

SOUTH AFRICAN SHADOW REPORT ON THE IMPLEMENTATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Submitted To The

**CEDAW Committee's 48th Session,
17 January - 4 February 2011**



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ACKNOWLEDGMENTS

This report has been made possible through the collective effort of the organisations listed below. We wish to acknowledge everyone, who, with great dedication, donated their time and effort to the production of this report.

African Disabled Refugee Organisation (ADRO)
Aids Legal Network (ALN)
Alliance for Children's Entitlement to Social Security (ACCESS)
Bonne Esperance (Catholic Welfare Development)
Bonne Esperance Refugee Shelter
Commission for Conciliation, Mediation and Arbitration (CCMA)
Centre for the Study of Violence and Reconciliation (CSVR)
Congress of South African Trade Unions (COSATU)
Gender Advocacy Project (GAP)
Gender Health and Justice Research Unit (GHJRU)
Gender Links
Health Systems Trust
Industrial Health Resource Group (IHRG)
Joint Working Group on LGBTI Rights
Land Access Group of South Africa (LAMOSA)
Legal Resources Centre (LRC)
Masifundise Development Trust
Masincedisane Community Development Organization, Du Noon
National Union of Metal Workers of South Africa (NUMSA)
New Women's Movement
Open Democracy Advice Centre of South Africa
Open Society Initiative South Africa
OUT LGBT Well-Being
People Opposing Women Abuse (POWA)
Rural Women's Movement
SA Domestic Service and Allied Workers Union
South African Clothing and Textile Workers Union (SACTWU)
Sikhula Sonke
Slum Dwellers International
The Black Sash Trust
University of Cape Town: Gender & Health Unit
University of the Western Cape Community Law Centre
Western Cape Network on Violence against Women (WCNOVAW)
Women in Sexual and Reproductive (WISH)
Women on Farms
Women's Legal Centre (WLC)

The report would not have been possible without the generous sponsorship of Oxfam GB, UNIFEM and the Heinrich Böll Foundation who funded the development of the report. We wish to extend our sincerest appreciation to them.

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1 Executive Summary

Introduction

This Shadow Report (“the report”) has been collaboratively developed by a number of women’s and human rights organisations in response to the Republic of South Africa’s 2009 CEDAW report. The purpose of this report is to provide supplementary information to create a comprehensive picture of the status of women and compliance by the state with its obligations in terms of the Convention.

Articles 1 and 2: Defining and elimination discrimination

Compliance with the undertakings in Articles 1 and 2 will, given the structural and fundamental nature of the obligations in question, be largely determinative of the degree of compliance with undertakings in terms of the remainder of the articles.

In terms of Articles 1 and 2, the State has undertaken to condemn and eliminate discrimination against women by:

1. Ensuring de jure equality by taking corrective policy measures, including the enactment of laws promoting equality and the repeal and outlawing of discriminatory laws and practices;
2. Ensuring de facto equality through effective and equitable implementation of laws and programmes;
3. Raising awareness of the rights and remedies available to realise the right to equality;
4. Monitoring and evaluating the impact of the laws and programmes on improving the status of women through the realisation of their equality and other relevant rights; and
5. Facilitating collaboration across sectors to ensure that women suffering multiple discriminations are equally and equitably protected.

De Jure Equality

Whilst the State has embedded the right to gender equality in the Constitution, the legislature and executive have failed to fully honour their resultant constitutional obligations. These institutions have not repealed, amended or abolished a number of offending laws and practices, and neither have they enacted laws sanctioning discriminatory practices, especially in the customary, cultural and religious spheres.

In short, the State has not fully complied with its obligation to ensure de jure equality. This failure is evidenced in the instances of de jure inequality present across all areas of life covered by the Convention and is addressed in detail in the discussions under each of the article headings in this report.

For example:

1. There is no overarching national gender law in South Africa against to which all role players may be held legally accountable.
2. In the face of enduring gender inequality on various fronts, there are no laws compelling special corrective measures, especially for women subject to multiple vulnerabilities. For example, there is no comparable legal obligation to meaningfully address persistent lower employment levels among women, most notably black women and women living with a disability.
3. In the face of inaction on the part of the State, civil society has had no choice but to approach the Constitutional Court to compel the legislature and executive to move to change entrenched gendered social and cultural norms, litigation which has consistently been opposed by the government.
4. The risks associated with trafficking and exploitation of women continue to be aggravated by the continued criminalisation of sex work and workers; the phenomenon of trafficking is being addressed through laws that are not premised on a sound and credible information base.

5. There is no law compelling all political parties in South Africa to adhere to gender quotas.
6. The pro-poor bias within South Africa's education legal framework has improved access to education for poor people; however, it does not sufficiently acknowledge and address the poverty/gender intersection which continues to create inequity for women in education.
7. On the health front, there is no legislative obligation on the State to prevent a number of primary health issues that are either unique to women or very common in women-headed households. For example, there is no legally enforceable obligation to provide free services such as the HPV vaccine; to prevent malnutrition; or to provide adequate sanitation.
8. Because women are poorer than men, women are disproportionately affected by the lack of a national social assistance programme for poor people older than 18. Moreover, the insufficiency of relevant laws has resulted in the systematic exclusion of especially vulnerable women from access to social and economic development resources such as land, property, housing, and credit.
9. In the family domain, there is inequality in the failure to recognise and protect all forms of domestic relationships and unions. This results in women in unprotected relationships being at risk of losing their property.
10. Violence against women has increased year on year. This is in part due to the failure by the State to address certain policy gaps such as the failure within the Domestic Violence Act to acknowledge and address the intersection between violence, poverty and HIV and AIDS in South Africa; what is more, the Victim's Charter has no binding legal status.

De Facto Equality

The State report emphasises the development of a host of policies, laws and programmes intended to prohibit discrimination and promote equality across all areas of family, social and economic life.

This report recognises these steps; however, there is a systemic failure to effectively translate these laws into meaningful change in women's lives.

There is a strong trend in South Africa where we see a consistent failure to move effectively from de jure to de facto enjoyment and realisation of the rights in question. Many women remain unable to access or enjoy the rights, protections and benefits that have been created, with evidence of the scope and pervasiveness of these failings pointing to a systemic failure to translate de jure equality into de facto equality.

The de facto failings, as in the case of the de jure failings, are felt across all areas of life covered by the Convention and are discussed in detail under each article. The reasons for this are systemic in nature and include: the prevalence of discriminatory practices among state service providers; inadequate financial, infrastructural and human resources; insufficient provision of sites of service delivery in rural areas; and lack of capacity in terms of people sensitised to, and respectful of, gender rights and equality.

Limited Awareness-Raising And Access To Information

Despite the State's duty to promote human rights by, inter alia, engaging in public education and awareness campaigns of treaties like CEDAW as well as laws and programmes designed to realise women's rights, there is little evidence in the State's report of it having fulfilled this duty, and no data is available on the number of women who know about CEDAW or the rights it protects.

Little, If Any, Evidence To Monitor Progress And Evaluate Impact

A key concern with the State's report is the lack of data presented by the State in support of the alleged impact of the laws reported on; where evidence is available, in however happenstance a form, the

indications are that their impact has been limited. The reason for the failure to present data is fundamentally linked to an underlying concern with the lack of a national gender monitoring and evaluation framework and the failure of our national data collection agencies and systems to collect relevant data and disaggregate it to provide insight into progress on key gender indicators.

Inadequate Collaboration

There is a lack of cross-sectoral collaboration, which could otherwise enable collective engagement with intersectoral discrimination against especially vulnerable women.

Common Recommendations

The structural concerns listed above are relevant across the full spectrum of rights set out in the Convention and their impact on the realisation of each of these rights is dealt with in detail under each article heading in this Report.

The following recommendations are equally applicable across all articles and receive dedicated and tailored attention as they specifically apply in the discussions under each of the articles in this Report.

1. The State must identify all laws, practices and customs that conflict with the equality provision in the Constitution.
2. The legislature and the executive must assume full responsibility for their constitutionally mandated role of ensuring that identified offending laws be repealed or amended within an agreed timeline.
3. The national statistics agency must adapt its data collection tools and methodology to ensure that appropriate data are collected and that all data collected are capable of disaggregation by gender.
4. Monitoring and oversight bodies like the Commission for Gender Equality must be strengthened and must work with government and civil society to develop a common monitoring and evaluation framework with agreed targets, indicators and timelines to facilitate collective and shared responsibility for monitoring progress towards national goals and undertakings.
5. Mechanisms must be developed to hold all spheres of government accountable to national gender objectives.
6. Sufficient human, financial and other resources must be made available to address systemic blockages preventing de facto enjoyment of rights, especially in rural areas.
7. Effective evidence-based advocacy and communications campaigns must be developed and implemented to raise awareness of all relevant rights and to address attitudes, practices and stereotypes that drive all forms of discrimination; these must be endorsed at the highest level by all politicians and leaders

2 INTRODUCTION

South Africa signed and ratified the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) on 15 December 1995 and acceded to the Optional Protocol to CEDAW in March 2005.¹

This Shadow Report (“the report”), prepared by women’s rights groups in collaboration with other human rights organisations, is not intended to duplicate the government’s country report. Rather, the objectives of the report are as follows:

1. To assess government’s compliance with CEDAW obligations;
2. To identify and comment on the disparities in the government’s report; and

3. To assist the Committee in conducting an assessment of government's compliance with CEDAW and make recommendations that will contribute to the promotion and protection of women's rights in South Africa.

The report relies on the frameworks and indicators on violence against women as developed by the United Nations Special Rapporteur on Violence Against Women and the Office of the High Commissioner for Human Rights for monitoring compliance by States parties with international human rights treaties.² Based on this typology, the report submits that while the government has had some measure of success in terms of the *structural indicators* requirement, there remain major challenges in respect to *process and outcome indicators*.³ By providing statistical data, case studies and an analysis of the impact of laws and policies, the report will illustrate that the government is yet to demonstrate the necessary political will and invest the required resources to ensure the efficacy of laws, policies and institutions to contribute towards the full realization of women's rights.

The ratification of international human treaties and adoption of legislation and policy is merely a first step to achieving equality. There remain major gaps in the effective implementation of legislation and policies, further aggravated by dysfunctional or semi-functional state institutions which have adverse consequences for women's enjoyment of the right to equality. As noted by the Special Rapporteur on Violence Against Women, "**access to remedies is a core aspect in responses to violence, providing not only redress for violations that have already occurred, but also protection from repetition**".⁴

In the process of preparing the report, it became apparent that there were general limitations throughout the government's report, including the following:

Delay In Reporting

South Africa's Initial Report to the CEDAW Committee for the period 1995-1997 was submitted on 5 February 1998. With the submission of the report under review, South Africa had three (3) outstanding Periodic Reports for 2001, 2005 and 2009, respectively. While we acknowledge that there may be practical and financial constraints faced by governments in reporting to the Committee, we note with concern that the consolidated government report under review does not fully address the challenges to women's enjoyment of fundamental rights and freedoms over a ten-year period, but rather provides a generalised overview of law, policy and jurisprudential developments. In instances where challenges have been identified, the government report does not necessarily set out strategies to remedy these challenges.

Non-Compliance With CEDAW

The government's report implies full compliance with its commitments to CEDAW and in most instances falls short of critically reflecting on the institutional challenges and lack of political will to end all forms of discrimination against women. Furthermore, the report fails to comment on specific measures, which, in terms of CEDAW, must be taken to ensure the enjoyment of substantive equality and responding to intersectional discrimination and oppression experienced by women. There is a critical and articulated silence on: vulnerable groups, in particular, indigenous women; the routine violence and discrimination experienced by lesbian and transgender women; refugees and undocumented migrants; women seeking asylum; women with disabilities; and women infected and affected by HIV and AIDS. The report deals with women as a homogenous group and fails to take into account multiple identities, which render certain groups of women particularly vulnerable to violence and discrimination. For instance, pursuant to an official visit to South Africa, the *Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of*

Indigenous People noted that indigenous women require specific measures to empower them to overcome the constraints of poverty, low levels of education and literacy.³

Failure to provide disaggregated data

We acknowledge that the government report has provided statistical data on population groups and explicitly states that African black women are most affected by poverty and the HIV and AIDS pandemic, but we are concerned that this disaggregation of government data excludes other groups of women. Data are not further disaggregated in terms of disability and age and do not necessarily reflect on the impact of affirmative action policies and how they have benefited primarily white women in the context of women's development. In order to develop and budget for appropriate economic and resource allocation programmes and policies, precise disaggregated data with a woman's non-homogeneous perspective are required, particularly in the South African context.

Failure To Address Concluding Observations To The Initial 1998 Report

The government report fails to engage with the Concluding Observations from the CEDAW Committee on its Initial Report submitted in 1998. Part VI of this Report briefly reviews the extent to which the State has addressed the 1998 Concluding Observations that relate to the subject matter covered by this report.

3. PART I

3.1 ARTICLES 1 and 2: ELIMINATING DISCRIMINATION

3.1.1. RELEVANT OBLIGATIONS

The State has agreed to condemn and eliminate discrimination against women, as defined in Article 1, by:

(a.) in terms of policy measures

- (i.) Embedding the principle of equality into its national constitution and taking legislative and other steps to ensure practical realisation of the right;
- (ii.) Developing policies and laws to promote and protect the right to equality;
- (iii.) Abolishing, repealing or modifying all laws, regulations, customs and practices that constitute discrimination against women;

(b.) in terms of implementation measures

- (i.) Ensuring that public authorities and institutions do not discriminate against women;

(c.) in terms of advocacy and awareness-raising

- (i.) Conducting education and public-information programmes to address prejudices and practices hampering implementation of the principle of equality;
- (ii.) Publicising CEDAW in all main languages (General Recommendation 10);

(d.) in terms of evaluation and monitoring measures

- (i.) Ensuring that national statistical agencies to collect and report country data in a such way that it can be disaggregated according to gender;
- (ii.) Conducting research and compiling statistics on the cause and extent of discrimination and inequality;
- (iii.) Measuring the effectiveness of measures taken (General Recommendation 24 (c.));
- (iv.) Providing adequate resources and services to the Committee to enable it to fulfil its oversight role, especially by having a full-time staff member to help it perform its functions (General Recommendation 7); and,

(d.) in terms of multisectoral collaboration

- (i.) Facilitating multisectoral action to ensure that especially vulnerable women are protected from multiple intersectoral discrimination, and that all women's rights are guaranteed in diverse fields, including the social, economic and political.

3.1.2 FOCAL AREAS IN THE STATE REPORT

- a. Through its equality clause, the Constitution prohibits discrimination. The latter is the supreme law: thus, laws, policies and programmes contrary to it will be overruled by the Constitutional Court.
- b. The Court has exercised this prerogative on numerous occasions, with its decisions resulting in legislative reform.
- c. A plethora of laws, programmes and policies exists to combat discrimination.
- d. The equality principle is mainstreamed by vehicles such as the Local Government Gender Policy Framework, which takes its lead from the National Gender Policy Framework.
- e. Beyond the enactment of laws, the government has collaborated with other stakeholders on further measures that address discrimination, notably the 365 Day National Action Plan to End Gender Violence and the 16 Days of Activism Campaign.

- f. National structures such as the Commission on Gender Equality (CGE) and South African Human Rights Commission (SAHRC) have been formed to advise on, monitor and enforce women's rights by, inter alia, supporting women litigants.

3.1.3 CORE ISSUES

3.1.3.1 De Jure Discrimination Persists

The State has undertaken to eliminate discrimination by embedding an appropriate equality provision in the Constitution and complementary laws, as well as by abolishing, repealing or amending any existing laws, practices and customs that conflict with the overarching constitutional imperative.

Despite having embedded the right to equality in the Constitution, a number of discriminatory policies, laws, programmes and practices – particularly in the customary and religious spheres – remain steadfastly in place and unencumbered by legislative sanctions or prohibitions. These constitutional anomalies will be examined in detail within each of the critiques of the relevant articles. Table 1 provides a snapshot of central legally sanctioned instances of de jure discrimination against women in South Africa.

Participation In Political Life	<p>The Traditional Leadership and Governance Framework Act, 2003, entrenches patriarchal values and excludes women from participating in traditional governance.</p> <p>The Electoral Act No 73 of 1998 does not include specific gender quota clauses. There is no mandatory requirement on all political parties to meet gender quotas.</p>
Employment	<p>Protective labour legislation and contributory social security does not extend to seasonal and contract workers, many of whom are women.</p> <p>Contributory social security programmes such as those that pay compensation in the event of injury are not available for domestic workers, the majority of whom are women.</p> <p>Unpaid domestic work remains unvalued and unrecognised in the national economy.</p>
Non-Contributory Social Security/Social Assistance	<p>There is no social assistance scheme for poor adult women between the ages of 19 and 60 to address the higher levels of poverty evident amongst women in South Africa.</p>
Food Insecurity And Hunger	<p>There is no national nutritional programme that systemically addresses the higher levels of food insecurity and hunger experienced in women-headed households.</p>
	<p>Statutory land redistribution laws return land to former owners who, by virtue of historically discriminatory laws, were limited to men. This is repeated in the design of the current laws: land is returned to men.</p> <p>Ownership and use of land in rural areas is governed by dual statutory and customary legal systems. Customary law and practices regarding land ownership and allocation remain in operation, and are often the law and practice of choice</p>

Land Ownership, Security Of Tenure And Use Of Land	in rural areas. The discriminatory nature of these laws and practices results in many women not being permitted to own land, and/or being deprived of their land and other property on the death of their husbands.
	Women's use of land is limited by customary laws and practices, as well as by the discriminatory emphasis of programmatic support for economically productive (as opposed to domestic) use of land.
	The tenure of women living on farms is not secure upon the death of their husbands because they are not covered by the governing laws to do with security of tenure.
Housing	There is no preferential housing policy or programme for disabled women, women affected by HIV and AIDS, and women experiencing domestic violence.
Family And Marriage	Religious marriages remain unrecognised by law, resulting in inequitable maintenance and inheritance practices, exposing children to discriminatory status determinations, and denying them their right to their paternal name.
	Domestic partnerships are not recognised.
	Only registered customary marriages attract proprietary and other protections afforded to a civil marriage.
	Women in polygamous marriages are only protected if the marriage is registered and the laws do not equally protect all of the wives in the marriage.
Girl Child	Virginity testing is still permitted in the case of girls older than 16.
Education	There is no effective policy or programme to reduce the impact of additional domestic responsibilities on the education of girls in rural areas and/or girls taking care of families affected by HIV and AIDs.
	Education is not free.
Violence Against Women	The laws providing protection and support services for women survivors of gender-based violence (GBV) exclude women who do not report the crime to the police.
	There is no comprehensive law which deals comprehensively with all forms of violence against women and which covers all forms of protection, compensation, support services, redress and access to justice.
	Sex work remains criminalised.

Table 1: De Jure Discrimination In South Africa

3.1.3.2 Systemic Failures Impede De Facto Equality

As the State report emphasises, the government has enacted a host of policies, laws and programmes intended to prohibit discrimination and promote equality across all areas of family, social and economic life. This shadow report recognises the progress that has been made in developing policies and laws to address violence against women and promote equality in political and public life, in education, employment, health care, economic and social life, and family life.

Fact Sheet No. 22 emphasises that “[i]t is not enough merely to insert anti-discrimination clauses into legislation”, a stipulation echoed in General Recommendation 25, which specifies that “[a] purely formal or programmatic approach is insufficient to achieve women’s de facto equality”.

Strong evidence exists to suggest that the South African government has not succeeded in moving beyond a purely formal or programmatic approach. There is a consistent failure to move effectively from de jure to de facto enjoyment and realisation of the rights in question. Many women remain unable to access or enjoy the rights, protections and benefits that have been created, with evidence of the scope and pervasiveness of these failings pointing to a systemic failure to translate de jure equality into de facto equality. The extent and systemic nature of the de facto failings is illustrated by the discussion below.

Social, Economic, Family Life And Protection From Violence

The South African Constitution recognises the fundamental link between, on the one hand, social and economic rights, and, on the other, development and equality (in terms of both gender and race). The Constitution imposes a set of responsibilities on government to address socio-economic inequalities as part of the progressive realisation of human rights and to do so in ways that erode gender inequalities, in addition to racial inequality.¹ The CEDAW framework is premised on advancing the social and economic rights, in part by increasing the number of women in political and economic life (Article 7). South Africa has made strides in legislating progressive laws and policies and increasing the number of women in positions of political power in government (see discussion under Article 7).

However, as noted by Hassim (2005), these improvements have not been met with equal advancement of women’s economic position in the last ten years. Women in South Africa are poorer than men and have less access to the opportunities and development resources necessary to overcome poverty, such as land, housing, marine resources, employment and education.

The poorest 20% of the population fall into the “zero earned income” bracket. Forty-seven percent of black women and girls in 2007 live in these households, and many of them were totally dependent on state social assistance grants for survival.² Furthermore, of those living below the “national poverty line”, 92.4% were black South Africans of “African” and “coloured: backgrounds; 50.9% were female; and 60.2% were single parents.³

Households headed by a women are substantially poorer than those headed by men. Woolard (2002) concluded that, in 1999, households headed by women had a 48% chance of being poor, compared to those headed by a male, which had a 28% chance of being poor.⁴ A more recent study illustrates that there has been no change; there is still significant inequality in poverty levels between women- and men-headed households; the degree of difference is illustrated by the fact that in 2006 nearly 52% of female-headed households had a household expenditure of less than R1,000 per month in comparison to 35% of male-headed households.⁵

In 2003 women had lower incomes, lower employment rates and less access to assets than men. Young women faced an unemployment rate of 75%, and those in employment found themselves in the worst-

paid sectors, notably domestic and retail work.⁶ This low and unequal employment rate has remained consistent. In 2006, 30.7% of women were unemployed, compared to 21.2% of men. Women account for only 5% of senior management jobs in the private sector.⁷ Black women remain particularly vulnerable; they constitute only 14% of the formally employed, compared to 43% for white men, 34% for white women and 21% for black men. Black women also have the lowest level of earnings.⁸ The unemployment rate amongst rural women is 53% as compared to 37% amongst rural men and. In addition, the unemployment rate amongst rural African women amounts to 56% as compared to 21% amongst rural men and only 5% amongst rural white women.⁹

While we have achieved parity in primary school enrolment rates, education remains marred by gender inequality in more pervasive ways. There were, in 2008, considerable gender differences between the numbers of men (7.0%) and women (10.3%) over the age of 20 years with no formal education.¹⁰

Whilst enrolment rates are high, attendance and drop-out rates are a different story. The attendance of girls living in homes affected by HIV and AIDS is affected more severely than boys. A study by the Kaiser Family Foundation found that almost 10% of girls were out of school compared to 5% of boys in similar circumstances.¹¹ In 2008, 66,000 girls dropped out of school due to pregnancy.¹² In addition, domestic chores such as fetching fuel or water and caring for siblings (the traditional domain of the girl child in rural areas) have a negative impact on their educational attainment.¹³

By February 2004, only 11.9% of the households that had benefitted from land reform were female-headed.¹⁴ Hunger is more common in female-headed households. In 2008, hunger was present in 2.9 million female-headed households compared to 2.1 million male-headed households.¹⁵

Gender-based violence has not reduced. Rape statistics have increased every year since 1994;¹⁶ officially, 44,751 rapes were reported in 1994-1995, increasing to 71,500 in 2008/9.¹⁷ These statistics do not reflect the full GBV picture in South Africa. It is estimated that they reflect only 10-15% of rapes, given the unreliability of official data and the fact that only 10-15% of rapes are reported.

African rural women, singled out by the CEDAW for focused attention (Article 14), remain the most vulnerable of all. Female-headed households are more likely to be in rural areas where poverty is concentrated and employment rates higher; likewise, the infant mortality rate is higher in rural areas, as is the maternal mortality rate.¹⁸ Their higher levels of poverty make them more dependent on government support and services such as free basic water, sanitation, health care and protection from violence and abuse. These services are less accessible and available in poor rural areas. In addition, women in rural areas are often subject to customary law and practices, which results in inequitable access to land and inherited property¹⁹ as well as in the girl child facing greater risk of being exposed to harmful practices such as female genital mutilation, early (forced) marriage and virginity testing.

3.1.3.3 Silence Surrounds Multiple Vulnerabilities

Women in this country are not a homogenous group. The State report makes little mention of measures to recognise and respond to women who experience multiple vulnerabilities and who are hence at risk of multiple transgressions of their rights. People in this category include women with disabilities, women living in rural areas, elderly poor women, migrant women, single parents, lesbian, bisexual and transgender people. The report's silence about them means it is necessarily silent when it comes to provisions or mechanisms for addressing their multiple vulnerabilities holistically through collaborative action.

3.1.3.4 Little, If Any, Evidence To Monitor Progress And Evaluate Impact

No systematic data is presented by the State in support of the impact the laws in its report have made; where evidence is available, in however happenstance a form, the indications are that their impact has been limited. The reason for the failure to present data is fundamentally linked to the underlying lack of national monitoring and evaluation as well as the lack of national gendered and disaggregated data. The paucity of creditable national data presented an obstacle in the development of this shadow report. South Africa has a national statistical agency, Statistics South Africa, which conducts regular, if not annual, national community and household surveys to collect data about the population's access to, inter alia, education, housing, property, agricultural support, food and nutrition, water and sanitation, electricity, and social security. The kind of data that is collected is insufficient to monitor progress against key gender concerns, while and the data that is collected is in the main not disaggregated by gender, except in the case of education and disability statistics.

It would appear, then, that there is insufficient monitoring and evaluation or data disaggregation according to gender at national level, a shortcoming which is critical particularly in the context of intersectoral discrimination. For instance, there is a lack of information about the overlap between gender and disability in South Africa. Data from industrialised countries show that, based on their gender and disability status, disabled women face a double disadvantage in the workplace.²⁰ In South Africa, race is a further key variable. The need for disaggregation, and targeted redress, is highlighted by a CGE finding that, based on 1,493 employment equity reports in 2007, people with disabilities (irrespective of gender) constituted little more than 0.5% of the private sector workforce.²¹ In this statistical picture, disabled women are not only marginalised; they are occluded from view.

3.1.3.5 Provincial And Local Disparities Are Marked

Significant disparities are evident in the enjoyment and protection of women's rights in different provinces, municipalities and communities. Scanning across the different locales and levels, considerable variation can be seen in the degree to which the laws, policies and strategies of different provinces and municipal entities demonstrate commitment to gender equality. For example, access to electricity varies between 65.5% of households enjoying access in the Eastern Cape province to 81% in Limpopo to 94% in the Western Cape. Access to piped water varies from 70.4% of households in the Eastern Cape to 98.9 in the Western Cape; and 31.3 % of Eastern Cape households have no toilet facility at all, compared to 3.6% in Gauteng.

These provincial disparities are seen across almost all of the essential service delivery areas such as health care, education, housing and the other areas mentioned above. The provinces with the highest levels of poverty, the largest rural populations and concomitant female-headed households are the provinces with the lowest levels of service delivery, a convergence of factors impacting aggressively on the rights of women unlucky enough to live in provinces, municipalities and rural communities with poor track records.

3.1.3.6 Few Women Know About Cedaw

Despite the State's duty to promote human rights by, inter alia, engaging in public education and awareness campaigns of treaties like CEDAW, there is little evidence of it having fulfilled this duty and no data available on the number of women who know about CEDAW or the rights it protects. During the consultations held in preparation for this report, almost all participating NGOs indicated that knowledge levels amongst women on the ground are very low.

3.1.3.7 Ineffective Monitoring And Enforcement Bodies

The State reports that the Commission for Gender Equality (CGE) and the South African Human Rights Commission (SAHRC) have been established to monitor, advise and ensure compliance with CEDAW undertakings.

In the Committee's closing comments after its 19th Session in June 1998, it noted with concern that the national gender machinery and the CGE had not been properly resourced and encouraged the State to take remedial action.

A national review of Chapter 9 institutions including the SAHRC and the CGE was conducted in 2007. The findings of the report in relation to the CGE are cause for great concern, indicating that it is largely dysfunctional and needs more than additional resources to make it an effective tool in the country's national gender machinery.²² The review report emphasised the importance of a Commission for Gender Equality, but questioned the relevance of the Commission in its current form. Further findings were that:

- It shows poor understanding of its mandate;
- The relationship between the CGE and civil society is poor, a finding which has not since changed in any significant way (for example, the CGE developed its own CEDAW report, but did not effectively consult civil society in this regard);
- The public's knowledge of the Commission is very poor;
- It had no coherent strategic plan with priorities to serve as a monitoring and evaluation tool;
- Its relationship with Parliament is poor and insufficient for effective oversight and accountability;
- It has not effectively utilised its power of investigation and/or power to subpoena;
- It lacks statutory independence;
- The independence of the Commission is questionable in view of the appointment of commissioners by the President.

The review findings with regards to the effectiveness of the SAHRC were far more encouraging, finding that on the equality front the it has actively promoted equality through its dedicated Equality Unit and in the significant numbers of law suits pursued by the commission in the Equality Courts.²³

The efficacy of the Commission was noted to be hampered by the limited effectiveness of the equality courts and its failure to have devoted sufficient energy and resources in promoting the rights of people with disabilities.²⁴

3.1.3.8 Enforcement Mechanisms Are Inaccessible

Women deprived of their rights find mostly that they cannot enforce their rights through the courts, tribunals or structures created for this purpose. The establishment of Equality Courts was well-intentioned and innovative, but their flawed implementation has meant that they offer women little to no redress.

- The Department of Justice reported in 2006 that, of the 330 magisterial districts identified as locations for Equality Courts, only 220 had been designated.²⁵ Less than 700 cases had been referred to them, and most of these dealt with hate speech and racism.²⁶
- In submissions to the Parliamentary Equality Review process,²⁷ the SAHRC drew attention to the public's lack of usage of the courts, the insufficient training given to court officials for assisting unrepresented members of the public,²⁸ and the lack of public awareness of the courts.²⁹
- In the same review process, the CGE said that "many of the courts were not functional," and where they were in operation, "there was lack of procedures to access the courts"; these problems had resulted from "lack of education, lack of commitment to the running of the courts and the small alloca-

tion of resources”.³⁰

- Both the SAHRC and CGE reported that few referrals were made to the Equality Courts as alternative fora. In particular, the CGE, mandated as the custodian and monitor of the Equality legislation, said that the Department of Justice “was not working” with it in this regard, with the result that “[m]any cases that should be in the equality court were not getting there”.³¹
- Of the few reported Equality Court judgments, the majority deal with racially based discrimination. Only one such judgment concerns gender, and the applicant is a white male.³²
- In a case that attracted some publicity, the CGE used the court to obtain an apology from a community where a woman had been assaulted for wearing trousers, but the weakness of the remedy is unlikely to encourage women to approach the Equality Courts for relief.

3.1.3.9 Limited Awareness-Raising And Access To Information

Data suggest that women are not benefiting from non-statutory measures such as the 365 Day National Action Plan to End Gender Violence and the 16 Days of Activism Campaign. Apart from these initiatives, the State does not mention any other awareness-raising, gender-information or advocacy campaigns that are in place to modify customs and practices.

3.1.4. BARRIERS

3.1.4.1 Policy Gaps

A first and fundamental policy gap informing all other gaps discussed in this shadow report is that the legislature and executive have failed to assume and fully honour the obligations created through the embedment of the right to equality within the national constitution, particularly so in respect of customary and religious laws or practices that discriminate against women. That is to say, they have not undertaken a legal review and developed a timeline-based legislative revision process within which to repeal, amend or abolish offending laws and practices still in force, and neither have they enacted laws prohibiting and sanctioning discriminatory and harmful practices exercised in a cultural environment. Religious marriages are not recognised in law, and while it is acknowledged that progress has been made in terms of property and inheritance rights, the enjoyment of these provisions remains in doubt for many women.

The failure of South Africa’s legislature and executive branch has involved more than an omission to act in accordance with a constitutional imperative. In fact, whenever these aforementioned laws have been challenged at the Constitutional Court, all applications were opposed by the government. For instance, the State report cites three court decisions which had a positive impact on women, but both the *White* and *Carmichele* cases, arising from police dereliction of duty, were appealed by the government. In the third matter, *Masiya v Director of Public Prosecutions Pretoria (CC)*, the reason why the magistrate in the original trial took the unconventional step of amending the definition of rape was because Parliament had delayed for eight years in enacting appropriate legislation via the Sexual Offences Bill.

These cases, in other words, do not demonstrate that the government sought to advance women’s rights. Indeed, placed in the larger context above, they are indicative of a lack of political will at legislative and executive levels to fulfill the commitment to condemn and eliminate all discrimination against women. The end result is that we do not have a deliberate national revision agenda with clear timelines and appropriate plans of action. What we have instead is a piecemeal review and revision process that moves in ad hoc fits and starts as and when matters affecting society’s most vulnerable members come to the attention of NGOs and public interest lawyers, find their way to the Constitutional Court, and then manage to survive contestation by the government.

The second policy gap stems from and reinforces the first. No full-time South African representative has been appointed to support the Committee, which is indicative, again, of insufficient political and financial commitment to the State's obligations under CEDAW.

3.1.4.2 Inadequate Implementation

The State report does not provide adequate commentary on measures taken to ensure the enjoyment of substantive equality, but the reality is that de jure rights are not translated effectively enough into de facto experience. The reasons for this are systemic in nature and include: the prevalence of discriminatory practices among state service providers; inadequate financial, infrastructural and human resources, particularly in relation to the courts (notably the Equality Courts) and the insufficient provision of sites of service delivery in rural areas (also discussed later in detail); and lack of capacity in terms of people sensitised to, and respectful of, gender rights and equality.

3.1.4.3 Lack Of Awareness Or Knowledge

The State has not met its obligation to promote human rights by raising awareness of treaties like CEDAW. No effective advocacy campaigns have been waged by the State to empower women to know and access their rights protected under CEDAW; in particular, the communication campaigns that were conducted did not target especially vulnerable women such as those living in rural areas, where there is commonly a dearth of public communications to do with gender rights. Similarly, to turn away from the question of initiatives directed specifically at women, there have been no effective campaigns to change behaviour and attitudes in wider society by promoting knowledge of and respect for rights under CEDAW. The State report offers no evidence of the impact of its 16 Days of Activism and related campaigns; nor does it indicate any additional advocacy plans to address more effectively the tenacious stereotypes and attitudes that fuel gender inequality in South Africa.

3.1.4.4 Lack Of Accountability At All Levels Of Government

The devolution of powers from national to provincial, to local and, sometimes, by means of laws regulating tribal authorities, to community level, creates significant scope for variation in the way that laws, policies and programmes are customised, implemented, monitored and evaluated.

No effective mechanisms are in place to hold provinces, local governments and traditional leaders accountable to national CEDAW commitments and thereby ensure compliance with a common gender standard. The constitutional division of power and delegation of autonomous budgeting and related powers to the different spheres of government in respect of services essential to the economic development of women, such as water, sanitation, electricity, housing and education, makes it difficult in practice to hold the different levels accountable to a common agenda.

3.1.4.5 Monitoring And Evaluation Deficiencies

There is no monitoring by national gender machinery, or by government at a national scale, of the rate of enjoyment of and/or access to the rights protected under CEDAW. Likewise, no gendered data collection is undertaken by national statistical agencies like Statistics South Africa through the national, community and household-level surveys. The only data disaggregated specifically by gender concerns access to education and disability. With this exception, the national machinery has otherwise not been successful in engineering a framework and methodology for the annual collection of gender-related data. Civil society, on the other hand, is itself not necessary effective in its role as data collector and monitor; but in its defence, there is no common monitoring and evaluation framework of agreed targets and indicators in relation to the various rights that could guide its efforts in conjunction with those of the government. Finally, no evidence is available to indicate what impact the legislative and non-legislative interventions have had. The State report is quiet in this regard, as it is again in its analysis of the interventions' outcomes – a situation

that does not bode well for future planning to improve the current position.

3.1.4.6 Inadequate Collaboration

There is a lack of cross-sectoral collaboration, which could otherwise enable collective engagement with intersectoral discrimination against especially vulnerable women.

3.1.5 RECOMMENDATIONS

1. A national assessment must be conducted to identify all laws, practices and customs that conflict with the equality provision in the Constitution.
2. The legislature and the executive must assume full responsibility for their constitutionally mandated role of ensuring that identified offending laws be repealed or amended within an agreed timeline.
3. The national statistics agency must adapt its data collection tools and methodology to ensure that the correct type of data is collected and that all data collected are capable of disaggregation by gender.
4. The CGE must be institutionally strengthened.
5. The CGE must work with government and civil society to develop a common monitoring and evaluation framework with agreed targets, indicators and timelines to facilitate collective and shared responsibility for monitoring progress towards national goals and undertakings.
6. Mechanisms must be developed to hold all spheres of government accountable to national gender objectives, for example, through the conclusion of memoranda of understanding, performance agreements and minimum service delivery agreements, which should be linked to budget allocations.
7. Sufficient human, financial and other resources must be made available to address systemic blockages preventing de facto enjoyment of rights, especially in rural areas.
8. Effective evidence-based advocacy and communications campaigns must be developed and implemented to address attitudes, practices and stereotypes that drive all forms of discrimination and these must be endorsed at the highest level by all politicians and leaders.

3.2 ARTICLE 3: DEVELOPMENT AND ADVANCEMENT OF WOMEN

3.2.1 RELEVANT OBLIGATIONS

The State has agreed to take legislative and other measures to create enabling structural and societal conditions necessary to ensure that women can fully participate and exercise their relevant rights in the political, social, economic and cultural fields. It has also agreed to establish and strengthen effective and sufficiently resourced national gender machinery and procedures that can reach across all fields (General Recommendation 6).

3.2.2 FOCAL AREAS IN THE STATE REPORT

- a. The National Policy Framework for Women's Empowerment and Gender Equality (NPF) and the National Gender Machinery (NGM) have been established to ensure women's development and advancement.
- b. The NPF has two goals: (i.) achieving equality for women as participants, decision-makers and beneficiaries in all of the fields; (ii.) mainstreaming gender equality into the work of all national, provincial and local institutions.
- c. Gender mainstreaming is guided, overseen and monitored by the NGM, a package of structures located at various levels of State, led by the Minister in the Presidency, and reflected in Parliament in the Joint Monitoring Committee on the Improvement to the Quality of Life and Status of Women.

- d. The National Office on the Status of Women (OSW) ensures that mainstreaming and gender-responsive indicators are included in national monitoring processes.

3.2.3 CORE ISSUES

3.2.3.1 Ineffective Mainstreaming At National, Provincial And Local Levels

The NPF is not respected, enforced or funded by the key implementing agents, especially at provincial and local levels of government.

The data provided under the previous articles is indicative of the varying levels of non-compliance with NPF objectives in so far as they relate to the provision of socio-economic benefits for women living in poverty, especially the most marginalised, such as women living in rural areas.

The disregard accorded to the NPF is all the more worrisome at local-government level, where there is almost complete non-compliance with mainstreaming; this is particularly the case in local governments that serve poorer communities. Local structures have considerable power over land, water and housing, etc., resources and services that are necessary for development. It is thus critical that they be compliant with the NPF. A study conducted by the Human Sciences Research Council found that, despite intensive training and other efforts to build capacity at local level to mainstream gender in the decision-making structures and the local government Integrated Development Plans (IDPs), at local-government level, conservative local politics and attitudes to the role of women kept women out of ward councillor positions. In addition, the IDPs produced by municipalities paid scant regard to gender. Where it was addressed, this was limited and sporadic. Where it was present, it was dealt with as a side issue in which women were treated as one of the “vulnerable” groups meriting special, rather than mainstream, attention (treatment which in itself was not carried through).³³

3.2.3.2 The NGM Is An Ineffective Monitoring And Accountability Mechanism

The NGM, the body which is meant to be monitoring and ensuring compliance with the NPF at all levels of government, is ineffective at carrying out its parliamentary advisory and monitoring roles. The HSRC study observes that it is understaffed and limits its involvement to national-level interventions. At a parliamentary level it is supposed to perform its oversight role through the agency of the Joint Monitoring Committee (JMC), an entity that has delivered a poor performance as a supposed interrogator of laws impeding the full enjoyment of women’s right. A notable instance was its conduct in relation to the Traditional Leadership and Governance Framework Act, 2003, a law that entrenches patriarchal values and excludes women from participating in traditional governance. Notwithstanding the importance of so fundamental a law, its implications for women’s equality, or the fact that it invokes issues to do with conditions necessary for the enjoyment of political rights, the JMC met to discuss it only four times between 2000 and 2008. The committee minutes for this period reveal that while the JMC engaged in some monitoring in 2000-2003, the activities ceased after 2003. It produced a single report (2003), and although that made various recommendations to government departments, there is no evidence of follow-up to assess whether anyone had complied with them. In a further instance, the JMC was not present during the parliamentary drafting of the Sexual Offences Bill, despite having been invited to participate by the Justice and Constitutional Development Portfolio.

3.2.4 BARRIERS

3.2.4.1 Policy Gaps

The status of the national gender policy is problematic. The NPF is, in fact, not a formal policy but a policy framework,³⁴ one meant to guide the development of policies. But whether a policy or policy framework, it

has not been turned into a law. It is unenforceable, unfunded at implementation level within departments, and not respected by the agencies responsible for implementing its goals through mainstreaming.

3.2.4.2 Inadequate Implementation

As a consequence of the situation above, the policy is not being implemented and gender mainstreaming is not taking place effectively or consistently. In respect of the NGM, it is not effective at parliamentary, national, provincial or local level. This is due to a lack of political commitment as well as insufficient capacity, resources and funding; most importantly, given the policy's non-legal status, its ineffectiveness is due to its inability to hold others accountable.

3.2.4.3 Lack Of Accountability

Because the policy's obligations are not enforceable, there is no legal ground on which agencies can be held accountable to them. In other words, the problematic status of the policy means that, contrary to what Article 3 requires, it does not constitute an effective framework for effective national machinery.

3.2.5 RECOMMENDATIONS

1. The NPF must be reviewed and become a legally enforceable law so that role players can be held accountable for effective mainstreaming of gender at all levels of government.
2. The NGM must be increased in terms of its capacity and resources and must effectively fulfil its mandate.
3. The NPF must find traction at provincial and local level.

3.3 ARTICLE 4: ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN

3.3.1 RELEVANT OBLIGATIONS

The State has agreed to adopt temporary special legislative and other measures to accelerate de facto equality between men and women. In addition, to this purpose it has agreed to take special measures giving preference to especially vulnerable women such as rural women (Article 14) and those with disabilities (General Recommendation No. 18). While their focus falls on substantive rights, these undertakings are underpinned by other implied commitments, ones that apply across CEDAW and which need to be brought into relief as a requirement that there be an appropriate enabling environment for the substantive enjoyment of the rights, particularly so in the case of especially vulnerable women.

3.3.2 FOCAL AREAS IN THE STATE REPORT

- a. The State report cites the laws enumerated under Articles 1 and 2 as evidence of special measures to accelerate de facto equality between men and women.
- b. Focussing on the workplace and progress that has been made, the report notes that while advances were made in public sector employment of women in management positions, the same does not hold true of the private sector.
- c. The report refers to a debate about more aggressive interventions by the Commission for Employment Equity (CEE) to address slow progress in the private sector and ensure the appointment of more women, especially black women.

3.3.3 CORE ISSUES

3.3.3.1 The Race-Class Nexus Disadvantages Black Women

Race and class intersect in the employment sector to the ongoing disadvantage of black women. Black women remain particularly vulnerable; they constitute only 14% of the formally employed compared to 43% for white men, 34% for white women and 21% for black men. Black women also have the lowest level

of earnings.³⁵ The unemployment rate amongst rural women is 53% as compared to 37% amongst rural men and. In addition, the unemployment rate amongst rural African women amounts to 56% as compared to 21% amongst rural men and only 5% amongst rural white women.³⁶

In addition, African women are disproportionately and inadequately represented in private sector management positions, compared to white men and women as well as black men. The CEE concludes that white males and females dominate the upper echelons of the private sector, while Africans and coloureds (women) languish at the bottom.³⁷ In 2007, 68% of top management in companies was dominated by whites, white males making up 58% and white women, 10%. Nineteen percent were black, with only 6% being women.³⁸

The State report acknowledges to an extent the class and racial prejudice that results in discrimination of black women. By implication, it thus acknowledges the failure of current policies to comply with Article 4, but nevertheless provides no indication of what steps it is taking to address this inequality.

3.3.3.2 Women With Disabilities Are Overlooked By The State

In 2008 there were 788,000 women with disabilities in South Africa, making up 3.1% of the total population.³⁹ The State report does not, in contravention of Recommendation 18, highlight the plight of women with disabilities and provide information on their access to employment and the other socio-economic rights listed in Recommendation 18. Likewise, it does not provide information about special measures that have been taken to address equality for this vulnerable group.

Disabled women are marginalised in the workforce. The Commission for Employment Equity's 2008 Annual Report reveals that disabled people do not make up a statistically significant number in the workplace. They comprise 0.6% of the government workforce and 0.7% of the private sector workforce.⁴⁰

In addition, many children with disabilities of school-going age are not in school despite the fact that there is national policy dedicated to ensuring the inclusion of children with disabilities in education.⁴¹ It is estimated that, on average, approximately 22.5% (38,000) of children with disabilities between the ages of 7 and 15 were out of school in 2007.⁴² The source of this data, the National Community Survey conducted by Statistics South Africa, does not disaggregate the number by gender.

3.3.3.3 No Housing Programme For Women With Special Needs Infringes A Number Of Rights

The United Nations' Special Rapporteur on housing found in 2006 that there is a critical lack of housing and support for people with special needs, especially women with disabilities, women in indigenous communities, migrant women, women with HIV and AIDS, children and the elderly.⁴³ (The issue of housing for all women is discussed in more detail under Article 13.) This lack is marked in the face of the National Housing Policy's commitments to provide housing to 30% of women-headed households, to allocate 5% of houses to special needs beneficiaries, and the call in the Housing Act, 1997, for housing programmes to prioritise the special housing needs of people with disabilities as well as those of marginalised women and other groups disadvantaged by unfair discrimination.

The Special Rapporteur found that the lack of affordable housing, the lack of timely access to public housing, and the inadequate provision of long-term safe housing, especially in rural areas, in the context of domestic violence, means that women are forced to remain in or return to situations of domestic violence and thus continue to live in inadequate housing where they risk the safety and health of themselves and their children. The failure to provide adequate housing also therefore transgresses the right to be free from violence.

In addition, women in rural areas are deprived of their tenure due to customary approaches to security of tenure and land ownership.

3.3.4 BARRIERS

3.3.4.1 Policy Gaps

While special measures exist to promote equality of women in the workplace, there is insufficient legal promotion and compulsion of the appointment of especially vulnerable women such as black women and women with disabilities.

Despite the national policy statements and objectives, there are no enforceable laws in place compelling the preferred provision of housing to especially disadvantaged women such as women with disabilities, women experiencing domestic violence, and others.

There is a Social Housing Bill that has been developed [B29 – 2007] which seeks to provide affordable rental housing for poor people. It prioritises the housing needs of women and vulnerable groups but fails to mention specifically the housing needs of women in abusive relationships. The Tshwaranang Legal Advice centre argues that the unique and urgent needs of such women require focussed attention in housing laws such as the Social Housing Bill, and points out that various studies show that many women (28% in one study) experience physical violence in intimate relationships in their homes.⁴⁴

3.3.4.2 Inadequate Implementation

Whilst South Africa has a policy⁴⁵ dedicated to promoting the enrolment and retention of learners with disabilities, poor budgeting, planning and support results in poor implementation of the policy. Children with disabilities require specialised services and learning support. The lack of services and support is especially problematic in rural areas, where special-needs schools are scarce, facilities inadequate, and the number of trained teachers is insufficient.⁴⁶ Physical access is a problem, as the majority of public schools (97%) have no paved access from the school gate to the buildings, no ramps into buildings, and no toilets for people with disabilities.⁴⁷

There is a marked disjuncture between, on the one hand, policy recognition of women's vulnerabilities and right to housing and, on the other, implementation by the State of national programmes to execute the legal and policy framework, including supportive initiatives by civil society groups.⁴⁸

3.3.4.3 Inadequate Coordination

The Special Rapporteur noted that there is a critical lack of coordinated housing and support for people with particular housing requirements. In addition, there is inadequate consultation with civil society in planning and responding to the housing needs of vulnerable groups.

3.3.5 RECOMMENDATIONS

1. Develop a specific and dedicated housing policy governing the provision of special housing needs.
2. More specifically, there should be a programme that specifically addresses the immediate and longer-term housing needs of women exiting violent domestic relationships.
3. Programmes must be developed to bridge the gap between, on the one hand, policy recognition of women's rights to adequate housing, and, on the other, the implementation of it.
4. There must be a commitment to, and actioning of, adequate consultation with, and participation of, civil society and all levels of government in the planning of the provision of housing to vulnerable groups in terms of housing programmes.

5. Sufficient resources must be allocated by the State to honour obligations and undertaking articulated at policy level.
6. Employment equity policies and laws must be strengthened so as to ensure that more black women and women with disabilities are employed at all levels of employment.

3.4 ARTICLE 5: SEX ROLES AND STEREOTYPING

3.4.1 RELEVANT OBLIGATIONS

The State has agreed to take legislative and other measures to: modify social and cultural behaviour patterns which are based on the inferiority of women or stereotyped notions about the roles of men and women; and educate families about the common responsibility of men and women in the upbringing and development of their children.

3.4.2 FOCAL AREAS IN THE STATE REPORT

- a. Laws have been enacted to promote changes in behaviour and confront stereotyping.
- b. These legal changes were spearheaded by challenges to underlying customary laws and practices that perpetuate stereotypes and discrimination.
- c. Education and advocacy programmes have been conducted to modify the stereotyped roles of men and women.
- d. Codes of conduct address gender concerns in the media.

3.4.3 CORE ISSUES

3.4.3.1 Legal Transformation Has Not Been Driven By The State

The State report correctly highlights customary law as a field where numerous important court cases have engaged with the rights of women under customary systems, but neglects to mention that almost all of the cases were brought by individuals or civil society, and that the State, specifically its Chapter 9 institutions, has not been proactive in addressing the problems at issue. Legal transformation has been driven by civil society in its use of the courts; by contrast, the State has been unenthusiastic to repeal and outlaw laws or acts that entrench women's inferiority and perpetuate discriminatory behaviour (as evidenced by the State's opposition to all of the cases brought by civil society).

3.4.3.2 Stereotypes Continue To Legitimate Discrimination

Women remain subject to discriminatory behaviours condoned by customary, cultural and religious beliefs that subordinate and reify women. The State report list three cases in which the supposedly inappropriate attire worn by women led to violent retribution, yet they are but instances of a far more pervasive problem, namely that discriminatory behaviour premised on stereotypes is widespread in communities, families, at the service-delivery level, and among key national and provincial leaders. It is scarcely reassuring that, in the case of the woman attacked at the Noord Street taxi rank, none of the taxi drivers was convicted even though several were easily identifiable. Community leaders declared their intention to ignore the Equality Court ruling against the ban on trousers for women, and while these cases resulted in high levels of civic activism (as the State report points out), the response from government structures was almost universally poor.

Thanks to stereotyped notions of femininity, women's choices, for instance in relation to attire, put them at risk of dangerous and discriminatory behaviour. An indication of how prevalent these notions are in South Africa is given in the fact that, during his famous rape trial in 2005-2006, Jacob Zuma, today the country's president, raised the defence that his accuser had worn a "kanga"⁴⁹ and thereby expressed her willingness to have sex with him.

3.4.3.3 State Media Campaigns Do Not Effectively Address Stereotyping

The State report says that the government has played a proactive role in disseminating gender-related information to a mass audience. It is not disputed that large sums of money have been invested in these media campaigns, but the majority of them have dealt with human rights issues with little linkage to sex stereotypes and harmful cultural practices. Furthermore, the campaign objectives, apart from being too broad, often have been conceptualised at a level unsuited to communities at grassroots level. There is anecdotal evidence to suggest that, as a result of this, the campaigns were ineffective. The State offers no evidence of impact to dispel this anecdotal evidence.

3.4.3.4 Women Are Underrepresented In And By The Media

In addition to the proactive role discussed above, the State indicates that the government plays a protectionist role by prohibiting media that perpetuate stereotypes and discriminatory gender depictions. The State report's account of efforts that have been made to monitor stereotypes in print, visual and hypermedia rightly emphasises the scale of the problem, but overstates the remedial impact of government legislation, given that problematic stereotypes of women still abound across all media forms. This is notably so in advertising, a field where little is done to enforce legislative regulation. However, numerous gender deficits have also been flagged in the South African informational-news media by a SADC baseline report. Within the media profession, it found women, especially black women, to be underrepresented; they are likewise underrepresented in media content itself and account for only 19% of all known news sources, with these deficiencies growing more pronounced in the case of women politicians, old women and black women.⁵⁰

The State suggests that women take the initiative in media monitoring, a proposal that is not without merit but hardly a substitute for action by institutions of State, specifically those with a gender focus. Moreover, the report implies that the State's protectionist role over women's rights is circumscribed by the protected speech provisions of the Constitution. In our view this is a false dichotomy, given that these provisions do not legitimise hate speech or discrimination.

3.4.3.5 Women Carry Disproportionate Parenting Burdens

Almost half of the men in South Africa are absent fathers who, by virtue of their physical absence, cannot and do not share full parenting responsibilities with the mothers of their children. The State report is silent on this phenomenon and the steps, if any, by the government to promote the recognition and assumption of the parenting roles and responsibilities of fathers.

A study by the Human Sciences Research Council sought to identify how many fathers there are in the country and how many live with their children, but could not establish the first number because national household surveys do not ask men about their biological reproduction.⁵¹ However, using data between 1993 and 2002, it was able to find that 57% of children under the age of 15 do not live with their fathers. Only 11.5% do not do so because he is deceased; 45.8% of children's fathers are alive, but absent. The racial and rural bias is strong. Less than 40% of African children lived with their father, compared to almost 90% of white children. African children in rural areas are the worst affected: 55% of them do not live with their fathers, and a further 12.5% of children's fathers have died.

This means that the rights of African rural children and their female caregivers to the joint assumption of parenting roles and responsibilities are at greater risk than those of other children and caregivers. It also potentially impacts on the rights of women to engage in paid employment and public life as well as other rights, least of which is the right to co-financial support for their children. A small-scale study on absent fathers in KwaZulu-Natal suggests that the majority of absent fathers do not only fail to provide material or

emotional support to their children, but do not see the benefit of forming permanent relationships with the mothers of their children.⁵²

3.4.2 BARRIERS

3.4.2.1 Policy Gaps

The legislature and executive have not reviewed, revised, repealed, or amended a substantial number of customary and religious laws that discriminate against women.

No holistic policy or programme exists to address absent fathers and the resultant rights transgressions of women and their children.

There are insufficient laws condemning, prohibiting and sanctioning behaviour that is discriminatory and damaging to women. The implied condonation of this behaviour through actions and statements made by senior leaders, politicians and government officials, together with the government's reluctance to repeal and amend discriminatory laws and customs, leads to the conclusion that there is apparent tacit approval of discriminatory customary laws and hence no commitment to meet the State's obligations. If this so, it is tantamount to official sanction of behaviour based on stereotypes. The situation certainly does not qualify as condemnation, and it is a key barrier to advocacy efforts seeking to modify behaviour.

3.4.2.2 Inadequate Implementation

Discriminatory conduct based on gender stereotypes remains widespread not only in communities and families, but at service-delivery level and among community authorities as well as national and provincial leaders.

Through aggregate underrepresentation of women in professional structures and the preponderance of men's views and voices in communicative output, the media are not playing a sufficiently supportive role in addressing stereotypes. Regarding the State's protectionist role in relation to women's rights and the mass media, there is urgent need for an understanding to be developed about where the lines are located between freedom of expression and hate speech and/or discriminatory speech.

3.4.2.3 Monitoring & Evaluation And Planning Deficiencies

National initiatives like the 16 Days of Activism campaign are not monitored and evaluated for impact. As such, the planning of awareness-raising and advocacy campaigns takes place in an information vacuum rather than being calibrated against research into what works and what does not in achieving the objectives of behavioural and attitudinal change.

3.4.3 RECOMMENDATIONS

1. A comprehensive plan of action must be developed to address stereotyping. This must be premised on a strong statement by the government in the form of abolishing all discriminatory cultural practices customary laws and traditions.
2. Government must evaluate the impact of its advocacy campaigns and develop revised plans based on evidence of what works and what does not.

3.5 ARTICLE 6: SUPPRESSION OF TRAFFICKING AND EXPLOITATION OF WOMEN

3.5.1 RELEVANT OBLIGATIONS

The State has agreed to take all appropriate measures, including legislation to suppress all forms of traffic in women and exploitation or prostitution of women.

3.5.2 FOCAL AREAS IN THE STATE REPORT

- a. South Africa has strengthened its measures to combat trafficking in women and children.
- b. There is a law reform process under way with a view to developing a comprehensive legislative and administrative response to the problem of trafficking, including the development of a Trafficking in Persons Bill.
- c. There is insufficient data on the full extent of trafficking in South Africa.
- d. There are two advocacy efforts aimed at decriminalising sex work.
- e. The criminalisation of sex work makes sex workers vulnerable to violence.

3.5.3 CORE ISSUES

3.5.3.1 The Extent Of Human Trafficking Is Unknown

There are simply no reliable data as to the extent of trafficking in South Africa. The patchy statistics that are available – such as the fact that the International Organisation in Migration provided assistance to 238 victims of trafficking in southern Africa over a four-year period between 2004 and 2008,⁵³ or the fact that in a study in Cape Town, only 8 out of 164 sex workers interviewed experienced trafficking-like practices in the past⁵⁴ – raises questions about the scale of the problem. The indications are that the study's conclusion (that in Cape Town there is little evidence of trafficking for the purposes of prostitution) may be applicable to the country as a whole. Until such time as the scale of the problem is understood, responses are at risk of being inappropriate to address the issue with sufficient focus.

3.5.3.2 Insufficient Support Services For Survivors Of Trafficking

There is insufficient support for victims of trafficking in the form of protective and supportive reception by police when survivors of trafficking report a crime. In addition, there is a lack of safe houses for survivors of trafficking. Currently, the onus has been placed on non-profit organisations to provide services to survivors of trafficking, with little or no state funding being made available for this purpose.

3.5.3.3 The Rights Of Sex Workers Are Infringed

Sex workers suffer many rights abuses. The Sex Workers' Education and Advocacy Taskforce's (SWEAT)⁵⁵ has conducted research which shows that sex workers are unable to access health care, sexual and reproductive health services, and are the victims of police violence, unlawful arrests and extortion. SWEAT has documented numerous incidents of police harassment and the violation of sex workers rights: "*Sex workers are often beaten by the police and in some cases left permanently injured by the assaults.*"

3.5.4. BARRIERS

3.5.4.1 Trafficking Legislation Is Premised On Unfounded Assumptions

In 2000, South Africa created a task team to develop trafficking legislation. Some nine years later the Trafficking in Persons Bill was released. In a submission made by the Women's Legal Centre on the Bill, the weakness of legislative and other responses developed in an information vacuum are pointed out.⁵⁶ The submission states that Chapter 2 of the Bill, which deals specifically with the issue of public awareness, is premised on inaccurate assumptions that could result in ineffective and even counterproductive responses. The submission stresses that:

there is currently insufficient evidence about who is particularly vulnerable or at risk of becoming a victim of trafficking. While the common-sense notion is that poor, rural women and children may be most at risk, international and national evidence does not support this notion. Indeed, we should be very cautious about providing "awareness raising" in the absence of evidence about exactly who is vulnerable and what they need to know to protect themselves against abuse. For example, pamphlets or materials that merely warn rural girls and women to be aware of job

*opportunities offered in the cities could have the effect of severely constraining their options for work-seeking. There are examples of misleading advertising leading to trafficking, however there are few such cases in South Africa that we are aware of, and we ought to exercise caution in creating fear unnecessarily, especially if the result of the fear is that women's life chances are curtailed.*⁵⁷

At the same time, the Bill has not addressed factors that are known to the legislature to contribute to the practice of trafficking in South Africa, such as corrupt border officials.

3.5.4.2 The Criminalisation Of Sex Work Foments Abuse Of Their Rights

The current legal framework, in which both the sex worker and the client commit criminal offences, creates an environment in which the rights of sex workers, including the right not to be discriminated against, are often violated.

Sex workers' rights to equality are infringed by the criminalisation of the sex worker but not of the client. This was acknowledged by the minority Constitutional Court judgment in *S v Jordan (2002) 6 SA 642 (CC)*. The minority judges stated that "it would be unconstitutional to penalize only one party to the act of prostitution". The majority of the Court did, however, find that the legislature must develop an appropriate legal framework to ensure that the rights of sex workers are protected.

The State, unfortunately, missed the opportunity to reform the law holistically in line with the Constitution, and instead inserted a section into the Sexual Offences Amendment Act which also criminalises the actions of clients of adult sex workers. Apart from the fact that it requires police entrapment to be enforced, the effect of this was to drive sex workers and their clients further underground, exposing sex workers to more violations; a further effect was to provide impetus for the State to increase arrests without prosecutions of sex workers. As the minority in *Jordan* acknowledged, the criminalisation of sex work entrenches stereotypes that undermine the equality of women and stigmatise the sex worker.

3.5.4 RECOMMENDATIONS

1. Time frames must be established for the completion of the law reform processes relating to trafficking and sex workers.
2. Train health-care workers, police, border control officials, magistrates and judges on the rights of survivors of trafficking and sex workers, on how to deal with survivors of trafficking, and on the law around trafficking crimes.
3. Train border control on how to identify a victim of trafficking.
4. Develop a public advocacy campaign premised on "zero tolerance" of corrupt border officials, police officials and home affairs officials.
5. Provide sufficient resources for enough safe houses for survivors of trafficking.
6. The relevant Ministries should issue a directive that sex workers should not be arrested for purposes of harassment.

PART 2: ARTICLES 7-9**4.1 ARTICLE 7: POLITICAL AND PUBLIC LIFE****4.1.1 RELEVANT OBLIGATIONS**

The State has agreed, in terms of Article 7, to take steps to eliminate discrimination against and promote women's participation in political and public life, to implement them and monitor their effectiveness (Recommendation 45). It has undertaken to ensure that meaningful participation takes place at all decision-making at all levels (Comment 17). In South Africa this would mean at international, national, provincial, district, local, and community (traditional) levels.

In addition, the State has agreed to ensure de facto enjoyment of the right by identifying and addressing the social, economic and cultural barriers that stop women from taking up the de jure opportunities created for participation. More specifically, the State has agreed to address the barriers created by tradition, cultural and religious beliefs and practices which confine women to the private sphere; it has also agreed to address barriers created by the lack of support services and men's failure to assume domestic and child-caring responsibilities (Comments 8-12), along with barriers to equality such as illiteracy (General Recommendation 45(c)).

4.1.2 FOCAL AREAS IN THE STATE REPORT

- a. The state has committed to and realised the target of 30% women in political and decision-making positions.
- b. The Local Government: Municipal Structures Act, 1998, incorporates a 50% quota of women leaders. The report recognises that there has not been compliance with the quotas and that discrimination still occurs at this level.
- c. The State implies that its obligations to ensure gender equity at traditional and/or community leadership level were fulfilled by the enactment of the Traditional Leadership and Governance Framework Amendment Act.

4.1.3 CORE ISSUES**4.1.3.1 Insufficient Women Across All Political Parties**

The State report cites important gains in women's representation in party-political structures as well as national and provincial government. However, they relate primarily to achievements within the ruling African National Congress and do not reflect the noticeably different situation in other political parties (see Table 2). The State's responsibility to level the playing fields requires that all parties be brought into compliance with legislative provisions. As matters stand, there are insufficient women politicians in all political parties and in leadership positions. The State is able to report only on ruling-party commitments; the totality of the State comprises the ruling party as well as the others. It is to this that the report should speak.

Over-reliance on the Party Policy								
Parliamentarians					Local government councillors			
Total MPs	Women MPs	Women MPs per party	% women MPs		Total	Women	Women cllrs per party	% women cllrs

ANC	297	106	35.7%	82.2%	5,252	2,400	46%	78%
Opposition parties	103	23	22.3%	17.8%	2,446	669	27%	22%
Total	400	129	32.3%		7,698	3,069	40%	

Table 2: Over-reliance on the Party Policy

4.1.3.2 Marginalisation In Local Government And Traditional Leadership Level

The State report refers to a CGE study-finding that at local government women councillors continued to be marginalised by male colleagues in spite of their increased representation. While the finding is mentioned in order to acknowledge an ongoing challenge, the report does not analyse the reasons for it or specify any measures the State has taken in response. The effect is to pathologise the problem as an ineluctable consequence of individual male behaviour rather than to frame it as an issue of institutional transformation.

In this respect, a larger absence is discernible in the report, namely that it does not address compliance and non-compliance with local government legislation such as the Municipal Structures Act, which advocates the 50/50 principle. It must be noted that the SADC Protocol on Gender and Development, a derivative of CEDAW, calls for 50% equal representation by 2015. Its Article 5 mandates SADC states to use affirmative action legislation for this purpose, with Articles 12 and 13 referring specifically to governance. Seven years remain before the target date, with two elections to be held in that period; given a growth rate of 2% per election (see Table 3), it is reasonable to predict that the targets will not be met unless the pace of reform is intensified.

The Traditional Leadership and Governance Framework Act, 2003 entrenches patriarchal values and excludes women from participating in traditional governance. It does this by entrenching the power and status of the apartheid-era tribal authorities to select 60% of the members of the traditional council (a key traditional governance structure). The fact is that very few women are selected because of traditional views women's appropriate place is the domestic rather than political arena.

Position of women in political decision-making in South Africa in 2008

Area of decision making	Total	Women	% women	Increase required to reach 50% target
National Assembly	400	129	32.3%	17.8%
NCOP	54	19	35.2%	14.8%
Combined	454	148	32.6%	17.4%
Cabinet	30	12	40.0%	10.0%
Deputy Ministers	19	8	42.1%	7.9%
Local Government	9,126	3,620	39.7%	10.3%

Table 3: Position of women in political decision-making

4.1.3.3 Women Are Inadequately Represented In The Judiciary

Women are not adequately represented in the judiciary, the third branch of government. In October 2008 there were 201 judges permanently appointed in South Africa. Ninety-two were white, 13 of whom were women. There were 74 African judges, 15 of whom were women. Out of the 16 coloured judges, four were women, and there were 19 Indian judges, eight of whom were women; broken into gender, there were 161 male judges and only 40 women judges.⁵⁸

While the report includes a discussion of the judiciary and observes that it continues to be largely male in composition even as it becomes more racially diverse, the reasons for this shortcoming are not interrogated, nor are substantive remedies mentioned over and above support for a local chapter of the International Association of Women Judges.

4.1.3.4 Representation Is Conflated With Participation

The State report mentions gains in representation as evidence of the State's commitment to women's participation in public and political life. While these assertions are attended by significant lacunae, a further concern relates to their implied underpinning premise, which is that numerical representation can be read in and of itself as an indicator of equitable participation by women. By adopting a narrowly quantitative understanding of "participation", the report precludes from consideration qualitative issues such as access and outcomes linked to women's representation, as a result limiting the State's account of women in public life to being at best formalistic.

4.1.4 BARRIERS

4.1.4.1 Policy Gaps

The government does not require or compel all political parties to meet the stated quotas. The legislative frameworks in place to ensure representation of women at local level are not sufficient. They are a key illustration of a failure to support the creation of legal opportunities with institutional support to translate de jure into de fact enjoyment of the right.

4.1.4.2 Inadequate Implementation

The State report recognise the marginalisation of women in local government, but no analysis is offered or solutions proposed. The situation, in fact, points to deficiencies in the mechanisms for holding local and other levels of government levels accountable to national commitments and policies; more broadly, it speaks to failure of institutional transformation and accountability moving from national down to local levels of government.

4.1.4.3 Monitoring-Evaluation Deficiencies

The government does not monitor performance of gender equity in all political parties. No evaluation has been made of the impact of legislation to improve women's representation and participation in traditional and community-level decision-making and leadership.

4.1.5 RECOMMENDATIONS

1. Strengthen the regulatory and monitoring framework in respect of gender equality within all political parties.
2. Strengthen the obligation to include women at all levels of government and, at the same time, strengthen the receptiveness of the different levels of government to women's participation. The legal opportunities that are created must be accompanied by supportive initiatives designed to bring about institutional transformation. For example: supporting the planning and development of election lists; developing codes of conduct for leaders at all levels of government; and training.
3. Introduce and enforce special equity measure to increase the number of women in the judiciary.

5 PART 3: ARTICLES 10 - 14

5.1 ARTICLE 10: EDUCATION

5.1.1 RELEVANT OBLIGATIONS

The State has agreed to to eliminate discrimination in education between men and women, especially in relation to: access to quality schooling and educational infrastructure; the elimination of gender stereotypes in school textbooks, programmes and teaching methods; access to financial support; and the reduction of female drop-out rates as well as providing support programmes for girls who drop out early.

5.1.2 FOCAL AREAS IN THE STATE REPORT

- a. Parity has been achieved in access to education, evidenced by the high enrolment rates.
- b. The drop-out rate for girls is lower than for boys.
- c. Teenage pregnancies are a common cause of drop-out, but the Schools Act is addressing the situation.
- d. The government has provided schools and infrastructure, such as laboratories and computers, to rural communities. The delivery of basic services at schools is prioritised in rural schools.
- e. The report acknowledges that there are socio-economic barriers relating to school fees, transport and the like, and indicates that policies are in place to remedy them.
- f. Various policies, laws and programmes serve to maintain safety in schools.
- g. School Governing Bodies are responsible for developing school-level policies.

5.1.3 CORE ISSUES

5.1.3.1 Meaningful Access To Education Is Problematic

While the State report emphasises the high primary school enrolment rates, this does not accurately reflect the status of education in South Africa, which remains physically, financially and meaningfully inaccessible to children living in poverty.

- While the enrolment rate for children of compulsory school going age is relatively high (estimated at 95.4% for children in grades 1-9), there are still at least 408,000 children (4.6%) aged 7-15 years that are not attending school.⁵⁹
- Fourteen percent of primary-school-age children are not enrolled in the appropriate education level.⁶⁰
- At secondary level the number of children out of school escalates significantly. It is estimated that 30% of boys and 25% of girls from the typical age cohort for secondary education are not enrolled at all.⁶¹
- 22.5% of children with a disability are out of school.⁶²
- The quality of education and resultant educational outcomes in public schools is poor. Literacy and numeracy rates in public schools are very low. For example, in 2007 the average scores amongst children in grade 3 for literacy skills were 36% and 35% for numeracy skills.⁶³

5.1.3.2 School Costs Remain A Barrier

Despite the State's introduction of "no fee" schools and a strengthened school fee exemption policy, the most consistent barrier to education remains lack of money for fees. Among the poor, single mothers raise most children.⁶⁴ Ultimately, therefore, the burden rests on poor women.

Whilst we acknowledge that the new fee policies have improved access to education for poor children by reducing the fee burden, it has not gone far enough. In 2008, 7.7% of learners attending an education institution reported that high school fees remained a problem. 25.7% of learners aged 7-24 were not attending an educational institution in 2008, and 31.7% of them cited lack of money for fees as the main reason; 170,000 girls between the ages of 13 and 19 did not attend school because of cost related issues.⁶⁵ In addition, even if children do not have to pay school fees, the costs of uniforms, stationery, books and transport pose significant barriers to poor children in South Africa. The South African Human Rights Commission in its 2006 public hearings on the right to basic education found that transport costs are in fact a greater burden for many parents (especially poor single women) than schools fees.⁶⁶

5.1.3.3 Inadequate Facilities At Schools

5.4% of learners attending an education institution in 2008 reported bad facilities as a barrier to learning.⁶⁷ The quality of infrastructure and learning resources and sufficiency of teaching staff in schools, especially those providing education to poor and/or rural communities, is problematic.

For example, only 7.3% of public schools have libraries that are stocked with books and other materials; 13.5% have library space, but no books, and the remaining 79.3% have no library facilities at all. A similar deficit applies in the case of secondary school laboratories. Only 11.6% of public secondary schools have stocked laboratories and 60.2% have no labs at all. More than two thirds (67.9%) of South Africa's public ordinary schools have no computers. At a more basic level, many schools are hampered by insufficient desks and chairs for both learners and educators.⁶⁸

Large class sizes and overcrowding are particularly problematic in rural areas. A survey of schools in a selection of rural districts in Limpopo, KwaZulu-Natal and the Eastern Cape revealed that a typical foundation phase (grades 1-3) class accommodated more than 45 learners in a classroom, with an average of 62 children per classroom in the rural sites in KwaZulu-Natal – far in excess of the national 40:1 ratio.⁶⁹

5.1.3.4 Family Responsibilities Of Girls Remain An Educational Risk Factor

Whilst enrolment rates are high and show little discrimination between girls and boys, attendance and drop-out rates are a different story. The attendance of girls living in homes affected by HIV and AIDS is affected more severely than boys. A study by the Kaiser Family Foundation found that almost 10% of girls in homes affected by HIV and AIDS were out of school, compared to 5% of boys in similar circumstances.⁷⁰ In addition, domestic chores like fetching fuel and water and caring for siblings (the traditional domain of the girl child in rural areas), have a negative impact on their educational attainment.⁷¹ In 2008, 48,000 girls between the ages of 13 and 19 did not attend school because they had to work.⁷²

So, while the State's report's finding that the school drop-out rate is lower for girls than boys may be correct, it overlooks the fact that girls in especially vulnerable households (those where a household member is ill or where a primary caregiver has died as a result of HIV/AIDS) are at great risk of dropping out or not attending and performing at school.

5.1.3.5 Poverty And Poor Education Increase The Risk Of Early Pregnancy

There has been a recorded increase in early pregnancies amongst school-aged girls between 2004 and 2008. In 2008, 66,000 girls dropped out of school due to pregnancy.⁷³ The rate of pregnancy is linked to income inequalities; there are higher rates in poorly resourced schools and those in poor neighbourhoods, and, likewise, higher rates in more rural provinces such as the Eastern Cape, KwaZulu Natal and Limpopo.⁷⁴

The relationship between pregnancy, poverty and dropping out from school is a complex one. Pregnancy is often not the cause of a girl dropping out but its effect, raising the concern that the risk of early pregnancy

is higher in girls that are out of school. Other factors increasing the risk are poverty and the absence of one of the parents, including the father.⁷⁵

The State's reponse has been the enactment of guidelines for schools called the Measures for the Prevention and Management of Learner Pregnancy, 2007. This document encourages schools to readmit learners to school after they have become pregnant and delivered their baby. The fact of the matter, however, is that only about one third of girls return to school because of uneven application of the policy by schools.⁷⁶

5.1.3.6 Girls Are At Risk Of School Violence And Harrassment

Girls in South Africa are not safe at school and in many instances are at risk of violence and abuse by teachers. Incidents of rape, along with the attendant vulnerability to HIV infection, and interruptions of education are growing concerns in South Africa and continue to mar girls' access to adequate education. Human Rights Watch found that, "[o]n a daily basis, in schools across the nation girls of every race and economic class encountered sexual violence and harassment at schools that impeded the realisation of the right to education". The study said that one reason for the reluctance to report incidents of sexual violence to the schools was that school authorities took inappropriate measures, or failed completely, to address the issue of sexual abuse.

5.1.3.7 Sgbs Risk Perpetuating Poverty And Discrimination

School governance structures for schools in vulnerable areas are often poorly equipped to implement gender and anti-discrimination policies at school level. The key school management structure is the School Governing Body (SGB). It is the designated body that has to develop school-based codes of good practice and school-level policies prohibiting discrimination, addressing early pregnancies, deciding whether to distribute condoms in school, and regulating the implementation of the fee-related policy. Since these bodies are drawn from the communities which the schools serve, an SGB located in a particularly impoverished community with low levels of literacy and professional skill is likely to have a pronounced capacity deficit, a deficit all the more critical in the context of a marginalised school requiring expert solutions for complex problems. The result is a perpetuation of poverty through the SGB.

A further problem is that attitudes, customs and practices prevailing in the community are, via the SGBs, then brought to bear on the development of the policies; it is likely, therefore, that those policies could be unprogressive or discriminatory in nature. For example, there is evidence of school policies outlawing full school-fee exemptions, an action which is prohibited by law. Further examples are the majority of SGBs that prohibit the distribution of condoms in schools despite having the authority to make a different decision.

5.1.3.8 Fewer Women Over The Age Of 20 Years Have A Formal Education

While we have achieved parity in primary school enrolment rates, education remains marred by gender inequality in more pervasive ways. There were, in 2008, considerable gender differences between the numbers of men (7,0%) and women (10,3%) over the age of 20 years with no formal education.⁷⁷

5.1.4 BARRIERS

5.1.4.1 Policy Gaps

The School Fee Policy Is Flawed

The primary concern is that, contrary to Goal 19 of the United Nation's Millenium Development Goals and the Education For All goals, basic education is not free for all children in South Africa.

The no-fee policy as it stands covers only certain schools; it does not cover all poor learners. First, many schools that serve a significant percentage of such learners fall outside the parameters used to capture the “no fee” schools as a result of an inappropriate targeting mechanism which uses geography, rather than the school’s poverty demographics, as the key criterion for this designation.

Theoretically, poor children who attend fee paying schools are entitled to a school fee exemption. However, the reality is that many do not access the exemption because of the inadequacy of the exemption policy. The fee-exemption policy does not automatically make schooling more affordable, for the primary reason that the policy is not funded by the government. Individual schools are required to exempt qualifying learners from paying fees and recoup the costs themselves from other sources. This has worked to the detriment of the schools, most notably the poorer schools with access to fewer external resources, with many of them facing imminent bankruptcy due to a massive resource gap.⁷⁸

The responsibility for addressing this gap is passed downwards from top to bottom, from the national Department of Education to provincial education departments, and from there to district level. Ultimately, most of the burden rests on parents and caregivers.

The cumulative effect of this has been to contribute to the perpetuation of poverty-cycle patterns and educational outcomes between rich and poor children, between wealthy and less wealthy provinces, and between urban and rural children. It has, moreover, perpetuated South Africa’s historical pattern of education deprivation among poor communities.

No Policy Providing For Transport And Other Related Costs

Policy and legislative gaps hamper adequately provisioning for cost and distance barriers. Plainly put, there is no national transport policy. Some of the provinces have a transport policy, but these are not consistent or standardised; many of them are inadequately funded and poorly managed.

No Legally Enforceable Obligation On Schools To Support Learners With Domestic Responsibilities

There is a significant policy gap when it comes to addressing the barrier posed by excessive domestic responsibilities or having to work to supplement the family income.

Even though the Department of Education (DoE) has endorsed the Department of Labour’s Child Labour Programme of Action (CLPA), this programme has not progressed into a law, and the undertakings made in terms thereof are unenforceable and remain unimplemented. There is very little to no evidence of: (1) the promotion of equal sharing of household work between boys and girls in the Life Orientation curriculum; (2) the provision of child-care facilities in areas where children are looking after younger siblings; (3) assistance to the DSD to identify cases of child labour impacting on schooling; (4) participation in national public awareness campaigns on child labour; (5) the introduction of material specifically dealing with the matter in teacher training material; (6) identification of children who are frequently absent and assistance to have them to return to school; (7) inclusion of child labour indicators into existing information management systems to help identify vulnerable groups; and (8) reporting obvious work-related injuries to labour inspectors – as required of the DoE by CLPA.

No Enforceable Obligation On Schools To Improve Infrastructure

In terms of school buildings, infrastructure and basic services, no compulsion weighs on schools to provide basic levels of infrastructure and services in terms of current policy and legislation.

No Enforceable Policy For The Provision Of Support And Readmission Of Young Mothers

The current guidelines on learner pregnancy are not legally enforceable and are open to conservative and discriminatory interpretation and implementation by the schools.

5.1.4.2 Inadequate Implementation

Insufficient Resources To Adequately Implement Policies

The policies to address cost barriers are inadequately funded, resulting in schools failing to implement them.

Insufficient Capacity-Building And Training

The translation and implementation of national policies to improve access to education is the responsibility of the SGB and the principal and teachers; there is insufficient training and sensitisation of SGBs to fulfill this responsibility lawfully and adequately.

Insufficient Action To Address Sexual Abuse And Violence At Schools

The SAHRC observed in its hearings on violence in schools that a key reason why girls did not report sexual abuse by teachers and other officials was a failure on the part of authorities to do anything about the complaint.

5.1.4.3 Lack Of Accountability

Provincial Autonomy Stymies Accountability

Education is a provincial competency, with provinces enjoying legislative and budgetary autonomy in terms of how they prioritise, fund and implement national policies. Many provinces lack capacity, and wide variations are evident between the provinces in terms of the priorities they have applied, with strongly rural poor provinces showing high levels of inequity. Thanks to their considerable autonomy, it is difficult to hold provinces accountable for these imbalances.

School Governing Bodies Are Accorded Wide Discretionary Powers

The discretionary nature and wide unchecked power given to SGBs in terms of governing policies around key anti-discrimination policies creates space for discriminatory school-level policies and practices.

5.1.4.4 Monitoring-Evaluation Deficiencies

The State report refers to numerous laws and policies but offers scant evidence of the impact they have had. This speaks to the broader problem of a monitoring and evaluation deficit, a deficit that makes it hard for planning to be adequate and responsive, and which in turn contributes to poor education outcomes.

5.1.5 RECOMMENDATIONS

1. Strengthen the policies and laws governing the prohibition of discrimination against poor, female and rural learners by making the obligations to address cost barriers, transport, infrastructure deficits, child labour and onerous domestic responsibilities and learner pregnancy legally enforceable at all levels of government and at school level as well.
2. Increase the resources available for the implementation of policies.
3. Improve training for and engage in more systemic advocacy in relation to SGBs and principals.
4. Review the discretionary nature of the power granted to unaccountable provincial education authorities and SGBs.
5. Strengthen the enforcement and punitive mechanisms in relation to sexual abuse of learners by educators and boys.

5.2 ARTICLE 11: EMPLOYMENT

5.2.1 RELEVANT OBLIGATIONS

The State has agreed to eliminate discrimination against women in employment, prevent discrimination on the grounds of marriage and/or maternity, and research and measure the value of unremunerated domestic activities and include it in the gross national product (General Recommendation 17).

In particular, the government is committed to ensuring the following: equal employment opportunities; equal rights to benefits and conditions of service, including the right to vocational training; equal remuneration and benefits; the right to social security as well as benefits relating to retirement, unemployment, sickness, incapacity and paid leave; and health and safety in the workplace, including the provision of special protection for pregnant women.

Moreover, the government must prohibit dismissal on the basis of pregnancy or maternity leave, introduce paid maternity leave, and promote a network of child-care facilities for working women.

5.2.2 FOCAL AREAS IN THE STATE REPORT

- a. Numerous laws have been enacted to address discrimination in the workplace.
- b. Legislative reform has targeted equality in the workplace for domestic workers, part-time workers and workers with family responsibilities.
- c. The government acknowledges that sexual harassment remains pervasive despite the variety of legal measures that exist to combat it.
- d. The government recognises its lack of progress in advancing the employment of women, especially vulnerable, black and poor women, who experience a higher rate of unemployment than men; similarly, in the case of those who are employed, women enjoy both lower remuneration and a lower quality of employment compared to men. These trends serve to perpetuate the gendered and racialised dimensions of poverty.
- e. The Expanded Public Works Programme (EPWP) is a means of creating employment for women, black women in particular.
- f. The rights to social security and compensation for occupational injury have been equalised by virtue of their extension to domestic workers and certain part-time employees; the report mentions that some women in these categories are nevertheless still excluded.
- g. Health and safety measures have addressed historically marginalised employment hazards.

5.2.3 CORE ISSUES

5.2.3.1 Ineffective Responses To Inequality In Employment Rates

The rate of unemployment for women is much higher than for men, but insufficient steps are being taken to equalise the rate of employment and, in particular, attend to the plight of the country's most vulnerable women.

The State Report refers to the EPWP as a key initiative designed to address unemployment, especially amongst women. At the time that the State report was published, the first phase of the EPWP was on target to reach its goal of employing one million people. Both the goal and progress shown are commendable, yet the fact remains that the EPWP covers only a fraction of the country's unemployed, currently estimated at 22% of the population.⁷⁹ This takes on further saliency given that the Labour Force Survey shows the level of unemployment to be consistently higher for women, with an average of 30.7% in 2006, than it is for men, with an average of 21.6% in the same year.⁸⁰ In addition to concerns about the

limited reach of the EPWP, the primary State job-creation programme, questions have been raised about the quality of skills women acquire and thus the extent to which the EPWP improves their future employability.⁸¹

The continued discrimination against, especially black women and women with disabilities in employment, results in their poor representation particularly at senior management levels (discussed in detail under Article 4).

5.2.3.2 Poor Protection For Vulnerable Women By Labour Laws

Despite the existence of a progressive labour legal framework in South Africa, many women who find employment experience continued inequality in their enjoyment of the employment benefits, protections and services which the framework provides. Women who are especially vulnerable to abuse of their employment rights include: seasonal workers and other part-time workers; migrants, refugees and asylum seekers; domestic workers; farm workers; and women in the fishing sector.

The South African employment sector is increasingly making use of seasonal labour, labour brokerage and contract work as opposed to permanent employment. Roughly 60% of farm workers are retained seasonally, with two thirds of them being women.⁸² Nearly all women in the industrial fishing sub-sector work in processing plants; of these women, many are employed on a seasonal basis. Similarly, foreign nationals – including migrants, refugees and asylum seekers – are frequently drawn in numbers to seasonal employment.

The State report does not address this extensive phenomenon and its impact on women in the labour sector. Seasonal labour, labour brokerage and contract work are not beneficial to women. They exacerbate the imbalance of power between employer and employee and facilitate the abuse of the employee. The reason for this is that such employment relationships afford her less legal protection than would be the case if the arrangement between employee and employer were to amount to a contract of employment.

Abuses that stem from these forms of employment are prevalent in farm and domestic work. For example, while the domestic workers' sector is protected by a Sectoral Determination (SD) that rules on wages and particulars such as sick leave, work hours and maternity leave, workers nevertheless find themselves in a vulnerable position. Often they are foreign nationals employed by labour brokers, and are either unaware of their rights or wary of pressing them for fear of deportation or loss of favour with the brokers who arrange their job placements.

The employment relationships in question are imbalanced and open to abuse, especially where they involve already vulnerable women. In addition, they do not offer a basis for a consistent long-term income, but instead offset their rewards by effectively sealing women into a destiny of heightened and perpetual vulnerability to changes within the economy as a whole.

For instance, women in traditional coastal fishing communities are engaged in a wide range of fisheries activities but encounter ideological resistance to their participating in the sector's principal activity: going to sea and catching fish. Thanks to the myth that a woman's presence on a boat invites bad luck, most women are drawn, frequently on a seasonal basis, into shore-side processing work. Global and national trends, however, have made these jobs less secure. An example was the increasing demand for live lobster, which eliminated the need for local processing and hence for women's labour. Other business closures and relocations in turn reduced the prospect of their finding alternative employment within the sector. Situations like these clearly put all working women at risk no matter what their employment status; equally

clearly, seasonal labourers, and others employed under similarly tenuous arrangements, are at the greatest risk at all.

5.2.3.3 Inequality Of Workplace Social Security Benefits

Women in the workplace, particularly those who are especially vulnerable, suffer inequality in the enjoyment of maternity benefits as well as social security benefits of the kind provided under the Unemployment Insurance Fund (UIF) and Compensation for Occupational Injuries and Diseases Act (COIDA).

Regarding seasonal labourers, little to no protection exists for them. They receive few if any health and retirements benefits; many are not registered with the Department of Labour, and thus do not enjoy UIF or COIDA benefits.

In the case of domestic workers, the State report says that UIF and COIDA were extended to them as well as to certain categories of part-time workers. Whilst the government did eventually extend UIF to domestic workers, it has not done so with COIDA. South Africa has approximately one million domestic workers who are not entitled to compensation in the event of death or injury in the workplace.⁸³ Furthermore, the State report does not clarify the position on the Women's Retirement Fund, announced in 2007 and created with the aim of providing a retirement fund option for women such as domestic, seasonal and rural workers. The Domestic Worker's Plan was to be incorporated under it and offer a safety net for retirement, along with other benefits. However, the Black Sash established that the fund has been put on hold. No reasons for this have been forthcoming.

Refugees, many of them women, are also at a disadvantage when it comes to accessing their rights to social security in terms of the Constitution Act, 1996, and the Refugee Act, 1998. Provided they can prove an employer-employee relationship, asylum seekers and undocumented migrants should, likewise, be able to access UIF and COIDA. On attempting to do so, though, many refugees discover that their employers did not register them with the Department of Labour.

5.2.3.4 Scarcity Of Access To Training And Development

Vulnerable women have limited access to vocational and other training and development. In 2002 the Department of Labour announced the launch of the Domestic Workers Skills Development Project. It was funded for three years but ceased thereafter, its fate a mystery to this day. In the agricultural sector, the Women on Farms Project reports little change in the work status and job descriptions of farm employees. This could suggest an absence of skills development programmes. It is not known what SETA and other training authorities are doing in this regard.⁸⁴ Although a SETA has been designed for the clothing and textile industry, its effectiveness is in doubt. Women in the fishing sector are losing their traditional shore-side jobs and are in need of skills development, either in alternative occupations or customary male preserves such as boat-building and repairs. No known measures cater for this need.

5.2.3.5 Risks To The Health And Safety Of Pregnant Women

The health and safety of women in the agricultural sector is at risk. Farm workers are increasingly exposed to pesticides, and this presents an especial danger to pregnant women. Similar issues are reported in the fishing, clothing and metal industries. It is the case that many diseases or injuries acquired during work are not represented in COIDA legislation.

5.2.3.6 Sexual Harassment In The Workplace

Women are still at risk of sexual harassment in the workplace. Studies indicate that nearly 76% of career women in South Africa have been harassed in some or other form in the workplace.⁸⁵ It can therefore be

assumed that an even higher percentage are harassed or abused in the more vulnerable jobs, the informal sector and illegal work such as sex work.

Due to poverty, high unemployment levels and their disproportionate burden of household maintenance, women are less likely than men to challenge unfair labour practices and gender-based abuse in the workplace. Bonthuys points out that, in addition to being the most likely targets of sexual harassment, the most disadvantaged women will be the least able to resist it, because they lack the resources to litigate, because work is scarce, and because their families tend to depend on their incomes.⁸⁶ Thus, in sexual harassment cases, the element of gender subordination will often co-exist with racial and class dimensions.

In referring to the Employment Equity Act and Code of Practice promulgated thereunder, the State report positions these as an adequate response to the problems above. But while the law provides a remedy, its efficacy is restricted by factors that commonly limit access to justice in general (affordability, geographical remoteness, lack of access to representation, and lack of knowledge of rights). Moreover, the Code is only a guideline. Many employers do not follow it, and it does not go far enough in imposing obligations on them for eradicating environments conducive to sexual harassment. Conversely, an environment is that is conducive to reporting harassment without repercussions is essential.

In respect of the *Ntobo* case – mentioned in the State report – the State failed to take the opportunity provided by the courts to enforce the obligations on employers. This was not a State initiative, but was brought by an NGO, the Women’s Legal Centre. Indeed, the State itself, as an employer, has been found negligent in taking steps to prevent sexual harassment.⁸⁷

5.2.3.7 Ineffective Monitoring Of Labour-Legal Compliance

The monitoring of labour conditions and enforcement of legal requirements is ineffective. Employees such as farm and domestic workers are protected by specific Sectoral Determinations, compliance with which must be monitored and enforced by the Department of Labour. However, in the case of farm work, too few inspectors are available to cover widely dispersed farms in isolated areas; in the case of both domestic and farm work, inspectors are often not given adequate access to places of employment.

Employers with a payroll above R500,000 are required to formulate plans for skills development and employment equity. These plans are to be used as yardsticks for measuring failure or success, and employers who do not comply with the relevant legislated quotas are liable for a fine. In addition to there being a shortage of inspectors to perform site visits, it is said that some employers prefer to pay fines rather than comply with quotas. Fines are thus not acting as a universal deterrent, suggesting the need for other appropriate forms of liability.

5.2.3.8 Lack Of An Effective Child-Care Network

No effective network of child-care facilities is in place to help women balance domestic responsibilities with the exercise of their right to employment.

5.2.3.9 Non-Recognition Of Unpaid Domestic Work

The value of unpaid domestic work remains undetermined and unrecognised in the country’s economic discourse.

5.2.4 BARRIERS

5.2.4.1 Policy Gaps

Numerous legislative gaps expose women, in particular the especially vulnerable, to discrimination in the workplace.

- No laws exist to govern paid maternity leave outside of public-sector employment.
- Protective laws do not sufficiently target the especially vulnerable groups.
- The application of COIDA does not extend to domestic workers.
- Social security such as UIF is not available to vulnerable women.
- No policy governs the development and provision of a network of child-care facilities for women workers.
- Neither policy nor research has been instituted in respect of the value of unpaid domestic work, which continues to be a silent and unacknowledged component of South Africa's gross national product.
- Apart from the EPWP, no dedicated policies or programmes have been developed to equalise the rate of employment of women, especially vulnerable women, by way of offering incentives to prospective employers, as has been discussed in South Africa in relation to the country's large number of unemployed youngsters.

5.2.4.2 Inadequate Implementation

Restricted capacity caused by insufficient resources, both human and and monetary, for monitoring compliance with labour laws results in poor implementation, particularly in the private and domestic arenas.

5.2.4.3 Lack Of Awareness Or Knowledge

There is a lack of knowledge of employment rights, particularly so among vulnerable women; the problem is exacerbated by the inaccessibility of enforcement mechanisms and fora, especially in the domestic arena.

5.2.4.4 Lack Of Accountability

Poor enforcement mechanisms result in inadequate accountability for non-compliance with the laws.

5.2.5 RECOMMENDATIONS

1. Incentivise and compel equalisation of employment opportunities, rights and benefits, especially for marginalised and vulnerable women.
2. Equalise public and private sector maternity benefits.
3. Equalise social security benefits for domestic workers, seasonal workers and migrant women.
4. Develop a national child-care policy for women at work.
5. Include unpaid domestic work as a quantifiable commodity in the gross national product.
6. Provide sufficient resources to ensure and monitor compliance with labour laws in marginalised and domestic settings.
7. Develop appropriate advocacy campaigns to raise awareness of their rights amongst women made vulnerable by their migrant and other relevant status.

5.3 ARTICLE 12: HEALTH

5.3.1 RELEVANT PROVISIONS

The State has agreed to:

1. Guarantee equality of access to health-care services, including those related to family planning, pregnancy, confinement and the post-natal period;
2. Provide adequate nutrition during pregnancy and lactation;
3. Prioritise women and children in combating HIV and AIDS;

4. Provide and report on health-care services to women with disabilities;
5. Report on health plans and policies for women with reliable disaggregated data;
6. Address psychosocial factors which affect women, such as depression;
7. Effectively prohibit female genital mutilation and forced marriages;
8. Provide health care for women in especially difficult circumstances, including refugees; and,
9. Provide effective and comprehensive health care for victims of gender-based violence (GBV).

5.3.2 FOCAL AREAS IN THE STATE REPORT

- a. Free health care for pregnant and lactating women and children under the age of 6 has improved access to health care. The infant mortality rate has dropped and there has been a decrease in illness and deaths amongst women.
- b. Maternal, child and women's health and nutrition remain the Department of Health's priorities. The Integrated Nutrition Programme (INP) prevents and manages malnutrition, a major contributing factor to morbidity and mortality.
- c. There is a challenge in providing data as the most recent demographic health survey was conducted in 2003 and then again only in 2008, i.e. not in time for this report.
- d. Women in rural areas do not enjoy equitable access to reproductive health care services due to poverty, inaccessibility of sites and poor transport.
- e. Only two out of nine provinces have developed plans to provide psychosocial support for survivors of GBV.
- f. The response to HIV and AIDS was limited before 1994. The National Strategic Plan has been developed to address HIV and AIDS in South Africa.
- g. The number of women enrolled on the PMTCT programme dropped from 72.7% in 2006 to 56.2% in 2007. The number of pregnant women receiving ARVs increased from 60% in 2006 to 66% in 2007.
- h. There has been an increase in exclusive breastfeeding.

5.3.3 CORE ISSUES

5.3.3.1 Inequitable Access To Health Care

In 2003, 51.3% of women between the ages of 15-49 found it difficult to access health care when they were ill.⁸⁸ The reasons for their difficulty are linked to poverty and the underdevelopment of health care and other infrastructure in communities in which they live.

The free and subsidised health-care policies in South Africa are insufficient to address poverty barriers to health care. The Demographic and Health Survey found that: 39% of women did not have money for treatment; 32% could not access transport; 31% were unable to access health care because of the distance to the closest facility; 12% were concerned about there not being a female health-care provider; and 8% did not know where to go for treatment.

5.3.3.2 High Maternal, Infant And Child Mortality Shaped By Inequalities

Each year in South Africa at least 1,600 mothers die due to complications of pregnancy and childbirth. Twenty thousand babies are stillborn, and another 22,000 die before they reach the age of one month; 75,000 children die before their fifth birthday. This means that every day in South Africa at least 260 mothers and/or babies die.⁸⁹

Maternal mortality is increasing; most deaths are caused by HIV. There is, however, another factor contributing to this increase: the liberalisation of our abortion laws has increased the number of unsafe abortions and maternal deaths. This is due to insufficient service provision to meet the increased demand.

The figures quoted above for infant and child mortality are one set of many differing figures; there is uncertainty in South Africa about the exact current levels of child mortality. This lack of clarity on this crucial indicator of is a significant gap. Sanders et al note that although there is uncertainty about actual levels, there is consensus that the levels are unacceptably high, and that they have not improved but rather increased over the last ten to fifteen years, leaving South Africa way behind in meeting its MDG target of reducing the rate to 20 per 1,000 live births by 2015.⁹⁰

In 1990, the U5MR was estimated to be 60 deaths per 1,000 live births. UNICEF estimates that this increased to 73 in 2,000 and dropped very slightly thereafter to 67 deaths per 1,000 between 2000 and 2008.⁹¹

“The distribution and pattern of morbidity and mortality are shaped by persistent inequalities”. Sanders et al note that mortality rates coincide with the rates and demography of poverty in South Africa; both are higher in non-urban areas, and the child mortality rate is four times higher among African than white children. Diseases of poverty, including low birth weight, diarrhoea, lower respiratory infections and protein-energy malnutrition account for 30% of these deaths.⁹²

There are correspondingly poor levels of maternal health, which are cause for equal concern. At least 1,600 mothers die every year due to complications of pregnancy and childbirth.⁹³ At least 60% of these deaths are avoidable, and 55% are caused by what Harrison refers to as health systems failures.⁹⁴ The systems failures and other causes of inequitable access to health care for poor women and their children are discussed in more detail under the next sections.

5.3.3. Inequitable Coverage Of Maternal, Neonatal And Child Health Interventions

There are significant disparities in the coverage of maternal, neonatal and child health interventions between different parts of the country. Coverage is better in better-resourced districts and provinces, disadvantaging women in the poorer provinces with a greater need for, and who experience greater difficulties in, accessing health care. For example, in the Eastern Cape only 71% of women deliver in facilities compared to 98% in the Western Cape.⁹⁵ Westwood et al conclude that the government’s plans to deliver a district-level health-care package in all districts remains an elusive goal, with dire consequences for the realisation of the right to health care services.⁹⁶

5.3.3.4 Child And Women’s Nutrition Is Inadequate

It is cause for concern that our knowledge in South Africa of the nutritional status of mothers and children is seriously inadequate. There is insufficient data to gauge with any accuracy the progress that has been made in this regard since 1994. The data that are available show significant levels of under-nutrition among children under the age of 5. In 1999, 11.1% of children between the ages of 12 and 71 months were underweight, 23.8% suffered stunting and 3.8% suffered from wasting.⁹⁷ Sanders et al confirm that severe childhood malnutrition is a common and often fatal condition that presents regularly in hospitals but is poorly managed, especially in rural districts, thereby contributing to high levels of child mortality in the country.

In the context of women, hunger is more common in female-headed households. In 2008 hunger was present in 2.9 million female headed households compared to 2.1 million male-headed households.⁹⁸

Whilst the promotion of breastfeeding and complementary feeding, Vitamin A and zinc supplementation and the appropriate management of childhood malnutrition has the potential to reduce child mortality by 25%, and stunting by 33% when implemented to scale,⁹⁹ this potential remains unrealised. The 2005 National Food Consumption survey showed an increase in Vitamin A deficiency in children aged 1-5, with a

coverage rate of only 20.5%.¹⁰⁰ Despite the fact that almost half of all public hospitals are “Baby Friendly”, coverage for exclusive breastfeeding is a low 7%.¹⁰¹ In addition, knowledge among health workers about feeding options and choices, breastfeeding and the facts about HIV transmission to babies, have been found to be outdated and contrary to the latest WHO recommendations.¹⁰²

The infant and young child feeding policy makes provision for nutritional support to HIV-infected pregnant women and those who choose to breastfeed. A study by Hendricks et al (2003) confirmed that HIV-positive pregnant and lactating women were not put on the nutritional support programme, primarily because the clinic staff were not aware they were entitled to this benefit.¹⁰³

Only 12.6% of the 21.7% of households involved in agricultural production for the purposes of domestic consumption received agricultural support in 2008.¹⁰⁴

5.3.3.5 Unsafe Water, Sanitation And Hygiene

In 2000, almost 20% of deaths of children under the age of 5 years were attributable to unsafe water. As in the case of nutritional status, there is insufficient data to track progress related to diarrhoeal diseases at primary health-care facilities. Harrison notes that the introduction of the rotavirus vaccination in 2008 should make a positive difference in this regard, but that these gains may be offset by the poor water management practices by local authorities in marginalised communities. He refers specifically to the death of 80 infants due to contaminated water in 2008 on the Ukhahlamba district in the Eastern Cape.¹⁰⁵ These localised instances of contaminated water must also be seen against the broader failing in rural provinces like the Eastern Cape on 71.6% of households enjoyed access to piped water in 2008 and close to 20% (19.5%) had access to no toilet facilities at all or were using the bucket system.¹⁰⁶

5.3.3.6 Premature Deaths Of Women And Children Caused By HIV And AIDS

Women between the ages of 15 and 49 are one of the groups in South Africa most vulnerable to HIV infection; women account for over half of adults aged 15 and over estimated to be living with HIV and AIDS in South Africa.¹⁰⁷ Young women are especially vulnerable; those between the ages of 15 and 24 (12.7%) are significantly more likely than men of the same age (4.0%) to be infected. Approximately one third of women between the ages of 25 and 29 are HIV-positive and a total of 3,200,000 women older than 15 are living with HIV.¹⁰⁸

The main cause of premature deaths amongst children and women is overwhelmingly HIV and AIDS. HIV and AIDS and TB account for 75% of premature deaths.¹⁰⁹ Harrison observes:

*While the prevalence of HIV has now peaked, and there are indicators of significant declines amongst younger people, the enormity of the epidemic will continue to dwarf other causes of mortality for the next decade at least. The number of deaths from AIDS will continue to exceed 300,000 per annum even if 90% ART coverage is achieved.*¹¹⁰

A leading cause of HIV infection in South Africa is through mother-to-child transmission. Approximately 168,000 of the 800,000 public sector births in 2006 were to HIV-positive women. Only 50% (74,052) of these HIV-positive pregnant women received Nevirapine prophylaxis. Furthermore, the testing rate of babies in public sector births is very low. Of the 800,000 births in 2006, the HIV status of only 3% of the babies was known, and of these 3%, the transmission rate was 18%, which is much higher than the targeted 5% transmission rate.¹¹¹

There has been a consistent lack of partners’ participation in the PMTCT programmes.

Access to ARVs has improved substantially since the introduction of the Department of Health's Comprehensive HIV/AIDS care, management and treatment plan, which includes the provision of ART to all patients attending public health facilities with a CD4+ count $\leq 200/\mu\text{l}$, or an AIDS-defining illness. This resulted in an increase from 3.8% to 34% of eligible patients between 2003 and 2007. In as much as access to ART has improved, there is still a long way to go; 66% of eligible patients are still not accessing ART, and access rates vary between the provinces with only 21.5% of eligible patients accessing ART in the Free State provinces compared to 74.4% in the Northern Cape.¹¹² Given the feminisation of the pandemic, this failure of access will impact significantly on women, especially young women.

5.3.3.7 Post-Exposure Prophylaxis (PEP) For Survivors Of Sexual Abuse

Forty percent of child rape survivors do not qualify for PEP because they refuse testing or present more than the prescribed 72 hours after the rape.¹¹³ Where PEP is initiated, there are often low follow-up testing rates and low drug adherence rates. PEP is also narrowly defined and often does not include emergency contraception.

5.3.3.8 Abortion Services

Demand for abortion services has exceeded supply, with operational designated facilities decreasing from 60-43%.¹¹⁴ Post-abortion care is not currently mandatory in the curriculum of health workers, and there is a shortage of health workers and support managers who have been trained on how to deal with this generally stigmatised service.

Surgical abortion is the main method of abortion within the public sector, and medical abortion is the favoured method in the private sector. Currently medical abortion is only provided in the public sector in the Western Cape. The National Department of Health is still to approve countrywide medical abortion guidelines; this impacts on access to services.

5.3.3.9 Cervical Cancer

Cervical cancer is the cancer that causes the highest morbidity and mortality amongst black women. Screening services are inequitable and poorly distributed. South Africa only reaches 20% of the targeted 70% of those to be screened. Pap smears are rationed to three in a lifetime. HIV-positive women are ten times more likely to be predisposed to HPV, the dominant precursor to cervical cancer. Currently HIV/AIDS treatment programmes do not integrate cervical screening. Once a cervical lesion is identified, South Africa has limited treatment and referral facilities and we only have 50% of the radiation facilities needed for this particular illness. HPV vaccines are registered in the country, but are only available in the private sector.¹¹⁵

5.3.3.10 Mental Health

Women's experiences of mental health differ from that of men. Women may experience increased mental health mortality and morbidity due to unaddressed issues such as increased sexual violence, re-infection, and issues related to fertility, partum depression and depression related to HIV, etc. In addition, repeated trauma and experiences of violence predispose HIV-positive women to depression.¹¹⁶

Mental health care services are underdeveloped and restricted to urban areas and hospital-based care, making it difficult for rural women to access. The mental health and emotional needs of women are viewed as outside the scope of reproductive health services, which consequently provide no support or assistance in this regard. Human resources for mental health care are generally minimal.¹¹⁷

A review conducted by Lazarus and Freeman¹¹⁸ highlights the need for mental health services for HIV-infected people. This is due to the vulnerability of people with mental disorders and substance abuse to contracting HIV, and because mental ill-health is an important health outcome of being infected with HIV.

A perinatal mental health programme (PMHP) was launched in September 2002 at Liesbeeck Midwife Obstetric Unit (MOU) at Mowbray Maternity Hospital, Cape Town. The aim of PMHP is to provide holistic mental health services at the service point where women receive obstetric care. PMHP offers interventions to break the cycle of maternal mental distress. The vision of the PMHP is to integrate mental health care on site within the primary level maternal care environment on a broader scale. This project is being implemented in Cape Town and was developed to address staff shortages and increasing patient load, the focus of the health system on physical rather than emotional issues and community-based mental health teams being overwhelmed and unable to address the mental health need of mothers. Although formal services providing perinatal mental health have shown considerable success in many other parts of the world, no programme has been instituted in South Africa. The project at Mowbray Maternity Hospital is the only known service of its kind in South Africa.¹¹⁹

5.3.4 BARRIERS

5.3.4.1 Policy Gaps

Grossly insufficient HIV and AIDS policies in the pre-1994 period eroded the potentially beneficial impact of the free health-care policy in South Africa, especially with regards to the health and well-being of women and children. The failure by the State to mount a “concerted and comprehensive” HIV and AIDS prevention programme has resulted in high morbidity and mortality rates, as has the failure up until now to implement early antiretroviral treatment.¹²⁰

Since 1994, there has been an improvement and strengthening of the policies; however, a number of health-policy gaps remain in effect.

- There is no complementary transport policy to ensure access to health-care facilities, especially in the rural areas, where distance remains a key barrier to access to health care.
- There is no nutritional support for children to prevent malnutrition. The nutrition supplementation programmes only become available once the child is already malnourished and fall away once the child is at an acceptable weight, whereupon she returns to living in a highly food-insecure environment. Nutritional support for pregnant women is limited to those who are HIV-positive only. Moreover, there is no broader policy in place
- Services for HIV/AIDS tend to favour the unborn child and concentrate on the prevention of transmission to the child as opposed to treating women and increasing women’s access to care.
- The primary health-care policy limits the services available to exclude critical services like HPV vaccines.
- There is no legally enforceable obligation on government to provide vulnerable households with adequate and hygienic sanitation.
- The free basic water policy does not make additional provision for households with extraordinary water needs, such as households affected by HIV and AIDS and those housing children.
- PEP is not available to all survivors of rape, only those who report the attack within 72 hours and who are willing to undergo an HIV test.

5.3.4.2 Implementation Gaps

Equitable access to, and coverage of, health-care services provided for in terms of governing policies and laws is severely compromised by implementation failures. These failures are attributable to health systems failures such as insufficient sites of service delivery, poor management, insufficient stock and stock management, insufficient trained staff, poor transport infrastructure, poor infrastructure at health facilities.

Stigma is also a factor which inhibits access to services such as HIV testing, treatment and abortion.

A lack of knowledge amongst women about where to obtain health care and about their health-care rights remains a barrier.

5.3.4.3 Monitoring And Evaluation Gaps

Lack of reliable data about key health indicators such as maternal and infant mortality and the nutritional status of women and children speak to deep-seated systems failures in South Africa.

5.3.4.4 Accountability

Variations between the provinces in relation to health-care coverage and quality point to difficulties in holding provincial and local authorities accountable to national policies and priorities.

5.3.5 RECOMMENDATIONS

1. Strengthen health-care policies and the ancillary policies necessary for the effective realisation of access to health care, such as the national transport policy for people living in poverty and in rural areas.
2. The range of services available in terms of the free health-care policy must extend to essential preventive measures such as the HVP vaccine.
3. Revise the nutrition policies so as to be more proactively designed to prevent, rather than treat, malnutrition in women and children.
4. The provision of adequate sanitation must become an enforceable obligation on the State, especially in relation to households headed by women, living in poverty and in rural areas.
5. The free basic water policy must make provision for extra water to meet additional needs in vulnerable households.
6. PEP, including emergency contraception, must be available for all survivors of rape.
7. Medical and surgical abortion services need to be better implemented and supported.
8. Infrastructure and systems in the health sector must be improved.
9. Advocacy campaigns must be developed to address identified knowledge gaps amongst targeted audiences.
10. Provinces and local authorities must be held accountable to national policies and programmes.
11. Key health data must be collected to monitor the realisation of the right to health care, but also to develop evidence-based responsive health care policies and programmes.

5.4 ARTICLE 13: ECONOMIC AND SOCIAL LIFE

5.4.1 RELEVANT PROVISIONS

The State has agreed to eliminate discrimination in all other areas of economic and social life (not expressly dealt with in previous articles), especially family benefits, access to credit, and recreational and cultural activities.

The South African Constitution recognises the fundamental link between social and economic rights, development and equality (both gender and racial). The Constitution imposes a set of responsibilities on

government to address socio-economic inequalities as part of the progressive realisation of human rights and to do so in ways that erode gender inequalities, in addition to racial inequality.¹²¹

In addition to the express commitments under CEDAW, several “other” socio-economic rights are protected in terms of the Constitution. Through their inclusion, the State has agreed to protect and promote the rights to social security, including social assistance (s. 27(c.)), property (s. 25), housing (s. 26), and sufficient food and water (s. 27 (b.)).

5.4.2 FOCAL AREAS IN THE STATE REPORT

- a. Poverty shows a strong racial and gender dimension.
- b. Social security substantially alleviates poverty for families, children and people with disabilities, and
- c. Ghost beneficiaries are the principal barrier to disbursing grants.
- d. Numerous laws and policies have been set in place to improve women’s access to credit.

5.4.3 CORE ISSUES

5.4.3.1 Indicators Point To Systemic Socio-Economic Discrimination

As this report said previously, South Africa has a high rate of unemployment, with women in 2006 experiencing a greater level of unemployment than men. Given the one-million-employee goal of the EPWP, the State’s main work-creation programme can by its nature have only limited reach into the country’s unemployed, and although an extensive social security safety net is in existence, it is in various respects flawed in its delivery of benefits, over and above the fact that by design it does not protect most of the population of working-age adults, or, in other words, the majority of women living in poverty; programmes and measures such as the basic water policy are in place for these women in particular, but capacity issues and debatable budgetary allocations have marred their implementation.

Despite these challenges, ones compounded by the inequities discussed under Article 11, vulnerable women, especially black women, are overwhelmingly active in the economy. Black women have a participation rate in the labour force of 73%, compared to 59% of white women, and of all the different race and gender segments, they are the largest self-employed group of the population, with most of such businesses being micro-enterprises that employ four or less people. According to the World Bank’s International Finance Corporation, in Africa as a whole, women own around 48% of all enterprises.

Nonetheless, in spite of their high degree of participation in the labour force, black women enjoy the lowest level of formal employment rates, and although they are foremost among South Africa’s self-employed, they earn the least. In addition to the problems already identified, they face a battery of challenges relevant to Article 13. These have been arranged below into a single category, “insufficient access to developmental resources”, and include: property, land and housing; credit; and coastal marine resources necessary for the subsistence and/or economic empowerment of women in the low-income, peri-urban fishing communities found along South Africa’s vast coastline (limitations of space prevent consideration of kindred resources such as minerals and others).

5.4.3.2 Insufficient Access To Social Security

Despite South Africa’s expansive social security safety net, women living in poverty do not enjoy sufficient access to social security. There are some women who, within the governing legal framework, do indeed benefit, and there are others – many others – who, still within this framework, cannot access their rights for various reasons. But the latter experience problematic access, unlike another group, who experience no

access at all because they are entirely excluded from the governing framework, these being especially vulnerable women such as the majority of women living in poverty, refugee women, and others.

Social assistance is available only to older persons, children and the disabled. The increase in numbers of persons reached by the social security system has largely been achieved by the rollout of the child support grant (CSG) to children under the age of 15. Poor girl children over 15 do not receive social assistance, and poor women between the ages of 18 and 60 receive no non-contributory social assistance unless they qualify as disabled persons. Crucially, it has been documented that this lack of support for women aged 15 to 60 means that they are often reliant on the income brought into their households by the CSG and state old-aged pension funds. In addition, women allowed to be employed within an EPWP programme may not be a recipient of any social grant. Contributory social insurance is limited, and available only to workers employed in the formal sector, in the form of unemployment insurance, but women are more frequently employed in the informal economy, where (as discussed under Article 11) there is little to no access to social insurance.

The Taylor Report on comprehensive social security, published in 2002, recommended the introduction of a comprehensive social security system, including income support for unemployed, able adults not reached by unemployment insurance. The Department of Social Development has since announced, most recently in their Strategic Plan for 2007 to 2010, that they will focus on “the establishment of a universal minimum endowment equal for all”. No plans are in place to implement this policy objective.

While the current social security framework is far from comprehensive, it also faces difficulties in the disbursement of grants.

- The State report’s reference to corruption in grant disbursement under represents the actual situation. While the launch of the South African Social Security Agency (SASSA) in 2005 has improved the flow of grants to provinces, numerous allegations of corruption have been made about tender processes within SASSA.
- Identity documentation is required for access to social security, but the lack thereof is a significant problem in many poor rural communities, where unregistered births can be as high as 20% of births.¹²²
- The cost of transport remains an obstacle to the disbursement of grants, whereas transport subsidies could vastly improve the uptake of social grants.¹²³ The lack of a grant can affect those in isolated rural areas in particular, potentially increasing the inequality between urban and rural regions. In 2006 the Minister for Social Development declared that the government was committed to ensuring that no person would have to travel further than five kilometres to receive social grants, but this has not become a reality. A lack of accessible sites of service delivery in rural areas and the cost of transport to travel to obtain documents and apply for the grant, together with under-staffing and insufficient community facilities, frequently located too far from communities, result in long queues at service points, a backlog of clients, and a slow grant disbursement process.¹²⁴
- The Social Assistance Act 13 of 2004 requires the government to publish and distribute information about the social grants, but there have been concerns about the lack of knowledge among potential beneficiaries.¹²⁵

5.4.3.3 Insufficient Access To Social And Economic Development Resources

(a.) Access to property, land and housing

Women have insufficient protection of, and access to, the right to property, land and housing. They continue to be discriminated against in relation to their right to inherit property and the right to land

ownership. Especially in rural areas, women do not enjoy the full use and benefit of land, and are perennially at risk due to their insecurity of tenure. Women in urban areas do not enjoy guaranteed and protected access to housing. This is particularly the case with elderly women caregivers, unmarried mothers, women exposed to gender-based violence, and those affected and infected by HIV-AIDS.

Many women, especially African rural women, have not benefitted from land reform in South Africa

South Africa has developed a host of policies and laws to address skewed ownership patterns and insecurity of tenure experienced by groups who have been discriminated against in the past in South Africa.

African Women have suffered double discrimination through their exclusion from land by apartheid policies as well as customary law and tradition, which rendered women incapable of land ownership in their own right. In terms of apartheid laws, land ownership by all Africans was severely restricted and, in terms of customary laws, land ownership and security of tenure was the exclusively the domain of women's husbands and fathers; when the latter passed away, customary inheritance laws served, in the main, to deprive women of claims to their husband and/or father's land.

There has been a strong land law reform process in South Africa. On the policy front, there is the Land Reform Gender Policy which aims to increase land ownership by women by 30%; the Settlement Land Acquisitions Grant, 1997; and the Land Redistribution and Agricultural Development Programme, 2001, and Land Acquisition and Redistribution Programme, 2008 which formalise tenure rights, address skewed ownership patterns, and ensure the productive use of redistributed land for commercial production.

Various Acts promote ownership by those who have been excluded in the past and prohibit discrimination against women in this context. These include: the Land Rights Act, 1994; the Restitution of Land Rights Amendment Act, 2004; the Land Reform [Labour Tenants] Act, 1996; the Extension of Security of Tenure Act, 1997 (ESTA); and the Communal Land Rights Act, 2004, which vests ownership of land in groups that live under the authority of a Traditional Council. The Act allows individuals to own a secondary right to land. Decisions about land allocation in terms of CLARA are made by the Traditional Council, and the Act expressly prohibits authorities from making decisions about land distribution that discriminate against women. The Provision of Land Assistance Amendment Act, 2008, promotes the provision of financial assistance for the acquisition or improvement of land and tenure rights.

Gender disaggregated data on land ownership and use are not freely available,¹²⁶ making it difficult to analyse and evaluate how many women have benefitted from the land reform framework. Unfortunately, the data and studies that are available indicate that many women, especially poor rural women, continue to be denied their right to land ownership and security of tenure.

By February 2004, only 11.9% of households that had benefitted from land reform were female-headed.¹²⁷

Women who live on commercial farms with their husbands who are employed as labourers only enjoy security of tenure whilst their husbands are alive. On the death of their husbands they are evicted – *"Farmers do not give women a chance if they do not have a man."*¹²⁸ However, this is not restricted to commercial land only; in rural areas, women are able to access land, but it is usually through their husbands or other male family members, and on the death of their husbands they are then denied access to that land.¹²⁹

A study conducted by ActionAid International in a number of sites across Southern African in 2008 found that most of the married women in the study sites in rural communities in KwaZulu-Natal assumed that the

responsibility to seek ownership of land was the responsibility of their husbands rather than themselves, despite the revised laws allowing them ownership of land in their own name.

Many women seeking ownership of land in their own name in terms of the 2004 CLARA Act (which prohibits traditional councils from discriminating against women in land allocation) have often met with resistance from traditional leaders, many of whom still do not consider women as having the right to own land.¹³⁰

HIV and AIDS also impact negatively on the rights of women to own land and property. Increasing numbers of women are widowed at an early age but prevented from inheriting family land by custom. Discrimination takes its toll in this context too; there are reports of women who have been allocated land by the traditional leaders becoming HIV-positive and being evicted from that land by the Chief as a result of their HIV status.¹³¹

The CLARA vests authority on the Traditional Councils to decide on land allocation requests made by people living under the authority of the Council. The Act expressly entitles women to participate in the Council. There is evidence of chiefs selecting which women will participate; once selected, many women are not informed of their role and are unfamiliar with the procedures for conducting the meetings. In short, women's experiences indicate that the Traditional Councils are dismissive of their needs and rights.¹³²

Women's rights to land are negatively affected not only by land laws, but also by marriage, divorce, inheritance laws and domestic violence. These concerns are addressed elsewhere in this report.

Moreover, it is not only women's ownership of land that is affected but the use of land as well. Whilst laws make it possible for some women to access and/or own land, most women farmers are not able to make decisions about the land, mainly because of: power dynamics at household level; traditions that give preference to men in land allocation and inheritance; disparities in access to farming resources by men and women; and chiefs who meddle in women's control of land.

A common reason for women not being able to maximise the land ownership benefits in the various laws is that they generally do not have sufficient knowledge of the laws. Women in the ActionAid study indicated that only women in organisations or structures dealing with women's land rights really know the laws. In addition, the procedures for accessing land, financial and agricultural support are complex and inaccessible, resulting in only a few elite women involved in black economic empowerment ventures being able to maximise the inherent benefits.

Women do not have access to adequate housing

Despite government's goal to provide housing to 30% of women-headed households, there are still unacceptably high numbers of households living in inadequate housing across the country.¹³³ There is also inequality in the significant provincial variation in access to housing: the highest proportion of households still living in informal housing are the Eastern Cape (35%), KZN (32%) and the North West Province (23, 1%).¹³⁴

The Special Rapporteur found that the high cost of housing, the inability of single women to access a housing subsidy, long waiting lists for housing, and fragmented approaches to addressing the provision of housing across the country, precluded many poor women and women with specific housing needs, such as women with disabilities, women in abusive domestic relationships and women affected by HIV and AIDs, from accessing adequate housing (the latter issue has been addressed in more detail in this report under Article 4).

(b.) Access to credit

Women living in poverty cannot access credit sufficiently, easily and as a matter of right, in order to overcome their situation. Generally, women in South Africa have greater difficulty accessing credit than men even though they have better credit repayment records. In 2005 only 38% of black women were banked, and many rely instead on informal credit such as *stokvels*, burial societies, loan sharks or friends and family. As shown by different studies, debt acquired by the country's most vulnerable groups is mostly used for servicing basic needs rather than long-term assets or investments in housing or business development.¹³⁵ Such women are hampered by a lack of financial literacy and awareness of development finance; bank products and services are often unaffordable, and, moreover, asset-based lending disqualifies most of them from accessing business loans because they are poor and lack property to use as security for obtaining credit.

There have been a number of government-led women's business development funds, such as the Isivande Women's Fund, as well as capacity-building programmes to enable women to make use of the opportunity to participate in the formal economy. However, a common challenge is a lack of awareness around these initiatives. Most women do not know about them or make use of them.

(d.) Access to coastal marine resources

Women in the fisheries sector continue to experience discrimination. To the detriment of gender empowerment, transformation has largely focussed on race, with no attention being paid to the relationship between women's relative lack of access to, and control over, marine resources and their broader social, political and economic marginalisation in coastal fishing communities. As a result, the national gender legislative and policy framework has not yet been thoroughly institutionalised in the context of marine and coastal governance.

The imperatives of the Marine Living Resources Act, 1998, have not been translated into substantive gender policy practices, and while the General Policy on the Allocation of Long Term Fishing Rights, 2005, identifies gender as an indicator of transformation, it does not include it as a definitive policy principle; the references to gender are weak, tending to leave the use of gender as a criterion for rights allocation as optional. Marine and Coastal Management (MCM), the government branch responsible for fisheries rights allocations and management, has not developed a specific gender policy, although in the period prior to the introduction of the Long Term Rights Policy it adopted an informal policy of encouraging women to apply in certain sectors even if they were new entrants. To date the MCM does not disaggregate its data and is unable to provide data on the number of women rights holders.

As previously discussed under Article 11, almost all women in the industrial sub-sector are employed in processing plants rather than sea, many of them as seasonal workers courting the risks associated with this employment relationship. Within the small-scale fishing sub-sector, a small number of women have been allocated limited commercial fishing rights in the past eight years, while approximately 8,000 have been allocated subsistence permits to harvest marine resources in the Eastern Cape and KwaZulu-Natal.

The quota system used to allocate fishing rights is oriented in favour of the industrial sub-sector and discriminatory towards small-scale fishers, who have to contend with difficult application criteria and high permit application fees. Only a few men and women were successful in obtaining rights, and the allocations have been challenged in court. In 2007 the Equality Court ordered the Minister of Environmental Affairs and Tourism to develop a new policy to accommodate these traditional fishers.

5.4.4 BARRIERS

5.4.4.1 Policy Gaps

1. The national social security policies do not provide for social security for women aged between 18 and 60.
2. In the context of ownership and use of land, progressive land laws are administered by customary land administration systems which often entrench and apply rules and principles that conflict with constitutional principles of equality. As pointed out by Claassens and Mnisi, the exclusion of women from the decision-making and administrative fora which determine land ownership patterns and rules reinforces the power of traditional leaders unilaterally to determine the shape and interpretation of customary rights and entitlements, a situation that continues to prejudice women's rights to own and use land.¹³⁶
3. Progressive land laws are undone by customary laws of marriage and inheritance.
4. Security of tenure of women on the death of their husbands is not protected on commercial farms.
5. Land redistribution policies are inherently designed to benefit men as land is returned to former owners.
6. There is no policy on the provision of affordable rental housing for poor women.
7. The housing subsidy scheme is inherently inequitable in its exclusion of single women.
8. The current legal framework governing access to credit for women is not strong enough. Women fail to access credit because they run up against requirements, in terms of credit practices, that property be used to secure the loans for which application is being made. This creates a Catch-22 for women in poverty, who are thereby unable to get credit that could help them escape poverty.

5.4.4.2 Inadequate Implementation

1. Implementation of existing social security benefits that benefit women (such as the CSG) is inadequate. First, due to an insufficiency of capacity and resources, programmes do not have an effective enough reach into rural areas, which is critically important in relation to social grants and identification documents.
2. Land reform laws do not benefit women because of gender-blind implementation guided and administered by traditional and conservative interpreters of culture.
3. Poor knowledge of laws and processes limit the benefit of progressive land laws.
4. Housing waiting lists are marked by long waiting periods (more than ten years in many cases) and by corruption in the administration of the lists.

5.4.4.3 Lack Of Accountability

There is lack of accountability at local and provincial level, where governments at these levels enjoy competencies and autonomy to implement national policies relating to housing and land use. Provincial and local governments are at liberty to determine how much of the equitable share they receive from national governments should be allocated to the various programmes. As can be seen from the provincial disparities in terms of access to, and enjoyment of, these rights, no consistency prevails across provinces or municipalities in the funds that are assigned. In many instances, notably at local level, not enough money is budgeted for essential services, an issue compounded by the lack of capacity to implement them properly.

5.4.4.4 Lack Of Awareness Or Knowledge

Due to ineffective – or sometimes non-existent – government communication strategies for reaching the appropriate beneficiaries, there is lack of awareness and knowledge of the various policies, programmes or rights.

5.4.4.5 Monitoring-Evaluation Deficiencies

There is insufficient data collection and disaggregation on women's access to social and economic benefits. Without an evidentiary basis on which to work, planning is consequently poor. Moreover, there is only

limited monitoring of compliance with the laws, and no evaluation of the impact laws and programmes make to improve women's access. Planning and evaluation is further complicated by the lack of a poverty line against which plans could be made and progress measured.

5.4.4.6 Inadequate Collaboration

Given the specific and heightened vulnerability of women who experience multiple vulnerabilities (for example, the older disabled woman or the older poor caregiver), an important problem is the inadequate collaboration that occurs between the sectors responsible for individual vulnerabilities, collaboration which if optimised could work to ensure that women experiencing multiple vulnerabilities are afforded comprehensively guaranteed access to their rights.

5.4.5 RECOMMENDATIONS

1. Ensure that social security is available for women aged 18–60 living in poverty.
2. In order to be effective, land reform laws need to be accompanied by legal reform of the underlying decision-making and administrative systems as well as accompanying laws of marriage and inheritance.
3. Land reform laws must also be accompanied by gender knowledge-enhancement programmes for traditional leaders and other implementers.
4. There is a need for strengthened agricultural support programmes, not just for commercial but also domestic farmers.
5. There must be focused advocacy and awareness-raising to improve knowledge of the land reform laws and processes.
6. Develop a rental housing policy for low-income earners and revise the current housing subsidy scheme to allow single women to benefit.
7. There is a need for the regulation of women's access to credit of various forms. This requires deeper interrogation of, and engagement with, the web of underlying discriminatory laws that cumulatively predispose so many women applicants to lack loan security in the first place. In addition to researching legal reform and measures such as government-secured credit facilities, there is also call for the exploration of micro-credit possibilities that are user-friendly and not, as they currently tend to be, exploitative.

5.5 ARTICLE 14: RURAL WOMEN

5.5.1 RELEVANT PROVISIONS

The State has agreed to take into account the problems faced by rural women and take all appropriate measures to ensure their realisation of all of the rights set out in the Convention.

5.5.2 FOCAL AREAS IN THE STATE REPORT

- a. A host of policies and laws have been developed that impact on the rights of rural women.
- b. The Integrated Sustainable Rural Development Strategy ensures that women's rights are prioritised in the design and implementation of rural development strategies aimed at addressing poverty and underdevelopment.

5.5.3 CORE ISSUES

Despite the many policies and laws mentioned by the State, and despite a dedicated rural development strategy, there is a systematic failure of rural women's rights across the full spectrum of the Convention. This failure has been highlighted under each of the articles discussed in this report.

In summary, rural women are at a much higher risk than their urban counterparts in respect of:

1. Rights abuses based on sex roles and the stereotyping advanced by traditional conservative views about the appropriate role and place of women;
2. Exclusion from participation in political and public life;
3. Not being able to access quality education;
4. Unemployment and discriminatory employment practices;
5. Unequal access to health care, hunger and malnutrition;
6. Exclusion from access to social and economic development resources;
7. Unequal family relationships; and,
8. Unequal access to protection and support services for survivors of gender-based violence.

5.5.4 BARRIERS

5.5.4.1 Policy Barriers

A key policy barrier lies in the absence of a rural development strategy focusing exclusively on the realisation of the rights of women in rural areas. The current policies seek to prioritise, almost as an aside, the rights of women as one of many marginalised or disadvantaged groups. This has largely become a meaningless exercise conducted in name only, as there is little evidence of the development at a programmatic level of programmes and service delivery strategies to address the causes of the persistent rights abuses experienced by rural women.

A key example is the absence of a rural transport policy for rural women. Transport is a cross-cutting barrier; yet there are no national or even provincial transport policies to tackle this systemic barrier, leaving it to the piecemeal attention of service providers that are responsible for social benefits (such as health) yet lacking the mandate or budget to overcome transport barriers.

5.5.4.2 Implementation Barriers

The systemic failure of implementation in rural communities in respect of almost all services is due to poor planning, resourcing, capacity deficiencies and related matters. The systemic and pervasive nature of these failings point to a policy failure: a failure to grapple with, and respond appropriately and meaningfully to, the service delivery demands and constraints in rural areas.

5.5.5. RECOMMENDATIONS

1. The unique factors inhibiting service delivery in rural areas require not only a dedicated rural women's development strategy but a dedicated rural service delivery strategy that addresses issues of distance, transport, insufficiency in sites of delivery, communication in areas with limited access to the media and modern technology, the real need and challenges around integrated service delivery, and the challenges of effective monitoring and evaluation in remote areas.
2. These dedicated policies and strategies must be based on evidence of the extent of the need and challenges in rural areas and must be stringently monitored and evaluated.

6 PART 4: ARTICLES 15 -16

6.1 ARTICLE 16: EQUALITY IN MARRIAGE AND FAMILY LIFE

6.1.1 RELEVANT PROVISIONS

The State has agreed to eliminate discrimination against women that arises from marital or familial relationships. It has committed itself to doing so in order to provide for equality between men and women such that they have, in general, the same rights and responsibilities, and, specifically, the same rights to the acquisition, ownership, management, administration, enjoyment and disposition of property.

In particular, the State is obliged to discourage and/or prohibit: polygamous marriages under customary law (General Recommendation 21, Comment 14); forced marriages (General Recommendation 21, Comment 14); and laws and customs granting greater rights to property to men on the death of a spouse or dissolution of a marriage.

The State has also undertaken to prohibit, repeal or prohibit laws, customs and practices that discriminate against, and harm, the girl child.

6.1.2 FOCAL AREAS IN THE STATE REPORT

- a. South Africa has a number of marital regimes governed by civil, customary and religious laws.
- b. Forced marriages and abductions are criminalised, and although the de facto enjoyment of this protection is hampered by cultural and socio-economic forces, the impediments are mitigated by the courts, CGE, SAHRC and Equality Courts.
- c. Equality of property rights has long been a reality under civil marriages but was extended in 1998 to customary marriages by the Recognition of Customary Marriages Act, which introduced equality of property and other rights for men and women; thanks to the Court, the inheritance rights of Muslim women are protected, too.
- d. A media campaign (2003-6) sought to inform targeted audiences about the Act.
- e. Women's rights in polygamous marriages are protected.

6.1.3 CORE ISSUES

6.1.3.1 No De Jure Protection For Domestic Partnerships And Religious Marriages

Women in religious Muslim and Hindu marriages and domestic partnerships are vulnerable to discrimination because their relationships are unrecognised and hence unprotected by the law.

The Muslim population constitutes between 1.5 and 2% of the South African population, coming in at just under a million people. The Hindu population is also a significant section of South African society. The failure of recognise religious marriages means that all women married by religious rites do not enjoy the protections offered by civil marriages, such as claims to assets acquired during the relationship, spousal maintenance and protection from eviction.

6.1.3.2 Customary Marriages Prejudice Many African Women

Black African women constitute 40% of the population of South Africa, about 19 million. They have the lowest per capita income, the least access to land and services, the lowest educational levels and the highest rates of unemployment. These are also the women to whom customary law applies. Whilst customary marriages are recognised in terms of the Recognition of Customary Marriages Act 120 of 1998 (RCMA), in practice many women are unable to register customary marriages. There are various problems

in respect of the registration of customary marriages, which are not reflected in the periodic report. Whilst the law is clear that a failure to register a customary marriage does not affect the validity of the marriage, it does, however, affect the ability of the surviving spouse to inherit from their deceased spouse's estate. As a result, this inability to inherit causes great inequality, and prejudices many women who have failed to register their customary marriages.

The effect of the non-registration is that they are denied the right to administer the estates of their late husband's and often the right to inherit. Most of these estates fall under a threshold amount and are administered informally in the magistrates' courts. Officials at the courts are often not legally trained and the institutions are unfriendly and impersonal. Many women report that there are instances when certificates are issued to them by officials at the Department of Home Affairs and then subsequently cancelled without proper authority, where men refuse to register their customary marriages the officials refuse to register the marriages.

Many women are married in customary law to a man who is also married in terms of civil law to another woman (with or without their knowledge). Amnesty International commented that several women interviewed reported that their husbands, who were migrant workers, had taken second wives with whom they lived when working away from home. In addition, nearly a quarter of women had experienced being "chased away" by their husbands or having felt forced to leave their homes when their husband took a second wife and moved her into their house.¹³⁷ While polygyny is recognised if both marriages are customary, the monogamous nature of civil law marriage dictates that where a civil marriage exists, the customary marriage is invalid. This places women in a similar legal position to women married in accordance with religious rights and women in domestic partnerships

The implementation problems around customary marriages and the primacy of civil marriages over polygynous customary marriages have resulted in many women being deprived of the potential protection offered by the legislation. In addition, many women are currently deprived of access to resources (including their homes) by the failure of the State to legislate the recognition of religious marriages and domestic partnerships.

6.1.3.3 Forced Marriages Still Occur

Despite the fact that forced marriages, especially of minors, are outlawed, substantial anecdotal evidence indicates that this remains a common practice in rural communities, where conservative tradition and custom regards it as acceptable.

6.1.4 BARRIERS

6.1.4.1 Policy Gaps

There is no uniform family code in conformity with the Convention. Religious marriages and domestic partnerships are not recognised at law, women in polygamous marriages are insufficiently protected, and as for the laws that are in place, the State dragged its heels in their enactment and did so only once civil society initiated litigation. This raises concern about its commitment to equalising the rights of all women under family life. The upshot of the apparent tepidity is that there is no plan and goal in place for remedying the key gaps outlined above.

The government's report primarily focuses on the progress made in extending intestate rights and proprietary rights to women who are party to religious and customary marriages. Although the extension of these rights to women is a significant development, the report fails to mention that the reason these cases are brought in the first place is because of the failure on the part of the State to address the

inequality in the current legislation and amend the offending legislation accordingly or to pass new legislation to meet its obligations.

Further, children suffer prejudice and discrimination under the law as a result of being born into an unrecognised relationship.

6.1.4.2 Implementation Gaps

The property and inheritance rights of women married under customary and religious laws have been strengthened at a legislative level as a result of judicial pressure brought to bear by civil society groups that resorted to legal action to compel legislative action by an otherwise reluctant State. Nevertheless, despite these de jure achievements, de facto enjoyment of the rights remains a problem.

Problems regarding registration of customary marriages abound and stem mainly from the following:

- The inability of officials at Department of Home Affairs to understand and implement the legislation correctly, thus turning women away;
- A lack of awareness by, and information for, women affected by the laws, resulting in women attempting to register marriages only on the death of their spouses.

Despite laws outlawing forced marriages and female genital mutilation, there is substantial anecdotal evidence suggesting that the practices not only continue but are promoted by conservative traditional and cultural practitioners and leaders.

6.1.4.3 Ineffective Enforcement Mechanisms

Existing mechanisms are ineffective at enforcing and protecting rights. While the State indicates that such protections are hampered by socio-economic conditions, it provides no detail as to the scope of the problem or measures being taken to confront it. Instead it places its faith in the countervailing efficacy of other institutions, when the reality is that courts are inaccessible to marginalised women due to precisely the same socio-economic factors that impair their protection in the first place; what is more, the SAHRC et al have unfortunately not been able to address the situation to any significant degree.

The cases that have been brought to the courts were brought by non-governmental organisations and in one case by a private individual. Litigation is costly in South Africa, and those who do not have the financial means are left with no recourse. In most cases, the State opposes the litigation, which also proves more costly for the party involved. Chapter 9 Institutions such as the Human Rights Commission and the Commission for Gender Equality (CGE), despite being given certain significant investigative, monitoring, and reporting powers, are not always central role players in the institution of litigation. In the Hassam matter, cited in the State report, the Constitutional Court admitted the CGE as *amicus curiae* in the matter, but midway through the proceedings the CGE withdrew from the case, citing structural reorganisation as the reason for not intervening: this further illustrates the failure of the Chapter 9 institutions to uphold their mandate as protectors and watchdogs of the bill of rights.

6.1.4.4 Poor Knowledge

By the State's own admission, no further steps were taken after 2006 to continue raising awareness of the laws that have been created, notwithstanding that there is substantial evidence to suggest that women are not aware of their rights and thus fail to register their marriages and benefit from legal protection.

Moreover, one must conclude from the State report that the media campaign conducted between 2003 and 2006 was not evaluated to determine how well it worked at raising awareness. As such, no evidentiary

basis exists on which to apply any lessons learnt and develop an effective communications strategy to remedy the lack of awareness.

6.1.5 RECOMMENDATIONS

1. A uniform family code must be developed so as to standardise the legal recognition, status and protection afforded to all domestic relationships, notably religious marriages and domestic partnerships. The law-reform process in relation to the recognition of religious marriages and domestic partnerships should be accelerated in order for the State to demonstrate its commitment to its international obligations.
2. Protection for women in customary marriages must be strengthened.
3. There must be ongoing training and awareness-raising amongst service providers and women about the rights and processes created by the various family laws.
4. The State must research the prevalence of forced marriages and female genital mutilation and develop appropriate sanctions as well as advocacy campaigns for eradicating these harmful practices.

7 PART 5: VIOLENCE AGAINST WOMEN

7.1 GENERAL RECOMMENDATIONS 12 & 19: VIOLENCE AGAINST WOMEN

7.1.1. RELEVANT OBLIGATIONS

The State has agreed to:

1. Take appropriate legislative and other measures to protect women against gender-based violence (GBV) and to provide support services for victims and survivors of GBV;
2. Compile statistics of violence, the effect of violence and the effectiveness of measures to prevent and deal with violence;
3. Identify the nature and extent of attitudes, customs and practices that perpetuate violence against women and to take effective measures to overcome these attitudes and practices;
4. Prioritise the provision of protective and support services for women in rural areas;
5. Report on risks to rural women, the extent and nature of violence they are at risk of, and the effectiveness of measures to address violence; and,
6. Report on legal, preventive and protective measures that have been taken and on how effective they have been.

7.1.2 FOCAL AREAS IN THE STATE REPORT

- a. South Africa has undertaken legal reform to provide protection and support services for survivors and victims of sexual offences and domestic violence. Areas that have been strengthened include sentencing, victim empowerment and integrated responses.
- b. At an operational level, a multi-sectoral integrated approach focuses on prevention, reporting, transformation of the criminal justice system, and fast-tracking effective processing of cases.
- c. Victim support services have been strengthened through the development of a Service Charter for Victims of Crime.
- d. An anti-rape strategy has been developed, as have guidelines for service providers such as the police and health-care workers.
- e. There are two national prevention and awareness-raising campaigns: the 365 Day Action Plan to End Gender Violence and the 16 Days of Activism Campaign.

7.1.3 CORE ISSUES

7.1.3.1 High Levels Of Violence Deny Women The Right To Freedom From Discrimination

South Africa has sought to develop a comprehensive response to GBV that includes legislation, public awareness programmes and shelters for abused women. However, many women remain at risk in South Africa, which has one of the highest global rates of GBV.

Official statistics are unreliable due to under-reporting, corruption and lack of disaggregation. Even if one uses only the official statistics, there is no doubt that the rate of violence against women remains extremely high. South African Police Services (SAPS) statistics for reported rape were 69,117 in 2004/5, 68,076 in 2005/6, 65,201 in 2006/7, 63,818 in 2007/8, and 71,500 in 2008/9.¹³⁸

Nevertheless, it is estimated that these statistics reflect only 10-15% of rapes committed. For 2002, for instance, the estimates are that approximately 88% of rape cases were not reported for varying reasons, including embarrassment, self-blame, fear of not being believed, trauma and fear of secondary victimization.¹³⁹ Almost half of the women interviewed in a Cape Town study¹⁴⁰ had experienced one sexual assault;¹⁴¹ a substantial number of young women aged 14 – 24 participating in a study on violence in

educational settings experienced their first sexual encounter as a result of coercion, trickery or rape;¹⁴² more than one quarter of men participating in a study conducted by the Medical Research Council admitted having raped a woman, while 14.3% had raped a current or ex-girlfriend or wife.¹⁴³ Nearly half of the men who said they had raped, had raped more than one woman or girl; every six hours a woman is killed by her male partner.¹⁴⁴

7.1.3.2 Recognition, But No Interrogation By The State Of The Failure Of Responses To GBV

The State report recognises, in part, that the initiatives it has reported on have not translated into effective protection for women. It is not enough, however, to acknowledge the ineffectiveness of the prevailing initiatives. It is necessary that the State interrogate the reasons for its ineffectiveness and indicate what it intends doing about any policy gaps, gaps between policy and practice, and gaps between law and implementation. This report seeks to engage with these issues under “Barriers” below.

7.1.3.3 Insufficient Support Services At Health Facilities For Victims And Survivors Of GBV

Although policies and guidelines have been developed to improve services for ameliorating the after effects of rape and improve access to justice, many women do not receive adequate support. A study by Tshwaranang Legal Advocacy Centre confirmed that women experience systemic access problems when seeking support services at health-care facilities.¹⁴⁵

- Lengthy waits for medico-legal examinations are common at health-care facilities.¹⁴⁶ This is aggravated by the fact that nurses are not able to provide many of the forensic and treatment services but have to wait for doctors, who are in short supply especially in rural areas. The services are fragmented across many rooms and service providers within a facility, which lengthens the process substantially. This also contributes to the lack of privacy and confidentiality.¹⁴⁷
- Medical treatment that is time-dependent for its efficacy is often delayed. Post-exposure prophylaxis (PEP), only effective within a short window of opportunity after the attack, is often the last step provided in the treatment for the women. PEP is frequently not available after-hours, when most attacks are reported.
- The majority of women who receive their first PEP treatment do not return for essential subsequent doses.¹⁴⁸

7.1.3.4 Justice Is Not Served Through The Courts

The rate at which rape accused are charged and convicted, along with the length of the sentences they receive, represents a failure of justice for many rape victims and survivors. A study by Vetten et al (2008) that tracked the progress of rape cases through Gauteng courts found that of the 2064 cases in the study:¹⁴⁹

- Half of cases reported (50.5%) resulted in arrests, but only 42.8% proceeded to court;
- Only 4.1% of cases reported resulted in a conviction;
- 15.6% of convictions resulted in less than the ten-year minimum sentence;
- 34 of the accused were eligible for life imprisonment, but this sentence was imposed only in three cases; and,
- Actual trials commenced in less than one in five cases.

Further studies show that minimum sentences are not consistently imposed on convicted rapists. The Criminal Law Amendment Act No 105 of 1997 introduced minimum sentences for rape which may only be deviated from when “substantial and compelling circumstances” are found to exist. A study by Vetten (2008) found that presiding officers have mixed views on what constitute substantial and compelling circumstances and different understandings of the harm and injury caused by rape; this results in inconsistency across cases in the imposition of minimum sentences in accordance with the level of harm or

injury caused by the rape. The lack of consistency results yields inequitable disparity of sentencing based on attitudes of the presiding officer.

7.1.3.5 Victims Of Domestic Violence Cannot Access And Do Not Receive Adequate Protection

We have domestic violence laws which are regarded as progressive by international standards. The laws allow courts, inter alia, to: prohibit abusive behaviour; prohibit entry into a victim's home; order the perpetrator out of the family home; and order the removal of his weapon. In addition, oversight is built in by means of a dedicated Independent Complaints Directorate (ICD) established to oversee adherence to obligations imposed on the police in terms of the law. But despite this strong legal framework, the majority of women do not receive the protection they are entitled to from either the police or the magistrate's courts.

- Many police officers do not provide the prescribed services. This includes failure: to investigate telephonic reports of domestic violence; to assist with the service of court process; to refer complainants to shelters or organisations that can assist them; to assist complainants to obtain medical assistance; or to provide them with the necessary forms for completion by a registered medical practitioner in the case of a criminal case being opened.¹⁵⁰ Police officers are reluctant to arrest perpetrators of abuse owing to the widespread perception that domestic violence is a "family matter" in which they have no right to involve themselves.¹⁵¹
- Women suffer secondary abuse when they report domestic violence due to negative attitudes towards complainants; this is especially so when charges are withdrawn. In December 2004 the MEC for Safety and Security in KwaZulu-Natal ordered that all women who withdrew charges must be charged by the police.¹⁵²
- The oversight function is not being fulfilled or enforced by the ICD or Parliament. Since 1999, only two reports were submitted by the ICD and none by the police.
- Access to the police and court-based protection is severely inhibited by geographical location, literacy and poverty levels. A study conducted by Rasool (2002)¹⁵³ indicates that only 6% of rural women, compared to the 41% of women in urban areas who were abused, made use of the legal protection provided by the law. This is so in large part because the legacy of apartheid has left many rural areas and townships without adequate access to magistrate's courts or other justice service sites, given that these facilities are mainly located in the urban and developed areas.¹⁵⁴ Accessing the facilities involves travel costs that can rarely be afforded. A further impediment is that the application forms for a protection order must be in writing; moreover, the forms are only available in two of the official eleven languages (English and Afrikaans), both of which are not understood or spoken by many rural women.

7.1.3.6 Sex Workers Are Not Protected From Violence

Sex workers are vulnerable to violence, rape and assault. Their vulnerability is aggravated by the criminalisation of sex work, which exposes them to the risk of a criminal charge being laid against them if they report the assault on themselves to the police.¹⁵⁵

The criminalisation of sex workers promotes their isolation and marginalisation, and provides scope for corruption in their dealings with law enforcement officers. Consequently, they experience physical abuse, violence and corruption at the hands of the police. Twelve percent of street-based sex workers in Cape Town have been raped by a police officer, and 28% have been asked for sex in exchange for their release from custody.¹⁵⁶

They also experience unequal access to health-care services and routinely face discrimination when attempting to make use of such services.¹⁵⁷

7.1.3.7 No Engagement With Violence Against Especially Vulnerable Women

The State report is silent on the experiences of vulnerable and marginalised groups, in particular: indigenous, refugees and undocumented migrant women; commercial sex workers, the overwhelming majority of whom are women; the routine violence and discrimination experienced by lesbian and transgender women; and the critical intersection of GBV and HIV and AIDS.¹⁵⁸ Due to restrictions of space, this report will focus on two especially vulnerable groups, namely lesbian, bisexual and transgender people and women living in rural areas in South Africa.

Lesbian, Bisexual And Transgender (LBT) People

Despite sound legislative protection against discrimination, there is a significant failure in the de facto enjoyment of this right by LBT people. South African shows high levels of homophobia fuelled by conservative religious and African customary views on homosexuality. Evidence from NGOs across the country clearly suggests that levels of homophobic hate crimes, including assault, rape and murder, are increasing. Of all the forms of abuse facing LBT people, it is the myth of “corrective rape” that has received the most recognition and coverage. It refers to the rape of women who are, or are perceived to be, lesbians in order to “fix” them by making them heterosexual.

Compounding the situation facing LBT people in South Africa is the very real problem of the secondary victimisation they often suffer at the hands of the criminal justice system and, specifically, the police. There are numerous cases in which lesbian women have gone to local police stations to report incidents, only to be humiliated and abused further by police officials. Similar problems have been faced by victims at state medical facilities and when working with public prosecution services. This secondary victimisation exacerbates more general problems related to extreme under-reporting of rape and assault cases and to the failure of reported cases to make it through the criminal justice system to a conviction.

A request was put to the National Prosecuting Authority (NPA) for information about the number of violent crimes against LBT, the number of cases prosecuted, the number of successful convictions and the sentences handed down. However, the NPA proved unable to provide the information. This leads to the conclusion that there is no systematic monitoring of the prevalence of the problem or the effectiveness of support and judicial systems to provide the necessary assistance and relief.

Women In Rural Areas Are Not Adequately Protected

CEDAW expressly requires that rural women receive appropriate protection and that the State report on the extent of their vulnerability, the measures taken and the effectiveness of the interventions to address violence against rural women.

The State’s report is silent on all of these issues. There is no available data on the incidence of domestic violence against women in rural areas. This makes it difficult to determine the scope of the problem. However, there is no doubt that these women are exposed to a heightened vulnerability due to their poverty and other socio-cultural factors, poor literacy levels, language barriers and poor access to courts, as discussed under the previous heading. There are no effective measures – legislative or other – to address this vulnerability and improve access to protection and justice for rural women at risk of GBV.¹⁵⁹

7.1.3.8 No Evidence Of The Impact Of Advocacy Campaigns

The 365 Days Campaign is an extension of the 16 Days of Activism campaign. 16 Days of Activism was originally driven by civil society and was subsequently adopted by government. These campaigns are inadequately funded and poorly conceptualised, focusing on project rather than societal or systemic solutions to bring about sustainable transformation of society.

These campaigns do not demonstrate impact, as is clearly evidenced by the continued conservative and regressive attitudes that promote GBV, by the secondary victimisation of women, and by the severe limitations within protection and support services.

The issue of stereotypes and attitudes acting as drivers of violence against women – and the failure to make significant shifts in this regard – is discussed in detail under various articles in this report.

7.1.4 BARRIERS

7.1.4.1 Policy Gaps

Whilst we have a progressive legal framework in place, numerous policy and legislative gaps expose women to heightened risks of violence and fail to provide them with adequate protection.

For example, the Domestic Violence Act fails to take into account the intersectionality between violence, poverty and HIV and AIDS. Nowhere in the text does it make reference to HIV/AIDS or any other set of circumstances that require dedicated and specialised responses, despite the fact that the majority of women affected and infected by HIV/AIDS also experience domestic violence. Nor does it compel specific and appropriate responses to provide effective protection to these women.

Sex work remains criminalised in spite of the specific recommendation to decriminalize it in the NSP 2007 – 2011.

A key policy gap lies in the fact that the protection and support services are provided only to women who report the crime. The majority of women who fail to report the crime have limited options in terms of protection and support services.¹⁶⁰

The Victims' Charter is not legally binding as it has only policy status and is rarely if ever used by judges and magistrates. The rights are intended to be conferred only on those victims who choose to report crimes and engage with the criminal justice system. The Victims Charter therefore does not protect all victims of crime.

Special measures for child victims in court are not automatically available in terms of the governing law but require that an application be made to court.

No study has been conducted on the impact of customary law on GBV, and no attempt has been made to repeal or amend offending customary laws.

7.1.4.2 Implementation Gaps

The most significant barriers are those linked to poor implementation of an otherwise progressive legal framework.

There is a lack of education and training for the public and implementers around new legislation such as the Domestic Violence Act and Sexual Offences Act.

There is a lack of training and guidance for presiding officers on the criteria and application of the minimum sentence provisions.

Inadequate planning, costing and budgeting for the proper implementation of legislation have resulted in systemic shortages in personnel, facilities and intended support services. Despite the State's reliance on

civil society organisations to provide services to survivors of violence, it fails to resource these organisations adequately.

Current advocacy and awareness-raising campaigns are ineffective to stem GBV and shift the underlying attitudes and practices. This is in part due to ineffective *planning* of campaigns, which in turn is linked to the ineffective *evaluation* of previous campaigns.

7.1.4.3 Monitoring And Evaluation Gaps

Insufficient monitoring by the IDC and Parliament as to whether or not the police and other stakeholders are fulfilling their obligations undermines the effectiveness of the Domestic Violence Act and indicates a lack of political will and commitment to implement the law.

Despite the obligation on the state to provide accurate and disaggregated data on the extent and cause of violence and the impact made by interventions, there are no accurate and reliable data on the subject. This in turn impacts on the effectiveness of the State's planning, budgeting and implementation.

7.1.5 RECOMMENDATIONS

1. Strengthen the policies and laws to protect all women, especially those who are exposed to multiple vulnerabilities, notably migrant women, LBT people, and women in rural areas. These policies must be evidence-based, that is to say, based on adequate research and ongoing monitoring of the prevalence and nature of violence against these vulnerable women.
2. Repeal all laws that criminalise adult sex work and enact, without delay, comprehensive legislation that will protect sex workers from violence and exploitation.
3. The government must develop evidence-based and effective advocacy and awareness-raising campaigns. Senior government politicians and leaders must speak out forcefully on the urgent need to end violence against women and ensure public accountability for all instances of violence.
4. Government funding must be increased to provide adequate services (including shelters for abused women and children) and access to justice and redress for survivors.
5. Strengthen implementation and monitoring of the Domestic Violence Act and related criminal and civil laws.
6. Ensure the speedy prosecution of perpetrators of domestic violence in order to convey to offenders and the public that society condemns domestic violence by, inter alia, ensuring enhanced coordination among law enforcement officials, judicial officers, and non-governmental organisations that work to protect and support women survivors of gender-based violence.
7. In adjudicating domestic violence cases, due consideration must be given to the safety of women, emphasising that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity.
8. The need is urgent for intervention from the highest levels to challenge the epidemic of homophobic hate crime in South Africa. There is a need for an acknowledgement of the problem from leaders within the structures of government, a commitment to explore all options at a policy and legislative level, and sensitisation and training for service providers to ensure better implementation of current legislation to provide effective protection for all women who are doubly discriminated against

9. Strengthen the necessary infrastructure, including adequate resource allocation, in order to increase access, and quality of services, for victims of sexual violence and rape, particularly access to, and quality of, PEP services and treatment.
10. Intensify the implementation of objectives in the National Strategic Plan which specifically address the links between violence against women and HIV risks and calls for the decriminalisation of sex work.
11. Reiterate violence against women as a “driver” of the HIV and AIDS pandemics, as a consequence to HIV, and as a barrier to access available prevention and treatment services.

8 PART 6: COMMITTEE'S '98 CONCLUDING COMMENTS

8.1 CONCLUDING COMMENTS: OVERVIEW OF COMPLIANCE

8.1.1 Reconcile Conflict Between The Constitutional Protection Of Equality And Discriminatory Religious And Customary Laws

Ten years after this recommendation was made there are still a number of discriminatory religious and customary laws which impact negatively on the inheritance and land rights of women and women's rights in family relations. Some progress has been made in abolishing certain laws, but this progress has been driven by civil society initiated litigation which was opposed by the government. The government does not have a time-bound reform agenda or plan to address the remaining discriminatory laws.

8.1.2 Adequately Resource Of The Commission On Gender Equality

The Commission on Gender Equality is largely dysfunctional and needs more than additional resources to make it an effective tool in the country's national gender machinery.

8.1.3 Prioritise National Comprehensive Responses To Reduce High Levels Of Violence Against Women

The levels of violence against women in South Africa remain high. Whilst there have been a number of progressive legislative steps in addressing violence against women, there is still the need to develop a comprehensive law addressing all forms of violence against women and making provision for all relevant forms of support and justice. Moreover, there has been a failure to sufficiently fund and otherwise resource laws and programmes that have been developed. The lack of funding alongside inadequate awareness raising and advocacy campaigns has translated into a systematic failure to realise de facto protection of women against violence.

8.1.4 Implement Temporary Special Measures To Increase The Number Of Women In Decision-Making Positions And The Judiciary

Whilst we have seen an increase in the number of women in positions of political power within the ruling party, the same cannot be said of the full political landscape in South Africa. There is no legal obligation on all parties to meet gender quotas. In a similar vein, the judiciary remains male-dominated and there is no law in place compelling the appointment of women.

8.1.5 Improve Employment Ratios And Protection Of Women

The employment ratio of women, especially vulnerable women, remains low. Many women who are employed do not enjoy the same level of protection by the governing labour legislation.

There is no law compelling the specific employment of women. In addition, despite the existence of a progressive labour legal framework in South Africa, many women who find employment experience continued inequality in their enjoyment of the employment benefits, protections and services which the framework provides. Women who are especially vulnerable to abuse of their employment rights include: seasonal workers and other part-time workers; migrants, refugees and asylum seekers; domestic workers; farm workers; and women in the fishing sector.

8.1.6 Equalise Access To Health Care Services And Improve Data Collection

Access to health care remains inequitable across the different provinces and as between rural and urban settings. Moreover, data collection and disaggregation is inadequate to keep track of progress and for planning purposes to address entrenched inequities.

8.1.7 Adopt Specific Measures To Empower Rural Women And Improve Their Social And Economic Rights

Despite many policies and laws designed to address the rights of women, there is a systematic failure with respect to rural women's rights across the full spectrum of the Convention. No national dedicated special measures have been specifically designed to overcome this entrenched inequity.

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