



Submission to the Portfolio Committee on Women, Children and People with Disabilities on the Women Empowerment and Gender Equality Bill [B50 - 2013]

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1. Introduction

This document is a joint submission by POWA and HURISA to Parliament in response to the call for submissions on the Women Empowerment and Gender Equality Bill. It reviews the contents and context of the WEGE Bill, reads the Bill alongside other relevant legislation and legislative processes in order to identify several issues of concern, and it makes recommendations on strengthening the WEGE Bill in order to better articulate its stated aims.

2. WHO WE ARE

2.1 POWA

People Opposing Women Abuse (POWA) is a “feminist, women’s rights organisation that provides both services, and engages in advocacy in order to ensure the realisation of women’s rights and thereby improve women’s quality of life”. Established in 1979 as a response to the high levels of violence against women, our work is rooted in the belief that change can only be said to be effective when women’s lives are directly improved through our interventions. There is no single route to change. We constantly seek new and creative approaches in our POWA’s core mandate are to provide legal and psychosocial services to women survivors of violence. These services include counseling, legal advice, court support and preparation and the provision of shelter for abused women and their children. In addition to service provision, the organisation engages in research, training, lobbying and advocacy at both national and regional levels to ensure state accountability for violations of women’s human rights. POWA was the first organisation in Gauteng to establish a shelter for abused women in 1984 and currently operates two shelters situated in the Gauteng area. While we acknowledge that abuse of women happens across all sectors of society, POWA’s work is primarily aimed at women who come from communities with limited or no resources at all. POWA operates primarily in the townships, with branch offices in Tembisa, Soweto, Katlehong, Berea and Vosloorus. Besides providing legal and psychosocial services to abused women in these areas, POWA has a contingent of volunteers stationed at various family courts around Johannesburg.

As a feminist organisation, our focus is on eradicating all forms of violence against women through the provision of the counselling, legal and training services listed above. Our experience as an organisation is that survivors of gender based violence are often financially dependent on perpetrators, making it difficult to break the cycle of violence. The economic empowerment of women is therefore crucial in this POWA also conducts regional and international advocacy work focused on CEDAW and the Maputo Protocol, both of which are key instruments in the promotion and protection of the rights of women. It is in this light, and against this experience, that we have an interest in seeing the provisions of these instruments incorporated in legislation that seeks to serve this purpose, bearing in mind

that as a signatory, the Republic of South Africa has specific obligations to these same instruments.

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2.2 Human Rights institute of South Africa (HURISA)

The Human Rights Institute of South Africa is a section 21 registered number 1993/003485/08 non-profit, non-governmental organisation (NGO) which offers professional services towards the promotion of a culture of human rights, peace and democracy.

HURISA was founded in June 1993 as an Institute for the Study of Public Violence and served as the research and documentation arm of the Commission of Inquiry into public violence chaired by Retired Judge, Judge Richard Goldstone. When Mr. Mandela visited Norway in 1992, he requested assistance from the Norwegian Government for effective monitoring of the politically based public violence that was threatening the transformation process from apartheid to multiracial democracy in South Africa. That would not have been possible without the support and encouragement of President Nelson Mandela, the father of our democracy.

When the Goldstone Commission's mandate ended in 1994, the name of the organisation was changed to the Human Rights Institute of South Africa. Since then the HURISA has transformed itself into a human rights training organisation. Within South Africa a wide number of NGOs and community-based organisations have been provided training as well as government officials, lawyers, students, educators and learners. HURISA seeks to strengthen the systems of human rights, namely the Human Rights Council (HRC) and African Union (AU) at national, sub-regional (SADC) and continental levels (AU)

3. Concerns and Recommendations

The WEGE Bill aims to provide the authority to monitor, review and oversee gender mainstreaming and integration of gender equality considerations into all programmes of government and other sectors and to promote the provisions of Section 9 (2) of the Constitution of the Republic of South Africa 1996. The WEGE Bill should directly and proactively address itself to the principle of gender equality and prohibit gender discrimination.

It should do so clearly and decisively as we note below some concerns in meeting these principles:

Section 1: Definitions

The definition of gender in the Bill is limited as it does not take into account lesbian, bisexual, transgender and intersex (LBTI) people.

Furthermore the gender discrimination definition omits sexual orientation

Recommendation

We recommend that these definition be extended to include LBTI people. The definition of women empowerment should also include” the advancement of women by other legislation, international and regional treaties”

Section 3: Objectives of the Act

This section recognises and seeks to facilitate compliance with the various international and international agreements but omits the Protocol to the African Charter on Human and Peoples Rights on the Rights of women in Africa which is key instruments seeking to address challenges specific to women in the continent. This instrument is therefore relevant in the protection of women from discriminatory as is quite explicit on harmful practices which we believe the Bill needs to cover at length. A definition of this is further defined in this instruments as *“means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity”*

Recommendation

We recommend that this instrument be included in the objectives section of the Bill and is useful in the elimination of discriminatory practices which the Bill seeks to do. This is also necessary in addressing religious and cultural harmful practices that discriminate against women that the Bill is silent on.

Section 4: Education and Training

We commend the incorporation of this section more specifically as it seeks to provide for designated public and private bodies to develop plans in compliance with international instruments by ensuring that women’s child bearing responsibilities are not the cause for drop out. This section does not take into account the challenges faced by LBTI persons in schools and in the workplace as they are exposed to various forms of discrimination and stigma on the basis of their sexual orientation. It is therefore important that in promoting the right to education this be taken into account.

Recommendation

LBTI people should be included and protected from dropping out as result of pressure and stigma

Section 6: Public Education on prohibited practices including Gender Based Violence

We commend the Bill for including this section but it fails to take into account the existing challenges with regards to the implementation of gender based violence related legislation such as the Domestic Violence Act ,1998 and the Criminal Law(Sexual Offences)Amendment Act,2007.POWA, having expertise in this area, has found the challenges to implementation to include but not limited to negative attitudes within the criminal justice system which often discourage survivors of gender based violence from further reporting. This exposure to secondary victimisation is further problematic as also leads to the poor investigation of cases resulting in less convictions and perpetrators enjoying impunity.

Similarly, does not take into account challenges relating to LGBTI people more importantly acknowledge the killing of lesbian women as a serious violation of this provision.

Recommendation

It is necessary that the Bill takes this into account these challenges as seek to address them in on order to ensure that survivors of gender based violence find redress within the criminal justice system. This needs to be paired with public education focused on sensitising these role-players to enable them to provide quality services. This public education mandate should include religious and traditional structures.

Section 7: Equal Representation and Empowerment

The WEGE Bill pays considerable attention to equal representation and participation. It also contains a definition of discrimination as required by CEDAW. This is commendable since such attention is in line with articles in CEDAW, the SADC Gender Protocol and the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women, which have been ratified by the South African government. Such ratification means that the SA government has assumed specific obligations in relation to women's empowerment and gender equality. The WEGE Bill should directly and proactively address itself to the principle of gender equality and prohibit gender discrimination. It should do so clearly and decisively.

As the section stands it provides an obligation on designated public and private bodies to develop and implement measures to progressively realise the minimum fifty percent representation which is encouraged by a number of the abovementioned instruments. The concern is that the obligations stated are similar to those provided for in the Employment Equity Act, 1998. It is unclear how the Bill will seek to overcome the existing challenges relating to the submission of Employment Equity plans which include the representation of women with designated employers. It is therefore not clear what this WEGE Bill seeks to achieve differently from EEA and how it will not be hampered by similar challenges in enforcing compliance. As it stands, companies would now be required to draft similar reports for EEA and WEGE purposes.

Recommendation

We recommend that a thorough analysis of existing legislation be conducted in this regard to avoid duplication thereby taking into account challenges with these laws. Whilst we support the fifty percent representation the Bill does need to provide a definition of “meaningful participation” of women to provide guidance on the very designated stakeholders in developing their plans and promoting gender equality. This will deepen substantive equality vision.

Other Observations:

Homogenous use of “women”

Women are not a homogenous group. This is an important recognition for any policy or legislation that seeks to address patriarchal discrimination and promote gender equality. The WEGE Bill appears not to recognise that women are affected by intersecting forms of marginalisation. While patriarchal oppression and gendered violation impacts on all women, it is nonetheless crucial to pay attention to the specific ways in which different forms of power and identity give meaning to gender experience. Whereas all three cases require attention to class, location, age and sexuality alongside race and gender, uniform solutions will not meaningfully intervene to empower all these women. Legislation informed by how both variety and similarity work in women’s lives can result in substantial interventions. The WEGE Bill has to be informed by intersectional approaches if it is to potentially transform women’s lives for the better.

Race, poverty, sexual orientation, class status, age, disability and geographical location determine in very specific ways the forms of marginalisation and violation faced by women. Legislation which seeks gender redress and to achieve gender equality needs directly attend to and consider interventions and remedies informed by such intersectionalities. The challenges faced by urban, working class women living with disabilities, for example, differ as significantly from the needs of young, rural, lesbian women faced with abduction into marriage to older men with established power ties to chiefs, as they do from the mechanisms required to empower young women survivors of childhood sexual abuse who now face the stigma of failing virginity tests.

Recommendation

The Bill needs to needs to acknowledge these intersectionalities and clearly articulate these in the Bill. As the Bill stands it only refers rural women and women with disabilities failing to take into account other intersectionalities. Failure to do so will render the Bill ineffective through various blind spots for women who should receive specific recognition and protection from a Bill such as this.

Conclusion

Whilst we support the intentions of the Ministry in seeking to improve the lives of women by promoting socio-economic empowerment and seeking to eliminate various forms of discrimination against women we believe that more substance will need to be incorporated into this Bill in order to give effect to this .Furthermore the Bill will need to take into account the various intersectionalities of women in order to address the lived realities of women. The current legislative framework has sought to promote gender equality and eliminate discrimination but had been rigged with a number of implementation challenges which we believe without taking these into account the Bill will be rendered ineffective.

The Bill will also need broader consultation with other stakeholders including women's groups in communities both rural and urban locations.