

THE IMPACT OF ECONOMIC REFORM POLICIES ON WOMEN'S HUMAN RIGHTS



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Summary

Efforts to protect women's rights in times of crisis and austerity need to be sensitive to the complex web of disadvantage that encircles women. This submission explores two steps necessary to protect women's rights. First, the need to broaden the evidence base for human rights impact assessments and court actions. Equality seeking groups are turning to domestic accountability forums to challenge economic reforms, yet little attention has been paid to how human rights impact assessments can be used in legal advocacy. Additionally, given the difficulty of obtaining quantitative and qualitative data on economic reforms it is important to take seriously women's experience of economic reforms. Second, measures designed to overcome the negative impacts of financial crisis and austerity measures need to account for the reality of women's lives and vulnerability. Using decent work as a case study, we demonstrate how current measures re-entrench women's inequality and argue that economic reforms must be buttressed by comprehensive and strong labour rights.

Introduction

- [1] In response to financial crises, States have aggressively pursued austerity measures and other forms of restrictive economic reform. These measures do not only attempt to restore fiscal balance but also reflect ideological preferences and a de-prioritising of human rights. Rather than improving financial regulations or closing corporate tax loopholes, States have focused on reducing the funding and availability of public services.¹ Due to gender power imbalances and women's economic disadvantage, the impact of this is not gender neutral. Women disproportionately work in the public sector and disproportionately rely on public services.² Cutting public services severely and negatively impacts on women's rights to education, health, an adequate standard of living, access to justice and labour rights. Moreover, with the reduction of public services, women tend to fill the gap and perform additional unpaid care work.³ This continues to trap them in traditional gender roles and limits their ability to pursue full development and advancement as well as enjoyment of their human rights. It is imperative to stress the links between economic reforms, austerity and gender inequality. In this submission, we examine two inter-related steps necessary to protect gender equality, regardless of the economic climate.
- [2] First, ten years after the global financial crisis, States still seek to justify as unavoidable financial reforms that prioritise economic indicators over human rights. Women, civil society and other equality seeking groups are turning to domestic legal or quasi-legal forums to challenge these reforms. To determine whether economic reforms that negatively impact on women's rights are justified under a human rights framework, it is crucial to consider how human rights impact assessments can be used in legal advocacy. Human rights impact assessments that are

¹ UN Working Group on Discrimination Against Women in Law and Practice, "Discrimination against women in economic and social life, with a focus on economic crisis" (2014) A/C.26/39 [27]-[31].

² *ibid.*

³ UN Women, 'Progress of the World's Women 2015-2016: Realising Rights, Transforming Economies' (2016) 156 <http://progress.unwomen.org/en/2015/pdf/UNW_progressreport.pdf>.

transparent and accessible are indispensable in seeking accountability in domestic courts.⁴ Even with this level of transparency and accessibility, *ex-ante* or *ex-post* human rights impact assessments may not reveal the full impact of human rights reforms on women's rights, especially for women with intersectional identities. Thus, when adjudicating austerity measures, legal forums need to give significant weight to women's experience of reforms. This is practically important in understanding the impact or potential impact of policy choices but is also symbolically significant in bringing women's voices into the process and displacing the dominance of economic metrics.

- [3] Second, to overcome the negative impacts of austerity, the design of economic measures needs to reflect a depth of commitment to gender equality and sensitivity to the complex factors that can undermine women's rights. Using decent work as an example, we argue that those pursuing economic reforms need to understand the reality of women's working lives and operate within comprehensive labour rights standards so as to prevent re-entrenching disadvantage.

Challenging Austerity in Domestic Legal Forums

- [4] Ten years after the last global financial crisis, States continue to pursue austerity policies. The pursuit of such policies has often been in the face of evidence that challenges their effectiveness. Such longevity and stubbornness indicate that a fiscal austerity agenda is, at least for some, merely a pretext for ideological choices or preferences. This can further be seen in the nature of the changes pursued; often entailing a targeting aspects of State expenditure where only marginal economic gains are to be made but where the impact on the most vulnerable is substantial. For example, cutting legal aid impacts the ability of many to access justice,⁵ while offering little in the way of budget savings.⁶ The expansion of punitive measures in the welfare system primarily serves to punish those in need rather than protect the fiscal interests of the State.⁷ Individual women, civil society and other equality seeking groups are challenging State claims that austerity measures are necessary for fiscal stability. Courts and other domestic adjudicative bodies are forums to challenge economic reforms that undermine gender equality.
- [5] In theory, domestic adjudicative forms have rich potential. Human rights frameworks have a well-developed and sophisticated process for evaluating if violations of gender equality are justified. Another attractive feature is that challenging austerity measures in court processes can enhance the transparency around economic decision making. Surprisingly, very little attention has been paid on how to develop persuasive human rights-based strategies to challenge economic reforms in domestic legal proceedings. The lack of meaningful and usable guidance can make it difficult for women to argue that economic reforms violate their human rights. This difficulty is compounded by the tendency of courts and other adjudicative bodies to be deferential to the State's claims.⁸ Guidance and toolkits designed for advocates on gender equality should focus on how to fully interrogate in the judicial context whether austerity measures are justified.
- [6] Human rights frameworks need to re-examine how they can help in rigorously examining economic reforms. It can be challenging to prove the negative impact of reforms. Early, clear and thorough review of economic reforms that pays specific attention to the most disadvantaged and marginalised groups of women is imperative to understand the impact of reforms. Not at all States routinely conduct this sort of review or the review is collapsed into a box-ticking exercise rather

⁴ The CESCR has led on the development of this doctrine, which has diffused into some of the outputs of the CEDAW Committee and CommRC.

⁵ 'The availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way'; Human Rights Committee, 'General Comment 32: Right to Equality Before Courts and Tribunals and to Fair Trial (Article 14)' (2007) CCPR/C/GC/32 [10]. See also, Amnesty International, 'Cut that Hurt: The Impact of Legal Aid Cuts in England on Access to Justice' (Amnesty International, 2016).

⁶ Deep cuts to the legal aid budget in the UK that have seriously affected the operation of the system saved just 0.04% of public expenditure. This net saving will likely be reduced by the impacts on other parts of the State system which will become more burdened by such cuts (HM Treasury, 'Autumn Budget 2017' (2017) 5 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/661480/autumn_budget_2017_web.pdf>; Mr Jonathan Djanogly, Legal Aid, Sentencing and Punishment of Offenders Bill 2011 volume 534, column 688.

⁷ Joseph Rowntree Foundation, 'Welfare Sanctions and Conditionality in the UK' (2014) <<https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/Welfare-conditionality-UK-Summary.pdf>>.

⁸ See for example, *Newfoundland Treasury Board v NAPE* [2004] 3 SCR 381.

than a thorough and critical assessment.⁹ Furthermore, official statistics and data are often not disaggregated for gender and rarely disaggregated to account for the impact of the intersection of gender and, *inter alia*, age, race, disability, religion, sexual orientation, socio-economic status, migrant status or geographic region.¹⁰ The impact of economic crisis and reforms on women with intersectional identities, who are often in a precarious and vulnerable position, remains unseen. These considerations should ultimately drive the reform of human rights impact assessments.¹¹ In a similar vein, States may lack objectivity in conducting human rights impact assessment and *independent* reviews of government policy are crucial. Unless and until such reforms are made to State-conducted human rights impact assessments, they should not be taken as determinative by courts.

- [7] With the lack of reliable information, in considering whether it is 'proved' that the economic reform negatively impacts women's rights, domestic (and regional and international) accountability mechanisms should have particular regard to the voices and experiences of affected women. In many regions and in many circumstances, there simply will not be abundant, accurate or complete quantitative data available to show the impacts of economic reforms upon women's rights. Often, longitudinal data will be needed to make out a case.¹²
- [8] These challenges are all the more acute immediately after reforms are implemented or where States restrict the collection and release of publicly held data to avoid negative perceptions of economic policies. In the absence of statistics, when the testimonials of affected women disclose a human rights violation, then this should be given significant weight by courts and treated as adequate proof.
- [9] Even if such quantitative data exists, hearing women's experiences remains essential. While economic indicators are often portrayed as objective, they can be subject to (conscious and unconscious) manipulation and can be interpreted in multiple ways. As such, women's voices should be afforded significant weight as they can tell an important alternative story. The traditional dominance of statistics in assessing economic policy has ensured the invisibility of women's experience.
- [10] Neither should attention to women's experiences only be limited to their understanding of the impacts of policies after they have been enacted. This would make the role of women a highly reactive one. Rather, women's expertise should be heard *ex ante*, too. When policies are being developed, before they are implemented, or before the impacts have fully been seen, it is crucial to take account of the understandings of diverse groups of women about the likely results of those policies. Doing so allows policymakers to avoid repeating failures of the past and acknowledges that the women that stand to be affected by policy changes will have a better understanding of their nuances and interactions with other changes that they have to contend with.

Putting Gender Equality at the Heart of Economic Reforms

- [11] Economic reforms designed to address a financial crisis need to be cognisant of how law, social structures and cultural norms limit women's human rights. Gender inequality is so deeply embedded that measures to address a financial crisis can have a negative knock on effect and perpetuate women's disadvantage. Using decent work as a case study, we explore how economic reforms must have at their heart a strong commitment to gender equality.

⁹ See the Public Sector Equality Duty in the Equality Act, (2010) UK and *R (Brown) v Secretary of State for Work and Pensions* [2008] EWCA 3158 (Admin) [92].

¹⁰ See, CEDAW Committee, 'General Recommendation No 9: on statistical data' (1989) CEDAW/C/GC/9.

¹¹ Kalwinder Sandhu and Mary-Ann Stephenson, 'Layers of Inequality—a Human Rights and Equality Impact Assessment of the Public Spending Cuts on Black Asian and Minority Ethnic Women in Coventry' (2015) 109 *Feminist Review* 169.

¹² Aoife Nolan, Nicholas J Lusiani and Christian Courtis, 'Two Steps Forward, No Steps Back? Evolving Criteria on the Prohibition of Retrogression in Economic, Social and Cultural Rights' in Aoife Nolan (ed), *Economic and Social Rights after the Global Financial Crisis* (CUP 2014) 128.

- [12] Economic reforms and stimulus packages are all too often blind to women's working lives. Due to pervasive gender cultural norms, women continue to be segregated into low-paid, low-status professions. The Committee on the Convention on the Elimination of All Forms of Discrimination Against Women recently noted that women are tracked into the humanities, food and nutrition, cosmetology and clerical studies.¹³ Economic growth packages should not ignore gender job segregation and only be targeted towards traditionally male occupations (infrastructure, manufacturing or STEM) as this does little to ensure that women's human rights are protected in times of financial and economic stress. Stimulus measures must also be directed towards sectors where women work and should encourage and support women to overcome vertical and horizontal job segregation.
- [13] Reducing the funding for public services increases women's already disproportionate share of unpaid care responsibilities for children and the elderly. As a result, women remain clustered in informal or low paid part-time work.¹⁴ An effective way to break the gender pay gap has been to raise the minimum wage,¹⁵ but this must be done carefully and with all women in mind to avoid this facially progressive measure in fact perpetuating gender inequality.
- [14] Minimum wage laws often do not fully protect domestic workers, who are predominantly racial or ethnic minority women. A good example of this is from the proposed minimum wage laws in South Africa.¹⁶ The law aims to alleviate poverty. It mandates a universal minimum wage and it is set to come into force on 1 May 2018. The law stipulates a transition period where it is justified to pay domestic workers below the minimum wage. The News Deeply reports that the government argues that this is 'necessary to ease employers in and give them at least a year before they have to start paying the full minimum wage'.¹⁷ The law gives preference to the concerns of employers and ignores the immediate needs and human rights of the most vulnerable women. It further marginalizes women who sit at the intersection of race, gender and class. Furthermore, the definition of domestic worker for the purpose of the minimum wage excludes women who contract individually to clean in private homes. This is a glaring gap as domestic workers are often contracted privately and informally.¹⁸ Excluding this type of domestic worker ignores the reality of women's working lives and means that women, especially women with intersectional identities are unable to benefit from economic reforms.
- [15] Measures, such as increases in wages, must be assessed in context. For example, recent efforts to raise minimum wages have been accompanied by severe backlashes. In Canada, the provinces have raised the minimum wage to \$11/hour but businesses have claimed they cannot afford to pay their employees this wage. So in response, they are rolling back other labour rights and protections claiming that it is the only way the business can make a profit. Employers have cut hours, eliminated workers paid breaks and other benefits so as to maximise profits.¹⁹ As women are concentrated in minimum wage jobs, this backlash needs to be understood in the context of gender inequality.²⁰ Measures to overcome austerity and economic disadvantage need to be cognisant of women's disadvantaged and vulnerable position in the labour force. Economic reforms must be buttressed with strong labour force protection. To ensure women's human rights, it is imperative that the State adopts, monitors and enforces labour rights that protect women's rights to decent work.

Conclusion

¹³ CEDAW Committee, 'General Recommendation No. 36 on girls and women's education' (2017) CEDAW/C/GC/36.

¹⁴ International Labour Organisation, 'Women at Work Trends: 2016' (ILO, 2016) 11, 22-26, 52.

¹⁵ Jill Rubery, 'Pay Equity, Minimum Wage and Equality at Work' (2003) ILO Working Paper 19-20 <http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_decl_wp_20_en.pdf>.

¹⁶ The National Minimum Wage Bill (South Africa) <<https://www.parliament.gov.za/storage/app/media/Docs/bill/8038e752-7014-4b25-806a-8854b859c8e5.pdf>>.

¹⁷ Jen Thorpe, 'Domestic Workers to Miss Out on South Africa's Minimum Wage' (29 January 2018) News Deeply <<https://www.newsdeeply.com/womensadvancement/articles/2018/01/29/domestic-workers-to-miss-out-on-south-africas-new-minimum-wage>>.

¹⁸ Women in Informal Employment: Globalizing and Organizing, 'Typology of Domestic Workers' <<http://www.wiego.org/informal-economy/typology-domestic-workers>>.

¹⁹ Aaron Saltzman, 'Tim Hortons Heirs Cut Paid Breaks and Worker Benefits After Minimum Wage Hikes' (3 Jan 2018) CBC <<http://www.cbc.ca/news/business/tim-horton-s-tims-timmies-doubled-double-minimum-wage-ontario-kathleen-wynne-labour-1.4470215>>.

²⁰ See Women's National Law Centre, 'Women and the Minimum Wage State-by-State' (2017) <<https://nwlc.org/resources/women-and-minimum-wage-state-state/>>.

- [16] Economic reform and austerity policies come with high stakes for women's rights. State economic policies can have serious impacts upon women which can accumulate for women with intersecting identities. Further, in a climate of austerity measures and cuts to social programmes, and when States are permitted to reduce public services that fulfil human rights, a strong signal is sent out for business to follow. It is therefore imperative to address both State and private sector harms to women's rights.
- [17] Domestic human rights adjudication is a highly promising avenue. However, despite increased interest there remains a gap between the potential and use of the courts. Attention and support from international mechanisms can encourage greater action before the courts, and improved argumentation.
- [18] Human rights impact assessments must be developed so as to capture the reality of women's lives more fully. In addition, where the impact assessment is completed by the State, courts as independent organs of the state should be especially willing to challenge its veracity and authority.
- [19] Women's voices have traditionally been dismissed as a source of evidence in making resource decisions and generating fiscal policy. However, domestic courts should be encouraged to give significant weight to women's experience in order redress their invisibility in other parts of economic decision making, and to tell an alternative story to statistics which are often subject to manipulation.
- [20] Gender equality should be afforded a centrality in economic reform processes. This is true even of facially 'progressive' measures, which must be understood in the context of diverse women's lives in order to ensure that their potential is realised and inadvertent harm is avoid.

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