

SOUTH AFRICA

LESLEY ANN FOSTER

Purpose and Rationale of the CEDAW Impact Study

This study is being conducted by the International Women's Rights project (IWRP), established at the Centre for Feminist Research (CFR) from York University in co-operation with the United Nations Division for the Advancement of Women (DAW). This study aims to assist women's human rights activists to make meaningful comparisons and to develop strategies for the effective implementation of *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW).

According to the guidelines as outlined by the International Women's Rights Project, the CEDAW impact study has been designed to "measure the implementation, and lack thereof, of the United Nations human rights treaties—the cornerstone of the global rights legal system—by beginning with examining CEDAW." This creates tools for government and non-government organisations alike to effectively address human rights issues. This study will "identify practical means to improve the reporting and monitoring processes relevant to member countries, treaty bodies and constituencies."

The impact study is important to South Africa because of the contribution it will make to the advancement of women's human rights. This contribution and specifically its focus on Violence against Women, are important concerns that need to be addressed. They need to be accounted for by the government for it is ultimately responsible for ensuring that women's human rights are upheld.

Executive Summary

The concept of a human rights culture and

human rights law was determined by the devastation, impact and "trauma of World War II, the widespread abuses of people and groups—including genocide, mass killings and other forms of violence against humanity."¹ This necessitated the formulation of various legal international treaties that recommended standards for the treatment of people by their own governments. The founding of the United Nations facilitated the process in which the human rights system could be implemented. The first attempt in 1947 to codify such standards was the *Universal Declaration of Human Rights* (UDHR). The United Nations Commission on Human Rights was subsequently established to oversee, implement, monitor, report and draft various *Conventions* by which the translation of the Universal Declaration's Principles became the legally binding human rights instruments, which was eventually split into two "covenants" by the General Assembly. *The International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* was adopted in 1966.²

Non-discrimination on the basis of sex is recognised as a

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fundamental human right by the *Charter of the United Nations*, the *Universal Declaration of Human Rights* and the two covenants mentioned above. However, criticisms levelled by women and other concerned members of the United Nations on the androcentric nature of these treaties resulted in the drafting of a separate *Convention* focusing on the rights for women.³ The right to gender equality and the primary *Convention* pertaining to women, the *Convention on the Elimination of all forms of Discrimination against Women* (CEDAW) was signed in 1979 and enforced in 1981.

The opposition to South Africa ratifying CEDAW in 1993 by the National Party was strongly linked to the political situation in the country. The negotiation process after the liberation struggle resulted in intense debate and perspectives from South African women on the forms of discrimination faced by them. During the preparations for the Fourth World Conference on Women held in Beijing from 4-15 September 1995, women in South Africa demanded that the government ratify CEDAW. South Africa eventually ratified CEDAW in full (no reservations) in December 1995. During the Apartheid struggle, a strong women's movement emerged. This movement developed the *Women's Charter* which formed the basis for the *Bill of Rights* and which is included in the national constitution. The process by which the emergence of the human rights of women as a discourse within the South African context is expanded upon in a later section of this report.

The recognition of gender discrimination and structures created by the present government is an attempt by South Africa to make CEDAW work effectively at the domestic level. This has not been easy as the legacy of apartheid has manifested itself in another form of struggle for South Africans.

The political rationals of maintaining apartheid discourses informed the racial and gendered categorisations of people in South Africa which in itself became a terrain of political struggle. The ideological and political hegemony within South Africa depended on "an ability to control the material context of personal and social experiences"⁴ and the "materialization and meanings given to money, time and space" had enormous "significance for the maintenance of political power"⁵ by the National party. Thus, the process in which the African National Congress Government is engaged in presently, reflects the reconstruction of a society in which entrenched ideologies need to be reversed. Entrenched ideologies and institutionalised power structures, be it explicit or implicit in nature, provides relatively little space in which to challenge hegemonic ideas on the social construction of gender. Legislative changes and formulation of policies which address gender inequalities have been the first step toward which South Africa is beginning to set mechanisms in place to significantly contribute to the promotion of equality between men and women.

At a theoretical level, the *South African Constitution*, as well as various international human rights instruments, recognises women's unequal social status. Substantive provisions of the *Convention on the Elimination of all forms of Discrimination against Women* (Articles 1-16) highlight the obligation of State parties that have ratified this legally binding *Convention*.⁶ The Preamble of CEDAW also recognises that at the heart of women's unequal social status lies the unequal burden on women in terms of child care and domestic responsibilities. It recognises that the sharing of responsibility between men and women and society as a whole for the upbringing and care of children is critical to achieving gender equality. The Preamble also recognises that women bear a disproportionate burden of poverty and have the least access to food, health, education, training and opportunities for employment and other needs. Though these aspects are noted within a theoretical paradigm, the practical implementation of these legal mechanisms proves much more

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difficult to accomplish.

Various factors impede the effectiveness for the implementation of CEDAW. A recognition of women's unequal status is noted in this legal document but one needs to question the concept and context in which equality is defined—a male norm of equality is imposed onto women and this in part negates the concept of equality for women as it merely preserves a hierarchical system based within a neutralised gender framework. An analysis of the human rights instruments reveals the weaknesses in which the much more deeply entrenched private/public dichotomy is not challenged.

The rights discourse, which has been entrenched in the *South African Constitution*, can only be effective and achieved if a gendered analysis of the private/public dichotomy is questioned. This, in turn allows one to challenge the political, economic and social oppression of women, as it is largely male dominated institutional structures, which determine the legal framework on which equality between the sexes is formulated. The purpose of gender analysis within policy documents should not only be a process of informing but transforming and subverting deeply entrenched stereotypes, values etc. The ingrained subordination of women sanctioned covertly by law in many countries is taken as natural and given. The use of cultural relativism as a means to discriminate against women (with States parties entering a record number of reservations to certain articles in CEDAW) needs to be questioned more closely. One begins to question to what extent a general equality clause would actually be able to trump over cultural rights in the African context.

Although South Africa has ratified CEDAW with no reservations, the inherent contradictions between the *Constitution* and the provisions in CEDAW have had major implications for the attainment of gender equality.

Despite the fact that South African women constitute 57 per cent of the population, the economic, political and social mobility of the majority of women (mainly black African) has not improved substantially. This can be attributed to various inhibiting factors which

range from limited access to resources, power bases, entrenched patriarchal institutions and attitudes, amongst others. The new *Constitution*, which came into effect on 4 February 1997, has entrenched equality even more firmly in the country's value system. The founding provisions, set out in Chapter 1 of the *Constitution*, assert that the democratic state is founded on the values of:

a) *Human dignity, the achievement of equality and advancement of human rights and freedoms; and*

b) *Non-racialism and non-sexism.*

Among the important clauses of the *Constitution* for the advancement of gender equality are:

The *equality* clause in the *Bill of Rights*, which says that “the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”

Affirmative action, provided for in the clause which states that “legislative and other measures” may be taken to “protect or advance” people who have been disadvantaged.

The clause on *freedom and security of the person*, which states that everyone has the right to “bodily and psychological integrity.” This includes the right to make decisions concerning reproduction, and to security and control over one's body.

While the *Constitution* acknowledges the right to property, it states that “no provision may impede the state from taking legislative and other measures to achieve land reform or equitable access to natural resources to redress the results of past racial discrimination.” This clause is crucial to one of the most disadvantaged groups of women—rural women dispossessed of *access to land* by

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both apartheid and tradition.

The *Constitution* states that where there is a conflict between *customary law* and the *Constitution*, the *Constitution* will take precedence.

The *Constitution* provides for *socio-economic* rights by committing the state to take “reasonable legislative and other measures, within its available resources, to achieve the progressive realisation” of the right to adequate housing, health care services, food, water and social security.

The *Bill of Rights* states that everyone has the right to both *basic education* and *further education* which the state “must take reasonable measures to make progressively available and accessible.”

South African law does not provide a definition of discrimination against women. Many of CEDAW’s provisions have not yet been directly included in South African laws. However, Section 231(4) of the *Constitution* states:

Any international agreement becomes law in the Republic when it is enacted into law by legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Convention or an Act of Parliament.

Section 233 of the *Constitution* states that:

When interpreting any legislation, every court must prefer any reasonable interpretation of legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

According to the First South African Report presented to the CEDAW committee in June 1998. The provisions of CEDAW are therefore relevant to the interpretation of all South African laws even though there is no explicit legislation.⁷

This study, in attempting to fulfil the purpose and objectives of the CEDAW impact study, has utilised a range of available government sources ranging from White Paper Policy documents, telephonic interviews, interviews,

research statistics, non-governmental reports and inputs and the United Nations CEDAW impact study questionnaire—which elicited responses from governmental and non-governmental structures and experiences of women’s rights activists. Although it attempted to offer a comprehensive perspective of the shift of South African women’s position in 1998, certain limitations impeded a more detailed study.

Introduction

The *Constitution of the Republic of South Africa* that was adopted by the Constitutional Assembly on the May 8, 1996, was indeed a victory for all its oppressed peoples. The slogan, ‘One law for one nation’, was not only possible through the intervention of the main key political players, but was helped by a history of political struggle by its people. South Africa’s *Constitution*, as mentioned earlier mentions a firm commitment to ensuring equality between men and women.

Although the revolution (which many people predicted) to overthrow the apartheid regime did not happen, the negotiated agreement between the two political enemies, the National Party (NP) and the African National Congress (ANC), saw the establishment of a legal framework in which a democratic state committed itself to human rights. The *Constitution* in itself is important in that we are now “seeing the gestation of a human rights culture” that was denied the majority of people.

Whilst our *Constitution* entrenches the idea of equality, democracy and non-racism, the women question and a gender analysis has only recently occurred in the South African context. However, the use of gender in itself is controversial not only in the South African context, but in the Western world. The use of the term “gender oppression” comes to encompass human rights and social justice for all people, especially in South Africa. The challenge, I think, more specifically in focussing on gender relations is that we begin to raise the issue of relations of power. The differential impact on men and women in terms of economic policies and economic and political power needs to be challenged at all levels of society.

The reductionist usage of the meaning of gender as being “synonymous with women has continued to focus gender analysis on areas of social life traditionally regarded as female domains such as the domestic sphere, the family and so on,” and is problematic.⁸ The use of the term gender on the other hand is vitally important in all societies to explain why the social relations between men and women are so fraught with dissonance. However, it is equally important to talk of women’s rights to challenge the way in which men and women operate in society and challenge the idea that this is natural and given.

The concept of gender as a category of analysis within the discourse of state theory in South Africa is being addressed in policy documents. However, the focus for the mobilisation of interests that is central to gender politics on a larger scale within civil society needs to be addressed to allow new political possibilities. The creation of special structures, such as the Office on the Status of Women, demonstrates the state’s power to regulate, exercise power, and claim a major stake in gender and sexual politics.⁹ These activities, as noted by Connell, includes family policy, population policy, regulation of sexual behaviour and expression, provision of child care, mass education, taxation, and income distribution.¹⁰ The “state becomes the focus of interest-group formation and mobilisation in gender and sexual politics.”¹¹

In South Africa, these interest group formation and mobilisation on the activities of the state and its accountability to civil society saw the emergence of a robust and varied civil society including numerous grassroots organisations forged and consolidated in the 1980s.¹² Thus, if the state has created special structures to regulate, exercise power and claim a major stake in gender politics—there is a definite need to assess and analyse to what extent and how the human rights and needs of women in South Africa is being implemented at a practical and strategic level.

In exploring some of the issues mentioned above, this report will provide overviews of:

- The emergence of the human rights of women as a discourse in the South African context;

- The South African Constitution and its Commitment to Gender Transformation

- Creation of Structures/Projects and Policies to attain Constitutional Objectives to Transform Unequal Gender Relations;

- South Africa’s Commitment to the *Convention on the Elimination of All Forms of Discrimination Against Women*;

- Translation of provisions in CEDAW into implementation;

- Problems encountered;

- The United Nations CEDAW Committee’s Assessment of South Africa’s First Report;

- Response to the UN CEDAW Impact Study Questionnaire from government structures/commissions/individuals;

- The non-governmental organisation sector’s involvement in the attainment of gender equality in South Africa;

- Impact of the NGO sector in the process of implementation of the South African Constitution and the CEDAW provisions to mainstream gender;

- Shadow Reports submitted to the United Nations CEDAW Committee by South African NGOS;

- Response to the UN CEDAW Impact Study Questionnaire from the NGO Sector.

A detailed examination and analysis of the above is beyond the scope of this study and researchers of this study have provided an in-depth appendices to strengthen this project. South Africa’s First Report to the United Nations CEDAW Committee has been extensively used in the initial input to this study as it was found to be quite comprehensive. Thereafter, as mentioned earlier, the White Papers on different aspects pertaining to gender transformation and literature from the NGO and government sector have been used substantially to analyse the transformation of gender inequality in South Africa and the extent to which the provisions in CEDAW are being implemented.

The Emergence of the Human Rights of Women as a Discourse in the South African Context: An Overview

The history of the struggle for women’s rights in South Africa was located and sub-

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ordinated for many years within the liberation struggle and in an attempt to transform the Apartheid State. The dualistic nature of this history resulted in women being confronted with a struggle against both gender inequality and racial oppression. The political and legal structuring of the Apartheid State divided women in South Africa along race and class lines and this shaped their perceptions of attaining gender equality. The political consciousness of black women (and a few white women in the liberation struggle) entailed demands for political and economic equality within the radical transformation of the State. The attainment of equality with men within the political and legal sphere was of central importance for a great number of white women during this period.

The social, political and economic historical and legal changes in South Africa determined the form and content of women's demands for equality. The increase of black women's political involvement at grassroots level in the liberation struggle during the 1950s saw the emergence of a new women's movement. In 1954, the Federation of South

African Women (FEDSAW) was formed. The movement developed a *Women's Charter* in which practical goals in a programme for the emancipation of women was incorporated. The focus and demands of the *Women's Charter* was as mentioned earlier, determined by the legal, social, cultural and economic positions of women in the fifties.

Though the above demands were set out in the *Women's Charter* at this particular time, two critical aspects impeded women's struggle for equality as detailed in the *Women's Charter* in the 1950s. On the one hand, there was an urgency for women's mobilisation for national liberation and on the other hand, the deeply ingrained patriarchal attitudes within society did not create

the space or the time for women to address gender equality at an in-depth level.

Although an understanding and acknowledgement of gender oppression was worded in the *African National Congress's Freedom Charter* (ANC) of 1955, gender oppression was not fully underpinned or clarified within a defined material and ideological framework. Thus, claims to substantive gender equality within the legal, political, social and economic structures was determined by the discourse which informed understandings of gender oppression at this particular point.

The negotiating process with the ANC in exile by the then South African government and with the unbanning of the ANC by the state, altered the subordination of gender to the national liberation struggle. Women in ANC structures who participated in the constitutional process maintained that gender equality should be an autonomous aspect of this process. The role of women in the constitutional process was an important consideration raised at two conferences—in Lusaka and the Malibongwe meeting in Amsterdam.

The ANC's National Executive Committee maintained that women's equality and emancipation should be prioritised in its own right. The ANC's May 1990 statement called on women, particularly the ANC's Women's League (ANCWL) to take the lead in creating a non-sexist South Africa and to initiate a national debate for a Charter of Women's Rights to elaborate and reinforce the new constitution.

The development of a woman's rights movement was of primary importance to the ANCWL. Its primary role at the time of its formation was:

Acquire and disseminate information about women's needs and aspirations and; unify women in formulating and adopting a Charter to entrench equality for women in the *New Constitution*.

The WNC in engaging the women of South Africa in writing a Charter to impact on the Constitution viewed rights as an important priority of the campaign. The Women's National Coalition launched its charter for Effective Equality on National Women's Day, 9 August 1994. This Charter has no legal sta-

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tus. However, it was anticipated that it would form the basis of political, legal and legislative strategies for equality, as well as be a source in the writing of the final *Constitution*. However, many problems, challenges and obstacles were encountered by the WNC in their efforts.

Though women experienced many problems and obstacles, the women delegates to the constitutional negotiations requested assistance from the WNC. A Negotiations Monitoring Team was set up. Very few women delegates were present at the first round of constitutional negotiations in 1992. The exclusion of women at the Conference for a Democratic South Africa (CODESA) was challenged and a Gender Advisory Group (GAC) was established. Their task was to advise women delegates on the gender implications of CODESA's term of reference.

The dissolution of CODESA led to the next round of constitutional negotiations in the form of the Multi-Party Negotiation Process (MPNP). The GAC submitted a final report to the MPNP to be included in the process of writing the *Constitution*. The limited number of women in this process once again resulted in protests. It was then decided that each political delegation to the National Council should have at least one woman delegate. The various Technical Committees that were set up later should also include one woman. This was an important aspect to women's participation in the political transition. However, once again women delegates experienced certain obstacles and problems.¹³

Though women experienced various problems, women did influence the constitutional process. An example of the influence of women is illustrated by the dispute over the inclusion of customary law in the Bill of Rights. The claim for the exclusion of customary law from the Bill of Rights by chiefs who objected to the equality clause provision in the Bill of Rights was met with strong protest from women fighting for the principle of gender equality to be entrenched in the Interim Constitution. Women argued that customary law and tradition discriminated against women and if the above was legislated, a large number of women in South Af-

rica would be denied their rights. After much debate, the Technical Committee on Fundamental Rights drafted a compromise clause, which became known as Clause 32.

The chiefs and women opposed clause 32. Chiefs maintained that the equality clause diminished their authority and power and women delegates argued that it compromised the right to equality for women. Further, women delegates maintained that all women should be able to claim equality through the *Bill of Rights* and if customary law was excluded from the *Bill of Rights*, then the majority of rural women would be most affected. They pointed out that the equality clause should trump over claims to culture and customs that discriminated against women. An attempt to remove clause 32 and insert an equality trump was opposed by (male) experts who argued that an existent equality clause in the *Bill of Rights* was sufficient for women to challenge any discriminatory practices.

The challenges faced by women delegates as well as lobbying groups within the Constitutional process were of immense importance. The challenges faced by women at that point were of a particular nature. The progress made by these women impacted greatly in opening up the debate, making legislative changes as well opening up the discourse of gender equality in South Africa. The work begun by these groups needs to be sustained so that women in South Africa obtain the optimum status due to them.

The South African Constitution and its Commitment to Gender Transformation

The various clauses, which seek to attain gender equality, as enshrined in the *Constitution* have been detailed in the Foreword of this study. To facilitate, monitor and implement these aspects in the *Constitution*, various government

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and independent structures were created.

Creation of Structures to Attain Constitutional Objectives to Transform Unequal Gender Relations

National Machinery for Advancing Gender Equality:

South Africa's National Machinery for Advancing Gender Equality is made up of a package of structures that function strategically through:

Government: structures in Cabinet, in the national and provincial government departments, and in the Office of the Deputy President and offices of the provincial premiers;

The Legislature: national and provincial parliaments;

Independent Bodies: statutory bodies which are independent of government but report to parliament;

Civil Society: all the above structures link closely with, and are supported by civil society.

Structures in Government:

- The Department of Public Service and Administration
- Apex Structures at National and Provincial Level
- Gender Desks in Departments

Structures in the Legislature:

- Parliamentary Women's Groups
- Select and Other Parliamentary Committees

Independent Bodies:

- Commission on Gender Equality
- Human Rights Commission
- Public Protector
- Public Service Commission
- Commission for Restitution of Land Rights
- Financial and Fiscal Commission
- Judicial Authority

Women's Organisations in Civil Society

Appendix 1 details the form, function and role of each of these structures.

South Africa's Commitment to the Convention on the Elimination of Discrimination against Women

The ratification of CEDAW legally binds South Africa to take the necessary steps to facilitate and ensure that women enjoy political, social and economic equality in society.

This part of the study will examine the extent to which South Africa has attempted to translate the provisions in CEDAW into implementation. The South African First Report (June 1998) to the CEDAW Committee details the advances made in terms of their obligations to the provisions in this *Convention*. Thus, this section will merely highlight various aspects already expanded upon. Appendix 2 will provide a much more detailed examination of the progress made in South Africa in terms of legislative and administrative changes.

Article 2: Obligations to Eliminate Discrimination

States Parties condemn discrimination against women in all its forms, agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women and, to this end, undertake:

a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means the practical realisation of this principle;

b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;

f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

g) To repeal all national penal provisions which constitute discrimination against women.

Article 3: Development and Advancement of Women

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Legislative and administrative procedures

South Africa repealed various discriminatory laws prior to the 1994 elections. *The General Law Fourth Amendment Act (1993)* repealed a number of discriminatory laws regarding citizenship, attendance at trials, dismissal of female employees on marriage, and prohibition of women performing dangerous or night shifts.¹⁴

At the sectoral level, departments are largely responsible for initiating legislation. Where departments are aware of discriminatory provisions, they generally address these in drafting their White Papers. The department's of Labour and Public Service and Administration are redressing discriminatory legislation relating to women and work.¹⁵

The Department of Land Affairs has identified the following as discriminatory:

- *Black Administration (1972);*
- *Natal Code of Zulu Law;*
- *Common African Law and Custom.*

In drafting its land reform policy, the Department has attempted to give women security and equal rights with men regarding ownership, control and use of land.¹⁶

Article 4: Acceleration of Equality between Men and Women

Adoption by States Parties of temporary measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail, as a consequence, the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity, shall not be considered discriminatory.

Statistics from the Public Service Sector in December shows that:

- 583 299 or 49 per cent of public servants are women;
- Most women (309 417 or 53 per cent of the total) are employed in the highly skilled production category in which nurses and teachers are found.
- There are only 30 women out of 298 (or ten per cent) at senior management level. This represents a substantial increase from 3 per cent after the elections;
- Four out of 25 (16 per cent) director—generals—the most senior level in the civil service—are women; and
- Race imbalances persist—for example, 42 per cent of skilled supervisors, 58 per cent of management and 40 per cent of senior management are white men.¹⁷

A review of legislation and regulations by the former Office of the Public Service Commission aimed at eradicating all discriminatory practices within the public service.

The Labour Relations Act (1995) was extended to cover the public service in 1996. The Act states that no one may be discriminated against on the basis of family responsibility, marital status or sexual orientation. Such discrimination constitutes an unfair practice. The Public Service will also be covered by Employment and Occupational Equity legislation.¹⁸

Certain targets were set out to redress the imbalances in the public service sector. “One

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of the primary objectives of the 1996 White Paper on the Transformation of the Public Service is the creation of a genuinely representative public service which reflects the major characteristics of South African demography.” More specifically, it sets out its key targets:

- Within four years, a 50 per cent representation of blacks at management level; and
- During the same period, at least 30 per cent of new recruits to the middle and senior management echelons are to be women.¹⁹

Other departments, initiatives and strategies by the South African government to promote acceleration of equality between men and women include:

- Transformation Units;
- Affirmative Action in Government Departments;
- Provincial Initiatives to create an arena for women in parliament and studies are being undertaken to determine the reasons for women not reaching senior levels in the Public Sector;
- An improvement in employment conditions within the public service with a special focus on women.²⁰

Although the Constitution recognises tradition and religious practices as being fundamentally important to people in South Africa, it does acknowledge that certain practices oppress women and therefore a reform of discriminatory laws and practices is being reviewed.

Article 5: Sex Roles and Stereotyping

State parties shall take all appropriate measures:

a) To modify the social and cultural patterns of conduct of men and women, with a view to achieve the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority of either of the sexes or on stereotyped roles for men and women;

b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interests of

children is the primordial consideration in all cases.

The South African First Report to the CEDAW committee points out that deeply entrenched patriarchal institutions impede women’s mobility to attain gender equality. Although the *Constitution* recognises the customs, tradition and religious practices as being fundamentally important to people in South Africa, it does acknowledge that certain practices oppress women and therefore a reform of discriminatory laws and practices is being reviewed by the South African Law Reform Commission. Their task is to recognise customary marriages and to remove any remaining discriminatory practices. The Commission is also looking into the issue of discriminatory aspects of Muslim Family Law.²¹

The Commission on Gender Equality has also undertaken to evaluate any system of personal and family law or custom; any system of indigenous law, custom or practices or any other law, and thereafter making recommendations to parliament. (5-3)

Other important strategies used by various departments to address this issue:

- Use of inclusive language in policy documents;
- Education;
- Initiatives to combat sexism and gender bias by the Ministry of Education;
- An awareness of the manner in which the media entrenches stereotypes- programmes to gender-sensitise the media.²²

Article 6: Suppression of the Exploitation of Women

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

While the *Sexual Offences Act* (1957) makes prostitution an offence, current laws on prostitution may violate some constitutional rights. These rights include:

- The right to equal protection and benefit of the law;
- The right to have one’s dignity respected and protected;
- The right to privacy;
- Rights to freedom and security of the person;

- The right to freedom of association; and
- The right to choose one's trade, occupation or profession.²³

The Department of Justice has undertaken a review of the sexual offence legislation to decriminalise prostitution and to provide protection for women. Research and input to the relevant departments is being undertaken by various organisations to address the above.

Article 7: Political and Public Life

State parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and in particular, shall ensure to women, on equal terms with men, the right:

- a) *To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;*
- b) *To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;*
- c) *To participate in non-governmental organisations and associations concerned with the public and political life of the country.*

The representation of women in Parliament has increased. Although women are still under-represented in the public life, the government's affirmative action policy in the Public Service and with the Employment Equity Act has set targets for increasing the representation of women.²⁴ See Appendix for a detailed input.

In terms of the monitoring of CEDAW within government structures, the *Ad Hoc Joint Committee on Improvement of Quality of Life and Status of Women* was set up and it had the following terms of reference:

To monitor and oversee progress with regard to the improvement of the quality of life and status of women in South Africa, with specific reference to the government's commitments in that regard made in Beijing, and with regard to the provisions of the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW). The Committee has the power to take evidence and call for papers.²⁵

Among tasks which the Committee has undertaken or set itself are:

- Assessing the inputs into South Africa's first CEDAW report, and alerting Committee Chairs to the commitments made by the government in terms of CEDAW and the Beijing Platform for Action.
- Analysing the budget to assess the extent to which various departments use their budgets to prioritise and implement provisions which would lead to an improvement in the lives of women; and
- Identifying priorities for improving the quality of life and status of women within existing legislation and proposed legislation, and identifying any gaps, which might exist.²⁶

Article 8: International Representation and Participation

States Parties shall take all appropriate measures to ensure to women, on equal terms with men, and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organisations.

South African participants concerned with the empowerment of women are involved in committees, which include:

The United Nations Structures

- The Economic and Social Council with its subsidiary body, the Commission on the Status of Women;
- The Committee on the Elimination of all forms of Discrimination against Women;
- INSTRAW—the United Nations International Research and Training Institute for the Advancement of Women; and
- The United Nations Division for the Advancement of Women;
- The United Nations Economic Commission for Africa and its sub-committee, the Africa Regional Coordination

The representation of women in Parliament has increased. Although women are still under-represented in the public life, the government's affirmative action policy with the Employment Equity Act has set targets for increasing the representation of women.

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Committee for the Integration of Women in Development.²⁷

South Africa has also participated in other international and regional events.

An attempt by the Foreign Service Institute is being made to increase the number of women in foreign missions, that of diplomats etc. The Department of Trade and Industry has also begun to address the issue of greater representation of women in international trade missions.

Article 9: Nationality

a) State Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure that neither marriage to an alien or change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

b) State parties shall grant women equal rights with men with respect to the nationality of their children.

The new *South African Constitution* confirms the citizenship of all its residents that were denied citizenship during the apartheid era. With regard to women—they have equal rights with men with “regard to acquisition, change or retention of their nationalities.”²⁸

The *Alien Control Act (1991)* and the *Alien Control Amendment Act (1995)* controls immigration. These acts “regulate migration through immigration, work and workseeker permits. The amendment provides the government with greater controls and powers of expulsion.”²⁹

In January 1996, South Africa “acceded to the *Convention on the Status of Refugees of 1951*; the Protocol relating to the status of refugees of 1967 and the *Organisation of African Unity Convention* governing Specific Aspects of the Refugee Problem in Africa of 1969.”³⁰

Article 10: Education

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in par-

ticular to ensure, on a basis of equality of men and women:

a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality should be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

d) The same opportunities to benefit from scholarships and other study grants;

e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

f) The reduction of female student dropout rates and the organisation of programmes for girls and women who have left school prematurely;

g) The same opportunities to participate actively in sports and physical education;

h) Access to specific educational information to help to ensure the health and well being of families, including information and advice on family planning.

South Africa has clearly stated its commitment to providing lifelong education and training for all its people. The White Paper on Education and Training of 1995 states that:

Every person shall have the right:—

a) To basic education and to equal access to education institutions;

b) To instruction in the language of his

or her choice where this is reasonably practicable;

c) To establish, where practicable, educational institutions based on a common culture, language or religion, provided that there shall be no discrimination on the ground of race.³¹

Certain strategies have been formulated to ensure that the above rights are implemented. The national Department of Education has been given the overall responsibility for policy formulation. The South African First Report to the UN CEDAW Committee provides an in-depth account of the impact of educational changes on gender equality.

Article 11: Employment

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

a) The right to work as an inalienable right of all human beings;

b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.

d) The right to equal remuneration, including benefits and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or mater-

nity and to ensure their effective right to work, States Parties shall take appropriate measures:

a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

b) To introduce maternity leave with pay or with considerable social benefits without loss of former employment, seniority or social allowance;

c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particularly through promoting the establishment and development of a network of child-care facilities;

d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Like many other countries, women are concentrated in certain sectors of the economy and in particular occupations. However, unemployment for women is higher than for men. South Africa though has moved “some way towards providing equal rights and protection to those fortunate enough to find a job.”³²

This has entailed:

- A unified system of Labour laws;
- The Labour Relations Act;
- The Basic Conditions of Employment Act;
- Various employment opportunities.

Article 12: Equality in Access to Health Care

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health services, including those relating to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in con-

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nection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

The First South African Report does note that there are certain imbalances to health care among South Africans. Research conducted on health care in South Africa point out that the major causes of female deaths are:

- High blood pressure;
- Problems related to pregnancy;
- Bleeding before, during and after delivery;
- Septic abortion;
- Prolonged labour etc.;

The above is attributed to poor socio-economic conditions.

South Africa does face major health problems such as:

- Nutrition—malnutrition;
- Tuberculosis;
- Sexually transmitted diseases;
- HIV/AIDS;
- Cancer;
- Immunisation.

Access to health care:

• First be programmes introduced by the 1994 post-apartheid government was free health care for pregnant women and children under six at state hospitals and clinics.

• In 1996—provision of free primary health care was extended to all South African residents—male or female.

• An evaluation of the programme for pregnant women and children found a definite increase in the number of women utilising these services. However, there are no gender-disaggregated statistics on clinic attendances.³³

Obstacles to use of health care:

- Women's ability to access health facilities;
- Nature of the professional background and training of health workers;
- Restrictions on the scope of practice of nurses;
- Cultural beliefs and practices;
- Public transport system can hinder access;

- Many public clinics still lack basic facilities—electricity.³⁴

Quality of Care:

The Women's Health Project has developed a tool for monitoring health workers' sensitivity to women's health needs. The Department of Health is developing a model for women-focused mental care at the primary health level. Some NGOs are currently providing specific mental health services.³⁵

Reproductive Health:

The National Department of Health has a Directorate: Maternal, Child and Women's Health that oversees policy development and liaises with provincial health authorities regarding implementation.

The government's commitment to reproductive health issues covers the areas of:

- Contraception and family-planning;
- Antenatal, delivery and postnatal care;
- Sexually transmitted disease prevention and treatment; and
- Termination of pregnancy.³⁶

Article 13: Social and Economic Benefits

State Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- a) The right to family benefits;*
- b) The right to bank loans, mortgages and other forms of financial credit;*
- c) The right to participate in recreational activities, sports and in all other aspects of cultural life.*

“Social Security covers a wide variety of public and private measures. At present, means-tested grants are provided primarily for the aged, the disabled and for single parents and their children.”³⁷

Government initiatives to improve the social and economic quality of women's lives include providing support systems such as:

- Child and family grants;
- Old age pensions;
- Funding to increase women's participa-

tion and attainment of equality in sport;

- Funding of women’s arts and culture projects;
- Looking at ways to guide financial institutions to provide credit facilities to women.³⁸

Article 14: Special Help for Rural Women

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- a) To participate in the elaboration and implementation of development planning at all levels;
- b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- c) To benefit directly from social security programmes;
- d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well, as *inter alia*, the benefit to obtain equal access to economic opportunities through employment or self-employment;
- e) To organise self-help groups and co-operatives in order to obtain equal access to economic opportunities in all community activities;
- f) To participate in all community activities;
- g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- h) To enjoy adequate living conditions, particularly in relation to housing, sanitation,

electricity and water supply, transport and communications.

Women and children in South Africa dominate the population in rural areas. Although, this is quite common in many countries, the impact of apartheid structures and legislation exacerbated this pattern. Influx control, pass laws, forced removals, the migratory labour system, land ownership patterns and restrictions imposed by laws such as the 1913 and 1936 *Land Acts* resulted in certain problems.³⁹

Other obstacles faced by women in terms of attaining equality with men are:

- The inability to overcome poverty is lack of access to, and rights in, land;
- Discriminatory customary and social practices;
- Power relations;
- Legal restrictions.⁴⁰

The three components to the Government’s land reform programme are:

- Redistribution aims to provide the disadvantaged and the poor with access to land for residential and productive purposes;
- Land Restitution covers cases of forced removals which took place after 1913;
- Land tenure reform involves a review of present land policy, administration and legislation.

Further attempts by the Government to improve the quality and status of rural women is:

- The creation of a newly established Sub-Directorate, Women’s Land Rights within Land Affairs—took on the task of developing policy guidelines to facilitate women’s participation in land reform;
- Legislation**—“In drafting policy for and implementing land reform, the Department of Land Affairs is reviewing laws so as to give women security and equal rights with men regarding ownership, control and use of land. The Department of Agriculture, too, is planning a comprehensive legislative review in 1997 so as to strengthen the link between legislation and key developments in gender policy. The Department of Water Affairs has issued regulations under the *Water Act (1956)*

which specify that at least one third of all members of Water Services Committees should be women.”⁴¹

- Access to finance and control;
- Monitoring;
- Redefining the use of the word “farmer”;
- Communications;
- Health Services for women in rural areas;
- Social security programmes in rural areas;
- Training and education.
- Development Programmes.⁴²

Article 15: Equality Before The Law And In Civil Matters

1. *State Parties shall accord to women equality with men before the law.*

2. *States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. They shall in particular give women equal rights to conclude contracts and to administer property and treat them equally in all stages of procedure in courts and tribunals.*

3. *States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.*

4. *States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.*

Article 16: Equality in Marriage and Family Law

1. *States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women;*

- a) *The same right to enter marriage;*
- b) *The same right freely to choose a spouse and to enter into marriage only with their free and full consent;*
- c) *The same rights and responsibilities during marriage and at its dissolution;*
- d) *The same rights and responsibilities as parents; irrespective of their marital status, in matters relating to their children; in all cases*

the interests of the children shall be paramount;

e) *The same rights to decide freely and responsibly on the number of spacing of their children and to have access to the information, education and means to enable them to exercise these rights;*

f) *The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;*

g) *The same personal rights as husband and wife, including the right to choose a family, name, a profession and an occupation;*

h) *The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration;*

2. *The betrothal and the marriage of a child shall have no legal effect and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.*

There are various forms of marriages practiced in South Africa—combination of civil law, religious and customary laws.

Many debates have arisen in South Africa recently over the recognition of customary marriages within the *Constitution*. “The tensions created by the intersection of the *Constitution*, a potentially discriminatory Customary Law and CEDAW are raised in the Issue Paper of the South African Law Commission.”⁴³ See the South African First Report to the UN CEDAW Committee, 1998, for a more detailed account of this debate and for an extension of women’s rights under this Provision.

General Recommendation 12: Violence against Women

The Committee on the Elimination of Discrimination against Women,

Considering that Articles 2, 5, 11, 12 and 16 of the Convention require the States Parties to act to protect women against violence of any kind occurring within the family, at

the workplace or in any other area of social life,

Taking into account Economics and Social Council resolution 1988/27,

Recommends to the States Parties that they should include in their periodic reports to the Committee information about:

1. The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the workplace etc);

2. Other measures adopted to eradicate this violence;

3. The existence of support services for women who are the victims of aggression or abuses;

4. Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.

General Recommendation 19: Violence against Women

The Convention in Article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm of suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1 of the Convention. These rights and freedoms include:

- a) The right to life;
- b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishments;
- c) The right to equal protection according to humanitarian norms in time of international or internal armed conflicts;
- d) The right to liberty and security of person;

e) The right to equal protection under the law;

f) The rights to equality in the family;

g) The right to the highest standard attainable of physical and mental health;

h) The right to just and favourable conditions at work.

The seriousness of violence against women is recognised by the South African government and the general public. However, certain initiatives by government (legislative) and non-legislative initiatives have been instituted to address this problem. Achievements, according to the First South African Report to the UN CEDAW Committee include the following:

- Constitutional framework—change in legislation.
- Policy Initiatives.
- Institutional and Administrative Issues: Victim Empowerment.
- Pretrial Services.
- Witness Friendly Courts.
- Support Services.
- Dispute Resolution Arrangements.
- Co-ordination of Services.
- Training of service providers.
- Attitudes.⁴⁴

The United Nations Response to South Africa’s First Report to the CEDAW Committee: Summary of Press Release 1057

Some of the issues and questions posed to the South African delegation are highlighted below:

- What policies is the Government developing to change fundamental attitudes?
- Is the Government ensuring programmes to educate and sensitise society?
- How is it ensuring increased awareness of women’s rights?
- How is the Government handling the contradiction between the equality of women and its constitutional recognition of religious and customs which perpetuate women’s inequality?
- How is the government addressing the plight of rural women who suffered triple discrimination—being black, women and poor?
- The approach to Land Reform is restric-

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tive in that it appears that the focus is on legislation. Are there further measures to ensure that women do not suffer discrimination at local level (e.g. Discrimination by tribal authorities) through a lack of information and knowledge?

- Is there any legislative reform on the government agenda to address the gap between its obligations in terms of the *Convention* and Domestic Legislation?

- Does the Government have a separate Office/Ombudsman that deals with discrimination complaints or does the National Machinery for women deal with this? If so, does it have adequate resources to deal with it effectively? Caution was expressed around the gap between centralised and access of this to grassroots women.

- Are there specific temporary measures (e.g. Quotas, affirmative action policies) to achieve de facto (real) equality? Affirmative action must be backed by a support system for the beneficiaries.

The NGO Sector's Involvement in the Attainment of Gender Equality in South Africa

The NGO sector in South Africa is unique in that it grew out of the historical socio-political conditions within an apartheid structure. The complex role of civil society saw the emergence of various NGOs, as a covert or overt response and resistance to the oppression of the Black population. These organisations fought for democracy, equal opportunities, a better life and against racial and other oppression, dispossession and degradation of their natural resources. With the exception of Kenya, Senegal and Zimbabwe, the NGO sector in South Africa has to a large extent spearheaded the development process. Various NGOs in South Africa place a interest not only on research and policy questions, but these organisations are also Aengaged in supporting grassroots groups, peoples organisations and even intermediary NGOs in various training and research needs. The focus within these development organisations are within the primary health care sector, the empowerment of women in rural areas and ur-

ban areas, educational and training skills, etc. During the apartheid era, the emphasis on protest within NGOs was a dominant factor. However, the challenges taken up in post-apartheid South Africa, has seen the move away from protest to creating and harnessing opportunities.

The use of CEDAW by NGOs in South Africa seem to be intense at certain periods—after the Fourth Beijing Conference and NGO impetus and work in urging the South African Government to ratify CEDAW. Furthermore, it would appear that certain vibrant NGOs concerned with specific issues such as Domestic Violence, reproductive rights and women farm workers are initiating and inputting on legislation. These NGOs frequently refer to the States parties obligations to CEDAW with specific reference to a particular issue. The National Institute for Public Interest Law and Research has however, together with the Commission for Gender Equality worked on various publications to disseminate accessible and useful information to the general public on CEDAW.

Certain universities, such as the University of Pretoria's Centre for Human Rights as well as the University of South Africa's Law Section incorporates and does training on CEDAW within their courses on Women and the Law.

The response to the UN CEDAW Study from the NGO sector was disappointing. Of the over 50 selected in various sectors of work ranging from domestic violence, reproductive rights, women and governance, etc.—researchers received just over 20 responses. Although the limited returns response do not provide a comprehensive or detailed input on the use of CEDAW in South Africa, the limited responses from NGOs working in different provinces in South Africa give a general picture of the extent of usage of CEDAW in their work or input into government initiatives in implementing CEDAW. An indication of the responses of selected NGOs to the UN CEDAW Impact Study Questionnaire are listed below.

Responses to the UN CEDAW Impact Study from the NGO Sector

1. Describe the problems/solutions for NGOs in the use of CEDAW, such as efforts and meth-

ods employed to remove country reservations, education needs, advocacy needs.

•Within the land reform and agricultural labour sectors, there is very little understanding of CEDAW and how it can be used as a tool for promoting gender equality. A small number of NGOs have begun to cite CEDAW in submissions to various government departments and other statutory bodies but to date CEDAW has not been used successfully to challenge discrimination within these sectors. Rural, community based organisations with whom this Centre works such as advice offices and trade unions are not aware of CEDAW.

Problems experienced by the above NGOs working within the land reform and agricultural sector:

•Research on the gendered nature of the impact of land reform programmes within the Western and Southern Cape and the basic conditions of women farmworkers suggests that many aspects of CEDAW are not being implemented or enforced. With specific reference to Article 14, the following concerns are highlighted.

•Women farmworkers and dwellers in South Africa experience extremely tenuous political, social and economic rights as a result of gendered and racially structured discriminatory legislation and practices. The lack of a well developed rural civil society, weak local government and their particular position as occupants on private property and predominantly seasonal workers contribute to women farmdwellers being one of the most marginalised groups of rural women.

•A particular consideration of power relations operating on farms in South Africa locates women living and women on farms in an extremely vulnerable position. Gender relations operating at the level of the household, workplace, market, local, provincial and national government interact and reinforce the gender, class and racial oppression experienced by women farmdwellers. Women are seldom employed in their own right. Their employment and occupational rights are, in most instances, tied to the employment of a male partner or relative. Significant gender disparity in wage levels, training and man-

agement opportunities persists.

•Despite the provision of formal, political rights, women in rural areas are seldom able to actualise their socio-economic rights to tenure security, employment equity, equal rights in land, housing, security and welfare. Customary law as well as common law contains patriarchally defined norms, which continue to shape women's access to resources. Social practices mediate women's access to resources and their positions on farms.

•Existing policies and legislation in the Land and Agriculture, Labour and Housing sectors do not accommodate the historically gendered nature of women farmdwellers position on commercial farms and the resultant gender discrimination which these women experience. As a result, these policies may have the unintended consequence of entrenching gender inequality.

•In the context of the Government's GEAR strategy and increasing globalisation, it is anticipated that women workers in the agriculture sector will be extremely vulnerable to the implementation of flexible employment standards. The absence of anti-discrimination legislation leaves women agricultural workers vulnerable to marginalisation and enforcement mechanisms.

•The absence of appropriate indicators for measuring the implementation of gender equity hampers effective monitoring and evaluation. The lack of effective mechanisms for enforcing equity provisions and other legislation in rural areas prevents women from achieving substantive equality and social justice.

In summary, the following challenges face women farmworkers:

•Rural women, in particular, women living on farms are not organised and do not have a history of organisation. There is a tremendous need to raise awareness of gender relations on farms and to facilitate the mobilisation of this constituency.

•Weak rural local government and the poor representation of women within these structures present a challenge to organisations. There is a need to contribute to the development of a vibrant rural civil society.

•There is a lack of reliable information on

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the social and economic circumstances of women living on farms. There is a need for extensive quantitative and qualitative data as well as the need to lobby existing data systems such as the CSS to disaggregate data.

- The urban bias in policy and legislation is an obstacle to the establishment of a rights culture in rural areas. There is a need to undertake advocacy and lobbying activities to ensure that policies and legislation reflect the needs and interests of women farmworkers and dwellers.

- Many policies focus on achieving formal equality only. The failure of policies to consider the social practices that mediate women's abilities to actualise their rights and hence achieve substantive equality results in organisations having to develop strategies that proactively contribute to gender transformation at this level.

- The absence of clear gender equity indicators presents a challenge to organisations working in this sector.

- Extremely poor government monitoring and enforcement mechanisms create a challenge for NGOs working in rural areas as they often play a central role in identifying rights violations.

- It is difficult to apply CEDAW when the Department of Housing does not disaggregate statistics and in fact keeps very vague statistics. Few NGOs even know of CEDAW.

- There is a lack of recognition on the part of the South African government that the provisions of CEDAW constitute obligations, which are legally binding in terms of international human rights law. This is especially apparent in the first South African Report to the CEDAW Committee. (criticism in this regard is set out in the NGO Shadow Report prepared by Masimanyane and other NGOs.

- South Africa is an educationally warped society, with over 70 per cent of rural women illiterate. Therefore, there is a critical need for adult literacy programmes providing special teaching material using illustrations. There is an equally critical need for most South African men and women to be better informed of gender rights granted by the *South African Constitution*. Efforts by the Commission for Gender Equality and some

NGOs appear to have little impact, since men have yet to be convinced of the value and validity of gender rights education. Many men feel threatened, particularly where gender rights affect customary and traditional law. One approach might be for NGO/tribal authority to be set up, so that agreement on gender education (literacy, HIV, sex practices, voting) and on the necessity for the entire community to become educated and informed is agreed upon—and not blocked as we understand it is being done in rural areas which is governed by customary law. While we recognise that in the South African legal system, customary law is undergoing continuous development, as a result of which de facto gender justice should evolve, the need to educate/inform women has become imperative.

- As a general comment, I have limited familiarity with the CEDAW document and consequently can't answer a number of your questions. To be honest, I have found CEDAW to be of little practical use in my work—but that may be as a result of my limited knowledge of the document. Perhaps, some campaign needs to be conducted among NGOs broadly, publicising the contents of CEDAW as well as how it can be used.

The Ratification Process

1. *What was the motivation for ratification? How was this motivation communicated—by written announcement, media coverage, spoken statements (on record or unofficial)?*

2. *Describe any steps taken in your country towards ratification?*

3. *Following ratification, how did you learn that your country had in fact ratified CEDAW? What follow-up measures were taken by the government, by others?*

- Motivation for ratification—pressure from women's groups, also political motivation once it was discovered that half of the country's voters are women. Once the government had signed the *Convention*, there was once again pressure on it to ratify. This it did with no reservations.

- Some organisations pointed out that they were not informed of the ratification process

but heard about it from different mediums—radio, newspapers etc.

- Motivation for ratification was political. It was communicated as a matter of public record (reference: Parliamentary Information and South African Country Report).

- Some newspapers ran articles announcing that the government had ratified CEDAW.

- Some organisations such as NIPILAR have focused heavily on CEDAW as a tool not only for empowering women but also for educating women about their rights.

- The setting up of the CGE and the Office on the Quality and Life of Status of Women with the new government also saw initiatives at government level to monitor and evaluate government bodies in its use and implementation of CEDAW.

- Ratification was achieved through intensive lobbying by NGOs, spurred by the Women’s National Coalition process which produced the *Women’s Charter for Effective Equality*.

- We learned that South Africa had ratified CEDAW by monitoring Parliamentary sessions on television and through the print media. We are unaware of any post-ratification measures being taken by government or by others.

Reporting to the United Nations

1. *What is the level of NGO participation in the preparation of state parties reports?*

2. *Describe any NGO shadow reports, including which NGOs were involved in their preparation.*

3. *Have NGOs received any guidelines and training on CEDAW? Who provided this? What have the results been?*

4. *What are the areas of information provided by NGOs that were included in the member country report to the UN? Was anything provided/excluded?*

- The NGO that I was involved with did not participate in the preparation of the South African Report and I am not aware of participation by other NGOs.

- The level of NGO participation in the preparation of States parties was paltry. The Women’s Lobby had to seek out an opportunity to contribute and managed to arrange for a last

minute invitation to attend a meeting to discuss a draft of the South African country report in Johannesburg in August 1997 organised by the relevant departments. (Reference: NGO Commentary Document on CEDAW facilitated by the National Institute for Public Interest, Law and Research.

- Shadow Reports: Although not formally presented, the NGO Commentary Document on the First South African Government Report on CEDAW, by collaborating civil society organisations and individuals. (Reference: copy presented to UN CEDAW Committee—June 1998—New York—for list of participants). This was coordinated by NIPILAR.

- NGO Shadow Report on CEDAW, South Africa: Violence against Women, co-ordinated by Masimanye Women’s Support Centre. (Reference: for names of working group—see copy presented to UN CEDAW Committee—June 1998).

- The Women’s Lobby received no information or reports on CEDAW from any official organisation—CGE or other—except what we sought on our own initiatives. There were media reports on needs, but we have seen no official educational or information material. CEDAW information relating to South Africa reaches us through civil society, newsletters such as produced by the universities, NIPILAR, gender newsletter, Mahlo Basadi (Through the Eyes of Women).

- For more information from NGOs for the South African country report, refer to country report and to the two NGO reports cited above.

- No idea of the level of NGO participation in states parties reports.

- The only Shadow Report produced by South Africa that I am aware of is the report co-ordinated by Masimanye Women’s Support Centre.

- My impression is that knowledge and training around CEDAW has been confined to a small, selected group of South African NGOs.

- Not seen the government report.

Use of CEDAW

1. *Describe the use of/reference to CEDAW in courts, media, constitutional and legislative*

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initiatives, non-profit sector, or by advocates for development policy reform?

2. *Are you aware of the CEDAW concluding comments in response to the country report(s)? have the CEDAW concluding comments been implemented? How? Please provide samples wherever possible.*

3. *Are there any other ways that CEDAW has been used i.e. interpreting a point of public policy or administrative law?*

4. *Describe any conscious effort taken to incorporate CEDAW in domestic legislation as opposed to, for example, issuing the Convention to create clarity in domestic legislation/tool for statutory interpretation.*

5. *Describe government/institutional arrangements in implementing CEDAW? Who/what are assigned as key implementers? What are the strengths/weaknesses of these arrangements?*

6. *Identify who/which category of people is using the Convention in any particular way, for what purposes?*

•In response to the concerns above, the Centre has embarked on a seventeen month research and advocacy project with the intention of promoting the implementation of CEDAW within the agricultural labour sector. The document attached to this study provides further information about this project. This organisation is currently halfway through the project and hope that by March 1999, we will be able to identify indicators for measuring CEDAW in this sector. We also intend to lobby government departments and will undertake training about CEDAW with community based organisations in this sector. We have lobbied the Gender Commission to become involved in monitoring implementation of CEDAW in this sector and they have responded on two levels:

1. They will be contracting an organisation to undertake research into equal pay for work of equal value within this sector shortly;

2. In early 1999, they hope to host an inter-departmental forum with government departments and NGOs in order to explore the implementation of gender equality in this sector, including the enforcement of CEDAW.

•Found the unedited draft concluding comments on the Internet, but have not been able

to find the final version even by requesting this from the UNDAW. It is too early to say whether the comments have been implemented. I am not aware of much South African press coverage of the presentation of the South African report, but did hear favourable comments on it on the radio by a visiting Israeli member of the CEDAW Committee.

•In spite of the limited use of CEDAW in the Southern African context, it is interesting to note that reference to CEDAW is increasingly made in legislation, for example, the proposed *Domestic Violence Bill* (now an Act). The Women and Human Rights Project has consistently relied on the provisions of CEDAW, and specifically Recommendations 12 and 19, in making submissions to the South African Law Commission (regarding domestic violence) and the Parliamentary Justice Portfolio (regarding reform of the law relating to sexual assault and domestic violence).

•Organisations working within the reproductive rights sector have also contributed substantially in the debate and input to the Termination of Pregnancy Act.

•The Women's Lobby Group used CEDAW by inputting, researching or disseminating information on three main Acts: 1) *Customary Law Marriage Act 1998*; 2) *Domestic Violence Act 1998*; *Maintenance Act of 1998*.

•Indirect Acts: 1) *Skills Development Act No. 97 of 1998*; 2) *Employment Equity Act No. 55 of 1998*; 3) *Basic Conditions of Employment Act No. 75 of 1997*.

A reasonable level of awareness exists among urban NGOs and advocates for development policies, but there are no visible signs of delivery.

•We are now aware of CEDAW concluding comments, but only after a self-initiated search. Information is neither freely available nor accessible. The response we had from the UN Information Office in Pretoria when we enquired about that document was a complete blank—two members of staff we spoke to had no idea of what CEDAW was. All they could find, they said—after much persuasion to go and look for some reference that might lead to the information we wanted was a poster with the word CEDAW on it. The gender advisor was equally unaware of the conclud-

ing remarks.

- The Women's Human Rights Desk of the Foreign Affairs Department and the Director of Community Development are, however, most obliging when contacted. Not everyone has access to the Internet. The WomensNet produced by the CGE and Sangonet carries much useful gender information. Numerous NGOs and activists, and women in the rural areas particularly do not even have the computers and are therefore excluded.

- The first report was coordinated by the Department of Social Welfare. The key implementers from now on will be the Office on the Status of Women. The Office is relatively new so is somewhat of an unknown factor. Its strength is that it is housed in the Office of the Deputy President, so it should have a lot of clout.

- Section 23(4) of the 1996 *Constitution* requires that an international agreement (for example CEDAW) becomes law in the Republic when it is enacted by national legislation. In our experience, the provisions of CEDAW (specifically Recommendation 19) have not been incorporated in legislation around VAW.

- In relation to violence against women, the key government departments for implementing CEDAW are the Departments of Justice, Health and Education. In the Department of Justice, a Gender Policy Unit (situated in the Office of the Deputy Minister of Justice), has been tasked with the development of a national gender policy which includes VAW). However, this office is under-staffed and under-resourced, and there are no indications of specific budgetary planning to implement any policies which this unit may develop.

- As set out above, the Women and Human Rights Project have consistently made references to CEDAW in its submission to legislative bodies. The reference to CEDAW was made in the context of arguing that under international human rights law (specifically CEDAW), it is not sufficient for the state to merely refrain from committing violence against women; it is also essential that the state takes responsibility for the prevention, investigation, prosecution and, where applicable, compensation for acts of violence against women. In practice, this inter alia implies effective leg-

islative measures to ensure that women have access to judicial measures to seek protection against violence, and requires the removal of legal rules, which are prejudicial and discriminatory. A very important consequence of this approach is the allocation of adequate state resources to ensure the effective implementation of laws and policies. While a number of our proposals have been accepted and incorporated in legislation, for example, the *Domestic Violence Bill*, it is difficult to access what role the reliance in CEDAW played in the ultimate decision-making process.

- The South African Human Rights Commission in formulating policy, drawing up of labour, employment equity and domestic workers legislation has used CEDAW.

- Conscious effort to incorporate CEDAW has been made as described above. However, there is no adequate national campaign. There has also not been any nationwide report-back meeting for civil society on the New York meeting. The Women's Lobby has had to rely on its own research and on networking with NGOs. The situation is compounded by the fact that the Women's National Coalition is not sufficiently capacitated, skilled or funded. It therefore cannot serve as a national coordinator for our very own diverse, multi-ethnic developed and developing women's movement. It nonetheless contains activist pockets that are vibrant and continuously advocating despite this disadvantage. A National Gender Policy is apparently still in the making by the Office on the Status of Women (OSW), awaiting presidential sanction. Assigned as key implementers are the: CGE; SAHRC, OSW (policy) and the Parliamentary Portfolio on the Quality of Life and Status of Women. But, probably funding and staff shortages, and in some cases gross lack of capacity combined with little sense of urgency, prevent effective implementation of CEDAW. For example, both the CGE and the SAHR still do not have their full complement of staff, and the SAHRC is unable to finance litigation when necessary. The Parliamentary Committee suffers similar constraints.

- We simply do not know who is using CEDAW in any particular way. That is, other than the CGE, the Parliamentary Committee

and a few dedicated individual activist NGOs demonstrating strong political will in their gender advocacy work.

- There are two areas in which CEDAW is referred to in the mentioned areas in this question. Those include certain pieces of legislation and certain policy documents. The two government departments which 'use' CEDAW are Justice and Welfare. Reference to CEDAW is made specifically in the new Domestic Violence legislation as well as the Welfare White Paper. Rape Crisis, together with other advocacy organisations, such as the Women and Human Rights Project at the Community Law Centre, UWC and the Institute of Criminology at UCT, constantly make use of Article 19 and the commitments contained therein to motivate for changes in present policy and legislation as they pertain to violence against women.

- We are aware of the concluding comments but have not seen any implementation thereof.

- Cognizance seems to have been taken of CEDAW in the new domestic violence legislation, but was not as such incorporated into the legislation.

- It is my understanding that after Beijing, an intersectoral government meeting was held, together with the national Network on Violence against Women at which a number of government departments made commitments to taking both CEDAW and the Beijing Platform of Action forward. This to some extent has been seen in the Justice (Gender Policy Considerations Document) and in Welfare, but by and large the commitment appears to come from a few individuals within those departments who operate without the real support (resources, both economic and human) of those departments).

- The main grouping of people who are using CEDAW in the sense of relying on its provisions are the NGO Sector in that they are using it to pressure the government to live up to its obligations. I think that the government does not completely understand its obligations in terms of this *Convention* as well as other international instruments in that the government is not only obliged to refrain from committing violence against women, but

is also obliged to take and put in place measures to prevent violence against women. submit then that the government is by and large not living up to its obligations in CEDAW.

Challenges of a Gender Approach in its implementation of Development Policies and Programmes in South Africa:

The translation of gendered theoretical policies/frameworks to meet practical and strategic gender needs in South Africa

The historical legacy of the apartheid system in South Africa has had a significant effect on how development policies were conceived and applied in the attainment of gender equality in African societies. The migrant labour system had serious repercussions not only on societal structures but also on familial relationships within African societies. Most of the able bodied men entered the labour market whilst women's agricultural burden increased in the rural areas. The creation of reserves and legislation restricting entrance of African women into urban areas as well as the strict control by the state over African peoples lives shaped not only the gendered identities but further entrenched the division of labour. Whilst, at certain periods within these societies, one saw a collapse or an integration of these divisions, importance attached to men's work as opposed women's work conform to the western norm and is reflected within development policies and programmes.

Though both men and women are disadvantaged due to the high levels of poverty in the country, women experience the major burden of poverty. The gendered dimension of poverty and its impact on women led to a government initiative to empower and develop women. The Reconstruction and Development Programme, an official policy document with a strong emphasis on gender approach to development strives towards a non-sexist future.⁴⁵ The document places a special emphasis on the development and empowerment of women. The principles set out

relate to the fulfillment of women's practical, as well as strategic needs. The needs to be addressed relating to their social condition (practical gender needs) include:

- improvement of maternal health;
- promotion of the provision of child-care facilities;
- affordable and safer transport;
- the provision of electricity.⁴⁶

Meeting the strategic gender needs of women, which are related to their social position, include:

- special attention to be paid to their legal, educational and employment status;
- all forms of discrimination regarding women's access to land to be removed.
- the approach to housing and other social services to support gender equality
- legislative obstacles and constraints to housing and credit to be removed;
- women to have equal access to education, training and economic opportunities;
- reproductive rights to be granted to women;
- opportunities and choices for women, as well as broader participation in economic decision-making to be facilitated; and
- the development of small-scale farming by women and of small enterprise focusing on women to be promoted.⁴⁷

As Sadie and Loots argue that although the policy guidelines on development in South Africa suggest "a gender-based approach to development, the challenge of a gender approach lies in its implementation, which is the *sine qua non* of all development policies and programmes."⁴⁸

A gender unit was created in the RDP office and this unit initiated the National Policy on Women's Empowerment in 1995 and their primary objective was to mainstream gender into government policies and programmes. Arising from this, a CEDAW Working Group was established. The CEDAW Working Group compiled a research document based on the terms of CEDAW's provisions, the Women's Charter for Effective Equality, the National Policy for Women's Empowerment and the Beijing Platform for Action.

In 1996, the RDP Ministry was a closed and certain development programme such as disability and gender and children programmes were moved to the Deputy President's Office. This in effect, resulted in the President's Lead Projects being transferred to the individual line government departments concerned. The line departments determined the gender analysis and sensitivity of all development policies and programmes. A guideline in the Policy for Women's Empowerment was issued to these government departments.⁴⁹

Although South Africa's First Report to the CEDAW Committee in June 1998 provides an in-depth assessment of the country's gender policies, one needs to also examine how each sector is working to implement gender transformation. Thus, this section will provide an overview of the development policies and projects of the Department of Agriculture, Department of Education, Department of Health, Department of Housing, Department of Public Works and the Department of Water Affairs and Forestry to analyse to what extent each of these is meeting the practical and strategic gender needs of women in South Africa.

Department of Agriculture

In theory in policy documents, the Department of Agriculture has committed itself to assist women in small-scale farming. In a report presented to the CEDAW committee, representatives from this department pointed out that the grant assistance to small-scale farming projects contained certain criteria to which people had to qualify.⁵⁰ The representatives argued that since most women in the rural farming sector practiced subsistence farming rather than as a commercial activity, it was much more difficult to achieve any satisfactory results which would fit the criteria in grant assistance to small scale farmers.⁵¹

The criteria laid down by the Department of Agriculture on the issue of grant assistance reflects the development discourse which conform to certain dichotomies—production/reproduction; private/public; economic/welfare. For most development planners and bankers who formulate policies which revolve around a cash generating or profit making

productive activity, even men's work in the field is seen as "productive" as it generates a cash income whilst women's work in the field is seen as reproductive. This, in part impedes women from taking part in empowering activities. Although it is mostly women who carry out the agricultural work on the land, many of them do not own the land nor are they provided the necessary tools, implements or skills when development programmes are carried out. Thus, the statements in policy documents do not necessarily translate into meeting the practical and strategic needs of women.⁵²

Some of the problems, which impede women's equality within the agricultural sector, are:

- the lack of disaggregated data;
- the lack of accessible information; the Department of Agriculture has been accused of insufficient communication of their services;
- low literacy levels;
- customary marriage laws that give men a decision-making role, and cultural practices defining women as minors;
- the fact that women are economically dependent; and
- their lack of skills and training to enter productive agriculture.⁵³

Department of Education

The Presidential Lead Projects pertaining to education comprises of two components. A national literacy programme (known as Adult Basic Education and Training) and a Culture of Learning programme. The Culture of Learning programme caters for the physical improvement of school buildings, as well as the quality of learning by targeting the improvement of social governance. It therefore, as Sadie and Loots point out, leaves little scope for a gender interpretation.⁵⁴

The First South African Report to the UN CEDAW Committee, 1998, provides a detailed examination of the input of the Department of Education.

Department of Health

The programmes introduced by the Department of Health show a commitment to the CEDAWs provision A that accessible and affordable primary health care should be provided for vulnerable groups such as women and chil-

dren.⁵⁵ Three projects were undertaken to implement this provision-primary health-care, the building of clinics and an AIDS awareness and prevention campaign. The article that is attached to this study as an Appendix provides an in-depth analysis of the work of the Department of Health.

Department of Housing

Section 26 of the *Constitution* embodies provisions for housing as a fundamental human right and every citizen of the country has the right to have access to adequate housing.

The Department of Housing has committed itself to access affordable housing to assist women and other stakeholders to acquire low cost housing, a spokesperson of the Department stated that at present, the primary aim was to provide housing for the broader population group. Thus, there is no definite framework within the policy which specifically focuses on women with dependants or single women with low incomes to obtain housing.⁵⁶ The decentralisation of power to provincial and local government structures is another factor that has contributed to the slowness of services to provide housing to the population.

The establishment of the National Urban Reconstruction and Housing Agency (NURCHA) in October 1995, was another Presidential Lead Project. This structure provides guarantees to financial institutions for low-income housing provision. There is, however, no guarantee that these projects initiated by NURCHA conform to any gender-sensitive criteria.

According to Mjoli-Mncube, the Executive Director of NURCHA, Awomen are not incorporated in all the stages of the housing projects. Although women attend meetings to initiate housing projects, they do not participate because of their marginal knowledge of technical terms. They are therefore not elected to decision-making committees. Despite NURCHA's reference for assistance to women-driven projects, fewer than ten of the 75 projects launched by them are women-driven.⁵⁷

Department of Land Affairs

According to the *Green Paper on South African Land Policy* (the green paper on land reform) published in February 1996, the land reform programme has the following elements:

- Land distribution (which explicitly aims to provide the disadvantaged and the poor with land for residential and productive purposes). Labour tenants, farmworkers, women and emergent farmers are targeted.

- Land restitution which aims to restore land to those dispossessed through racially discriminatory measures; and

- Land tenure reform that will provide security of tenure to all South Africans.⁵⁸

“The Land Reform Pilot Programme (LRPP) was the initial exploratory phase of the land redistribution programme and was initiated in December 1994. Regarding women’s needs, the LRPP Core Business Plan explicitly states that the elements of the Programme are intended to enhance the material, political and social status of women.” The framework requires the participation of women in representative decision-making structures to ensure that rural women gain social and economic benefits. Despite the existence of gender-sensitive policy guidelines, in practice, the pilot programmes do not reflect such guidelines.”⁵⁹

Department of Public Works

Another Presidential Lead Project (within the National Public Works Programme). The aim of the NPWP is to:

- Reduce employment;
- Empower communities;
- Create physical assets that will improve the quality of life of the poor; and
- Provide education and training to the unemployed, especially women, youth and rural dwellers.⁶⁰

Various projects and programmes have been initiated by the NPWP. An evaluation of these programmes in 1997 showed that 41 per cent of those employed were women. However, the marginal roles of women on the periphery of the economic sector showed that:

- Women were often assigned the more menial jobs;

- That their average wages were lower than those of men;

- That they were employed for shorter periods than men;

- That they were less likely to receive training than men;

- Women held minimal positions and involvement in the decision-making process at community-level projects and programmes;

- Women received little or no vocational or technical skills.

Thus, as Sadie and Loots argue that “while some practical needs of women have obviously been met (e.g. the provision of an income), the lack of gender sensitivity in the majority of the projects has served to stagnate women in their traditional positions.”⁶¹ Further, these two authors maintain that “in general, public works programmes do not seem to be vehicles for empowerment for the majority of women, nor for giving women a unity of purpose beyond a project’s lifespan.”⁶²

Department of Water Affairs and Forestry

The principles within the *White Paper on Water Supply and Sanitation*, recognises that within the South African context, the need for water services is central to the vast majority of rural women’s lives as it relates to their reproductive responsibilities. Further, it is women who are responsible for the collection and utilisation of water. A commitment by the Department to ensuring women’s access to water services was undertaken. This entailed recommendations to all statutory bodies and committees involved in Water Affairs and Forestry to include a minimum of 30 per cent women at all levels.⁶³

Additional *Guidelines for Increasing the Involvement of Women on Water and Sanitation Projects in Local Communities in Rural Areas*, 1995, also identified areas for women’s involvement on project management, in project construction, project design and project health and water usage promotion.

The document strongly emphasises the adoption of a gender-sensitive approach and

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these measures include:

- A supportive policy framework at project level which supports the participation of women as equal partners in projects and committees;
- The official targeting of women as the major beneficiaries by project planners;
- The identification, understanding and consciousness-raising at all levels of the project which would involve raising the debate at all meetings, establishing reasons for women's possible lack of participation and prioritising factors that need to be overcome to ensure greater involvement of women; and
- Data collection covering information on women, such as how they see their role in the project, unemployment and representation of women on committees and their roles.⁶⁴

Whilst the Department has set out theoretical frameworks which incorporate a gender-sensitive and women's active participation in water projects and programmes, certain problems which inevitably arise in development projects were found. These were:

- Most consultants were not exposed to gender needs and the need to involve women in terms of ergonomics. They therefore lacked the commitment to ensure that women were involved in all stages of the project, including the design;
- When included, women's participation was not meaningful as they lacked confidence to speak at project meetings due to the lack of experience in articulating their views, their unfamiliarity with technical concepts and the predominant use of English;
- Educated rural women have heavy workloads and therefore did not attend project meetings as these placed a further burden on them;
- Women's involvement or empowering is seen as a threat to family values. Most men within these communities feel that women's participation in water project activities led to them neglecting their responsibilities in the household.⁶⁵

The following problems were identified within the Department of Water Affairs and

Forestry. These were:

- The Department's project teams, particularly the technical staff, had little exposure to gender issues and gender awareness to the extent that they could make a difference to project activities;
- Gender disaggregated data are lacking within most project plans, and the concentration is on technical feasibilities. Without a clear understanding of the position of men and women it will be difficult to evaluate the relevance of the project to men and women and its impact on them
- Sound monitoring tools on the success of women's empowerment programmes, are largely absent.⁶⁷

While the analysis above may not directly impact or input on the CEDAW Impact Study being conducted in January 1998, the researchers of this study very strongly believe that any progress for women's attainment of equality within all sectors is by monitoring not only government initiatives but development projects and programmes. This analysis facilitates further changes and gauges the success and or failure of gender justice both at de jure and de facto levels.

The use of CEDAW has been marginal in South Africa. Some NGOs, mainly urban based have used CEDAW as a referent at particular periods and it would appear that this is used for controversial issues such as the *Termination of Pregnancy Act*, the *Domestic Violence Act*, land rights, maintenance laws. Women's economic and political status by the use of specific CEDAW provisions has not been fully utilised.

Conclusion

South Africa's First Report to the United Nations CEDAW Committee, June 1998, provided a comprehensive and substantial input to the very many changes since the dawn of the new democracy. A comprehensive study was compiled by the Parliamentary Committee of the Quality of Life and the Status of Women. This study entitled *Report on Government: Implementation of CEDAW and the Beijing Platform for Action*, November 1998,

provides an detailed insight of the changes in various government departments and the successes and failures of these departments in the implementation of CEDAW. Unfortunately, the researchers received this copy far too late to incorporate it fully into this study. Thus, to facilitate the national correspondents and international advisory board of CEDAW, the document has been sent as an attachment.

The development of the *Constitution* was a radical change from the oppressive Dracanian apartheid system of rule. The *Constitution*, the accompanying *Bill of Rights* has now seen a rights culture in South Africa which was denied the vast majority of people. Racial oppression in South Africa left little space to address gender inequalities in our society. The new *Constitution* guarantees the rights and freedoms of all its people. However, the concept of equality has not as yet been fully contextualised or defined in the Constitution or in the *Bill of Rights*. This, in itself raises important concerns. This issue is receiving priority attention by the Human Rights Commission.

Legislative changes and formulation of policies which address gender inequalities have been the first step toward which South Africa is beginning to set mechanisms in place to significantly contribute to the promotion of equality between men and women.

Although South Africa has ratified CEDAW with no reservations, the inherent contradictions between the *Constitution* and the provisions in CEDAW have had major implications for the attainment of gender equality. Despite the fact that South African women constitute 57 per cent of the population, the economic, political and social mobility of the majority of women (mainly black African) has not improved substantially. This can be attributed to various inhibiting factors which range from limited access to resources, power bases, entrenched patriarchal institutions and attitudes, amongst others.

Extensive research by means of personal interviews with women working at various levels of government, from national to local indicates that there is a serious lack of knowledge—extending to no knowledge at all of CEDAW within the government sector. This

means that the information on the *Convention* is not filtering through to the main key players in charge of legislative changes, development policies and programmes.

Women have an understanding of issues of inequality-deep knowledge of how this plays itself out in society- what is lacking is the language and the space to articulate this. A classic example is that many women parliamentarians are declining to stand for elections in 1999.

To summarise this study, it would seem that CEDAW:

- Is not being fully utilised in all sectors of South African society—that is using it to incorporate into changes within domestic legislation;
- Although reference is made to the *Convention* by the NGO sector and government, it is used more as a theoretical and practical tool rather than for implementation;
- Used as a referrant quite strongly by certain lobbying groups;
- Information from government sector on CEDAW and progress is received by mainly urban NGOs with access to the Internet B this becomes rather elitist.

The author acknowledges the research assistance of Shereen Banu Dawood.

Endnotes

¹Women's Human Rights, Step by Step—A Practical Guide to Using International Human Rights Law and Mechanisms to Defend Women's Human Rights by Women, Law and International and Human Rights Watch Women's Rights Project, p. 8.

²A vast amount of literature detailing the various aspects of the international human rights instruments is available.

³Rebecca Cook, amongst other writers, has provided a critique and analysis of the international human rights treaties.

⁴M. Swilling, in *Apartheid City in Transition*, edited by M. Swilling, R. Humphries & K. Shubane, (Cape Town: Oxford University Press, 1991), p.ix.

⁵D. Massey, *Social Structures and the Geography of Production*, (London: Macmillan

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Productions, Ltd., 1984), p.44.

⁶Substantive provisions of the *Convention on the Elimination of All Forms of Discrimination Against Women* sets out 16 articles noted below which attempts to guarantee women the protection of their rights.

_Article 1—Defining discrimination

_Article 2—Obligations of states parties

_Article 3—Appropriate measures

_Article 4—Temporary special measures to combat discrimination

_Article 5—Modifying social and cultural patterns

_Article 6—Suppressing exploitation of women

_Article 7—Equality in political and public life at the national level

_Article 8—Equality in political and public life at the international level

_Article 9—Equality in nationality laws

_Article 10—Equality in education

_Article 11—Equality in employment and labour rights

_Article 12—Equality in access to health facilities

_Article 13—Finance and social security

_Article 14—Rural women

_Article 15—Equality in legal and civil matters

_Article 16—Equality in family law

_General Recommendation 19

⁷First South African Report submitted to the CEDAW Committee, June 1998, pp. 2-1 to 2-2.

⁸S. Bazili, (ed.) *Putting Women on the Agenda*, (Johannesburg: Ravan Press, 1991), p. 4.

⁹In South Africa, special structures to advance gender equality have been created. These are:

_Office on the Status of Women (in the President's Office)—a co-ordinating structure;

_Establishment of gender desks in various departments;

_A multi-party women's Parliament caucus;

_Establishment of linkages between provincial structures;

_Establishment of a Commission on Gender Equality—an independent research and advisory council.

¹⁰R. Connell, 'The State, Gender and Sexual Politics: Theory and Appraisal' in *Theory and*

Society 19: 1990, pp. 507-544.

¹¹Connell, 'The State, Gender and Sexual Politics', p. 543.

¹²The emergence of these organisations in the 1980s was during the period of intense civic resistance to state repression. See P. Fitzgerald, A. McLennan and B. Munslow (eds.), *Managing Sustainable Development in South Africa*, (2nd edition), (Oxford: Oxford University Press, 1997), p. 9.

¹³Some of the problems and obstacles encountered by women for full participation in this process were:

_Delegates consisted of political parties and governments only;

_Some delegates did not include a woman delegate;

_Token women were appointed in a non-speaking capacity;

_No representation of women per se;

_An unsympathetic environment;

_Lack of technical legal experiences;

_Lack of gender-consciousness at the MPNP;

_Women themselves, not being sufficiently organised and developed as a social movement to place significant pressure on the process.

¹⁴*Convention for the Elimination of all Forms of Discrimination against Women: First South African Report*, p. 3-1.

¹⁵*Convention for the Elimination of all Forms of Discrimination against Women: First South African Report*, p. 3-1.

¹⁶CEDAW: First South African Report, p. 3-2.

¹⁷CEDAW: First South African Report, p. 4-1.

¹⁸CEDAW: First South African Report, p. 4-2.

¹⁹CEDAW: First South African Report, p. 4-2.

²⁰CEDAW: First South African Report, pp. 4-2 to 4-6.

²¹CEDAW: First South African Report, pp. 5-1 to 5-8.

²²CEDAW: First South African Report, pp. 5-5 to 5-8.

²³CEDAW: First South African Report, p. 6-1.

²⁴CEDAW: First South African Report, p. 7-1.

²⁵CEDAW: First South African Report, p. 7-3.

²⁶CEDAW: First South African Report, p. 7-3.

²⁷CEDAW: First South African Report, p. 8-1.

²⁸CEDAW: First South African Report, p. 9-1.

²⁹CEDAW: First South African Report, p. 9-1.

³⁰CEDAW: First South African Report, p. 10-1.

- ³¹CEDAW: First South African Report, p. 10-2.
³²CEDAW: First South African Report, p. 11-4.
³³CEDAW: First South African Report, p. 12-5.
³⁴CEDAW: First South African Report, p. 12-5.
³⁵CEDAW: First South African Report, p. 12-6.
³⁶CEDAW: First South African Report, pp. 12-5 to 12-6.
³⁷CEDAW: First South African Report, p.13-1.
³⁸CEDAW: First South African Report, p. 13-4.
³⁹CEDAW: First South African Report, p. 14-1.
⁴⁰CEDAW: First South African Report, p. 14-2.
⁴¹CEDAW: First South African Report, p. 14-3.
⁴²CEDAW: First South African Report, pp. 14-1 to 14-7.
⁴³CEDAW: First South African Report, p. 16-2.
⁴⁴CEDAW: The First South African Report, 1998.
⁴⁵Sadie Y and Loots E, "RDP Projects in South Africa—A Gender Perspective Analysis," in Solomon H and Schoeman M (eds), *Security, Development and Gender in Africa*, (South Africa: Institute for Security Studies, 1998), pp. 94-95.
⁴⁶Sadie and Loots, "RDP Projects," pp. 98-100.
⁴⁷Sadie and Loots, "RDP Projects," pp.98-100.
⁴⁸Sadie and Loots, "RDP Projects," p. 100.
⁴⁹Sadie and Loots, "RDP Projects," p. 102.
⁵⁰The primary criteria laid down for grant assistance include that projects must be demand-led, that community involvement and ownership are prerequisites, and that the target beneficiaries must be the poor and disadvantaged. Department of Agriculture, *The Status of Women in South African Agriculture*, CEDAW Report, 7 March 1997 as cited in Sadie and Loots, "RDP Projects," pp. 102-103.
⁵¹Sadie and Loots, "RDP Projects," Although the agricultural policy states that their programmes attempt to be as gender-sensitive as possible, the particular needs of African women and the constraints faced by these women in applying for grants is not taken into consideration, pp 102-103.
⁵²Sadie and Loots, "RDP Projects," p.102-104.
⁵³Sadie and Loots, "RDP Projects," p. 104.
⁵⁴Sadie and Loots, "RDP Projects," p. 104-105.
⁵⁵RDP Office, *Mainstreaming Gender Considerations in Policies and Programmes*, (Pretoria: July 1996), p. 60.
⁵⁶Sadie and Loots, "RDP Projects," p. 110.

- ⁵⁷Sadie and Loots, "RDP Projects," p. 112.
⁵⁸Sadie and Loots, "RDP Projects," p. 114.
⁵⁹Sadie and Loots, "RDP Projects," p. 114.
⁶⁰Sadie and Loots, "RDP Projects," p. 117.
⁶¹ Sadie and Loots, "RDP Projects," p. 118.
⁶²Sadie and Loots, "RDP Projects," p. 119.
⁶³Sadie and Loots, "RDP Projects," p. 120.
⁶⁴Sadie and Loots, "RDP Projects," p. 120.
 For a detailed input to this Department's work, see attached article to this study.
⁶⁵Sadie and Loots, "RDP Projects," p. 122.
⁶⁶Sadie and Loots, "RDP Projects," p. 122.

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