

The International Covenant on Economic, Social & Cultural Rights at 50:

The Significance from a
Women's Rights Perspective



The Global Initiative
for Economic, Social and Cultural Rights

الشبكة العالمية
للحقوق الاقتصادية
والاجتماعية والثقافية



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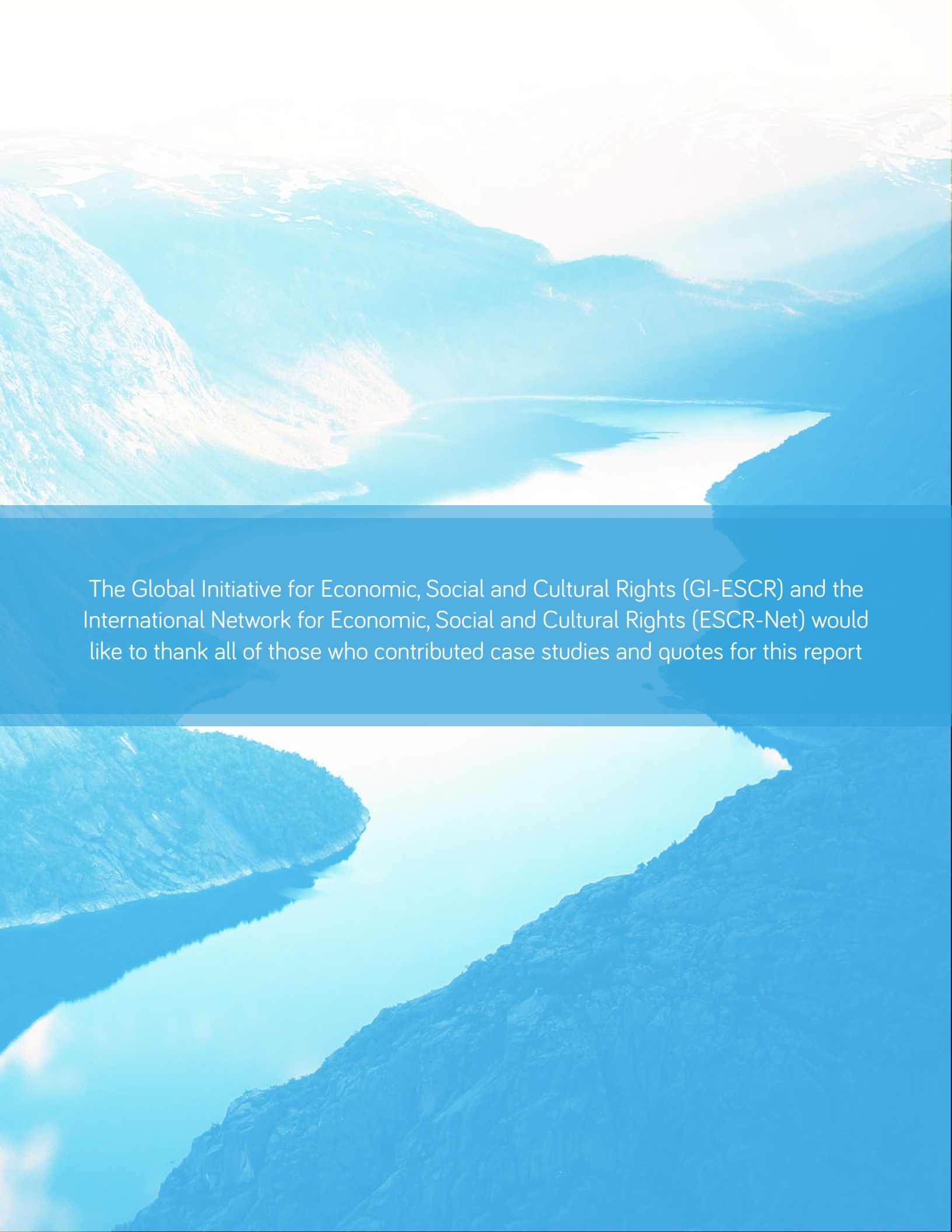


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Introduction

The International Covenant on Economic, Social and Cultural Rights (ICESCR) enshrines economic, social and cultural (ESC) human rights, including the right to housing, the right to work and to just conditions of work, the right to food, the right to the highest attainable standard of health, the right to social security, and the right to education, amongst others. It also recognizes “the equal right of men and women to the enjoyment of all economic, social and cultural rights” and prohibits gender-based discrimination.

2016 marks the 50th anniversary of the ICESCR, and it is an important moment to pause and look at the impacts of the Covenant on the lives of those most impacted by violations of ESC rights violations. Globally, women represent the majority of the 1.2 billion people living in poverty throughout the world. There is no aspect of ESC rights that are not relevant to the lives of women, and there is no ESC right which is not directly or indirectly impacted by discrimination on the basis of gender. Women are also on the front

lines of ESC rights advocacy and are often targeted in their roles as human rights defenders, for example as they take up struggles to resist land disposessions, large scale development projects, and forced evictions.

Notably, the 50th anniversary of the ICESCR comes just one year after the United Nations General Assembly adopted the 2030 Agenda for Sustainable Development as the agreed framework for international development. The 2030 Agenda has a stand-alone Goal on gender equality and the empowerment of women and girls (Goal 5), and there are gender equality targets in other Goals, as well as a call for sex disaggregated data across many indicators.¹ ICESCR represents a powerful framework for claiming women’s ESC rights globally, and within the context of the 2030 Agenda, it is vital to ensuring that international development conforms to international human rights law when it comes to realizing women’s ESC rights.

While progress has been made on various fronts, for

¹ See: UN-Women, ‘Women and Sustainable Development Goals,’ 2016.

example, in relation to girls' education, inequality with respect to the enjoyment of ESC rights is a central fact of women's lives and an everyday lived reality for women in every region of the world. As UN-Women has recognized, the end of poverty can only be achieved with the end of gender-based discrimination,² but the global economy is not working for women,³ and all too often women bear the brunt of increased economic pressures and deteriorating social services.

Ongoing inequality in the enjoyment of ESC rights also contributes to the continuing subordination of women and makes them especially vulnerable to violence, exploitation and other forms of abuse. Globally, women's earnings are 24 per cent less than men's;⁴ in many societies, laws and traditions bar women from accessing, controlling and inheriting important resources like land;⁵ women worldwide have less access to political power;⁶ and women continue to carry an unfair burden when it comes to unpaid care work.⁷

This publication celebrates the significance of the ICESCR from the perspective of advancing and ensuring gender equality and simultaneously points to ways in which the treaty can be utilized even more strategically and effectively to ensure that women's ESC rights are fully respected, protected and fulfilled towards the goal of achieving gender equality. While the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) is sometimes seen as the 'women's treaty' within international human rights law, the truth is that the ICESCR is also directly and extremely relevant to the lives of millions of women worldwide. As UN-Women has highlighted: "In addition to CEDAW, which is a vital reference point for understanding the meaning of gender equality, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the work of the committee that supervises its work, are also essential to understanding and addressing women's economic and social rights."⁸ ICESCR provides an important normative framework for claiming and upholding ESC rights, and it recognizes the central principle of gender equality. In particular, the principle of substantive equality articulated by CEDAW and echoed by ICESCR is also integral to claiming women's ESC rights. The right to gender equality is not subject to progressive realization, rather it is an immediate obligation of States parties under ICESCR to ensure that women are able to enjoy their right to equality in relation to ESC rights. Immediacy of obligations can be contrasted with the notion of progressivity, the latter of which has

2 Ibid.

3 See: <http://progress.unwomen.org/en/2015/>; See also: World Bank Policy Research Report, 'Engendering Development through Gender Equality in Rights, Resources, and Voice,' a copublication of the World Bank and Oxford University Press, 2001.

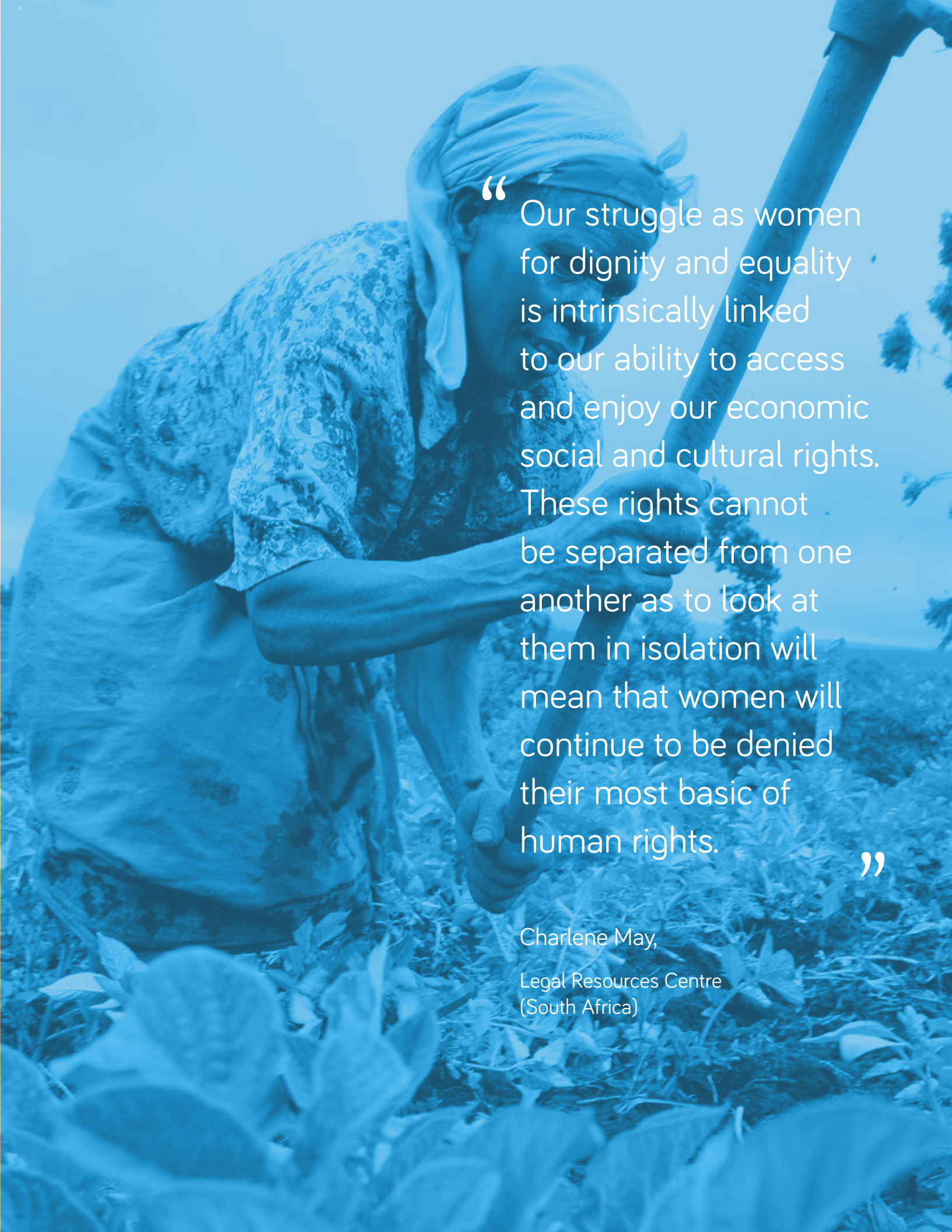
4 See: UN-Women, 'Progress of the World's Women 2015-2016: Summary; Transforming Economies, Realizing Rights,' 2016.

5 FAO, 'Infographic: The Female Face of Farming,' 2014.

6 World Economic Forum, 'Global Gender Gap Report,' 2015.

7 Report of the Special Rapporteur on extreme poverty and human rights, Ms. Maria Magdalena Sepúlveda Carmona on unpaid care work and women's human rights. UN Doc. A/68/293, 2013.

8 UN-Women, 'Progress of the World's Women 2015-2016: Summary; Transforming Economies, Realizing Rights,' 2016, p. 37.

A woman wearing a headscarf and a patterned shirt is working in a field, holding a hoe. The image is overlaid with a blue tint. The text is white and positioned on the right side of the image.

“ Our struggle as women for dignity and equality is intrinsically linked to our ability to access and enjoy our economic social and cultural rights. These rights cannot be separated from one another as to look at them in isolation will mean that women will continue to be denied their most basic of human rights.

”

Charlene May,
Legal Resources Centre
(South Africa)

“ The immediate obligation of States parties under ICESCR to ensure that women enjoy their right to equality in relation to economic and social rights is transformative both for gender equality and for economic and social life.

As regards gender equality, economic and social rights are at the core of transformative equality for women and girls, entitling them to education, health, employment and entrepreneurial opportunities on an equal basis with men. It is transformative equality in ESC which must require that states secure accommodation for maternity and parental leave and childcare, so essential for equal opportunity in economic and social life.

As regards the transformative impact of gender equality on economic and social life, it is abundantly clear both theoretically and empirically, that the equality of women and girls is essential for the economic and social welfare of the state, the community and the family.

”

Frances Raday,

Member of the UN Working Group on the issue of Discrimination against Women in Law and Practice, and former member of the CEDAW Committee

been described by the Committee on Economic, Social and Cultural Rights (CESCR) as “a necessary flexibility device,” which, while it applies to the general realization of ESC rights, cannot be said to apply to women’s right to equality.⁹

Finally, this publication seeks to overview the content of normative statements which CESCR has made over the years on various issues relevant to women’s ESC rights, and to highlight cases in which advocates have engaged with CESCR successfully to raise these issues and seek redress for violations of women’s ESC rights. While it does not address the issue of implementation by States, the publication highlights CESCR’s commentary within the context of many specific country reviews (country and year of review are noted in the footnotes). However, it is not meant to be an exhaustive commentary on everything that CESCR has said on every issue of interest.

Substantive Equality

Substantive equality is a critical concept in women’s human rights. It understands that formal equality (or equality in law), while important, is not enough to ensure women’s rights in reality. Rather substantive equality (or equality in practice) understands that in order for women to enjoy their human rights:

- the reality of gender inequality itself needs to be specifically acknowledged, so that **gender-responsive and women-centered laws and policies are enacted to combat such inequalities;**
- laws and policies need to **take into account sex-and gender-specific difference in order to explicitly remove barriers to the enjoyment of rights;**
- laws and policies **should not inadvertently reinforce gender stereotypes and roles but should rather seek to transform societal discrimination patterns;**
- **temporary special measures** will in many cases be necessary to ensure women’s equality; and
- analysis of **indirect and intersectional discrimination against women** is fundamental for the realization of substantive equality.¹⁰

CESCR, the body of experts which monitors the implementation of the ICESCR has articulated important standards on substantive ESC rights, and connected them explicitly to the experiences of women. It has said that “merely addressing formal discrimination will not ensure substantive equality ... States Parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate

9 CESCR, General Comment 3, The nature of States parties’ obligations, U.N. Doc. E/1991/23, annex III at 86, 1991.

10 For further discussion on the dimensions of substantive equality, please see: Sandra Fredman and Beth Goldblatt, ‘Discussion Paper: Gender Equality and Human Rights,’ UN-Women, No. 4, July 2015. See also: ‘Montreal Principles on Women’s Economic, Social and Cultural Rights,’ Human Rights Quarterly, Vol. 26, No. 3, 2004, pp. 760-780.

the conditions and attitudes which cause or perpetuate substantive or *de facto* discrimination.”¹¹

The most important statement from the Committee to date on substantive equality between women and men is its General Comment No. 16 (2005) on the equal right of men and women to the enjoyment of all ESC rights.¹² In it, CESCR highlights that “[t]he equal right of men and women to the enjoyment of all human rights is one of the fundamental principles recognized under international law and enshrined in the main international human rights instruments,”¹³ and that “failure to ensure formal and substantive equality in the enjoyment of [the specific rights enumerated in the Covenant] constitutes a violation of that right.”¹⁴

These principles have been reinforced in the Committee’s dealings with States parties to the Covenant. For example, on Benin (2002) the Committee observed that although the national Constitution says that men and women have equal rights (art. 26), women continue to face widespread discrimination, especially where access to employment, land and credit and inheritance rights are concerned. Similarly on Morocco (2006),¹⁵ it acknowledged that certain traditions, customs and cultural practices continue to prevent women from fully exercising their rights under the Covenant.

In other cases, CESCR has expressed concern about the existence of gender stereotypes that cast women as being of an inferior status within the family and in society at large and prevent women from exercising all their rights on an equal footing with men¹⁶. It has noted that *de facto* inequality can and does exist between men and women despite legislative guarantees of equality, owing to “perpetuation of traditional stereotypes and lack of implementation of legislative guarantees of equality; such inequality is reflected in unequal wages for equal work, high percentage of illiteracy ... low level of representation of women in public service and administration, and limited access to credit, professional work and skilled trades.”¹⁷

The Committee has therefore recommended to States parties that they incorporate a fundamental gender perspective in all public policies¹⁸ and intensify measures, including temporary special measures, to facilitate access by women to all Covenant rights, for example vis-à-vis education, employment and health care.¹⁹ It has also said that States parties should

11 CESCR, General Comment 20 on non-discrimination in economic, social and cultural rights, UN Doc. E/C.12/GC/20, at para. 8(b), 2009.

12 CESCR, General Comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights, UN Doc. E/C.12/2005/4, 2005.

13 Ibid., at para. 1.

14 Ibid., at para. 41.

15 See also Sudan, 2000.

16 Ecuador, 2012; see also Kazakhstan, 2010.

17 Ecuador, 2004.

18 Bolivia, 2008.

19 Denmark, 2013.

adopt effective monitoring and implementation mechanisms to ensure the effectiveness and sustainability of programs and policies aimed at promoting gender equality.²⁰ In some cases it has also suggested that States parties “conduct public awareness-raising campaigns, in collaboration with civil society organizations and the media, with a view to combating traditional stereotypes regarding the status of women and men in the public and private spheres.”²¹

Formal Equality

While substantive equality is necessary to ensuring that rights translate into reality, formal equality is still – while incomplete as a solution – important in its own right. Formal law within a country must be brought into line with Covenant protections and ensure women’s rights to non-discrimination and equality. CESCR has expressed concern in several cases where there are gaps in these legal protections. For example, on Egypt (2000) it noted “considerable divergence between constitutional provisions on one hand and national legislation ... on [the] other, with respect to societal status of women in general, women’s participation in political life, provisions in criminal law with respect to adultery, and female genital mutilation.” On Kuwait (2013) CESCR called upon the State party, *inter alia*, to:

- enshrine equal rights for men and women in its Constitution;
- prioritize the abrogation of all discriminatory laws, including those premised on women’s dependence on men;
- undertake a gender-based assessment of the impact of all legislation; and
- address gender inequality in the application of law.

In the case of Nepal (2001) CESCR recommended that the State party implement more vigorously existing legislation on gender equality and incorporate a gender equality perspective in legislation, with a view to ensuring greater equality of men and women, especially in areas of family, employment, labor conditions and representation in public services and administration. Similarly, it has also recommended to States parties that all present and future policies, laws and practices be reviewed in light of potential effects on women and appropriate measures be taken to ensure that women are not disadvantaged²² and in some cases existing legislation that institutionalizes discrimination against women must be amended, with a view to strengthening the legal status of women.²³

20 Jamaica, 2013; see also Uruguay, 2010.

21 Uruguay, 2010.

22 Croatia, 2001.

23 Morocco, 2000, in specific reference to discriminatory provisions in family, inheritance and personal status law.

Intersectionality

Intersectionality recognizes that women are not a homogenous group and that women can be affected by not only gender discrimination, but also various other forms of discrimination and inequality that affect and exacerbate gender discrimination. This reality has been recognized by CESCR on many occasions, including in its General Comment NO. 20 (2009) on non-discrimination in economic, social and cultural rights, where CESCR highlights that “[s]ome individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying.”²⁴

For example, on women with disabilities, CESCR has stated that “... the double discrimination suffered by women with disabilities is often neglected,” and urged States parties to address their situation, with high priority being given in future to the implementation of ESC rights-related programs.²⁵ Similarly, CESCR has said that States parties need to “pay particular attention to older women, who ... are often in critical situations” in part because they have been left out of social security and pension schemes.²⁶

CESCR has addressed intersectional discrimination in numerous ways and it has in many cases expressed concern about the disadvantaged position of particular groups of women. For example, on Ecuador, CESCR pointed to disparities in social security coverage rates, noting that although 22 per cent of the total population was covered, the coverage rate was only 12 per cent for indigenous women and 18 per cent for afro-Ecuadorian women.²⁷ In the same Concluding Observations, CESCR also expressed concern about the insufficiency of health-care services, including maternal health services in rural areas and noted that this is particularly a problem in the case of indigenous women.²⁸ Similarly, it has noted that women living in rural areas and indigenous women in other countries continue to suffer multiple and intersectional discrimination, which is reflected in the high levels of poverty in which they live,²⁹ and that women in rural and remote areas face particular hardship and challenges in the realization of their ESC rights, and that their situation is aggravated by poverty, illiteracy, difficulties in accessing health and social services

24 CESCR, General Comment NO. 20 (2009) on non-discrimination in economic, social and cultural rights, UN Doc. E/C.12/GC/20, 2 July 2009, at para. 17.

25 CESCR, General Comment No. 5 on persons with disabilities, contained in UN Doc. E/1995/22, 1995 at para. 19.

26 CESCR, General Comment No. 6 on the economic, social and cultural rights of older persons, 1995 at para. 20.

27 Ecuador, 2012.

28 Ibid.

29 Paraguay, 2015.

“

The International Covenant on Economic, Social and Cultural Rights is a powerful tool to advance women's rights. Article 3 of the Covenant specifies a cross cutting provision regarding the equal right of men and women to the enjoyment of all economic, social and cultural rights. It constitutes an immediate obligation for States parties to the Covenant, that must repeal formal discrimination legislation immediately and take targeted steps using maximum available resources to eliminate indirect, multiple and systemic discrimination against women.

The consideration of this provision in conjunction with all the substantive rights enshrined in the Covenant calls for nothing less than

substantive equality, since it implies that women must be at the center of economic, social and cultural policies.

Though the full potential of the Covenant in general and of Article 3 in particular has yet to be fully realized by States and women's rights organizations, the Committee on Economic, Social and Cultural Rights has made extensive use of both to monitor gender equality and the respect, protection and fulfillment of women's rights. Hopefully, in the future, the Covenant will become more relevant in mainstreaming women's rights into public policies.

”

and non-participation in decision-making processes.³⁰ It has also highlighted the plight of specific ethnic groups, including dalit women in Nepal. The Committee expressed concern that dalits continue to face widespread discrimination in the enjoyment of ESC rights, in particular with respect to access to education, health care, food, housing, employment and income-generating activities and that dalit women are victims of multiple discrimination, as they are more vulnerable to sexual exploitation, trafficking and various forms of violence, including domestic violence.³¹ Similarly, on Roma women, CDESCR has asked States parties to adopt temporary special measures to, in particular, ensure that Roma and other minority women have the same access to the regular labor market as men, including to senior positions, and that the principle of equal remuneration for work of equal value is implemented in practice.³² CDESCR has also expressed concern on the situation of immigrant women, who may be unaware of legal protections in their new country.³³ It has also repeatedly raised concern about the situation of lesbians, bi-sexual women and transgender women, asking States to repeal or amend all legislation that results or could result in discrimination, prosecution and punishment of people because of their sexual orientation or gender identity, and that effective measures are taken to ensure that these individuals can enjoy their ESC rights without discrimination, including access to health care, employment and education.³⁴

CDESCR has laid out several recommendations to States parties to address intersectional discrimination. It has asked States parties, for example, to take all appropriate measures – including **temporary special measures**, to combat all forms of discrimination against women belonging to racial, ethnic and national minorities, as well as single mothers, so as to ensure their equal access to employment, social security and social services, housing, health and education.³⁵ It has also asked States to **strengthen legal and institutional mechanisms aimed at combating discrimination** in the field of employment and facilitating equal access to employment opportunities for women and for persons belonging to racial, ethnic and national minorities.³⁶ In the field of health it has asked that States parties **accord priority to especially marginalized women** such as women from ethnic minorities and in rural areas in sexual and reproductive health programs.³⁷ In conflict and emergency situations, as well as in disaster and post-disaster situations, CDESCR has also asked that States parties **prioritize aid to female victims**³⁸ and that they protect refugee and internally displaced women from all forms of violence

³⁰ Tanzania, 2012.

³¹ Nepal, 2014.

³² Former Yugoslav Republic of Macedonia, 2008.

³³ Iceland, 2012; in reference to immigrant women being made insufficiently aware of the amendments to the act on foreigners, which states that a family reunification permit may still be extended when a marriage/cohabitation ends due to domestic violence.

³⁴ Tanzania, 2012; Iran, 2013; Guatemala, 2014; Indonesia, 2014; Lithuania, 2014.

³⁵ France, 2008.

³⁶ Brazil, 2009.

³⁷ Viet Nam, 2014.

³⁸ Morocco, 2006; Nepal 2008.

and provide mechanisms to offer them remedies and opportunities for social reintegration.³⁹

Health

CESCR has paid a great deal of attention to women's right to health, and has developed a rich body of Concluding Observations in that regard, particularly in relation to women's sexual and reproductive health and rights. In its General Comment No. 14 (2000) on the right to the highest attainable standard of health, in addition to addressing the issue of health generally from a gender perspective, CESCR also specifically highlights sexual and reproductive health, stating:

...there is a need to develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span. Such a strategy should include interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable health care, including sexual and reproductive services. A major goal should be reducing women's health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence. The realisation of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health. It is also important to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.⁴⁰

In some countries, CESCR has expressed concern that clandestine abortions remain a major cause of death among women.⁴¹ Where abortion is illegal, it has urged States parties to revise legislation on the total prohibition of abortion to make it compatible with other fundamental rights such as the woman's right to health and life, and consistent with the dignity of women.⁴² It has encouraged States parties to review their legislation on abortion and to study the possibility of providing for exceptions to general prohibitions on abortion in cases of therapeutic abortion or pregnancies resulting from rape or incest.⁴³ Where abortion is also criminalized, it has urged State parties to provide quality treatment for complications arising


³⁹ Chad, 2009.

⁴⁰ CESCR, General Comment 14 on the right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, 2000 at para. 21.

⁴¹ Brazil, 2009; Mexico, 2006.

⁴² El Salvador, 2014.

⁴³ Nicaragua, 2008.

A woman with glasses is looking at a smartphone. The background is a warm, orange-toned image of a woman's face, partially obscured by the text.

“ The Committee on Economic, Social and Cultural Rights puts gender equality at the heart of its work. It has not shied away from taking on some of the most sensitive issues related to gender equality—including calling on states to amend restrictive abortion laws and increase access to legal abortion, and to prohibit female genital mutilation. It has emphasized the importance of social security programs for gender equality, urging governments to ensure that women receive equal benefits in pension schemes and adequate maternity leave.

The Committee has made clear that States have the obligation to ensure that victims of domestic violence, most often women and girls, have access to safe housing, remedies and

redress. It has promoted equality in the family, including by underscoring States’ obligation to ensure that women and girls have an equal right to choose if, whom and when to marry, and to guarantee equal rights to marital property and inheritance. It has played an important role in developing the right to health, including through discussion of how gender roles affect access to determinants of health, such as water and food. The Committee’s role in promoting States’ obligation to address the social construction of gender stereotypes, prejudices and expected roles is important for the full realization of economic, social and cultural rights for women and girls around the world. As a result, the Committee is a leading champion of gender equality.

”

Amanda Klasing,

Women’s Rights Division of Human Rights Watch

from abortions carried out in unsafe conditions, rather than focusing on criminal prosecution⁴⁴ and to avoid penalizing medical professionals in the exercise of their professional responsibilities.⁴⁵

In its General Comment No. 22 (2016) on the right to sexual and reproductive health, CESCR notes the close link between sexual and reproductive health and civil and political rights, noting that the failure to provide emergency obstetric care or abortion services, both of which can lead to maternal mortality and morbidity can in fact constitute violations of the right to life or security, and in certain circumstances can even amount to torture or cruel, inhuman or degrading treatment.⁴⁶ It likewise stated that States parties must guarantee women and girls access to safe abortion services and quality post-abortion care, including by training health-care providers.

On contraception, CESCR has expressed concern about situations in which family planning services are not provided in public health-care systems and that women have no access to affordable contraception.⁴⁷ It has urged States parties to do away with barriers to access to emergency contraceptives and, in particular, to remove restrictions on the free distribution of such contraceptives, to develop strategies for overcoming culturally based prejudices against their provision to women, and to carry out campaigns on women's right to have access to such contraceptives.⁴⁸ It has noted that physical and economic access to reproductive health care and contraceptives should be given high priority, particularly in rural areas.⁴⁹ States parties are required to adopt legal and policy measures to guarantee all individuals access to affordable, safe and effective contraceptives and comprehensive sexual education.⁵⁰

CESCR has expressed concern that in some situations, the inadequate number, quality, staffing and supplies of health posts and the cost of reproductive health services continue to place women at risk, and that traditional attitudes among some castes and ethnic groups contribute to reproductive health problems of women.⁵¹ It has also highlighted that lack of adequately equipped maternal health care facilities and skilled birth attendance especially impacts the lives of poor women, older women and women with HIV.⁵² It remains concerned about high maternal and infant mortality rates, especially in regions where health infrastructure is inadequate, and the fact that women and girls often have limited access to reproductive health

44 El Salvador, 2014; Rwanda, 2013.

45 Nicaragua, 2008.

46 CESCR, General Comment No. 22 on the right to sexual and reproductive health, UN Doc. E/C.12/GC/22, 2016 at paras. 10 & 28.

47 Poland, 2002.

48 Ecuador, 2012.

49 Nepal, 2008.

50 CESCR, General Comment No. 22 on the right to sexual and reproductive health, UN Doc. E/C.12/GC/22, 2016 at para. 28.

51 Nepal, 2008.

52 Kenya, 2008.

services and antenatal assistance in rural areas.⁵³

CESCR has recommended that States parties ensure universal access to affordable primary health care and specialized reproductive health services; that they take specific measures to enable women to give birth in the care of trained health-care professionals; that they increase skilled birth attendance, and antenatal and post-natal care, especially in rural and remote areas; and that they increase the representation of women among health-care personnel, especially in the field of nursing.⁵⁴ It has called upon States parties to ensure access to sexual and reproductive health services to unmarried women and teenagers as well as to married women without the consent of their spouses.⁵⁵ It has said that States parties should step up efforts to ensure that pregnant women and girls receive proper medical care during pregnancy and during and after childbirth and have access to reproductive health services and antenatal assistance, including in rural areas, and that they are made aware of the importance of sexual and reproductive health.⁵⁶

At times, CESCR has also addressed other health issues which are of specific relevance to women. For example, on Argentina, CESCR recommended that the State party ratify and implement the WHO framework convention on tobacco control and develop effective public awareness and tax and pricing policies to reduce tobacco consumption, in particular targeting women and youth.⁵⁷

53 Yemen, 2003; Benin, 2008; Kenya, 2008; Turkey, 2011; Rwanda, 2013.

54 Nepal, 2008; Madagascar, 2009; Yemen, 2011.

55 Indonesia, 2014.

56 Benin, 2008.

57 Argentina, 2011.

Case Study:

The Center for Reproductive Rights

USING ICESCR TO UPHOLD WOMEN'S RIGHTS
IN DOMESTIC LITIGATION:
AWUOR & ANOTHER V. A.G. OF KENYA & 4 OTHERS (2012)

The issue

Whether a Kenyan public hospital violated two patients' right to health, human dignity, and freedom from discrimination, violence, and cruel, inhuman and degrading treatment by detaining them after they had just given birth because they could not pay their medical bills.

The facts

In 2012, the **Center for Reproductive Rights** (the Center) filed a case in the Kenyan High court on behalf of two petitioners who were detained at one of Kenya's main maternity hospitals after they each had given birth, but were unable to pay their hospital bills. Detention occurs when the patient is discharged but forced to stay at the hospital against their will until they pay their bills or the hospital finds they are unable to pay. Each additional day they stay in the hospital is added to their hospital bill. Prior to the petitioners' detentions, the Minister of Health declared that maternity fees would no longer be charged at public hospitals. The petitioners were kept in a separate ward where they were watched by guards so to prevent their escape, and were not given proper warm bedding, as a result of which one contracted pneumonia. They were abused by facility staff and workers, and kept away from their other children at home. Furthermore, the public hospital failed to investigate if they qualified for a waiver.

The legal strategy and petition

The Center placed at the heart of its litigation strategy human dignity, the right to the highest attainable standard of health, and freedom from discrimination. In order to effectively advocate for these rights, the Center relied on Articles 2(2), 10(2) and 12(1) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).⁵⁸ Under Article 10(2), the Center argued that the petitioners' emotional, physical and mental health were placed in a vulnerable state by the respondents.⁵⁹ The ICESCR explicitly proscribes discrimination based on gender, property or status, yet the petitioners' detention by the hospital was inherently discriminatory based

⁵⁸ Ibid., at paras. 27, 31, 37 & 54.

⁵⁹ Ibid., at paras. 52 & 54.

on the petitioners' income and immutable reproductive capacities.⁶⁰ Most importantly, the Center's petition reaffirmed the standards developed by the Committee on Economic, Social, and Cultural Rights (CESCR) in its General Comment No. 14,⁶¹ which places on states the obligation to ensure patients' right to health including the highest attainable standard of maternal health services, which the government of Kenya failed to guarantee.⁶² Thus, the ICESCR provided a clear legal framework under which the Center could hold the hospital and Kenyan ministries accountable.

The outcome

The Kenyan High Court responded to the Center's legal arguments with a strong and robust affirmation of the ICESCR and General Comment No. 14 by explicitly referencing the Covenant's provisions in the Center's petition as legal grounds for holding Kenya accountable to preventing abuse in state hospitals and implementing waiver programs for maternal health.⁶³ The Court used the CESCR's General Comment No. 14 interpretation of the right to health to include available, accessible, acceptable, and quality sexual and reproductive health services that respond to the specific needs of vulnerable or marginalized groups.⁶⁴ The Court upheld the state's duty to fulfil the rights of all persons when they are unable to realize the right themselves.⁶⁵ The Court found that because the petitioners' income prevented them from paying their medical bills, "the state was under an obligation to provide affordable reproductive health care services."⁶⁶

Advancing the judgment

The Center's engagement with the CESCR was also an effective advocacy tool for the 2012 Awuor case. In 2008, the Center submitted a shadow letter to the CESCR prior to Kenya's periodic review. The letter highlighted the abuse and detention patients, particularly pregnant women,⁶⁷ such as the petitioners in the Awuor case, suffer in state hospitals. The CESCR, in its concluding observations, placed a responsibility on Kenya to prevent abuses towards all pregnant women in state hospitals, and ensure that

60 Ibid., at para. 57.

61 CESCR, *General Comment No. 14: The right to the highest attainable standard of health*, UN Doc. E/C.12/2000/4 2000, at para. 34. See also: Paul Hunt & Judith Bueno de Mesquita, *Reducing Maternal Mortality: The Contribution of the Right to the Highest Attainable Standard of Health*, Human Rights Centre, University of Essex, 2007, pp. 5 & 9.

62 *Awuor* Petition, at paras. 27, 37 & 61.

63 See: *Awuor & Another v. A.G. of Kenya & 4 Others*, Judgment of 2015, 51-58 (High Ct. Kenya, Nairobi), available at <http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Judgment%20Petition%20No562%20of%202012%20Kenya%20detention%20case.pdf> [hereinafter *Awuor* Judgment].

64 Ibid., at paras. 133 & 136-139.

65 Ibid., at para. 140.

66 Ibid.

67 Center for Reproductive Rights, *Supplementary Information on Kenya submitted to the Committee on Economic, Social, and Cultural Rights*, 3, 4, 3 October 2008.

women are given accessible, quality and free maternal health care.⁶⁸ The Kenyan High Court relied on these concluding observations in its *Awuor* 2015 judgment as an example of Kenya's obligations to secure maternal health, including reproductive and sexual health and rights.⁶⁹ After the High Court opinion, the Center submitted additional shadow letters and an oral statement supplementing Kenya's 2016 periodic review in front of the CESC. These shadow letters call on the CESC to question Kenya about its implementation of the 2015 High Court opinion in the *Awuor* detention case, and the measures it will take to ensure state hospitals provide access to skilled maternal care free from abuse, and waivers for maternal health services so that no woman faces unlawful detention after giving birth.⁷⁰ In response, the CESC, in its 2016 Concluding Observations, urged Kenya to ensure maternal health-care services and prevent post-delivery detention, as well as strengthen efforts to improve access to sexual and reproductive health information and services.⁷¹

ICESCR's impact on the advancement of women's rights

The ICESCR and its interpretations proved to be an effective legal framework for redressing and securing the rights of the petitioners, upholding the human rights of vulnerable and marginalized groups in Kenya, as well as mandating states to "accord the widest possible protection and assistance to families, especially to mothers, before during and after birth."⁷² The Kenyan High Court was able to advance a broad interpretation of the ICESCR because the CESC continues to propel a progressive agenda that promotes the rights of the most vulnerable and marginalized groups including women, girls and adolescents. The Center is able to advance its work in securing sexual and reproductive rights for these marginalized groups because of the CESC's impressive role in the area of protecting the right to health and calling for state accountability.

68 CESC, Concluding Observations: Kenya, UN Doc. E/C.12/KEN/CO/1 2008, para. 32, available at http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.KEN.CO.1_EN.pdf.

69 *Awuor* Judgment, para. 143.

70 Center for Reproductive Rights, *Supplementary Information on Kenya submitted to the Committee on Economic, Social, and Cultural Rights*, 4, 5, 12, 1 February 2016, available at http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/KEN/INT_CESCR_CSS_KEN_22940_E.pdf; See also: Center for Reproductive Rights, *Supplementary Information on Kenya: Scheduled for Review by the Pre-sessional Working Group of the Committee on Economic, Social, and Cultural Rights during its 56th Session*, 5-7, 2015.

71 CESC, Concluding Observations: Kenya, UN Doc. E/C.12/KEN/CO/2-5 2016, paras. 53 & 54, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fKEN%2fCO%2f2-5

72 *Awuor* Judgment, para. 27.

Violence against Women (VAW)

CESCR has highlighted the problem of VAW in many countries, looking at issues of domestic violence, sexual trafficking and harmful traditional practices, and underscoring the link between VAW and women's ESC rights, including their rights to health, work, and education, among others. In its General Comment No. 16 (2005) on the equal right of men and women to the enjoyment of all ESC rights, CESCR highlighted that "Gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality. States parties must take appropriate measures to eliminate violence against men and women and act with due diligence to prevent, investigate, mediate, punish and redress acts of violence against them by private actors."⁷³ CESCR has expressed concern at the continuing occurrence of VAW, the lack of comprehensive strategies to combat all forms of VAW, and the absence of statistical information on VAW.⁷⁴ It has recommended that States parties strengthen legal protections to ensure that VAW and girls – such as domestic violence, female genital mutilation and other harmful traditional practices, sexual harassment, and marital rape, are made punishable under criminal law and that perpetrators are prosecuted.⁷⁵ States parties are therefore encouraged to take all effective measures, including concrete legislative and enforcement measures and adoption of national awareness campaigns, to eliminate all forms of VAW.⁷⁶

In this regard, CESCR has specifically recommended that States parties devise comprehensive national strategies to combat VAW, elements of which should include: data collection, enactment of relevant legislation, training courses for and sensitizing of police forces and judiciary, establishment of refuges for battered women and public awareness-raising campaigns.⁷⁷ In some cases, CESCR has also recommended preventive and awareness-raising measures on gender violence, such as training on women's rights and gender violence for police officers, especially those in police units for women.⁷⁸ It has also asked for enforcement of appropriate criminal sanctions against perpetrators of VAW, including by monitoring the number of prosecutions and convictions in this regard.⁷⁹

⁷³ CESCR, General Comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights, UN Doc. E/C.12/2005/4, 2005, at para. 27.

⁷⁴ Austria, 2013.

⁷⁵ Cameroon, 2012.

⁷⁶ Senegal, 2001; Egypt, 2013.

⁷⁷ Italy, 2000; Bolivia, 2001; Jamaica, 2013.

⁷⁸ Nicaragua, 2008.

⁷⁹ Egypt, 2013.

CESCR has also recommended that national awareness-raising campaigns be conducted to combat all forms of violence against women and girls, and that States parties provide statistical information on the prevalence of VAW and girls, together with statistics on prosecutions and convictions.⁸⁰

States parties have been asked to attach high priority to comprehensive measures to address domestic and other VAW and to allocate the human and financial resources necessary to put in place a national action plan to combat VAW.⁸¹

Domestic violence

CESCR has repeatedly rebuked States parties where domestic penal codes either do not consider domestic violence as crime, or where domestic violence is not specifically defined as a distinct criminal offence.⁸² It has also asked States parties to close loopholes in domestic violence laws, for example in the Philippines, to strengthen the protections on marital rape by repealing the possibility that the criminal liability of the husband be extinguished by the subsequent forgiveness of the wife.⁸³ However, even where adequate legislations exists, gaps in implementation remain and States parties have been encouraged to strictly enforce protections and penalize offenders.⁸⁴ To ensure proper implementation, CESCR has also called upon States parties to conduct education and training programs for judicial authorities and law enforcement officials on women's rights, as well as awareness-raising campaigns to sensitize the general public about domestic violence as a human rights violation.⁸⁵

States parties have also been asked to intensify its efforts to combat domestic violence in other ways, including by strengthening efforts to raise awareness on the criminal nature of domestic violence, including through a campaign of zero tolerance that makes such violence unacceptable; providing victims with shelters; ensuring that all cases of VAW are effectively investigated, that perpetrators are brought to account, and that victims have access to remedies as well as to protection, including in rural areas; and allocating sufficient human and financial resources to ensure the effective implementation of legal protections.⁸⁶

Harmful traditional practices

CESCR has expressed concern about the prevalence of traditional practices that violate the physical integrity and human dignity of women and girls, including female genital mutilation, polygamy, forced marriage and early marriage.⁸⁷ Such

80 Italy, 2000; Cameroon, 2012.

81 Dominican Republic, 2010.

82 Guatemala, 2003; Denmark, 2004; Kenya, 2008; Chad, 2009; Germany, 2011; Israel, 2011; Ethiopia, 2012; Iceland, 2012; Uzbekistan, 2014.

83 Philippines, 2008.

84 Cambodia, 2009; Kazakhstan, 2010; Monaco, 2014.

85 Kazakhstan, 2010.

86 Mongolia, 2000; Lithuania, 2014; Monaco, 2014; Uzbekistan, 2014.

87 Chad, 2009; Togo, 2013; Uganda, 2015.

practices harm women's ability to realize their ESC rights, including to health, education and work, and reinforce systems of gender discrimination and abuse. The Committee has asked that States parties criminalize such practices and implement national strategies, including widespread educational campaigns, to end them.⁸⁸ It has further called upon States parties to introduce in its legislation a harmonized minimum age of marriage for girls and boys that is in line with international standards.⁸⁹

Trafficking and sexual exploitation

In some countries, CESCR has expressed concern about high numbers of trafficked women and children who are subjected to forced labor and sexual exploitation.⁹⁰ It has also expressed concern about lack of reliable information, including statistics, on the extent of the problem of sexual exploitation of women and children, including prostitution, sale and trafficking in persons.⁹¹

CESCR has asked States parties to criminalize all forms of trafficking in human beings, convict perpetrators, adopt effective measures against trafficking and the sexual and commercial exploitation of women and children, and provide them with physical and psychological recovery and social reintegration measures, including provision of shelter, counselling and medical care.⁹² It has also asked States parties to adopt effective measures, including through regional cooperation, to combat trafficking in women and to adopt preventive programs to combat sexual exploitation of women.⁹³ States parties should intensify its efforts to combat human trafficking, especially of women and children, for purposes of sexual exploitation and forced labor, inter alia by prosecuting and convicting offenders of the law against trafficking, supporting programs and public awareness campaigns to prevent trafficking — in particular emphasizing that trafficking of women for sexual exploitation is a criminal offence, providing mandatory training for law enforcement officials, prosecutors and judges on the anti-trafficking legislation and increasing the provision of medical, psychological and legal support for victims.⁹⁴

States have also been encouraged to address the root causes of trafficking and sexual exploitation of women,⁹⁵ and to improve job possibilities and assistance to women living in poverty so as to combat the phenomenon of trafficking in persons.⁹⁶

88 Nepal, 2014; Gambia, 2015; Uganda 2015.

89 Gambia, 2015.

90 Ukraine, 2001; Greece, 2004.

91 China, 2005.


92 Democratic Republic of the Congo, 2009; Russian Federation, 2011.

93 Slovakia, 2002.

94 Dominican Republic, 2010; Yemen, 2011.

95 Russian Federation, 2011.

96 Moldova, 2003.



“ The International Covenant on Economic, Social and Cultural Rights supports women’s rights in three ways. First, women and girls in most families and in all world regions still shoulder, by far, most of the burden of caring for the children and the elderly, of buying and preparing the food, and in the most destitute households, of fetching firewood and water. The retreat of the State from social services or the cutting back on social protection therefore has disproportionate gender impacts. Conversely, by strengthening the protection of economic and social rights, the Covenant makes a vital contribution to gender equality. Second, women remain widely underrepresented in political decision-making — within local communities, within parliaments, and within executives. As a result, decision-making is biased against their interests. The recognition of economic and social rights as human rights, that must be shielded from shifts in the political mood and changing majorities, is therefore indispensable as a check against the disempowerment of women — although of course, it should never be seen as a substitute. Third, finally, whereas the Covenant recognizes rights that are in part subject to progressive realization, the requirement of non-discrimination imposes immediate obligations: at whatever pace economic and social rights are realized, they should be fulfilled without discrimination.

It is fitting, therefore, that this publication celebrating the fiftieth anniversary of the Covenant on Economic, Social and Cultural Rights focuses on women’s and girls’ rights, highlighting the contribution of this instrument to gender equality. The progress of economic and social rights benefits all individuals, but since women and girls face discrimination in a range of areas covered by the Covenant, it is they who should benefit the most. The result will be healthier and more resilient societies, who will better support the flourishing of all their members.

”

Olivier De Schutter,

Member of CESCR

Education

On the right to education, the CESCR has noted that education has a vital role in empowering women, and that States parties are obliged to remove gender and other stereotyping which impedes the educational access of girls, women and other disadvantaged groups.⁹⁷ CESCR has raised concern in multiple countries about low rates of female literacy,⁹⁸ and in particular amongst rural women, which has a deep impact on the enjoyment of ESC rights.⁹⁹ It has urged States parties to remove gender biases and stereotypes in school materials¹⁰⁰ and to take measures to change society's perception of gender roles, including through awareness-raising campaigns on shared family responsibilities for men and women and on equal career opportunities as a result of education and training in fields other than those traditionally dominated by either sex.¹⁰¹ It has further recommended that States parties take effective measures and provide funds to combat discrimination in the education of girls and young women.¹⁰²

In higher education, CESCR has expressed concern about the restrictions placed on access to university education, in particular those affecting women,¹⁰³ as well as low representation of women in university teaching posts,¹⁰⁴ and has recommended that States parties take the necessary measures, including temporary special measures, to promote an increase in the number of women in higher education and provide incentives for young women and men to enter the field of study of their choice,¹⁰⁵ and in particular increase the participation of women in higher educational courses in science, technology, engineering and mathematics, as well as its related professions.¹⁰⁶

Food and Nutrition

CESCR has encouraged States parties to give particular attention to the need

97 CESCR, General Comment No. 13 (Twenty-first session, 1999), The right to education (article 13 of the Covenant), UN Doc E/C.12/1999/10, 1999 at paras. 1 & 55.

98 Egypt, 2000; Panama, 2001.

99 Morocco, 2000; Yemen, 2003.

100 Viet Nam, 2014.

101 Ukraine, 2014.

102 Bolivia, 2008.

103 Iran, 2013.

104 Austria, 2006.

105 Turkmenistan, 2011.

106 Austria, 2013.

to prevent discrimination in access to food or resources for food.¹⁰⁷ Women in particular should be guaranteed full and equal access to economic resources, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology. In State party reviews, it has recommended that steps be taken to address chronic food insecurity, chronic malnutrition and, in particular, the critical nutritional needs of pregnant women.¹⁰⁸

Work and Family

CESCR has continually raised concern about women's rights at work, and about the disproportionate burden that women throughout the world carry in terms of unpaid care work. In several cases, CESCR has raised concern about persisting wage gaps between men and women and high unemployment and underemployment rates among women,¹⁰⁹ as well as persistent practices that discriminate against women with respect to working conditions, vertical and horizontal gender segregation in the labor market, unfair dismissal, and lack of employment contracts.¹¹⁰ It has also raised concern about the low percentage of women in high-ranking and high-wage positions in many professional fields.¹¹¹

In order to eliminate these and other forms of gender discrimination in the field of work, CESCR has encouraged States parties to adopt employment strategies and policies aimed specifically at women¹¹² and to implement temporary special measures to accelerate women's representation in the field of employment.¹¹³ For example, it has asked States parties to further enhance vocational training, job training and retraining opportunities for unemployed women and women employed in low-paid jobs.¹¹⁴ CESCR has highlighted that there should be a comprehensive system of protection to combat gender discrimination and to ensure equal opportunities and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value.¹¹⁵ It has repeatedly asked States parties to undertake and enforce effectively measures to ensure equal treatment

107 See: CESCR, General Comment No. 12: the right to adequate food, UN Doc. E/C.12/1999/5, 12 May 1999.

108 Sri Lanka, 2010; Tajikistan, 2015.

109 Ukraine, 2001; Costa Rica, 2008; Serbia, 2008; Sweden, 2008; Madagascar, 2009; Switzerland, 2010; Russian Federation, 2011; Tanzania, 2012; Bosnia and Herzegovina, 2013; Egypt, 2013; Czech Republic, 2014; Paraguay, 2015.

110 Bosnia and Herzegovina, 2013; Czech Republic, 2014; Paraguay, 2015.

111 Finland, 2008; Sweden, 2008; Switzerland, 2010; Armenia, 2014.

112 Jamaica, 2013; El Salvador, 2014.

113 Czech Republic, 2014.

114 Ukraine, 2008.

115 CESCR, General Comment No. 18: Article 6 of the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/C.12/GC/18, 2006, at para. 13. See also: CESCR, General Comment No. 23 on the right to just and favourable conditions of work, UN Doc. E/C.12/GC/23, 27 April 2016, in particular paras. 11-17 & 47(a).

between men and women in the labor market, and consider enacting legislation on equal pay for work of equal value in both the public and the private sectors.¹¹⁶ In some instances, it has also urged State parties to “address the root causes of unemployment among women,” including by carrying out awareness-raising campaigns to change society’s perception of gender roles.¹¹⁷ It has also suggested promoting pursuit of education and training in fields other than those traditionally dominated by either sex.¹¹⁸

To monitor the situation of women’s rights at work, CESCR has asked that States provide gender-disaggregated statistics on participation in the labor market and on the average actual earnings broken down by occupation, branch of activity, and level of qualifications, with respect to both the public and private sector.¹¹⁹ It has also asked that criteria used to determine the rates of remuneration, including those established in collective agreements and in minimum wage agreements, are determined in accordance with the principle of equal remuneration for men and women for work of equal value.¹²⁰

116 Colombia, 2001; Germany, 2001; Brazil, 2003; Luxembourg, 2003; Denmark, 2004; Liechtenstein, 2006; India, 2008; Cambodia, 2009; Poland, 2009; Sri Lanka, 2010; Iceland, 2012; Peru, 2012; Jamaica, 2013; El Salvador, 2014; Ukraine, 2014.

117 Mauritania, 2012.

118 El Salvador, 2014.

119 Bosnia and Herzegovina, 2006; Liechtenstein, 2006; Turkmenistan, 2011.

120 Turkmenistan, 2011.

Case Study: Nazdeek

USING ICESCR TO UPHOLD THE RIGHTS OF WOMEN TEA WORKERS IN INDIA

Basanti Topno, Nazdeek's paralegal coordinator in Assam, India dusts off her bicycle and begins her daily visits to the community of paralegals living within Assam's tea gardens. An Adivasi (indigenous) grassroots activist, Basanti has committed her life's work to mobilizing women tea workers to learn and demand their rights in a quest to save mothers' lives.

Producing more than 52 per cent of India's tea, the northeastern state of Assam is home to the largest tea-growing region in the world. The tea laborers, mostly Adivasis forcibly brought by the British to work in the plantations more than 175 years ago, today live in a state of generational servitude dependent on the tea management for their livelihood, housing, health and education. Comprising more than 50 percent of the workforce, women workers are at the core of this unbreakable cycle, routinely denied health, nutrition and labor benefits necessary to ensure safe motherhood.

Assam leads the country with the **highest maternal mortality ratio** (MMR) in India, with 77 percent of maternal deaths occurring in the tea gardens. Health facilities in the plantations are often ill-equipped, lacking adequate electricity, water, medical supplies, ambulances and skilled medical personnel. As a result, patients have no option but to secure their own transportation to reach better facilities, often located 1-2 hours away. Once women arrive at a district-level hospital they encounter an overcrowded, highly unhygienic facility, and they are forced to sleep on floors and corridors due to lack of beds and adequate staff. Those "lucky" enough to receive assistance often pay illegal fees for life-saving services such as blood, medicine and emergency obstetrics care. These barriers to care place the lives of women workers at serious risk, and are in blatant violation of the rights to safe motherhood firmly rooted in domestic and international law.

The Supreme Court of India has repeatedly held that the right to health is a fundamental right protected by the Indian constitution. India has ratified numerous international covenants including the International Covenant on Economic Social Cultural Rights (ICESCR). The government has also enacted numerous programs guaranteeing free and universal access to maternal health care. Despite these robust laws and policies, weak

implementation and low community awareness results in rampant human rights violations.

At **Nazdeek**, a legal empowerment organization committed to bringing justice closer to marginalized communities in India, we are using the law to tackle impunity and build community agency to save mothers' lives. Central to this effort is holding India accountable to its international gender equality commitments under ICESCR. By example, we invoke Articles 10 and 12 of ICESCR and CESCR Comments such as General Comment No. 14 to strengthen and inform our demands for safe motherhood. In our legal petitions, our administrative complaints and advocacy reports, we rely on ICESCR to underscore that the right to safe motherhood is an immediate obligation, and interconnected to the rights to maternal health, nutrition, sanitation, equality and non-discrimination.¹²¹ When meeting with government officials from the local, state and national level, we rely on ICESCR commitments to underline the duties and obligations of officials to protect the right to women's health without discrimination.

The spirit and purpose of ICESCR is woven into our groundbreaking project, **End MM Now**, a community-monitoring platform that allows women to identify and report violations of their right to healthcare through text messages. A collective of 25 indigenous women – many of whom are tea garden workers, farmers and housewives – use their mobile phones and a basic knowledge of national and international law to demand a more accountable healthcare system for tea garden workers. To date, more than 160 cases of health and nutrition violations have been reported through the platform, providing crucial data to identify gaps in healthcare delivery.

The initial findings of the project were published in the report **No Time to Lose**, evidence-based recommendations based on international and national law to local authorities to improve health service delivery. Since the launch of the project, significant impacts have been achieved in the lives of women. Basanti and our collective of paralegals have observed improvements in healthcare services ranging from better ambulance coverage, a reduction in informal fees paid at health facilities, the appointment of medical personnel, and more than 27,000 pregnant and lactating women and children receiving supplementary nutrition rations. In addition, citizen grievance forums have been established where women can raise violations and secure time-bound relief. With the law as an instrument of justice Basanti feels power shifting towards people, a movement which saves mothers' lives.

¹²¹ Nazdeek relies on path-breaking decisions such as Laxmi Mandal case where the Delhi High Court held that the right to survive pregnancy and childbirth is a core component of the right to life in Article 21 of the Indian Constitution, and that the failure of the state to protect the reproductive rights of women violated international and domestic law, including ICESCR.

Other forms of gender discrimination in the workplace

On discrimination in the workplace, CESCR has also expressed concern over sexual harassment¹²² and has asked States parties to enact and enforce specific legislation criminalizing sexual harassment in the workplace.¹²³ It has said that pregnancies must not constitute an obstacle to employment and should not constitute justification for loss of employment.¹²⁴ Rather, it has upheld that paid maternity leave should be granted to all women and benefits should be provided for an adequate period.¹²⁵ Here, it has recommended that in certain cases, States parties should amend federal legislation, with a view to prohibiting the practice of requiring non-pregnancy certificates from women as condition of employment and to sanction employers who fail to comply with these provisions.¹²⁶ In other cases, it has recommended effective enforcement of existing legislation in order to protect pregnant women and women on maternity leave against unjustified dismissal and to circulate legislation widely among employers and to conduct inspections in order to combat possible abuses.¹²⁷ More broadly, the Committee has also expressed concern that certain professions not being accessible to women on the ground of protecting their physical well-being.¹²⁸ It has also raised the situation of disadvantageous working conditions affecting in particular domestic workers, most of whom are migrant women, who are paid the lowest minimum wage, working over 8 hours a day with inadequate rest, pensions and vacations.¹²⁹

Inequalities in family roles

CESCR has also encouraged more equitable sharing by men and women of roles and responsibilities within the family, thereby allowing women to enjoy their ESC rights fully,¹³⁰ and has asked States parties to take measures to assist men and women to reconcile professional and family life.¹³¹ In this regard it has recommended increasing the capacity of childcare facilities, promoting training measures to facilitate re-entry of women into the labor market following parental leave, and providing incentives for use of parental leave by fathers.¹³²

122 Ukraine, 2001; Slovakia, 2012.

123 Mongolia, 2000; Russian Federation, 2003; Russian Federation, 2011; Japan, 2013.

124 CESCR, General Comment No. 18: Article 6 of the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/C.12/GC/18, 2006, at para. 13.

125 CESCR, General Comment No. 19, The right to social security (art. 9), UN Doc. E/C.12/GC/19, 2008 at para. 19.

126 Mexico, 2006.

127 Mongolia, 2000; Belgium, 2013.

128 Turkmenistan, 2011.

129 Costa Rica, 2008.

130 Monaco, 2014.

131 Denmark, 2004.

132 Germany, 2001; Austria, 2006; Canada, 2006; Estonia, 2011; Austria, 2013; Monaco, 2014.

Housing, Land and Property

Throughout the world, women face discrimination in housing and are too often denied access to productive resources such as land, due to entrenched patterns of gender discrimination and exclusion. This situation both reflects and deepens gender inequality, and leaves women far more vulnerable to the multiple threats of food insecurity, violence, marginalization, and economic impoverishment, and, in many cases, to the devastating effects of HIV/AIDS. Housing, land and property are interconnected because there are common barriers to women's access: barriers such as discriminatory personal status, civil and family codes which limit women's equal right to property; customary practices which deny women's ability to control housing and land; and unequal rights within the context of marriage. In its country reviews, CESCR has encouraged States parties, as a matter of priority, to amend matrimonial and family laws with a view to eliminating discrimination against women in marital matters and ensuring their consistency with the relevant human rights standards under the Covenant and other international instruments. In particular, it has recommended that urgent steps be taken with a view to ensuring equal rights of women in divorce proceedings and guaranteeing equal rights of women to inheritance and land.¹³³ It has also urged States parties to eradicate enduring discriminatory practices against women and girls that restrict access to land, property, housing, credit facilities, and inheritance.¹³⁴

CESCR has also recommended that States parties raise awareness about women's land rights with women, local and traditional communities and their leaders, the judiciary and land administration officials and to provide legal support to women to claim their land rights.¹³⁵ In some cases it has urged States parties to speed up the process of land reform, to ensure that obstacles to land ownership faced by women are removed, and to provide funds to combat discrimination in access to housing and land.¹³⁶ In those cases where plural legal systems exist, CESCR has also made it clear that customary law must be brought in line with international human rights standards on gender equality which protect women's equal rights to land.¹³⁷

CESCR has highlighted the link between access to housing and domestic violence,

¹³³ Morocco, 2000; Senegal, 2001; Madagascar, 2009; Yemen, 2011; Egypt, 2013; Nepal, 2014; Kenya 2016.

¹³⁴ Senegal, 2001.

¹³⁵ Kenya, 2016.

¹³⁶ Bolivia, 2008; Cameroon, 2012.

¹³⁷ Equatorial Guinea, 2012; Kenya 2016.

noting that States parties are required “to provide victims of domestic violence, who are primarily female, with access to safe housing.”¹³⁸ It has expressed concern that women are prevented from leaving abusive relationships due to lack of affordable housing and inadequate assistance.¹³⁹ On forced evictions, CESCR has also said that “women ... suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless.”¹⁴⁰

138 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 International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2005/4, 2005 at para. 27.

139 Canada, 2006.

140 CESCR, General comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions, contained in UN Doc. E/1998/22, annex IV, 1998 at para. 10.

Case Study:

Centre for Economic Social Cultural Rights in Africa (CESCRA)

USING CESCRA TO MONITOR AND REPORT ON WOMEN'S LAND INHERITANCE AND PROPERTY RIGHTS IN UGANDA

Uganda was reviewed by CESCRA in 2015, the first time in over 10 years. The country level civil society reporting process began earlier in 2014 coordinated under the ESCR ad hoc NGO Coalition in which various ESC rights were raised in the main CSO joint submission. CESCRA's reporting mechanism is very relevant to the **Center for Economic, Social and Cultural Rights in Africa** (CESCRA) which works on women's rights to land, inheritance, housing and property rights in the context of oil and gas extractives. The 2015 review was an opportunity to reiterate concerns on gender equality in women's equal access, ownership and control of land, inheritance and property rights in Uganda. Earlier in 2010 the CEDAW Committee had made some recommendations to address persisting discrimination against women that were not adequately addressed by the government. CESCRA reporting provided the opportunity to restate the concerns since ICESCR provides for strong standards on land, inheritance, housing and property rights of women and stresses the significance of these to the attainment of other ESC right as well as the civil and political rights enshrined in Uganda's domestic laws and other international human rights laws.

Uganda has progressive laws including legal prohibition of all forms of discrimination against women, affirmative action on the historical injustices and barriers to women advancement and the prohibition of repugnant cultures and beliefs that discriminate against women. Despite this, substantive discrimination persists, enforcement of existing laws is very weak and efforts to review relevant laws on marriage, divorce and succession to guarantee greater legal protection of women's land, inheritance and property rights and address persisting substantive discrimination in communities especially women in rural areas, have stagnated for years. With weaker legal protection of customary land owners from impact of exploitation of natural

resources and extractives like mining, oil and gas, women are faced with increased threats to their land rights, food security, economic independence and are vulnerable to displacement and forced evictions due to land grabbing, unprecedented land sales by spouses and domestic violence from spouses over irrational choices on use of finances from sale of land. CESCRA sought partnership with likeminded international and national organizations; the Global Initiative for Economic, Social, and Cultural Rights (GI-ESCR), the International Human Rights Clinic at Western New England University School of Law, and the Uganda Land Alliance (ULA) for a more specific joint submission in order to increase visibility of women's land and property rights issues in the review and influence outcome Concluding Observations (CO). Indeed this was achieved as evidenced in the final CO.

The joint submission and the subsequent advocacy activities CESCRA engaged in was an eye opener. A communique, which highlighted key concerns and recommendations in our joint shadow report, was submitted to the Committee. One of the Committee members met with CESCRA in a follow up activity in Uruguay organized by ESCR-Net and said "your write up was very useful... such interventions helps to guide our recommendations." CESCRA also made follow up on the implementation of the CO. We organized a strategic meeting involving the government relevant ministries, CSOs and the National Human rights Commission to discuss the implementation of the CO. It was suggested that we form a national framework on women's land and property rights. We were also offered space to talk on a national television, a radio talk-show and we also talked to journalists that later aired our views popularizing the CO. CESCRA in partnership with GI-ESCR is undertaking a series of strategic meeting with line ministries to further monitor CO implementation and the Ministry of Gender has offered space for the meetings.

CESCR has urged States parties to apply the standard of free, prior and informed consent (FPIC) to women affected by land concessions, and has urged States parties to always enter into prior and meaningful consultations with the communities concerned before granting concessions for the economic exploitation of lands, and fulfil the obligation to obtain their FPIC, including and in particular that of women and customary landowners.¹⁴¹

Water and Sanitation

On the right to water, the CESCR has noted that “whereas the right to water applies to everyone, States Parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women ... In particular, States Parties should take steps to ensure that ... [w]omen are not excluded from decision-making processes concerning water resources and entitlements. The disproportionate burden women bear in the collection of water should be alleviated.”¹⁴² It has in some cases asked States parties to take immediate steps to improve the health situation of indigenous women, including by implementing a human rights framework that ensures access to safe drinking water and effective sanitation systems.¹⁴³ It has also urged States parties to ensure that women in rural areas, and in particular those who are heads of household, participate in decision-making processes and have improved access to clean water and sanitation services.¹⁴⁴

Social Security

CESCR has noted that “whereas everyone has the right to social security, States Parties should give special attention to those individuals and groups who traditionally face difficulties in exercising this right, in particular women,”¹⁴⁵ and has called upon States parties to provide for the “equalisation of the compulsory retirement age for both men and women; ensuring that women receive benefits in both public and private pension schemes; and guaranteeing adequate maternity leave for women, paternity leave for men, and parental leave for both men and women.”¹⁴⁶

141 Uganda, 2015.

142 CESCR, General Comment No. 15: The right to water, UN Doc. E/C.12/2002/11, 2002 at para. 16.

143 Australia, 2009.

144 Tanzania, 2012.

145 CESCR, General Comment No. 19, The right to social security (art. 9), UN Doc. E/C.12/GC/19, 2008 at para. 31.

146 Ibid., at para. 32.



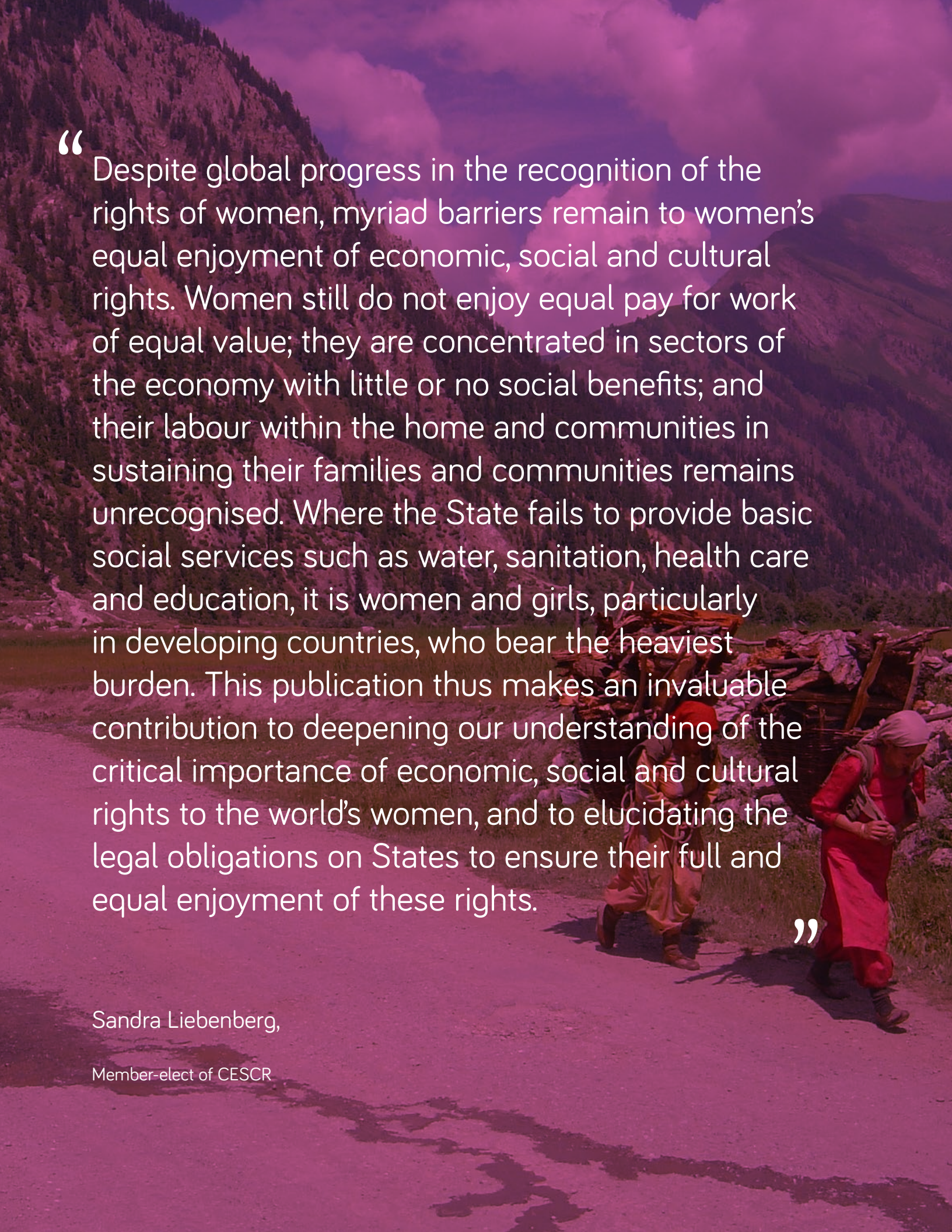
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Five decades on, the impact of ICESCR in furthering women's rights cannot be overstated. In recognizing the strong link between gender-based discrimination and the denial of ESC rights, the Covenant, especially through its General Comments has proved to be an invaluable tool in campaigning for gender justice. In my work, I have seen the ICESCR framework used to great effect by community activists and advocates to advance the rights of women and girls within the struggle to realise the rights to adequate housing, water and sanitation in informal settlements.

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Malavika Vartak,

GI-ESCR Board Member



“Despite global progress in the recognition of the rights of women, myriad barriers remain to women’s equal enjoyment of economic, social and cultural rights. Women still do not enjoy equal pay for work of equal value; they are concentrated in sectors of the economy with little or no social benefits; and their labour within the home and communities in sustaining their families and communities remains unrecognised. Where the State fails to provide basic social services such as water, sanitation, health care and education, it is women and girls, particularly in developing countries, who bear the heaviest burden. This publication thus makes an invaluable contribution to deepening our understanding of the critical importance of economic, social and cultural rights to the world’s women, and to elucidating the legal obligations on States to ensure their full and equal enjoyment of these rights.

”

Sandra Liebenberg,

Member-elect of CESCR

Further, the Committee reiterates that in social security schemes that link benefits with contributions:

States parties should take steps to eliminate the factors that prevent women from making equal contributions to such schemes (for example, intermittent participation in the workforce on account of family responsibilities and unequal wage outcomes) or ensure that schemes take account of such factors in the design of benefit formulas (for example by considering child rearing periods or periods to take care of adult dependents in relation to pension entitlements). Differences in the average life expectancy of men and women can also lead directly or indirectly to discrimination in provision of benefits (particularly in the case of pensions) and thus need to be taken into account in the design of schemes. Non-contributory schemes must also take account of the fact that women are more likely to live in poverty than men and often have sole responsibility for the care of children.¹⁴⁷

The Committee has recommended that States parties pay careful consideration to unified pension systems, taking all the necessary measures to ensure equal access of women to it¹⁴⁸ and that they consider how to extend the coverage of social security to rural women and informal sector workers and implement social security legislation for all domestic workers.¹⁴⁹

Participation and Representation

While women are disproportionately affected by ESC rights violations, they are often not at the table when important economic and political decisions are made. This lack of representation at all levels makes women's rights too often peripheral, and even invisible, in policy making. In many countries, CESCR has expressed concern about the low number of women in decision-making positions,¹⁵⁰ particularly over low representation of women in parliament, in senior government positions and in the judiciary.¹⁵¹

CESCR has urged States parties to continue to make use of affirmative action

147 Ibid., at para. 32.

148 Tajikistan, 2015.

149 Madagascar, 2009.

150 Greece, 2004; Germany, 2011; Egypt, 2013; Rwanda, 2013.

151 Hungary, 2008; Ukraine, 2008; Angola, 2009; Chad, 2009; Bosnia and Herzegovina, 2013; Romania, 2014; Serbia, 2014.

measures to promote active political participation of women,¹⁵² including through the adoption of quotas in the public sector and effective mechanisms to monitor the compliance by private actors equal treatment and anti-discrimination laws.¹⁵³ It has also suggested in certain cases that States parties should actively take steps to encourage women to run for office.¹⁵⁴

Conclusions and Recommendations

Since coming into force, ICESCR has been a vital instrument for advancing women's ESC rights. Through it, advocates from around the world have been able to place in the foreground the gender-dimensions of ESC rights violations and the ways in which women's lives are specifically impacted by these violations. Further still, advocates have used ICESCR to advance a substantive equality approach which seeks to challenge and to transform gender inequality between women and men, and which understands that such inequality is a driving force behind ESC rights violations globally.

Over the years, CESCR has made important strides in protecting women's ESC rights, and it has emphasized the specific rights of women in relation to health, work, education, and other substantive ESC rights, as highlighted in this document. It has also upheld the principle of intersectionality and taken into account the ways in which women often suffer multiple forms of discrimination and marginalization. Through its existing Concluding Observations and General Comments, a rich body of standards has been articulated on which it is possible for advocates to build still further.

In the future, there are many ways in which the connections between ESC rights and gender equality can be further strengthened using the treaty. For example, there is room to elaborate further upon the ways in which women are impacted by **taxation policy, global trade and macro-economic policies and practices**, as well as by the activities of **non-state actors including transnational corporations**. **Women's work in the informal and care economy**, as well as their **access to financial goods and services**,¹⁵⁵ are also areas where further development is needed. Likewise, there

152 India, 2008; Kenya, 2008; Iceland, 2012.

153 Germany, 2011; Yemen, 2011.

154 Monaco, 2014.

155 According to the 2014 Global Findex report, over 1 billion women either do not use or do not have access to the financial system, see: World Bank, The Global FINDEX Database: Measuring Financial Inclusion around the World, 2014. See also: John Isaac, 'Expanding Women's Access to Financial Services,' World Bank, 2014.

is an opportunity to expand upon the application of **extraterritorial obligations**¹⁵⁶ under ICESCR, and to detail what these obligations entail specifically from the standpoint of women's ESC rights. As the impacts of **climate change** increase globally, advocates and CESCR itself must also find ways to not only highlight the implications and obligations of States from an ESC rights perspective, but also to take into account the gendered impacts and repercussions of climate change.

In this work we encourage CESCR to:

1. **Continue to develop and strengthen the gender-related content of ESC rights through a substantive equality approach and analysis.** General Comments, Concluding Observations, Statement and relevant CESCR jurisprudence should all seek to illuminate the lived realities that women and girls face in relation to ESC rights violations and identify and clarify the nature of State party obligations in relation to respecting, protecting and fulfilling the ESC rights of women and girls. In this regard, the Committee can also play an important role in helping to monitor the implementation of SDG Goal 5 on gender equality, as well as the gender dimensions of other SDGs.
2. **Take into account the reality of intersectionality and wherever possible bring to the foreground the experiences of especially marginalized groups of women,** including women from poor and minority communities, elderly women, widows, lesbian, bi-sexual or transgender women, migrant women, indigenous and/or rural women, women with disabilities, refugee and/or displaced women, and others, and continue to take an evolving approach to recognizing grounds of intersectional discrimination.
3. **Emphasize the transformative nature of ESC rights for women and the relationship that exists between gender equality and enjoyment of ESC rights.** Women's equality and women's ESC rights are often instrumentalized from the standpoint of economic growth. It is important that women's equality and rights are valued for their own sake, and that both women's strategic and materials needs be taken into account in developing gender-responsive approaches to ESC rights.
4. **Continue to consult with the CEDAW Committee so as to streamline and strengthen recommendations and approaches related to women's ESC rights,** both in terms of the standards articulated by the CEDAW Committee, as well as through ongoing dialogue and exchange with the CEDAW Committee itself.
5. To the extent possible, **develop jurisprudence around women's ESC rights through adjudication of cases submitted under ICESCR's Optional Protocol** to ensure that the Optional Protocol is and continues to be an avenue through which individuals whose rights have been violated under the treaty are able to pursue justice/legal claims.

¹⁵⁶ The CEDAW Committee has addressed the issue of extraterritorial obligations and women's rights in its General Recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations and in its General Recommendation No. 34 (2016) on the rights of rural women.

6. **Pay special attention to overarching and emerging themes relevant to women's ESC rights** – for example, macroeconomic policy, global trade, taxation policy, climate change, extraterritorial obligations, the activities of non-state actors including transnational corporations, economic literacy, financial inclusion, women's land rights, and highlight the importance and relevance of these themes from the standpoint of women's equality and the ability of women to enjoy their substantive rights under ICESCR.
7. Continue to **promote the recognition of women's care work and work within the informal sector, promote the integration of fair labor practices which protect women's rights, and address underlying gender divisions in paid and unpaid work.**
8. **Request greater support and resources from the UN and the donor community** to enable CDESCR to provide technical assistance to States parties on implementation of women's ESC rights.
9. **Strengthen the cooperation and joint work between CDESCR and other treaty bodies and special procedures** working on relevant women's ESC rights promotion and protection.
10. Strengthening the normative framework and ensuing domestic justiciability of ESC rights are foundational to a culture of compliance. In this regard, CDESCR should **emphasize the importance of domestic monitoring and accountability mechanisms for women's ESC rights.**
11. **Encourage the submission of alternative reports from CSOs which highlight/ focus on women's ESC rights and their participation in the review system,** to ensure a cohesive link between interpretation of the standards of the Covenant and the context of the lived realities of women on the ground.

Annex: List of Organizations and Individuals comprising ESCR-Net's Working Group on Women and ESC Rights

1. Adalah – The Legal Center for Arab Minority Rights in Israel, Israel
2. Alicia Yamin, individual member, United States
3. Alison Aggarwal, individual member, Australia
4. Arab NGO Network for Development (ANND), Lebanon
5. Asia Pacific Forum on Women, Law and Development (APWLD), Thailand
6. Association for Women's Rights in Development (AWID), Canada
7. Asociacion Q'ukumatz, Guatemala
8. Avocat sans Frontieres, Belgium
9. Bulgarian Gender Research Foundation, Bulgaria
10. Canada without Poverty, Canada
11. Center for Reproductive Rights, United States
12. Center for Women's Global Leadership (CWGL), Rutgers University, United States
13. Centro de Estudios Legales y Sociales (CELS), Argentina
14. Chiadzwa Community Development Trust, Zimbabwe
15. Collectif Femmes du Mali (COFEM), Mali
16. Confederación Campesina del Perú (CCP), Peru
17. Conservación Investigación y Aprovechamiento de los Recursos Naturales (CIARENA), Mexico
18. Defend Job Philippines, Philippines
19. Economic & Social Rights Centre (Hakijamii), Kenya
20. Egyptian Initiative for Personal Rights, Egypt
21. EnGendeRights, Inc., Philippines
22. Escuela Nacional Sindical (ENS), Colombia
23. Equis: Justicia para las Mujeres, Mexico
24. Federation of Women Lawyers (FIDA Kenya), Kenya
25. Femmes Côte d'Ivoire Experience (FCIEX), Côte d'Ivoire
26. FIAN International - Food First Information and Action Network, German
27. Global Initiative for Economic, Social and Cultural Rights, United States
28. Habitat International Coalition (HIC), International
29. Initiative for Gender Equality and Development in Africa (IGED), Ghana
30. Instituto de Liderazgo Simone de Beauvoir, Mexico
31. Instituto Latinoamericano de Servicios Legales Alternativos (ILSA), Colombia
32. International Commission of Jurists (ICJ), Switzerland
33. International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific), Malaysia
34. Just Associates (JASS), International
35. Kebetkache Women Development & Resource Centre, Nigeria
36. Kenyan Human Rights Commission, Kenya
37. Legal Resource Centre (LRC), South Africa
38. Lisa Pusey, individual member, Australia
39. National Fisheries Solidarity Organization (NAFSO), Sri Lanka
40. National Union of Domestic Employees (N.U.D.E.), Trinidad and Tobago
41. Nazdeek, India
42. Organización Fraternal Negra Hondureña (OFRANEH), Honduras
43. Ogiek Peoples' Development Program, Kenya
44. Star Kampuchea, Cambodia
45. Tlachinollan - El Centro de Derechos Humanos de la Montaña (CDHM), Mexico
46. Women and Law in Southern Africa Research and Educational Trust (WLSA), South Africa
47. Zi Teng, Hong Kong

