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A Primer on Women's Economic, Social and Cultural Rights

Today, women represent approximately 70% of the 1.2 billion people living in poverty throughout the world. Inequality with respect to the enjoyment of economic, social and cultural rights is a central fact of women's lives in every region of the world, and is itself a result of discrimination against women and women's lower status within patriarchal societies.

Throughout the world, women make significant contributions to the economy and labour market through their paid and unpaid work in the public and private spheres. Ongoing inequality in the sphere of economic, social and cultural rights contributes to the continuing subordination of women and makes them especially vulnerable to violence, exploitation and other forms of abuse. The realisation of women's economic, social and cultural rights can itself be transformative, not only in ensuring that women's immediate material needs are met, but also in fundamentally reshaping unequal power relationships. Building on the framework provided by the Montreal Principles on Women's Economic, Social and Cultural Rights, this Primer asserts that that fulfilment of women's economic, social and cultural rights must be a primary strategy in addressing and remedying women's inequality.

INTRODUCTION

Over the past decade, women's economic, social and cultural rights have increasingly garnered the attention of the international community. The increasing recognition of women's essential contribution to the global economy through their productive and reproductive labour as well as recognition of their continued social marginalisation including through new trends in social and cultural life that seek to limit women's access to decision-making processes, has brought women's economic, social and cultural rights to the fore. Once seen as being issues merely peripheral to human rights concerns, the indivisibility of *all* women's rights (civil, political, economic, social and cultural) has become ever clearer – recognition that in order for women to realise the full range of their human



rights, fulfilment of women's economic, social and cultural rights is essential.

Without a doubt, advocates all over the world are increasingly recognising that issues such as violence against women, denial of women's equal rights to property and inheritance, discrimination against women in the field of health, education, employment and political participation, denial of women's reproductive and sexual rights, women's experience of forced evictions, the impact of the HIV/AIDS pandemic on the rights of women and girls, discrimination in terms of women's access to water and food security, are all fundamentally and intimately connected. These rights are indispensable to women's daily lives, and violations of these rights affect women in ways which are gender-specific and which reaffirm women's unequal status within their families, communities and societies.



WOMEN'S
Economic,
Social and
Cultural
Rights

In International Human Rights Standards

International human rights standards that enshrine and protect women's right to equality, as well as women's substantive economic, social and cultural rights, have been established by human rights treaties as well as by the International Labour Organisation and the World Health Organisation. In addition, reports of various Special Procedures of the Human Rights Council such as the Special Rapporteur on the Right to Adequate Housing and the Special Rapporteur on Health, help establish new standards in this area. The bodies which lead standard setting processes in the area of women's economic, social and

cultural rights remain the UN Committee on the Elimination of All Forms of Discrimination Against Women and the UN Committee on Economic, Social and Cultural Rights.

Both Committees recognise that substantive gender equality entails that rights must be interpreted and implemented in a manner that ensures women equal exercise and enjoyment of their rights. Substantive enjoyment of equal rights by women cannot be achieved through the mere passage of laws or promulgation of policies that are gender-neutral. The Montréal Principles on Women's Economic, Social and Cultural Rights provide important insight into these questions. Section 9 of the Montréal Principles explains, "Gender neutral laws and policies can perpetuate sex inequality because they do not take into account the economic and social disadvantage of women; they may therefore simply maintain the *status quo*. *De jure* equality does not, by itself, provide *de facto* equality. *De facto*, or substantive equality, requires that rights be interpreted, and that policies and programs - through which rights are implemented - be designed in ways that take women's socially constructed disadvantage into account, that secure for women the equal benefit, in real terms, of laws and measures, and that provide equality for women in their material conditions. The adequacy of conduct undertaken to implement rights must always be assessed against the background of women's actual conditions and evaluated in the light of the effects of policies, laws and practices on those conditions."

STANDARDS under the Convention on the Elimination of

CEDAW recalls that "discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity ..." CEDAW holistically addresses civil and political rights as well as economic, social and cultural rights and recognises that enjoyment of all these rights are inextricably linked to one another. It recognises that discrimination against women in one field of life can cause and perpetuate discrimination in other fields of life. For example, Article 5 of this Convention recognises that it is necessary to eliminate discriminatory gender stereotypes to ensure that women's access and enjoyment of all their rights is met including their economic, social and cultural rights. CEDAW rests on the principle that the State is obligated to eliminate all forms of discrimination against women without delay and using all appropriate measures. This Convention also provides specific standards related to gender equality in the spheres of education, employment, health care, and other areas of economic and social life.

Through its Concluding Observations (the Committee's collective assessment of the State's record and recommendations for enhanced implementation of the rights in question) and General Recommendations, (the

Committee's recommendations on an issue affecting women to which it believes the States parties should devote more attention), the CEDAW Committee has made significant inroads in terms of providing substantive guidance on the interlinkages between substantive economic, social and cultural rights, and women's right to equality. For example, in its Concluding Observations the CEDAW Committee has frequently made recommendations to the State under review regarding their obligations to ensure that discriminatory social and cultural attitudes and beliefs are modified in recognition of the role they play in perpetuating discrimination against women and inequality between and men and women in all spheres of life including in their enjoyment of their economic, social and cultural rights. The CEDAW Committee recognises for example, the links between the discrimination women face in the private sphere (including early or forced marriage and traditional roles of men and women) and low levels of education among girls as well as the impact of this on women's economic opportunities later in life. Furthermore, the CEDAW Committee recommends that State Parties must address social and cultural stereotypes about traditional roles of men and women which impede women's ability to freely choose their occupation



All Forms of Discrimination Against Women

and work free from discrimination. The CEDAW Convention also explicitly recognises maternity as a social responsibility which must be recognised and valued if women's equality is to be achieved (CEDAW Article 5(b)).

The General Recommendations of the CEDAW Committee further demonstrate the Committee's analysis of the interlinkages between discrimination against women and women's enjoyment of their economic, social and cultural rights. On the right to work, the CEDAW Committee has advocated on behalf of the "principle of equal remuneration for work of equal value" (General Recommendation 13).

On violence against women, the CEDAW Committee noted that "Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men" and specifically noted impairment of women's rights to the highest standard attainable of physical and mental health and to just and favourable conditions of work (General Recommendation 19, para 1). The Committee has noted other linkages between violence against women and economic, social and cultural rights, for example, that "poverty and unemployment increase opportunities for trafficking in women;" that "poverty and unemployment force many women, including young girls, into prostitution" and that "[e]quality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace" (General Recommendation 19, paras 14, 15, 17).

The CEDAW Committee also recognises the close connections between the realisation of women's economic, social and cultural rights, and their equality in marriage and in family relations. The CEDAW Committee noted "Article 15 (l) [of CEDAW] guarantees women equality with men before the law. The right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for family" (General Recommendation 21, para 26). In relation to marital property, the

CEDAW Committee notes that "in many countries, property accumulated during a de facto relationship is not treated at law on the same basis as property acquired during marriage. Invariably, if the relationship ends, the woman receives a significantly lower share than her partner. Property laws and customs that discriminate in this way against married or unmarried women with or without children should be revoked and discouraged" (General Recommendation 21, para 33). This recognition is directly relevant to the realisation of women's right to adequate housing, among others rights.

The CEDAW Committee further noted that "The responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women. The number and spacing of their children have a similar impact on women's lives and also affect their physical and mental health, as well as that of their children" (General Recommendation 21, para 21).

On political and public life, the CEDAW Committee noted that "Relieving women of some of the burdens of domestic work would allow them to engage more fully in the life of their communities. Women's economic dependence on men often prevents them from making important political decisions and from participating actively in public life. Their double burden of work and their economic dependence, coupled with the long or inflexible hours of both public and political work, prevent women from being more active" (General Recommendation 23, para 11). The Committee plainly recognised that "While democratic systems have improved women's opportunities for involvement in political life, the many economic, social and cultural barriers they continue to face have seriously limited their participation" and called upon States Parties to "ensure that barriers to equality are overcome, including those resulting from illiteracy, language, poverty and impediments to women's freedom of movement" (General Recommendation 23, paras 14, 45(c)).

On women and health, the CEDAW Committee recognised that "unequal power relationships between women and men in the

home and workplace may negatively affect women's nutrition and health. They may also be exposed to different forms of violence which can affect their health. Girl children and adolescent girls are often vulnerable to sexual abuse by older men and family members, placing them at risk of physical and psychological harm and unwanted and early pregnancy. Some cultural or traditional practices such as female genital mutilation also carry a high risk of death and disability" (General Recommendation 24, para 12(b)).

Article 16 of the Convention also recognises the right of women to make decisions about their reproductive lives including the right to decide on the number and spacing of children. The Committee noted the unique contours of the right to health from the standpoint of women, and encouraged States Parties to give priority attention to ensure access to health care *on a basis of equality of men and women*, eliminate barriers that women face in gaining *access to health care services*, ensure timely access to the range of services which are *related to family planning*, in particular, and to sexual and reproductive health in general (including ensuring women appropriate services *in connection with pregnancy, delivery and the post-natal period*) (General Recommendation 24, paras 26-27).

The CEDAW Committee has called on States Parties to eradicate "the practice of female circumcision and other traditional practices harmful to the health of women" (General Recommendation 14), and further recommended that "programmes to combat AIDS should give special attention to the rights and needs of women and children, and to the factors relating to the reproductive role of women and their subordinate position in some societies which make them especially vulnerable to HIV infection" (General Recommendation 15). The Committee also reminded States Parties of their obligations to take all appropriate measures to ensure adequate living conditions, particularly housing, sanitation, electricity and water supply, transport and communications, all of which are critical for the prevention of disease and the promotion of good health care (General Recommendation 24, para 28).

STANDARDS under the International Covenant on Economic,

The International Covenant on Economic, Social and Cultural Rights (ICESCR) articulates substantive economic, social and cultural rights, including the right to an adequate standard of living, the right to housing, the right to work, the right to food, the right to the highest attainable standard of health, the right to social security, the right to security in the event of unemployment, and the right to education and recognises “the equal right of men and women to the enjoyment of all economic, social and cultural rights.” The ICESCR also prohibits gender-based discrimination.

The Committee on Economic, Social and Cultural Rights (CESCR) has articulated important standards on substantive economic, social and cultural rights, and connected them explicitly to the experiences of women. On the right to adequate housing and the prohibition on forced evictions, for example, the CESCR set forth that “women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all 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” (General Comment 7, para 10). Furthermore, in times of crisis and severe economic constraints, as we are currently experiencing with the global economic crisis, States must still meet their duty to protect the economic, social and cultural rights of the most vulnerable groups, including women (General Comment 3; General Comment 6).

On the right to adequate food, the CESCR encouraged States Parties to develop and implement national strategies towards the realisation of the right to food. In so doing, States should “give particular attention to the need to prevent discrimination in access to food or resources for food. This should include: guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other prop-

erty, credit, natural resources and appropriate technology; measures to respect and protect self-employment and work which provides a remuneration ensuring a decent living for wage earners and their families” (General Comment 12, para 26). On the right to education, the CESCR noted that “Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth” (General Comment 13, para 1). The CESCR went further to note “States Parties are obliged to remove gender and other stereotyping which impedes the educational access of girls, women and other disadvantaged groups” (General Comment 13, para 55).

On the right to the highest attainable standard of health, the CESCR echoed many of the themes noted by the CEDAW Committee on women and health. The CESCR stated, for example, that in order to eliminate discrimination against women, “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.” (General Comment 14, para 21).

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” (General Comment 15, para 16).



On the right to work, the CESCR underlined the need for “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. In particular, pregnancies must not constitute an obstacle to employment and should not constitute justification for loss of employment. Lastly, emphasis should be placed on the link between the fact that women often have less access to education than men and certain traditional cultures which compromise the opportunities for the employment and advancement of women” (General Comment 18, para 13).

On social security, the CESCR emphasised that paid maternity leave should be granted to all women and benefits should be provided for an adequate period (General Comment 19). Additionally, the CESCR noted (as it has similarly done with other substantive rights) 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” (General Comment 19, para 31). The CESCR specifically called upon States Parties to provide for the “equalisation of the compulsory retirement age for both men and women; ensuring that women receive equal benefits in both public and private pension schemes; and guaranteeing adequate maternity leave for

Social and Cultural Rights



STRENGTHENING
the Link
Between

Women's Right to Equality, and Women's Economic, Social and Cultural Rights

The standards articulated above represent major advances in the understanding of women's rights and women's equality and particularly the intersection between discrimination against women and barriers to women's enjoyment of their economic, social and cultural rights. Nonetheless, the truth remains that despite these and other advances, women's economic, social and cultural rights are still too often marginalised and violated particularly in the contexts of poverty, globalisation, unfair trade agreements and armed conflict. Further work is still required to examine and better articulate the link between women's economic, social and cultural rights and women's right to substantive equality. There continues to remain a stark gap between human rights standards on economic, social and cultural rights and the implementation of these standards for women.

An important contribution from the Committee on the Elimination of All Forms of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, as well as from the UPR mechanism and Reports of Special Procedures of the Human

women, paternity leave for men, and parental leave for both men and women" (General Comment 19, para 32). Further, 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 (General Comment 19).

Several General Comments of the CESCR look at the enjoyment of substantive economic, social and cultural rights by marginalised groups, including women. On persons with disabilities, the Committee on Economic, Social and Cultural Rights (CESCR) noted the specific challenges faced by disabled women, stating: "Persons with disabilities are sometimes treated as genderless human beings. As a result, the double discrimination suffered by women with disabilities is often neglected ... The Committee therefore urges States Parties to address the situation of women with disabilities, with high priority being given in future to the implementation of economic, social and cultural rights-related programmes" (General Comment 5, para 19). Similarly, on the rights of older persons, the CESCR considered that "States Parties should pay particular attention to older women who, because they have spent all or part of their lives caring for their families without engaging in a remunerated activity entitling them to an old-age pension, and who are also not entitled to a widow's pension, are often in critical situations" (General Comment 6, para 20).

On the equal right of men and women to the enjoyment of all economic, social and cultural

rights, the CESCR explicitly recognises that the enjoyment of human rights on the basis of equality between men and women must be understood comprehensively. In that regard, guarantees of non-discrimination and equality in international human rights treaties mandate both *de facto* and *de jure* equality (General Comment 16). Centrally, the CESCR noted that "gender-based assumptions and expectations generally place women at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognised as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions. Gender-based assumptions about economic, social and cultural roles preclude the sharing of responsibility between men and women in all spheres that is necessary to equality" (General Comment 16, para 14).

On issues of violence against women, the CESCR made a critical connection between women's ability to seek safety from domestic violence, and their ability to enjoy their housing rights. The CESCR held that the ICESCR *requires* States Parties "to provide victims of domestic violence, who are primarily female, with access to safe housing" (General Comment 16, para 27).

More recently, the CESCR also addressed non-discrimination in economic, social and cultural rights, noting clearly that "merely addressing formal discrimination will not ensure substantive equality ... States Parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or *de facto* discrimination" (General Comment 20, para 8(b)). Here, the CESCR noted that *not only does gender discrimination affect the enjoyment of economic, social and cultural right by women, but that the reverse is also true: enjoyment of these rights has the power to transform patterns of social discrimination*. The CESCR notes, for example, that "ensuring that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas" (General Comment 20, para 8 (b)).

Strengthening the Recognition and Protection of Women's Economic, Social and Cultural Rights in International Standard Setting

RECOMMENDATIONS for Non-Governmental Organisations

- 1 Submit comprehensive information to various treaty bodies, including the CEDAW and CESCR Committees, on women's economic, social and cultural rights from which these bodies can then make strong recommendations to the State to ensure the equal protection and enjoyment of women's economic, social and cultural rights.
- 2 Clearly demonstrate the links between violations of women's economic, social and cultural rights and barriers to their enjoyment of their other rights.
- 3 Draw on the recommendations from other treaty bodies, the UPR and Special Procedures, on women's economic, social and cultural rights to strengthen the recommendations made by each body and State obligation to implement the recommendations.

Rights Council, could be examining the essential elements of economic, social and cultural rights, and engendering each of these elements with a perspective that explicitly looks at its impact on women. In this regard, women's rights advocates are increasingly working to highlight what economic, social and cultural rights mean from the standpoint of women's equality and substantive fulfilment of women's ESC rights and how they can be effectively implemented and to share this information with international standard setting bodies to facilitate the integration of women's human rights concerns in their work. This will be a critical next phase in activism for the continued protection of these rights.

Intersectionality is an important concept to consider when developing norms around women's economic, social and cultural rights. It recognises that people encounter distinct forms of discrimination due to the intersection of sex/gender with such factors as: race/ethnicity, language, age, sexual orientation and gender identity, culture, religion, disability, or socio-economic class. Indigenous people, migrants, displaced persons, and non-nationals or refugees experience distinct forms of discrimination because of the intersection of their gender and race/ethnicity, or their gender and citizenship status. Women may also confront particular forms of discrimination due to their age or occupation;

family status, as single mothers or widows; health status, such as living with HIV/AIDS; sexuality, such as being lesbian; or because they are engaged in sex work. To ensure that all women enjoy the benefits of their economic, social and cultural rights, specific measures are needed to address the ways in which women are differently affected in their enjoyment of a right as a result of the intersection of discrimination based on gender with discrimination based on other characteristics.

Similarly, in order to make the most significant and meaningful inroads into the perpetuation of discrimination against women, it is critical to continue to underscore the fundamental *interconnectedness and indivisibility* of all women's human rights. Certainly for women, violations of human rights rarely occur in isolation from one another, and violations of rights *both reflect and perpetuate* patterns of inequality. As noted above, there is a deeply cyclic relationship between the realisation of women's 'substantive rights' and women's equality. Certainly this is true across the spectrum of civil, cultural, economic, political and social rights. In order to advance the broader goal of gender equality, therefore, it is critical to understand, illuminate and reflect the connections that exist between rights, as they are experienced in reality by women around the world.

Strengthening the Recognition and Protection of Women's Economic, Social and Cultural Rights in International Standard Setting

RECOMMENDATIONS for Treaty Bodies

- 1 Continue to articulate clearly and comprehensively the content of substantive equality in relation to women's full enjoyment of their economic, social and cultural rights in all General Comments/ Recommendations and Concluding Observations. In other words, provide a *gender-sensitive analysis* of substantive economic, social and cultural rights and their relationship to the fulfilment of women's right to equality.
- 2 Emphasise the centrality of the realisation of the economic, social and cultural rights of women in addressing gender-based discrimination and realising gender equality within General Comments/ Recommendations and Concluding Observations, as well as in questions to State Parties during review processes. This includes identification of what the right means for women in terms of respect, protect and fulfilment of rights and what kinds of specific measures need to be considered by States for the implementation of the right for women including women facing intersectional discrimination.
- 3 Continue to consult and refer to the Concluding Observations of other relevant treaty bodies (as well as the Outcome Document of the UPR and reports of Special Procedures) on the State Parties performance in ensuring women's economic, social and cultural rights and addressing gender-based discrimination and inequality.
- 4 Continue to consult and refer to relevant General Comments/Recommendations of all treaty bodies to which the State is a Party when analysing the scope the State Parties obligations to ensure women's economic, social and cultural rights and eliminate gender-based discrimination and inequality.

