

**Contribution by the Special Rapporteur on extreme poverty and human rights
CEDAW Committee, General Discussion on women's access to justice
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Economic and practical obstacles to access to justice for women living in poverty

Introduction

In November 2012, I presented a thematic report to the General Assembly on obstacles to access to justice for persons living in poverty.

The report emphasises the multitude of intersecting obstacles that people living in poverty face in accessing justice, and pays particular attention to the obstacles faced by women. The report examines social, structural, institutional, procedural, legal, financial and physical barriers and urges States to tackle these in a holistic manner. Today, as many of these areas are covered by other presentations, I will be focusing on economic and practical barriers; but I would like to emphasise that in my opinion, all these different types of obstacles are overlapping and mutually reinforcing.

All sorts of women face obstacles in accessing justice, as covered by the presentations here today, but I would like to emphasize that women living in poverty are disproportionately impacted, as they do not have alternative means of resolving disputes or resources to fall back on, and the impact of unresolved or unfairly resolved disputes on their livelihoods can be devastating for them and often their children. Therefore, I would like to urge the Committee to pay special attention to women living in poverty in the General Recommendation.

Of course, a focus on intersectional forms of discrimination is essential. Women living in poverty face double discrimination because of their sex and their socio-economic status; but many also face discrimination on other grounds also, given that indigenous women, rural women, ethnic minority women, women with disabilities, girl children and older women are overrepresented among the poor.

Economic obstacles to access to justice are a major and unacceptable challenge for all people living in poverty, but they are particularly pronounced for women, due to the unequal distribution of resources at both the household and societal levels. In terms of household resources, this is particularly a problem for older women and girl children. It is important to note that when we refer to women that cannot access justice due to economic barriers, this could well include women that are living in households not considered poor under national standards.

Women living in poverty are often economically dependent on men or other members of their families and may be prevented or reluctant to pursue justice claims against them. Therefore, this socio-economic dependency may result in women living in poverty being unable to seek justice against abusive husbands, partners or other family members.

One of the main economic obstacles that hinder women from accessing justice are the costs of legal advice and assistance, which are prohibitively expensive for people living in poverty. This is a major problem not only in regard to criminal matters. In particular for women, legal assistance is often essential in civil matters, as the lack of such assistance can prevent them from asserting their rights. In many countries certain categories of claims essential for the rights of people living in poverty are excluded from the scope of free legal aid, such as welfare, housing, divorce or child custody proceedings. Therefore, the lack of legal aid for civil matters can seriously prejudice the rights and interests of women living in poverty, for example when they are unable to contest eviction decisions, eligibility for social security benefits, abusive working conditions, discrimination in the workplace or child custody decisions.

Unaffordability of legal assistance in civil matters such as divorce, child custody or inheritance rights is a serious impediment for women who lack economic resources. In such cases, the right to equality of arms could be seriously threatened, and moreover this can lead to a woman falling into poverty, especially in divorce and alimony cases where the husband is able to retain a good lawyer but the wife is not. Even when women can access legal aid, it is frequently of poor quality due to shortage of legal aid lawyers, their inexperience, lack of sufficient support or compensation. This can create a huge imbalance in the legal protection that each party receive in these cases.

In addition, the eligibility criteria that govern access to State-funded legal assistance are often arbitrary, overly restrictive and rely heavily on means testing to determine eligibility, having a disproportionately negative impact on women.¹ Means testing is frequently inaccurate in that it is unable to take account of the wealth distribution within a household, disadvantaging women who have restricted access to household wealth.

Unfortunately, the costs of legal advice, being a major barrier for women living in poverty, are not the only financial barrier. There are many other costs associated with engaging with justice systems such as courts fees and transportation costs. All of them disproportionately disadvantage women living in poverty. When excessive fees are imposed they may prevent women from filing criminal charges (e.g. domestic violence) or civil claims to protect their rights and livelihoods. In some countries the cost of divorce proceedings (including child custody claims) or filing a land inheritance claim is many times the monthly income of a person living in poverty, and again, an even greater barrier for poor women. For example, the average cost of divorce proceedings in Indonesia's General Court is approximately \$230.00, even when a lawyer is not retained – ten times the monthly income of a person living in income poverty.² In Kenya, filing a land inheritance claim involves 17 legal steps, including 13 separate procedural forms, and costs up to USD \$780.00.³ This is not only a problem in developing countries. Unfortunately, court fees are now increasing in some developed countries, particularly European countries under 'austerity' measures; for example in Spain, the increase in

¹ UNDP, 2005, p. 143.

² Akhmadi *et al*, 2010, pp. 1-5.

³ Harrington and Chopra, 2010, pp.15-17.

court fees for labour, divorce and domestic violence cases is having an enormous impact on the poor and in particular on women.

In addition to formal administrative fees, persons living in poverty encounter other collateral costs in accessing justice, which are again likely to be even more burdensome for women due to unequal access to household resources or lack of independent income. The cost of transportation to courts and accommodation, together with the loss of income while away from employment or subsistence activities, may be impossible for the poor. These costs are particularly severe for those who live in rural areas.

For rural women in particular, physical and geographical obstacles to accessing justice are extremely significant. In addition to restrictions on their mobility often imposed by family or community members or social norms, their lack of socio-economic independence, and not least their care responsibilities constitute a great barrier for accessing formal justice mechanisms.

Courthouses, particularly appeal courts, are often located only in capital cities or large towns. Police officers, prosecutors and lawyers are also concentrated in urban areas, along with registries for land titling, and births, deaths and marriages. In such circumstances, women living in poverty often have to travel long distances at great cost to engage with the justice system, exposing them to unfamiliar environments and unsafe conditions. Those who experience limited mobility, such as older women or women with disabilities, are particularly affected.

For the poorest, the need to travel a long distance to reach police stations, court houses or public registers often implies that they are unable to seek redress or protection from violence, abuse and exploitation, and have greater difficulty in accessing documents such as birth certificates or land titles that are essential as evidence of their rights.

Women that work in informal or precarious work are unlikely to get their employer's permission to take time off work to attend a hearing, so attendance would mean they risk losing their jobs and income altogether. Caregivers, the vast majority of whom are women, may simply not be able to leave home to submit a claim or to attend a court hearing. To do so may entail leaving children or other dependents alone, or paying unaffordable childcare costs.

In addition, most rural women work in subsistence labour on their small landholdings, and time away from this work is often impossible. It is thus not uncommon for rural women to consider themselves unable to devote time, money and efforts to pursuing legal remedies and justice.⁴

Corruption may also entail a significant economic barrier for women. Persons living in poverty are more likely than other individuals to be confronted with requests for bribes,

⁴ International Commission of Jurists, 2012, p. 67.

and to resort to paying bribes⁵ - and evidence shows that women are more likely to be affected by demands for bribes within the justice system.⁶ Being forced to pay a bribe often means that women have to sell assets or sacrifice their health or education.

Conclusion

Worldwide, women are more likely to be poor, and they also face extra burdens or obstacles in accessing many rights and services; justice is no exception. As we are hearing today, women face considerable discrimination as well as disproportionate and particular social, cultural, legal, procedural, economic and practical barriers when trying to protect, claim or uphold their rights. Very often, these rights are essential for their livelihoods and living a life of dignity. Obstructed access to justice thus feeds the cycle of gendered poverty, violence and inequality.

Even mature democracies with well-functioning state institutions and technically inclusive and fair legal systems struggle to ensure *de facto* equal access to justice by women living in poverty. States have a legal obligation to ensure that all women, in particular those living in poverty are able to access competent, impartial judicial and adjudicatory mechanisms equally and without discrimination. Access to justice is not only a fundamental right in itself, but it is an essential pre-requisite for the protection and promotion of all other civil, cultural, economic, political and social rights. It is also an essential tool for reducing poverty and inequality – including gender equality.

The principle of indivisibility and interdependence requires States to address a range of intersecting and mutually reinforcing deprivations and obstacles which prevent women accessing to justice.

Focusing just on the measures that States should take to assist women to overcome economic and practical barriers, let me expressly mention some measures that I believe that a CEDAW General Recommendation should call on States to undertake:

1. Access to justice interventions must be designed to address gendered imbalances, risks and vulnerabilities, particularly with respect to accessing productive resources, education, health and work as well as the dual role of women as caregivers and as independent rights-bearers. This includes adopting supporting policies addressing the specific gender-based obstacles preventing men and women from accessing justice on equal terms.
2. Ensure that women living in poverty have practical and effective access to competent legal advice and assistance when needed for the protection of their human rights, including all civil cases in which their rights are at stake.
3. Ensure that legal aid lawyers are independent, adequately trained and remunerated, and meet the highest standards of the legal profession so as to ensure that women defended by them will enjoy equality of arms in the proceedings.

⁵ Report on the Transparency International Global Corruption Barometer 2007 (Berlin: Transparency International, 2007).

⁶ UN Women, *Progress of the World's Women* Report 2011, p.54.

4. Qualifying conditions for legal aid must be gender sensitive; eligibility must not be assessed on the basis of household income. Particular attention must be paid to ensure that it is the wealth of women herself that is assessed and not that of their household.
5. Put measures in place to ensure that legal, administrative and procedural fees related to access to justice are waived for women who cannot afford them.
6. Ensure maximum use of available resources to provide progressively prompt and effective procedures to allow women living in poverty to seek financial assistance to cover travel, accommodation and other costs associated with engaging with the justice system.
7. Expand the geographical reach of the justice system in particular in rural and remote areas, for instance through mobile courts or 'one-stop justice shops'.
8. Take strong measures to eliminate corrupt practices in the justice system and law enforcement, including the solicitation of bribes.