



## **COUNTRY SECTION:** South Africa

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# OVERVIEW OF THE SOUTH AFRICAN LEGAL SYSTEM

South Africa has a progressive Constitution that guarantees equality for women, the right to freedom from violence, and access to socio-economic rights such as housing, land, fair labour practices, and health. Unfortunately there is a vast chasm between the rights contained in the Constitution and the everyday lives of the majority of South African women.

South Africa has also ratified a number of landmark international and regional treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter on Human and People's Rights on the Rights of Women (the African Protocol). The country operates under a Dualist legal system, meaning domestic and international law function separately at their respective levels. International law becomes incorporated into domestic law by the adoption of statutes.<sup>1</sup> The Constitution is the supreme law and all other laws are subject to the Bill of Rights contained in the Constitution.

## INTERNATIONAL INSTRUMENTS

### Convention on the Elimination of All Forms of Discrimination Against Women of 1979 (CEDAW)

CEDAW is an international treaty that requires states to eliminate all forms of discrimination against women. South Africa ratified CEDAW on 15 December 1995 and acceded to the Optional Protocol to CEDAW in March 2005. Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports to the CEDAW Committee, at least every four years, on measures they have taken to comply with their treaty obligations. South Africa presented its latest country report early in 2011.

### Universal Declaration of Human Rights 1948 (UDHR)

The Universal Declaration of Human Rights recognises the inherent dignity and the equal and inalienable rights of all members of the human family regardless of sex, race, colour, language, religion or distinction of any kind.

### International Covenant on Civil and Political Rights of 1966 (ICCPR)

The ICCPR guarantees basic civil and political rights to all persons, "without distinction of any kind, such as race, colour, [or] sex..." [article 2(1)]. South Africa ratified the ICCPR in 1998.

<sup>1</sup> Mikaleko Joyce Maluleke. *Women's Human Rights Resource Book*. The Department of Justice and Constitutional Development in South Africa, May 2006, pp 27.

## **International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)**

The ICCPR deals in detail with the rights outlined in the Universal Declaration of Human rights and guarantees basic civil and political rights to all persons, “without distinction of any kind, such as race, colour, [or] sex...” [Article 2(1)]. These rights include, amongst others, the right to life, freedom of movement, equality before the law, privacy, freedom of religion and the right to participate in public affairs including the right to vote. South Africa has signed but not yet ratified the ICESCR.

## **Beijing Declaration and Platform for Action 1995 (BPfA)**

The Beijing Conference of 1995 identified 12 critical areas of concern that were impacting negatively on the ability of women to fully access their human rights. The Beijing Declaration and Platform for Action set out specific objectives and urgent priority actions in response to the identified critical areas. The Platform also calls upon governments to develop strategies or national plans of action to implement the Platform locally and improve the situation of women in their country. The South African government adopted a National Policy Framework for Women’s Empowerment and Gender Equality in 2000.<sup>2</sup>

## **Declaration on the Elimination of Violence Against Women 1993 (The Declaration)**

The Declaration, adopted by the United Nations General Assembly, defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women”. Article 4 requires states to “condemn violence against women and...not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination”. In addition, article 4(d) states, “women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms”.

## **Convention on the Rights of the Child 1989 (CRC)**

The CRC applies to all children and prohibits discrimination against girls. South Africa ratified the CRC in June 1995 and ratified the Optional Protocol to the CRC on the involvement of children in armed conflict in 2009. South Africa acceded to the Optional Protocol to the CRC on child prostitution and pornography in 2003.

<sup>2</sup> The 15 year anniversary report of the Republic of South Africa on the implementation of the Beijing Declaration and Platform for Action (1995), p. 5

## **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT)**

CAT is an international human rights instrument which aims to prevent torture around the world and requires states to take effective measures to prevent torture within their borders. Rape as an act of torture has been affirmed by successive UN Special Rapporteurs on Torture. South Africa signed the Convention on 29 January 1993 and ratified it on 10 December 1998. South Africa acceded to the Optional Protocol on 28 August 2002.

## **Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949 (Trafficking Convention)**

Adopted by the UN in 1949, the Trafficking Convention asserts that the prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community. South Africa ratified the Trafficking Convention on 10 October 1951.

## **The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000 (Trafficking Protocol)**

The Trafficking Protocol draws special attention to women, and requires states to legislate in order to combat human trafficking. South Africa ratified the Trafficking Protocol on 20 February 2004.

## **REGIONAL INSTRUMENTS**

### **African Decade for Women**

The African Union declared 2010 to 2020 as a Decade of Women and identified ten themes around which member States are to take action. The goal of the Decade is to promote gender equality and women's empowerment from the grassroots to national, regional and continental levels by speeding up the implementation of commitments made by States through the various international treaties. The themes are: Women's health, reduce maternal mortality and address HIV/AIDS; Women's economic empowerment and entrepreneurship; Agriculture and food security; Education, science and technology; Environment, climate change and sustainable development; Peace, security and violence against women; Governance and Legal Protection; Gender financing and budgeting; Women in decision making; and Young Women's Movement. An African Women's Decade Fund has been established to support activities towards achieving objectives under the thematic areas.

## **The African Charter on Human and People's Rights 1986 (Banjul Charter)**

The Banjul Charter is a regional human rights instrument which guarantees the rights of all individuals to equality, dignity, health, freedom from exploitation, and work under equitable and satisfactory circumstances. Article 18(3) requires states to ...ensure the elimination of every discrimination against women . South Africa ratified the Banjul Charter in 1995.

## **The Protocol to the African Charter on Human and People's Rights on the Rights of Women 2005 (The Maputo Protocol)**

The Maputo Protocol builds on the Banjul Charter, focusing specifically on the need to promote and protect women's rights. It includes articles relating to trafficking in women, violence against women, equal partnership in marriage, sexual and reproductive rights, and the right to equal opportunity in work and career advancement. South Africa ratified the Maputo Protocol on 17 December 2004.

## **Addendum to the 1997 Declaration on Gender and Development by SADC Heads of State or Government of 1998**

Adopted by members of the Southern African Development Community (SADC), the Addendum strongly condemns all forms of violence against women and children.

## **The SADC Protocol on Gender and Development 2008**

The Southern African Development Community (SADC) is an organisation comprised of 14 States from the Southern Africa region. The SADC Protocol calls for the empowerment of women, the elimination of discrimination, and the achievement of gender equality. Article 7 requires states to take action, including the enactment of legislation, to promote and ensure equality for women. This includes measures aimed at ensuring equality in the criminal justice system, addressing gender bias and stereotypes, and providing accessible and affordable legal services for all women, as well as specific

## **DOMESTIC LAWS**

South Africa has a comprehensive body of laws that expressly protect women's rights and promote gender equality in both the public and private sphere.

## **The Constitution**

The Constitution is the supreme law of the country. It includes a Bill of Rights that provides the legal framework guaranteeing the dignity,

equality, freedom and human rights of all South Africans.

- **Section 9** guarantees equality and prohibits unfair discrimination by the State or a person on a number of grounds relevant to gender equality, including gender, sex, marital status, and pregnancy.
- **Section 10** recognises human dignity.
- **Section 11** affords everyone a right to life.
- **Section 12** guarantees freedom and security of person, which includes freedom from violence and the right to bodily control and integrity, including to make decisions concerning reproduction, and the right to security in and control over one's body.
- **Section 26** recognises an individual's right to housing, and holds the government responsible for providing adequate housing.
- **Section 27** guarantees the right to health care, food, water, and social security.
- **Section 29** guarantees everyone the right to education.
- **Sections 59, 72 and 118** require the National Assembly, National Council of Provinces and provincial offices of parliament to be open and transparent to the general public.

## Gender Equality:

### The Equality Act

The Equality Act prohibits unfair discrimination, hate speech, and harassment. The Act applies in cases involving unfair discrimination by the State or by any person or organisation. It was introduced to guarantee the equality protected under Section 9 of the Bill of Rights. The Act specifically prohibits gender discrimination, including discrimination on the basis of sex, pregnancy, marital status, domestic or family responsibilities, or sexual orientation. The Act prohibits many specific types of gender discrimination, including but not limited to: gender-based violence; female genital mutilation; the system of preventing women from inheriting property; any traditional, customary or religious practice which impairs the dignity of women and undermines equality; any policy that limits women's access to land rights, finance and other resources; discrimination on the grounds of pregnancy; limiting women's access to social services or benefits; the denial of access to opportunities, including access to services or contractual opportunities; and systemic inequality of access to opportunities by women as a result of the sexual division of labour.

The Act allows individuals who have suffered unfair discrimination, hate speech or harassment to lodge a complaint with an Equality Court, which will then hold an enquiry. The Equality Court has wide powers to

order remedies, including compensation.

## Employment Rights:

### Employment Equity Act

The Employment Equity Act has two main purposes:

- Eliminate discrimination in the workplace
- Provide for measures to correct past discrimination against black persons, women and the disabled in the employment context.

The Act prohibits unfair discrimination by employers against employees, directly or indirectly, on the basis of sex, gender, and pregnancy.

A woman can bring a complaint regarding an employer's unfair discriminatory conduct to the Commission for Conciliation, Mediation, and Arbitration (CCMA), and then to the Labour Court.

### Basic Conditions of Employment Act (BCEA)

The BCEA outlines the basic rights that apply to all employees, such as pay for overtime, sick leave, fair wages, and notice of termination of employment. In addition, article 25 states, An employee is entitled to at least four consecutive months' maternity leave. According to article 26, (1) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child. (2) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if— (a) the employee is required to perform night work...or her work poses a danger to her health or safety or that of her child; and (b) it is practicable for the employer to do so.

### Broad Based Black Economic Empowerment Act

This Act promotes economic empowerment for all black people, and cites black women specifically as a group in need of assistance. Article 2(d) aims to increase the extent to which black women own and manage existing and new enterprises, and increas[e] their access to economic activities, infrastructure and skills training .

## Violence against women:

### Sexual Offences Act (SOA)

The SOA is part of the criminal law. It defines and explains different types of sexual offences, including an expanded definition of rape and the new, much broader offence of sexual assault. The Act obligates the State to provide services to victims of sexual assault, including HIV testing,

counselling, and post-exposure prophylaxis free of charge. The Act also obliges the creation of a National Sex Offender Register.

### **Domestic Violence Act (DVA)**

The DVA applies whenever domestic violence has occurred. Under the DVA, police officers are required to aid victims by offering assistance, such as locating a shelter or obtaining medical treatment, and by providing information on legal options, such as protection orders. Any person experiencing domestic violence can apply to the Magistrate's Court for a protection order, which would prohibit the abuser from committing acts of domestic violence. Protection orders may also include other restrictions, such as an order that the abuser cannot contact or approach the victim, an order that the abuser cannot enter the victim's residence or place of employment, or an order that the abuser must provide emergency monetary relief to the complainant.

### **Marriage and the Family:**

#### **Recognition of Customary Marriages Act (RCMA)**

The RCMA recognises all customary marriages and introduces important legal protections of particular benefit to women, including giving women more rights with regard to property during the marriage but also during a divorce or after the death of a spouse. Additionally, Section 6 of the Act recognises, A wife in a customary marriage has, on the basis of equality with her husband and subject to the matrimonial property system governing the marriage, full status and capacity, including the capacity to acquire assets and to dispose of them, to enter into contracts and to litigate, in addition to any rights and powers that she might have under customary law. Under the Act, polygamous marriages are afforded the same legal status as civil marriages, but a husband is required to apply to court before entering an additional marriage.

#### **Reform of Customary Law of Succession and Regulation of Related Matters Act**

This Act reforms the customary law of succession by prohibiting the principle of primogeniture, which allows only men to inherit from a deceased's estate. The Act entitles women to inherit on equal grounds as men, in accordance with the rules of succession contained in the Intestate Succession Act.<sup>3</sup>

#### **Maintenance Act**

The Maintenance Act obligates both biological parents to maintain all children on an equal basis, ensuring that women will not be regarded as

<sup>3</sup> Act 81 of 1987.

solely responsible for supporting children. The Act sets out the process for a parent to apply to the Magistrate's Court for a maintenance order without the need of legal representation. The Act also provides enforcement measures to ensure compliance with maintenance orders.

### **Termination of Pregnancy Act**

The Termination of Pregnancy Act promotes reproductive freedom by providing all women with the right to a safe and legal termination of pregnancy. Section 2(a) allows women to terminate a pregnancy ...during the first 12 weeks of the gestation period of her pregnancy, and Section 2(b) extends this time to 13-20 weeks for those whose pregnancy resulted from rape or incest, or whose ...continued pregnancy would significantly affect the social or economic circumstances of the woman.

### **Children's Amendment Act**

The Children's Amendment Act provides protection for children and outlines parental rights and responsibilities.

## **OVERVIEW OF GENDER MACHINERY**

The South African National Gender Machinery is a network of bodies – governmental and non-governmental – aimed at guaranteeing constitutional rights specifically related to gender. The *South African National Policy Framework for Women's Empowerment and Gender Equality* (2000)<sup>4</sup> outlines the basic structure of the country's gender machinery.

With the creation of his cabinet in 2009, President Jacob Zuma established the Ministry for Women, Children, and Persons with Disabilities. This body is charged with the task of furthering gender equality through gender mainstreaming. Below are descriptions of the branches with lead responsibility for promoting gender equality and women's rights:

### **Executive Cabinet**

One of the responsibilities of the Executive Cabinet is to ensure that all policy coming from the Cabinet, including budget approvals, is engendered, and that gender concerns are addressed in the discussion and implementation of national policy. The Cabinet may also make gender policy recommendations.<sup>5</sup>

4 *South Africa's National Policy Framework for Women's Empowerment and Gender Equality*. Prepared by the Office of the Status of Women. 2000, available at <[www.info.gov.za/otherdocs/2000/gender.pdf](http://www.info.gov.za/otherdocs/2000/gender.pdf)>

5 *Ibid.* pp 47.

## Office on the Status of Women (OSW)

The OSW is a part of the Office of the President and is the core of the gender machinery. The body acts as the official liaison with international bodies and gender- focused Non-Governmental Organisations and women's organisations. The OSW also advises the President and other officials on gender issues, and acts as a liaison between citizens and Parliament. It is responsible for conducting research, facilitating gender sensitive training, and facilitating affirmative action. The executive branches of provincial governments may also include an OSW.<sup>6</sup>

## Gender Desks or Gender Focal Points

The *South African National Gender Policy Framework* requires every governmental department to establish Gender Desks or Focal Points. These bodies work to ensure that the policies and programmes that come from particular governmental departments are consistent with the national gender framework. They engage with citizens in order to remain up to date on current issues. In addition, these bodies facilitate gender training in their particular governmental department. The focal points work under the Director General of the department and are located in both national and provincial offices.<sup>7</sup>

## Portfolio Committee on Women, Youth, Children, and People with Disabilities

The Portfolio Committee on Women, Youth, Children, and People with Disabilities is associated with the Ministry of Women, Youth, Children, and People with Disabilities. It is charged with the review and oversight of bills that fall into the category of its title and the oversight of the Ministry. This body has the authority to review budget votes and make recommendations concerning any part of the Ministry's business or structure.<sup>8</sup>

## Other useful bodies and organisations:<sup>9</sup>

**Commission for Gender Equality (CGE)** The mission of the CGE is to: advance, promote and protect gender equality in South Africa through undertaking research, public education, policy development, legislative initiatives, effective monitoring and litigation.<sup>10</sup> The CGE has six focus areas: gender and poverty; gender- based violence; democracy and good governance; gender, culture, religion and tradition; HIV/AIDS; and

6 *South African National Policy Framework* pp 27.

7 *Ibid* p. 28.

8 Parliament of the Republic of South Africa. Committees: Portfolio Committee on Women, Children and Persons with Disabilities. Accessed June 13, 2011 <[http://www.parliament.gov.za/live/content.php?Item\\_ID=215&CommitteeID=70](http://www.parliament.gov.za/live/content.php?Item_ID=215&CommitteeID=70)>

9 *South Africa's Narrative Report on the Implementation of the Beijing Declaration* p. 18.

10 Commission for Gender Equality. Mission and Vision. Accessed 13 June 2011.<<http://www.cge.org.za>>

the national gender machinery (strategic plan). The CGE is an expansive organisation with considerable resources.<sup>11</sup>

**Inter-Departmental Management Team (IDMT)** – The IDMT is an interdisciplinary team that aims to create multi-dimensional responses and strategies to challenge gender- based violence.

**Family Courts** – Family Courts hear and mediate cases of domestic violence and divorce. They also work with service agencies to promote the psychological and physical health of women and children.

## **PARLIAMENTARY PROCESS:**

The South African Parliament is comprised of two houses: the National Assembly and the National Council of Provinces (NCOP). The executive ministries are responsible for drafting legislation based on policy discussions at the ruling party's conventions. A new piece of legislation starts out as a green paper document, before moving to the white paper stage, which is the basis of the legislation. The white paper is debated on the Parliament floor as a draft bill and becomes a bill after it is tabled in Parliament. The green paper, white paper, cabinet approved draft bill, and bill are all released for public comment.<sup>12</sup> Once a new bill is drafted, it must be introduced to both houses of Parliament for consideration. Most bills begin in the National Assembly and are initially sent to a special committee responsible for reviewing and amending the bill.

There are four types of bills outlined in the Constitution:

1. Constitutional Amendments (Section 74 bills)
2. Ordinary bills not affecting the provinces (Section 75 bills)
3. Ordinary bills affecting the provinces (Section 76 bills)
4. Money bills (Section 77 bills)

For a constitutional amendment bill, committees are required to publish the bill in the *Government Gazette* for public comment, and may also organise public hearings depending on public interest. National and provincial governments publish bills in separate Government Gazettes. If you would like to submit a comment on a piece of legislation you can send your submission to the address listed on the appropriate gazette. The Official Website of the South African Parliament also includes a comment function that allows visitors to comment and receive updates on bills that are currently before parliament.<sup>13</sup> The committee must

<sup>11</sup> Ibid.

<sup>12</sup> "The Policy and Law Making Process." Community Organisers Toolbox, Education & Training Unit for Democracy and Development (ETU). Accessed 22 June 2011 <<http://www.etu.org.za/toolbox/docs/govern/policy.html>>

<sup>13</sup> (Parliament of the Republic of South Africa. "Bills Before Parliament." Accessed 23 June 2011. [http://www.parliament.gov.za/live/content.php?Session\\_ID=2ece20e68538e4fcbef7ee34207e9a4&Category\\_ID=720](http://www.parliament.gov.za/live/content.php?Session_ID=2ece20e68538e4fcbef7ee34207e9a4&Category_ID=720)

submit any written comments received from the public and the provincial legislatures to the Speaker of Tabling in the National Assembly.<sup>14</sup>

For ordinary bills not affecting the provinces, ordinary bills affecting the provinces, and money bills, this process of public consultation is not explicitly required. However, articles 59 and 118 of the Constitution require the National Assembly and the provincial legislatures, respectively, to facilitate public involvement in the legislative and other processes of the legislature and its committees.<sup>15</sup>

For all types of bills, the committee must complete its review and any changes before officially introducing the bill in the National Assembly. Once the National Assembly has considered the bill, it is sent to the NCOP. If both houses pass the bill it is forwarded to the President for his signature. When the President signs a bill it becomes law.

## EXPERIENCE OF WOMEN'S ORGANISATIONS IN SOUTH AFRICA

One of the challenges faced by women's organisations in South Africa is the gap between the passage of progressive legislation and governmental implementation of its provisions. Very often women are unaware of laws and policies, and of the services and resources available to them. As a result, well-intentioned legislation can be ineffective, unless it is accompanied by a will to implement and the provision of popular education to increase public understanding of how to use the law. The case study below offers an example of an effort by civil society to push for the Domestic Violence Act and lobby for its effective implementation.

### Example **Passing and Implementing the Domestic Violence Act (1998)**

In response to criticisms of the 1993 Prevention of Family Violence Act<sup>16</sup>, the South African Law Commission (SALC) established the Project 100 Committee, comprised of legal experts and NGOs specialising in domestic violence, to review the issue. The Committee published a paper for public comment, which outlined its recommendations and draft legislation.<sup>17</sup> NGOs responded to the paper, with several coming together as informal lobbying groups to compile joint submissions.

<sup>14</sup> Act 108 of 1996, Section 74, article 6.

<sup>15</sup> Act 108 of 1996, Section 118, article 1(a).

<sup>16</sup> Act 133 of 1993.

<sup>17</sup> Meintjes, Sheila. (2003). "The Politics of Engagement: Women Transforming the Policy Process – Domestic Violence Legislation in South Africa" in Anne Marie Goetz and Shireen Hassim (eds) *No Shortcuts to Power*. London: Zed Books Ltd. pp 151.

Women's organisations also worked with the State to edit the draft legislation.<sup>18</sup> The Domestic Violence Act<sup>19</sup> (DVA) was passed on 2 December 1998.

Unfortunately, though, the government failed to budget for the resources required to fulfil the provisions of the Act.<sup>20</sup> As a result, implementation of the DVA was extremely delayed. In response, in 1999, the Soul City Institute for Health and Development Communication and the National Network on Violence Against Women (NNVAW) formed a coalition of grassroots activists and service organisations, with the goal of pressuring the government to implement the DVA.<sup>21</sup> The advocacy campaign adopted a variety of strategies, such as sending letters to the government, making phone calls to portfolio committee members, and giving presentations to Parliament. Additionally, the campaign provided a resource pack to journalists, which outlined the provisions of the Act in the hope of improving the quality of media coverage.<sup>22</sup> Pamphlets were distributed to the public, and rallies and meetings were held to increase local support. The campaign's most unique approach was the creation of a radio and television drama series that drew attention to the problem of violence against women.<sup>23</sup> Popular actors from the series spoke out about the issue at the NNVAW's public conferences. As a result of the campaign's efforts, the government announced an implementation date of 15 December 1999 for the DVA.

Although the government has made progress in its implementation of the DVA as a result of these efforts, it still does not provide the resources for the full execution of the Act. Shortages include the additional personnel and services required to help women obtain protection orders and fill out application forms properly, as well as the safety shelters outlined in the Act. In these instances, women's NGOs step in to fill the gaps; they play pivotal roles implementing the DVA although they receive little or no financial support from the government.<sup>24</sup>

An overall strength of the implementation campaign was the prioritisation of coalition building as a way to consolidate the best assets

18 Ibid, p. 153.

19 Act 116 of 1998.

20 Vetten, Lisa. (2005). "Addressing domestic violence in South Africa".

21 Usdin, Shereen; Christofides, Nicola; Malepe, Lebo; Maker, Aadielah. (2000). "The Value of Advocacy and Promoting Social Change: Implementing the New Domestic Violence Act in South Africa." *Reproductive Health Matters*, Vol. 8, No. 16, November 2000, p. 58.

22 Ibid, p. 58.

23 The Communication Initiative Network, "Soul City / National Network on Violence Against Women (NNVAW) Partnership - South Africa." Accessed on 22 June 2011. Available at <<http://www.cominit.com/en/node/114445>>

24 Vetten, Lisa and Khan, Zohra. (2002). "We're doing their work for them." An Investigation into Government Support to Non-Profit Organisations Providing Services to Women Experiencing Gender Violence. Braamfontein: Centre for the Study of Violence and Reconciliation.

different organisations.<sup>25</sup> Additionally, the combination of creative advocacy tools proved beneficial in targeting both the government and the public.<sup>26</sup> Weaknesses included the fact that advocacy efforts were largely limited to wealthy, urban regions, with little presence in poorer, rural areas. Additionally, the campaign could have expanded its advocacy network to include the health sector, with training for doctors and nurses to better detect domestic violence and refer female victims.<sup>27</sup> One of the main challenges faced by the coalition was exclusion from participation in the drafting process of the national instructions and guidelines, and from the training of police and justice officials. Ultimately, the campaign highlights the importance of extending advocacy efforts beyond the *passing* of legislation to also ensure that the government commits adequate resources to ensure full implementation.

## Effective Advocacy Strategies in the South African Context

- Take advantage of elections: Elections increase citizens' access to politicians – often this is the only time a community sees their counsellor. Politicians are also more willing to discuss policy issues ahead of elections. From an advocacy point of view, it can be a really good time to try to push issues and ask for commitments".<sup>28</sup>
- Run a campaign which engages the wider public not only other NGOs, and adopt easy-to-grasp, simple demands which encourage easy buy-in.<sup>29</sup>
- Make use of access to the South African Parliament: Due to the lack of legislative staff within parliamentary offices, civil society organisations' reports, research, and recommendations can be useful to legislators. This enables civil society to be very influential:  
"Parliament is constitutionally required to...have the meetings in public, and they are required to encourage public participation... It does depend on the issue, but from talking to colleagues around the world, [South African citizens] do have good access to Parliament, we have good access to legislators, we have quite a high degree of success in influencing them largely because... many of the [parliamentary] committees don't have strong research departments."<sup>30</sup>

25 Usdin et al. (2000). "The Value of Advocacy and Promoting Social Change," pp 60-62.

26 Ibid, p. 58.

27 Ibid, p. 64.

28 Ibid

29 Ibid

30 Alison Tilley, interview 22 July 2011. Alison Tilley is the Executive Director of the Open Democracy Advice Centre. She is a founding trustee of the Women's Legal Centre, and is a member of the South African Law Reform Commission Project Committee on Data Protection.

- Be cautious about embarking on a Law Reform Commission (LRC) process. The law reform process can be very long and often yields mixed results. While some legislation is swiftly presented to the Department of Justice and Constitutional Development and then sent to Parliament, other LRC reports are written but never move further.

## CONCLUSION

South Africa has a progressive legal framework. At the same time, it has one of the widest gaps between rich and poor in the world, with women remaining the most vulnerable and socioeconomically disadvantaged members of society. The law can provide an advocacy tool to promote gender equality and women's empowerment and a mechanism to hold the state accountable for the promises contained in the Bill of Rights. Yet the failures in implementation of the law constitute major challenges for those that seek to realise women's equality and may require social mobilisation on a much larger scale.