



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Forty-eighth session

17 January – 4 February 2011

List of issues and questions with regard to the consideration of periodic reports

South Africa

The pre-session working group considered the combined second, third, and fourth periodic reports of South Africa (CEDAW/C/ZAF/2-4).

General

1. According to the report (Overview, at pp. 34-36), the methodology used for its preparation comprised, inter alia, discussions with individual gender experts and a presentation to the Women's Parliament held in the National Parliament in August 2008. Please specify the extent of consultation and participation of non-governmental organizations and whether the report was submitted to Parliament.

Legal status and visibility of the Convention

2. Please clarify the status of the Convention in the national legal system in view of sections 1 (c), 2, and 39 (1) (b) of the South African Constitution (para. 1.2). Are there any examples of (constitutional) court cases in which the (constitutional) court has utilized the Convention in interpreting the Bill of Rights?

3. The report (paras. 1.1 - 1.9) describes the adoption of ordinary equality legislation to give effect to section 9 of the South African Constitution, especially the Equality Act, 2000, and the Employment Equity Act, 1998. The report asserts that the definition of discrimination in the Equality Act, 2000, is comparable to article 1 of CEDAW and broad enough to cover its scope. Please indicate whether the State party is considering a specific Gender Equality Act containing a definition of discrimination against women in accordance with article 1 of the Convention, incorporating the Convention into domestic law and thus providing a firm legal basis for the State party's policies and programmes on gender equality in all fields covered by the Convention.

4. Welcoming the accession of South Africa to the Optional Protocol in 2004, please indicate what measures have been taken by the State party, in accordance with article 13 of the Optional Protocol, to make the Convention and its Optional Protocol visible in the

country, including through training programmes for the judiciary, law enforcement officials and other civil servants.

5. The report states that the Southern African Development Community's Protocol on Gender and Development was "ratified and adopted during August 2008" (para. 8.21; see also para. 1.10.4). Please elaborate further on its legal status, the international obligations undertaken by the State Party thereunder, the relation of this Protocol to Security Council Resolution 1325, and measures taken to implement its provisions.

Discriminatory laws/provisions

6. The report discusses several judgments by the Constitutional Court of South Africa by which discriminatory rules of customary laws on marriage and succession were held to be unconstitutional. In the case of *Bhe*, the Court struck down a rule of customary law of male primogeniture in cases of intestate succession and required Parliament to correct the legislative defects pending which the Court put an interim system in place (para. 2.13 and Textbox 29 at p. 250). In *Gumede*, the Court declared customary rules of marriage in the province of KwaZulu-Natal to be unconstitutional as being discriminatory on at least one of the listed ground of gender (para. 2.13). Whereas the State Party reports that a Bill on the Customary Law of Succession has been tabled in Parliament (para. 15.1) it also indicates that the State party retains the combination of civil, customary and religious marital regimes. In view of the Committee's recommendation contained in its previous concluding observations (CEDAW/C/ZAF/CO/1, para. 118) to prepare a uniform family code with the aim of abolishing unequal inheritance rights, land rights and polygamy, please provide information on the progress made to enact such legislation.

National machinery for the advancement of women

7. In its last concluding observations (CEDAW/C/ZAF/CO/1, para. 119), the Committee raised concerns that the national machinery and the Commission on Gender Equality do not have sufficient financial and human resources available and encouraged the State party to provide it with adequate resources. Please report on the progress made in the implementation of the Committee's recommendation.

Stereotypes, cultural practices

8. Please provide information on any legislative initiative to reverse the Constitutional Court's judgement in the case of *Jordan* which is reported by the State Party to have entrenched the role of women as caregivers and men as bread winners (Textbox 11 at p. 109).

9. Please provide information about any comprehensive strategy or initiative with a focus on rural areas that may exist in order to eliminate existing gender stereotypes and harmful cultural practices, such as *ukuthwala* and virginity testing, that impede the dignity, empowerment and development of rural women.

Violence against women

10. The report concedes that "the country is still challenged by the persisting volume of violence against women and children, and of serious concern, is the depth of this violence displayed in several cases" (para. V.2.21). Based on a multi-sectoral integrated approach the report identifies a number of policy, legislative, administrative, and other measures to combat the scourge of violence against women prevailing in the country, including the "Justice Crime Prevention Strategy". The report further provides statistics up until the years 2006/07 on the persistent high rate of cases of rape (para. V.4.3) and other forms of violence against women, including domestic violence (V.2.11), as well as on the extremely

low conviction rate for sexual offences (paras. V.4.24.1). It also refers to a University study that indicates that some judges fail to impose the minimum mandatory sentence on rapists (para. V.4.6). Against this background, please explain the rationale behind the goals of the “365 Days National Action Plan” of, inter alia, reducing cases of rape by 7 to 10% per annum and increasing conviction rates by 10% per annum (para. V.2.16), whether such goals have been achieved within the years since the launching of the “365 Days National Action Plan” in 2007, and if so, by applying what measures. The report lists a few studies into the root causes of violence against women pertaining to gender-stereotyped attitudes. Please clarify whether further research is envisaged by the State Party into the high level of violence against women, including the high incidence of rape, particularly of young girls, so as to more effectively prevent violence against women, bearing in mind the Committee’s general recommendation No. 19 and its recommendation contained in its concluding observations concerning the State party (CEDAW/C/ZAF/CO/1, para. 124).

11. Please report on whether administrative or legislative measures have been taken ensuring that restraining or protection orders by courts are enforced and the laws on pre-trial detention for alleged sexual offenders are applied, particularly in cases of a risk of re-offending.

12. Please indicate whether any special initiative or programme exists that target sexual offences committed against lesbian women and girls who are reported to be subject to serious violent crimes of rape and murder, also out of the harmful belief reported to be prevailing in some communities that lesbian women would change their sexual orientation if they are raped by a man. Please also provide information on the 20 cases of murder of lesbian women documented in the State party by May 2009 and how they are being investigated and addressed by the criminal justice system.

Trafficking, exploitation of prostitution

13. The report identifies numerous laws which make acts of trafficking in human beings, especially of women and girls, a criminal offence, namely the Children’s Act, 2005; the revised Sexual Offences Act, 1957, called the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; the Prevention of Organized Crime Act, 1998; the Refugees Act, 1998; the Domestic Violence Act, 1998; the Sexual Offences Act, 1957; the Basic Conditions of Employment Act, 1997; and the Child Care Amendment Act, 1996 (paras. 6.2 and 6.7). Please provide information on the implementation of the above-mentioned Acts. Please provide further information on whether the State party intends to draft a comprehensive bill criminalizing trafficking, including a definition of the crime of trafficking in human beings and the sanctions it carries.

14. Please elaborate further on measures initiated to address the identified need for accurate data on the extent of trafficking and the need for research into the issues and challenges faced by law enforcement and judicial personnel in policing and prosecuting trafficking cases (paras. 6.13 and 6.14). In responding to this question, please cover both the problem of cross-border and domestic rural to urban trafficking.

15. The report (para. 6.15) indicates that the “365 Days National Action Plan to End Gender Violence” includes a focus on trafficking of women and prostitution. Please provide information on the measures undertaken by the State party under this Action Plan and other steps taken to combat exploitation of prostitution of women, particularly girls, including efforts to decriminalize women in prostitution and to support women who wish to leave prostitution (cf. para. 6.18).

Political participation and participation in public life, temporary special measures (article 4, paragraph 1)

16. Please specify whether the Electoral Act, 1998, or other pertinent legislation, provides for a quota system or other appropriate temporary special measures to ensure equal participation of women in political activities as recommended by the Committee in its last concluding observations (CEDAW/C/ZAF/CO/1, para. 128). Please also provide information on whether other political parties apart from the African National Congress have taken decisions to ensure gender parity in their decision-making structures and with respect to representation in the National Parliament and Provincial Legislatures (cf. para. 2.2).

17. While the report contains statistical data on the participation of women in the area of political representation and decision-making at national and local levels of government, it is lacking comprehensive data for the provincial level. Please provide such data. Please further indicate whether the statistical data provided on women's representation in the Public Service relate to all levels of government, national, provincial, and local. If they do not, please provide relevant statistical data.

18. In view of the Committee's recommendation addressed to the State party in its previous concluding observations (CEDAW/C/ZAF/CO/1, para. 128), please expand further on the efforts undertaken to assess ways of extending quota systems to other governmental or governmentally appointed bodies to increase women's participation therein as well as in addressing the low number of women at the various levels of the judiciary (cf. paras. 7.10 – 7.12).

Education

19. The report confirms that the drop out rate for girls from schooling is lower than that of boys, that the main reason for girls to drop out is pregnancy, and that the South African Schools Act, 1998, is clear about pregnant pupils and students and their continued access to education. Please provide statistics on the actual drop out rate of girls from schooling and about the re-enrolment rate for pregnant girls. Please also provide information on the policies of the State party to eliminate gender-based violence in the context of schools.

Employment

20. The report concedes (para. 2.11) that while the Employment Equity Act, 1998, as well as the Equality Act, 2000, prohibit discrimination on the grounds of pregnancy, and while the Basic Conditions of Employment Act, 1997, protect maternity leave, there is no clear provision for remuneration during maternity leave. The report further makes mention of the White Paper on "Affirmative Action in the Public Service" (Table 1), which foresees the granting of full remuneration during maternity leave for four months. In view of the fact that the issue of remuneration during maternity leave, both in the public and private sector, has come under scrutiny of the Commission for Employment Equity (para. 2.11), please report about the progress made, particularly whether the White Paper has reached the legislative stage, and whether a maternity leave remuneration scheme is also intended for the private sector.

21. Please provide information on the outcome of the report on the investigation into domestic workers and the results of the discussion that ensued on the introduction of minimum wages for domestic workers the majority of which are women (para. 11.5).

22. Please also specify, including by available statistics, in what way the laws regulating wage determinations have contributed to the increase of earnings of women in traditionally female occupations (para. 11.6) and the challenges faced to close the gender-related pay gap and the underrepresentation of women in certain occupational sectors. What is the

status and what are the functions and powers of the Employment Conditions Commission in monitoring progress in enforcing the right to equal remuneration (para. 11.22)?

Health

23. Please explain what measures and programmes have been initiated to address the identified challenge of increasing women's access to adequate and efficient health services, especially for girls (para. 30 of the executive summary at p. 20).

24. Please elaborate on the basis and rationale for the goals set in the annual national health programme 2007/08 to have at least 50% of health districts implement the "Reach Every District" strategy, and 70% of districts have more than 90% immunization coverage. Please provide information whether the targets were achieved.

25. Please also provide information on what measures have been taken to implement the ten recommendations of the "Report on the Confidential Inquiry into Maternal Deaths" in relation to which the State party's National Department of Health has noted that much more progress needs to be made (paras. 12.16 and 12.17). In doing so, please report on the sex- and gender-related key health priorities in subsequent annual health programmes and the progress made.

26. Please indicate whether the goal of 80% of people living with HIV and their families receiving appropriate treatment, care and support services by 2011, determined by the South African National AIDS Council (para. 12.34), has been achieved. Have further survey rounds into the prevalence of HIV among pregnant youth been conducted (cf. para. 12.35) and what have been their results? Please provide up to date statistical data on the prevalence of mother-to-child transmission (MTCT). Please also elaborate further on efforts undertaken to broaden the prevention of MTCT services, including the involvement of non-governmental organizations, and whether the objective of reducing MTCT to less than 5 %, set in the 2007-2011 National Strategic Plan (para. 12.41.3, see also paras. 12.36 and 12.38), is expected to be achieved.

27. Please explain the discrepancies amongst the South African Provinces in the percentage of HIV positive pregnant women receiving antiretrovirals (Figure 5 at p. 204). Please also provide the results of the midterm review, disaggregated by sex, to elucidate on the factors that inform the gap between the number of patients registered for treatment of advanced HIV infections and actually receiving such treatment (para. 12.39), also in view of the State Party's admission that stigma and discrimination continue to present challenges in the management of HIV and AIDS (para. 12.42).

28. The Committee in its previous concluding observations expressed concern about the fact that the practice of female genital mutilation has not been given attention (CEDAW/C/ZAF/CO/1, para. 133). Please indicate whether the Department of Health and Social Development has taken up its proposed leading role in undertaking studies on the prevalence of female genital mutilation in South Africa as stated in the report (V.4.14). If such research has been undertaken has any plan of action been adopted with the aim of abolishing such practice? Please also report on further research undertaken into other traditional harmful practices (para. V.4.20).

Disadvantaged groups of women, rural women, poverty

29. The report reflects a great variance amongst women in the South African Provinces compared to men in ownership of land by women as well as female beneficiaries of land reform programmes implemented between 1994 and 2007 and particularly targeting rural areas (Tables 9 and 10). Please explain the discrepancies in relation to the Provinces. One of the reasons identified by the report for the variances vis-à-vis men was a provision in the Restitution of Land Rights Act, 1994, that gave priority in land restitution, inter alia, to

previous owners dispossessed by *apartheid* who in the majority were men (paras. 14.5 and 14.34). Please indicate to what effect the Act was amended in 2003 and what impact this amendment has had with respect to land ownership of rural women.

30. The report elaborates on the scarcity of sex disaggregated data on the progress made with respect to the implementation of “Integrated Sustainable Rural Development Programme” and the “Free Basic Services Programme” and that it is hoped that the “Local Government Policy Framework” will lead towards the routine development of a database containing data disaggregated by sex (para. 14.7). Please report about the progress that has been made in this regard.

31. The South African civil society has called for the establishment of a national fund for women’s advancement (para. vi.9) and other forms of financial resources and mechanisms as a means of empowering women in general and eradicating poverty in particular, suffered especially by disadvantaged groups of women, including rural women, older women and women with disabilities. Such targeted funding has been qualified by the State Party as best practice examples following the launch of the “National War on Poverty Campaign” in 2008 (paras. vi.12 and vi.14). Please report on the progress made in identifying financial resources and implementation of strategies and programmes towards this end.

32. Please provide information on the situation of older women and women with disabilities in all areas covered by the Convention.

Marriage and family life

33. Please indicate what policies and programmes are in place to make women aware of the risks and benefits of the various matrimonial regimes at their disposal, including the regime under the Recognition of Customary Marriages Act. What protection is given to women who are engaged in same-sex marriage and unions under the Civil Union Act of 2006?

Amendment to article 20, paragraph 1

34. Please indicate any progress made towards the acceptance of the amendment to article 20, paragraph 1, of the Convention pertaining to the Committee’s meeting time.
