

**POLICY BRIEF 16**

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**Commission for Gender Equality**

*A society free from gender oppression and inequality*

## **ON PAPER AND IN PRACTICE:**

*The Challenges of South Africa's Compliance  
with Global and Regional Gender Instruments*

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## INTRODUCTION

The dawn of democracy in South Africa in 1994 saw the country's integration into the community of nations characterised by the ratification of numerous global and continental (i.e. African) instruments promoting gender equality, and advancing the rights of women. These instruments have provisions not only for ways to promote gender equality and advance the rights of women in signatory countries (including South Africa), but also specific periodic progress-reporting obligations. Progress reporting is intended to provide clear details of measures taken by signatory countries, including South Africa, to achieve the attainment or enjoyment of the rights contained in the various instruments.

The Commission for Gender Equality (CGE), with support and guidance from the Gender Desk of the United Nations Economic Commission for Africa (UNECA), undertook a review of South Africa's progress in complying with the numerous instruments that the country has signed up to for the promotion of gender equality and the rights of women. This review is also in line with the Constitutional mandate of the CGE to monitor and evaluate progress by government and related institutions in promoting, protecting and attaining gender equality, as prescribed under Section 11(h) of the Commission for Gender Equality Act 39 of 1996.

This Policy Brief focuses on and highlights some of the key issues raised in the review

report<sup>1</sup>, particularly from the African Women's Progress Scoreboard (AWPS) component of the review, dealing with progress made and the challenges identified on the domestication of the various global and continental/regional instruments.

## BRIEF BACKGROUND

The advent of a post-apartheid democracy in South Africa was followed by ratifications of numerous global and continental/regional instruments on gender equality,<sup>2</sup> signalling the country's national political commitment to promoting human rights issues, including the need for gender equality and women's empowerment. The various instruments ratified were as follows.

### Global Instruments

- *The Convention on the Elimination of all forms of Discrimination against Women (CEDAW)*
- *Article 2 – Equality*
- *Article 16 – Equality in Marriage and Family Life*
- *Optional Protocol to CEDAW*
- *Beijing Platform for Action*
- *Protocol on the Suppression and Punishment of Trafficking in Persons Especially in Women and Children*
- *Convention on the Rights of the Child*
- *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*

<sup>1</sup> CGE (2016) *The African Gender Development Index (AGDI) South Africa Country Report 2015*.

<sup>2</sup> See the CGE (2016) *op. cit.*, for more in-depth details and discussions on the relevant provisions of the different instruments.



- *Optional Protocol to the Convention on the Rights of the Child (CRC) on the Involvement of Children in Armed Conflict.*
- *Convention 100 : Equal Pay*
- *Convention 111: Discrimination*
- *UN Security Council Resolutions 1325.*

### **Continental/Regional instruments**

- *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*
- *Solemn Declaration on Gender Equality*
- *African Charter on the Rights and Welfare of the Child.*

Ratifying these instruments binds the country to domesticating their provisions, and imposes obligations on it to ensure that gender equality and women's empowerment are prioritised through relevant policies, legislation, planning, programmes and budgeting processes.

The African Gender Development Index (AGDI) was developed as an assessment instrument by the United Nations Economic Commission for Africa (UNECA) in 2004 to support African countries' initiatives to monitor and evaluate the impact of national policies on gender equality and the empowerment of women in line with the provisions of the global and continental/regional instruments that have been ratified. The assessment tool comprises two parts: the first part is the Gender Status Index (GSI) which measures gender inequalities utilising readily available information, especially quantitative indicators, on

education, health, income, time-use, employment, access to resources, and formal and informal political representation. The second part is the AWPS, which measures progress in terms of women's empowerment, qualitatively evaluating government's performance in implementing specific global and continental/regional instruments ratified by South Africa with provisions relating to promoting gender equality and the empowerment of women.

## **METHODOLOGY AND APPROACH**

The review was structured around the two components (i.e. the GSI and the AWPS) as outlined above.<sup>3</sup>

Progress in terms of the GSI was measured focusing on aspects of gender relations that could be measured quantitatively to assess the advancement of gender equality. Progress was therefore assessed in three areas: social power 'capabilities', economic power 'opportunities' and political power 'agency'. Progress in terms of the AWPS component is measured through qualitative assessments in relation to government's performance in implementing the provisions of the instruments through its domestic gender policies, programmes and related activities. It therefore provides a qualitative assessment of the gap between political commitment on paper, and the implementation of gender policies in practice. Performance scores were awarded based on

<sup>3</sup> For more in-depth details of the methodology and approach, see appropriate sections of the review report (see footnote 1).



the analysis of information obtained from different official government and other trusted sources.<sup>4</sup>

The scoring for progress on the AWPS was done on a three-point scale of between 0 and 2 (0 indicates nothing done, 1 indicates poor to fair performance, and 2 indicates a good to excellent performance).

In terms of performance scoring for the GSI component, an assessment of female achievement as a ratio to male achievement is calculated using a number of specific indicators<sup>5</sup> to obtain a score for female achievement as a ratio of male achievement total of 1. The closer the specific indicator score is to 1, the better the performance on gender equality by the country. The GSI is then compiled as the sum total of the three scoring categories (i.e. sub-component, component and block) to give the overall gender profile of the country.

However, some of the indicators in the GSI component do not follow the same scoring rule (i.e. reverse indicators). These are related to education (dropout rates), health (stunting, underweight, mortality) and time-use (domestic, care and volunteer activities). Here the review measures male achievement against female achievement. As is the case with any other study, this assessment encountered limitations and constraints that are outlined in detail in the main review report.

## THE FINDINGS

The review of South Africa's performance in terms of the AWPS was scored on the following indicators: *Ratification, Reporting, Law, Policy, Plans, Involvement of civil society, Monitoring and evaluation, Information dissemination, Capacity development and Accountability*. The review revealed that the country performed relatively well in some indicators, while not so well in others, as discussed below.

### AWPS – Areas of good performance

The review revealed that the country performed well in terms of ratification, reporting, promulgation of laws, developing policies and involvement of civil society. The country's performance in terms of these specific indicators scored consistently high scores of 2 in line with the AWPS three-point scoring scale (i.e. 0-1-2). The country therefore appears to be complying with the formal performance requirements as outlined by the specific Treaty Bodies responsible for overseeing compliance by signatories. The country has ratified all the instruments listed above, and has submitted progress reports to the Treaty Bodies as required, although the review does raise some important issues of concern with regard to the timing of submissions of periodic reports, as will be discussed in the following subsection. The country has also developed appropriate

<sup>4</sup> See the main review report for more details on sources of data (CGE (2016)) The African Gender Development Index (AGDI) South Africa Country Report 2015).

<sup>5</sup> See the main review report for more details on this.



gender policies and promulgated a plethora of gender-related legislation during the past two decades. It needs to be acknowledged though that while a number of gender-positive policies and legislation were passed, effective implementation of many domestic policies and legislation has remained a severe limitation on the attainment of gender equality and women's empowerment.

It is also worth noting that the country performed satisfactorily in terms of involving and consulting with civil society organisations on issues related to gender mainstreaming. This derives partly from, and bears testimony to, the strength and independence of the country's civil society sector and its willingness and ability to insist on holding the state accountable for its actions in line with domestic laws, policies and commitment to human rights. However, problematic issues such as the extent, nature and quality of these consultations are matters of concern for the review.

The set of indicators on which the country showed satisfactory levels of performance were less problematic in that all that was required was political willingness to buy into the gender agenda as a global and continental/regional imperative. The existence within the country's leadership of the political willingness and readiness to buy into the gender agenda therefore made it easy to commit politically and to ratify these global and continental/regional instruments on gender equality.

It is plausible to surmise the reason why the country appears to have performed relatively

well in these indicators. This is because these are the areas where political commitment and leadership were not only necessary, but also relatively easy to provide by the country's political leadership. Also, these are largely voluntary commitments, not underpinned by strict enforcement conditions and punitive sanctions for non-compliance. This possibly explains partly the ease with which many of these instruments were ratified without reservations.

#### *AWPS – Areas of poor performance*

In terms of the second set of indicators of performance (i.e. monitoring and evaluation, information dissemination, capacity development and accountability) the country's performance appears to be less than satisfactory. For instance, the review showed that the country scored consistently low scores of between 0 and 1, clearly indicating massive problems in its ability to implement the policies, programmes and plans effectively, including allocating the necessary budgetary resources, to ensure compliance with the provisions of the various instruments. In particular, the review revealed poor performance in areas such as the effective implementation of gender policies and legislation, dissemination of related information to women to improve their knowledge and ability to claim their rights and access to related services, and developing the necessary state capacity and skills to monitor and evaluate the implementation of gender policies and legislative frameworks. A number of factors such as poor budgetary resource allocation and lack of skilled human resources are clearly compounding the problem of poor



state capacity to implement gender policies effectively.

Even on some of the first set of indicators discussed in the previous subsection in terms of which the country performed relatively satisfactorily, there are issues of concern. For instance, in terms of ratifying and reporting, our analysis shows that while the country appears to comply easily with the technical requirements for signing up to and ratifying the instruments, it struggles in terms of reporting consistently, regularly and timeously, as required by the conventions and Treaty Bodies. In terms of reporting, the review shows that over the past two decades the trend in the country's compilation of periodic reports has been erratic, often left until late and in some instances combining and compressing several periodic reports<sup>6</sup> into a single report. For instance, the 2011 periodic report on CEDAW came after the country had missed several periodic reporting deadlines, and had to combine the second, third and fourth periodic reports into one report. Similarly, the country's second periodic report (i.e. 2015) on the African Charter on Human and People's Rights combines reports for several reporting periods (i.e. third, fourth and fifth) into one report.

It is worth noting that the reporting process serves as an important means of enforcement of compliance with treaty obligations, and is therefore intended to be regularly carried out on time for each specific reporting period on several instruments. South Africa has

consistently failed to report on time for every specific reporting period, which poses serious negative implications for assessing the country's progress. For instance, failure to report on time could delay the identification of problem areas and timely intervention by the Treaty Bodies. Failure to report on time also denies the intended beneficiaries, especially women, the opportunity to get timely information on progress achieved or lack of progress on the various indicators for promoting gender equality.

While the country's performance on the indicator for involvement of civil society was also reviewed and found satisfactory, analysis shows that a limited number of relatively well-resourced civil society organisations tend to be involved rather than a cross-section of the civil society sector. This implies that the process of consulting civil society organisations in the compilation of periodic reports, as required by the conventions and Treaty Bodies, is often not extensive and intensive. This is compounded by the current weaknesses of the country's National Gender Machinery which lacks the necessary resources, and institutional capacity to act with unity of purpose to ensure state accountability in implementing gender policies and legislative frameworks.

## POLICY IMPLICATIONS

There are several key policy implications flowing from the discussion above. Firstly, the country's ratification without reservation of a

<sup>6</sup> See relevant sections of the report, CGE (2016), *The African Gender Development Index (AGDI) South Africa Country Report 2015*.



large number of global and continental/regional gender instruments not only implies deep political commitment to the global gender-equality agenda, but also policy commitment towards the effective implementation of the provisions of the various instruments. However, the review shows that the country performed satisfactorily mainly on those indicators where political commitment was required and easily provided, but performed less so on those indicators where political commitment on paper still needs to be translated into administrative and operational commitment in practice. This implies that there is a clear gap between policy commitments on paper and practical outcomes on the ground to meet the country's global and regional gender mainstreaming obligations. This is compounded by the voluntary nature of these commitments, lacking enforcement and punitive sanctions for poor compliance.

Secondly, and reinforcing the argument above, is that the tendency for the country to consistently fail to meet its obligations for timeous reporting, and subsequently combining and compressing reports for multiple reporting periods implies considerable institutional lapses or weaknesses in translating policy commitments into practical outcomes, especially in areas of policy execution and management of global and regional commitments on gender issues.

Thirdly, the practice of compressing multiple periodic reports into single reports holds negative implications for potential and timely policy interventions. For instance, compressing progress reporting for multiple reporting

periods implies that vital information is not compiled and disseminated at the time when it is due, but rather at a later stage when the effectiveness of possible policy interventions could be undermined by the late compilation and dissemination of such information. Another related policy implication is the risk of losing the opportunity to act on information at the time when it is still relevant and vital for purposes of effective policy interventions.

Finally, the fact that the country's commitments towards the global and regional gender instruments are essentially voluntary and not backed by strict monitoring, enforcement and punitive sanctions poses important policy implications. For instance, failure to develop the necessary institutional and administrative capacity, and allocate the necessary resources toward ensuring compliance with the provisions of the various instruments becomes an important policy issue that has not yet been addressed fully.

## RECOMMENDATIONS

It is critical that the government creates effective institutional mechanisms and systems, with the necessary budgetary resources and institutional capacity to ensure that the country addresses the key weaknesses undermining its compliance with global and continental/regional obligations to promote gender equality and women's empowerment. In particular, it is important that the government meets and fulfils its periodic reporting requirements on time as required by the various Treaty Bodies. This should place greater emphasis on developing internal staff



capacity and effective internal systems for tracking and monitoring the country's periodic reporting obligations on the various global and continental/regional instruments.

We further recommend that the government, working closely with the CGE and other institutions within the National Gender Machinery, develop effective processes for ensuring the country's compliance with, and accountability for, the implementation of the provisions of the various ratified global and continental/regional instruments.

Thirdly, the voluntary nature of compliance with global and regional gender instruments has

created an enforcement and accountability deficit that threatens to undermine progress on these instruments, particularly with respect to implementation and allocation of both human and financial resources. We recommend that the CGE, working closely with other institutions within the national gender machinery, develop common and effective approaches, including clearly defined performance indicators and enforcement processes (e.g. through relevant legislation outlining punitive sanctions for non-compliance by state institutions as well as effective monitoring and evaluation systems) to ensure that the country honors its global and regional obligations towards gender equality and women's empowerment.



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