

# Human Rights Institute of South Africa (HURISA)



**ECONOMIC AND SOCIAL RIGHTS**

**ADVOCACY TRAINING FOR RURALWOMEN**



**HURISA**

# **Economic and social Rights Advocacy Training for Rural Women**

**Johannesburg, South Africa 2010**

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## **About HURISA<sup>1</sup>**

The Human Rights Institute of South Africa is a non-profit, non-governmental organization incorporated under Section 21 of the Companies Act, 1973. It was founded in June 1993 as the Institute for the Study of Public Violence and served as the research and documentation arm of the Commission of inquiry into Public Violence Chaired by Judge Richard Goldstone. Since its transformation, this institution has offered efficient and successful human rights training within and beyond South Africa.

### **Vision**

To create a culture of Human Rights where people know, understand and promote human rights and responsibilities to all in their communities.

### **Mission**

To provide as much human rights education as possible primarily in South Africa, but also in region and continent as whole, especially in terms of human right as a philosophy, understanding human rights system, accessing rights especially socio-economic rights and learning skills to train others and promote human rights and to provide support to NGOs in neighboring countries

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This publication is developed for rural community based organisations to strengthen their capacity to advocate for implementation of economic and social rights in their local areas

## ACRONYMS

AU	African Union
CEDAW	Convention on the Elimination of All Discrimination Against Women
CERD	Covenant on Elimination of Racial Discrimination
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic and Social Rights
HURISA	Human Rights institute of South Africa
Maputo Protocol	African Charter Protocol on the Rights of Women in Africa
NEPAD	New Partnership for Africa's Development
SADC	Southern African Development Community
UDHR	Universal Declaration of Human Rights
UIF	Unemployment Insurance Fund
UN	United Nations

## FOREWORD

This resource pack is developed for the Community Based Organisations who work with communities at grass roots level. The material seeks to equip communities with skills to participate with confidence in public hearings, decision making processes, to raise awareness for respect of human rights through facilitation of community workshops and advocacy for enforcement of economic and social rights.

The publication is written in simplified languages to assist CBOs translate human rights laws, policies for communities and to monitor delivery of social services at local level as well as playing constructive roles in developmental programmes that promote and protect women's rights. Participation of the CBOs is important in engaging officials and institutions responsible for protection of human right. The international is part of the South African law. It is therefore imperative to involve the CBOs in the work of human rights treaty bodies to increase efforts creating a culture of human rights and make progress in cultivation of international standards at grass roots level.

Preparation and submission of states reports to international and regional human rights bodies is part of the state duty to show case accountability and commitment to human rights obligations. This process requires independent assessment of CSOs to ensure states reports reflect the true picture on the ground and rectify pertinent issues affecting communities. Many CBOs lack skills and capacities to use the international and regional procedures for promotion and protection of human rights mechanisms at local level. It is based on this background that HURISA designed this publication to empower communities with knowledge on rights, to educate them on how to enforce their rights and know how to access institutions responsible for fulfilment of human rights.

# INTRODUCTION TO HUMAN RIGHTS

## WHAT ARE HUMAN RIGHTS

Human Rights are those rights, values and those freedoms everyone is born with because they are human beings. Human Rights apply to all people regardless of where they come from in the world, live, culture, religion, race, sex, language, age, background or class.

Human rights are found in many international documents such as the Universal Declaration on Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights.

## WHAT IS INTERNATIONAL INSTRUMENT

An international instrument is a treaty entered into by member states. Once a country signs the international instruments it means that state is committed to follow human rights standards entrenched in that document. When a state ratifies an international instrument it means the international instrument will be implemented into domestic laws of that country, and affords the courts of that state the power to enforce the laws according to that human rights document.

## IS MORALITY, LEGAL RIGHTS DEFINED AS HUMAN RIGHTS

Moral rights are rights developed by people of different cultures or religious background. While legal rights are written laws passed by Parliament or the legislature and can be found in statutory books.

South Africa has ratified some major international and regional human rights instruments.

- **UDHR (not a legal binding document)** Universal declaration on Human Rights
- **ICCPR** International Covenant on civil and Political Rights
- **ICESCR** International Covenant on Economic, Cultural and Economic Rights
- **CEDAW** Convention on the Elimination of All Forms of Discrimination Against Women
- **ACHPRS** African Charter on Human and People's Rights
- **NEPAD** New Partnership for Africa's Development
- **ILO** International Labour Organisation

Although human rights belongs to everyone, enjoyment of these rights is not absolute (unlimited) but is subject to limitation. This means all human rights go hand in hand with responsibilities. We all have a duty to respect human rights of other people when enjoying our own human rights. This means we will be encroaching (infringing) upon other people's rights if we fail to respect their rights. We are therefore expected to conduct ourselves in a respectful and responsible manner.

## WHERE DO HUMAN RIGHTS COME FROM?

The concept of human rights is not new but has been around since centuries. However human rights were only recognised and accepted as universal rights after the World War II. This was due to the gross (very serious) violation of human rights by the German Nazi Holocaust perpetrated against the Jewish people. Many Jews were left killed and their property destroyed. The United Nations General Assembly adopted the Universal Declaration on Human Rights on 10 December 1948.

## CLASSIFICATION OF HUMAN RIGHTS

Human rights are divided in 3 categories.

**First Generation Rights**  
**Second Generation Rights**  
**Third Generation Rights**

Realisation and recognition of these rights is a manifestation of deep-rooted worldwide struggle for freedom and Equality.

### First Generation Rights

They are described as the **Blue Rights**- blue signify royalty and were developed from the west and north countries, these include, United Kingdom, France, United Kingdom for example.

#### Civil and Political Rights

- Right to Human Dignity
- Right to Life
- Freedom of Expression, Opinion, Assembly
- Right to Liberty, Security of the person, Equality
- Privacy
- Right to free, fair and regular elections
- Right to vote
- Right to make free political choices
- Right to stand for election

These rights are also referred to as negative rights because a duty has been imposed upon a government to act in certain a way.

### Second Generation Rights

These rights are described as red and positive rights. Development of these rights is attributable to East Europe, Asia including Russia and China They impose obligations on the government to do something. The state is obliged to do whatever it can progressively to secure basic health care, food, water and social security for all members of society particularly the indigent persons.

## **Economic and Social Rights**

- Right to work
- Right to form and join trade unions
- Right to fair labour practice
- Right to shrike
- Education
- Shelter
- Right have access to housing and land
- Rights for children
- Health care
- Right to Own property
- social security

## **Third Generation Rights**

### **The green rights**

Environmental, Cultural and development rights

These are newly developed rights and are referred to as green rights. These rights are concern with self-determination, living in a clean environment, protection from devastation, cultural, political and economic development.

### **Exercise**

**Duration 15**

**Instructions**

**Identify first, second, third generation rights from UDHR, ICCPR, ICESCR**

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## **INTRODUCTION TO ECONOMIC AND SOCIAL RIGHTS**

The different approaches to enforcement of the two covenants ICCPR and ICESCR differs very much. This is due to the fact that the first generation rights were developed from western countries or the so called rich counties for example in the West, the Magna Charter (1215), the Petition of Rights (1628), the Habeas Corpus Act (1679) the Bill of Rights (1689), the 1776 American Declaration of Independence, United States Bill of Rights 1791 and the 1789, 1793 and 1795 French Declaration of Man and Citizen. These charters and documents served a significant (important) role in bringing radical (major) changes and precedent (standard) for protection of citizen's rights against abuse of states power.

While the development of economic and social rights derive from socialist or eastern countries which supported communist system of government. These rights were not seen as a priority as far as the western countries were concerned. However in most western countries contingencies for social security for the needy or indigent groups is well established. Implementation of economic and social rights depends entirely on availability of resources. This is the reason why most governments have big budgets to run election campaigns and for canvassing of political manifesto. This means the government could escape accountability by raising defence of lack of resources since implementation of economic and social rights depends of availability of resources. Civil society monitors state's activities particularly in budgeting and expenditure. It is therefore important to

challenge the government where implementation of economic and social rights is compromised for arms deals, malpractice and corruption. All human rights are interrelated, interdependent, indivisible and inalienable. No rights are better or important than others.

### **Exercise**

**Duration 20 minutes**

#### **Instruction**

**Identify economic and social rights from the following documents:**

1. Women CEDAW
2. African Charter
3. Discrimination
4. NEPAD
5. ICESCR

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## **NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT**

**Article 47**, (key goal of NEPAD) emphasize that the African Leaders have committed themselves to promote the role of women in social and economic development by reinforcing their capacity in the domain of education and training, development of income generating activities through making credit facilities accessible, ensuring free participation in political and economical life of African countries.

**Article 49**, part of the long –term objective is to eradicate poverty in Africa and to place African countries on a path of sustainable development. In this regard promotion of women in all activities will be prioritized. This coincides with the Millenium Development Goals, to which states have committed to reduce poverty by half by 2015.

## **INTRODUCTION TO THE CONSTITUTION AND BILL OF RIGHTS**

The constitution of South Africa is the highest law of the land and any law which contradicts the constitution can be declared invalid by the courts especially the constitutional court. The constitutional court is the guardian of the Constitution. The constitution binds everyone including the executive, judiciary and the legislature. The Constitution entrenches both civil and political rights and economic and social rights. Constitution accords all people in South Africa the respect of human rights, human dignity and foundational values of our society are denied to those who have no food, water, education, participation in decision making process, freedom of expression, clothing or shelter.

Affording people socio economic rights enables them to enjoy the other rights enshrined in Chapter 2 of the Constitution

### **Exercise**

**Duration 20 minutes**

#### **Instructions**

Identify civil and political rights and economic and social rights in Chapter 2 of the Constitution.

The Bill of rights enshrines basic fundamental rights of individuals. The state is prevented from violating these fundamental rights. The main sections dealing with economic and social rights are:

**Section 22** (right to trade or occupation)

Every citizen has the right to choose their trade, occupation or profession freely. The practice or profession may be regulated by Law.

**Section 23** (labour rights)

- The right to fair labour practice
- To join a trade Union
- Participate in activities of a trade union
- To strike

**Section 25** (property)

No one should be deprived of property except in terms of Law of general application, and no law may permit arbitrary deprivation of property. This means eviction can be enforced only through courts orders. The state cannot expropriate (take) land arbitrarily but for good purpose and for the best interest of the public. Compensation should be effected to those affected by the expropriation.

**Section 26** (housing)

Everyone has the right to have access to adequate housing

- State must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.

**Exercise – role play****Duration 15 minutes****Grootboom case****Section 27** Health care, Food, Water and Social security

Everyone has the right to have access to – health care services, including reproductive health care.

- Sufficient food and water
- Social security, including if they are unable to support themselves and their dependants, appropriate social assistance.
- State must take reasonable legislative or other measures within its available resources to achieve the progressive realisation of each of these rights
- No one may be refused emergency medical treatment

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**RIGHT TO HEALTH**

Health is one of the most important things as it deals with support, physical, mental, and emotional well being of a human being. The right to health falls under the category of socio-economic rights and is affected by economic forces of supply and demand. Lack of resources can force people to make poor choices or not priorities. This also depends on the decision making of the government and individuals within their families and communities. The government decides which resources should be distributed and to whom these resources should be distributed. Most government institutions justify the lack of service delivery unavailability of resources.

The South African health service is openly divided between the private sector, which serves approximately 20%-25% of the population and consumes the largest portion of national expenditure. The government has also looked into addressing the problem of medical facilities in remote rural areas

The government has seen the way forward to address the problems of health through Primary Health Care. The primary health care is an effective method of addressing health problems and lack of facilities. However the primary health method is not impacted to rural communities as there is still a lack of medical doctors, professional health workers and adequate clinics. According to the principles of primary health care, the health facility should be situated within 5 km radius away or not more than 1 hour walk from the community.

### **HIV/AIDS**

Women are generally more vulnerable to HIV infection due to an actual biological vulnerability as well as being socially, culturally and economically more vulnerable to HIV/AIDS (South African population report – p65). In addition women particularly young and women are often required not to have protected sex and this increases the risk of both infection and pregnancy. Empowerment of training of women is one of the tools that can assist reducing the HIV/AIDS pandemic particularly rural women. Training should also encourage contraceptives or family planning to prevent the spread of HIV/AIDS.

# ***INSTRUMENTS AND MECHANISMS PROTECTING AND PROMOTING THE RIGHT TO HEALTH AT INTERNATIONAL, REGIONAL AND NATIONAL LEVEL***

## ***The Universal Declaration on Human Rights***

### **Article 25**

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including medical care
- (2) Motherhood and childhood are entitled to special care and assistance.

## ***The International Covenant On Economic, Social And Cultural Rights (1966)***

It was adopted by the United Nations General Assembly in 1966. South Africa has signed the Covenant but has not yet ratified it.

### **Article 12**

- (1) The State Parties to the present Covenant recognises the right of enjoyment of highest attainable standard of physical and mental health by everyone.
- (2) The steps to be taken by the State Parties to the present Covenant to achieve the full realisation of the right shall include those necessary for:
  - (a) the provision for the reduction of stillborn rate and of infant mortality and for the healthy development of the child; according to the millennium development goals, the government has committed to reduce mortality of under 5 years old by two thirds and maternal motility by three quarters by 2015
  - (b) the improvement of all aspects of environmental and industrial hygiene;
  - (c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) the creation of conditions that would ensure all medical services and medical attention in the event of sickness.

## ***Convention on the Elimination Of All Forms Of Discrimination Against Women (CEDAW)***

It was adopted by the United Nations General Assembly in 1979

South Africa has signed the convention on 29 November 1993 and ratified it on 15 December 1995, without reservations.

### **Article 10**

- (h) Access to specific educational information to ensure the right to health and well being of families, including information and advice on family planning.

### **Article 11**

- (f) The right to protection of health and to safety in working conditions, including the safeguarding and functioning of reproduction.

### **Article 12 (emphasize the duty of the government)**

1. States Parties shall take all appropriate measures to eliminate discrimination against women to ensure equality between men and women on health care, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure that women receive appropriate services with regard to pregnancy, confinement and post-natal period, granting of free services where necessary, as well as adequate nutrition during pregnancy and lactation.

### **Article 14**

2. States Parties shall take all appropriate measures to eliminate all forms of discrimination against women in rural areas in order to ensure participation of women in developmental programme and also benefit.

- (b) Women must have access to health care facilities, including information, counselling and family planning services.

## **Convention on the Elimination of All forms of Racial Discrimination**

The Convention was adopted by the United Nations General Assembly in 1966.

South Africa has signed the convention on 29<sup>th</sup> January 1994 and ratified it in 1998

### **Article 5**

- (e)(iv) The right to public health, medical care , social security and social services

## **AFRICAN CHARTER ON HUMAN AND PEOPLE S RIGHTS (1981)**

The African Charter was adopted on the 27<sup>th</sup> June 1981 and entered into force on 21 October 1986. South Africa acceded to the charter on 9 July 1996

### Article 16

Every individual shall have the right to enjoy the best attainable state of physical and mental health.

- (1) State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when in need.
- 

## **CONSTITUTIONAL OBLIGATIONS TO BE ADHERED TO BY GOVERNMENT**

Chapter 2 of the Bill of Rights (Act 108 of 1996)

### **Section 27.**

- (1) Every person in South Africa has the right to:
  - (a) Access to health care services, including reproductive health care
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.

### **Section 28.**

- (1) Every child has the right:
  - (c) to basic nutrition, shelter, basic health cares services and social services.
- (2) In this section, the child” means a person under the age of 18 years.

### **Domestic laws and policies that give effect to the Right to Health**

The Choice of termination of pregnancy Act of 1996;

The Medical, Dental and Supplementary Health Act of 1995

The Pharmacy Amendment Act of 1995

The Nursing Amendment Act of 1995

The Chiropractors, Homeopaths and Allied Professions Amendment Act of 1995

### **Medical Schemes Act 146:**

It repeals the 1967 Act and regulates private medical aid schemes and ensures equitable access and benefits to the public. The Act prohibits exclusion of persons from medical aid schemes on the basis of age, gender or past and present state of health.

### **The National Health Bill (1998)**

In terms of the Bill of Rights, the government will provide:

- Free health care to pregnant lactating women
- Free health care for children under the age of six
- Access to free primary health care
- Primary school nutrition programme
- Integrated nutrition programme

## Exercise

Duration 15 minutes

Instructions Role play

Soobroomany Case

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## RIGHT TO EQUALITY

The right to equality is enshrined in the Bill of Rights under the provisions of section 9. Everyone enjoys equal protection and benefit of the law. Everyone is entitled to equal protection of the law and should be free from all forms of discriminations based on race, colour, gender, sex, pregnancy, ethnicity or social origin, age, sexual orientation, disability, religion, conscience, belief, culture language and birth. All these grounds are listed in section 9 of the Bill of Rights and impose a duty upon the government and members of the public to end entrenched patterns of inequality in our society.

This means any law or practice contradicting the equality right are unconstitutional. Women must not be discriminated upon and must be treated with respect and human dignity both in private and public sphere. It means the government has a role to play in ensuring both vertical and horizontal application of equality right. This can be done through legislation which seeks to cultivate values that promotes respect of women's human dignity and elimination of all forms of discrimination.

The African Charter on Human and People's Rights limit recognition to women's rights to only 3 specific articles:

- Article 2, **Non Discrimination Clause**, all rights protected in the Charter shall be enjoyed by all irrespective of sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status
- Article 3, **Equal Protection Clause**, every individual is equal before the law and entitled to equal protection of the law
- Article 18 **Family Clause**, seeks to eliminate discrimination against women and also ensures protection of the rights of women in the context of family

These 3 provisions are not adequate to defend the rights of women

**The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa** was adopted in Maputo 2003 and entered into force in November 2005. It is a precise instrument that tackles peculiar situations affecting African women. It outlaws harmful traditional practices; enshrines rights to positive cultural context; reinforces existing instruments to accelerate efforts promoting women's rights

**Comparison of the Maputo Protocol with the Convention on the Elimination of all Forms of discrimination against Women, CEDAW** is the first and most powerful instrument that deals with women's rights on a global level. It was needed to address the effects of long standing and pervasive discrimination against women. It defines substantive equality and discrimination.

Both instruments emphasize equal treatment between men and women and seek to eliminate discrimination of women on grounds of sex. States and citizens have obligations to respect women's human dignity.

The only difference existing between the two instruments is broad interpretation in CEDAW, while the Women Protocol is clear about discriminatory laws and practices which pose threats and danger to the life of women as well as impairing them from developing and progressing in life, such as socialization of women, cultural perceptions, stereo typed roles of women and men in the home and society, minority of women and superiority of men in education, decision making position e.g. Article 2(1) (e) and (2).

The Protocol is the first legal instrument to expressly protect women's reproductive health. Article 14 seeks to address issues of fertility and birth control, HIV/AIDS, and family planning, offers women protection from unwanted sex in both public and private spheres, protects women in armed conflicts, elderly women and women with disabilities against sexual exploitation. It also covers issues of sexual harassment.

Article 16 (1) (a-g) of CEDAW provide no restriction age for marriage but stipulates rights and obligations between a husband and wife. Including annulment and separation

The protocol is also unique in its articulation of widows' right to equality under international law. Existing global standards guaranteeing the right to equality and non-discrimination may be interpreted to include widows' rights, but have seldom been applied to combat discrimination against widows at national levels

Woman's right to decide herself on matters of marriage and family, reproductive and sexual rights of women, equal rights of widows. In addition, to guaranteeing women's right to protection from sexually transmissible diseases, including HIV/AIDS, the African Women Protocol guarantees women's right to adequate, affordable, and accessible health services

Provisions on violence against women: the protocol goes beyond existing global and regional treaties by affording specific legal protection against gender-based violence, in both the public and private sphere, including domestic abuse and marital rape.

Protocol has Special Rapporteur on Women's Rights there were no guidelines developed for state reporting, the African Commission on Human and People's Rights has created guidelines for report on women's issues.

New development advancing equality between men and women was created in the Southern African Development Community, (SADC)

### **SADC Gender protocol:**

The Gender Protocol has integrated various international and regional instruments to subscribed member states to advance women's rights in the region. These include and are not limited to the following:

- Convention on the Elimination of All Forms of Racial Discrimination Against Women (1979),
- Convention on the Rights of the Child (1989),
- The International Conference on Population and Development (1994),
- The Beijing Declaration and Its Platform of Action (1995),
- The SADC Declaration on Gender and Development (1997)and its Addendum (1998), The Millennium Development Goals (2000),
- The UN Security Council Resolution 1325 on Women, Peace and Security (2000),

- The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003),
- The United Nations Convention on the Rights of People's with Disabilities (2008), and any other legal instruments that may be relevant to this Protocol.

**SADC Gender Protocol commits members states to abolish inequality and disparity facing women in the region by 2015 through implement of the protocol,**

- Member States shall by 2015 enshrine gender equality and equity in their Constitution and ensure that these laws are not compromised by any provisions, laws or practices
- SADC states committed to develop and implement gender responsive legislation, policies, programmes and projects to accelerate implementation of the SADC Gender Protocol
- States shall, review, amend, repeal discriminatory laws on the ground of sex or gender by 2015
- abolish minority status of women by 2015
- States shall ensure that by 2015 at least 50% of women hold decision making positions in both public and private sector
- State parties shall conduct time use studies and adopt policy to ease burden of multiple roles played by women by 2015
- States shall by 2015 enact policies to ensure equal access, benefit opportunities for both women and men in trade, entrepreneurship, taking account of contribution of women in formal and informal sectors,
- States shall review their national trade and entrepreneurship policies to make them gender responsive by 2015
- States shall by 2015, introduce measures to ensure that women benefit equally from economic opportunities including those created through procurement processes
- States shall review all policies and laws that determine access to, control of, benefit from, productive resources by women
- States shall by 2015, reviews amend enact laws and policies that ensure women and men have equal access to wage employment in all sectors of the economy
- States shall by 2015, reviews amend enact laws and policies that ensure women and men have equal access to wage employment in all sectors of the economy
- States shall by 2015 enact and enforce all forms of gender based violence
- State shall by 2015 enact legislative provisions, adopt and implement policies, strategies and programmes to define and prohibit sexual harassment in all spheres and provide deterrent sanctions for perpetrators of sexual harassment
- State shall by 2015 adopt an implement legislative frameworks, policies, programmes and services in line with SADC protocol on health, other regional and international commitments of member states relating to health to enhance gender sensitive, appropriate and affordable quality health care in particular
  - to reduce the maternal mortality ratio by 75% by 2015
  - develop and implement policies and programmes to address the mental, sexual and reproductive health and needs of women and men
  - ensure the provision of hygiene, sanitary facilities and nutritional needs of women including women in prison
- State shall by 2015 develop gender sensitive strategies to prevent new infections; ensure universal access to HIV/AIDS treatment for infected women and men, girls and boys and develop and implement policies programmes to recognise work of care givers of whom the

majority are women, allocation of resources, psychological support as well as promoting the involvement of men in the care and support of people living with HIV/AIDS

- State shall by 2015 put in place in accordance with UN Security Council Resolution 1325 on Women, Peace and Security, measures to ensure that women have equal representation and participation in key decision making positions in conflict resolution
- State shall take measures to promote equal representation of women in ownership of decision making structures of the media for equal representation of women in decision making position by 2015.

Practical realisation of the SADC Gender Protocol in the region depends on ratification and domestication of the instrument to reinforce states commitments to protect women's rights locally. This will be achieved through public actions, awareness campaigns as well as educational workshops advocating for ratification and domestication of the Gender Protocol at national levels. NGOs and CSOs in the SADC region should continue advocating for accreditation for full participation in processes of regional integration of the region, especially at Summit level.

**Section 15** of the Constitution protects individuals to practice their culture or religion. However the cultural and religious rights must be consistent with the Constitution. This means those cultural and traditional practices which are harmful must give way to the Constitution.

The continuation of unfair practices or unequal treatment of female persons particularly those in rural areas, notwithstanding the new constitutional order are not acceptable and must be challenged. Mention should be made that the phenomenon culture is not static but subject to change since it exist to serve purposes of a particular time. Culture is a set of norms comprised of high moral standards and followed because of the values it serves to the community.

The Constitution lays down very progressive foundation on equality for treatment of children. By subjecting our children to unfair and upbringing characterized by inequality, for example, favouring boys to receive education and in addition exempting them from exercising home chores is detrimental to the girl child and conflict with the spirit and purports of the new democratically order.

All social barriers created to serve past circumstances without providing solution to the current are prejudicial and serves no value or purpose to development and well being of children. We need to take stork of them in order to begin tackling the manifestations attributing inequality. This means the South African civil society must do something about implementation of human rights based on the principles of human dignity; equality and freedoms. Norms which promotes inequality and marginalisation of others through social, cultural and religious practices have no place in the new dispensation.

### **Role play**

**Duration**10 minutes

**Instructions:** Your husband has passed away. Your in-laws have chased you away from your late husband property. Our culture promotes this values "death does not terminate marriage" but your in-laws are not interested to observe this cultural value. Can the chief assist you and your children to remain at your husband's property? you decide to buy land so you can build a house for your children. Can you get a loan from the bank to assist you with the building of the house. You are told that people in rural areas are not entitled to title deeds.

## **EMPLOYMENT**

Protection of benefits is usually extended to those individuals who qualify as employees according to various statutes which regulate the provision of social security in one way or the other. An employee in Labour Relations act is defined as to include any person excluding an independent contractor. This excludes majority of people that are self employed as well as domestic workers. It may be argued that the exclusion of certain categories of workers from some of the social security legislation may indirectly amount to discrimination on the basis of race, sex. It is a fact that majority of African women dominate the domestic worker sector. Excluding them from these benefits impacts negatively on them and amount to indirect and unfair discrimination based on race and sex.

### **Unemployment Insurance Fund Act**

Workers that are employed for less than 24 hours a month with a particular employer are effectively excluded from Unemployment Insurance Act and the Basic Conditions of Employment Act. It is a common practice in South Africa for domestic workers to work for more than one employer. These workers now enjoy these benefits due to the new labour legislation which recognise domestic workers as workers. Independent contractor, self- employed, any person who assist in carrying on or conducting the business of an employee are effectively excluded from the ambit of the Act. All employers are now required by law to register their domestic workers with the UIF to cover as their insurance in instances of unemployment.

### **Compensation for Occupational Injuries and Diseases Act 61 1997**

This act provides for the compensation of disablement caused by occupational injuries or diseases sustained or contacted by a worker in cause of employment. Domestic workers are not protected to benefit under the ambit of COIDA. This exclusion is tantamount to discrimination based on race and gender

### **Legislation**

Employment Equity Act  
Labour Relations Act  
Promotion of Equality Act

## **MARRIAGES IN SOUTH AFRICA**

Before 1984 the law was more interested with power relations of spouses. The husband had marital power over the person and property of his wife. The wife was therefore restricted from contracting and litigating in matters affecting her or dependents in court. In addition marriages were in community of property for white people with the opportunity to choose to be out of community of property and conclude ante-nuptial contracts. Marriages of African people, which also changed in 1988, were out of community of property and also given the opportunity to choose to be in community of property. Ante-nuptial means a contract entered into by one person and through consultation with a lawyer protecting personal assets of a person and ensuring remain completely separate from matrimonial estate, till divorce or death. The latest information from Home Affairs provides that,

Marriage is the union of a man and woman as husband and wife. Through the legal, religious and social processes attached to marriage, the couple are formally recognised as man and wife in their community. As a result of the marriage, each partner gets certain rights and accepts certain duties towards the other person.

### **There are three types of marriages:**

Civil marriage (marriages out of community of property subject to accrual system and marriages in community of property) customary marriages and same sex marriages.

Marriage is a big decision and many people choose to get counselling or legal advice before getting married, to help them think through the most important issues and understand the consequences of getting married.

**Marriages subject to accrual system:** This marriage excludes community of property and of profit and loss. Accrual estate of a spouse is the amount by which the net value of his / her estate at the dissolution of his / her marriage exceeds the net value of his / her estate at the commencement of that marriage. It also provides a spouse whose estate shows no accrual or a smaller accrual than the estate of the other spouse a right to claim against the other spouse or his / her estate for an amount equal to half of the difference between the accrual of the respective estates of the spouses at dissolution of the marriage either by divorce or death of one of the spouses.

Furthermore, the right to claim against the accrued estate of the other spouse arises at dissolution of a marriage and the right to share in the accrual estate of the other spouse is during the subsistence of the marriage not transferable, or liable for attachment and does not form part of the insolvent estate of a spouse.

### **Marriages in community of property**

Spouses in this marriage enjoy equal rights and powers with regard to disposal of asset of the joint estate, contracting of debts, which, lie against the joint estate, the management of the joint estate as those preserved by the husband before the commencement of the Matrimonial Property Act 88 of 1984. They can perform any juristic act regarding the joint estate without the consent of the other spouse. However a spouse should have a written consent from the other spouse to:

- (alienate, mortgage, pledge any shares, jewellery, coins, stamps, paintings, stock, debentures, debenture bonds, insurance policies, fixed deposits or any similar assets, or any investment on behalf of the other spouse in any financial institution, burden with servitude, or confer any real right in any immovable property forming part of the joint estate

- Withdraw money held in name of the other spouse in any account in a banking institution, building society or Post Office savings bank in South Africa.
- Bind himself/ herself as surety
- Alienate, pledge any furniture or other effects of the common household forming part of the joint estate.
- May not receive without the consent of the other spouse money due or accrued to the joint estate by way of (i) (remuneration, earnings, bonus, allowance, royalty, pension or gratuity, by virtue of his profession, trade, business, or services rendered by him,(ii) damages for loss of income as indicated in (i) (iii) inheritance, legacy, donation, bursary or prize left, bequeathed, made or awarded to the other spouse (iv) income derived by from the separate property of the other spouse (v) dividends or interest on or the proceeds of shares or investment, in the name of the other spouse (vi) proceeds of any insurance policy or annuity in favour of the other spouse.

### **Marriages out of community of property**

Here spouses are liable to contribute for necessities of the joint household pro-rata according to financial means and is deemed to have been so liable from the beginning of the marriage (take note that there is no joint estate in marriages out of community of property but a joint household). Spouses are also held jointly and severally liable to third parties for all debts incurred by either of them in respect of necessities for the household. The spouses have right of claim against each other where the other spouses contributed more in respect of the necessities for the joint household than that for which he / she was liable.

### **Rights and duties arising out of marriage**

Marriage creates a duty to live together and support each other and any children arising from the marriage. In the past, the husband was given power over his wife (called marital power), but this is no longer the case. The partners in a marriage are now equal. It is important to note that marriage does not create duties or rights regarding sex. This means that if someone forces their spouse to have sex with them then this is rape and it can be reported to the police.

### **Who may marry?**

In South Africa same-sex couples can now get legally married. This law was passed after being reconsidered by the South African Law Commission. Close relatives can not get married. Boys under 18 and girls under 15 cannot get married without special permission and anyone under the age of 21 has to get their parents' permission before they can get married. If you are already married under civil law, you cannot enter into another civil marriage.

### **Sharing property**

When you get married, you share your life with your partner. This can include sharing your property. Whether or not property is shared depends on the ante-nuptial agreement (a contract that is entered into before the marriage) if there is one. If there is no ante-nuptial agreement then the default position is set out in the law. The default legal position is that civil marriages are now in community of property with accrual. This means that everything that you own is shared, including property and debts. Accrual means that everything that you earn or buy after you have married also becomes part of the joint estate. If you get divorced, the shared property is divided equally between you. Any debts are also shared. Some things, like inheritances or gifts, remain separate.

### **Customary marriages**

The most common customary marriages in South Africa are marriages in terms of African Customary Law and Muslim and Hindu customs. The legal status of these marriages is different to

that of civil marriages. This means that the protections afforded to partners in a civil marriage and the rules applied to a civil marriage are not always applicable to a customary marriage. Often couples will get married according to their customs and then will also marry according to the civil requirements.

### **African customary marriages**

African customary marriages do not adhere to the rules and procedures of a civil marriage. For example, it is possible for a man to have more than one wife. In the past, these marriages were not legally recognised. The Recognition of Customary Marriages Act of 1988 gives legal recognition to customary marriages. This provides protection, especially to the wife. Some of the changes introduced by the Act are:

- The recognition of the equal status and capacity of the husband and wife
- an age requirement - both parties must be at least 18 years old
- registration of the marriage with the Department of Home Affairs
- a default property regime (in community of property).

These changes are in addition to any rights or powers the parties have under customary law:

- The partners can claim maintenance from each other on divorce.
- The wife can claim some inheritance rights if her husband dies.
- The wife can claim pension benefits if her husband dies.
- The wife can claim under the Compensation for Occupational Injuries and Diseases Act if her husband dies in an accident at work.

### **Muslim and Hindu marriages**

Muslim and Hindu marriages are also recognised by law as legal marriages as before they were regarded as polygamous, which means the man can marry more than one wife.

### **New Legislation**

#### **Same Sex Marriages**

A new Marriage Act for same sex marriage was passed on 30 November 2006. The Act makes South Africa the fifth country in the world to legalise same sex marriage. In Africa we are rated number one and second outside of Europe.

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