

# THE BARE MINIMUM

Commission for Gender Equality Report on  
South Africa's Compliance with  
**CEDAW Committee 2011**  
**Concluding Observations & Recommendations**

**RESEARCH REPORT**  
**2020**



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## FOREWORD AND ACKNOWLEDGEMENTS

The Commission for Gender Equality (CGE) was established, in terms of Section 181 of the Constitution of the Republic of South Africa, 1996, to support democracy in South Africa as one of a number of independent Constitutional bodies. The work of the CGE is underpinned by Section 187 of the Constitution, which among other requirements, demands that the CGE “must promote respect for gender equality and the protection, development and attainment of gender equality”. The Constitutional mandate of the CGE is elaborated further in the Gender Equality Act<sup>1</sup>, which among others, empowers it to monitor the country's “compliance with international conventions, international covenants and international charters, acceded to or ratified by the Republic, relating to the object of the Commission”<sup>2</sup> as well as “... prepare and submit reports to Parliament pertaining to any such convention, covenant or charter relating to the object of the Commission”.<sup>3</sup>

This report was compiled by the CGE as part of its constitutional and legislative mandate to monitor and assess government's compliance with its obligations to honour international treaties, conventions, covenants and charters related to the promotion and protection of gender equality. In this particular instance, the CGE concerned itself with government's compliance with the provisions of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) during the 2009–2015 reporting period, including the country's response to and implementation of the concluding observations and recommendations of the CEDAW Committee emanating from its 967<sup>th</sup> and 968<sup>th</sup> Sessions in 2011.

This report is compiled in addition to the government's own periodic report to be submitted to the CEDAW Committee for the same reporting period in fulfilment of the country's periodic reporting requirements. As will become clear to the reader of this report, government has, during this period, taken steps in various policy areas and sectors (eg. health, education, the judiciary, politics, social policy, security, etc.) to protect, promote and advance the rights of women, including eliminating discrimination and violence against women. In many instances these steps were, directly or indirectly, relevant and crucial in assisting government's obligations to comply with the provisions of the CEDAW.

The contents of this report are aimed at reviewing, assessing and providing insights into the work of government in meeting its obligations towards CEDAW. In instances where the CGE determined that the government performed adequately and met its obligations, this is clearly articulated. In those areas where the CGE determined that

<sup>1</sup> Act 39 of 1996

<sup>2</sup> CGE Act 39, 1996, Section 1 (h)

<sup>3</sup> CGE Act 39, 1996, Section 1 (i)

government's performance was below par, and failed to meet its obligations in line with the CEDAW, it is hoped that the reader will not only gain insights in this regard, but also understand some of the factors accounting for such failure to comply with the relevant CEDAW provisions. It is hoped that this report will serve as a resource not only for government, Parliament and other role players within the gender policy sector, but also within general public debates regarding the country's progress in promoting the rights of women, and eliminating all forms of violence and discrimination against women.

The Commission wishes to thank various government ministries and other government entities for making information available during the process of compiling this report.

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## ACRONYMS & ABBREVIATIONS

<b>AIDS:</b>	Acquired Immunodeficiency Syndrome
<b>ANC:</b>	African National Congress
<b>ARV:</b>	Anti-Retro Viral
<b>BPFA:</b>	Beijing Declaration and Platform for Action
<b>CEDAW:</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CEO:</b>	Chief Executive Officer
<b>CGE:</b>	Commission for Gender Equality
<b>CSW:</b>	Commission on the Status of Women
<b>DBE:</b>	Department of Basic Education
<b>DCS:</b>	Department of Correctional Services
<b>DHET:</b>	Department of Higher Education and Training
<b>DOH:</b>	Department of Health
<b>DOJ:</b>	Department of Justice and Constitutional Development
<b>DSD:</b>	Department of Social Development
<b>DVA:</b>	Domestic Violence Act (Act 116 of 1998)
<b>DWCPD:</b>	Department of Women, Children and People with Disabilities
<b>ERP:</b>	Emergency Response Plan
<b>EU:</b>	European Union
<b>FCS:</b>	Family Violence, Child Protection and Sexual Offences Unit
<b>FGM:</b>	Female Genital Mutilation
<b>GBV:</b>	Gender-Based Violence
<b>GLO.ACT:</b>	Global Action against Trafficking in Persons and Smuggling of Migrants
<b>HIV:</b>	Human Immunodeficiency Virus
<b>HIV/AIDS:</b>	Human Immunodeficiency Virus, Acquired Immunodeficiency Syndrome
<b>HTA:</b>	High Transmissions Areas
<b>ILO:</b>	International Labour Organisation
<b>IPOA:</b>	Integrated Programme of Action
<b>JSE:</b>	Johannesburg Stock Exchange
<b>KZN:</b>	KwaZulu-Natal
<b>LGBTQIA+:</b>	Lesbian, gay, bi-sexual, transgender, queer/questioning, intersex, asexual, and other
<b>MDG:</b>	Millennium Development Goals
<b>NAP:</b>	National Action Plan
<b>NCGBV:</b>	National Council on Gender Based Violence
<b>NCOP:</b>	National Council of Provinces

<b>NDP:</b>	National Development Plan
<b>NGM:</b>	National Gender Machinery
<b>NGO:</b>	Non-Governmental Organisations
<b>NHI:</b>	National Health Insurance
<b>NIS:</b>	National Intervention Strategy
<b>NPA:</b>	National Prosecuting Authority
<b>NPF:</b>	Prevention and Combating of Trafficking in Persons National Policy Framework
<b>NSG:</b>	National School of Government
<b>NSP:</b>	National Strategic Plan
<b>NTT:</b>	National Task Team
<b>OHCHR:</b>	Office of the United Nations High Commissioner for Human Rights
<b>PEPUDA:</b>	Promotion of Equality and Prevention of Unfair Discrimination Act (Act 4 of 2000)
<b>PMTCT:</b>	Prevention of Mother to Child Transmission
<b>RCMA:</b>	Recognition of Customary Marriages Act (Act 120 of 1998)
<b>RRT:</b>	Rapid Response Team
<b>SADC:</b>	Southern African Development Community
<b>SAHO:</b>	South Africa History Online
<b>SAHRC:</b>	South African Human Rights Commission
<b>SALRC:</b>	South African Law Reform Commission
<b>SANAC:</b>	South African National AIDS Council
<b>SAPS:</b>	South Africa Police Service
<b>SASSA:</b>	South African Social Security Agency
<b>SCA:</b>	Supreme Court of Appeal
<b>SMME:</b>	Small, Medium and Micro-sized Enterprises
<b>SMS:</b>	Senior Management Services
<b>SOC:</b>	Sexual Offences Courts
<b>SOPs:</b>	Standard Operating Procedures
<b>STI:</b>	Sexually Transmitted Infections
<b>TB:</b>	Tuberculosis
<b>TCB:</b>	Traditional Courts Bill
<b>TCC:</b>	Thuthuzela Care Centre
<b>TIP:</b>	Trafficking in Persons
<b>UN:</b>	United Nations
<b>UNODC:</b>	United Nations Office on Drugs and Crime
<b>VAWC:</b>	Violence Against Women and Children
<b>VEP:</b>	Victim Empowerment Programme
<b>WHO:</b>	World Health Organisation

## INTRODUCTION

The Commission for Gender Equality (CGE) is an independent statutory body that was established with other Chapter Nine Institutions by Section 181 of the Constitution of the Republic of South Africa, 1996. The CGE derives its mandate as stipulated in Section 187 of the Constitution and the Commission for Gender Equality Act<sup>4</sup>. Section 11 (h) of the Commission for Gender Equality Act mandates the CGE to monitor and evaluate the implementation of the International Instruments that South Africa has acceded to and ratified. In line with that constitutional mandate, the CGE monitors the implementation of such International Instruments to ensure that the country complies with its obligations. In line with the mandate as indicated, the CGE is undertaking the exercise of compiling this report on the country's progress in terms of implementing the CEDAW Committee's Concluding Observations, which were instigated during South Africa's fourth periodic reporting period during the Committee's 967<sup>th</sup> and 968<sup>th</sup> Sessions in 2011. The first country report was deposited to the CEDAW Committee in 1998, and the combined second, third and the fourth reports were presented before the committee in 2011.

The CGE, in line with the Constitution and the Commission for Gender Equality Act, produced the baseline report on the progress of South Africa in the implementation of the CEDAW in 2015. The report reflected on the status of the country in implementing all the provisions of the Convention, as well as on how far along the country was in implementing the General Recommendations on different thematic areas, as stipulated by the CEDAW. This current process looks into whether there has been progress since the last national reporting period in line with the recommendations by the CEDAW Committee through the concluding observations.

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<sup>4</sup> Act 39 of 1996.

## BACKGROUND

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) was grafted in line with the International Bill of Human Rights, which is geared towards strengthening and extending the emphasis on women's human rights. The Universal Declaration of Human Rights (Declaration), which is celebrating 72 years in existence in 2020, proclaims the entitlement of everyone to equality before the law and to the enjoyment of human rights and fundamental freedoms without distinction of any kind. Sex and gender are included as an impermissible distinction.<sup>5</sup>

The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both of 1966, which South Africa is a state party to, translate the principles of the Declaration into a legally binding form. They clearly state that the rights set forth are applicable to all persons without distinction of any kind and, again, puts forth sex as such a ground of impermissible distinction. In addition, each Covenant specifically obliges state party to take steps to ensure that women and men have equality in the enjoyment of all the rights they establish.<sup>6</sup>

The establishment of the Commission on the Status of Women in 1946 served to promote the introduction of important declarations and conventions that protect and promote the human rights of women. The CSW played an important role in promoting the principle that men and women should have equal rights, and in the development of proposals to give effect to such recommendations. The CSW crafted all the necessary instruments for addressing different challenges that women are exposed to. It was however realised that although many Conventions were introduced between 1946, when the CSW was established, and 1963, such conventions were fragmented. Moreover, it was realised and that there was no specific convention that addressed the discriminations against women holistically. The Commission was therefore requested by the UN General Assembly to initiate the process of crafting CEDAW in 1965, leading to the process of crafting the 1967 Declaration on the Elimination of Discrimination against Women. This was therefore the first legal international instrument which articulated the international standards in the promotion of equality between men and women. However, the fact that the Declaration was not a treaty meant that, despite having moral and political force, it did not create binding obligation for the state parties.<sup>7</sup>

<sup>5</sup> <https://www.un.org/womenwatch/daw/cedaw/history.htm>

<sup>6</sup> Ibid

<sup>7</sup> Assessing the Status of Women. 2000. A Guide to Reporting Under the Convention on the Elimination of All Forms of Discrimination against Women. United Nations.

Therefore, in 1972, the CSW explored the feasibility of preparing a Convention that would give the Declaration binding force. The process then commenced during the 1975 World Conference of the United Nations International Women's Year, which led to the adoption of the CEDAW in 1979 by the UN General Assembly. South Africa ratified the CEDAW in 1995 and submitted its initial report in 1998, three years late. CEDAW is crafted on the basis of three principles which entail:

- i. Principle of substantive equality;
- ii. Principle of non-discrimination; and
- iii. Principle of state obligation.

The state parties are therefore obliged to report to the team of experts, who are appointed as members of the CEDAW Committee. These experts are nominated by their respective countries, even though as members of the Committee, they are not necessarily representing those countries which nominated them. The reporting process by the state parties for the treaty bodies is not merely for the fulfilment of the country's international obligations or for ensuring compliance, but it is also an opportunity for the country to take stock of the state of human rights protection and the level of transformation in line with the provisions of the international treaty. This is for the purpose of policy planning and enhancing implementation, which, as different studies have demonstrated, is one of the major challenges in the case of South Africa. The report preparation process thus offers an occasion for each state party, and South Africa in this case, to:

- (a) Conduct a comprehensive review of the measures it has taken to harmonise national law and policy with the provisions of the relevant international human rights treaties to which it is a party;
- (b) Monitor progress made in promoting the enjoyment of the rights set forth in the treaties in the context of the promotion of human rights in general;
- (c) Identify problems and shortcomings in its approach to the implementation of the treaties; and
- (d) Plan and develop appropriate policies to achieve these goals.<sup>8</sup>

## **South Africa's Reporting**

South Africa submitted its Initial Report in 1998 and its combined second, third and fourth periodic reports were deposited in 2008 and presented before the CEDAW Committee in 2011. The highlights that emerged from the second periodic reporting period entailed the following achievements:

<sup>8</sup> International Women's Rights Watch. Producing Shadow Report to CEDAW: Procedural Guide.

- 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<sup>9</sup>, 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<sup>10</sup>, 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 the elderly, people with disabilities, and caregivers;
- Advancing women's empowerment through the mainstreaming of gender in the implementation of the Land Reform (Labour Tenants) Act<sup>11</sup>; the Housing Act<sup>12</sup>; the Water Services Act<sup>13</sup>; the Land Bank Amendment Act<sup>14</sup>; 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; and
- Partnerships between civil society and media organisations for media advocacy, and programmes about gender-based violence, HIV and AIDS and other related issues that lead to improved government responses and shifts in social norms within communities across the country.

<sup>9</sup> Act 120 of 1998.

<sup>10</sup> Act 75 of 1997

<sup>11</sup> Act 3 of 1996.

<sup>12</sup> Act 107 of 1997.

<sup>13</sup> Act 108 of 1997.

<sup>14</sup> Act 21 of 1998.

## The Challenges

The report highlighted the following as some of the challenges which need to be addressed:

- The need to 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 for women in the labour force to be employed in larger numbers in higher levels of work, and not marginalised in the lowest job categories; eliminate wage disparities between men and women and actively promote equal pay for work of equal value;
- 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, the elderly and disabled women; and,
- 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 that multi-sectoral campaigns have sufficient government support and sustainable resources to target and alleviate the high levels of violence against women and girl children;
- 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 girl children 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; and,
- Address priorities identified by the 365 Day National Action Plan to End Gender Violence (which was in place between 2006 and 2011).

### **Cross-cutting issues to be prioritised**

The report identified the following cross-cutting issues and stated that they needed to be prioritised:

- 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 girl children through multi-sectoral (government, civil society, private sector, donors and other stakeholders) alliances and on-going campaigns with clear targets, impact assessments and allocated sustainable resources;
- Removing barriers in the public and private spheres to fighting prejudice, bias, and discriminatory practices;

The CGE undertakes this review of the progress made by South Africa in addressing the challenges that were identified by the CEDAW Committee during the previous periodic country reporting period, as well as to monitor the progress in terms of responding to the concluding remarks, and implementation of the recommendations, from 2011 to date. This report will exist as an additional source of information in relation to the currently deposited country periodic report covering the period 2009 to 2014. This report will also cover the period beyond the scope of the deposited report to ensure reflection of new developments that emanate beyond that period, addressing concerns relating to the implementation of the CEDAW recommendations, as highlighted by the concluding observations of the CEDAW Committee.

### **The Work Done by CGE**

As a national human rights institution, whose mandate is provided for under the Constitution to monitor implementation of gender regulatory frameworks for promotion of gender transformation in the country, the CGE has been compiling alternative reports on the CEDAW since 2010.

The main objective has been to provide additional information and insights/perspectives on the implementation of the CEDAW, and the South African government's progress, to the Committee. This is to enable the CEDAW Committee to have a better and more informed understanding of South Africa's level of compliance with the provisions of the CEDAW. The report was also shared with Parliament. The second report was issued in 2015, and stood as the baseline report on the overall status of the implementation of the CEDAW in South Africa. The current CGE report (2019/2020), which coincides with the country's fifth periodic reporting to the CEDAW Committee, is focusing on how the country responded to, and implemented, with the concluding observations of the 967<sup>th</sup> and 968<sup>th</sup> sessions of the Committee.

### **METHODOLOGY**

This study utilised mostly secondary data. The team of researchers relied on the information from various sources, including departmental websites, as well as annual reports and other official documents, to establish the progress that different departments have made in implementing the recommendations as articulated in the concluding observations from the last periodic reporting period. The information was verified through conducting telephonic engagements with officials from the relevant government departments and other related organisations. This work was based largely on a desktop review of published documents, official reports and other information provided by government departments, officials and other related sources.

## THE MAIN OBJECTIVE OF CEDAW

The overall object and purpose of the Convention on the Elimination of All Forms of Discrimination Against Women is to eliminate all forms of discrimination against women, with a view to achieving women's legal (*de jure*) and factual (*de facto*) equality with men in the enjoyment of their human rights and fundamental freedoms. Therefore, states are under a legal obligation to respect, protect, promote and fulfil this right of non-discrimination to women, and to ensure the development and advancement of women in order to improve their positioning in society to one of *de jure* as well as *de facto* equality with men.

### Specific Objectives for CGE

- To assess the progress of the country's compliance in implementing the provisions of the CEDAW;
- To assess the country's progress in the implementation of the Concluding observations emanating from the previous periodic reporting; and,
- To assess gaps and factors hindering implementation of the Convention.

## PART A: ARTICLES 1-6

### ARTICLE 1

#### *1. Definition of Discrimination against Women*

For the purpose of the Convention on the Elimination of All Forms of Discrimination Against Women, "Discrimination against Women" means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women - irrespective of their marital status, or on the basis of equality of men and women - of human rights and fundamental freedoms in the political, economic, social, civil, or any other field.

The country reported comprehensively on the legislative framework and structural innovations to prevent and guard against discrimination aimed at women, including the promotion of gender equality in both the private and public spheres. This was reported in the fourth periodic report that was presented before the CEDAW Committee during the 967<sup>th</sup> and 968<sup>th</sup> Sessions.

- *Involvement of Parliament in the implementation of the Convention and the Concluding Observations*

*While reaffirming that the Government has the primary responsibility and is particularly accountable for the full implementation of the obligations of the State party under the Convention, the Committee stresses that the Convention is binding on all branches of the State apparatus. It invites the State party to encourage the National Assembly, in line with their procedures, where appropriate, to take the necessary steps with regard to the implementation of the present concluding observations and the Government's next reporting process under the Convention.*

Some of the work of the National Assembly relating to the implementation of the CEDAW Committee Concluding Observations and Recommendations was reflected through the work of various internal Parliamentary Committees, and other relevant structures. For instance, Parliament's Portfolio Committee on Women, Youth and Persons with Disabilities held two sessions in 2015 and 2016 to deliberate specifically on the country's 5<sup>th</sup> periodic report (2009 – 2014) on compliance with the CEDAW Committee's 2011 Concluding Observations and Recommendations. The Portfolio Committee was focusing on ways in which the issues raised in the report could be addressed. The Committee on Women, Youth and Persons with Disabilities has oversight functions

and interests in the areas of gender-based violence, a pressing area addressed in the CEDAW Concluding Recommendations 24 and 25, Violence Against Women, and through the National Strategic Plan being developed in partnership with members of civil society to address GBV. It was believed that areas identified by the CEDAW could be dealt with.<sup>15</sup> The Home Affairs Portfolio Committee is responsible for oversight of the Department of Home Affairs, among other statutory entities. Therefore, in as far as Article 9, Nationality, this Portfolio Committee has a key role to play in as far as reporting on activities identified and addressed in the CEDAW recommendations thus far, and what still needs to be done in meeting the Observations.<sup>16</sup>

The Health Portfolio Committee is responsible for oversight of the Department of Health, as well as statutory entities such as the Council for Medical Schemes. The Department has vested interests in Article 12 of the CEDAW, Equality in Access to Health Care. Developments to note in this field include the National Health Insurance, a key proposal towards fostering equality in access to healthcare. The work of the Health Portfolio Committee also cuts across Recommendation 35, HIV/AIDS, and Recommendations 37 and 38, Access to Health for Rural Women and Health Education.<sup>17</sup> Unlike other Parliamentary Portfolio Committees, this Committee restricts access to its reports, making it difficult to review and analyse its decisions. Parliament's Portfolio Committee on Social Development is responsible for undertaking oversight work on the Department of Social Development and its statutory entity, the South African Social Security Agency (SASSA). The work of this Committee is relevant for compliance with the CEDAW Committee General Recommendation no. 19, Article 19 of the CEDAW, Rights of the Child, as well as the CEDAW Committee's 2011 Concluding Recommendation 24 for South Africa, that deals with Violence Against Women, and details among others the inadequacies of social support services that impact on measures of necessary shelter for abused women as a result of budgetary constraints. On the country's plans to combat GBV, femicide, violence and murder of children, the Portfolio Committee was briefed on 30 October 2019 by the Department of Social Development on a range of approaches. These approaches encompass two hundred social workers being appointed to provide targeted services to survivors at various social services centres, including at the national network of Thuthuzela Care Centres, and work to enhance the current legal and policy framework to make it more responsive to the needs of survivors of GBV.<sup>18</sup> Also, Parliament's Portfolio Committee on Women, Youth and Persons with Disabilities, which

<sup>15</sup> Parliamentary Monitoring Group (2019). Department of Women, Youth and Persons with Disabilities 2019/20 Annual Performance Plan <https://pmg.org.za/committee-meeting/28801/>. Accessed: 10.01.2020

<sup>16</sup> Parliamentary Monitoring Group (2019). Oversight responsibility of Home Affairs Portfolio Committee <https://pmg.org.za/committee/110/>. Accessed: 10.01.2020.

<sup>17</sup> Parliamentary Monitoring Group (2019). DoH, NHLS & SAHPRA 2018/19 Annual Reports; with Minister & Deputy Minister. <https://pmg.org.za/committee-meeting/29073/>. Accessed: 10.1.2020

<sup>18</sup> Parliamentary Monitoring Group (2019). Plans to combat Gender Based Violence, femicide, violence and murder of children: DSD briefing. <https://pmg.org.za/committee-meeting/29203/>. Accessed: 10.01.2020.

is responsible for conducting oversight work on the programmes of the Department of Women, Youth and Persons with Disabilities<sup>19</sup>, has carried out a number of important activities during the past few years. Among these are: scrutinising the department's annual programme reports on the implementation of its programmes, conducting site visits to various government programme implementation sites, and holding public hearings to assess the impact of these programmes on women's empowerment and gender mainstreaming in the country.<sup>20</sup> African National Congress (ANC) Member of Parliament, Mr. M Dirks, mentioned that the implementation of government plans was a major challenge, and urged Parliament to ensure that implementation of government plans and policies was actually happening.<sup>21</sup> This concern relating to the effective implementation of government plans and programmes is also expressed in the CGE's report on the African Gender Development Index<sup>22</sup> which identified several challenges including limited systematic monitoring of gender mainstreaming activities across government departments, as well as the lack of authority and resources. This undermines the work of government's Gender Focal Points, in terms of influencing departmental decision-making processes relating to issues of concern for women's empowerment.

Parliament and provincial legislatures also have initiatives that hold *Women's Parliament* sessions during the National Women's Month in August. The last meeting was held in 2019, where speakers raised concerns about GBV and human trafficking, stating that government, police and intelligence services need to deal with organised underground crime networks.<sup>23</sup> Other initiatives include debates on the "16 Days Campaign for No Violence Against Women and Children", as well as sessions of "Taking Parliament to the People". These campaigns have proved less than effective in dealing with the scourge of violence against women and children.

<sup>19</sup> Parliamentary Monitoring Group (2016). CEDAW Implementation 5th Report 2009-2014: Department of Women in the Presidency briefing. <https://pmg.org.za/committee-meeting/22592/>. Accessed: 07.10.2019.

<sup>20</sup> Department of Women (2019). South Africa's 5<sup>th</sup> Periodic Report on the Implementation of the Convention on Elimination of All Forms of Discrimination Against Women. 5<sup>th</sup> CEDAW Report 2009-2014, p2.

<sup>21</sup> Parliamentary Monitoring Group (2016). CEDAW Implementation 5th Report 2009-2014: Department of Women in the Presidency briefing. <https://pmg.org.za/committee-meeting/22592/>. Accessed: 07.10.2019.

<sup>22</sup> Commission for Gender Equality (2015). The African Gender Development Index (AGDI)-South Africa Country Report p57.

<sup>23</sup> Parliamentary Monitoring Group (2019). Department of Women, Youth and Persons with Disabilities 2019/20 Annual Performance Plan. <https://pmg.org.za/committee-meeting/28801/>. Accessed: 10.01.2020

## ARTICLE 2

- *Access to Justice*

In providing access to justice, South Africa aligns itself with the international agenda through compliance with international frameworks, such as Sustainable Development Goals 16 and 17, which advocate for partnerships to enhance the quality of service delivery for the benefit of beneficiaries. The country also aligns its actions with the African Union's Agenda 2063, as contained in the government's National Development Plan (also called Agenda 2030). Access to justice is provided for under Sections 35 (2)(c) and Section 35 (3) (g) & (o) of the Constitution of the Republic of South Africa, 1996. Legal Aid South Africa was established in terms of the Legal Aid South Africa Act<sup>24</sup> and came into effect on 1 March 2015. The organisation has a mandate provided by the Constitution to help poor and indigent people to obtain tax-funded legal assistance. Legal aid provides services to anyone who lives in South Africa, including non-citizens, on the following cases:

- Criminal cases;
- Cases that involve children; and,
- Cases that involve asylum seekers – legal aid is available to asylum seekers applying or intending to apply for asylum under Chapters 3 and 4 of the Refugees Act 130 of 1998.

The organisation however does not render services on civil cases for non-citizens.<sup>25</sup>

The key challenge that the CGE noted was that despite the good work that Legal Aid does with limited resources, it does not provide gender disaggregated statistics on who benefits most from its services. This makes it difficult to determine the extent to which women gained access to judicial and legal services, including legal aid. Women are classified as part of the broader vulnerable group category, but the gender-related aspects of access to justice are not clearly articulated. The re-establishment of Sexual Offences Courts was one of the initiatives that government put in place to ensure that victims of sexual offences, who are mostly women, are able to easily access justice.

- *Mobilisation against Traditional Courts Bill*

The Traditional Courts Bill (TCB) was crafted to harmonise the principles of the Bill of Rights with the customary law of the land. The principles of the TCB are based on reconciliation and restorative justice, which promote the values that underlie an open

<sup>24</sup> Act 39 of 2014.

<sup>25</sup> <http://www.legal-aid.co.za/>

democratic society as per the constitutional provisions under the Bill of Rights. The transformation of traditional courts is therefore a constitutional prerogative. This process is aimed at including into the justice system both the new values of the Constitution, as well as customary law – a prominent component of the South African legal system, particularly within the rural and indigenous communities which comprise the majority of the population.<sup>26</sup> The importance of customary law is recognised, as well as the need for it to be refined and aligned with the discourse of the promotion of human rights, including women's human rights.

Among the reasons that led to the stalling of the TCB was the fact that it was discriminatory and not compliant with the provisions of the Constitution on equality and universal access to justice. The Bill denied women the right to talk in those courts, while in some instances they were not allowed to participate in the proceedings at all, purely on the basis of their sex. This led to many submissions to Parliament from activists within the gender sector contesting the provisions of the Bill that seemed inconsistent with the provisions of the Constitution.

The reference group that was set up previously to deal with contested issues had its last meeting on 22 April 2019 to discuss the draft Bill. It was indicated that there was willingness to engage on both sides through this group. Thus far, consensus had been reached on equal participation of women, dispute resolution, jurisdiction boundaries, the scope of authority of traditional courts, legal representation, sanctions, appeal mechanism and accountability, among other matters.

The issues on which parties cannot agree include traditional courts removing the discriminatory provisions and the traditional court system, the powers of traditional leaders, enforcement mechanisms and the balance between tradition/custom and human rights. The Department of Corporate Governance and Traditional Affairs indicated that the Bill should be ready to be sent to Cabinet before it is taken to Parliament.

- National Gender Machinery

*The Committee recommends that the State party expeditiously strengthen its National Gender Machinery, in particular the Ministry for Women, Children and People with Disabilities, in order to ensure a strong institutional mechanism for the promotion of gender equality. In particular, the Committee urges the State party to provide the national machinery with adequate human, financial and technical resources to coordinate the implementation of the Convention, and work effectively towards promoting gender equality. It calls on the State party to*

<sup>26</sup> For more information, see <https://www.parliament.gov.za/news/traditional-courts-bill-set-return-parliament>

*strengthen the linkages between the national, regional and local levels in relation to gender-equality activities, including through the provision of training in gender sensitisation and gender mainstreaming by the South African Management Institute and/or the Local Government Leadership Academy.*

The Ministry for Women was once again re-configured to incorporate other vulnerable categories, including 'youth' and 'persons with disabilities' were moved to the Department of Social Development, in order for the Ministry of Women to focus on the specific socio-economic needs and challenges of women.

The placement of the Ministry under the highest office in the land created an expectation that the challenges of the former DWCPD relating to poor budget allocations, political marginalisation from key economic discussions and ineffectiveness would be remedied. Spokesperson Kenosi Machepe stated that: "Women will be going back under the guidance and watchful eye of the president"<sup>27</sup>. The Ministry, however, failed to live up to these expectations as it remained one of the least funded Ministries in the country<sup>28</sup>. It was also criticised for its lack of institutional direction and for often conflating its mandate with that of the CGE. Another challenge experienced by the Ministry was that it often faced severe public condemnation for its perceived unresponsiveness to issues affecting women, particularly the high rates of sexual violence, femicide and GBV in general. This even led to many commentators, including opposition political parties, calling for its demise, with some stating in their 2019 election party manifestos that they would do away with the Ministry if elected<sup>29</sup>. Civil society organisations on the other hand resorted to drafting a Shadow Framework on the National Strategic Plan for GBV, following then Minister Susan Shabangu's refusal for the Department of Women to lead country efforts on establishing the NSP, stating that they were focusing on the economic empowerment of women.

In the period following the 2019 national and provincial elections, the Ministry for Women was once again combined with other vulnerable categories, and this time with 'youth' and 'persons with disabilities'. This change was put into effect in spite of evidence that shows that when women are grouped together with other vulnerable social groups in government ministries, the focus on women is often lost.<sup>30</sup>

In 2013, the CGE conducted a review of the effectiveness of the National Gender Machinery in the country and reported that there was a challenge of an absence

<sup>27</sup> Rebecca Davis (2014). Analysis: What's going on at the Ministry of Women? Daily Maverick: 13 November 2014 <https://www.dailymaverick.co.za/article/2014-11-13-analysis-whats-going-on-at-the-ministry-of-women/>

<sup>28</sup> The Department's budget remains the smallest budget across all departments and it also received the smallest increase in the 2018/19 financial year, <https://pmg.org.za/committee-meeting/28509/>

<sup>29</sup> Democratic Alliance Elections Manifesto (2019); Freedom Front Plus Elections Manifesto (2019)

<sup>30</sup> Sadie, Y. (2014). Gender policy and legislation during the first 20 years of Democracy, *Strategic Review for Southern Africa*, (36) 2, p111-125.

of a clearly defined set of methods and indicators for measuring and assessing the effectiveness of NGM structures. Furthermore, the report generally agreed with the concluding observations of the CEDAW Committee, that South Africa's NGM is weak, under-resourced and too fragmented to effectively promote gender equality and transformation. The CGE concluded that the NGM needed urgent intervention to have its systems and operations strengthened<sup>31</sup>.

Information obtained from DWYPD in November 2019 reveals that the Department had officially commenced the process of resuscitating the NGM in September 2019<sup>32</sup>. Subsequent to this, the Department produced a draft Framework document on strengthening and reviving South Africa's NGM. The purpose of the Framework as stated on the document is to, amongst several functions mentioned, update the National Gender Policy Framework, as well as to strengthen and revive the structural mechanisms of the NGM.<sup>33</sup> The document addresses issues raised by the CEDAW Committee, particularly the issue of strengthening the human, financial and technical resources of the NGM. There is a lack of clarity as to why the DWYPD assumed leadership over the resuscitation of the NGM, as it is only one of the many institutions involved with it.

At the time of writing this report, DWYPD was conducting consultation workshops on the draft Framework with various stakeholders, particularly those institutions/organisations that form part of the NGM, to obtain their views and gain their support on participating in the processes of reviving the NGM<sup>34</sup>. It is worth mentioning that the draft Framework document was preceded by a series of NGM Forum meetings convened by the DWYPD. Based on the Framework, the NGM Forum, which is to be made up of a number of institutions - including government, Parliament, independent bodies and civil society - has the responsibility for managing gender mainstreaming and its related processes in public and private institutions, and to broaden sectoral participation in the National Gender Programme<sup>35</sup>. Given that the revitalisation of the NGM was still at an infancy stage when this report was compiled, a detailed analysis of the structure's effectiveness could not be conducted. However, information provided in this section clearly demonstrates that there are processes underway to resuscitate and strengthen the NGM.

South Africa's 5<sup>th</sup> CEDAW periodic report reveals that the linkage between the three spheres of government (national, provincial and local spheres) with regards to gender-equality activities exist, and that the linkage also exists in terms of training institutions

<sup>31</sup> CGE (2013). Evaluating effectiveness of National Gender Machinery in South Africa (Commission for Gender Equality, Concept note).

<sup>32</sup> Information obtained from an official from the DWYPD, December 2019.

<sup>33</sup> DWYPD (2019). Framework on South Africa's National Gender Machinery.

<sup>34</sup> Information obtained from an official from the DWYPD, December 2019.

<sup>35</sup> DWYPD (2019). Framework on South Africa's National Gender Machinery.

to facilitate gender mainstreaming training<sup>36</sup>. This information, however, could not be verified by the CGE.

### ARTICLE 3

- *Guarantee of Human Rights and Fundamental Freedoms*

*Measures to address harmful traditional practices: More vigorously address harmful practices, such as Ukuthwala, polygamy, the killing of witches, and the practice of female genital mutilation among certain populations.*

It is important to highlight that South Africa is a heterogeneous society with different ethnic groups which have their respective traditional practices that they believe in. This is an element of their respective identities. The Commission for Gender Equality, through different studies conducted with regard to the guarantee of human rights and fundamental freedoms, has found out that in many cases there is thin line between these practices and the violation of human rights. This has demonstrated an urgent need for the harmonisation of customary law with the constitutional provisions protecting human rights to minimise violations that occur within different ethnic groups in the name of traditional practices. Some of these practices include:

- *Ukuthwala*

The original purpose of *Ukuthwala* was based on a romantic and idealistic notion involving two people who want to be together, while facing familial and societal disapproval. The practice has its roots in historic cultural tradition where such a practice was widely accepted provided it was done in line with accepted norms and standards. However, over the past three or so decades the practice has evolved significantly and became distorted or deviated from its original purpose and function.<sup>37</sup> In recent times, it has come to be used to hide illegal practices, particularly abduction or kidnapping of underage girls or young women/girls against their will, with the intention of compelling the families of those young women or girl's to endorse such forced relations or coercive actions.<sup>38</sup>

Given the above characterisation of the current practice of *Ukuthwala*, South Africa regards the abuse of *Ukuthwala* as a harmful practice that robs children of their childhoods and impacts negatively on health, development and the right to gender

<sup>36</sup> RSA (2015). South Africa's 5<sup>th</sup> Periodic Country Report (2009-14) on the implementation of the Convention on the Elimination of all Forms of Discrimination Against Women.

<sup>37</sup> Commission for Gender Equality (2013). *Ukuthwala in KwaZulu-Natal: An Investigation into State Prevention and Responses*.

<sup>38</sup> *Ibid.*

equality.<sup>39</sup> This practice is tantamount to forced marriage, which is illegal. Even though *Ukuthwala* has not been criminalised there are a number of pieces of legislation that are used to charge perpetrators of this crime, such as the Combating and Prevention of Trafficking in Persons Act<sup>40</sup>.

As already highlighted above, there are numerous of pieces of legislation which seek to address issues related to the false practices of *Ukuthwala* such as:

- Criminal Law (Sexual Offences and Related Matters) Amendment Act<sup>41</sup>, which states that having a sex with a child without her consent following her kidnapping and abduction (*Ukuthwala*) constitutes rape in violation of section 15 of the Act;
- Section 17 of the same Act prohibits the sexual exploitation of children by their parents and others; and
- Recognition of Customary Marriages Act<sup>42</sup>, states that both the bride and the groom must consent to a marriage. The age of consent is 18 years, while on the other hand in the practice of *Ukuthwala*, there is no consent.

Despite several pieces of legislation being enacted, the practice of *Ukuthwala* which results in the abduction of young women, is still rife in some parts of the country, especially among the Nguni-speaking groups. It is noteworthy to state that, there is no specific law against *Ukuthwala* in South Africa. This has resulted in the South African Law Reform Commission (SALRC) issuing a discussion paper<sup>43</sup> and is currently developing a Bill in this regard. The main objective of the Bill is to determine whether to abolish or regulate the practice.<sup>44</sup> The proposed Bill has not yet been submitted to Parliament. Meanwhile, young women are still subjected to *Ukuthwala* and human rights violations by perpetrators.

There are, however, instances of cases involving *Ukuthwala* being brought before a court of law. such as a case where the Mokerong Regional Magistrate in Limpopo sentenced a 57-year-old man who married a 13-year-old girl to five years imprisonment.<sup>45</sup> There are other cases whereby older men have been charged and sentenced for subjecting young girls to the practice of *Ukuthwala*.

<sup>39</sup> RSA (2015), South Africa's 5<sup>th</sup> Periodic Country Report, op.cit.

<sup>40</sup> Act 7 of 2013.

<sup>41</sup> Act 32 of 2007.

<sup>42</sup> Act 120 of 1998.

<sup>43</sup> South African Law Reform Commission (2015), MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION: THE PRACTICE OF UKUTHWALA. (<https://www.justice.gov.za/salrc/media/20151028-prj138-ukuthwala.pdf>), accessed on 16/03/2020

<sup>44</sup> RSA (2015), South Africa's 5<sup>th</sup> Periodic Country Report, op.cit.

<sup>45</sup> Court details for citation of this case not specified in court records

- *Recognition of Polygamy in South Africa*

In terms of the RCMA, polygamous marriages are recognised and protected. However, Section 7(1) of the RCMA was declared unconstitutional in 2017 as it was determined to be discriminatory to women in customary marriages, particularly those in polygamous marriages. The Constitutional Court, in the case of *Ramuhovhi and Others v President of the Republic of South Africa and Others*<sup>46</sup>, has confirmed an earlier judgment of the Limpopo High Court which determined that Section 7(1) of the RCMA was unconstitutional. Section 7(1) states that “the proprietary consequences of customary marriages entered into before the commencement of this Act continue to be governed by customary law”. In other words, women in customary marriages married prior to the Act coming into force had no marital property rights.<sup>47</sup>

The judgment in the case of *Ramuhovhi and Others v President of the Republic of South Africa and Others* resulted in the drafting of the Recognition of Customary Marriages Amendment Bill, approved for submission to parliament by Cabinet on 24<sup>th</sup> July 2019. The new Bill provides for the equal treatment of women in monogamous and polygamous customary marriages in South Africa. Once passed into law, this will mean that women married in customary marriages would enjoy joint and equal rights over marital property.<sup>48</sup>

- *Killing of “witches”*

The practice of witchcraft is as old as humankind.<sup>49</sup> It is alleged to have been practiced by most rural communities throughout the world. From early Christian times, witchcraft was associated with evil and was regarded as a rebellion against God or a rejection of the Christian religion.<sup>50</sup>

In South Africa, before witchcraft was regulated by law, the practice was largely regulated and dealt with by the traditional courts.<sup>51</sup> Traditional courts handed down sentences that ranged from beatings to death.<sup>52</sup> In some instances, guilty parties were banished from the village or supposedly “cured”.<sup>53</sup> After the promulgation of the Witchcraft Suppression Act<sup>54</sup>, cases involving witchcraft were adjudicated by the

<sup>46</sup> *Ramuhovhi and Others v President of the Republic of South Africa and Others* (CCT194/16) [2017] ZACC 41 (30 November 2017)

<sup>47</sup> Tomlinson Mnguni Attorneys. <https://www.tmj.co.za/News/Read/120167>. Accessed: 31/01/2020

<sup>48</sup> Nkanjeni, U (2019). ‘The new customary marriages law: what you need to know’. <https://www.timeslive.co.za/news/south-africa/2019-07-29-the-new-customary-marriages-law-what-you-need-to-know/>. Accessed: 29/07/2019

<sup>49</sup> South African Law Reform Commission (2014). *The Review of the Witchcraft Suppression Act 3 of 1957*, Issue Paper 29.

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Ralushai Commission Report 51.

<sup>53</sup> Ibid

<sup>54</sup> Act 3 of 1957.

courts.<sup>55</sup> Despite the Act being promulgated, people are still falling victim to witch hunts in South Africa. It has been well documented that witchcraft killings have reportedly targeted older women. More often, witchcraft allegations can profoundly impact those accused by subjecting them to harassment, violence, and even death.

As already mentioned, South Africa has an Act promulgated to deal with the issues of witchcraft. There are numerous complaints about the Act, especially that it lacks a definition of witchcraft, the very thing it seeks to regulate.

- *Female genital mutilation (FGM)*

The World Health Organisation does not list South Africa as a country where FGM is practised<sup>56</sup>, while the CGE CEDAW Report<sup>57</sup> states that FGM exists in South Africa in cultural groups from outside the country, especially prevalent in certain geographical areas such as Limpopo and Mpumalanga provinces. It is difficult to source information on this subject as it is regarded as confidential, and those communities who practice it consider it a taboo to discuss it. This makes it even more difficult to investigate FGM within different ethnic groups where it is alleged to be practiced. Migrants in South Africa, including Sudanese and other African communities, continue practising FGM.<sup>58</sup>

South Africa has over the years enacted legislation to address FGM, to supplement the aforementioned Acts which were already in place. An example of this is the Promotion of Equality and Prevention of Unfair Discrimination Act, known as the Equality Act<sup>59</sup>, which outlaws discrimination of any person on the grounds of gender and culture, including FGM. Under section 12(2) (a), the Children's Act<sup>60</sup> explicitly prohibits genital mutilation or circumcision of female children, as opposed section 8(b) of the Equality Act, which only prohibits discrimination based on FGM.<sup>61</sup>

South Africa's 5th Periodic report is therefore silent on this issue that still exposes young women and girls to the violation of their rights to privacy, dignity and personal integrity. Consequently, this violates the South African Constitution in terms of the provisions relating to privacy and dignity, among others. It is also worth noting that South Africa is a state party to the African Charter on Human and People's Rights on the Rights of Women, which is a progressive instrument that has contributed towards promoting African women's human rights. Article 3 of the Protocol provides for the elimination of harmful practices, echoing the provisions of the CEDAW in this regard.

<sup>55</sup> South African Law Reform Commission (2014), *op.cit.*

<sup>56</sup> Kitui, B (2012). *Female Genital Mutilation in South Africa.*

<sup>57</sup> Commission for Gender Equality (2013). *Measuring South Africa's Progress Under the Convention on the Elimination of all forms of Discrimination Against Women.*

<sup>58</sup> *Ibid*

<sup>59</sup> Act 4 of 2000.

<sup>60</sup> Act 38 of 2005.

<sup>61</sup> Kitui, B (2012). *Op. cit.*

## ARTICLE 4

- *Temporary Special Measures*

The country report omits the existence of the Commission for Gender Equality which is a Constitutional body that is established with other institutions promoting democracy under Section 181 of the Constitution, and its mandate is articulated under Section 187 as well as in the Commission for Gender Equality Act Number 39 of 1996. One key mandate of the CGE as established is to monitor and evaluate the implementation of gender transformational regulatory frameworks to ensure promotion of gender equality in both the private and public spheres of life in the South Africa.

## ARTICLE 5

- *Sex Role Stereotyping and prejudice*

*Accelerate the implementation without delay of a comprehensive strategy, including review and formulation of legislation and establishment of goals and timetables, to modify or eliminate harmful practices and stereotypes that discriminate against women, in conformity with articles 2(f) and 5(a) of the Convention. Such measures should include efforts to raise awareness of this subject, targeting women and men at all levels of society, including traditional leaders, in collaboration with civil society.*

As far as harmful practices and stereotypes that discriminate against women are concerned, the country's 5<sup>th</sup> CEDAW report states that government has developed a Medium-Term Strategic Framework (2014-2019) that comprises 14 outcomes which focus on nation building and social cohesion. This Framework does not address issues of harmful practices and stereotypes that discriminate against women. The document touches on several issues, including economic growth and good governance. However, it does not touch on any efforts by government to address harmful practices and stereotypes that discriminate against women.

Nonetheless, there are court judgments that have sought to address some of the discriminatory actions of state institutions, including the school system and schools. A court ruling on the case between the *Head of Department of Education, Free State Province v Harmony High School*<sup>62</sup> is a key example in this regard. The high school had a policy which stated that pregnant girls must be absent from school for a certain period of time. The policy allowed teenage fathers to continue with their studies uninterrupted. In some instances, the policy insisted that pregnant girls be dismissed from school and,

<sup>62</sup> *Head of Department, Department of Education, Free State Province v Welkom High School and Another; Head of Department, Department of Education, Free State Province v Harmony High School and Another* (CCT 103/12) [2013] ZACC 25; 2013 (9) BCLR 989 (CC); 2014 (2) SA 228 (CC) (10 July 2013)

on returning to school after the pregnancy, were compelled to repeat the year of study missed due to the pregnancy.<sup>63</sup> The court found that the policy was discriminatory against the female learners and ruled that such policies be reviewed.

It is important to note that there are cases where young women are still discriminated against and nothing has been done to correct this. Research details that girls are socialised to become home keepers and child-bearers, placing less value on their educational attainment. For example, a study by the HSRC has found that this ranges from daily school practices that may discourage girls from pursuing studies in mathematics, science and other technical subjects, to the gendered norms regarding the domestic and physical labour of keeping the classrooms clean.<sup>64</sup> It then goes without saying that due to the gendered division of roles in the household and in society at large, which has a considerable bearing on educational access, girls are less likely to enrol in school, and are more likely to drop out and end up illiterate.<sup>65</sup> This is usually more evident in rural areas than in urban areas where women are most likely to know about their rights and can fight for them.

- *Use innovative and effective measures to strengthen understanding of the equality of women and men, and work with the media to enhance a positive, non-stereotypical and non-discriminatory portrayal of women.*

Peoples and institutions from all walks of life, including government, civil society organisations, the media, faith based organisations, have come together to raise awareness on the negative impact caused by violence against women and children in our country.<sup>66</sup>

Public education through media education campaigns, such as television adverts on LGBTQIA+ issues, *Ukuthwala*, etc<sup>67</sup> have reached many people across South Africa. However, this is not enough as escalating cases of child marriages demonstrate the staunch cultural believe on the perceived customary legitimacy of the current practice of *Ukuthwala*, despite the fact that the practice often violates children's human rights. Government, trades unions and civil society organisations have advocated for the infusion of issues related to GBV into the school curriculum as this would serve to educate society and create a mind-shift regarding the damage caused to society by violence against women and children. It is hoped that this approach might get rid of toxic forms of masculinity from society through socialisation and education, and that the school system would play a critical role in this regard.

<sup>63</sup> RSA (2015) SA 5<sup>th</sup> Periodic Country Report, Op.cit.

<sup>64</sup> Human Sciences Research Council (2014). Gender inequalities in education in South Africa. Policy Brief.

<sup>65</sup> Ibid

<sup>66</sup> RSA (2015). South Africa's 5<sup>th</sup> Periodic Country Report, op. cit.

<sup>67</sup> Ibid

Furthermore, government came up with the Ndabezitha Izimbizo Project which is part of the broader Ndabezitha Programme. This is an initiative led by the NPA Sexual Offences and Community Affairs Unit in partnership with the Department of Justice and Constitutional Development's Chief Directorate of the Promotion of the Rights of Vulnerable Persons, the National House of Traditional Leaders and the Malibongwe Women's Development Organisation.<sup>68</sup> It is basically a public awareness and legal education initiative aimed at empowering rural communities on the issues of domestic violence. It is a project that seeks not only to bridge the gap in service provision between urban and rural communities, but also between men and women, and boys and girls.<sup>69</sup>

- *Report, in its next periodic report, on any developments regarding consultations on legislation to prohibit Ukuthwala, which is being conducted by the South African Law Reform Commission.*

The South African Law Reform Commission (SALRC) held public consultations with various stakeholders throughout the country on *Ukuthwala*. As indicated above, the consultations led to the development of the Discussion Paper 32, Project 139: The Practice of *Ukuthwala*. The discussion paper incorporates the draft Bill on the subject matter *Ukuthwala*. At the time when this report was drafted the SALRC indicated that it was waiting for the Minister of Justice and Constitutional Development to meet with them to discuss the paper and the proposed Bill before it is tabled in Parliament.<sup>70</sup> It is doubtful that by the time the country reports back to the CEDAW Committee, a law banning *Ukuthwala* would be in place.

- *The Committee calls upon the State party to take the necessary actions to amend the Children's Act with the aim of prohibiting virginity tests for girl children, irrespective of their age, and to design and implement effective education campaigns to combat traditional and family pressures on girls and women in favour of this practice, in order to comply with its international obligations, including under the Committee's General recommendation No. 19 (1992) and Article 19 of the Convention on the Rights of the Child, which states that State parties shall take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse.*

<sup>68</sup> South African Government. <https://www.gov.za/ndabezitha-izimbizo-project>. Accessed: 14/2/2020

<sup>69</sup> Ibid

<sup>70</sup> Telephonic Interview held with SALRC official on the November 2019

Section 12 of the South African Children's Act<sup>71</sup> deals with social, cultural and religious practices, and states the following:

- Section 12 (1) Every child has the right not to be subjected to social, cultural and religious practices which are detrimental to his or her wellbeing; and,
- Section 12(4) Virginity testing of children is prohibited.

The Children's Act was amended in 2007, the amendment focusing only on adoption. The Act has included the prohibition of virginity testing as per CEDAW Recommendations, yet there is a specification on the age of those being tested. According to the Act, children below 16 cannot be tested while children above 16 may be tested, provided there is consent and that counselling is provided. Even with the current legal prohibition on virginity testing of children below the age of 16, such practices continue unabated in many communities in the country. An example of this are certain Zulu-speaking people, where this practice is fiercely defended by traditional authorities and leaders as an integral part of the Zulu culture.<sup>72</sup>

Many gender and women's rights advocacy groups, including institutions supporting constitutional democracy such as the CGE and the SAHRC, have been and continue to demand a total ban on the practice of virginity testing. However, these practices persist, in some cases with the support of some local state institutions. For example in 2016 the media carried reports of a bursary scheme (the so-called Maidens Bursary Scheme) offered to girls by the UThukela District Municipality in KwaZulu-Natal, on condition that the girls underwent virginity testing and remained virgins for the duration of the scheme.<sup>73</sup> The girls were also required to undergo regular virginity testing each time they returned home after the holidays, and were told they would lose their bursaries if it was determined that they had engaged in sexual activity.<sup>74</sup> An investigation by the CGE in 2016 found that the UThukela District Municipality had not only violated the law, but had also engaged in acts that were discriminatory on the grounds of sex, and therefore violated the constitutional rights of the female students involved. The municipality was compelled, on the basis of recommendations drafted by the CGE, to review the bursary scheme and abolish the gender discriminatory aspects of the scheme.<sup>75</sup>

<sup>71</sup> Act 38 of 2005.

<sup>72</sup> Fact Sheet No.23, Harmful Traditional Practices Affecting the Health of Women and Children (not dated)

<sup>73</sup> Biyela, N.A (2018). Virginity testing as women empowerment: A Case Study of the UThukela District Municipality's Virgin Bursary Scheme

<sup>74</sup> The Guardian: 17<sup>th</sup> June 2016. 'South Africa's 'virgin bursaries' ruled unconstitutional'

<sup>75</sup> Biyela, N. A. (2018), op.cit.

- *Violence against women*
- *Give priority attention to the results of the report of the study, commissioned by the Government and conducted by the Centre for the Study of Violence and Reconciliation, which addresses the prevalence, nature and causes of sexual violence in South Africa (released in November 2010), in order to review the State party's multi-sectoral action plan to combat violence against women, and expeditiously adopt comprehensive measures to better address such violence, in accordance with the Committee's General recommendation No. 19.*

One of the key policy and institutional developments introduced by the government in the wake of the CEDAW Committee Recommendations was to respond to the Committee's Recommendation of South Africa's last reporting period in the 967<sup>th</sup> and 968<sup>th</sup> Sessions of 2011. This called upon the country to establish an independent gender-based violence coordinating structure in line with General Recommendation 19. The government established the National Council on Gender Based Violence and formally launched it on 10 December 2012.

The NCGBV was established to function as a multi-sectoral strategic body that coordinates, monitors and evaluates the implementation of all national strategies and programmes to combat GBV. Despite good intentions, the NCGBV did not last for more than two years, and met its demise soon after the 2014 general elections. Among the reasons for its failure were the following: unclear legal and institutional status, lack of independence, limited resources and funding which further affected capacity, and the lack of diversity among its civil society role players due to the dominance of government.

On the 1 August 2018, civil society organisations, gender activists and ordinary women across the country embarked on marches, demanding that President Cyril Ramaphosa place the issue of GBV on the national agenda. One of the demands that were put forward as part of the protests was the need for the re-establishment of an independent National Structure to coordinate GBV-related work. The protests led to the first ever Presidential Summit on GBV and Femicide which was hosted in November 2018. The summit led to a Declaration<sup>76</sup> that was signed and launched by the President in March 2019. Part of the summit resolutions was an agreement to establish an interim committee that would work towards the establishment of a permanent structure. The interim committee was established in early 2019 and was at the time of writing this report still engaged in the process of establishing the ultimate structure.

<sup>76</sup> Declaration of the Presidential Summit against Gender-Based Violence and Femicide (2 November 2018).

At the same time as national efforts to re-establish a national council on GBV, there were also efforts (based on nation-wide consultations led by the interim committee on GBV) to develop a National Strategic Plan (NSP) to combat GBV. These efforts are at an advanced stage and there is great anticipation regarding the official launch of the NSP.

Another significant response from government in the wake of the CEDAW Committee Recommendations has been the formulation of Outcome 3 of the government's National Development Plan (NDP), which was introduced in 2011. The NDP Document, under the Chapter titled 'Creating Safer Communities', makes reference to the goal of ensuring that "all people in South Africa are and feel safe". This should be seen in the context of huge numbers of South Africans, women in particular, not feeling safe in their country. For instance, in 2015/16, Statistics South Africa figures revealed that 70% of all South Africans felt unsafe at night during that period<sup>77</sup>. Also, statistics released by the SAPS, have shown that there was an increase in the number of women murdered in 2018 (291 more) compared to the 2017 figure. In total, for 2017/18, 2,930 women were murdered in South Africa. Thus, government's intention of making South Africans, particularly women, feel safe continues to face enormous challenges on the ground, given the rate of femicide and the worrying degree of GBV in the country.

In 2014/15 the government, through the NCGBV and the Ministry of Women, commissioned a review of the *365 Days of Action National Action Plan*. This was in the wake of the study/assessment of the programme carried out by the CGE, which revealed numerous operational and systemic problems that undermined the implementation of the National Action Plan<sup>78</sup>. However, this review was not implemented.

In 2013/14, government did attempt to formulate an NSP to combat GBV, but these efforts did not bear results. Prior to this attempt at developing the NSP, the government had commissioned a number of studies to uncover the underlying causal factors of GBV in the country. These studies were intended to inform the process of developing the NSP. However, these studies were never made public, and the NSP was never developed, thus prompting civil society organisations to embark on their own Shadow NSP which was completed and disseminated. This was rejected by government.

<sup>77</sup> News24 (2017). Nearly 70% of South Africans feel unsafe at night - Stats SA. <https://www.news24.com/SouthAfrica/News/nearly-70-of-south-africans-feel-unsafe-at-night-stats-sa-20170214>. Accessed: 09.09.2019.

<sup>78</sup> CGE (2012). *365 Days of Action to end Violence against Women and Children: Assessing Progress on the implementation of the National Action Plan (2007-2011)*, (Commission for Gender Equality, Research Report).

CGE (2013). *Out of mind or out of sight? Reviewing the implementation of the 365 Days of Action to End Violence against Women and Children*, (Commission for Gender Equality, Research Report).

Also, in 2013/14 the Department of Social Development introduced the integrated Programme of Action (IPOA) which was intended to bring together and coordinate the activities and programmes of several departments - including the South African Police Service, Justice, Health and Education - aimed at addressing the scourge of GBV. However, the implementation of the IPOA suffered several operational and other challenges, including lack of cooperation by other departments, poor coordination, limited capacity and poor resource allocation<sup>79</sup>.

In 2013, the government took a decision to re-establish the Sexual Offences Courts in South Africa following the passing of the Judicial Matters Second Amendment Act<sup>80</sup>. The amendment included Section 55A, that provides the Minister of Justice and Correctional Services the authority to designate a court as a Sexual Offences Court, and for government to develop regulations relating to the resourcing and management of these courts. Initially, government had intended to establish a total of 54 Sexual Offences Courts across the country. Currently, the number of Sexual Offences Courts in the country is 74. While this number exceeds the initial target, it is still relatively small given the scale of reported sexual offences and GBV in general in the country.

- *Raise public awareness, through the media and education programmes, on the fact that all forms of violence against women are a form of discrimination under the Convention, and therefore a violation of women's rights.*

A number of awareness-raising programmes have been initiated by government and civil society over the years. Many of these interventions have obviously not yet borne much fruit as the country continues to face an unyielding or even escalating scourge of violence against women and children.

The country continues to direct significant public resources towards the annual 16 Days of Activism for No Violence Against Women and Children Campaign, as one of its strategies to address the scourge<sup>81</sup>. Over the past 21 years, more and more government departments and state institutions have developed programmes and organised activities during this campaign to draw attention to the scourge of GBV and the situations of women in South Africa. Although its duration is short – conventionally 25 November to 10 December - and appears to lack sustained focus beyond this period. The campaign remains popular among various role players, including government, civil society organisations, the media, faith based organisations, and others<sup>82</sup>. While it

<sup>79</sup> CGE (2015). Painting over old cracks? Assessing current programmes to combat gender-based violence, (Commission for Gender Equality, Research Report).

<sup>80</sup> Act 43 of 2013.

<sup>81</sup> Parliament of the Republic of South Africa. <https://www.parliament.gov.za/project-event-details/3>. Accessed on 09/09/19

<sup>82</sup> RSA (2015), South Africa's 5<sup>th</sup> Periodic Report, Op. cit.

can be argued that the campaign's success rests on daily individual and collective actions to safeguard society against the cycle of abuse, the 16 Days of Activism Campaign has not yielded the intended results as the crisis of violence against women and children continues unabated.

The *365 Days of Activism Campaign* stems from the *16 days of Activism Campaign*. The National Action Plan (NAP) of *365 Days of Activism* was launched in 2007. The purpose of this campaign was to combat GBV in South Africa and beyond. It was initially implemented in partnership with the media and members of society, including men, to join hands with government against the scourge with the theme #CountMeIn<sup>83</sup>.

The life span of this campaign was short, lasting for only five years. This was due to some government departments completely abandoning the implementation of the NAP. The *365 Days of Activism Campaign* was relaunched in 2019, again as an extension of the *16 Days of Activism Campaign* which had ended a day before this relaunch. The campaign was launched by the Department of Women, Youth and Persons with Disabilities, along with UN Women and the 1st for Women insurance company. Although the campaign was not accompanied by any clear and costed plan of action, it was seemingly reintroduced to maintain focus on the subject of GBV beyond 16 days.

Another campaign that was introduced was led by South African men known as the *100 Men March*, undertaken in July 2018. It was aimed at raising awareness and getting men to join in fighting the crisis of violence against women and children. This was immediately followed by the #TotalShutdown marches, which took place on 1 August 2018. Participants in the March presented a set of 24 demands to President Ramaphosa, one of which was that the President should convene a GBV Summit, as discussed above.

The government then convened the two-day summit in Centurion, Tshwane, in November 2018, together with civil society organisations, in an effort to find ways to address the problem. Several resolutions were adopted, including the need to re-establish a new National Structure to coordinate national efforts to combat GBV. While the summit sought to raise public awareness and place on record government's unequivocal determination and commitment to deal with GBV, the impact of the summit is yet to be realised.

As indicated previously (under discussion on Article 5), media education campaigns have been conducted in the form of television adverts on LGBTQIA+ issues, *ukuthwala* and related matters<sup>84</sup> which have reached many communities in the country even

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<sup>83</sup> Ibid

<sup>84</sup> Ibid

if such actions have clearly not been adequate. More focussed public campaigns, including coordinated efforts and collaboration with the media and civil society organisations across a range of sectors - including schools, churches and other mass-based organisations - are necessary to reach across the country with messages against the crisis of GBV in South Africa.

- *Mechanisms of accountability to ensure implementation of provisions of policies and legislation related to combating GBV/VAWC against women in South Africa*

Several mechanisms of accountability exist to ensure the implementation of provisions of policies and legislation related to combating GBV/VAWC in South Africa. These include the DWYPD, National Gender Machinery, the Parliamentary Portfolio Committee on Women, the CGE and the South African Human Rights Commission. However, many of these mechanisms have not yielded the desired results, with members of civil society expressing discontent, particularly with the DWYPD<sup>85</sup>, for failing to ensure the implementation of policies, legislation and programmes related to combating violence against women.

The DWYPD has, since its inception in 2009 and under numerous Ministers, lacked the relevant authority and resources to strategically position violence against women as a national priority. Previously, when the department was known as Department of Women, Children and Persons with Disabilities (during the period 2009-2014), it had championed the establishment of the NCGBV, which would serve as the main GBV coordinating structure, to ensure that there is effective implementation of relevant policies and legislation. As has already been indicated, the NCGBV failed. The NCGBV faced several structural and operational challenges. In terms of structural issues, the NCGBV faced problems with unresolved internal leadership, independence and institutional direction; lack of clarity on relations with the DWCPD; lack of institutional capacity to coordinate national programmes on GBV; unresolved funding limitations (limited state support and donor funding); lack of direction on determining the way forward on the 365 Days of Action to End Violence against Women and Children (NAP 5-year cycle ended 2011); persistent conflicts amongst primary stakeholders (government and civil society); weak secretariat and administrative support - NCGBV lacked its own administrative component; and unresolved issues relating to transparency on financial reporting and accountability to stakeholders. The operational challenges were vast. These included the Council facing issues of a lack of a clear and comprehensive operational programme, plans and budget, it failed to timeously appoint a CEO and it failed to develop a National Strategic Plan (NSP).

<sup>85</sup> Formerly known as the Department of Women.

In terms of the NGM, the most common or recurring finding revealed in different studies is the challenge of a lack of financial and personnel resources, and non-accountability<sup>86</sup>. The CEDAW Committee had also found in its analysis of the country's combined second, third and fourth periodic reports at its 967<sup>th</sup> and 968<sup>th</sup> Sessions in 2011, that South Africa's NGM was institutionally weak and ineffective. It is therefore important to re-engineer the role of the CGE within the NGM to contribute in the strengthening of the NGM. It is the responsibility of the Commission to assess the effectiveness of the existing NGM, and how best to interact with this.

Parliament is an important institution for ensuring government's accountability for implementing policies, legislation and programmes to combat GBV. The Portfolio Committee on Women in the Presidency also plays a role of holding accountable not only the Ministry for Women, but also the CGE and other institutions and government departments whose roles and responsibilities have an impact on the implementation of policies and legislations aimed at promoting gender equality and protecting the rights of women and other vulnerable gender groups.

The CGE plays an important role and function in the monitoring and assessing of compliance with gender policies and legislation by government departments and other executive agencies. While the CGE does not have the power to hold government departments directly accountable, its assessment reports and other activities to monitor compliance with gender legislative frameworks are regularly submitted to Parliament to be used as critical resources in Parliament's oversight and accountability functions over government and its departments.

The SAHRC also plays an important role in terms of ensuring that South Africans of all genders enjoy their rights as enshrined in the Constitution, including the right to gender equality. The SAHRC carries out investigations of reported human rights violations, including violations of women's rights.

- *Budget allocations for the implementation of various projects, programmes, including social support services for victims*

State budgeting for the implementation of GBV-related projects and programmes is currently unsystematic and obscure. This is despite the existence of progressive legislation such as the Domestic Violence Act<sup>87</sup> and the Criminal Law (Sexual Offences

<sup>86</sup> Sadie, Y. (2014). Gender policy and legislation during the first 20 years of Democracy, Strategic Review for Southern Africa, (36) 2, p111-125.

CGE (2013). Evaluating effectiveness of National Gender Machinery in South Africa (Commission for Gender Equality, Concept note).

<sup>87</sup> Act 116 of 1998.

and Related Matters) Amendment Act<sup>88</sup>, which place a duty on government departments to provide several services to survivors of abuse. It is however not clear how much government spends on the implementation of such legislation<sup>89</sup>.

Additionally, and as already mentioned, South Africa has adopted or created a number of plans, strategies, and institutions to address the crisis of VAWC; these include the National Action Plan on the *365 Days of Action to End Violence Against Women and Children* (2007-2011), the Victim Empowerment Programme, the Service Charter for the Victims of Crime, the National Council on Gender Based Violence, and the Department of Social Development's Integrated Programme of Action for Addressing Violence Against Women and Children; the National Task Team (NTT) on Gender and Sexual Orientation-Based Violence Perpetrated Against LGBTQIA+ individuals; TCCs; victim friendly rooms in police stations; shelters for survivors of GBV; Green Doors and White Doors programme<sup>90</sup>; Sexual Offences Courts; and others. The CGE has through a number of research assessments<sup>91</sup> determined that these initiatives were neither costed nor appropriately budgeted for, which led to government's failure to implement them.

According to KPMG<sup>92</sup>, "assuming that one in five women experience violence within the year, the minimum annual cost to the South African economy of that violence is R28.4 billion". The same report estimated that government had spent R513,551,244 on GBV-related programmes by the South African Police Services (SAPS), the Department of Justice and Constitutional Development (DOJ), the Department of Health (DOH), the Department of Social Development (DSD), and the National Prosecuting Authority (NPA), combined in the 2013/14 financial year. KPMG however, acknowledged that some of the expenditure could have fallen through the cracks, as GBV budgeting and spending are often not properly itemised/stipulated.

In July 2013, the Parliamentary Committee on Women, Children and People with Disabilities sent a list of questions to the SAPS, DOJ, DOH and the DSD relating to their spending levels on GBV. Parliament researchers further conducted site visits to a Thuthuzela Care Centre (TCC), a police station, a Family Violence, Child Protection and

<sup>88</sup> Act 32 of 2007.

<sup>89</sup> Thorpe, J. (2014). Financial year spending estimates on gender-based violence by the South African Government. South African Parliament.

<sup>90</sup> This is a national and provincial programme involving the provision of safety houses or shelters for abused women, girls, children and other victims of domestic violence/assault in the country to receive assistance in the form of assessments and referrals to other support services including police.

<sup>91</sup> CGE (2015). Ship without a captain: Assessing Departmental responses to CGE findings on the Victims Charter (Departments: Social Development, Health and Correctional Services), (Commission for Gender Equality, Research Report).

CGE (2016). Struggling to meet the ends of justice: Assessing Departmental Responses to CGE findings on the Victims Charter (Departments: Justice, NPA & SAPS), (Commission for Gender Equality, Research Report).

<sup>92</sup> KPMG (2014). Too costly to ignore: The economic impact of gender-based violence in South Africa (KPMG Report).

Sexual Offences unit (FCS), and a court in order to obtain information on the spending needs and requirements of these institutions and to supplement the information already obtained by parliament from these institutions to supplement information obtained through parliamentary question sessions. Only two departments (SAPS and DOJ) responded to the questions and the reported costs were R106,855,823 by the DOJ and R40,604,988.58 by the SAPS for the 2013/14 financial year. These amounts, however, were based on money spent for the financial year, and did not reflect the actual costs necessary to render effective GBV-related services by the departments<sup>93</sup>.

The abovementioned government departments, as well as the Department of Correctional Services (DCS), are the departments through which the state discharges its responsibility towards addressing GBV; and as already alluded to, the majority of these departments do not itemise spending on GBV in their budgets. For example, GBV-related training for prosecutors falls within the broader budget of training within the NPA; and salaries of health officials who assist survivors of GBV, but who also deal with a wide range of issues, are not separated in terms of work done with survivors in the DOH. Furthermore, government departments provide periodic funding to non-governmental organisations that deliver services related to violence against women. It is not clear how much of the state funding goes into these organisations<sup>94</sup>.

This lack of clarity on the costing and budgeting around GBV in departmental budgets creates a situation whereby it becomes difficult to evaluate the capacity of state funding in order to assess its sufficiency, and any gaps which exist. It is however clear from research studies, including CGE's own assessments<sup>95</sup>, that funding and resource allocation by the state in response to GBV is limited.

The following budgetary and resource related challenges exist in relation to the six identified departments that are responsible for carrying out government's mandate to address GBV:

#### 1. The SAPS

- Inadequate training of SAPS officials to deal effectively with GBV, including training on the relevant national strategic programmes of action, as well as legislative and policy frameworks;
- Lack of provisions for the establishment of adequate victim friendly rooms in police stations;

<sup>93</sup> Thorpe, J. (2014). Financial year spending estimates on gender-based violence by the South African Government. South African Parliament.

<sup>94</sup> Thorpe, J. (2014). Op. cit.

<sup>95</sup> CGE (2015). Op. cit.

CGE (2016). Struggling to meet the ends of justice: Assessing Departmental Responses to CGE findings on the Victims Charter (Departments: Justice, NPA & SAPS), (Commission for Gender Equality, Research Report).

- Shortages of rape kits;
  - Limited allocations of specialised detectives (FCS Units); and
  - Lack of vehicles to transport survivors to shelters, places of safety, and medical facilities for examination.
2. NPA
- Poorly resourced TCCs;
  - TCCs not open 24/7, as intended; and
  - Lack of training of prosecutors, particularly on the Victims Charter.
3. DOJ
- In 2014 the Department re-launched the Sexual Offences Courts;
  - The Department had initially intended to establish 55;
  - Currently, 74 SOC are in existence across the country;
  - Inadequately SOC; and,
  - Lack of trained specialised staff (magistrates, intermediaries, and interpreters).
4. DOH
- Limited number of trained clinical forensic nurses; and,
  - Shortages of rape kits.
5. DSD
- Shut down of shelters for survivors of violence due to cuts in government funding;
  - Under-resourced shelters; and,
  - Lack of DSD counsellors in police stations and TCCs.
6. DCS
- Lack of support for survivors of violence against women, particularly when it comes to victim-offender dialogues and mediation by the parole boards; and,
  - Inadequate resources to track survivors to participate in the victim-offender dialogues and mediation processes.

Also relevant to all six departments is the issue of raising awareness around GBV, as government departments often lack the necessary resources to run well coordinated and effective educational projects and programmes on GBV.

In September 2019, following the increased media coverage and the widespread public outcry regarding the high spate of rapes and femicide in South Africa, President Ramaphosa announced an emergency plan to combat GBV during an extraordinary joint sitting of Parliament. The implementation of the emergency action plan was set to take place within a six months period (October 2019 – March 2020) and the plan was placed under the auspices of the Interim Steering Committee on GBV. An initial R1.1 billion was allocated to this plan, however, in November 2019, the President announced that the amount would be increased to R1.6 billion. Various government departments, particularly the Justice, Crime Prevention and Security Cluster, were earmarked to implement the emergency plan. The President revealed that, “An amount of R517 million will go to care and support for survivors of gender-based violence,” and that R179 million would be allocated to education, raising awareness, and violence prevention programmes<sup>96</sup>. It is not clear how the President arrived at these amounts as that information was not made available to the public.

- *Moreover, the Committee requests the State party to provide in its next periodic report detailed information on the causes, scope and extent of all forms of violence against women, disaggregated by age, and urban and rural areas, and on the impact of measures taken to prevent such violence, investigate occurrences, prosecute and punish perpetrators, and provide protection, relief and remedies, including appropriate compensation, to victims and their families.*

The state, in its latest periodic report (i.e. 2009-2014) failed to adhere to the request by the CEDAW Committee to report on detailed information on the causes, scope and extent of all forms of violence against women, disaggregated by age, urban and rural areas; on the impact of measures taken to prevent such violence, investigate occurrences, prosecute and punish perpetrators, and provide protection, relief and remedies, including appropriate compensation, to victims and their families. Instead the state refers to the Root Causes study that was commissioned in 2012 to inform the country's NSP on GBV. The state claims that the findings of this study were used to inform the Integrated Plan of Action on GBV, however, this cannot be verified as both the Know Your Epidemic Study (measuring extent the of GBV in South Africa) and the Root Causes study findings were never disseminated. Both studies were undertaken as initiatives of the failed NCGBV.

The country currently faces the challenge of a lack of accurate GBV statistics. The SAPS releases crime statistics on an annual basis, which include statistics on GBV-related crimes. The SAPS, however, focuses on instances of victims who reported cases to their police stations, whereas underreporting of GBV crimes, particularly of sexual offences, is widely known to be a persistent challenge in South Africa.

<sup>96</sup> Speech by President Cyril Ramaphosa, In the National Assembly, 6<sup>th</sup> November 2019.

## ARTICLE 6

- *Trafficking and exploitation of prostitution*

*To expedite the adoption of the Prevention and Combating of Trafficking in Persons Bill in order to fully implement article 6 of the Convention, including through the effective implementation of this new legislation on trafficking, ensuring that perpetrators are prosecuted and punished and victims adequately protected and assisted;*

As reported in South Africa's 5<sup>th</sup> Periodic Report on the Convention on the Elimination of All Forms of Discrimination Against Women<sup>97</sup>, the Prevention and Combating of Trafficking in Persons Act<sup>98</sup> was promulgated in 2013 as the key legislation intended to address issues related to trafficking in persons. On 9 August 2015, the Act came into operation<sup>99</sup> and on the 25 April 2019, the Department of Justice and Constitutional Development in collaboration with the United Nations Office on Drugs and Crime (UNODC) launched under the framework of the Global Action against Trafficking in Persons and Smuggling of Migrants (GLO.ACT), the Prevention and Combating of Trafficking in Persons National Policy Framework (NPF).<sup>100</sup> This was an initiative government and international agencies introduced as a measure towards implementing the Combating of Trafficking in Persons Act. The purpose of the NPF was to ensure that all the government departments, together with their stakeholders from civil society, are guided collectively towards the implementation of anti-trafficking responses, and are aware of their statutory responsibilities.<sup>101</sup>

Although the Combating of Trafficking in Persons Act that came into operation in 2015 was a necessary development in the fight against human trafficking, the number of convictions in this area has remained low. In 2016/17, over 170 women and children were the victims of human trafficking, but convictions were only secured in nine cases.<sup>102</sup> Despite the low rate of conviction, arrests and prosecutions have occurred among key figures responsible for this heinous crime. In 2016/2017, the media reported on a R6,000 fine or three years of imprisonment was handed down to four Thai women

<sup>97</sup> RSA (2015), South Africa's 5<sup>th</sup> Periodic Country Report, Op.cit.

<sup>98</sup> Act 7 of 2013.

<sup>99</sup> United Nations Office on Drugs and Crime (2019). South Africa launches Prevention and Combating of Trafficking in Persons National Policy Framework. <https://www.unodc.org/unodc/en/human-trafficking/glo-act/south-africa-launches-prevention-and-combating-of-trafficking-in-persons-national-policy-framework.html>. Accessed: 07.02.2020.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Hawks' Major-General Sylvia Ledwaba (2017). Rates of conviction in human trafficking cases 'disturbingly' low. <https://www.timeslive.co.za/news/south-africa/2017-08-31-rates-of-conviction-in-human-trafficking-cases-disturbingly-low/>. Accessed: 07.02.2020.

in a trafficking case in Durban<sup>103</sup>; two Nigerian pimps were sentenced to an effective 12 and 18 years imprisonment in 2018<sup>104</sup>. Six life sentences and an additional 129 years imprisonment was meted out to a Nigerian national for human trafficking and related charges after he held three young girls hostage to work as sex slaves in 2019.<sup>105</sup>

- *That in all parts of the country information and training on how to identify and deal with trafficking victims and on anti-trafficking provisions in the domestic law be provided to the judiciary, law enforcement officials, border guards and social workers.*

The Guiding Principles and Approaches of the NPF stipulate that “all professionals working in the anti-trafficking field shall be regularly trained and provided with refresher courses on issues concerning new trends in the different forms of trafficking in persons; local, national, regional, and international legislation; strategies and operational tools and measures to employ in their daily work with potential, presumed or identified trafficked persons”<sup>106</sup>. However, on the ground it was found that partnerships with structures in the South African criminal justice system and the United Nations bodies were key towards the provision of training on Trafficking in Persons (TIP). For an example on the 19<sup>th</sup> March 2019, the UNODC under the framework of the GLO.ACT in collaboration with the SAPS in KwaZulu-Natal and the NPA facilitated a three-day training workshop from 12 to 14 March 2019, on the issue of TIP.<sup>107</sup> Participants comprised members of the SAPS from Cluster and Provincial offices, including commanders, trainers and detectives in KZN, as well as from the NPA and GLO.ACT partners.<sup>108</sup> However, similar initiatives could not be found in relation to the judiciary, border guards and social workers.

- *To conduct comparative studies on trafficking and prostitution and address their root causes, including poverty, in order to eliminate the vulnerability of girls and women to sexual exploitation and trafficking and to undertake efforts for the recovery and social integration of the victims;*

<sup>103</sup> Details of the court case, including case number, are not available. For more information, refer to TimesLive: ‘Rates of Convictions in Human Trafficking Cases Disturbingly Low’, (<https://www.timeslive.co.za/news/south-africa/2017-08-31-rates-of-conviction-in-human-trafficking-cases-disturbingly-low/>) Accessed: 08.02.2020.

<sup>104</sup> Details of the court case, including case number, not made available. For more information see TimesLive, ‘Human Trafficking Kingpin to Rot in Jail’, (<https://www.iol.co.za/news/south-africa/gauteng/lengthy-sentences-for-nigerian-brothers-convicted-for-human-trafficking-17125422>). Accessed: 08.02.2020.

<sup>105</sup> IOL News (2019). Human trafficking ‘kingpin’ to rot in jail. <https://www.iol.co.za/pretoria-news/news/human-trafficking-kingpin-to-rot-in-jail-33191689>. Accessed: 08.02.2020.

<sup>106</sup> Department of Justice and Constitutional Development (2019). Prevention and Combating of Trafficking in Persons National Policy Framework (NPF) p. 14

<sup>107</sup> United Nations Office on Drugs and Crime (2019). GLO.ACT trains police officers in South Africa on combatting human trafficking. <https://www.unodc.org/unodc/en/human-trafficking/glo-act/glo-act-trains-police-officers-in-south-africa-on-combatting-human-trafficking.html> Accessed: 13.02.2020.

<sup>108</sup> Ibid

Speaking during the launch of the NPF, Deputy Minister of Justice and Constitutional Affairs, Hon. John Jeffery, mentioned how trafficking in persons was by no means a recent phenomenon, as its roots can be traced to South Africa's historical landscape, and how it is fundamentally enabled by the country's deep structural inequalities.<sup>109</sup>

Further arguments support the above point that prostitution and human trafficking are some of the oldest forms of oppression in the world.<sup>110</sup> However, it appears that no studies have been conducted by the South African government on human trafficking in line with the CEDAW Committee's 2011 Concluding Recommendation in this regard.

- *To ensure systematic monitoring and periodic evaluation, including the collection and analysis of data on trafficking and exploitation of women in prostitution, and to include such data in its next periodic report;*

South Africa's 5<sup>th</sup> Periodic Report on the Implementation of the CEDAW provides no clarity in this area, despite mentioning statistics on the types of cases opened, investigated and withdrawn. There is no mention of monitoring and evaluation mechanisms, and the focus leans more towards sexual exploitation as opposed to prostitution. Collecting data and statistics pertaining to trafficking and exploitation through prostitution has been poorly undertaken by South Africa. According to the Human Sciences Research Council back in 2010, South Africa was not collecting even the most basic national-level data which will allow for sound estimates to be made about the scale of human trafficking.<sup>111</sup> This was further acknowledged by Deputy Minister John Jeffery, specifically that data on all forms of trafficking in South Africa is scarce. In 2018, there were eight cases with successful convictions of perpetrators for trafficking in persons-related offences.<sup>112</sup> This further speaks to the example given above of a higher number of cases being investigated by the SAPS which are suspected as human trafficking. However, conviction rates were low. In 2013 the government introduced the Combating of Trafficking in Persons Act, followed in 2019 by the NPF, to guide the implementation of the Act. There has been an improvement in the recording of cases pertaining to human trafficking by the SAPS. However, it becomes difficult to link it with prostitution, which is an illegal activity in the country. According to Deputy Minister John Jeffery, in 2019, a new data tool was expected to help collate more accurate data on human

<sup>109</sup> United Nations Office on Drugs and Crime (2019). South Africa launches Prevention and Combating of Trafficking in Persons National Policy Framework. <https://www.unodc.org/unodc/en/human-trafficking/glo-act/south-africa-launches-prevention-and-combating-of-trafficking-in-persons-national-policy-framework.html>. Accessed: 07.02.2020.

<sup>110</sup> Ramos, N (2008). Addressing Domestic Human Trafficking. *University of St. Thomas Law Journal*. 6(1): 21-27.

<sup>111</sup> Human Sciences Research Council & NPA, (2010). Tsireledzani: Understanding the dimensions of Human Trafficking in Southern Africa. Democracy, Governance and Service Delivery. file:///C:/Users/Mojalefa/OneDrive%20-%20Commission%20for%20Gender%20Equality/Downloads/6289.pdf. Accessed: 08.02.2020

<sup>112</sup> Ibid

trafficking, which will help in the fight against the crisis. This was at the launch of the NPF.<sup>113</sup> The data tool, developed by the NPA and the Department of Justice aims to collect data and focus on important questions relating to human trafficking.<sup>114</sup>

- *To increase its efforts at international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking through information exchange and to harmonise legal procedures aiming at prosecution of traffickers.*

Apart from associations such as the GLO.ACT, a four-year (2015-2019), €11 million joint initiative by the European Union and the UNODC,<sup>115</sup> to provide assistance to the South African government and civil society organisations (included here are other strategically placed countries, including: Belarus, Brazil, Colombia, Egypt, the Kyrgyz Republic, Laos, Mali, Morocco, Nepal, Niger, Pakistan and Ukraine<sup>116</sup>). There is no indication that South Africa had engaged in regional bilateral or multilateral cooperation with other countries to prevent trafficking.

- *To consider using the Office of the United Nations High Commissioner for Human Rights' Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002) as a basis for their implementation.*

No information could be found to determine if the South African government had made use of the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002) as a basis of its implementation.

<sup>113</sup> News24 (2019). New data tool to help combat human trafficking. <https://www.news24.com/South-Africa/News/new-data-tool-to-help-combat-human-trafficking-20190425>. Accessed; on .02.2020

<sup>114</sup> Ibid

<sup>115</sup> United Nations Office on Drugs and Crime (2019), Op. cit.

<sup>116</sup> Ibid

## PART B: ARTICLES 7 - 9

### ARTICLE 7

- *Participation in political and public life*

*Pursue sustained policies aimed at the promotion of women's full and equal participation in decision-making as a democratic requirement in all areas of public, political and professional life by utilising the Committee's General recommendation No. 23 concerning women in public life, and by continuing to adopt, wherever necessary, temporary special measures in accordance with article 4, paragraph 1 of the Convention and the Committee's General recommendation No. 25, in order to accelerate women's full and equal participation in public and political life, in particular within the judiciary.*

The post-1994 democratic constitutional dispensation has enabled women to be elevated to central political and public positions. The right to vote and the right to equality are enshrined in the Constitution of the Republic of South Africa, 1996, granting women equal rights to men to participate in the political and public space. This is provided for under Section 19 of the Constitution, and reads as follows:

1. Every citizen is free to make political choices, which includes the right:
  - a) to form a political party;
  - b) to participate in the activities of, or recruit members for, a political party; and
  - c) to campaign for a political party or cause.
2. Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
3. Every adult citizen has the right:
  - a) to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
  - b) to stand for public office and, if elected, to hold office".

The above listed rights are filtered into various statutes which in turn call for gender equality within the public and private arena.

To date there is no policy in place geared towards the enforcement of 50/50 gender representation; this is acknowledged by South Africa's 5<sup>th</sup> Periodic Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination

Against Women (CEDAW). This is despite the South African government's adoption of special temporary measures and the Southern African Development Community's (SADC) 50% target from the SADC Protocol on Gender and Development on representation. This remains the case as there are no new developments or policies on women's empowerment, or gender equality. The initiative of crafting the equality legislation was made in 2014, but the term of the process lapsed, and the process needs to be started anew. The Commission for Gender Equality (CGE), across several forums, has been advocating for the speedy enactment of the Women Empowerment and Gender Equality legislation, but progress to date has been limited. In the absence of the legislation, CGE continues to monitor and evaluate the work of different departments and organisations on their levels of compliance with existing legislative and policy frameworks, in terms of gender transformation. With regard to party political representation, the African National Congress (ANC), which is the ruling party, is the only party with a zebra stripes quota strategy and 50/50 quota policy.

The Economic Freedom Fighters, which is comprised predominantly of youth, has adopted the principle of zebra stripe strategy and 50/50 quota in practice, however this has not been formalised. As a result, this reduces the disparity gap between the representation of men and women in political institutions. During the recent 2019 national elections, a study by the CGE established that there was disparity existing within the leadership structures for the top six political parties in the country. However, on a positive note, the implementation of the Heads of Department 8 Principle Action Plan for Promoting Women's Empowerment and Gender Equality exists, even though it has not been implemented thoroughly across the board. Targets set and achieved differ across different departments, with inconsistencies and a lack of uniform implementation.

The trend of women voters leading registrations during elections in South Africa has been on the rise since the 2009 national elections, where it stood at 55%<sup>117</sup>. In 2014, this number increased to 55.9%<sup>118</sup> and again in 2019 to 55%<sup>119</sup>. Thus, as mentioned in South Africa's 5<sup>th</sup> Periodic Report<sup>120</sup>, a higher interest in political participation has been shown by women in the country's elections. However, during the compilation of the CGE's 2019 Elections report, it was found that the top six leading political parties before the elections of May 2019 were indifferent when it came to issues affecting women,

<sup>117</sup> Booysen, S. and Masterson, G (2009). "Chapter 11: South Africa" in Kadima, D and Booysen, S (eds). *Compendium of Elections in Southern Africa 1989-2009: 20 Years of Multiparty Democracy*, EISA, Johannesburg, 406, 407. <https://www.eisa.org.za/wep/sou2009registration2.htm>

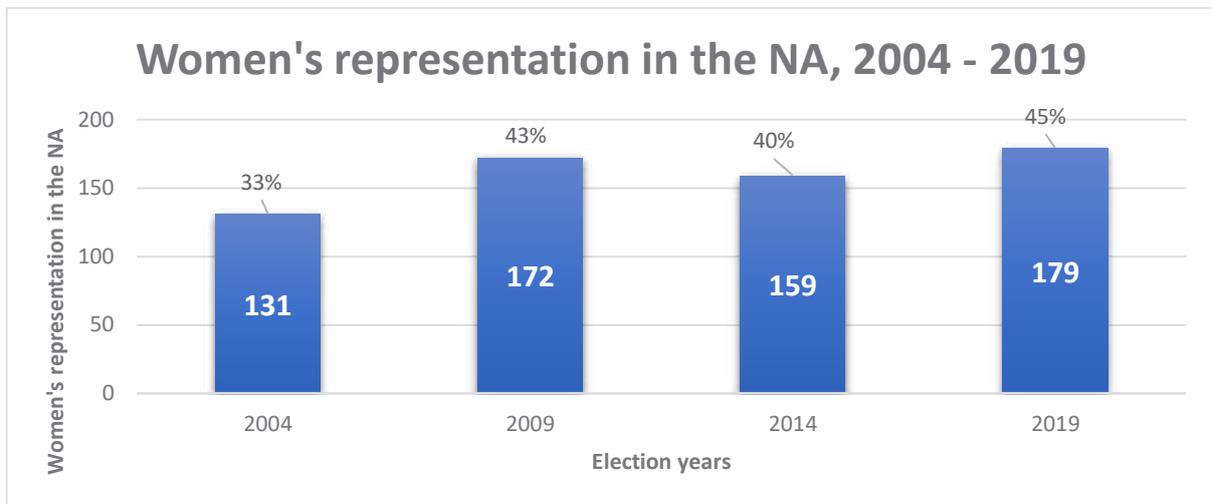
<sup>118</sup> Independent Electoral Commission (2014). Final candidate lists published, and certificates issued. <http://www.elections.org.za/content/About-Us/News/Final-candidate-lists-published-and-certificates-issued/> Accessed: 14.10.2019.

<sup>119</sup> IEC (2019). Voters' Roll Certified for National and Provincial Elections 2019. <https://www.elections.org.za/content/About-Us/News/Voters--Roll-Certified-for-National-and-Provincial-Elections-2019/> Accessed: 14.10.2019.

<sup>120</sup> RSA (2015). South Africa's 5<sup>th</sup> Periodic Country Report, Op.cit., p17.

despite women making up the majority of registered voters. Instead of mainstreaming women's issues throughout their manifestos, gender issues were often conflated with a number of other issues, and when women's issues were addressed, it was found that the goals and policies set were unattainable or unrealistic. The table below presents the trajectory of progress in women's representation in the South African National Assembly from 2004 to 2019 national elections.

Figure 8: Women's representation in the National Assembly (after the 2019 Elections)



Source: National Assembly, IEC & CGE

48 political parties were running for office during the 2019 national elections; only four of these parties were led by women.<sup>121</sup> Following the outcome of these elections, only two female-led political parties secured enough votes to occupy seats in Parliament.<sup>122</sup> This compared to the 2014 national elections, where both the Speaker of the National Assembly and the Chairperson of the National Council of Provinces were women; the 2019 elections saw only the appointment of a female Speaker of the National Assembly<sup>123</sup>. Improvements were however observed in the number of women represented in the National Assembly following the May 2019 national elections, with the highest recorded representation of women at 45%.<sup>124</sup> In the NCOP, there has been on a consistent decline from 41% in 2004, to 21% in 2019.<sup>125</sup>

<sup>121</sup> This was also the case in the 2014 elections only four political parties which contested were led by women see Commission for Gender Equality. 2019. Elections Report: Electing Women in South Africa: Assessing gender issues and women's representation in the 2019 Elections.

<sup>122</sup> Ibid

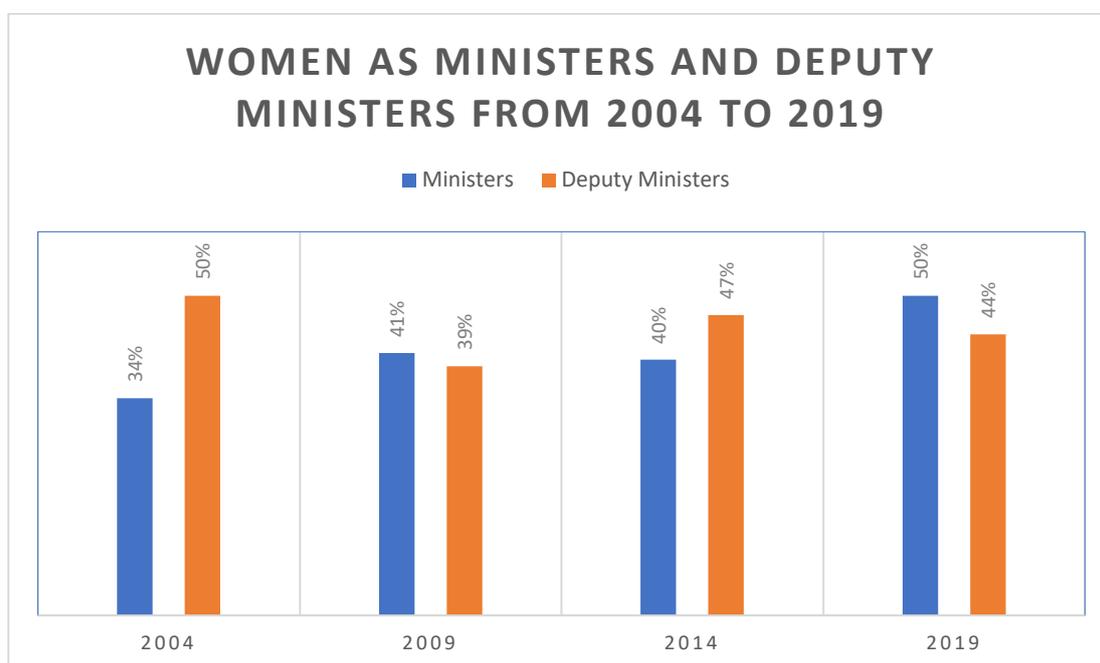
<sup>123</sup> Ibid

<sup>124</sup> Ibid

<sup>125</sup> Ibid

A lot has been said in the country's 5<sup>th</sup> Periodic Report about women occupying critical positions in government, and rightly so, particularly the cabinet posts, following the 2019 general elections. However, one of the most critical ministries, namely that of the Ministry of Finance (i.e. the National Treasury) has never been occupied by a woman, and in 2019, the Minister and Deputy Minister are both men. In addition, the position of President and Deputy President of the country are still occupied by males following the 2019 elections, a situation which many gender equality and women's rights activists regard as a missed opportunity.<sup>126</sup>

Figure 1: Female Cabinet and Deputy Ministers (2004 – 2019)



Source: National Assembly

The graph above demonstrates the number of female Cabinet Ministers and Deputy Ministers between 2004 and 2019. The figures show that there has been an increase in female-held ministerial posts from 34% in 2004, to 41% in 2009, with a slight dip to 40% in 2014 before the trend went up again. For the first time ever, a 50/50 gender parity between men and women in the National Cabinet was achieved following the 2019 national elections.<sup>127</sup> Another important point to note is that in the period after 2004, women no longer dominated the position of Deputy Ministers as alternative career path for not making it as Cabinet Ministers.<sup>128</sup> This was a fairly common trend during the early years of the country's democracy, with men dominating Cabinet ministerial

<sup>126</sup> Genderlinks (2019), South Africa: Gender and Elections (<http://genderlinks.org.za/what-we-do/governance/advocacy/south-africa-gender-and-elections/>)

<sup>127</sup> Commission for Gender Equality (2019). Elections Report: Electing Women in South Africa: Assessing gender issues and women's representation in the 2019 Elections.

<sup>128</sup> Ibid

posts. Since 2004, there has been a general trend towards gender parity between male and female Deputy Ministers.

In terms of women's representation at senior levels in the public service, current figures provided by the Public Service Commission for the 2018/19 financial year show that women in top management positions (Levels 15-16) made up 29%, which is two women out of seven positions, and those in senior management (Levels 13-14) accounted for 41.6%, that is 35 women out of 84 positions.<sup>129</sup> There was a deficit of 9% in terms of reaching the national target of 50% women representation at SMS levels (Levels 13 - 16).<sup>130</sup>

Within the Judiciary, the country's Constitutional Court has 11 Justices, of which four are currently women (with one vacancy). With regard to the Supreme Court of Appeal (SCA), women currently constitute 29% of the Judges; that is, eight women out of 28 judges, with the President of the SCA being a woman.<sup>131</sup> In terms of Magistrate appointments, 47.8% were women (863 out of 1,803 magistrates).<sup>132</sup>

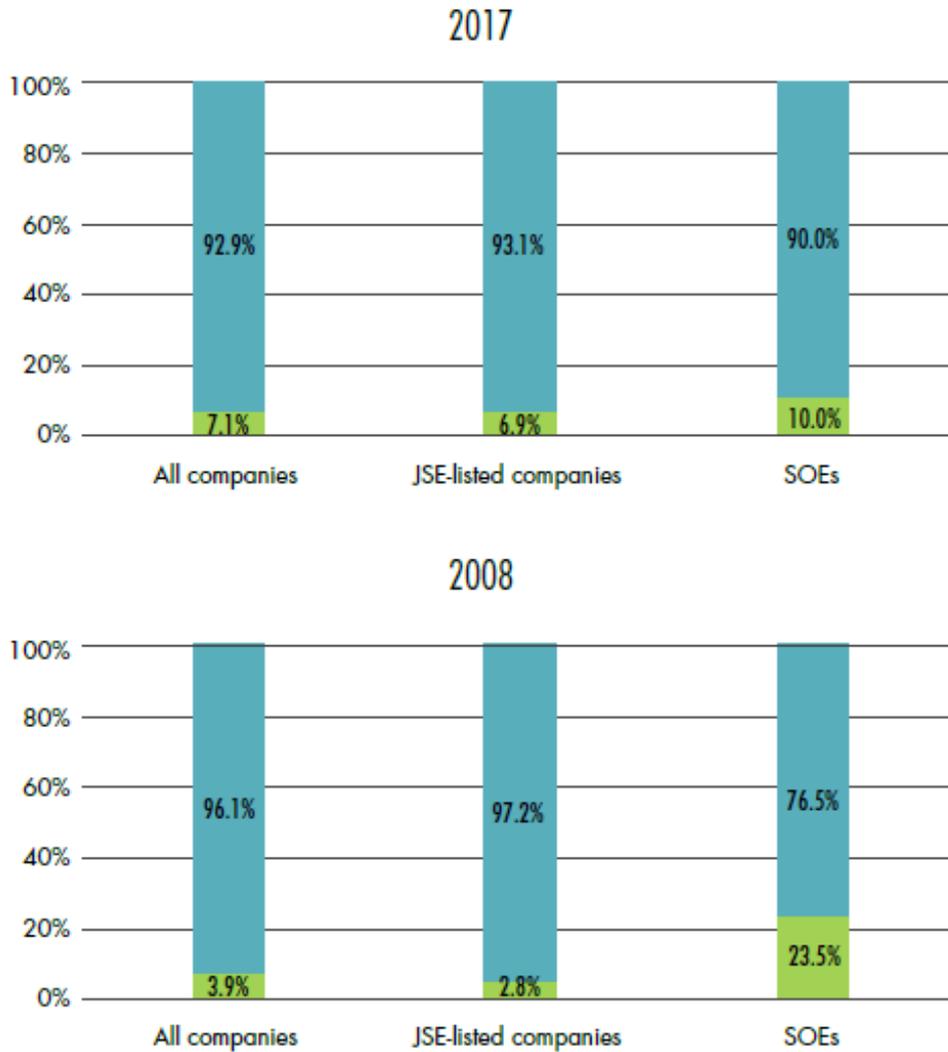
<sup>129</sup> Department of Public Service and Administration (2019). Annual Report 2018/19. [http://www.dpsa.gov.za/dpsa2g/documents/institutional/DPSA%20Annual%20Report%202018\\_2019.pdf](http://www.dpsa.gov.za/dpsa2g/documents/institutional/DPSA%20Annual%20Report%202018_2019.pdf). Accessed: 23.10.2019. p. 93.

<sup>130</sup> Ibid p. 84.

<sup>131</sup> Supreme Court of Appeal of South Africa. 21 Jan 2020. Judges of the Supreme Court of Appeal. [http://www.justice.gov.za/sca/judges\\_cv.html](http://www.justice.gov.za/sca/judges_cv.html). Accessed: 21.01.2020.

<sup>132</sup> Times Live: 04 November 2019. New magistrate appointments increase female representation. <https://www.timeslive.co.za/news/south-africa/2019-11-04-new-magistrate-appointments-increase-female-representation/>

Figure 2: Female Chairs of company boards as a percentage of all board chairs, 2008 vs. 2017



Source: BWASA Women in Leadership

According to Business Women Association of South Africa, Johannesburg Stock Exchange-listed (JSE) companies have a higher representation of female executive directors, with three in 20 female directors holding executive director positions. The number of women CEOs has increased from seven in 2015 to 14 in 2017, with female directors at JSE-listed companies accounting for 19.1%.<sup>133</sup> Despite this, the share of JSE-listed companies with at least three female Directors has decreased to 25.6% in 2017, from 35.9% in 2015, further hampering the realization of gender-diverse boards.<sup>134</sup>

<sup>133</sup> Businesswomen's Association of South Africa (2017). BWASA South African Women in Leadership Census.

<sup>134</sup> Ibid

Table 1: Comparison between JSE-listed firms and SOEs, 2017

	JSE-listed	SOEs
Share of female CEOs	4.7%	5%
Share of female Chairpersons	6.9%	10%
Share of female Directors	19.1%	41.2%
Share of female Executive Managers	29.5%	28.5%

Source: BWASA

The table above demonstrates the sluggish gender transformational patterns within the leadership of private sector organisations, as well as state-owned enterprises. Because of this lack of progress, the Commission for Gender Equality (CGE) has been conducting a series of employment equity hearings, and calling on the leadership of organisations and institutions to appear before the CGE to account for their poor levels of women's representation in leadership positions.

- *Implement awareness-raising activities on the importance of women's participation in decision-making for society as a whole, and the development of targeted training and mentoring programmes for women candidates and women elected to public office, as well as programmes on leadership and negotiation skills for current and future women leaders.*

In terms of policies and legislation, women's rights to participate equally in politics, the workplace and areas such as business and the judiciary, is provided for. The only challenge is implementation. Clear information and details regarding the development of targeted training and mentoring programmes for women candidates and women elected to public office could not be established.

Efforts at promoting and highlighting women's issues occur annually during Women's Month (August) in South Africa. For instance, during this period, the Department for Women, Youth and Persons with Disabilities (DWCPD) usually leads the country with a number of nation-wide activities to highlight issues of concern for women. For example during the 2019 period, activities included the commemoration of the 65th Anniversary of the Women's Charter, discussions around women's economic empowerment, the eradication of gender based violence (GBV) and the elimination of pay gaps between men and women for equal work.<sup>135</sup> The remainder of the month focused on young women, including women with disabilities, and advancing their rights, and activities that would develop action plans to mainstream the needs of women.<sup>136</sup>

<sup>135</sup> The South African: 2019-08-01. Presidency kick-starts Women's Month with gender equality campaign. <https://www.thesouthafrican.com/news/minister-establishes-womens-month-2019/>. Accessed: 28.10.2019.

<sup>136</sup> Ibid

Parliament and provincial legislatures also have initiatives that include convening *Women's Parliament* sessions during the National Women's Month in August, debates on the *16 days Campaign of No Violence Against Women and Children*, as well as sessions of "Taking Parliament to the People" around the country. *Women's Parliament* is a women-only gathering to raise, address and deal with pertinent issues that affect and impact women. However, the lack of authority of these women-only parliamentary sessions leads to the failure to implement their decisions, rendering them 'talking shops'. Although attempts at raising awareness are made by such activities, it should be noted that some take place within a period of a month, a short space of time for such pressing and enormous issues. It is also quite difficult to unearth tangibles from such activities as they serve more as government awareness initiatives, as opposed to clear, concrete government interventions.

The CEDAW has further recommended the development of targeted training and mentoring programmes for women candidates and women elected to public office, as well as programmes on leadership and negotiation skills for current and future women leaders. Government has since created the National School of Government (NSG), launched by the Minister for Public Service and Administration on 21 October 2013.<sup>137</sup> The NSG is a Schedule 1 government department, and replaced the Public Administration Leadership and Management Academy by proclamation of the President of South Africa.<sup>138</sup> The Accelerated Development Programme from NSG aims to fast-track the advancement of middle managers in the public service through the equipping of the skills and competencies required for senior management positions, it is also intended to enhance the transformation of public service by preparing women and people with disabilities for senior management roles in the public service.<sup>139</sup> Another programme is the Executive Development Programme, that is aimed to equip participants with the necessary knowledge and skills to perform effectively as senior managers and team leaders.<sup>140</sup>

## ARTICLE 8

- *International Representation and Participation*

In line with Article 8 of the convention, South Africa has made strides with the representation of South African women in the international arena. Despite the overwhelming levels of male representation, improvements have been recorded in

<sup>137</sup> National School of Government (2016). Course Directory. [http://www.thensg.gov.za/wp-content/uploads/2016/08/NSG\\_Course\\_Directory\\_Final-002.pdf](http://www.thensg.gov.za/wp-content/uploads/2016/08/NSG_Course_Directory_Final-002.pdf). Accessed: 28.10.2019.

<sup>138</sup> Ibid

<sup>139</sup> Ibid

<sup>140</sup> Ibid

diplomatic appointments of women since South Africa's 5<sup>th</sup> Periodic Report on the Implementation of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) in 2015. As of the 19 September 2019, the appointment of women ambassadors was 35%, with 13% vacancies unfilled.<sup>141</sup> Chargé d'Affaires (deputy ambassadors) appointments were at 31%, High Commissioner appointments were 43%, with 5% vacancies unfilled, and Consular-General appointments were 46%, with 15% vacancies unfilled.<sup>142</sup>

Table 2: The total representation in terms of gender at missions abroad 2015

Gender	Male	Female	Total
The representation	337	386	723
Percentage	47%	53%	100

Source: DIRCO

South Africa is also one of the few African countries deploying more women on peace keeping missions abroad.<sup>143</sup> Moreover, the country has also initiated the development of National Action Plan on the United Nation's Resolution 1325 on women, peace and security. This is a positive initiative for the country.

## ARTICLE 9

- *Nationality*

South Africa has put in place legislative and policy framework as stipulated by the Constitution of the republic of South Africa, 1996, on how nationality and citizenship are defined and how one qualifies to be a South African citizen.

- *Legislative framework including an Overview of the duties and responsibilities of the Department of Home Affairs*

Nationality is clearly articulated under the Constitution, and the duties and responsibilities related to administering the issues of nationality and citizenship lie under the auspices of the Department of Home Affairs; these duties and responsibilities stem from the Constitution, various pieces of legislation, as well as other policy documents.

<sup>141</sup> Department of International Relations and Cooperation. 19/09/2019. South African Heads of Mission Abroad. [http://www.dirco.gov.za/foreign/sa\\_abroad/hom.htm](http://www.dirco.gov.za/foreign/sa_abroad/hom.htm). Accessed: 21.10.2019.

<sup>142</sup> Ibid

<sup>143</sup> CGE (2015). Op. cit.

The Department's services are divided into two broad categories, Civic Services and Immigration Services. Some of the Civic services are covered by the following legislative provisions, namely:

- *Births, Marriages and Deaths*
  - Births and Deaths Registration Act<sup>144</sup>, as amended;
  - Regulations made in terms of the Births and Deaths Registration Act;
  - Marriage Act<sup>145</sup>, as amended;
  - Regulations made in terms of the Marriage Act;
  - Recognition of Customary Marriages Act<sup>146</sup>;
  - Civil Union Act<sup>147</sup>; and,
  - Regulations made in terms of the Civil Union Act.
- *Identity Documents and Identification*
  - Identification Act<sup>148</sup>, as amended;
  - Regulations made in terms of the Identification Act; and
  - Alteration of the Sex Description and Sex Status Act<sup>149</sup>.
- *Citizenship*
  - South African Citizenship Act<sup>150</sup>, as amended; and
  - Regulations made in terms of the South African Citizenship Act.

South African citizenship can, subject to the provisions of the South African Citizenship Act, be acquired by birth, descent, naturalisation and previously also by registration in specific instances.

- *Citizenship by birth*

Any person who is born in South Africa, and who has at least one parent who is either a South African citizen or permanent residency permit holder at the time of birth, or

<sup>144</sup> Act 51 of 1992.

<sup>145</sup> Act 25 of 1961.

<sup>146</sup> Act 120 of 1998.

<sup>147</sup> Act 17 of 2006.

<sup>148</sup> Act 68 of 1997

<sup>149</sup> Act 49 of 2003.

<sup>150</sup> Act 88 of 1995.

someone who was adopted by a South African citizen or permanent resident in terms of the Children's Act<sup>151</sup>, qualifies for citizenship.

- *Citizenship by descent*

A person born outside of South Africa to a South African citizen/s, or is adopted by a South African citizen in terms of the Children's Act, and their birth was registered in accordance with the Births and Deaths Registration Act, can apply for citizenship by descent.

- *Citizenship by naturalisation*

A person can apply for naturalisation if such a person complies with the provisions of section 5 of the South African Citizenship Act.

- *Retention of Citizenship*

A person who wants to formally obtain the citizenship of another country while retaining their South African citizenship can apply for retention of their South African citizenship. The application must be made and approved before acquisition of the new citizenship, or the applicant stands to lose their South African citizenship automatically on the date that they acquire the foreign citizenship.

- *Automatic loss of citizenship*

A person automatically loses their South African citizenship if they get granted foreign citizenship before being granted retention of their South African citizenship. This automatically occurs if a person is 18 years and older, and has obtained the citizenship of another country by a voluntary and formal act, other than marriage.

- *Resumption of citizenship*

A person may apply to have their South African citizenship reinstated if such a person is a former citizen by birth or descent, and has returned to South Africa permanently or is living in South Africa permanently. Former citizens by naturalisation must re-apply for permanent residence or apply for an exemption thereof, before they can be considered for resumption.

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<sup>151</sup> Act 38 of 2005.

- *Exemption from loss of citizenship*

A person who has lost their South African citizenship by acquiring the citizenship of another country before 6 October 1995 may apply for exemption from the loss.

- *Renunciation of citizenship*

A person who is a dual citizen, or who intends to acquire the citizenship of another country, may apply for renunciation of their South African citizenship.

- *Deprivation of Citizenship*

A person could be deprived of their South African citizenship under the following conditions:

- If the citizenship is by naturalisation;
- If the certificate of naturalisation was obtained fraudulently;
- If such a citizen had concealed a material fact relating to the application for citizenship;
- If the applicant had supplied false information about themselves; or,
- If the person holds dual citizenship, deprivation of the South African citizenship may be effected at any time if the holder of the dual citizenship has been sentenced to imprisonment for a period of 12 months or more in any country for an offence that would also have been a punishable offence in South Africa, or if deprivation of citizenship is deemed to be in the public interest.

- *The right of women to assume a different surname*

Assuming a different surname (Section 26 of Births and Deaths Registration Act)

A woman may assume her husband's surname, or revert to her maiden surname or a prior surname she bore legally, and since 1997, a woman may also join her surname with that of her husband's as a double-barreled surname. No application to the Department of Home Affairs is necessary in these instances, but to enable the Department to update the Population Register, women should notify the Department of such changes in writing.

Apart from the aforementioned exclusions, no adult may assume another surname unless such change of surname has been approved by the Director-General of Home

Affairs, and has been published in the Government Gazette. Applications in this regard may be lodged at any domestic Home Affairs office, or any South African embassy, mission or consulate abroad. Applications must complete the requisite form, and furnish a good and sufficient reason, in writing, for the change.

Despite these legislative provisions, there are ongoing concerns about the Department of Home Affairs' current practice of denying engaged women the right to choose either to retain their maiden surnames or acquire the spousal surname. Currently, the system automatically changes the surname of the newly married woman to that of her spouse, without prior consent. This has been the practice since the legislative changes which came into force in 1997, which gave women the right to make the decision regarding which surname to use when registering a marriage. It is absolutely critical that the Department of Home Affairs puts the necessary systems in place to ensure that the right of women to choose is upheld.

## PART C: ARTICLES 10 – 14

### ARTICLE 10

- *Education*

South Africa has put in place regulatory frameworks to advance equitable access to education for boys and girls as one of the basic constitutional rights of every child.

- *Legislative Framework*

The Basic Education Law Amendment Act<sup>152</sup> has resulted in the revision of the following Acts, in accordance with the amendment. The following Acts have been respectively affected by the amendments:

- South African Schools Act<sup>153</sup>;
- The National Education Policy Act<sup>154</sup>;
- The Employment of Educators Act<sup>155</sup>;
- The South African Council for Educators Act<sup>156</sup>; and,
- The General and Further Education and Training Quality Assurance Act<sup>157</sup>.

#### Policies and Guidelines

- Guidelines for the provision of boarding facilities in public ordinary schools, 23 July 2012;
- Rights and responsibilities of parents, learners and public schools: Public School Policy Guide. 2005;
- Policy Document of Adult Basic Education and Training, 12 December 2003;
- Improving Access to Free and Quality Basic Education to All, 14 June 2003; and,
- National Education Policy Act<sup>158</sup> - Admission Policy for Ordinary Public Schools, 1 October 1998.

<sup>152</sup> Act 15 of 2011.

<sup>153</sup> Act 84 of 1996.

<sup>154</sup> Act 27 of 1996.

<sup>155</sup> Act 76 of 1998.

<sup>156</sup> Act 31 of 2000.

<sup>157</sup> Act 58 of 2001.

<sup>158</sup> Act 27 of 1996.

- *Take steps to ensure de facto equal access of girls and young women to all levels of education, to retain girls in schools, and to strengthen the implementation of re-entry policies enabling young women to return to school after pregnancy, across the country.*

There have been several measures taken by the state through the government to provide equal access to education for girls and young women. The Department of Basic Education, alongside the Department of Higher Education and Training, function as the primary government institutions which work to implement education from reception year (i.e. Grade R<sup>159</sup>) to grade 12, and Adult Basic Education and Training qualifications as well as higher education systems, including further education and training facilities and institutions, national skills authority, sector education and training, trade testing centres, as well as skills development institutions. For the 2017/2018 financial year, the government allocated 17% of its spending to the DBE.<sup>160</sup> For 2019/2020 R24.5 billion was allocated to the DBE, an increase from the previous year of 3.4%.<sup>161</sup>

The DBE drafted the National Policy on the Prevention and Management of Learner Pregnancy in Schools. The policy is underscored by the alarming rate of learner pregnancy in South Africa, which Statistics South Africa asserts stood at 97,143 births by teenagers in 2017.<sup>162</sup> Teenage pregnancy is understood as an important factor that hinders the educational outcomes for girls, which has life-long consequences. While the National Policy on the Prevention and Management of Learner Pregnancy in Schools is welcomed, it has its shortcomings. Civil society organisations have highlighted the lack of grounding data to drive the policy, and it is therefore marred by vague claims and plans, based on questionable fundamental starting points. The policy is centered primarily on the ways in which learner pregnancy affects the government's planning and neglects to protect the rights of learners to education and appropriate health care in this regard.

The policy does not include clear implementation and actionable plans in the event a learner does become pregnant and gives birth. The National Policy on the Prevention and Management of Learner Pregnancy in Schools guarantees the right of learners to return to school following the delivery of their babies, in line with the government's Comprehensive Sexual Education programme. Despite this, the National Policy has not been implemented, and individual school governing bodies are at liberty to create and implement their own policies, which are often discriminatory. This discrimination ranges

<sup>159</sup> In South Africa's schooling system, Grade R is the last/final Grade in pre-school, prior to the first year (i.e. Grade 1) of primary school.

<sup>160</sup> Education Budget for South Africa 2017/2018. UNICEF. Available from [https://www.unicef.org/esaro/UNICEF\\_South\\_Africa\\_-\\_2017\\_-\\_Education\\_Budget\\_Brief.pdf](https://www.unicef.org/esaro/UNICEF_South_Africa_-_2017_-_Education_Budget_Brief.pdf)

<sup>161</sup> Minister Angie Motshekga: Basic Education Department Budget Vote 2019/2020. 17 July 2019. Available from <https://www.gov.za/speeches/basic-education-budget-vote-speech-17-jul-2019-0000>

<sup>162</sup> Statistics South Africa Statistical Release P0305 Recorded Live Births 2017, p13. Available from <http://www.statssa.gov.za/publications/P0305/P03052017.pdf>

from learners not being given access to missed academic content, to suspension from school, forced repetition of the same grade, or even expulsion.<sup>163</sup> Moreover, while the policy refers to a “learner”, it is centered around young girls who become pregnant, neglecting to speak to the rights of young boys who are teenage fathers.

Alongside the growing rate of teenage pregnancy, menstruation is another reality that contributes to retention or absenteeism. The Stellenbosch Law Clinic has found that 30% of girls miss school while having their period, and miss out on valuable classroom time.<sup>164</sup> The state has made strides through the inclusion of sanitary pads in the list of value-added tax free items following strong movements against these products being taxed. Be that as it may, the increasing rate of absenteeism is concerning regarding the retention of girls in school. Girls in rural areas and those with disabilities continue to suffer most due to their environments, the difficulties associated with disability and the remaining cost of sanitary products.<sup>165</sup>

- *Provide safe educational environments free from discrimination and violence, as well as safe transportation to and from schools, and closely monitor the implementation of the Safe Schools Programme;*

There has been a scourge of violence in schools over the last few years which has often been fatal, both among students, and between learners and educators. Instances include learners being fatally stabbed<sup>166</sup> or shot<sup>167</sup>, and teachers killed or severely injured. In one of the cases a teacher was almost killed when a student tried to run her over.<sup>168</sup> Violence is a widespread problem across the country and schools are a microcosm of the broader communities in which they are situated. This demonstrates that a culture of violence has been filtering into the schools, making them very unsafe for teachers and learners alike. Young girls bear the brunt of this, yet South Africa's 5th Periodic Report on the Implementation of the Convention on the Elimination of All forms of Discrimination Against Women is silent on safe educational environments. While South Africa has appropriate legislation including the Criminal Procedures Act<sup>169</sup>,

<sup>163</sup> Draga, L., Stuurman C., and Petherbridge, B. (2016). Basic Education Handbook. Chapter 8: Pregnancy. Available from <http://section27.org.za/wp-content/uploads/2017/02/Chapter-8.pdf>

<sup>164</sup> Stellenbosch Law Clinic (21 June 2018). Available from <https://www.sun.ac.za/english/Lists/news/Disp-Form.aspx?ID=5731>

<sup>165</sup> Report of the North West Provincial Investigative Hearing into Lack of Safety and Security Measures in Schools for Children with Disabilities. South African Human Rights Commission. Available from [https://www.sahrc.org.za/home/21/files/SAHRC%20School%20Safety%20for%20Web%20\(FINAL\).pdf](https://www.sahrc.org.za/home/21/files/SAHRC%20School%20Safety%20for%20Web%20(FINAL).pdf)

<sup>166</sup> Sadiki, R. (2019). Precious Ramabulana died in the cruellest way, says broken aunt. *Sunday Independent*: 1 December 2019. Available from <https://www.iol.co.za/sundayindependent/news/precious-ramabulana-died-in-the-cruellest-way-says-heartbroken-aunt-38426464>

<sup>167</sup> Bhengu, L. (2019). Durban pupils suspended as they appear in court over fellow pupil's death. *Times Live*: 16/09/2019. Available from <https://www.timeslive.co.za/news/south-africa/2019-09-16-durban-pupils-suspended-as-they-appear-in-court-over-fellow-pupils-death/>

<sup>168</sup> Singh, K. (2019). KZN pupil jailed for 17 years for assaulting teacher, trying to run her over. *News24*: 12/12/2019. Available from <https://www.news24.com/SouthAfrica/News/kzn-pupil-jailed-for-17-years-for-assaulting-teacher-trying-to-run-over-her-20191204>

<sup>169</sup> Act 51 of 1977.

the Children's Act<sup>170</sup>, the Children's Amendment Act<sup>171</sup>, and the South African Schools Act<sup>172</sup> of 1996, violence and discrimination remain a grave reality and concern for girl children in schools. For queer learners, the schooling system is seemingly a violent space which perpetuates negative stereotypes. A study found that these negative experiences range from punitive actions expressed through derogatory language to vicious reactionary hate, often expressed through violence, and often perpetrated by teachers.<sup>173</sup> Even with this legislation in place, it is incredibly difficult for survivors of sexual abuse, and rape in particular, to come forward due to their distrust of the system and its effectiveness.

On the positive side, the Departments of Transport and Basic Education implemented the National Learner Transport Policy in 2015.<sup>174</sup> The policy makes provision for the beneficiaries of the transport service to be primarily learners with disabilities and those who are "needy", from grades R – 12, and prohibits the extension of the service to areas with public transport, as this is considered a duplication of services. While the policy is welcomed, it is exclusionary and neglects to consider the realities of rural and poor learners. While some learners live in areas where there is public transport, many families cannot afford this service.<sup>175</sup> For girl children in particular, the journey is often characterised by sexual violence and unsolicited sexual advances, or in many cases discriminatory and abusive practices such as female genital mutilation, forced under-age marriages and ukuthwala. Despite the implementation of the policy, civil society organisation Equal Education highlighted that over half a million learners in KwaZulu-Natal still walk to and from school. The roll out of the policy is marked by a lack of funding, and a poor location of responsibility. Provincial departments assign funds from the National Treasury at their individual discretion. Indeed, scattered provincial policies exist, yet these remain inconsistent and un-standardised, inadequately managed and poorly resourced.

The National School Safety Framework document was drafted and approved by the Minister of Education in April 2015. The Framework underlines that safety for learners and teachers remains integral in the functioning of the schooling system and the provision of a good quality education. Part A of this National School Safety Framework (titled the Conceptual Reader) uses an ecological approach, which aims to connect the individual, relationships, community and society. The Conceptual Reader provides a step by step guide on the implementation of the reader, alongside

<sup>170</sup> Act 38 of 2005.

<sup>171</sup> Act 41 of 2007.

<sup>172</sup> Act 84 of 1996.

<sup>173</sup> Msibi, T. (2012). 'I'm used to it now': experiences of homophobia among queer youth in South African township schools. *Gender and Education*, 24(5), 515-533.

<sup>174</sup> National Learner Transport Policy. Available from [https://www.gov.za/sites/default/files/gcis\\_document/201510/39314gon997.pdf](https://www.gov.za/sites/default/files/gcis_document/201510/39314gon997.pdf)

<sup>175</sup> Joseph, S., and Carpenter, J. Basic Education Handbook. Chapter 16: Scholar Transport. <http://section27.org.za/wp-content/uploads/2017/02/Chapter-16.pdf>

the tools of implementation.<sup>176</sup> Nevertheless, the Safe School Programme has not been far reaching. While some provinces in the country are active and engaged in the implementation of the programme, others are not well resourced, or are not appropriately included in the structures of the DBE. Much of the programme's reach is primarily centered on the partnerships of public schools and their local police stations, which exposes its limit in scope. As such, the Safe School Programme has not been adequately effective nationally and does not live up to its multi-pronged theoretical expectations.

- *Strengthen awareness-raising and training of school officials and students, and the sensitisation of children through the media; and establish reporting and accountability mechanisms to ensure that perpetrators of sexual abuse and harassment are prosecuted and punished*

The DBE has introduced several measures to raise awareness and training of officials and students on several campaigns. This includes the development and distribution of a handbook for learners entitled *Speak Out! A handbook for learners on how to prevent sexual abuse in public schools*, and a teachers manual, entitled *Opening your eyes -Addressing Gender-based violence in South African schools*.<sup>177</sup> The Department has also launched a website titled 'Speak Out Freely' ([www.speakoutfreely.co.za](http://www.speakoutfreely.co.za)) which focuses on learners' understanding, and the prevention and reporting of sexual abuse. The Department has partnered with local organisation LEAD SA on another campaign, *STOP RAPE!* to raise awareness and educate at least 10,2 million learners on rape.<sup>178</sup> Campaign documents published in 2013 highlight the education campaign included a pledge through the Bill of Responsibilities, which has been made available in the 11 official languages of the country. DBE has also used social media platforms such as Facebook for educational purposes for learners and teachers through the Girls Education Movement and Boys Education Movement.

South Africa's 5th Periodic Report on the Implementation of CEDAW makes no mention of the awareness-raising and training of school officials and students, and the sensitisation of children through the media and different advocacy strategies. While it is evident that the department of basic education has embarked on some projects and campaigns, these campaigns have not reached their full potential. The 'Speak Out Freely' website, for example, reaches a web domain that does not belong to the Department. Rather, the website belongs to a private psychic facility that has

<sup>176</sup> Department of Basic Education (2015), The National School Safety Framework.

<sup>177</sup> Department of Basic Education. Opening our eyes: addressing gender-based violence in South African Schools. Available from ADDRESSING GENDER- BASED VIOLENCE IN SOUTH AFRICAN SCHOOLS

<sup>178</sup> Department of Basic Education and LeadSA campaign, STOP RAPE. Available from <https://www.education.gov.za/Portals/0/Documents/Publications/STOP%20RAPE%20booklet.pdf?ver=2015-01-30-081322-643>

no relationship to what the Department asserts the website is intended for. A 2017 report by the South African Human Rights Commission (SAHRC) emphasizes that poor and inadequate services and platforms continue to fuel the scourge of violence in South African schools, allowing perpetrators - both learners and teachers - to escape without consequence.<sup>179</sup> Moreover, while the programmes and projects have been established, schools are not legally obliged to adopt guidelines, therefore further limiting their effectiveness.<sup>180</sup>

- *Widely disseminate the Guidelines for the Prevention and Management of Sexual Violence and Harassment in Public Schools, and ensure enforcement and monitoring of the provisions recommended to curtail the problem*

South Africa's 5th Periodic Report on the implementation of CEDAW asserts that the Guidelines for the Prevention and Management of Sexual Violence and Harassment in Public Schools has been distributed to all schools across the country, and serves to improve the measures taken to create safe schooling environments. In light of the aforementioned, sexual violence and harassment in schools remains high. Civil society organisations working in the sector have highlighted sensitive issues, including the sex for marks scandals in both basic and higher education facilities, as particularly important, as these serves as a microcosm of the broader system of abuse in South Africa.<sup>181</sup> While legislation is an important part of curbing the crisis, it evidently has not been enough. The South African Council for Educators - a teacher's regulatory body - tabled a report in Parliament, and highlighted that out of 633 misconduct cases, 93 were associated with sexual assault, indecent assault, sexual misconduct and rape<sup>182</sup>. In a document published on the website of the DBE, the Department concedes that sexual violence in schools is dynamic, and takes place in hallways, empty classrooms, dormitories and toilets, and that while all learners are affected by this, it is girls and learners with disabilities that are most at risk.

<sup>179</sup> Unpacking the gaps and challenges in addressing gender-based violence in South Africa. Available at <https://www.sahrc.org.za/home/21/files/SAHRC%20GBV%20Research%20Brief%20Publication.pdf>

<sup>180</sup> Centre for Applied Legal Studies (2014). Sexual violence by educators in South African schools: gaps in accountability

<sup>181</sup> Chanel, R. (2019). Academics highlight abuse of sex for jobs or marks at universities. *Daily Maverick*: 26/03/2019. Available from <https://www.dailymaverick.co.za/article/2019-03-26-academics-highlight-abuse-of-sex-for-jobs-or-marks-at-universities/>

<sup>182</sup> South African Council of Educators (2019), Report 2018/2019, p 21.

- *Ensure necessary budgetary allocation for the implementation of various projects and programmes*

South Africa's 5th Periodic Report on the Implementation of CEDAW does not engage the issue of budgeting or finances. The '2019 Budget: Estimates of National Expenditure' outlines the budget and expenditure expectations and trends. The DBE has five thematic categories: administration; curriculum policy, support and monitoring; teachers, education, human resources and institutional development; planning, information and assessment; and educational enrichment services<sup>183</sup>. According to the estimate document, no specific budgetary allocations are made for sub-programmes which center gender. Similarly, the DHET '2019 Budget: Estimates of National Expenditure' through its categories: administration; planning, policy and strategy; university education; technical and vocational education and training; skills development and community education and training. This too makes no specific reference to gender-specific budgetary allocations. The CGE reported on gender transformation in tertiary institutions in 2018/2019 and recommended that universities need to provide adequate funding for gender transformation for their employment equity targets, alongside managing the retention of their female staff members as a 2020 goal in line with international instruments such as CEDAW.<sup>184</sup>

## ARTICLE 11

- *Employment*

### *Legislative and policy framework*

South Africa has put in place a regulatory framework that governs employment in compliance with the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and in line with General Recommendation number 13 of CEDAW. This legislative framework includes:

- The Employment Equity Act<sup>185</sup>;
- The Promotion of Equality and Prevention of Unfair Discrimination Act<sup>186</sup>;

<sup>183</sup> Department of Finance (2019). Budget: Estimates of National Expenditure. Available from <http://www.treasury.gov.za/documents/National%20Budget/2019/enebooklets/Vote%2014%20Basic%20Education.pdf>

<sup>184</sup> Commission for Gender Equality (2016). Report on Gender Transformation in Tertiary Institutions, Available at <http://www.cge.org.za/wp-content/uploads/2016/12/CGE-gender-tranformation-in-tertiary-institutes-2.pdf>. Accessed: 2018.

<sup>185</sup> Act 55 of 1998.

<sup>186</sup> Act 29 of 2000.

- The Preferential Procurement Policy Framework Act<sup>187</sup>;
  - The Skills Development Act<sup>188</sup> No. 97 of 1998 and the Skills Development Levies Act<sup>189</sup> No. 9 of 1999; and
  - The Basic Conditions of Employment Act<sup>190</sup> No. 75 of 1997
  - The Labour Relations Act No. 66 of 1995
  - Broad Based Black Economic Empowerment Act No.53 of 2003
- *International Labour Laws*

South Africa has ratified several Conventions of the International Labour Organisation (ILO), which the country has been a member of for the periods of 1919-1966 and 1994 to date. South Africa has recently signed the first Sexual Harassment Convention, which will assist the member states including South Africa with how to adequately address the issue of sexual harassment in the workplace.

The Commission for Gender Equality (CGE), however, notes crucially that South Africa has not yet ratified the ILO Convention Number 83 regarding maternity benefits. It is also noted that the regulatory framework in place has contributed to elevating women's employment chances and has improved their positioning as a result of the above listed Acts, and in turn, has strengthened women's retention in the labour force. Be that as it may, there are still gaps within the legal framework which require redress to enhance the effective implementation of the provisions of CEDAW in the country.

- *Ensure equal opportunities for women in the labour market, in accordance with article 11 of the Convention. To this end, the Committee urges the State party to adopt effective measures in the formal labour market to eliminate both horizontal and vertical occupational segregation, narrow and close the wage gap between women and men and ensure the application of the principle of equal remuneration and equal opportunities at work. The Committee further calls on the State party to review the relevant legislation under discussion, in particular the Employment Equity Amendment Bill, and the Basic Conditions of Employment Amendment Bill, with a view to ensuring, in accordance with international standards, that all mothers receive leave with pay, and also to provide effective sanctions and remedies for violation of laws on maternity leave.*

<sup>187</sup> Act 3 of 2000.

<sup>188</sup> Act 97 of 1998.

<sup>189</sup> Act 9 of 1999.

<sup>190</sup> Act 75 of 1997.

South Africa has enacted a plethora of legislation which seek to address the issue of inequality in the workplace. For example, in government institutions and departments, there is no wage disparity between men and women holding the same position in the public service. The same cannot be said about the private sector, where women continue to fight to close the gender wage gap, which currently sits at 15%.<sup>191</sup> Excuses such as lack of work experience are given so as to protect the sector from this practice and the failure to uphold the principle of equal pay for equal work, and other laws such as the Employment Equity Act<sup>192</sup> and the Basic Conditions of Employment Act<sup>193</sup> are not being enforced. This can also be blamed on the government's failure to monitor and enforce compliance in terms of labour law within the private sector.

There have been some new developments as far as parental leave laws are concerned. South Africa's new parental leave legal provisions (introduced through Sections 1-7 of the Labour Relations Amendment Act, no. 8 (2018)) were signed into law by President Ramaphosa on 27<sup>th</sup> November 2018 and came into effect on 1 January 2019. The repercussions of the amendments to the Labour Relations Act have also resulted in changes to the Basic Conditions of Employment Act, which came into effect on 1<sup>st</sup> January 2020. The new legislation means that all parents – including fathers, adoptive parents, and surrogates – are now entitled to ten days unpaid parental leave when their children are born, when they adopt their child or when they give birth. This is an exciting development as far as gender equality is concerned, specifically in the workplace. However, the Act provides that these leave entitlements are unpaid, and qualifying employees are eligible to apply to the Unemployment Insurance Fund for income replacement benefits during the leave period.

The issue of sexual harassment has been persisting in various industries, in both the private and public sectors. This prompted CGE to conduct a gender transformation study (amongst other studies), which sought to assess gender transformation in both the private and public sectors, focusing on internal gender mainstreaming programmes, policies and practices. Findings revealed that women are still bearing the brunt of sexually harassment in the workplace, despite pieces of legislation promulgated over the years to address this. Even though the 5<sup>th</sup> Periodic Report is silent on this issue, the government acknowledges that sexual harassment in the workplace remains pervasive.

<sup>191</sup> Mail & Guardian Online: 08/08/2019. Why Gender Pay Gap Persist (<https://mg.co.za/article/2019-08-08-00-why-the-gender-pay-gap-persists/>)

<sup>192</sup> Act 55 of 1998.

<sup>193</sup> Act 75 of 1997.

The country report does not mention the rights of domestic workers, who constitute over one million members of the labour force in South Africa<sup>194</sup>. According to the 2019 survey published by SweepSouth (a digital domestic work booking platform), based on interviews with 1300 domestic workers, 16% of them indicated that they were abused verbally and physically by their employers. Domestic workers are in the category of the most vulnerable workers in the country. According to this survey, 79% of them were the breadwinners for their households, and earned very low salaries.<sup>195</sup>

## ARTICLE 12

- *Equality in Access to Health Care*

### *National Legal Framework*

In line with the international human rights legal framework that South Africa subscribes to, section 27 of the Constitution of the Republic of South Africa, 1996, specifies that all South Africans have the right to access health care services (including reproductive health care) and emergency medical treatment. The realisation of this right is enhanced by the National Health Act<sup>196</sup>. In addition, these rights are also provided for under various pieces of legislation and policies on equality of access to health care as indicated below:

- *The Constitution of the Republic of South Africa, 1996, and the National Health Act<sup>197</sup>*

In line with the international human rights legal framework that South Africa subscribes to, the Constitution, under section 27, specifies that all South Africans have the right to access health care services (including reproductive health care) and emergency medical treatment. The realisation of this right is enhanced by the National Health Act. Realisation of these rights is also provided for under the following legislation, particularly to address health issues related to women, children and vulnerable groups:

*The National Health Act:* The objective of the Act is to provide a framework for a structured, uniform healthcare system, taking into account the obligations imposed

<sup>194</sup> SweepSouth (2019), 'Report on Pay and Working Conditions for Domestic Work in South Africa', (See <https://www.businessinsider.co.za/16-of-south-african-domestic-workers-report-being-abused-at-work-sweep-south-report-said-2019-5>)

<sup>195</sup> Ibid

<sup>196</sup> Act 61 of 2003.

<sup>197</sup> Act 61 of 2003.

by the Constitution and other national, provincial and local government laws with regards to health services.

*Choice of Termination of Pregnancy Act*<sup>198</sup>: The objective of the Act is to determine the circumstances and conditions under which the pregnancy of a woman may be terminated, and to provide for matters connected therewith.

*Sterilisation Act*<sup>199</sup>: The objective of the Act is to provide for the right to sterilisation; to determine the circumstances under which sterilisation may be performed and in particular, the circumstances under which sterilisation may be performed on persons incapable of consenting or who are incompetent to consent due to mental disability.

*Child Care Act*<sup>200</sup>: The objectives of this Act are to provide for the establishment of children's courts, and the appointment of commissioners of child welfare; for the protection and welfare of certain children; for the adoption of children; for the establishment of certain institutions for the reception of children and for the treatment of children after such reception; and for contribution by certain persons towards the maintenance of certain children; and to provide for incidental matters.

*Children's Act*<sup>201</sup>: This provides for the protection of the rights and wellbeing of children.

*Older Persons Act*<sup>202</sup>: This aims to deal effectively with the plight of the elderly by establishing a framework aimed at the empowerment and protection of older persons, and at the promotion and maintenance of their status, rights, well-being, safety and security; and to provide for matters connected therewith.

*Mental Health Care Act*<sup>203</sup>: This provides a legal framework for mental health in South Africa, and in particular the admission and discharge of mental health patients in mental health institutions, with emphasis on human rights for mentally ill patients.

*Promotion of Equality and the Prevention of Unfair Discrimination Act*<sup>204</sup>: This provides for the further amplification of the constitutional principles of equality, and the elimination of unfair discrimination. This law intersects with issues related to HIV/AIDS and women's health, and also issues of gender discrimination or violence in the workplace.

<sup>198</sup> Act 92 of 1996.

<sup>199</sup> Act 44 of 1998.

<sup>200</sup> Act 74 of 1983.

<sup>201</sup> Act 38 of 2005.

<sup>202</sup> Act 61 of 2006.

<sup>203</sup> Act 17 of 2002.

<sup>204</sup> Act 4 of 2000.

- The Proposed National Health Insurance (NHI)

South Africa is in the process of establishing the National Health Insurance (NHI), which once approved by Parliament, is envisioned to guarantee all South Africans and legal residents access to a defined package of comprehensive health services. This exists as a roadmap towards positioning health reform within a legal framework, ensuring the affordability and accessibility of health services for different strata of the South African society. Currently the NHI bill is undergoing public hearings across the country where citizens have a chance to have their input, before it goes back to Parliament for approval.<sup>205</sup>

The NHI is a financing system that seeks to make sure that all citizens of South Africa (and legal long-term residents) are provided with essential healthcare, regardless of their employment status and ability to make a direct monetary contribution to the NHI fund. NHI seeks to eradicate barriers limiting access to healthcare and ensures financial risk protection from catastrophic health-related expenditures for households and individuals through a prepayment system.

Healthcare is a human right – this is a widely accepted international principle. This right should not depend on how rich a person is or where a person lives. The right to obtain healthcare is written into our Constitution. But large numbers of people continue to die prematurely and to suffer unnecessarily from poor health. Treatable conditions are not being treated timeously and preventable diseases are not being prevented. This is despite of the fact that government has tried its utmost since 1994 to ensure that everyone in this country has equitable access to necessary healthcare services. There are still serious challenges, caused mainly by a skewed healthcare financing system. Without NHI, the burden of disease in the country will not be reduced because the majority of the population – and the section suffering the greatest ill health – will not be able to access good quality healthcare.

The White paper on the NHI has been drawn and debated in Parliament on several occasions. The Bill is awaiting enactment.

- *Policies to ensure equality in access to healthcare*

*National Contraception and Fertility Planning Policy and Service Delivery Guidelines*

<sup>205</sup> NHI Public Hearings: 'Addressing inequality is long overdue'. Available at <https://www.health24.com/News/Public-Health/nhipublichearings-addressing-inequality-is-long-overdue-20200207>

The above policy and guidelines are aimed at re-prioritising contraception and fertility planning in South Africa, with an emphasis on dual protection. The policy embraces both the prevention of pregnancy (contraception) and the planning for a healthy pregnancy (conception). It also reflects the Department of Health's focus on human rights, quality and integration. It provides a framework for a broad, forward looking contraception and fertility planning programme, with an emphasis on improved access, as well as expanded contraceptive choice.

According to the CEDAW, with regards to health and HIV, the CEDAW Committee is concerned about the high levels of maternal mortality rates (65/100,000 live births), and data indicating that a significant proportion of maternal deaths are attributed to non-pregnancy related infections, mainly AIDS (43.7%).<sup>206</sup> While acknowledging information provided on various initiatives undertaken by the South African government to prevent and combat HIV/AIDS, including the implementation of the National Strategic Plan (NSP) for HIV and AIDS, 2007-2011, the CEDAW Committee notes with deep concern the fact that South Africa continues to face a serious epidemic, and that women and girls are disproportionately affected by HIV/AIDS; the prevalence among women is higher (13.6%) than among men (7.9%).<sup>207</sup>

The CEDAW Committee is further concerned about the discrepancies among the provinces of South Africa in the percentage of HIV-positive pregnant women that have access to antiretroviral (ARV) treatment.<sup>208</sup> The Committee is also concerned about the lack of information on specific measures addressing the intersection between violence and HIV/AIDS risks, given the high levels of sexual violence against women. It is also concerned about the prevalence of HIV-related stigma which places women living with HIV at risk of being subjected to violence and discrimination.<sup>209</sup>

CEDAW sets out five recommendations (a-e) with regards to health and HIV for the South African government to respond to. These are outlined below, along with the government's response (and additional reflections and insights based on information collected by the CGE).

- *Ensure the implementation of the Maternal Child and Women's Health Strategy (2009-2014); Transmission, as indicated in the State party's replies to the list of issues and questions.*

<sup>206</sup> Office of the High Commission on Human Rights. ([https://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Joint\\_NGO\\_Report\\_for\\_the\\_session\\_SouthAfrica.pdf](https://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Joint_NGO_Report_for_the_session_SouthAfrica.pdf))

<sup>207</sup> Ibid

<sup>208</sup> Ibid

<sup>209</sup> Ibid

The implementation of the Maternal Child and Women's Health Strategy (2009-2014) has scaled up, and a total of 72% of primary health care facilities providing basic antenatal care was achieved. 96.9 % of pregnant women agreed to be tested for HIV. A total of 81% maternity facilities conducted monthly maternal and perinatal morbidity and mortality meetings.<sup>210</sup> Health workers were trained in emergency and comprehensive obstetric care to improve their skills in intravenous fluid lines, the manual removal of placenta and provision of parenteral analgesia during labour, blood transfusions, the performance of caesarean sections in case of emergency and surgical intervention in cases of post-partum haemorrhage.<sup>211</sup> Maternal, child and women's health and nutrition remain the Department of Health's (DOH) priorities. The Integrated Nutrition Programme prevents and manages malnutrition, a major contributing factor to morbidity and mortality.<sup>212</sup>

Free health care for pregnant and lactating women, and children under the age of 6, has improved access to health care.<sup>213</sup> According to Statistics South Africa (2019), the infant mortality rate has dropped from a high of 281 in 2009 to a low of 121 in 2016, and there has been a decrease in illness and deaths amongst women.<sup>214</sup> With regards to the levels of child malnutrition, the South African Demographic Health Survey of 2016 shows that 27% of children under the age of five are stunted, 3% are wasted, and 6% are underweight, and disconcertingly, 13% of children are overweight.<sup>215</sup>

- *Take continued and sustained measures to address the impact of HIV/AIDS on women and girls, as well as its social and family consequences*

The approach to deal with HIV and AIDS for women and children is a multi-pronged strategy comprising prevention, treatment and support.<sup>216</sup> The prevention component focuses on advocacy and social mobilisation, training of peer educators, provision of male and female condoms and the correct treatment of sexually transmitted infections (STI).<sup>217</sup> The treatment component focuses on managing opportunistic infections through Cotrimoxazole and INH prophylaxis, providing ARV treatments and treating tuberculosis (TB) as part of co-infection with HIV. The care and support component focuses on providing nutrition for people living with HIV and AIDS, providing home-based care and step down care to minimise the cost of admitting patients at more expensive private or public healthcare/medical facilities.<sup>218</sup>

<sup>210</sup> <http://www.women.gov.za/images/SA-5th-Periodic-Report-Website.pdf>

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

<sup>213</sup> <https://www.goaltracker.org/countries/south-africa/explorer>

<sup>214</sup> <https://www.goaltracker.org/countries/south-africa/explorer>

<sup>215</sup> [www.health.gov.za/index.php/strategic-documents/category/536-so...](http://www.health.gov.za/index.php/strategic-documents/category/536-so...)

<sup>216</sup> <http://www.women.gov.za/images/SA-5th-Periodic-Report-Website.pdf>

<sup>217</sup> Ibid

<sup>218</sup> Ibid

The response to HIV and AIDS was limited prior to 1994. The National Strategic Plan on HIV, TB & STI's 2017-2022, has been developed to address HIV and AIDS in South Africa.<sup>219</sup>

According to South Africa History Online (SAHO)<sup>220</sup>, the NSP includes the following strategic goals which must be achieved in relation to HIV, TB & STI's:

- Halve the number of new HIV infections;
- Ensure that at least 80% of people eligible for HIV treatment are receiving it;
- Halve the number of new TB infections and deaths from TB;
- Ensure that the rights of people living with HIV are protected; and,
- Halve stigma related to HIV and TB. This plan has resulted in an increase in overall budget allocation for ARV treatment, to ensure that its second target of 80% coverage is reached by 2016.

According to SAHO, the NSP has resulted in an increase in overall budget allocation for ARV treatment, to ensure that its second target of 80% coverage was reached by 2016.<sup>221</sup> In 2016 Dr Fareed Abdullah, chief executive of South African National AIDS Council (SANAC), revealed that an estimated R23 billion a year was being spent by the government on HIV/AIDS in South Africa, 80% of which came from the government and the balance from donors.<sup>222</sup>

Despite these efforts by the government of South Africa, more needed to be done given that South Africa continues to have one of the countries with high rates of HIV/Aids infections.<sup>223</sup> Dr Fareed Abdullah further pointed out that government had spent more on HIV in South Africa than the Global Fund to Fight AIDS, Tuberculosis and Malaria spends in the whole of Africa, and that SANAC and the DOH had commissioned more HIV research over the next 20 years that would require more expenditure.<sup>224</sup> He also pointed out that, "all signs point to the government needing to do more in targeting new infections."<sup>225</sup>

While new infections were declining, in some age group categories, they remained extremely high. For example, for females in the 15-24 age group, the new infection rate

<sup>219</sup> Ibid.

<sup>220</sup> <https://www.sahistory.org.za/article/history-official-government-hiv-aids-policy-south-africa>

<sup>221</sup> Ibid

<sup>222</sup> N. Nkosi (2016). R23bn spent on HIV/Aids each year

Available online at <https://www.iol.co.za/business-report/economy/r23bn-spent-on-hiv-aids-each-year-2042364>

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

was at 2.38%<sup>226</sup> in 2016. Figures provided by various scholars and institutions, including UNAIDS and SANAC, also indicate that infection rates among the youth (both boys and girls aged 15-24) in South Africa are extremely high at 87% of the total, and that the infection rate among girls/young women in the age category 15-24 were three times higher than among boys/young men in the same age group.<sup>227</sup> while This meant that for every 100 females in this age group, three would contract HIV each year, which was considered extremely high, Abdullah he pointed out.<sup>228</sup>

- *Take measures to broaden and strengthen Prevention of Mother to Child Transmission services in order to achieve its target rate of 5 per cent for Mother to Child.*

Progress has been recorded in scaling up Prevention of Mother to Child Transmission (PMTCT) of HIV from 71% in 2009 to 99% in 2013, resulting in a reduction in mother to child transmission from 8% in 2008 to 2% in 2013.<sup>229</sup> This resulted in a 97% reduction in mother-to-child transmission of HIV.<sup>230</sup> PMTCT had managed to attain a total of 79.4% eligible HIV positive pregnant women placed on highly active ARV therapy.<sup>231</sup> Furthermore, the South African government, in conjunction with other partner organisations across the country, introduced a national programme called *She Conquers* in 2016, with the aim of decreasing new HIV infections, teenage pregnancies and gender-based violence among young women and adolescent girls, to increase and retain young women and adolescent girls in school, and to increase economic opportunities for young people, particularly young women.<sup>232</sup>

The *She Conquers* Programme seems to have proved successful according to Hasina Subedar et al., who conducted an evaluation of this programme.<sup>233</sup> They point out the following with regard to the successes of the programme:

- *General Progress under She Conquers*<sup>234</sup>
  - Over 20 government departments and 100 partner organisations have agreed to align under *She Conquers*;

<sup>226</sup> Ibid.

<sup>227</sup> See Allinder, S.M & Fleischman, J. (2019), *The World's Largest HIV Epidemic in Crisis: HIV in South Africa* (<https://www.csis.org/analysis/worlds-largest-hiv-epidemic-crisis-hiv-south-africa>), accessed on 14/03/2020

<sup>228</sup> Ibid.

<sup>229</sup> <http://www.women.gov.za/images/SA-5th-Periodic-Report-Website.pdf>

<sup>230</sup> Ibid

<sup>231</sup> Ibid.

<sup>232</sup> Subedar, H. et.al (2018). *Tackling HIV By Empowering Adolescent Girls and Young Women: a multisectoral, government led campaign in South Africa*. Available online at <https://doi.org/10.1136/bmj.k4585>

<sup>233</sup> Ibid.

<sup>234</sup> Ibid

- Programmes for adolescent girls and young women account for over R3 billion; and
  - *She Conquers* covers a total of three million young women, within 22 priority subdistricts, across all nine provinces of South Africa.<sup>235</sup>
- *Progress on She Conquers interventions (1 July 2016 - 31 December 2017)*<sup>236</sup>
    - More than 700,000 adolescent girls and young women have had an HIV test;
    - 26,000 adolescent girls and young women who tested HIV positive were connected to care;
    - Over 560,000 adolescent girls received life skills and sexual education;
    - More than 90,000 adolescent girls and young women received post-violence care;
    - Nearly 19,000 young boys and girls participated in violence prevention programmes;
    - More than 72,000 adolescent girls received support to remain in school;
    - More than 19,000 adolescent girls and young women attended economic strengthening programmes; and,
    - Over 6,000 completed a parenting programme (including teen parents).

Despite some of the successes of the *She Conquers* programme in reducing mother to child transmission, Subedar *et al.* point out that several challenges remain, including the following:<sup>237</sup>

- Political and funding problems meant that some implementing partners were unable to offer the full package of sexual and reproductive health services in all districts;
- Even though the programme had high level buy-in from government departments, strong leadership at provincial and district levels was less consistent. Some provinces have key staff who are motivated to systematically push the *She Conquers* agenda forward as part of their work, but commitment varies, and it is not always possible to engage reliable local staff or to integrate the campaign into existing coordinating structures; and,
- There is a lack of dedicated resources for sustained youth engagement at all levels of government. Engagement is hampered by the shortage of strong youth networks and the lack of a common platform for young people.<sup>238</sup>

In addition to government efforts with regard to PMTCT, in 2017, the Joint United Nations Programme on HIV/AIDS launched the *Start Free Stay Free AIDS Free* programme, also

<sup>235</sup> Ibid.

<sup>236</sup> Ibid.

<sup>237</sup> Ibid.

<sup>238</sup> Ibid.

known as the *Super Fast-Track Framework and Action Plan*.<sup>239</sup> This plan was meant to build upon the successes achieved under the *Global Plan Towards the Elimination of New HIV Infections Among Children by 2015 and Keeping Their Mothers Alive* (Global Plan), which was released in 2011, while bringing additional focus to the HIV prevention and the treatment needs of children and adolescents.

The *Start Free Stay Free AIDS Free* plan embraces the goals adopted by UN member states in the 2016 Political Declaration on Ending AIDS. It commits to the elimination of mother to child transmission of both HIV and congenital syphilis (syphilis can result in miscarriage, stillbirth, neonatal infections and death). The 2017 Framework was designed to accelerate action in 23 priority countries, amongst them South Africa.

- *Develop policies aimed at addressing multiple discrimination and violence against women, based on the intersection between violence and HIV/AIDS;*

The South African government developed a National Strategic Plan on HIV, TB and STIs, 2012-2016, which consists of five goals. The goals that relate to violence against women are (i) ensuring an enabling and accessible legal framework that protects and promotes human rights, and (ii) reducing self-reported stigma related to HIV and TB by at least 50%.<sup>240</sup>

The key strategic objectives of the National Strategic Plan include: (a) addressing social and structural barriers that increase vulnerability to HIV, TB and STI infection; (b) preventing new HIV, TB and STI infections; and (c) increasing the protection of human rights and improving access to justice. The country has prioritised these services for sex workers.<sup>241</sup>

In addition to this, the South African government has developed several pieces of legislation, as well as policies and programmes which address issues at the intersection between violence and HIV/AIDS. Some of these are outlined by the Centre for the Study of Violence and Reconciliation in a report in 2017 looking at violence against women in South Africa, and include the following:<sup>242</sup>

- *Domestic Violence Act*<sup>243</sup> )- This aims to afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide. It also

<sup>239</sup> AVERT (2019), Prevention of Mother-To-Child Transmission (PMTCT) of HIV. Available online at <https://www.avert.org/professionals/hiv-programming/prevention/prevention-mother-child>

<sup>240</sup> RSA (2015), South Africa's 5<sup>th</sup> Periodic Country Report., Op.cit. (<http://www.women.gov.za/images/SA-5th-Periodic-Report-Website.pdf>)

<sup>241</sup> Ibid

<sup>242</sup> Nonhlanhla Sibanda-Moyo, Eleanor Khonje and Maame Kyerewaa Brobbey (2017). Violence Against Women in South Africa A Country In Crisis. Centre for the Study of Violence and Reconciliation (CSVr). Available online at <https://www.csvr.org.za/pdf/CSVr-Violence-Against-Women-in-SA.pdf>

<sup>243</sup> Act 116 of 1998.

aims to introduce measures which seek to ensure that relevant organs of state give full effect to the provisions of this Act, thereby conveying a strong message that the state is committed to eliminating domestic violence;

- *The Criminal Law (Sexual Offences and Related Matters) Amendment Act*<sup>244</sup> - This Act, known commonly as the Sexual Offences Act, brings together, codifies and revises South Africa's laws dealing with sexual offences. In addition to qualifying sexual offences in line with the Constitution, it has also created new offences, including those of child pornography. A critical contribution in combating VAWC has been the Act's redefinition of rape, which is defined as, "intentionally committing an act of sexual penetration without consent, irrespective of gender". The Act also empowers courts to provide specialised victim support services in order to mitigate against secondary victimisation or traumatisation, reduce case handling time and improve conviction rates.
- *365 Days National Action Plan against (Violence against women)*- In response to the call by the UN, and as an extended version of the international *16 Days of Activism for No Violence against Women and Children (VAWC)*, (25 November–10 December) awareness campaign, the government of South Africa runs an annual campaign to combat VAWC. Though South Africa adopted the *16 Days of Activism* campaign in 1998, the government and multiple partners adopted a *365 Day National Action Plan to End Violence against Women and Children* in what is known as the Kopanong Declaration in 2006. This Action Plan, which is multisectoral and involves several stakeholders, is also in accordance with the uppermost priority of the Declaration – to 'strengthen and place far greater emphasis on prevention'.
- *Victim Empowerment Programme (VEP)*- In responding to South Africa's high rates of violent crime in general, and the unproductive focus of earlier strategies on retributive justice, a new national crime prevention strategy was introduced in 1998, focusing on restorative justice; a victim-centered approach to criminal justice. Principally, the VEP is aimed at developing a victim-friendly criminal justice system, providing quality services to survivors and promoting intersectoral and departmental collaboration in victim-centered interventions.
- *Thuthuzela Care Centres (TCCs)* - In the spirit of the VEP and in accordance with the Sexual Offences Act, TCCs were established under the leadership of the National Prosecuting Authority's Sexual Offences and Community Affairs Unit, as one-stop facilities to provide services to survivors of sexual offences. They operate from public hospitals and are linked with the Sexual Offences Courts.

<sup>244</sup> Act 32 of 2007.

As an essential part of an anti-rape strategy, they enable rape survivors to lodge a case with the police and receive counselling and medical care in one place.

- *National Council on Gender Based Violence (NCGBV)* - Initially launched in 2012 to deal with the problems of coordination and funding in the efforts towards prevention and services in the fight against VAWC, the South African government established the NCGBV. The NCGBV was established in December 2012 as, “a high level, multi-sectoral national response to the scourge of gender based violence” to “lead and monitor the implementation of national programmes to combat gender based violence.” As already indicated, the NCGBV collapsed within two years due to a number of reasons already outlined in this report.<sup>245</sup>
  - *Undertake awareness-raising campaigns throughout the State party and among Government personnel in respect of prevention, protection and maintenance of confidentiality, in order to systemise and integrate approaches for multiple government sectors.*

The government, in South Africa's 5<sup>th</sup> periodic report on the implementation of the CEDAW (2009-2014), points to several awareness raising campaigns in the country attempting to address issues of prevention, protection and promoting confidentiality in order to systemise and integrate approaches for multiple government sectors. However, many of these initiatives were undertaken by non-state actors or non-governmental organisations. In a few instances, government was involved sometimes only to a limited extent:

- Programmes to reduce barriers faced by women in accessing HIV/AIDS services are in place, such as eliminating user fees and addressing stigma and discrimination in the healthcare sector. Post-Exposure Prophylaxis interventions continue to be provided to victims of sexual violence;<sup>246</sup>
- Sonke Gender Justice's Community Education and Mobilisation unit, a non-governmental organisation initiative, works closely with men and women from all walks of life, and in numerous communities across South Africa's nine provinces, to address gender inequality, gender based violence and the spread and impact of HIV and AIDS. The campaigns aim to inspire community activism, and encourage community members to form community action teams. Measures used include participatory workshops, digital stories, photo-voice<sup>247</sup>, ambush theatre, street soccer, murals and community radio;<sup>248</sup>

<sup>245</sup> For further details, see Commission for Gender Equality (2014). From Expectation to Uncertainty? Assessing the work of the National Council on Gender Based Violence. Available online at <http://www.cge.org.za/wp-content/uploads/2014/05/CGE-Research-Report-2014.pdf>

<sup>246</sup> RSA (2015), South Africa's 5<sup>th</sup> Periodic Country Report, Op.cit.

<sup>247</sup> Photo-voice is a visual research methodology that involves giving cameras participants in an activity to help them document and discuss issues of concern in processes of social change.

<sup>248</sup> Ibid.

- The *One Man Can Campaign*, which encourages men aged 15-30 to become actively involved in advocating for gender equality, preventing gender based violence and responding to HIV and AIDS;
- The *Brothers for Life Campaign* which engages men aged 30-50 in order to address the risks associated with having multiple and concurrent sexual partnerships, men's limited involvement in fatherhood, lack of knowledge of HIV status by many, and insufficient health seeking behaviours in general;
- Women in Partnership Against Aids and Men in Partnership Against Aids;
- Programmes targeting high transmission areas such as commercial sex workers. In this programme, peer educators address and educate women about prevention of HIV and other STIs, the use of male and female condoms, sexual and reproductive health and distribution of condoms;
- HIV prevention programmes for young girls aged 15-24, where they are taught health education and skills to protect them from contracting HIV;
- The *Love-Life Campaign*, funded by the DOH, assists with prevention of HIV transmission amongst the youth;
- Ground breakers programmes targeted at young girls where they are educated on sexual and reproductive health. The Youth festivals and First-Things-First initiative at universities and higher education institutions educate students on prevention of HIV and access to ARV treatment for HIV infected learners; and,
- The *Khomanani Campaign*, an outreach programme which provides information and educational programmes that have extended their prevention initiatives to focus on school leavers and young adults, implemented through well trained volunteers, who interact face-to-face with residents.<sup>249</sup>

It should be noted though that the government has certainly made efforts to respond to the CEDAW Committee's Concluding Recommendations with regard to equality of access to healthcare. However, several challenges and obstacles continue to bedevil these efforts as pointed out in parts of this report. Some of these challenges surround general systemic issues such as lack of funding, ineffective implementation, poor resource allocation and resource management, as well as lack of capacity and skills, negative attitudes of healthcare workers, prejudice and stereotypes towards people with HIV/AIDS or other health conditions - including prejudicial and discriminatory

<sup>249</sup> Ibid.

practices towards women's sexual and reproductive health rights, which often fuel the scourge of violence against women.

## ARTICLE 14

- *Special measures for rural women: The Committee calls on the State party to take the necessary measures to increase and strengthen the participation of women in designing and implementing local development plans, and to pay special attention to the needs of rural women, in particular women heads of household, by ensuring that they participate in decision-making processes and have improved access to health, education, clean water and sanitation services, fertile land and income-generation projects. The Committee also urges the State party to eliminate all forms of discrimination with respect to ownership, co-sharing and inheritance of land. It further urges the introduction of measures to address negative customs and traditional practices, especially in rural areas, which affect full enjoyment of the right to property by women.*
- *Applicable Legal Framework*

The different pieces of legislation listed below contain provisions which address various issues related to women, such as participation in decision-making, and the implementation of government development programmes and planning processes; discrimination against women, access to basic services (eg. healthcare, education, water and sanitation), access to land and income-generating and economic activities in both rural and urban communities:

- The Older Persons Act<sup>250</sup>;
- The Mental Health Care Act<sup>251</sup>;
- The Land Reform (Labour Tenants) Act<sup>252</sup>;
- The Land Restitution and Reform Laws Amendment Act<sup>253</sup>;
- The Restitution and Land Rights Amendment Act<sup>254</sup>;
- The Communal Land Rights Act<sup>255</sup>;

<sup>250</sup> Act 61 of 2006.

<sup>251</sup> Act 17 of 2002.

<sup>252</sup> Act 3 of 1996.

<sup>253</sup> Act 78 of 1996.

<sup>254</sup> Act 48 of 2003.

<sup>255</sup> Act 11 of 2004.

- The Housing Act<sup>256</sup>;
- The Restitution of Land Rights Act<sup>257</sup>, as amended ;
- The Water Services Act<sup>258</sup>;
- The Land Bank Amendment Act<sup>259</sup>;
- The Integrated Sustainable Rural Development Programme; and,
- The Development Act<sup>260</sup>.

A 2019 report published by the United Nations Children's Fund (UNICEF) and the World Health Organisation, '*Progress on Drinking Water, Sanitation and Hygiene - 2000-2017: Special focus on inequalities*', reveals that, while significant progress has been made towards achieving universal access to basic water, sanitation and hygiene, there remain huge gaps in the quality of services provided by the government.<sup>261</sup> While the government has made significant steps, especially in terms of poverty alleviation through, among others, delivery of basic services (e.g. running water, primary healthcare and education) and the provision of social grants to the poor and elderly, the disabled, low income single mothers, among others, many sections of the population across the country, especially in the rural areas and informal settlements, continue to struggle with limited access to these basic services.<sup>262</sup>

Many communities across the country have no access to proper sanitation, clean and piped water. There has been widespread media coverage of rural communities sharing water sources, such as dams and rivers, with their livestock. Shortages of ablution facilities compel households to resort to the 'bucket system', leading to illnesses. In many cases, the shortage of clean water affects women more than men, not only in terms of their basic hygiene needs, but also in terms of their safety. Due to the traditional gender role divisions and the patriarchal nature of many communities in South African society, women are responsible for routine household chores including cooking, cleaning, childcare and fetching water for household use. Fetching water, in some cases from distant water sources, often at unsociable hours including at night, usually exposes women to safety risks including violence and sexual attacks.<sup>263</sup>

<sup>256</sup> Act 107 of 1997.

<sup>257</sup> Act 22 of 1994.

<sup>258</sup> Act 108 of 1997.

<sup>259</sup> Act 21 of 1998.

<sup>260</sup> Act 19 of 2005.

<sup>261</sup> UNICEF & WHO (2019), '*Progress on Drinking Water, Sanitation and Hygiene - 2000-2017: Special focus on inequalities*'.

<sup>262</sup> Centre for Applied Legal Studies (2015). Submission to the Department of Women on the Draft Report to the United Nations Convention on the Elimination of Discrimination Against Women.

<sup>263</sup> Ibid.

Access and ownership of land by women residing in rural areas has always been a challenge in South Africa. It can be argued that the current power relations in rural society, and current traditional patriarchal practices regulating land access and ownership, determine the benefits of land reform, which tend to accrue mainly to men. This is exacerbated by women's lack of authority in a society which also limits their control over the land resources that they are able to access. As in many African countries, in communal land tenure systems, women generally access land through their relationships with male relatives. In the case of married women who suffer the death of a spouse, they are regularly evicted from the land, often by her spousal relatives, supported by biased traditional laws.

The findings of a High-Level Presidential Advisory Panel on Land Reform<sup>264</sup> have also confirmed the unequal benefits from access to land between men and women in South Africa, by stating that women are still being marginalised by the government's current land reform programme. The report shows that women constitute less than a quarter of all the beneficiaries of the land reform programme nationally. The High-Level Advisory Panel Report further argues that women's access to land is dependent on males, and that their status is that of minor children. Also, in many rural communities under the authority of traditional leaders, women are not allowed to have an audience with traditional leaders by themselves. These conditions under which women exist, particularly in the rural areas, lead to and exacerbate the socio-political and economic disempowerment of women.<sup>265</sup> While South Africa's 5<sup>th</sup> CEDAW Periodic Report argues that the government's plans to combat landlessness among women has achieved results worth celebrating, the report does not seem to acknowledge these persisting challenges.

Unequal access to healthcare dates back to the colonial and apartheid regimes which each implemented fragmented health systems with an intention of suppressing the broad black majority in South Africa. It has, however, continued even under the democratic government, with the less fortunate residing in rural areas without access to proper healthcare facilities. It is worth noting though that South Africa has poor health outcomes in both rural and urban areas, despite spending significantly more on health than other middle-income and developing countries, which produce better outcomes. A number of studies have found that considerably greater access barriers are experienced by rural compared to urban communities, including distance, time and the cost of accessing health services.<sup>266</sup>

<sup>264</sup> Ibid.

<sup>265</sup> Ibid

<sup>266</sup> Schneider H (2009). Phase 1 Results: Access Challenges in TB, ART and Maternal Health services. (Johannesburg)., Researching Equity in Access to Health Care Project (REACH).

## PART D: ARTICLES 15 – 16

### ARTICLE 15

- *Equality before the law in civil matters*

#### *Sexual Orientation*

The Committee calls on the State party to abide by its Constitutional provisions and to provide effective protection from violence and discrimination against women based on their sexual orientation, in particular through the enactment of comprehensive anti-discrimination legislation that would include the prohibition of multiple forms of discrimination against women on all grounds, including on the grounds of sexual orientation. The Committee further recommends that the State party continue its sensitisation campaign aimed at the general public, as well as provide appropriate training to law enforcement officials and other relevant actors.

In the effort to abide by Constitutional provisions, the state has passed numerous laws and policies, and has developed programmes and initiatives to provide for the protection of women from violence and discrimination on the basis of their sexual orientation.

The values of human dignity, equality, non-sexism, human rights and freedoms are the cornerstone of South Africa's democracy and are reflected in the Bill of Rights to enable the recognition and realisation of basic human rights and freedoms of all citizens, irrespective of their sexual orientation and gender identity. Section 9(3) of the Constitution of the Republic of South Africa, 1996, prohibits the state or any other person from unfairly discriminating, either directly or indirectly, against anyone on one or more grounds, including on the grounds of sexual orientation. Section 9(2) of the Constitution, on the other hand, requires that legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination, be taken in order to promote the achievement of equality. Section 9(4) further recognises the need for national legislation to be enacted to prevent or prohibit unfair discrimination.

It was on the basis of these clauses that the Promotion of Equality and Prevention of Unfair Discrimination Act<sup>267</sup> (PEPUDA) was enacted. The main objective of PEPUDA is to provide measures to prevent and prohibit unfair discrimination, harassment and hate speech, in order to protect human dignity. The Act, commonly known as the Equality Act, was passed in 2000 and lists 17 grounds of discrimination, which include gender and sexual orientation.

<sup>267</sup> Act 4 of 2000.

Equality Courts were created by PEPUDA to adjudicate cases of unfair discrimination. The courts became operational in late 2003 to deal with matters specifically relating to infringements of the right to equality, as well as unfair discrimination and hate speech. Data obtained from the Department of Justice and Constitutional Development (DOJ), however, indicates that Equality Courts are generally underutilised, with the Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, Asexual and Others (LGBTQIA+) being no exception<sup>268</sup>. There are also challenges of lack of awareness around the functioning of these Courts, as well as lack of infrastructure, which have rendered the courts ineffective and un-operational<sup>269</sup>. Attempts were made by the Equality Review Committee that comprises the Commission for Gender Equality (CGE), the Human Rights Commission of South Africa (HRCSA) and a senior official from the DOJ in 2015/16 to implement awareness raising initiatives around the functioning of the courts. The campaigns, which only came into effect in three provinces, namely; Eastern Cape, Limpopo and Mpumalanga, were halted, and were never implemented in the rest of the country. A member of the Committee revealed that they encountered internal issues that resulted in the pausing of the campaigns<sup>270</sup>.

The Criminal Law (Sexual Offences and Related Matters) Amendment Act<sup>271</sup>, addresses all types of sexual crimes against citizens, regardless of their sexual orientation. A noteworthy accomplishment under this Act is that it assisted in broadening the definition of rape, which is no longer limited to vaginal penetration. The definition now also covers anal penetration and the use of objects. It also recognises sexual offences perpetrated by a person of the same sex<sup>272</sup>.

In terms of the Protection from Harassment Act<sup>273</sup>, previously, protection orders for harassment could only be obtained against parties involved or those involved in a domestic relationship, in terms of the Domestic Violence Act<sup>274</sup>. However, numerous abusive relationships do not fit into these categories, such as the violence committed against lesbian women by virtue of their sexuality; in fact, such violence can also be perpetrated by strangers. However, protection orders could not be issued in such instances. A stride made with regards to this Act is that protection orders can now be issued irrespective of the existence of a domestic relationship, thereby extending protection to all victims of crimes of harassment<sup>275</sup>.

<sup>268</sup> Information obtained from a DOJ&CD Official, October 2019.

<sup>269</sup> CGE (2013). CEDAW, Are we there yet? Measuring South Africa's Progress under Convention on the Elimination of all forms of Discrimination Against Women, (Commission for Gender Equality, Research Report).

<sup>270</sup> Information obtained from a member of the Equality Review Committee, February 2020.

<sup>271</sup> Act 32 of 2007.

<sup>272</sup> CGE (2013). Op.cit.

<sup>273</sup> Act 17 of 2011.

<sup>274</sup> Act 116 of 1998.

<sup>275</sup> Supra Note 267.

The Employment Equity Act<sup>276</sup> was enacted to give effect to Section 9 of the Constitution within the context of employment. Section 6 of the Act prohibits unfair discrimination, directly or indirectly, on a number of grounds, including sexual orientation. It is noted in literature that direct forms of discrimination and intolerance in the workplace are not rife in the democratic dispensation, but that indirect discrimination still exists<sup>277</sup>. Indirect discrimination may include, for example, overlooking homosexual employees based on the employer's subconscious prejudice. The Employment Equity Act, nonetheless, provides for dispute resolution mechanisms that can be pursued by employees who believe that they are being unfairly discriminated against.

The Prevention and Combating of Hate Crimes and Hate Speech Bill that was approved by Cabinet on 19 of October 2016 recognises sexual orientation as one of the grounds that may lead to an offence constituting a hate crime. Although "corrective rape", assault, murder and other forms of violence inflicted upon the LGBTQIA+ community are dealt with under the existing laws of the country, activists argue that, "the consequences for crimes motivated by hate need to be more severe than ordinary crimes. This is because hate crimes are 'message crimes' that harm entire communities, making millions feel unsafe to live their lives normally."<sup>278</sup> The Bill is currently before the National Assembly in the Portfolio Committee on Justice and Correctional Services. Once signed into law, the Bill will empower judges to consider prejudice or intolerance as aggravating factors in a crime in the sentencing of perpetrators. The objective of this Bill is to ensure that perpetrators of hate crimes are prosecuted.

In 2013, the DOJ re-established the Sexual Offences Courts to address secondary victimisation and to improve conviction rates. While this was a significant milestone for the country in its efforts to address high rates of sexual violence, particularly against women, including lesbian women, many of the courts are reportedly poorly resourced and inefficient<sup>279</sup>. In 2016, there were 55 Sexual Offences Courts established in the country, but only 18 were functional. By September 2019, the number of the Courts stood at 74 with the same challenges of lack of infrastructure, trained personnel and other resources still persisting. As part of President Ramaphosa's announcement of the six-month long Emergency Response Action Plan in September 2019, he directed government to re-direct resources to improve the functioning of Sexual Offences

<sup>276</sup> Act 55 of 1998.

<sup>277</sup> Ainslie, K. (2015). What protection from discrimination do employees have on the grounds of sexual orientation? <https://www.globalworkplaceinsider.com/2015/06/what-protection-from-discrimination-do-employees-have-on-the-grounds-of-sexual-orientation/>

<sup>278</sup> Iguar, R. (2015). So What's the Status of South Africa's Hate Crimes Bill? <https://www.mambaonline.com/2018/07/17/so-whats-the-status-of-south-africas-hate-crimes-bill/>

<sup>279</sup> CGE (2016). Struggling to meet the ends of justice: Assessing Departmental Responses to CGE findings on the Victims Charter (Departments: Justice, NPA & SAPS), (Commission for Gender Equality, Research Report).

Courts<sup>280</sup>. The President further mentioned that funding had been approved towards the establishment of an additional 11 Sexual Offences Courts over the 2020/2021 financial year<sup>281</sup>. On 7 February 2020, legislation and regulations prescribing minimum standards for Sexual Offences Courts were gazetted. The legislation sets in place facilities and other measures that should be in place for the effective functioning of the courts. The benefits of this new legislation are yet to be realised<sup>282</sup>.

Other state responses include the establishment of the National Task Team (NTT) on Gender and Sexual Orientation-Based Violence Against LGBTI-Persons. The NTT was established in September 2011 by the Minister of Justice and Constitutional Development, and was initially mandated to address homophobic rape. However, in light of other violent crimes committed against LGBTQIA+ individuals, its scope was later extended to incorporate all forms of gender based violence crimes and sexual orientation based crimes which are perpetrated against LGBTQIA+ individuals, such as murder<sup>283</sup>. The NTT is a multi-stakeholder entity that comprises government departments and institutions that participate in crime intervention, particularly government departments that constitute the Justice, Crime Prevention and Security Cluster, as well as civil society organisations that focus on LGBTQIA+ individuals and communities, and national human rights institutions, including the CGE<sup>284</sup>.

The NTT developed a National Intervention Strategy (NIS) for the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) sector (years 2014-2017), to address so-called “corrective rape” and other forms of violence directed to the LGBTQIA+ community<sup>285</sup>. The NIS implementation period lapsed in 2017, and at the time of compiling this report, the development of another NIS was underway.

As part of the work of the NTT, a Rapid Response Team (RRT) was established to ensure speedy investigations and finalisations of cases of crimes committed against the LGBTQIA+ individuals. The RRT meets on a monthly basis, and one of its key priorities is to discuss updates on the status of cases. The effectiveness of the operations of this RRT is yet to be examined and documented. What is called for is a separate research study to assess the effectiveness and impact of the NTT and its related structures, such as the RRT. The study could capture and evaluate the opinions of all stakeholders involved,

<sup>280</sup> Phakathi, B. (2019). Ramaphosa announces further R1.1bn to fight abuse against women: The government will re-direct resources to improve the functioning of sexual offences courts. <https://www.businesslive.co.za/bd/national/2019-09-18-ramaphosa-announces-further-r11bn-to-fight-abuse-against-women/>.

<sup>281</sup> Ibid.

<sup>282</sup> Ellis, E. (2020). Key sex offences courts legislation finally emerges from limbo. <https://www.dailymaverick.co.za/article/2020-02-07-key-sex-offences-courts-legislation-finally-emerges-from-limbo/>.

<sup>283</sup> DOJ & CD (No date). National Intervention Strategy for Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Sector.

<sup>284</sup> Ibid.

<sup>285</sup> Ibid

including LGBTQIA+ individuals and communities themselves. A critique of the NTT as it stands is that it excludes and overlooks the plight of queer and asexual persons, whose rights are equally violated as they too face corrective rape and other forms of hate violence.

In terms of the training and capacity building of law enforcement officials and other key role players, data obtained from the NTT indicates that a multi-sectoral guide to sensitise service providers about the rights of the LGBTQIA+ community was developed and piloted<sup>286</sup>. Law enforcement officials from the South African Police Service (SAPS), National Prosecuting Authority (NPA), and DOJ were also targeted for this pilot training. Additionally, the legal unit of the CGE was, under the terms of an agreement made with the office of the Deputy Chief Justice, in the process of developing a manual to sensitise judicial officers on the rights of survivors of GBV, including survivors of "corrective rape". The development of the manual was still in its infancy stage at the time of compiling this report<sup>287</sup>.

As already indicated, in April 2019, the SAPS approved the Standard Operating Procedures (SOPs) to promote the respect, protection and promotion of the rights of the LGBTQIA+ individuals, who are either victims or alleged perpetrators of crime<sup>288</sup>. The document was developed in response to reports and allegations levelled against the members of the SAPS for their failure to uphold the rights of the LGBTQIA+ community in the provision of their services. The guidelines contained in the SOPs seek to ensure that the LGBTQIA+ individuals, as well as their families, friends and support networks, are not discriminated against in any shape or form, and that victims of crime do not experience secondary victimisation at the hands of SAPS members. The implementation of the SOPs commenced on 1<sup>st</sup> October 2019, and would continue for a period three years before being reviewed.

In terms of public awareness initiatives, the NTT had developed a multi-sectoral communication strategy to educate the South African public about their Constitutional rights, and encourage acceptance towards LGBTQIA+ individuals<sup>289</sup>. The communication strategy identifies a number of interventions that target various sectors of society. In spite of all these efforts, discrimination and violence against the LGBTQIA+ community remains a persistent challenge in the country. In a study that was conducted by the Human Science Research Council (in the KwaZulu-Natal province

<sup>286</sup> DOJ & CD (No date). Working with Diverse Communities. Understanding Sexual Orientation, Gender Identity and Expression: A guide for service providers.

<sup>287</sup> Information obtained from a CGE Official, February 2020.

<sup>288</sup> SAPS (2019). Standard Operating Procedure to respect, promote, and promote the rights of the Lesbian, Gay, Bisexual, Transgender, Intersex, Plus (LGBTQIA+) Persons.

<sup>289</sup> DOJ & CD (No date). Communication Strategy: National Task Team on Gender and Sexual Orientation-Based Violence Perpetrated on LGBTQIA+ Persons.

in 2014, young lesbian women and gay men reported experiences of homophobic language and violence<sup>290</sup>. An attitudinal survey conducted by the same institution in 2017 revealed that 44.6% of South Africans chose “strongly agree” on the question regarding sex between women being “plain wrong”, while 35% selected “strongly agree” about finding lesbians “disgusting”. This underscores a need for more initiatives to address the negative attitudes and discriminatory behaviour of South Africans against the LGBTQIA+community.

## ARTICLE 16

- *Equality in Marriage and Family*

*The Committee recommends that the State party increase support for law reform, in line with its Constitutional principles, with regard to non-discrimination, and to comply with its international obligations through partnerships and collaboration with religious and community leaders, lawyers, judges, civil society organisations and women’s non-governmental organisations.*

*To this end, the Committee urges the State party to expedite discussion of the Customary Law of Succession and Related Amendment Bill, with the aim of adopting it,*

A number of legal developments occurred in the past few years, mainly resulting from a number of court cases brought before the Constitutional Court in respect of issues of concern in laws regulating marriages in South Africa. These cases included: *The Bhe v Khayelitsha Magistrate case*<sup>291</sup>; *the Shibi v Sithole case*<sup>292</sup>; and *the South African Human Rights Commission v President of the Republic of South Africa case*<sup>293</sup>. The significance of the outcomes of these cases is that they addressed the issue of inheritance and property rights, especially in customary marriages in South Africa. Prior to these cases, laws governing marriages in South Africa were heavily characterised by unfairness towards women resulting from the prevalent cultural doctrine of male primogeniture that governs inheritance in many African traditional and rural communities, and households in South Africa. The courts found that the principle of male primogeniture, and the disputed sections of legislation, did not acknowledge women’s rights, and further infringed upon their fundamental right to equality and human dignity, to the

<sup>290</sup> HSRC (2014). Heteronormativity, Homophobia And ‘Culture’ Arguments in Kwazulu-Natal, South Africa.

<sup>291</sup> 2005 (1) SA 580 (CC)

<sup>292</sup> 2005 (1) SA 580 (CC)

<sup>293</sup> 2005 (1) SA 580 (CC)

extent that they excluded or hindered women, and children, from inheriting property following the death of a spouse.<sup>294</sup>

This situation exposed the glaring need for legal reform of the customary laws of succession to correct these legalised inequalities. It subsequently led to the Reform of Customary Law of Succession and Regulation of Related Matters Act<sup>295</sup> (the "Reform Act"). The Act came into operation on 20 September 2010, thus giving effect to the decisions of the Constitutional Court in the cases listed above. Furthermore, this enabled the reformed customary law of succession to be more in line with the relevant provisions of the Constitution of the Republic of South Africa, 1996. This it did by abolishing the customary rule of male primogeniture as it applied to the law of succession. It also extended application of the Intestate Succession Act<sup>296</sup> by providing guidelines for interpretation, thus ensuring the safeguarding and protection of women's right to inherit property.<sup>297</sup>

When the Recognition of Customary Marriages Act<sup>298</sup> (RCMA) came into force on 15 November 2000, it was an attempt to correct past discriminations against African women by officially recognising all African customary marriages in South Africa. It gave women in customary marriages the same status and protection as women in civil law marriages with the introduction of equality between husband and wife. Also, these changes applied equally to both monogamous and polygamous customary marriages, recognising customary marriages as legal in South African law.<sup>299</sup> Despite the good intentions behind section 6 of the RCMA (which deals with equal status and capacity of spouses<sup>300</sup>), section 7(1) of the same Act stipulated that, "[t]he proprietary consequences of a customary marriage entered into before the commencement of the Act continue to be governed by customary law." This meant that women whose marriages under customary law occurred prior to the passing of the Act in 2000 would continue to be governed by the marriage legislation that existed prior to the RCMA. Such laws were discriminatory to women married in customary law, including their rights to property ownership.

<sup>294</sup> Ibid

<sup>295</sup> Act 11 of 2009.

<sup>296</sup> Act 81 of 1987.

<sup>297</sup> Supra Note 285.

<sup>298</sup> Act 120 of 1998.

<sup>299</sup> Law, Race and Gender Research Unit (2012). The Recognition of Customary Marriages in South Africa: Law, Policy and Practice. [www.larc.uct.ac.za/files/FactSheets/CLS\\_RCMA\\_Factsheet\\_2012\\_Eng](http://www.larc.uct.ac.za/files/FactSheets/CLS_RCMA_Factsheet_2012_Eng). Accessed: 06.12.19.

<sup>300</sup> Schoeman Law INC. (2017). Customary Law Of Succession - Women's Rights To Inherit Property. <https://www.schoemanlaw.co.za/wp-content/uploads/2017/09/Website-Customary-law-of-succession-September-2017.pdf>. Accessed: 28.10.2019.

However, on 30 November 2017, the Constitutional Court ruled, in confirmation of an earlier judgment made by the High Court of South Africa, Limpopo Local Division, Thohoyandou, in terms of section 172(2)(a) of the Constitution, that section 7(1) of the RCMA was Constitutionally invalid. This is because, according to the Constitutional Court, this section discriminated unfairly on the basis of gender, race, ethnic or social origin, against women in polygamous customary marriages, especially those entered into before the commencement of the RCMA. However, having declared section 7(1) of the RCMA invalid, the Constitutional Court decided to suspend this declaration of invalidity, pending Parliament's amendment of the offending provision of the RCMA. In the meantime, the Constitutional Court has provided an interim relief for those negatively affected by Section 7(1) of the RCMA, as indicated in this excerpt from the text of the judgement:

“On remedy, the Court (CC) considered the appropriate relief to be a suspension of the declaration of invalidity accompanied by interim relief. It found that this twin relief has the effect of granting immediate succor to the vulnerable group of wives in pre-Act customary marriages whilst also giving due deference to Parliament. The interim relief given is that a husband and his wives in pre-Act polygamous customary marriages must share equally in the right of ownership of, and other rights attaching to, family property, including the right of management and control of family property; and a husband and each of his wives in each of the marriages constituting the pre-Act polygamous customary marriages must have similar rights in respect of house property.”<sup>301</sup>

Following this ruling, government took steps to effect the necessary changes in order to abide by the court judgements from the cases listed above (eg. *Gumede v The President of South Africa and Others*<sup>302</sup> and *Ramuhovhi and Others v The President of South Africa and Others*<sup>303</sup>) This was through the Recognition of Customary Marriages Amendment Bill of 2019, which ensures that section 7(1) and (2) of the RCMA, are in line with the judgment of the Constitutional Court in 2017, which declared these provisions constitutionally invalid.<sup>304</sup>

Other amendments have included a Draft Recognition of Customary Marriages Amendment Bill, 2009, that seeks to amend certain provisions of the RCMA which are detrimental to widows and spouses.<sup>305</sup>

<sup>301</sup> *Ramuhovhi and Others v President of the Republic of South Africa and Others*, 2018 (2) SA 1 (CC) (Summary, page3)

<sup>302</sup> 2009 (3) SA 152 (CC)

<sup>303</sup> 2017 (41) ZACC

<sup>304</sup> Department of Justice and Constitutional Development. 2019. Justice on recognition of Customary Marriages Amendment Bill of 2019. <https://www.gov.za/speeches/justice-recognition-customary-marriages-amendment-bill-2019-25-jul-2019-0000>. Accessed: 07.02.2020

<sup>305</sup> Juggernath, M & Dewar, B (2012). South Africa: The Effect of The Draft Recognition of Customary Marriages Amendment Bill, 2009 On the Recognition of Customary Marriages Act 120 Of 1998. <http://>

Further amendments to the Act occurred in 2018 and 2019. Cabinet has since approved the submission of the Recognition of Customary Marriages Amendment Bill of 2019 to Parliament, as already mentioned. This should bring sections 7(1) and (2) of the RCMA in line with Constitutional Court judgments made in 2017.<sup>306</sup>

- *Prepare a unified family code in conformity with the Convention, in which unequal inheritance rights, property and land rights and polygamy are addressed, with the aim of abolishing them, including the option of civil provisions available for all women.*

In terms of developments in the area of family policy, South Africa is one of the few countries globally with an active legislation to deal specifically with the area of family policy. This is done through the White Paper on Families which was approved by Cabinet in 2013, and aims to deal with matters related to families, their challenges, and strategies to uphold family structures and related matters. The importance of family as a policy area is also reflected in the fact that government's long term National Development Plan (NDP) 2030 also makes reference to the issue of family.<sup>307</sup>

Acknowledging recommendation 42b by the Convention on the Elimination of All Forms of Discrimination Against Women, South Africa's 5<sup>th</sup> Periodic Report<sup>308</sup> argues that having one marriage law for all the different types of marriages in the country is unlikely to work. According to this report, this complexity is the result of the country's history, its multi-racial, multi-cultural and multi-religious composition, which allows and caters for different marriage systems. Marriages in South Africa are regulated through several pieces of legislation: The Marriage Act<sup>309</sup>, which applies to monogamous heterosexual couples; the RCMA, which caters for traditional, polygamous heterosexual couples; and the Civil Unions Act<sup>310</sup>, which makes provision for monogamous partnerships for both same-sex and heterosexual couples.<sup>311</sup>

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[www.mondaq.com/southafrica/x/161784/Family+Law/The+Effect+Of+The+Draft+Recognition+Of+Customary+Marriages+Amendment+Bill+2009+On+The+Recognition+Of+Customary+Marriages+Act+120+Of+1998](http://www.mondaq.com/southafrica/x/161784/Family+Law/The+Effect+Of+The+Draft+Recognition+Of+Customary+Marriages+Amendment+Bill+2009+On+The+Recognition+Of+Customary+Marriages+Act+120+Of+1998). Accessed: 28.10.2019.

<sup>306</sup> DOJ & CD (2019). Justice on recognition of Customary Marriages Amendment Bill of 2019. <https://www.gov.za/speeches/justice-recognition-customary-marriages-amendment-bill-2019-25-jul-2019-0000> Accessed: 07.01.2019

<sup>307</sup> Patel, L., Hochfeld, T. & Englert, T (2018). Reviewing the Implementation OF the White Paper on Families: Lessons Learned for Future Practice, Policy and Research. Centre for Social Development in Africa, University of Johannesburg. <https://www.uj.ac.za/faculties/humanities/csda/Documents/Family%20Policy%20Report%20Nov%202018%20Web.pdf>. Accessed: 04.12.19.

<sup>308</sup> RSA (2015). South Africa's 5<sup>th</sup> Periodic Country Report, Op.cit., p. 91.

<sup>309</sup> Act 25 of 1961.

<sup>310</sup> Act 17 of 2006.

<sup>311</sup> Ensor, L (2019). New, Single Marriage Law Proposed Based On 'Principle of Equality'. <https://www.businesslive.co.za/bd/national/2019-08-30-new-single-marriage-law-proposed-based-on-principle-of-equality/>. Accessed: 07.12.20

Despite what the government had said previously, it would appear now that the government has changed its initial position of allowing multiple pieces of legislation to regulate marriages in South Africa, and is now pursuing a single, consolidated piece of legislation to regulate all marriages in South Africa. As of August 2019, the Department of Home Affairs and Minister of Home Affairs, Aaron Motsoaledi, were driving a nation-wide consultative process of drafting the country's consolidated marriage legislation. This legislation, it is hoped, would, among other things, cater for previously excluded marriages in both religious and traditional communities, and deal with the inequities in current marriage law, including the scourge of underage marriages.<sup>312</sup>

Historically, and because of existing cultural and customary practices, and customary law, women were discriminated against in as far as property inheritance is concerned in South Africa. For instance, customary law of succession held that women would be under the guardianship of the male family member or heir and therefore had no legal capacity to acquire ownership of property.<sup>313</sup> This meant that whether or not a woman was first in line to inherit property, they would be overlooked as a result of the customary law of succession. In particular, succession was governed through the principle of male primogeniture, which means that the eldest son within a family succeeds as head of the entire estate after the death of the male head. The system excludes younger siblings, both male and female.<sup>314</sup> However, as already discussed above, numerous court cases exposed some of the inequities and discriminatory aspects of these legal and other practices and strove to uphold the rights of women through creating legislative fairness and equity.

As mentioned previously, the country's complex social diversity of traditions and cultures meant that various cultural and traditional practices were acknowledged, accepted and recognised through relevant legislative and policy frameworks, provided that these practices were not in contravention of the law. For instance, the practice of polygamy is one of those recognised and accepted in law in South Africa in terms of the RCMA.<sup>315</sup> Certain aspects of the Customary Marriages Act, especially those regulating polygamy, were found to be unfair. The Constitutional Court suspended the application of these provisions of the Act and left it to Parliament to effect the necessary changes to the law.

- *Implementation of the Beijing Declaration and Platform for Action (BPFA)*

The country's commitment to the BPFA dates back to the UN's four World Conferences on Women between 1975 and 1995. These conferences sought to unite the international

<sup>312</sup> Ibid

<sup>313</sup> Schoeman Law INC (2017), Op.cit.

<sup>314</sup> Ibid

<sup>315</sup> RSA (2015), South Africa's 5<sup>th</sup> Periodic Country Report, Op.cit. p. 64.

community behind a set of common objectives with an effective plan of action for the advancement of women in all spheres of public and private life. The World Conferences were held at Mexico City in 1975, Copenhagen in 1980, Nairobi in 1985 and Beijing in 1995, and contributed greatly to the process of eliminating obstacles to the improvement of the status of women at the national, regional and international levels.

South Africa formally started participating in the global arena on gender issues at the Beijing conference, where the concept of gender mainstreaming was coined. The BPFA adopted at that conference is the Global Agenda for Women.

The BPFA is a consolidation of the agreements reached at the World Summit for Children, the United Nations Conference on Environment and Development, the World Conference on Human Rights, the International Conference on Population and Development, the World Summit for Social Development, which set out specific approaches and commitments for fostering sustainable development and international cooperation, and also emphasise the issues of women's empowerment and equality. Furthermore the BPFA acknowledges the importance of agreements made at the Global Conference on Sustainable Development, the International Conference on Nutrition, the International Conference on Primary Health Care, the International Year for the World's Indigenous People, the International Year of the Family, the United Nations Year for Tolerance, the Geneva Declaration for Rural Women, the Declaration on the Elimination of Violence against Women and the World Conference on Education, all of which have addressed the various facets of development and human rights within their respective perspectives, paying significant attention to the role of women and girls.

As the BPFA celebrates its 25 year anniversary this year, South Africa has been consistent with reporting on the progress in terms of the implementation of the Beijing Principles, which also echoed the commitments that the global community made during the preceding three international conferences, which also included CEDAW. To maintain the momentum, the process of compiling the Plus 25 Country Report is underway. The Commission for Gender Equality (CGE), as per its constitutional mandate, has been monitoring the implementation of BPFA, and produced the reports which have been presented before Parliament.

The CGE has noted the strides that the country has made on the implementation of BPFA which, as indicated, also encompass the provisions of CEDAW. The National Gender Policy Framework is the main instrument that was adopted in 2000 as the guiding framework intended to drive gender mainstreaming and transformation. The establishment of the Office on the Status of Women, and subsequently the

Ministry of Women, were the structures that were first put in place to safeguard the implementation of gender mainstreaming through coordinating the National Gender Machinery (NGM).

The CGE has raised the issue of the weakened NGM as discussed earlier in this report, and the urgent need to review the National Gender Policy Framework, as it is outdated considering the dynamic nature of the gender discourse within the South African context. The CGE has noted government's initiative on the process of reviving the NGM. It is however still unclear how far the review process is at the stage of publication of this report.

- *Millennium Development Goals (MDGs) and Sustainable Development Goals (SDGs)*

The UN Sustainable Development Goals were adopted after the expiry of the Millennium Development Goals, which were adopted as a huge promise to the world with the aim of alleviating poverty in its entirety. The CGE has been monitoring the process of the implementation of the SDGs since 2017 when government embarked on a cumbersome process of developing the Baseline Report, as well as the subsequent country report and the Voluntary National Review on the Sustainable Development Goals, which were submitted to the UN in July 2019. As a part of this process, the CGE served as Co-Chair of the Sector Working Group dealing with Sustainable Development Goal 5 - *Achieve gender equality and empower all women and girls*. The CGE was also participating in other Sector Working Groups to ensure that gender mainstreaming was carried out across various policy sectors. In general, South Africa has made significant progress in line with the SDGs, including Goal 5.

## **PART E: GENERAL RECOMMENDATIONS NO. 19 & 35**

Issues related to the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women General Recommendation 19 are clearly addressed under Part I of this report. The Commission for Gender Equality also made a submission to the UN Special Rapporteur on Violence against Women on the abuses (eg. physical, verbal and emotional violence) and other discriminatory practices women and girls are subjected to when seeking reproductive healthcare services, especially during periods of maternity and childbirth. The submission also provided a summary of analyses of the causes and drivers of the abuses and discriminatory practices directed at women and girls.

As indicated under Part B of this report, efforts by the government are currently under way to improve the country's public health system and strengthen effectiveness of service delivery. This was attested to by the participation of the country's delegation at the International Conference on Population Development which was held in Nairobi from 12 to 14 November 2019, where, among issues discussed, sexual and reproductive health rights for women was raised.

## CONCLUDING REMARKS

This report sought to review and assess progress achieved and identify issues of concern regarding the South African government's compliance with the obligations imposed by the Convention on the Elimination of All forms of Discrimination against Women. In particular, the review also focussed attention on the government's response to, and implementation of, the CEDAW Committee's Concluding Observations and Recommendations following its consideration of South Africa's period report during its 967<sup>th</sup> and 968<sup>th</sup> Sessions in 2011.

Based on this review, it is clear that the country has, in many areas, made progress and advancements in meeting the obligations imposed by the CEDAW. In areas such as policy and legislative or law reform, tremendous progress has been made over the years, including the reporting period covered in this report (i.e. 2011 – 2015). Also, a number of institutional reforms, strategies and programmes aimed at dealing with gender based violence, including discrimination and violence against women, have been put in place over the years. At the political leadership level, the country's political leadership cannot be faulted for responsiveness to public calls and demands for action against gender based violence, including violence and discrimination against women. In many instances, when such calls were made through protest action by civil society organisations, the government, especially through the Presidency, has always made efforts to be seen to be responding to public demands for action, through appropriate public addresses and announcements of programmes of action.

However, it is clear that in many areas of compliance, the government has done the bare minimum of what was required in terms of the CEDAW Obligations. Much of the challenge has been at the level of administrative and implementation action, which have been characterised by poor performance, leading to lack of compliance on the part of the state. A number of key factors account for these failures, the most important of which are poor planning and coordination, poor costing of programmes, ineffective allocation of resources and implementation of government departmental policies, legislation, plans and programmes of action to deal with violence and discrimination against women. In addition, the country's National Gender Machinery has for many years been characterised by tremendous institutional weaknesses (evidenced not only by current institutional fragmentation and lack of coordination, but also by the collapse of the National Council on Gender Based Violence), lack of appropriate skills and poor training for state personnel (including members of the country's police, judiciary and other agencies) at the forefront of the country's fight to combat gender-based violence in general and violence against women in particular.

## THE BARE MINIMUM:

As a result of these persisting problems, South Africa continues to be plagued by persistently high levels of gender based violence and violence against women, despite the existence of political will to tackle these challenges. South Africa, instead of the bare minimum, requires the absolute maximum from government, and indeed, all South Africans.



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