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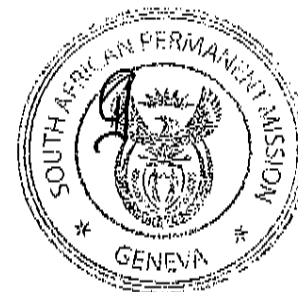
The Permanent Mission of the Republic of South Africa to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR) and has the honour to submit South Africa's response to the Questionnaire by the High Commissioner for Human Rights on the Realization of the Right to Work and the enjoyment of all Human Rights by Women with emphasis on the empowerment of Women.

The Permanent Mission of the Republic of South Africa to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights (OHCHR), the assurances of its highest consideration.

Geneva, 09 November 2016

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**RESPONSE TO THE QUESTIONNAIRE FROM THE HIGH COMMISSIONER FOR  
HUMAN RIGHTS ON THE RELATIONSHIP BETWEEN THE REALIZATION OF THE  
RIGHT TO WORK AND THE ENJOYMENT OF ALL HUMAN RIGHTS BY WOMEN,  
WITH EMPHASIS ON THE EMPOWERMENT OF WOMEN**

**QUESTION 1**

**The relationship between the realization of the right to work and the enjoyment of all human rights by women, with a particular emphasis on the empowerment of women, in accordance with States' respective obligations under international human rights law.**

**RESPONSE:**

It is worth noting that the role of international human rights law has been even more pronounced in the South African Constitution (the Constitution), which affirms the democratic values of human dignity, equality and freedom. The preamble of the Constitution recognises the injustices of the past and then sets out national objectives, including the goal of establishing a society based on democratic values, social justice and fundamental human rights. Thereafter, a wide range of fundamental human rights are recognised in the Bill of Rights, which applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.

Sections 9(2) and 9(4) of the Constitution state clearly that Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken. Furthermore, no person may unfairly discriminate directly or indirectly against anyone 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.

It is important to highlight that the right to work and the enjoyment of all human rights by women like any other workers' rights are also protected by the Constitution. Sections 22 and 23 of the Constitution respectively state that "every citizen has the right to choose their trade, occupation or profession freely and the practice of a trade, occupation or profession may be regulated by law." It then further states that "everyone has the right to fair labour practices; and every worker has the right to form and join a trade union, to participate in the activities and programmes of a trade union; and to strike."

In order to give effect to the realisation of the right to work and enjoyment of all human rights by women, including their empowerment, various pieces of transformative legislation have been enacted by the government since the dawn of democracy in 1994. The Employment Equity Act, 1998 (the EEA) that promotes the equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and implementation of affirmative action to redress the disadvantages in employment experienced by designated groups (i.e. black people; women and people with disabilities) in order to ensure their equitable representation in all occupational levels in the workforce.

During the 18 years of the EEA, we have observed some positive spin-offs in relation to the advancement and empowerment of women in the labour market and in positions of power in the various sectors of our economy. We have observed women having equal access to job opportunities in sectors that were previously male-dominated, e.g. in mining, construction, engineering, science and technology through various government and private sector initiatives. For example, in 2015, women accounted for 21.4% and 32.4% of all positions in top and senior management levels respectively. A significant progress was also observed at Professionally Qualified/ Middle management levels where women accounted for 46.1% of all positions at this level in 2015.<sup>1</sup>

Worth noting, is enactment of the Labour Relations Act, 1995 that promotes fair labour practices and social justice and the Basic Conditions of Employment Act, 1997 (BCEA) also promotes the right to basic conditions of employment for all workers. In particular for

<sup>1</sup> 16<sup>th</sup> Commission for Employment Equity (CEE) Annual Report (2015-2016) available on [www.labour.gov.za](http://www.labour.gov.za)

women, the BCEA regulates maternity leave and family responsibility leave. Added to this, The Unemployment Insurance Act (UIA) regulates the payment of maternity benefits to ensure that women are not disadvantaged in relation to income during their maternity leave period. Another key economic empowerment legislation for women is the Broad- Based Black Economic Empowerment Act, 2003 (BBBEEA) as amended, which promotes the economic empowerment of all black people, in particular women, workers, youth, people with disabilities, and people living in rural areas. Through the BBBEEA, women, in particular black women are economically empowered as entrepreneurs in their own right to access and compete for state contracts in the various government institutions. This allows women to be financially independent and economically empowered.

In terms of ensuring that women get access to equal opportunities of training and skills development, the Skills Development Act, 1998 (SDA) promotes the training of the previously disadvantaged persons, i.e. black people, women, youth and persons with disabilities. To give effect to rights enshrined in the SDA, the National Skills Authority is then mandated to develop a National Skills Strategic Plan to regulate skills development targets to be met in relation to the training of the various categories of the previously disadvantaged groups, including women.

Notably, various Codes of Good Practice have also been developed and are being implemented to promote equity in the labour market, in particular to ensure the rights of women as workers. Worth noting are the Codes on Equal Pay for Work of Equal Value irrespective of gender, race, colour, etc.; the Handling of Sexual Harassment Cases in the workplace; the Integration of Employment Equity in the Human Resource Policies, Practices and Procedures; and the one on the Protection of employees during pregnancy and after the birth of a child. All these policies are intended to promote, protect and fulfil the rights to work and enjoyment of all rights by women.

**QUESTION 2**

**The relevant major challenges and best practices in this regard?**

**RESPONSE:**

In relation to the various transformative pieces of legislation discussed above, there are various implementation challenges experienced on the ground, however it varies from one organisation to another and also from one sector to another. For example, in some organisations, we have observed that there are linkages between the Strategic Business Plans and the Transformation legislation listed above, where these legislations are integrated into the Business Plans to transform the workplaces. However, in other organisations, this transformation legislation is not integrated into the Strategic Business Plans, but relegated to Human Resource Departments and do not form part of the Strategic decision making processes. Some best practices observed is that were these legislation is part of the Strategic business Plans and also a strategic priority in terms of Executive/ Board decision making processes, there is significant progress in terms of women representation and empowerment across all occupational levels.

Furthermore, lack of commitment from Executive/ Board level has a negative impact on the transformation agenda in the labour market in relation to the promotion and protection of women's rights to access to equal opportunities to employment, promotions, training and advancement in the organisations and the labour market as a whole. There is a need to create more awareness on the rights of women in relation to fair treatment and protection against unfair discrimination in relation to their access to equal opportunities in employment. This should be supported by the strengthening of the enforcement capacity to ensure that these rights are realised for women; and also to ensure that the 2030 UN target of 50/50 gender parity is achieved.

It worth mentioning that there are some organisations with best practices in both the Public and Private sectors that have been recognised for their achievement in the promotion of equity in their organisation and for their programmes in advancing the rights of women. These organisations received recognition through the Employment Equity Awards hosted for the first time in 2015 by the Commission for Employment Equity (CEE); and these organisations were also show-cased in the 2015/2016 16<sup>th</sup> CEE Annual Report.<sup>2</sup>

### QUESTION 3

**A brief summary of legislation, public policies, programs and other relevant measures and good practices to ensure women's right to work.**

#### **RESPONSE:**

There following legislation, public policies, amongst others have been promulgated/ implemented to promote the realisation of the right to work by women and their empowerment:

- The Constitution of the Republic of South Africa;
- The Labour Relations Act;
- The Employment Equity Act;
- The Skills Development Act;
- The Basic Conditions of Employment Act;
- The Unemployment Insurance Act; and
- Broad- Based Black Economic Empowerment Act.
- Codes of Good Practice on:
  - ✓ Equal Pay for Work of Equal Value irrespective of gender, race, colour, etc.;
  - ✓ The Handling of Sexual Harassment Cases in the workplace;
  - ✓ The Integration of Employment Equity in the Human Resource Policies, Practices and Procedures; and
  - ✓ The Protection of employees during pregnancy and after the birth of a child.

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<sup>2</sup> 16<sup>th</sup> Commission for Employment Equity (CEE) Annual Report (2015-2016) available on [www.labour.gov.za](http://www.labour.gov.za)