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**DATE: 30 September 2015**

**SUBMISSION TO THE DEPARTMENT OF WOMEN ON THE DRAFT REPORT  
TO THE UNITED NATIONS CONVENTION ON THE ELIMINATION OF  
DISCRIMINATION AGAINST WOMEN**

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## **Introduction**

[1] The Centre for Applied Legal Studies (CALS) welcomes the opportunity to make submissions to the Department of Women on South Africa's 5th Periodic Report ('the report') on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

[2] CALS is a civil society organisation and registered law clinic based at the School of Law at the University of the Witwatersrand, South Africa. CALS is committed to the protection of human rights through empowerment of individuals and communities and the pursuit of systemic change.

[3] CALS' vision is a country where human rights are respected, protected and fulfilled by the State, corporations, individuals and other repositories of power, the dismantling of systemic harm, and a rigorous dedication to justice. It fulfils its mandate by:

- challenging and reforming systems within Africa which perpetuate harm, inequality and human rights violations;
- providing professional legal representation to survivors of human rights abuses; and
- using a combination of strategic litigation, advocacy and research, to challenge systems of power and act on behalf of the vulnerable.

[4] CALS operates across a range of human rights issues: rule of law, business and human rights, environmental justice, gender, and basic services. The gender programme explores the intersection of socio-economic rights issues and gender rights and has worked on projects facilitating dialogue and heightened awareness of gender issues among lawyers and activists working within various socio-economic rights sectors.

[5] CALS would like to commend the Department of Women for preparing the draft report in compliance with Article 18 of CEDAW.

## **Structure of the submission**

[6] This submission is divided according to the arrangement of sections as they appear in the report. The submission is comprised of comments on the relevant areas pertaining to CALS'

work within the gender and rule of law programmes and it will therefore not address every section of the report.

- I. Structural comments
- II. Comments on the CEDAW concluding observations on previous reports
- III. Comments on the South African Government's CEDAW Report 2009-2014
- IV. Comments on General Recommendations 12 & 19 on violence against women
- V. Conclusion

## **I. Structural comments**

[7] CALS acknowledges the efforts of the Department of Women to draft an extensive report in conformity with South Africa's international obligations. The report follows the UN guidelines on reporting under international human rights treaties<sup>1</sup> insofar as it incorporates one section for addressing the CEDAW concluding observations of 2011 and another section for addressing the implementation of the CEDAW Convention by the State. However, we note that the Report may be improved in the following ways:

- (a) Implementation: In most of the sections of the report there is only an overview of the legislative, jurisprudential, administrative measures and other developments. The report fails to assess the actual *implementation* of those measures and how they contribute to the fulfilment of the State obligations under CEDAW.

For example, in the education section, the report includes a table with information of enrolment rates for 2002-2013 period.<sup>2</sup> However, the report does not contain information in relation to the actual attendance and dropout rates of female learners. This is problematic as the report fails to present the current state of affairs of high dropout rates of female learners. It also fails to address the causes for such rates, including exclusion due to pregnancy, sexual violence, limited access to water (necessary for sanitation), and poverty.

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<sup>1</sup> Harmonized guidelines on reporting under the international human rights treaties, HRI/GEN/2/Rev.6, 3 June 2009, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=HRI/GEN/2/Rev.6\\_&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI/GEN/2/Rev.6_&Lang=en)

<sup>2</sup> South Africa draft report, para 188.

- (b) Strategies to remedying obstacles: The report fails to address the challenges and obstacles that persist in some of the topics addressed in the report. Where the report does refer to challenges and obstacles to fulfilment of its international obligations, it fails to propose a strategy that aims to remedy these obstacles.
- (c) Disaggregated statistical data: While the report incorporates statistical data, such data is not disaggregated by sex, ethnicity, age, and by urban and rural areas. In some instances the report does not provide data for the reporting period (2009-2014). This is critically important to evaluate improvements over time. The UN guidelines on reporting clearly state, “reports should provide relevant statistical data, disaggregated by sex, age, and population groups, which may be presented together in tables annexed to the report. Such information should allow comparison over time and should indicate data sources.”<sup>3</sup>

CALS recommends that the report should incorporate data specifically focused on the reporting period of 2009 to 2013 in all the sections of the report and in cases where it is applicable, data that will facilitate the evaluation of policies and measures. Furthermore, the report should include an analysis of the statistical information provided.

- (d) Poverty: Poverty is specifically addressed in the overview section of the report. It makes mention of the fact that in South Africa, female-headed households are more likely to be poor than male-headed households. The report further mentions that in the division of labour, women are still confined to reproductive, domestic care and community roles.<sup>4</sup> It also mentions that women are undervalued in economic terms and their work is unpaid.<sup>5</sup>

Although the report is clear regarding the types of discrimination that women suffer as a result of poverty, the report is silent as to the solutions to such issues.

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<sup>3</sup> Harmonized guidelines, *supra* note 1.

<sup>4</sup> *Idem*, para 32.

<sup>5</sup> *Idem*, para 35.

CALS is of the opinion that in its report the Department should also include steps that the South African Government has taken or will take to eradicate the gendered effects of poverty on women.

## **II. Comments on the CEDAW concluding observations on previous reports**

### **Violence against women**

[8] At paragraph 25 of the CEDAW Committee's concluding observations,<sup>6</sup> the CEDAW Committee makes recommendations to the State in relation to violence against women. In particular, paragraph 25(c) recommends that the State should "put in place mechanisms of accountability to ensure the implementation of the provisions contained within policies and legislation, such as the Domestic Violence Act and the Sexual Offences Act, to combat violence against women."<sup>7</sup>

[9] In the State's response to this particular recommendation, the report only mentions the MATTSO Team within the Sexual Offences Act as a mechanism for accountability. However, the report fails to provide information on the impact of such a mechanism to reduce violence against women. For example, the report does not mention the Civilian Secretariat for the Police, as the mechanism that monitors police compliance with the Domestic Violence Act (DVA).

[10] With respect to the recommendation in paragraph 25(d), in relation to budgetary allocations for the implementation of the various projects and programmes, the report only includes the budget allocation for the 2013-2014 financial years, even though the report should cover the 2009-2014 period. The report should include the budget allocation for the full reporting period. Furthermore, the information pertaining to allocated budget for the reporting period should be disaggregated by province.

[11] Another omission in the report is that the budget does not include a budgetary allocation for social support to victims of domestic violence, as specifically recommended by the CEDAW Committee. The report should include the allocation for this item or provide an explanation for the failure to do so.

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<sup>6</sup> Committee On The Elimination Of Discrimination Against Women, Forty-Eighth Session - Concluding observations of the Committee on the Elimination of Discrimination against Women, available at: [http://advocacyaid.com/ecdnnewsflash/CEDAW\\_C-ZAF-CO-4\\_closing\\_comments\\_2011.pdf](http://advocacyaid.com/ecdnnewsflash/CEDAW_C-ZAF-CO-4_closing_comments_2011.pdf) .

<sup>7</sup> Concluding observations, para 25.

[12] The CEDAW observations request the State to provide detailed information on “the causes scope and extent of violence against women disaggregated by age, urban and rural areas, as well as the impact of measures taken to prevent it”.<sup>8</sup> The report does not adequately address the causes of violence against women.

[13] The report provides causes for the prevalence of the violence against women in South Africa yet; the list of causes suggested by the report and the explanation of the causes is insufficient. It is suggested that the report refer to the following causes of violence against women as set out in the CALS report ‘Sexual violence by educators in South African Schools: Gaps in Accountability’.<sup>9</sup>

[14] Finally, the report does not adequately deal with issues around reporting, prosecution, and compensation for victims of violence, and it does not include sufficient information about the impact of the measures taken to prevent domestic violence.

### **Participation in political and public life**

[15] In reference to paragraph 30 of the CEDAW report, CALS has the following recommendations:

- (a) The report includes an explanation of the Electoral Commission functions and mandate followed by a table indicating the percentage of women judges for the period 2011-2014. However, the available data does not cover the reporting period. The data must be for the period of 2009 to 2014.
- (b) The report does not address the CEDAW Committee recommendations as to what policies have been implemented in order to promote equal participation of women in the decision-making process or types of awareness-raising activities the State has implemented in that period.
- (c) The report does not provide information in response to the recommendation of the CEDAW Committee regarding the results achieved in this area.

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<sup>8</sup> Concluding observations, para 26.

<sup>9</sup> Report: Sexual violence by educators in South African Schools: Gaps in Accountability, May 2014 page 10, available at [http://www.wits.ac.za/files/t5ccr\\_910848001399909772.pdf](http://www.wits.ac.za/files/t5ccr_910848001399909772.pdf).

- (d) The report should address the state of the Electoral Act No 73 of 1998 and why it has not been amended to include specific gender-quota clauses. There is currently no law compelling political parties in South Africa to adhere to gender quotas.
- (e) Although the report provides data about the representation of women in the judiciary, it does not explain why in some instances there has been a decrease in the number of women in the judiciary over time or why, in the highest courts, there is no significant representation of women. For example, the Labour Court consists of only 27% women in 2014 as opposed to 36% in 2012. The same can be seen in the Constitutional Court with a 20% representation in 2014 and 30% in 2011.

CALS has done extensive research in the area of gender transformation in the legal profession. The report on Transformation of the Legal Profession highlights the current challenges faced by women in the legal profession and provides useful recommendations to address them.<sup>10</sup> We recommend that the Department's report should engage more with CALS' research or the issues it addresses, and provide a more comprehensive explanation of the challenges that women are facing in the legal profession and provide strategies to address them.

## **Education**

[16] The report mentions that there is a deep concern around the Committee's concluding observation that "prostitution, exploitative sex and rape are perpetrated in connection with a child's access to education."<sup>11</sup> However, the report fails to engage in any of the current research regarding sexual violence perpetrated against female learners in schools.

[17] The report should engage with the recent studies, including that conducted by Action Aid South Africa,<sup>12</sup> on sexual violence perpetrated against female learners in the provinces of Gauteng and Limpopo. The study found that 49% of female learners in Limpopo and 45% of female learners in Gauteng admitted that they have been forced to engage in sexual intercourse.

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<sup>10</sup> Report: Transformation of the Legal Profession, August 2014, available at: [http://www.wits.ac.za/files/25gim\\_578095001427098673.pdf](http://www.wits.ac.za/files/25gim_578095001427098673.pdf)

<sup>11</sup> Concluding observations, para 24.

<sup>12</sup> Action Aid South Africa *Key Findings: Sexual Offences and Reporting. Sexual Violence in Schools 2015 Baseline Study – Limpopo and Gauteng.*

In one school it was reported that 33% of female learners admitted to being raped. It was also found that 1 in 5 female learners felt pressurised to have sexual intercourse with an educator.

[18] Furthermore, it would be helpful for the report to refer to the CALS' publication 'Sexual Violence by Educators in South African Schools: Gaps in Accountability',<sup>13</sup> where accountability in the education system, police work, the prosecuting authority and the courts is examined and recommendations given.

## **Employment**

[19] This section of the report deals with the status of women in employment, in particular women employed in public services and the measures that have been taken to ensure the equality of men and women in this sector.

[20] The section is very brief and does not adequately deal with measures that have to be taken to eliminate all forms of discrimination against women in the workplace. Specificity in this regard is very important as many women are still discriminated against in the workplace, especially in male-dominated sectors, such as the mining industry. The Mining Charter prescribes that 13% of miners underground should be female. Women are now being sent underground in greater numbers, but there are no measures to provide female miners with safe spaces in which they can work free from sexual harassment and violence.

[21] This particular issue became apparent after the rape and murder of Binky Mosiane, a female underground mine worker, who was employed by Anglo American Platinum. She was raped and murdered whilst on duty in February 2012. However, despite the media attention and public outrage over Binky Mosiane's rape and murder, no measures have been taken to deal with violence against women underground. When Anglo American Platinum classified Binky Mosiane's rape and murder as mere criminal activity, the South African government remained silent regarding any policy to protect women from sexual violence in the mining sector. This is especially disquieting given the additional reports of sexual violence against women in mining.

[22] CALS therefore submits that South Africa needs to take more progressive measures to protect women against violence in the workplace and in particular to protect women working

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<sup>13</sup> Sexual Violence by Educators in South African Schools: Gaps in Accountability, *supra* note 10.



in male-dominated industries like mining. Issues of violence against women working underground should not be treated as mere random criminal acts. The state needs to legislate and place a duty on mining houses to treat violence against women as a safety issue with obligations that mining companies cannot contract out of, and the report should include information on this particular issue.

[23] Paragraph 33 of the CEDAW concluding observations also deals with maternity leave for women. According to the State report “workers may not go to work 6 weeks after the birth of a child unless their doctor or midwife says it is safe.”<sup>14</sup>

[24] Although the report mentions benefits that women are entitled to after giving birth, such as a compulsory six-week period at home, legislation currently provides no sufficient paternity leave to fathers of new born babies.

[25] The assumption that only women can or should be primary caregivers enforces the stereotype that childcare is women’s responsibility. In a recent Labour Court decision of *MIA v State Information Technology Agency (Pty) Ltd*,<sup>15</sup> the court acknowledged that issues of childcare after birth are not just ‘women’s issues’, but are also dependent on what is best for the child. In that case the court ordered the respondent to pay leave of two months to the applicant who was in a civil union with his partner, after the couple had decided that after the birth of their child through surrogacy, the applicant would be the immediate care giver of the child. Although the case only dealt with the issue for the benefit of a homosexual couple, if having a father as a primary caregiver of the child is in the best interests of the child, the sex of the parents should not matter. The benefit provided to the applicant in the MIA matter ought to be extended to all fathers. This will also ensure that women are not only confined to reproductive roles with no sufficient assistance from their male partners. These harmful gender stereotypes need to be broken down for the benefit of all sexes. Therefore, the report should include more information about current status of paternity leave in South Africa and what strategies exist to incorporate the measures in the future.

## **Rural women**

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<sup>14</sup> South Africa draft report, para 189.

<sup>15</sup> (D312/2012) [2015].

[26] The report mentions steps taken by the country to provide basic services to indigent South Africans. It states that people benefit from a number of social packages and free basic services in the form of reticulated water, electricity, sanitation and sewerage as well as solid waste management for households.

[27] Although the South African government has made progress in the delivery of basic services to the poor (especially in the realm of social grants), a number of people across the country especially those in rural areas and informal settlements, still suffer from the lack of access to basic services.

[28] Since 2013, CALS has been involved in a matter in the Limpopo province where residents in five villages have requested assistance to compel the state to provide them with access to water. Due to the lack of adequate water supply, the residents have resorted to collecting water from dams and rivers. In many cases women have had to bare the burden of the lack of water supply, as they are the ones who have had to collect water (due to the patriarchal nature of that community). The lack of water supply has made women vulnerable to violence, as many have reported that they have had to leave their homes at 02:00 in the mornings to look for water and face attacks on their way back from fetching water from the rivers. These attacks range from common assault to sexual violence. Women in these circumstances become common targets of these assaults because the rivers and dams are situated far from the community and they have to walk long distances to collect the water. The quality of this water is also poor, resulting in illness.

[29] The report is therefore silent on issues, which still expose women to gender based-violence and discrimination as a result of the lack of water supply and other basic services.

### **III. Comments on South African Government's CEDAW Report 2009-2014**

#### **Gender-based violence**

[30] At paragraph 320, the report explains several interventions to address gender-based violence and sexual offenses. However, the report does not provide data as to the number of specialised sexual offences courts, police units or victim friendly rooms that are currently in place, how those interventions operate, and whether the interventions were successful in addressing gender-based violence in the country.

[31] In most cases, as noted above, the data does not cover the 2009-2014 period, for example, paragraph 346 does not provide information about the number of shelters over the time period and paragraph 322 only includes information of sexual assault cases in the 2012/2013 period.

[32] In all of the cases covered in this section, the information is not disaggregated by age, rural and urban area and race; nor does it provide sufficient information. For example, paragraph 326 includes data of convictions within the Family Violence and Child Protection and Sexual Offences Units, but does not speak to the rate of convictions in relation to the number of cases reported. Moreover, when the report explains a challenge, as in paragraph 346, in relation to accessibility of One-Stop Service Centres of Abuse in rural areas, it does not provide information on how that challenge is going to be addressed or include possible solutions.

### **Sexual offences courts**

[33] Sexual offences courts were reintroduced in 2014. According to the Department of Justice and Constitutional Development, 15 sexual offences courts were established or upgraded in the period of 2013/14; 8 were established or upgraded in the period between 2014/15; and 4 were established or upgraded between 2015/16.<sup>16</sup> This is a total of 27 sexual offences courts countrywide. By having only 27 sexual offences courts nationwide in comparison to the amount of regional magistrate courts, it can be seen that there is simply an insufficient number of sexual offences courts to serve all the districts in South Africa. The report should explain this issue in detail as to why the number of sexual courts currently in place is sufficient.

[34] At paragraph 323 the report states that according to the National Strategy for Intersectoral Management of Sexual Offences, each sexual offences court will have the following as a minimum: (i) 1 presiding officer; (ii) 2 prosecutors; (iii) 1 intermediary; (iv) 1 designated clerk; (v) 1 designated social worker; (vi) 1 legal aid practitioner; and (vii) 1 court preparation / victim support officer. The report should explain why it deems these numbers to be adequate.

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<sup>16</sup> Department of Justice and Constitutional Development, available at <http://www.justice.gov.za/vg/sxo/2014-SOC-list.html>.

[35] Furthermore, the National Strategic Plan does not mention how many interpreters will be working at each court. The report should discuss the need for further interpreters to be assigned to each court.

[36] Although paragraph 325 mentions that intermediaries have audio-visual equipment available to them to deal with cases in sexual offences courts, the report should discuss the lack of “special measures” at courts, such as: CCTV, anatomical dolls, sign language interpreters and intermediaries.

### **Forms of marriage in South Africa**

[37] The report fails to mention domestic partnerships as a form of relationship in South Africa. This is problematic as domestic partnerships are not provided with legal protections which other forms of recognised relationships have such as: joint ownership with regard to the common home and property;<sup>17</sup> a statutory duty to maintain the less wealthy partner when the relationship ends;<sup>18</sup> and when the distribution of profits when a partner works in the other partner’s business for no compensation.<sup>19</sup>

[38] Case law has been key in incrementally developing law that protects domestic partnerships. In the matter of *Butters v Mncora*<sup>20</sup> the Supreme Court of Appeal held that despite the common law principles applicable to normal commercial partnerships, a partnership enterprise might extend beyond commercial undertakings to include a cohabitive relationship. Importantly, the court held that in determining whether both parties contributed to the ‘profit-making’ requirement of a universal agreement, the non-profit focus of looking after a family was deemed as part of this requirement. Thus, enforcing the notion that care-focussed work of women is of value and even commercial value.

[39] In conclusion, the report should include an explanation of the status of domestic partnerships in the country.

### **IV. Comments on General Recommendations 12 & 19 on violence against women**

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<sup>17</sup> South African Law Reform Commission, Discussion Paper 104, Project 118: Domestic Partnerships at 57. <http://www.justice.gov.za/salrc/dpapers/dp104.pdf>

<sup>18</sup> *Idem* at 61.

<sup>19</sup> *Idem* at 63.

<sup>20</sup> (181/11) [2012] ZASCA 29.

[40] The report started with an explanation of legislative measures in the area of domestic violence; however, as we already comment above, the report does not provide an analysis of the implementation of the legislation in order to combat violence against women.

[41] At paragraph 556 of the report it states that in 2009, a review of the implementation of the Domestic Violence Act was conducted. However it does not explain the findings of the review, if any challenges arise from the review and how the challenges are going to be addressed.

[42] The report stated at paragraph 560 that the Government has been running awareness campaigns and public education programmes on domestic violence. However, the report does not explain the geographical areas that these programmes were targeting or if this type of measure has been implemented in rural areas.

[43] Regarding protection orders, the report provides data about the number of applications, the number of interim orders and final orders. However, the report does not provide data for the relevant reporting period. Furthermore, the report acknowledges an increase in applications in 2013-2014 and fails to explain the causes of the increase.

[44] In addition, the report does not provide information regarding the number of protection orders which have been breached. This data is fundamental since, according to Women's Legal Centre, 55 of the women killed in 2009 by their intimate male partners were in possession of a protection order at the time.<sup>21</sup>

[45] Paragraph 572 does not provide information on the performance of the Civilian Secretariat for Police, the challenges faced or how the challenges could be remedied. In this regard the Civilian Secretariat for Police in their briefing to the Parliament Police of May 2015, admitted in relation to the monitoring obligation that “[p]rovinces were unable to meet the minimum requirements due to a lack of capacity, because of priority of AMC this impacted the amount of audits they could do for the DVC. Based on this, the findings of the report are not entirely representative of the whole country, and are only applicable to the stations that were visited.”<sup>22</sup>

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<sup>21</sup> Women Legal Centre, letter to the Portfolio Committee on Police, June 11, 2015.

<sup>22</sup> Meeting of the Police Portfolio Committee, Briefing by the Civilian Secretariat for Police on DVA reports; May 2015.

[46] The report does not contain any information on statistical data regarding cases of domestic violence. This is a general problem in South Africa, reinforced by the report's silence in this regard. As recorded by Lisa Vetten, the "[d]ata on the full extent of all forms of domestic violence in South Africa is not available."<sup>23</sup>

[47] The report stated that, in relation to victim friendly rooms, "as at November 2014, there are 1137 police stations rendering VFS for victim of crime (100%)".<sup>24</sup> This information is in contrast with the Civilian Secretariat report to Parliament where it was stated that in a visit to 156 police stations, 13,5% do not have a victim friendly room, 16,7% are not resourced and 11,5 are not functioning.<sup>25</sup>

[48] Therefore, the report should engage in the findings of the Civilian Secretariat and include an explanation on the different data in that issue.

## **V. Conclusion**

[49] We value having the opportunity to engage with the Department of Women on the South African 5<sup>th</sup> Draft Report and welcome the opportunity to elaborate further on any of our comments. For queries or further information please contact Sheena Swemmer, researcher in the Gender Programme at [Sheena.Swemmer@wits.ac.za](mailto:Sheena.Swemmer@wits.ac.za) or Marianna Belalba, researcher in the Rule of Law Programme at [Mariana.BelalbaBarreto@wits.ac.za](mailto:Mariana.BelalbaBarreto@wits.ac.za).

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<sup>23</sup> Lisa Vetten, Domestic violence in South Africa, Policy Brief 71, November 2014

<sup>24</sup> South Africa draft report, para 581

<sup>25</sup> Report on the status of Domestic Violence Act (DVA) implementation by the South African Police Service(SAPS) for the period 01 April to 30 September 2014