



REFERENCE: YH/follow-up/South Africa/63

13 May 2016

Excellency,

In my capacity as Rapporteur for Follow-up on Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW), I have the honour to refer to the examination of the combined second to fourth periodic reports of the Republic of South Africa at the Committee's forty-eighth session, held in January-February 2011. At the end of that session, the Committee's concluding observations were transmitted to your Permanent Mission (CEDAW/C/ZAF/CO/4). You may recall that in the concluding observations, the Committee requested the Republic of South Africa to provide, within two years, written information on the steps undertaken to implement the recommendations contained in paragraphs 15 and 42 of the concluding observations.

The Committee welcomes the follow-up report received with a 31-month delay in September 2015 (CEDAW/C/ZAF/CO/4/Add.1) under the CEDAW follow-up procedure. At its sixty-third session, held in February-March 2016 in Geneva, the Committee examined this follow-up report and adopted the following assessment.

Regarding the recommendation made in **paragraph 15** of the concluding observations that the State party “expedite the consultations on the Green Paper towards a Gender Equality Bill in order to submit it as soon as possible for adoption to the Parliament, and achieve de jure equality for women and compliance with the State party's international treaty obligations; and fully incorporate into the Gender Equality Bill the principle of equality between women and men in accordance with article 2(a) of the Convention, as well as prohibit discrimination on the basis of sex, in line with article 1 and other relevant provisions of the Convention”: The State party mentioned the different steps undertaken to expedite the consultations of the Gender Equality Bill, including the National Gender Machinery consultation held in October 2010, the compilation of a discussion document entitled “Policy Considerations for Gender Equality Legislation”, and the publication of the Bill in the Government Gazette on 29 August 2012 for public comments for a period of 30 days. It further indicated that the Bill formed the subject of consultations with the South African National Economic Development and Labour Council (NEDLAC) from June 2012 to May 2013 in preparation for the final submission to the Cabinet, which approved and tabled the renamed Women's Empowerment and Gender Equality Bill in November 2013 in Parliament. It stated that the subsequent debate in the National Assembly and referral to the National Council of Provinces had delayed the adoption of the Bill, which eventually lapsed in April 2014. It reported

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that the decision was taken to hold off on reviving the Bill processes, or even redrafting the Bill, which is described as redundant and duplicative, and to focus on ensuring that existing legislation

is fully and effectively implemented. The Committee notes the various consultations that took place around the Gender Equality Bill and its submission to the Parliament for adoption. It notes, however, that the Bill eventually lapsed in April 2014 and that the decision was taken not to resume the adoption process. The Committee considers that the recommendation **has not been implemented**.

The Committee recommends that, in relation to paragraph 15 of the concluding observations, the State party provide, **in its next periodic report**, information on further actions taken to ensure the full and effective implementation of existing legislation and reintroduce the Women's Empowerment and Gender Equality Bill, with appropriate amendments as necessary, for adoption in the Parliament, in order to achieve *de jure* equality for women and compliance with the State party's international treaty obligations.

Regarding the recommendation made in **paragraph 42** of the concluding observations that the State party "expedite discussion of the Customary Law of Succession and Related Amendment Bill, with the aim of adopting it": The State party mentioned the existence of the Reform of Customary Law of Succession and Regulation of Related Matters Act (2009). It further indicated that it has developed a White Paper on Families, which contains proposals on how South African families should be supported, and that the national legal system recognizes different forms of family. Moreover, it reported that, with respect to inheritance rights, cases regarding racial, gender and other forms of discrimination have been dealt with satisfactorily within the existing Bill of Rights and through court decisions. Court cases also brought into sharp focus the issues of ownership, including access to and control of family property by women during and upon dissolution of their customary marriages, and poses intricate questions about the relative space occupied by pluralist legal systems under the umbrella of one supreme law, which lays down a common normative platform. While noting the adoption of the Reform of Customary Law of Succession and Regulation of Related Matters Act in 2009, as well as the development of a White Paper which recognizes different forms of family, the Committee considers that the State party did not take concrete steps to expedite discussion of the Customary Law of Succession and Related Amendment Bill, with the aim of adopting it. It considers that the recommendation **has not been implemented**.

Regarding the recommendation that the State party "prepare a unified family code in conformity with the Convention, in which unequal inheritance rights, property and land rights and polygamy are addressed, with the aim of abolishing them, including the option of civil provisions available for all women": The State party reported that section 31 of the Constitution states that a community may not be denied the right to enjoy its culture, including the right to marry according to its customs, as long as this is done in a manner that is consistent with the Bill of Rights. In this regard, customary marriages and religious marriages were given full recognition through the Recognition of Customary Marriages Act, 1998 (Act 120 of 1998) and Muslim Marriages Bill (not yet promulgated), respectively, while the South African Law Reform Commission has issued a Discussion Document on Hindu Marriages. It further stated that customary law and religious law, which are to be treated as a national heritage, have to be protected and cultivated and cannot be compromised for the sake of formal equality. It concluded that a unified family code might result in achieving formal equality which in many instances discriminates against others indirectly, and that the aim of recognizing diversity is to ensure substantive equality for all. The Committee notes the State party's commitment to preserve and cultivate its customary and religious laws as a national heritage. However, it maintains that customary laws which are discriminatory against women should be abolished, in line with the convention. In this regard, it considers that the State party has not taken steps to prepare a unified family code in conformity with the Convention, in which unequal inheritance rights, property and land rights and polygamy are addressed, with the aim of abolishing them, including the option of civil provisions available for all women. The Committee considers that the recommendation **has not been implemented**.

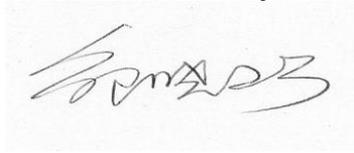
The Committee recommends that, in relation to paragraph 42 of the concluding observations, the State party provide, **in its next periodic report**, information on further actions taken to:

- 1) Expedite discussion of the Customary Law of Succession and Related Amendment Bill, with the aim of adopting it; and
- 2) Prepare a unified family code in conformity with the Convention, in which unequal inheritance rights, property and land rights and polygamy are addressed, with the aim of abolishing them, including the option of civil provisions available for all women.

The Committee looks forward to pursuing its constructive dialogue with the authorities of the Republic of South Africa on the implementation of the Convention.

Please accept, Excellency, the assurances of my highest consideration.

Yours sincerely,



Xiaoqiao Zou
Rapporteur on follow-up
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