



Oral presentation of the Centre for Law and Society at public hearings on the Women Empowerment and Gender Equality Bill [B 50–2013]

Hearings conducted by Portfolio Committee on Women, Children and People with Disabilities

Wednesday 29 January 2014; V454 Old Assembly

INTRODUCTION

The Centre for Law and Society is based at the University of Cape Town. Its core programme is the Rural Women's Action Research Programme. The Programme engages in participatory research models with people based in the former homelands to develop knowledges that reflect the experiences of different power relations in rural areas. Our inputs on the Women Empowerment and Gender Equality (WEGE) Bill are based on the experiences that different people, especially women, have communicated to us across the country about the realities that they face in exercising their rights and accessing justice.

The focus of our presentation is clause 11, concerning the socio-economic empowerment of women in rural areas, which most directly speaks to our work. Our submission is principled rather than about the technical drafting of the Bill. We would like to note that the Centre for Law and Society endorses the submission of the Community Law Centre at the University of the Western Cape.

We commend the objectives of the Bill outlined in its opening, and the spirit communicated in these objectives. We echo other submissions in noting the significant advancements that South Africa has made around gender equality since the advent of democracy. We recognise also the enormous challenges that continue to exist. Based on our understandings of some of these challenges, we raise three major concerns relevant to clause 11 of the WEGE Bill.

CONCERNS

1. Weak mechanisms for enforcing the rights that the Bill is trying to promote

The first concern we raise is with what we perceive as weak mechanisms for enforcing the rights that the Bill is trying to promote. In terms of the Bill, designated public and private bodies are required to develop and implement a broad range of plans dealing with women empowerment and gender equality. However, the

Bill provides no strong mechanisms to ensure that these instruments will actually be developed and, more importantly, that they will be properly implemented.

The Honourable Minister's powers seem generally to be limited to the provision of guidance once designated bodies have submitted their plans and to the discretionary review of reports on the progress that designated bodies have made. Where the designated bodies have not complied with the Bill's requirements, enforcement is to be achieved through "dispute resolution mechanisms". It is our submission that this is a very weak mechanism for enforcement, and this point has been echoed in other written submissions.

Furthermore, even if there is compliance with the Bill's provisions, there is no guarantee, once a designated body has developed and launched a certain plan, that implementation will have a trickle-down effect within the body.

Taken as a whole, this framework therefore seems at most to give the power to encourage compliance with the Bill and, to a lesser extent, to encourage broad compliance with the actual policies developed in terms of the Bill.

Looking specifically at clause 11, although the clause claims to trump other laws, there is no real way to compel compliance if a designated public or private body does NOT develop or implement plans to empower women in rural areas socio-economically. All that is required in terms of clause 11 is that these bodies submit plans and reports if the Minister asks them to do so. If there is still non-compliance, the only remaining option is dispute resolution.

In our view, these weak enforcement mechanisms undermine the potential of clause 11 to improve the circumstances of women in rural areas.

2. No concrete mechanism for women to improve their circumstances in everyday real-life contexts

Our second point flows from the first and argues that the Bill provides no concrete mechanism for women to improve their circumstances in everyday real-life contexts. Our concern is that the Bill seems to envision broad plans for empowerment and equality that are developed at top levels of designated private and public bodies to be implemented downwards. But, our question is this: how will these top-level plans influence the lives of ordinary women?

What women need is an intervention mechanism that can compel compliance when there are individual complaints of non-compliance with either the Bill itself, or with the plans that have been developed in terms of the Bill's provisions.

Of course, women should not have to go to court each and every time they experience discrimination. However, what could this Bill do to improve a woman's circumstances if, for example, she was being threatened with eviction from her rural home and land by her brother? Or, if in practice her access to land depended on an allocation by a traditional leader?

This was the experience of a woman from rural KwaZulu-Natal who spoke out in Parliament against the Traditional Courts Bill [B 1–2012] in 2012. And there are many more women who could tell similar stories to her.

Clause 11's impetus to develop and implement land reform plans that will "ensure more land in the hands of women in rural areas", while a commendable goal, will mean little to the woman from KwaZulu-Natal if she is threatened by her brother again. Honourable Chair, it is therefore our submission that, in practice, the Bill will provide no remedy for this woman's daily struggles in respect of land.

3. Formal requirement for 50% representation not an end in itself

We support the aim for women's participation articulated in the 50% representation requirement. However, we believe that this requirement is not an end in itself and needs to be accompanied by other requirements that enable women's meaningful participation and recognition in different spaces. We echo what has been raised in other submissions that substantive gender equality cannot be understood without simultaneous reference to race, class, sex and sexual orientation, among other markers of identity. These intersecting identities materially impact the ways that women are able to access resources, positions of influence, and formal recourse for grievances.

Clause 11 of the Bill requires that plans be developed and implemented to "ensure equal representation and meaningful participation of women in traditional councils". Although it is unclear whether "equal representation" means that 50% of traditional council members should be women, this sort of formal quota does not in itself prevent the discrimination faced by women who are members of these councils. Our work in the former homelands has highlighted the ways that women continue to be deprived of the rights that are guaranteed to them in legislation and in the Constitution because of patriarchal constructions of women and femininity that limit their life options, make them dependent on men for social and material security, and devalue their contributions in all spaces.

Several other submissions point to existing legislation that promotes many of the same ideals as the WEGE Bill but that fails to meaningfully impact women's lives because of poor implementation. Existing legislation requires that one third of traditional council members be women, but this has not slowed reports from women about discrimination, silencing and abuse both within traditional councils and in engaging with them.

As an example of this, we again point to a submission made at the 2012 Parliamentary public hearings on the Traditional Courts Bill. Here another woman from KwaZulu-Natal spoke of her experiences of social and political violence, which included trying to exclude her from meetings and prevent her from speaking in meetings. This intimidation and harassment culminated in an assault instigated by a male member of the traditional council which resulted in this woman having to amputate one of her fingers. This story serves as a reminder that equal representation is not an end in itself and cannot by itself change gendered power relations on the ground.

CONCLUSION

While the Bill was drafted with commendable intentions, we therefore raise our concerns that it does not provide women with meaningful mechanisms through which to protect and enforce their rights.

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