an investigation of the impact of menstrual poverty on girls.³⁸ The survey led to a positive inference that alleviation of menstrual poverty will cause a decrease in school absenteeism for menstruating girls.³⁹ It therefore also validated that menstrual poverty is an impediment to girls' equal access to education opportunities.

Moreover, studies in the area of menstrual hygiene management have concluded a twofold problem—high absenteeism or completely dropping out of school.⁴⁰ For instance, a top and concerning statistical claim currently in literature is that 1 in 10 girls in Sub-Saharan

³¹ Thinx & PERIOD, 'State of the Period' (2017) https://cdn.shopify.com/s/files/1/0795/1599/files/State-of-the-Period-white-paper_Thinx_PERIOD.pdf (Accessed 13 August 2021).

³² Shawna De La Rosa, 'Report finds 'period poverty' a top reason girls miss school' (2019) <https://www.k12dive.com/news/report-finds-period-poverty-a-top-reason-girls-miss-school/565424/> (Accessed 13 August 2021).

³³ Women's Agenda, 'New study uncovers reality of period poverty in Australian schools' (2020) <https://womensagenda.com.au/latest/new-study-uncovers-reality-of-period-poverty-in-australian-schools/> (Accessed 25 July 2021).

³⁴ Businesswire, 'Nearly 1 in 5 American Girls Have Missed School Due to Lack of Period Protection 1: Always® Joins Forces with Gina Rodriguez & Feeding America® to Help #EndPeriodPoverty and Keep Girls in School' (2018) <https://www.businesswire.com/news/home/20180807005135/en/Nearly-1-in-5-American-Girls-Have-Missed-School-Due-to-Lack-of-Period-Protection-1-Always%C2%AE-Joins-Forces-with-Gina-Rodriguez-Feeding-America%C2%AE-to-Help-EndPeriodPoverty-and-Keep-Girls-in-School> (Accessed 29 December 2021). ; Always, 'Join Always to End Period Poverty!' (2020) <https://always.com/en-us/about-us/end-period-poverty> (Accessed 29 December 2021).

³⁵ Nadya Okamoto and Maria Molland, 'The cost of tampons is hurting low-income girls. Let's fix that' (2019) <https://edition.cnn.com/2019/10/21/perspectives/period-poverty-menstrual-products/index.html> (Accessed 25 September 2021).

³⁶ Thinx & PERIOD, 'State of the Period' (2020) https://cdn.shopify.com/s/files/1/0795/1599/files/State-of-the-Period-white-paper_Thinx_PERIOD.pdf?455788 (Accessed 5 August 2021).

³⁷ Kerina Tull, *Period poverty impact on the economic empowerment of women* (2019).

³⁸ Ruth Knight, 'Reducing Period Poverty in Australia' (2020) https://eprints.qut.edu.au/201306/1/Share_the_Dignity_Report_FINAL.pdf (Accessed 1 August 2021).

³⁹ QUT, 'A QUT study has investigated the impact of period poverty on some young Australian women in high schools.' (2020) <https://www.qut.edu.au/news?id=165708> (Accessed 1 August 2021).

⁴⁰ SELAMAWIT TAMIRU et al, 'Towards a Sustainable Solution for School Menstrual Hygiene Management: Cases of Ethiopia, Uganda, South-Sudan, Tanzania, and Zimbabwe' (2015) *Waterlines* 34(1) 92-102.

Africa, including Ethiopia, Ghana, Kenya, Nigeria, Sierra Leone, Somalia, South Africa, Sudan, and Uganda, do not attend school during their menstruation because they cannot afford sanitary products to manage their menstruation with dignity.⁴¹ The World Bank⁴² and the World Economic Forum⁴³ also confirm this. On that account, it indicates that a drastic social and cultural impact of menstrual poverty is its hindrance to equal access to the right to education for girls.⁴⁴

The risk entailed here is of a systematic nature that involves a concerning exclusion of menstruating girls from not merely life-changing, but also socio-culturally empowering opportunities⁴⁵ such as education. Since they do not earn money themselves and come from low-income backgrounds, affording sanitary products is beyond young girls' ability. Consequently, menstruating girls are deprived of equal access to and enjoyment of the right to education simply due to a naturally occurring biological process

New Zealand is the most recent country to facilitate equal access to education for girls experiencing menstrual poverty through a systematic program. This landmark in its policies is to provide free sanitary items to school girls. Whilst claiming menstrual poverty to be her personal priority,⁴⁶ New Zealand's current Prime Minister Jacinda Arden emphasized that: "Young people should not miss out on their education because of something that is a normal part of life for half the population."⁴⁷ Lewis⁴⁸ reported that Arden stated that the lack of access to sanitary products keeps young girls away from school. The claim reflects Arden's stand against menstrual poverty and for the right to education, and she further claims that sanitary products are a necessity for girls and not a luxury, and that the inability to afford those was causing too many⁴⁹ young women to skip school.

Even local research reveals that menstrual poverty in New Zealand is an issue at large faced by young women at school. In New Zealand, a survey on experiences of menstrual poverty with almost 4,000 students revealed that 19% of Māori youth⁵⁰ experience menstrual

⁴¹ World Bank, 'Globally, periods are causing girls to be absent from school' (2016) <https://blogs.worldbank.org/education/globally-periods-are-causing-girls-be-absent-school> (Accessed 18 August 2021). ; Chris Bobel, *The Managed Body: Developing Girls and Menstrual Health in the Global South* (2019).

⁴² Oni Lusk-Stover, 'Globally, periods are causing girls to be absent from school' (2016) <https://blogs.worldbank.org/education/globally-periods-are-causing-girls-be-absent-school> (Accessed 18 August 2021).

⁴³ Stephanie Thomson, '1 in 10 girls in Africa will drop out of school for this reason' (2015) <https://www.weforum.org/agenda/2015/12/1-in-10-girls-in-africa-will-drop-out-of-school-for-this-reason/> (Accessed 25 July 2021).

⁴⁴ Charlotte Brooks, 'Period Poverty, Safeguarding and Wellbeing' (2020) <https://www.anncrafttrust.org/period-poverty-safeguarding-and-wellbeing/> (Accessed 16 July 2021).

⁴⁵ International Federation of Gynecology and Obstetrics, 'Month After Month: Period Poverty' (2019) <https://www.who.int/news/month-after-month-period-poverty> (Accessed 2 August 2021).

⁴⁶ Jason Walls, 'Prime Minister Jacinda Arden says tackling period poverty is a 'personal priority' for her' (2019) <https://www.nzherald.co.nz/nz/prime-minister-jacinda-arden-says-tackling-period-poverty-is-a-personal-priority-for-her/BIHHULQZCH43PIPP7TL7Z6DEMA/> (Accessed 19 August 2021).

⁴⁷ BBC, 'Period poverty: New Zealand schools to offer free sanitary products' (2021) <https://www.bbc.com/news/world-asia-56107816> (Accessed 23 July 2021).

⁴⁸ Sophie Lewis, 'New Zealand schools will offer free period products to all students' (2021) <https://www.cbsnews.com/news/new-zealand-school-free-menstrual-products-students-period-poverty/> (Accessed 24 July 2021).

⁴⁹ Eleanor Ainge Roy, 'New Zealand tackles 'period poverty' with free sanitary products for all school girls' (2020) <https://www.theguardian.com/world/2020/jun/03/new-zealand-tackles-period-poverty-with-free-sanitary-products-for-all-schoolgirls> (Accessed 10 July 2021).

⁵⁰ University of Auckland, 'Period poverty contributing to inequity' (2020) <https://www.auckland.ac.nz/en/news/2020/02/20/period-poverty-contributing-to-inequity-in-nz.html> (Accessed 14 July 2021).

poverty. An example of this is The Youth 19 survey⁵¹ designed for menstrual poverty research which included Dr. Terry Fleming from the Faculty of Health at Victoria University of Wellington, Associate Professor Terryann Clark from the University of Auckland, and Dr. Sarah Donovan from the University of Otago. They claimed the study was the first menstrual poverty investigation in the world owing to its random selection sample with scientific rigor.⁵² It was found that 12% of students from Year 9 to 13 that go through menstruation are reported to be struggling with access to sanitary items⁵³ due to cost issues.⁵⁴

Research centered on New Zealand youth further evinced a consequential link between inadequate access to sanitary items and being absent from school. The New York Times⁵⁵ reported that Dr. Donovan found that 15% of Māori students and 14% of Pacific Island students in New Zealand skipped school because they could not afford sanitary products. The “gendered cyclical nature of poverty”⁵⁶ further places women with menstruation at a huge disadvantage. To illustrate, Jong⁵⁷ reported that according to the University of Otago, girls that experience menstrual poverty face implications that are lifelong, namely their education prospects.

Additionally, the Youth 19⁵⁸ survey concluded that 1 in 12 students in New Zealand that missed school did so due to difficulty in affording sanitary products. Additionally, Associate Professor Terryann Clark from the University of Auckland and Dr. Terry Fleming from Victoria University highlighted that these findings are a matter of inequity.⁵⁹ Therefore, as Dr Theresa Fleming and others⁶⁰ reported, in New Zealand those who experience menstrual poverty skip school because they cannot afford sanitary products. This does not merely sustain inequity, but moreover, it disadvantageously causes those girls to miss out on equitable academic experiences. To address this, the free availability of sanitary products is needful. But how did the New Zealand Government begin to avail equal enjoyment of the right to education with free menstrual items for girls?

⁵¹ Youth19, ‘PERIOD POVERTY: A YOUTH19 FACT SHEET’ (2020)

<https://www.youth19.ac.nz/publications/period-poverty-fact-sheet?rq=period%20poverty> (Accessed 14 July 2021).

⁵² University of Auckland, ‘Period poverty contributing to inequity’ (2020)

<https://www.auckland.ac.nz/en/news/2020/02/20/period-poverty-contributing-to-inequity-in-nz.html> (Accessed 14 July 2021).

⁵³ Eleanor Ainge Roy, ‘New Zealand tackles ‘period poverty’ with free sanitary products for all school girls’ (2020) <https://www.theguardian.com/world/2020/jun/03/new-zealand-tackles-period-poverty-with-free-sanitary-products-for-all-schoolgirls> (Accessed 10 July 2021).

⁵⁴ Jason Walls, ‘Prime Minister Jacinda Ardern says tackling period poverty is a ‘personal priority’ for her’ (2019) <https://www.nzherald.co.nz/nz/prime-minister-jacinda-ardern-says-tackling-period-poverty-is-a-personal-priority-for-her/BIHHULQZCH43PIPP7TL7Z6DEMA/> (Accessed 10 July 2021).

⁵⁵ Natasha Frost, ‘New Zealand to Rollout Free Period Products to All Students’ (2021)

<https://www.nytimes.com/2021/02/18/world/asia/new-zealand-period-schools.html> (Accessed 11 July 2021).

⁵⁶ Natasha Frost, ‘New Zealand to Rollout Free Period Products to All Students’ (2021)

<https://www.nytimes.com/2021/02/18/world/asia/new-zealand-period-schools.html> (Accessed 14 August 2021).

⁵⁷ Eleanor de Jong, ‘All New Zealand schools to offer free period products as part of poverty drive’ (2021)

<https://www.theguardian.com/world/2021/feb/18/all-new-zealand-schools-to-offer-free-period-products-as-part-of-poverty-drive> (Accessed 11 July 2021).

⁵⁸ Youth19, ‘PERIOD POVERTY: A YOUTH19 FACT SHEET’ (2020)

<https://www.youth19.ac.nz/publications/period-poverty-fact-sheet?rq=period%20poverty> (Accessed 14 July 2021).

⁵⁹ University of Auckland, ‘Period poverty contributing to inequity’ (2020)

<https://www.auckland.ac.nz/en/news/2020/02/20/period-poverty-contributing-to-inequity-in-nz.html> (Accessed 14 July 2021).

⁶⁰ Youth19, ‘PERIOD POVERTY: A YOUTH19 FACT SHEET’ (2020)

<https://www.youth19.ac.nz/publications/period-poverty-fact-sheet?rq=period%20poverty> (Accessed 14 July 2021).

In 2019, Jacinta Gulasekharam and other campaigners collected 3,000 signatures on a petition for free menstrual items for all school students.⁶¹ The petition called on the government to provide free menstrual products to all school students, considering research data that demonstrated young women were missing school due to the cost of the menstrual items that they found difficult to afford.⁶² It gained the support of the Prime Minister's office after the submitted petition was encouraged by the Minister for Women. Subsequently, in mid-2020, a pilot program spanning 6 months⁶³ was launched in 15 schools in the Waikato region encompassing more than 3,000 students. Under the program, the engaged schools and students were offered free sanitary items.⁶⁴ Then, according to officials and the Prime Minister, the positive reception motivated a nationwide expansion⁶⁵ of the initiative. Following the positive outcome, New Zealand declared to offer free sanitary products to all schools, commencing from June 2021, with the objective to directly address the issue of young women skipping school due to menstrual poverty.⁶⁶ A free supply of menstrual products is systematic facilitation for girls to equally access and fully enjoy their right to education.

Part B. Substantive Approach

Substantive Equality

Even though it is an ongoing challenge to tailor an incontestable scholarly definition of equality, I have generated a summary of the definitions: Equality is not identical treatment. Equality between women and men is not a refusal to acknowledge differences between them. Rather it is recognizing those differences while providing equitable levels of access in the pursuit of equal benefits and opportunities in society for both.

Substantive equality is an integral branch of human rights that is manifested through policies, legal mechanisms, and programs⁶⁷ that address and eradicate elements of systematic, direct, or indirect disadvantage. This approach to equality ensures that implementation of predominantly special policies and practices⁶⁸ by the state not only provides the same opportunities for all in society, but also recognizes unequal distribution and marginalization with the objective to attain equal access to fundamental human rights, services, and

⁶¹ Natasha Frost, 'New Zealand to Rollout Free Period Products to All Students' (2021) <https://www.nytimes.com/2021/02/18/world/asia/new-zealand-period-schools.html> (Accessed 11 July 2021).

⁶² Jason Walls, 'Prime Minister Jacinda Ardern says tackling period poverty is a 'personal priority' for her' (2019) <https://www.nzherald.co.nz/nz/prime-minister-jacinda-ardern-says-tackling-period-poverty-is-a-personal-priority-for-her/BIHHULQZCH43PIPP7TL7Z6DEMA/> (Accessed 10 July 2021).

⁶³ Natasha Frost, 'New Zealand to Rollout Free Period Products to All Students' (2021) <https://www.nytimes.com/2021/02/18/world/asia/new-zealand-period-schools.html> (Accessed 11 July 2021).

⁶⁴ Rachel Treisman, 'New Zealand Will Offer Free Sanitary Products At Schools To Fight Period Poverty' (2021) <https://www.npr.org/2021/02/18/969129496/new-zealand-will-offer-free-sanitary-products-at-schools-to-fight-period-poverty> (Accessed 11 July 2021).

⁶⁵ Sophie Lewis, 'New Zealand schools will offer free period products to all students' (2021) <https://www.cbsnews.com/news/new-zealand-school-free-menstrual-products-students-period-poverty/> (Accessed 24 July 2021).

⁶⁶ CNN, 'Free sanitary products for all New Zealand schools to beat period poverty, Ardern announces' (2021) <https://edition.cnn.com/2021/02/18/asia/new-zealand-free-sanitary-products-scli-intl/index.html> (Accessed 24 July 2021).

⁶⁷ Equal Rights Trust, 'The Ideas of Equality and Non-Discrimination: Formal and Substantive Equality (2007) <https://www.equalrightstrust.org/content/ideas-equality-and-non-discrimination-formal-and-substantive-equality> (Accessed 4 September 2021).

⁶⁸ Australian Human Rights Commission, 'Special Measures' (n.d) <https://humanrights.gov.au/quick-guide/12099> (Accessed 3 September 2021).

opportunities.⁶⁹ For example, the right to education via the substantive approach to equality does not merely demand parity between genders, but further requires equality of opportunity in the enjoyment of that right for all. That is to say, the substantive equality framework must consider any disadvantageous factors that result in inequality in education and impede inclusivity in basic education opportunities.⁷⁰ The factor can be, but is not limited to a gender concern, disability issue,⁷¹ or a financial constraint such as menstrual poverty for girls.

While substantive equality can take the form of a four-dimensional approach—comprising the redressing of the disadvantage; countering any related harm, stigma and prejudice; elevating participation; and accommodating differences and attaining structural change⁷²—it is not a definitive framework, but rather an analytical and assistive one. Alternatively, a multidimensional format will help to address the structural obstacles to equality and the different aspects of inequality⁷³ as this approach results in compromise and synthesis, especially in regards to structural change. Thus, it is a necessity to accommodate a difference and attain a structural change in order to achieve equality of results. For instance, a social and economic disadvantage and its impact—such as menstrual poverty that causes girls to miss school—is required to be addressed with a specific measure. Subsequently, the structural dimension demands change of institutions such as free supply of sanitary products in the case of menstruating school girls.⁷⁴

The vital focus here is to recognize the attendant disadvantage as an issue to address by virtue of substantive equality through acknowledgment of a positive duty of provision, particularly in situations of social and economic rights.⁷⁵ To illustrate, the free supply of sanitary products to school girls in New Zealand conforms to the achievement of human rights values for young girls, such as the right to education. A reflection of this is Jolland's⁷⁶ interpretation of the fourth dimension—accommodating difference and structural change—that argues for the need to change the existing social structures in order to accommodate difference by eliminating the detriment, not the difference. Here, it can be argued that the free availability of sanitary items for school girls is accommodating a difference as changing the socio-economic structure for the social, economic, and cultural human rights standard⁷⁷ for girls to enjoy their right to education. In a substantive approach to equality, being disadvantaged with the experience of menstrual poverty is the detriment to remove.

⁶⁹ Ben Mitchell, 'Process Equality, Substantive Equality and Recognising Disadvantage in Constitutional Equality Law' (2015) *Irish Jurist* 53(1) 36-57.

⁷⁰ Sandra Fredman, 'Women and education: the right to substantive equality' in Sandra Fredman, Meghan Campbell, and Helen Taylor (eds), *Human Rights and Equality in Education: Comparative Perspectives on the Right to Education for Minorities and Disadvantaged Groups* (2019) 99-110.

⁷¹ Charles Ngwena and Loot Pretorius, 'Substantive Equality for Disabled Learners in State Provision of Basic Education: A Commentary on Western Cape Forum for Intellectual Disability V Government of the Republic of South Africa' (2017) *South African Journal on Human Rights* 28(1) 81-115.

⁷² Sandra Fredman, *Discrimination Law* (2nd ed, 2011).; Sandra Fredman, 'The Future of Equality in Britain' (EOC Working Paper Series No.5, 2002).

⁷³ Sandra Fredman, 'Substantive equality revisited' (2016) *International Journal of Constitutional Law* 14(3) 712-738.

⁷⁴ Sandra Fredman and Beth Goldblatt, 'Gender Equality and Human Rights' (Discussion Paper, UN Women, 2014) <http://www.austlii.edu.au/au/journals/UTSLRS/2014/8.pdf> (Accessed 29 December 2021).

⁷⁵ Sandra Fredman, 'Providing Equality: Substantive Equality and the Positive Duty To Provide' (2005) *South African Journal on Human Rights* 21(2) 163-190.

⁷⁶ Victoria Jollands, 'Substantive Equality: A useable framework for assessing human rights, allocation, and more in fisheries' (2020) <https://www.genderaquafish.org/2020/10/03/substantive-equality-a-useable-framework-for-assessing-human-rights-allocation-and-more-in-fisheries/> (Accessed 20 August 2021).

⁷⁷ Catherine A. MacKinnon, 'Substantive Equality: A Perspective' (2011) *Minnesota Law Review* 383.

Additionally, the provision of free sanitary items to school girls can be viewed as a special policy treatment in New Zealand within the domain of a substantive approach to equality. Where menstrual poverty exists in the form of a financially-grounded disadvantage for school girls, the politically reasonable interpretation⁷⁸ of the substantive principle of equality justifies the special treatment provision as needful for different treatment considering that particular disadvantage. The inherent goal of this conceptualization of equality is to distribute benefits more equitably. To demonstrate, the first dimension necessitates specific measures to address the social and/or economic disadvantage associated with poverty or disability, and the structural dimension demands institutions to change, but not individuals. The free supply of sanitary products as a specific measure advances the right to equality in education by addressing the material disadvantage (menstrual poverty), not as an individual exception, but rather as a structural change for the right-holders (school girls) experiencing a disadvantage.⁷⁹ It thus insists on their participation amongst other right-holders that do not experience menstrual poverty.

Substantive equality further manifests an egalitarian sense⁸⁰ of social justice in relation to gender inequalities in education that obstruct equal access for school girls.⁸¹ It insists on a positive action that offers targeted assistance to right-holders to gain the equal advantage of specific opportunities like education. Accordingly, aiming to address menstrual poverty in New Zealand, local research⁸² has suggested a social justice approach via a rights-oriented perspective in which equality and complete participation in socio-cultural life is indicative of a fundamental value of human rights for girls. For example, girls' education is regarded as one of the key interests of social justice across the world in which poverty is a concern.⁸³ This is fundamentally linked to a financial vulnerability for girls in affording sanitary supplies.⁸⁴ The linkage, therefore, shapes menstrual poverty as a structural barrier that threatens girls' equal access to their education opportunities.⁸⁵ The commitment to equality in rights-led opportunities is a narrower concern of social justice.⁸⁶ The focus of the social justice approach here is on the right-holders, that is school girls, and alleviating their disadvantaged state of

⁷⁸ *Thlimmenos v. Greece*, Application no. 34369/97, Council of Europe: European Court of Human Rights, 6 April 2000.

⁷⁹ Shreya Atrey 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' (2017) *Oxford Human Rights Hub* <https://research-information.bris.ac.uk/en/publications/achieving-transformative-equality-for-persons-with-disabilities-s> (Accessed 29 December 2021).

⁸⁰ Equal Rights Trust, 'The Ideas of Equality and Non-Discrimination: Formal and Substantive Equality' (2007) <https://www.equalrightstrust.org/content/ideas-equality-and-non-discrimination-formal-and-substantive-equality> (Accessed 5 August 2021).

⁸¹ Human Rights Careers, 'What Does Social Justice Mean?' (n.d) <https://www.humanrightscareers.com/issues/what-does-social-justice-mean/> (Accessed 3 August 2021).

⁸² Dr Tracy Morison, 'Opinion: Tackling the social stigma behind period poverty' (2020) https://www.massey.ac.nz/massey/about-massey/news/article.cfm?mnarticle_uid=DCAD903F-C5CB-43C0-A36A-F299E281ABBC (Accessed 1 August 2021).

⁸³ Plan International, '3 SOCIAL INJUSTICES THAT GIRLS FACE AROUND THE WORLD' (n.d) <https://stories.plancanada.ca/3-social-injustices-girls-face/> (Accessed 29 December 2021).

⁸⁴ Plan International, 'Girls' Education' (n.d) https://plancanada.ca/girls-Education?_ga=2.123696015.581833824.1641259548-605715916.1641259547 (Accessed 29 December 2021).

⁸⁵ National Education Association, 'Educational Equity for Women and Girls' (n.d) <https://neadjustice.org/educational-equity-for-women-and-girls/> (Accessed 13 September 2021).

⁸⁶ Kerry A Froc, 'Constitutional Coalescence: Substantive Equality as a Principle of Fundamental Justice' (2011) *Ottawa Law Review* 42(3) 436-439.

menstrual poverty through a specific measure.⁸⁷ Thus, the free supply of menstrual products, which aids in keeping young girls in school, can be viewed as dealing with one of the disadvantageous consequences of menstrual poverty embedded in the social inequalities for girls by means of this perceived approach to substantive equality.

Furthermore, substantive equality does not necessarily require that all differences be treated with special measures. But rather it ensures that the basis of the special measure is circumstantially a relevant consideration to make it vital for the state to implement measures for advancement in the access to services as an answer to certain needs and creation of tangible opportunities to participate.⁸⁸ The availability of free menstrual products for school girls demonstrates a like answer where a special program⁸⁹ is put in place as an additional protection of their right to pursue and enjoy education. In this, the fostering of substantive equality is within the concept of positive action⁹⁰ to mitigate the condition of the disadvantaged.

This free supply for menstruating school girls also implicates an international human rights standard for the substantive approach to equality. The voices for substantive equality have argued from the position of international human rights that the implementation of the substantive approach to equality is contextual and flexible, and necessarily involves an exhaustive assessment of the context and disadvantage that the identifiable individuals face.⁹¹ In this light, research data on young school girls' menstrual poverty⁹² and the six-month pilot program⁹³ in New Zealand meets the imperative of a careful empirical evaluation of the concerned disadvantage. Further at an international standard, the *International Covenant on Economic, Social, and Cultural Rights 1976* (ICESCR) informs substantive equality for its facilitation of special programs aimed at meeting fundamental rights for individuals or affected groups.⁹⁴ The *International Covenant on Economic, Social, and Cultural Rights* (ICESCR) came into force in 1976 and fundamentally recognizes economic, social, and cultural rights, including education.⁹⁵ The obligation for state parties under Article 2 is to opt for measures to the extent of their available resources with the objective to progressively attain the complete realization of the stipulated rights by all reasonable means. To note, New Zealand has been a

⁸⁷ Alier Anyuon, 'THE GIRL CHILD EDUCATION IS A KEY TO DEVELOPMENT AND GENDER EQUALITY' (2015) <https://atlascorps.org/the-girl-child-education-is-a-key-to-development-and-gender-equality/> (Accessed 10 September 2021).

⁸⁸ Law Commission of Ontario, 'Substantive Equality as an Overarching Value' (2012) <https://www.lco-cdo.org/en/our-current-projects/the-law-and-persons-with-disabilities/disabilities-background-principles-paper-march-2012/iv-substantive-equality-as-an-overarching-value/> (Accessed 23 August 2021).

⁸⁹ Ontario Human Rights Commission, 'Why are special programs protected?' (2013) <http://www.ohrc.on.ca/en/your-guide-special-programs-and-human-rights-code/why-are-special-programs-protected> (Accessed 13 August 2021).

⁹⁰ *Roberts v. Ontario (Ministry of Health)* 1989 - 1994: (1994) 117 DLR (4th).

⁹¹ Kelly Loper, 'Substantive Equality in International Human Rights Law and Its Relevance for the Resolution of Tibetan Autonomy Claims' (2011) *North Carolina Journal of International Law and Commercial Regulation* 37(1).

⁹² Jason Walls, 'Prime Minister Jacinda Ardern says tackling period poverty is a 'personal priority' for her' (2019) <https://www.nzherald.co.nz/nz/prime-minister-jacinda-ardern-says-tackling-period-poverty-is-a-personal-priority-for-her/BIHHULQZCH43PIPP7TL7Z6DEMA/> (Accessed 23 August 2021).

⁹³ Natasha Frost, 'New Zealand to Rollout Free Period Products to All Students' (2021) <https://www.nytimes.com/2021/02/18/world/asia/new-zealand-period-schools.html> (Accessed 14 August 2021).

⁹⁴ Sandra Fredman and Beth Goldblatt, 'Substantive equality: A conceptual framework' in Sandra Fredman and Beth Goldblatt (eds), *Gender Equality and Human Rights* (2015) 3-11. ; Australian Human Rights Commission, 'Equality and non-discrimination' (Paper No.5, Declaration Dialogue Series Papers, 2013).

⁹⁵ *International Covenant on Economic, Social and Cultural Rights 1976* (ICESCR).

party to the *International Covenant on Economic, Social, and Cultural Rights 1976* (ICESR) since 1978.⁹⁶

With regard to substantive equality, the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR) provisions and relevant materials for its interpretation clarify a requirement to recognize such an approach for equality.⁹⁷ The specification outlines that special mechanisms developed to make changes to the social and economic structures, which otherwise affect individuals, with the purpose to attain substantive equality, are not characterized as discriminatory.⁹⁸ To illustrate, special programs such as free supply of menstrual products to school girls address two inequalities and disadvantaged groups: a). menstruating school girls that belong to families in a low-income bracket that cannot afford sanitary items compared to menstruating school girls that are in a high income bracket that can afford them; b). school girls who are experiencing menstrual poverty and as a result miss school compared to school boys or non-menstruating girls who are not living through this particular disadvantage at the cost of their education. Considering the two conceptions of deprivation of access to education, school girls that experience menstrual poverty are not facing inequality and disadvantageous consequences only compared in terms of gender-related experience. The comparison is also to those girls in school who can afford menstrual products and are not forced to miss school. First, menstruating school girls have biologically different experiences compared to non-menstruating students, and the disadvantageous situation of menstrual poverty is linked to a biologically existing difference. A substantive approach involves the free provision of sanitary products with the purpose to eradicate their disadvantage for equal results such that all can equally enjoy their right to education. Second, school girls that come from low income households experience menstrual poverty compared to school girls that can afford products, as they belong to families that are not in that income bracket. Therefore, in the two-fold conceptualization, providing menstruating girls with free menstrual items is an implementation of substantive equality that will pave the way for their equal access to the right to education without any discriminatory attributes.

Nonetheless, in a more specific view, substantive equality does not illustrate the absolute sameness of women and men. Rather, equality in this substantive approach means that human rights are to be recognized, enjoyed, and exercised by women and men with absolute and equal access to equal opportunities and equal results. To reflect on the obligation outlined in the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR), the full enjoyment of and equal access to opportunities of right to education should be realized regardless of gender. But, where school girls living in menstrual poverty are at a disadvantage against this equal and complete access, the free sanitary products are a “substantively” special measure to help them enjoy the right to education in equal measure to their non-menstruating classmates. The reason is that biological and social attributes can either entail women to be given the same treatment as men, or the impact of the said factors can cause women to be

⁹⁶ Ministry of Justice, ‘International Covenant on Economic, Social and Cultural Rights’ (2020) <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/human-rights/international-human-rights/international-covenant-on-economic-social-and-cultural-rights/> (Accessed 20 July 2021).

⁹⁷ UN Committee on the Elimination of all Racial Discrimination, ‘Consideration of reports submitted by States parties under article 9 of the Convention : concluding observations of the Committee on the Elimination of Racial Discrimination : Turkmenistan’ (2007) <https://digitallibrary.un.org/record/560509?ln=en> (Accessed 13 August 2021).

⁹⁸ Kelly Loper, ‘Substantive Equality in International Human Rights Law and Its Relevance for the Resolution of Tibetan Autonomy Claims’ (2011) *North Carolina Journal of International Law and Commercial Regulation* 37(1).

circumstantially treated in a unique fashion compared to men.⁹⁹ That is to say, policies should reflect achievement of equal opportunities and results, such as all right holders being in school to fully enjoy their right to education. The *Convention on the Elimination of All Forms of Discrimination against Women 1979* (CEDAW) is illustrative of an international human rights standard of the rationale for this differential or “special” treatment. According to Article 4 of the Convention: “1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention...”¹⁰⁰

In light of this, although special and affirmative measures in terms of a particular gender can arguably be seen as contradicting the principle of equality, nevertheless, the development of measures beneficial to women is in fact a way to achieve equality substantively and not contradict it.¹⁰¹ This is upon the acknowledgement that the advantageous measure, like the free supply of sanitary products, is required to combat the existing disadvantage of menstrual poverty that deprives young girls of equal enjoyment to their right to education.

Substantively, on biological, social, and cultural grounds, it is not sufficient to guarantee treatment for women identical to that of men where differences of the same aspects are considered.¹⁰² Substantive equality is reflective of equality of impact and not treatment owing to the conceptualization that equal treatment can potentially result in unequal outcomes. A practical view of the contrary notion of equality of treatment would be to not provide school girls free sanitary products merely because school boys do not need them. Conversely, a substantive approach to equality is focused on the purpose and impact. For example, focusing on menstrual poverty, which is in fact inhibiting school girls from equal access to education, and then accommodating¹⁰³ an observed need with free sanitary products, addresses the disadvantage for girls so they can equally enjoy education as non-menstruating girls and boys do.

Differences of this nature not only require contextual consideration, but also a differential treatment of girls and boys with regard to equal enjoyment of the right to education. Given the historically restricted access of women to education, the objective of the substantive approach is to take special measures to eradicate inequality rooted in historically determined patriarchal paradigms of resource and control.¹⁰⁴ In that regard, the United Nations Committee on Economic, Social, and Cultural Rights¹⁰⁵ noted that the policies and practices concerned with substantive equality should ensure in its effect that they mitigate the inherent disadvantage that specific groups experience. To alleviate the disadvantage demonstrates commitment within the

⁹⁹ COOP4Equality, ‘Substantive Equality’ (n.d) <http://coop4equality.com/en/how-we-do-it/substantive-equality/> (Accessed 6 August 2021).

¹⁰⁰ *Convention on the Elimination of All Forms of Discrimination against Women 1979* (CEDAW).

¹⁰¹ Sandra Fredman, ‘The Age of Equality’ in Sandra Fredman and Sarah Spencer (eds), *Age as an Equality Issue Legal and Policy Perspectives* (2003) 21-27.

¹⁰² United Nations Women, *Gender Equality and Human Rights* (2015).

¹⁰³ Kelly Loper, ‘Substantive Equality in International Human Rights Law and Its Relevance for the Resolution of Tibetan Autonomy Claims’ (2011) *North Carolina Journal of International Law and Commercial Regulation* 37(1).

¹⁰⁴ UN Committee on Elimination of All Forms of Discrimination against Women (CEDAW), ‘General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures’ (2004) <https://www.refworld.org/docid/453882a7e0.html> (Accessed 4 August 2021).

¹⁰⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), ‘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 Covenant)’ (2005) <https://www.refworld.org/docid/43f3067ae.html> (Accessed 3 August 2021).

substantive approach to a “leveling up”¹⁰⁶ mechanism that also conforms to *Convention on Elimination of All Forms of Discrimination Against Women* (CEDAW) standards. Its Committee¹⁰⁷ outlined a substantive perspective to its provisions, concerning the particular disadvantage in women’s access to education, and emphasized the implementation of provisions with the goal to decrease dropout rates for school girls, just as the New Zealand program does.

Since the rationale for the free supply of sanitary products in New Zealand is that it will facilitate girls’ participation in school by addressing menstrual poverty, the program conforms to the substantive approach to equality and its interpretations. Substantive equality as a singular principle, dimensional interpretation, social-justice interpretation, and international human rights interpretation recognizes menstrual poverty as a disadvantage for menstruating girls as right-holders. In light of this—and the assessment of the disadvantage and its negative consequence like the 6-month pilot program in New Zealand, in conformity with the international human rights standards—the free supply of sanitary products is equitably a specific measure or policy treatment to redress this disadvantage and its negative effect on girls’ equal access to education.

Current Initiatives

Presently, high-income nations around the world have taken the initiative to address menstrual poverty either with the free supply of menstrual products or the removal of sales tax. It demonstrates a positive duty from a state and institutional change that also generates equality as a result. 2020 research¹⁰⁸ at QUT (Queensland University of Technology) suggested that donations of menstrual products to deal with menstrual poverty can lead to positive results like a decline in school absenteeism for girls. The recommendations reflect steps taken in New Zealand to offer free sanitary items.¹⁰⁹ Similarly, Scotland is the first country in the world to offer period items for free. Actually, local authorities are legally obliged¹¹⁰ to ensure the free provision of sanitary pads and tampons to everyone who needs them. Like New Zealand’s pilot program, prior to the free supply, the government of Scotland also had gathered from letters and an extensive survey¹¹¹ that more than sixty percent of student respondents were struggling to access sanitary products. While, New Zealand and Scotland have availed free access to sanitary items, the initiative of Germany, Kenya, Canada, Australia, France, Spain, Poland and Austria include reduction of sales tax on menstrual hygiene articles.¹¹²

The free supply of sanitary products will not only tackle menstrual poverty but also redress the stigma associated with menstruation by allowing girls to properly manage their

¹⁰⁶ Sandra Fredman and Beth Goldblatt, ‘Substantive equality: A conceptual framework’ in Sandra Fredman and Beth Goldblatt (eds), *Gender Equality and Human Rights* (2015) 3-11.

¹⁰⁷ UN Committee on Elimination of All Forms of Discrimination against Women (CEDAW), ‘General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures’ (2004) <https://www.refworld.org/docid/453882a7e0.html> (Accessed 4 August 2021).

¹⁰⁸ Ruth Knight, ‘Reducing Period Poverty in Australia’ (2020) https://eprints.qut.edu.au/201306/1/Share_the_Dignity_Report_FINAL.pdf (Accessed 20 September 2021).

¹⁰⁹ QUT, ‘A QUT study has investigated the impact of period poverty on some young Australian women in high schools.’ (2020) <https://www.qut.edu.au/news?id=165708> (Accessed 15 August 2021).

¹¹⁰ BBC, ‘Period poverty: Scotland first in world to make period products free’ (2020) <https://www.bbc.com/news/uk-scotland-scotland-politics-51629880> (Accessed 8 August 2020).

¹¹¹ Young Scot, ‘Insight: Access to sanitary products in Scotland’ (2018) <https://youngscot.net/access-to-sanitary-products> (Accessed 29 July 2021).

¹¹² Stephanie Hoppner, ‘Free tampons and the fight against period poverty’ (2020) <https://www.dw.com/en/free-tampons-and-the-fight-against-period-poverty/a-55731499> (Accessed 24 August 2021).

menstruation with dignity in school. The preamble of the *Universal Declaration of Human Rights 1948* states that the inherent dignity of all human beings (including school girls as right-holders) should be recognized.¹¹³ This makes menstrual hygiene rights a human right for menstruating girls that is also linked to the fundamental right to education.¹¹⁴ Providing school girls with the proper menstruation hygiene supplies serves them as right-holders.¹¹⁵ Likewise, the Human Rights Watch stressed that providing pads and other supplies enables school girls to hygienically manage their menstruation¹¹⁶ whilst participating in school with dignity.¹¹⁷ When they cannot afford this, it results in their basic human rights being denied.¹¹⁸ Menstruation is a biological reality¹¹⁹ for many girls as right holders whose inherent dignity should be preserved.

However, young girls' fundamental right to education is not sustained and their inherent dignity is denied owing to the stigma attached to menstruation and the lack of access to sanitary products which inflames the stigma.¹²⁰ Firstly, menstrual poverty is a wider concern in that the ingrained menstrual stigma does not allow educational discussion of menstruation.¹²¹ Secondly, menstrual poverty exacerbates the menstrual stigma when girls are not able to manage their menstruation with dignity in school. This time of stigma and deprivation becomes the reason for their disengagement in school, either occasionally or absolutely. How does the free supply of sanitary products address this detriment through the substantive equality framework?

The four interconnected¹²² yet usefully separated dimensions of the substantive equality framework can inform the free supply of sanitary products to school girls for the disadvantage

¹¹³ *Universal Declaration of Human Rights 1948*.

¹¹⁴ World Vision, 'Menstrual hygiene rights are human rights. Period.' (2017) <https://www.wvi.org/blogpost/menstrual-hygiene-rights-are-human-rights-period> (Accessed 29 December 2021).

¹¹⁵ Humanitarian Response, 'Dignity Kits Guidance Note' (2015) https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/dignity_kits_guidance_note_en.pdf (Accessed 27 September 2021).

¹¹⁶ Human Rights Watch, 'UNDERSTANDING MENSTRUAL HYGIENE MANAGEMENT AND HUMAN RIGHTS' (2017) https://menstrualhygieneday.org/wp-content/uploads/2017/08/WU-HRW_mhm_practitioner_guide_2017.pdf (Accessed 29 DECEMBER 2021).

¹¹⁷ Graca Machel Trust, 'Restoring her dignity: raising the bar in menstrual reproductive health and rights' (2019) <https://gracamacheltrust.org/2019/11/12/restoring-her-dignity-raising-the-bar-in-menstrual-reproductive-health-and-rights/> (Accessed 25 September 2021). ; Karan Babbar et al, 'Menstrual health is a public health and human rights issue' (2021) *The Lancet* 7(1).

¹¹⁸ Human Rights Watch, 'UNDERSTANDING MENSTRUAL HYGIENE MANAGEMENT AND HUMAN RIGHTS' (2017) https://menstrualhygieneday.org/wp-content/uploads/2017/08/WU-HRW_mhm_practitioner_guide_2017.pdf (Accessed 29 DECEMBER 2021).

¹¹⁹ ID4D Sustainable Development News, 'Menstrual Hygiene: The Fight for Human Rights and Dignity' (2021) <https://ideas4development.org/en/menstrual-hygiene-fight-human-rights-dignity/> (Accessed 15 September 2021).

¹²⁰ World Bank, 'Menstrual Hygiene Management Enables Women and Girls to Reach Their Full Potential' (2018) <https://www.worldbank.org/en/news/feature/2018/05/25/menstrual-hygiene-management> (Accessed 13 September 2021). ; Murat Sahin, 'Guest editorial: Tackling the stigma and gender marginalization related to menstruation via WASH in schools programmes' (2015) *Waterlines* 34(1) 3-6.

¹²¹ Hygiene Day, 'Normalising menstruation, empowering girls.' (2018) *The Lancet Child & Adolescent Health* 2(6) 379.

¹²² Sandra Fredman, 'Women and education: the right to substantive equality' in Sandra Fredman, Meghan Campbell, and Helen Taylor (eds), *Human Rights and Equality in Education: Comparative Perspectives on the Right to Education for Minorities and Disadvantaged Groups* (2019) 99-110.

and stigma they face as right-holders in equally attaining their right to education.¹²³ The first dimension is redressing the social and economic disadvantage with a specific measure focusing on the group that experiences the disadvantage and its negative impact.¹²⁴ For example, the impact of the disadvantaged state of menstrual poverty is that it keeps girls away from school because they cannot manage their menstruation with dignity.¹²⁵ The second dimension is redressing the recognized harms like stigma, stereotype, indignity, and humiliation.¹²⁶ Social consequences of these harms may also be experienced with regard to the disadvantage. For instance, the menstruation taboo can be addressed by providing proper supplies for management of menstruation with dignity to girls experiencing menstrual poverty who cannot afford these.¹²⁷ An Australian charitable organization named Share The Dignity that offers sanitary products in schools country-wide confirmed in a report that offering sanitary products to young girls that experience menstrual poverty reduces stigma and restores dignity with the added impact of increased school attendance.¹²⁸ The third dimension is facilitating participation. To illustrate this, participation is facilitated with free supply of sanitary items that can break the culture of silence¹²⁹ around menstruation as a taboo topic and stigma. This instance is in New Zealand where Jacinta Gulasekharam's Positive Periods campaign provided sanitary items to school girls intending to reframe the conversation to erase the stigma around menstruation.¹³⁰ The supply ensures that girls participate in school with dignity,¹³¹ and do not have to fail tests because they cannot afford to manage their menstruation with dignity.¹³² The fourth dimension is to accommodate difference and achieve structural change.¹³³ In this transformative dimension, an institutional change that is social and economic in nature is

¹²³ Victoria Jollands, 'Substantive Equality: A useable framework for assessing human rights, allocation, and more in fisheries' (2020) <https://www.genderaquafish.org/2020/10/03/substantive-equality-a-useable-framework-for-assessing-human-rights-allocation-and-more-in-fisheries/> (Accessed 20 August 2021). ; Sandra Fredman, 'Substantive equality revisited' (2016) *International Journal of Constitutional Law* 14(3) 712-738.

¹²⁴ Sandra Fredman, 'Substantive equality revisited' (2016) *International Journal of Constitutional Law* 14(3) 712-738.

¹²⁵ BRITTANY KEOGH and CAROLINE WILLIAMS, 'Period shaming: Three in four Kiwi women say menstruation is stigmatised' (2019) <https://www.stuff.co.nz/life-style/115075228/period-shaming-three-in-four-kiwi-women-say-menstruation-is-stigmatised> (Accessed 29 December 2021).

¹²⁶ Sandra Fredman, 'Women and education: the right to substantive equality' in Sandra Fredman, Meghan Campbell, and Helen Taylor (eds), *Human Rights and Equality in Education: Comparative Perspectives on the Right to Education for Minorities and Disadvantaged Groups* (2019) 99-110.

¹²⁷ Graca Machel Trust, 'Restoring her dignity: raising the bar in menstrual reproductive health and rights' (2019) <https://gracamacheltrust.org/2019/11/12/restoring-her-dignity-raising-the-bar-in-menstrual-reproductive-health-and-rights/> (Accessed 25 September 2021).

¹²⁸ Ruth Knight, 'Reducing Period Poverty in Australia' (2020) https://eprints.qut.edu.au/201306/1/Share_the_Dignity_Report_FINAL.pdf (Accessed 20 September 2021).

¹²⁹ World Bank, 'Menstrual Hygiene Management Enables Women and Girls to Reach Their Full Potential' (2018) <https://www.worldbank.org/en/news/feature/2018/05/25/menstrual-hygiene-management> (Accessed 13 September 2021).

¹³⁰ Brittany Keogh and Caroline Williams, 'Period shaming: Three in four Kiwi women say menstruation is stigmatised' (2019) <https://www.stuff.co.nz/life-style/115075228/period-shaming-three-in-four-kiwi-women-say-menstruation-is-stigmatised> (Accessed 29 December 2021).

¹³¹ Graca Machel Trust, 'Restoring her dignity: raising the bar in menstrual reproductive health and rights' (2019) <https://gracamacheltrust.org/2019/11/12/restoring-her-dignity-raising-the-bar-in-menstrual-reproductive-health-and-rights/> (Accessed 25 September 2021).

¹³² BRITTANY KEOGH and CAROLINE WILLIAMS, 'Period shaming: Three in four Kiwi women say menstruation is stigmatised' (2019) <https://www.stuff.co.nz/life-style/115075228/period-shaming-three-in-four-kiwi-women-say-menstruation-is-stigmatised> (Accessed 29 December 2021).

¹³³ Sandra Fredman and Beth Goldblatt, 'Gender Equality and Human Rights' (Discussion Paper, UN Women, 2014) <http://www.austlii.edu.au/au/journals/UTSLRS/2014/8.pdf> (Accessed 29 December 2021).

required in order to respect and accommodate difference, without the need to change the individual or remove the difference, but rather to remove the detriment. To illustrate, facilitating girls' access to sanitary products symbolizes an institutional step towards recognizing menstruation as a biological reality for many girls that will remove both the stigma and menstrual poverty. It will accommodate the difference for girls experiencing menstrual poverty, who during their menstrual cycle in school, will be able to manage their menstruation with dignity without menstruation-related exclusion like missing school or education entirely.¹³⁴ Therefore, the four-dimensional substantive equality framework not only addresses the disadvantage of menstrual poverty to advance their equal access to right to education, but also redresses the stigma that menstruation carries. In this view of substantive equality, girls' inherent dignity as right-holders is restored and their fundamental right to education is equally sustained with the provision of proper sanitary supplies that enables them to manage their menstruation with dignity amidst their participation in the socio-economic advancement and rights-based opportunity that is education.

Conclusion

The rationale behind the New Zealand Government's free supply of sanitary products to girls is to address their high absenteeism rate due to menstrual poverty. The rationale in fact involves a fundamental right—the right to education. Girls' equal enjoyment of their fundamental right to education is deprived due to the disadvantaged state of menstrual poverty not merely in New Zealand but also in major democracies like India, the United Kingdom, the United States of America, and Australia. In light of this, substantive equality as a fundamental facet of human rights underpins the free supply of menstrual products for the mentioned rationale involving the equal enjoyment of the right to education for school girls as right-holders experiencing menstrual poverty. Menstrual poverty is identified as a material, social, and economic disadvantage to be addressed with a special measure for young girls' equal access to right to education in the diverse interpretations of substantive equality informed from the wider literature and international human rights standards, such as the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) standards. Thus New Zealand's rationale for the free supply of sanitary products as a policy is validated. The four dimensions of the substantive equality principle further recognizes redressing the disadvantage of menstrual poverty and the stigma attached to menstruation for girls as right-holders for the restoration of their inherent dignity. The four-dimensional interpretation usefully offers a holistic paradigm for responding to the disadvantage, the stigma, and the exclusion as a consequence of the former.

While scholars have acknowledged the existence of menstrual poverty as a multifaceted concern for girls in diverse national contexts, its lasting impact on young girls' education is an emerging body of fundamental policy consideration. The handful of countries that have reduced tax on the sale of menstrual products, and two nations' surveys and initiatives to supply free sanitary items, exemplify this fresh realization more than ever. Countries that are adopting a feminist perspective with conformity to international human rights standards should adopt this initiative with the purpose to allow school girls to equally enjoy their fundamental right to education and to be free from the disadvantage of menstrual poverty. The substantive perspective to equality is indicative of a resolution methodology underpinning the provision of

¹³⁴ Sarah House, Thérèse Mahon and Sue Cavill, 'Menstrual Hygiene Matters: a resource for improving menstrual hygiene around the world' (2013) *Reproductive Health Matters* 21(41) 257-259. ; Graca Machel Trust, 'Restoring her dignity: raising the bar in menstrual reproductive health and rights' (2019) <https://gracamacheltrust.org/2019/11/12/restoring-her-dignity-raising-the-bar-in-menstrual-reproductive-health-and-rights/> (Accessed 25 September 2021).

free sanitary items to girls who experience menstrual poverty and are unable to manage their menstruation with dignity. This is also where stakeholders come into play along with state actors for such facilitation that embodies the substantive equality approach. To reach an equal enjoyment of a common fundamental right and restoration of inherent dignity, biological and substantive differences between men and women should be considered and not neglected. Therefore, further work is needed to holistically capture the impact of menstrual poverty for young girls and their equal engagement with rights-led opportunities.

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