



**Commission for Gender Equality**  
A society free from gender oppression and inequality



# **PROGRESS REPORT: TRANSFORMATION IN THE PUBLIC AND PRIVATE SECTORS**

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## Acronyms and Abbreviations

CGE	Commission for Gender Equality
Constitution	Constitution of the Republic of South Africa, 1996
B-BBEE	Broad-Based Black Economic Empowerment Act 53 of 2003 as amended
BCEA	Basic Conditions of Employment Act 11 of 2002
EAP	Economically Active Population
EE	Employee Equity
EEA	Employment Equality Act 55 of 1998 (EEA) as amended
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual Plus
LRA	Labour Relations Act 66 of 1995
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000
PPPFA	Preferential Procurement Policy Framework Act 5 of 2000
PWD	Persons with Disability
SDGs	Sustainable Development Goals
WEPs	UN Women Empowerment Principles

## 1. Introduction

The Commission for Gender Equality (CGE) is an independent statutory body created under Chapter 9 of the Constitution of the Republic of South Africa, 1996 ('the Constitution'). The CGE has a mandate to promote and protect gender equality in government, civil society and the private sector. To this end, the Commission for Gender Equality Act 39 of 1996, as amended ("the CGE Act") gives the commission the power to monitor and evaluate policies and practices of organs of state at any level, statutory bodies and functionaries, public bodies and authorities and private businesses, enterprises, and institutions in order to promote gender equality and make any recommendations that it may deem necessary.

## 2. Background

Transformation in the workplace is a process to change the racial, gender and, economic make-up of the workforce to reflect South Africa's population demographics.<sup>1</sup> Various pieces of legislation have been enacted to transform South African businesses and society to ensure that all enjoy equal opportunities, fair treatment and thereby promote equal respect and dignity. The purpose of these pieces of legislation is to promote equal opportunities for people who have been historically disenfranchised owing to apartheid policies.<sup>2</sup>

Before the amendment of the constitution, Africans (namely black people, coloureds and Indians) were precluded from participating in the economy and pursuing a better life simply because of the colour of their skin. Women and persons with disabilities were often unfairly discriminated against with respect to employment opportunities. The Employment Equity Act 55 of 1998 (EEA), as amended, was promulgated to ensure that people are treated equally. Where blacks, women and persons with disabilities (designated groups) are under-represented in the workplace, employers should redress this imbalance by putting corrective measures in place to accelerate equality.<sup>3</sup>

During the financial year 2019/20, the CGE continued to consult new entities to examine compliance with transformation legislation and to advance equality in the employment and

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<sup>1</sup> <https://www.skills-universe.com/2018/05/15/what-is-transformation/>.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid,

economic sector. As such, the commission conducted transformation hearings on the application, implementation and review of employment equity and other transformation legislation in the public and private sector. The aim of these transformation hearings is to:

- Assess compliance with employment equity legislation and its policies;
- Assess compliance with other transformation legislation and its policies;
- Assess the impact of transformation legislation and policies on persons with disabilities (PWD), women and other previously disadvantaged<sup>4</sup> in the public and private sector
- Address institutional and systematic barriers to economic and gender diversity in the workplace regarding the progress of women and persons with disability;
- Raise awareness of relevant international commitments to gender transformation and the importance of compliance;
- Raise and address transformation policy gaps and implementation challenges;
- Make findings and recommendations for necessary improvements and corrections to improve policy implementation;
- To consult and liaise with relevant stakeholders for their input on all the above; and
- To monitor implementation of the Commission's recommendations by entities.

To achieve the above, the commission successfully conducted transformation hearings into these four entities from the public and private sector.

- Vodacom Group Limited.
- Woolworths Holdings Pty Limited.
- National Department of Cooperative Governance
- National Department of Justice and Constitutional Development

In its process, the Commission applied the employment equity and other transformation legislation as primary sources, among others:

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<sup>4</sup> The previously disadvantaged persons include the persons listed in the definition of “broad-based black economic empowerment, section 1 of the Broad-Based Black Economic Empowerment Act 53 of 2003 (BBBEE) provides that: "broad-based black economic empowerment" means the viable economic empowerment of all black people, in particular women, workers, youth, people with disabilities and people living in rural areas.

- The Employment Equity Act 55 of 1998 (EEA) as amended, and its Regulations
- The Employment Equity Amendment Bill September 2018
- The Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA) and its Regulations
- The Broad-Based Black Economic Empowerment Act 53 of 2003 as amended (B-BBEE) and its Regulations
- Skills Development Act 97 of 1998, as amended
- Skills Development Levies Act 9 of 1999, as amended
- Amended Agri BEE Sector Code 2017
- Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA)
- Labour Relations Act 66 of 1995 (LRA)
- Basic Condition of Employment Act 11 of 2002 (BCEA)

Employers are bound by these statutes to create equal employment opportunities for women and people with disabilities, and to remove the barriers to their entry, advancement, development, remuneration, and retention. The EEA is the foundation for a range of policies, commissions, and activities to achieve equitable representation in the workplace as it:

- Promotes skills development for the disadvantaged
- Establishes the Commission for Employment Equity (or CEE) to ensure employers promote equal opportunity and eliminate discriminatory hiring practices
- Makes employers responsible for training and developing women in the workplace.
- Removes obstacles to promoting women
- Obliges employers to narrow wage gaps between employees of different sexes who perform similar work
- Promotes flexible working hours, time off during pregnancy, and the improvement of maternity and childcare facilities

### **3. Follow up on implementation.**

On the 21 and 22 November 2019, the CGE conducted its employment equity (EE) and transformation hearing with four entities namely: Vodacom Group Limited, Woolworths Holdings Pty Limited, National Department of Cooperative Governance and Traditional Affairs and the National Department of Justice and Constitutional Development.

### 3.1 Vodacom Group Limited

The CGE made the following findings and recommendations to Vodacom:

#### Findings

- I. White male employees dominate top and senior management positions;
- II. There is an underrepresentation of women in general at managerial positions;
- III. Vodacom has created enabling environments that cater for the needs, challenges of women and persons with disability (PWD);
- IV. More men have been promoted at various occupational levels since April 2017 than women;
- V. Gender mainstreaming is prioritised through the adoption of gender related policies, practices (such as “Code Like a Girl” intervention and gender-neutral bathrooms) and various trainings. However, it is found that the policies are not gender neutral;
- VI. There is a disproportionate investment in women.  
For example, in programmes it offers in conjunction with the Gordon Institute of Business Science (GIBS) programme. It is, however, important that once the pool for talent is created, measures should be adopted to ensure that there is an upward mobility for these women in the workplace; and
- VII. The adoption of flexi working hours and establishment of medical units for women employees is viewed as a best practice for addressing transformation.

#### Recommendations

- I. Vodacom should increase the representation of women in top and senior management positions;
- II. Engagement should be conducted between the CGE and Vodacom on sexual harassment by March 2020.
- III. Vodacom should assess organisational culture and how it affects women's environment and accordingly develop a culture change strategy based on the outcome of the culture audit; and
- IV. All employment policies of Vodacom must be gender neutral.

**PROGRESS ON FINDINGS AND RECOMMENDATIONS**

1. Vodacom should increase the representation of women in top and senior management positions.

The company submits that the information and communications technology (ICT) sector in both emerging and first world countries is dominated by men, more especially the engineering and technology side of the business. However, Vodacom asserts that it is making serious strides to address this imbalance by introducing several pioneering programs to ensure that women emerge as leaders.

To this end, Vodacom concedes that the representation of women remains a challenge for its business and for the broader telecoms sector. In South Africa, women account for 42.9% of the workforce, with 34.3% at senior management level against the target of 36%. The company submitted that in top management, there has been an improvement in the representation of African people, and black people in general. However, progress in respect of African women has been a challenge because of scarcity of black female in the ICT sector. The company commits to fully exploit EE drivers (appointments, promotions, development, and retention) to facilitate progress. Therefore, its key focus would be on recruiting women into top, senior, and middle management positions.

It is submitted that achieving gender balance continues to be one of the company's five (5) strategic pillars adopted in the Vodacom Diversity and Inclusion Strategy Document. The company planned on achieving this by ensuring amongst others:

- Middle management plus levels ambition is to aim for a gender balanced shortlist;
- To purposefully identify and develop female talent pools and key successors across senior levels, to diverse interview and selection panels;
- Continue to invest in the leadership development programmes to advance women to senior and top management levels. The company's commitment to promoting gender equality in the workplace is reinforced by membership of the 30% Club – a group of chairs and CEOs committed to better gender balance through voluntary action.

The company plans to improve the gender balance through programmes such as the Vodacom Advanced Executive Programme, Harvard Senior Executive programme, and

Women in Leadership programme. The company asserts that it has set targets to increase the representation of women and further identify opportunities for gender transformation. It submitted that:

“Our commitment to delivering on our purpose saw Vodacom retain its BBBEE recognition of Level 1. The Level 1 achievement came at a total direct investment of R1.1-billion”.

2. Engagement should be conducted between the CGE and Vodacom on sexual harassment by March 2020.

The engagement between the commission and the company on sexual harassment did not take place due to Covid-19. Nonetheless, the commission has satisfied itself that the video used by Vodacom on sexual harassment is comprehensive and addresses the key elements of sexual harassment in the workplace.

3. Vodacom should assess organisational culture and how it affects women's environment and accordingly develop a culture - change strategy based on the outcome of the culture audit.

The company asserts that it identified the need for a shift in the company culture, referred to as “The Spirit of Vodacom”. In January 2020, the company launched the Spirit of Vodacom and articulated the connection between its purpose, strategy and spirit. This launch, known as the Big Conversation, was attended by 6 259 employees across its markets. These team conversations focused on the beliefs and behaviours related to the spirit. Since the launch in January 2020, the company asserts that It has made progress towards embedding the spirit culture in its ways of working.

In June, employees received the insights dashboard for their teams. Managers got to see additional information, such as comments their teams have chosen to share. The tool provides personalised actions that can help the company improve which will be sent via email as a series of 'Nudges' (Nudges are a simple way for everyone to increase self-development, build spirit habits, connect with colleagues, and have the best possible experience at work). The survey will occur every six months so that the company observes progress made over time Spirit Beat will show where the company is making progress and, over time, will measure the relationship between behaviour change and business outcomes.

4. All employment policies of Vodacom must be gender neutral.

The company reviewed HR policies which are critical levers in facilitating or inhibiting EE. The updated policies in respect of the following have been amended to include gender-neutral language:

- Employment Equity Policy
- Talent Acquisition Policy
- Learning & Development Policy
- Retention Policy
- Leave Benefits Policy
- Flexible Working Arrangements
- Maternity Benefits Framework
- Domestic Violence Policy
- Sexual Harassment Policy. – In addition to gender-neutral language, this policy has replaced the 1998 code with the amended code of 2005
- Parental Leave Policy (The company offers all its employees' 16 weeks of fully paid parental leave. This expands on the maternity policy, by extending it to any employee regardless of their gender, sexual orientation or length of service whose partner is having a baby)

The company asserts that it utilises multifaceted and wide employee consultative committee structures to monitor the implementation of this recommendation to eliminate employment barriers inadvertently written in any other human resources related policy.

### **3.2 Woolworths Holdings Pty (Ltd)**

The CGE made the following findings and recommendations to Woolworths:

#### **Findings**

- I. The commission finds that the top and senior management positions at Woolworths are predominantly occupied by white men. As such, women are underrepresented at the top and senior management levels.

- II. At all other levels from middle management downwards, women are predominant. Employees with disabilities are underrepresented at one percent overall.
- III. The commission finds and commends Woolworths for expeditiously finalising the sexual harassment cases and imposing maximum sanctions to address sexual harassment.
- IV. The commission commends Woolworths for learning a lot more about the social trauma that many of its employees must deal with outside work. This has been demonstrated through the introduction of the Gender Based Violence Task Team.
- V. The commission finds that Woolworths did not report on the budget spent on individual employees because the budget is integrated into operational budgets.
- VI. Woolworths developed a new blueprint for new stores to include facilities for persons with disabilities (PWD) as far as possible based on location.
- VII. Woolworths does not have breastfeeding rooms and most of its employees are young mothers.
- VIII. The maternity and uniform policy of Woolworths unfairly discriminated against LGBTIQ+ employees but it was later remedied.
- IX. The commission commends Woolworths for its grievance policy, which provides that the company has discretion to decide that a formal procedure should be followed as opposed to the informal procedure even if the complainant does not wish so.
- X. The commission finds that the grievance policy of Woolworths is not time-bound regarding finalisation of the hearing/matters.
- XI. Woolworths amended several policies pursuant to the transformation hearings but should do more to amend all its policies. As such, there will be a need to conduct training to all employee on the newly introduced and amended policies.

### **Recommendations**

- I. Woolworths should increase the representation of women, Africans, and PWD in the top and senior management levels.

- II. Woolworths should segregate data regarding the budget spent on individual employees; to track spending on employees training per race and gender.
- III. Woolworths should ensure that its grievance policy is time bound regarding the finalisation of the hearing/matters.
- IV. Woolworths should review all other +/- 500 policies and conduct training to all employees on the newly introduced or amended policies by March 2021.
- V. Woolworths should provide action plans to deal with the identified barriers (EE Plan) and its implementation.
- VI. Woolworths should develop a plan to creating breastfeeding rooms or conduct feasibility study for its stores considering that most of its employees are young women.
- VII. Woolworths is welcome to consult the commission regarding the plans of its Gender Based Violence Team/Initiative or in conducting its programmes to address gender based violence in the community.

### **Progress on findings and recommendations**

1. Woolworths should review all its approximately 500 policies and conduct training to all employees on the newly introduced or amended policies by March 2021.

Woolworths established a task team of functional experts to conduct a detailed review of all its policies and procedures to ensure gender equality and broader transformation is not compromised. The impact of Covid-19 has slowed its progress down; however, it is working towards ensuring meeting its committed timeline for completion by March 2021.

2. Woolworths should ensure that its grievance policy is time bound regarding the finalisation of the hearings.

Woolworths updated the grievance policy and implemented a stringent timeline for the resolution of the process. Its timeline for resolution of all grievances is 21 days from the date of receipt of the grievance to resolution.

This change in policy has been published on all platforms where the grievance policy is accessed by employees.

3. Woolworths should increase the representation of women, black people, and PWD in the top and senior management levels.

Following the end of Woolworths' three-year EE plan on 30 June 2020, Woolworths has prepared an interim 1-year EE plan given the challenging and uncertain times its business finds itself in the context of Covid-19 realities. Woolworths prefers a longer-term EE planning approach aligned to its approach to planning and developing talent.

Furthermore, the usually extensive consultation process on the plan and the identification of barriers to EE and transformation, proved difficult considering social distancing and phased return to work. Woolworths has committed to kick start a five-year planning process in the current financial year, assuming this is feasible within the macro-context. The five-year plan will also seek to align with the eminent legislation and sentiment of EE sectorial targets by the Department of Labour and Employment.

Following a virtual and online engagement and consultation process, Woolworths' leadership is confident that the plan is realistic and can be committed to.

This EE plan was prepared in line with Woolworths' values and commitment to transformation and considers the following context:

- It is an interim one-year Covid-19 plan which will be reviewed in January 2021;
- Woolworths' current business performance and trading conditions are under significant pressure;
- The drive to lower the cost of doing business and the resultant ongoing vacancy freezes, confirmed future vacancies and roles in line with growth strategies and organisational design shifts over the next two years;
- The evolving Covid-19 impacts and how these shape the business going forward;
- Anticipation of the pending sector targets and the requirement for the development of a five-year EE plan;

- In general, the “war for talent” has abated somewhat for now within the context of Covid-19;
- Notwithstanding the increased availability of talent in a broad sense, specialist retail talent remains scarce and active headhunting of this talent continues. As a private label business, scarcity of talent therefore remains a challenge;
- Woolworths’s business model is anchored on differentiation through product and customer experience. Its ability to differentiate is enabled by deep technical and specialist retail skills and brand affinity built over time, and
- Furthermore, as a private label organisation that sells product and offers services across food, food services, fashion, beauty, home, cellular, and financial services both in stores and online, Woolworths is complex from a structural point of view, with many “one off” unique or specialist jobs.

Given the above, one of the foundations of Woolworths’ transformation strategy is a focus on retaining, developing, and growing, and ultimately progressing and promoting talent from within the organisation.

Within the above context, Woolworths supports delivery of its EE plan as follows:

- Woolworths invests in understanding and monitoring the changing local and global retail landscape and the effect on its business and the required talent strategy, particularly on its EE strategies and plans,
- Woolworths conducts regular market mapping exercises to determine the availability of EE talent for its core function at senior levels and this, together with its commitment to sustainable transformation, has informed its strategic talent focus on growing, developing and retaining its own talent, and
- Woolworths’ learning and development spend also prioritises the development of its internal talent pipeline.

The main objectives of the plan are aligned to support this philosophy as follows:

- Continue to shift the senior management profile in line with its growth strategy, particularly the representation of Africans and black women at this level. Whilst the spirit and intent of this EE plan is to shift its employee profile to be more representative of the national demographics using the Economically Active Population (EAP) targets, it is the

representation of Africans and black women at senior management level that is most concerning.

- PWD is a category of employees that Woolworths is concerned about. Whilst it continues to gain momentum with the recruitment of PWD and the sensitisation of the culture to working with differently-abled employees, the ongoing labour turnover in this category is a challenge and its focus on PWD is enabled by an integrated, holistic implementation approach to sourcing and developing people with disabilities and sensitising the environment aligned with its people and transformation strategies and the national skills development strategy. Its focus remains on improving middle management and senior management representation of PWD. Notwithstanding the challenging trading environment, infrastructure, and capacity, it remains steadfast in its commitment to improving PWD representation within the organisation as the diverse workforce including PWD is an increasingly critical asset in enhancing the ability to serve customers;
- Focus on the extensively identified barriers to implementation of EE integrated with business organisational development strategies and practices for sustainable impact;
- Monitor and evaluate progress against the plan to ensure it delivers to its commitments, particularly because of the dynamic nature of the retail industry; and
- To meet the compliance requirements of the Department of Labour.

These objectives are aligned with Woolworths' overall strategic intent for people, which is to establish and drive an employment value proposition (EVP) and experience that will continue to attract, engage, develop, reward, and retain the right diverse talent and leadership required to deliver the Woolworths strategy. Woolworths aims to develop integrated people plans and strategies that will transform its workforce and achieve EE targets, as a key enabler of this intent.

4. Woolworths should segregate the data regarding the budget spent on individual employees to track spending on employees training per race and gender.

Woolworths will develop the tool to segregate data together with the training policies referred to in point 1 above, due March 2021.

5. Woolworths should develop a plan for creating breastfeeding rooms or conduct feasibility studies for its stores, considering that most of its employees are young women.

Woolworths tabled this recommendation with its Real Estate Committee in terms of investigating the feasibility to implement breastfeeding rooms in Woolworths stores. Woolworths has explored some options within its store environment that can serve as breastfeeding rooms. This initiative was unfortunately placed on hold within the context of Covid-19, but it will be reviewed in line with the easing of restrictions according to the Government's Risk Adjustment Strategy.

6. Woolworths should provide action plans on how to deal with the identified barriers, indicated in the employment equity plan, and its implementation.

In the context of the interim one-year plan mentioned above, Woolworths agreed in its consultation process to continue its focus on the current barriers. Whilst there have been significant improvements in these barriers, they still require continued focus to achieve transformation.

All this work is aimed at creating a much broader and comprehensive focus to deeply mine and address barriers to EE and broader transformation in the business in a more inclusive and responsive way.

7. Woolworths is welcome to consult the CGE regarding the plans of its Gender-Based Violence Initiative, or in conducting its programmes to address gender-based violence in the community.

Woolworths welcomes the opportunity to partner with the CGE on all its initiatives and will reach out at the relevant times to engage in the expertise of the CGE.

### **3.3 National Department of Cooperative Governance and Traditional Affairs**

The CGE made the following findings and recommendations to the National Department of Cooperative Governance:

## Findings

1. The department failed to demonstrate commitment to transformation in its practices
2. The Commission finds that persons with disabilities (PWD) are not represented at the top and senior management positions;
3. The working environment is not conducive for persons with different forms of disabilities;
4. The top and senior management positions are predominately occupied by black men to the exclusion of other racial and gender groups;
5. The department does not have a designated employment equity (EE) manager as required by section 20 of the Employment Equity Act;
6. The department does not have a gender responsive budget;
7. The department does not have a childcare facility and flexitime policy;
8. The department does not have succession and retention policies;
9. The department does not have policies to deal with relevant issues with specific reference to gender, disability, and Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual Plus (LGBTIQA+);
10. The commission observed that the department does not take cognisance of black people living in rural areas in its procurement practices and women owned businesses typically receive tenders amounting to R50 000.00 and below; and
11. The department did not conduct sexual harassment workshops in 2018

## Recommendations

1. The commission should meet with the Minister of Cooperative Governance and Traditional Affairs by March 2021 to discuss the lack of gender transformation and employment equity and implementation of transformation legislation.
2. The commission requires quarterly reports on targets set by the department. The secretariat of the commission should engage the department's secretariat on a quarterly basis to monitor and oversee progress of gender transformation, inclusive of PWD and LGBTIQA+ issues.
3. The department must conduct a culture survey by September 2020 regarding work satisfaction, sexual harassment, wellness, issues relating to LGBTIQA+ and disability.
4. The department should develop and provide a plan to the commission aimed at creating a working environment that is conducive for persons with different forms of disability by September 2020.

5. Top and senior management positions should be inclusive of other racial and gender groups.
6. The department should appoint a designated EE manager as required by section 20 of the Employment Equity Act.
7. The department should develop and source a gender responsive budget.
8. The department should conduct a feasibility study to implement childcare facilities and flexitime in its employment by September 2020.
9. The department should develop a gender, disability, and LGBTIQ+, succession and retention policies by March 2021.
10. The department must take cognisance of black people living in rural areas in its future procurement practices and address the aspect that women receive tenders amounting to R50 000.00 and below.
11. The department should conduct sexual harassment workshops to all employees by September 2020.

### **Progress on findings and recommendations**

1. The department failed to demonstrate commitment to transformation in its practices.  
The department submitted that due to constraints in the Compensation of Employees budget, it is unable to meet government wide transformation targets by utilising the available vacant posts.
2. The Commission finds that PWD are not represented at the top and senior management positions.  
The department submitted that it will consider guidance in appointing persons with disabilities to top and senior management positions. Doing so will require it to make changes to its employment equity plan. Section 20 of the Employment Equity Act provides that a designated employer must prepare and implement an employment equity plan that will achieve reasonable progress towards employment equity in the workforce.

3. The working environment is not conducive for persons with different forms of disabilities.  
The department did not provide an action plan to address this issue. Measures must be put in place so that the needs of PWD are attended to.
4. The top and senior management positions are predominantly occupied by black men to the exclusion of all other racial and gender groups.  
The department submitted that it intends appointing an EE manager to address this finding.
5. The department does not have a designated EE manager as required by section 20 of the Employment Equity Act.  
The department submitted that a candidate will be appointed to ensure that its EE plan is implemented.
6. The department does not have gender responsive budget.  
The department submitted that it would consider allocating gender responsive budget.
7. The department does not have childcare facilities and flexitime policy.  
The department submitted that a feasibility study will be conducted to implement the flexi time policy and childcare facilities as guided by the Department of Public Service and Administration.
8. The department does not have succession and retention policy.  
The department submitted that it has a succession and retention policy in place.
9. The department does not have policies to deal with relevant issues with specific reference to gender, disability, LGBTIQ+.  
The department submitted that it has several policies that it believes comply with the Public Service Act and Public Service Regulations 2016. It is willing to subject the policies to the CGE for further analysis and verification if they meet the required standard. Such policies are:

Policy	Adopted date	Review date
Employment Equity Policy	20/06/2019	20/06/2022
Sexual Harassment Policy	20/06/2019	20/06/2022
Disability Policy	20/06/2019	20/06/2022
Wellness Management Policy	20/06/2019	20/06/2022
Recruitment and Selection Policy	17/07/2019	17/07/2022
Special Leave Policy	31/02/2017	Under Review
HIV & AIDS Policy	20/06/2019	20/06/2022
Working Hours Policy	10/10/2019	10/10/2022
Job Evaluation Policy	05/07/2019	05/07/2022
Bursary Policy	15/11/2018	15/11/2021
Training Education & Development Policy	12/11/2018	12/11/2021

10. The Commission observed that the department does not take cognisance of black people living in rural areas in its procurement practices and women typically receiving tenders amounting to R50 000.00 and below.

The department undertakes to play a role of supporting provincial and local government, targets supplies owned by black people, women in rural areas and townships. The evaluation criteria for transactions that are above R50 000.00 will include sub-criteria under functionality for points to benefit suppliers owned by black people and women in rural areas and townships, without discriminating other potential bidders.

Women, youth, and PWD participate in the mainstream economy through community works programmes.

11. The department did not conduct sexual harassment workshops in 2018.

The department submitted that sexual harassment workshops were held during 2017 and 2019 as follows:

Date	Type of Session	Attendees	
		Female	Male
05/05/2017	Information Session	44	29
08/08/2018	Policy communicated to employees on Women's Day	97	14
17/05/2019	Communication during departmental orientation	09	08

### 3.4 National Department of Justice & Constitutional Development

The Commission for Gender Equality (CGE) made the following findings and recommendations to the Department of Justice and Constitutional Development:

#### Findings

1. Black women are underrepresented at senior management level;
2. The commission finds that the current sexual offences courts (SOC) model does not make provision for breastfeeding rooms;
3. The commission finds that the department delayed in the handling of sexual harassment cases, without justification, and thus not creating a conducive working environment;
4. The commission finds that there is a likelihood of underreporting of sexual harassment cases of various reasons. Thus, it is necessary for the department to conduct a culture survey with the view of establishing work satisfaction, sexual harassment, wellness, as well as issues relating to LGBTIQ+ and disability of officials.
5. The commission finds that the department does not include people from rural areas, LGBTIQ+, and PWD in its procurement practices.
6. The commission commends the department for ensuring that its constitutional and educational material is available in braille and for making the Sexual Offences and the Domestic Violence Act available in audio as well.
7. The commission finds that the department lacks skills transfer programs and recognition of prior learning (RPL) which directly impact on succession and experience planning.
8. The commission finds that the department does not implement flexitime relating to child-care and family responsibilities by policy application, and such unwritten discretionary implementation might be exploited.

#### Recommendations

1. The department should increase the representation of black women and PWD at senior management level.
2. The department should create an implementation plan to include breastfeeding rooms in the new model for SOCs and in the maintenance offices/courts. The department should supply same to the commission by September 2020.

3. The delay/gaps in handling sexual harassment cases should be addressed by policy and informed by best practices or previously handled cases to create a conducive working environment.
4. The department should conduct a culture survey by September 2020 with the view of establishing work satisfaction, sexual harassment, wellness, issues relating to LGBTIQ+ and disability of officials.
5. The department should consult the responsible departments such as the Department of Trade and Industry, the National Treasury, the Department of Small Businesses, the State Information Technology Agency (SITA) (that has the mandate on transversal Information Technology (IT)-bids) etc., to include people from rural areas, LGBTIQ+ and PWD in its procurement practices.
6. The department should develop skills transfer programmes and recognition of prior learning (RPL) by March 2021.
7. The department should develop and implement policies providing for flexitime relating to child-care and family responsibilities by March 2021.

### PROGRESS ON FINDINGS AND RECOMMENDATIONS

1. Black women are underrepresented at senior management level.

The department concurs with the commission. Against this background, the department conducted a workforce analysis in February 2020 which was in preparation to review the Departmental Employment Equity Plan (EE Plan) which expired on 30 June 2020.

The workforce analysis revealed under-representation of African women at senior management levels. This was conducted against the Economically Active Population (EAP) targets as provided by STATS SA. The EAP targets are 36.2% and African women were at 27%; with overall non-achievement for the 50/50 target of women.

To address this, the department set 50% women targets in the EE Plan for 01 July 2020 to 31 June 2025, which was approved on 13 October 2020, with priority given to the appointment of African women.

Progress made as of 31 January 2021 indicates an increase of 1.9% of African women at senior management level, i.e., on February 2020 African women in senior management were at 28% and increased to 29.9% as of 31 January 2021. There has been overall increase from 47% on 01 November 2020 to 48% on 31 January 2021.

The department has 4.5% of PWD at senior management levels; with 2.3% of women, where its two percent PWD target has been exceeded.

2. The commission finds that the current SOC model does not make provision for breastfeeding rooms.

The department submitted that when the sexual offences court model was designed/created, the objective was to create a victim friendly environment where a victim will not suffer secondary victimisation. It was thus imperative when the model was re-established to ascertain that the blueprint promotes victims' rights of privacy, security, and dignity. The main facilities of the model comprise the following demarcated secluded areas:

- (i) Separate waiting rooms for children and for adults (that is if there is enough space to create the two waiting areas)
- (ii) A private testifying room
- (iii) Enclosed restrooms within the demarcated area. In some courts, the restroom is situated outside the demarcated area, but there are means put in place to make sure that victims do not have contact with the public, the perpetrator, or the family of the perpetrator. Victims are always accompanied by either the court preparation officer or the intermediary to the restrooms.

Some courts have serious structural challenges due to their dimensions. Some are, for example, situated in historical/monument buildings and cannot be demolished or restructured in accordance with the model. Therefore, in most of the courts, the model cannot be executed 100% as required by the Ministerial Task Team of Sexual Offences (MATTSO) which now has been enhanced by the coming into effect of the Sexual Offences Court Regulations.

Nappy changer facilities will be incorporated and placed in the restrooms, to be determined by the availability of space.

In 2019, when the CGE enquired about the breastfeeding facilities within the model, it was explained that the current model of the SOC is not well structured to make provision for nursing spaces. The challenges were highlighted. The idea was not totally shut out as the department had to investigate the prospects of incorporating the breastfeeding room/nursing room and conduct a costing thereof.

The SOC regulations do not make provision for breastfeeding/nursing rooms. It was envisaged that in the 2020/2021 financial year, a pilot will be initiated and conducted. Regrettably, with the outbreak of the COVID-19 pandemic, the exercise could not be put in place as planned. The department submitted as follows:

“The pilot project will unfold as follows:

- a) Select three courts that have been upgraded and investigate the issue of space and the possibility of creating a nursing/breast feeding room/space
- b) As a pilot, we will recommend that the “nursing room/space “be created. This would require us to visit the sites together with the regional office, NPA and the judiciary
- c) We can start this process, as from December 2021/2022 financial year, in preparation to effect these changes in regulations checklist
- d) We need to also investigate the type of furniture that must be included in this room/space (this will be included in the costing process)
- e) Since we are going to pilot it, we will gradually recommend its integration in some of the courts designated in terms of sec 55A of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007) or courts in progress of being upgraded to sexual offences courts, but this depends on availability of space
- f) With regards to the ongoing upgrading, we will also recommend the inclusion of the nursing room/space
- g) As a pilot, we will commence small and increase as we progress”

3. The Commission finds that the department delayed in the handling sexual harassment cases and such delay is not justified and thus not creating a conducive working environment.

The department submitted that it is currently implementing the sexual harassment policy, which was revised in 2015. The policy was benchmarked with other government departments and fully aligned to the Department of Public Service and Administration (DPSA) sexual harassment policy. The revised sexual harassment policy was presented on 10 November 2020 at HR and Ethics EXCO Sub-Committee. It was further presented on 20 November 2020 at Legislation Policy and Strategy EXCO Subcommittee and at EXCO on 1 February 2021.

During 2019/20 financial year seven cases were reported of which four were finalised leading to 57% finalisation rate. Three cases are not finalised and were carried over to 2020/21 financial year. Four cases were finalised, with sanctions as follows:

- a) One suspension without pay and one final warning.

During December 2020 (2020/21 financial year), there were five cases registered, including the three carried over. Three cases were finalised with outcome being acquittal, suspension without pay and a withdrawal. Only two are pending.

There are various factors that led to delays in the finalisation of sexual harassment cases within the prescribed 90 day timeframe to finalise the case(s). Amongst others are the following:

- i. Postponements owing to sick leave by either presiding officer, perpetrator and in some other instances long sick leave by the complainant (main witness)
- ii. The changing of employee representative and the presiding officer
- iii. COVID-19 hospitalisation and isolation after positive cases of the role players
- iv. Resignation by the presiding officer from the public service which led to a new presiding officer being appointed
- v. The perpetrator decides to engage the services of a legal representation

Employee relations had put in place case management mechanisms to compel presiding officers; initiators or employer representatives to submit progress reports which will also be inclusive of reasons for delays in the hearings. This will ensure compliance with the prescribed 90 day time-frame to finalise case(s).

To address the delays in handling sexual harassment cases the department has put in place the following interventions/turnaround efforts:

- a) Set up multi-disciplinary committee(s) to handle these cases on an expedited basis in line with the code of good practice on the handling of sexual harassment cases in the workplace as opposed to managing these cases through misconduct hearings which were chaired by one presiding officer
- b) The department to seriously consider precautionary suspension of the perpetrator(s) facing allegations of sexual harassment from the workplace in order to protect the victims(s), as a first action after the act pending the investigation and finalisation of the case
- c) Heighten awareness through quarterly training sessions on sexual harassment to all employees to address under reporting
- d) Appointment of highly trained, skilled, and experienced officials to investigate sexual harassment cases

The department submitted that it has made the following amendments to its sexual harassment policy to improve on effective management of cases and incorporate the recommendations of the Commission:

- i. Inclusion of a definition of "complainant" in its departmental sexual harassment policy
- ii. The policy further enhanced the sexual harassment provisions to ensure effective and timeous management and finalisation of cases
- iii. The designated officials from employment equity sub directorate shall quarterly monitor to ensure finalisation of sexual harassment cases
- iv. Formally reported cases shall be recorded in the sexual harassment register at employment equity sub- directorate by the relevant employee relations unit where the case is reported

- v. The appointment of sexual harassment investigating committee shall be facilitated by the relevant employee relations unit for the approval of the delegated authority.
4. The commission finds that there is a likelihood of underreporting of sexual harassment cases of various reasons. Thus, it is necessary for the department to conduct a culture survey with the view of establishing work satisfaction, sexual harassment, wellness, issues relating to LGBTIQA+ and disability of officials.

The department agrees that there is a likelihood of underreporting of sexual harassment cases and therefore, the department commits to the following:

- i. To continue with sexual harassment training and awareness sessions,
- ii. Appointment of highly skilled, trained and experienced officials to deal with or investigate cases,
- iii. Implement best practice of code of good practice on the handling of sexual harassment cases in the workplace,
- iv. Appointment of a committee to handle cases on an expedited basis and heighten awareness to employees in order to address under-reporting of cases
- v. Deepen cooperation between stakeholders and labour relations experts regarding the training of employees (especially female officials), advice and ensure proper handling and timely finalisation of Sexual Harassment cases reported.

It is of critical importance for the CGE to note that the department started with the process of developing terms of reference (ToR) for the process of going to tender to solicit service providers who will conduct a cultural and climate survey. This process was placed on hold due to the unexpected lockdown on Covid-19.

It is envisaged that by the end of the next financial year (2021/2022), the department would have appointed a suitable service provider on a 6-month project to finalise the culture survey. The purpose of the culture survey is to: -

- a) Assist departmental management firstly to understand the nature of its organisational culture whether negative or positive and how it influences service delivery

- b) Emphasise the culture implications in relation to how the characteristics and elements of culture influence behaviour. This aspect will cover characteristics and elements of culture on how it discriminates against gender, sexual orientation, age, race, religion and disability
  - c) The focal point on gender will also ensure that the organisation understands issues of gender, the LGBTQIA+ Community, sexual harassment and the disabilities of officials
5. The Commission finds that the department does not include people from rural areas, LGBTQIA+ and PWD in its procurement practices.

The department submitted that although its procurement system (JYP) is not configured to collate statistics and information on procurement and quotation awards made to service providers in rural communities, the department is convinced that a considerable share of its procurement expenditure benefited service providers in rural communities, particularly, from its request for quotation (RFQ) processes. The department's RFQ process is decentralised to all business units including magistrate offices (courts).

The majority of our courts are in rural areas and as part of its contribution to the promotion of local and district economy, RFQs are always issued to service providers who are near where the department's office and court is located.

With regards to tenders, there is a preferential procurement system in place that allows for the allocation of preferential points for targeted groups of people in the society. Already, as part of the department's preferential procurement system, people living with disabilities are included. The Department will from its procurement plan for the financial year 2021/22 earmark projects that must target service providers living in rural areas. As for the members of the LGBTQIA+ community the department will, together with the representatives from the members of the LGBTQIA+ community, endeavour to engage the National Treasury's chief procurement officer on their inclusion in the procurement processes.

The department is currently engaging the State Information Technology Agency (SITA) on the configuration of JYP to be able to generate the report on its procurement spend from service providers in living in rural areas. If all goes accordingly, the department anticipates this capability to be active on JYP from May 2021.

The department submitted that it is in the process of consulting the responsible national departments, such as Department of Trade and Industry, the National Treasury, the Department of Small Businesses, the SITA, etc., to include people from rural areas, members of the LGBTQIA+ community or PWD in its procurement practices delays has been because of COVID 19.

6. The commission finds that the department lacks skills transfer programmes and recognition of prior learning (RPL), which directly impact on succession & experience planning.

The department submitted that the inception of its human resource development strategy (HRD Strategy) since August 2018 has levelled the ground through its four pillars to encourage public private partnership (PPP) in implanting skills programmes and the recognition of prior learning (RPL) is of no exclusion.

It is with this initiative that the department shall determine the eligible number of employees for RPL and enrol them with accredited higher education institutions (HEIs).

PPP is strengthened through affiliation to the Sector Education Training Authority (SETAs) whereby awarding of both mandatory and discretionary grants for the purpose of funding skills programmes encompassing management developments programmes play a role in closing skills gaps. Management development programmes for lower-level employees should be of a high priority for the next grant window period.

The department, through its training arm (the Justice College), developed the Management Skills Development, Foundational Project Management, and Women in Middle Management Development Programmes to equip lower-level employees for management positions.

7. The commission finds that the department does not implement flexitime relating to child-care and family responsibilities by policy application, and such unwritten discretionary implementation might be exploited.

The department submitted that its retention policy provides for flexitime relating to childcare and family responsibility. However, same is not clearly defined. Instead, it addresses half-day work because it is an employee's birthday or time off for performing beyond expectations at work. It does not address working from home per se.

## 4. Conclusion

The Commission for Gender Equality (CGE) is encouraged by the private and public sector willingness and commitment to transform their workplace, however the achievement of equity for women and persons with disabilities in both sectors remains a concern. Nonetheless, the additional measures such as adoption of new paid parental leave by Vodacom is commended and viewed as a best practice that can be emulated in other sectors.

The commission observed that Woolworths amended its grievance policy to provide for resolution of grievances within 21 days. It also established a task team of functional experts to conduct a detailed review of all Woolworths policies and procedures.

Woolworths' implementation progress cannot be measured with certainty at this stage because most recommendations require long term implementation. The due date for the implementation of some of the recommendations is March 2021.

The Covid-19 pandemic is cited as the major economic challenge/factor that has the potential to slow down transformation progress of Woolworths. Its impact will be measurable together with the submission of the reviewed policies due 31 March 2021. The establishment of a task team of functional experts to conduct a detailed review of all Woolworths policies and procedures is welcome. Reviewed policies should aid transformation journey of Woolworths.

There Department of Cooperative Governance has undertaken to make quite a few changes. Unfortunately, there are no timeframes set. More particularly, the appointment of an employment equity manager and the allocation of gender responsive budgets are of concern. In addition to that, the department did not put in place an action plan to ensure that the working environment is conducive for persons with different forms of disabilities.

The commission notes that the Department of Justice and Constitutional Development has measures in place to address gender equality and transformation through the newly approved employment equity plan. There is a set target of 36.2% in the equity plan for the appointment of women to increase their representation. The department further intends initiating a pilot project and implementing sexual offences courts to make provision for breastfeeding rooms. In the same breath, it will enter partnership with outside stakeholders for skills transfer programs and recognition of prior learning.







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