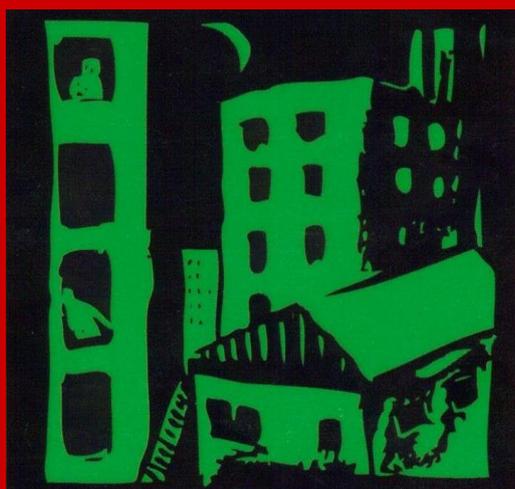


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What gender legislative reforms have meant for women in South Africa

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ABSTRACT

South Africa is a much better place to live in today than before 1994. Having witnessed a largely peaceful transition from a pariah apartheid State to a democratic State where equality is guaranteed before the law, the country offers rights and justice for all. The Constitution of the Republic of South Africa, 1996 set out to rectify the injustices of the past and eliminate the various forms of discrimination that were the hallmarks of an apartheid State. Gender equality was a focal point in the reforms introduced in legislation and government programmes in a new democratic society. In this article I explore what these gendered legislative reforms and measures have meant to South African women, and whether these

*measures have brought about a positive change in their lives. Framed within a feminist epistemological and methodological approach, I draw on the results of a qualitative study of South Africa women. The results form part of a larger mixed methods study employing both qualitative and quantitative components. Qualitative individual interviews as well as focus groups were conducted. For the majority of women interviewed, the promulgation of legislation was viewed as positive and progressive. Women are now recognised as full citizen, have access to various opportunities, and experience more autonomy and choice. However, participants raised numerous shortcomings in legislation, and challenges that they experienced in their daily lives. For some of the participants, the transformative changes anticipated in the social and economic spheres have not been realised.*¹

Keywords: Gender equality, legislation, women, gender justice, South Africa.

1 INTRODUCTION

South Africa is a much better place to live in today than before 1994. Having witnessed a largely peaceful transition from a pariah apartheid State to a democratic State where equality is guaranteed before the law, the country offers rights and justice for all.² The Constitution of the Republic of South Africa, 1996 (Constitution)³ set out to rectify the injustices of the past and eliminate the various forms of discrimination that were the hallmarks of an apartheid State. Gender equality was a focal point in the reforms introduced in legislation and government programmes in a new democratic society.

South Africa is a leader in respect of its progressive rights accorded to women, and as regards gender and sexual equality and justice in general. Since 1994, the country has observed important legal and policy changes in the political, economic and social spheres.⁴ Civil society organisations, feminist and women's organisations, LGBTIQ+ (lesbian, gay, bisexual, transgender, intersex, queer) organisations (which address heteronormative discrimination) and scholars have been active in lobbying for these changes.⁵ These changes were aimed not only at removing and addressing the racial and

¹ Special thanks to Anna Strelbel and Tamara Shefer for their comments and guidance on this article. My appreciation also to the editorial team and reviewers for their insightful comments. The Andrew W. Mellon funded New Imaginaries for an intersectional, queer feminist project on gender and sexual justice (Grant G-31700714) supported this work. I have no conflict of interest in the publication of this article.

² Sarkin J "The drafting of SA's final Constitution from a human rights perspective" (1999) 45(1) *The American Journal of Comparative Law* 67 at 67. See also Heyns C & Brand D "Introduction to socio-economic rights in the South African Constitution" (1998) 2(2) *Law, Democracy and Development* 153 at 153.

³ Constitution of the Republic of South Africa, 1996.

⁴ See Sarkin (1999) at 67. Heyns & Brand (1998) at 153. February J & Pienaar G "Twenty years of constitutional democracy" in Meyiwa T, Nkondo M, Chitiga-Mabugu M, Sithole M & Nyamnjoh F (eds) *State of the Nation: South Africa 1994-2014. A twenty-year review of freedom and democracy* Cape Town : HSRC Press (2014) 25.

⁵ See Gouws A "The state of the national gender machinery: structural problems and personalised politics" in Buhlungu S, Daniel J, Southall R & Lutchman J (eds) *State of the nation 2005-2006* Cape Town : HSRC Press (2006) 143. Hassim S "Voices, hierarchies and spaces: reconfiguring the women's movement in democratic South Africa" (2005) 32(2) *Politikon* 175 at 175.

classed discriminations related to the racial capitalist system of apartheid and colonisation, but also discrimination based on, among others, sex, gender, sexual orientation and culture.

In this article I look at what these gendered legislative reforms and measures have meant to South African women, and whether these measures have brought about a positive change in their lives. First, I discuss the significance of legislative reform and gender equality which provides a theoretical framework for this article. Secondly, I discuss South Africa's legislative framework that foregrounds gender and the country's international gender commitments. In doing so, I turn to Fraser's⁶ trivalent view of justice. Thirdly, the article presents some of the challenges faced by women; and lastly, I report the empirical findings of what the gender reforms have meant for women.

2 LEGISLATIVE REFORM AND GENDER EQUALITY

The term gender justice has often been used interchangeably with gender equality, gender equity, women's empowerment, and women's rights.⁷ Some gender activists and academics have increasingly been using the notion of gender justice as opposed to gender equality, arguing that the latter concept fails to convey strongly and address the continued gender injustices that women experience.⁸ Gender equality and women's empowerment are, however, the language used by multilaterals and States in their work related to gender justice. Gender equality and gender justice will be used interchangeably in this article, whilst acknowledging the need for redress and women's agency, which calls for formal equality as well as substantive equality and not merely equality to men.

Attaining gender equality has become key in the work of multilaterals, such as, the United Nations, the African Union, and the World Bank, amongst others, as well as in many States. But how do these multilaterals and States attempt to address gender equality? A legal approach to gender equality takes access to justice, judicial transformation and formal equal rights between men and women as central.⁹ Multilaterals and States might not have one standard approach and may take different routes to gender equality. In this article, however, attention is paid to legal aspects.

Law reform, as argued by Gouws and Galgut, is a key method employed by liberal democracies to ensure that those previously excluded as citizens are now included.¹⁰ Legislation has the ability to impact directly on its citizens and is thus a key instrument

⁶ Fraser N "Reframing justice in a globalizing world" (2005) 36 *New Left Review* 69 at 69.

⁷ Goetz A (2007) "Gender justice, citizenship and entitlements. Core concepts, central debates and new directions for research" in Mukhopadhyay M & Singh N (eds) *Gender justice, citizenship and development* New Delhi : Zubaan (2007) 15.

⁸ See Goetz (2007) at 15.

⁹ Goetz (2007) at 15. Kapur R "Challenging the liberal subject. Law and gender justice in South Asia" in Mukhopadhyay M & Singh N (eds) *Gender justice, citizenship and development* New Delhi : Zubaan (2007) 116.

¹⁰ Gouws A & Galgut H "Twenty years of the Constitution: reflecting on citizenship and gender justice" (2016) 30(1) *Agenda* 3 at 3.

in bringing about change in their lives. Documenting research done on the impact of gendered legislation, Hyland, Djankov and Goldberg note that affording women rights is positively linked with enhanced educational results, lower reproductive rates, and more expenditure on education, health and nutrition, which results in better educational and health outcomes for women as well as for the next generation.¹¹

International and regional conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the the African Charter on Human and Peoples' Rights, amongst others, have recognised the need for legal reform to address gender equality. Significant attention is paid to civil rights and the legal status of women in CEDAW, with a number of Articles calling for the adoption of legislation, repeal of discriminatory legislation, and amending legislation, ensuring legal protection for women which would advance the principle of equality between men and women and eliminate discrimination against women.

In conjunction with the above provisions, Article 15 of CEDAW addresses matters of equality before the law. The Article includes provisions stating that States Parties should

“accord women equality with men before the law; accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity; agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void; accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile”¹².

Regionally, the African Charter on Human and People's Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), call on Member States to take the necessary measures to ensure that the rights, duties and freedoms encapsulated in the Charter are recognised and that States should take the necessary legislative measures, amongst others, to give effect to them.¹³ Conventions such as these have led to a number of African States adopting the necessary legal reforms to address gender equality and women's empowerment. Furthermore, the African Union (AU) strategy for gender equality and women's empowerment (2018 – 2020) recognises that legislative reform is a prerequisite for gender responsive governance, albeit not the only measure.

Law reform targeting women's empowerment has been associated with improved economic outcomes for women.¹⁴ As noted by the World Bank, “reforms increasing

¹¹ Hyland M, Djankov S & Goldberg PK “Gendered Laws. Policy research working paper WPS9080” (2019) *World Bank* available at <http://documents1.worldbank.org/curated/en/514981576015899984/pdf/Gendered-Laws.pdf> (accessed 5 October 2020).

¹² Article 15 of the Convention on the Elimination of All Forms of Discrimination Against Women.

¹³ See Art 1 of the African Charter on Human and People's Rights, June 1981.

¹⁴ World Bank *Women, Business and the Law 2020*. Washington DC : World Bank (2020).

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women's equality of opportunity contribute to more successful economies, higher female labor [sic] force participation, and better development outcomes".¹⁵ Close attention, however, needs to be paid to how legislation is implemented, whether legislation addresses societal norms, attitudes and brings about behavioural change.

Measuring legal differences between men and women across eight indicators¹⁶ associated with women's empowerment, the World Bank found that Sub-Saharan Africa has recorded progress, with the region scoring (69.9) (a score close to 100 indicates equal legal standing between men and women). Mauritius fared the best out of the African States scoring (91.9), followed by South Africa (88.1), Zimbabwe (86.9), Namibia (86.3) and Tanzania (84.4). Several other Sub-Saharan African countries also undertook legal reforms to enhance gender equality, including Ivory Coast, Mali, Niger, Uganda and South Sudan.¹⁷ Importantly, it should be noted that the World Bank report does not measure implementation of legislation. The report further notes that, between 1970–2019, considerable progress was made in Sub-Saharan Africa to remove barriers faced by women thus improving women's participation in the labour force.¹⁸

Looking at Rwanda, we see that legislative reform has been key in restructuring the country following the genocide of 1994. Rwanda, signatory to CEDAW and the Maputo Protocol, has ensured that the gender equality provisions are encapsulated in legislation. Such legislation pertains to inheritance and land, labour laws and legislation related to gender based violence.¹⁹ Today, Rwanda is lauded for its achievement of 50 per cent women in Parliament, the first country in the world to do so.²⁰ Despite this achievement, scholars have argued that these gains have not translated into significant transformation in the lives of women.²¹ Nevertheless, it has afforded women greater respect and a voice in the family, as well as increased their access to education.²²

So, whilst gender legislative reforms may have taken place to give effect to international, regional and national instruments across countries, it is important to measure the impact of these reforms on women's lives. A useful framework to use is that of Fraser, which is discussed in the Part below.

¹⁵ See World Bank (2020).

¹⁶ These indicators include: mobility, workplace, pay, marriage, parenthood, entrepreneurship, assets and pension.

¹⁷ See World Bank (2020).

¹⁸ See World Bank (2020).

¹⁹ Abbott P & Malunda D *The promise and the reality: women's rights in Rwanda* Working Paper no 5, Oxford Human Rights Hub (2015) available at <https://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2015/07/OxHRH-Working-Paper-Series-Number-5-Abbott-and-Malunda1.pdf> (accessed 6 October 2020).

²⁰ Abbott P & Rucogoza M *Legal and policy framework for gender equality and the empowerment of women in Rwanda*, Institute of Policy Analysis and Research-Rwanda, gender Monitoring Office (2011) available at <https://core.ac.uk/download/pdf/43540646.pdf> (accessed 5 October 2010).

²¹ See generally Abbott & Malunda (2015).

²² See generally Abbott & Malunda (2015).

3 SOUTH AFRICA'S GENDERED LEGISLATIVE REFORMS AND INTERNATIONAL GENDER COMMITMENTS

Fraser's theory of justice, viz, redistribution, recognition and representation, provides a useful lens with which to assess progress towards achieving gender justice. Fraser contends that gender justice cannot be achieved without considering the distribution of resources, cultural redress and political representation, the latter considering who can lay claim to gender justice.²³ This trivalent view of justice is underpinned by participatory parity. She argues : "Justice requires social arrangements that permit all to participate as peers in social life. Overcoming injustice means dismantling institutionalized obstacles that prevent some people from participating on par with others as full partners in social interaction."²⁴

People can be prevented from participating as peers due to economic structures. In such cases, individuals and groups experience "distributive injustice or maldistribution"²⁵. People can also suffer from status inequality or misrecognition when they are prevented from participating as peers when "institutional hierarchies of cultural values" deny them the necessary recognition.²⁶ How we define gender justice and equality underpins the legislation, policies, programmes and conventions that countries and multilaterals develop. In the discussion of South Africa's legislative framework, Fraser's theory offers a suitable lens to consider gender justice efforts undertaken.

A democratic South Africa had the mammoth task to address the racist and sexist legislation on its statute books to ensure a more equitable society and one where all citizens are recognised and included. One cannot overlook the role that the women's movement played during the liberation struggle to challenge racial, class and gender discriminations. Women wanted to ensure that their rights were encapsulated in the new Constitution and that they were well-represented in the new government.²⁷ Feminist advocacy was furthermore key (and remains key) in ensuring that women's voices and perspectives were considered in the drafting of legislation, monitoring the implementation of legislation, holding decision-makers accountable, and in ensuring judicial reform.²⁸

The democratic moment ushered in progressive legislation, key being the Constitution.²⁹ The Constitution is the supreme piece of legislation guaranteeing human rights and pursuing equality for all, and laying the foundations for a non-racist, non-sexist South Africa. In its founding provisions, the Constitution sets out the values on which a democratic South Africa is founded, and these include the values of "(a) [h]uman dignity, the achievement of equality and the advancement of human rights and

²³ See Fraser (2005) at 69.

²⁴ See Fraser (2005) at 73.

²⁵ See Fraser (2005) at 73.

²⁶ See Fraser (2005) at 73.

²⁷ See Hassim (2005) at 175.

²⁸ Artz L "Gender and the legal system" (2009) 23(82) *Agenda* 4 at 4.

²⁹ Constitution .

freedoms” and “(b) [n]on-racialism and non-sexism” (section 1). The Bill of Rights in the Constitution is unequivocal in asserting the rights pertaining to equality. Section 9 asserts that “everyone is equal before the law and has the right to equal protection and benefit of the law”.³⁰ Through these provisions the State may take legislative and other measures to protect and advance persons who have been unfairly discriminated against. The Bill of Rights is most profound in its section 9(3) dealing with discrimination, and denotes that the State may not unfairly discriminate against anyone (whether it is directly or indirectly) “on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth”.

The Constitution provides the necessary framework for the enactment of legislation that would ensure that the principle of equality is advanced, and that promotes the empowerment of women. Since 1994, various pieces of legislation have been enacted which give effect to the equality provisions of the Constitution. These include the Promotion of Equality and Prevention of Unfair Discrimination Act,³¹ the Domestic Violence Act,³² the Criminal Law (Sexual Offences and Related Matters) Amendment Act³³, to mention a few. In addition, a number of institutions were established to give effect to Chapter 9 of the Constitution and to support democracy, including the Commission on Gender Equality. We have also seen the establishment of the Department of Women, Children and Persons with Disabilities, after the general elections in 2009, and the Ministry of Women within the Presidency, after the 2014 elections (the Department of Women, Children and Persons with Disabilities was not re-established after the 2014 elections). Following the 2019 national elections, the Ministry in the Presidency for Women, Youth and Persons with Disabilities was established.

Within the Parliament of the Republic of South Africa, and as early as 2008, a Multi-party Women’s Caucus was established to provide a platform for women across political parties to raise matters as they relate to women in the activities undertaken by Parliament, to influence discussions on issues affecting women, and to act in an advisory capacity in some instances.

It is evident that the South African national government has developed a wide range of measures at policy, legal and institutional levels to address particular challenges of gender inequality. In doing so, it has also given effect to the numerous international instruments that it has ratified and to which I now turn.

South Africa is signatory to a number of international and regional agreements which have resulted in specific gendered obligations. These agreements include CEDAW³⁴ and regional instruments including the African Charter on Human and

³⁰ Constitution .

³¹ Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

³² Domestic Violence Act 116 of 1998.

³³ Criminal Law Amendment (Sexual Offences and Related Matters) Act 32 of 2007.

³⁴ South Africa ratified CEDAW on 15 December 1995, without any reservations.

Peoples' Rights,³⁵ the Maputo Protocol,³⁶ the Solemn Declaration on Gender Equality in Africa,³⁷ and the SADC Protocol on Gender and Development.³⁸ It is beyond the scope of this article to discuss these various international instruments. I thus briefly consider South Africa's commitments to CEDAW and, in particular, the legislative shortcomings highlighted by the United Nations Committee on the Elimination of All Forms of Discrimination against Women³⁹ (CEDAW) Committee) in response to South Africa's 5th Periodic Report⁴⁰ (2009 – 2014).⁴¹

The (CEDAW) Committee (consisting of 23 experts from around the world, including Africa) requested that South Africa provide evidence that it has enacted legislation that prohibits direct and indirect discrimination against woman. This request was in response to a concern previously raised by the Committee that the South African Constitution, as well as other legislation, did not fully incorporate the principle of substantive equality between men and women nor prohibit direct and indirect discrimination against women, and thus was not in accordance with the Convention (Articles 1 and 2).⁴² South Africa has previously indicated that whilst the definition of discrimination is not in accordance with that of the Convention, rulings of the Constitutional Court have interpreted the equality provisions of the Constitution as substantive equality.⁴³ In addition, it is argued that the Constitution, as well as legislation, including the Equality Act, the Labour Relations Act,⁴⁴ and the Employment Equity Act⁴⁵, make provision for the proscription of discrimination on the basis sex and gender.

Transformation of the justice system is crucial if women are to effectively access their rights. In its 5th CEDAW Periodic Report, South Africa notes that the Legal Aid Board Justice Centres provide legal representation to the indigent. The Legal Aid Board

³⁵ Acceded to July 1996.

³⁶ Acceded to 2004.

³⁷ Adopted 2004.

³⁸ Signed 2008.

³⁹ UN Committee on the Elimination of Discrimination Against Women (CEDAW) "List of issues and questions in relation to the fifth periodic report of South Africa: Committee on the Elimination of ..." (2020) available at <https://digitallibrary.un.org/record/3856603?ln=en> (accessed 10 September 2020).

⁴⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW) "5th periodic report submitted by South Africa under article 18 of the Convention, due in 2015" (2019) available at <https://digitallibrary.un.org/record/3840063?ln=en#record-files-collapse-header> (accessed 10 September 2020).

⁴¹ The Report was received by the UN in May 2019.

⁴² See generally UN CEDAW (2020).

⁴³ UN Committee on the Elimination of Discrimination Against Women (CEDAW) "Responses to the list of issues and questions with regard to the consideration of the combined second, third and fourth periodic reports-South Africa" (2011) available at <https://www.refworld.org/docid/4eeb037c2.html> (accessed 6 July 2020).

⁴⁴ Labour Relations Act 66 of 1995.

⁴⁵ Employment Equity Act 55 of 1998.

has identified women's and children's rights to receive special attention in their provision of services. The (CEDAW) Committee, based on this, requested the country to provide data on the types of services offered by the Board disaggregated by race, ethnicity, nationality, and age, amongst others.

The (CEDAW) Committee further requested South Africa to indicate what measures it has taken to address gender based violence against women as a criminal offence and what sanctions it imposes within the context of the Committee having updated its general recommendations on violence against women. Violence against women remains rife in South Africa and will be dealt with in the Part below. The President of South Africa, in an address to South Africa in June 2020,⁴⁶ acknowledged that the country faces a gender based violence pandemic and called for the strengthening of legislation that deals with, amongst others, minimum sentencing and bail conditions for those accused of gender based violence. To give effect to the President's call three Bills have been introduced in Parliament,⁴⁷ namely, the Criminal Law (Sexual Offences) Bill (B16-2020), the Criminal and Related Matters Amendment Bill (B17-2020) and the Domestic Violence Amendment Bill (B20-2020).

South Africa has taken significant steps to ensure that gender equality is enshrined in its legislative and policy frameworks. Nevertheless, women continue to face significant challenges, to which I now turn.

4 GENDER (IN)EQUALITY IN SOUTH AFRICA

Poverty remains a significant challenge faced by South Africans. In 2015, 1 out of 2 South Africans was poor.⁴⁸ Poverty is also gendered. Females have higher poverty rates than males and poor females are generally worse off than poor males.⁴⁹ This despite the enactment of legislation to address women's economic conditions. Participation in the labour force is one of the key indicators of gender equality and sheds some light on poverty experienced. Employment rates for the 1st quarter of 2020 indicate that 36.9% females and 47.5% males were employed.⁵⁰ In South Africa, females head 41.6% of all households.⁵¹ Of the households headed by females, 39.2% had no employed persons in the household as compared to 19.5% of the households headed by males.⁵² Of the

⁴⁶ Ramaphosa C "Address by President Cyril Ramaphosa on South Africa's Response to the Coronavirus Pandemic" 17 June 2020 available at <http://www.dirco.gov.za/docs/speeches/2020/cram0617.pdf> (accessed 14 September 2020).

⁴⁷ As at 15 September 2020.

⁴⁸ Statistics South Africa *Poverty trends in South Africa. An examination of absolute poverty between 2006 and 2015* (2017) available at <https://www.statssa.gov.za/publications/Report-03-10-06/Report-03-10-062015.pdf> (accessed 12 July 2020).

⁴⁹ See Statistics South Africa (2017).

⁵⁰ Statistics South Africa *Quarterly Labour Force Survey: Quarter 1: 2020* (2020) available online at <http://www.statssa.gov.za/publications/P0211/P02111stQuarter2020.pdf> (accessed 8 July 2020).

⁵¹ Statistics South Africa *Marginalised group indicator report 2018* (2020) available online at <http://www.statssa.gov.za/publications/03-19-05/03-19-052018.pdf> (accessed 8 July 2020).

⁵² Statistics South Africa (2020).

female population employed in 2018, 66.8% were employed in the formal sector, 15.6% in the informal sector, 3.8% in the agricultural sector, and 13.8% as domestic workers.

We thus see that the majority of females (66.8%) were employed in the formal sector, although the number of women engaged in the informal and agricultural sectors and as domestic workers account for nearly a third (33.2%) of women employed in more precarious sectors. The number of households headed by females that had no employed persons in the household is quite high, and provides an indication of the poverty experienced in such households. Given that a third of the females are employed outside of the formal sectors, they are thus vulnerable to poverty. These statistics should be read in conjunction with the unemployment statistics which at the end of the 1st quarter 2020 indicate that unemployment in South Africa was 30.1%.⁵³ The unemployment for females was 32.4%.⁵⁴

Females are over-represented in the lowest income group, earning between R1 and R2 500.⁵⁵ There is a slight increase in the parity ratios for income groups R7 501 – R11 500 and above.⁵⁶ This could possibly be ascribed to affirmative action measures being implemented. However, females still find themselves under-represented in the higher income earning groups and continue to earn approximately 30% less than their male counterparts.⁵⁷ Considering the poverty rates and employment and unemployment rates, as well as earnings, it is thus not surprising that 11.6% of households headed by females reported hunger in 2018⁵⁸ despite legislative measures put in place to address poverty and inequality.

Using Fraser's trivalent view of justice as a lens, we can see how women can suffer from both redistribution and recognition injustices. The disparities (or impediments) faced by women in the labour market point to economic or redistributive injustices and are an indication of how the economy is gendered. Moreover, staying with the labour market, Statistics South Africa data shows that women's jobs are not as valued as men's. In this respect, women face misrecognition. The impediments faced by women are structural and require redress if women are to participate equally with their peers.⁵⁹

As briefly alluded to, crime and violence are of great concern in South Africa. As noted above, we see that South Africa has enacted several pieces of legislation to deal

⁵³ Statistics South Africa "Quarterly Labour Force Survey: Quarter 1: 2020" (2020).

⁵⁴ Statistics South Africa "Quarterly Labour Force Survey: Quarter 1: 2020" (2020).

⁵⁵ Statistics South Africa (2020).

⁵⁶ Statistics South Africa (2020).

⁵⁷ Statistics South Africa "Inequality trends in South Africa. A multidimensional diagnostic of inequality" (2019) available at <http://www.statssa.gov.za/publications/Report-03-10-19/Report-03-10-192017.pdf> (accessed 8 July 2020).

⁵⁸ Statistics South Africa (2020).

⁵⁹ Fraser N "Social justice in the age of identity politics: redistribution, recognition, participation (discussion paper. FS I 98 -108 Wissenschaftszentrum Berlin für Sozialforschung 1998)" (1998) available at https://www.ssoar.info/ssoar/bitstream/handle/document/12624/ssoar-1998-fraser-social_justice_in_the_age.pdf?sequence=1&isAllowed=y&lnkname=ssoar-1998-fraser-social_justice_in_the_age.pdf (accessed 13 July 2020).

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with violence. Yet, as can be seen from the Table below, (reported) violent incidents remain high.

Table 1: Crimes against women

Crime category	2015/2016	2016/2017	2017/2018	2018/2019
Murders	2 780	2 639	2 930	2 771
Total Sexual Offences	39 580	37 392	36 731	36 597
Attempted murder	3 325	3 328	3 554	3 445
Assault GBH	56 969	51 956	53 263	54 142
Common assault	84 091	78 090	81 142	82 728
Total contact crimes	186 745	173 405	177 620	179 683

Source: South African Police Service.⁶⁰

What the above figures tell us is that the incidence of reported contact crimes against women is high. Sexual offences against women are particular high despite the apparent reduction in figures, (reduction has often been attributed to under-reporting). The figures are a clear indication that legislation alone is insufficient in dealing with crimes against women. Yet, despite the high reported incidence of sexual offences, we know that sexual offences, and in particular rape, are under-reported. Research has shown us that rapes, and one can include sexual offences more broadly, are often not reported, due to a number of barriers which include fear of not being believed, police persuading women not to open rape cases, and little success in conviction of perpetrators or of cases going to court.⁶¹ The under-reporting claims are further supported by results from the Victims of Crime Survey,⁶² which show declining households levels of satisfaction with the police and the courts. It has also been noted that the most common forms of sexual coercion, such as, those which occur in marriage, friendship, or if there is bribery involved, often go unreported to the police.⁶³ Anecdotal evidence further supports claims that police are sometimes reluctant to open rape or sexual offence dockets,⁶⁴ possibly as this may reflect negatively on the crime statistics produced annually. It is thus important to emphasise the fact that the statistics reflect *reported* cases of sexual offences, and not the actual number of incidents of sexual offences occurring.

⁶⁰ Republic of South Africa “Crime situation in Republic of South Africa twelve (12) months (April to March 2018_19)” (2019) available at https://www.saps.gov.za/services/april_to_march2018_19_presentation.pdf (accessed 10 July 2020).

⁶¹ Jewkes R & Abrahams N “The epidemiology of rape and sexual coercion in South Africa: an overview” (2002) 55 *Social Science and Medicine* 1231 at 1231.

⁶² Statistics South Africa “Victims of crime survey 2015/16” (2017) available at <http://www.statssa.gov.za/publications/P0341/P03412015.pdf> (accessed 13 July 2020).

⁶³ See Jewkes & Abrahams (2002) at 1231.

⁶⁴ Mapumulo Z “Rape is down? No way, say experts” *City Press* 5 March 2017 at 7.

Violence impacts on gender equality. It prevents and constrains women from attaining gender equality. In societies where patriarchy and the valuing of androcentric norms are institutionalised, as is the case in South Africa, women suffer from misrecognition or status differentiation. Status differentiation can be observed in cases of domestic violence, sexual harassment, sexual assault, exclusion, and marginalisation in the public arena.⁶⁵ It is seen in instances where the police refuse to assist victims of domestic violence, where insufficient budgets are allocated for implementing legislation related to violence against women or where lenient sentences are handed out to perpetrators of sexual violence.

5 METHODOLOGY

This study is located within a feminist epistemological and methodological framework. A feminist framework recognises that the voices of marginalised persons have often been excluded from knowledge generation.⁶⁶ Most notable has been the absence of the voices of women, black people and poor people, amongst others. This article draws on the results of the qualitative component of a broader study. The broader study examined women's experiences of gender equality and happiness and adopted a mixed methods approach, utilising both qualitative and quantitative methods.⁶⁷

Qualitative research methods best suit the exploration of what gendered legislative reforms mean to women. For this reason, individual in-depth interviews as well as focus groups were employed. Eleven in-depth individual interviews were held with woman key informants. Purposive sampling was used to select the key informants, who were primarily selected for their activism, scholarly work and/or organisational work related to gender or gender justice. Interviews were held until data saturation point was reached. Most of the participants identified as middle class. Participants were drawn from diverse racial backgrounds, namely, black, coloured and white.⁶⁸ Nearly all of the participants had a post-graduate degree, with most reporting PhDs as their highest educational level. The age range for participants was 38 to 54 years.

Three focus groups were conducted with women, who were not key informants, but who could share their lived experiences and perceptions of gender related policies and programmes. Here I employed convenience sampling. Focus groups were held with a group of teachers, support staff at a school, and a group of women involved in a woman's group at a church. Twenty-two women participated across the different focus groups. They were mainly drawn from working and middle class communities. Whilst most of the women had some form of tertiary qualification, a number of participants,

⁶⁵ See generally Fraser (1998).

⁶⁶ Banister P, Burman E, Parker I, Taylor M & Tindall C (eds) *Qualitative methods in psychology. A research guide* Buckingham : Open University Press (1994).

⁶⁷ Rustin C *Gender equality and happiness among South African women* (unpublished PhD dissertation, University of the Western Cape, 2018).

⁶⁸ While I consider race to be a social construction with material effects, I employ the categories constructed under apartheid of black (native), coloured, indian and white (Population Registration Act 30 of 1950). I do this as racial inequalities continue to shape the lives of South African women.

who were support staff at the school or participants from the church group, had not completed high school (Grade 12). Participants mostly identified as coloured, with a few identifying as black. Participants ranged in age from 27 to 77 years.

Qualitative thematic analysis was used to analyse the data. Thematic analysis is a coherent way of organising or reading interview material in relation to the specific research questions.⁶⁹ It is also a method used to identify, analyse and report themes or patterns within the data.⁷⁰ I used ATLAS.ti to manage the coding and thematising of the data.

Ethical clearance was received from the University of the Western Cape for the study. In conducting the study, I adhered to all ethical procedures pertaining to research with human participants. These ethical procedures included the principles of transparency, respect for participants, informed and voluntary participation, confidentiality and anonymity. At the start of each of the interviews, I informed participants of the aims and objectives of the study, and they were given an information sheet. Participants were further informed that their participation was voluntary and that they could withdraw at any stage. Consent was obtained and participants signed consent forms. In this article I use pseudonyms in order to ensure the anonymity of the participants. In the results below I indicate in which focus group the participant participated.

6 RESULTS AND DISCUSSION

6.1 Significance of gender related legislative measures

For the majority of women interviewed, the promulgation of legislation was viewed as positive and progressive. The enactment of legislation has led to a clearer political recognition that women constitute a historically oppressed group on the basis of gender, and require particular focus and redress. One way in which any State gives recognition to different bodies is through citizenship. Citizenship refers to the relationship between individuals and the State, as well as between individuals, where access to rights and justice characterises this relationship.⁷¹ Gouws and Galgut argue that citizenship, from a feminist perspective, is about exclusion and inclusion, about who are considered as full citizens and who are excluded.⁷² Participants acknowledged the significance of the State's role – through the Constitution – in recognising women as full citizens of the country:

“Zinzi: [...] the Constitution as a whole, I mean, to be recognised as a woman is an important thing for any State to do that, we should not just take it for granted. (Key informant).”

⁶⁹ See generally Banister et al (1994).

⁷⁰ Braun V & Clarke V “Using thematic analysis in psychology” (2006) 3 *Qualitative Research in Psychology* 77 at 77.

⁷¹ See Gouws & Galgut (2016) at 3.

⁷² See Gouws & Galgut (2016) at 3.

The institutionalisation of gender-based injustices under apartheid and under colonialism – women were not recognised as full human beings, nor did they participate fully in the affairs of the State, even as white women, who were privileged under apartheid because of their whiteness, is what Fraser has referred to as the injustices of misrecognition.⁷³ In the extract below, Mandy, a key informant, indicates how the State has now addressed this misrecognition and recognised women, irrespective of their identity markers:

“Mandy: [...] This consideration of who counts, or who is – on paper at least in terms of law and policy – recognised as a citizen, and I think there certainly – that had a massive impact on the fact that women are recognised as claimants of full citizenship.”

It was not only through the State that black and poor women suffered misrecognition. The colonial project and apartheid were effective in ensuring that there was a hierarchy of race, class and gender, and this was reflected in relations between different races and classes. Freda, as an older woman who had been classified as coloured during apartheid, noted that coloured women were not able to participate as equals and were not accorded recognition because of their race and gender. The extract below reflects the indignity and humiliation suffered by millions of black South African men and women, including those who identified as coloured. It clearly speaks to the oppression and discrimination women suffered, not only because they were women but also because they were black – what King would refer to as the multiple jeopardy of women:⁷⁴

“Freda: And even our acceptance as coloured women, we are now regarded as women and people treat us with more respect, overall. [...] (FG Church Group).”

From the above extract it becomes clear that not only was it important for the State to address this misrecognition of women on the basis of race and gender, but that this recognition of (coloured) women seems to have extended to “others” having shifted their perceptions of (coloured) women. Read through Fraser⁷⁵, this recognition is an important component of participatory parity.

For many of the participants the changes in legislation have led to an increase in access to opportunities that were not available to women before 1994. These opportunities vary from job opportunities to opportunities for development and growth.

“Sam: [...] we have companies, they are obligated to have a percentage, an equal percentage of management positions as well, you know so there is that kind of equality. (FG Teachers).”

⁷³ See Fraser N “Recognition or redistribution” (1995) 3(2) *Journal of Political Philosophy* 166 at 166. See also Fraser N “Feminist politics in the age of recognition: a two-dimensional approach to gender justice” (2007) 1(1) *Studies in Social Justice* 23 at 23.

⁷⁴ King DK “Multiple jeopardy, multiple consciousness: the context of black feminist ideology” in Meyers DT (ed) *Feminist social thought* New York : Routledge (1997) 220

⁷⁵ See Fraser (2005) at 69.

Post-1994, more and more women have entered the paid labour market. The above extracts reflect the opening up of socio-economic opportunities for all women, but especially for black and coloured women post-1994. As seen from earlier discussions, whilst employment opportunities may have opened up, a large number of women are still unemployed.⁷⁶ This unequal uptake in the formal job market was acknowledged in the focus group with the teachers, with a participant noting that equality is in place on paper but perhaps not practically. It is clear that to some extent women have been able to benefit from what Fraser has called the redistribution of resources.⁷⁷ Nevertheless, given the number of unemployed women in South Africa and the poverty that women continue to face, they still suffer from maldistribution of resources, which impedes gender equality efforts.

Access to opportunities could not always be ascribed to gender only. The key informants' as well as the other women's experiences clearly reflect their conceptual understanding and awareness that the passing of the gendered legislation was not solely about gender redress. Gender equality legislation took into account the intersection of their multiple identities and positionalities, and acknowledges that racial discrimination could not be addressed in isolation from gender, class and sexual discrimination, amongst others. Feminist scholars have argued for an intersectional framework, which takes women's multiple axes of subordination into account.⁷⁸ In the extract below, Palesa recognises the intersection of her different identities and where this intersection has possibly led to her benefiting:

“Palesa: [...] So it is a combination of the gender, the focus on her progress on the level of gender representation but also at the level of representation of people of colour. (Key informant). “

Many of the participants noted that their rights have been legislated and guaranteed in law. The majority of women now have access to various rights, which they did not have prior to 1994, including the right to vote, the right to education, reproductive rights, etc. Some of the participants noted that they now also have recourse through law if they are discriminated against, albeit on the basis of their gender or race. Again, the inclusion of these rights in various pieces of legislation acknowledges and addresses injustices inflicted on women in the past (addressing issues of misrecognition). Structural injustices that women faced and continue to face today can be challenged through the courts of law. Women thus theoretically have access to justice (a concern raised by the (CEDAW) Committee) as noted by Mandy, yet this access might be uneven.

⁷⁶ Statistics South Africa *Quarterly Labour Force Survey: Quarter 1: 2020* (2020).

⁷⁷ See Fraser (2005) at 69.

⁷⁸ Crenshaw K “Mapping the margins: intersectionality, identity politics, and violence against women of color” (1991) 43(6) *Stanford Law Review* 1241 at 1241. See also Crenshaw K “Beyond racism and misogyny: black feminism and 2 Live Crew” in Meyers DT (ed) *Feminist social thought* (1997) New York, NY : Routledge 245 at 246. See also King (1997) at 220.

“Mandy: So people actually using the law across the board to some degree in order to assert the claim on our rights... (Key informant).”

Legislatively and theoretically, women now have the freedom to exercise choice. Enshrining a range of socio-economic rights in the Constitution and other pieces of legislation meant that women now, legislatively, have the potential to make choices. The ability to choose for oneself, and for one's choices not to be limited, were closely linked to participants' sense of independence and freedom:

“Susan: Well, I think after '94, there was a lot of affirmation of women's choice and autonomy and of equality, gender equality as a concept. And for me, legislation has started to more and more, reflect that. (Key informant).”

Choice is closely associated with freedom. It is only once women have the freedom, and including the freedom to choose, that they have the latitude to achieve what they desire. Whilst the ability to choose was predominately discussed as a positive element, there was recognition in at least two of the interviews that the choices available could also have negative outcomes, as seen in Grace's narrative below. These negative outcomes should however not detract from one's ability to be able to or have the freedom to make choices. However, often other factors, such as access to resources, need to be in place for the choices that one makes to be effectively supported and to facilitate participatory parity:

“Grace: [...] that I've been able to use the system, to push back and do it, but the actually material condition deteriorates because of that choice. (Key informant).”

Does legislation make a practical and significant difference in the day-to-day lives of women? From the above extracts and discussion, yes. However, when we look closely at the conversations presented above, it has been mostly those women whom I identified as experts, who are either working in academia or NGOs as activists, who have noted how they, in their *personal* lives, are able to access opportunities and draw on the legislative framework, if called upon to do so. The key informants have indicated that it may be difficult for “ordinary” women to fully access their rights or access legislation. This concern of some of the key informants should be read in conjunction with the concern of the (CEDAW) Committee pertaining to women's access to justice.

As they have further argued, women do not have equal access to rights, services, etc. as guaranteed in legislation, due to their complex and intertwined positioning on the basis of race, class and sexuality, amongst others. I would argue that the legislation has not been “felt” in the lived experiences of the women in the focus group at the school with the teachers and community women. Some women continue to face misrecognition and maldistribution of resources impacting on their ability to participate equally with their peers. It is noteworthy to reflect on the progress that they have identified, although this progress is conditional and contextual, in that it is shaped by the different material and geopolitical contexts in which different women live.

6.2 Legislative shortcomings

Participants raised numerous shortcomings in legislation and the challenges that they experienced in their daily lives. These narratives relate to: (1) problems with the implementation of legislation; (2) women's multiple roles and responsibilities, which hinder women's full participation in leadership roles; and (3) the disjuncture between rights and the daily realities of women.

Several problems with the implementation of legislation and accessing of rights have plagued the effectiveness of legislation and have detracted from the intended outcomes thereof. Implementation challenges, which were often also linked to the ability to access rights, were raised by a number of participants, which gives some credence to the concern of the (CEDAW) Committee pertaining to women's ability to access justice. These challenges range from companies being unable to meet employment equity targets to the police failing to act in matters of domestic violence. Women furthermore face difficulty accessing rights depending on their class, race and sexual orientation. Some women, notably white middle or upper class women, would be able to access rights more easily than poor, black, queer women:

“Mandy: Well I think in the sense that, you know, women are not only women, they are also very specifically raced, classed and sexualized, and the extent to which women are raced, classed and sexualized often impacts the extent to which they can exercise rights. (Key informant).”

Injustices in the economy can be observed in how the economy values what has been called productive and reproductive work. Reproductive work, which is overwhelmingly done by women, is under-paid and under-valued. The importance of reproductive work is not acknowledged in neoliberal economies, where increasingly State responsibilities for care have shifted to women. Reproductive work has the potential to constrict women's participation in the formal economy. Sandra argued that women's responsibilities in the household and family have often hindered them in accessing opportunities or fully accessing their rights. Connell has argued that gender inequalities are organised through gender relations.⁷⁹ One domain of gender relation, the sexual division of labour, is seen as a key site of unequal gender relations:

“Sandra: We live in a hostile society that doesn't really value the input of women. (Key informant).”

She expresses this tension between what is expected of her in her role as a woman, wife, mother, and her desire to occupy a leadership position:

“Sandra: You've got to be a housewife, but you also want to a leader.”

Hannah suggests that whilst there may have been transformation or progress in the public space, even women who hold positions of power in the public space may not hold such power in the private sphere. Whilst there may be a shift in normative gender

⁷⁹ Connell R *Gender in world perspective* 2nd ed USA : Polity Press (2009).

binary roles in the public sphere, there has not been a concomitant shift in the private sphere:

“Hannah: I believe that gender equality needs to be robust in real, not just in public space, but in private spaces, and I think that’s quite rare in this country. I’ve known a lot of women who have tremendous power and agency in public spaces and have to re-enter and renegotiate a subservient or very restricted spaces when they return home, going to a domestic space or intimate space. (Key informant).”

So, whilst women have moved into positions of leadership and into paid employment in the public sphere, the responsibilities in the private sphere and tasks considered women’s work in the household have not stopped nor shifted. Taking up the opportunities and spaces that have opened up to women post-1994 has thus meant that women have to work doubly hard, in a context where this unseen work is often devalued and is not remunerated. A 2013 Statistics South Africa report,⁸⁰ looking at the amount of household work done by employed men and women, reveals that by far, and across all race groups, women spend more time doing unpaid housework, caring for others and collecting water and fuel, than men. The question thus arises whether it is enough for the State to introduce legislation alone, as women, in effect, suffer when they take up these opportunities, as the care and household responsibilities are not shared equally within the household.

Participants argued that legislation has not made a material difference to many women’s lives. Women continue to face hardships, despite progressive legislation being in place. The value of legislation, other than providing a legal framework which can be called upon if needs be, has to be reflected on:

“Florence: [...] I think it’s the disjuncture between having progressive legislation that we’re lauded for, you know, across the world. [...] But beyond the violence, I mean there’s the structural violence, there’s poverty that is formalised, right, it’s mostly women. There’s income inequality, that women get paid less than men, I mean in a sense it’s global trends, but still, you know with our progressive legislation, we should be doing better on these things. (Key informant).”

6.3 (Legislative) interventions required

Not many participants spoke about what measures could be introduced to ensure that the gender legislative reforms introduced are more transformative. Whilst this was not a substantial theme, a number of participants indicated that specific interventions were required to ensure that legislative measures actually made a difference in the lives of women, and that they could indeed benefit from the progress achieved thus far. They

⁸⁰ Statistics South Africa *Gender statistics in South Africa 2011* (2013) available at <http://www.statssa.gov.za/publications/Report-03-10-05/Report-03-10-052011.pdf> (accessed 12 July 2020).

were cognisant of the fact that legislation alone would not bring about transformative change.

Participants further noted that legislation alone was not sufficient to ensure that women take up and excel in leadership positions, and that an enabling environment was needed. An enabling environment meant that women needed to be given the necessary skills and support to be able to fulfil and access certain opportunities. Participants were clear that opportunities should not only be given to women because legislation requires it and to ensure that certain numeric targets with regards to employment equity were met, as this would not result in the necessary transformation of institutions or be of real benefit to the women employed in these positions:

“Megan: [...] don’t [put] me in there just because you have to because I’m a woman. I have to be trained to do that job, because it’s pointless putting me there and I don’t know what’s going on. (FG Community women).”

Many gender equality measures have been introduced to ensure that women are able to participate equally with their peers. Nonetheless, women continue to bear the burden of care and household work. Women taking up the gender equality opportunities thus continue to be burdened with work in the household that is not recognised. Workplaces can thus play an important role in acknowledging the care work that women are often responsible for, by introducing practical measures to enable women to take up the gender equality measures in the workplace. As seen from the narratives, creating a gender sensitive workplace will ensure that women are able to take up leadership positions, whilst ensuring that the care responsibilities are also taken care of. The introduction of such practical measures ought not to be the sole responsibility of workplaces.

The State, through measures, such as, subsidised, public care facilities, which could include early childhood centres, State care for the aged, incentives and legislated paternity leave, amongst others, will remove some of the burden from women, and provide them with the space to take up gender equality opportunities, and also not restrict them to normative gender roles or burden them with multiple roles. However, neoliberal States which prioritise economic growth, the accumulation of wealth, and monetary and fiscal prudence, also advocate for the privatisation of welfare services, which thrusts care responsibilities onto women.

7 CONCLUSION

Legislation that ensures that the rights of all are protected is imperative if we are to see positive changes in the lives of women. From the data presented in this article, it is evident that the enactment of gendered legislation has had a positive impact on the lives of women. Read through Fraser’s lens, the enactment of legislation is an important step in facilitating participatory parity. However, legislation alone will not guarantee that women are treated fairly and equally. Discrimination on the basis of gender, race, sexual orientation and class may be legislated against, but this does not mean that it will not occur. In the views presented in this article, participants call into question whether “real” transformation has taken place. They question whether gender relations and

structures in a patriarchal society have been transformed. From their discussions, it is clear that the transformative changes anticipated in the social sphere, in gender relations, men's attitudes and behaviour, and economic spheres, including access to resources, have not been realised for some.

The result, of course, is that women suffer maldistribution and misrecognition and the inability to participate equally with their peers. Gender inequalities are deeply embedded in societies, and institutions, such as, the police and other workplaces. These inequalities are reproduced through the practices in these institutions. In order for change to be transformative, the introduction of legislation should go hand in hand with behavioural as well as attitudinal change. Certainly, social norms, behaviour and attitudes need to be challenged and disrupted, especially when they actively work against gender equality. Here, the State, but also various different social actors and institutions, have a role to play.

The current study has some limitations. Given that it was a qualitative study, a limited sample of participants was included. It was not the intention that the findings be generalised to a broader population. The qualitative study does however provide a deeper indication of how some women perceive the gendered legislative reforms that have taken place and the impact that they have had on their lives.

This article aims to contribute to the discussion of the impact of gendered legislative reforms on women's lives, which has particular relevance for policy and programmatic interventions at the level of the State, but so too for those involved in gender justice work.

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