

Women's rights protection instruments ratified by South Africa:

- **CEDAW**: ratified in 1995
- **CEDAW Protocol**: ratified in 2005
- **Maputo Protocol**: ratified in 2004

Respect! Over the past decade South Africa has ratified the main international and regional women's rights protection instruments; and national statutory laws tend to respect the principle of equality between women and men. Yet, the continued application of discriminatory customary laws and persistent patriarchal traditions lead to widespread violations of women's human rights. The Coalition of the campaign remains particularly concerned about: discrimination within the family; violence against women, including trafficking; unequal access to property; discrimination in employment; and access to health services.

/ Some positive developments...

In addition to the ratification of all the main women's rights protection instruments, the Coalition of the Campaign acknowledges several other developments in recent years concerning women's rights:

- The adoption of the Criminal Law (Sexual Offences) Amendment Act 2007 which modifies the definition of consent and the evidential requirements for proving rape (including abolition of the cautionary rule against complainants' evidence and providing that no negative inference can be drawn from a delay in reporting rape).
- The adoption of the Criminal Law (Sentencing) Amendment Act 2007, which establishes minimum sentences for rape. This amendment was intended in particular to prevent courts failing to impose minimum sentences on the basis of absence of physical injuries, the "cultural beliefs" of the perpetrator, or the behavior of the victims or her relationship to the perpetrator.
- The adoption of National Instructions for Police on Sexual Offences, which sets out how police investigations should be conducted in such cases.
- Concerning representation of women in parliament, following the 2009 parliamentary elections, 178 out of a total of 400 members of the lower house are women (44.5%). In the upper house, 16 of 54 members are women (29.6%). At ministerial level and deputy minister level respectively 42% and 39% are women.

/ But discrimination and violence persist

South Africa has a hybrid legal system composed of statutory and customary law. Laws protecting women's rights are ineffectively implemented, due to lack of training of law enforcement personnel, general lack of awareness of women's human rights and generalised impunity for violations.

• Discrimination in the family

Legally both civil and customary marriages are recognised. Religious marriages have been recognised by the courts and laws recognising such marriages are currently under consideration.

Under customary law, polygamy is authorized (although it is rarely practised). Indeed, the current President, Jacob Zuma, whose role is to guarantee the application of the Constitution, which provides for equality between men and women, openly defends polygamy and married his fifth wife in 2010.

The Recognition of Customary Marriages act requires a court application if a spouse in an existing customary marriage wants to take on a new wife. However, the need to register customary marriages is not well-known and many women within customary marriages do not know about their rights as outlined in the new legislation.

• Violence

Despite the adoption of specific legislation to protect women from domestic violence, including marital rape, (Domestic Violence Act 1998), such violence remains widespread. The implementation of the law is curtailed, due to deeply rooted social attitudes which condone violence against women, lack of resources, and inadequate training of doctors, police and court personnel. Efforts undertaken by the government, including the financing of shelters for victims and training for police, have so far proved inadequate.

South Africa has the highest recorded incidence of rape in the world. Over a nine month period, during 2007-2008, 36,190 complaints of rape were recorded by the police. . Yet, the large majority of rapes committed go unreported. Reported cases are generally not effectively investigated and prosecuted, in part due to lack of training of law enforcement officials. According to a 2008 study, only 4.1% of reported cases result in convictions. The government abolished specialist sexual offences units in favour of a decentralized approach to the investigation of these cases. This has led to deterioration in how rape cases are dealt with by the police. In 2009, the Minister of Police announced government's intention to reverse this decision but this has not been implemented.

There are extensive reports of rape, sexual abuse, sexual harassment and assaults of girls at school by teachers, students, and other persons in the school community. Although the law requires schools to disclose sexual abuse to the authorities; administrators often conceal sexual violence or delay disciplinary action.

Violence against those accused of witchcraft occurs, especially amongst elderly women. There have been reports of women accused of witchcraft being driven from their villages in rural communities, assaulted, exiled, and in some cases, murdered.

The Children's Act 2005 (signed into law in 2008) prohibits trafficking of children, and the new Sexual Offences Act of 2007 prohibits any trafficking for sexual purposes. The Prevention of Trafficking Bill is currently at parliamentary stage and aims to comply with government's international obligations in relation to trafficking. The precise extent of trafficking operations in South Africa is unknown.

• Obstacles to access to health

Poverty and HIV/AIDS remain the two key inter-linked drivers of maternal and infant mortality. South Africa has the highest prevalence of HIV/AIDS worldwide. In 2009, the Government announced that it would expand access to anti-retroviral treatment for women and children who are living with HIV/AIDS.

The Coalition of the Campaign calls on the authorities of South Africa to:

- **Harmonise statutory and customary laws** in conformity with CEDAW and the Maputo Protocol and ensure that, where conflicts arise between statutory legal provisions and customary law, the statutory provisions prevail.
- **Strengthen measures to protect women from violence and support victims**, including by ensuring effective prosecution and punishment of perpetrators; implementing training for all law enforcement personnel, in particular concerning implementation of the Domestic Violence and Sexual Offences Acts and the related National Instructions; reinstating specialist sexual offences units; adopting a policy to increase the responsiveness of health services to domestic violence cases; and implementing awareness-raising programmes informing the population of women's rights and mechanisms of access to justice.
- **Take all necessary measures to increase women's access to employment**, including by addressing socio-economic and cultural factors and enforcing legislation on sexual harassment.
- **Adopt all necessary measures to reform or eliminate cultural practices and stereotypes that discriminate against women**, including through awareness-raising programmes targeting women and men, traditional and community leaders and the media.
- **Implement all recommendations issued by the CEDAW Committee**, in June 1998, and submit the long overdue combined 2nd and 3rd periodic report to the CEDAW Committee.

PRINCIPAL SOURCES

- Lawyers for Human Rights (LHR)
- First monitoring report of the Shukumisa Campaign, Sexual violence, calling the system to account, available at www.tlac.org.za
- Inter Parliamentary Union, www.ipu.org
- Wikigender, www.wikigender.org

For more information on women's rights and the actions of the campaign in South Africa, see: www.africa4womensrights.org