



**Convention on the Elimination  
of All Forms of Discrimination  
against Women**

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**Committee on the Elimination of Discrimination  
against Women**

**Consideration of reports submitted by States parties under article 18 of the  
Convention on the Elimination of All Forms of Discrimination against Women**

**Combined second, third and fourth periodic report of States parties**

**South Africa\***

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\* The present report is being issued without formal editing.

## FOREWORD

On 15 December 1995, our Parliament ratified, without any reservation, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). In March 2005, we also ratified the Optional Protocol to CEDAW, without reservation. In compliance with our legal and international obligations, the South African Government is pleased to present South Africa's consolidated second, third and fourth country report on the implementation of the Convention.

We submitted our Initial Country Report for the period 1994-1997 to the CEDAW Committee on 05 February 1998. This Initial Report provided the baseline for our subsequent submission, which covers the period 1998–2008. This in effect also addresses South Africa's reporting backlog/requirements for 2001 (second report), 2005 (third report) and the fourth report (due 14 January 2009).

South Africa became a constitutional democracy in 1994 and was founded on the rule of law, the advancement of human rights and the principles of non-racialism and non-sexism. The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) has been guided by a range of international and human rights instruments, including CEDAW and the Beijing Declaration and its Platform for Action. The Bill of Rights in the Constitution ensures the foundation for a non-racist, non-sexist, and human rights-based society where race, class, gender, sexual orientation, disability, diversity, age, social security and protection from harm are, among others, primary considerations. It forms the bedrock of the developmental state – especially with respect to legislation, governance, sustainable development considerations, and democratic institutions of the State. These include oversight and monitoring bodies, the media and those in civil society.

While the South African democracy is only 14 years old and still in its nascent stage of development, it has made significant strides and achieved major gains. Some of these gains include ensuring rights, providing education, basic health care, basic services such as water, electricity, sanitation and provision of social security benefits, among others. These have improved the life opportunities of large numbers of marginalized South Africans, including women, people with disabilities, the aged, and children.

South Africa has incorporated into its transformation agenda a gender; disability; children; and youth rights-based mainstreaming strategy for governance, implementation, and monitoring and evaluation. Our government has been steadfast in creating an enabling environment conducive to the empowerment of women and children, particularly the girl child. This has resulted in progressive legislation that guarantees the promotion and protection of human rights in general, but women's rights in particular. These have been translated into implementable measures and programmes for the advancement of women. While these measures have generally impacted positively on their lives, we nevertheless acknowledge that a number of challenges still remain. These exist both in implementation as well as in transforming societal attitudes and harmful practices that manifest themselves negatively, particularly against women and the girl-child.

The CEDAW reporting process has allowed South Africa to analyse critically the situation of women in the country and every effort has been made to present a transparent and realistic picture of the achievements, best practices, challenges and ongoing commitments and measures needed to advance the cause of women. In the spirit of both the Convention and the South African Constitution, we welcome the monitoring of our efforts in advancing women in South Africa. We also welcome and look forward to the Committee's comments and responses to this Report, which will guide our ongoing progress towards the full realization of the provisions of the Convention. Women not only deserve but justifiably demand their due; and this means changing practices and attitudes which in many cases are deeply rooted. The Government of South Africa will not shirk its responsibility in fighting for this cause, which lies at the very root of our democratic nationhood.

Consequently, South Africa is resolute in its commitment to the full implementation of CEDAW and other international, regional and sub-regional instruments on promoting women's rights to which we are signatory. We remain guided by the words of Former President Nelson Mandela when he stated in his Inaugural Address to National Parliament in 1994, "...freedom will not be fully attained unless women have truly been emancipated and empowered in all spheres of life".

*(Signed)* Kgalema Motlanthe  
President of the Republic of South Africa

## **PREFACE**

To be able to appreciate the contents of this report, one has to stop and take a deep breath to reflect on the purpose and rationale of the evolution of CEDAW from its origins in the human rights culture and human rights laws adopted at various stages since the 1947 Human Rights Declaration. This human rights atmosphere was further strengthened by the adoption in 1966 of the two separate "covenants": The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Interestingly, the Charter of the United Nation in its Declaration on Human Rights and the two covenants emphasized that non-discrimination on the basis of sex was fundamental to this concept of human rights.

The ruling ANC party endorsed the noble principle of Human Rights when the late President of the ANC, O.R. Tambo, appeared before the United Nations General Assembly in 1963, as leader of the then ANC Liberation Movement, in defense not only of the Women of South Africa, but also "to end inhumanity, to secure the liberation of the African people, to end racial discrimination, and to replace racial intolerance and tyranny with democracy and equality, irrespective of colour, race or creed.". In part, his defense of women's rights was informed by the Women's Charter of 1954, adopted by the Federation of South African Women ( FEDSAW ).

Since the dawn of democracy in South Africa in 1994, the democratic government of the Republic of South Africa has observed a determined human rights approach and ratified CEDAW in full (without reservations) in December 1995.

Whilst reasonable progress continues to be made towards the elimination of all forms of discrimination against women, issues of cultural, patriarchal, and social and economic background remain a challenge. These obstacles are identified and highlighted in the Women's Charter for Effective Equality that was adopted and launched on National Women's Day in August 1994 by the Women's Coalition. This charter was to form the basis for all political, legal and legislative strategies, as well as a source for the writing of the National Constitution.

South Africa has adopted significant legislative reforms and has developed policies and programmes based on the National Constitution and its Bill of Rights (Act 108 of 1996) which seek to promote and protect women's rights in the home, in the community and in the workplace. The promulgation of the Equality Act of 2000 sought to translate the legislative processes into practical measures relating to the empowerment of women in all decision-making processes and development. Of interest is the fact that each government department is mandated to ensure that this programme for the advancement of women is part of their respective mandates.

As the global dialogue on the elimination of all forms of discrimination against women continues, it is important to always remember that the social environment greatly influences the outcomes. Issues such as the availability of resources in a country to provide good housing, clean water, good roads, communication networks, quality education and health care etc. all contribute to the success of programmes to address inequalities. The economic status of each country influences the level of provision of these services. It might be worthwhile in future to factor in the different variables that influence each country's performance.

The 2009 South African Report on CEDAW is the product of a wide consultative process in the country.

It would be remiss of me if I did not recognize the hard work that has been put into this work by stakeholders in government, the private sector and civil society. For that I say thank you and do continue with the good work. Much still remains to be done and I know that all of us have the will, the strength and commitment to do just that.

*(Signed)* Dr. Manto Tshabalala-Msimang  
Minister in the Presidency

## EXECUTIVE SUMMARY

1. In 1998, three years into its peaceful transition to democracy, South Africa submitted its first Report on the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) for the period covering 1994 -1997 (CEDAW/C/ZAF1), a landmark report which serves as the baseline for this second submission. This Report focuses on progress achieved in consolidating the policy and legal framework and the implementation of laws and policies which impact positively on the lives of women and the girl child. The compilation of this Report also coincides with South Africa undertaking its fifteen years of freedom review. These concurrent processes, among others, provide the opportunity to integrate the gender equality agenda and concrete plans for accelerated action into broader national development plans and objectives.
2. South Africa signed the CEDAW Convention on 29 January 1993 and ratified it without reservations on 15 December 1995; and its Optional Protocol, without reservation, in March 2005. In keeping with its legal and international obligations, this Report is a consolidated second, third and fourth country report on the implementation of the Convention for the period 1998–2008. This in effect also addresses the reporting backlog/requirements for 2001 (second report) and 2005 (third report), and the fourth report due on 14 January 2009.
3. This reporting process has allowed South Africa to critically analyse the situation of women in the country in relation to the Articles of the Convention and to report on its achievements, best practices, challenges, commitments and measures needed to advance the situation of women in the country.
4. The empowerment of women in South Africa is about dealing with the legacy of *apartheid* and about the transformation of society, particularly the transformation of power relations between women, men, institutions and laws. It is about addressing gender oppression, patriarchy, sexism, racism, ageism, and structural oppression, and creating a conducive environment which enables women to take control of their lives. Furthermore, in South Africa, empowerment is seen as active citizenship and equal participation by women and men in all aspects of life.
5. It is within this context that this report seeks to outline and assess progress, achievements, and challenges since the Initial Country Report was submitted, as well as look at the measures required for greater impetus in the advancement of women's empowerment and gender equality in the country. It provides both qualitative and quantitative data on the status of women in South Africa and responds to comments and questions raised by the CEDAW committee during its deliberations on South Africa's Initial Report in 1998.
6. This report wishes to highlight the non-homogenous nature of the more than 25 million South African women whose condition this report seeks to assess, taking note of the vast differences between the different members of the female population of South Africa, in terms of their race, language, religion, circumstances, aspirations, geographic location, historic disadvantages, levels of education, self-esteem, cultural beliefs, values, and access to and control of opportunities and resources.

7. This Report adheres to the framework for *Reporting Guidelines* issued by the CEDAW Committee. In developing this Report, South Africa is conscious of its commitments to the Beijing Platform of Action and other international and regional human rights commitments, as well as, in meeting the Millennium Development Goals and targets, including those pertaining to women and the girl child.
8. Over the period under review for this CEDAW Report, South Africa had increasingly created opportunities for mainstreaming gender equality goals generally, and CEDAW-related goals in particular, into national agenda-setting processes and transformation priorities. It has had time to test the strengths and limitations of its gender-based policies and implementation through specific commitments such as the ten year review of the implementation of the Beijing Platform for Action in 2005, as well as through larger national processes such as the African Peer Review Mechanism (APRM) conducted in 2006-2007.
9. The legacy of the past, and accordingly, the baseline from which gender equality as envisaged in CEDAW, the Beijing Platform for Action and related instruments had to be pursued, has been that of systemic and structural racial and gender inequality in all spheres of life. This was also noted by the CEDAW Committee in its concluding observations where the Committee noted that the legacy of *apartheid* for women included “widespread discrimination and underdevelopment, and is visible in areas such as women’s high levels of unemployment, illiteracy and poverty and in the area of violence against women.”
10. Accordingly, the advancement of women has had to give priority to this as part of a broader national transformation agenda in addressing systemic inequalities inherited from the past. This has presented a practical challenge in the effective pursuit of the implementation of the Convention’s Articles against the pressing and demanding imperatives of broader transformative goals in the context of limited and competing access to resources, while still maintaining national competitiveness in an evolving global economy.
11. Despite the many achievements towards the empowerment of women, however, the prevailing attitudes regarding the place of women in society and the different notions of masculinity and “macho-ism” continue to present a barrier to the effective implementation of CEDAW and the general pursuit of women’s rights and gender equality.
12. However, the context of transformation has also presented remarkable opportunities for women’s empowerment and the pursuit of gender equality. The implementation of CEDAW has particularly benefited from the human rights focus of government’s programmes in post-*Apartheid* South Africa. A key achievement in this regard has been the emergence of national consensus on viewing violence against women as a gross violation of human rights and a threat to women’s full participation and contribution to democracy.
13. Furthermore, during the period under review, South Africa made unprecedented progress in advancing women in the area of political representation and decision-making. This includes achieving 43% representation in the Cabinet and about 33% in the Legislature, and, with the appointment by former President Thabo Mbeki in 2005, of the first female Deputy President. Representation of

women in senior management positions in the Public Service surpassed the minimum 30% target set by Government for 2005, and the new target is parity by March 2009. Government is on track towards parity in the senior echelons of the Public Service, but the challenge still remains the low representation of women in corporate decision-making positions in the Private Sector. At the local government level, gender parity provisions have been integrated into the regulatory framework and women are increasingly represented in decision-making positions. At the last Local Government elections, South Africa recorded an historic 40% representation of women elected into local government seats, largely due to the structure of proportional representation.

14. South Africa has also achieved significant progress on the protection of worker's rights, especially the rights of domestic and farm workers, the majority of whom are women. South Africa is particularly encouraged by the progress it has made in protecting the rights of domestic workers. There has also been outstanding progress with regard to the attainment of basic rights such as access to clean water, education, primary health care, social grants and civic participation, including development planning.

15. The legal framework is one of the country's success stories. Since 1998 the government has made tremendous strides in ensuring that legislation is aligned with the Constitution and international norms that are binding on South Africa. With regard to gender and women's human rights, special attention has been given to compliance with the CEDAW, the Convention on the Rights of the Child, and the African Charter on Human and Peoples' Rights.

16. There is general consensus that the Constitution of the Republic of South Africa and a progressive legislative framework provide both for the protection and promotion of the rights of women and the girl child. The critical objectives of this enabling legislative framework to ensure gender equality include:

- Preventing and prohibiting unfair discrimination and to provide redress in cases of unfair discrimination;
- Facilitating South Africa's compliance with international human rights treaty obligations, with specific reference to CEDAW and the Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- Providing for the eradication of current systemic discrimination which is a legacy of previously legalised discrimination;
- Providing for the promotion of equality, prioritising the adoption of measures to advance persons disadvantaged by unfair discrimination; and
- Providing for measures aimed at ensuring the eradication of unfair discrimination, hate speech and harassment with special focus on race, gender and disability.

17. The Constitutional Court has interpreted the constitutional provisions on equality to give effect to substantive equality. Many of the landmark court decisions on equality have fundamentally advanced *de jure* and *de facto* equality between women and men. Key court decisions in this regard have advanced women's rights and freedoms in areas such as customary and inheritance laws, violence

against women, in respect of the protection of motherhood, as well as positive measures aimed at accelerating women's access to land, health care, basic services, and economic opportunities. The Report has highlighted these cases, with particular emphasis on how they have tested existing legislation and constitutional provisions.

18. In fact, the laws that specifically deal with equality in South Africa reflect deliberate endeavours to incorporate the objectives and specific provisions of CEDAW in domestic law. Key instruments in this regard include: The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000); the Recognition of Customary Marriages Act, 1998 (Act 120 of 1998) and the customary law of succession.

19. The provisions of CEDAW and related international instruments have also informed other transformational laws that have been introduced since the last Report. Examples in this regard include laws dealing with positive measures to promote equality, including gender equality. Relevant laws include: the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and the Broad-based Black Economic Empowerment Act, 2003 (Act 53 of 2003).

20. The objectives of CEDAW and its specific provisions have also been incorporated into the South African National Policy Framework for Women's Empowerment and Gender Equality and other transformation policies that have evolved during the period under review. This includes the National Skills Development Strategy, Codes of Good Practice on Black Economic Empowerment and local government policies, particularly those relating to gender parity in Integrated Development Plans and processes.

21. Violence against women has received the most consistent and profound government attention and resources. Most resources have gone towards implementing the Domestic Violence Act, 1998 (Act 116 of 1998), combating sexual offences, raising public awareness, building capacity amongst service providers and perfecting an integrated response to this social scourge.

22. There has been specific focus on violence against the girl child particularly in response to rape, domestic violence, child pornography, trafficking in women and girls and in all public awareness measures and human rights programmes. However, violence against women and children continues to pose a serious challenge for Government. Close collaboration with civil society remains a major component of government's strategic intervention in this regard. This Report cites a few media clippings on violence against women to demonstrate the vibrant democracy and the space for reporting from different perspectives. It provides the platform to highlight the diversity of issues affecting women and the role of civil society, advocacy, monitoring and enforcement; and the powerful role of the media in informing public opinion and attitudes on critical issues of women's rights as human rights.

23. The integrated, multi-sectoral approach of Government in addressing violence against women includes some of the following measures:

- The 365 Day National Plan of Action to End Gender Violence;



- An annual 16 Days Activism Campaign on No Violence against Women and Children;
- The involvement of men and boys as partners in fighting violence against women and in changing attitudes and the behaviour of boys and men;
- The establishment of Equality Courts and dedicated Sexual Offences Courts; amongst others;
- The Victim empowerment programmes and the Thuthuzela Care Centres as 24 hour one-stop centres where victims have access to services such as the police, counselling, doctors, court preparation and prosecution.

24. Measures aimed at combating trafficking in women and children have been stepped up with special attention paid to the strengthening of related investigations and prosecution of traffickers; studying the causes, influencing factors and trends; and commencing a law reform process to achieve an integrated and holistic legal framework.

25. Government's Poverty Alleviation Agenda and the Skills Development Programmes have opened numerous avenues for women to enter the labour force and have also broadened opportunities for career changes. The main contributors in this regard have been the labour intensive Expanded Public Works Programme (EPWP) and the learnerships opened by the Skills Development Programme.

26. Women's employment chances have also been strengthened by employment equity legislation and other employment and labour laws which, amongst others, have strengthened women's retention in the labour force, particularly in the cases of pregnancy and balancing work with motherhood.

27. The poverty programme also targets income-generating activities for women. This includes small business development measures, assistance with access to credit and the Community Based Public Works Programme. South Africa's positive best practice so far has been the provision of a social security net through the provision of social grants to an increasing number of beneficiaries, the majority of whom are women. However, South Africa acknowledges the many challenges in this area; particularly the increasing gendered nature of poverty, the fact that the condition of women has not improved measurably, despite government interventions and infrastructure injection, the lack of funding for women's programmes, and the fact that rural women, children, people with disabilities and older persons remain the most vulnerable. In this regard, South African Women in Dialogue (SAWID), a civil society organization representing the voice of women, (amongst other organizations with a similar mandate like the Progressive Women's Movement (PWM)) has made various recommendations to Government, including the need for an integrated poverty eradication strategy, the targeting of the poorest families and marginalised communities with a basket of services, the need to strengthen the gender machinery, including the consideration of establishing a Women's Ministry, and the creation of a special fund to support Poverty Eradication.

28. Measures aimed at ensuring even distribution of health services have been intensified over the period of review for this Report. These include special measures to ensure that rural women have increased access to public health care and that rural clinics have qualified and appropriate health professionals. Significant strides have been made in ensuring equitable access to health services such

as that aimed at curbing maternal mortality and silent killers such as hypertension, diabetes, TB, malaria and HIV and AIDS. Measures have also included ensuring that women have access to reproductive health-care services throughout the country.

29. Overall, in South Africa, the strong political will and broad societal commitment has allowed for best practice measures to affirm the rights of women in critical areas and to advance the woman's agenda, for example:

- The establishment of a National Gender Machinery (NGM)
- The recognition of a core principle contained in the National Gender Policy Framework on Women's Empowerment and Gender Equality that customary and cultural practices are subject to the right to equality.
- The "Head of Department's 8 Principle Action Plan for Promoting Women's Empowerment and Gender Equality within the Public Service Workplace".
- The development of a Local Government Gender Policy Framework.
- A strong and robust gender-sensitive civil society network that is active in the fields of research, policy research, advocacy and service provision.
- The Recognition of Customary Marriages Act, 1998 (Act 120 of 1998) which provides an opportunity for women married under customary law to call on their constitutional rights should they wish to do so.
- The integrated poverty reduction and job creation programme through the EPWP which aims to create additional work opportunities for a minimum of one million people; at least 40% women, 30% youth and 2% people with disabilities, in South Africa between 2004 and 2009.
- Changes to the Basic Conditions of Employment Act, 1997 (Act 75 of 1997) which included pregnancy and parental rights and the extension of basic employment rights to vulnerable groups such as domestic workers and part-time workers.
- The provision of a social security net through a social grants programme including equal entitlement to social benefits such as grants for elderly persons, people with disabilities, and care-givers.
- Advancing women's empowerment through the mainstreaming of gender in the implementation of the Land Reform (Labour Tenants) Act, 1996 (Act 3 of 1996); Housing Act, 1997 (Act 107 of 1997); Water Services Act, 1997 (Act 108 of 1997); the Land Bank Amendment Act, 1998 (Act 21 of 1998); and the Integrated Sustainable Development Programme.
- The impact of the free basic services programme on improving the socio-economic conditions of women and the quality of life especially in rural areas.
- The achievement of universal education for children and gender parity in education.
- Partnerships between civil society and media organizations for media advocacy and programmes about gender-based violence, HIV and AIDS and other related issues that lead to improved government responses and to shifts in social norms within communities across the country.

30. Some of the challenges that need to be addressed by South Africa include:

- Increase the labour force participation rates of women, especially Black women and youth in the 15-34 year age group; decrease the unemployment and underemployment rates of women; increase opportunities to women in the labour force to be employed in larger numbers in higher levels of work and not be marginalized in the lowest job categories; eliminate wage disparities between men and women and actively promote equal pay for work of equal value; and increased hiring of women with disabilities.
- Promote the participation of women in both the first and second economies and reduce and eradicate poverty, in particular gendered poverty; and promote access to funding and credit for women entrepreneurs and women SMMEs.
- Develop a more clearly defined institutional framework necessary to coordinate and drive the vision of gender equality;
- Increase the accountability of Director Generals and Senior Managers in the Public Service for the increased recruitment of women into management positions to meet the goal of gender parity; and promote a more enabling environment for the empowerment of women in the Public Service.
- Improve and strengthen compliance as well as effective monitoring and evaluation of empowerment of women in both the public and private sectors;
- Promote gender parity in the private sector – particularly in senior management positions and on Boards.
- Increase women’s access to adequate and efficient health services, especially youth-friendly health services;
- Improve service delivery to women in rural areas and ensure that there is a strong “know your rights campaign” (and awareness of responsibilities), directly targeted at vulnerable and marginalised women in rural areas;
- Ensuring that all who are entitled to receive social grants are registered and receive the grants, especially the rural poor, elderly and disabled women.
- Significantly reduce levels of crime and violence against women and children including the following:
  - Increase the profile and level of engagement of politicians and leaders in the fight to end violence against women;
  - Increase the profile and level of engagement of faith-based groups and traditional leaders in addressing patriarchal and discriminatory attitudes; and engagement in all campaigns to address gender equality and violence against women.
  - Ensure multi-sectoral campaigns have sufficient government and sustainable resources to target and alleviate the high levels of violence against women and the girl child;

- Address gender-based stereotyping and prejudice and harmful traditional practices through increased educational campaigns;
- Address violence in schools and increase efforts at creating safe schools for all learners and in particular for the girl child regarding sexual harassment and abuse;
- Ensure that services for victims of sexual assault are increased and equitable across all provinces in relation to health, the criminal justice system and access to complementary services from civil society; while increasing training and resources.
- Address priorities identified by the 365 Day National Action Plan to End Gender Violence.

31. The key cross-cutting issues identified in this Report that need priority include:

- Improving the socio-economic conditions of women particularly in relation to poverty, unemployment and their congregation in the second and informal economy;
- Decreasing violence against women while addressing attitudes and practices that perpetuate this evil
- Vigilance and action to address constitutional and human rights violations against women and the girl child through multi-sectoral (government, civil society, private sector, donors and other stakeholders) alliances and ongoing campaigns with clear targets, impact assessment and allocated sustainable resources.
- Removing barriers in the public and private spheres in fighting prejudice, bias, and discriminatory practices

32. In South Africa's first CEDAW report, the country responded to recommendations 12 and 19 in addressing violence against women as a grave concern nationally and globally. As South Africans, we are deeply concerned by the ongoing scourge of violence against women and children, and as a nation we have embraced the challenge of eradicating all forms of discrimination and violence against women and children. This Report therefore also responds fully to General Recommendations 12 and 19.

33. The CEDAW reporting process has allowed Government to critically analyse the situation of women in the country in relation to the Articles of the Convention. It has provided a platform for the country to report on its achievements, best practices, challenges, commitments and measures needed to advance the situation of women. In the spirit of CEDAW and the South African Constitution, South Africa dedicates itself to the ongoing advancement of women and the full realization of the Convention.

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**ACRONYMS**

AIDS	Acquired Immune Deficiency Syndrome
ANC	African National Congress
APRM	African Peer Review Mechanism
ART	Anti-Retro Viral Treatment
ARV	Anti-Retro Viral
AU	African Union
BBBEE(A)	Broad-based Black Economic Empowerment (Act)
BEE	Black Economic Empowerment
BEM	Boys Education Movement
BWA	Business Women's Association
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CBOs	Community Based Organizations
CEOs	Chief Executive Officers
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CGE	Commission on Gender Equality
CSIR	Council for Scientific and Industrial Research
EPWP	Extended Public Works Programme
FBOs	Faith Based Organizations
GEM	Girls Education Movement
HIV	Human Immuno-Deficiency Virus
ID	Identity Document
ILO	International Labour Organization (ILO)
JCPS	Justice Crime Prevention Strategy
MDGs	Millennium Development Goals
MECs	Members of the Executive Councils
NCPS	National Crime Prevention Strategy
NEPAD	New Partnership for Africa's Development
NGM	National Gender Machinery
NGOs	Non-Governmental Organizations
NSP	National Strategic Plan
OSW	Office on the Status of Women
PHC	Primary Health Care
PWM	Progressive Women's Movement
SA	South Africa
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SALGA	South African Local Government Association,
SALRC	South African Law Review Commission or SALC (S.A Law Commission)
SANAC	South African National AIDS Council
SAWEN	South African Women Entrepreneurship Network
SAWID	South African Women in Dialogue
SCA	Supreme Court of Appeal

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SETA	Sector Education and Training Authorities
SMME	Small, medium and micro enterprises
STI	Sexually Transmitted Infection
TB	Tuberculosis
UN	United Nations

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- Adult Basic Education and Training Act, 2000 (Act 52 of 2000)
- Basic Conditions of Employment Act, 1997 (Act 75 of 1997)
- Black Administration Act, 1927 (Act 38 of 1927) as amended
- Broad-based Black Economic Empowerment Act, 2003 (Act 53 of 2003)
- Child Care Amendment Act, 1996 (Act 96 of 1996)
- Children’s Act, 2005 (Act 38 of 2005)
- Choice on Termination of Pregnancy Act, 1996 (Act 92 of 1996)
- Choice on Termination of Pregnancy Amendment Act, 2004 (Act 38 of 2004)
- Commission on Gender Equality Act, 1996 (Act 39 of 1996)
- Communal Land Rights Act, 2004 (Act 11 of 2004)
- Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993)
- Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)
- Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007)
- Criminal Law Amendment Act, 1997 (Act 105 of 1997)
- Criminal Procedure Act, 1977 (Act 51 of 1977)
- Domestic Violence Act, 1998 (Act 116 of 1998)
- Education Laws Amendment Act, 2000 (Act 53 of 2000)
- Education Laws Amendment Act, 2007 (Act 31 of 2007)
- Electoral Act, 1998 (Act 73 of 1998)
- Employment Equity Act, 1998 (Act 55 of 1998)
- Employment of Educators Act, 1998 (Act 53 of 1998)
- Films and Publications Act, 1996 (Act 65 of 1996)
- Films and Publications Amendment Act, 1999 (Act 34 of 1999)
- Further Education and Training Act, 1998 (Act 98 of 1998)
- Home Loan and Mortgage Disclosure Act, 2000 (Act 63 of 2000)



- Housing Act, 1997 (Act 107 of 1997)
- Immigration Amendment Act, 2004 (Act 19 of 2004)
- Independent Broadcasting Authority Act, 1993 (Act 53 of 1993)
- Intestate Succession Act, 1987 (Act 81 of 1987)
- Labour Relations Act, 1995 (Act 66 of 1995)
- Land Bank Amendment Act, 1998 (Act 21 of 1998)
- Land Reform (Labour Tenants) Act, 1996 (Act 3 of 1996)
- Land Restitution and Reform Laws Amendment Act, 1996 (Act 78 of 1996)
- Legal Aid Amendment Act, 1996 (Act 20 of 1996)
- Local Government: Municipal Structures Act, 1998 (Act 117 of 1998)
- Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)
- Maintenance Act, 1998 (Act 99 of 1998)
- Maintenance of Surviving Spouses Act, 1990 (Act 27 of 1990)
- Marriage Act, 1961 (Act 25 of 1961)
- Media Development and Diversity Agency Act, 2002 (Act 14 of 2002)
- Minerals and Petroleum Resources Development Act, 2002 (Act 28 of 2002)
- National Development Agency Act, 1998 (Act 108 of 1998)
- National Education Policy Act, 1996 (Act 27 of 1996)
- National Environmental Management Biodiversity Act, 2004 (Act 10 of 2004)
- National Environment Management Act, 1998 (Act 107 of 1998)
- National Health Act, 2003 (Act 61 of 2003)
- National Prosecuting Authority Act, 1998 (Act No. 32 of 1998)
- National Water Act, 1998 (Act 36 of 1998)
- Non-Profit Organizations Amendment Act, 2000 (Act 17 of 2000)
- Occupational Health and Safety Act, 1993 (Act 85 of 1993)
- Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)
- Prevention of Organized Crime Act, 1998 (Act 121 of 1998)
- Promotion of Access to Information Act, 2000 (Act 2 of 2000)
- Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)
- Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)
- Public Service Act, as amended in 1996, 2001 and 2007 (Act 30 of 2007)
- Recognition of Customary Marriages Act, 1998 (Act 120 of 1998)
- Refugees Act, 1998 (Act 130 of 1998)
- Restitution of Land Rights Act, 1994 (Act 22 of 1994) as amended
- Restitution of Land Rights Amendment Act, 2003 (Act 48 of 2003)
- Sexual Offences Act, 1957 (Act 23 of 1957)
- Skills Development Act, 1998 (Act 97 of 1998)
- Skills Development Levies Act, 1999 (Act 9 of 1999)
- South African Citizenship Act, 1995 (Act 88 of 1995)
- South African Citizenship Amendment Act, 2004 (Act 17 of 2004)
- South African Qualifications Authority Act, 1995 (Act 58 of 1995)

- South African Schools Act, 1996 (Act 84 of 1996)
- Traditional Health Practitioners Act, 2004 (Act 35 of 2004)
- Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003)
- Unemployment Insurance Act, 2001 (Act 63 of 2001) and amended in 2003
- Unemployment Insurance Contributions Act, 2002 (Act 4 of 2002)
- Water Services Act, 1997 (Act 108 of 1997)
- Witness Protection Act, 1998 (Act 112 of 1998)
- Women Legal Practitioners Act, 1923 (Act 7 of 1923)

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## INTRODUCTION

### Background

“We are all witnessing a historic moment, a moment which is characterised by unprecedented solidarity. This solidarity is reflected in one principle, which is not to be compromised. This is the principle of equality between human beings: equality between men and women....

...May I conclude by saying that a revolution has begun. There is no going back. There will be no unravelling of commitments. Neither today's nor last year's and certainly, not this decade's commitments. This revolution is too just, too important, and certainly long overdue.”

Statement by Gertrude Mongella, President of the Pan African Parliament, while acting as Secretary General during the Welcoming Ceremony of the Fourth UN World Conference on Women, Beijing, 4 September 1995

South Africa signed the CEDAW Convention on 29 January 1993 and ratified it without reservation on 15 December 1995. According to the provisions of Article 27.2 of the Convention, it entered into force for South Africa thirty days later, i.e. on 15 January 1996.

Article 18 of the Convention stipulates that States Parties to the Convention will submit to the Secretary-General of the United Nations, for consideration by the CEDAW Committee, a report of the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the Convention and on the progress made in this respect. Reports are due within one year after the entry into force of the Convention for the State concerned, and thereafter at least every four years and further whenever the Committee so requests.

South Africa's initial report was due on 14 January 1997, and was submitted on 5 February 1998 (CEDAW/C/ZAF1). It was considered by the UN CEDAW Committee during its nineteenth session in 1998.

After the initial report, no further reports have been submitted by South Africa. South Africa's second periodic report was due on 14 January 2001, the third periodic report on 14 January 2005 and the fourth is due on 14 January 2009.

### Overview

According to official data, as of July 2008 women constituted 25,242,200 of the 48,687,000 people in South Africa<sup>1</sup> while men constituted 23,444,800. This places women at about 52% of the population.

<sup>1</sup> Statistics SA, 2007, Mid-year population estimates, July 2007, Pretoria.

The racial breakdown of the population is 79.2% African, 9.0% White, 9.2% Coloured and 2.6% Indian/Asian.

Gender equality has been recognized by South Africa and the UN member states as essential and critical for the achievement of the UN priorities of peace, security, human rights, development and meeting the Millennium Development Goals (MDGs).

In the South African government, the responsibility for women's empowerment and gender equality lies with the Minister in the Presidency. The responsibility for gender mainstreaming as a strategy for realizing gender equality, rests with all members of the Cabinet. The National Policy on Women's Empowerment and Gender Equality (hereinafter known as the National Gender Policy) outlines the structure and functions of the facilitative components of the NGM for women's empowerment, each of which are located strategically at the highest level of government, within Parliament and amongst statutory bodies. These include the Office on the Status of Women (OSW) located within the Presidency, the Joint Committee on the Improvement of Quality of Life and Status of Women in Parliament, (JMC) and the Commission on Gender Equality (CGE) that is a statutory body. Each of these components has specific and distinctive mandates, roles and functions. Although the National Gender Policy recognizes the role of civil society as an important component of the National Gender Machinery (NGM), it does not prescribe the functions for civil society, but strives to work through coordinated action. The South African Human Rights Commission (SAHRC) also plays a vital oversight and advocacy role with regard to equality, monitoring and legislation.

South Africa has incorporated into its transformation agenda a gender; disability; children; and youth rights-based mainstreaming strategy for governance, implementation, monitoring and evaluation within government. Specifically, gender mainstreaming, according to the National Gender Policy is about:

- Infusing a gender perspective into all policies, programmes and plans of action at all levels of government;
- Applying an analytical lens that integrates the concerns of men and women in a crosscutting way, but highlights women's empowerment e.g. poverty and violence against women
- Levelling the playing field so as to eradicate poverty in general and gendered poverty in particular;
- Reducing inequality faced by women based on sex, race, disability, age, sexual orientation, class; and geography (urban-rural); and
- Eliminating all the barriers that limit women's full participation in society and the economy as equals.

Poverty, particularly amongst black female-headed families, is one of the major challenges that South Africa has grappled with since the onset of freedom and democracy. Women's lives in the Coloured population in the Cape provinces were also exacerbated by the apartheid legacy of the wine farms and the tot-system with its related socio-economic ills. Poverty is also compounded by the impact of the

HIV and AIDS infection, estimated at 11 % of the population (approximately 5.35 million people) with the highest prevalence, namely 24%, in the female population aged 25-49.

According to the APRM Report, 2007, “five legacies of the apartheid era have persisted: a dualistic polity, pervasive poverty; large scale structural unemployment; inequitable distribution of wealth and income; and a high incidence of crime”. Unfortunately, black women, women in rural areas and women with disabilities are most acutely affected and bear the brunt of this unequal legacy in all aspects of life. The erosion of family life, the racial dimension to the feminisation of poverty and its impact on the health and well-being of marginalized women also severely challenges sustainable development and the creation of a peaceful society free from crime and violence.

### **Scope of the Report**

This Report will therefore outline progress, achievements, and challenges since the last Report, as well as measures required for greater impetus in the advancement of women’s empowerment and gender equality in South Africa. It provides both qualitative and quantitative data on the status of women in South Africa. A variety of case studies have been cited throughout this report to highlight the South African reality in a balanced and transparent manner. Several case studies were used specifically in Part V: Violence against Women to identify both the use of and the implications for the equality provisions of the Constitution. The Report also incorporates responses to comments and questions raised by the CEDAW committee during its deliberations on South Africa’s first National CEDAW submission in 1998.

This Report adheres to the CEDAW Committee’s framework for reporting guidelines for subsequent reports and seeks to answer questions raised by the CEDAW Committee in its response to South Africa’s First Report, particularly on the status of women and the extent to which the implementation of gender mainstreaming occurs in South Africa in compliance with the Convention. The report is presented in the following manner:

- Executive Summary
- Introduction: Overview and Scope of the Report
- Part I: *Articles 1-6*
- Part II *Articles 7-9*
- Part III: *Articles 10-14*
- Part IV: *Articles 15-16*
- Part V: Response to Recommendation 12 & 19
- Part VI: Conclusion
- Appendices on a CD

In South Africa’s First Report, the country responded to General Recommendations 12 and 19 in addressing violence against women which is a grave concern nationally and globally. In that submission, South Africa made a recommendation to the Committee that the issue of violence against

women should be addressed as a stand alone and substantive provision in the Convention's articles. This Report also responds in full to General Recommendations 12 and 19.

The methodology used for the compilation of, and consultation on, this report included desktop research, a systematic review of relevant government documents and submissions as well as an analysis of Statistics South Africa data. In addition, structured consultations and data collection processes with key government departments and provincial OSW counterparts; the NGM, the CGE; National Parliament's Joint Monitoring Committee on the Improvement to the Quality of Life and Status of Women. Discussions with individual gender experts in the country were also undertaken at all stages of this reporting process. The final draft report has also undergone a thorough assessment by an individual legal expert on the Convention and its reporting processes. The Report was presented to the Women's Parliament held in National Parliament in August 2008. Lastly, the final draft document was submitted to the South African Cabinet for approval and adoption prior to submission to the UN CEDAW Committee.

South Africa intends to widely distribute and consult on the Cabinet-approved document, which will include a national dialogue on the Report, as well as the publication of the document in all official languages, Braille and in electronic and audio- tape.

## PART 1

### ARTICLE I: DEFINITION OF DISCRIMINATION AGAINST WOMEN

#### The Constitution of South Africa

1.1 The Constitution of the Republic of South Africa, Act 108 of 1996, which took effect on 4 February 1997<sup>2</sup> is the supreme law of the land. It seeks to "...establish a society based on democratic values, social justice and fundamental human rights" It provides for the establishment of one sovereign state, a common South African citizenship and a democratic system of government committed to achieving equality between men and women and people of all races. It further provides for the prohibition of racial, gender and all other forms of discrimination, and promotes the celebration of formal (*de jure*) and substantive (*de facto*) equality<sup>3</sup>. Section 9 provides that neither the state, nor any person, may discriminate directly or indirectly on the grounds of gender, sex, pregnancy, marital status or any other ground or combination of grounds listed or unlisted in s9 (3). To clarify its approach to equality, the Constitution further states that:

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<sup>2</sup> This Constitution, which is colloquially termed the "Final Constitution", superseded the Interim Constitution Act No 200 of 1993, the latter which had similar provisions in relation to its supremacy in terms of the law, equality, and the general protection of women

<sup>3</sup> Refer to Section 9 of the Constitution

*“Equality includes the full and equal enjoyment of all rights and freedoms. To promote equality, legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination may be taken”*

Equality is also given prominence in the Preamble to the Constitution where it is stated that: *“South Africa belongs to all who live in it, United in our diversity”*

1.2 As the Constitution is the supreme law, all laws, policies and programmes of government are subject to it, and any piece of legislation, policy or government programme that is contrary to the Constitution will be declared unconstitutional by the Constitutional Court. Section 9 of the Constitution has proved to have the same effect as a combination of Articles 1 and 4 of CEDAW. This practical adherence to the spirit of CEDAW is further augmented by the fact that all courts are required to consider the provisions of international instruments as section 39 (1) (b) of the Constitution provides that when interpreting the Bill of Rights, a court must consider international law and may consider foreign law.

1.3 The constitutional provisions on equality and human dignity have also provided sufficient guidance to the courts with regard to recognising and protecting equality between women and men when faced with conflicting claims relating to the constitutional guarantee of gender equality and constitutional recognition of customary and religious laws. Examples in this regard include a number of Constitutional Court decisions on customary and Muslim marriages and inheritance from deceased spouses. These decisions are discussed in Article 16 of the Report.

### **Key Equality Legislation**

1.4 Law reform interventions in the first ten years of democracy have been underpinned by three major considerations, namely:

- Aligning substantive law with constitutional imperatives, international human rights obligations and peoples’ needs, taking into account the diversity and changing nature of such needs;
- Broadening access to justice, particularly for groups or communities whose access is undermined by the legacy of historical marginalization; and
- Transforming and strengthening the institutional framework for enforcement.

1.5 The adequacy of the constitutional provisions on equality has generally been confirmed in the interpretation of the Constitution through other pieces legislation, administrative measures and general court jurisprudence. With particular regard the ancillary pieces of legislation, the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No 4 of 2000 )(hereinafter known as the Equality Act) is to date the key Act which fully embodies and expounds on the constitutional provisions of equality.

1.6 The Equality Act, which is a statute that the Constitution specifically required to be enacted within a stipulated timeframe to give effect to Section 9 of the Constitution, provides a broad definition of

discrimination that encompasses discrimination against women by any person, including the state, private entities and individuals. Furthermore, whilst the Constitution applies vertically, in other words, it regulates the relationship between the state and individuals, it does not necessarily apply horizontally in all situations (it does not always regulate relationships between individuals). It is therefore noteworthy that the Equality Act further extends protection to, amongst others, women, in that it does not distinguish between the protection that is to be afforded in situations involving public power and those that are inherently private in nature. Thus, in effect the Equality Act can be interpreted as giving wider protection than that afforded under the Constitution, by virtue of the fact that it has a wider definition of discrimination.

1.7 The definition of discrimination contained in the Equality Act is comparable to that in Article I of CEDAW as it covers direct and indirect discrimination and the elimination of both *de jure* and *de facto* discrimination. The Act defines discrimination as: “any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly:

- (a) imposes burdens, obligations or disadvantage on; or
- (b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds”<sup>4</sup>

1.8 The “prohibited grounds”<sup>5</sup> under the Equality Act are extensive enough to cover all forms of discrimination against women, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; or any other ground where discrimination based on that ground:

- 1. causes or perpetuates systemic disadvantage
- 2. undermines human dignity; or
- 3. adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph(a)”

### **Textbox 1: Definition of Equality**

1.8 In addition, the Act defines equality as: “the full and equal enjoyment of rights and freedoms as contemplated in the Constitution and includes *de jure* and *de facto* equality and also equality in terms of outcomes”<sup>6</sup> The reach of the Act is broad enough to cover the scope of section 1 of CEDAW. In fact some of the specific forms of gender discrimination that are prohibited by the Act are paraphrased from CEDAW. Most of these are captured in section 8 of the Act which states that: “Subject to section 6, no person may unfairly discriminate against any person on the ground of gender, including:

- (a) gender-based violence
- (b) female genital mutilation
- (c) the system of preventing women from inheriting family property

<sup>4</sup> Section 1(viii) of the Equality Act, 2000

<sup>5</sup> Section 1(xxii) of the Act

<sup>6</sup> The Equality Act, 2000



(d) any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child;

(e) any policy or conduct that unfairly limits access of women to land rights, finance, and other resources;

(f) discrimination on the grounds of pregnancy;

(g) limiting women's access to social services or benefits, such as health, education and social security;

(h) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons;

(i) systemic inequality of access to opportunities by women as a result of the sexual division of labour.”

1.9 Prior to the enactment of the Equality Act, other pieces of legislation had been passed in an effort to promote equality and non discrimination. For example, the Employment Equity Act, 1998, (Act 55 of 1998), which was adopted by National Parliament shortly after the presentation of South Africa's First CEDAW Report, provides a framework for understanding and eliminating discrimination in the workplace.

This Act is discussed in more detail under Article 11 of this Report.

### **Monitoring Implementation of Equality Legislation**

1.10 South Africa has established independent institutions that strengthen the democratic processes of the country and monitor the implementation of the equality legislation. Examples of such institutions are:

1.10.1 The Equality Courts: These courts deal with matters covered by the Promotion of the Equality and Prevention of Unfair Discrimination Act, 2000 ( Act 4 of 2000. ) Equality courts are housed in the same buildings as Magistrates' courts, and deal with issues of

- Unfair discrimination,
- Publication of information that unfairly discriminates
- Harrassment
- Hate Speech.

1.10.2 The South African Human Rights Commission: The mandate of the SAHRC is to conduct regular equality reviews.<sup>7</sup> The SAHRC Equality Unit is committed to the achievement of social justice through the promotion and protection of human rights and in particular the right to equality as enunciated in section 9 of the South African Constitution. In addition, the SAHRC is committed to providing awareness in respect of the Equality Act, 2000 that seeks to ensure that the inequalities of

<sup>7</sup><http://www.sahrc.org.za>

the past on the basis of gender, disability and race are eliminated, and to promote the achievement of substantive equality in the country by:

- instituting legal proceedings in the Equality Court in its own or public interest or on behalf of another person who cannot act in their own name
- requesting any component of the State or any person to provide information on measures taken relating to the achievement of equality
- monitoring and assessing the extent to which unfair discrimination on the grounds of race, gender, disability and other grounds persist in South Africa, the effect thereof and recommendations on how best to address the problem.

1.10.3 The Commission on Gender Equality: The CGE, established through the Commission on Gender Equality Act, 1996 (Act 39 of 1996) is one of six independent statutory bodies tasked with supporting constitutional democracy primarily through monitoring in the private and public spheres.

1.10.4 The Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women: This is a permanent Parliamentary Portfolio Committee in the National Parliament that monitors and oversees Government's progress regarding compliance with global instruments it is signatory to, with specific reference to South Africa's obligations to agreements like the Beijing Declaration and its Platform for Action, CEDAW, the African Union (AU) Heads of States' Solemn Declaration on Gender Equality in Africa, and the Southern African Development Community (SADC) Protocol on Gender and Development (2008).

### **Equality Jurisprudence**

1.11 The Constitutional Court has consistently interpreted the constitutional provisions on equality to give effect to substantive equality. Many of the landmark court decisions on equality have fundamentally advanced *de jure* and *de facto* equality between women and men. Key court decisions in this regard have ensured the vindication of women's rights and freedoms in areas such as customary and Muslim inheritance laws, insurance law, violence against women, the protection of motherhood and positive measures aimed at accelerating women's access to economic opportunities. These decisions are discussed in detail in appropriate sections of the Report.

### **Violence against Women**

This is fully addressed in Part V of the Report.

## **ARTICLE 2: OBLIGATIONS TO ELIMINATE DISCRIMINATION**

### **Article 2 (a): Mainstreaming the Principle of Equality**

2.1 South Africa has made great strides with the implementation of measures aimed at integrating the principle of equality between women and men in all appropriate legislation and administrative

measures. Many of the questions raised in Article 2 have been effectively dealt with in Article 1 in relation to the Constitution and legislation which aims to guarantee non-discriminatory practice. Other legislative measures are discussed in detail below and will not be repeated in other relevant sections such as employment.

2.2 The Electoral Act, 1998 (Act 73 of 1998) requires every registered party and candidate to respect the rights of women and to communicate freely with parties and candidates, facilitate full and equal participation of women in political activities, ensure free access for women to all public political meetings, marches, demonstrations, rallies and other public political events and take all possible steps to ensure that women are free to engage in political activities. In December 2007, the African National Congress (ANC) took a decision to ensure gender parity in its decision-making structures and with respect to representatives in National Parliament and Provincial Legislatures.

2.3 The Local Government Municipal Structures Act, 1998 (Act 117 of 1998) makes provision for the equal representation of women and men in political party lists and ward committees.

2.4 The Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003) requires at least 30% of members of the National House of Traditional Leaders to be women. The Act provides for measures for parity of representation between female and male traditional leaders in district and local municipalities, and, is explicit about the promotion of gender equality and non-sexism. Subsection 3 of the preamble states, “A traditional community must transform and adapt to customary law and customs relevant to the application of this Act so as to comply with the relevant principles contained in the Bill of Rights in the Constitution; in particular by preventing unfair discrimination; promoting equality; and seeking to progressively advance gender representation in the succession to traditional leadership positions.” The Institution of Traditional Leadership has established a Portfolio Committee on Gender, Youth, Children and People with Disabilities that helps to monitor cultural practices and customs that undermine gender equality. It also keeps the gender debate going within the Traditional Leadership Institution.

2.5 In September 2007, the Department of Provincial and Local Government, which included the House of Traditional Leaders, launched the Local Government Gender Policy Framework. This comprehensive policy is crucial in ensuring that the provisions relating to gender equality and equity find practical expression in local government core policies, planning processes, programmes, projects and budgets. The policy proposes mainstreaming as a strategy for promoting gender equality and women’s empowerment in the local government sphere. Furthermore, it advances a monitoring and evaluation framework to track progress.

2.6 The Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) also mainstreams gender in participation within municipal structures and provides the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities, and ensure universal access to essential services that are affordable to all. The following are examples of some initiatives:

- Municipalities have varying capacities in terms of resources and at times geographical location heightens differences in capacities.
- Well resourced municipalities are more advanced in the gender mainstreaming agenda. The challenge is to support and strengthen municipalities to implement the Local Government Gender Policy Framework for sustainability.
- Government and women's organization partnerships provide training on gender sensitivity empowerment and mainstreaming.
- The Municipal Leadership Development Programme will benefit 150 women Councillors. The programme will be run in the Eastern Cape in Cacadu and Chris Hani Districts and in Limpopo in the Greater Sekhukhune District.
- The Traditional Leadership Institution participates in gender-related activities and campaigns such as the 16 Days of Activism for No Violence Against Women and Children<sup>8</sup>

### **Equality and Non-Discrimination laws**

2.7 As previously noted, the key piece of legislation that enforces non-discrimination is the Equality Act. In 1998, South Africa passed the Employment Equity Act, 1998 (Act 55 of 1998). This Act provided a framework for eliminating systemic and structural inequality and discrimination with regard to accessing labour market opportunities and benefits. It also provided a framework for the implementation of positive measures, referred to in the Act, such as affirmative action measures, which aim to redress imbalances of the past by giving priority to the advancement of women, black people and persons with disabilities.

2.8 This Act employs two main strategies in addressing discrimination in the workplace. The one focuses on the prohibition and prevention of discrimination (Chapter 2), while the other imposes positive duties on every employer who has 50 and more employees or is within a stipulated sector financial threshold. These employers are required to implement a diagnostic approach to the eradication of inequality in the workplace. This involves auditing their policies and practices to identify barriers to the entry, advancement, development, remuneration and retention of black people, women, and persons with disabilities. Measures in response to each of the barriers and which should include targets for achieving equitable representation of the three designated groups are to be implemented over a period of time until discrimination and inequality have substantially subsided.

2.9 Increasingly, gender focal points in government are developing the capacity and skills to undertake gender analysis of these programmes to ascertain their impact on gender relations in their workplaces.

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<sup>8</sup> Department of Provincial and Local Government *CEDAW* Report Input, 2008

## 2.10 Other Laws that Impact on Discrimination, with particular focus on the Workplace

**Table 1: List of Laws and Policies that Impact on Discrimination in the Workplace**

<b>Legislation / Policy</b>	<b>Brief summary of impact on discrimination</b>
Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)	This Act comprehensively deals with issues of discrimination and addresses residual factors of the promotion of equality in the workplace. It covers employees and issues not dealt with in the Employment Equity Act, 1998 (Act 55 of 1998). Its scope covers all areas of life, including the family. The Act also prohibits “harassment” on the grounds of sex and other grounds or a combination of grounds. It also prohibits “hate speech”.
Employment Equity Act, 1998 (Act 55 of 1998)	The Act seeks to promote equal opportunity and fair treatment in employment through the elimination of (unfair) discrimination; and implementing affirmative action measures to redress the disadvantages experienced by women and other disadvantaged groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce
Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)	This is a constitutional statute issued in terms of section 217(2) of the Constitution. The Act seeks to provide a framework for preferential treatment of women of all races, black people and persons with disabilities in procurement transactions, as a means of addressing historical imbalances, to accelerate <i>de facto</i> equality. The Act introduces a point system for adjudicating state tenders or contracts. The framework includes preferential points for black women and men, white women and persons with disabilities. A challenge in the implementation of the Act has been that the point system is ineffective and in most instances results in the historically advantaged getting the tenders or contracts. Its alignment with the BBBEEA strengthens its impact.
Skills Development Act, 1998 (Act 97 of 1998) and Skills Development Levies Act, 1999 (Act 9 of 1999)	This Act sets out a framework for managing skills development. The implementation of the Employment Equity Act, 1998 (Act 55 of 1998) requires synergy with that of the Skills Development Framework. Furthermore, the Skills Development Strategy sets out skills development targets for women of all races (54%); black people, including women, and persons with disabilities

Basic Conditions of Employment Act, 1997 (Act 75 of 1997)	This Act protects rights relating to pregnancy and parenting. It also deals with other conditions of work. The Act has been extended to Domestic Workers
Labour Relations Act, 1995 (Act 66 of 1995)	This Act deals with various labour rights, including freedom of association and collective bargaining rights. It also deals with sexual harassment in the workplace
Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003)	This Act deals with economic empowerment of black women and men and persons with disabilities. The Act gives priority to issues such as employment equity and equalizing opportunities through: human resources development, preferential procurement and state asset restructuring
Unemployment Insurance Contributions Act, 2002 (Act 4 of 2002)	This Act applies to domestic and seasonal workers and their employers, and provides for a monthly contribution of 1% of salary to be paid to the Unemployment Insurance Fund. It forces the employer to register the employee and it has significantly improved the benefits for vulnerable workers
White Paper on Affirmative Action in the Public Service	This White Paper deals with rights of public employees. This includes full remuneration during maternity leave of four months
The Domestic Worker Sectoral Determination	This was set by the Minister of Labour to ensure that vulnerable workers are protected. It outlines the basic working conditions and minimum wages for domestic workers and gardeners and also makes provision for annual wage increases for these workers. As of 01 November 2003, such full-time employees are to receive a minimum of 8% increase in wages earned
Minerals and Petroleum Resources Development Act, 2002 (Act 28 of 2002)	This Act entrenches the right of women to participate in and own mines.
The White Paper on South African Land Policy	This White Paper also provides measures that seek to enable women to access financial and support services
Home Loan and Mortgage Disclosure Act, 2000 (Act 63 of 2000)	This Act extends credit to women and other historically disadvantaged groups. It encourages financial institutions to provide them with credit to acquire housing
Media Development and Diversity Agency Act, 2002 (Act 14 of 2002)	The Act seeks to provide a framework for accelerating equality, including gender equality in media ownership, control, participation and content. This is one of the special measures that have been implemented by government, in partnership with civil society, to mainstream the principle of equality, including gender equality, in the media

Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003) (Also referred to as BBEEA)	<p>The Act seeks to correct the apartheid legacy of racial imbalances in ownership, control and participation within the South African economy and mainstreams the empowerment of Black women in its provisions. Government has also endeavoured to mainstream gender in the key implementation tools under the Act especially the Codes of Good Practice on Black Empowerment and the Generic Balanced Scorecard for measuring black empowerment.</p> <p>Although sector initiatives such as the Black Economic Empowerment (BEE) Charters have up until now not adequately embraced the gender dimension, through state interventions, this is being addressed in the relevant dialogue forums and in the generic instruments issued by government (Codes and Score Card). The Act covers a broad spectrum of economic issues, including business development and access to credit. It also touches on employment equity and skills development relating to the empowerment of black women and men.</p>
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2.11 It must be noted however that in the instance of discrimination on the grounds of pregnancy, while both the Employment Equity Act, 1998 (Act 55 of 1998), and the Equality Act, prohibit such discrimination, and the Basic Conditions of Employment Act, 1997 (Act 75 of 1997), provides for protected maternity leave, the limitation is that the latter Act does not make clear provisions for remuneration during maternity leave. This issue has come under scrutiny in the work of the Commission for Employment Equity, a statutory body that monitors and evaluates the implementation of the Employment Equity Act in the workplace, by both the Public and Private sectors.

2.12 Several legal cases in this regard have impacted positively on women and children in South Africa. Best practices in this regard are, *inter alia*:

- the various amendments to the Criminal Procedure Act, 1977 (Act 51 of 1977);
- the minimum sentences for certain offences as outlined in the Criminal Law Amendment Act, 1997 (Act 105 of 1997);
- the restrictions with regard to bail provisions;
- the Sexual Offences and Family Courts;
- labour law developments;
- the Employment Equity Act, 1998 (Act 55 of 1998);
- the Domestic Violence Act, 1998 (Act 116 of 1998) and;
- the Maintenance Act, 1998 (Act 99 of 1998)

## Key Constitutional Court Judgements that have impacted positively on women in South Africa

2.13 The Constitutional Court made a number of important judgements as is summarised below:

1. Particular provisions of CEDAW places particular emphasis on certain aspects such as the advancement of women in rural areas and customary laws related thereto and issues of violence against women. It would therefore be fitting to particularly mention cases that have had a large impact in this regard.

### Customary Law

#### Bhe<sup>9</sup>

2. This case concerned a constitutional challenge to the rule of male primogeniture as it applies in the African customary law of succession. The application was made on behalf of the two minor daughters of Ms Nontupheko Bhe and her deceased partner. It was contended that the impugned provisions and the customary law rule of male primogeniture unfairly discriminated against the two children in that they prevented the children from inheriting the deceased estate of their late father.<sup>10</sup>
3. The court considered the African customary law rule of male primogeniture, in the form that it has come to be applied in relation to the inheritance of property. It held that it discriminates unfairly against women and illegitimate children, and accordingly declared it to be unconstitutional and invalid.
4. The court further held that while it would ordinarily be desirable for courts to develop new rules of African customary law to reflect the living customary law and bring customary law in line with the Constitution, that remedy is not feasible in this matter, given the fact that the rule of male primogeniture is fundamental to customary law and not replaceable on a case-by-case basis.

#### Gumede<sup>11</sup>

5. The facts of the case were that Elizabeth Gumede entered into a customary marriage in 1968, which was the only marriage to which the applicant's husband was party. The marriage has

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<sup>9</sup> *Bhe and Others v Magistrate, Khayelitsha and Others CCT49/03 ; Shibi v Sithole and Others CCT69/03 ; South African Human Rights Commission and Another v President of the Republic of South Africa and Another 2005 (1) SA 850 (CC); 2005 (1) BCLR 1 (CC).*

<sup>10</sup> The South African Human Rights Commission and the Women's Legal Trust were permitted direct access to the Court in the third case which was brought in the public interest, and as a class action on behalf of all women and children prevented from inheriting by reason of the impugned provisions and the rule of male primogeniture.

The Commission for Gender Equality was admitted as amicus curiae and, together with the Minister for Justice and Constitutional Development (who was a respondent in each of the cases), presented oral and written submissions.

<sup>11</sup> *Gumede v President of the Republic of South Africa and Others (Women's Legal Centre Trust as Amicus Curiae) [2008] ZACC 23.*



since broken down irretrievably, and in January 2003 her husband instituted divorce proceedings. The Recognition Act provides that a customary marriage concluded after the commencement of that Act, being 15 November 2000, is automatically in community of property. The Act does not, however, provide for this property regime in respect of customary marriages concluded before the commencement of the Act, and those marriages are subsequently governed by customary law.

6. The result thereof is therefore that a wife to a customary marriage concluded before the commencement of the Act will in effect be entitled to nothing upon dissolution of the marriage. The Court, also examined the codified customary law of marriage in KwaZulu-Natal, which subjects a woman married under customary law to the marital power of her husband, who is the exclusive owner and has control of all family property. The Constitutional Court found these impugned provisions to be self-evidently discriminatory on at least the one listed ground of gender. Only women in a customary marriage are subject to these unequal proprietary consequences.

### Tinyiko<sup>12</sup>

7. The case concerned the Baloyi tribe and their decision that their next chief (Hosi) , would be a woman, Ms Shilubana, departing from the rule of male primogeniture. (See textbox 2 below) The Court found that the succession to the leadership of the Baloyi had in the past operated according to the principle of male primogeniture. However, the traditional authorities had the authority to develop customary law. They did so in accordance with the constitutional right to equality. The value of recognising the development by a traditional community of its own law in accordance with the Constitution was not outweighed by the need for legal certainty or the protection of rights. The change in customary law did not create legal uncertainty and Mr Nwamitwa, Ms. Shilubana's uncle and the late Chief's brother, did not have a vested right to be Hosi.

### **Textbox 2: Women Can Be Chiefs**

In a judgement hailed as gender equality and recognition of women in traditional leadership, a Limpopo woman has won the right to succeed her late father as Hosi (Chief). The Constitutional Court ruled that Tinyiko Nwamitwa-Shilubana's appointment to succeed her father as Hosi of the Valoyi Tribe near Tzaneen is legal. Her father, Hosi Fofozwa Nwamitwa, died in 1968 without a male heir. At the time the customary law did not permit women to be a Chief. Instead her place was taken by her uncle, the late chief's brother. Between 1996 and 1997 the tribe reversed the arrangement and passed the progressive resolutions to restore the chieftaincy to Hosi Fofozwa Nwamitwa house and decided Nwamitwa-Shilubana should take over from her uncle. An interdict was successfully sought to stop Nwamitwa-Shilubana being installed as a successor, and the Pretoria high court, together with the Appeal Court, ruled in this favour. In a groundbreaking decision, Judge Johann van der Westhuizen said both the High court and Appeal court failed to acknowledge the power of the

<sup>12</sup> *Shilubana and Others v Nwamitwa (Commission for Gender Equality; National Movement of Rural Women; Congress of Traditional Leaders of South Africa as Amici Curiae)* 2008 ZACC 9.

traditional authorities to develop customary law, and that the Constitution required the courts to respect this..

The Sowetan newspaper

## Intestate Succession

### Daniels<sup>13</sup>

8. The Intestate Succession Act, 1987 (Act 81 of 1987), and the Maintenance of Surviving Spouses Act, 1990 (Act 27 of 1990), conferred rights to claim against the estate of a deceased spouse on a surviving spouse. The applicant in this matter had been married to the deceased in terms of Muslim rites. The marriage was never solemnised according to the requirements of the Marriage Act, 1961 (Act 25 of 1961).
9. The applicant sought an order recognising her as the spouse of the deceased in terms of the Intestate Succession Act, 1987 (Act 81 of 1987). The Constitutional Court held that the word “spouse” as used in this Act included the surviving partner of a monogamous Muslim marriage. It further held that the word “survivor” as used in the Maintenance of Surviving Spouse Act, 1990 (Act 27 of 1990), included the surviving partner of a monogamous Muslim marriage. Thus it was held that the applicant was a “spouse” and “survivor” as referred to in the respective Acts.

## Violence Against Women

### Carmichele<sup>14</sup>

10. The specific issue was whether the High Court and the Supreme Court of Appeal ought to have broadened the concept of “wrongfulness” in the law of delict in the light of the State’s constitutional duty to safeguard the rights of women.
11. The applicant sued the two Ministers concerned for damages resulting from a brutal attack on her by a man who was awaiting trial for having attempted to rape another woman. Despite his history of sexual violence, the police and prosecutor had recommended his release without bail. In the High Court the applicant alleged that this had been an omission by the police and the prosecutor. She also relied on the duties imposed on the police by the interim Constitution and on the State under the rights to life, equality, dignity, freedom and security of the person and privacy. In a unanimous decision, the Constitutional Court held that the State is obliged by the Constitution and international law to prevent gender-based discrimination and to protect the dignity, freedom and security of women. It is important that women be free from the threat of sexual violence. In the particular circumstances of the present case the police

<sup>13</sup> Daniels v Campbell No and Others 2004 (7) BCLR 735 (CC)

<sup>14</sup> Carmichele v Minister of Safety and Security and Another (Centre for Applied Legal Studies Intervening) 2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC).

recommendation for the assailant's release could therefore amount to wrongful conduct giving rise to liability for the consequences. Similarly, the Court held that prosecutors, who are under a general duty to place before a court any information relevant to the refusal of grant of bail, might reasonably be held liable for negligently failing to fulfil that duty.

Masiya<sup>15</sup>

12. *“The Constitutional Court handed down judgment today in a case concerning the definition of rape. The questions before this Court concerned firstly, whether the common law definition of rape needs to be developed to include ‘anal penetration of a person’”*.<sup>16</sup>
13. Mr Masiya appeared in the Regional Court on a charge of rape of a nine-year-old girl, the complainant. Evidence adduced at the trial established that he had penetrated the complainant anally, therefore necessitating conviction on the offence of indecent assault, a competent verdict to rape. The Magistrate, on his own accord, developed the common law definition of rape to include non-consensual penetration of the penis into the vagina or anus of a person and made the definition gender-neutral. The basis was that the distinction between non-consensual penile penetration of the anus of a female or male, on the one hand, and of the vagina, on the other, is irrational, archaic and discriminatory. Having developed the common law, the Magistrate convicted the applicant of rape and referred the matter to the High Court for confirmation of the conviction and for sentencing. The High Court, agreeing with the Magistrate's reasons for developing the definition, confirmed the conviction on a charge of rape. It held that the existing definition was constitutionally invalid and developed it to include non-consensual anal penetration defined in gender-neutral terms. As a result, certain provisions of the Criminal Procedure Act 51 of 1977 and the Criminal Law Amendment Act 105 of 1997 were amended so as to be gender-neutral and consistent with the developed definition. The case was referred to the Constitutional Court for confirmation.
14. The Constitutional Court held that the definition must be extended to include non-consensual anal penetration of the anus of females.
15. The minority dissented on one point. It found that the definition of rape should also be extended to include unconsensual anal penetration of men. It argued that, once it was accepted that rape was about the infringement of dignity and that anal rape was as severe an infringement of a victim's dignity as vaginal rape, it made no sense to distinguish between men and women. To limit the definition to female victims would in no way increase the protection afforded to women, but would rather reinforce dangerous, gendered stereotypes.

<sup>15</sup> *Masiya v Director of Public Prosecutions Pretoria and Another (Centre for Applied Legal Studies; Tshwaranang Legal Advocacy Centre as Amici Curiae)* 2007 ZACC 9; 2007 (5) SA 30 (CC); 2007 (8) BCLR 827 (CC).

<sup>16</sup> Newspaper Caption.

White<sup>17</sup>

16. *“Rape victim’s successful suit opens door to others  
Marilyn White’s court victory to hold police legally responsible for her rape by her estranged HIV-positive husband has opened the door for damages claims by hundreds of women in a similar position. Six years ago, she obtained a protection order prohibiting her abusive s ex-offender husband, Thomas White, from entering her home in East London. But in November 2002, he moved back into her home uninvited and when she asked the police to enforce the order and arrest him, three members of the Cambridge Police Station refused to do so. Thomas raped her a few days later. Now a full Bench of the Grahamstown High Court has confirmed their failure to arrest Thomas was the ‘factual and legal’ cause of the rape. The judges held that White was raped ‘within a few days of the police’s wrongful omission to take proper and adequate steps for her protection at her home as required by the order of court’. Having established the police’s liability, White is now suing then-Safety and Security Minister Charles Nqakula and the three police members for R2m in damages.....”*<sup>18</sup>.

<b>Article 2(b): Prohibition of Discrimination against Women</b>
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2.14 The Constitution and the Equality Act remain the clearest and most comprehensive statement of law on the prohibition and elimination of discrimination against women in South Africa. The Equality Act seeks to address systemic gender and other forms of discrimination in all spheres of South African life. A closer scrutiny of the above stated cases will show that the courts have also used the Constitution and international law, including CEDAW, to develop statutory, common, customary, and religious law to prohibit and eliminate discrimination against women, thus giving effect to the principle of equality between women and men.

<b>Article 2(c): Mechanisms for Enforcing Non-Discrimination</b>
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2.15 The Equality Act provides for the establishment of Equality Courts, which have been introduced since June 2003 as a special chamber in existing Magistrates and High Courts to deal with complaints of discrimination. These courts are presided over by specialist presiding officers who have been designated as Equality Court Presiding Officers by virtue of their human rights background and training on equality issues. Clerks of the Equality Court and Registrars are also specially designated and trained on equality issues before such designation. In addition, the Equality Act:

- Provides for Alternative Forums to provide informal dispute resolution services for the enforcement of some of the rights under it. Alternative Forums include institutions such as the CGE, the SAHRC, the Public Protector and the Pan South African Language Board.

<sup>17</sup> Not yet reported, full bench decision of the Grahamstown High Court.

<sup>18</sup> Newspaper caption

- Requires all entities that are covered by it, both in the Public and Private Sector, to review their internal enforcement mechanisms and make necessary adjustment to facilitate effective enforcement of the rights protected by the Act, including women's rights relating to non-discrimination and redress for violations.
- Imposes a duty on all public officials to assist persons who seek to vindicate their rights as enshrined in the Equality Act and requires the state to educate the public on the Act. As a result the government of South Africa, the CGE and the SAHRC have been providing ongoing training of public officials across government, and public education on the Act has been going on since 2000.
- Recognizes the role of ordinary courts in enforcing aspects of it. In particular, the Act specifically directs that discrimination on the grounds of race, gender and disability should be regarded as aggravating circumstances for the purposes of ensuring stiffer sentences in crimes that are motivated by discrimination.<sup>19</sup> This would obviously include hate crimes, including those directed at women and women's groups, including gay women and those infected with HIV.

2.16 In addition to these institutional mechanisms, various other laws have established a network of private and public anti-discrimination enforcement and dispute resolution structures that are sector or subject matter specific. These include the Labour Court System<sup>20</sup>, Land Court, Electoral Court, Independent Broadcasting Authority and structures that specifically deal with disputes or complaints relating to land; housing, linguistics and sport.

2.17 The CGE and the SAHRC have legislative powers that enable them to play a key role in enforcing non-discrimination on the grounds of sex, gender and other related grounds beyond the scope of the Equality Act. Their powers also cover direct enforcement of the Constitution and enforcing sector specific legislation. The relevant enforcement powers include informal dispute resolution services and assisting litigants in court, including the Equality Court and the Constitutional Court. In addition, the CGE has powers of being able to subpoena anyone to account on issues of discrimination against women or who are in dereliction of advancing the rights of women.

#### **Article 2(d): Public Authorities and Institutions**

2.18 All key South African anti-discrimination laws, including the Equality Act and the Employment Equity Act, 1998 (Act 55 of 1998) apply to both the public and private sector. With regard to enforcement, the Public Protector, SAHRC and the CGE have continued to intervene whenever the principle of equality between women and men is violated by any public authority or entity. Complaints received and investigated are generally reported in the annual reports of the CGE and the SAHRC.

<sup>19</sup> Section 28(1) of the Equality Act, 2000

<sup>20</sup> This includes the Commission for Conciliation, Mediation and Arbitration and similar institutions.

### Textbox 3: Successful Litigation by the CGE

The following case example illustrates how the CGE involves itself in protecting the rights of women in South Africa:

A recent litigation success for Ms Zandele Mpanza, from the Kwa-Zulu Natal province, and the CGE, in the Equality Court, involved assault and damage to property as a result of her non compliance to a “stipulation” that women are not allowed to wear trousers/pants in the T-section of the hostel. The CGE and Ms Mpanza sought an order restraining unfair discriminatory practices against women in T-section and sought to eradicate a ban on women wearing trousers and the harassment of women who did wear trousers.

While this case was awarded in the favour of women in general, it raises fundamental questions on the accessibility of justice for large numbers of women and for those in rural areas who are unaware of their rights and/or do not have access to legal recourse. In addition, it raises fundamental questions on the continuance of the practice of patriarchy within the South African society and the need for paradigm shifts in mind sets and attitudes.

2.19 The Joint Monitoring Committee on the Improvement to the Quality of Life and the Status of Women in National Parliament is significantly involved in monitoring the implementation of the Domestic Violence Act, 1998 (Act 116 of 1998) and the Maintenance Act, 1998 (Act 99 of 1998) including the compliance with the South African Police Service National Instructions on these Acts, as well as the monitoring of domestic violence cases and ensuring a better quality of life for women and the girl child.

2.20 The role of the Public Protector is primarily to ensure administrative justice for women and others. The enactment of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) added more impetus to the protection, ensuring that public authorities and entities conform to the principle of equality between women and men. The enforcement of rights in the event of violation by public authorities and entities has further been strengthened by the Promotion of Access to Information Act, 2000 (Act 2 of 2000) which was introduced to facilitate access to information in the possession of public and other institutions that is relevant for the protection of one’s rights. Women are increasingly using this Act to gain access to information that helps them vindicate their right to be treated equally with men.

2.21 There are also various laws that prohibit and prevent discrimination against women in the conduct of public authorities and entities. This includes educators and law enforcement officers. The Employment of Educators Act, 1998 (Act 53 of 1998), and amended in 2000<sup>21</sup>, makes sexual harassment a form of serious misconduct<sup>22</sup>. The rest of public service has an enforceable Code of Conduct that stipulates standards for expected conduct towards the public.

<sup>21</sup> Education Laws Amendment Act, 2000 (Act 53 of 2000)

<sup>22</sup> Section 17 of the Act

#### **Textbox 4: The Optional Protocol to CEDAW**

The Optional Protocol to CEDAW provides for the CEDAW Committee to initiate inquiries into situations where there are violations of women's rights. Landmark cases in other countries have shown that it is possible for individuals to demonstrate the State's failure to exercise due diligence in the protection of women citizens against domestic violence that leads to death,

It is essential for South Africa to acknowledge the optional protocol mechanism and include this in their human rights and *CEDAW* education campaigns to foster increased vigilance and pro-woman action. South Africa has acceded to the Optional Protocol in March 2005, Unfortunately, in South Africa there continues to be patriarchal and traditional beliefs and attitudes that foster power imbalances and violence against women in different forms as reflected in the diverse case studies throughout the Report.

#### **Article 2 (e): Eliminating Discrimination by any Person, Organization or Enterprise**

2.22 The Equality Act specifically seeks to prevent, prohibit and eliminate discrimination by all persons and entities, including private organizations and enterprises (see Article 4). There are also sector-specific laws or provisions in generic sector laws that have been introduced during the period under review to prohibit discrimination against women by private organizations and enterprises. This includes the Employment Equity Act, 1998 (Act 55 of 1998), and other labour statutes discussed under Article 11. It also includes health and health benefits, social security, housing, pensions and minerals and energy. Specific instruments are discussed further under relevant articles in this Report.

#### **Article 2(f): Modification of Laws, Customs and Practices**

2.23 South Africa has continued to make tremendous strides since its First Report in aligning all laws with both the South African Constitution, as well as with international human rights norms, including the provisions of CEDAW. The successes in this regard are articulated in the court cases of *Bhe*, *Gumede*, *Tinyiko and Daniels.*, discussed in Article 2.13. Furthermore, previous detailed discussions on legislation which has been passed show that particular measures aimed at modifying laws and administrative practices that restrict or undermine women's economic and democratic participation have been implemented.

#### **Campaigns**

2.24 The South African government, in collaboration with national institutions and civil society, has also implemented various administrative measures aimed at the modification of customs, beliefs and practices that violate women's dignity and the principle of equality between women and men. Two processes that have contributed significantly in this regard have been the process of developing the National Action Plan on the Protection and Promotion of Human Rights (finalised in December 1998) and an ongoing campaign on eliminating violence against women and children (including the 16 Days Activism Campaign and a 365 Days National Action Plan to eradicate violence). The key programmes

and projects on the advancement of human rights of women in this regard have included: Radio programmes and workshops on customary marriage law; civil society programmes seeking to popularise CEDAW and related human rights instruments; National Human Rights Awards; ongoing human rights and legal literacy education that involves pamphlets, posters, radio, television and newspapers (cross reference to Article 5 and Part V). The process of developing and implementing a National Programme of Action on the Rights of Children has also contributed positively to improved awareness on violence against the girl child.

2.25 There has also been unprecedented success in ensuring that violence against women is seen as a human rights violation and this is addressed in Part V of this Report. Government and civil society have continued to implement measures aimed at modifying traditional beliefs and practices regarding the place and worth of women, including the girl child, in society. Specific measures include the Values in Education programme implemented as part of transformation of the education system, various human rights education programmes, including “Human Rights Week” and “Open Court Days” implemented at various levels of government. Shortcomings to be noted in this regard include the absence of impact assessment studies.

2.26 Some of these measures are specifically targeted at educating traditional leaders and communities about human rights with emphasis on the contents of CEDAW, the African Charter on Human Rights and the Rights of People in Africa, its Optional Women’s Protocol and the South African Constitution. An example in this regard is ‘Project Ndabezitha’ which seeks to educate traditional leadership institutions on domestic violence. Although the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003) provides for equality as far as succession into traditional leadership positions is concerned, there are cases publicized in the media where female members of royal household contest succession. In the Nwamitwa<sup>23</sup> case, the Constitutional Court granted an order in favour of a female who contested the traditional leadership position (which was rightfully hers but was given to her cousin because she was a female), against her cousin. See Article 2.13.7.

The CGE supports women claimants in waging these legal challenges. One such battle for succession by a woman resulted in her unfortunate death. Cases of this nature reflect the challenge of the practical realisation of legislative equality provisions and overcoming patriarchal cultural practices, statistics of which are reported in the CGE Annual report of 2006-2007.

2.27 Furthermore, gender issues are always integrated in the President’s State of the Nation Address, with that of 2005 having specifically identified the “achievement of a genuinely non-sexist society” as one of eight (8) national priorities to underpin government programmes and resources in the next decade. This is in addition to the President’s call for accelerating progress on women empowerment and gender mainstreaming in virtually all State of the Nation addresses and other public address opportunities. South Africa has also integrated its commitment on the advancement of women and gender equality in its interventions in regional, sub-regional and international processes. This has been

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<sup>23</sup> Shilubana and Others v Nwamitwa CCT (03/07) [2008] ZACC 9 (4 June 2007)



particularly the case with regard to processes relating to the New Partnership for Africa's Development, *NEPAD*, the AU and SADC.

There is a need for financing for women's empowerment for programming to give effect to this commitment for acceleration.

### **Article 2(g) Repeal of Discriminatory Criminal Law Provisions**

2.28 The process of identifying and removing criminal law provisions that discriminate directly or indirectly against women can be seen in the following:

#### **Textbox 5: Case Studies on Discrimination**

2.32.1 The abolition of the Cautionary Rule through a 1998 ground-breaking court decision in *S v Jackson*<sup>24</sup> has been one of the highlights of measures aimed at removing discriminatory provisions in criminal law. The Cautionary Rule was an antiquated rule of evidence that encouraged courts to treat the evidence of rape victims with circumspection. The continuing challenge is to address residual attitudes that translate into continued, albeit subtle, treatment of the evidence of single rape victims, particularly children, with a level of circumspection. This is being dealt with through judicial education, particularly social context awareness, constant engagement with the judiciary and the new Sexual Offences and Related Matters Amendment Act, 2007. (Act 32 of 2007)

2.32.2 Various amendments to the Criminal Procedure Act<sup>25</sup> have also sought to remove indirect discrimination in sentencing which previously saw serious violations of women's rights. The criminal law reform measures have also dealt with the tightening bail requirements for alleged perpetrators of rape and other serious forms of violence against women. This has also been achieved through amendments to the Criminal Procedure Act<sup>26</sup>. Criminal Law reform has also included crimes such as rape under serious and organized crimes. An example in this regard is the Prevention of Organized Crime Act, 1998 (Act 121 of 1998), whose provisions include the violation of section 20(1) of the Sexual Offences Act, 1957.

2.32.3 The Children's Act, 2005 (Act 38 of 2005) repeals the Children's Act, 1960 (Act 33 of 1960) and provides greater protection of the rights of children while providing for the establishment of the National Child Protection Register, that records the abuse or deliberate neglect inflicted on children and the monitoring of services; and, a record of persons unsuitable for employment with children.

2.32.4 The Child Justice Bill seeks to ensure amongst other things, gender responsive treatment of girls who are in conflict with the law and seeks to align South African Criminal Procedures with the UN Convention on the Rights of the Child.

<sup>24</sup> *S v Jackson* 1998(1) SALR 470 SCA

<sup>25</sup> Criminal Procedure Amendment Act, 1997 (Act 85 of 1997) and Criminal Law Amendment Act, 1997 (Act 105 of 1997)

<sup>26</sup> Criminal Procedure Amendment Act, 1997 (Act 85 of 1997)

2.32.5 The introduction of the Domestic Violence Act, 1998 (Act 116 of 1998) to replace the old Family Violence Act also contributed significantly to the elimination of discrimination against women in the criminal justice process. The Act sought, amongst other things, to broaden the definition of domestic violence and to ensure that perpetrators of such crimes are not treated with impunity by law enforcement officers. The scope of this Act is broad and recognizes physical, psychological and economic violence. It applies to people who are in a domestic relationship, as well as to same-sex relationships and extended families. It also provides victims of domestic violence with a relatively simple and accessible procedure against their abusers. It also provides for the establishment of Domestic Violence Courts where victims can obtain protection orders against the perpetrators. An Inter-sectoral Domestic Violence Training Manual has been developed and it is being used to train service providers. Guidelines have also been developed for Magistrates on the implementation of the Domestic Violence Act. The Joint Monitoring Committee on the Improvement to the Quality of Life and the Status of Women has a significant Parliamentary oversight role in domestic violence cases where public hearings in the monitoring of cases with the Criminal Justice System are held. The courts have taken the matter further by recognising and taking into account the impact of domestic violence on women who eventually kill or hire others to kill their abusive domestic partners. An example in this regard is the 2004 case of *Ferreira*, where the Supreme Court of Appeal drastically reduced the sentence of a woman who had hired killers to murder her domestic partner after enduring years of abuse from such a partner.

2.32.6. The Sexual Offences and Related Matters Amendment Act, 2007 (Act No 32 of 2007.) This Act extends the definition of rape, awarding women far more protection and in effect ensuring that crimes that were previously punished as sexual assault are now classified as rape and result in harsher sentences.

### **Integrated Response to Violence against Women addressed in Part V**

2.29 In order to respond to the challenges of violence against women and children in an integrated way, South Africa established Interdepartmental and Cluster Structures, which provide strategic leadership with regard to integrated management of Crime, including Violence Against Women. The following are the structures established:

- National Crime Prevention Strategy (NCPS); which has since been replaced by the Justice Crime Prevention and Security (JCPS) strategy;
- Integrated Justice Strategy (IJS);
- Forum For South African Directors General (FOSAD);
- Justice, Crime Prevention and Security Strategy (JCPS);
- Management Committee (MANCO);
- IRPS; and
- Inter-Departmental Management Team (IDMT) which is responsible for the development of an “Anti-Rape Strategy”

Achieving an integrated response to violence against women, including trafficking in women, was initially integrated in the objectives of the National Crime Prevention Strategy. The evolution of crime

prevention approaches gave birth to the Justice Crime Prevention and Security Strategy. These strategies, together with the broader discussion on the issue of violence against women and children are comprehensively addressed in Part V of this Report.

### **ARTICLE 3: DEVELOPMENT AND ADVANCEMENT OF WOMEN**

3.1 The legislative backdrop and measures taken in South Africa for the development and advancement of women have been covered in a holistic approach in this Report under Articles 1 and 2. This section provides a descriptive overview of the legislative framework with special emphasis on its implementation, impact and challenges in gender mainstreaming in order to ensure the full development and advancement of women across all sectors. It also offers insight into South Africa's integrated approach to women's advancement, the National Gender Policy and the NGM.

3.2 This section of the Report must be read in conjunction with the accompanying documentation to this report including the National Gender Policy; South Africa's Beijing +5 Report; South Africa's Beijing +10 Report; and South Africa's APRM Report, 2007.

#### **South African National Policy Framework for Women's Empowerment and Gender Equality**

3.3 South Africa's commitment to the promotion of gender equality is met in part through the establishment of a comprehensive NGM for women's empowerment and the advancement of gender equality. In 1999, the National OSW, located in the Presidency, conducted a national gender audit as part of the initiation of its gender mainstreaming programme. Based on the findings of this audit, the National Gender Policy was finalised and adopted by Cabinet in 2000. This Policy provides for the requisite status and location of Gender Focal Points in national departments as the operational level of Government to drive the gender agenda in the country.

3.4 The National Gender Policy was developed through a collaborative effort between government and civil society. It outlines the national vision of a society in which women and men are able to realise their full potential and to participate as equal partners in creating a just and prosperous society for all. In this regard, it outlines three main goals for the NGM. These are:

- Achieve equality for women as participants, decision makers and beneficiaries in the political, civil, social, economic and cultural spheres of life;
- Prioritise the needs of those women who benefited least from the system of *apartheid*;
- Transform all national, provincial and local institutions by mainstreaming and integrating issues of women's empowerment and gender equality into their work. These include institutions of government, independent statutory organizations, the private sector, the labour movement and organs of civil society.

3.5 The Policy is informed by and gives priority to the twelve critical areas as outlined in the Beijing Platform for Action as well as the provisions of CEDAW, while ensuring programme responsiveness to specific gender inequality challenges that were elicited by the national gender audit. Specific areas

of women's advancement and development that are mentioned in the policy include capacity building for women to enhance their effective participation in democratic structures and processes; within the economy and in the elimination of the feminisation of poverty. Furthermore, the National Gender Policy specifically elaborates the key short-term and long-term indicators to be measured. These were discussed at length in South Africa's Beijing +10 Progress Report (which is appended to this Report). Short-term measures include: women's increased access to management and leadership; gender-sensitive staff recruitment and discipline; gender-sensitive terms and conditions of service which address practical gender needs; gender transformation in programmes; transformation of the allocation of resources; data collection and utilisation. A primary concern is the lack of monitoring and enforcement and the need for this to happen within an organized and well-coordinated framework.

### **National Gender Machinery**

3.6 The NGM that was described in the First Report to the CEDAW Committee has remained unchanged. In fact the National Gender Policy confirms the arrangement outlined in the First Report, while providing further clarity of the role of each of the institutions that constitute the NGM and the framework for their interface.

3.7 In South Africa, the term national gender machinery refers to "an integrated package" of structures located at various levels of state, civil society and within the statutory bodies<sup>27</sup>: The policy framework specifically vests the responsibility for women's empowerment and gender equality with the Minister in the Presidency, while placing the responsibility for gender mainstreaming as a strategy for realising gender equality in all members of Cabinet and government entities.

3.8 The National Gender Policy outlines the structure and functions of the facilitative components of the NGM for women's empowerment, each of which are located strategically at the highest level of government, within Parliament and amongst statutory bodies. Each of these components has specific and distinctive mandates, roles and functions. Although the policy recognizes the role of civil society as an important component of the machinery, it does not prescribe the functions for civil society, but strives to work through a coordinated framework. Evidence of this coordination, for example, for campaigns and in response to the Justice and Crime Prevention Strategy are discussed later in the Report.

3.9 The Policy essentially provides a framework for the coordination of structures within and outside Government which aim to achieve equality for women in all spheres of life. In this regard, it mandates the establishment of a coordination mechanism for the NGM. Such a mechanism was established in 2001 and since 2002 has met frequently, typically once in two months, exceeding the mandate of "at least one meeting a year" for:

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<sup>27</sup> The point to note is that the function of gender mainstreaming in South Africa is that of all government, civil society and NGO bodies. The components of the gender machinery are facilitators of the gender programme, and primarily all have coordination and monitoring roles.

- The promotion of South Africa's constitutional sub-regional and international commitments to women's empowerment, gender equality, women's human rights and social justice;
- The transformation of institutions, laws, policies, procedures, consultative processes, budgetary allocations taking into account the needs and aspirations of all women, and particularly those who were most disadvantaged by the previous dispensation;
- Encouraging the development of policies, structures and practices in all statutory, government, public and private institutions which address women's empowerment and redress gender inequalities in their transformation goals;
- Promoting compliance to the National Gender Policy and ensuring its implementation;
- The exchange and sharing of information on the implementation of gender equality policies, and the evaluation of their impact and effectiveness;
- The review of priorities, targets, time-frames and performance indicators; of existing policy using a gender analysis;
- Advocate for women's empowerment and gender equality.

3.10 The NGM, primarily a facilitative mechanism for women's empowerment, has to provide the mechanisms through which women exercise policy influence with regard to women's interests, and ensure women's participation in decision-making. The responsibility for gender mainstreaming as a strategy for realizing gender equality however rests with all officials in the Public Sector.

3.11 One of the encouraging developments is a move towards placing gender focal points in some national departments at senior management level. Some government departments have the focal points located at the third highest level of the civil service, i.e. as Chief Directors, while several have them at the Director level. However, this is not the norm but the exception to the rule. One of the challenges in this regard is the general lack of compliance by government departments with this aspect of the Policy. There are also ongoing government efforts aimed at ensuring that all local government structures have gender focal points at appropriate levels, with adequate space and resources to facilitate gender mainstreaming in all structures, systems, and facets of work.

3.12 The NGM forum is convened by the National OSW as the Secretariat to the machinery, and is co-chaired jointly by the Joint Monitoring Committee on the Improvement to the Quality of Life and Status of Women, the CGE and the National OSW. Participants include Members of National Parliament, Commissioners of the CGE, the National OSW staff, Gender Focal Points from National Departments, Provincial OSW Coordinators and a vast number of NGOs working in diverse sectors addressing the critical areas that South Africa has made commitments to through the Constitution and human rights agreements. It provides a valuable platform for information sharing, priority setting, joint programming and strategy planning on the national gender programme.

3.13 In June 2004 a *Gender Indaba* (Symposium) was held to dialogue on overlapping activities of the CGE, OSW, SAHRC and administrative components in the Department of Justice and Constitutional Development. This process suggested a framework for rationalised operations to address overlaps and improve cooperation amongst the relevant institutions or structures. Despite

tremendous progress with a range of gender mainstreaming initiatives and achievements, South Africa continues to experience challenges with respect to the full implementation, monitoring and evaluation of gender programmes, as is highlighted in this Report.

3.14 In South Africa pre- and post democracy, civil society, especially in relation to gender, has played an active role in advocating for women's human rights and in the provision of critical services – especially in many areas outside of services provided by government. Civil society constitutes non-governmental and women's organizations, the academic and research institutes that address a range of issues from monitoring and legal issues, domestic abuse, violence against women and rape; women's health, counselling; training, sexual orientation or lesbian, gay, bi-sexual and transgender services; sex workers; victim empowerment, to men as partners. Some of the case examples used in this Report demonstrate the vibrancy and activism of civil society in South Africa, for example, the advocacy submission of the national working group championing the amendments to the Sexual Offences Act. (See Part V). Consultations with civil society organizations show the ongoing need to strengthen government and civil society engagement to enhance the advancement of women; and with a review of government funding for civil society organizations that are under-resourced and overstretched in meeting the diverse needs in South Africa. This concurs with feedback that emanated from the APRM national consultations and its report of 2007.

### **Mainstreaming Gender in Integrated Governance System**

3.15 South Africa adopted the strategy of gender mainstreaming following the adoption of the Beijing Platform for Action in 1995. According to the National Gender Policy the responsibility for the advancement of women and mainstreaming gender in all governance processes is that of all government officials and the political leadership in government, including the Presidency, Executive, Parliament and similar structures in the Provinces and at local government level. The role of the NGM is accordingly that of technical assistance to facilitate compliance by these mainstream structures.

3.16 The Government introduced the *Integrated Governance System*<sup>28</sup> in 2001, to enable effective service delivery. With this shift in governance, an opportunity was created for the NGM to review its systems and its capacity to contribute to the achievement of better service delivery. The clusters include: the Governance and Administration Cluster; the Economic Cluster; the Justice, Crime Prevention and Security Cluster; the International Relations, Peace and Security Cluster; and the Social Cluster. The result was a Cluster System that allowed for the integration of CEDAW, the Beijing Platform for Action, other global agreements and related provisions of the National Gender Policy in the programmes of Government. This gave credibility to the notion of gender as a cross-cutting issue and provided the ideal mechanism for mainstreaming gender issues into the day to day work of Government. This included aligning and integrating relevant gender equality objectives into appropriate clusters and cluster programmes. For example, in the Governance and Administration Cluster, a Task Team has been established to develop a strategy for mainstreaming gender in governance systems and processes.

<sup>28</sup> The Integrated Governance and Planning Framework for Government was adopted by the Cabinet *Lekgotla*(Council) in July 2001.

3.17 The Policy Coordination and Advisory Services located in the Presidency provides the overall monitoring of Government performance and compliance with its policy commitments. The National OSW forms part of this Policy Coordination Unit within the Presidency through the Chief Directorate: Programmes. As such it ensures that gender responsive indicators are included within the Government wide Monitoring and Evaluation Framework and ensures gender mainstreaming in Government monitoring processes. Through the reporting of government departments to the Policy Coordination Unit, the OSW is able to monitor overall government programmes to assess progress and compliance with gender equality. This is an important development for mainstreaming.

### **Status of Gender Mainstreaming In Government**

3.18 Mainstreaming of gender and its institutionalisation within government departments is taking place through a range of strategies. The progress made over the period from 1998 to 2008 with regard to the implementation of gender mainstreaming across government has been comprehensively recorded in the country progress reports on the implementation of the Beijing Platform for Action, which are appended to this Report.

3.19 Some examples that merit mention in this section are provided. Other examples are cited in various Articles of this Report as well. For example, the South African Police Services has established a women's network to advocate for gender equity. The National Intelligence Agency has established a set of regulations to address gender equity. The Department of Correctional Services undertook an audit to integrate gender equity into the department's strategy to accelerate the appointment of staff. The South African National Defence Force has taken gender equity even further by employing woman at all levels of its structures, including at command posts. A training programme on gender mainstreaming in the Public Service has been developed by the South African Management Development Institute, the training academy for Government. This Institution is mandated to provide leadership training across the Public Service, including training on gender mainstreaming for senior management. The gender mainstreaming project, which has been facilitated through the Canadian International Development Agency, is one way to promote awareness, understanding and implementation of gender mainstreaming in the Public Sector. This training academy also plays a key role in leadership and management skills development for all levels of government and for all managerial levels. Engagement of women managers in these training initiatives is essential for their preparedness for upper management positions and in facilitating the 50/50 representation of women at these levels. In collaboration with the training academy, the OSW has produced a resource document to complement the gender mainstreaming manual; and both documents will be piloted in the training of 1500 government officials during the 2008/09 fiscal year.

3.20 In 2004 the Local Government Leadership Academy was established in the Department of Provincial and Local Government, to provide professional development for leaders in local governance. The programme targets both councillors and senior managers at the local government level. The Academy developed the Municipal Leadership Development Programme for men and women; and of note is that it offers an important opportunity for women to sharpen their skills to function effectively in the historically male dominated sphere.

3.21 Given the history of South Africa and the systematic marginalisation of women and black women in particular, participation of women at decision-making levels has had a positive impact on the psyche of South African women. Women in Parliament have pioneered a number of legislative and policy directions for the democratic government. Amongst these are:

- Ratification of CEDAW without any reservations in 1995
- Enactment of various legislation and amendments as discussed in Articles 1 and 2
- The Women’s Budget Initiative
- Parliamentary /NGO Task Team on Violence Against Women
- Transformation of Parliament
- Provision of childcare facilities for Members of Parliament and staff of parliament
- Adoption of the National Women’s Day as a public day honouring South African women
- Women’s Parliament where women’s groups and Parliamentarians meet to dialogue about key issues affecting women in South Africa

3.22 The Public Service Handbook on Reasonable Accommodation for People with Disabilities in the Workplace, and the Job Access Strategic Framework on the Recruitment, Employment and Retention of Persons with Disabilities in the Public Service, which is aimed at ensuring that the Public Service meets its minimum 2% target for the employment of people with disabilities in the workplace, as well as the minimum 2% representation of women with disabilities in senior management levels in the Public Service, is a major achievement towards advancing women with disabilities in the workplace in general.

3.23 South Africa has also implemented various measures that seek to ensure financing for women’s empowerment at all levels of government. This has entailed the integration of gender considerations in the preparation and implementation of the national and other budgets to become more responsive to the needs of women and children. The process also seeks to ensure that where possible, resources are deployed as a positive measure to equalize opportunities between women and men. As a result a substantial portion of the budget is increasingly being invested in services that advance women. This includes social grants such as the child support grants and development funding directed at women, and basic services such as electricity, water and sanitation.

3.24 Some best practice examples in government departments include the provision of ‘one-stop centres’ where citizens can report crime and access other services – discussed in greater detail in Part V.

### **Audits and Critique of the NGM**

3.25 A recent Governance and Administration Cabinet Cluster meeting noted that there is a general lack of compliance by the Public Service with the National Gender Policy Framework and in regard to institutional mechanisms. This is in keeping with the findings of a rapid survey conducted by the OSW in June 2006, as well as the findings of the Public Service Commissions Audit Report, “*Gender Mainstreaming Initiatives in the Public Service*”, November 2006.



## **Textbox 6: Critique and Challenges of the Institutional Arrangements for Gender Mainstreaming**

### **3.25.1 The Findings of the OSW Audit of June 2006:**

- Of the 32 national departments surveyed through a questionnaire, 31 departments indicated that personnel for gender issues were appointed.
- 9 out of 30 departments had gender focal points that were solely responsible for gender related issues while 21 had responsibilities that included other issues such as disability, child rights, youth, elderly, employment equity, employee assistance programmes and or human resource matters in various combinations.
- 6 of the 9 departments had gender focal points appointed at a director level, 1 at a chief director level while 2 departments had dedicated focal points at the deputy director level.
- No focal point in any of the 30 departments reported directly to the Director-General. Of the 9 gender focal points (dedicated to gender issues alone), most reported to a chief director in the Director-General's office.

### **3.25.2 In summary there are challenges with respect to:**

- The establishment of these dedicated gender units or focal points; their rank; and lines of authority, accountability and reporting.
- Accountability for the hiring of women – especially in senior decision making. Are senior Managers, including Director-Generals, Deputy Director-Generals and Chief Directors, held accountable for their hiring practices?
- Issues of organizational culture and ethos and the absence of an enabling environment;
- The lack of will to implement mainstreaming; and
- Monitoring and enforcement

### **3.25.3 The Findings of the 2006 Public Service Commission Audit Report:**

- There was a general lack of knowledge and understanding of gender concepts and gender mainstreaming in most departments and across all levels with the result that senior management did not know how to move from policy to strategy and action.
- Women with disabilities were not adequately represented at senior management levels;
- In seven of the nine provinces, no women with disabilities were employed at the senior management level;
- In general the empowerment of women was not occurring in any significant way,
- There was a lack of a clearly defined institutional framework necessary to drive the vision of gender equality; and
- The environment in general was not enabling for the empowerment of women.

**Textbox 7: Critique of the Public Service Commission Audit Report: An Excerpt**

3.25.4 The Public Service Commission Report, *Gender Mainstreaming Initiatives in the Public Service, 2006* states that "...strides have been made towards creating an enabling environment for the advancement of gender equality. Elements of this include political commitment at the highest level, for instance, the establishment of the Office on the Status of women (OSW), placed within the President's office and established, inter-alia, to monitor gender equality. Although South Africa's National Gender Machinery is universally acknowledged to be a "best practice", the lack of skills, resources, and an integrated coordination framework with clear lines of communication and accountability has rendered it ineffectual"...."there is a lack of a clearly defined institutional framework that is necessary to facilitate the attainment of the vision of gender mainstreaming.....The role of the Gender Focal Point needs to be reviewed and the competence of Gender Focal Points assessed..."

3.25.5 The Report recommends that "...the Gender Focal Point be given the authority to drive gender mainstreaming.....Most important is that the Gender Focal Point should have access to the Senior Management Service and the Head of Department so that reports on gender mainstreaming can be addressed at that level. The Gender Focal Point should be dedicated to work with gender issues and all its intricacies and not have additional multiple roles to play as is currently the case".

3.26 In order to address the recommendations that emerged in the Public Service Commission's Report, the Department of Public Service and Administration, mandated to lead the transformation of the Public Service, implemented several measures. A Strategic Framework on Women's Empowerment and Gender Equality within the Public Service was developed in 2006. This document outlines the strategy of the Public Service to increase the representation of women to 50% at all levels of the Senior Management by March 2009. In addition, the Department of Public Service and Administration put in place the "Head of Department's 8-Principle Action Plan for Promoting Women's Empowerment and Gender Equality within the Public Service Workplace" in an attempt to fast track the attainment of the parity targets, but also to ensure that accountability for gender mainstreaming becomes the prerogative of the Director-General or the Head of Department. Cabinet endorsed these 8 principles in 2007 and recommended their inclusion in the performance contracts for all Directors-General and Senior Managers. In August 2007, the Department also initiated the Public Service Women Managers Forum and the Public Service Women Management Week, which provides an opportunity for women managers to evaluate progress made in the implementation of the Strategic Framework towards meeting the 8-Principle Action plan in their Departments. The plan targets Directors-General and Heads of Department to ensure its institutionalisation and implementation. Emphasis is placed on the creating of a conducive environment for the advancement of gender equality as well as institutional mechanisms for impact. A high level round table on Gender Mainstreaming in the Public Service: *Challenges and Barriers Faced* was held in Women's Month, August 2007 where issues of disability were also given prominence.

3.27 South Africa has done well at meeting numerical targets for representation of women in the Public Service. The current total number of women in the Public Service is 54.38% which is in

keeping with the 52% population of women in the county; whereas representation of women at the senior management level accounts for 34% of the management workforce in the Public Service<sup>29</sup>. In this regard South Africa passed the SADC minimum 30% target in March 2006.

### **Implementation of MDGs and Other Development Objectives**

3.28 South Africa has also adopted measures to ensure that CEDAW, Beijing Platform for Action and other provisions on the advancement and development of women are integrated in development planning and implementation processes, including domestic processes relating to the implementation of the MDGs, NEPAD and the outcome of the Johannesburg Summit for Sustainable Development. Some of the specific measures on women's development are briefly discussed under relevant Articles.

3.29 South Africa has implemented measures in local government and development management to ensure that women participate equitably in development planning and implementation and that relevant development measures are equally responsive to the circumstances of women and men. For example, the National Water Act, 1998 (Act 36 of 1998) specifies that at least one third of all members of water committees should be women and the Local Government Municipal Systems Act, 2000 (Act 32 of 2000)<sup>30</sup> requires equitable representation of women in all Integrated Development Planning processes.

3.30 According to the 2005 South African MDG report, social grants benefited 8 million people, and are a crucial safety net against extreme poverty. Social grants are an important source of income for the poorest households, and these grants contribute more than half of the income of the poorest 20% of households. Specific grants such as old age grants have helped reduce the number of women over 60 years of age with no income. Social grants have affected the income and/or expenditure status of the poorest, thus bringing the very poor closer to the poverty line. Article 13 addresses poverty reduction and social grants more comprehensively. Studies have consistently confirmed that these grants help not only to reduce hunger and extreme poverty, but also to enhance access to basic services and economic opportunities, through the income received.

3.31 In South Africa, development funding has also been transformed to give priority to women's development needs and participation. For example, The National Development Agency Act, 1998 (Act 108 of 1998) states its main goal as being the contribution towards the eradication of poverty and its causes by providing funds to civil society organizations to carry out projects to meet development needs of poor communities with a focus on vulnerable groups such as women. Women's NGOs have benefited from this Act and are increasingly benefiting from generous government development funding under the auspices of structures such as the National Lottery and discretionary Skills Development Grants within the National Skills Development Framework. Further, the Non Profit Organizations Amendment Act, 2000 (Act 17 of 2000) and related transformation measures that have transformed the non-profit sector to create an enabling environment for non-profit organizations or NGOs, particularly those run by historically disadvantaged individuals, has also contributed

<sup>29</sup> As at March 31<sup>st</sup> 2008, Government PERSAL System

<sup>30</sup> Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

significantly to the advancement and development of women. In addition to the enabling legislation, government has developed and placed at the disposal of civil society, facilitating instruments such as model Non-Profit Organization Constitutions and Annual Reports.

### **Research and Data- Management for the Advancement of Women**

3.32 Another issue that has been given priority since the submission of the First Report is that of research and data-management. The National Gender Policy places great emphasis on ongoing research on women's circumstances and needs, and the generation and management of gender disaggregated statistics on all key aspects of life, including births, deaths, health, education, poverty, and the economy. Government, through Statistics South Africa, and other government research bodies such as the Human Sciences Research Council have ensured a marked increase in gender sensitive sex disaggregated data to facilitate planning and monitoring. There has been improvement in the availability of gender sensitive and sex disaggregated data and qualitative studies on health, education, employment, income, personal crime, land and housing.

3.33 Despite a number of women's rights successes and exciting initiatives to advance the situation of women, challenges continue not only in South Africa but in the international community around the priority given to the advancement of women. It was for this reason that gender and financing became the focus at the 52<sup>nd</sup> Session of the UN Commission on the Status of Women, in New York, in 2008, and the theme for the 2008 International Women's Day commemoration. The NGM and gender activists have to continually ensure that gender perspectives are incorporated into the design, implementation, monitoring and evaluation of all national economic policies, strategies and plans in a coordinated manner. This has to encompass the national development, social protection and poverty reduction strategies that involve the NGM and women's organizations in these processes.

3.34 Strengthening the capacity and the resource base of the national machinery will enable them to engage effectively in promoting gender equality in the country's aid effectiveness agenda. Further strengthening the collection, analysis and utilization of sex disaggregated data will promote evidence based programming, monitoring and evaluation. Government needs to develop and enhance the capacity for the implementation of gender responsive budgets and financing for women's empowerment where the Minister for Finance takes leadership in promoting gender equality through its systems and structures through allocated and coordinated resources and for official donor assistance. There is a need to strengthen government and civil society engagement and financing to further the advancement of women in South Africa.

## **ARTICLE 4: ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN**

### **Article 4 (1) Special Measures to Accelerate *De facto* Equality between Women and Men**

4.1 Articles 1 and 2 have comprehensively covered the legislative frameworks and addressed some of the special measures to accelerate *de facto* equality between women and men in South Africa.

Landmark cases were discussed to show the positive impact in women's lives. The National Gender Policy Framework and the NGM have further ensured the advancement of women in aspects of governance, gender mainstreaming and equality. South Africa is proud of a comprehensive policy framework and measures which were largely finalised after June 1998 and after the submission of the First CEDAW report. They include the Employment Equity Act, 1998 (Act 55 of 1998); the White Paper on Affirmative Action in the Public Service, 1998; Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003); Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000); Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000); and the Media Development and Diversity Agency Act, 2002 (Act 14 of 2002), amongst others. All these pieces of legislation are critical in accelerating equality between men and women.

4.2 Legislative measures to achieve *de jure* equality have been discussed fully previously. (See Article 2.10 and Table 1.) Furthermore, court decisions and administrative interventions, as discussed under Article 2.13, have facilitated *de facto* equality.”

4.3 It is worthwhile to highlight that the issue of special temporary measures outlined within the Employment Equity Act, 1998 (Act 55 of 1998) has been mentioned already. This section must be cross referenced with Article 2, paragraphs 2.7 and 2.8 of this Report. Progress achieved by employers is monitored by the Department of Labour and the Commission for Employment Equity, a statutory body established under the Employment Equity Act, 1998 (Act 55 of 1998). Compliance with the Act also includes workplace inspections and compliance orders for non-compliance which may escalate to fines of up to R900 000 00 in appropriate circumstances. The Labour Court system, CGE and SAHRC play crucial roles in the enforcement of this Act.

4.4 The Integration of gender considerations in generic instruments in areas such as education, including education funding, skills development, broadcasting, mining and land redistribution, has also enhanced progress towards *de facto* equality for women not only in the areas where such measures have been implemented but also in other areas of life. For example, the Skills Development Strategy of 1998 stipulates a specific target of 54% for women in learnerships and related skills development benefits. It further requires the integration of gender in the execution of the targets for the other designated groups (Blacks and people with disabilities). Participation in skills development has opened avenues to employment and business ownership for many women as discussed in Articles 11, 13 and 14.

4.5 Enormous strides have been made in terms of the participation of women in Parliament, Cabinet, as Provincial Premiers and key decision makers in the Public Service. Neither the South African Constitution, nor the Electoral Act, 1998 (Act 73 of 1998) specifies a quota for women in Parliament, or in Cabinet. This has however not deterred the Government from its commitment toward increasing the participation of women in key political and decision making positions – with Cabinet taking the decision that by March 2009, 50% of all senior decision makers in government will be women.

4.6 Government has clear policies, institutional mechanisms and a variety of examples from departments at different levels to show the advancement of gender mainstreaming in achieving women's empowerment and gender equality, and in meeting the numerical targets set by the country.

(See textbox 6.) While the representation of women in management in the Public Service stands at 34% as at March 2008, in contrast census surveys conducted by the Business Women's Association on women in corporate leadership positions indicate that the private sector is lagging behind in hiring women in key decision making positions and on boards. This paragraph must be cross referenced with paragraph 4.8 and 4.9 below. There is emerging debate that the Commission for Employment Equity should become more vigilant in monitoring and enforcement with companies to get compliance, and, that companies with non compliance should be fined. There is a need for the private sector to more critically appraise itself and ensure that there are more women in general, and more Black women in particular, employed in leadership positions and on their boards.

#### 4.7 Textbox 8: Challenges of Representation in a Previously Male Dominated Field

##### **Financial Sector, Mines have Fewest Women Directors**

There may be more women executive directors at listed companies and parastatals in South Africa than ever before, but more than 40% of the 343 companies surveyed by the Businesswomen's Association (BWA) still have no women on their boards at all. "There is a commitment to the empowerment of women but there are some cracks, said Namane Magau, president of the BWA. Three years ago the study showed only 7,1% of all directors were women but the latest census, covering last year, places the figures at 11,5%. However, only a little more than 6% of women directors with a say in the day-to-day running of their companies are at executive level.

In 2004, 19,8% of executive management positions were held by women. Last year that dropped to 16,8%. "It has shocked us that SA has slipped back three percentage points. From deeper analysis, there were many opportunities for companies to appoint women but they have moved in the opposite direction," said Magau.

The two least-transformed industries when it came to women on boards were the financial services sector and mining. Tom Boardman, CEO of survey sponsor Nedbank, said he was disappointed his bank had not made it on to the list of the top 10 most transformed companies. He said 63% of Nedbank's staff members were women, but that pyramid structures still existed, with the retention of top women being particularly difficult.

**Renee Bonorchis**  
**Businesswomen's Association; BWA survey**  
**Business Day National 26 April 2006**

4.8 The private sector is lagging behind the public sector in hiring women in key decision making positions. This case illustrates precisely the poor representation of women in leadership positions in the private sector and in state-owned enterprises:

- A survey of 100 corporate sector companies in South Africa in 1990 found that women comprised 36.6% of the workforce. Of this figure, only 13% were in management (Wintour 1991).
- According to the Commission for Employment Equity Report for 2001 (which is cited as it had a larger sample of employers), African women hold 0.9% of top management positions, 1.4% of senior management positions and 4.3% of middle management positions. Women of all races hold 13% of top management positions and 20% of senior management positions.

4.9 The Second Census Survey conducted by the Business Women's Association found there was some improvement between 2004 and 2005 where the number of women in executive management and directorship positions had increased - there was a 5,1 % and 3,6 % increase respectively. There were only 15 female chairs of boards in South Africa, up from eleven the previous year. The number of women Chief Executive Officers (CEOs) had increased by one to eight, and four of those were in state-owned enterprises. In addition:

- Of the 306 directorships held by women, black women held the most - at 48,4 % - while white women held 43,8 %.
- Of the almost 20% of executive managers who were female, 83,8% were white, 8,3% were black, 2,2% were Coloured and 5,8% Indian. This is a reflection of the historical tendency of the market forces to favour white women over black women
- The best employers for women were state-owned enterprises, with a high level of both female directors (35%) and executive managers (31%).
- The worst industries were consumer goods, financial services and resources. The survey served as a useful benchmark to encourage companies to focus on their empowerment element.<sup>31</sup>

4.10 While there will always be more people in an overall workforce than in corporate leadership positions, the relative representativity of women in executive management and board positions does not correspond meaningfully to the proportion that women form of the overall working population of the country. In 2006, while women constituted 41.3% of the employed population, the private sector reflected only 6.4% women CEOs and Board Chairs; 11% women directors, and 16.8% women executive managers. These are very slight increases from the situation in 2004. Women corporate leaders are therefore "a minority within a minority".

4.11 These trends are indicative in general that men are still the chief decision-makers across all socio-economic strata, and that the power balance is still skewed towards men. The current representation of women in management levels, both within the Private and the Public sectors does not truly reflect women in the light of being potential sources of competition nor does it speak to the influence that they could wield in the economy.

<sup>31</sup> The Citizen, Felicity Duncan, 21 April 2005

## Government Performance

4.12 The textbox below provides a comprehensive example of how some of the relevant policy frameworks are enacted in a government department, for example, the National Department of Transport.

### Textbox 9: Case Study of the National Department of Transport

The Department has established dedicated structures to drive implementation of both internal and external programmes, such as the Sub-directorate: Special Programmes which was established in 2003, with a dedicated focal point, to drive the mainstreaming of gender programmes in the Department. The South African Network for Women in Transport (SANWIT) was launched in 2007. In addition, funds have been allocated for gender-related programmes; and the department participates in the national programme of action on women's empowerment and gender equality by:

- Establishing an Employment Equity Committee to influence the appointment of women to comply with employment equity targets;
- Ensuring women's access to information and accelerated appointments in senior positions;
- Conducting prevention initiatives aimed at eradicating all forms of violence against women and children through the 16 Days of Activism Campaign for No Violence Against Women;
- Accelerating the appointment of women in BEE initiatives, learnerships/internships, procurement and employment equity;
- Training and development initiatives have been conducted to empower women through women's seminars and commemorative days such as Women's Day; and,
- The mobilization of women in the transport sector and exposing them to business opportunities through SANWIT.

A Human Resource forum has been established to, amongst others, monitor adherence to national employment equity as well as skills development targets, and is chaired by senior managers. Furthermore, the Directorate: Capacity Development through Special Programmes plays a coordinating and oversight role in ensuring that transformational interventions are supported in relation to women's empowerment and all issues. At least 52,9% of filled posts within the department are occupied by women, and the department has also appointed women to serve in Public Entities' Board Committees. Out of 228 posts occupied by women across various levels, 39% are at senior management levels in the department. Furthermore, the department has registered 263 women as SANWIT members. From those who have received training and bursaries from the department, more than 70% have been women on an annual basis in various programmes (internships, learnerships, internal and external bursaries and other related interventions).

Through the Codes of Good Practice, developed by the Department of Trade and Industry, women's participation and control in the economy is increased. Women are given preferential points in the gender adjustment factor and in maintaining a scorecard for companies to ensure women empowerment. The department is currently finalizing the review of the existing Transport Sector BEE Charter aimed at empowering women to secure more BEE deals. There is a specific focus to intensify access especially to women in the rural areas for job creation and poverty alleviation. Women are also



encouraged to form co-operatives under the ownership element to get exposed to the available economic opportunities. Through the SANWIT as well as the Women in Transport conferences held during 2006 and 2007 a platform was provided to address current interventions and employment barriers across industries.

The department adheres to the Black Economic Empowerment Act and Code of Good Practice on Broad Based Black Economic Empowerment; the Transport sector BEE Charter 1996 and Non Motorized Transport strategy; Furthermore, through the BEE process, there has been an establishment of a private sector driven women's organization called Women in Transcontinental Transport (WTT).

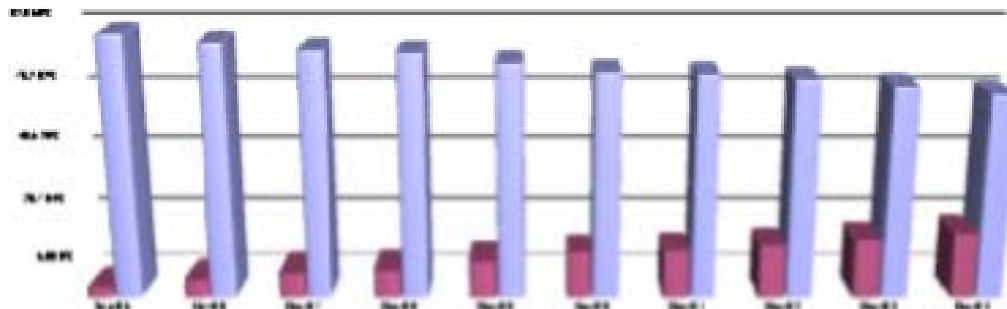
Some challenges include: capacity and scarce skills; budget constraints; lack of support from line functions in prioritisation of gender mainstreaming the empowerment in procurement processes; access to big transport-related business opportunities such as bus and rail-related contracts; lack of succession planning and structured mentorship programmes; access to funding; empowerment of women especially from the previously disadvantaged backgrounds to enter other transport-related professions like engineering, planning, maritime as well as aviation careers that are largely male dominated. Some best practices include: through the departmental procurement processes women have been consistently provided with business opportunities across all projects; Various BEE targets were provided across the industry to intensify economic inclusion and participation of women; the Putco Bus Company has facilitated the BEE deal through the Transport Charter as well as the code on good practice where women are allocated at least 6% of the Putco shareholding.

4.13 Other examples of how government departments have set specific targets and projects, including incubation projects, to accelerate *de facto* equality for women entrepreneurs and or professionals include: A *Women in Construction* Incubation Project. Similar measures have been undertaken in the mining sector as discussed in the Article on employment. The Independent Development Trust was established in 1999 by the national government to best serve the development of disadvantaged communities in South Africa, targeting women specifically. The Public Service and other departmental initiatives were discussed in Article 3.

### **Public Sector Performance**

4.14 The public sector has been performing much better than the private sector with regard to achieving equitable representation of women, black people and persons with disabilities in occupational categories and levels where they were previously excluded. An assessment conducted by the Department of Public Service and Administration, reflects the trends in the percentage of female managers in the Senior Management System of the South African Public Service from 1995 to 2004.

Representation of Women Senior Managers in the Public Service



(Vulindlela, January 2005. Assessment conducted by the Department of Public Service and Administration in June 2001 and updated to December 2004).

4.15 The representation of women at senior management level in the public sector was approaching the 30% national target of women managers in the Public Service<sup>32</sup> in January 2005. In 2008, women occupied 34% of all senior management positions in the Public Service. The Public Service has a new target of 50% representation of women at all levels of senior management by March 2009. Women currently represent 54.38% of all people employed in the Public Service, which is in keeping with the fact that women make up 52% of the country's population. The proportion of African females increased from 39% in 2005 to 43% in 2008. Of the total senior management service of the Public Service as at 31<sup>st</sup> March 2008, African women comprised approximately 22%, Black women (African, Coloured and Indian) comprised 27%, and white women made up 0,07%. However, of the 34% of women in senior management, black women comprised approximately 79.3% and white women 20.7%. Women constitute 34 (28%) of the 121 Directors-General appointed in the Public Service, with African women comprising 26 of the 34 women Directors-General. Women comprise 36 (26.4%) of the total of 136 level 16 (topmost level) of the senior management services in the Public Service.

4.16 The Public Service Commission Audit Report on Gender Mainstreaming Initiatives in the Public Service (2006) found that the percentage of women in the Public Service in senior positions is not proportionate to the overall number of women in a department. This means that while there are many more women employed in the Public Service, they are mainly located in lower positions. This is evident in both the Western Cape and Limpopo provinces. Female representativity at senior management level stood at 30.3%, with the national average at 31.2%, and provincial average at almost 29.8%; some provinces performed better than others, and some had not met their targets.

### Labour Market Performance

4.17 The overall *de facto* position of women in the labour market has improved significantly over the last few years as a result of the implementation of the several policy frameworks instituted in the

<sup>32</sup> The 30 % was originally targeted for achievement by 2000.

country. For example, women currently account for 27.3% of legislators, the highest paid occupational category, and 14% of top management positions, the highest occupational level. Their representation at the second highest occupational level, i.e. senior management, currently stands at 22.3%. Also worth noting is that approximately 27% of directorships in State Owned Enterprises are held by women. The private sector is still lagging behind and government is constantly calling for accelerated progress in this area.

4.18 In addition to rates of employment, there are also challenges with respect to the rates of unemployment. The official unemployment rate in 2007 was 25,5%. Female unemployment rates have been higher than those of males in the period 2001 to 2007, as reflected in the table below. There are also considerable differences in the unemployment figures between women, based on race. In the period 2001 to 2006, unemployment of African females ranged from 29.4% to 25.8%. The unemployment figures for white females in the period 2001 to 2006 are considerably lower and additionally indicate a decline from 6.0 % in 2001 to 3.6 % in 2006.

**Table 2: Unemployment Rates**

<b>Unemployment</b>	<b>Mar 2001</b>	<b>Mar 2002</b>	<b>Mar 2003</b>	<b>Mar 2004</b>	<b>Mar 2005</b>	<b>Mar 2006</b>	<b>Mar2007</b>
Male	246	261	272	239	224	216	21.1
Female	286	339	359	329	314	303	30.8
<b>Total</b>	<b>264</b>	<b>297</b>	<b>312</b>	<b>279</b>	<b>265</b>	<b>256</b>	<b>25.5</b>

Statistics South Africa Labour Force Survey, March 2007

4.19 One of the key gender challenges is ensuring that employers and skills authorities take these targets seriously and ensure that women benefit with respect to serious skills in occupational levels and categories of historical exclusion and do not only focus on skills development for domestic workers and other elementary occupations or levels. This forms part of government's review of the implementation of the Skills Development Act, 1998 (Act 97 of 1998).<sup>33</sup>

#### **Article 4 (2): Protecting Maternity**

4.20 Special measures have been adopted to provide protection for women with regard to pregnancy, maternity, and the health and safety of women in the workplace. These special measures, as articulated by the Basic Conditions of Employment Act, 1997 (Act 75 of 1997) provide for "at least four consecutive months maternity leave"<sup>34</sup> which spans minimally 4 weeks prior to delivery and minimally 6 weeks following delivery. In addition, the Act also entitles a woman undergoing a miscarriage in the third trimester period of pregnancy, or bearing a still-born child, to maternity leave.

<sup>33</sup> The Skills Development Levies Act, 1999 (Act 9 of 1999) is also part of the Skills Development package

<sup>34</sup> The Basic Conditions of Employment Act, 1997 (Act 75 of 1997), Volume 390, Republic of South Africa Government Gazette, Cape Town, 5 December 1997, page 26. Chapter 3, subsection 25 (1).

4.21 In terms of the Labour Relations Act, 1995 (Act 66 of 1995), the dismissal of an employee on account of her pregnancy, intended pregnancy, or any reason related to her pregnancy, is automatically deemed unfair. This includes the refusal to allow an employee to resume work after she had taken maternity leave in terms of any law, collective agreement or her contract.<sup>35</sup> Payment of maternity benefits is subject to the provisions contained within the Unemployment Insurance Act, 2001 (Act 63 of 2001).<sup>36</sup> These measures, which include the prohibition of pregnancy dismissals, the provision of maternity leave and ensuring an affirming environment, are discussed under Article 11 in this Report.

4.22 The protection of the employee's health before and after the birth of a child is guaranteed under the Basic Conditions of Employment Act, 1997 (Act 75 of 1997), especially if the work is hazardous to her health or the health of her child. In addition, the Act stipulates that during pregnancy a woman should be offered suitable, alternative employment if she was employed to perform night work. This Act provides for some measures that help women and men to balance work with family responsibilities as envisaged in the International Labour Organization (ILO) Convention on Workers with Family Responsibilities (ILO Convention No. 156).

4.23 In terms of the Employment Equity Act, 1998 (Act 55 of 1998), these matters fall under the requirement of reasonable accommodation. The Commission for Employment Equity has finalized a *Code of Good Practice on Integrating Employment Equity Considerations in All Human Resource Processes (2005)*<sup>37</sup>, which deals, amongst other things, with recommended measures for enabling employees to balance work and family. Equality between men and women in terms of family responsibility has been ensured by the Basic Conditions of Employment Act, 1997 (Act 75 of 1997), which provides for three days paid leave to men on the birth of a child, or to both parents when the child is sick. This Code<sup>38</sup> recognizes and encourages measures aimed at accommodating parental demands as a means of achieving a work-life balance for workers with family responsibilities. These measures usually include allowing mothers, and to a lesser extent fathers, to work flexi-time to balance parental demands with work. They also involve reorganization of work to protect pregnant workers from hazardous work conditions and flexible arrangements to accommodate parental demands in the post maternity phase. All these are in addition to the specific pregnancy and parental rights that are enshrined in legal instruments such as the Basic Conditions of Employment Act, 1997 (Act 75 of 1997), and as amended.

4.24 The Public Service Commission Audit Report (2005) states that the only provision allowing for women's practical needs such as attending to a sick child is by taking family responsibility leave provided for by the Basic Conditions of Employment Act, 1997 (Act 75 of 1997). In general senior management in the Public Service appear to be sceptical about introducing flexi-time or child care facilities as they suggest that it would lead to its abuse.

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<sup>35</sup> The Labour Relations Act, 1995 (Act 66 of 1995), Section 187 (1)(e)

<sup>36</sup> Sections 34 and 37 of the Unemployment Insurance Act, 2001 (Act 63 of 2001)

<sup>37</sup> The Code is issued under the Employment Equity Act, 1998 (Act 55 of 1998) as directed by the Act.

<sup>38</sup> The Code has been developed by the Commission for Employment Equity for issuing by the Minister of Labour under the Employment Equity Act, 1998 (Act 55 of 1998)

4.25 Another area of concern identified by the Audit Report was that “sexual harassment is largely ignored or not treated with the seriousness it deserves in the Public Service. Victims would rather not take action because the examples where decisive action has been taken against the perpetrator are few and far between, and in general the environment is not enabling for victims to feel safe enough to tackle this issue. Hence, victims would rather choose the safer route of going to counselling, dealing with it on an individual, personalised level rather than using the grievance procedures within departments to formally take actions against perpetrators”<sup>39</sup>. The case study below must be read in conjunction with Article 11, paragraph 11.8 of this Report.

### **Textbox 10: Legal Ruling on Sexual Harassment**

In this regard, the *Ntsabo v Real Security Case* (2004) discussed under the section on employment, deals with sexual harassment in the workplace. The case finds that employers will no longer be able to turn a blind eye to sexual harassment in the workplace and will need to take pro-active steps to eliminate and investigate sexual harassment within the workplace. The fact that the harasser is not authorised by the company to harass fellow employees will henceforth be irrelevant, as the action of the employer after being notified thereof will be the subject of the inquiry. A court will determine whether reasonable steps have been taken to protect women who have been sexually harassed in the workplace. The duties on employers and the recognition of sexual harassment as a form of discrimination are significant in this regard. The court further recognized that the reporting of incidents of sexual harassment should occur within a reasonable time and that what is reasonable will depend on the “trauma and circumstances” of the individual complainant. In future, women will have recourse where they have been sexually harassed in circumstances where the employer fails to take reasonable steps to address such harassment. Previously, women would often have proceeded in terms of constructive dismissal after resigning owing to the intolerable conditions endured, alternatively, unfair labour practice provisions would have been utilised by women. Now sexual harassment has also been brought within the confines of discrimination.

## **ARTICLE 5: SEX ROLES AND STEREOTYPING**

5.1 The South African Constitution provides that everyone has inherent human dignity<sup>40</sup> and has the right to have their dignity respected and protected. It further provides for the right to life<sup>41</sup> and the rights to freedom and security of persons<sup>42</sup>, which includes the right to be free from violence in both the public and private spheres. In addition, everyone has the right to bodily and psychological integrity.

5.2 The preceding Articles in this Report have addressed the legislative and special measures undertaken to expedite broad human rights based changes within the country in all aspects of life. As

<sup>39</sup> Public Service Commission: Audit Report on Gender Mainstreaming Initiatives in the Public Service, 2006

<sup>40</sup> Section 10, Constitution of the Republic of South Africa, 1996 (Act 108 of 1996).

<sup>41</sup> Section 11, Constitution of the Republic of South Africa, 1996 (Act 108 of 1996).

<sup>42</sup> Section 12, Constitution of the Republic of South Africa, 1996 (Act 108 of 1996).

a signatory to, and in fulfilling its obligations to human rights instruments like the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa; The Beijing Platform for Action; and CEDAW, South Africa is proud of its efforts at addressing sex role stereotyping through additional measures such as:

- Legislation to transform education – with measures to ensure equal access to education of both sexes from primary to adult education; and, a curriculum supported by the Girls Education Movement (GEM) for girls and the Boys Education Movement (BEM) for boys to assist in combating sex role stereotyping;
- In 1999 the Independent Broadcasting Authority Act, 1993 (Act 153 of 1993) was amended to include, amongst other things, a specific *Code of Practice* that addresses gender concerns such as identification of rape victims and the prohibition of material that stereotypes women, fosters sexism and undermines women's dignity;
- The provisions of the Films and Publications Amendment Act, 1999 (Act 34 of 1999) includes the prohibition of child pornography and the publication and/or dissemination of material that undermines the human dignity of women;
- A core principle contained in the National Gender Policy is that customary and cultural practices are subject to the right to equality. This principle recognizes the right of all persons to enjoy and practice their cultural and religious beliefs. However, it emphasises the point that these practices should not discriminate on the basis of sex.

5.3 South Africa is cognisant that gender-based stereotyping and prejudice is rooted in the gender discourses of masculinity and femininity with concomitant prescribed behaviours, norms and attitude that ultimately lead to discrimination and gender-based violence. It is an articulation of, or an enforcement of, power hierarchies and structural inequalities that are informed by belief systems, cultural norms and socialization processes. This is reflected in a number of cases that have been used in this Report, and in particular cases in Part V on violence against women, that indicate that efforts have to be strengthened in addressing gender imbalances, perceptions and stereotypes that lead to discriminatory behaviour against girls and women.

5.4 Aligning all laws with the Constitution and international human rights norms and measures to impact on rights based change in South Africa was mentioned from Articles 1 to 4 in this Report, with specific attention in Article 2 (f): Modification of laws, customs and practices. This Article 2(f) has to be read in conjunction with Article 5(a) below for greater coherence since it highlights the work with traditional leaders and human rights campaigns through government and civil society initiatives.

#### **Article 5 (a) Culture, Tradition and Religious Practices**

5.5 In South African society, the opportunity and capacity for transformation of gender relations galvanised within a discourse of deepening democracy and transformation of power relations to reflect the constitutional values of freedom, equality and dignity in a non-sexist and non-racist society.

Changes to customary law have opened up opportunities for women and girls to chieftaincy and to inherit property. Landmark cases in this regard have been discussed previously. (See Article 2.13 and Textbox 2.)

### **Textbox 11: Enforcing The Role Of Women As Caregivers**

In the case of *Jordan*<sup>43</sup> the Constitutional Court enforced the stereotypical role of women as care givers and that of men as bread winners. The case concerned a declaration by the then President of South Africa that all female prisoners with children under four years of age are to be released. The complaint was lodged by a male prisoner who also had a child under the requisite age. The argument was that the declaration discriminated based on the grounds of sex. The Constitutional Court however entrenched the role of women as care givers by holding that the discrimination was not unfair.

5.6 The cases in textbox 12 below are cited as examples where public discourse regarding constitutional rights vis-à-vis discriminatory cultural practices has led to public scrutiny of gender-based discrimination and violence in the name of culture. These have led ultimately to revision of legislation to ensure increased protection of victims and perpetrators.

### **Textbox 12: Cases On Dress Code And Culture**

1. Nwabisa Ngcukana was stripped, beaten, sexually assaulted and had alcohol poured on her by taxi drivers at the Noord Street taxi rank, Gauteng for wearing a mini skirt. Women's groups came out in public protest, while singing songs on fighting for their dignity. Meanwhile taxi drivers retaliated by saying they will continue to strip women who wore mini-skirts because it offended their culture (Mail & Guardian, March 7-13, 2008).
2. In a high profile case concerning a charge of rape, the kanga or sarong became the focus along with "Zulu custom" for the alleged rape;
3. The CGE, acting on behalf of Ms. Mpanza, sought a declaratory order from the Equality Court, based on the infringement of her right to human dignity, and unfair discrimination on the basis of her non-compliance with a ban stipulating that women are not allowed to wear trousers in the T-section of the Hostel.

5.7 These situations have seen a vibrant and organized civil society response; notably the One in Nine Campaign in response to a high profile rape trial; and collaboration by the national and provincial gender machinery, for example, in response to the Mpanza case. They have also seen action from the CGE and the SAHRC in ensuring women's rights; and combating sex role stereotyping and prejudicial practices that maintain the status quo - the patriarchal superiority of men over women. Increasingly civil society has targeted the creation of strong partnerships with traditional leaders, religious leaders, the media and sporting communities. This is to encourage these institutions to play an active role in public mobilization campaigns that seek to change entrenched beliefs that undermine the dignity and worth of women and girls. Traditional and faith leaders need to become more vigilant,

<sup>43</sup> *S v Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae)* 2002 (6) SA 642 (CC); 2002 (11) BCLR 1117 (CC).

take a stand publicly, and be vocal in challenging patriarchal stereotypes and prejudice regarding women. They also need to promote healthy options of women's role and choices in life that advance women's rights and the well-being of the community.

5.8 The courts have played a critical role in transforming societal beliefs and attitudes through some of their landmark decisions that have fundamentally changed customary and religious practices that violate women's human rights. The Sonke Gender Justice (an NGO that is part of the men's movement for gender equality in South Africa), the 16 Days Activism Campaign and the 365 Day National Action Plan against gender-based violence, are examples of initiatives to address stereotypes and transform attitudes and behaviour through awareness-raising campaigns, through the media, and through curriculum/events in the educational milieu.

5.9 Programmes run in schools, such as the GEM and Life skills programmes, that will impact on sex roles and stereotyping during the critical years of socialization, are discussed in the section on education in this Report. Government efforts have been discussed in Article 4 where *de facto* measures for women's empowerment will also serve to impact change on sex role stereotypes, such as the BBBEE and preferential procurement measures. These allow women to engage in areas that were previously barred to them such as in construction, transport and mining. Ownership, succession in estates and other achievements help to combat stereotypical views as women are empowered to engage in varied and non-traditional professions in South Africa. There is a backlash in different fields where men feel that women's rights are being given too much attention. Some challenges in relation to their ownership of land and engagement in meetings for redress that highlight the entrenched stereotypical views of women's role and place in society are discussed in Article 14.

#### **Article 5 (b) Family Education**

5.10 Since the onset of democracy, the Government of South Africa has spent millions of rands in educating the public on the Constitution, with emphasis on the *Bill of Rights*; provisions relating to the electoral system; and other key aspects of democracy. The purpose of this exercise was to institutionalise the provisions of the Constitution and thereby engender a culture that respects human rights, including the human rights of women. The Constitution has been translated into all eleven official languages to enable accessibility.

5.11 In 2000, the South African Government released a *Manifesto on Values, Education and Democracy*. This contained a number of strategies designed to promote the values of democracy, equity, non-racism and non-sexism, human dignity, accountability, the rule of law, respect and reconciliation. These have been integrated in the teaching material, the curriculum on religious and cultural interventions and language policy, among others.

5.12 The Equality Act, 2000, (Section 12), also prohibits the dissemination and publication of information that discriminates against women and others. The scope covers both broadcasting and print media and also covers advertisements that undermine women's dignity and gender equality. These prohibitions also cover the Internet. The challenge is to raise full awareness amongst all categories of women to ensure that they play a meaningful role with respect to monitoring the media's



stereotyping of women. The Internet also poses challenges that the government is presently grappling with. Another challenge is the balancing of women's rights with "protected speech" provisions in the Constitution<sup>44</sup>. Measures relating to law reform dealing with land and traditional beliefs or practices in rural areas are explored in more detail under Article 14. The use of education to change beliefs about sex and roles in society is also discussed under the section on education.

## ARTICLE 6: EXPLOITATION OF WOMEN

### Suppressing All Forms of Trafficking in Women

Trafficking in human beings is a modern form of slavery and a serious human rights violation. Indeed, it has become one of the lucrative illicit businesses in the global economy. This new slave trade has a variety of causes including extreme poverty, lack of access to resources, unemployment, poor education, and dysfunctional families. It is also fuelled by the clear demand for the services provided by trafficked persons.

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NGO Committee on UNICEF  
May 2006**

6.1 Since the presentation of the First Report and particularly the response to the CEDAW Committee's concluding comments, South Africa has strengthened its measures aimed at combating trafficking in women and children. South Africa's strategic response to trafficking in women has assumed a three-pronged approach. The approach involves strengthening international relations especially with neighbouring states with a view to strengthening the fight against organized and other forms of trafficking in women and children, including trafficking for the purposes of sexual and labour exploitation; pornography; prostitution and sex tourism. This has included the ratification of international and regional instruments that facilitate trans-national collaborative measures aimed at combating trafficking in women and children. One of the instruments in this regard, is the UN Convention against Trans-national Organized Crime which was ratified by South Africa, with the Supplementary Protocols, on 20 February 2004.

6.2 In December 2000, South Africa also signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and is a signatory to the Palermo Protocol. South Africa is one of at least 117 countries to have ratified the Protocol. In so doing, South Africa committed to criminalising trafficking and developing legislation to combat it. The South African National Prosecuting Authority has been tasked with coordinating this process and has formed an inter-sectoral task team to oversee the development of legislation. Provisions on trafficking have already been included in the Children's Act, 2005 (Act 38 of 2005) and the revised Sexual Offences

<sup>44</sup> Section 16 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)

Act, 1957 (Act 23 of 1957), called the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007). This Act has a chapter dedicated to criminalising trafficking for sexual purposes.

6.3 The multi-sector alliance to combat trafficking includes government departments and relevant agencies; the IOM; NGOs both national and international; various UN and identified foreign missions in South Africa identified in research studies as most affected by trafficking. A Trafficking in Person Inter-sectoral Task Team established a strategy to effectively address trafficking in persons. Elements of this strategy include: information; capacity-building and development; victim assistance and integration; policy and legislation development; liaison and consultation; and monitoring and evaluation. South Africa signed a 3-year funding agreement with the European Union in June 2006 to support the implementation of this strategy to prevent human trafficking, react to it, and provide support to the victims of crime.

6.4 Government's approach also involves prosecuting traffickers using existing legal provisions and administrative mechanisms, including the asset forfeiture unit. The prosecution of traffickers is backed by high-level special investigation units in the National Prosecuting Authority, which target crime syndicates. Legislation dealing with organized crime provides an enabling framework for effective handling of the syndicates. This includes legislation relating to asset seizure and forfeiture of the proceeds of crime.

6.5 The third component of the approach involves a law reform process aimed at creating an integrated and holistic legal framework that facilitates the fight against trafficking. Key measures to date include: interdisciplinary research on the causes, patterns and influencing factors; and the South African Law Commission's investigation with a view to developing a comprehensive legislative and administrative response to the problem of trafficking. The Law Commission's Report is currently being finalised.

6.6 Law enforcement agencies and research institutions have identified South Africa as one of the countries in the Southern African Region that is used by organized traffickers of human beings as a destination, transit and country of origin of victims. In acknowledging the seriousness of the situation, South Africa has implemented measures to combat trafficking and developed bilateral and multilateral co-operation agreements, particularly those that focus on organized cross-border crime. Furthermore, the South African Law Reform Commission has undertaken research with a view to producing a comprehensive Trafficking in Persons Bill, in addition to establishing a Human Trafficking Desk within the Organized Crime Unit of the South African Police Service.

6.7 Traffickers are currently prosecuted in South Africa under existing common law and statutory offences. The laws that are used include those on rape, assault, kidnapping, wrongful intention to deprive the liberty of another, abduction, murder, *Crimen injuria* (insulting the dignity of another) and extortion. Traffickers have been sought and actively prosecuted over the last few years. As a result, several syndicates have been busted. The prosecution of traffickers is backed by high-level special investigation units that target national syndicates. Legislation targeted at organized crime has been utilised effectively. This includes legislation relating to asset seizure and forfeiture of the proceeds of

crime. Specific statutes that currently support the combating of trafficking and have been used to prosecute traffickers include:

- Prevention of Organized Crime Act, 1998 (Act 121 of 1998);
- Refugees Act, 1998 (Act 130 of 1998);
- Domestic Violence Act, 1998 (Act 116 of 1998);
- Sexual Offences Act, 1957 (Act 23 of 1957);
- Basic Conditions of Employment Act, 1997 (Act 75 of 1997); and
- Child Care Amendment Act, 1996 (Act 96 of 1996)

6.8 Studies on trafficking in South Africa point to the country being both a key destination as well as a country of origin and transit point for individuals trafficked to and from Africa and Europe as well as globally. Certainly, given a few high profile cases of trafficking, there is increased awareness of trafficking within South Africa. What is needed is more accurate data on the full extent of the problem. Trafficking is a result of a complex set of interrelated push and pull factors. On the ‘push’ side, most studies focus on such factors as poverty, a lack of opportunities, dislocation, gender, racial and ethnic inequalities, and the break-up of families. ‘Pull’ factors include the promise of a better life, consumer aspirations, and lack of information on the risks involved, established patterns of migration, porous borders and fewer constraints on travel.

6.9 A 2003 report by the International Organization for Migration (IOM) on the trafficking of women and children for purposes of sexual exploitation in South and Southern Africa estimated that at least 1000 women were trafficked into South Africa from Mozambique.<sup>45</sup> The Report also found that South Africa was a transit point for women and children trafficked from the SADC region. However the Report was unable to provide reliable estimates on the numbers of women, men and children trafficked into and out of South Africa and the surrounding countries. The Report did identify push and pull factors fuelling the trade in women and children which include the commoditisation of women, poverty, and, in the case of Southern Africa, porous borders. The Report noted that the working conditions of women trafficked into the industry are extremely exploitative and include debt-bondage, long working hours, a limited right to refuse clients, and removal of their freedom of movement. These are violations of fundamental human rights.

6.10 The Report also identified nine distinct patterns of trafficking activity that have emerged in Southern Africa. These are:

- Trafficking of women from refugee-producing countries to South Africa;
- Trafficking of children from Lesotho to towns in the Eastern Free State of South Africa;
- Trafficking of women and girls from Mozambique to Gauteng and KwaZulu-Natal;
- Trafficking of women from Malawi to Northern Europe;
- Trafficking of girl- and boy children from Malawi to Northern Europe;

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<sup>45</sup> IOM Paper, ‘Seduction, Sale and Slavery: Trafficking of Women and Children for Sexual Exploitation in Southern Africa.’ 3rd Edition, 2003.

- Trafficking of women and girls from Malawi to South Africa over land;
- Trafficking of women from Thailand to South Africa;
- Trafficking of women from China to South Africa;
- Trafficking of Eastern European women to South Africa.

6.11 The UN estimates that every year approximately 1.2 million children are trafficked, both internally and across borders. Girls under the age of 18 trafficked for prostitution constitute 10-30% of the total number of trafficked women. Girls are particularly vulnerable because of their marginalization in society. They may be abducted by traffickers; sold by parents who are unable to feed them; or, given to a relative or person who promises employment. In some case the girls may have already been sexually exploited within the family or neighbourhood.<sup>46</sup>

6.12 Trafficking cases present a range of offences like sexual exploitation, exploitation of persons for farm or domestic labour, violence and murder. Prosecutions have proceeded on an *ad hoc* basis involving kidnapping, indecent assault and rape, where sentences are not as heavy as an offence in the trafficking in persons. While these measures are being undertaken, serious challenges exist in relation to the adequacy of the legislation and resources required to address the problem. With respect to the forced economic exploitation by gender, for example, the ILO found that men and boys accounted for 44% and women and girls for 56% of those exploited, while for forced sexual exploitation by gender, women and girls accounted for 98% and men and boys for only 2% of those forcibly exploited.<sup>47</sup> The ILO Report notes that “A major incentive for trafficking in labour is the lack of application and enforcement of labour standards ... tolerance of restrictions on freedom of movement, long working hours, poor or non-existent health and safety protections, non-payment of wages, substandard housing, etc. all contribute to expanding a market for trafficked migrants who have no choice but to labour in conditions simply intolerable and unacceptable for legal employment”.<sup>48</sup>

6.13 Research and studies on trafficking point to the following broad conclusions:<sup>49</sup>

- Trafficking is not confined to the sex industry and trafficked individuals are likely to find themselves involved in a range of legal and extra legal activities in both the formal and informal economy;
- The age, gender and other characteristics of victims vary. Though the sexual exploitation of trafficked women and girls is highly prevalent, men and boys are also sexually exploited and significant numbers of men, women and children are trafficked into other sectors;
- Though poverty, inequality and a range of other factors such as the promise of a better life, a lack of information, established patterns of migration and fewer constraints on travel may

<sup>46</sup> Fact Sheet on Violence Against Girls, NGO Working Group on Girls, NGO Committee on UNICEF, May 2006

<sup>47</sup> ILO, cited in Anderson & O’Connell Davidson, 2004, op cit, p 32.

<sup>48</sup> Ibid

<sup>49</sup> *Getting to grips with trafficking: reflections on human trafficking research in South Africa*, by Robyn Pharoah, ISS Monograph Series • no 123, June 2006

encourage trafficking, more research is required on the structural conditions which make trafficking possible;

- Trafficked individuals are subject to both physical as well as psychological coercion in order to keep them in their subjugated state;
- There is a need for accurate data on the extent of trafficking;
- Traffickers are a highly diverse group and there is much more to be learnt about traffickers and trafficking networks;
- Trafficking has significant implications for victims' health and well-being and there is again a need for detailed research in this area;
- Policies and programmes aimed at reducing trafficking, exploitative labour, prostitution or immigration can inadvertently fuel trafficking;
- Victim assistance and support programmes that adopt overly restrictive eligibility criteria may leave many without the help and support they need;
- Broad, abstract definitions of trafficking may be hard to apply in a law enforcement context. There is a need for research into the issues and challenges faced by law enforcement and judicial personnel in policing and prosecuting trafficking cases<sup>50</sup>; and
- Anti-trafficking measures have also included: the strengthening of international ties for cross-border collaboration; getting extensive information about the problem for the purposes of a comprehensive law and administrative review; and harnessing available legal and administrative avenues to respond to this global problem, in the interim.

6.14 Clearly, in order to effectively combat trafficking in South Africa there is a need for reliable and verifiable information about:

- Recruitment and transportation;
- The nature and extent of exploitation of victims;
- The organizations and organizational networks involved in trafficking;
- The characteristics and motivations of both clients and victims; and
- The infrastructure available both to help prevent and respond to trafficking.

6.15 The 365 Days National Action Plan to End Gender Violence includes focus on trafficking of women and prostitution. There is a need to more significantly raise awareness and coordinated action to end trafficking that is damaging to the person and their human development. It affects a girl's sense of dignity, self worth, ability to trust, and capacity for developing relationships. A girl's neurological

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<sup>50</sup> "Interfaith Dialogue: "What the Religious Community can do to Combat Trafficking" Global Initiative to Counter Human Trafficking International Forum, Cape Town, October 2007.

system is shaped by these terrifying experiences and for the remainder of her life, directly affects her way of thinking, feeling and acting<sup>51</sup>

### **Exploitation of Prostitution of Women and Children**

6.16 Measures aimed at exposing and prosecuting syndicates and persons responsible for child prostitution have also sought to combat child pornography as prohibited by amongst other laws, the Films and Publications Act, 1996 (Act 65 of 1996). Measures have been put in place to monitor and combat child pornography, including internet peddling of child pornography.

6.17 It is important to note that child prostitution was prohibited under the Sexual Offences Act, 1957 (Act 23 of 1957) and the Child Act, 1982 (Act 75 of 1982), and within the new legislation in both instances. (See Part V for cases of women being trafficked for prostitution and exploited for their labour, sometimes in cases of bondage by individuals and syndicates). Part V also looks at the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007) and how it could be strengthened to offer adequate protection, in conjunction with services for women and children. Government measures have targeted those responsible for child prostitution.

6.18 There are advocacy efforts aimed at the decriminalisation of prostitution as cited in the textbox below, to offer women more protection, to be less marginalized and stigmatised, to offer health and other related services. POWA (People Opposing Women Abuse) is an NGO that participates in the NGM in a very critical manner and works closely with the National OSW.

#### **Textbox 13: POWA: Vulnerabilities of undocumented women in South Africa**

In South Africa, the continued criminalisation of sex work stigmatises sex workers not just to the extent that they feel unable to request large numbers of condoms from clinics. It generally also leaves sex workers with too little control over their lives and therefore little control over their health. In the criminalised workplace, there is no legal obligation on clients to practice safer sex, and sex workers have no recourse to the police if they are raped. Outdoor sex workers told Sweat that they have very little time to negotiate with clients before they get into the car with them, because they fear arrest. This leaves sex workers unable to always establish the terms of the sexual encounter with the client. A further problem for South Africa's sex workers is their vulnerability to violence — sex workers are not protected by the police or justice system from the threat of violence like other workers. The World Health Organization has identified that forced sex increases the risk of HIV due to physical trauma. Sweat's research also revealed that sex workers are preoccupied about violence at the hands of clients and police, stigma, and with the fact that they do not have the space to take more proactive action around their own health and well being. The approach to sex work as a criminal offence is out of step with the Bill of Rights. Decriminalising sex work will also enable sex workers to access the same health and safety workplace protections as other workers.

<sup>51</sup> Ibid

## PART 2

## ARTICLE 7: POLITICAL AND PUBLIC LIFE

**Article 7 (a) Women in Politics and the Public Life**

7.1 Driven by the constitutional imperatives of gender equality and non-discrimination, the South African Government has put in place clear targets to enable the advancement of women in political and decision-making positions. Within the framework of the White Paper on the Transformation of the Public Service, 1995 and the White Paper on Affirmative Action in the Public Service, 1998, a minimum target of 30% was put in place for women in management positions in the Public Service. The new revised government target is that of 50% representation of women at all levels in Senior Management Services in the Public Service by March 2009. The Employment Equity Act, 1998 (Act 55 of 1998) requires all employers to ensure that the profile of their establishments exponentially reflects the demography of the country and to commit to this in a human resources plan with targets and time-frames, and especially for senior management levels. The status of government performance in this regard can be cross referenced to Article 4, paragraphs 4.12 to 4.15.

7.2 South Africa is signatory to the 1997 SADC Heads of State Declaration on Gender and Development, which had a minimum target of at least 30% women in political and decision-making positions by 2005. As a member of the AU, South Africa played a significant role in advancing the 2002 Durban decision of 50% women in the Commission of the AU, which was later extended to include all components of the AU in 2004, in line with the AU Heads of States' Solemn Declaration on Gender Equality in Africa, 2004.

7.3 The Electoral Act, 1998 (Act 73 of 1998) states that every registered party and candidate must facilitate the full participation of women in political activities and take all reasonable steps to ensure that women are free to engage in political activities. The ANC ruling party in December 2004 adopted the decision that 50% of its candidates on the party lists will be women - this undoubtedly had, and will continue to have a positive impact on the numbers of women in Parliament and in public life.

7.4 The Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) requires parity in the representation of women and men in political party lists and ward committees. Furthermore, the ruling party's quota for women's representation in party lists increased to 50% in 2005 local government elections. Ongoing democracy education and capacity building to accelerate and support women's political participation has been implemented, particularly by NGOs in partnership with the Independent Electoral Commission. In recognition of NGO contributions to democracy, the Electoral Commission integrates an award for NGOs that have excelled in this area, in the *National Human Rights Awards* that it shares with the SAHRC and the CGE.<sup>52</sup>

7.5 This section has to be cross referenced with Article 4 that addresses the government and corporate profile in employment equity and other related measures such as the BBBEE and preferential

<sup>52</sup> Annual Human Rights Awards that take place annually, on December 10, International Human Rights Day.

procurement measures and codes of good practices to accelerate women's involvement in previously disadvantaged areas and professions.

### **Article 7(b) Women's Participation in Government Policy**

#### **Women in political, policy and decision-making positions<sup>53</sup>**

7.6 An area in which substantial progress has been made in the last ten years is that of advancing women in political and decision-making positions in all spheres of Government. Progress has been substantial at the level of the legislatures, remarkably so at national and provincial levels. A national concerted effort is being made to advance women faster into senior management positions in the public sector and at local government level.

7.7 In 2008, in the National Parliament, almost a third (33%) of Members of the National Assembly are women. There are two (40%) women appointed as Office-Bearers of the National Assembly, namely the Speaker and Deputy Speaker of the National Assembly. The South African Parliament can boast the appointment of female Speakers of the National Assembly from 1994 to 2008. The Chairperson for the National Council of Provinces was a woman prior to the 2004 elections. In 2008, twenty-nine (i.e. 28.15%) women are appointed as Ambassadors, High Commissioners and Consul-Generals. In 2005, women comprised approximately 40% of all elected councillors at the local government level.

7.8 The representation of women in Cabinet has steadily increased over the years with women currently constituting 42.8% of Ministers, which entails a 200% increase from 1997. Overall there has been a three-fold increase in the number of women Ministers appointed from 1997 to 2008. Many women Ministers currently hold critical Cabinet portfolios that have been historically associated with masculinity. These include: Foreign Affairs, Public Works, Land and Agriculture, and Justice and Constitutional Development, to name just a few. Women hold 40% of Deputy Minister Posts. Since the 2004 elections, four of the nine Premiers that head Provincial Governments in South Africa are women. This entails a 303% increase from the 1 woman Premier since 1994.

7.9 The first woman Deputy Head of State was appointed in 2005. There are currently 20 women of the total of 48 Ministers and Deputy Ministers at National Level. In 1997, this figure was 12 women. There is thus an 83% increase in the number of women appointed as Ministers and Deputy Ministers since 1997.

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<sup>53</sup> This category includes Ministers, Deputy Ministers and Office Bearers in Parliament at National, Provincial and Local Levels



**Table 3 Representation of Women in Political Positions in 2008<sup>54</sup>****Women in the Judiciary****Textbox 14: Representation of Women in Law Sector**

“We have undoubtedly travelled far from the days when a woman, Madeline Una Wookey, was informed by the then Appellate Division of the High Court System of South Africa, that because she was a woman, the relevant law did not regard her as a person and also saw her as unfit to practice law. This was 1912, and it took another nine years before the Women Legal Practitioner’s Act, 1923 (Act 7 of 1923), which allowed women to enter legal practice, was enacted. It took a further seventy years for this country to see the first woman judge, a white woman, and another year to produce the first black woman judge”.

**Adv. Joyce Maluleke**  
**Director: Gender Issues, Dept of Justice**  
**“Women in the Judiciary Making a Difference”**  
**The Birth of the SA Chapter of the International Association of Women Judges:**  
**Report of the SA Women Judges Conference**  
**03-05 October 2003**

<b>Position</b>	<b>Female</b>	<b>Male</b>	<b>Total Number</b>	<b>% of women representation</b>
President	-	1	1	<b>0%</b>
Deputy President	1	-	1	<b>100%</b>
Ministers	12	16	28	<b>42.8%</b>
Deputy Ministers	8	12	20	<b>40%</b>
Premiers	4	5	9	<b>44.4%</b>
Members of National Parliament	128	264	392	<b>33%</b>
Members of National Council of Provinces	20	34	54	<b>37.3%</b>
MPs in Provincial Legislatures	139	277	416	<b>33.4%</b>

7.10 Given the character and role of the judiciary under *apartheid*, judicial transformation in the democratic South Africa became an urgent and critical priority in the broader transformation goals. This has serious and important consequences for women in general, both as users of the judicial system and as women employed within the system itself. While the Judiciary is currently increasingly

<sup>54</sup> Figures obtained from Information Services Section: Research Unit: Parliament of SA and Permanent Delegate Contact List, National Parliament.

representative of South African society in terms of race, it remains predominantly male in nature, where only 30% women in 2008 comprise judges and magistrates. In 2005, women constituted about 28 (13.52%) of 207 of the country's judges, one of whom was a Deputy Judge President. The remarkable progress that must be noted is that prior to 1994, only 1 woman (who was white) served as a Judge. Changing the racial and gender profile of the South African Judiciary constitutes a significant milestone achieved with regard to the transformation of the judicial system.

7.11 Measures aimed at facilitating the organization of South African women judges and magistrates into an association affiliated to the International Association of Women Judges have been ongoing since 2003. This has culminated in the launch in August 2004, of the South African Chapter. Government is providing the necessary support to ensure that the Chapter capacitates its members and participates in meaningful decision-making. This structure will place women's issues on the agenda of transformation of the judiciary. In January 2007 the founding members of the South African Chapter of the International Federation of Women Lawyers (FIDA SA) adopted their constitution and elected an executive committee. They plan to focus on collaboration with programmes of Legal Aid, education and rights awareness for women, and strengthening of international relations.

7.12 South Africa can boast the appointment of one of its women judges to the International Criminal Court, Judge Navi Pillay.

### **Women in local government**

7.13 The database of the Municipalities of South Africa (November 2007) indicates that from a total of 283 Municipal Managers, only 26 (8.48 %) are females, and that out of a total of 7968 Councillors, only 3122 (40 %) are females. According to the gender audits carried out by the South African Local Government Association in 2004 and 2006, the representation of women in local government was 29% in 2004 and 42% in 2006.<sup>55</sup> Despite impressive increases in numbers, according to a study conducted by the CGE titled "Gender equity in Local Government" (2006), women councillors continue to experience marginalization and withholding of resources by male colleagues who do not approve of women in leadership positions.

7.14 The Traditional Leadership and Governance Framework Amendment Act, 2003 (Act 41 of 2003) provides for a quota for the representation of women with regard to the establishment of traditional councils. According to the Act a traditional community must establish a traditional council. The council must have a maximum of 30 members and the Act stipulates that 30% of those should be women. However, the Act goes on to provide that the Premier could set a lower threshold (in accordance with set procedures) if there is an insufficient number of women to participate in the council. This provision introduces an element of prompting traditional communities to make concerted efforts to involve women in key structures. It also provides for traditional communities to strive towards progressively advancing gender presentation in the succession to traditional leadership positions.

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<sup>55</sup> Department of Provincial and Local Government, CEDAW input 2008

## Article 7(c) Women's Participation in NGOs and Trade Unions

7.15 *In 2004 a series of Ingxoxo Zamakhosikazi (Women's Conversations)* were hosted by government in the various provinces and at national level with a view to ensuring women's participation in the country's *Ten Years of Freedom Review* process and in particular, to obtain their feedback on the impact of government policies and related services on their lives. These forums obtained useful feedback on what works and what doesn't and the information obtained has been integrated in government plans for the next decade. The feedback covered a wide range of women's priorities and needs for accelerated progress and these included: poverty, violence against women, land, housing and access to finance and natural resources such as land. This tradition has been extended to the involvement of the girl child in 'mock parliaments', by NGOs where younger woman get the opportunity to debate issues from a gender perspective and to bring these to the attention of politicians.

7.16 The Government of South Africa has also actively supported the establishment of and facilitating the input of women's interest groups in mainstream policy-making structures in the various sectors. Most of these are business and professional women's groups. They include groups such as South African Association of Women Entrepreneurs Network (SAWEN), South African Women in Mining Association, Women in Oil and Energy South Africa, Technology for Women in Business, Women in Nuclear South Africa, Women in Construction and South African Women in Dialogue (SAWID). SAWID is an independent SA women's forum committed to improving the status of women by engaging National Government, the Private Sector, Civil Society Organs and donors, and forming partnerships to shape development agendas, SAWID seeks to provide a dialogue platform for women from all walks of life, including rural areas.

7.17 Some of the women's groups are financially sustained by government. This is the case with SAWEN which received R30million from government funding in the form of project specific grants. Women in NGOs and Women's NGOs have been encouraged to participate in Justice Forums, Peace Tables and other consultative processes, including South African Law Reform Commission consultations. Government has also encouraged and provided space for women's voices in the process of exploring a *Legal Services Charter* that commenced in December, 2004.

7.18 Government has also continued to encourage women's participation in trade unions and at all levels of decision making in these structures. One of the effective measures in this regard is the requirement of equitable representation in social partner structures such as National Education and Labour Council (known as NEDLAC). The proportion of women who are members of trade unions has increased by 1.2% from 25.6% in 2000 to 26.8% in 2002. Women's representation in trade union leadership has also increased albeit at a slow pace. As unions are also covered by equality legislation this in the long term is likely to accelerate gender transformation within the leadership of the labour movement.

## ARTICLE 8: INTERNATIONAL REPRESENTATION AND PARTICIPATION

### **Women's Representation in Diplomatic Appointments and International Delegations**

8.1 Diplomatic appointments of women increased dramatically since 1998. Twenty-three (24.2%) women were appointed as Ambassadors and High Commissioners in 2005. This indicates a 188 percentage increase in the number of women appointed as Heads of Missions from 8 (17.4%) in 2001. Overall, there are 296 (40.68%) women employed in Missions abroad, including Ambassadors and High Commissioners. In 2008, women account for 36% appointed as Ambassadors, High Commissioners and Consul-Generals.

8.2 Women's participation in delegations other than those dealing with women and children's issues has also increased considerably. Women often head important delegations to international forums with the Minister of Foreign Affairs, who is a woman, naturally heading many of South Africa's delegations

8.3 The South African Constitution, 1996 (Act 108 of 1996) informs its foreign policy and the National Gender Policy ensures that gender mainstreaming is an integrated component in all aspects of government's work, including in peace missions abroad. South Africa's attempts to centralise gender mainstreaming in peace missions is also informed by the UN Security Council Resolution 1325 on Women, Peace and Security; the AU constitutive elements of a PCR framework that seeks to consolidate women's gains made during the conflict; and rebuilding public institutions that are responsive to women's needs.

8.4 South Africa believes that the full implementation of the United Nations Security Council Resolution 1325 requires the resolve of member states in forming partnerships with civil society and communities to promote women's rights and participation in peace processes. The South African government and the UN Department of Peacekeeping Operations recently hosted a Strategy workshop with women's constituencies from police and troop contributing countries. At this meeting, South Africa, Pakistan, Nigeria and Argentina was requested to implement a pilot project of the key agreements and recommendations and to monitor the implementation of UN Security Council Resolution 1325. We are currently in the process of establishing an inter-ministerial/ department task force at a national level to develop a national consultation process that can lead to a national action plan. Key amongst these partners will of course be the Department of Defence, Foreign Affairs, Justice and Home Affairs, with participation from other departments as well.

8.5 South Africa is currently revising its White Paper on Participation in International Peace Missions. This is a collaborative venture between the Departments of Foreign Affairs, Defence, Correctional Services, South African Police Services and other government institutions. A primary objective is to emphasise the role of women in peace missions abroad as well as the mainstreaming of gender in all missions. The country's programme of action includes the following:

- To ensure that each government department appoints a focal point to support coordination of the Interdepartmental Working Group
- Consult, inform and seek partnership with the NGM and relevant civil society organizations

- Negotiate and secure resources to facilitate implementation strategy
- Elaborate a National Action Plan on the implementation of UN Security Council Resolution 1325 (2000)
- Hold regular meetings with stakeholders to monitor and evaluate the implementation of the action plan
- Considerable progress has been made to date: South Africa prepared and submitted a progress report on the implementation of the Action Plan to the UN Department of Peace Keeping Operations.
- South Africa also hosted a National Consultative Workshop on Gender mainstreaming in Peace Missions with civil society to further refine the National Action Plan on UN Security Council Resolution 1325.

8.6 Over the past 13 years, South Africa has deployed several women to participate at operational levels in the UN and the AU-sponsored peacekeeping missions as members of the South African National Defence Force (SANDF). Measures have been put in place with regard to strengthening the role of women and ensuring their involvement in decision-making related to peace-keeping, preventative diplomacy and related activities. A number of senior women, including the Minister of Foreign Affairs, have been involved in peace-keeping and preventative diplomacy related to decision-making on the continent.

8.7 In addition, in January 2005, the South African Government approved the deployment of South African Police Service members in Sudan as part of the AU Civilian Police. The members deployed consisted of both males and females. Equity targets for this deployment were maintained at the ratio of 60% males and 40% females. One of the objectives of the deployment was to provide assistance to women and children, i.e. “internally displaced people”.

8.8 South Africa has adopted various strategies to address gender in conflict ridden countries, particularly efforts to lobby for more women in peace making, peace building and peacekeeping.

8.9 The South African Government has demonstrated its political will and commitment to change the lives of women in this country, among others through signing important international conventions regarding the rights of women, in particular CEDAW.

8.10 The exclusion of women from political decision-making is a major impediment to the realisation of sustainable peace. South Africa has also realised the need and committed itself to mainstreaming gender in conflict resolution. Measures aimed at mainstreaming gender and involving women in decision-making relating to conflict resolution are also informed by a need to respond effectively to violence against women.

8.11 The changes in South Africa had major implications for women’s lives and opened new opportunities and challenges in the quest for women’s equality and empowerment. Women in the SANDF have welcomed the equity clause in the Constitution and other instruments that create an enabling environment that can overcome obstacles in the pursuit of gender objectives and equal opportunities.

8.12 It is encouraging to see a number of women within the defence force who occupy previously male dominated positions, especially in the air force and the navy. We now have female generals, commanders, pilots and engineers, and now all women of all races are becoming battalion commanders, others undertaking foreign postings as military attachés.

8.13 The operations of the SANDF, including the treatment of women in armed conflict, observance of other human rights and involving women in peace-keeping operations and related decision-making in the continent, are informed by the Constitution and the Defence White Paper. Amongst other things, the Defence White Paper commits the SANDF to adhere to international law on armed conflict and to all international treaties to which South Africa is party to such as CEDAW, the Optional Protocol on the African Charter on Human and People's Rights on the Rights of Women in Africa, the UN Security Council Resolution 1325 on women's inclusion in peace processes, and the Southern African Development Community (SADC) Declaration on Women and Development (now adopted into a Protocol).

8.14 South Africa also used the opportunity of its recent appointment as President of the General Assembly to invite Member States and observers to an informal thematic debate on the promotion of gender equality and the empowerment of women. The common concern that was reached by the 20 Ministers from different member states concluded, amongst other agreements, that gender based violence continues to be a major impediment to the empowerment of women and girls, and to the development of communities and States. Furthermore, member states present recognized that women's participation and leadership in peacekeeping operations is key to progress towards peace and security, including the full implementation of Security Resolution 1325 on women, peace and security. Member States also expressed strong support for a more coherent, better coordinated and better resourced UN gender architecture with both normative and operational functions, which would strengthen the impact of gender equality and the empowerment of women programmes at the country level, and across the Funds, Programmes, Agencies and Departments of the United Nations. Member states also pointed out that each UN entity was responsible for mainstreaming gender perspectives in its policies and programmes, and called for much better accountability mechanisms to ensure better implementation. Finally, some members also called for an intergovernmental process to discuss the recommendations in the report of the High level Panel on System-wide coherence.

8.15 South Africa also fully associates itself with the statement of the Human Security Network that draws attention to the need for more work to be done in this area, particularly the representation of women at levels of decision-making including as military observers, civilian police, peacekeepers, human rights and humanitarian personnel in UN field operations and special representatives of the Secretary General.

8.16 Strong partnerships between government and South African women's initiatives in peace-building and conflict resolutions processes also yielded reputable results. South Africa has, through the Spousal Office and the Office on the Status of Women, both in the Presidency, and the Department of Defence, spearheaded programmes that seek to assist women from conflict-ridden countries in Africa to contribute to the culture of peace on the continent and beyond. This goal is achieved through facilitating dialogue among these women with the South African Women in Dialogue (SAWID). SAWID has played a major role in facilitating dialogue between women from

opposing camps, for example the dialogue with women of the DRC (March 2003) and Burundi (July 2004). An active solidarity movement has developed whereby SA women in addition to engaging in their struggles are also reaching out to provide space for women in conflict and post-conflict areas to express their own concerns and hopes for the future. SAWID led a multi-party delegation to the Sudan in 2007 to participate in a Conference on Sudanese Women in Politics, and both attended and hosted conferences on Women, Peace and Prosperity in Tunisia and South Africa in March and April 2007. The women of South Africa have therefore seized the opportunities that exist and have taken an active role as political, business and civil society leaders to contribute towards the resolution of conflicts and for the full attainment of socio-economic development within the country and the continent.

8.17 Furthermore, measures have been implemented with regard to strengthening the role of women and ensuring their involvement in decision-making relating to peace-keeping, preventive diplomacy and related activities. In addition, a number of senior women, including the Minister of Foreign Affairs, and the President's adviser, are involved in peace-keeping and preventive diplomacy related to decision-making in the continent and other areas on a regular basis.

### **Women's Participation in International Forum Processes**

8.18 South Africa nominated a woman as a candidate, Justice Navi Pillay, for the International Court of Justice in 2004. Furthermore, women are equitably represented amongst South Africa's delegates to the Pan African Parliament. The nomination of women as technical staff for different international forums such as the UN, AU, NEPAD and SADC structures has also improved considerably in the last few years. However, the government has noted that a lot still needs to be done in this area. Several female Ministers are Chairpersons of International and global bodies. One such example is the Former Minister for Public Service and Administration who was President of the Commonwealth structure (CAPAM) as well as the Chair of the Pan African Ministers for Public Service.

8.19 South Africa has also supported a civil society initiative by the Spousal Office in the Presidency, to assist women in post war situations to participate meaningfully in post war social reconstruction and democracy processes. This has included Peace Round-Tables<sup>56</sup> involving dialogue between South African women and women in the Democratic Republic of Congo, Burundi and Rwanda.

8.20 South Africa has participated in the pilot process of the UN Economic Commission for Africa for the development of an African Gender and Development Index, to facilitate gender monitoring and evaluation of progress across the African region in terms of compliance with international and global agreements.

8.21 South Africa played a key role in the development of the SADC Protocol on Gender and Development which places women at the centre of post conflict resolution and post conflict reconstruction and development. This Protocol was ratified and adopted during August 2008.

<sup>56</sup> Organized in collaboration with the Department of Defence

8.22 Dr Nkosazana Dlamini Zuma, Minister for Foreign Affairs, participated in a thematic debate of the United Nations Security Council on Sexual Violence in Conflict Solutions at the UN Headquarters on Thursday 19 June 2008 at the invitation of Ms Condoleezza Rice, US Secretary of State. The debate was held under the Council's agenda item, "Women, Peace and Security, with a particular emphasis on rape and other forms of sexual violence in situations of armed conflict", and focused on sexual violence as a tactic of war.

8.23 In order to enhance progress on the development agenda within north-south cooperation, South Africa has placed women's issues on the agenda in discussions, both in bilateral and multilateral forums. Within south-south cooperation, the issues have also been taken up by ministers within the Non-Aligned Movement (NAM) context. NAM will hold a ministerial meeting on the advancement of women in December 2008 in Guatemala. Through active participation in the India-Brazil-South Africa (IBSA), South Africa seeks to contribute to strengthening south-south co-operation and the development of innovative cooperation programmes, including those with a gender dimension. South-South cooperation also includes the New Africa-Asia Strategic Partnership (NAASP) in which a women's working group was established. In 2006, South Africa and Indonesia co-hosted the NAASP conference in Durban and organized a Women's Working Group on the margins of this meeting. South Africa has undertaken to facilitate the issue of gender parity within the African continent.

8.24 South Africa hosted the Fourth World Congress on Rural Women and the African pre-Congress consultations in April 2007 to discuss universal and wide-ranging issues confronting rural women and to share concrete experience of success in addressing these worldwide.

8.25 Within the Social Development arena, South Africa reiterated the country's priority social and population -development issues as contained, respectively, in the WSSD (Copenhagen Declaration, 1995) and the International Conference on Population and Plan of Action, among other things, the internationally agreed development goals. Gender issues were dealt with as a priority.

8.26 Within the Democracy Forum, specifically the Friends of the Helsinki Process, South Africa was the facilitator for the Gender Roadmap on strengthening Gender Equality and preventing Violence against Women, building international political will and developing mechanisms for co-operation.

8.27 South Africa continues to include the importance of the role of non-state actors in the gender arena, particularly in the areas of health and education.

8.28 South Africa also participates actively in the development of gender policies and programmes of the African Union, SADC and NEPAD.

## **ARTICLE 9: NATIONALITY**

9.1 South African laws that grant equal rights between women and men in respect of acquisition, transmission and changing of citizenship have remained unchanged. Government measures during the period under review have involved law reform measures aimed at removing barriers undermining the unification of foreign spouses with their South African spouses of either sex. The main law reform



instrument in this regard has been the Immigration Amendment Act, 2004 (Act 19 of 2004) and the South African Citizenship Amendment Act, 2004 (Act 17 of 2004). The Constitutional Court played a key role in providing constitutional guidance on this matter through its landmark decisions in cases such as *Dawood, Shalabi and Thomas*.<sup>57</sup>

9.2 There are ongoing efforts that endeavour to ensure that all new laws are assessed for their equality impact. This has entailed in many instances, withdrawal or recasting of provisions in statutes to embrace gender equality. Old laws, whether statutory, common law, customary or religious laws, are reviewed with a view to eliciting and eliminating provisions that undermine gender equality. In practice, the focus is on analysing existing and planned laws to ensure that such laws do not discriminate directly or indirectly against women and that where possible, measures that seek to advance the human rights of women or affected groups of women are included.

9.3 The table below shows some of the legislation that impacts on women and their nationality.

<b>Table 4: Important Legislation Impacting on Women's Lives</b>	
<b>Legislation</b>	<b>Summary</b>
<b>Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)</b>	Widely acclaimed as one of the world's most progressive Constitutions, asserts in its founding provisions that the democratic state is founded on the values of human dignity, the achievement of equality and advancement of human rights and freedoms, non-racism and non-sexism. The Constitution contains several provisions that advance gender equality. Amongst these is the Equality Clause in the Bill of Rights.
<b>Recognition of Customary Marriages Act, 1998 (Act 120 of 1998)</b>	This Act abolishes the minority status of women married under customary law and abolishes the marital power of husbands as guardians.
<b>South African Citizenship Act, 1995 (Act 88 of 1995)</b>	Citizenship may not be lost or gained due to marriage, giving effect to obligations under <i>CEDAW</i> .

## Refugees

9.4 South Africa has also reviewed the regulatory framework for refugees to ensure that all refugees including women are treated with dignity and have unhampered access to life's necessities, including health, social grants, housing, education and work. Unfortunately, there has been growing resentment, and reaction to refugees that has been demonstrated through violent attacks in different parts of the

<sup>57</sup> *Dawood, Shalabi and Thomas v Minister of Home Affairs* 2000(3) SA 93 and *Booyesen and Others v Minister of Home Affairs and Another*. 2001 (4) SA 485

country. Local South Africans are concerned that refugees are dipping into a small pot of resources allocated for large numbers of South African citizens who still remain poor, unemployed and or/in need of basic services. The violence against other African nationals and negative reaction towards refugees has been confirmed by the SAHRC, as well as the UN High Commissioner for Refugees, who have assisted asylum-seekers. The Department of Home Affairs has acknowledged backlogs in processing applications and needing to expedite matters. Refugees to South Africa are largely from Africa, neighbouring states, and recently from Zimbabwe, where their unstable political situation has led to large numbers coming into South Africa in search of work, peace and security. Government departments that address the needs of refugees would benefit from more awareness and training on the constitutional provision for access to basic public services such as education, health and other social assistance and to manage this without bias. Human rights education and campaigns are also needed to bring an end to violence against these vulnerable foreign nationals in South Africa who are perceived to be in competition with the poor for scarce resources.

### **Immigration**

9.5 South Africa has changed its immigration laws to ensure equity and efficiency. However, in its study of immigration patterns, South Africa has noted that it is women and children who tend to be disproportionately represented, raising the concern that this may be related to trafficking. Government is presently looking into this anomaly.

## **PART 3**

### **ARTICLE 10: EDUCATION**

#### **Article 10(a): Equal Access to Education**

10.1 During the period under review, the government has tirelessly pursued transformation measures in all aspects of education, including those aimed at the advancement of girls and women and the promotion of gender equality. It has continued to ensure its compliance with the Education for All goal and in fulfilling its obligations to international and regional agreements to promote gender equality in education while addressing MDG goals 2 and 3 on universal primary education.

10.2 The key law reform measures to transform the education system to eliminate the inherited systemic deficiencies and inequalities in access to education were dealt with in South Africa's First Report to the CEDAW Committee. In particular, the National Education Policy Act, 1996 (Act 27 of 1996) and the South African Schools Act, 1996 (Act 84 of 1996) promoted access, equality and democratic education; as well as compulsory education for children aged 7 to 15 years. The Further Education and Training Act, 1998 (Act 98 of 1998) regulates further education, and addresses the advancement of women in further education as well as in previously male-dominated fields. The Skills Development Act, 1998 (Act 97 of 1998) provides for upgrading and acquisition of new skills

for employment and advancement in the labour sector; and requires the Department of Labour to consider the provisions for gender equality.

10.3 South Africa has ensured that discriminatory practices in education are addressed for all learners through:

- Ensuring the same conditions for all with regard to career and vocational guidance, for equal access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas. This equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training.
- Access by all to the same curricula, the same examinations, teaching staff with qualifications of the same standard and pre-school premises and equipment of the same quality.
- The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging co-education and other types of education which will help to achieve this aim and, in particular by the revision of teacher learner support materials and learning areas and adaptation of teaching methods.
- The same opportunities to benefit from scholarships and other study grants.
- The same opportunities for access to programmes of continuing education, including adult education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women.
- The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely.
- The same opportunities to participate actively in sport and physical education.
- Equal access to specific educational information to help to ensure the health and the well-being of family including information and advice on family planning

### **Legislation and Developments since 1998**

10.4 The South African Schools Act, 1996 (Act 84 of 1996), amended in 1999 and again in 2002, gives parents at all schools the right to set school fees. In order to prevent school fees from becoming a barrier to education, a system of exemptions from school fees for poor parents was established. Since 2006, 60% of all schools are 'no fee schools' in the poorest areas of the country. For learners who are orphans or in foster care there continues to be an automatic exemption for fees. In 2006 the category was broadened to include those who receive a child-support grant.

10.5 The National Plan for Higher Education, March 2001 in its restructuring of the higher education system, established student-equity and employment equity targets. Student-equity targets are for black and female students who are underrepresented, while employment-equity aims to address the race and gender employment inequalities

10.6 The Adult Basic Education and Training Act, 2000 (Act 52 of 2000) provides for basic education to older persons who previously could not access education opportunities. This Act largely benefits

women and black women in rural areas who were historically disadvantaged. In order to redress the inequities in education experienced by persons with disability, the Education White Paper 6: Special Needs Education, building an Inclusive Education and Training System (2001) encourages where possible the inclusion of learners with special needs into public mainstream schools.

10.7 During the period under review, government has forged ahead with transformation measures across the education system. Across all levels, advances have been made in the proportion of women in the education system with parity being achieved in almost all spheres. The Education Statistics at a Glance Report, 2006, shows that more female learners than male learners of the same appropriate school age population are enrolled in schools. It also indicates a disparity in favour of females. The provinces showing the largest gender gap, that is, furthest from gender parity are the Eastern Cape and Western Cape; while Limpopo shows no gender gap at all. More girls than boys remain at the secondary level and in tertiary education. In addition, there are notable increases in the participation rate of all children in education with almost universal access and achievement of the MDG on education, as indicated by the following data:

- In 2001 the figures<sup>58</sup> for the girl child between 0-17 years in the education system was equal to that of the boy child of the same age group. It remained unchanged in 2007<sup>59</sup>.
- In 2007, 95.8% of primary school-going learners aged 7-13 years were enrolled in primary schooling.
- 2007 showed a slightly higher proportion of females, at 96% compared to males at 95.6%; and figures show close to universal primary school enrolments.
- The proportion of females under 19 years attending school increased phenomenally from 21.33% in 1995, to 65.53% in 1999,<sup>60</sup> to 87, 41% in 2007<sup>61</sup>.
- For the general population, according to the Labour Force Survey of March 2007, the literacy rate for the general population was 89.09% while for the 15 to 24 year olds, it was 97.5%.
- Gender parity indices for primary, secondary and tertiary education in South Africa were 0.99, 0.97 and 1.16 respectively in 2007.
- In 2007 there were more females than males enrolled in tertiary education<sup>62</sup>.
- In 2001, 56% of all university qualifications were obtained by women, although they remained under-represented in engineering sciences and technology fields
- Enrolment of female learners in higher education has increased from 44% of total enrolment in 1994 to 53.4% (contact and distance education) in 2004.<sup>63</sup>
- Black students account for 68.17% of contact and distance education enrolments in higher education in 2007.

<sup>58</sup> Figures sources from Census 1995 and 2001, Stats SA. Remains unchanged

<sup>59</sup> Stats SA Community Survey 2007

<sup>60</sup> Source: October Household Surveys, 1995 and 1999. Statistics SA. (Refer to table 1 in Annexure 8 of this report).

<sup>61</sup> Stats SA Community Survey, 2007

<sup>62</sup> Ibid

<sup>63</sup> APRM 2007

- The increase in the number of black and women graduates is hailed by the education system as representing a significant achievement made by government over the past decade towards widening access, encouraging equity and providing redress in education.

10.8 Overall there are indications that girls drop out from schooling at a lower rate than boys. Some of the reasons offered for this encouraging counter trend compared to other African countries are:

- Only relatively high status jobs available (particularly for African women) require Matric and further training;
- Families may increasingly begin to invest in girls because women are more often sole breadwinners; and
- The perception that educated girls can command a higher *lobola* price.

1.9Of the girls who drop out from schooling, pregnancy is cited as the most common reason. However, the South African Schools Act, 1996 (Act 84 of 1996) is clear about pregnant learners and their continued access to education.<sup>64</sup>

#### **Article 10(b): Curriculum and Education Infrastructure**

10.10 The National Curriculum Statement, 2002 is a radical departure from the previous racist and sexist curriculum model. This new curriculum is liberating, nation building, learner centred, outcomes based, and more gender sensitive. The Department of Education is further strengthening the curriculum by providing curriculum support material for teachers nationally, through advocacy inserts on learner pregnancy, sexual violence and harassment in schools in print media.

10.11 Government in partnership with civil society has continued to provide school buildings within reasonable distances from rural communities and equipped them with learning aids such as computers and laboratories. This process however, is a long term intervention and will take a number of years to cover all rural villages. Both the Department of Public Works and the Department of Education work in partnership to construct and rehabilitate schools in disadvantaged communities, using innovative technology that can accommodate rapid delivery of schools without compromising quality. The textbox below provides an example of these ongoing efforts.

#### **Textbox 15: School Infrastructure Development**

An Eradication of Mud Schools programme was launched in the Eastern Cape in June 2007 and in Mpumalanga in July 2007, by the Minister of Public Works, in a partnership between the Department of Public Works and the Department of Education.

Despite efforts since 1994 by Civil society organizations and government, the large inherited disparities of the *apartheid* legacy are still being addressed; particularly in the poorer and more disadvantaged areas in the country

<sup>64</sup> African Gender and Development Index; African Women's Progress Report, South African Report

10.12 The National Education Infrastructure Management System is an electronic planning and management tool developed by government to allow access to information about the conditions of infrastructure and facilities at all public schools across the country. A report released in 2007 provides detailed information about every school including the state of its physical infrastructure, water and sanitation. According to the report, the number of public schools without water decreased from 8 823 in 1996 to 3 152 in 2006, and the number of schools without on-site toilets decreased from 3 265 in 1996 to 1 532 in 2006. This tool is being used as a planning tool for improving physical infrastructure developments in public schools across the country. The first phase of this project was completed in 2008 and will be operationalized to ensure that the state of infrastructure in every school is documented, tracked and linked to upgrading plans.

10.13 As part of the Rural Transport Strategy of South Africa, school transport is a priority at all spheres (national, provincial and local/municipal). Efforts are underway to improve access through the improvement of road infrastructure; village level or intra-farm transportation; and linkages through main connector routes through subsidized buses and taxis. Increased and affordable access to transport in rural and peri-urban areas will reduce the large amounts of time spent by learners walking to and from school and will increase participation and educational achievement. While there is no national scholar transport strategy, some provincial departments have implemented specific learner transport strategies in areas of particular need.

10.14 Poverty and other socio-economic factors continue to threaten the provision of quality education for all. The Education Department has increased the number of schools in previously disadvantaged areas and increased the budget for the provision of basic services to schools, for example, in the 2006/07 financial year, 21 schools were built and R950 million was allocated for service provision. Through the National School Nutrition Programme, government ensures that primary school learners from poor communities are provided with a healthy meal for 156 days per annum. In 2007, a total of 6 054 000 learners in 18 039 primary schools were beneficiaries of this programme. This scheme enhances active learning capacity of students, and works in conjunction with food production and nutrition education initiatives in schools.

10.15 In its efforts to maintain safety and security in the educational environment the Government has put in place a number of measures to ensure safety in schools, such as building and fixing fencing around schools to restrict access of intruders and installing high mast security lights; implementing regulations that declare all public schools as drug-free and dangerous weapon-free zones. Across the country, 585 schools are prioritised to become models of safe schools and the Education Department officials and School Governing Bodies are partnering to develop safe school policies; with identified school safety teams inclusive of community representation to collectively make schools safe. In relation to drug use and abuse, policies and programmes have been put in place to address the school environment as a whole. There are a number of complementary and related policies and legislation on the control and management of drug abuse in schools in addition to the Regulations for Safety Measures at Public Schools, *Government Gazette No. 22754* of 12 October 2001.

10.16 School Governing Bodies are legally obliged to ensure that measures are in place including a Code of Conduct for an anti-discriminatory and safe school environment to curb racism, pregnancy, sexual harassment and violence in public schools. New legislation introduced in 2007 has given schools stronger powers to search pupils for weapons and drugs.

#### **Article 10(c): Eliminating Gender Stereotyping**

10.17 In 2000, the South African Government released a *Manifesto on Values, Education and Democracy* that contained a number of strategies designed to promote the values of democracy, equity, non-racism and non-sexism, human dignity, accountability, the rule of law, respect and reconciliation. These are reflected in the teaching material, the curriculum, religious and cultural interventions, and language policy that have been reviewed to eliminate gender stereotyping and other forms of bias and discrimination. The new curriculum for education as well as teaching methods also seeks to integrate the principle of equality between women and men.

10.18 The South African Schools Act, 1996 (Act 84 of 1996) prohibits the discrimination of learners on the basis of pregnancy. Learners are educated about the prevention of pregnancy and sexually transmitted diseases and about positive lifestyle choices through the Life Orientation Programme in the National Curriculum that is compulsory for grade 1 to 12. Peer education, prevention and support programmes are available. The *Measures for the Prevention and Management of Learner Pregnancy* provides support to educators to manage pregnancy in schools and to contribute to the reduction of girls dropping out of school. It is worth noting that girls drop out at a far lower rate than boys.

10.19 The South African Government has introduced a number of innovative programmes that seek to improve women's vocational choices with special attention given to accelerating their participation in science and technology. The *2001 National Census* revealed that for the population 20 years and older there were twice as many women as men in the social sciences, whilst there were ten times as many men as women in the engineering and the pure and life sciences.

10.20 The Department of Science and Technology established the National Advisory Council on Innovation to serve as an advisory panel to the Minister of Science and Technology. The Science, Engineering and Technology for Women Sub-committee advises the Minister on issues relating to women within the science and technology environment. The programme has been in operation since 2003 and to date has spent R 3 150 000 on awards and Fellowships for women. One of the positive spin-offs of this process has been assistance provided by the department in the production of a television series on Women in Science that was screened on national television in South Africa in 2007. This series served both to educate young girls on careers in science, engineering and technology but also highlighted the impact of women scientists in South Africa. The winners of the different categories in the Women in Science Awards also featured in a supplement to a weekly South African newspaper.<sup>65</sup> In addition in 2003, the Department created the Women in Science Awards to honour the achievements of women within the sector. These awards showcase the achievements of women scientists and provide role models for young girls in science and technology.

<sup>65</sup> Department of Science and Technology CEDAW input 2008

10.21 Recognizing that technology drives the economy, the Girls Education Movement (GEM) was initiated to encourage girls to participate in science and technology areas. The Techno-girl programme was initiated with sister national and provincial departments of education to provide career guidance and life skills support, particularly in mathematics and technology. The target group comprises secondary school female learners or tertiary school entrants between the ages of 15 and 20, drawn from the rural areas. The Boys Education Movement (BEM) was also established in schools to complement the GEM, as a vehicle to empower both girls and boys in both curriculum and social related skills. GEM was started in 2002 in Limpopo, KwaZulu-Natal and Eastern Cape provinces, and launched nationally in 2003. Even though BEM was started in 2007, boys have always been part of the participants in the GEM camps conducted by the Department. The focus of these camps has not only been on life skills education but included awareness-raising on the participation, retention and achievements of girls in Maths, Science and Technology learning areas. The Department of Education camps, others in partnership with the Department of Science and Technology and UNICEF, are held annually in all of the provinces during school vacations. Techno-Girl has run math and technology camps for girls in 2002 and established an Information Technology Academy in Tombo, a rural village in the Eastern Cape Province. A two-week science camp through the National Science and Technology Programme benefited 347 female learners in 2002.

10.22 Despite the innovative and concerted efforts made within the educational system to create a non-sexist and equitable educational environment, at an operational level the educational system is still challenged with transforming gender relations, including gender stereotyping and gender-based violence in schools.

### **Violence Prevention in Schools and Protection of the Girl child**

10.23 This section has to be read in conjunction with Part V, Sections 2.2 and 4.1 of this Report on gender-based violence. There are a number of government initiatives undertaken within educational institutions to ensure the safety of children, especially girls, at schools. While the Government has progressive policies to address violence in schools and gender-based violence in the educational environment, the problem remains one of enforcement and the creation of a human rights culture.

10.24 Most efforts to address this issue can be found within the educational environment, and within the curriculum itself. For example, life skills and life orientation, HIV and AIDS prevention and outcomes-based education form important aspects of the teaching-learning materials. The life skills programme addresses sexual abuse and the life orientation programmes address gender-based violence. While students' knowledge of HIV and AIDS appears to have improved, programmes have had a more limited impact on sexual behaviour primarily because of poor content, inadequate teacher training, persistence of cultural barriers, educator resistance and parental objections to sex education.<sup>66</sup> A professional development training module "*Opening our Eyes: addressing gender-based violence in South African Schools*" has been utilized to train educators and officials and this training has been rolled out nationally. It consists of eight interactive workshops to increase the educator's awareness of sexual harassment and gender-based violence; to address the links between

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<sup>66</sup> Women's Parliament 2007, Gender Based Violence in Schools,



gender-based violence and HIV and AIDS; and, school safety. The Department of Education developed the *Guidelines for the Prevention and Management of Sexual Violence and Harassment in Public Schools (Guidelines)* in 2008. It aims to assist public schools in maintaining minimum standard procedures for addressing situations of sexual violence and harassment, as well as to assist victims with procedures for reporting incidences of sexual violence and harassment.

10.25 In 2001 the Department of Education and the South African Police Service completed a workbook on Signposts for Safe Schools. This workbook is a valuable resource for actions to be taken by educators, district managers, principals, school governing bodies, and members of the community. It provides schools with strategies to address violence in schools, focusing on improving the impact, authority and efficiency of school management and school services, development of policies, procedures and plans for their implementation, including policies for non-adherence, and strategies to involve, mobilize and capacitate youth in prevention programmes, projects and campaigns. Training on the manual has been done at both national and provincial levels.

10.26 The Department of Education, together with the South African Police Service and Gun Free South Africa, an NGO, has piloted the declaration of schools as "Firearm Free Schools". In addition, the Department works closely with school governing bodies to help them develop school safety policies and put in place school safety teams with community representation, that actively work in making schools safe. Provincial departments of education have invested significant funds into building fences around schools and mending those that had been vandalized, in order to help schools with controllable boundaries.

10.27 To mitigate the psycho-social factors and their impact on gender-based violence, learner pregnancy and sexual harassment, the Education Department continues to train peer educators as mentors and counsellors to support peers. This is done through programmes like GEM and BEM clubs; and through those programmes offered in the Life Orientation Learning Programme in the National Curriculum. The Policy for Drug Abuse Management in Education Institutions is in response to a decision by the Council of Education Ministers to increase the capacity of educational institutions to manage drug abuse by learners nationally and on a consistent basis. The key thrust of the policy is to help and support not only those learners who abuse drugs, but also the majority of learners and staff who do not use drugs but who may be affected by the usage of drugs by others. It complements related policies and legislation on the control and management of drug abuse in schools, in particular the Regulations for Safety Measures at Public Schools, *Government Gazette No. 22754* of 12 October 2001. These regulations declare all public schools both as drug-free and dangerous weapon-free zones, and regulate access to schools to manage entry by unauthorized persons.

10.28 The Safe and Caring Schools programme in all nine provinces addresses crime and gender-based violence in a holistic manner while initiatives through partnership with NGOs such as the Study of Violence and Reconciliation provides consultation, educational materials and training workshops for educators and learners. The Education Department as part of the Inter-Departmental Management Team, a structure led by the National Prosecuting Authority that deals with court cases of juveniles, ensures that the learners have access to education and their cases are fast-tracked for attention. It also addresses the prevention and management of gender-based violence through the development of the

Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007). The Education Department is advocating for the implementation of the guidelines for the prevention and management of sexual violence and harassment.

10.29 Through the Education Laws Amendment Act, 2007 (Act 31 of 2007), provincial departments have the power to hold principals accountable for school performances and for safety at schools. A new provincial strategy is being developed that will be presented to the provincial cabinet this year since violence is impacting on safety and the quality of learning in schools. The Education Department has focussed creating safe schools primarily in 60 high-risk schools identified in provinces, recognising that many more need attention.<sup>67</sup> Curriculum efforts and the programmes discussed above are essential to address violence in schools however, in order to impact meaningful social change, there has to be greater collaboration between the school and its community, with civil society organizations and the criminal justice system to effectively bring an end to violence in schools and communities.

### **Study on Violence in Schools**

10.30 The National Schools Violence Study, released in April 2008 by the Centre for Justice and Crime Prevention, was based on information gathered from 12 794 pupils, 264 principals and 521 teachers from both public and private schools. The findings of the study indicate:

- Violence in primary schools is most common in the Eastern Cape. The highest recorded rates of violence were for secondary schools in Gauteng and Limpopo;
- One in 10 pupils say it is relatively easy for them to get hold of a gun;
- Alcohol and drugs are readily available, and;
- Between 83 percent and 90 percent of pupils have been exposed to some sort of sexual assault;
- Sexual assault was prevalent in both primary and secondary schools — up to 90 percent of pupils said they had experienced some sort of assault.

### **Textbox 16: Some Comments on the Findings of the National Schools Violence Study**

Patrick Burton, director of research at the Centre for Justice and Crime Prevention, said: “More than one in 10 (14.7 percent) secondary school learners and slightly fewer (10.5 percent ) primary school learners reported that it was easy to get alcohol at school, and a similar percentage thought it was easy to get dagga.” He said 31.2 percent of high school pupils said that it was easy to get a knife at school. However, Burton said that despite 1 821 054 pupils having been exposed to crime at school, pupils still felt safe in the school environment. “This is because of the normalisation of crime in society. The country has high levels of violence and crime has become a way of life.

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<sup>67</sup> Ibid

”Department of Education Deputy Director General, Gugu Ndebele said: “Children exposed to violence and victimisation are likely to become perpetrators of anti- social behaviour.” She said the department was looking at initiatives to improve school security and also called for more community involvement.<sup>68</sup>

As part of increased safety measures at schools the Education MEC, Cameron Dugmore says that there is a need to take safety at schools to a "new level", principals of violent and under-performing schools could be replaced, mentored or face incapacity hearings. Dugmore said on Sunday that after a damning report by the Human Rights Commission (HRC) on violence at schools and a review of the Safe Schools programme, an improved safety strategy would be presented to the provincial executive committee in little less than two months. 'Antisocial behaviour needs to be nipped in the bud'<sup>69</sup>

There are concerns of exploitation of child labour on farms and its impact on their engagement in education that needs to be addressed. “There is much evidence to suggest that farm school children are being systematically exploited. Until 1988, farmers were entitled to withdraw children from school to work on their farms. Despite now being illegal, the practice continues. Again, reliable and systemic data are hard to come by, but anecdotal evidence from Fairleigh Farm School in the Camperdown district of KwaZulu-Natal suggests that learners have been routinely forced to assist in harvesting crops. The SANGOCO Poverty Hearings also heard accounts of learners in North West Province being taken out of school to help *with harvests*.” – *Stuart Wilson, Centre for Applied Legal Studies, University of the Witwatersrand, 2002. Citing: Education Laws Amendment Act 1988; Stuart Wilson, “Classroom of Human Rights”, London Times Law*

#### **Article 10(d): Scholarships and Study Grants**

10.31 Discrimination in the award of scholarships and study grants is prohibited by the Constitution, education laws and the Equality Act. However, proving and challenging indirect discrimination which often masquerades as merit requirement especially in research grants for academics, presents a challenge.

10.32 To address systemic inequality the Government of South Africa, in partnership with civil society entities such as the Carnegie Foundation and the Education Department (national and provincial) has initiated a number of programmes that constitute special measures for girls and women, particularly young women to accelerate their *de facto* enjoyment of scholarship and grant opportunities. Many of these measures are targeted at encouraging girls and women to pursue and sustain successful careers in scarce skills areas such as in the area of science education and technology and finance where they are under-represented. The Education Department supports the National Financial Aid Scheme for post-graduate studies and provides undergraduate funding for women in science and engineering.

<sup>68</sup> *Violence stalks millions of kids at schoolboy* Sashni Pather, in The Times April 24, 2008; ‘Crime is now a way of life’

<sup>69</sup> Aeysha Kassiem in Cape Times, p.1 March 17, 2008.

1.33 The Department of Public Works in compliance with the Skills Development Act, 1998 (Act 97 of 1998) has developed a bursary fund, in addition to a Directorate for Learnership, Internship and Young Professionals for enhancing the quantity and quality of education in the construction and property industry.

#### **Article 10(e): Continuing Education and Literacy Programmes**

10.34 The Further Education and Training Act, 1998 (Act 98 of 1998) provides the basis for developing a nationally coordinated Further Education and Training system aimed at ensuring representation and equal access to further education at the workplace by persons who have been marginalized in the past including women, the disabled and the disadvantaged.

10.35 The implementation of the South African Qualifications Framework established by the South African Qualifications Authority Act, 1995 (Act 58 of 1995) and the Skills Development Framework<sup>70</sup> has endeavoured to mainstream gender and to foster quality between women and men. Women have particularly benefited from learnerships in scarce skills areas that have been made available through skills development funding under various sector education authorities.

10.36 A new landscape for skills development was heralded in South Africa on March 20, 2000, when twenty-five Sector Education and Training Authorities (SETAs) were established by the Minister of Labour. They cover all the economic sectors in South Africa, including Services, Banking, Agriculture, Energy, Health and Welfare, Construction, Wholesale and Retail, Education, Training and Development Practice, and Tourism, Hospitality and Sport. The members and stakeholders of a SETA include employers, learners, providers, trade unions, government departments and bargaining councils from each economic sector. Under the terms of the Skills Development Act, 1998, and the Skills Development Levies Act, 1999, from 1 April 2001 onwards, every employer in South Africa who is registered with SARS (South African Revenue Services) for PAYE; and has an annual payroll in excess of R250,000, must register with SARS to pay the Skills Development Levy, 1% of the total amount of remuneration paid to employees.

10.37 This money is used to fund skills development programmes for the employees of the company. Each company therefore needs to have a workplace skills plan in place, and provide an annual training report to report on progress in training and skills development. A National Skills Development Strategy framework provides for compliance with the above-mentioned laws. Training programmes have also been created for domestic workers and the unemployed under this framework. Disaggregated data for the training of women by these SETAs was not available at the time of the completion of this report. However, it remains a priority to obtain this very valuable information.

10.38 The South African Government, through the Multi Plan Implementation Strategy for Adult Education and Training, has set targets to reduce the illiteracy rate by half in 2005. The focus of adult basic education and training centres and the South African national literacy initiative programmes, is

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<sup>70</sup> Established by the Skills Development Act, 1998 (Act 87 of 1998) Skills Levies Act, 1999 (Act 9 of 1999) and the National Skills Development Strategy

on rural areas and especially on women living in rural communities. There have also been projects that target domestic workers.

10.39 The Ten Year Review report on Government programmes indicates a significant increase in the literacy rate in South Africa from 83% in 1996 to 89% in 2001 for the general population, while for the 15 to 24 year olds; the literacy rate had increased from 83% to 96%. The literacy level for women in 2002 was 85.5% as compared to 90% for men<sup>71</sup>. This indicates that fewer women than men in South Africa were literate. It must be noted that these figures did not go far enough to provide information such as whether women could read and write in only one language, or whether it referred to the fact that women were only able to sign their names. Data<sup>72</sup> from the Census 2001 Count indicated that women in the age group 15 to 24 showed the highest level of literacy among literate women. According to the Labour Force Survey of March 2007, the literacy rate for 15 to 24 year olds was 97.78% for females and 97.28% for males. The literacy rate for the general population in 2007 was 90.97% for males and 87.36% for females.

10.40 The proportion of women aged 25 to 44<sup>73</sup> who could read and write was 92% in 2002 as compared to 94% males. In 2007, these figures stood at 93.96% for females and 94.35% for males in the same age group. The proportion of women aged 45 and above who could read and write in 2002 was 70.4% as compared to 78.2% males<sup>74</sup>. In 2007 these figures stood at 69.42% for females and 78.23% for males in the same age group. Data indicates that the literacy levels for women in these age groups were steadily increasing<sup>75</sup> from 1999 to 2007. This reflected the lack of access in the past by many women to education. Furthermore, the practice of keeping the girl child at home to perform household chores had resulted in many females being illiterate. In 2007<sup>76</sup>, of the total population surveyed (including inactive and economically active), 2.4% men and 3.5% women were illiterate (i.e. no education at all).

10.41 The textbox below provides a case study of bursaries and the challenges of implementation of such programmes.

#### **Textbox 17: Case Study of the Department of Land Affairs**

The Department of Land Affairs gives effect to the Skills Development Act, 1998 (Act 97 of 1998), Skills Development Levies Act, 1999 (Act 9 of 1999), Human Resource Development Strategy for the Public Sector, the National Skills Development Strategy and the Employment Equity Act, 1998 (Act 55 of 1998) by recognising the scarcity of skilled women to fill positions in fields like cartography and town and regional planning. They also acknowledge that there are few women in leadership positions in the core Directorate of the Department.

<sup>71</sup> Source: Labour Force Survey, 2002. Statistics SA.

<sup>72</sup> Ten Year Review Report

<sup>73</sup> Ibid

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Labour Force Survey, 2007, Statistics SA

In recognition of the problem recruited graduates are given bursaries that guarantee employment on successful completion of the required courses. Bursaries were given to 616 women of all races and only 144 successfully graduated while others withdrew from the programme owing to non-compliance with the requirements of the HRD directorate, for example, not submitting their results. Further in the Internship programmes, 473 candidates were approved to commence and 278 confirmed to have completed while 193 resigned due to employment opportunities in other departments. In the ABET Programme there were 15 participants and 5 are still continuing while others have withdrawn. The challenge in all these programmes has been the withdrawals.

For the bursary programme it has also involved withdrawal by the HRD for candidates not meeting criteria, or a high failure and drop-out rate. The bursary programme needs to be properly marketed with a recruitment and retentions strategy and clarity that preference is given to women, for example in the advertisement. Some measures that were adopted to address the situation have been: to continue to offer students bursaries into their subsequent study years upon successful completion of initial years; offering employment upon completion; and the appointment of a chief training officer to coordinate this area.<sup>77</sup>

#### **Article 10(f): Reducing Female Student Drop-Out Rates**

10.42 Measures have been implemented to reduce female student drop-out rates, in pursuit of the South African Schools Act, 1996 (Act 84 of 1996) which provides that no learner will be discriminated against on the basis of pregnancy. Administrative measures that have been implemented have also involved education programmes that assist girls and boys who have dropped out to continue with their education. It is worth noting that girls drop out at a far lower rate than boys.

#### **Article 10(g): Equal Opportunity in Sports**

10.43 Sports policies and related funding are continuously being reviewed to identify and eliminate any form of discrimination against women. As a result women's sporting and related physical education activities in schools, received increased funding and attention from government and the private sector during the period under review.

#### **Article 10(h): Access to Education and Family Planning Information and Advice**

10.44 South African schools are increasingly integrating family planning education and related reproductive health education in life skills training for all learners. Schools supply learners with information, empowering them to make informed choices, but do not supply them with contraceptives. Family planning advice is freely available from health centres throughout the country, including University Clinics, as part of the national primary health care system. One of the challenges that government is constantly addressing through education, is to encourage young women and men to use available family planning services without fear of stigma.

<sup>77</sup> Department of Land Affairs CEDAW Report Input April 2008

## ARTICLE 11: EMPLOYMENT

“Globally, but especially in Africa, women have inadequate access to the resources they need to become economically productive and independent. Yet, as we know, women are very industrious and dynamic in the face of serious odds. We see this in instances where women defy serious challenges even in difficult circumstances, such as in the informal economy, working as hawkers, in part-time jobs, in agriculture and in domestic service, determined to provide for their families. Both in the rural and urban areas, women have increasingly become the backbone of the family unit as well as the community. Clearly, because poverty among these women threatens to negate whatever advance we, as South Africans, have made since the onset of democracy in 1994, we need to strengthen our interventions on women's empowerment in the spirit of the Women's Day clarion call: All hands on deck, all power to the women!”

**Address by Mr. Thabo Mbeki, former President of South Africa, at the Women's Parliament, 19 August 2008.**

### Article 11 (a) Elimination of Discrimination against Women in Employment

11.1 United Nations statistics show that despite women being more than half of the world's population, “they perform two-thirds of the work done worldwide. However, women's earnings only amount to 10 percent of the world's earnings, and they own only 1 percent of the world's property (Brazili, 1991:17)” These statistics speak volumes about women's position in the labour market. South Africa is no exception to this pattern.<sup>78</sup>

11.2 South Africa has continued to implement labour market transformation measures that are aimed at equalising access to employment opportunities since 1998. A key focus of such interventions has been the implementation of the new legislative framework to transform labour market relations with a view to affirming women and enabling them to enter and advance in enclaves of the labour market that were previously closed to them. The principal instruments that have been implemented during the period under review include the Labour Relations Act, 1995 (Act 66 of 1995); Basic Conditions of Employment Act, 1997 (Act 75 of 1997); Employment Equity Act, 1998 (Act 55 of 1998); White Paper on Affirmative Action in the Public Service, 1995; Public Service Act,<sup>79</sup> as amended in 1996 and 2001 (Act 30 of 2007); legislation dealing with social security and workplace health and safety. Legislation has been extensively addressed in prior articles, in particular articles 2, 4 and 7.

11.3 The principle of equality between women and men has also informed labour law reform, particularly those relating to the protection of domestic workers, part-time workers and workers with family responsibilities. Specific measures that have been implemented since 1998 are discussed hereunder. The Legal Aid Amendment Act, 1996 (Act 20 of 1996) enables the Legal Aid Board to provide legal representation at state expense for accused persons in deserving cases.

<sup>78</sup> Women and the labour market: challenges posed for job creation policy, 1994, Pat Horn

<sup>79</sup> This and the White Paper on Affirmative Action in the Public Service only apply to the Public Service.

11.4 Legislative measures that seek to address income differentials between women and men have been informed by the Constitution, particularly section 9(2), which prohibits discrimination. Such measures include:

- Basic Conditions of Employment Act, 1997 (Act 75 of 1997)
- Labour Relations Act, 1995 (Act 66 of 1995)
- Employment Equity Act, 1998 (Act 55 of 1998)
- Extension of unemployment insurance to previously excluded categories of workers, which include domestic workers.

11.5 Specific measures that have sought to address gendered income differentials include:

- *Domestic Workers:* On July 2001, a report on the investigation into domestic workers was launched and published. This became the basis on which minimum wages for domestic workers were discussed under the critical area of concern: Poverty. The Commission also did similar studies on the agricultural sector and the retail sector.
- *Income Differentials Across Sectors:* The Economic Commission shares with the Commission for Employment Equity the responsibility of monitoring wages to ensure that direct and indirect discrimination on the grounds of race, sex, gender, disability or any other grounds contemplated in the Act or a combination of grounds, is eliminated. The Employment Equity Report conducted in pursuit of this mandate arrived at the conclusion that gender inequalities persist.

11.6 The laws that regulate wage determinations have contributed meaningfully to the increase of earnings of women in traditionally female occupations or sectors. However, the gap remains and more work is still being done to address it.

11.7 South African law prohibits sexual and other forms of harassment. Sexual and other forms of harassment are included in the rights relating to non-discrimination under the Employment Equity Act, 1998 (Act 55 of 1998) and the Equality Act. Hate speech is also prohibited. A *Code of Good Practice on Sexual Harassment*, amended in 2005, has been issued to provide clarity on sexual harassment. Sexual and other forms of harassment are under the purview of the Department of Labour, specifically the Commission for Conciliation, Mediation and Arbitration, and the Labour Court (which falls under the Department of Justice). Laws passed to protect women (and others) against violence in the workplace include the Employment Equity Act, 1998 (Act 55 of 1998), which recognizes the harassment of an employee as a form of unfair discrimination. This is accompanied by the Code of Good Practice on the Handling of Sexual Harassment issued in terms of the Labour Relations Act, 1995 (Act 66 of 1995). Further legislation addressing sexual harassment includes the Employment of Educators Act, as amended in 2000, which explicitly makes sexual harassment a form of serious misconduct (Section 17); and the South African Schools Act, 1996 (Act 84 of 1996) under



which sexual harassment constitutes misconduct. The Department of Justice has rolled out Equality Courts that address cases of sexual harassment<sup>80</sup> in terms of the Equality Act.

11.8 Unfortunately, sexual harassment remains a problem in the workplace, in schools and in public and private places. Advances in technology have also opened the way to new forms of stalking and worrying acts of sexual aggression, which challenge current and conventional forms of addressing gender-based violence. The significance of the following case, *Ntsabo v Real Security* is that it makes employers liable for the harassment of their employees and employers will no longer be able to turn a blind eye to sexual harassment at the workplace. This case must be read in conjunction with Article 4, paragraph 4.25 in this Report.

### **Textbox: 18: Case of Sexual Harassment**

#### ***Ntsabo v Real Security* CC [2004] 1 BLLR 58 (LC); *Women's Legal Centre***

On Friday, 14 November 2003, the Labour Court in Cape Town handed down a landmark judgment dealing with sexual harassment and the issue of employer liability for acts of sexual harassment perpetrated by an employee against a fellow employee. The judge rejected the version of the Company and found the witnesses presented on behalf of the Company to be untruthful and not credible. Having accepted the version of Ms Ntsabo and her witnesses the Court then had to deal with the legal issues before it and the liability of the employer for the acts of the harasser. Prior to this decision there had been no reported South African decision dealing with an employer's liability in terms of the provisions of the EEA for sexual harassment in the workplace. In terms of our law previously, an employer could only be held vicariously liable if it was shown that the employee in question acted in the course and scope of the employment. In this case it was argued that it would be incorrect to import into Section 60 of the EEA these common law principles governing the liability of an employer for the wrongful acts of an employee. It was argued that the matter should be dealt with as one of discrimination and the duty of an employer to eliminate all forms of discrimination and take steps to investigate and act in terms of allegations of sexual harassment. The Court accepted this argument with Acting Judge Pillay finding that Section 60 of the EEA creates a form of vicarious liability for employers where an employee sexually harasses a co-employee at work.. The Court held that since Real Security had been notified of the sexual harassment and took no steps to protect Ms. Ntsabo the company would be liable for her damages. She was awarded amounts for unfair dismissal and for discrimination in terms of the EEA. In the latter regard she was awarded amounts for future medical expenses and for pain, suffering and the impairment of her dignity. In total she was awarded an amount of R82,000 with the company being held liable for Ms Ntsabo's costs in addition hereto terms of which damages may be claimed for aspects such as pain and suffering and future medical expenses. It is hoped that the decision will serve to encourage employers to take more pro-active measures in relation to sexual harassment and that women will take up the challenge of holding not only their perpetrator liable but also the employer who condones or turns a blind eye to such harassment.

<sup>80</sup> These would be cases that do not involve an employer/employee relationship.

## Article 11(a) (1): The Right to Work

11.9 Improvements with regard to the protection of the Right to Work for women, during the period under review, have included the implementation of changes to the Basic Conditions of Employment Act, 1997 (Act 75 of 1997) which included pregnancy and parental rights and the extension of basic employment rights to vulnerable groups such as domestic workers and part-time workers. Since the introduction of the Employment Equity Act, 1998 (Act 55 of 1998) women and other workers now also have non-discrimination in addition to the concept of “unfair labour practice” to help them contest their exclusion from employment opportunities, dismissals and other workplace violations of their right to work

11.10 The Act’s prohibition of discrimination also applies to pregnancy discrimination. Since the Act defines an ‘employee’ to include job seekers the prohibition of (unfair) discrimination extends to pre-employment discrimination and thus also covers pregnancy discrimination at all stages, including application for employment. This is important because when faced with pre-employment pregnancy discrimination the Labour Appeal Court recently failed to provide the necessary protection<sup>81</sup>.

11.11 Despite progress made with regard to protecting the right to work, unemployment generally and the unemployment of black women in particular, remains a major challenge for South Africa.<sup>82</sup> This matter is receiving priority attention from government and forms part of government’s poverty alleviation programme, which includes the EPWP. The impact of globalisation, particularly in the garment industry, has compounded the position of women.

### Labour Force Survey

11.12 The Labour Force Survey<sup>83</sup> of March 2007 provided an overview of progress with regard to women in the labour force from March 2001 to 2007. Although a marked improvement is noted in the position of women, much still needs to be done in this regard. While overall there was a decrease in the number of discouraged work seekers from 15.8% in 2005 to 13.8% in 2007, the number remains higher for females than males. This is indicated in the table below.

**Table 5: Trends in Discouraged Work Seekers According to Sex for the Period 2001-2007**

As % of working population	March 2001	March 2002	March 2003	March 2004	March 2005	March 2006	March 2007
<b>Male</b>	7.5%	8.2%	8.5%	10.0%	9.9%	9.6%	9.2%
<b>Female</b>	11.5%	13.1%	13.9%	15.7%	15.8%	14.9%	13.8%
<b>Total</b>	9.6%	10.7%	11.3%	12.9%	13.0%	12.3%	11.6%

<sup>81</sup> *Woolworth Pty Ltd V Whitehead (2000)* 21 ILJ 571 (LAC)

<sup>82</sup> Fourth Report of the Commission for Employment Equity.

<sup>83</sup> Statistics SA, Labour Force Survey, March 2007 – Released on March 2008.

11.13 According to the Labour Force Survey, March 2007, the educational profiles of women have also improved in 2007, indicating that the increase in the level of education among women however did not necessarily translate into increased job accessibility. Unemployment for women still remains high at 30% while for men it is 21.1%. The table below shows the educational levels between men and women as at March 2007.

**Table 6: Education Levels According to Sex as at March 2007**

Highest educational level	Male	Female
Grade 12/Std 10	18.1%	33.7%
Diploma	10.7%	17.2%
Degree	4.2%	8.4%

11.14 A Department of Labour Study provides an overview of the change in the status of women in South Africa between 1995-2005 with respect to employment, unemployment and earnings, and in contrast to men.<sup>84</sup> Women continue to suffer discrimination in the labour market, in terms of lower quality employment and lower remuneration. African women remain the most vulnerable in the labour force. While progress has been made in the labour force significant challenges remain. Some of the findings are as follows:

- The increased numbers of women in the labour force in South Africa between 1995 and 2005 have been driven by African women entering the labour force. Women accounted for 6 in 10 new labour force members during this period.
- Educational profiles of women have improved with those with General Training and Education, Matric and tertiary education showing the most rapid growth in the labour market.
- The largest percentage increase was in the two oldest groups, 45 - 54 and 55 – 65 years showing that women are selecting / forced to remain for longer than before to survive.
- Women remain largely represented in low-income, less secure employment. The majority were unskilled and low paid elementary workers, that accounted for more than a quarter of all new jobs created in that period were in the wholesale and retail trade.
- Despite the above, unemployment rates increased for all groups of women with significant numbers for Black women and female entrants into the labour market.
- In 2005 the rate of unemployment for African women was 53% in contrast to the aggregate rate of 39% and the aggregate female unemployment rate of 47%.
- In 2005, 7-10 % of job seekers between the ages 15-34 were unable to find jobs.
- Across all levels of education, women have higher levels of unemployment than their male counterparts.
- Discrimination by gender, age and race continues and persists.
- Women of all groups earned less than men in 2001 and in 2005 with the exception of Coloureds in 2005.

<sup>84</sup> Women in the South African labour Market, 1995-2005, Department of Labour, Republic of South Africa. [www.labour.gov.za](http://www.labour.gov.za)

- In 2005, White women earned higher salaries than Black women with the same level of education, with the exception of African women with degrees; managers and professionals (only in 2005) and operators and assemblers.

11.15 Compared to their male counterparts, women in South Africa still earn less; have higher rates of unemployment and underemployment, and lower rates of labour force participation. These conditions only reproduce gendered and racial dimensions of poverty. In an effort to deal with these labour market challenges the South African Government has put in place various measures to redress the gendered nature of poverty in South Africa. Key initiatives which have benefited women include the provision of social security nets e.g. social grants, child care grants, foster grants, etc. The majority of beneficiaries of social grants, in particular the old age grants, are elderly women. Another measure is the EPWP, which has specific quotas for women and has provided opportunities for women to enter the labour market. In addition visible changes include improved quality of life for many women characterised by, amongst other things, access to clean water, sanitation, primary health care, education, civic participation and increasing incomes. Other measures include income-generating opportunities, small business development for women, opening of employment opportunities in mining and construction.

#### **Article 11(a) (2): The Right to Equal Employment Opportunities**

11.16 The Employment Equity Act, 1998 (Act 55 of 1998) (Section 6)<sup>85</sup> prohibits discrimination in all employment practices including the process of selection. The Act requires all employers to ensure that the profile of their establishments exponentially reflects the demography of the country and to commit this in their Human Resource Plan with time-frames. For employees who are excluded from the ambit of this Act, the same right may be asserted under the Equality Act<sup>86</sup>. Both Acts also require the adoption of positive measures to accelerate *de facto* access to employment for women and other designated groups.

11.17 The textbox below provides examples of best-practice on how government departments address the constitutional obligations in advancing job creation in general and for women and other vulnerable groups in particular.

#### **Textbox 19: Best Practice on Job Creation**

11.17.1 Of significance are the Construction Charter and the Property Charter and the Independent Development Trust that was established in 1999 by the government to best serve the development of disadvantaged communities; and targeting poverty alleviation programmes. The Construction Industry Development Board - a Schedule 3A public entity - was established by an Act of Parliament, No 38 of 2000 to promote a regulatory and developmental framework that builds the construction delivery

<sup>85</sup> Read with the definition of an “employment practice” in section 1 of the Employment Equity Act, 1998 (Act 55 of 1998), which includes “recruitment procedures, advertising and selection criteria; and appointments and the appointment process.

<sup>86</sup> Section 6 read with the schedule in the Act and section 5 (application clause)

capability for South Africa's social and economic growth. The Council for the Built Environment was established as a statutory body by Parliament (Act 43 of 2000) to provide leadership to, and ensure good governance of the professions, while serving as a two-way channel for coordinated input into the restructuring and development process, between the professions and Government. Government-wide Immovable Asset Management Policy was approved by Cabinet in 2005. Within these parameters, the Department of Public Works is leading an integrated poverty reduction and job creation programme through the Expanded Public Works Programme (EPWP).

11.17.2 The EPWP aims to create additional work opportunities for a minimum of one million people; at least 40% women, 30% youth and 2% disabled between 2004 and 2009. Progress in targeting the empowerment and development of women is notable in non-traditional occupations like construction as well as in the property industry. The Construction Incubator Programme has registered 134 contractors of which 50 are women. There is no conclusive statistical data on women-owned construction companies in the emerging contractor development programme.

11.17.3 While this is a very significant achievement in addressing opportunities for women in a short space of time post democracy, proper statistical data and monitoring and evaluation is necessary to ensure that the target population of women are in fact enjoying the benefits of these programmes and that they are not being used as a *front* by men. This is a challenge that was identified in the consultations for the CEDAW Report. Within the Department of Public Works, its employment equity profile shows that in 2006-2007, it achieved 25% representation of African women in Senior Management Levels compared to the current national target of 50% women<sup>87</sup>.

11.17.4 The example that follows shows how the Department of Land Affairs has addressed the under-representation of designated groups in all occupational categories and levels. The Department has a National Employment Equity Committee that monitors the implementation of the employment equity plans and ensures the achievement of targets. An employment equity manager has been appointed to drive the process. The Department is on track as of July 2007, where the department in 2007 showed a 56% representation of women compared to 54% in 2006; and at the senior management level there has been a drop from 47% in 2006 to 38%; once again signalling that women are largely represented in the lower levels of service.<sup>88</sup>

11.17.5 South Africa has made significant efforts to broaden the scope of women's involvement in various sectors of the economy in a short space of time, particularly in non-traditional fields through special allocations such as the Sectoral Empowerment Fund for Women for the mining industry that has received R2 million and the Women's Entrepreneurs Fund for small and medium business entrepreneurs. While the Sectoral Empowerment Fund provides finance for pre-feasibility studies and collateral for women in the mining sector, the Women's Entrepreneurs Fund provides loans and business support for the development of women-owned enterprises. Loans range from R 50 000 to R1 million and bridging finance enables service provision after being awarded tenders. The Women's

<sup>87</sup> Department of Public Works CEDAW Data Input, April 2008

<sup>88</sup> Department of Land Affairs CEDAW Data Input, April 2008

Fund also facilitates access to micro finance for entrepreneurial development and economic self-sufficiency.

11.17.6 The South African Women Entrepreneurs Network (SAWEN) is a networking forum for individuals and organizations that are committed to the promotion and advancement of women entrepreneurs within the South African SMME sector. It assists women entrepreneurs to overcome barriers; provides information and access to business resources and opportunities; monitors the impact of women entrepreneurs on the country's economy and on the socio-economic advancement of women entrepreneurs; lobbies public and private institutions on the economic empowerment of women; and facilitates trade missions with other countries for women; and facilitates linkages with women entrepreneurs for example, in Sweden and the United Kingdom. SAWEN has 2000 potential members who own small to medium enterprises country wide.

11.17.7 Another best practice is that of Victoria West Road Construction project in the Northern Cape that started on 18 August 2003. The total cost of the project is R6,8 million through the EPWP. The Department of Labour has contributed funds by training workers to build roads, stabilization and excavation of storm water channels and the laying of curbs. The project trained 23 people; 16 women and 7 men. Three women graduates established their own businesses. The workers on the project tendered successfully for a Telkom project to repair roads. Two women successfully completed training as Learner Contractors in the Learnership Programme in road construction and subsequently completed contracts for the construction of two roads in Norvalspont and Garies. The beneficiaries were honoured with certificates of recognition by the Deputy President during the Women's Month Programme in 2007.<sup>89</sup>

### **Article 11(a) (3): The Right to Equality in Employment Conditions**

11.18 The Employment Equity Act, 1998 (Act 55 of 1998) prohibits discrimination in all employment practices including promotion; benefits and conditions of service; human resources, skills development, job security and termination of employment.<sup>90</sup> The Act further requires employers to take steps to promote equal opportunity in the workplace by eliminating discrimination in any employment policy or practice.<sup>91</sup> Employers with more than 50 employees or a financial turnover above a stipulated financial threshold, also have to adopt affirmative action (special measures) to accelerate *de facto* enjoyment of equality in employment conditions by women, black people and persons with disability.

11.19 Various Codes of Good Practice have been issued under the Employment Equity Act, 1998 (Act 55 of 1998) to assist employers to understand and eliminate discrimination in all employment practices, including employment conditions, and where applicable to implement special measures to accelerate *de facto* equality for women and the other designated groups. The Codes include the *Code of Good Practice on the Integration of Employment Equity in Human Resources Policies and Practice (HR Code)*; *Code of Good Practice on Key Aspects of in Employment*; and the *Code of Good*

<sup>89</sup> CEDAW input from the provincial OSW, Premier's Office, Northern Cape

<sup>90</sup> See Definition of "employment practice" referred to in footnote 41 above.

<sup>91</sup> Section 5 of the Act.

*Practice on the Employment of People with Disabilities.* Except for the HR Code, the Codes are accompanied by *Technical Assistance Guidelines*. These instruments elaborate on discrimination against women and other forms of discrimination and provide examples of best practices on possible special measures to accelerate *de facto* equality. Contract workers and other workers who are not covered by the legislation on employment equity have similar protection under the Equality Act. There are also sector specific laws and provisions that prohibit discrimination against women in employment.

11.20 The Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) makes provision for “municipal managers to be offered fixed term employment contracts not exceeding a period ending two years after the election of the next council.” The women delegates who attended the Women in Provincial and Local Government summit in 2007 expressed concerns about the fixed term (usually five years) nature of the contract. They indicated that the length of the contract does not allow post incumbents adequate room to fully apply their capabilities. The gender implications of the contract arrangement relate to the glass ceiling phenomenon. It implies that women in those positions do not get the chance to progress smoothly to other career levels. It might also become challenging for them to secure themselves stable jobs after the end of the contract term. This results in loss of skills and expertise.

11.21 The Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) contains a code of conduct for municipal staff members. The code prohibits staff members embarking on behaviour that amounts to sexual harassment. The Local Government Gender Policy Framework proposes that municipalities develop specific sexual harassment policies. The 16 Days Activism Campaign Secretariat is in the process of initiating a dialogue that would culminate in the development of the sexual harassment policy for the Department of Provincial and Local Government.

#### **Article 11(a) (4): The Right to Equal Remuneration**

11.22 The Employment Equity Act, 1998 (Act 55 of 1998) prohibits discrimination against women and others with respect to “*remuneration, employment benefits and terms and conditions of employment*”<sup>92</sup>. Section 5 of this Act also requires employers to take steps to eliminate discrimination and promote equality in remuneration. Section 26 of the Act further requires employers to submit as part of their employment equity reporting, a *Statement on Income Differentials*. Where disproportionate income differentials are reflected, designated employers<sup>93</sup> must take measures to correct the imbalances, with the Employment Conditions Commission monitoring progress and providing guidelines.

#### **Article 11(a) (5): The Right to Social Security**

11.23 The Unemployment Insurance Act, as amended in 2001 and 2003; and the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993) (as amended) continue to regulate

<sup>92</sup> Section 6 of the Act read with the definition of “employment practice” in section 1.

<sup>93</sup> Employers with 50 or more employees or those above the stipulated financial threshold.

rights in respect of employment-related social security. Recent developments that are critical to the advancement of women include the extension of these rights to domestic workers and certain categories of part-time workers. However, there are still a number of categories of workers that are excluded to the detriment of women. This is a subject of ongoing review by government. Job creation under the EPWP is focused on community development and the linking of social grants to the creation of sustainable livelihoods. The social grants are addressed in Article 13 of this Report.

#### **Article 11(a) (6): The Right to Health and Safety**

11.24 The Occupational Health and Safety Act, 1993 (Act 85 of 1993) continues to regulate workplace health and safety. In the implementation of the Act, increasing attention has been paid to historically marginalised employment hazards involved in feminised occupations such as nursing and office work. The key challenge in this area is to improve rights awareness and to strengthen monitoring and enforcement. Government is already grappling with these matters. In particular, government has stepped up health and safety inspections in many women-dominated factories and ongoing education on health and safety continues.

#### **Article 11(b) Maternity and Family Responsibility Rights**

11.25 The table below highlights the most critical pieces of legislation that prohibit discrimination against women on the grounds of pregnancy, maternity and marital status. The position of women in the public service is reinforced by additional sector-specific legislation.

**Table 7: Sector-Specific Legislation on Maternity**

<b>Legislation</b>	<b>Measures</b>
Basic Conditions of Employment Act, 1997 (Act 75 of 1997)	<p>This Act provides for “at least four consecutive months maternity leave” which spans minimally 4 weeks prior to delivery and minimally 6 weeks following delivery. The Act also entitles a woman undergoing a miscarriage in the third trimester period of pregnancy, or bearing a still born child, to maternity leave.</p> <p>The Act also guarantees the protection of the employee’s health before and after the birth of a child, especially if the work is hazardous to her health or the health of her child. In addition, the Act stipulates that during pregnancy a woman should be offered suitable, alternative employment if she was employed to perform night work. The Act also provides for three days paid leave to men on the birth of a child, or to both parents when the child is sick, as a way of encouraging shared parenting between women and men</p>



Labour Relations Act, 1995 (Act 66 of 1995)	In terms of this Act the dismissal of an employee on account of her pregnancy, intended pregnancy, or any reason related to her pregnancy, is automatically unfair. This includes the refusal to allow an employee to resume work after she has taken maternity leave in terms of any law, collective agreement or her contract. In addition to this Act, the Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child provides a degree of protection for women.
Public Service Act, 1994 as amended	The Act provides for fully paid maternity leave for public servants while the payment of maternity benefits for women in the public sector is left to employer discretion and the right to claim a partial salary from the Unemployment Insurance Fund as provided for in the <i>Unemployment Insurance Act as amended</i> . This means that women outside the public service who are excluded from the scope of the unemployment legislation do not get any remuneration at all during pregnancy. Government has noted this gap and it forms part of employment law review

### Article 11(c) Protective Legislation

11.26 No significant developments have occurred since the removal of protective discrimination against women in occupational categories such as mining. Certain protective legal provisions also apply to pregnancy but without compromising job security and employment benefits. The ongoing review of protective legislation is part of regular review of labour legislation in South Africa.

## ARTICLE 12: EQUALITY IN ACCESS TO HEALTH CARE

### Article 12(a): Access to Health Care Services

12.1 The Health System in South Africa in 1994 was fragmented, inefficient and inequitable and based on *apartheid* policies. This posed a serious challenge for health reform in South Africa, since the majority of Black South Africans had poor access and inequitable health care as elaborated on in South Africa's first *CEDAW* Report in 1998. A human rights approach to health and health care was entrenched in the 1996 South African Constitution that guaranteed access to health-care services, including reproductive choice, and free maternal and child health-care, amongst others.

12.2 The Policy on Universal Access to Primary Health Care, introduced in 1994, paved the way for effective health care delivery programmes. This policy provides for free health care to pregnant and lactating women and children under the age of six. One outcome of the implementation of universal access has been a marked increase in access to health facilities and high levels of utilization of primary health care (PHC) services.

12.3 The Gender Policy Guidelines for the Public Health Sector, 2002 were developed to ensure that an effective framework is in place to develop, implement and monitor laws, policies, programmes, procedures and practices for women's health. Further the policy ensures that in all spheres of life, equitable attention and sensitivity is given to the health needs of women and girls in relation to men and boys. Implementation of this policy allows for a gender-focused approach to health planning and programming. It has provided the impetus for numerous innovative initiatives<sup>94</sup>. The National Health Act, 2003 (Act 61 of 2003) further entrenches principles for promotion of women's health.

12.4 For the South African government some of the health priorities have included HIV and AIDS, Tuberculosis (TB) and malaria control, medicine supply and providing the human resources needed for health care provision. More broadly, broadening access to and improving the quality of education, land reform, water and sanitation, universal access to electricity and improving public transport are also important components of health promotion<sup>95</sup>. In July 2007, the Presidency requested all government departments to submit a set of high-level priorities for inclusion in the priorities for immediate government action. The implementation of these priorities would have to be accelerated during 2007-2009. The priorities identified by the National Department of Health included the following broad areas:

- Strengthening the management of TB;
- Implementation of the National Strategic Plan for HIV and AIDS 2007-2011;
- Expansion of the implementation of the Comprehensive Plan for HIV and AIDS Care, Treatment and Management;
- Strengthening TB and HIV collaborative efforts;
- Strengthening the implementation of key strategies for effective malaria control in South Africa;
- Strengthening inter-country and cross-border malaria control initiatives;
- Improving the management of childhood illnesses;
- Achieving measles elimination;
- Ensure polio outbreak and importation preparedness;
- Improving maternal, child, and women's health and nutrition;
- Improving micronutrient control;
- Facilitating the country's preparedness to prevent and respond to communicable diseases and outbreaks during the FIFA Soccer World Cup in 2010 when South Africa is the host;
- Contributing to poverty alleviation through the EPWP by appointing unemployed matriculants as data capturers;
- Contribute to poverty alleviation by expanding and strengthening the delivery of PHC through the partnerships for the delivery of PHC Project funded by the European Union; and
- Contribute to poverty alleviation by expanding and strengthening the role of NGOs and Community Based Organizations in curbing the impact of HIV and AIDS.

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<sup>94</sup> The challenge with all the health data including those on HIV and AIDS is that the most recent South Africa demographic health survey was conducted in 2003 and the latest survey was only conducted in 2008. At the time of completing this Report the results of these surveys had not been released.

<sup>95</sup> Presidency Submission to the APRM, 2006

### **Access to Health Services for the Girl child**

12.5 Special attention has been paid to the girl child. Numerous cross-cutting programmes affect the girl child, some of which include immunization programmes, integrated management of childhood diseases, introduction of prevention of maternal to child transmission of HIV associated infections, strengthening and promoting breast-feeding programmes, improved water and sanitation and strengthening the malaria control programme. As a result the infant mortality rate for the girl child has declined from 45 deaths per 1000 live births in 1998 to 43 per 1000 live births in 2003. Breast-feeding has become more widely accepted with more women breast-feeding and exclusive breast-feeding in the first 3 months of the child's life. Recent studies show that the number of women breast-feeding and exclusively breast-feeding even in public has increased.

12.6 In the area of combating communicable diseases, the health sector records several achievements for this period. National immunisation coverage improved from 82% in 2004/05, to 84% in 2006/07. This ensures the protection of South African children against vaccine preventable diseases.<sup>96</sup> Maternal, child, and women's health and nutrition remain one of the core priorities of the Department of Health for the 2007-09 period.

### **Women with Disabilities**

12.7 The Government has established the mainstreaming of the Integrated National Disability Strategy White Paper and guidelines through the Office on the Status of Disabled Persons in the Presidency. The realisation of this policy allows for a multi-pronged approach to advance the rights of people with disabilities in all areas. The health needs are especially poignant in addition to targeted assistance, programmes and support in addressing inequities for economic, social, and cultural advancement.

12.8 Disability and impairments along with attitudinal and environmental barriers hinder full and effective participation in society. Many impairments are preventable such those caused by violence; poverty; lack of accurate information about prevention and management of disability; failure of medical services; unhealthy lifestyles; environmental factors such as epidemics, natural disasters, pollution and trauma.

12.9 The social segregation and inequalities in society are most pronounced for people with disabilities. The vulnerable in this group includes women and children with disabilities, black and rural women and children; rural and informal settlements; persons with mental disorders; elderly women with disabilities; youth with disabilities; persons with disabilities who have been displaced by violence and war; persons with disabilities and HIV and AIDS; persons who acquire disabilities through disabling conditions brought on by the progression of HIV and AIDS and persons with multiple disabilities.<sup>97</sup> The sections that follow address their access to health care within the integrated framework.

<sup>96</sup> Department of Health, Annual National Health Plan 2007/08.

<sup>97</sup> Office on the Status of Disabled Persons, Fifteen Year Review Report, 2008

### **Article 12(b): Sexual and Reproductive Health Services**

12.10 South Africa has participated in the Meeting of AU Ministers of Health in Maputo, Mozambique in September 2006. The purpose of the meeting was to develop a Plan of Action for the Continental Policy Framework for Sexual and Reproductive Health and Rights, 2007-2010. For South Africa, strategies for the sexual and reproductive health policy implementation are as follows:

- Integrating sexually transmitted infections and sexual and reproductive health and rights programmes and services, including reproductive cancers, to maximize the effectiveness of resource utilization and attain synergy between the two strategies;
- Repositioning family planning as an essential part of the MDGs;
- Addressing sexual and reproductive health and rights of adolescents and youth as a key part of the strategy since youth health is a key priority in South Africa. The government initiated a National Adolescent Youth Friendly Clinic Initiative service in partnership with NGOs;
- Addressing unsafe abortion;
- Delivery of quality and affordable services in order to promote safe motherhood, child survival, maternal, newborn and child health;
- Africa and South-South cooperation on population development and the MDGs in Africa.

12.11 Sexual and reproductive health is one way of attaining health and a better quality of life including economic development in the long term. Integrating responses and related infections on the one hand and sexual and reproductive health on the other is part of the South African strategy. Reproductive health and peer education programmes focus on access and activities such as family planning advice, access to contraceptives and the choice on termination of pregnancy.<sup>98</sup> There has been a demonstrable increase in women's access to reproductive health care services. With respect to antenatal care services, the provision of these services has increased markedly in the last 10 years.

12.12 Improved reproductive health services have resulted in a reduction in illness and deaths amongst women. An important element in reducing maternal and neonatal deaths is the proportion of babies that are delivered with the assistance of medically qualified persons. Proper medical attention and hygienic conditions during delivery can reduce the risk of complications and infections that can cause death or serious illness to either the mother or the baby. Babies are most susceptible to sexually transmitted disease and HIV associated infections. Data shows an increase in the proportion of deliveries that occur in health facilities and a downward trend in the number of home deliveries.

12.13 Maternal deaths are associated with the inability to access affordable maternity services, to receive quality antenatal care and give birth safely. By 2002, 95.1% of women attended antenatal care at least once in their pregnancy and 83.7% of women gave birth in an institution. However, these national figures hide deeper inequalities; with over 40% of very poor women in rural areas giving birth at home. Part of the difficulties associated with poor utilisation of services in some areas is associated with poverty, inaccessibility and un-affordability of transport. According to the National PHC Facility Survey (2003), antenatal care is available 5 days per week in the majority of health facilities. By 2003, 83% of babies were being delivered in health facilities. This is a 5% point increase

<sup>98</sup> Choice on Termination of Pregnancy Act, 1996 (Act 92 of 1996)

from the 78% of babies that were delivered in a health facility during the period 1992-1998. Urban dwellers are more likely to deliver in health facilities than rural dwellers. Between 2000 and 2003 the proportion of women accessing antenatal services increased from 78,8 to 95,5%. Similarly, there was an increase in the proportion of births assisted by medically trained personnel from 84% to 92% in the five years preceding.

12.14 The maternal mortality ratio of 150 maternal deaths per 100 000 live births for the approximate period 1992-1998 declined to an estimated 143 per 100 000 live births in 2003. Maternal deaths during this period account for approximately 5% of the total number of deaths in women of childbearing age. South Africa ranks 61 out of 68 high priority countries researched in the Countdown to 2015: Maternal, Newborn & Child Survival Report, 2008<sup>99</sup>. The 68 countries combined accounted for 97% of all maternal, newborn and infant deaths that occur worldwide. Maternal Mortality Ratio (per 100 000 live births) of 400 (in 2005) is classified as high with 1:110 lifetime chance of a woman dying during pregnancy or childbirth.

12.15 The main causes for maternal mortality as reported in the Saving Mothers Report on Confidential Inquiry into Maternal Deaths (1998) include hypertension diseases of pregnancy (20%), infections including HIV associated infections (18%), obstetric haemorrhage (14%), early pregnancy loss (12%), pre-existing maternal disease (11%) and pregnancy-related sepsis (9%). The introduction of the confidential inquiry into maternal deaths has been an invaluable tool for monitoring through specific investigation of each death and enables the health sector to take corrective action to prevent or decrease the incidence of similar deaths. The Department of Health acknowledges that that “many of the successes in reducing child and maternal mortality were eroded by the impact of the HIV and AIDS epidemic.”<sup>100</sup>

12.16 To date, one of the key health priorities remains strengthening maternal, child and women’s health. The Annual National health programme, 2007/08 requires that at least 50% of health districts implement the Reach Every District strategy; that 70% of districts have more than 90% immunisation coverage; that the 10 recommendations of the Report on the Confidential Inquiry into Maternal Deaths are implemented; and that the country improve the management of childhood illnesses and improve micronutrient malnutrition control.<sup>101</sup>

12.17 The Department of Health notes that much more progress needs to be made with respect to implementing the ten recommendations of the report titled: Saving Mothers: Third Report on Confidential Inquiries into Maternal Deaths in South Africa 2002-2004<sup>102</sup>. It further notes that “It is essential that the implementation of these recommendations is strengthened, as part of enhancing South Africa’s strides toward the Millennium Development Goals (MDGs), particularly the health-related MDGs.”<sup>103</sup> These recommendations are as follows:

<sup>99</sup> Count-down Report from April 2008 M&G,

<sup>100</sup> Department of Health, Annual National Health Plan, 2007/08

<sup>101</sup> Department of Health, Annual National Health Plan, 2007/08

<sup>102</sup> Ibid

<sup>103</sup> Ibid

- Protocols on the management of important conditions causing maternal deaths must be available and utilised appropriately. All midwives and doctors must be trained on the use of these protocols;
- All pregnant women should be offered information on, screening for and appropriate management of communicable and non-communicable diseases;
- Criteria for referral and referral routes must be established and utilised appropriately in all provinces;
- Emergency transport facilities must be available for all pregnant and postpartum women and their babies with complications (at any site);
- Staffing and equipment must be established for every level of care and for every health institution concerned with the care of pregnant women;
- Blood for transfusion must be available at every institution where Caesarean sections are performed;
- Contraceptive use must be promoted through education and service provision and the number of mortalities from unsafe abortion must be reduced;
- Correct use of the partogram should become the norm in each institution conducting births. A quality assurance programme should be implemented, using an appropriate tool;
- Skills in anaesthesia should be improved at all levels of care, particularly at Level 1 hospitals; and
- Women, families and communities at large must be empowered, involved and participate actively in activities, projects and programmes aiming at improving maternal and neonatal health as well as reproductive health in general.

### **Choice on Termination of Pregnancy**

12.18 As a result of the promulgation of the Choice on Termination of Pregnancy Act, 1996 (Act 92 of 1996), abortion-related deaths among women dropped by 91 percent between 1994 and 2001. The Choice on Termination of Pregnancy Amendment Act, 2004 (Act 38 of 2004) increases access to safe termination of pregnancy services for women, giving greater effect to the constitutionally guaranteed right to access to healthcare services, including reproductive healthcare. It is reported that 216 718 safe terminations were performed in the first four years of the Act being passed. The Department of Health notes that since provision of access to choice on termination of pregnancy 344,477 women over a seven year period (1997-2004) availed themselves of the services.<sup>104</sup>

12.19 According to the South African Behavioural Surveillance Survey 2003, 63% of women reported that they visited the hospital or clinic for termination of pregnancy, whilst only 16% reported that they had visited other practitioners outside the formal health system for assistance. Section 27(1) lessens the bureaucratic barriers to reproductive health services and increases administrative efficiency by empowering Provincial Health Ministers to approve facilities and develop regulations. The Act makes it an offence for any person or facility that does not meet specified requirements, to unlawfully terminate a pregnancy

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<sup>104</sup> Department of Health, Annual National Health Plan 2007/08.

12.20 Challenges to its efficacy are presented by great disparities in availability and quality of services between the provinces, and between rural and urban areas; a lack of sufficient staff, training and the requisite equipment; discriminatory attitudes, practices and behaviours amongst healthcare providers; and social, cultural and religious taboos that impact negatively on the adequacy and quality of care; and, may deter patients from accessing termination of pregnancy services.

### **Integrated Nutrition Programme**

12.21 The Integrated Nutrition Programme was developed from the recommendations of the Nutrition Committee appointed in 1994 by the Minister of Health. Good nutrition is a basic human right guaranteed in South Africa's Constitution. The Department of Health has to ensure that nutrition security is respected, protected, facilitated and provided to the people of South Africa. Nutrition security incorporates food security, health security and care security where security refers to sustainability and having food and good nutrition on an ongoing basis. Therefore, sound nutrition involves more than just the availability of food or the consumption of a certain amount of nutrients per day. The integrated nutrition programme is implemented as an integral part of the PHC approach and at the different levels of health management structures. It acknowledges extreme inequities in society and targets the most disadvantaged groups. It includes school-feeding programmes, community nutrition projects and income generation projects.

12.22 Studies indicate that micronutrient deficiencies are prevalent in the country and affect vulnerable groups the most, where the diet is low in energy and poor in protein quality and micronutrient density. One out of two children aged 1–9 years have an intake of approximately less than half the recommended levels for vitamin A, vitamin C, riboflavin, niacin, vitamin B6, foliate, calcium, iron and zinc. Therefore, iron deficiency and anaemia are common problems among children in rural communities.

12.23 The Health Sector Strategic Framework requires the Integrated Nutrition Programme to prevent and manage malnutrition. Malnutrition is a major contributing factor to morbidity and mortality. This Programme is one of the key strategic health programmes to decrease morbidity and mortality rates. In South Africa, malnutrition is manifested in both under-nutrition and over-nutrition.

### **Violence against Women (addressed in Part V)**

12.24 Women and children in South Africa are vulnerable to high levels of crime and violence on a daily basis that impacts on impaired functioning, health and well-being. This is dealt with in Part V of this Report. This section must be cross-referenced with Part V of this Report. 12.24 The Department of Health is a key player in the provision of services along with others in the Justice and Crime Prevention Strategy and particularly when it comes to addressing victims of domestic violence and sexual assault against the girl child and women. Sexual Assault Care Practice Training is provided to state doctors that includes training on the use of crime kits and the completion of the sexual assault examination forms<sup>105</sup>. Every year provinces continue to train nurses and doctors in Sexual Assault Care Practice, a comprehensive training programme aimed at building capacity in health facilities to address issues of sexual assault and domestic violence. The South African Police Services has social

<sup>105</sup> In South Africa known as J88 forms.

workers appointed at some police stations to provide counselling to victims of domestic violence, however personnel are limited.

12.25 In 2001, the National Department of Health prioritised improving sexual assault services and a situational analysis was conducted in October 2003 to inform this process. The executive summary from the report titled “The State of Sexual Assault Services from a Situation Analysis of Services in South Africa”,<sup>106</sup> available in Part V, provides a critical perspective of how South Africa is faring in these programmes.

12.26 The textbox below highlights some key issues contained in this situation analysis.

**Textbox 20: Key Issues Identified in the “State of Sexual Assault Services from a Situational Analysis of Services in South Africa”**

“Women often receive very poor quality medical care after sexual assault... There were many systemic problems that were identified. These included structural inadequacies such as not having a private room with walls and a door where examinations could be conducted. Sexual assault services were typified by long waits – this resulted from health care providers not being available (either because they were too busy or on call), sexual assault not being prioritised and the current system where the police bring the sexual assault evidence collection kits and if the patient did not present first at the police this means waiting for the police to bring the kit. Problems with kits were experienced ranging from kits being incomplete or unavailable to health providers being inadequately trained to use the kit.”

12.27 It was anticipated in 2006/07 that a National Policy and Guidelines for the Treatment and Care of Survivors of Domestic Violence would be developed by the National Department of Health in consultation with provinces. Unfortunately, as the Department has admitted, this was not achieved. With respect to the development of the comprehensive plans for the provision of psycho-social support for survivors of gender-based violence, only Mpumalanga and the Western Cape reported progress with the development of these comprehensive plans.

### **Access to Traditional Medicines**

12.28 In 2004, the Traditional Health Practitioners Act, 2004 (Act 35 of 2004) was adopted. There are challenges to regulating practices but women practitioners, who are in the majority, have benefitted most from this Act, which is being implemented in alignment with a Traditional Health Practitioner’s Policy. Similarly the users of traditional medicines, a large proportion of whom are women, will benefit from these initiatives through research and monitoring. The Department of Health's support for African traditional medicines research has included a R6 million grant channelled through the Medical Research Council of South Africa, for research into the safety, efficacy and quality of traditional medicines used as immune boosters for the treatment of health conditions.

<sup>106</sup> SAGBVHI report: The State of Sexual Assault Services in South Africa



## HIV and AIDS

12.29 South Africa is signatory to several international declarations and agreements on HIV and Aids. These include the Abuja Declaration (Abuja +), UNGASS, Maseru Declaration, and the UNAIDS. South Africa ratified a number of declarations that uphold the promotion of Sexual and Reproductive Health and Rights such as CEDAW, the International Conference on Population and Development, (Cairo 1994, ICPD+10), and the Beijing Platform for Action.<sup>107</sup>

12.30 The response to HIV and AIDS and Sexually Transmitted Infections was fairly limited before 1994. Dedicated expenditure on programmes across national departments has increased from about R30 million in 1994 to R342 million in 2001/02. This excludes allocations from provincial equitable share. Expenditure increased to R3.6 billion in 2005/06.<sup>108</sup> This increased expenditure is funding a comprehensive prevention, care and treatment programme. In 2006, domestic and international spending on HIV and AIDS by categories and financing sources was R4 270 716 447, of which R2 976 695 000 (69.7%) came from the South African government and the remaining from international sources. The figure for 2007 was R4 530 175 220 of which R 3 356 707 000 (74%) came from the government of South Africa.

12.31 The total amount of funds spent by the public sector to combat HIV and AIDS and mitigating its impact, increased from R 5,317 billion in 2006 to R 5,768 billion in 2007. The HIV and AIDS sub-programme in the Department of Health grew from R676 million to R3,2 billion at an average annual rate of 29,5% over the seven-year period. The Department of Education increased its expenditure from R157 million in 2006 to R167 million in 2007. The Department of Social Development increased its HIV and AIDS spending from R339 million to R452 million in 2007. It should be noted that the expenditure by the Department of Social Development does not include the range of grants, which are part of the social security system. This increased expenditure is funding a HIV and AIDS comprehensive prevention, care and treatment programme.

12.32 South Africa has established the South African National AIDS Council (SANAC), a multi-sectoral body that is chaired by the Deputy President of the country. The South African Cabinet, as the highest political authority has deferred this responsibility to an Inter-Ministerial Committee comprising 8 key Ministers. SANAC comprising representatives from government as well as the NGOs and co-chaired by the Deputy President and an NGO representative, provides policy guidance, advice, programme implementation support and monitoring of sector programmes to the Inter-Ministerial Committee. The Ministry of Health remains an ex-officio member at all levels. The HIV and AIDS and STI Strategic Plan for South Africa 2007-2011 (NSP) shows the country's multi-sectoral response to the challenge with HIV infection and the wide-ranging impacts of AIDS and SANAC's work is aligned to the NSP. It requires government departments to have a focal person and a team responsible for planning, budgeting, implementing, as well as for monitoring and evaluating all interventions. Government departments have target communities or sectors who are meaningfully involved in these interventions. Prevention depends on education and investment of resources in

<sup>107</sup> Beijing +10

<sup>108</sup> Presidency Submission to the APRM, 2006

critical areas to impact on individuals changing their behaviour in relation to sex, reproductive health and intimate relationships. With an estimated 5 to 6 million South Africans infected with HIV and only a minority aware of their status, prevention remains a huge challenge.

12.33 HIV and AIDS is one of the main challenges facing South Africa today. It is estimated that of the 39.5 million people living with HIV worldwide in 2006, more than 63% were from sub-Saharan Africa. In 2008 about 5.35 million people were estimated to be living with HIV in South Africa, with 18.8% of the adult population (15-49 years) and about 11% of the general population affected. Women are disproportionately affected; accounting for approximately 54% of HIV-positive people. Women in the age group 30-34 are the worst affected with prevalence rates of up to 30%. For men, the peak is reached at older ages, with an estimated 10% prevalence among men older than 50 years. HIV prevalence among younger women (15-24 years) seems to be stabilizing, at about 8% for the past three years.

12.34 The challenge is to identify those affected people; to provide a comprehensive package of services to reduce morbidity and mortality; and, to mitigate the wide-ranging impact of HIV and AIDS. The target established by SANAC is to provide an appropriate package of treatment, care and support services to 80% of people living with HIV and their families by 2011.

12.35 With respect specifically to women, the data trends in South Africa suggest:

- A tendency towards stabilization of the prevalence among pregnant women who access antenatal care services from the public health sector. This has been observed since 2004.
- A decline from 16% in 2004 to 13.5% in 2006 (graph below), among women younger than 20 years of age as well as a decline in prevalence in those between 20 and 24 years of age (from 30.6% in 2005 to 28.0% in 2006). This could be the beginning of the long-awaited downward trend of prevalence among pregnant youth in South Africa. At least two more survey rounds with the same 2006 expanded sampling methodology will be necessary to draw a conclusion on the downward HIV trend among pregnant women.
- A reversal in the prevalence of syphilis among pregnant women in the past five years which is an indication of the gains from the introduction of syndromic executive summary management of sexually transmitted infections (STIs) in 1995 as well as the introduction of the primary health care system.

Figure 2: HIV prevalence among young pregnant women, South Africa, 2000 – 2006

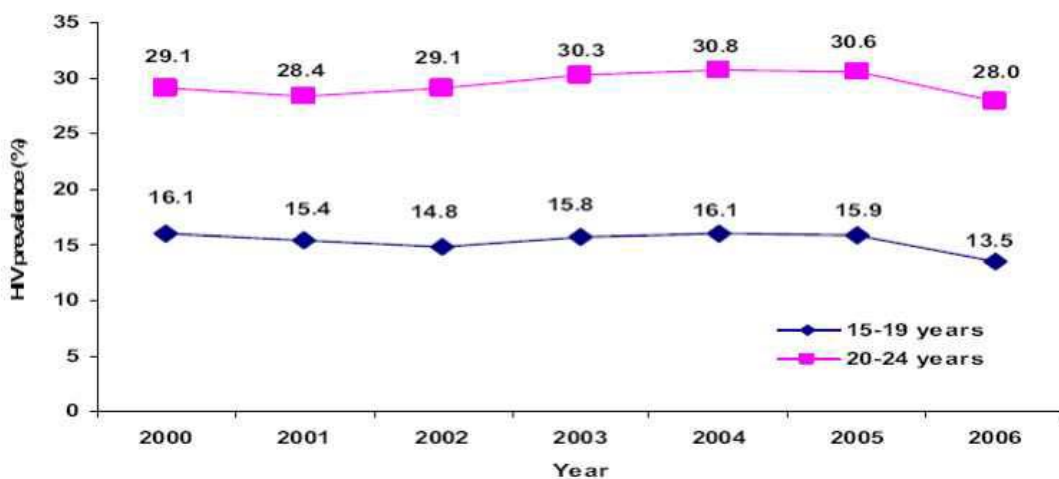
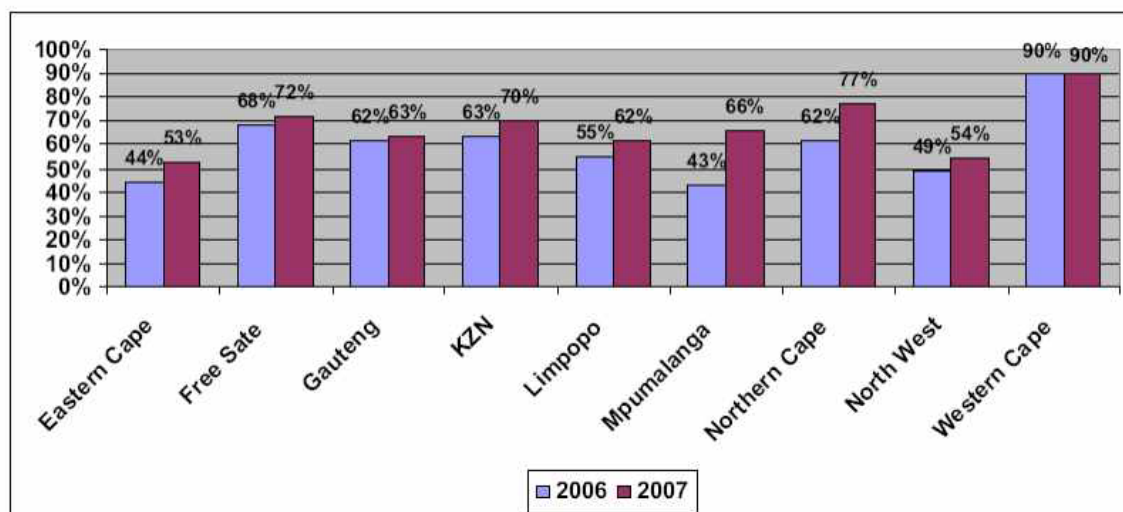


Figure 5: Percentage of HIV positive pregnant women who received antiretrovirals to reduce the risk of mother-to-child transmission



12.36 There are approximately 1,000,000 births per calendar year. Based on the antenatal statistics the estimated number of HIV positive pregnant women in 2006 was 302,000 (30.2/1000000) and 290,000 in 2007. Approximately 85% of pregnant women attend antenatal services in the public health facilities. The total number of HIV positive pregnant women identified and enrolled into the Prevention of Mother to Child Transmission programme in 2006 was 186,646 (72.7%) and for the period January to September 2007 it was 144,506 (56.2%). The decline in 2007 is due to the lack of numerator data for October-December 2007 with the denominator being the same as for 2006. Overall

there was a 6% increase in the percentage of women who received Antiretrovirals (ARV) in this programme.

12.37 The estimated number of people needing treatment (children and adults at WHO Stage 4) in South Africa was 764,000 by the middle of 2006 of which a total of 353,945 (46%) enrolled in the Antiretroviral Treatment (ART) programme and 273,400 (36%) were initiated on the ART programme in 2006. In 2007 - 889,000 people needed treatment of which 488,739 (55%) enrolled and 371,731 (42%) initiated on the ART programme. Approximately 55% of the people receiving treatment were female and 45% male. The estimated number of children (<15years) needing treatment was 52,000 in 2006 and 65,000 in 2007 of which 23,369 received treatment in 2006 and 32,060 in 2007.

12.38 The health sector's comprehensive response to HIV and AIDS is implemented and rapidly expanding. A significant increase was recorded in the proportion of public health facilities offering voluntary counselling and testing (from 80% in 2004/05 to 90% in 2006/07) and those providing Prevention of Mother-to-Child Transmission services (increasing from 60% in 2004/05 to almost 90% in 2006/07). Increasing numbers of health service users agreed to be tested, even though the uptake rates of both programmes have not reached our own targets.

12.39 The cumulative percentage of patients with advanced HIV infection who were registered as having received antiretroviral therapy from public and private sectors increased from 46% in 2006 to 55% in 2007. The actual percentage of patients reported to be on treatment was 36% in 2006 and 42% in 2007. A midterm review is underway in order to elucidate the factors at play. The percentage of HIV positive pregnant women who received ARVs to reduce the risk of mother-to-child transmission increased from 60% in 2006 to 66% in 2007.

12.40 The increase in patients on ARV treatment reflects ongoing expansion as service points are accredited, counselling and testing, human resources and laboratory infrastructure are put in place. There has also been a rapid increase in numbers of HIV, CD4 and viral load tests performed by the National Health Laboratory Service. HIV and AIDS programmes will continue to strengthen under the new national strategic plan, alongside an expansion of prevention programmes.

12.41 The textbox below identifies key elements of the 2007-2011 NSP.

**Textbox 21: Key elements of the 2007-2011 National Strategic Plan (NSP)**

12.41.1 The primary aims of the NSP include:

- Reduce the rate of new HIV infections by 50% by 2011.
- Reduce the impact of HIV and AIDS on individuals, families, communities and society by expanding access to appropriate treatment, care and support to 80% of all HIV-positive people and their families by 2011.

12.41.2 The interventions needed to reach the NSP's goals are structured under four key priority areas<sup>109</sup>:

- Prevention, treatment, care and support;
- Research, monitoring, and surveillance;
- Human rights; and
- Access to justice.

12.41.3 The NSP identified 19 goals of which the following three specifically apply to women:

a. **Reduce mother-to-child transmission of HIV:**

- Broaden existing mother-to-child transmission services to include other related services and target groups.
- Scale up coverage and improve quality of PMTCT to reduce MTCT to less than 5%.

b. **Identify and remove legal, policy, religious and cultural barriers to effective HIV prevention, treatment and support:**

- Minimise the risk of human rights violations from cultural, religious and traditional practices.

c. **Focus on the human rights of women and girls, including people with disabilities, and mobilize society to promote gender and sexual equality to address gender-based violence:**

- Reduce legal constraints to access to Social Security Services for women and children.
- Ensure implementation of existing laws and policies that protect women and children from gender-based violence.
- Address the needs of women in abusive relationships.
- Ensure that laws, policies and customs do not discriminate against women and children (Department of Health, Annual National Health Plan 2007/08).

12.42 There is an acknowledgement that stigma and discrimination continue to present challenges in the management of HIV and AIDS. This priority area seeks to mainstream programmes to mitigate these fundamental human rights challenges. In spite of improvements and commitments, the Department of Health acknowledges the "...systemic challenge of human resources particularly in the health sector, attenuates the expected benefits of these commitments. A number of challenges have been identified including inequalities; operationalisation of the NSP by SANAC sectors; underdevelopment; un-affordability of ARVs; prevention - new initiatives including effectiveness of male circumcision require further investigations and empirical evidence before development of

<sup>109</sup> Department of Health, Annual National Health Plan 2007-08

policy; and unavailability of sufficient quantities of skilled personnel and weaknesses of existing monitoring and evaluation systems”<sup>110</sup>

12.43 A study conducted in Cape Town found that traditional beliefs of the causes of HIV and AIDS were identified as being caused by supernatural forces and witchcraft. The AIDS stigma can be mediated by AIDS knowledge and education that is widely needed across the country to combat myths and barriers to overcoming the pandemic<sup>111</sup>. HIV and AIDS presents a number of challenges for the workplace, including rights of affected employees and access to health care services, their ability to work and its impact on the labour force. The government has a code of good practice for dealing with this in the workplace.

### **Sexually Transmitted Infections (STI)**

12.44 It is estimated that in South Africa, 11 million STI cases occur annually. Although this report separates STIs and HIV, the epidemiological and biological evidence that STIs are co-factors in the transmission of HIV means that controlling STIs has become a high priority for South Africa. It is one of the main strategies for HIV control.

12.45 Government has continued to implement the National Strategy for the Control and Management of STIs that was introduced in 1997. This has been done in collaboration with a broad spectrum of stakeholders and based on the World Health Organization’s recommended approach to STI referred to as ‘syndromic management’. This resulted in amending the National STI Treatment Guidelines including safer sex education, condom promotion and partner notification and treatment. Implementation of the ‘syndromic management’ of sexually transmitted diseases has been strengthened. This has resulted in a reduction of syphilis infections amongst women attending antenatal clinics from 11% in 1997 to 2.2 % in 2003.

### **Partnership Programmes**

12.46 There are numerous initiatives and multi-sectoral partnerships, for example, the *Women in Partnership Against Aids* (WIPAA) and *Men in Partnership Against Aids* (MIPAA). The country continues with a huge investment in information and educational programmes. Programmes such as the Khomanani Campaign have shifted their prevention focus to school leavers and young adults while the school life skills and LoveLife programmes are addressing the adolescent population. The Khomanani campaign is a community outreach programme that has broadened its reach and impact through well trained volunteers, who interact face-to-face with residents.

### **Tuberculosis Control**

12.47 The Department of Health admits that one of the areas of slow progress during 2006/07, which must gain momentum in 2007/08, includes implementation of the TB Crisis Plan. South Africa reports relatively high incidents of tuberculosis (TB). More men than women are diagnosed with TB. It

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<sup>110</sup> Department of Health, Progress Report on declaration of Commitment on HIV and AIDS, Republic of South Africa Reporting period: January 2006–December 2007 Prepared for: United Nations General Assembly Special Session on HIV and AIDS

<sup>111</sup> Traditional beliefs about the cause of AIDS and AIDS related stigma in South Africa; Kalichman & Simbayi; <http://www.informaworld.com>

remains the leading cause of death for men and women. Programmes are being strengthened to ensure adherence to TB medication and treatment, mainly to women through the Directly Observed Treatment (DOT) programmes involving strong community participation. An important initiative is a research unit of the Medical Council on air control. There are numerous challenges related to TB infections and women. One challenge relates to relatively low health-seeking behaviour by women for services such as TB services. Given the co-infection of TB and HIV it is necessary to conduct gender-based analyses of TB to assess the degree to which women are differently affected by the disease. Another challenge relates to the slow development of innovations in the management of TB over the last 20 years. Current treatment regimen and treatment programmes which require hospitalisation for long periods of time place heavy time demands on women.

12.48 It was estimated that 50.3% of estimated HIV-positive incident TB cases received treatment for TB and HIV in 2007. The percentage of schools that provided life skills based HIV and AIDS education in the last academic year increased from 96% in 2006 to an estimated 100% in 2007. The results of the national HIV survey among pregnant women are showing encouraging trends, a decline from 15.9% in 2005 to 13.5% in 2006 among women younger than 20 years of age as well as from 30.6% in 2005 to 28.0% in 2006 among those between 20 and 24 years of age. The Department of Health notes that one of the challenges that faced the provinces was the increase in XDR-TB. A total of 68 XDR-TB cases were confirmed of which 54 were from the crisis districts.<sup>112</sup>

### **Cancer of the Breast and Cervix**

12.49 Breast cancer is the leading cancer for women in South Africa and around the world, with one in 27 South African women diagnosed with breast cancer in her lifetime, according to the National Cancer Registry. The age standardised death rate in 2000 was 10 per 100 000 as stated in the Mortality report by the Medical Research Council (MRC). The age standardised incidence rate was quoted as 33 per 100 000 in 1999, according to the South African National Cancer Registry.

12.50 In 2005, the Breast Advocacy Coalition drew up a position statement in consultation with the Breast Health Foundation/Bosom Buddies, the Cancer Association of South Africa, GVI Oncology, PinkLink, Reach for Recovery, as well as oncologists, surgeons, radiologists, healthcare practitioners and the Department of Health, to call for an accessible breast health service for all where there is no discrimination against anyone diagnosed with breast cancer. Some of the barriers to breast health the coalition mentioned were the dearth of accurate breast cancer statistics to inform a comprehensive policy, and the absence of a population-based cancer registry to record and provide accurate breast cancer statistics

12.51 Cancer of the cervix is the second most common form of cancer amongst South African women, and one in 41 women in South Africa will develop cancer of the cervix during her lifetime. Cervical cancer is preventable, however, by doing cervical smears, which can detect the abnormalities preceding invasive cancer, known as squamous intraepithelial lesion (SIL) and previously known as cervical intraepithelial lesion (CIN). The national guidelines of the cervical cancer screening

<sup>112</sup> Department of Health, Annual National Health Plan 2007-08

programme was introduced in 2001, and rolled out incrementally depending on health service capacity. The ultimate goal is to screen at least 70% of women nationally within the target group of women 30 years and older within 10 years of initiating the programme. By 2007, 30% of Primary Health Care facilities had at least one health care provider trained to conduct pap smears and close to 20% of women were screened for cervical cancer during 2006/7, which marked great progress from the 2.6 record since implementation of the cervical screening policy guidelines in 2001 (DOH Annual Report 2006/07).

### **Research & dissemination of information on women**

12.52 Health information and in particular information disaggregated by sex is of critical importance for planning and programming women's health and gender associated analysis. Health information systems were extremely rudimentary in the mid 1990s. Health Information systems were inadequate and national disease profile information such as infant mortality rates and maternal mortality rates were unknown and where available, only reflected the health profiles of the white and sometimes the Indian population groups. Information on the health status of women was fragmented and often unavailable. In the last several years South Africa has strengthened routine health information systems and created structures to ensure provincial coordination of standards to achieve these objectives. The vital registration system has been strengthened significantly.

12.53 The Demographic and Health surveys which are an international yardstick for health profiling and which disaggregate health information for women and different age groups of women, were introduced in 1993. Similarly South Africa now conducts numerous surveys and studies to profile health and to both assess and analyse health in general and women's health in particular. Challenges still exist in unifying hospital information systems that were previously developed without national hardware standards. It is believed that a national master patient index and patient information system will be important for patient follow up. In particular women who attend one health facility and have to attend another in another geographic region will enjoy continuity in treatment without relying exclusively on patient carry cards.

12.54 The Department of Health introduced a Directorate on Research, which has oversight responsibilities for health research including coordination with the Medical Research Council. A parliamentary grant supports the Medical Research Council (MRC) whose brief relates to strengthening capacity for health research in South Africa. A great deal of attention is placed on ensuring appropriate capacity amongst women in the conduct of research. Female researchers lead numerous key programmes in the MRC such as the Gender programme, the health promotion programme, Health Information Programme and the Burden of Disease programme. Health research has cut across the various fields including research to strengthen health systems delivery; understanding the factors that impede or best promote the involvement of women and men in health programmes including understanding of behavioural dynamics in health.

12.55 The MRC, an important partner in health research, encourages mainstreaming gender in research. The Council has a women's health programme dedicated to research on women's health matters. There are numerous other academic and research institutions such as the Human Sciences



Research Council and Health Systems Trust undertaking critical health research in South Africa. The Directorate has been involved in numerous initiatives aimed at promoting women as researchers and protection of the rights of women in scientific research. The guidelines for instance demand continued treatment of patients (at the cost of the trial sponsor) at the conclusion of a clinical trial if the patient still requires treatment. The amended good clinical practice guidelines require clinical trials to include women so as to ensure that the particular biological considerations of women are taken into account in the development of new drugs and treatment regimen. The guidelines further protect women and the foetus from risks resulting from poor clinical practice.

## **ARTICLE 13: ECONOMIC AND SOCIAL LIFE**

### **Article 13(a): The Right to Family Benefits**

13.1 Equality with respect to family benefits for men and women in South Africa remains unchanged. This includes equal entitlement to social benefits such as grants for elderly persons, people with disabilities and care givers. Government measures during the period under review focussed on eradicating racial disparities as alluded to in the Lund Report that was mentioned in South Africa's First Report to the CEDAW Committee.

13.2 The Presidency in its submission to the APRM Report (2006) noted that:

**Textbox 22: Excerpt from APRM Report, 2006**

13.2.1 Government is committed to the eradication of poverty while recognising that in the short term, given the impoverishment of the people there is a need for policies aimed at poverty alleviation. In this regard government has instituted a number of social programmes and social income programmes designed to alleviate poverty, for families, children and people with disabilities. There is a need to assess the extent to which social grants are creating dependence on the state. Are people being empowered by being provided with the financial means to meet their most basic and fundamental human needs, or are they being disempowering by creating dependence?

13.2.2 The South African social security system is well established and widely held as one of the most successful poverty reduction programmes. In our social security system, social insurance is used to protect those in formal employment while social assistance aims to protect those left unprotected by social insurance. Social security benefits comprise both social assistance grants and social security funds. The measures to address extreme poverty and hunger that we have adopted include:

- Cash transfers in the form of social assistance grants whose expenditure increased 3.7 fold between 1994 and 2004 - from R10 billion to R55 billion in 2005, and the number of beneficiaries grew from 2.6 million in 1994 to 10.5 million in 2005 (this allocation exceeds 3% of GDP);
- With the extension of the Child support grant to children under the age of 14, the total number of children accessing the grants since 1997 is over 7 million (this exceeds the target government set in 2004) of registering 2.4 million children);
- The social wage (monetary value of accessed basic services) which amounted to about R88 billion in 2003.
- The EPWP: In the first nine months of the programme, R2.4 billion was spent on 1 890 projects to create 144 056 gross job opportunities. This exceeds the target of 130 000 opportunities for the first year of the programme. The EPWP is on course to reach its target of 1 million job opportunities in five years. By September 2005, some 223 400 gross work opportunities had been created from 3400 EPWP projects nationwide in the first year of the EPWP, yielding at least R823m in total wages paid. Of those who benefited from the programme in the first year, 38% were women, 41% were youth and 0.5% was people with disabilities.
- The establishment of the Agricultural Starter Pack Programme and The Comprehensive Agricultural Support Programme.

13.2.3 However these measures have to work in tandem with economic empowerment, sustainable economic growth and development, shared growth and the revitalisation of our marginalised rural communities where large numbers of our impoverished people live. One of the most effective anti-poverty strategies is an effective employment creation strategy - thus the government's focus on Accelerated Shared Growth Initiative (ASGI-SA); the Extended Public Works Programme, and the massive expenditure allocation on infrastructure development.

13.3 Poverty in South Africa has a serious race and gender dimension. A study on poverty trends since 1994, (van den Berg, Burger *et al*), found that poverty increased between 1993 and 2000, and then declined rapidly thereafter – for all poverty lines ranging from R2,000 to R4,000 per capita per annum. Between 2000 and 2004 the number of people living in poverty declined from 18.5 million to 15.4 million. Over that same period the number of non-poor rose from 26.2 million to 31 million. The study also found that the per capita incomes of the poorest two quintiles rose by more than 30% between 2000 and 2004. And the middle class constituting just over 10% of the population increased threefold to 1.2 million in the period 1993-2004.

**Textbox 23: Excerpt from “The End of Poverty: How can we make it Happen in Our Lifetime” by Jeffery Sachs**

13.4 In a recently published book by Jeffrey Sachs, Special Advisor to the UN Secretary General and one of the foremost economists in the world titled “*The End of Poverty: How We Can Make it Happen in Our Lifetime*” points to the role of women in sustainable development and in the fight against poverty and underdevelopment. In his book, Sachs asks a very important question: “how is it that some very poor countries escaped the ravages of a poverty trap, while others did not?” After comparing those countries that made it with those that did not, he concluded that “the most important determination, it seems, is food productivity” (p. 69). Sachs noted that the so called poverty trap is predominantly a rural phenomenon of rural small farmers and peasants caught in a vicious cycle of increasing population and falling food production (p. 70). He also notes that one other possible reason for the persistence of poverty, especially in the rural areas, is that in many countries, women face discrimination. It is essential therefore to address this discrimination and to ensure the economic empowerment of women through the creation of business opportunities.

13.5 The government of South Africa has given priority through legislation, policy and administrative reform to address racial and gender inequalities, for example, access to social grants and poverty alleviation programmes. The social grants include: an old-age grant, disability grant, war veterans’ grant, grant-in-aid, foster child grant, child support grant, care dependency grant and social relief of distress. The income derived from social grants has improved the income and/or expenditure of the poorest, thus bringing the very poor closer to the poverty line, as the income of the poorest 10% and 20% in the country. However, on the other hand the income of the rich has grown even higher than that of the poor, and thus the inequality gap between the rich poor has not reduced.

13.6 Since 1994, there has been a significant increase in the number of beneficiaries of social grants, as illustrated in the table below:

**Table 8: Beneficiaries of Social Grants**

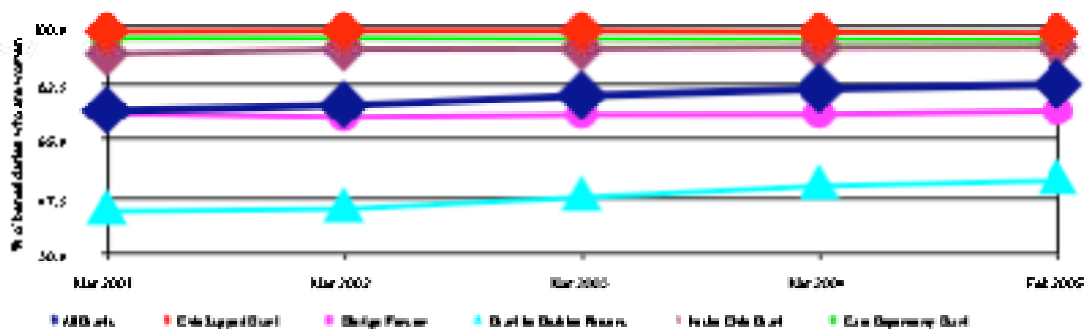
1994	285 1/7	Apr 2001	2003	Mar 2006	2007
2.6 million	3 million	3.8 million	5.1 million	11 million	+12 million

13.7 Government spending on social grants demonstrates the level of commitment that the government has in addressing the issue of poverty, given that this has been “the fastest-growing

category of government expenditure since 2001”, and by 2005 amounted to R55 billion a year. Expenditure on income transfers to households in general, increased from R42, 9 billion in 2002/03 to R74, 2 billion in 2005, representing an increase of 20% a year.

13.8 The graph below shows the trends in women beneficiaries of social grants from 2001 to 2005.

**Graph showing the percentage of social security grant beneficiaries who are women, by year**



Source: Department of Social Development SOCPEN raw data

13.9 The main challenge faced with the disbursement of social grants is related to ghost-beneficiaries, mainly as a result of fraud committed by public servants in the department, and by others in the general public. Corruption takes away from those who are the poorest and most in need to alleviate their underdeveloped status and improve the quality of life. There were 829 social-grant fraud cases brought to court, with 453 convictions, by May 2006. The government has also acknowledged that some of the country’s poor who are entitled to grants are still unregistered or poorly serviced. This is evidenced in the case below.

### 13.9.1 Textbox 24: Extract from: *Children of the Valley* ....

Woza Moya is a Community Care and Support Programme that was filmed by SABC 3's Special Assignment whilst working in the Ufafa Valley, near Ixopo in the KwaZulu Natal province. This is their story ...

'It is estimated that 12 million children in South Africa are living in deep poverty and child support grants have become a meal ticket but access to child support grants can be a problem because many caregivers do not have bar-coded Identity Documents (ID) documents. The community workers pointed to a grand-mother with eleven orphans who was trying to secure a new ID book, without which she could not access any form of social assistance from the government. This is part of the daily routine of the Woza Moya Team as they struggle to help families apply for IDs or grants. Rural dwellers often have to travel long distances to reach the Department of Home Affairs Offices and they often do not have money to pay for taxis or for the documentation or photos that may be required. The web-site reports impending legal action by child rights activists to get government to accept other forms of identification.

**(Source: [http://www. Documents and Settings/Victim](http://www.Documents and Settings/Victim). Cited on 22.04.08)**

13.10 The results of the Income and Expenditure Survey 2005/2006 released in 2008 by Statistics SA show that:

- Real per capita income increased in all income deciles from 2000 to 2005-06, though the increases were uneven. This can only be good for the economy and society;
- Social grants play an important role in reducing inequality as they constitute a major source of income for the poor;
- Total household income during the survey year was approximately R929,2 billion. The average annual income of a South African household was estimated at R74 589.
- Total annual household consumption expenditure during the survey year is estimated at approximately R700 billion.

13.11 On average, the estimated total household consumption expenditure per household in South Africa was R56 152. The main components of household consumption expenditure were housing, water, electricity, gas and other fuels; transport; food and non-alcoholic beverages. On average, a South African household is estimated to have spent approximately R13 245 on housing, water, electricity, gas and other fuels during the survey year.

13.12 The second largest contributor to consumption expenditure was transport contributing 19,9% to the total household consumption expenditure during the survey year. This means that approximately one in every five rand is spent by South African households on transport. On average, a typical household spent approximately R11 180 on transport during the survey year.

13.13 The poorest 20% of households spent a considerably higher proportion of their expenditure on food and clothing (37%) than do the richest 20% of households who allocated only 10%. This of

course suggests to us that inflation hurts the poor the most, and our inflation-targeting policies are therefore also a very important pro-poor initiative. The current world- wide food crisis has particular implications for the poorest South Africans, the majority of whom are women, rural women, children and people with disabilities.

### **Textbox 25: The Gini Co-efficient for 2008**

13.14 With regard to the Gini coefficient (measuring inequality), the Statistics SA 2008 reports that:

“Inequality continues to remain high between population groups and within individual population groups. The Gini coefficient based on disposable income (from work and social grants) for the whole country was 0,72 ... Within individual groups the Gini coefficient was highest at 0,63 among black African households, with the other population groups ranging between 0,56 and 0,59. If social grants and taxes are excluded, the Gini coefficient for the whole country would be 0,80 rather than 0,72, i.e. the reduction of inequality through redistributive policies reduces the Gini coefficient by 8 percentage points.”

13.15 The Report also notes that: “From 2000 to 2005/2006, black African households’ share of consumption expenditure rose from 42,9% to 44,3% (and their share of the population rose from 78,3% to 79,4%). White households’ share of consumption expenditure fell from 44,1% in 2000 to 42,9% in 2005/2006 (and their share of the population fell from 10,1% to 9,2%). Black African households experienced increases in their share of expenditure in each expenditure category except for miscellaneous goods and services” There was little change in the shares of the Coloured and Indian/Asian population groups (share of expenditure as well as share of population).

13.16 Of greater interest is the Report’s assessment that “Mean real per capita income increased in all income deciles between 2000 and 2005/2006 (based on income excluding imputed rent). But the increases were uneven, with above-average increases occurring in deciles 1, 2, 3 and 10, and below-average increases occurring in deciles 4 to 9 (where decile 1 refers to the 10% of the population with the lowest income and decile 10 refers to the 10% of the population with the highest income).” This means that real income per capita increased at above-average rates for the poorest 30% of the population as well as the richest 10%. It is the higher rate of increase of the top 10% that accounts for the increased inequality – 10% of the population continue to earn more than 50% of household income in the country, while the poorest 40% account for less than 7% of household income, and the poorest 20% account for less than 1.5% of national income. Overall, the socio-economic condition of the poorest in our country has improved.

13.17 Of the various sources from which households derive their income, the single most important and by far the largest source is income from work. The Report points to the importance of social grants as a source of income for lower-income households. This means that the social grant is an important source of poverty alleviation in South Africa. The single most important factor that drives inequality is the gross disparity in skills levels. The economy has continued to change, simultaneously requiring fewer and fewer unskilled workers and more educated and skilled workers. The result is that

those with these skills take an increasing share of the national income. On the other hand, many of the poorly educated and the unskilled end up being casually employed or unemployed.

13.18 The textbox below highlights an interesting, but numerically limited poll that shows what 3 500 ordinary South Africans have to say about how government is doing and the priority issues in the country. The *people's agenda* points to unemployment and job creation...

### **Textbox 26: The People's Agenda**

A Markinor opinion poll, *Government Performance: Expectations and Perceptions, 20 March 2005*, found Government's performance to be the following <sup>113</sup>

13.18.1 South Africans agree that the government's performance regarding unemployment/job creation is still not satisfactory. Prior to the 2004 election, respondents were asked in a nationwide opinion poll to respond spontaneously to the question: "What are the most important issues or problems facing this country that government should address?" They could mention as many different issues as they wanted to and answers were grouped and coded afterwards. These key issues can thus be considered the people's agenda. The responses are summarised below. (The % indicates the total proportion who regarded the issue to be important.)

13.18.1.1 It is significant that nine out of every ten South Africans spontaneously mentioned the issues of unemployment and the necessity to create jobs. Although all the other issues lag far behind, crime was also mentioned by almost two-thirds of South Africans and poverty and HIV and AIDS by just under half. With a clear view of the most important issues in the country we can now focus on the evaluation of Government Performance on these and other issues. As in the past we asked South Africans at the end of 2004 to evaluate the performance of the government on 23 key policy issues in SABC / Markinor Opinion 2005 poll.

13.18.2 The question is posed: "How well would you say the government is handling the following... very well, fairly well, not very well, or not at all well?" Each policy area is evaluated separately and respondents can give their own perception of the government's performance. They could also spontaneously indicate that they do not know or refuse to answer the question. If only the proportions who indicated that the government is performing "very well" or "fairly well" on a particular issue are taken into account, government performance can be summarised as follows:

13.18.2.1 It is very interesting to see that 12 of the 23 key issues are rated 67%+, compared to the three achieving this score a year ago. This spells out that people generally perceive the government to be performing better at the key issues. As in the past, welfare payments, gender equality and the delivery of basic services are evaluated very positively, achieving the highest three scores. Government is seen to be performing best in delivering welfare payments to those who are entitled to them, with 81% saying it is doing "very" or "fairly well" in helping those in need.

<sup>113</sup> Markinor Opinion 2005 poll,

13.18.2.2 This score is even marginally higher than the 78% achieved a year ago. Its efforts to deliver basic services, such as water and electricity, received the approval of 77%, with gender equality at 80%. In the same light, there are only 3 key issues rated below 50%, compared to the 9 of a year ago. Reducing unemployment and creating jobs are definitely the biggest bones of contention with regard to the government's performance.

### **Article 13(b): The Right to Bank Loans, Mortgages and other forms of Financial Credit**

13.19 While women form the majority of small business owners they are significantly outnumbered by men in the formal sector. In addition, women-owned businesses although more numerous than male-owned businesses, remain weaker because they are usually smaller, less formal and operate in more vulnerable sectors, especially in trade, catering and accommodation. The government recognizes that women are the backbone of the second economy and require multi-faceted approach to address disparities. Some of these measures are outlined in the textbox below.

#### **Textbox 27: Measures to improve access by women to finances**

- Micro financing arrangements where the major financial institutions are provided with incentives to provide loans to women entrepreneurs;
- A legislative environment focussing on the service industry that encourages meaningful partnerships between economic actors in the first and the second economies;
- Skills development and training directed at potential women entrepreneurs in both the urban and rural areas;
- Providing mentorship and learnership opportunities for women seeking to become entrepreneurs;
- Encouraging young female learners to take business courses in high school and in tertiary education.
- Undertaking a communications campaign to champion and profile successful women entrepreneurs in both the first and the second economies.
- Ensuring that women entrepreneurs have access to the incredible wealth of data that government has accumulated with respect to future growth points in the South African economy;
- Gearing women entrepreneurs for success while simultaneously providing a safety net in the event they need more time to succeed;
- Encouraging the private sector to direct and target their spending on social investments towards women entrepreneurs

13.20 The Government has introduced two major changes to facilitate access to credit. The first is the new Apex fund institution. The second involves Government's commitment of R1 billion to a new loan fund for agricultural development. Women constitute one of the targeted beneficiaries and the equalisation of benefits between women and men is one of the issues to be addressed by the new



institution. The Land Bank also recently introduced a Step-Up loan facility to provide short-term micro-credit to individuals from vulnerable groups.

13.21 Various regulatory and persuasive measures have been implemented to encourage financial institutions to extend credit to women and other historically disadvantaged groups. One of these measures was the Home Loan and Mortgage Disclosure Act, 2000 (Act 63 of 2000) which sought to encourage financial institutions to provide credit to help historically disadvantaged persons to acquire housing. The Department of Public Works has just signed an agreement with ABSA Bank to facilitate access to credit for Women in Construction.

13.22 Since 1996 Government began to incorporate gender considerations, including the need to ensure responsiveness to the needs of women based in rural areas, into the programmes of institutions like the Independent Development Corporation; the National Economic Fund (BEE Fund); the Umsobomvu Youth Fund and Khula Enterprise. For example, 87% of support granted or received through accessing micro credit under the Khula Start, a project of Khula Enterprise, went to women. Another example is the R85 million worth Women Private Equity Fund. Other examples include the R85 million worth Women Private Equity Fund and the Isivande Women's Fund. This Fund was established exclusively for women following the study on "Women's Access to Finance in South Africa" in 2006. The study confirmed that limited access to finance for women inhibits the establishment, growth, sustainability and profitability of women's enterprises. It also pointed out the gender bias that exists within financial institutions in favour of males. The Fund therefore seeks to improve women's access to formal finance in the absence of any personal savings.

13.23 South Africa has reviewed the SMME policy and legal framework with a view to creating a more enabling environment. A new institutional structure was created to address the needs of South Africa for both urban and rural SMMEs, and, those belonging to women. The key actors were: Ntsika Enterprise Promotion Agency; Khula Enterprise Finance and Khula Credit Guarantee; the National Small Business Council; and Provincial SMME Desks<sup>114</sup>. Women received substantial funding, albeit less than men, from these institutions.

13.24 State funding is also available for Non-Governmental Organizations (NGOs), including women's NGOs through Development Agencies such as: National Development Agency; Department of Social Development; Department of Labour's Strengthening Civil Society Fund; the National Lottery Board; Provincial and Local Government Development Agencies, e.g. Gauteng Development Agency.

13.25 The Financial Services Regulatory Framework has been liberalized to facilitate traditional saving initiatives such as Women's Associations or "*Stokvels*". Policy measures have helped women also deal with the protection of the public, particularly women, from unscrupulous lenders who charge

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<sup>114</sup> South Africa, Republic of 1995. National Strategy for the Development and Promotion of Small Business in South Africa.

exorbitant interest rates and confiscate various items of a personal nature, including bank cards and IDs.

13.26 The Government has also persuaded the financial sector to introduce mechanisms to enable groups such as self-employed persons who up until now could not open bank accounts to do so. A banking initiative, the *Mzansi Bank*, allows unemployed and self-employed persons to open banking accounts. This has had a positive impact on the lives of women, many of whom are self-employed persons.

13.27 A number of recent studies on women entrepreneurs indicate that data is hard to come by; however of the women surveyed<sup>115</sup>:

- 70% indicated that financial support was more important than organizational support;
- 42% were unaware of organizations that supported businesses in South Africa;
- 52% were unaware of organizations that specifically targeted women;
- 71% of women entrepreneurs were African, 11% were Indian and 8% were Coloured;
- 15% of women-owned businesses were in rural areas;
- 31% were in ICT and services;
- 65.5% of the women who disclosed their turnovers generated revenues of over R100 000; and
- 69% were in operation for fewer than 5 years.

13.28 The 2003 Annual Review of SMMEs conducted by the Department of Trade and Industry notes that in the informal sector there are 570 000 males who are employers and self employed, while there are 664 000 females who are employers and self employed. However in the formal sector there are 378 000 males who are employers and self employed while there are only 128 000 females who are employers and self employed. This translates into approximately 28% of formal businesses being female owned and 62% of informal businesses being female owned. The formal economy is therefore chiefly contained within the hands of males.

13.29 The establishment of the South African Women Entrepreneurs Network (SAWEN) is to redress the persistent obstacles that women entrepreneurs face in starting, growing and sustaining their own enterprises. It is a networking forum for individuals and organizations that are committed to the promotion and advancement of women entrepreneurs. One of the achievements to date is the recruitment of 2000 potential members who own small-to-medium enterprises countrywide. The Technology for Women in Business (TWIB) is an initiative aimed at enhancing the accessibility of science and technology to women in business and in particular, in small, medium and macro enterprises.

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<sup>115</sup> Cited by Minister in the Presidency, Women Entrepreneurship - The Backbone Of The 2nd Economy, Presented To the Gwe Unit, National Consultation Policy Conference, 03-04 August 2006. The Forum – Bryanston. Thursday, 03 August 2006

### Article 13(c): Recreational Activities, Sports and Cultural Life

13.30 A number of measures have been introduced to facilitate women's *de facto* equal participation in sports and cultural life. This has seen increased visibility of women's sport and vast improvement in government grants and private sector sponsorship for women's sport. Funding has also been allocated to support and accelerate women's involvement in areas such as writing, music, film and fine art. The Media Diversity Agency and the National Film and Publications Foundation have a major role in these measures.

13.31 The government is aware that many *de facto* inequalities between women and men continue to exist. There are a number of programmes under way that aim to improve the *de facto* position of women.

### ARTICLE 14: SPECIAL MEASURES FOR RURAL WOMEN

14.1 Key national legislation that has an impact on rural women includes:

- The Land Reform (Labour Tenants) Act 1996 (Act 3 of 1996)
- Land Restitution and Reform Laws Amendment Act, 1996 (Act 78 of 1996)
- Restitution of Land Rights Amendment Act, 2003 (Act 48 of 2003)
- Communal Land Rights Act, 2004 (Act 11 of 2004)
- The Housing Act, 1997 (Act 107 of 1997)
- The Restitution of Land Rights Act, 1994 (Act 22 of 1994) as amended
- The Water Services Act, 1997 (Act 108 of 1997)
- The Land Bank Amendment Act, 1998 (Act 21 of 1998)
- The Integrated Sustainable Rural Development Programme

14.2 The South African White Paper on Land Reform specifically stated that all laws that continue to discriminate against women needed to be removed. Further, the White Paper provided for the removal of all legislative restrictions on women's access to land use; compelled Government to implement procedures that promote women's participation in decision-making; and emphasised that the purpose of land reform was to bring about equitable opportunities for both women and men. It further stated that priority must be given to women. The White Paper had been reinforced with a sectoral Land Reform Gender Policy<sup>116</sup> that aims to create an enabling environment for women to access, own, control, use and manage land as well as access credit for productive use of land.

14.3 Land reform legislation has subsequently sought to give effect to the vision outlined in both the White Paper and the Gender Policy. Women's rights to land have been strengthened by the removal of discrimination against women in marriage and matrimonial property under customary law and in inheritance rights under this legal system. See Article 15 and 16.

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<sup>116</sup> Produced by the Department of Land Affairs.

14.4 During the period under review, rural women's empowerment has advanced significantly through the mainstreaming of gender in the implementation of the Land Reform (Labour Tenants) Act 1996 (Act 3 of 1996); the Housing Act, 1997 (Act 107 of 1997); the Water Services Act, 1997 (Act 108 of 1997); the Land bank Amendment Act, 1998 (Act 21 of 1998) and the Integrated Sustainable Development Programme. The actual benefits for women have included: land ownership and control; other land rights; mineral rights and rights in respect of game farming and other natural resources; access to housing; job-creation initiatives including self-help income-generation projects; and, enhanced access to credit, and new business opportunities.

14.5 Approximately 13.3 % of the total number of households that benefited from the Land Redistribution and Tenure Reform Programmes during the period 1994 to December 2007 were female-headed households.<sup>117</sup> This marked an increase from 1,016 households recorded at the beginning of the programme in 1994, of which only 1.2% of the beneficiaries were female-headed households. This is due to the fact that land restitution primarily restores land ownership to previous owners who were dispossessed by *apartheid*. In the majority of instances such owners are men. The Government's efforts to address gender imbalances are mainly targeted at land reform as this presents more meaningful opportunities for women for sustainable development. South Africa has set targets to increase the proportion of women who own land to 30% by 2015. The table below shows the percentage of land owned by women following land reform from 1994 to December 2007 across provinces, where great variance can be noted between provinces.

**Table 9: Provincial Ownership of Land by Women**

Province	% of land owned by women
Eastern Cape	11.35%
Free State	25.87%
Gauteng	9.65%
Kwa-Zulu Natal	7.63%
Limpopo	8.56%
Mpumalanga	1.63%
Northern Cape	32.35%
North West	14.32%
Western Cape	41.25%
<b>TOTAL</b>	<b>13.29%</b>

14.6 The South African Government has ensured that an enabling environment is created for women's increased access to and control over land through the creation of credit opportunities for women. In this regard, Government has put in place a target of 40% by 2015 for women accessing credit for land ownership. This has provided many opportunities for women to own land since 1994. The table below

<sup>117</sup> Department of Land Affairs. Land Reform Statistics: Statistical Report compiled by the Department's Monitoring and Evaluation Directorate. Pretoria, South Africa

provides figures showing overall credit provided for women as beneficiaries of the land reform programme from 1994 to 2007.

**Table 10: Beneficiaries of Land Reform Programmes**

<b>Females beneficiaries in land reform programmes : 1994 to 2007</b>				
<b>Province</b>	<b>Number of individuals</b>	<b>Number of Females</b>	<b>% of Females</b>	<b>Loan Amount where females are involved</b>
Eastern Cape	23185	2632	11.35%	R109003449.00
Free State	7182	1858	25.87%	R3834063.00
Gauteng	6997	675	9.65%	R18938698.00
Kwa-Zulu Natal	30282	2311	7.63%	R8922115.00
Limpopo	6392	547	8.56%	R22262587.00
Mpumalanga	11294	184	1.63%	R0.00
Northern Cape	2402	777	32.35%	R24801755.00
North West	28832	4129	14.32%	R21159646.00
Western Cape	8484	3500	41.25%	R1988653.00
<b>TOTAL</b>	<b>125050</b>	<b>16613</b>	<b>13.29%</b>	<b>R210910966.00</b>

14.7 The Department of Provincial and Local Government's Integrated Sustainable Rural Development and Free Basic Services Programmes are among the interventions that benefit rural women and the poor, even though both men and women can benefit from these programmes. The scope and range of activities they address yield communal benefits and impact on the quality of women's lives. At this stage there is no gender disaggregated national database reflecting how men and women benefit from the two programmes. It is hoped that the Local Government Policy Framework will lead towards the routine development of gender disaggregated data. Although all municipalities have the mandate to provide free basic services, more resourced municipalities located outside of rural areas are making significant progress in these provisions.

14.8 The Integrated Sustainable Rural Development Strategy was developed in 2000. The Department of Provincial and Local Government is the national coordinator of the Integrated Rural Development Programme which is aimed at creating a sustained campaign against rural poverty and underdevelopment, and, bringing in the resources of all three spheres of government in a coordinated manner. In its vision the strategy targets women, youth, and the disabled as beneficiaries. The programme currently focuses on 21 nodal areas with poverty as a common feature in the Eastern Cape, Mpumalanga, KwaZulu-Natal, the Free State, Limpopo and the Northern Cape.

14.9 The Free Basic Services Programme also contributes towards poverty relief. This programme requires each municipality to develop and adopt an indigent policy outlining criteria that will be used to determine who will qualify as an indigent and to ensure that indigents who are unable to afford basic services can have access to the package of services in the Programme (water, sanitation, electricity, waste removal). The criteria for determining who qualifies does not necessarily set women as a priority group but they stand to benefit on an equal basis with men. The policy reduces the

financial burden especially to households with limited income and improves the quality of life of rural citizens. Child-headed households however, are considered indigent. Some municipalities make concessions for people with disabilities.

14.10 The following measures and frameworks in the Department of Land Affairs help to drive the government's agenda on equitable redistribution of land: the Restitution Programme, Settlement Implementation Business Process; Settlement Implementation Strategy; Land and Agrarian Reform Programme; and, Women in Agriculture and Rural Development. The Restitution programme is a rights-based programme and project officers strive to ensure that women in family as well as in community land claims are fairly addressed and protected. Where land is restored, women are an integral part of the planning process in ensuring sustainability of settlement, for current and future land use and business planning. The commitment to gender equity in the allocation of land is reflected in all policies, and Acts make specific references to meeting the needs of women as beneficiaries, for example, through the Communal Land Rights Act, 2004 (Act 11 of 2004).<sup>118</sup>

14.11 The Grants and Services Policy of the Department of Land Affairs outlines how women can benefit from access to land and grants provided by the department. Paragraph 2.1(a) of this policy states clearly the priority for women as... "eligible applicants - landless people or people who have limited access to land especially women - who wish to gain access to land and settlement opportunities in rural areas". Settlement and development grants assist with restoring land, sustainable planning and security of the land. The department's statistics show that at least 94,166 female-headed households were awarded land restitution and ownership. In a recent land handover celebration in KwaZulu-Natal (Ndumu & Tembe) communities, there were 142 female-headed households that were beneficiaries out of the total of 562 that received settlement.<sup>119</sup>

14.12 A number of challenges remain for women in rural communities, such as: attitudes and stereotypes towards women; freedom of speech for women in remote and rural areas; not being allowed to have input or to make decisions during meetings or to participate in meetings; for example where the community has to decide on a suitable form of compensation. Therefore meetings are held with different parties (i.e. women and men separately to get views and opinions of both). Urban women appear to know their rights better than rural women. The awareness and education needs of rural women *vis a vis* their rights to land and access to resources is high as can be ascertained throughout this Report.

14.13 Advocacy and support programmes including World Rural Women's Day are being observed in rural communities. The Fourth World Congress of Rural Women, hosted in South Africa in 2006, offered ordinary rural women a platform to share their experiences and learn from each other. The South African women in particular indicated that despite government's efforts to promote gender empowerment and equality through a range of programmes, they are still faced with enormous challenges such as poverty, lack of access to land and resources; lack of education, illiteracy; and insufficient government aid.<sup>120</sup>

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<sup>118</sup> Ibid

<sup>119</sup> Department of Land Affairs CEDAW Report Input, April 2008

<sup>120</sup> Department of Land Affairs CEDAW Report Input, April 2008

14.14 Within the last ten years major strides have been made in the supply of basic services; however the lives of Black rural women in some communities continue to be difficult with daily sustenance issues like fetching water and wood that take up a large part of their day. Ownership of land for women continues to be a complex and a controversial issue in traditional South African communities that needs to be continually mediated through education, human rights campaigns, and court challenges to ensure equality before the law for women.

#### **Article 14(a): Economic Empowerment**

14.15 South Africa has put in place policies that increase women's access to credit to ensure that women are empowered economically. In addressing the needs of the poor for housing and shelter, the Rural Housing Loan Fund<sup>121</sup> has been implemented that provides loans through intermediaries to low-income households for incremental housing purposes. Incremental housing is a people-driven process that seeks to empower low-income families in rural areas to access credit, to improve their homes or to build homes. The subsidy beneficiaries must contribute towards achieving access to the benefits of the housing subsidy. As of April 2002, all subsidy beneficiaries were required to make a contribution (of R2 479.00). Significantly, beneficiaries of rural subsidies are exempt from making this contribution.

14.16 Through the Department of Social Development there are a number of projects throughout the country to facilitate economic empowerment and sustainable development. For example, in the Northern Cape Food Security Projects provided R420000 to the *Eksteenskuil Women's Development* for 89 women as beneficiaries; the *Itireleng Delicious Bakery* received R205 000.00 for 8 women who built a tuck shop for ongoing sustainability; *Bulletrap Vegetable Garden* received R420 000.00 for participants to manage their own household gardens and to sell their produce to the community.<sup>122</sup>

14.17 The EPWP and other aspects of South Africa's poverty alleviation programme have also paid special attention to rural women's economic empowerment. This has created opportunities for women to become construction entrepreneurs and for others in public works jobs such as road works, which were previously given to men only. This has also been mentioned under the Article on Employment.

14.18 The South African government has reviewed development funding criteria and infrastructure to make special provisions for enhanced access to credit and other forms of finance for rural women and people. This has included changes to the Land Bank Amendment Act, 1998 (Act 21 of 1998).<sup>123</sup> Government measures have been reinforced by various private sector efforts that seek to empower rural women. A sustained economic empowerment intervention that has advanced rural women is the Women's Development Bank<sup>124</sup> which specifically targets its micro credit facilities to rural women.

<sup>121</sup> These Programmes are put in place by the national Department of Housing to address the inequalities in home ownership experienced as a result of race and gender discrimination of the past.

<sup>122</sup> Northern Cape Provincial OSW CEDAW Input 2008

<sup>123</sup> Land Bank Amendment Act, 1998 (Act 21 of 1998)

<sup>124</sup> An independent agency which offers micro credit along the lines of the Gramine Bank in India

14.19 Development measures such as the expedited access to water; sanitation; electrification; telephone facilities and education have also had positive spin-offs for improved quality of life and women's economic empowerment, in particular for women in rural areas.

### **Article 14(b): Rural Development**

#### **Article 14(b) (1): Participation in Development Planning and Implementation**

14.20 South Africa has introduced various legislative and policy measures to ensure that women participate fully at all levels and at all stages of development planning and implementation. Of note in this regard are the provisions of the Local Government: Municipal Systems Act, 2000(Act 32 of 2000) that provide for women's equitable representation, and response to women's development in the development, implementation, and monitoring of Integrated Development Plans.

14.21 Government's food security policy directives also require the involvement of women and consideration of their environmental needs in environmental impact studies. Environmental measures have sought to preserve women's indigenous knowledge systems and to ensure that they benefit from any commercialisation of relevant knowledge.

### **Women and the Environment**

14.22 Legislation and policy that govern environmental issues recognize women as important primary stakeholders and thus provide for women empowerment issues. The inclusion of the right to environmentally sustainable development in the Constitution has emphasized the importance of the sustainable use of natural resources in the South African context.

14.23 In its Plan of Implementation submitted to the Commission on Sustainable Development, the South African Government asserts that the outcomes of the World Summit on Sustainable Development should benefit all, particularly women, youth, children and vulnerable groups. The outcome of the Johannesburg Summit 2002 confirms the South African Government's commitment to ensuring that women's empowerment and gender equality are integrated in all activities encompassed within Agenda 21, the MDGs and the Johannesburg Plan of Implementation.

14.24 The National Environment Management Act, 1998 (Act 107 of 1998) recognizes the role that women and the youth play in environmental management and that their participation should be promoted. The South African environmental policy framework emphasizes the role of women in environmental management. The White Paper on Environmental Management prioritised support for the involvement of, among others, women and persons with disability in the design, planning and implementation of environmental education and capacity-building programmes and projects.

14.25 The National Biodiversity Strategy and Action Plan indirectly benefit women by ensuring the sustainable use and development of the country's rich natural resources. Women are identified as beneficiaries of programmes and projects aimed at poverty relief and economic empowerment.



Furthermore, the transformation strategy of the fishing industry has made an impact towards women empowerment by supporting women entrepreneurs in this industry.

14.26 The Department of Environmental Affairs and Tourism through the strategies of its implementing agency, the South African National Parks, specifically promotes women participation in its cooperative management, equitable use of natural resources and benefit sharing.

14.27 In the Poverty Relief Programme, the Department of Environmental Affairs and Tourism projects focus on community-based tourism projects. By 2004, 34 632 temporary jobs had been created, with 45 % going to women, 22% to youth, and 2 % to persons with disability. Additionally, 2 324 permanent jobs were created, of which 45% were occupied by women (and 15% by youth), with 10 days allocated to training. Thus far, 29 672 people were trained in literacy, numeric and life skills. The South African Government intended to have created 67 300 jobs and 740 300 training days through this programme by 2007, using protection of biodiversity and ecological sustainability to provide jobs and income for poor and unskilled; half of the beneficiaries will be women, and 30% youth.

14.28 The Working for Water Programme aims to create employment opportunities through the clearing of invading alien plant species, to enhance water security amongst promoting other downstream economic activities. Annually, it employs about 24 000 people from poor rural communities, of whom 54% are women and 26% youth. The South African Government through an inter-ministerial collaboration developed a model for integrating reproductive health and life-skills training and services for participants in projects, and their communities. A secondary industry to the Programme has created the opportunity for individuals to start their own businesses manufacturing furniture from alien vegetation; most of the beneficiaries are unemployed people, mainly women.

14.29 The National Environmental Management Biodiversity Act, 2004 (Act 10 of 2004) regulates bio-prospecting involving indigenous biological resources, and in particular provides for a fair and equitable sharing by stakeholders in benefits arising from bio-prospecting. It specifically protects the interests of indigenous communities that have traditional uses and knowledge of the biological resources. There are two recent examples of bio-prospecting agreements involving indigenous knowledge and use. An agreement was reached between the Centre for Studies in Research and Innovation (CSIR) and a group of 10 traditional healers, whereby knowledge is collected by healers for the CSIR, and benefits arising from commercial use of the knowledge are paid into a trust administered by the healers, many of whom are women.

14.30 The critical challenges include:

- Ongoing monitoring of the impact of policies and programmes on women specifically;
- Targeting interventions specifically for women;
- Access by women-owned enterprises and programmes for funding support;
- Allocation of fishing rights to women;
- Ensuring that the waste management and air quality management planning processes address the specific needs of women; and

- Ensuring that women are empowered within the institutional arrangements (e.g. Trust funds) for receiving benefits from activities involving natural resource use and management

#### **Article 14 (b) (2): Access to Health Care Facilities**

14.31 Government measures have prioritised the issue of ensuring access to PHC to rural communities and ensuring access to obstetric services aimed at eradicating maternal and infant mortality. This includes incentives that have been introduced to encourage doctors to go to rural areas. Measures on health care facilities for rural women are discussed in more detail under Article 12.

#### **Article 14 (b) (3): Direct Benefit from Social Security Programmes**

14.32 Government measures regarding access to the state provided social security services (social grants) have focussed on eradicating racial disparities in sizes and types of grants. In 2004 government initiated a major campaign with the aim of helping those who were deprived of IDs during the *apartheid* era, to obtain such. IDs are critical because they confirm a person's status and enable each person to access social services such as social grants, housing and development opportunities. Most of the affected persons are black rural residents with many of these being elderly women, single mothers, women looking after children of relatives and women with disabilities.<sup>125</sup>

#### **Article 14 (b) (4): Education and Training**

14.33 Education and training for rural woman remains a major challenge. According to a local market survey<sup>126</sup> only 15 % of rural woman have completed secondary schooling compared to 50%, for urban women. South Africa has implemented various special measures in education and training to ensure that rural women are not left out in measures such as skills development, learnerships, scholarships and measures aimed at accelerating women's participation in maths, science and technology. The Broad Based Black Economic Empowerment Policy specifically makes reference to special measures to empower rural people, including rural women. The EPWP also has specific directives regarding special training opportunities for rural women and communities.

#### **Article 14 (b) (5): Land and Agrarian Reform and Land Resettlement Schemes**

14.34 The Restitution of Land Rights Act, 1994 (Act 22 of 1994) can have unintended consequences from a gender perspective. It states that 'priority should be given to people with the most pressing need' and aims to restore land to those who previously had rights, most of whom are not women. This Act was amended in 2003.<sup>127</sup>

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<sup>125</sup> Information supplied by the Department of Home Affairs

<sup>126</sup> Markinor, 2007.

<sup>127</sup> Restitution of Land Rights Amendment Act, 2003 (Act 48 of 2003)

## PART 4

## ARTICLE 15: EQUALITY BEFORE THE LAW IN CIVIL MATTERS

**Article 15(a) Equality before the Law**

15.1 The most fundamental change with regard to equality before the law in civil matters has been the recognition of the full legal status of women married under customary law. This brought an end to the subjection of African women married under customary law to perpetual minority under the Black Administration Act, 1927 (Act 38 of 1927).

15.2 A Bill<sup>128</sup> on the Customary Law of Succession has been tabled in parliament. The purpose of the Bill is to give effect to the Constitutional principle of equality before the law, where women and men, and boys and girls, have the same right to inherit from the deceased estates of their spouses or parents. The Equality Act (section 8(c))<sup>129</sup> was the first concrete measure outside the Constitution to prohibit discrimination against women with regard to inheritance rights. Since then the Constitutional Court has specifically abolished specific provisions of the Black Administration Act, 1927 (Act 38 of 1927) that discriminated against women and girls with regards to inheritance and the administration of estates<sup>130</sup>.

15.3 Government measures to advance *de facto* equality before the law for women have incorporated improving access to justice, which has included the extension of legal aid to civil matters and expanding justice centres to rural areas. A review of the civil justice system, particularly in response to a Customer Feedback Survey conducted in 2003,<sup>131</sup> has had a positive impact.

15.4 In 2004, in the landmark decision *S v Ferreira*, the Supreme Court of Appeal acknowledged the grim complexities of battered women's choices and grappled with how this context needed to be incorporated into legal decision-making. Recognising how misunderstood domestic violence is, the judges acknowledged the need for a court to "place itself as far as it can in the position of the woman concerned, with a fully detailed account of the abusive relationship and the assistance of expert evidence."<sup>132</sup>

15.5 In the case of Ms Ferreira, who was sentenced to life in prison for killing her abusive spouse, the Supreme Court of Appeal accepted the concept of a battered woman's syndrome and overturned her life sentence and substituted it with a six year suspended sentence. Courts have certainly taken note of

<sup>128</sup> The Reform of Customary Law of Succession and Regulations of Related Matters Bill

<sup>129</sup> Also implied in sub-sections (c) and (d).

<sup>130</sup> The *Bhe* case referred to in the above and the case of *Moseneke and Others v Master of the High Court 2000 (2) SA 18 (CC)* with respect to the administration of estates.

<sup>131</sup> The Customer feedback Survey was conducted by the Department of Justice as part of a gender mainstreaming exercise to inform gender responsive budgeting.

<sup>132</sup> Staying in an abusive relationship is not a crime, by Lisa Vetten, Centre for the Study of Violence and Reconciliation <http://www.csvr.org.za>

this decision, using it as a basis to hand down just and appropriate sentences. Examples of similar cases include that of *Annemarie Engelbrecht and Zelanga Mandulo*. See textbox 28.

#### **Article 15(b): Legal Capacity**

15.6 In terms of the Recognition of Customary Marriages Act, women and men who enter into a customary marriage have equal legal status and the same rights.

#### **Article 15 (c): Contractual Freedom**

15.7 Legal capacity for women and men is an inalienable right that may not be waived through any contract, including a marital contract. Prior to the democratic and equitable legislation, black women who had attained the universal age of majority lost their legal capacity upon entering into a customary marriage.

#### **Article 15 (d) Freedom of Movement and Domicile**

##### **Textbox 28: Staying in an abusive relationship is not a crime**

“Demanding that women leave before they are allowed to defend themselves from their abusive partners essentially holds women responsible for creating the dangerous situation, thus blaming the victim and removing all responsibility from the abuser. Condemning women for remaining in abusive relationships also misunderstands how limited and constrained so many battered women's choices are. They stay because they face impoverishment and even destitution if they leave; because they have been told not to deprive their children of a father; because they have been told to persevere and persist; because they hope their partners will change; because they have no alternative accommodation; because their partners are fanatically dedicated to finding them and bringing them back; because they are terrified of their partners (and for good reason. Our study of 941 cases of men killing their intimate female partners in Gauteng found that ending the relationship was the second most common reason why women were murdered); because their families have told them to go back; because their religion makes divorce impossible; because the police and courts cannot protect them from further violence; because their self-belief has been so eroded they believe they're incapable of surviving without their abusive partner - and so the complications multiply.

**by Lisa Vetten, Centre for the Study of Violence and Reconciliation**

15.8 Equal rights for women and men with regard to freedom of movement and domicile in South Africa have remained unchanged. The most significant government measures have been in relation to making it easier for foreign spouses to join their South African spouses in the country. This has involved the reduction of administrative red-tape relaxation of barriers regarding taking up work in South Africa. The way for these measures was paved by the Constitutional Court.<sup>133</sup>

15.9 Government measures aimed at equalising women and men's rights in respect of access to, ownership of and control over land and resources such as housing have contributed to women's *de facto* enjoyment of equality of freedom of movement and domicile. The link between resources and freedom is given more attention in the discussion on the empowerment of rural women under Article 14 of this Report.

## **ARTICLE 16: EQUALITY IN MARRIAGE AND THE FAMILY**

### **Article 16(a): Eliminating Discrimination in Marriage**

16.1 South Africa retains the combination of marital regimes that were outlined in South Africa's First CEDAW Report and which include civil, customary and religious laws.

#### **Article 16(a) (1): Right to Enter Marriage**

16.2 Everyone, whether male or female has a right to choose whether to enter into marriage or not. This includes the right to choose a spouse.

16.3 The Constitution prohibits discrimination on the grounds of marital status in addition to the prohibition of discrimination on the grounds of sex, gender or combination of grounds. The courts have interpreted the constitutional guarantee to include the right to choose a marital regime in recognition of cultural diversity and the right for same sex partners to be married.

#### **Article 16(a) (2): Marital Consent**

16.4 Consent is an essential requirement of marriage in all marital regimes in South Africa. This also applies to customary marriages. Forced marriage and abduction are criminalised. At a *de facto* level enjoyment of this right is often hampered by economic and cultural circumstances but this is mitigated by avenues such as the CGE, SAHRC, Equality Courts and the ordinary criminal courts which are available for the enforcement of infringed rights.

#### **Article 16(a) (3): Matrimonial Rights**

16.5 As previously reported men and women have the same *de jure* rights in civil marriages. Among the most important recommendations of the South African Law Commission with regard to the reform

<sup>133</sup> *Dawood, Shalabi and Thomas v Minister of Home Affairs 2000 (3) SA 936 and Booysen and others v Minister of Home Affairs and Another 2001(4) (SA) 485.*

of the customary law of succession, is the amendment of the Intestate Succession Act, 1987 (Act 81 of 1987). It recommended that the customary law of succession rule of primogeniture be abolished as it discriminates against women. It provides that upon a person's death, the estate has to dissolve in accordance with that person's will or where there is no will, according to the law of intestate prescribed by the Intestate Succession Act, 1987 (Act 81 of 1987). This would apply to all intestate estates.

### **Textbox 29: Case Study on Administration of Estates**

16.5.1 The following Constitutional Court's case and decision of *Bhe and Others v Magistrate Khayelitsha v Magistrate and Others*, Case No. 49/03 handed down on 15 October 2004, declared Section 23 of the Black Administration Act, 1927 (Act 38 of 1927) and Regulation R200 as amended of the regulations published in Government Notice 10601 of 6 February 1987, unconstitutional. The decision requires that the Department of Justice design and implement a system for the supervision of the administration of deceased estates that complies with the spirit of the Constitution.

#### **Equality in Marriage and Family Law in the Constitutional Court of South Africa *Bhe v Magistrate, Khayelitsha and others* Case CCT49/03 Decided 15 October 2004 (Media Summary).**

16.5.2 The application in the *Bhe* case was made on behalf of the two minor daughters of Ms Nontupheko Bhe and her deceased partner. It was contended that the impugned provisions and the customary law rule of male primogeniture unfairly discriminated against the two children in that they prevented the children from inheriting the deceased estate of their late father. In the *Shibi* case for similar reasons, Ms Shibi was prevented from inheriting the estate of her deceased brother. The South African Human Rights Commission and the Women's Legal Trust were permitted direct access to the Court in the third case which was brought in the public interest, and as a class action on behalf of all women and children prevented from inheriting by reason of the impugned provisions and the rule of male primogeniture.

16.5.3 The CGE was admitted as *amicus curiae* and, together with the Minister for Justice and Constitutional Development (who was a respondent in each of the cases), presented oral and written submissions. In relation to the administration of estates, the court ordered that in future deceased estates which would have previously been administered by magistrates in terms of the Black Administration Act, 1927 (Act 38 of 1927) must now be administered by the Master of the Supreme Court in terms of the Administration of Estates Act, 1965 (Act 66 of 1965). However the order of the court in respect of the administration of estates is not made retrospective, so estates currently being administered by magistrates in terms of section 23 of the Black Administration Act will continue to be administered by those magistrates. From the date of this judgment, new estates will be administered by the Master of the High Court in terms of the administration of estates act.

#### **Ruling by the Constitutional Court in *Bhe and others v Magistrate, Khayelitsha v Magistrate and others*. Case NO. 49/03 11/11/2004**

16.5.4 The new system requires the following changes:

1. The Master of the High Court will take over the powers of supervision in all deceased estates.
2. All estates will be administered in terms of the Administration of Estates Act, 1965 (Act 66 of 1965), as amended.
3. All intestate estates will be administered in terms of the Intestate Succession Act, 1987 (Act 81 of 1987), as amended. This Act is supplemented by the Bhe-decision to accommodate cases where the deceased was married in terms of customary law.

16.6 The Recognition of Customary Marriages Act, 1998 (Act 120 of 1998) brought about equality between women and men married under customary law. Prior to this Act, customary marriages were not fully recognized as valid marriages. Tolerated by the *apartheid* laws as “unions”, the status of these marriages was inferior to that of their civil counterpart, and in the event of a conflict, the latter prevailed. In addition to placing customary marriages at an equal footing with civil marriages, the Act specifically stipulates that parties to a customary marriage have equal rights. The rights in question include: the duty to maintain each other; the presumption of community unless an ante-nuptial contract stipulates otherwise; and general marital rights.

### **Textbox 30: News Clipping: Ruling on divorce and property ownership in African Customary Marriage**

#### **“Breakthrough judgement in Zulu divorce”**

“When Elizabeth Gumede married Amos Gumede in an African traditional ceremony in 1968, divorce was the furthest thing from her mind. But 40 years later ..... the pensioner found herself in court. Her husband had instituted divorce proceedings against her. She faced eviction from ...house they had shared for four decades, because he was the sole owner of the property in terms of their customary marriage. But last week, the Durban High Court handed down a landmark judgement in favour of women married under the African Customary Law. Women married before the commencement in 2000 of the Recognition of Customary Marriages Act, will now enjoy the same rights as women married after the Act came into effect. Gumede approached the courts two years ago with the help of the Legal Resource Centre in Durban, arguing that the law discriminated against her as a woman and as an African. At issue was the distinction made in existing legislation between women married under African customary law before 2000, and those married after 2000. **The Recognition of Customary Marriages Act of 1998 gives women married under customary law greater financial rights, and guarantees these rights in the case of divorce.** Customary marriages entered into before 2000 however, are regulated by various colonial and *apartheid*-era kinds of legislation. Gumede said in court papers that her husband forbade her from working during their marriage, and that she had nowhere else to live and no means of financial support, should she be evicted from her home. Judge Leona Theron found the aspect of customary law concerned with property ownership to be discriminatory and declared it inconsistent with the Constitution and deemed invalid the distinction made in the Recognition of Customary Marriages Act between marriages before 2000 and those after

2000. Elizabeth Gumede can now make a claim against the marital property in a divorce court, pending a confirmation of the court's ruling by the Constitutional Court."

**By Khadija Bradlow**  
**The Times**  
**Wednesday, June 18 2008**

16.7 In order to protect the proprietary rights of women in customary marriages, section 7 of the Recognition of Customary Marriages Act, 1998 (Act 120 of 1998) provides that if a husband in a customary marriage wants to marry a second or subsequent wife, he must apply to the High Court for the division of the estate and submit a contract that will govern the new proprietary regime.

16.8 The textbox below highlights the protection of women's rights in polygamous marriages.

**Textbox 31: Polygamy and Women's Rights**

**Including the Excluded .....**

"In the late 1990s, activists and researchers in South Africa conducted a campaign to intervene in reform of customary laws concerning marriages where a man was able to take more than one wife (polygamy). At one meeting, a researcher noted a section of the women sat silently watching the mass of dancing members chanting 'one man, one woman'.

She asked these women why they were silent. They replied that they lived in polygamous marriages and that their livelihoods would be threatened if polygamy was not recognized. Ultimately the intervention made by the campaign in the reform process framed the law in a way that would make polygamy expensive (eventually leading to its disappearance), while safeguarding woman's rights to marital property".

**Extracted from Meer, S. & Sever, C. 2004.**  
**Re-framing Citizenship in Gender and Development**  
**Brief, No. 14. 2004**

**Monitoring and Evaluation of the Implementation of the Recognition of Customary Marriages Act, 1998 (Act 120 of 1998)**

16.9 A multilingual team organized by the Department of Justice and Constitutional Development conducted radio talk shows in all African medium radio stations as well as a series of provincial workshops between November 2003 and June 2006. The purpose of the radio talk shows were to educate the public on the Recognition of Customary Marriages Act and the implications of the Constitutional Court decision on Bhe and Shibi, and to evaluate the implementation of the Act. The



radio talk shows were targeted at the public, while the workshops were targeted at traditional leaders and service providers.

16.10 The project sought to achieve the following outcomes:

- Increased utilization of the Act by persons married in terms of customary law in particular those in rural communities, and especially women;
- Easy access and compliance procedures to the Act by persons intending to enter into a Customary Marriage
- Easy access and compliance procedures to the Act by persons intending to enter into a Polygamous Marriage, especially those from the rural communities by developing a *pro-forma contract* to be attached to the regulations;
- Legislative reform to address problem areas that have been identified during the talk show;
- Publishing the findings from the radio talk shows and workshops;
- Capacity building for different stakeholders that have a role to play in the Act, such as traditional leaders, Master of the High Court, Family Court, Divorce Court, Home Affairs personnel and members of the legal profession; and
- Uniformity in the manner in which the Act is implemented.

## Widowhood

### **Textbox 32: “Muslim Women Win Rights of Inheritance – Precedent-Setting Cape Ruling Allows Widows to Claim Part of Estate”**

A ... court victory has brought hope to thousands of South African Muslim women left destitute and desperate when their husbands die. Fatima Gabie Hassam’s prayers came true on Friday when she won a precedent-setting application on her inheritance rights in the Cape High Court. .... After slaving in her husband’s shop for 36 years of her married life and bearing him four children, Hassam was heartbroken when she discovered – on her returning home from Mecca – that he had married another woman [19 year old...]. But her wounded feelings turned to despair when Ebrahim Hassam died of a heart attack in 2001, leaving her penniless and without any rights to his humble estate. She has fought the executors of his estate ever since, refusing to be evicted from the tiny two-bedroom Cape Flats home that she had shared with him for decades.

**Existing South African legislation does not recognize polygamous Muslim marriages, as it does customary polygamous African marriages.** Hence, when a Muslim man in a polygamous marriage dies intestate, his wives cannot claim from his estate – it is divided among his children. But thanks to Hassam’s legal battle, legislation will be changed to protect Muslim women in such unions. The Maintenance of Surviving Spouses Act and the Intestate Succession Act have been referred to the Constitutional Court for the amendments to be made, following the ruling by Judge Dennis van Reenen.

“The practical implication is that Muslim women in the position of the applicant will no longer stand to be deprived of their homes and money accumulated during the course of the marriage”, said her

attorney... He added that in order to prevent dilemmas such as that suffered by Hassam, it was imperative that Muslim law – which gives effect to the provisions of the Koran – be codified in South Africa.....Hassam’s victory was significant because it showed that South Africa’s Constitution accommodates the needs of diverse people....especially to the marginalised and vulnerable groups.....The director of the Women’s Legal centre....concurred that Hassam’s was a ground-breaking victory. “The order will affect a class of women who will now be economically and socially empowered”.....

**By Bienne Huisman**  
**Sunday Times**  
**20 July 2008**

16.11 The findings of a recent study undertaken by the CGE indicate that the plight of widows across the country, particularly regarding inheritance and property rights needs to be addressed as a matter of urgency, and as a collaborative effort between all levels of government and civil society The textbox below highlights a media statement issued by the CGE that demonstrates its efforts at addressing this issue in South Africa.

### **Textbox 33: CGE Media Statement on Widowhood Rites and Rights**

“Widowhood Rites and Rights...For the period February 21 to March 2008, the Commission on Gender Equality, through its provincial offices, will be hosting stakeholder workshops in an effort to raise awareness among widows and widowers on their rights and to empower them in identifying and reporting discrimination, harassment and hate speech they experience in their daily lives. The workshops follow a research project which the Commission on Gender Equality undertook focusing on widowhood. Entitled Widowhood, Rites and Rights in South Africa, the research aimed to explore experiences of widowhood in different cultures and different geographical areas of South Africa. It was envisaged that the findings of the study would inform the need to amend the relevant policy and legislative framework and to increase widows’ and widowers’ access to justice and social services. Upon completion of the study, it became evident that the plight of widows across the country needs to be addressed as a matter of urgency, and as a collaborative effort between all levels of government and civil society. The seminars will be conducted with the following objectives in mind:

- To raise awareness of the exploitation and marginalisation of widows in our society
- To raise awareness of the constitutional and legal rights of widows and the protective framework
- To engage government, civil society and the business sector on the provision of relevant and effective services to widows and impairs on the dignity and well-being of the girl child.”

16.12 Matrimonial rights include a mutual duty of support regardless of the form of marriage. This includes an enforceable right to maintenance and support.

16.13 The South African law on marriage, including customary marriage, incorporates the right not to be subjected to any form of violence, including marital rape and other forms of domestic violence.

The Domestic Violence Act, 1998 (Act 116 of 1998) is the key instrument available to women to vindicate their rights in relation to violence in the family whether from the spouse, members of the extended family or fellow residents. While this Act has unarguably brought relief to women and is increasingly used by them, one of its limitations is the absence of social interventions that address the causes or influencing factors in any domestic violence situation. As a result women are often repeatedly assaulted or even killed after obtaining protecting orders under the Act. One of the state responses to this challenge has been the Domestic Violence Guidelines for all service providers across the criminal justice process, including training on these. Government is examining options for strengthening social interventions to address the causes and / or influencing factors at an individual and broader societal level. Attention is also being paid to broadening access to shelters and rehabilitation services for both victims and perpetrators.

#### **Article 16(a) (4): Parental Rights and Responsibilities**

16.14 The Maintenance Act was overhauled in 1998<sup>134</sup> with a view to strengthening the enforcement of the duty of parents to support their children. As women tend to be the caregivers for the children, the improvements in this Act have sought to bring them much-needed economic relief.

#### **Article 16 (a) (5): Reproductive Freedom**

16.15 The South African Constitution and the legislative framework continue to recognize the reproductive rights of all women, including married women. This includes the right to choose whether or not to have children, the number of children and when to have them.

16.16 Administrative measures have focussed on ongoing provision of sexuality education and advice to women and girls as well as boys and men to promote *de facto* enjoyment of these rights. This is discussed in more detail under Article 12.

#### **Article 16 (a) (6): Guardianship and Related Rights**

16.17 South Africa does not discriminate against women with regard to granting child-related rights such as guardianship, trusteeship and adoption. The main consideration on these matters is that the best interests of the child as guaranteed in section 28(2) of the Constitution, are paramount.

#### **Article 16 (a) (7): Personal Rights Such as Family Name and Occupational Freedom**

16.18 South African marriage law recognizes equal personal rights for men and women. This includes a married woman's right to retain her maiden surname or previous marriage surname. It also includes the right to choose a profession or occupation. Government has focussed on administrative interventions aimed at transforming gender relations in society and empowering women to ensure that all women enjoy *de facto* freedom to choose an occupation or profession.

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<sup>134</sup> Maintenance Act, 1998 (Act 99 of 1998)

**Article 16(a) (8): Equality in Proprietary Rights**

16.19 De jure equality in proprietary rights under civil marriage has been a reality for years. The Recognition of Customary Marriages Act, 1998 (Act 120 of 1998) has extended equality of proprietary rights in marriage to women and men married under customary law. For example, the proprietary rights of spouses in a customary marriage where there is only one husband and one wife are similar to those married in community of property.

**Article (16) (b): Minimum Age for Marital Consent**

16.20 The minimum age for consent to marriage in South Africa is 18 years for both boys and girls, and this has been extended to customary marriages through the Recognition of Customary Marriages Act, 1998 (Act 120 of 1998).

**PART 5****RECOMMENDATIONS 12 & 19: VIOLENCE AGAINST WOMEN AND THE GIRL CHILD****Violence against Women in South Africa****1. Overview and Context**

V.1.1 In South Africa's First CEDAW Report, the country addressed violence against women as a significant and grave concern of the country, and this infringement of women's human rights continues to challenge the national and international arena.

V.1.2 While an effort has been made to address the issue of violence against women in Part V it still requires the reader to constantly cross reference with a number of other Articles in this Report. This is with particular reference to:

- Articles 1 and 2 for the legislative framework, equality courts, alternative resolution mechanisms, enforcement, and human rights campaigns, such as those with traditional leaders in addressing traditional and harmful practices;
- Article 5 that addresses sex role and stereotyping;
- Article 6 for trafficking; and
- Article 10 on Education and gender-based violence.

In addition, the issue of female genital mutilation, virginity testing, forced marriages and witchcraft will also be addressed in this section.

V.1.3 South Africa has committed itself to the implementation of the *Prevention and Eradication of Violence against Women: Addendum to the SADC Declaration on Gender and Development, 1998*. This regional instrument has contributed immensely to the implementation of measures aimed at achieving an integrated response to violence against women in South Africa. The monitoring instrument that accompanies the Addendum, which was initially developed by South Africa, under the

leadership of the Department of Justice, and later modified by the SADC Secretariat, presents an excellent framework for implementing and monitoring an integrated response to violence against women. According to this monitoring framework, measures aimed at preventing and eliminating violence against women should accord priority to:

- A legal and policy framework
- Social, economic, and cultural measures
- Services and administrative measures
- An integrated approach
- Adequate budgetary allocations

V.1.4 In pursuit of the constitutional imperatives on violence against women, the SADC Addendum; the Beijing Platform for Action; CEDAW and other relevant international human rights norms and instruments, South Africa has implemented a comprehensive law reform programme. This programme has also sought to strengthen the integrated response to violence against women in the country. As is the case with the rest of the integrated response, law reform measures have given priority to sexual offences and domestic violence. Considerable attention has also been given to crimes such as trafficking in women and children and child pornography. The specific areas that have been targeted by the law have included bail, sentencing, victim empowerment and integrated responses.

V.1.5 Government and the courts have also continued to treat violence against women as a human rights violation and a violation of the Convention. The Country Review Report by the Panel of Eminent Persons (of the African Peer Review Mechanism) also made specific mention of the extent and gravity of violence against women. The Review Report noted that “There is also concern about persisting violence against women, which requires immediate action.”

## **2. South Africa’s Integrated Response to Violence against Women**

V.2.1 One of the Inter-Departmental Structures established to provide an integrated approach to the management of violence against women and children is the Inter-Departmental Management Team (IDMT), which is aimed at providing:

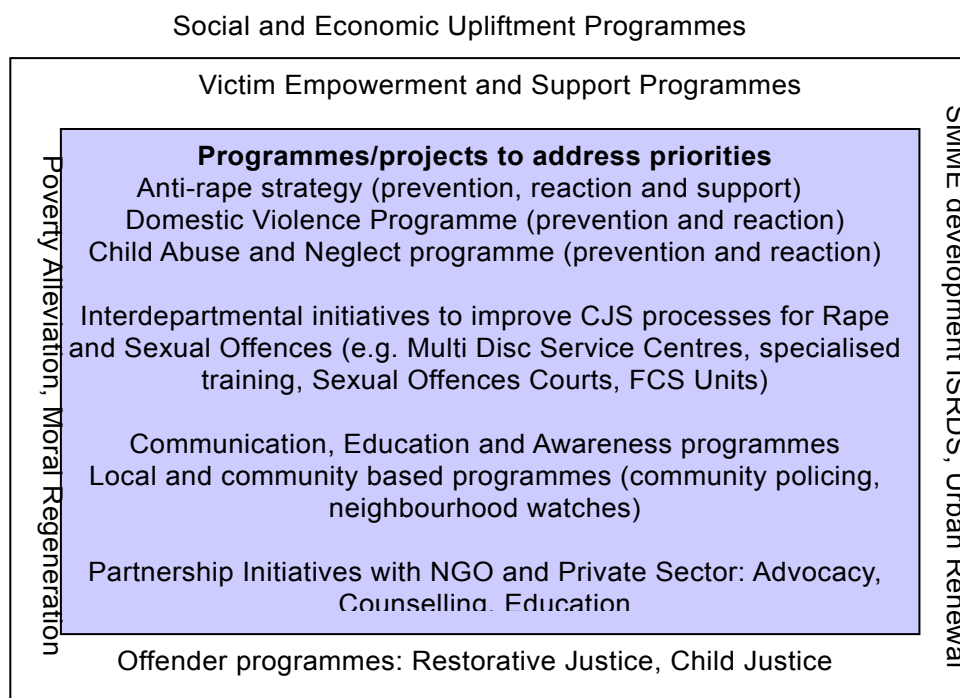
- A coordinated multi-disciplinary expert team focused on the design and implementation of integrated, innovative, futuristic and sustainable strategies and programmes with relevant partners to end Gender Based Violence
- An integrated multi-sectoral approach within the framework of Prevention, Response and Support to:
  - Prevent and reduce Gender Based Violence
  - Improve the quality of services addressing Gender Based Violence including victim support
  - Efficiently respond to the incidents of Gender Based Violence
  - Promote the best interest of the children in programming
  - Address specific needs of vulnerable groups
  - Provide programmes for offender rehabilitation and reintegration

V.2.2 South Africa has adopted an integrated developmental approach that is informed by best practice human rights instruments and the MDGs. This integrated approach is ensured through a focussed National Gender Policy and targeted sector-specific gender policies, actions and measures. The empowerment of women is viewed as a strategy for the transformation of society, particularly the transformation of power relations between women, men, institutions and laws. It is also seen as a strategy to eradicate gender oppression, patriarchy, sexism, racism, ageism, and structural oppression – both historically rooted and current forms. It is also viewed as enabling women to deal with inequalities and inequities inherited from the past and its current manifestations, and taking control of their lives. In addition, empowerment is perceived to be about active citizenship and equal participation in all aspects of life.

V.2.3 In keeping with this, South Africa has implemented a multi-sectoral, integrated approach at the operational level that focuses on prevention, reporting, and transformation of the criminal justice system, and the need to fast-track the effective processing of cases. This has been assisted by a broad policy framework; law reform; administrative measures; institutional mechanisms; victim empowerment; integrated planning; education and training of service providers; customer service; shelters; public education and awareness and alternative dispute resolution, amongst others. An integrated approach to violence against women includes environmental redesign, poverty alleviation and moral regeneration. The model also recognizes that actors in all areas in society need to be mobilised to play a role in the prevention and eradication of violence against women, including against the girl child. Achieving an integrated response to violence against women, including trafficking in women, was initially integrated in the objectives of the National Crime Prevention Strategy (NCPS). The evolution of crime prevention approaches gave birth to the Justice Crime Prevention Strategy (JCPS).

## 2.1 The Justice Crime Prevention Strategy (JCPS)

V.2.4 The JCPS was established in 1999, and is an improvement on the NCPS. The diagrammatic representation below summarises the JCPS integrated approach to violence against women:



V.2.5 Measures aimed at addressing violence against women have sought to strengthen institutional mechanisms and enforce rights of victims and survivors. In addition to this Report, the South African Beijing +10 Progress Report on the Implementation of the Beijing Declaration and its Platform for Action, (2005) addressed government's response in gender mainstreaming and the integrated violence against women response such as the Justice and Crime Prevention Strategy and institutional mechanisms like the specialized sexual offences courts, training initiatives and counselling services. Particular attention has been given to some multisectoral best practices. In addition a critique of the services for sexual assault victims is provided in this section.

V.2.6 The Anti-rape strategy was developed by an Interdepartmental Management Team comprising the Departments of Social Development, Justice and Constitutional Development, Health, Education, Correctional Services, National Treasury, Communications, the South African Police Services, led by the National Prosecuting Authority. Anti-rape Strategy Guidelines were developed for service providers including the South African Police Services and the Health Sector.

V.2.7 In order to integrate gender equality and prioritise violence against women in the prosecution of crime, the Sexual Offences and Community Affairs (SOCA) Unit was established in the National Prosecuting Authority in 1999, to focus primarily on sexual offences, domestic violence, trafficking in

persons, enforcement of child maintenance, managing of young offenders and other issues involving the victimization of women and children. Their role is to formulate policy, build capacity, increase sensitisation and provide scientific and functional training of officials who prosecute these crimes. This unit is responsible for the coordination of the establishment of the Thuthuzela Care Centres. It also facilitates research and training for prosecuting sexual offences, domestic violence and maintenance cases, and managing young offenders; as well as developing and implementing community awareness programmes and plans for the participation of NGOs in these processes and procedures.

V.2.8 This specialized unit boasts the following successes:

- The establishment of Thuthuzela Care Centres;
- Improved skills and capacity development;
- An increase in the number of specialist Prosecutors;
- Establishment of one-stop multidisciplinary care centres called the Thuthuzela Care Centres (details provided below);
- Establishment of victim support services;
- Public awareness campaigns for school children and adults, and speak-out campaigns
- Played a critical role in driving the 365 Days National Action Plan to end violence against women

The Department of Justice and Constitutional Development has established 63 Specialised Sexual Offences Courts.

## **2.2 The Girl child**

This section must be cross referenced with Article 10 of this Report.

V.2.9 In relation to the girl child and gender based violence; law reform has been prioritised, the reform of the criminal justice system, a gender sensitive curriculum and the safe schools programme. There are specialised, domestic violence, child abuse and sexual assault units in the police service (previously the child protection unit), in addition to specialized family courts that address violence against women and the girl child. There have been efforts to create child-friendly courts; the use of intermediaries for victims to give testimony outside of the court and not in the presence of the alleged perpetrator; the use of one-way mirrors, and the use of closed-circuit televisions for minors. Child advocates remain concerned that more needs to happen in this regard See paragraphs V.4.24.1 and V.4.24.2. Specifically there is a need to increase specialized child-friendly services especially for those under 18 testifying in court; increasing closed-circuit televisions in all courts for younger children; and increasing the conviction rate for sexual offences that is very low at present.

V.2.10 Government officials handling cases of gender-based violence have been trained to improve their capacity in handling, supporting and investigating such cases. Training programmes include multi-disciplinary training on the investigation and prosecutions of sexual offences cases; domestic



violence; family violence; child sex offenders; human trafficking; maintenance; young offender management; integrated training for case managers, victim assistance officers, site coordinators and relevant stakeholders involved in the Thutuzela Care Centres and Sexual Offences Courts.

### 2.3 Domestic Violence

V.2.11 For the period 01 July to 31 December 2006, 43 330 domestic violence incidents were reported to the South African Police Service. In the period of 01 January to June 2007, 45 454 such incidences were reported. Whilst these figures raise concern on the issue of continuing gender-based violence in the country, it is also reflective of an increase in reporting. However, concerns remain regarding under-reporting and revictimisation in the criminal justice system.

#### Textbox 34: Domestic Violence Act

The provisions of the Domestic Violence Act, 1998 (Act 116 of 1998) have been extended to any persons who have lived in a relationship similar to marriage regardless if partners are of the same or opposite sex and extends to persons who were dating and includes but is not limited to an actual or perceived romantic relationship of any duration. The Act provides for an application to be brought on behalf of an applicant, with written consent or an application may be made on another's behalf on the grounds of insanity, where the person may be under the influence of alcohol etc. A minor may apply for such an order without the written permission of his/her guardian.

V.2.12 A study conducted by the Sonke Gender Justice (NGO in the Men for Gender Equality Sector) in partnership with the OSW in the Presidency in 2007 titled “The Role of Men and Boys in Gender Equality”, shows that “some men appear eager to play a more involved role in ending violence against women while other men appear threatened by gender transformation. Violence prevention interventions need to be tailored to respond to the perceptions of these different groups of men, providing more gender equitable men with the necessary support, skills and resources to act on their convictions while challenging the myths and misconceptions held by those men who resist change. Working with men and boys to change deeply held beliefs about gender roles and relations requires comprehensive, multifaceted strategies—including approaches that focus on structural factors such as education, housing and unemployment.” Government is taking a leadership role in promoting and supporting this kind of collaborative work through the NGM programme.

### 1.4 Some Best Practice Examples and Multi-sectoral Approaches

V.2.13 Government is examining various options for strengthening social interventions to address the causes and / or influencing factors at an individual and broader societal level. Attention is also being paid to broadening access to shelters and rehabilitation services for both victims and perpetrators. A number of initiatives are being undertaken by both civil society organizations and the State, individually and collaboratively. These recognize the need for broad encompassing frameworks, with targets, resources and indicators for concerted action and impact. Some of these initiatives underway to address the scourge of violence against women and children include, amongst others:

### 2.4.1 Engagement of Men and Boys

V.2.14 At the 48th Session of the UN Commission on the Status of Women in 2004, South Africa and other participating governments made commitments to implementing recommendations aimed at involving men and boys in achieving gender equality. Gender inequality undermines democracy, impedes development and compromises women's lives especially in traditional and patriarchal societies with rigid notions of manhood that exacerbate gender-based violence. Therefore the study that was commissioned by the government in partnership with Sonke Gender Justice (See paragraph V.2.12) was to guide their work in addressing the eradication of gender-based violence. The report provides an overview of efforts made by government and civil society organizations. It identifies accomplishments and shortcomings; and also proposes recommendations, such as the need to intensify efforts to end men's violence against women and to involve men in achieving gender equality. These recommendations have also become allied to the work and strategy of Sonke Gender Justice itself. The full report is annexed to this Report.

V.2.15 The textbox below highlights the work of one NGO as part of the Men as Partners programme in South Africa.

#### **Textbox 35: Best Practice Case Study of the Sonke Gender Justice NGO in the promotion of Gender Equality in South Africa**

V.2.15.1 By using the media to highlight gender issues, the Advocacy Project of the NGO is strengthening citizen participation, involvement of men, and government accountability.

**Strong advocacy component:** "Initiatives focused on working with men have not made much use of advocacy strategies and have instead relied more on community education. Shifting public perception that gender-based violence affects us all and cannot be dismissed as a "women's issue" requires that men become more visible and outspoken about their opposition to gender-based violence and demonstrate their willingness to take public stands against it-by joining marches, by engaging the media and by making concerted efforts at the local level to demand justice".

**Initiatives:** Together with the Human Sciences Research Council's Gender and Development Unit, the NGO works with community-based organizations, the media and local government in 4 districts to pilot and research community mobilization strategies that train community members to support and hold local government accountable for the delivery of effective gender-based violence and related services; Supports existing advocacy initiatives such as the One in Nine Campaign, the Sexual Offences Bill Working Group and the Joint Civil Society Monitoring Forum on ARV roll-out; Convenes a series of strategic meetings that bring together activists from other social movements and successful national and international advocacy organizations-the Treatment Action Campaign, Gun Free South Africa, the Landless People's Movement to develop and share advocacy strategies and materials; Develop advocacy strategies and materials that can be used effectively by men and women to support and hold government accountable. These will include an advocacy training manual, an action kit with materials, tools, and advocacy frameworks; Provide advocacy, policy and media

related training to the Men as Partners Network including on the use of community action teams; Provide training and technical assistance to large civil society organizations-especially trade unions, faith based organizations and civic associations-to use their influence and membership to shift gender and related social norms and to take decisive action to end domestic and sexual violence and reduce the spread and impact of HIV and AIDS; Develop ongoing partnerships with media organizations to engage in media advocacy about gender-based violence, HIV and AIDS that leads to improved government responses and to shifts in social norms within communities across the country.

**The organization has put in place a highly successful campaign in 2006 called “One Man Can”. This best practice was also showcased at the 51<sup>st</sup> Session of the UN Commission on the Status of Women in 2007.**

#### 2.4.2 The National 365 Day Action Plan to End Gender Violence

V.2.16 The 365 Days National Action Plan to end gender based violence, appended with this Report, provides comprehensive data and an approach to addressing this issue. It also responds to the multi-faceted and multi-sectoral approach required by the *CEDAW* convention. There is a detailed strategy encompassing areas of prevention, response, support, children and vulnerable groups and coordination, with targets, indicators, responsibility, and budget. The plan includes:

- a sustained prevention and awareness campaign that extends beyond the Sixteen Days of Activism Campaign into a year-long campaign;
- involving women and men across the country; and has a measurable impact on attitudes and behaviour.
- Ensuring that all relevant legislation is passed, budgeted for, thoroughly canvassed and implemented.
- Reducing cases of rape by seven to ten percent per annum in line with the government target; increasing conviction rates by 10 percent per annum, including through the roll out of more Sexual Offences Courts.
- Ensuring that crime statistics provide particulars on domestic violence and that there is a significant reduction of domestic violence each year.
- Ensuring comprehensive treatment and care for all survivors of gender violence, including the provision of Post Exposure Prophylaxis to reduce the chances of HIV infection; treatment for the possibility of STDs and pregnancy as well as counselling.
- Ensure that the plan is widely canvassed and adapted for implementation at all levels: national, provincial and local.
- Providing support and empowerment for victims through places of safety, secondary housing and employment opportunities as well as rehabilitation of offenders.
- Ensuring coordination and communication among those involved in the implementation of the plan including through the establishment of appropriate institutional mechanisms.
- Set targets and indicators that are regularly monitored, evaluated and reported on.

V.2.17 The National Action Plan, launched by the Deputy President, Ms. Phumzile Mlambo-Ngcuka, in 2007, was undertaken out of the realization that gender violence is not abating and that traditional attitudes still persist.

### **2.4.3 Thuthuzela Care Centres and Victim Empowerment Program**

V.2.18 Thuthuzela Care Centres are 24-hour one-stop centres where victims have access to all services such as the police, counselling, doctors, court preparation and prosecution. The main objective of these centres is to eliminate secondary victimization, reduce case cycle time and increase convictions.

V.2.19 The Victim Empowerment Programme led by the Department of Social Development, is an integrated programme aimed at ensuring that the criminal justice system implements a victim-centred approach and to provide victim-friendly service to all victims of crime, especially victims of gender-based violence.

The key focus is:

- A Service Charter for Victims of Crime (Victims Charter): One of the objectives of the Charter is to balance the rights of the victims with those of alleged offenders. Women as victims are beneficiaries of the service delivery changes as a result of the charter
- Law reform to Protect Victim's Rights as mentioned in Article 1 and 2
- Victim's Support Services: various support mechanisms have been instituted for example one-way mirrors and closed-circuit televisions to protect children, in particular the girl child; special waiting rooms in courts where possible, and counselling services. Shelters are provided: however the demand outstrips the reality and more resources are needed to be allocated to shelter services. Specialised training and support services for service providers for example in the criminal justice system are provided.
- 2.4.4 Some Examples of Initiatives by the Justice and Crime Prevention Government Cluster

V.2.20 Relevant sections in the Report have addressed the issue of government legislation, policies, and measures to impact on an anti-discriminatory environment and to promote gender equality in the workplace and in the public service. This section has looked at the integrated JCPS and Government's ongoing efforts in different forums and different ways to ensure an end to violence against women. The table below provides some examples of the cluster approach and some projects in departments aimed at addressing violence against women. It is a snapshot from excerpts of the Interim Progress Update from the JCPS Cluster, Crime Prevention and Public Safety; and Government's Programme of Action 2007, and is available on the Government website.

GOAL	PROGRESS
Implement initiatives directed at preventing crimes against women and children.	An audit determining needs of provinces on establishment of victim-friendly facilities completed. 37 high contact crime police stations identified and an estimation of the costs
Sustain crime-prevention awareness campaigns, prioritising the 169 priority police station areas, and giving priority attention to the role of society in rehabilitation of offenders	Awareness campaigns in support of Women and Child abuse focusing on crime awareness, crimes against women and children, rights as victims of crime, reduction of high rates of abuse, illegal substance abuse etc. were conducted countrywide
Give life to the Victims' Charter through development of an integrated national implementation plan.	Development of a 5 year National Implementation Plan on the Victims Charter Training of all criminal justice system officials on the Charter Public Education and awareness raising on the Charter
Implement the Victim Support Services Programme	Shelters for abused women in Kwa-Zulu Natal and Mpumalanga are being built. Funding of Victim Empowerment initiatives by Civil Society Organizations from the Criminal Assets Recovery Account Funds are in progress
Sustain the dedicated courts, notably, among others, on sexual offences and commercial crimes. Where relevant finalise the framework for the establishment of such court	A framework on the functioning/operating of Commercial Crime Courts has been introduced and is functioning well

<p>Establish liaison for the entire cluster with communities and organs of civil society (business and religious leaders/formations), for partnership in crime prevention and a greater role of society in rehabilitation of offenders. The Community Building Credible Ownership partnership has been established in four provinces Align development in the 169 priority police station areas with Urban Renewal Programme and Integrated Sustainable Rural Development Programme, Project Consolidate and informal settlement upgrading. (Projects include the installation of CCTV monitors in Metropolitan Areas and other municipalities). Present Socio Graphic Profiles to provincial and local government to develop and implement appropriate development projects.</p>	<p>Capacity building work sessions which had commenced earlier in the year with regard to the Integrated Sustainable Rural Development Plan and Urban Renewal Plan have been facilitated in all nine Provinces</p>
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#### **2.4.5 The 16 Days of Activism Campaign on No Violence against Women and Children**

V.2.21 The 16 Days of Activism Campaign, launched by President Thabo Mbeki in 1999, with then Deputy Minister of Justice Dr. M. E. Tshabalala-Msimang, and currently led by the Deputy Minister for Provincial and Local Government, has a year-long programme in rural communities to heighten awareness and interventions on gender-based violence. The programme includes road shows to farm dwellers and fundraising activities. In 2006 the campaign raised over R 90 000 for the benefit of non-profit organizations that provide services on violence against women. Inclusion of men as partners in the campaign has been important, for example, their solidarity through the Million Men's March in 2007 and involvement in the national campaign to end violence against women. Various organizations spread across all 9 provinces have been assisted through fundraising to build community centres and shelters for abused women and children. For the past three consecutive years, an annual amount of R500.000 was pledged to the Foundation for Human Rights; in addition to equipment for community clinics and Braille printers for blind students at the University of Limpopo. This Campaign has enjoyed a successful run for the last ten years, increasing yearly in the number of people that it is able to reach. Given all this, the country is still challenged by the persisting volume of violence against women and children, and of serious concern, is the depth of this violence displayed in several cases.

#### **1.5 Not always a Success Story**

V.2.22 While there are several best practices that South Africa can be proud of in its integrated approach to addressing violence against women, there nevertheless remains those programmes that are plagued with persistent challenges in implementation. Sexual assault services have been

prioritised by the National Department of Health, but a situational analysis conducted in October 2003, entitled *The State of Sexual Assault Services from a Situation Analysis of Services in South Africa*,<sup>135</sup> pointed out that women often receive very poor quality medical care after sexual assault, with structural inadequacies such as not having a private room with walls and a door where examinations could be conducted, the need for standardised clinical management guidelines for sexual assault service delivery, long waiting times, incomplete kits, health providers inadequately trained to use the kits, and inadequate inter-sectoral collaboration being pointed out as ongoing challenges.

### 3. Landmark Cases: Advocacy, Monitoring and Enforcement

V.3.1 Landmark cases have informed revision of the legislative and policy framework on discrimination against women. The *Masiya* case certainly makes it clear that rape in all its forms constitutes violence against women and the issue of “male rape” raises important questions which both the legislature and the Constitutional Court will have to deal with in the future. On the issue of rape, on May 10, 2007 the Constitutional Court ruled that “Non-consensual, penile penetration of a woman -- whether it be anal or vaginal -- constitutes rape, however the Court did not find that non-consensual anal penetration of a man is rape. The Court noted that to extend the definition of rape to non-consensual anal penetration of a man must involve the legislative branch of governments and not the courts”. Another landmark case was *S v Baloyi*<sup>136</sup> a case which involved an abusive husband’s challenge of the constitutional validity of provisions of the predecessor of the Domestic Violence Act, 1998 (Act 116 of 1998), and in which the Constitutional Court stated that: “The non-sexist society promised in the founding clauses of the Constitution and the right to equality and non-discrimination guaranteed by section 9, are undermined when spouse-batterers enjoy immunity. ”

V.3.2 A case example used in Article 15 shows a landmark decision in *S v Ferreira*, where the Supreme Court of Appeal acknowledged the grim complexities of battered women's choices and grappled with how this context needed to be incorporated into legal decision-making.

V.3.3 The CGE and the SAHRC have natural powers that enable them to play a very important role in enforcing non-discrimination on the grounds of sex, gender and related grounds beyond the scope of the Equality Act. Their powers also cover direct enforcement of the Constitution and they also play a role in enforcing sector-specific legislation such as the Employment Equity Act, 1998 (Act 55 of 1998). The relevant enforcement powers include informal dispute resolution services and assisting litigants in court, including the Equality and Constitutional Courts. While their role is reflected in some of the cases below, most significant is the role of advocacy and civil society organizations in the fight to eradicate gender-based violence and advance the rights of women, children and vulnerable groups. These are reflected in the case studies outlined in the textbox below:

<sup>135</sup> SAGBVHI report: The State of Sexual Assault Services in South Africa: Participating groups include: Gender and Health Group, MRC, Women’s Health Project, School of Public Health, Wits University; Centre for Health Policy; University of Cape Town – Department of Forensic Medicine, Rural Aids Development Action research.

<sup>136</sup> *S v Baloyi* 2000(2) SA 425 CC

**Textbox 36: Case studies showing role of CGE and SAHRC**

V.3.3.1 Public discourse regarding constitutional rights vis-à-vis discriminatory cultural practices, leading to public scrutiny of gender-based discrimination and violence in the name of culture, and ultimately to revision of legislation to ensure increased protection of victims and perpetrators.

V.3.3.3 Strides have been made in improved awareness raising and understanding of the exploitation of women through trafficking and sex work, and the need for improved protection, for example through the work of civil society organizations (such as Molo Shongololo and SWEAT). In practice, however, notions of “illegal immigrants”, “deportation” and fixation on documentation detract from identifying trafficking in women and children and addressing the underlying problem.

V.3.3.4 On sex workers, Sweat’s research has shown that sex workers are preoccupied about violence at the hands of clients and police; stigma; and with the fact that they do not have the space to take more proactive action around their own health and well-being. They suggest that the approach to sex work as a criminal offence is out of step with the Bill of Rights and Sweat is advocating for it to be decriminalised and follow the best practices adopted in New Zealand that further safeguard sex workers.

V.3.4 All sectors of the South African society view violence against women and children with seriousness. This is reflected in the submission made by the National Working Group on Sexual Offences<sup>137</sup> on the Regulations in terms of the Criminal Law (Sexual Offences And Related Matters) Amendment Act, 2007 (Act 32 of 2007), on 20 March 2008, to the Department of Justice and Constitutional Development. Their submission focused on the need to strengthen the Act as well as mechanisms in conjunction with its implementation as follows: regulations on services for victims of sexual offences: access to Post-Exposure Prophylaxis at designated health facilities; regulations on compulsory HIV testing of alleged sex offenders; regulations on The National Register for sex offenders. It included other areas that require regulations such as the definition of a person who is mentally disabled and the provisions relating to crimes against persons who are mentally disabled; the reporting of sexual offences on children and the mentally disabled to the police; the need for regulations that provide guidelines for the prosecution of children involved in sexual activities; and, the inclusion of civil society organizations in this process.

**4. Persistent Challenges of Violence against Women and Children**

V.4.1 High levels of gender-based violence deny South Africans the realisation and enjoyment of full citizenship rights as set out in the Constitution. Despite concerted efforts on policy, legislative and programmatic levels, together with numerous awareness campaigns and consistent media focus; harmful practices against women, men and children on grounds of gender and sexuality do not appear to be abating with significant vigour. At the core of the scourge lie unequal power gender relations, patriarchy, homophobia, sexism, and other discriminatory beliefs and practices, which manifest in

<sup>137</sup> (<http://www.tlac.org.za/content/view/24/>).



society in differentiated and complex ways. Gender-based stereotyping and prejudice is rooted in the gender discourses of masculinity and femininity with concomitant prescribed behaviours, norms and attitudes, which ultimately leads to discrimination and gender-based violence. It is an articulation of, or an enforcement of, power hierarchies and structural inequalities that are informed by belief systems, cultural norms and socialization processes.

V.4.2 South Africa has amongst the world's highest levels of sexual and domestic violence. Table 11 below shows recent rates of rape in South Africa by provinces over a six-year period. Research conducted by the Medical Research Council in 2004 shows that "a woman is killed by her intimate partner in South Africa every six hours. A recent study of over 1,500 women in South Africa also indicates that "women with violent or controlling male partners are at increased risk of HIV infection". South Africa has the largest number of people living with HIV, with an estimated 5.5 to 6.5 million people living with the disease. An estimated 500 000 South Africans are infected each year. The epidemic disproportionately affects women's lives both in terms of rates of infection and the burden of care and support they carry for those with AIDS-related illnesses.<sup>138</sup>

**Table 11: Provincial and Regional Variations in Rates of Sexual Violence<sup>139</sup>**

**Reported rates of rape (per 100 000 population) in South Africa for the period April to March 2002/2003 to 2006/2007**

<b>Province</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>
Northern Cape	178	179	187	173	156	143
North West	138	136	132	133	131	131
Free State	142	137	140	135	126	121
Gauteng	142	133	127	135	128	121
Western Cape	150	142	133	150	132	121
Mpumalanga	118	111	115	122	124	119
Eastern Cape	105	93.9	108	105	127	111
<b>RSA</b>	<b>121</b>	<b>115</b>	<b>114</b>	<b>118</b>	<b>117</b>	<b>111</b>
KwaZulu-Natal	99	99	95	100	101	99
Limpopo	91	84	77	87	78	81

In so far as reported rape and projected population figures are a reliable measure, there are significant variations in rates of rape between the different provinces with those in the Northern Cape (143 per 100 000), 75% higher than those in Limpopo (81 per 100 000) according to the 2006/07 SAPS

<sup>138</sup> Country Report to the 51<sup>st</sup> Session of the UN Commission on the Status of Women on commitments made on implementing recommendations aimed at involving men and boys in achieving gender equality at the 48<sup>th</sup> Session, 2007

<sup>139</sup> Centre for the Study of Violence and Reconciliation, December 2008. Statistics from the SAPS [www.saps.gov.za](http://www.saps.gov.za).

statistics. According to these figures<sup>140</sup> 5 of the provinces appear to have experienced significant declines in rape rates with the top 5 in the list below all reflecting their lowest figures in the 2006/07 year. The position of North West as the province with the 2<sup>nd</sup> highest rape rate is a relatively recent development, with the Western Cape consistently having occupied 2<sup>nd</sup> position until the 2006/07 year. Though North West has also experienced declines in its rate of rape these have not been as significant as those in the Northern and Western Cape. According to these figures the Northern Cape has experienced a 31% decline since its 2003/04 high point. The recorded decline in the Western Cape is 24% in the two year period since 2004/05.

V.4.3 The Report of the 365 Day National Programme to End Gender Violence, 2007 states that “In 2004, the government set targets of reducing contact crime such as murder and rape by 7-10 percent per year until 2009, with a major focus on social crime prevention, integrated law enforcement operations, and reduction of repeat offending. According to the South African police Statistics released in September 2006, murder is down by 2%, that is 18,793 to 18,545 and rape by a mere 0.3%, which is a fractional decrease from 55, 114 to 54,926”.<sup>141</sup>

V.4.5 A number of studies have been conducted to determine men’s attitudes and practices related to sexual violence. A recent survey of 435 men in a Cape Town township revealed that “More than one in five men reported that they had either threatened to use force or used force to gain sexual access to a woman in their lifetime”. A 2006 Medical Research Council survey of 1370 male volunteers recruited from 70 rural South African villages indicated that “16.3% had raped a non-partner, or participated in a form of gang rape; 8.4% had been sexually violent towards an intimate partner; and 79.1% had done neither”. A 2006 Sonke Gender Justice survey of 1000 men in the greater Johannesburg area suggested that approximately equal numbers of men support and oppose government efforts to promote gender equality, with 41.4% of men surveyed saying that the government is doing too much to end violence against women, while 38.4% of men surveyed said that government is not doing enough in this regard. At the same time, 50.1% of all men surveyed felt that they themselves should be doing more to end violence against women.<sup>142</sup>

V.4.6 A study conducted by the University of Cape Towns Gender, Health and Justice Research Unit named judges that fail to impose minimum mandatory sentences on rapists; and use flimsy excuses for failing to impose mandatory sentences. Women’s groups including the Women’s legal centre want judges to show more compassion for rape victims and want harsher sentences for rapists. The Centre is calling for a sentencing framework which sets out acceptable mitigating and aggravating factors. They raised concerns that derogatory statements in sentences were not new, and reinforce messages to rapists that they can have excuses. The law sets a minimum life sentence (25 years) for cases where a victim is raped more than once or if younger than 16 years of age. The Criminal Law Amendment Act

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<sup>140</sup> The figures are calculated based on projected figures for population growth.

<sup>141</sup> 365 Day National Program to End Gender Violence, March 8, 2007

<sup>142</sup> Country Report to the 51<sup>st</sup> Session of the UN Commission on the Status of Women on commitments made on implementing recommendations aimed at involving men and boys in achieving gender equality at the 48<sup>th</sup> Session, 2007

was changed in December 31, 2007 to include reasons why a judge may not use or hand down lighter sentences. They are calling for the law to become tougher<sup>143</sup>.

#### 4.1 Gender-based Violence in Schools

V.4.7. This section should be read in conjunction with Article 10 of this Report. Gender-based violence is a problem in South African society as a whole and schools as a microcosm of this society unfortunately are no different; signalling a priority for focus for redressing the rights of the girl child, the promotion of human rights in the educational environment; reducing the incidence of school drop out, and, helping to curb the incidence of HIV and AIDS in young girls and women.

V.4.8 A study undertaken by Human Rights Watch, 2001<sup>144</sup> and cited in a paper commissioned by the Women's Parliament 2007, is based on eight schools in three provinces. It suggests that gender-based violence is pervasive across all schools in South Africa, and not only in schools with limited and inadequate resources. It also indicates that the ethos that exists in schools is rooted in unequal power relations and strong patriarchal values. The study adds that:

- girls face multiple forms of violence from verbal abuse; sexualised touching such as groping in queues; emotional abuse in the form of threats and violence; rape; assault; and sexual harassment, largely from male students, but also from educators and others in the environment;
- victims are greeted with hostility upon reporting such incidents and may have to leave school for a while or quit school entirely. The environment therefore fosters underreporting;
- girls face constant verbal degradation largely from peers
- the importance of critical procedures or guidelines needed in schools to address gender-based violence, and the need for awareness and training for educators, students and parent community on human rights, on how to confront gender-based and sexual violence; along enforcement of the guidelines

#### **Textbox 37: Recommendations From the Study: Women and Education; Gender-Based Violence in Schools**

- Raising the status of girls: girl-friendly schools and promoting gender equality; and income-generating activities to raise the profile of women;
- Guidelines for schools and learners: comprehensive to address accessible schools and safe environment to responses to allegations by students or educators; prompt and effective investigation, immediate disciplinary action including for due process for alleged perpetrator/s; and, referral to the criminal justice system;
- Reporting mechanisms to facilitate reporting and protect from hostility and revictimisation;

<sup>143</sup> *Judges Flout Guidelines and let rapists off lightly*; Lauren Cohen, *Sunday Times*, March 9, 2008

<sup>144</sup> Women and Education; Gender-based Violence in Schools, Research Unit: Dennis Brandi, 12 July 2007 for Women's Parliament; 27-29 August 2007

- Protection of complainants: confidentiality, protection and support services for victims of gender-based violence and need to find alternate schooling if victimization an issue;
- Coordination and enforcement of policies between national and provincial education departments and schools to be strengthened and stricter implementation and monitoring of state officials;
- Whole School strategy to address gender inequalities - a holistic approach to management, educators, learners, administrative members and community to make schools safer

Research Unit: Dennis Brandi,  
12 July 2007 for Women's Parliament on 27-29 August 2007

V.4.9 Strong integrated and coordinated efforts are needed at all levels to address violence in general, but especially violence manifested in schools. Some of Government's responses have included improvements in the criminal justice system, legislative reform, a revised curriculum that is gender sensitive, measures to address gender violence and the introduction of safe school programmes. These have been outlined in more detail in Article 10 of this Report.

#### **4.2 Some Harmful Cultural Practices**

V.4.10 Harmful practices endanger the health and well-being of the girl child and women. They constitute all behaviours, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as the right to life, health, dignity, education and physical integrity. The Equality Act, 2000 in particular provides protection and prohibits these practices that are listed below.

V.4.11 Despite a progressive human rights legislative framework, strong human rights campaigns and rights-based education against harmful cultural and religious practices, and the prohibition of these under the law, behaviour and practices continue to manifest in different forms that violate the rights of girls and women in South Africa. These practices that occur within the private domain are difficult to monitor as women in many communities remain subjugated and submissive to oppressive cultural and traditional practices. They inadvertently become victim to them, maintaining silent acceptance and tolerance; and/or may be complicit in perpetuating these practices. Women themselves may be unaware of their rights and subscribe to mistaken beliefs that it is acceptable to accommodate men and their religious or cultural community. In theory, legislation covers all of the following practices but they need to be tested in the courts and challenged so that they can significantly and increasingly promote women rights.

##### **1.1.1 Virginty Testing**

V.4.12 The Equality Act prohibits virginty testing and declares it as a form of gender discrimination. It is still practised in South Africa, however, especially in rural areas. While virginty testing may have been culturally sanctioned and more acceptable historically, within the new democratic constitution and legislative frameworks in South Africa, including its commitments to international and regional instruments promoting women's rights as human rights, these practices become problematic.

V.4.13 It is commonly understood that virginty testing has taken on new meaning with the HIV and AIDS pandemic and the myths surrounding a "cure if one engages in sex with a virgin". It appears

that this may be more common in KwaZulu-Natal. Not only have these myths infringed on the rights of women and the girl child but have also impacted on the lives of babies as well. They continue to rob women and the girl child of protection and control over their bodies and their overall well-being, as they become labelled as prostitutes; not worthy of marriage; infected with HIV and AIDS, and eventually also ostracised by the community. The CGE has publicly criticised this practice as violating the right to life, health and dignity of girls.<sup>145</sup>

#### **4.2.2 Female Genital Mutilation**

V.4.14 Reports in general indicate that the incidence of female genital mutilation is not widely practised in South Africa, but that different variations of the practice exist. It is a more commonly held view that this violation of women's rights is likely to be practiced by some foreign nationals, the refugee population, and immigrants to South Africa, for example, the Somali population. The uncertainty around the level of this situation in the country has been mentioned in other reports on human rights commitments. There have also been proposals for the Department of Health and Social Development to play a lead role in undertaking relevant studies to understand this phenomenon in South Africa; and, to make concrete recommendations with a plan of action on how to address the reality.

#### **4.2.3 Abduction and Forced Marriages**

V.4.15 This section must be cross referenced with Articles 6, 15 &16 of this Report. The vulnerability to poverty increases women's vulnerability to abuses such as forced marriages and polygamous marriages – i.e. in becoming a subsequent wife. Forced marriages are thought to have been more prevalent historically and more prevalent within certain communities, such as in the Indian community and in some African communities.

V.4.16 Forced marriages may happen for a number of reasons such as:

- to protect the family name if the daughter was found to be in a premarital relationship especially if it is sexual in nature;
- for a suitable match from the same caste; tribe, and religion;
- to protect the family from shame and disgrace in the event of pregnancy;
- to elevate the family status;
- to provide stability for the family as a poverty relief measure; and,
- for male members of the family to offer the daughter to those in positions of power whether they be Chiefs or esteemed members of the community.

V.4.17 In some, admittedly isolated, customary practices, women may be forced to marry their brother-in-law or father-in-law after the death of their husband; or risk losing her status in the family, her children and access to housing, property, inheritance and a known livelihood.<sup>146</sup> The prevalence is not well researched or documented in South Africa. However with new forms of trafficking and

<sup>145</sup> Cited in Beyond Inequality 2005; Women in South Africa; Women in development Southern Africa Awareness

<sup>146</sup> NGM Consultation March 28 2008

exploitation of women and the girl child, there is a pressing and urgent need for protracted focus on monitoring and understanding the relationship between forced marriages and/or bondage within a broader framework and within the national and international contexts.

#### 1.1.4 Witchcraft in South Africa

V.4.18 Witchcraft in different forms continues to be practiced in certain sections of South African society. It may be practised by men and women who play a role in maintaining a range of beliefs about the supernatural realm and one's ability to heal either through potions, prayer, and other methods; or to inflict harm onto others in the case of *Jadoo or muthi*. Women are often more liable to be accused of witchcraft and to be tortured or ostracised in some communities<sup>147</sup>.

V.4.19 As mentioned in the Article on Health in this Report, the Council of Traditional Health Practitioners Act was introduced in 2004. There are challenges to regulating practices in this regard, but women practitioners who are in the majority will benefit most from the Act. Similarly, the users of traditional medicines, a large proportion of whom are women, will benefit from these initiatives through research and monitoring. The Department of Health's support for African traditional medicines research has included a R6 million grant channelled through the Medical Research Council of South Africa, for research into the safety, efficacy and quality of traditional medicines used as immune boosters for the treatment of health conditions.

#### **Textbox 38: Thoughts of the NGM on Harmful Traditional Practices<sup>148</sup>**

In the NGM meeting held on March 28, 2008, participants outlined some thoughts on harmful traditional practices. These will be used, together with other data, to inform the terms of reference for a research paper to be produced on harmful cultural and traditional practices in South Africa. This research is being initiated by the Office on the Status of Women in the Presidency.

Thoughts on some harmful traditional practices from the participants include: Child and forced marriages; Female genital mutilation; Loss of estate when the husband dies; Forced to marry the brother-in-law or father-in-law after the death of the husband; Mourning dress code; Virginitly testing; Denied the right to own land; Women not allowed to lead the church; Women barred from engaging in certain activities while menstruating; Husband can beat his wife lightly if not conceiving; Wife always blamed for the death of her husband; Women work on land, ploughing to provide for her children; Women are bread winners and men would rarely provide for the family; Exclusion of women from traditional meetings and they are always not considered in decision making meetings; Royal wife cannot talk to any man in the community; Dress code during funerals is decided by men and is demeaning.

Some proposed interventions from the NGM include: Advocacy – public education around policy and legislations; Collaboration between traditional leaders and faith-based groups to change the rules;

<sup>147</sup> Ibid

<sup>148</sup> CEDAW Report Consultation with the NGM, March 28<sup>th</sup> 2008, Burgers Park Hotel

Research into these practices to provide positive intervention; Men play a very important role in this regard.

V.4.20 The area of harmful traditional practices in South Africa needs research and information for concerted human rights action and intervention. There is no doubt that women need to be able to control and take charge of their bodies, making their own decisions regarding their bodies. Women must be empowered through an integrated human rights and capacity development approach that involves cultural, social, educational and economic empowerment, so that women can become more forceful and vigilant in protecting themselves and their communities against abuses perpetrated in the name of culture, religion and tradition.

V.4.21 Practices that are culturally ingrained are difficult to root out as they are steeped in patriarchal power imbalances and male superiority over women. In addition, these practices derive their strength from having been passed on through the generations and have become commonly accepted and entrenched practices. Women are often threatened and marginalized when they challenge the status quo. There has to be more monitoring and enforcement of the human rights legislation and more concerted action taken against those who abuse and violate the rights of women and children.

### 4.3 The role of the media and case studies on violence against women

V.4.22 This Report has taken an innovative approach in providing a variety of case studies to highlight the South African reality, not only in the body of the Report itself, but to use explicit cases to show the multifarious manifestations of forms of violence perpetrated against women and the girl child. The purpose is to identify both the use of and the implications for the equality sections of the Constitution, particularly in meeting the women's rights based agenda. They outline the important role that the media has in the public arena in informing and affecting attitudes and perspectives, and to a large degree playing the role of a change agent.

#### V.4.24 Textbox 39: Newspaper Articles highlighting Case Studies on the Sexual Offences Act

V.4.24.1 Sexual Offences Act 'fails victims'; By Candice Bailey, The Argus; December 18 2007

Child rights advocacy groups will be lobbying for a change in certain aspects of the new Sexual Offences Act, through either case law or amendments. But they point out that for the change to take place through amendments there would have to be political will. The Act, which was passed on December 13, makes changes to the definition of what constitutes rape and includes a sexual offender register, but child rights groups say the Act has done little to increase protective measures available in the court system. Sam Waterhouse, advocacy officer of Resources Aimed at the Prevention of Child Abuse (Rapcan), said the new Act did very little to protect children under 18 while testifying in court. "Many courts use the [closed circuit television] for younger children. But there are still courts that don't use them ... and most only use them for children under 12. We want to make it compulsory for everyone under 18," she said. Waterhouse pointed out that South Africa has a conviction rate of only 7 percent for sexual offences. "The Act had done nothing to address anything that causes the low conviction rate," she said.

#### V.4.24.2 Sex Crimes Bill Partly Enacted by Gabi Khumalo; The Argus, 19 December 2007

Certain sections of the long-awaited Sexual Offences Act finally came into operation this week. They deal mainly with statutory sexual offences relating to assault, exploitation, trafficking and child pornography. The Department of Justice and Constitutional Development said in a statement that the operationalisation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007, or the Sexual Offences Act, would "help intensify South Africa's efforts to fight crimes against women, children, the elderly and the vulnerable."

The Act comprehensively reviews and amends all aspects of the laws and the implementation of the laws relating to sexual offences. It deals with all legal aspects relating to sexual offences in a single statute by repealing the common-law offence of rape and replacing it with a new expanded statutory offence of rape, applicable to all forms of sexual penetration without consent, irrespective of gender. The Act repeals the common-law offence of indecent assault and replaces it with a new statutory offence of sexual assault, applicable to all forms of sexual violation without consent, creating new statutory offences relating to certain compelled acts of penetration or violation. It also looks at creating new statutory offences for adults by criminalising the compelling or causing the witnessing of certain sexual conduct and certain parts of the human anatomy, the exposure or display of child pornography and the engaging of sexual services of an adult. It further repeals the common-law offences of incest, bestiality and violation of a corpse, as far as such violation is of a sexual nature, and enacts corresponding new statutory offences and comprehensive provisions dealing with the creation of certain new, expanded or amended sexual offences against children and persons who are mentally disabled.

These include offences relating to sexual exploitation or grooming, exposure to or display of child pornography or pornography to children, and the creation of child pornography. This is despite some of the offences being similar to offences created in respect of adults, as the creation of these offences aims to address the particular vulnerability of children and persons who are mentally disabled to sexual abuse or exploitation. Chapter 5 of the Act deals with services for victims of sexual offences and compulsory HIV testing of alleged sex offenders.

#### V.4.26 **Textbox 40: Newspaper Articles Highlighting Case Studies on Sex Workers and Trafficking**

##### V.4.26.1 Old law a curse on SA's sex workers<sup>149</sup>

Today is International Sex Worker Rights Day, and in SA sex workers are using the day to highlight their demand for their work to be decriminalised so that they can work without harassment from police and municipal authorities. Sex workers are stigmatised mainly because of their criminal status. In SA, sex work is criminalised under the Sexual Offences Act of 1957, previously the *apartheid* Immorality Act. The South African Law Reform Commission is reviewing this act, and the Sex Worker Education and Advocacy Taskforce (Sweat) is urging the commission to speed this process up

<sup>149</sup> By Jayne Arnott, Business Day, Saturday, 26 April 2008; <http://www.businessday.co.za/articles/topstories.aspx?ID=BD4A163352>



and lobbying for sex work to be decriminalised. Sweat recently completed a qualitative research project in Cape Town that investigated how local sex workers cope with stigma, discrimination and violence.

Sex workers are subjected to severe disapproval from society for behaviour that is considered to be outside the bounds of social norms. Society justifies this disapproval, in part, by saying that sex workers are vectors of sexually transmitted diseases, including HIV. Sex workers are seen as a public health risk. But this is a false perception. Sex workers all over the world are becoming increasingly organized, and have for years been taking responsibility for safer sex with clients. In New Zealand, health concerns have been firmly addressed through a new law decriminalising sex work, the 2003 Prostitution Reform Act. This act is a good model for consideration by SA. The act did not simply decriminalise prostitution but legislated a framework to “safeguard the human rights of sex workers and protect them from exploitation” and “promote the welfare and occupational health and safety of sex workers”. Under the act, indoor agency employers must provide all the necessary health and safety equipment that sex workers need, including condoms. In SA, there is no such legal obligation upon employers. Sex workers are responsible for providing their own condoms. At the same time, sex workers are often not able to ask clinics for large numbers of condoms because of their criminal status and their fear of discrimination from health workers”....”So while condoms generally are freely available in SA from the health department, in the criminalised sex-work environment, condoms are not necessarily accessible to sex workers who need them most.”.....”

In SA, the continued criminalisation of sex work stigmatises sex workers not just to the extent that they feel unable to request large numbers of condoms from clinics. It generally also leaves sex workers with too little control over their lives and therefore little control over their health. In the criminalised workplace, there is no legal obligation on clients to practice safer sex, and sex workers have no recourse to the police if they are raped.” A further problem for SA’s sex workers is their vulnerability to violence — sex workers are not protected by the police or justice system from the threat of violence like other workers. The World Health Organization has identified that forced sex increases the risk of HIV due to physical trauma.”

## PART 6

### Concluding Comments and Recommendations

vi.1 Over the past ten years, following the submission of its Initial Report to the CEDAW Committee, the South African Government has created increasing opportunities for mainstreaming gender and equality goals generally, but CEDAW related goals in particular, into national agenda-setting processes and transformation priorities. It has had time to test the strengths and limitations of its gender-based policies and implementation through specific commitments like the ten-year review in 2005, of the implementation of the Beijing Platform for Action, as well as through larger national and continental processes such as the African Peer Review Mechanism in 2007.

vi.2 There is genuine consensus that the Constitution of the Republic of South Africa as well as the progressive legislative framework provides both for the protection and promotion of the rights of women and the girl child.

vi.3 South Africa wishes to conclude that the CEDAW reporting process has allowed Government to critically analyse the situation of women in the country in relation to the CEDAW articles. It has provided a platform for the country to report on its achievements, best practices, challenges, commitments and measures needed to advance the situation of women. In the spirit of CEDAW and the South African Constitution, South Africa dedicates itself to the ongoing advancement of women and the full realization of the Convention.

vi.4 The key cross-cutting issues identified in this Report that need priority include:

- Improving the socio-economic conditions of women particularly in relation to poverty, unemployment and their congregation in the second and informal economy;
- Decreasing violence against women while addressing attitudes and practices that perpetuate this evil
- Vigilance and action to address constitutional and human rights violations against women and the girl child through multi-sectoral (government, civil society, private sector, donors and other stakeholders) alliances and ongoing campaigns with clear targets, impact assessment and allocated sustainable resources.
- Removing barriers in the public and private spheres in fighting prejudice, bias, and discriminatory practices

vi. 5 As Government has become increasingly involved in supporting the efforts of a wide variety of NGOs, CBOs and FBOs, however, it has also become progressively more aware of the gaps and challenges that continue to frustrate the lives of women at grassroots level.

### Concerns

vi.6 In its 2008 Annual Dialogue : *Financing for Gender Equality and Women's Empowerment*, South African Women In Dialogue (SAWID) a non profit organization that, together with organizations like the Progressive Women's Movement (PWM) seeks to represent the voice of women in South Africa, has sought to draw national attention to the paucity of funding provided by the state to support the substantive positive policy positions and legislative frameworks put forward over the past 14 years to promote gender equality and the empowerment of women.

vi.7 In response to observed gaps in the current National Gender Machinery and the national strategies for the empowerment of women, SAWID has proposed and joined in the campaigns for a women's solidarity fund; for a co-ordinated and integrated national poverty eradication strategy, based on stratification and segmentation; for the NGM to be upgraded to a funded Women's Ministry; for a Planning Ministry/Commission to oversee implementation and measurement, as well as for a Strengthened Women's Movement, buttressed by well-established women's organizations.

vi.8 Government has taken cognisance of the fact that the poorly funded national policy positions for gender equality and women's empowerment are not isolated and peculiar to South Africa, but is the expressed experience of women the world over. As women have slowly become aware that certain decisions that women took as a Global Women's Movement to 'mainstream' women's integration has left women's development projects in government and within the women's movement without resources. The design of mainstreaming women in all line ministries need not have cancelled out resources that were availed through the early women's ministries and their international donors.

vi.9 To quote from the founding SAWID 2003 communiqué: "The participants recognized and appreciated the gains made by the democratic government in providing women with institutional, political and socio-economic liberation. **However, we also note with concern that despite all these gains, South African women are still disadvantaged and do not benefit maximally from the above achievements.**"

vi.10 Key challenges identified were poverty, disease, continued levels of gender-based violence, marginal economic participation, job insecurity and casualisation of labour, and access to funding, among other issues. It is imperative that women find a way to remove the shackles of poverty that continue to limit women's full participation in our democracy. Towards this women in 2003 called for the establishment of a national fund for women's advancement. This, they said, was necessary due to the fact that women experience the worst household poverty and have the least ability to access national development funds.

vi.11 The increasing feminization of poverty is however deeply linked to the current macro-economic framework, which does not give centrality to the lived experiences of women, who make up more than 50% of the world's population, and who additionally carry the burden of the unpaid care work they do for the young, the sick and the elderly. South Africa, in its participation in the India Brazil South Africa (IBSA) Women's Forum, as part of the trilateral IBSA partnership promoting good governance and South-South cooperation, has repeatedly advocated for a meaningful and well-targeted intervention in the global macro-economic framework that will take into account the unpaid work of women. In this regard, it is also necessary to monitor the trend of increased casualisation of women's labour, despite the legislative protection mentioned under Article 11.

## Recommendations

vi.12 It is abundantly clear that, in addition to advocacy for a compassionate global economic framework that recognizes women's unpaid labour, South Africa needs to implement successful poverty eradication strategies in order to accelerate women's full participation in South Africa's democracy. Best practice examples have shown that poverty is best reduced when:

- Women are at the centre of national poverty eradication strategies.
- Women's issues are both mainstreamed in line ministries and also targeted through funded women's ministries.
- There are national solidarity funds for poverty eradication to reach the poorest families.

- Poor women have access to microcredit.
- Research facilities provide planning information on women to government and also to women's organizations.
- There are training facilities for the advancement of poor women.
- There is access to government-sponsored Early Childhood Development Facilities.

vi. 13 It is also clear that women need both mainstreaming **and** targeted funding to finance women's empowerment, especially in light of the non-homogenous nature of the more than 25 million South African women, who differ vastly in terms of their race, language, religion, circumstances, aspirations, geographic location, historic disadvantages, levels of education, self-esteem, cultural beliefs, values, and access to and control of opportunities and resources.

vi. 14 The Government of South Africa launched a National War on Poverty Campaign on 14 August 2008 which will serve to honour the voices of the women of South Africa who have requested that we remove the obstacles that keep them from fully participating in the democratic spaces that have been made available for them. We are further responsive to the suggestion of women in civil society that the country needs to coordinate the efforts of government, business, labour and civil society

- To explore budgeting models for women's empowerment
- To strengthen **national women's empowerment strategies** that will lead to real gender equality and women's greater participation in our democracy
- To identify sources of funds to strengthen the South African Women's Movement, which is the driving engine for women's development
- To propose financing mechanisms for building institutions for empowering women e.g., a Women's Research Facility and a Women's Training Centre, in response to identified needs at grassroots level
- To identify funding sources for grass roots socio-economic projects (similar to women-in-development funds)

vi. 15 A final suggestion made by civil society is the creation of an electronic Monitoring and Evaluation framework for networking and effective action to support the goals articulated by the women of South Africa (and their development partners) and to ensure that women live lives of dignity, with adequate access to health, education, nutrition, employment, income and other resources.

- Such a system would connect communities, non governmental organizations, government, business, and volunteers with experience and skills, coordinating all development efforts at grassroots level, resulting in individuals and communities that are sustainable, resilient and flourishing. Such a system will allow cooperation on issues of concern to women, and encourage cross-organizational collaboration on a shared development agenda, municipality by municipality.
- A shared civil society and local government Monitoring and Evaluation tool will allow South Africa to track the development outcomes related to its stated priorities of women

empowerment, and to track the implementation of global, continental and national protocols for women's empowerment and their full participation in society.

- It is envisaged that such a Monitoring and Evaluation system will be worked out with the suggested development partners at municipal level, in partnership with the South African Local Government Association, (SALGA) and with the assistance of women and poor communities themselves, to ensure that it faithfully reflects the needs of the communities it aims to benefit.
-