**THROUGH A GENDER LENSE: THE REALISATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHT FOR WOMEN IN SOUTH AFRICA**

**List of issues submitted to the Working Group on South Africa Committee on Economic, Social and Cultural Rights**

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**Introduction:**

1. The contributing organisations are immensely grateful for the opportunity to make these submissions to the Committee on Economic Social and Cultural Rights. The submissions are intended to assist the Committee in preparing the List of Issues to be used to review South Africa in its implementation of the International Covenant on Economic Social and Cultural Rights.
2. The submissions are gendered and seek to provide the Committee with key issues that women experience in relation to accessing economic social and cultural rights in South Africa. The contributing organisations submit that the Government of South Africa has failed to adequately represent the position of women within South African society in relation to rights realisation and enjoyment of economic, social and cultural rights.

**Article 2: Non – Discrimination**

1. Because of South Africa’s history of apartheid and enforcement of discrimination through legislation and policy implementation there are deeply entrenched discriminatory believes and practices. Patriarchy is entrenched within South African society and women have been identified as a key vulnerable group within society in need of protection from discrimination.
2. Although a number of policies have been developed and legislation enacted implementation remains a major barrier to creating an inclusive society free from discrimination.
* *How does South Africa plan on improving implementation of policies and laws such as the proposed Prevention and Combating of Hate Crimes and hate Speech Bill and the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance if neither of these documents has been costed, and there is no clear strategy on implementation?*
* *There is an emphasis by the South African government on formal equality but what are its plans to ensure implementation and substantive equality?*

**Article 3: Gender Equality**

1. We concur with government that discrimination against women is pervasive in South Africa and that apartheid has had a devastating impact on women and black women in particular. In 2013, the Ministerial Advisory Task team on the Adjudication of Sexual Offence Matters released the Report on the Re-establishment of Sexual Offences Courts, which recommended that sexual offences courts be re-established. Since, the Department of Justice has promised to rollout sexual offences courts.
2. These courts offer specialised infrastructure, services and personnel and have proven to achieve higher conviction rates and reduced secondary trauma suffered by survivors of sexual offences. It is envisaged that the Judicial Matters Amendment Bill, 2016 will amend section 55A of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007, and provide these long awaited specialized Courts.
* *When will the amended section 55A be brought into operation?*
* *We need the planned and funded rollout of sexual offences courts. When will government make rollout plan (with courts, budgets and timeframes specified) public?*
* *There is a clear lack of overall strategy on how to address violence against women within South African society. What financial resources have the South African government committed to addressing violence against women, and what percentage of the relevant government departments are being spent on the addressing violence against women?*

**Article 6: Right to Work**

1. The right to work for women remains unrealized within many professions which are effectively criminalized by national[[1]](#footnote-1) or local government laws and bylaws[[2]](#footnote-2). Sex work is such an example and a recent South African Law Reform Commission Report[[3]](#footnote-3) detailing research undertaken in 2009 indicates that government should continue to criminalize the profession. Informal traders and street traders are of the most vulnerable within the labour market. These women are very often restricted and limited to applying their trade or chosen profession by harsh municipal bylaws.
* *When will South Africa enact legislation as called for by the World Health Organisation, UNAIDS, Amnesty International and other international bodies that decriminalizes sex work and recognizes women’s right to work in a profession of their choosing and to enable safer working conditions?*
* *There are a number of local government bylaws that effectively criminalizes women’s poverty. What steps will government at a national level to address bylaws that criminalizes and restricts women in the informal labour market?*

**Article 7: The Right to Just and Favorable Conditions of Work**

1. The workplace remains a very hostile environment for women and although legislation has been enacted to protect women in workplace implementation of such legislation remains questionable. There are a number of gaps in the legislation which especially impact on women in the workplace: Self-employed women (women in the informal sector such as informal street traders and community health care workers) cannot benefit from the Unemployment Insurance Fund, as the fund only provides protection to women as employees. The effect of this is that women who work in the informal labour market work without any social security protection, and should they be unable to apply their trade they are left without income protection. Similarly they would have to forfeit an income during maternity leave as they are not protected or covered under the existing Unemployment Insurance Fund.
* *What legislative plans does the South African government have to expand unemployment insurance benefits such as maternity leave and financial compensation during maternity leave to self-employed women?*

 **Article 10: Protection and Assistance for the family**

1. Family law and recognition and protection to diverse family groupings remain underdeveloped in South Africa. Marriages concluded in terms of the Islamic faith remain largely unrecognized in that no law exists which recognizes such marriages. Rights protection for women married in terms of the Islamic faith has been forced to challenge the non-recognition through Court processes.
* *When will legislation be adopted to address the non-recognition and the lack of protection of women married in terms of the Islamic faith?*
* *What steps do the government intend taking to ensure that women in particular are protected in marital relationships that are not recognised or not regulated?*
1. The Civil Unions Act[[4]](#footnote-4) was enacted to recognize and regulate same sex marriages and unions in South Africa. The legislation contains a clause[[5]](#footnote-5) which specifically allows for marriage officers employed by the Department of Home Affairs to object to performing same sex unions.
* *The conscientious objection clause amounts to discrimination by the state. What steps have the government taken to remedy the discrimination? Does the government intend on repealing the discrimination from the legislation?*
1. The Alteration of Sex Description and Sex Status Act[[6]](#footnote-6) allows for transgender and intersex persons to alter their gender description on the National Population Register. The legislation however in its implementation has led to the Department of Home Affairs requiring that transgender persons who alter their sex description obtain a divorce order before their gender marker is altered. The Department citing that the electronic database used is incompatible with allowing for transgender persons to remain married in terms of the Marriages Act when their marriage has become a same sex marriage.
* *What steps are the government intending to take to ensure recognition of marriages of transgender persons who have entered into legal marriages under the Marriages Act and who seeks to alter their gender marker?*

**Article 12: The right to health**

1. The right to the highest attainable standard of health includes freedom to control and make choices about physical and mental health and entitlement to a system of health protection that provides equal access to healthcare. Equality of access to healthcare needs to incorporate a gendered perspective that promotes sexual and reproductive rights, ensuring that women’s health issues are addressed, that women have access to adequate and affordable care.
2. While the contraception and fertility policy include a wide method and mix of available options and includes requirements for informed consent, the majority of women are effectively compelled to receive the injectable contraceptive which is controversial given its possible linkages with HIV acquisition.
3. The health interests of transgender women in particular requires access to adequate hormone and surgical treatment, freedom from discrimination and education for healthcare professionals around dealing with transgender patients.
4. Sexual and reproductive health concerns include access to affordable and available contraception, access to termination of pregnancy, provision for maternity leave and benefits, safe and accessible maternity healthcare and education around sexual and reproductive rights. The provision of sanitary pads is also a crucial issue which needs to be addressed, especially in poor communities and rural areas, where many young women cannot afford sanitary pads and are forced to use unsafe and impractical replacements or to stay home from school or work during menstruation.
* *Does the government of South Africa provide adequate education and information around comprehensive sexuality and reproductive rights for women, including the option to access a termination of pregnancy?*
* *Does the government plan to increase the availability of a wide method and mix of contraceptives and sanitary pads, especially in poor urban and rural communities?*
* *Have the recent social developments around transgender rights been included in healthcare policies and does the government plan on making policy recommendations around transgender healthcare?*
* *What efforts are being made to ensure health providers practice non-discrimination and welcome clients of diverse sexual orientations and gender identities?*
* *Maternal mortality is a complex indicator in South Africa, a woman who dies from an unsafe abortion when HIV positive is counted as an HIV death. What measures are being taken to address the feminization of HIV and integration of a reproductive justice perspective where PMTCT focal point 2 (prevention of unintended pregnancies) is programmed?*

**Article 15: Cultural Rights**

1. The South African Constitution in Section 30 and 31 deals with and confirms the right to live and practice ones customary believes. Our Constitutional Court has recognized customary law as an indigenous source of law and has stated that customary law is not stagnant but alive and capable of being balanced with constitutional rights and principles. The Court has also expressed that customary law and practices are rooted in patriarchy and that such patriarchy needs to be addressed. Young girls and women in rural areas are subjected to harmful customary practices without any protection in law. Specifically we draw attention to the practice of *“ukuthwala”* which sees the kidnapping, assault and rape of young girls often by much older men continuing to be practiced without legal recourse or specific legislation that outlaws the practice.
2. The Children’s Act in its current form also recognizes virginity testing of young girls from the age of 16. This harmful practice cannot be justified in any way in terms of the South African Constitution.
* *What legislative steps has the government taken to address and criminalize harmful customary practices such as ‘ukuthwala’ and virginity testing?*
* *What educational and outreach steps have the government taken to ensure that those who live in terms of custom understand the role of custom in the Constitution and the need to transform to bring it in line with the Constitution?*
1. The Sexual Offences Act 23 of 1957 as amended (http://www.justice.gov.za/legislation/acts/1957-023.pdf) [↑](#footnote-ref-1)
2. A number of local government bye laws prohibit and restrict certain trading activities within certain areas, including certain activities such as loitering and begging in certain instances. [↑](#footnote-ref-2)
3. http://www.justice.gov.za/salrc/reports/r-pr107-SXO-AdultProstitution-2017.pdf [↑](#footnote-ref-3)
4. Act 17 of 2006 [↑](#footnote-ref-4)
5. Section 6 of the Civil Unions Act allows for marriage officers employed as such by the Department of Home Affairs to object to the performing same sex unions effectively granting a religious exemption to state employees from complying with their duties under the Civil Unions Act. [↑](#footnote-ref-5)
6. Act 49 of 2003 [↑](#footnote-ref-6)