



16 January 2014

The Chairperson
Portfolio Committee on Women, Children and People with Disabilities
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To whom it may concern

Submission on the Women Empowerment and Gender Equality Bill [B 50–2013]

The Centre for Law and Society (CLS) was established in 1994 (under the name Law, Race and Gender Unit) as a research and training unit in UCT's Faculty of Law. Presently, the main project of CLS is the Rural Women's Action-Research (RWAR) Programme. The RWAR Programme is part of a wider collaborative initiative that seeks to support struggles for change by rural people, particularly women, in South Africa. The Programme focuses on land rights, but includes related issues of poverty, inheritance, succession, marriage, women's standing and representation in community structures and before traditional courts, rural governance, citizenship and access to human rights in general by rural women. An explicit concern is that of power relations, and the impact of national laws and policy in framing the balance of power within which rural women and men struggle for change at the local level. The RWAR Programme seeks to understand the complexities and opportunities in the processes of contestation and change underway in rural areas and aims to provide targeted forms of support to those engaged in struggles that challenge patriarchal and autocratic power relations in former homeland areas.

In this context, CLS is concerned that the Women Empowerment and Gender Equality Bill [B 50–2013] provides no real mechanism for the enforcement of women's rights. The Bill establishes an outline for a broad range of policies, plans, programmes, measures, strategies, frameworks and guidelines to be developed for implementation by individual designated bodies. Yet, none of the instruments to be developed are accompanied by enforcement mechanisms to ensure that designated public and private bodies comply with the content of the instruments and with the Bill more broadly. The Minister's powers in this regard appear to be limited to requesting and reviewing reports or to utilising weak 'dispute resolution mechanisms' (clause 16) where the Bill's provisions are not complied with. Even so, because the Bill's provisions are primarily about the development and implementation of plans by public and private bodies, enforceability of these provisions will not guarantee that the implementation of developed plans will have a trickle-down effect within these bodies. The minimal power provided to the Minister to promote compliance is further undermined by the Bill's vague, convoluted and repetitive drafting – which would make it difficult for both designated bodies and the Department itself to apply the Bill's provisions and perform the required duties.

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In principle we agree that women should not have to litigate to enforce their rights each and every time that they are denied. For this reason gender mainstreaming, or making gender ‘integral to the design, implementation, monitoring and evaluation of policies and programmes in all sectors of life’ (clause 1), a stated objective of the Bill (clause 3(f)), remains important and an admirable goal to aspire to. Yet, women need something more than overly broad plans that aim to improve their circumstances but provide no concrete mechanisms through which this can be done in real-life contexts. What women need is a justiciable mechanism through which the Minister, in her capacity as head of the Department of Women, Children and People with Disabilities, can intervene and compel compliance where women complain about their own experiences of public or private bodies’ disregard for gender equality. As currently drafted, the Bill provides no such remedy for women. The Bill envisions equality and empowerment plans emanating from the top levels of designated bodies and being implemented downwards, without consideration for the actual needs of women on the ground. This has the potential to render the Bill’s provisions meaningless in the lives of ordinary women and brings into serious question the legitimacy of the framework it tries to establish.

We are further concerned with the Bill’s preoccupation with a formal requirement for 50% representation of women and equal access to opportunities within private and public bodies. While these requirements appear to be advancing the position of women, they do not guarantee that women will enjoy equal outcomes. Formal equality requirements are particularly dangerous when coupled with weak enforcement mechanisms, as is the case in this Bill, because they appear to provide women with a recourse where their rights have been violated, but in fact do not do so when applied to real-life contexts.

Clause 11 of the Bill, dealing with the ‘socio-economic empowerment of women in rural areas’, serves as one example of what has already been stated in this submission. Although clause 11 claims to trump all other related laws, the clause provides no remedy for women who have been aggrieved by a public or private body’s non-compliance with the requirements to facilitate sustainable livelihoods and decent work for women, ensure more land in the hands of women, improve conditions for women on farms, and ensure equal representation of women in traditional councils (clause 11(1)(a)-(d)). All that the clause requires is that, *if* the Minister requests it of them, designated bodies submit plans and measures dealing with these issues and then report on the implementation of those plans. Beyond that, the Minister can only attempt to enforce compliance with the Bill through dispute resolution with the designated body in terms of clause 16.

For these reasons we submit that the Bill, while drafted with commendable intentions, will fail to provide women with meaningful mechanisms for the protection and enforcement of their rights. Effective remedies are essential to the full realisation of the right to equality that is protected at section 9 of the Constitution.

We thank the Committee for this opportunity to present our views on the Bill and welcome further engagement with the Committee at public hearings or to provide clarity on any aspect of our submission.