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Make the Link! ESC Rights are Women's Human Rights

Women's Economic, Social and Cultural Rights Working Group Submission to CEDAW Day of Discussion on Access to Justice, Feb 18, 2013

The Women and ESCR working group of ESCR-Net would like to commend the CEDAW Committee for taking up the critical issue of Access to Justice for further elaboration under its mandate. Ensuring access to justice is essential for preventing, ending and remedying violations of women's human rights. Women are often denied access to justice because of a lack of resources and legal frameworks and mechanisms for the hearing of legal matters most commonly experienced by women. Furthermore, situations of poverty and social and economic marginalization can create barriers for women when it comes to accessing justice, even in situations where legal aid, courts or other justice procedures may technically be available. It is essential, therefore, for the Committee to recognize and integrate an understanding of access to justice into this General Recommendation which acknowledges these barriers in women's lives and could constitute clear guidelines for States on redressing these situations.

There are two interrelated issues to which we would like to draw your attention today. The first is the concept of substantive equality and its application to women's access to justice. The CEDAW Committee has been a pioneer within the UN human rights system in developing and integrating the concept of substantive equality in its work. On the issues of access to justice, a substantive equality approach allows the Committee to be at the forefront of developing jurisprudence which takes into account the unequal context in which women are living and seeking to access the courts or other justice procedures, including less access to education, less ability to travel freely, etc. Also, in many instances, women have no access to resources for their claims and even if they do, they often have nowhere to claim the right. This approach requires a firm understanding of women's marginalized position vis-à-vis their economic, social and cultural rights, and an acknowledgement that violations of these rights perpetuate gender inequality and violate women's rights in a multitude of ways, and that these inequalities must be considered when assessing women's access to justice.

In our experiences, at the national level a significant barrier to substantive equality claims with respect to social and economic rights violations is the failure of the courts, and government officials to understand or accept that ESC rights are justiciable. Often, ESC rights violations are not gender neutral, and denying women the means and mechanisms to claim their rights has unique ramifications for women. For the CEDAW Committee this means that it may receive claims from women who may not have received a decision from an adjudicatory or administrative body at the national level. Where this is the case, the Committee should take into account whether the national legal framework ensures that

women have the opportunity to seek an effective remedy with regard to all of their human rights, and particularly with regard to their economic, social and cultural rights.

Access to justice has been even more difficult for women human rights defenders, as highlighted in the 2012 [report](#) by the UN Special Rapporteur on human rights defenders (HRDs), Margaret Sekaggya. Therefore, we also urge the CEDAW Committee to address the protection of women human rights defenders in particular and guarantee their equal access to justice, prompt and impartial investigation of infringements of their rights, and the accountability of those responsible – whether they be State or non-State actors. Efforts should include effective measures to combat impunity.

In light of these issues, this Committee should call on States parties to ensure that viable, accessible resources and effective remedies are actually available at the national level so women can claim their rights equally with men. In its own work and consideration of legal cases, the Committee should consider whether the barriers to access to justice are so insurmountable that women cannot, in fact, avail themselves of domestic remedies. Throughout the periodic review process, an assessment of a state's compliance to ensure access to effective remedies for ESC rights violations should be conducted. Furthermore, in determining the need to have exhausted domestic remedies, the Committee should draw on the principle of effectiveness. That is, the Committee must ask: Were remedies i/ available in practice, in the particular circumstances of the case; ii/ adequate (or sufficient) to provide relief for the harm suffered; iii/ effective, in that they are capable of producing the results for which they were intended; and, iv/ offer a reasonable prospect of success.

Members and Partners of the Women and ESCR Working Group

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