

ACHIEVING WOMEN'S ECONOMIC & SOCIAL RIGHTS

STRATEGIES
AND LESSONS FROM
EXPERIENCE



The Association for Women's Rights in Development



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A roof over one's head, safe drinking water, nutritious food, accessible education, adequate health care, a dignified and secure livelihood ... these are not only development goals, they are basic human rights. Ensuring these rights, however, has been an uphill battle for the majority of the world's population. While many national governments have signalled their tacit acceptance of these rights by signing onto progressive international human rights treaties, few of them have abided by them in any meaningful way, if at all. Exacerbating this non-compliance is the blatant disregard for basic human rights shown by non-state actors who have become increasingly powerful as a result of the global rise of neoliberalism and religious fundamentalisms. The confluence of these forces has created a difficult and untenable situation for many women around the world. Rather than moving forward, many women's rights activists are now struggling simply to hold onto gains previously won.

What are Economic and Social Rights?

- The right to education
- The right to health
- The right to housing
- The right to food
- The right to water
- The right to work
- The right to social security
- The right to an adequate standard of living
- The right to a healthy environment

Everyone has the right to enjoy these rights without discrimination based on their race, sex, language, religion, political or other opinion, national or social origin, sexual orientation or other status.

Women are guaranteed equal enjoyment of these rights with men.

In this challenging global climate, the question of how to advocate for women's economic and social rights is as urgent as it is complex. How do we articulate, recognize, and legitimate these rights? How can we ensure that they are protected and enforced? What can we do to hold states and non-state actors to account when they are in violation of these rights? And how do we do all of this in a way that is both empowering and sustainable?

As the language of human rights gains greater authority and legitimacy, a small but growing number of feminist activists have begun to answer these questions with a newer, more refined set of strategies that draw on the framework of economic, social and cultural rights (ESCR) as expressed in the International Covenant on Economic, Social and Cultural Rights (ICESCR). In recent years, a number of watershed cases have been brought forward in national courts to compel governments to act on their ESCR commitments, including in the areas of health, housing and social security. At the same time, the complex and often arduous work of articulating government responsibilities and developing mechanisms for enforcement and redress of ESCR has also picked up pace, opening up more and more spaces for discussions of ESCR. Meanwhile, on the streets, the distinctive language of ESCR has become increasingly prominent in popular protests, mobilizations, and empowerment work. All of these efforts, combined with the wealth of experience and expertise developed by women's rights advocates over many years in their struggle to achieve gender equality and poverty eradication, have resulted in the emergence of valuable new analysis, creative strategizing, and renewed mobilizations.

Despite this recent flurry of activity however, ESCR advocacy, generally speaking, is a newer area for feminist engagement. Many questions remain about its value in terms of bringing about tangible improvements in women's lives. History has taught us, for example, that an over-reliance on rights approaches, to the exclusion of other strategies, has its limits. The rights of women, moreover, have been traditionally marginalized in the field of mainstream human rights, despite many efforts by feminists to address the imbalance. Furthermore, translating "gains on paper" into substantial, positive changes for women remains a significant and widely recognized challenge.

These obstacles notwithstanding, the learnings and strategies that have emerged from our more recent experiences with ESCR advocacy are worth consideration, and have much to teach us about doing our work more strategically and effectively. This project is an attempt to synthesize and analyze some of these lessons.

About the Association for Women's Rights in Development

The Association for Women's Rights in Development (AWID) is an international feminist, membership organization committed to strengthening the voice, impact and influence of women's rights advocates, organizations and movements around the world. In recent years, AWID has looked at many different approaches and issue areas, analyzing what has brought about positive change, why and how. We have also prioritized interdisciplinary work, bringing together activists and organizations that work on similar issues but draw upon different tools, languages and approaches. This project is a natural outgrowth of that work, focusing as it does on the innovative ways in which a single set of strategies is being used in different ways for similar aims.

Methodology

Our methodology for this project was to look at examples and experiences from many different contexts, striving to understand the opportunities and obstacles to economic and social rights implementation, and the different activities that have been used to advance economic and social rights in different settings. Since the most effective human rights work often happens at the local level or in the context of a specific situation of urgency, we chose to begin with those experiences and explore how positive impacts can be made (rather than the more common approach of starting with United Nations committees and interventions). The research presented here is based on interviews with activists, researchers, lawyers, government officials and development practitioners with diverse experiences using a range of strategies to implement economic and social rights, as well on reports and articles on ESCR that have been published in different sources.

It is important to state up front that while economic, social and cultural rights are often grouped together, especially at the international level, we have explicitly chosen to focus on only economic and social rights for the purposes of this research. While there is no question that the arena of cultural rights is rich with strategic possibilities, exploring these possibilities necessarily entails bringing in issues of ancestry and/or indigenous rights, customary law, and discriminatory cultural practices – the proper treatment of which demands a full, contextual analysis that goes beyond the scope of this project. In addition, other key regional and international projects and organizations are currently doing work that

focuses specifically on cultural rights.¹ This research strives to complement rather than replicate that work.

About the ICESCR

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is the primary source of economic and social rights internationally. It was adopted unanimously by the United Nations General Assembly in December 1966 and came into force January 3, 1976. This covenant was one of two that were drafted with the purpose of giving legal effect to the Universal Declaration of Human Rights (UDHR)—the founding document of international human rights law—which was developed nearly 20 years before. The other is the International Covenant on Civil and Political Rights (ICCPR).

Originally, the UN Human Rights Commission intended for there only to be one treaty, but the Cold War prevented this from happening. On the one side, the USA and Europe stressed the importance of civil and political rights (e.g., the right to participate in political processes, freedom of expression, etc.). By contrast, the Communist block prioritized economic, social, and cultural rights (e.g., the right to employment, education, shelter, health, etc.). The compromise was therefore the creation of two separate instruments. In the post-Cold War world, this division has been much diminished, although the historical legacy has resulted in economic, social and cultural rights remaining second-class to civil and political rights.

As of May 8, 2006, 153 countries have signed on to the ICESCR. The ICESCR delineates protections of a number of economic, social and cultural rights including the rights to work; to fair and adequate employment; to education; to social security; to adequate mental and physical health; to appropriate shelter; and to reasonable standards of living.

We do not wish to suggest, however, that women's rights can be categorized neatly into artificial groupings, or that cultural rights are not as important as social or economic rights. In fact, discriminatory cultural practices are among the most entrenched and unyielding of obsta-

cles to women's equality, particularly in the areas of housing, land and inheritance. This is because race, religion, national origin and ethnicity often work hand-in-hand with gender to delineate who enjoys which rights within a given society. Women's right to participate in culture, to have their culture respected, and to shape and change culture is therefore central to both analysis and action for women's human rights. Because of this, even though we are not focusing on cultural rights per se in this paper, cultural discrimination and cultural rights are nevertheless implicated both directly and obliquely in many of the economic and social rights campaigns profiled and discussed in this report.

This report aims to provide examples and experiences from key ESCR advocacy efforts around the world, in order to illuminate, inspire and provoke.

This report is not intended to be a comprehensive account of the entire field of women's economic and social rights, nor is it intended to detail specific developments in ESCR jurisprudence and doctrine. It aims, instead, to provide examples and experiences from key ESCR advocacy efforts around the world, in order to illuminate, inspire and provoke. It also presents conclusions and lessons that we think will be of use to those working to actualize women's economic and social rights, whether explicitly or as part of other, larger aims. We hope that the experiences presented here will contribute to the body of knowledge on the critically important question of how to move from the realization of "rights on paper" to ensuring their concrete implementation in women's lives around the world.

In the sections that follow, we present an overview of key challenges to women's social and economic rights in terms of political and economic contexts, focusing in particular on neoliberal globalization and the rise of religious fundamentalisms. This overview is followed by an examination of strategies that have been used successfully to achieve the economic and social rights of women – litigation and judicial processes, making and reforming public policy, understanding and using budgets, and advocating using UN mechanisms – as well as some of the mechanisms (which are themselves strategies) mostly commonly and effectively used within these strategies: fact-finding and investigative work, and cam-

paigns and other popular mobilizations. Finally, in the last section, we present conclusions that can be extracted from this research on how to collectively advance our work for women's economic and social rights more broadly.

Current Contexts and Future Impacts

"There is no denying that we are witnessing, and indeed living, global crises. Increased militarization and armed conflict, devastating terror attacks and a "global alliance against terrorism" which breeds fear and hatred, the spreading HIV/AIDS pandemic, environmental degradation, the widening gap between resource rich and resource poor, and ethnic and religious extremism/fundamentalisms, are all symptoms of the situation we are facing around the globe. All over the world, most people continue to be socialized according to values based on dominance and violence, rather than diversity and respect. Moreover, militarization, terrorism and religious extremism are closely associated with increasing levels of violence against women."²

This is not the world of 20, or even ten years ago. The obstacles to realizing women's economic and social rights today are multiple, multifaceted and often interconnected.

This is not the world of 20, or even ten years ago. The obstacles to realizing women's economic and social rights today are multiple, multifaceted and often interconnected. Environmental degradation, for example, has put strains on traditional livelihoods in many regions. Trade liberalization and structural adjustment policies have promoted a development model that focuses on economic growth and consumption, rather than on human development and expanding freedoms. Harmful cultural and religious practices have resulted in restrictions on women's rights to inheritance, access to health, education and work, and freedom of movement. Trends in terms of labour migration, influenced by rapidly changing economic opportunities, have been implicated in new forms of exploitation and risk to women. Corruption and organized crime have also obscured accountability.

At the same time, our ability to effectively challenge these impediments has weakened considerably on many

fronts. The lack of effective political participation of women, the difficulty in accessing information, and absence of transparency in decision-making have combined to shut many women out of political processes. The transfer of responsibilities from national to local governments, without sufficient resources or accountability structures, has resulted in a further disintegration of governance systems. Meanwhile, tensions between social movements, the enduring lack of gender-sensitivity in mainstream civil society groups, diminishing resources available for women's rights work, and the lack of cohesion among women's rights advocates themselves has limited our collective ability to effectively pressure governments and non-state actors to act on their rights obligations.³ Of these myriad challenges, the two obstacles that emerged in our research as the most significant barriers to implementing women's economic and social rights were neoliberal globalization and the rise of religious fundamentalisms.

Neoliberalism

Neoliberalism is an ideology based on a resolute and unwavering belief in "free markets."⁴ Although initially promoted as a way to achieve economic growth and reduce poverty, its indiscriminate application and policy prescriptions have had starkly gendered impacts as well as a disproportionately negative effect on those most marginalized.⁵ The rapid rise of neoliberalism is directly responsible for the privatization of essential services such as health and education; the concentration of wealth and resources in the hands of a select few; disruptions of local economies and loss of sustainable livelihoods; the undervaluing of work, in particular women's work; the ascendancy of a model of profit maximization and competition that has devastated environmental and labour standards; the imposition of aid conditionalities that mandate cost recovery and government down-sizing; heightened economic insecurity as a result of the casualization and flexibilization of employment; increased threats to small- and medium-scale farming, natural environments, biodiversity and food security; a sharp increase in women's unpaid work; growing demands in terms of women's roles in social reproduction; and a weakened ability by less powerful countries to protect their national industries, as a result of increased trade liberalization.

The neoliberal agenda initially had the endorsement of only a small group of Northern institutions and academics, but in recent decades has taken hold globally. It now has many powerful proponents (including the international financial institutions and G-8 governments) and is

becoming ever more irrevocably ingrained in economic, political and legal structures of countries all around the world. This has created a situation in which it is increasingly difficult to ensure that women are able to exercise their economic and social rights – including rights they had previously enjoyed and even taken for granted. Indeed, according to evidence reviewed by economist Diane Elson, neoliberalism has resulted in a substantial regress in women's rights rather than progress.⁶ The direction of public policy under neoliberal stringencies, she notes, means that women living in the worst poverty in the Global South have been deprived of even the prospect of the progressive realization of a non-discriminatory system of decent jobs, public services and broad-based social security systems.⁷

Unless the influence of neoliberalism begins to decline ... the advancement of universal economic and social rights will continue to be forfeited in deference to private interests.

The rapid escalation of neoliberalism is currently having its most dramatic effects in developing countries, but all economies in the world have been affected. New Zealand and Canada, for example, which are not under the influence of the International Monetary Fund and World Bank in the same way as countries in the Global South, nonetheless have instituted similar policies as those recommended by the international financial institutions. New Zealand in fact has been held up as a model neoliberal economy, irrespective of the increasing inequalities and injustices experienced by the poor and marginalized throughout the country.⁸

While neoliberalism is both pervasive and entrenched currently, it is important to note that it has come under sustained attack by social movements in recent years, as its devastating impacts on the poor and marginalized become increasingly evident. Anti-globalization protesters, trade unionists, women's rights advocates, farmers groups, social justice groups and numerous others have all in their own ways exposed the myth of neoliberalism as a benign economic model. And although many have commented on the difficulty of turning the "street heat" of social protest into viable policy alternatives for the future,⁹ it does seem as if there may be some cracks in the neoliberal super-structure, as evidenced by recent failures of negotiations at the WTO and the elections of governments in Latin America that appear more socially

responsible and less willing to apply traditional neoliberal prescriptions in their countries. The financial and economic crisis engendered in countries such as Argentina has further called into question the logic of neoliberal policy prescriptions, even from more conservative quarters. Whether these incidents are isolated or indicative of a larger change remains to be seen. What is clear, however, is that unless the influence of neoliberalism begins to decline, and new economic paradigms which are centered on the principles of human rights and development are implemented, the advancement of universal economic and social rights will continue to be forfeited in deference to private interests.

Religious Fundamentalisms

Fundamentalist forces around the world, likewise, are exerting increasing control over women's lives, using religion (which often intersects with ethnicity, nationalism, tradition and culture) to justify rigid definitions of gender roles and to restrain women's sexuality, reproductive choices, dress codes, freedom of movement, ownership and inheritance of property, and education. These forces, as Farida Shaheed of Women Living Under Muslim Laws notes, are "diametrically opposed to concepts of universal human rights and to the right of people to have choices, to the right of dissent, to formulate alternatives, to a pluralistic society, to decide matters from themselves."¹⁰ Their impact, moreover, is being felt not only in particular regions but around the world, even in countries that have long-standing traditions of secularism.

While fundamentalist forces clearly violate civil and political rights, they can also have profound impacts on women's economic and social rights, especially in the areas of health, education, inheritance, land ownership and employment. For example, even though the interpretations of Muslim laws are diverse, none of them have equal rights of inheritance and property for women. In the vast majority of cases, women inherit based on their relationship with men – and even then, they only inherit a fraction as much as their male counterparts. In Iran, for example, women only inherit half of what men inherit. In Malaysia, moreover, as a result of pressures from religious groups, the senate recently considered an amendment to the family laws that would give men increased powers of divorce, ease of entry into polygamous marriages, and the ability to freeze and claim a share of matrimonial assets and property belonging to their wives.¹¹

In many instances, fundamentalist groups also restrict women's movement, especially in the public sphere, and enforce rigid, patriarchal definitions of gender roles. This

was most clearly seen in extremist regimes like the Taliban in Afghanistan, the Ayatollah Khomeini dictatorship in Iran or in Mormon communities in Utah, USA and British Columbia, Canada. Here, rigidly prescribed social roles as well as restrictions on movement, education, information, and technology severely limit women's economic independence and their productive capacities. Removing half the workforce from the delivery of social services like health and education further exacerbates this situation.¹²

Other, lesser known examples abound. Some Jewish women from ultra-orthodox communities in Israel, for instance, work in ultra-orthodox workplaces within their communities in order to earn the money needed to support their husband's full-time Torah study. Salaries, however, are often very low in these jobs, precisely because employers realize the women from these communities often have no other choice. Research and development centres are now opening in Israel, for example, where ultra-orthodox Jewish women work for less than half of what they would earn in other jobs. In exchange, the companies ensure that their religious needs are met through segregated kitchens and special working hours.¹³ Likewise, the convergence of a Christian evangelical worldview with the Bush administration's political agenda in the United States has had negative implications for women, particularly in the areas of sexual and reproductive health. The impact of these policies, moreover, have been felt both domestically and internationally, as funding has been cut to family planning services, abortion counselling, advocacy with or service provision to sex workers, contraceptive provision, and HIV/AIDS prevention education around the world.

The rise of fundamentalisms, it should be noted, is intricately connected to the spread of neoliberal economic globalization. As Dr. Vandana Shiva so aptly puts it, "fundamentalist, extremist and excluding politics emerge to fill the void left by the collapse of economic democracy and the growth of economic insecurity. Instead of identifying the root causes of economic insecurity in the global economy, every policy decision is translated into the politics of 'we' and 'they.'"¹⁴ It is the very rise of economic insecurity, in other words, along with the weakening of states, rising inequality, poverty and conflict, and the destruction of the social safety net promoted by the current neoliberal economic model that leaves a vacuum in which fundamentalist politics operate.

In recent years, it has become abundantly clear that fundamentalist forces are gaining ground around the world at an alarming pace, with all of the major religions exerting increased control over women's lives and appropriating women's public and private spaces. Even

when they are not explicit, fundamentalist agendas influence practices, policies, political agendas and laws, in ways that are almost always destructive to women's rights. According to Hina Jilani, UN Special Representative of the Secretary General on Human Rights Defenders and a long-standing women's rights activist in Pakistan, "even when [fundamentalist] forces are not on the foreground they are influencing power to an extent where women are negatively affected with the agenda that is being set." Often, religious fundamentalisms combine with other factors to further legitimize and reinforce practices that give rise to a host of rights violations. Recognizing gender equality as well as the full array of other civil and political and economic social and cultural rights as human rights rather than religious, communal or cultural issues is therefore ever more essential in the face of this threat.

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The pervasiveness of both neoliberalism and religious fundamentalisms have led to a situation in which working for social and economic rights is becoming increasingly important, both in and of itself, but also as a complement and sometimes pre-requisite to attaining other rights, such as civil and political rights. Despite variations in the impacts of these two trends and the many different social, political and economic contexts of communities around the world, it is clear that economic and social rights violations happen in every country. Furthermore, it is clear that these violations impact differently on women because of their social status and roles within societies. In rich countries as well as poor countries, in so called 'religious' and 'secular' states, and in more and less democratic governments, inequality is evident, not just in income but in access to education, health care, food and shelter, between women and men, between different ethnic and/or religious groups, and between rural and urban populations. Strategies to implement women's economic and social rights, therefore, should have resonance for social justice actors throughout the world.

The ESCR advocacy currently underway is as diverse as the situations this advocacy is trying to address. ESCR campaigns and initiatives, however, are connected by their emphasis on notions of entitlement and accounta-

bility. Many of the activities involved in ESCR advocacy, moreover, while adapted to specific situations, share a common set of strategies. Indeed, in recent years a number of organizations have sprung up in order to share this knowledge, both within a larger human rights framework and more specifically within activism for women's rights in particular. The International Network for Economic, Social and Cultural Rights (ESCR-net), for example, was launched in 2003 as a collaborative initiative of groups and individuals from around the world working to secure economic and social justice through human rights.¹⁵

In the sections that follow, we will explore and analyze some of these strategies, drawing out lessons that may be useful to furthering our thinking and activism on women's economic and social rights in light of all the challenges before us. We hope in the process to inspire social justice advocates throughout the world not only with concrete examples of change, but also with the knowledge that change is not only possible, but that it is happening in innovative ways all around the world.

“The realisation of economic and social rights is inherently a political undertaking, involving negotiation, disagreement, trade-offs and compromise. But political processes do not serve all equally. Equality requires, among other things, that the most disadvantaged be empowered to participate meaningfully both in political and legal processes, unshackling them from the benevolence and whim of the powerful, and enabling them to control their own destinies.”

– Louise Arbour, UN High Commissioner for Human Rights, Lafontaine-Baldwin speech, 2005

There are many different strategies for implementing human rights. What they all have at their core is an understanding that rights are not mere benefits, charity or rewards of economic development. Human rights, rather, are entitlements based on an international consensus of what is required to live with dignity – entitlements that people have solely by virtue of being human. An outgrowth of these entitlements is the fact that they necessarily entail accountability. When rights are not met, action must be taken. Responsible parties must respond, and remedies must be found.

Accountability can be realized through many different means, including monitoring, reporting, litigation, public debate and political participation. In order to be meaningful, however, accountability cannot be limited to the implementation of human rights obligations between a state and the people living in its territory. Instead, the concept of accountability must also extend to non-state actors (e.g., corporations, international financial institutions, religious-political groups etc.). Accountability must also address the regulation of activities in the private and family sphere as well as the extraterritorial obligations of states. The challenge, however, is that direct accountability under international human rights law remains relatively limited, since only states are parties to human rights treaties even as non-state actors grow increasingly powerful.¹⁶

Currently, much of the work around implementing economic and social rights centers on the question of how to hold responsible parties to account for their rights obligations. This is because rights that remain promises on paper only are not true rights. They are not the nourishing food to sustain a body, the roof of a home providing shelter, or the equal treatment and access of all people to opportunities and resources. To be truly effective,

strategies to implement women's rights must redistribute power; they must get beyond securing promises and actually translate human rights into tangible, concrete changes in the lives of real women around the world.

In the section that follows, examples of strategies in the areas of litigation and judicial processes, law and policy making and reform, budget analysis, UN mechanisms, fact-finding and research, and campaigns and popular mobilization will be shared.

Using Litigation and Judicial Processes to Protect Human Rights

Litigation is a traditional human rights approach, although only more recently used specifically for economic and social rights work in most regions. The collective nature of economic and social rights, as well as the budgetary implications associated with economic and social policy, however, has made litigating these violations more difficult than litigating civil and political rights violations. Nonetheless, there have been a number of key victories recently, including for example in South Africa, Argentina and India, that indicate that these perceived challenges can be overcome, and that the judiciary can be used to play an important role in advancing economic and social rights.

The collective nature of economic and social rights, as well as the budgetary implications associated with economic and social policy, however, has made litigating these violations more difficult.

Respecting and Protecting the Right to Housing: the South African Experience

The renowned Grootboom decision of the South African Constitutional Court is a helpful example of how the role of courts is advancing with respect to economic and social rights.¹⁷ The case involved about 900 people (including Irene Grootboom) who had been living in terrible conditions in the municipality of Oostenberg in South Africa. Most of these people had already applied for low-cost housing, but were becoming increasingly frustrated after many years of waiting with no response from authorities. Desperate, they decided to illegally occupy a vacant piece of private property across the road from the site that had been earmarked for low-cost housing.¹⁸ In response, the owner of the property applied for and received a court magistrates order to evict the occupied community. In the aftermath of the decision, the homes of the people occupying the land were destroyed.

Now homeless, the community responded by petitioning the High Court for an order to provide them with temporary shelter, until they could be permanently accommodated under a provincial housing plan. The government, for its part, placated them by offering to give them access to a piece of land and some building materials, as well as access to basic services while they waited for housing to become available. Subsequently, however, the government failed to honour its promise. The community then took their case to the High Court, basing their arguments on Section 26 of the South African Constitution, which states that: 1) Everyone has the right to have access to adequate housing; and 2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right. And since half of the population of the community were children, they also referred in their petition to section 28 of the Constitution, which stipulated that every child had the right to basic nutrition, shelter, basic health care services and social services.¹⁹

The court rejected the argument based on Section 28, arguing that the primary responsibility for the care of children lies with the parents. They ruled, however, that the argument based on Section 26 was in fact valid, and that the community's right to have access to adequate housing had indeed been violated. The Court explained that a legislative or policy framework aimed at the progressive realization of social rights must be adequate to facilitate the progressive realization of the right within prevailing resource constraints, and that it must be comprehensive, coherent, balanced and flexible. According

to the judgement, Section 26 imposed a negative duty on states not to prevent or impair the access to housing, as well as a positive obligation to create an enabling environment for the fulfillment of this right. The state's housing plan, the court noted, must clearly allocate responsibility to different spheres of government, must respond to the needs of crisis situations, and may not exclude any significant sector of society, especially vulnerable populations. The housing plan in this case did not meet these standards, and therefore the government had a duty to rectify the situation.²⁰

The Grootboom decision was a landmark decision in terms of economic and social rights. It recognized, first, that socio-economic rights enshrined in a Constitution were justiciable – that is, that social and economic rights were appropriate to be tried in a court of law. Secondly, the decision also recognized that the obligation of the state to ensure access to these rights was irrespective of any budgetary or other constraints that it may be able to demonstrate.

This reasoning behind this decision was solidified more recently in a separate decision regarding the provision of drugs to prevent mother-to-child transmission of HIV. In this case, the Court unequivocally dismissed the government's arguments that courts are not empowered to issue any order other than a declaration of rights in socio-economic rights cases such as these.²¹ The Court, instead, reaffirmed that the Constitution requires the government to respect, promote and protect the rights in the South African Bill of Rights (which includes social and economic rights). It affirmed, further, that where government policy is inconsistent with this obligation, the Court not only has the authority, but also the obligation to determine whether the government has fulfilled its obligations, and to intervene if it finds that the government has not.

Using Litigation for the Promotion of Women's Rights in Bangladesh

Sara Hossain, a lawyer based in Bangladesh, explains why litigation is particularly useful on issues such as women's housing rights and the provision of protection for marginalized groups. It has been important for setting "goal posts" as part of a larger strategy for social change, and for declaring minimum standards. In a decision of the Supreme Court of Bangladesh in 2000, for example, the rights to life and livelihood of sex workers and their children were vindicated, after they had been forcibly evicted from their homes.²² This landmark deci-

sion resulted not only in the legal recognition of rights of the complainants, but also, at least symbolically, in the tacit social recognition of sex workers as citizens with the power to protect their rights.

Hossain also notes, however, that obstacles to using litigation to bring about change in Southeast Asia (and elsewhere) still remain, including that: the judiciary does not understand the issues very well; the lower courts are weakened by politics and corruption; the government does not comply with the courts' decisions; interest groups block change from occurring; and the legal system is quite unbalanced in terms of where power lies. There also needs to be a wider recognition of rights in the general population where more people feel entitled to – and do – actually claim their rights. There needs to be better mobilization and organization as well as the development of stronger national networks, and more investment in the local level from funding agencies as well as a real commitment to realizing changes not only in theory and in international legislation but also in practice.²³

Implementing the right to water in Argentina

Argentina, like South Africa also has a strong tradition of using judicial processes to protect the rights of citizens.²⁴ One example of this is the Chacras de la Merced water case. Approximately 20 years ago, municipal authorities in Cordoba, Argentina, began expanding sewer connections from a limited area. According to the city plan, taxes would be used to expand the capacity of the sewage treatment plant at regular intervals, thereby allowing for the continual expansion of the system, which would eventually include the entire city. The plan, however, was not implemented. As the city expanded and additional neighbourhoods were added to the sewer system, more and more sewage was sent to the plant, but the revenues designated for expanding the capacity of the plant were used for other purposes. As the capacity of the treatment plant was exceeded, untreated water was eventually dumped into the river. As a result, communities upriver from the plant, who did not have connections for potable water, ended up drinking contaminated water from their wells. Chacras de la Merced was one of those affected. A low-income community of approximately 4500 residents continually suffered from chronic gastro-intestinal diseases as a result.

The Centre for Human Rights and Environment (CEDHA) decided to take action. They tested the water and proved that the contamination caused by the sewage plant was responsible for the ill-health of the community.

CEDHA convinced five families in Chacras de la Merced to bring a class action lawsuit against the municipality, using the line item in the municipal budget that should have allocated funds to expand the capacity of the sewage plant, but did not. The judge, in an unprecedented ruling, found in favour of the families and ordered that the municipality provide the families with safe drinking water on a daily basis. As a result of this legal victory, a truck began bringing water to the families. Not long after this, the neighbours of the litigants began to request their own safe water – and so CEDHA went back to court, where they worked with the judge, the community, the province and the municipality to find a suitable solution. An important part of the strategy used to fight the municipality was the use of the media to get positive coverage of the issue and support for a judgment in favour of the community. This helped a young judge to take a risky decision against a public utility – a first in Argentina's history – that brought safe drinking water to three affected communities.

As a result of this legal victory, a truck began bringing water to the families. Not long after this, the neighbours of the litigants began to request their own safe water.

In bringing this case forward, CEDHA set a number of important precedents that are worth noting. It was the first time, for example, that an Argentinean judge became involved in public utilities. It was also one of the only instances in which the complainants deliberately included actions to support the judge as part of their overall strategy. The case was also precedent-setting in that the affected communities, in a break from normal procedure, were actually present during portions of the trial, for strategic reasons. This contributed not only to a favourable judicial decision, but also to community empowerment. The affected families gained, through this process, the confidence to stand up to the authorities and also the tools to resolve their problems. In this case, litigation was central to the strategy to bring water to the communities, but it was only successful when used as part of an innovative and community-centred strategy.²⁵

Implementing the Right to Health: Bringing the Argentine Hemorrhagic Fever Vaccine to the Population

A similar case was brought by the Centre on Social and Legal Studies (CELS) regarding the Pampa Zone of Argentina, where Argentine Hemorrhagic Fever (FHA) had become endemic. The best way to combat FHA was through a highly effective vaccine. The production of this vaccine, however, had proven unprofitable for private laboratories and, as a result, the vaccine had become difficult to obtain. CELS, in response, mounted a court challenge based on the right to health, and eventually won. In the ruling, the court, citing Argentina's constitutional and international human rights law obligations, stated that when, for economic or commercial reasons, private institutions do not provide health care for a population, the state must find the necessary resources to do it. The court further established a schedule according to which the state had to proceed, and followed up to monitor compliance with the schedule. Unfortunately, as of the writing of this report, the government has not yet complied with this schedule, but CELS is continuing to pressure the government for progress and anticipates that the vaccine will be made available soon.

Often what starts out as a lawsuit on a narrow issue goes on to blossom into a program of community organization and empowerment.

As in the Chacras de la Merced water case, the affected community and their advocates were able to make use of litigation to find original remedies to deal with complex human rights violations. The success of this litigation also suggests the importance of having judges who can use creativity and abandon their traditional passive role as mere applicators of the law.²⁶ Indeed, as lawyer Caroline Fairstein of CELS underscores, this case illustrates the importance of having effective judicial mechanism which can respond to collective claims. Fairstein notes further that often what starts out as a lawsuit on a narrow issue goes on to blossom into a program of community organization and empowerment, involving political action and popular education. During these larger community processes, women, importantly, often take leadership roles and develop their capacities in many different areas.²⁷

Women's ESCR Tribunals in Latin America

Judicial models can also be adapted to advance women's rights outside of formal courts. In Latin America, for example, women have set up a wide range of tribunals in order to articulate violations of their economic, social and cultural rights, and to demand restitution and compensation for the violations. One of the most famous of these is the "Tribunales por los DESC de las Mujeres" ("Tribunals for the ESCR of women"), which was born in October 2003 as a process of vindication, knowledge production and claiming of rights from a feminist perspective. Other tribunals have also been held, to date, in Bolivia, Chile, Ecuador, Peru and Colombia, followed by a larger, regional tribunal held in July 2005.²⁸ The methodology of these tribunals involves two phases. The first involves disseminating information about the tribunals and women's rights in various popular venues and on radio stations, as well as producing capacity-building tools on women's economic, social and cultural rights prior to holding the tribunal. The second is the Tribunal itself, the format of which is modified in each country, but which always draws on the judicial model of gathering facts relevant to specific cases and presenting them publicly for adjudication.

The National Tribunal in Peru is a case in point. The Peruvian Tribunal included testimonies that exposed the reality being lived by lesbian women, women affected by the mining industry, women working in agricultural export industries and domestic workers. It also unveiled the workings of the Peruvian health system with respect to denying therapeutic abortions and performing forced sterilizations. For each case brought forward, the facts of the case and legal arguments about the human rights implications were presented, and a verdict was issued. Also in each of the cases, the Ministry of Health sent a delegation to respond. And while the Ministry of Women and Development did not attend, they nevertheless committed to send written documentation to the organizers explaining how they would address the exposed human rights violations and what measures they would take to ensure women's enjoyment of their economic, social and cultural rights in the future. The verdicts, moreover, identified the responsible parties in each case and put forward recommendations on how to remedy the violated rights.

Maria Ysabel Cedano of Demus was one of the organizers of the National Tribunal in Peru. She noted that the tribunal was a tremendous success and enumerated amongst its accomplishments: that economic, social and cultural rights are now embedded not only in feminist

and women's organizations and movements, but also in other social movements, including those that deal with labour rights and race, among others; that many people now understand women's economic, social and cultural rights issues and concepts, including between 450-500 women from "popular neighbourhoods" (low income neighbourhoods) who attended; that the documentation from these cases can now be used in national and international courts, as well as for other advocacy purposes; and finally that ESCR have been put on the public agenda with a gender perspective, through the extensive media coverage the tribunals received. Cedano also identified several obstacles, including securing adequate funding, getting the organizations involved to give priority to ESCR, and the lack of ESCR specialists within the country. She nevertheless anticipates that the tribunals will have many spin-offs, including further documentation and knowledge building efforts as well as increased international co-operation and understanding of how these rights violations are systemic and global.²⁹

The documentation from these cases can now be used in national and international courts, as well as for other advocacy purposes.

Evaluating the Role of Litigation

As these examples demonstrate, the courts and judicial models have an important role to play in the everyday struggle to achieve economic and social rights. It should be noted, however, that litigation is often a difficult, lengthy and costly strategy, and that victories in claiming economic and social rights in court are still few and far between. And while many judicial processes have an empowering effect on the community, they can also have the opposite effect, as lawyers and experts removed from the lived experiences of affected peoples take formal processes forward.

Given these challenges, it may be prudent for feminists considering incorporating litigation into their activism to consider the following factors before making a decision:

- Is the rule of law respected within the society in question? Are the courts independent and well-respected?
- Is there an obvious human rights violation? Is that right protected in national law (e.g., the constitution)?
- Have meaningful consultations taken place with all interested parties and affected people? Are the necessary resources available (both human and financial) to carry the case through?
- Has the legal strategy been developed as part of a larger effort to effect social change? How will the decision be used to vindicate the rights violation and advance the implementation of human rights? Is the goal to develop legal principles or to obtain redress for the right violation?
- Is there popular support for the action? Has the case captured the public attention?

Making and Reforming Policy to Guarantee Women's Rights

Many think of human rights work as court-based and dominated by lawyers, and to a great extent it has been, but a considerable amount of human rights advocacy is actually directed towards policy making and policy reform. The issues involved in policy making and reform, however, are slightly different from those involved in judicial processes. Thinking about human rights in policy terms, for example, involves grappling with questions such as what a rights-based approach to health policy is, how to design a human rights compliant housing program, and whether leaving the provision of essential services to private companies can be consistent with a government's economic and social rights commitments. According to Paul Hunt, UN Special Rapporteur on the Right to Health, rights-based policy and law-making efforts require a different set of tools and skills than other human rights strategies, including knowledge of how to do human rights impact assessments, establish human rights indicators and benchmarks, and engage with policy-makers on human rights priority-setting. This area of work is to-date underdeveloped and a fertile ground for interdisciplinary collaboration; development practitioners, for example, may be able to help develop methodologies for human rights indicators based on their long experience with using development indicators.³⁰

Connecting Policy to Women's Rights

It should go without saying that economic and social policies are significant influences on women's enjoyment of their economic and social rights. Consider, for example, the right to housing in the Canadian context. Currently in Canada, women and children are the fastest growing group using shelters in Canada. The increasing number of women in shelters, moreover, is only a small fraction of the number of women experiencing housing crises and homelessness in diverse ways – living with the threat of violence because there are no other housing options; sacrificing other necessities such as food, clothing and medical needs to pay rent or to make mortgage payments; or moving into overcrowded accommodation with family or friends. Given these myriad factors, it becomes evident that the housing crisis cannot be adequately understood merely as a result of a scarcity of appropriate housing. It arises, instead, from the complex interconnections between housing programs, subsidy eligibility and allocation, income security, access to credit, security of tenure, transportation and service needs, as well as discrimination and inequality.³¹

To address these issues, better and more holistic housing policies are required, rather than more new houses.

More housing, or government subsidized affordable housing, then, in and of itself, will not solve the housing problem, as experience has proven time and time again. Even when social housing is available, it is often substandard and inappropriate, while the allocation process is often characterized by discrimination. This occurs both in the public and private housing market. These are major obstacles in particular for aboriginal women, single mothers, racialized groups, and new immigrants to Canada. For women in abusive relationships, these factors can be compounded by poverty, making it very difficult for women to leave their partners and maintain adequate housing.

To address these issues, then, better and more holistic housing policies are required, rather than merely subsidized accommodations. These policies, moreover, must link poverty and gender to housing if they are to be effective in addressing the homelessness of women. Doing the kind of advocacy required to bring about these changes, however, remains a challenge, in part because of the structure of the Canadian government, which allo-

cates these issues to different portfolios. Nevertheless, some work has already been set in motion. As Leilani Farha, representative for the National Working Group on Women and Housing, tells us, their group has already begun moving forward on advocacy for a National Housing Policy. She believes that if this policy were designed to be inclusive of women and based in principles of non-discrimination and equality, it would have very real and beneficial impacts on women. Such a policy would require, for example, that any newly built housing units would have to be allocated in such a way that those in need would have access to them. It would also lend itself to enforceable standards, so that implementation would not be a problem. Reflecting on the strategy, Farha notes that “human rights are about access and protection for those most in need – women living in poverty therefore should be at the centre.”³²

Lessons from New Zealand: Applying a Rights-Based Approach

The recent experience of New Zealand is also instructive in terms of the possibilities and challenges involved in incorporating economic and social rights into the policy sphere, as efforts are currently underway there to formally introduce human rights into different aspects of policy making processes. As part of this effort, the Human Rights Commission of New Zealand has been working with several government departments to explore how a rights-based approach differs from a needs-based approach in terms of developing and implementing public policy. In doing so, the Commission has learned that many policymakers do not really understand what human rights mean in policy terms, as Human Rights Commissioner Joy Liddicoat explains. Through their engagement with the Commission however, Liddicoat notes, the government's policymakers have started to understand that rights-based approaches and needs-based approaches are complementary and not in opposition, and that using human rights frameworks can in fact assist them in meeting citizens' needs and advancing equality and well-being.

This is consistent with lecturer and writer Claudia Geiringer's observation that the most significant change comes when governments come to understand rights-based policy approaches as an intensification of participation and transparency. What the rights-based approach really sets up, she notes, are “bottom lines” and parameters on acceptable actions.

There are also lessons to be learned from New Zealand in terms of changing existing laws and policies.

Indigenous communities in New Zealand, for example, have had extensive experience working for policy changes to advance economic and social rights within their communities, particularly on the right to health. This is because health status within New Zealand is not consistent across ethnic, class and gendered lines. Within the Maori community in particular, health problems persist that have been eradicated in other communities. The reason for this, as Rebecca Taipiri of the Whare Mauri Ora Trust explains, is that the mainstream medical system is not always effective for the Maori population, in particular where modern medicine practices clash with Maori practices. Moreover, many of the medicines are expensive and non-Maori practitioners are often unaware or insensitive to cultural differences.

Indigenous communities in New Zealand have had extensive experience working for policy changes to advance economic and social rights within their communities, particularly on the right to health.

Advocating for Culturally Appropriate Vaccines in the Maori Community

One of the areas in which considerable right to health advocacy work has been done to change policies and practices is in the provision of vaccinations and immunizations. According to Maori faith, it is unacceptable to ingest or accept vaccines made of human tissue. Because a number of vaccines do contain, or have in the past contained, human tissue, vaccinations have become uncommon and even taboo in some Maori cultures. To complicate matters further, several community members have died after having received vaccination, thereby reinforcing the taboo. Adding to these cultural prohibitions is the burden of going to the clinic and the generally high cost of vaccines. The result is that those who are most at risk – including older people and teenagers – are the least likely to be vaccinated. Not surprisingly, a number of infectious diseases, including Polio, have resurged in recent years in Maori communities.

In response to this situation, Whare Mauri Ora Trust and others participated in many government and community meetings to ensure that vaccines without human tissue were made available in Maori communities. As a result of these efforts, there are now currently a number of vaccines in New Zealand (measles, mumps and rubella, for example) that use alternative ingredients. The work of Whare Mauri Ora Trust (and other Maori organizations) is unique in that it is based on cultural values and on the idea of whole family health or whole community health, rather than individual health. This advocacy around vaccines is therefore integrated within a broad spectrum of issues on which they provide services in order to strengthen their community (including parenting support and financial training).

The key ingredient to successful policy advocacy is to “make lots of noise”: have a clear message and mandate, and repeat it forcefully at every possible meeting and forum.

When asked about what they learned from their policy work, Rebecca Taipiri notes that, for them, the key ingredient to successful policy advocacy was to “make lots of noise”: have a clear message and mandate, and repeat it forcefully at every possible meeting and forum. To do

this successfully, she adds, you must be open to participating in a range of different spaces, reinforcing your point of view whenever the government is willing to listen. You must also ensure that the community is involved in monitoring the implementation of the policy (e.g. the manufacture of the vaccines) so that the programs and processes will be sustained.³³

The Use of Policy to Make Change: Challenges and Pitfalls

While designing and implementing policies to protect women's rights is essential, doing so is not without its challenges and pitfalls. Indeed, examples abound of how much-anticipated laws or policy changes have, disappointingly, not led to an improvement in women's situations, or how short-lived certain policies have been. The area of workers rights is a prime example of this. Many assumed that getting women into the labour market would lead to their economic equality, but instead the situation has proved to be much more complicated.

Consider the example of post-socialist Lithuania, where social, economic and political reforms have substantially changed public and private life, creating a new, open-market structure where women are free to choose if and in what sector to work. These changes have not, however, led to equality between men and women or to the full enjoyment of the right to work by women. According to a Shadow Report prepared for the Committee on Economic, Social and Cultural Rights, while many women work outside of the home today, their level of economic activity remains lower than that of men (at 66% as compared to 74% for men).³⁴ In addition, a gendered division of labour remains, with women making up the majority of those working in health care, social work and education, while men predominate in construction, electricity, gas and water supply, and management-level positions. At the same time, women continue to earn less than men, and continue to be discriminated against based on age and child-bearing in ways that men are not. Compounding these issues is the problem of growing unemployment, which is the primary cause of poverty in Lithuania.

As a result, many women have become active in informal employment, thereby losing their social security and health insurance benefits. Unemployment of women has also been shown to lead to prostitution, depression and suicide, in addition to poverty.³⁵

These and other unintended consequences have made it abundantly clear, in retrospect, that merely getting women into the labour market by eliminating policy barriers to their inclusion has had only limited efficacy in terms of assuring that women can enjoy their rights. Part of the reason why initiatives such as this fail, as activist and organizer Lisa VeneKlasen notes, is that sometimes policy research, analysis, lobbying and engagement become so all-consuming that organizations and advocates forget about building the broader forces needed for political changes. She and others refer to this process, colloquially, as "falling down the policy black hole."

VeneKlasen explains that today, policy work tends to be considered more important and worthy of funding than media work and mobilization. The reasons for this are many, and include the increasing "NGOization" of social movements over the last 15 years, the increasing number of invited spaces for civil society actors to engage in policy processes, global conferences, and the priorities of funders. Over time, she notes, these and other factors have resulted in policy engagement opportunities sometimes *leading* social justice work (rather than it *being led* by the needs and experiences of local people).

VeneKlasen does not suggest, however, that everyone should shift to work on mobilization, but only that policy work must be balanced with public education, constituency building and media work. Norma Sanchis, of the International Gender and Trade Network (IGTN) agrees. Sanchis notes that some feminists have a "fetishism" for the law and devote all of their resources to advancing laws that guarantee equality and women's rights. These laws, however, often have little tangible impact in and of themselves because they lack implementation and enforcement. Economic and social change can be made with or without laws, she notes, and successful campaigns can pressure for rights regardless of whether these are grounded in the law or not.

Understanding and Engaging with Budgets

Budgets are a particular type of policy or, perhaps more accurately, a concrete expression of a nation's policies. A country's budget can tell us a great deal, for example, about where the country's social and economic priorities lie, and whether the government is putting the necessary resources into fulfilling its promises. Furthermore, it helps to reveal the choices that confront a government and its people about how to use limited resources (especially under debt and restructuring conditions), and provides a legally and morally recognized basis for setting priorities. Initiatives to analyse a country's budget according to human rights commitments and standards, therefore, are revealing exercises to ensure that limited resources are being used to maximum effect, that resources are being redistributed to bring about greater equality, and to pinpoint government failings and reveal concrete suggestions for how to improve situations.³⁶ Budget analysis therefore helps human rights advocates to understand and take action on what a government is *actually* doing, rather than what it says it is doing.

Emphasizing the value of rights discourse with respect to budgets, renowned feminist economist, Diane Elson³⁷ writes:

The discourse of human rights has a profound moral authority in contesting many current values which disadvantage women. ... Advocacy based on human rights has a moral authority that no economic analysis can ever have. The worst that an economist can say of a government's budget is that it is 'imprudent', 'unsound', 'unsustainable', 'inefficient'; while the human rights advocate can point out [that] even if the budget is 'prudent', 'sound', 'sustainable' and 'efficient' if [it] violates human rights, it is unacceptable.³⁸

This moral force is particularly useful for governments who are called on to defend their budget priorities as well as for activists who are advocating for particular policies or resource allocations. In the experience of Ann Blyberg of the International Human Rights Internship Program, there has been minimal government resistance to budget work using a human rights framework. The work has empirical weight as the data being analyzed is often generated by the government in question, which may automatically lend legitimacy in some instances. As Blyberg puts it, when you are using the government's

own figures, they tend to listen. This willingness to listen, she adds, is underscored by the fact that so few in the Ministry of Finance really understand the budget anyway. As a result, legislators and others in the bureaucracy are usually very interested in the budget analyses and welcome guidance on how to realign spending.³⁹

Budget analysis also has widespread acceptance in court cases, where having accurate data is imperative.

Budget analysis can also be very persuasive when used as evidence in court case, provided you have accurate data. In the Chacras de la Merced access to water case, for example, it was the fact that a budgetary allocation for expanding the water treatment plant had been made (but not acted upon) that gave CEDHA something concrete on which to build their strategy. Using budget analysis as a component of strategies to advance women's economic and social rights in particular, builds on both human rights budget analysis initiatives as well and the rich body of work on gender-responsive budgets. There are many examples of how this can be done. For instance, to address an issue such as maternal mortality, discrepancies in the amount of funding allotted to hospitals in different regions – or knowledge of where funds have been blocked or diverted to other uses – may be used as a basis of an advocacy campaign or even litigation against the governments in question.⁴⁰ Budget analysis is also essential in answering what are probably the most common excuses for not fulfilling economic and social rights, namely “lack of available funds” and “budgetary constraints.”

Participatory Budget Process in Rosario, Argentina

Beyond analyzing government-produced budgets, human rights work can include processes for establishing spending priorities, redistributing resources to marginalized areas/populations and preparing alternative budgets. Officials in the City of Rosario, Argentina, for example, initiated a participatory budget process in 2002, after studying similar initiatives that had been carried out in Montevideo, Uruguay and Porto Alegre, Brazil. As part of this initiative, local citizens became part of decision-making processes and took control of 15% of the municipal budget (approximately USD 25 million).

Rosario's participatory budget process became as much about empowerment for women as it was about money and budgets.

Rosario is divided into six districts and devotes 50% of its budget to health and social issues. As part of the participatory budget process, in March of each year, between eight and ten assemblies are held in each district. Here citizens elect their representatives to the municipal council and discuss how they want to use the budget resources for the following year. After each assembly, documentation of proposed projects, including public works and social services, are produced in order that the citizens of the district can vote on projects for the following year.

The participation of women in these assemblies is very high, in large part because the municipal government makes a concerted effort to facilitate women's involvement. The government legislated, for example, that half of the elected representatives per assembly would be women (although if the quota had not been established, women's participation would likely exceed that of men). The City also pays close attention to access issues, for example scheduling strategically and providing childcare during the assemblies. Moreover, to counter the tendency for women's input not to be taken seriously, the Department of Women developed a capacity building program within the participatory budget process, so that female council representatives participate in workshops on women's rights issues as well as on the budget design and implementation.

As a result of these measures, Rosario's participatory budget process became as much about empowerment for women as it was about money and budgets. This process, moreover, has already had concrete results in terms of improving women's lives. For example, while early on in the process, domestic violence was always singled out as an important issue in the assemblies it seldom translated into anything tangible. However, more recently education to end violence against women has been added as a priority project. Other services directed at women have also been funded, including a much-needed mammography unit at a local hospital.

Reflecting on these successes, Susana Bartolomé, Director General of the West District of Rosario, notes that the future for the participatory budget process is bright. "If this trend continues," she says optimistically, "I think in a very short time people in Rosario will end up deciding 50% of the municipal budget. I believe in citizen's participation as a tool of transformation."

The success of this initiative can be attributed to several factors. First, there was an effective left-leaning government in power, which responded to civil society pressure in order to avoid a potentially explosive situation at hand after the financial crisis of 2001. Second, the City invested resources in learning from similar projects elsewhere while also tailoring the process to their specific needs and context. Third, they evaluated the process early on using gender-sensitive indicators to ascertain what improvements were needed to make it more responsive to citizens' needs. Fourth, the City also tried to engage and educate citizens throughout the process. They made it as participatory and accessible as possible. Finally, having an effective government department devoted to women's issues and feminists in key decision-making positions facilitated the inclusion of a strong gender perspective in the planning, implementation and evaluation of the process.⁴¹

Using Budgets as a Human Rights Tool:

Lessons Learned

The longer experience of work on gender-sensitive budgets provides some lessons applicable to budgetary analysis with respect to women's economic and social rights and human rights more generally. According to an overview report on gender and budgets by BRIDGE, some of the pitfalls of gender-sensitive budget initiatives include:

- Failure to keep objectives and goals realistic;
- Lack of consistent follow-through and evaluation of identifiable results;
- Insufficient coalition-building and citizen's participation;
- Heavy dependency on external consultants;
- Unavailability and/or inaccessibility of gender-disaggregated data;
- Challenges of engaging the legislature.⁴²

The report concludes that while there are no readily available recipes and no formulas that guarantee success, features that can make a significant difference when planning gender-budget initiatives include: citizen involvement; hard and constant work which is well-resourced; women's participation; strategic vision; and opportunity of political change.⁴³

Advocating for Women's Rights Using United Nations Mechanisms⁴⁴

Engagement at the international level through the United Nations (UN) is a very common human rights strategy, as there are a range of UN mechanisms with direct relevance to women's economic and social rights. The UN also sets normative standards for gender equality – including the setting of legislative frameworks – and develops international policies, many of which are key to women's rights advocacy. The accountability structures and implementation mechanisms necessary to effectively use these policies and frameworks, however, are often lacking.⁴⁵ Because of this, many people working to implement women's economic and social rights around the world tend to be ambivalent about the value of engaging with UN mechanisms. Most acknowledge that there is some merit to strategic engagement at this level, particularly in terms of symbolic value and standard setting, but many question the return on the huge investments of time, energy and resources that go into UN advocacy

and report writing. This is particularly problematic when these processes replace local-level work, rather than supporting and supplementing it.

Many people working to implement women's economic and social rights around the world tend to be ambivalent about the value of engaging with UN mechanisms.

Despite these challenges, the UN continues to be an important arena for the advancement of women's rights, albeit an imperfect and unpredictable one. In recent years, there have been considerable efforts to reform various structures in the UN as well as make them more responsive to women's rights, following years of political debate, pressure from civil society groups as well as specific proposals from the Secretary General in 2005.⁴⁶ At the time of this writing, the new Human Rights Council, which replaces the former Commission on Human Rights, held its first session in June 2006. The 47-member Council, a subsidiary body of the General Assembly, will be responsible for promoting and protecting all human rights – including women's rights – by addressing rights violations, and promoting effective coordination and mainstreaming of human rights within the UN system. A new “universal periodic review” process will also fall under the purview of the Council, reviewing the fulfillment by each state of its human rights obligations (as a complement to the work of the treaty bodies). This review process is intended to be a universal, objective, cooperative and interactive mechanism.

In addition to the work of this new council, proposals have also been put forward for a separate, better resourced and independent women's agency within the UN, which would be better placed to promote and protect women's interests within the UN system as well as internationally. The proposals include creating an agency which would have organizational autonomy, high-level leadership, presence on the ground in all countries, and adequate resources.⁴⁷

Despite these promising developments in the works and on the horizon, it should be noted that the most powerful structure in the United Nations, the Security Council – which has the primary responsibility for the maintaining international peace and security – remains impervi-

ous to change. An open-ended working group charged with its reform was formed over a decade ago in response to calls to enlarge the Security Council's membership, reform its working methods to enhance transparency and accountability and to improve collaboration between the Council and the larger UN membership. However, to date, it has been able to report little success towards these goals.

Within the UN system, the two treaties of primary relevance to women's economic and social rights are the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). Each has a similar set of enforcement mechanisms and advocacy opportunities, including a committee of experts and reporting procedures, investigation and complaint mechanisms, and legal interpretations including General Comments.⁴⁸

Women's rights advocates who use UN mechanisms have mostly focused their advocacy through the Committee on the Elimination of Discrimination Against Women and approached economic and social rights through the CEDAW lens of non-discrimination. As a result, many women's organizations around the world have extensive experience in using various aspects of CEDAW to advance women's rights and to hold their governments to account for their human rights obligations, whether civil and political, or economic and social, or cultural.

In addition to CEDAW, there are also other UN venues for women's rights activism, including those that are not explicitly gender focused. Housing rights advocate Leilani Farha, for example, notes that the committee with the specific expertise and mandate on the rights to housing and an adequate standard of living is the Committee on Economic, Social and Cultural Rights (CESCR) and, as such, is the most relevant to her work. Farha notes further that by aiming advocacy at UN bodies not explicitly dealing with women's rights, advocates not only address their immediate objectives, they also contribute to the ongoing integration of women's rights into other rights mechanisms.

Engaging with these and other UN treaties and bodies can be done in a variety of different ways, as attested to by the experiences of activists around the world who have engaged with various UN processes. In the section that follows, we will review some of the most common and effective of the strategies used, as well as touch on some of the key issues that inevitably arise with regards to UN advocacy.

Preparing and Presenting Shadow/Alternative Reports

The preparation and presentation of "Shadow/Alternative Reports" for the CEDAW Committee (as for the CESCR) is a popular form of UN engagement for feminist NGOs and local women's organizations. It is a requirement that governments who have ratified the CEDAW Convention submit reports to the Committee every four years, informing the Committee about their efforts to comply with the treaty. The Committee is then given an opportunity to ask reporting governments questions, following which they issue what are known as "Concluding Observations" to commend states on progress made and/or note deficiencies and recommend action where rights violations persist. NGOs can participate in this reporting process by submitting "Shadow Reports" as a supplement to the official reports. When they do not have access to the official report or the country has not fulfilled its reporting obligations, NGOs can also submit an "alternative report"⁴⁹ that provides a basis for lobbying the Committee to hold the government to account for rights violations.

New Zealand: the Prostitution Reform Act

The domestic and international lobbying that led to the passage of New Zealand's Prostitution Reform Act on June 28, 2003 provides an important example of how civil society can use CEDAW and international human rights mechanisms along with domestic mobilization and campaign work to apply direct pressure on governments to change. In this case, the lobbying for the passage of the Act was undertaken through the participation of the New Zealand Prostitutes' Collective (NZPC) in the UN CEDAW process of 2002. During this period, several groups along with NZPC came together to work on a Shadow report to be presented to the CEDAW committee. Because the report was written collectively and had several different authors, the process was a predictably complicated one, with many organizations taking their time to think through the issues, establish their agendas, and mobilize locally before taking their lobbying to the international arena.

The group then presented this report to the CEDAW Committee. Although decriminalization of sex work was not the primary point of discussion on the committee's agenda, when the issue started to receive serious attention and interest, the groups that had authored the report were quick to react. They encouraged the committee's questions on the issues, quickly responded to

them, and noted the Committee's recommendations. They then used these recommendations as well as other critiques to lobby and shame the New Zealand government for not meeting its human rights obligations. The media for their part, recognizing a controversial as well as news-worthy story, promptly took up the issue in the daily news.

In New Zealand, the women's movement, and the union movement in particular had become effective at using international instruments to shame the government (for example around Contracts Act). At the domestic level, advocates pointed out continually that in this regard the state was in violation of international labour codes. Shaming doesn't work with all governments, and does ultimately vary from government to government. But as participants in this process suggest "at times, external pressure is very strategic".⁵⁰

As the pressure mounted from both the lobbyists as well as internally from the Ministry of Women's Affairs, which very much championed the law, it became increasingly difficult for the government to ignore the issue.

As the pressure mounted from both the lobbyists as well as internally from the Ministry of Women's Affairs, the Green Party and other constituencies who championed the law (including gay rights groups), it became increasingly difficult for the government to ignore the issue. The CEDAW Committee, for its part, assisted by taking up the issue with the New Zealand government and encouraging it to take concrete steps to comply with its CEDAW commitments, including providing adequate protection for sex work.

After many years of lobbying and numerous drafts, the actual law passed as the Prostitution Reform Act remains quite close to what was advocated for by NZPC.⁵¹

Sex work legislation is particularly interesting to ESCR given the direct relationship between the decriminalization of sex work and the increased economic and health rights of workers. It is broadly recognized, for example, that when carried out illegally, sex work increases women's vulnerability to violence, disease, and economic and other types of exploitation.

Given this situation, the strategy used in the New Zealand case was to pitch decriminalization as a health and safety issue, and to assert that by not providing adequate protection to sex workers the State was in violation not only of international human rights standards, but also of its own employment standards legislation. The argument was a straightforward one: Since prostitution fell under criminal law, sex workers were denied the labour protections afforded everyone else under the employment laws of the country. As such, the laws governing prostitution had to be reformed, in order to extend labour protections to sex workers.

Although still fairly new, the Prostitution Reform Act has led, as expected to improved economic rights of sex workers. The process of lobbying for that Act, moreover, has strengthened the understanding of and support for the issues faced by sex workers in the general population as well as increased their participation within New Zealand's women's movement. Highlights of the reforms include health and safety requirements, which require, for example, that all operators of a prostitution business must "take all reasonable steps to ensure that no commercial sexual services are provided by a sex worker unless a prophylactic sheath is used." Operators must also take all reasonable steps to minimize the risk to sex workers acquiring or transmitting STDs. Owners or operators who contravene this requirement can be fined up to \$10,000. The legislation also permits sex workers to refuse to provide a commercial sex service, even if a contract for the provision of services exists. In other words, NO continues to mean NO (Sex Industry Rights and Education Network, Issue 19, 2004).

While the passage of this law was an important victory, its advocates nevertheless recognize that the Prostitution Reform Act is not a magic bullet. Women still need to access the rights protected in this legislation. Moreover, it does not address changing men's behaviour or eliminate the buying sexual services (in fact, some argue it normalizes it). As Catherine Healey says "legality and legitimacy have only gone so far."⁵²

Lessons for Presenting Shadow/ Alternative Reports

The lessons learned from this advocacy are many, and can be successfully adopted by other organizations presenting shadow/alternative reports to the CEDAW committee to mobilize support for similar issues in their countries. They include:

- In the oral presentation, highlight only a couple of key issues where progress can be made.
- Lobby strategically while the Committee is focused on your government. Whenever possible, take strategic advantage of their attention.
- Keep in mind that lobbying is most effective when representatives are onsite at the UN.
- Think contextually about the state of the government being lobbied. In New Zealand, the economy and social conditions were all relatively good, so pressure was framed in terms of, “if not now, then when?”
- Be willing to give the Committee as much information as they request. In the New Zealand case, representatives had people back home “on call” to feed them information on the committee’s request.
- Use the language of the Convention, and be sure to stay around to engage in the process.⁵³

Groups who are about to engage in this process should also keep the following in mind:

- Presenting the Committee with a short document succinctly addressing three-five key issues is more strategic than presenting them with a massive, comprehensive report.
- Providing suggested questions on key issues for the Committee Members to ask government representatives can be helpful to the Committee, which is in turn helpful to you.
- Make sure you allocate enough resources, including resources for travel to and accommodation in New York, so that you can lobby while the Committee is focused on your government.
- Use a personal touch with committee members approaching them directly whenever possible.⁵⁴

As demonstrated by the experience of lobbying for New Zealand’s Prostitution Reform Act, Shadow/Alternate Reports can be very strategic, in the right circumstances, and can help to hold a government accountable for improving the situation for its citizens. Preparing these reports, however, can be resource-intensive and highly specialized. Groups therefore might want to consider whether the process will be beneficial to their organizing and lobbying efforts, and whether their government will be amenable to the Committee’s influence, before they being to engage.

Using the Optional Protocol: The Ciudad Juárez Example

Less commonly used CEDAW mechanisms are those contained in the Optional Protocol to the Convention (OP) – that is, the complaint procedure and the investigative procedure.⁵⁵ According to Janine Moussa of IRAW-AP (International Women’s Rights Action Watch – Asia Pacific), thus far only two complaints have been submitted to the Committee, of which only one was deemed admissible. And as far as she can document, only two requests for the inquiry procedure have been submitted, of which only one has been accepted and conducted.⁵⁶

Filing a complaint under the CEDAW-OP is similar to other international human rights complaints procedures. In order to be eligible to file, one must first ensure the following: that domestic remedies have been exhausted (in other words, first use whatever means are available within your own country such as administrative tribunals and courts appeals); that the alleged violations are of rights protected by the CEDAW Convention; that the violations are systematic in nature; and that the victim consents to the complaint.⁵⁷

Initiating an inquiry through the OP was one of the numerous strategies that were used in the face of the ongoing disappearances and murders taking place in Ciudad Juárez, Mexico. Over the last decade, more than 400 women have been murdered in Juárez and neighbouring Chihuahua, with estimates of the number of disappeared women going as high as 4,500.⁵⁸ The Mexican authorities, for their part, have reacted with inaction, corruption, complicity and denial.

In response to this grave human rights situation, human rights groups at the local, regional, national and international levels have been organizing to have this situation addressed, using all the tools at their disposal. A national campaign was launched in 2001 under the slogan "Alto a la Impunidad: Ni Una Muerte Más" ("Stop the Impunity: Not One More Murder"), which brought much needed media attention to the violations occurring in Ciudad Juárez. Advocates also made use of Special Rapporteurs (see below), CEDAW reporting mechanisms (described above), an Inter-Ministerial Commission of the Mexican government, and the Inter-American Commission on Human Rights. As a component of these ongoing efforts, Equality Now, a New York-based human rights group, filed a case with the CEDAW-OP, eventually getting endorsement for their action from local NGOs. The case was submitted to the Committee as an inquiry rather than as a complaint, so that the general situation of impunity for the murder, rape and abduction of women in Ciudad Juárez could be presented as a whole, which would force the Committee to look at the entire context rather than at individual cases.

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Using the OP was considered strategic because it was expected that the CEDAW Committee would point out issues of gender-based violence, and that its recommendations would be more strident and specific than those of a more general human rights body. It was also an opportunity to test the still relatively new Optional Protocol with a very strong case of gender-based, systematic violence and, in the process, enrich the rules and jurisprudence of the CEDAW Committee.

After reviewing the inquiry, the CEDAW Committee appointed two experts to the investigation, who conducted a visit to Ciudad Juárez. During the visit, they held meetings with federal and local authorities, NGOs, and victim's families. They also held also a special meeting for the organizations involved in the presentation of the case. Following the visit, the Committee twice requested additional information before submitting its report and the following conclusions:

- The facts alleged do in fact constitute grave and systemic violations of the provisions of CEDAW, as well as recommendation No. 19 of the Committee on the Elimination of Discrimination against Women and the United Nations Declaration on the Elimination of Violence against Women;
- The murders were not isolated instances of sporadic violence against women, but rather systematic violations of women's rights in a culture of violence and discrimination based on women's alleged inferiority;
- The culture of violence and discrimination has resulted in the murderers acting with full impunity; and
- Mexico has had serious lapses in compliance with its ratification of the CEDAW Convention as evidenced by the persistence and tolerance for violations of women's rights.

The CEDAW Committee also made numerous recommendations to the Mexican federal government, including undertaking the following:

- Exert its jurisdiction and investigate the crimes directly, and coordinate better among the three levels of government.
- Incorporate a gender perspective into all actions and programmes, investigations, and policies meant to prevent and combat violence.
- Thoroughly investigate and punish all negligence and complicity of public authorities.
- Thoroughly investigate and punish public officials for harassment or threats directed towards victims' relatives or others involved.
- Establish early warning and emergency search mechanisms to treat new cases of girls and women disappearing (within 24 hours).
- Organize campaigns to eradicate discrimination against women (with the active participation of civil society organizations), promote equality between women and men and contribute to women's empowerment.
- Guarantee legal support in providing access to justice and to all legal guarantees of protection for the victims of violence and the relatives of the murdered and abducted women.⁵⁹

The CEDAW Committee's final report contained important arguments that supported and validated those made earlier by the Special Rapporteur on Women's Rights of the Inter-American Commission on Human Rights who had visited Juárez earlier. It was also influential with the press and authorities, and received widespread coverage. And while compliance is always an issue, the Committee, encouragingly, expressed its commitment to follow up on the recommendations, to ensure they are fulfilled. The report has since become an additional tool in the arsenal of those fighting to protect women in Ciudad Juárez and similar situations.

Despite these successes, the situation nevertheless remains bleak. The various factors involved in creating the situation in the first place remain entrenched: discrimination against women, economic injustice, organized crime and a powerful drug cartel, a weak justice system, and corrupt, unresponsive authorities. The national campaign was successful in achieving some of its objectives (e.g., bringing attention to the situation; assistance for victims' families), but in the end, it could not change the structural issues of discrimination, inequality, social injustice and human rights violations that created and sanctioned the violence in Ciudad Juárez in the first place.

The Optional Protocol: Lessons Learned

The experience of Ciudad Juárez is instructive in terms of using the OP and other international human rights enforcement mechanisms, as well as in addressing the challenges of coordinating this type of national and international advocacy effort. First, a tremendous commitment of time, energy and resources is necessary to mount such an advocacy effort. The recommendations made by the Special Rapporteurs were excellent, but following up on them was challenging and time-consuming. Requests for more information, media interviews, and other appearances kept growing. All of this left the groups involved in the campaign with little time to step back and plan their next steps, to seize opportunities of key political moments, and to proactively produce analysis.

Secondly, tensions between all of the different actors involved became amplified because of the size and complexity of the campaign. Some victims' families felt that NGOs were profiting from their tragedy, while local groups at times resented the presence of national and international NGOs who they saw as co-opting the process. Additional conflict emerged when certain human rights groups took up the cause of an accused killer's alleged torture.

Thirdly, the confidential and bureaucratic nature of various procedures posed significant difficulties. The confidentiality inherent in the CEDAW inquiry meant that information was not available to NGOs, which meant further that victims' families were therefore unsure of where the process was going. The response of the Mexican government was similarly unhelpful. Despite putting a well-respected human rights activist in charge of the Federal Inter-Ministerial Commission, not even the case files have been made available to the Commission.

This case and its aftermath also points to a number of factors that are important when considering the use of international mechanisms. Collaboration is necessary so that groups working effectively on the ground as well as other organizations involved can most effectively contribute different capacities towards the overall success of the campaign. Human rights groups, for example, usually have more expertise with the legal structures, while campaigners may have useful media relations expertise. Women's groups, for their part, can bring gender analyses and sensitivity, while others may have skills for research, documentation and analysis in order to understand the global implications of the situation.

It is also important for those directly affected to have agency within a campaign and a space for advocacy. This can be done for strategic reasons, to lend added credibility to the campaign and to make its message more poignant, but in order for this process to really be empowering, it must go beyond simply requiring "victims" to narrate accounts of pain and suffering, to empowering them to actively demand restitution, justice and accountability.⁶⁰

Finally, transparency and clarity are key. Working in a diverse coalition can accentuate frictions resulting from differing power and knowledge, raising questions over the perception of who is "doing the work" and who is "benefiting." Such questions of "ownership" did emerge in the Ciudad Juárez advocacy efforts.⁶¹

These lessons from the Ciudad Juárez experience confirm general lessons that other activists who have engaged with UN processes have written and spoken about. These include the following tips and strategies, as noted by Janine Moussa and Ben Hui of IWRAW-AP:

- Substantiate the allegations with as many facts and as much evidence as possible.
- The written complaint should be as precise, concise and clear as possible.
- If possible, include supportive jurisprudence from other national, regional and international bodies.
- If available, include proposed recommendations and remedies that the claimant(s) would like to see from the Committee.

Moussa and Hui add that the following factors should also be in place and/or pursued concurrently in order for the processes to work:

- Broader social and political strategies, including the development of a critical mass of rights holders and constituencies for action.
- Organizations poised to catalyze resulting developments and changes.
- Administrative and judicial enforcement institutions that can implement the recommendations.
- A favourable political environment.

The most important lesson from the Ciudad Juárez case, however, was a more basic one that activists working through the courts have known for many years, which is that stand-alone judicial processes cannot be effective in and of themselves. In the words of activist and writer Donna Sullivan:

Women are all too familiar with the limitations of national courts as a means of securing their rights. Can an international procedure, which is even more removed from their local realities, be of practical use to women? This question is raised by activists again and again in discussions of the procedures now available for bringing cases under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to the UN Committee on the Elimination of Discrimination Against Women (the Committee). The answer seems to be “yes – when they are used as one of a series of strategies,” an answer which holds true for most international human rights procedures.⁶²

These sentiments are echoed by others who agree that UN mechanisms are still important avenues for redress and that women's rights activists should review the various applications of these mechanisms as part of a larger strategy. In fact, housing rights advocate Leilani Farha identifies getting an Optional Protocol to the ICSECR as one of the most strategic opportunities for advancing women's economic and social rights in the near future.

At this time, the ICESCR does not have an Optional Protocol with enforcement mechanisms, although this may soon change, as an international coalition of NGOs has been campaigning for an OP for several years now.

In 2003, the UN Human Rights Council established an Open-Ended Working Group in 2003 to formally explore the possibility of an Optional Protocol. This working group met for the third and final time under its original mandate in February 2006. At this session, as Suad Elias of ESCR-Net and a member of the NGO Coalition for an Optional Protocol reports, those advocating for an OP “definitely marked a step forward in the process.” She notes that support for an OP was wider than in previous years, with the overwhelming majority of countries clearly in support of moving forward towards drafting a comprehensive OP that includes all the rights contained in the ICESCR. Countries that supported initiating the drafting processes included Argentina, Angola, Bolivia, Burkina Faso, Brazil, Chile, Congo, Costa Rica, Croatia, Cuba, Ecuador, Egypt, Ethiopia, Finland, Ghana, Guatemala, Iran, Italy, Lesotho, Madagascar, Mexico, Morocco, Mozambique, Nigeria, Panama, Portugal, Russian Federation, Senegal, South Africa, Spain, Timor Leste, Turkey, and Venezuela. The next step is for a decision to be taken at the Human Rights Commission as to whether the mandate of the Working Group will be amended to include the task of preparing a draft Optional Protocol.

Using UN General Comments

Another area of work of the UN human rights treaty bodies is in the composition of General Comments, which are legal interpretations of the rights contained in the treaties. General Comments clarify and elaborate on the content of the rights and the obligations they impose. General Comments help states, NGOs, courts and others understand the full meaning of the conventions and provide important authoritative statements on human rights.

Women's organizations around the world have used CEDAW's General Comments in their activism for many years. For example, domestic laws, policies and practices have all been evaluated according to these standards.

General Comments have also influenced ESCR advocacy in very specific ways. In May 2005, for example, the CESCR adopted General Comment No. 16 on Article 3 of the ICESCR (the article which pertains to gender equality).⁶³ This General Comment, importantly, was the Committee's first articulation of the meaning and application of Article 3. In adopting the General Comment, the Committee confirmed that Article 3 was aimed at ending women's inequality; that all of the rights in the Covenant must be analyzed through the lens of equality, non-discrimination and the need for temporary special measures; that the ICESCR incorporates the principle of substantive equality; and that it recognized immediate obligations on states.⁶⁴

UN Special Rapporteurs

Another UN mechanism that groups are increasingly looking to with respect to economic and social rights protection is that of Special Rapporteurs. Special Rapporteurs are independent experts who examine human rights conditions in specific countries or on specific themes. They engage in dialogue with governments, conduct fact-finding visits and research, make appeals on behalf of individuals at risk, and make recommendations to improve human rights protections. Special Rapporteurs also accept information from civil society, opening up a space for advocacy activities and, when appropriate, synthesize their findings in reports they present to the UN Human Rights Council.

The reports of UN Special Rapporteurs are often of strategic importance to women's rights activists. Several reports of the UN Special Rapporteur on the Right to Health, Paul Hunt, address reproductive rights and gender-specific aspects of other health issues and have

been widely used by human rights activists, for example. His report on the World Trade Organization and public comments on trade agreements threatening economic and social rights are also a bold and innovative use of his position.⁶⁵ The Special Rapporteur on the Right to Housing, Miloon Kothari, has also shown a keen interest in women's rights with respect to housing, conducting tribunals to gather information on the gender-specific housing issues facing women in various countries around the world.⁶⁶

Special Rapporteurs are independent experts who examine human rights conditions in specific countries or on specific themes.

The work of Special Rapporteurs can also be implicated more directly in the work of women's rights activists. In the Ciudad Juárez case (discussed above), for example, a visit by Asma Jahangir in her official capacity as the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, became an important turning point in the activism around women's disappearances. In her report, Jahangir confirmed that the killings were indeed summary executions. She also denounced the conduct of the Mexican authorities as arrogant, and noted that they were mostly dismissive of the killings.⁶⁷

While Jahangir's report did not change the situation of violence on the ground, it nevertheless brought valuable media attention to the issue, both international and national. The report also, importantly, served to lend legitimacy to the allegations of impunity being put forth by local organizations and gave leverage to their demands for justice.

Jahangir's findings were reinforced by the visit and subsequent report of Dato Param Coomaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers in 2001.⁶⁸ They were also echoed in the report of Marta Altoaguirre, the Special Rapporteur on Women's Rights of the Inter-American Commission on Human Rights, whose work was seen by activists involved in the Ciudad Juárez campaign as having special significance to their campaign. Altoaguirre's report was released in March 2003 and included a comprehensive overview of the situation as well as concrete recommendations for all levels of government.⁶⁹ Two months after her report was released, the Federal Government

of Mexico launched the Inter-Ministerial Commission to look into the killings. As a result, the authorities of the State of Chihuahua, who had allowed the impunity, were forced to respond before the Commission, which challenged their actions and asked them to provide specific details of cases and disclosure of information.

Because of the work of the Special Rapporteurs, working together with local, national and international activists, the government was forced to stop dismissing the killings as a purely provincial or local matter and was pushed, instead, to understand the issue as an international human rights crisis.⁷⁰

Where UN mechanisms have had particular benefit, however, is when they are used in tandem with civil society mobilizing and movement-building.

Special Rapporteurs are respected thinkers on their focus issues and bring a high level of expertise to their subjects. As such, their work can also be very helpful in terms of advancing understanding of accountability for the right(s) at issue. The effectiveness of their efforts, however, depends to a great degree on the response of governments, civil society and the international community to their statements, findings, conclusions and recommendations.

The types of concerns that women's rights activists may find engaging with the Special Rapporteurs effective include: making public their country's failure to prevent or respond to human rights violations; lobbying for government accountability for human rights; to highlight gender-specific rights concerns for UN standard setting processes; critiquing policies and laws, and putting forth rights-protecting alternatives; as an external monitoring mechanism; and for raising awareness of the gender nature of human rights violations.

Other UN Processes

In addition to the mechanisms discussed above, there are also many other UN committees and mechanisms are relevant to women's economic and social rights. For example, many women's rights activists attend the annual meeting of the Commission on the Status of Women (CSW), a functional commission of the Economic and Social Council that promotes equality between men and women and gender mainstreaming within the UN. The outcomes of the CSW, however, are political commitments only, so while many women's rights advocates spend their time engaging (and preparing to engage) with the CSW, it is difficult to hold governments (or anyone else) to account for promises made there.

Where UN mechanisms have had particular benefit, however, is when they are used in tandem with civil society mobilizing and movement-building, and when they can bring international attention to key issues at specific moments, as was seen with the international focus on women's rights and gender equality with the Fourth World Conference on Women in Beijing 1995. But as with any international activism, in order for UN engagement to be effective, advocates must choose strategically when and how to engage. They must also, importantly, "bring home" what happens at the international level so that they can be implemented and/or used locally.

Cross-Cutting Mechanisms

All of the strategies discussed above can be complementary to one another, but two in particular should be considered "cross-cutting" in that they are integral to all: fact-finding and research, and campaigns and popular mobilization.

Fact-Finding and Research (including Analysis, Investigation and Documentation)

Fact-finding is a traditional human rights activity whereby information and evidence are gathered to document the details of potential or actual human rights abuses. Research into the implicated actors, relevant policies, external influences, and the everyday lived experiences of rights holders allows us to build a complete picture and understand the root causes of violations as well as the gender, race and class differentiated impacts. Fact-finding is also essential for effective monitoring, without which governments can neither be held accountable for implementing rights nor liable for violating them. For this reason, access to information is itself a human right.

More so than a separate strategy, having accurate information is essential to all other strategies for implementing economic and social rights, whether proving a case in court, planning a campaign, advocating for a policy change, or putting an international spotlight on a local situation. Many activist strategies grow out of investigations that reveal intended or unintended acts or omissions that threaten the rights of a group or community. CEDHA in Argentina, for example, undertook an exercise to understand environmental problems in two cities, studying the legal, historical and political aspects of the issues. Their work revealed the series of political decisions, failed investments and expanding poverty that led to the current problems. The work also revealed several commonalities among the sites studied: communities living in poverty are systematically excluded from decision-making processes; undesirable waste is often directed into those communities without any consultation; there is an inequitable distribution of resources and decision-making; there is a lack of information about rights; and people are generally unaware of the steps they can take to address the problems. Moreover, the exercise led to the recognition that the human rights of people in the problem sites were being violated as well as to the identification of responsible parties. This recognition formed the basis for litigation and lobbying in an effort to resolve some of the issues described (an example of which is discussed earlier in this report).

In terms of women's human rights, research and detailed analysis has always played a key role. As has been demonstrated time and time again, without gathering all of the facts and doing a gender analysis, problems are misdiagnosed and important gender implications go unseen. Furthermore, in order to properly address a problem, we need good information about key

players, policies and/or practices, distribution of resources, discrimination and inequality, and so on.

In terms of the right to water, for example, research in Mexico has shown that the problem is one of inequality and distribution of services more so than an absolute lack of safe water.⁷¹ Similarly in Ghana, research demonstrating the gendered burden placed on women in terms of access to water was instrumental in advocacy around the right to water.

More so than a separate strategy, having accurate information is essential to all other strategies for implementing economic and social rights.

The crisis in access to clean and affordable water in Ghana had led to the government giving serious consideration to privatization as a possible solution. Many in the government felt that privatization would improve operational efficiency, attract needed capital, and expand the supply of affordable water. This solution was backed by the World Bank. Many in civil society, however, disagreed vehemently. They noted, instead, that women had a vital role in providing community support and household labour, including the provision of water. As such, they argued, the scarcity of water was a gendered issue and was posing a particular burden on Ghanaian women. Testimonies of women's organizations and women living in poverty in communities visited by the International Fact-Finding Mission on Water Sector Reform in Ghana confirmed the following facts:

- As it is women's responsibility to provide water to the household, the situation of unavailability of water leads to serious despair, reduced income that was already very low, aggravated health and sanitation situations, and even violence in the home.
- Because of their social position and high level of vulnerability, women tend to have less access to water for their personal needs when the resource is lacking. The situation of lack of access has a dramatic impact on women's health, in particular on pregnant women and those giving birth.

- Water is the very first item that women will substitute for other necessary goods in their food basket. Increased costs for water will push poor families towards consumption of unsafe water and consequently a higher incidence of water-borne diseases and women's and children's morbidity.
- It is common practice to withdraw children from schools, particularly girls, to send them to fetch water to supplement their mothers' heavier work burdens. Some students, furthermore, especially girls, choose not to go to school because they have no water to bathe.

The results of the Fact-Finding mission illuminate the real causes and impacts of the water crisis on women, information which is essential for developing plans to guarantee the right to water to all Ghanaian citizens.⁷²

Research in Action: the CEDES Example

The work of the Centro de Estudios de Estado y Sociedad (CEDES) based in Buenos Aires, Argentina, provides one example of how research can be used to advance women's rights. In a recent study on maternal mortality, CEDES worked with partners in six provinces of Argentina that have higher-than-average maternal mortality: Chaco, Formosa, Mendoza, San Juan, San Luis y Tucumán. As part of the study, CEDES documented cases of maternal deaths, conducted epidemiological research on the relationship between the quality of care services and maternal mortality, and undertook interviews with the families of women who had died ("verbal autopsies") to reconstruct the social, economic and gendered conditions that led to their death. They then published their findings in a booklet entitled "Para Que Cada Muerte Materna Importe" ("So that Each Maternal Death Matters"), published in 2004.

After the publication of their research, CEDES gave public presentations on the research in each of the provinces. They also convened the media, government, women's groups, and health professionals to increase the understanding of all relevant decision-makers and provoke an informed public debate. As part of these advocacy efforts, they also produced an executive summary of the report in order to make it accessible to different audiences as well as to increase the likelihood that politicians would read it.

CEDES undertook these activities because it realized that if the report was to contribute to a change in public opinion and policy, it would need to be accompanied by a well-thought-out advocacy strategy. CEDES also understood that in order for those in government to be able to use the report, they would have to work to increase their capacity to understand gender issues. As such, they also built in advocacy with the officials in the public health ministries into their larger plan.

Silvina Ramos of CEDES notes that the key to advancing women's rights using research strategies is to create the conditions so that people can take responsibility for their necessary part of the change. This is most effectively done with high quality, accurate research that is tied to an advocacy strategy, which includes the broad dissemination of accessible information. This information, Ramos suggests, when used properly can galvanize public opinion, which, in turn, can put tremendous pressure on politicians to take action on the issue in question.⁷³

The key to advancing women's rights using research strategies is to create the conditions so that people can take responsibility for their necessary part of the change.

Advocating Social Corporate Responsibility: The Maquila Solidarity Network and Gildan Activewear

The action taken by the Maquila Solidarity Network with respect to labour rights violations by Canadian T-shirt manufacturer Gildan Activewear (discussed more in next section) is another example of research sparking action. In this case, research was undertaken jointly by the Maquila Solidarity Network (MSN) and the Honduran Independent Monitoring Team (EMIH) into Gildan's production methods and labour practices in Honduras. This research was supported by additional research undertaken by local groups (supported by MSN) into some of Gildan's wholly owned and contract factories elsewhere in Latin America and the Caribbean,⁷⁴ as well as MSN's own research into Gildan's corporate practices and investment strategies.

The first round of research was done without Gildan's knowledge, in order that the information be as unbiased as possible. The idea was to reveal the report to Gildan before its release, in order to get their input and also as a way to pressure them to redress the situation before it went public. However, a couple of unanticipated events prevented this from taking place. Before the research could be completed, the CBC (Canadian Broadcasting Corporation) aired a documentary called "Sewing Discontent," which was an exposé of Gildan's labour practices. This led to a public shaming of the company that put it very much on the defensive. Instead of rectifying the alleged violations, Gildan denied all the allegations and pressured the workers that had participated in the documentary to produce affidavits saying that they had been forced to lie to reporters. Later that year, despite promises to its shareholders to adhere to labour standards, Gildan fired 38 workers trying to organize a union in its Honduras El Progreso factory.

In spite of these difficulties, MSN and EMIH continued to focus strategically on pressuring Gildan's bulk purchasers and shareholders. The aim of this strategy was not only to pressure the company to bring its code of conduct in line with the International Labour Organization's standards and allow its factories to be independently audited and certified, but also to take corrective action on behalf of the fired workers. Gildan, for its part, relented partially by allowing a limited independent investigation by its Canadian shareholders. However, when the findings reconfirmed that the workers had been fired for union organizing, Gildan continued to refuse to acknowledge that any violations had occurred, and again refused to reinstate the workers.

In light of these repeated denials, MSN and EMIH decided in June 2003 to make their research public through a report entitled *A Canadian Success Story? Gildan Activewear: T-shirts, Free Trade and Worker Rights*, which demonstrated that Gildan stayed competitive by seeking out the lowest possible labour costs, and by actively thwarting any attempts at worker organizing. Gildan again responded by denying any wrongdoing and, in an attempt at intimidation, threatened legal action against MSN.⁷⁵ By then, however, the report had mobilized other stakeholders in Gildan to conduct further investigations to clarify the situation. Sensing vulnerability, MSN, along with other groups, filed a formal complaint with the Fair Labor Association (FLA) and the Worker Rights Consortium (WRC). The complaint, which concerned the 2002 and 2003 firings, alleged that there was a pattern of violations of freedom of association at Gildan El Progreso.

Here the joint investigation, research and fact-finding played a key part in the restitution of workers jobs and the pressure to reform labour practices.

In the end, as a result of this activism, Gildan was forced to comply with the FLA audit and pressured to begin corrective measures in order to comply with its standards.⁷⁶ Here the joint investigation, research and fact-finding played a key part in the restitution of workers jobs and the pressure to reform labour practices at the Gildan factories.

Demanding Human Rights through Campaigns and Popular Mobilization

Taking to the streets is perhaps one of the oldest and most direct strategy to catalyze social change. An active and vocal citizenry can demand accountability and orchestrate alternatives in the face of injustices, drawing on their passion, creativity and vision, as well as at times their rage and physical force. Campaigns and popular mobilizations therefore remain important strategies for implementing women's economic and social rights in the face of the grave injustices.

When thinking about campaign work for human rights, it should be noted that mobilizing for rights can be very dangerous work. Collusion between the state and private actors is resulting in more acts of state violence against those trying to protect their economic and social rights in the face of development projects. Intimidation, false imprisonment, sexual harassment, and assaults against female activists have been documented, including even two murders in Thailand. In the words of Mary Jane Real of the Women Human Rights Defenders campaign, "human rights, far from being respected, have been manipulated in the name of trade, economics or political ends."⁷⁷

Taking to the Streets in Costa Rica: the Energy Combo⁷⁸

In recent years, boisterous protests against the privatization of essential services (such as water, electricity and telecommunications) have taken place all over the world. In Costa Rica, for example, protests, strikes and blockades erupted in March and April of 2000 around the Congress's passage of a draft-law commonly known as "The Energy Combo," which was intended to expose the state-owned Costa Rican Electrical Institute (ICE) to private and foreign competition. The government had previously controlled public services and resources, guaranteeing social insurance and health services to 90% of the population as well as providing inexpensive electricity, water and telecommunications to 95% of the population. It was feared that with the passage of the Energy Combo, the broad access to basic services that the government had been able to provide would be supplanted by profit-driven, private operations that did not prioritize equality of access nor protect natural resources.

When the issue first arose, thousands of citizens turned up in the legislative assembly to listen to the debates regarding the combo. The next day, however, they were

shut out; in frustration, they took to the streets to protest. Here they were met with police brutality and arrests. Feminists, who had taken a strong stance in support of the demonstrators, convened 50 groups in response, and collectively they issued a strong public statement in support of the ICE and against the police repression. Meanwhile people continued to take to the streets (over 100,000 people marched in the streets of San José), while at least 30 rural communities organized protests and barricades throughout the country. Public workers, for their part, declared an indefinite national strike until the issue was resolved in support of the public utility.⁷⁹

"A mobilization that began as a protest against one neoliberal measure in the country expanded into a profound and holistic agenda."

This sustained public pressure to withdraw the draft law eventually resulted in government representatives agreeing to meet with social groups on April 4, 2000. The draft law was then sent to a Special Mixed Commission formed by the National Congress that included representatives of political parties, businesses, the Catholic Church, environmental groups, students, and ICE workers. After listening to these groups, the Commission proposed a new law that would give ICE the exclusive rights to generate, transmit, distribute and market electricity (the "Ley de fortalecimiento del ICE" or the "ICE strengthening law"). This law would protect ICE as a state-owned enterprise.

Talking about the protests, Maria Suarez from the Feminist International Radio Endeavor (FIRE) of Costa Rica, notes that "a mobilization that began as a protest against one neo-liberal measure in the country expanded into a profound and holistic agenda: to expose the erosion of democracy, denounce the rise of neoliberalism, and the assertion of the right to communicate."

Today, these same groups are mobilizing to fight against a proposed free trade agreement with the United States, in addition to their continuing activism against the privatization of the electrical utility, which has yet to pass. The political climate in Costa Rica, however, has changed dramatically in recent years, with the swearing in of president Oscar Arias, who is known for his neoliberal economic agenda. This has made the situation more difficult for activists. Arias is once again seeking to

privatize many Costa Rican institutions, including, but not limited to ICE. Indeed, in April 2006, Arias confirmed his intention to get rid of the draft “ICE strengthening law” in favour of a newer draft law for telecommunications that reflects his commitment to the Central American Free Trade Agreement (CAFTA). This law would in effect privatize all of Costa Rica’s telecommunications systems, and effectively undo the work accomplished with the previous regime.

Following this announcement in May 2006, several thousand protesters marched to demand that Costa Rica not ratify the CAFTA free trade agreement, drawing on their earlier successful activism. Despite this setback, they are continuing to fight and are cautiously optimistic.⁸⁰

Mobilizing for Abortion Rights in Argentina

Decriminalization of abortion is another issue where mobilizations have been used widely and effectively, often with many organizations working together in a coalition. In Argentina, for example, where approximately 500,000 women a year resort to clandestine abortions, women have been campaigning for years for legalization. Their efforts were met with little success in the early years, but recently, the tide has started to shift. And as with so many successful campaigns, it was the ability of the organizers to capitalize on a series of strategic opportunities that opened space for public debate on the issue that provided the springboard for a powerful, nationwide campaign.

Key to the success of this campaign was that it took advantage of a political moment and it had an ally in government.

The most recent mobilizations began in February 2005, when the Minister of Health spoke publicly about the problem of the access to abortion, calling for the decriminalization of abortion as the only option to lower female mortality. The statement provoked a strong reaction from the Catholic Church and attracted extensive media attention. For the Catholics for Free Choice (CFFC) and other women’s groups, this presented an opportunity and political moment to further their campaign to legalize abortion. They sent a letter to the Minister supporting his stance and informing him that their organization represented Catholic women but did not support the

opinions expressed by the hierarchy of the Catholic Church. The Catholics for a Free Choice then facilitated a national campaign for legal, safe and free abortion.

As part of the campaign, CFFC identified allies in government and civil society, gathering 1,000 signatures from key personalities in support of decriminalizing abortion, which were published in the press. Key to their strategy was dispelling the myth that it was just a small group of feminists that were demanding this change. The national campaign in fact included universities, human rights organizations, trade unions, civil society organizations, “piqueteros,”⁸¹ public personalities, artists, rural women, and others in favour of the objectives. Although not all of the participating groups had the same perspective or feminist analysis, they were all committed to being inclusive of other opinions and to having as diverse an engagement as possible. Together, in November 2005, this coalition and other activists marched to the national congress to present 50,000 signatures in favour of legalizing abortion.

The Congress, for its part, has yet to make any changes, but they are now considering legalizing abortion in limited situations.

One of the key factors in the success of this campaign was the history of the civil society movement in Argentina. The economic crisis of the 1990s and the collapse of the economy in 2001 had a devastating impact on Argentineans in general but in particular on women’s social and economic rights – from access to employment and the health care system, social security for seniors, access to education, food security, a change in household roles and dynamics, and an increased reliance on women’s unpaid work.⁸²

In the aftermath of this economic crisis, there was an unprecedented coming-together of the women’s movement with other social movements. Forced to work in close collaboration, these groups widened their agendas to include both economic justice as well as sexual and reproductive rights in their agendas. This collaboration laid the foundation for a shared understanding and eventual mobilization that allowed diverse groups to come together for a broad-based campaign that, while focused on abortion, made wider linkages between human rights, gender inequality and poverty eradication. By taking this more integrated approach, the campaign was able to highlight that the legalization of abortion was not only important for all women in terms of guaranteeing their inalienable rights, but that it was particularly important for women living in poverty, who were the most likely to be forced to turn to and die from unsafe abortions.

The other factor that was key to the success of this campaign was that it took advantage of a political moment and had an ally in government. The Minister of Health knew that he would have support for his stance from the women's movement, which had been lobbying for over 20 years to change the laws governing abortion. He took advantage of this knowledge when he opened up the issue of abortion. Women's rights activists, in turn, seized the opportunity created by the Minister of Health's opening to advance their mutual cause.

Reflecting on the campaign, Marta Alanís of Catholics for Free Choice, notes that it is important to do all of the groundwork in advance in order to be ready to take advantage when opportune moments present themselves, such as the Argentinean Health Minister's statement in this case. She further advises that you need to continually articulate your demands with government, civil society, and the media, even when it seems like no one is paying attention or when your issue is unpopular. Then when the conditions are in place, you will be able to make change happen.⁸³

Mobilizing for Women's Labour Rights: More Lessons from MSN

The action taken by the Canadian-based NGO, Maquila Solidarity Network (MSN), with respect to labour rights violations by the T-shirt manufacturer Gildan Activewear in their factory in Honduras is another example where campaigns were used effectively to effect change. As described earlier, this mobilization was sparked by research into the working conditions at Gildan's factories. The broader campaign against Gildan, however, involved much more than just research. Sustained mobilization was necessary in order for the research to be taken seriously, and for the groups involved to take their issues to a larger public.

These mobilizations focused on a number of key issues: wages were too low to meet basic needs, production targets were excessively high, the work hours were too long and the pace of production too intensive to be safe, management failed to provide child care and nursing facilities as required by law, and there was no real freedom of association. The mobilizations also exposed allegations of pregnancy testing for new employees, with those found to be pregnant facing termination, and made public that 38 workers had been fired shortly after they applied to register a union.

MSN used several leverage points in their efforts to get Gildan to comply with international labour standards. They uncovered the fact, for example, that quite a few US and Canadian Universities as well as municipal governments and schools were bulk purchasers of Gildan's products. Many of these institutions, importantly, had in place ethical purchasing codes-of-conduct which were clearly violated by Gildan's practices. Further research also enabled MSN to discover that many progressive organizations – including Oxfam Canada, Amnesty International and the CBC (which originally aired the documentary expose on the el Progreso factory) – were also clients of Gildan. Moreover some of its major investors included the Quebec Federation of Labour (FTQ), which was investing union pension dues in the corporation. MSN mobilized all these various institutions and organizations to respond to the findings of the report and pressure Gildan, in their own ways, to respond to the allegations of labour violations. MSN also used the 2003 Gildan shareholder meeting as a strategic moment in which to go public with its findings and demand corrective action from the corporation.

As a result of this activism, Gildan was ultimately forced to back down. In January of 2005, Gildan submitted a corrective action plan to the Worker's Rights Consortium and MSN, which included first-hire preference for former Gildan El Progreso workers at a new factory, no discrimination against fired union supporters, transportation to the new factory, relocation expenses for workers and their families, free training for former El Progreso workers as required (including training on the freedom of association), and a promise to correct other worker rights violations in all its factories in Honduras. Gildan also collaborated with a local women's rights organization to address sexual harassment by the factory doctor, which was uncovered as part of the ongoing attention paid to labour rights codes as part of the investigation, and took corrective measure on violations with regards to overtime compensation, rest periods, and sanitation.

As a result of this activism, Gildan was forced to back down. In January of 2005, Gildan submitted a corrective action plan to the Worker's Rights Consortium and MSN.

Despite the gains made through this corrective plan, however, it must be noted that Gildan's record of compliance has been mixed. Many issues, including those of long working hours and non-provision of childcare facilities, have yet to be addressed.

MSN has learnt a number of lessons from its work on the Gildan case in Honduras as well as other worker rights campaigns in Thailand and Lesotho. First, effective leadership is a key component of successful campaigns. The lack of a strong local union in the El Progreso case, partially due to the repressive measures by the employer and partially a reflection of the weak state of unions in Central America, did not help the campaign to progress. Moreover, the unions that did exist were male-dominated and unresponsive to the realities of maquila workers (who are predominantly young women).

Secondly, national and regional support, especially from other labour rights and human rights organizations, is crucial. It provides direct support and legitimacy to the campaign, and also a means to connect the campaign with other national and international groups.

Thirdly, the collaborative South-North research and exchange of information was important in this case, where EMIH could document the actual local working conditions and investigate the firing of workers while MSN could research Gildan's investors and corporate structure.

Fourthly, campaigns must be very sensitive to context and local conditions. Groups need to carefully assess when the conditions are correct for engagement and be careful not to do more harm to the workers through their demands. It is also helpful to have multiple leverage points from which to influence and pressure for change. In this case, MSN used pressure from bulk purchasers and shareholders, as well as the media, to exert additional pressure.

Finally, an important lesson and challenge is how to achieve effective South-North collaboration with all its potential for misunderstanding, different power relations, paces, demands and expectations. The challenge continues to be how to ensure the best collaboration and consultation between the groups, to involve all stakeholders, and to achieve the intended results in a process that is beneficial to all.⁸⁴

As the examples included here have shown, using an internationally recognized framework such as ESCR can lend further weight to strategies and actions already underway, as well as providing the basis for new projects and activities in the struggle for equality and justice. It is important to note, however, that economic and social rights are not new concepts; many women's rights advocates have been working for economic and social rights in one way or another for many years. Our experiences talking with dynamic activists have revealed that ESCR can provide an internationally recognized legal and rights-based paradigm to frame your work and legitimize your demands. They can also be a powerful and empowering new lens through which you see your work.

Daniel Taillant reminds us that “a passion for ‘doing good’ does not get one very far in terms of solutions. We need specific violations to grab on to.”⁸⁵ We also need to organize and work collectively to bring about substantive changes. There are many distinctive and creative ways in which to work with ESCR, as the examples we have explored indicate. And of course, much of this work is context-specific. Most states, for example, do not treat their international human rights commitments in the way that New Zealand does. Still, there are many lessons we can draw from the New Zealand experience.

Over the course of this project, we were able to speak with many activists, researchers, lawyers and development practitioners who use various strategies to implement economic and social rights. Some had many years experience in human rights work, while others were much newer to the field. Some focused specifically on women's rights, while others worked on economic and/or social rights from a gender-neutral position or on behalf of another group or community. Each conversation contributed to an enriched understanding of the opportunities and achievements, as well as the limitations and challenges, of doing ESCR work. Taken together, a number of key lessons emerge:

Success Comes through Creativity and Diversity in Strategies

Most of the success stories we heard involved people working across disciplinary boundaries, flexibly adapting their strategies in response to changing contexts. They combined legal, political, economic and social expertise, using innovative approaches and often building over time on what began as a small, focused, short-term advocacy activity. Not all of the work was done within an explicit “rights framework” and many did not think of themselves as working on ESCR.

This multiplicity of strategies underscores the fact that, as Madhu Mehra of Partners for Law and Development reminds us, human rights are really only significant when they go beyond the law and connect with other approaches such as empowerment programs, mobilization and development work.⁸⁶ If the law helps your mission, then use it, Mehra argues; when it does not, criticize it. Similarly, use international standards to evaluate domestic ones, and local experiences to inform international advocacy. And, she adds, always keep your eye on what works in what context.

This lesson reminds us of the resources that are all too often wasted on debates about which approach is “best”, particularly in larger institutions, including some academic bodies and mainstream development institutions. These debates are mostly irrelevant on the ground and counter-productive in terms of supporting good social and economic justice work at the local level. Different strategies will work at different times, in different places, and for different purposes. Our focus should be on human rights implementation, not on the academic exercise of methodological debate.

Human Rights are Political Tools, Not Just Legal Standards

At a political level and in public discourse, human rights have become powerful tools. Human rights language is moving into our mainstream lingo, grassroots groups are being empowered by human rights activism, and appeals to international standards are bringing increased legitimacy and leverage to campaigns and lobbying at various levels. As such, whether or not the legal doctrine and mechanisms are in place to support a claim, human rights arguments can still be used. In situations like this, questions of justiciability, admissibility, and jurisdiction fall to the wayside, while the moral and political power of rights discourse is invoked in struggles over resource distribution, economic and social policy, and accountability for the impacts of one's actions.

Moreover, we have begun to see an increase in human rights activity not only in more traditional areas of women's rights work such as violence against women and reproductive rights, but also in areas in such as trade and investment, corporate accountability, and international co-operation. Human rights as legal standards are now being invoked in the legal arguments that accompany these disputes. More impressively, however, human rights understood as political tools are also compellingly invoked in the political and diplomatic venues where these struggles often play out.

Human Rights are Indivisible in Both Practice and Theory

Feminist analysis provides rich understandings of the indivisibility of rights, which is a central element of the human rights framework. Many of the feminists we spoke with were unable to separate gender-based discrimination, civil and political rights, and economic and social rights issues in their thinking or in their work. As Marta Alanís pointed out, you simply cannot eradicate poverty without addressing the fact that there is a huge gap between the rich and the poor, between men and women, and between different groups in society. You also cannot effectively address sexual and reproductive rights without understanding how poverty intersects with these rights.⁸⁷

Because of the indivisibility of rights, the key issues for the attainment of any rights in the future will be distribution of wealth and the availability of universal social policies.

This fact of indivisibility explains why, as our examples demonstrate, while at a policy level issues can be separated into neat categories, in "real life" issues are more complex. Housing, for example, cannot be logically separated from issues of violence against women and poverty. Neither can women's employment issues be separated from unequal access to education, sexual harassment, and the availability of childcare.

Because of the indivisibility of rights, the key issues for the attainment of any rights in the future will be distribution of wealth and the availability of universal social policies, as Haydée Birgin of Equipo Latinoamericano de Justicia y Género (ELA) points out.⁸⁸ Without (re)distribution, there can be no economic and social rights. But when a rich understanding of what indivisibility means is applied to both analyzing discrimination and to advocating for change, entitlement claims become more politicized and the potential for transformative change is amplified. In this respect, feminists can make a significant contribution to the mainstream human rights community, through their theoretical and lived understanding of indivisibility.

Context Matters

Certain contexts favour some strategies more than others. When planning an advocacy strategy or responding to a critical situation, it is imperative that you consider the economic, political, legal and social climate in which you are working, the expertise and resources that you can pull together, the state of civil society, public awareness and sentiment about the issue, strategic moments or events around which to mobilize, who the responsible parties are, and the nature of the opposition you will face. The government in power, the economy, and the strength of civil society are of particular importance in this regard.

When planning an advocacy strategy or responding to a critical situation, it is imperative that you consider the economic, political, legal and social climate in which you are working.

Depending on context, in some cases women's specific concerns will be embedded within broader community issues (e.g., access to potable water) whereas others will be framed as explicitly women's rights issues (e.g., abortion rights). Similarly, if the informal economy makes up a large proportion of transactions, different solutions will be warranted than in a more formal, regulated economy. If external debt is a large factor for a country, then international financial institutions and foreign creditors will have a stronger influence over domestic policy. But if attracting foreign capital is a government's priority, then making the domestic situation appear stable will be a preoccupation of government. Moreover, if a government is not sensitive to its international reputation, public shaming and engagement with UN mechanisms will not be successful strategies. And some issues, realistically, will be insurmountable in certain contexts (e.g., the power of international financial institutions at the current time). In cases like this, as illustrated by the campaign for abortion rights, you may need to wait for critical factors to change or for the right set of circumstances to come together.

This is not to say, however, that women's rights activists should not be bold in their thinking of their activism. Indeed, as we have seen throughout history, revolutions do happen, and things that seemed impossible yesterday are commonplace today. As such, we cannot shy

away from being courageous, "thinking big", and taking calculated risks. Nevertheless, it is important to keep in mind that if your strategy is dependent on revolutionary change to work, your chances of success will be lower than if you have smaller and more realistic aims. Alternatively, if a strategic moment opens up, as they do when governments or ministers change, your chances for success will be far greater.

Advocacy Should be Based on Good Evidence

While passion, commitment and a sense of justice are critical components of any advocacy effort, the value of doing your research should not be underestimated. As many of the above examples demonstrate, gathering and analyzing the facts of a situation can reveal gendered dimensions of the issue, responsible parties, allies and opponents, advocacy opportunities, and appropriate remedies. This information is critical, because it carries an empirical weight that is much more difficult to dismiss out of hand than impassioned argument, particularly when the courts are involved. Solid evidence for your claims is also important in establishing and maintaining legitimacy with the public.

Fact-finding and other evidentiary procedures are also important ways in which to help foster movement-building. Indeed, many of the activists we spoke to reiterated that the exercise of fact-finding, while necessary for the facts they generated, was also sometimes just as important for the opportunity it provided to build a common agenda and foster greater cohesion and teamwork.

As we have seen throughout history, revolutions do happen, and things that seemed impossible yesterday are common-place today.

Despite Limitations, Positive Changes are Being made at the Local Level

While it may seem like a like a trite observation, that fact that advances are being made in protecting and promoting economic and social rights is an important point to make. In the face of regressive social policies around the world, privatization of essential services, increasing corporate power, rise in the influence of fundamentalist religious leaders, and the struggles of civil society actors to sustain their efforts, narratives of successes are critical both in terms of what we can learn from them and their inspiration value. Water is being brought into marginalized communities, women worker's jobs are being protected, essential medications are being made available to those who need them, and resources are being allocated to services for women, to name but a few of the local level changes that we learned about in the course of this research.

Conclusion

Can economic and social rights strategies be used to bring about positive change for women, today and into the future? As the collection of examples and insights presented here demonstrates, the answer to that question is both “yes” and “no.”

Of course, there is no single approach or doctrine that will bring about gender equality or eradicate poverty, and human rights frameworks should not take the place of all other areas of gender equality work. But positive change can be made in the lives of women, and efforts to implement economic and social rights are making a difference. We would therefore be remiss not to take note of ESCR successes, learn from ESCR advocates' experiences, and use the lessons and insights to enrich all of our work for equality and justice.

The UN High Commissioner for Human Rights, Louise Arbour, noted recently in a speech that poverty and exclusion are too readily accepted as accidental, natural or inevitable.⁸⁹ We know, however, that conscious policy choices, discrimination, greed and ignorance are in fact the causes. Human rights are a way to respond to these problems – they are tools to redistribute power and to counteract the injustices of poverty and exclusion. Far from being a utopian ideal, human rights are the product of intense struggles between and within states. They embody an international consensus on the minimum conditions for a life with dignity. As Arbour states, “[t]here will always be a place for charity, but charitable responses are not an effective, principled or sustainable substitute for enforceable human rights guarantees.”⁹⁰ Each and every woman, in other words, solely by virtue of being human, is entitled to enjoy every one of the internationally agreed upon human rights.

Enacting these rights, however, is becoming increasingly difficult, with the domination of neoliberal economies, the rise of fundamental politics, and the ongoing challenges posed by the HIV/AIDS pandemic as well as ongoing poverty and inequality. Given these tremendous challenges, it is more important than ever that we develop better and more effective ways of doing our work.

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List of People Interviewed

Marta Alanís, Catholics for a Free Choice [Argentina]

Elise Alexander, Lecturer in Sociology, Women in Law and Development in Africa (WILDAF) [Botswana]

Mariana Alonso, Director of the Area of Women, Municipality of Rosario [Argentina]

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Astronaut Bagile-Rutenge, Ishi Campaign Manager, Dar es Salaam [Tanzania]

Susana Bartolomé, Director General, West District of Rosario [Argentina]

Paulette Benton-Greig, Auckland Women's Centre [New Zealand]

Mabel Bianco, Fundación para el Estudio e investigación de la Mujer [Argentina]

Haydée Birgin, Equipo Latinoamericano de Justicia y Género [Argentina]

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Cristina García, Economist [Argentina]

Claudia Geiringer, Lecturer, Victoria University of Wellington School of Law [New Zealand]

Beth Goldblatt, Senior Research Officer, Centre for Applied Legal Studies [South Africa]

Christina González, Universidad de Córdoba [Argentina]

Alison Greenaway, Researcher, Collaborative Learning Group [New Zealand]

Tyrell Haberkorn, Women's Human Rights Defenders Campaign [Thailand/United States of America]

Lana Hart, Employment Equity Office, Human Rights Commission [New Zealand]

Catherine Healey, Sex Workers Reform [New Zealand]

Honorine Honkou, Femme de Demain [Togo]

Sara Hossain, Lawyer, Dhaka [Bangladesh]

Paul Hunt, University of Essex, Department of Law, United Nations Special Rapporteur on the Right to Health [United Kingdom]

Prue Hyman, Professor, Victoria University of Wellington, Feminist Economist; International Association For Feminist Economics (IAFFE) editor; Ministry of Women's Affairs on Secondment [New Zealand]

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The Association for Women's Rights in Development is an international membership organization working to strengthen the voice, impact and influence of women's rights advocates, organizations and movements internationally to effectively advance the rights of women.