



**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

**2009 - 2014**



REPUBLIC OF SOUTH AFRICA



## FOREWORD BY THE PRESIDENT

The South African Government is pleased to present its 5th Periodic Report to the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) Committee.

The report provides substantive evidence of progress in the implementation of the CEDAW, its Optional Protocol and General Recommendations. It is presented against the background of critical and significant milestones in our country in 2014, that included the 20th anniversary of democracy and the 60th anniversary of the Women's Charter adopted at the Founding Conference of the Federation of South African Women on 17 April 1954, which outlines the aspirations of women for national liberation and total emancipation – including political participation and equality for women.

The submission of this report takes place at a time when the country will be commemorating the 60th anniversary of the historic 1956 Women's March, where 20 000 women from across all races marched to the Union Buildings, the seat of government, against the pass laws and racial and gender discrimination enforced by the then Apartheid regime.

By the time of the reporting period, the South African Government had adopted the National Development Plan (NDP) 2030 in 2013 as a blueprint for the country's development trajectory. The NDP envisages a South African society that is democratic and prosperous by 2030 and aims at eliminating poverty and reducing inequality by 2030. Incidentally, the NDP is aligned to the 2030 Agenda for Sustainable Development. Its approach revolves around citizens being active participants in a capable and developmental state that is able to intervene to correct our historical inequities, and provide strong leadership throughout society. To achieve this society, the NDP sets as an imperative a need to overcome social and economic exclusions because they are causes as well as outcomes of poverty and inequality. Furthermore, the NDP identifies the financial inclusion for women as a critical tool that will result in quicker poverty elimination and reduction of inequality, and contribute towards the achievement of the set targets.

The NDP proposes that the transformation of the economy should involve active participation and empowerment of women and that the role of women as leaders in all sectors of society should be actively supported. The economic empowerment of women continues to receive focused attention. To this end, on 9 August 2015, the National Women's Day, I launched a report on the Status of Women in the South African Economy. The report outlines progress that the country has made in including women in the economy and also identifies critical challenges in meeting the goal of economic inclusion of women.

In addressing these challenges, I directed all Economic Sector, Employment and Infrastructure Development Cluster Departments to ensure the inclusion of women in the broader economic plans of government, operation and spending plans, and to explicitly consider and report on women at all times. I have also mandated the Department of Women to monitor the implementation of this directive and report to Cabinet periodically.

In South Africa, we acknowledge that when more women are engaged in economic activities such as participating in labour market and enterprises, the economy grows faster, which results in quicker poverty elimination, reduction of inequality and the empowerment of women. South Africans are therefore called upon to continue to unite and unleash the energies of all its citizens, grow an inclusive economy, build capabilities, enhance the capability of the state and leaders to work together to solve identified challenges that we are still faced with.

Together, Moving South Africa forward.

A handwritten signature in black ink, appearing to read 'J. Zuma', written over a horizontal line.

Jacob Gedleyihlekisa Zuma  
President  
Republic of South Africa



## PREFACE BY THE MINISTER

South Africa's 5th Periodic report reflects achievements we have collectively made in the implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in the country since the previous report. The report also highlights the challenges that remain in eliminating all forms of discrimination against women as well as measures that are in place to address them.

The Constitution of the Republic of South Africa is aligned with and also serves as an instrument for facilitating South Africa's compliance with its regional, continental and international human rights obligations. Many of the human rights standards and resultant obligations relate to women's human rights and the duty of parties to take measures to eradicate discrimination and inequality between women and men in all spheres of life, including the justice system, the family, societal practices and the economy and to promote the empowerment of women.

Women's equal access to and control over economic and financial resources is critical for the achievement of gender equality and the empowerment of women, and for equitable and sustainable economic growth and development. Gender equality in the distribution of economic and financial resources has positive multiplier effects for a range of key development goals, including poverty reduction and the welfare of children. This will also address issues of dependency which perpetuate violence against women.

Government has taken strong action to address the barriers that women face in accessing the labour market and business; women are encouraged and supported to start their own businesses through legislation and policy implementation measures. It is acknowledged that potentials of women have not been fully utilized in efforts towards economic transformation in the country.

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

The Government of South Africa will not shirk its responsibility in fighting for the elimination of discrimination against women and the promotion of women's rights towards women empowerment and gender equality, which lies at the very root of our democratic nationhood.

Ms Susan Shabangu, MP

Minister in the Presidency responsible for Women



## EXECUTIVE SUMMARY

In 2015 the South African Government and its stakeholders collaborated in the development of South Africa's 5th Periodic Report on the implementation of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). The report responds to the CEDAW Concluding Observations submitted to the country following the presentation of the South African 2nd, 3rd and 4th Periodic Report on Progress made in the implementation of the Convention at its 48th Session on 21 January 2011. The report also provides updated information on progress made in the implementation of the CEDAW and its General Recommendations from 2009- 2014. This report is aligned with the CEDAW Committee's Guidelines on the form and content of reports to be submitted by State Parties (HRI/GEN/2/Rev.6).

The South Africa Census 2011 data indicates that the population is predominantly female with 41.2% of house-holds headed by females. Female headed house-holds generally contain more dependents and have a larger average household size. The report therefore provided the country with the opportunity to quantify efforts that were made to prevent discrimination against women, promote women's rights and empowerment.

In South Africa the responsibility for the elimination of discrimination against women lies with different stakeholders that include amongst others government, parliament, chapter nine institutions, and civil society organisations. It is therefore apparent that there was collaboration with stakeholders in the development of the report through consultations to ensure that the report represents the aspirations of the country and not specific groups. The report was further gazetted for public comment and comments received go a long way towards improving the report and plans going forward on the implementation of the Convention.

The Constitution of the Republic of South Africa, 1996 and The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) (PEPUDA), remain relevant within the definition of discrimination by the CEDAW. South Africa therefore continues to be guided by the Constitution and continues to implement a legislative framework that promotes women's rights and gender equality. South Africa believes that the optimal implementation of the current legislative framework that has already been adopted and funded is more critical than adoption of any new or additional legislation.

Several measures have been implemented, which include reaching the public through media, booklets, pamphlets as well as community gatherings to raise public awareness of legislation and services that have been put in place. These have resulted in an increased number of people accessing the services. South Africa created a balance between the service recipients and service providers in the public service by ensuring that there was sufficient capacitation through training and workshops plus support to officials dealing with victims through counselling.

The Medium Term Strategic Framework (MTSF) is Government's Strategic Plan for the 2014-2019 electoral terms and reflects the commitments made in the election manifesto of the governing party, including the commitment to implement South Africa's National Development Plan 2030. The MTSF is structured around 14 priority outcomes which sets out the actions Government will take and the targets to be achieved. The third priority area is "All people in South Africa are and feel safe". The vision is to ensure that, by 2030, people living in South Africa feel safe at home, at school and at work, and enjoy a community life free of fear. Women should be able to walk freely in the street and children should be able to play safely outside. Businesses should be able to invest confidently and create jobs without the threat of livelihoods being undermined by crime.

In this regard, South Africa's implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, (Act No. 32 of 2007) through the establishment of the sexual offences courts and encouragement of inter-sectoral approach on all matters related to sexual offenses is paying off. More cases are finalised and more perpetrators get adequate punishment for their offences. The inter-governmental approach on the implementation of the South African Integrated Programme of Action Addressing Violence Against Women and Children (2013-2018) which provides a key platform for accelerating violence prevention and response efforts at all levels is operational. In South Africa, adult prostitution is contested, and the perspective ranges from the constitutional protection of human rights and human dignity and safety of the person enforcing particular moral or religious values. The status remains unchanged since the previous report.

A new piece of legislation, the Prevention and Combating of Trafficking in Persons Act, 2013, (Act No.7 of 2013), has been adopted, giving South Africa one statute that will tackle trafficking holistically.

South Africa's progress with participation of women in political and public life has been echoed internationally with South African women holding leadership positions. The African National Congress continues to implement its 50/50 policy on gender equity, working towards equal representation of women, however no other political party in Parliament has the principle of 50/50 gender party. The representation of women in the public sector is pleasing, with women gradually occupying positions in the defence force and peace building, as pilots, and in other areas. However, the representation of women in decision making in the private sector remains low.

Government embarked on several measures to promote women and girls' participation in primary, secondary and higher education including in further education and training. Safety measures, social support, financial support, advocacy measures among others, has resulted in the achievement of gender parity in primary education, increased literacy of women, and in women moving towards business, commerce and management sciences.

Although South Africa has equal opportunity for both men and women to participate in employment, it is acknowledged that the participation of women in the labour force is lower than that of men. However, South Africa has seen stability between the participation of males and females in 2001 and 2004 where both were equally lowered. Patriarchal attitudes and stereotypes still influence perceptions on the role of women and men in society and influence women's participation in paid work.

The report notes and acknowledges that there are linkages between the status of women in society and HIV infections, hence the country continues with free reproductive health services, such as antenatal, delivery and post natal services as well as family planning. In 2010, the maternal mortality rate declined significantly to 270 per 100 000 and this decline was sustained. The latest estimate for maternal mortality is measured at 141 per 100 000. Special measures to protect rural women and women in marriages have been implemented. Women in rural areas are also accessing ownership to land and in management of their use.

Harmful traditional practices deny girls the right to education and development and this practice is not condoned by the state, hence perpetrators are prosecuted.

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## ACRONYMS

<b>AIDS</b>	Acquired Immune Deficiency Syndrome
<b>ART</b>	Anti- Retroviral Treatment
<b>CAPS</b>	Curriculum Assessment Policy Statement
<b>CARMMA</b>	Campaign on Accelerated Reduction of Maternal and Child Mortality
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CEM</b>	Community Education and Mobilization
<b>CEO</b>	Chief Executive Officer
<b>DBE</b>	Department of Basic Education
<b>DHET</b>	Department of Higher Education and Training
<b>DoJ&amp;CD</b>	Department of Justice and Constitutional Development
<b>DRDLR</b>	Department of Rural Development and Land Reform
<b>dti</b>	Department of Trade and Industry
<b>FCS</b>	Family Violence, Child Protection and Sexual Offences
<b>HIV</b>	Human Immuno-deficiency Virus
<b>HTA</b>	Higher Transmission Area
<b>IDC</b>	Industrial Development Corporation
<b>IDMT</b>	Inter Departmental Management Team
<b>ILO</b>	International Labor Organization
<b>IOM</b>	International Organization for Migration
<b>IDP</b>	Integrated Development Plan
<b>LGBTI</b>	Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI)
<b>MATTSO</b>	Ministerial Task Team on the Adjudication of Sexual Offences
<b>MMR</b>	Maternal Mortality Rate
<b>NCS</b>	National Curriculum Statement
<b>NDP</b>	National Development Plan
<b>NEF</b>	National Empowerment Fund
<b>NSC</b>	National Senior Certificate
<b>NTT</b>	National Task Team
<b>PEPUDA</b>	Promotion of Equality and Prevention of Unfair Discrimination Act
<b>PMTCT</b>	Prevention of Mother to Child Transmission
<b>RCMA</b>	Recognition of Customary Marriage Act
<b>SAMDI</b>	South African Management Institute
<b>SANAC</b>	South African National Aids Council
<b>SALRC</b>	South African Law Reform Commission
<b>SAPS</b>	South African Police Services
<b>SASSA</b>	South Africa Social Security Agency
<b>seda</b>	Small Enterprise Development Agency
<b>sefa</b>	Small Enterprise Financing Agency
<b>SMME</b>	Small, Medium and Micro Enterprises
<b>SOCA</b>	Sexual Offences and Community Affairs
<b>STI</b>	Sexually Transmitted Infection
<b>TB</b>	Tuberculosis
<b>TCC</b>	Thuthuzela Care Centre
<b>TiP</b>	Trafficking in Persons
<b>UN</b>	United Nations
<b>VAWC</b>	Violence against women and Children
<b>MTSF</b>	Medium Term Strategic Framework

# INTRODUCTION

## Background and scope of the report

1. This is *South Africa's 5<sup>th</sup> Periodic Report on the Implementation of CEDAW 2009-2014*. The report responds to the Concluding Observations issued by the Committee after the consideration of the *Combined 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> South African CEDAW Report: Progress made on the implementation of the Convention 1998-2008*. It will further give an account on progress made, achievements and also challenges in the implementation of the Convention for the period 2009 to 2014. The report also responds to the General Recommendations No.1 to 33 of the Committee where applicable.
2. The country notes with regret that it submitted its responses to paragraph 48 of the Concluding Observations in September 2015 (late for the requested date of February 2013) and that this 5th Periodic Report was not handed in February 2015 as requested.
3. This report is a product of an extensive public participation process and it includes information provided by civil society, by labour and by business alongside the information made available from government departments. This report is therefore an outcome of an open consultation process, involving discussions with stakeholders in representing different sectors as well as publication of the draft report for public comment. A detailed consultation report is attached as annexure 1.
4. The report is presented in this manner: (i) Introduction: Background, scope of the report and overview; (ii) Part 1: Article 1-6; (iii) Part 2 : Article 7-9; (iii) Part 3: Article 10-14; (iv) Part 4: Article 15-16; (v) Part 5: General Recommendations 12 and 19; and (vi) Conclusion.

## Overview

5. Census 2011 data indicates that the South African population is marginally more female. Women constitute 51.3% (26 581 769) of the population while men constitute 48.7% (25 188 791). The gender demography has always reflected a high number of women as in 1996, 2001, 2007 and 2011 with women being 51.9% / 52.2% / 51.7% and 51.5 respectively
6. More people are living in urban areas than in rural areas, however more women can be found in rural areas (62.5%) as compared to 37.5% in urban areas. This can be attributed to migratory labour patterns in the country.
7. 41.2% of house-holds are headed by females. The percentage of female heads of households increased with age. They are divided as follows: 34.4% for the 18-34 year age group; 40.2% in the 35-59 year age group; 47.7% for the 60-69 year age group and finally peaking at 60.2% at the 70+ year age group.<sup>1</sup>
8. Female headed house-holds generally contain more dependents and have a larger average household size. Approximately 10% of female headed house-holds are “skip-generation” house-holds (where grandparents, especially grandmothers care for orphaned or grandchildren from absent parents), compared to 3.2% of male headed house-holds.<sup>2</sup> The percentage of “skip generation” house-holds is even larger among older persons (15.1%). Census 2011 also found that extended families comprised 31.8% of female headed households compared to 18.4% of households headed by males.

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<sup>1</sup> According to Census 2011, Statistics South Africa  
<sup>2</sup> Census 2011



## PART I: ARTICLES 1-8

### Article 1: Definition of Discrimination against women

9. The definition of discrimination was covered in the previous report and the Common Core Document.

### Involvement of Parliament in the implementation of the Convention and the Concluding Observations

10. The Parliamentary Portfolio Committee on Women and the Select Committee on Co-operative Governance and Traditional Affairs (Women, Youth and Inter-Governmental Relation matters) have since 2014 exercised their oversight functions by requesting government departments to account on measures undertaken to empower women. They may request for a report on implementation of legislation. They also conduct monitoring visits to government programmes on empowerment at local level. In addition, the Committees hold public hearings on issues concerning women, and especially the impact of certain legislation, such as the Domestic Violence Act, Maintenance Act, and the Sexual Offences and Amendment Matters Act. Parliament and provincial legislatures also hold annual “Women’s Parliament” sessions during the National Women’s Month in August, host debates on the 16 days Campaign of “No Violence Against Women and Children”, as well as annual sessions of “Taking Parliament to the People”.

### Visibility of the Convention and its Optional Protocol

11. The Concluding Observations were circulated widely via email to stakeholders such as government, Parliament, the Commission for Gender Equality, civil society organisations, media, sports fraternity; traditional and religious, labour movements, judiciary, business and any other interested parties.
12. The Women’s Human Rights Resource Book, a resource book on international and regional instruments and institutions that support gender equality was published by the Department of Justice and Constitutional Development, was distributed to all judicial workshops and conferences. Furthermore, the South African Chapter of the International Association of Women Judges adopted the Jurisprudence of Equality Programme with an objective of training members of the judiciary on the development of the jurisprudence of equality through the use of international instruments including CEDAW and its Optional Protocol.
13. The South African Women Lawyers Association has training programmes on international instruments, as well as on litigation to promote human rights for its members which includes male lawyers as friends of the Association,
14. In order to popularise the CEDAW Committee’s General Recommendations 12 and 19, the State coordinates stakeholders to promote women’s human rights and collective responsibility in the fight to eradicate violence against women and children through the “*#CountMeIn*” Campaign to shift society’s perception on their role in acknowledging that violence against women and children is a crime that affects the entire society.

### Incorporation of the Convention

15. South Africa refutes the assertion made in paragraph 14 of the Committee’s Concluding Observation stating that: “*neither the Constitution nor other relevant legislation of the state party embodies the principle of substantive equality between women and men....*” Article 1 of the Convention may not

be verbatim in the Constitution and legislation on equality but they both embody the principle of substantive equality between women and men and prohibit direct and indirect discrimination against women. South Africa has one of the best Constitutions and bodies of legislation in the world, including the enforcement institutional mechanisms such as the Constitutional and Equality Courts.

16. South Africa's Constitution has a mixed approach to the incorporation of international law into the country's domestic law. It assumes a dualist approach in relation to treaties and a monist stance in respect of customary international law<sup>3</sup>. The dualist approach means that international law is not directly applicable domestically. It must first be translated into national legislation before it can be applied by domestic courts.
17. South Africa is a signatory to many international instruments which makes it difficult to mention all these instruments in the Constitution. However, Section 39(1)(b) provides that the court must consider international law on interpretation of the Bill of Rights; this includes consideration of CEDAW and its Optional Protocol. The founding principles of the Constitution elevate human rights, equality and freedom for everyone. Gender equality is a core right and principle of the South African Constitution. In addition to singling out non-sexism as one of the core values upon which the new South Africa is founded, the Constitution champions the achievement of equality, including gender equality, throughout its provisions and particularly in Section 9 thereof.
18. The Common Core Document provides information on how the Constitution of the Republic of South Africa incorporates CEDAW and other International Instruments. Specific reference in this regard is Section 7 (1) (2), Section 9 (1) (2) (3) (4) (5), Section 10 and Section 39 (1).
19. The previous report referred to the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) (PEPUDA). This report highlights Section 1 (viii) as it defines discrimination as meaning any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly- (a) imposes burdens, obligations or disadvantage on; or withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds as it relates to incorporation of the Convention.

### **Equality law and access to equality protection**

20. The Green Paper towards the Women's Empowerment and Gender Equality (WEGE) Bill lapsed in April 2014. The detailed explanation of the processes undertaken has already been submitted to the UN Office of the High Commissioner on Human Rights in September 2015.
21. In 2009, all Magistrates' Courts and High Courts were designated as Equality Courts. Regulations for Equality Courts have also been promulgated<sup>4</sup>. This has improved access to justice as the public can now lodge complaints of unfair discrimination at the Courts nearest to their community.
22. Persons needing assistance when approaching the Equality Court are usually assisted by the clerk of the Equality Court, the South African Human Rights Commission or the Commission for Gender Equality,

<sup>3</sup> Deputy Chief Justice D Moseneke, "The role of comparative and public international law in domestic legal systems: a South African perspective" December 2010

<sup>4</sup> Government Notice No R764 of 13 June 2003 (Government Gazette 25065)

as the need arises. Although the Equality Court is a formal court sitting, the rules and procedures are more relaxed than in normal courts as legal representation is not necessary and complainants do not have to pay any court fees. Different Equality Court matters such as harassment, hate speech and unfair discrimination that have been registered are 618 during 2012/2013, and 638 during 2013/2014.

23. During the reporting period a 3.24% increase of new matters was observed. Hate Speech and Unfair Discrimination were the leading complaints in 2013/2014 with 255 and 217 respectively. While there is a 4% decrease in hate speech complaints, unfair discrimination increased by more than 40% during this period.
24. During the reporting period, there was a 30% decrease in the total number of cases disposed of. Out of the total cases disposed of, 31.5% were referred to alternative forums. Although an increase in cases enrolled at these courts has been witnessed, it is nonetheless a matter of concern to the government that the Equality Courts are underutilised.

### Landmark decisions on discrimination

25. In the case of MEC for Education: Kwazulu-Natal v Pillay<sup>5</sup> the Constitutional Court held that a school policy that forbids the wearing of a small nose stud as a religious and cultural expression, is discriminatory and unconstitutional. The evidence before the Court showed that the wearing of a nose stud was a voluntary practice that formed part of the learner's South Indian Tamil Hindu culture, which was part of her Hindu religion. The school and its policy had therefore interfered with her right to religion and culture. As that burden was not imposed on others, the school's interference amounted to discrimination against her.
26. In the case of *Hassam v Jacobs NO*<sup>6</sup>, 2009 ZACC19, the applicant, whose husband had died intestate, was a party to a polygamous Muslim marriage. The Constitutional Court held that precluding the applicant from inheriting unfairly discriminated on the grounds of religion and was therefore inconsistent with section 9 of the Constitution. The Court thus declared invalid section 1(4) (f) of the Intestate Succession Act<sup>7</sup> which excluded widows of polygamous Muslim marriages from the protection of the Act. Accordingly, it was held that the applicant could inherit. The ambit of this judgment extended the ruling in *Daniels v Campbell* to polygamous Muslim marriages.
27. Monogamous Hindu marriages also received legal recognition during the period under review. In the case of *Govender v Ragavayah, NO*<sup>8</sup> the court examined Constitutional Court cases which have extended the ambit of the Intestate Succession Act. The court found that the conclusion of a marriage in terms of Hindu rites and custom is an inherent element of the right and freedom associated with religious and cultural choices. Accordingly, it held that there is judicial support for the proposition that a spouse of a "marriage" by Hindu rites may well have the religious "marriage contract" given some recognition by South African law.

5 2008 (1) SA 474 (CC)

6 (2009) ZACC 19

7 Act No 81 of 1987

8 2009(3)SA178(D)

## **Article 2: Policy Measures**

### **Access to Justice**

28. Legal Aid South Africa is an independent statutory body established by the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014) (Legal Aid Act) with a mandate to give legal aid or to make legal aid available (within its financial means) to indigent persons. It provides legal representation at State expense, as set out in the Section 35(2) (c) of the Constitution and relevant legislation giving content to the right to legal representation at State expense.
29. Section 35(2)(c) states that “Everyone who is detained, including every sentenced prisoner, has the right (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly.”
30. The Legal Aid Board Justice Centres provide legal representation to the indigent in the country and their addresses are made available to the public. The Legal Aid Board has identified women and children’s rights (as well as land issues) as deserving of special attention in the provision of its legal services.

### **Mobilisation against the Traditional Courts Bill**

31. The Traditional Courts Bill was not passed by Parliament in 2014 due to mobilisation by women against it. The main concern was that the Bill, if enacted, will promote gender inequality and undermine women emancipation particularly in rural areas. It is however acknowledged that these courts exist. Therefore it is a constitutional imperative that traditional courts should be transformed to suit the democratic dispensation. This explains that the process on policy dialogue on traditional courts reform has started.
32. Efforts have been stepped up to transform the traditional courts to bring them in conformity with the Constitution and work on the processes of revising the Traditional Courts Bill with a view of incorporating the wealth of submissions and commentary garnered during the lengthy public participation process. The Department of Justice and Constitutional Development is working steadfastly with the Department of Traditional Affairs to bring these legislative reforms to finality.

### **Training on application of legislation prohibiting discrimination**

33. The South African Government has established training institutions to provide systematic training on the application of legislation prohibiting discrimination. They include the South African Judicial Education Institution (SAJEI) which is responsible for training members of the judiciary; Justice College and Police Academies in all Provinces. The National School of Government provides training to all public service. Gender mainstreaming and gender budgeting is inclusive in the training to meet its service delivery needs and to develop a professional, responsive and capable public sector, driven by the imperative of a developmental state.

### **National Machinery**

34. In 2014, the incoming Fifth Administration elevated the status of women’s issues by establishing a dedicated Ministry, the Ministry of Women and locating it strategically back into the Presidency. The Ministry has greater authority and a mandate to promote women’s socio-economic empowerment



and gender equality which includes a monitoring and evaluation function over other line ministries to promote mainstreaming of women's empowerment and equality across Government, private sector and civil society in general. The Ministry and its Department is guided by the South African National Policy Framework for Women's Empowerment and Gender Equality (2000).

35. The Ministry has reviewed the Department's institutional capacity and is putting in place human, financial and technical resources in order to strengthen its capacity to monitor and evaluate the impact of programmes on women's empowerment, to report and make recommendations, to coordinate stakeholders and its outreach capacity.
36. The Department of Public Service and Administration has ensured that South African public service departments all have a gender focal point, albeit that there is unevenness in the level of the posts, and in their location. In addition, there is increasing emphasis on the importance of gender planning and budgeting and reporting in government.

### Article 3: Guarantee of Basic Human Rights and Fundamental Freedoms

#### Measures to address harmful traditional practices

37. *Ukuthwala* is an "irregular" form of marriage which was practised in a certain culture. It was characterised by a staged abduction between two consenting adults who either lacked the bride price to get married, or whose parents were disapproving of the proposed marriage. The main aim was to force the girl's family to enter into marriage negotiations. The practice in its original form had a number of legitimate cultural goals and had built-in protection for the young woman: the man was not permitted to seduce the girl once she has been abducted as part of *Ukuthwala*, and if he did do so, he was fined. In its original form *Ukuthwala* did not involve children and rape was not permitted<sup>9</sup>.
38. In 2009, the government was made aware of the misuse of the *Ukuthwala* practice, where young girls between the ages of 12 and 15 years were being abducted. Meetings took place among traditional leaders, provincial government departments, women, men and children in the affected localities in order to establish the extent of the problem. Awareness raising Indabas were conducted by members of the executive. This included Ministers championing gender equality, safety and security, justice, National Prosecuting Authority, health, education and basic services (local government). A pledge was signed between the former Minister in the Presidency, King Sigcawu as well as other traditional leaders. Pamphlets to raise awareness were created which outlined the laws that prohibit this practice, its impact on the country and also information on services available. A boarding house/ hostel for victims was established in the affected locality.
39. Section 28 of the Constitution states that a child's best interests are of paramount importance in every matter concerning the child and that a "child" means a person under the age of 18 years. Therefore custom, cultural or religious rights cannot undermine the rights of children. South Africa regards the abuse of *Ukuthwala* as a criminal and harmful practice that robs children of their childhood and impacts negatively on their health, development and gender equality. The practices that are dehumanising to young girls and women are regarded as unfair discrimination and rights espoused in PEPUDA can be enforced in the Equality Courts.

<sup>9</sup> An exploratory study on the interplay between African customary law and practices and children's protection rights in South Africa, 2011 by Commissioned by Save the Children Sweden Southern Africa Regional Office

40. Section 17 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, Act 32 of 2007) prohibits the sexual exploitation of children by their parents and others. Parents, relatives or others who collude in, or aid and abet, the unacceptable practice of *Ukuthwala* of a girl child commit the crime of the sexual exploitation of children. These parents and relatives also face being charged with Trafficking in Persons, under Section 71 of this Act.
41. Court decisions on *Ukuthwala* include the *Jezile v S and Others* (A 127/2014) [2015] ZAWCHC 31109 and Limpopo Province Court decision on child marriage<sup>11</sup>
42. Government has public education initiatives and utilises a combination of various communication platforms such as media, public exhibitions, educational imbizo's and government websites to promote the rights of women, children, older persons, persons with disabilities, the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) community and other marginalised groups. These initiatives are a means to reach out to communities in an effort to raise awareness on legal recourse and redress measures available.
43. Article 5 of the report has a dedicated section that addresses all public awareness programmes that took place during the reporting period titled *“Awareness raising and education programme on violence against women and girls”*.

#### Addressing virginity testing

44. The consultation process during the development of the Children's Act, 2005 (Act No. 38 of 2005) revealed that some of the young girls believed that virginity testing encourages them to abstain until marriage. The challenge to the country's democracy in the context of its history is that indigenous cultural practices were marginalised and distorted for a long period. There is a need to find the appropriate balance between recognising our diverse cultural practices and respecting the constitutional framework which promotes the values of human dignity, the achievement of equality, the advancement of human rights and freedoms.
45. Section 16(1) of the Constitution provides that: “Everyone has the right to freedom of expression ...” Section 12 of the Children's Act, 2005 (Act No. 38 of 2005) states that: “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”. Specifically, it goes further to prohibit virginity testing for children under the age of 16. Section 12 (4) states that “Virginity testing of children under the age of 16 is prohibited.” This measure is an effort to protect children who may not be able to express themselves freely in addressing social, cultural and religious practices detrimental to their wellbeing.

<sup>10</sup> In February 2014, the Wynberg Regional Court convicted a man found guilty for *Ukuthwala* on three counts of rape, human trafficking and assault and sentenced him to 22 years behind bars. In addition, court ordered that his name be included in the National Register for Sexual Offenders in accordance with Section 50(2)(a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) (the Sexual Offences Act). He appealed the conviction and sentence at the Western Cape High Court but on 23 March 2015, the full bench of the High Court rejected his appeal and confirmed the decision of the court a quo.

<sup>11</sup> In 2015 the Mokerong Regional Magistrates Court sentenced a 60 year old man who married a 13 year old girl to 5 years imprisonment. The State is appealing the sentence as being too lenient and has indicated that it will review the laws governing child marriages for more protection

## **Recognition of polygamy in South Africa**

46. The development of legislation relating to customary and religious marriages had to comply with the provisions of the Constitution to ensure that the rights to equality, freedom from unfair discrimination; dignity; practise freedom of religion, belief and opinion; language and culture; and cultural, religious and linguistic communities is attained.
47. The Recognition of Customary Marriages Act (RCMA), (Act No. 120 of 1998) gives recognition to both monogamous and polygamous marriages, meaning that when a person is a spouse in more than one customary marriage, all such valid customary marriages, entered into before and after the commencement of the Act are for all purposes recognised as valid and equal marriages. The RCMA was fully elaborated on in the previous report.

## **Article 4: Temporary Special Measures**

48. The 2014 Presidential Declaration to establish the Department of Women evolved from an organisation that focused on the plight of marginalised and vulnerable groups to an organisation that is focusing on women socio-economic empowerment and gender equality. The reconfiguration and reorganisation of the Department provides focused attention on issues of socio-economic empowerment and gender equality.
49. Government initiated a strong nation building programme in the country and actively promoted the concept of social cohesion in line with the country's National Development Plan's (NDP) 2030 vision and trajectory. Government's Medium Term Strategic Framework (MTSF) (2014-2019) comprises 14 outcomes. One of the Outcomes specifically focusing on Nation Building and Social Cohesion is aimed towards South Africans being more conscious of the things they have in common with each other than their differences.
50. On August 9, Women's Day 2015, the President released the first government report on the Status of Women in the South African Economy since the establishment of the Ministry responsible for Women in the Presidency in May 2014.

## **Article 5: Sex Role Stereotyping and prejudice**

51. South Africa is against sex role stereotyping as noted in the cases of the Head of Department, Department of Education, Free State Province v Harmony High School<sup>12</sup>. The Court considered the rights of pregnant learners and policies which state that they must be absent from school for a certain period of time. The policy further allows boys responsible for impregnating girls to continue with their studies unpunished but requires that girls be dismissed and repeats the year of study. The Court found that these policies violate pregnant learners' constitutional rights and therefore ordered that the policies be reviewed as they lead to unfair discrimination, which treats boys and girls differently. Pregnant learners are now allowed to attend school until giving birth and are re-admitted as soon they are ready to proceed with their schooling.

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<sup>12</sup> 2013 (9) BCLR 989 (CC)

## Violence against women

### Comment on the report commissioned by the Government, done by the Centre for the Study of Violence and Reconciliation

52. The report commissioned by the Government in 2007 compiled by the Centre for the Study of Violence and Reconciliation did not provide any new information but rather confirmed what government already knew and for which they had developed and implemented a plan. This transpired through the establishment of the Sexual Offences and Community Affairs (SOCA) Unit, Inter Departmental Management Team, Thuthuzela Care Centres (TCC), Ndabezitha dialogues and many other initiatives.
53. Outcome 3 in the MTSF provides that “All people in South Africa are and feel safe”, and includes integrated government interventions against sexual offences.

### Accountability mechanism for implementation of policies and legislation

54. The Ministerial Task Team on the Adjudication of Sexual Offences Matters (MATTSO) was established as a measure to implement the Criminal Law (Sexual Offences and Related Matters) Amendment Act, (Act No. 32 of 2007) through the investigation of the viability of re-establishing the Sexual Offences Courts which was officially handed to the Minister of Justice in August 2013. The initiative was also adopted by Parliament in 2014 when it passed the Judicial Matters Second Amendment Act, 2013 (Act No. 43 of 2013). The amendment includes the insertion of Section 55A to provide the Minister of Justice and Correctional Services with the authority to designate a court as a Sexual Offences Court and for Government to develop regulations that will guide resourcing and management of these courts<sup>13</sup>.
55. The National Strategy for Intersectoral Management of Sexual Offences<sup>14</sup> 2014 was established to encourage the inter-sectoral approach to all matters relating to sexual offences courts. The Strategy provides for the minimum uniform personnel required at each sexual offence court as well as access to services such as court preparation programme; information material.
56. The MATTSO report provided a new Sexual Offences Court Model that must be followed. It identified 57 Regional Courts that were resourced closest to the Model and recommended that those courts be upgraded to Sexual Offences Courts over a period of 3 years commencing in the 2013/2014 financial year. It also recommended the establishment of the governance structures, the National Sexual Offences Courts Committee, which was established in October 2014, to manage the courts. The Committee considered the Draft Regulations for Sexual Offences Courts and commissioned the Feasibility Study on the Provision of Nutritional Food for Child Witnesses in partnership with UN Children’s Fund.
57. On 23 August 2013 the first sexual offences court was launched in the Eastern Cape rural community. From 6 August 2013 to 31 March 2014, a total of 21 sexual offences courtrooms were established in accordance to the requirements of the new MATTSO Model which seeks to provide a variety

<sup>13</sup> Input from Department of Justice and Constitutional Development: January 2015

<sup>14</sup> JCPS Working Group (Devcom) input: January 2015



of support services to the victims of sexual offences. An additional 12 courts were established in 2014/2015 to bring the total number of sexual offences courtrooms to 33. South Africa set a trend that some countries leading in the intervention against gender-based violence found it worthy of adoption. As at December 2012, there were 322 CCTV systems, 98 One-Way Mirrors and 220 Witness Testifying Rooms. The re-establishment of the Sexual Offences Courts has therefore increased the physical resources by adding the following between 2013/2014 and 2014/2015<sup>15</sup>

Sexual Offence Courts Established							
Year	Dual View CCTV System	Testifying Rooms	Private Child/Teen Waiting Rooms	Private Adult Waiting Room	Bar Fridge	Micro Wave Oven	Information Screens
01 August 2013 to 31 March 2014	21	21	17	17	18	18	34
01 August 2014 to 31 March 2015	34	33	28	27	28	28	55

58. In 2014/15 Government established a personnel structure creating posts of 185 courts and 9 regional intermediaries. The recruitment process for newly created posts will commence in 2015/16 for the post structure to reach 194 personnel.
59. South African Police Service (SAPS) conducts regular station visits to monitor compliance. Provincial and National Domestic Violence Work Sessions were facilitated in 2012 to address challenges experienced in terms of the implementation of the Act and National Instructions on domestic violence.
60. With the promulgation of the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011) effective from 1 April 2012 and the Civilian Secretariat for Police Act, 2011 (Act No. 2 of 2011) effective from 1 December 2011, the SAPS is now obligated to report all misconduct cases pertaining to non-compliance with the Domestic Violence Act, 1998 (Act No 116 of 1998) to the Secretariat as of 1 April 2012.
61. In the past 5 years, several interventions were introduced to address gender-based violence and sexual offences against women and children. Government re-introduced the specialised Family Violence Child Protection and Sexual Offences (FCS) Units and there are now 176 FCS units attached to all police stations nationally. By 2013 there were 1 194 life sentences secured over a three-year period: 306 in 2010/2011; 389 in 2011/2012 and 499 in 2012/2013. Sentences passed over this period led to a combined 36 225 years of imprisonment.
62. The Victim Friendly Facilities rendering victim support services continue to be rolled out in police stations and the ideal would be to have them in all stations. As at November 2014, there are 1 137 police stations rendering these services which provide a private place where victims can be interviewed and statements can be taken assuring the victims' rights and protection. All these services work towards reducing secondary victimisation.

<sup>15</sup> Departmental Annual Reports on the Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: April 2013 – March 2014 and April 2014 – March 2015

63. The number of Thuthuzela Care Centres (TTCs) in the country has increased<sup>16</sup>. Conviction rates in the prosecution of sexual offences reported at TCCs were 60.7% in 2011/12, 61.03% in 2012/2013 and peaked

to 65.9% 2013/14, which was the best conviction rate over a period of 5 years<sup>17</sup>. In 2011, the UN Secretary-General, Mr Ban Ki Moon, recognised the ‘Thuthuzela model’ as a ‘world best practice model’ in the field of gender violence management and response.

64. The National Register for Sex Offenders came into operation in June 2009 in terms of Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment (Act No 32 of 2007) with the objective of protecting children and persons who are mentally disabled by establishing and maintaining a record of persons who have been convicted of a sexual offence. The Register’s progression/ cumulative numbers in the past four financial years are as follows:

2011/2012	2012/2013	2013/2014	2014/2015
2 340	3 526	15 545	17 500 <sup>18</sup>

65. The national register is available to employers in the public or private sectors, especially schools, crèches and hospitals, where it is required to verify the suitability of an individual to work with children or mentally disabled people.

66. A number of statutes have been adopted to fight national and transnational crime and corruption<sup>19</sup>. In the last five years a cyber-crime policy has been developed and is being implemented. During 2011/12 and 2012/13, the courts finalised 216 cyber-crime cases with a conviction rate of 87.5% and 136 cases with a conviction rate of 97.8% respectively.

67. Despite the country’s successes some broader challenges remain. These include the need for a better understanding of line functions of inter- and intra-departmental structures as well as the need for improved synergy with regard to departmental policy areas for service delivery. In certain instances a lack of coordination and uniformity of services has been identified.

68. In resolving this challenge, government developed the South African Integrated Programme of Action Addressing Violence Against Women and Children (VAWC) (2013-2018). The Integrated Programme of Action operates on three main pillars, namely; prevention and protection, response, care and support. The focus and rationale is a shift in national programming approaches away from crisis response to that of prevention and early intervention. The main objectives are (i) Prevent VAWC from occurring through a sustained strategy for transforming attitudes, practices and behaviours, (ii) Respond to violence in an integrated and coordinated manner by ensuring a comprehensive package of services to affected women and children, (iii) Ensure provision of long-term care, support and empowerment of survivors of violence, (iv) Ensure provision of reintegration and rehabilitation services for perpetrators of violence,

16 National Prosecuting Authority input into the Report; January 2015

17 *Ibid*

18 DOJ&CD:REPORT on the implementation of Criminal Law(Sexual Offences and Related Matters)Amendment Act 32 of 2007: 01 April 2014 to 31 March 2015

19 The Prevention of Organised Crime Act, 1998 (Act No 121 of 1998); Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004); Firearms Control Act, 2000 (Act No 60 of 2000); National Convention Arms Control Act, 2002 (Act No 41 of 2002); and Financial Intelligence Act, 2001 (Act No 38 of 2001) serve as legal frameworks to fight transnational crime corruption, illegal arms and money laundering. The Criminal Procedure Act, 1977 (Act No 51 of 1977) provides for rules of procedure in dealing with criminality from the investigation and trial stages.

and (v) Strengthen the system at all levels that prevent and respond to violence to ensure accountable and coordinated action across sectors<sup>19</sup>. All relevant government departments have responsibilities in the implementation of the Integrated Programme of Action.

69. This Integrated Programme of Action has four key outcomes that must be achieved by 2018: (i) The creation of a national enabling environment to transform attitudes, practices and behaviours leading to women and children living free from violence in line with human rights principles; (ii) Women and children at-risk and survivors of violence must benefit from improved access to comprehensive, integrated and timely support services; (iii) There must be an increased number of female and child survivors utilising long-term care, support and empowerment services; and (iv) Ensuring that women and children are better protected from violence through a strengthened system with supportive legislative, policy, institutional frameworks, adequate resources, organisational capacity and a comprehensive and evolving evidence base.

### **Budgetary allocations to ensure the necessary implementation of the various projects and programmes, including social support services for victims**

70. Different departments carry out the responsibility to eradicate violence against women and children. However, it is acknowledged that at present only two departments, DOJ&CD and SAPS, are able to quantify their spending (R106 855 823 / R40 604 988.58 respectively during 2013/14) while implementation runs across government<sup>20</sup>. As government gets to a better understanding of the need to quantify services provided; future reports will carry better information related to expenditures and allocations across all departments over a period of time.

### **Causes, scope and extent of all forms of violence against women**

71. The Inter-Ministerial Committee on the Root Causes of Violence Against Women and Children was established by the Cabinet in May 2012 to develop a comprehensive strategy to deal with this scourge. It comprises of the Ministers of Social Development, Women, Justice and Constitutional Development, Health, Home Affairs, Police and Basic Education. The findings of the research report have led to the development of the South African Integrated Programme of Action Addressing VAWC (2013-2018) already discussed above.

### **Awareness raising and education programme on violence against women and girls**

72. Awareness raising and public education measures in place covering different areas that include violence against women, older persons, violence in schools, trafficking in persons among others except for health related public awareness will be included in this part of the report only.
73. Government runs public awareness campaigns through the media, booklets, pamphlets, Izimbizo (Community gatherings), all aimed at sensitising citizens on government services, legislation, women's empowerment and promotion of gender equality, violations of cultural and traditional practices and its consequences, human trafficking to mention a few. All stakeholders across the sectors have a role to play in conducting public education campaigns in line with their mandate.

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<sup>19</sup> South African Integrated Programme of Action Addressing Violence Against Women and Children (VAWC) (2013-2018).

<sup>20</sup> "Financial year estimates for spending on gender-based violence" by the South African Government [Feb 2014, Jen Thorpe]

74. Educational materials are also printed in Braille including booklets and the braille version of the Constitution of South Africa. In November 2013, forms prescribed by Regulations for the Domestic Violence Act have been translated into all 11 official languages, and distributed to all lower courts in the country and in November 2014 a round-table discussion on “Equal Access to Justice for Persons with Disabilities” was held.
75. A draft manual called “No More Violence” aimed at teaching the role-players at service points as well as victims on how to manage and improve the alleviation of domestic violence matters and the impact of such crimes on their lives, has been developed. In December 2014, Government launched a public educational DVD titled: “Court-based Support for Victims of Domestic Violence” for all the courts across the country.
76. A Domestic Violence Register has been managed and monitored in all police stations, to register all incidents (whether a docket has been opened or not) and cases reported on domestic violence. The victim is provided with information on the rights and options available as well as contact details of support service providers in the area.
77. During 2012/2013<sup>21</sup>, Imbizos were held in Limpopo and Eastern Cape provinces with a focus on the Domestic Violence recourse measures available. South Africa launched the annual Victims’ Rights Week in September 2010 to sensitise communities on the rights of victims, this is an annual programme.
78. In line with commemoration of International Men’s Day as observed on 19 November, the Deputy President, who holds the position of the patron of the National Men’s Forum, leads men’s organisations to raise awareness on violence against women and children as well as prevention of economic abuse of children.
79. The following public education interventions were conducted by Government during 2012/13: (i) Stop Teenage Pregnancy Campaign: Reached 274 schools and 60 367 teenage learners; (ii) School for the Blind to launch the Braille FAQ’s on the Children’s Act, and reached 250 blind learners; (iii) Door-to-Door Educational Campaign on gender-based violence and Trafficking in Persons, which reached 80 Communities; (iv) Media Outreach: 11 radio and TV interviews conducted on violence against women; (v) Public Exhibitions: Held 9 and reached about 31 968 people; and (vi) Public Service Fairs: Held 8 and reached about 12 803 people.
80. During October-November 2014, the National Maintenance Campaign was implemented by Government<sup>22</sup>, using radio and TV advertisements; fathers were called upon to take pride in supporting their children. The public message / pay-off line for the campaign was: ‘My child’s future is my priority. I Pay Maintenance’. In 2013/14<sup>23</sup>, four national public education and awareness raising events to educate members of the public about the Maintenance Act and the services offered at courts were carried out at the provincial level.
81. Additionally in 2014/2015, Government conducted the following public education interventions: (i) Radio Public Education talk show in 7 languages: reached 33 337 000 listeners; (b) Television Public Education Talk Shows / Actuality in four languages; (c) National Register for Sex Offender Media

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<sup>21</sup> National Prosecuting Authority

<sup>22</sup> Department of Justice and Constitutional Development input: January 2015

<sup>23</sup> *Ibid*



Campaign Talk Show in 4 languages: reached 23 390 000 people; (d) Sexual Violence and Child Justice Act in school in an actuality show conducted in four languages: reached 10 438 000 viewers; (e) Print Media Campaign on the National Register for Sex Offenders in English: reached 15 465 000 people; (f) LGBTI Television and Radio advert by the Minister of Justice and Correctional Services which has reached 23 000 000 viewers and 118 000 000 listeners ; (g) Imbizos and Door-to-Door Campaign were conducted in 9 provinces [Rural & Semi-Urban Communities] in all 11 official languages and reached 34 603; (h) Schools Campaign against Rape, Cyber-Bullying, Sexting and related gender based violence crime was conducted in all 9 provinces in 122 schools and reached 30 194 learners; (i) Public Education for Older Persons was conducted in 4 Provinces [7 interventions] in 6 languages and reached 2 850 old people; (j) Ndabezitha Programme with Traditional Leaders conducted in 3 interventions and reached 896 traditional leaders and their council and Public Education on Ukuthwala Custom in 2 Provinces [3 Interventions] and have reached 520 people <sup>24</sup>.

### Measures in place to support victims of violence against women

82. By 2009, at least 6 of the 9 provinces had One-Stop Service Centres and 109 shelters that provide accommodation and render psychosocial services to the victims in accordance with the Minimum Standards for Shelters for Abused Women. During 2011, 13 of these shelters were strengthened to host victims of human trafficking with trained personnel and a further 22 shelters were identified. The shelters provide nine-week rehabilitation programmes to address the psycho-social well-being of trafficked victims. However, more still needs to be done to improve the quality, care and services at these centres such as accessibility to people in rural areas.
83. There is a National Command Centre on Gender Based Violence where victims of gender based violence receive face to face counselling by trained social workers and the police support.

### Measures to support officials

84. South Africa has measures in place to capacitate officials handling both the victim and the perpetrator of violence in the form of training and workshops. The table below indicates training of prosecutors conducted by the National Prosecuting Authority from 2010/2011- 2013/2014.

Type of training	2010/2011	2012/2014	2013/14 <sup>25</sup>
Sexual offences	-	40	158
Maintenance	180	24	50
Child justice	349	54	185
Domestic violence	102	35	54
Trafficking in persons	79	-	193

85. The International Organization for Migration (IOM) is responsible for capacity building for government officials with skills that are necessary to identify adequately and respond to incidences of domestic and international trafficking in persons. The capacity building is the activity in the “Tsireledzani programme”<sup>26</sup>, which means “Let us protect each other”, implemented from 2007. The IOM compiled a ‘Handbook on Counter-Trafficking for South African Government and Civil Society’ to guide the training.
86. Government provides annual training interventions on legislation promoting the rights of women and children.

<sup>24</sup> DOJ&CD: Report on the implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007:01 April 2014 to 31 March 2015.

<sup>25</sup> National Prosecuting Authority input: January 2015

In 2012/13<sup>27</sup>: (i) 330 regional and district magistrates were taken through the Trauma Debriefing Programme; (ii) 111 prosecutors were trained on the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; (iii) 74 clerks of the court were trained on the sexual offences legislation and HIV; (iv) 450 Frontline Officials drawn from key government departments and Legal Aid SA were trained on Sexual Offences, Victims Charter and Victim Empowerment Framework; (v) 45 Registrars, Clerks of the Court, IT Coordinators and Administrative Officers were trained on the Integrated Case Management System for the National Register for Sex Offenders; (vi) 258 officials participated in the Intersectoral Training on Sexual Offences; (vii) 342 Intermediaries were trained on Information Management on Cases of Sexual Offences involving child victims and persons with mental disabilities.

87. In 2013/14<sup>28</sup>: (i) 688 officials were trained on the National Register of Sex Offenders; (ii) 544 on sexual offences and related forms of abuse; (iii) 180 frontline officials trained on Victims Charter, Victim Empowerment, and sexual offences legislation so as to minimise the incidence of secondary victimisation from the justice system; (iv) during the same period, 68 intermediaries were taken through the Trauma Debriefing Programme to reduce the vicarious trauma they often experience from dealing with child-victims of sexual violence.

88. From 1 January to 31 March 2014, there were 4422<sup>28</sup> members trained in the Victim Empowerment Programme and related courses such as domestic violence and sexual offences.

89.1 117 police officers, emergency police service personnel, detectives, and community service centre personnel received training on handling sexual offences during 2010/2011.

90. Government conducted Trauma Debriefing Sessions which covers emotional impact, coping skills, and self-help physical exercises for intermediaries and court interpreters to minimise and eliminate the vicarious trauma that is often suffered from dealing with cases of sexual offences on daily basis. During the period 01 April 2014 to 31 March 2015 7 Trauma Debriefing Sessions were held in 7 Provinces, where 250 court personnel participated.

91. Stress Management Workshops for magistrates presiding over sexual offences cases were conducted by the SAJEI, accountable for all training intervention held for members of the judiciary. 130 magistrates were assisted through this programme.

## **Article 6: Trafficking in women and exploitation of prostitution and response to General Recommendation 19**

92. The Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013) was promulgated in 2013. The Act is a single statute that tackles human trafficking holistically and comprehensively by providing a maximum penalty of R100-million or life imprisonment or both in the case of a conviction. The legislation fulfils the objectives to; (i) provide for an offence of trafficking in persons and other offences associated with trafficking in persons; (ii) to prevent and combat the trafficking in persons within or across the borders of the Republic; (iii) to provide for measures to protect and assist victims of trafficking in persons; (iv) to provide for the establishment of the Intersectoral Committee on Prevention and Combating of Trafficking in Persons; and (v) the criminalisation of

<sup>26</sup> This Programme, initiated by the National Prosecuting Authority, was funded by the European Union and started in 2007. It ran until the end of 2011 after which the South African government continued the anti-trafficking efforts with its partners:

Input from the National Prosecuting Authority, January 2015

<sup>27</sup> Department of Justice and Constitutional Development input: 2015

<sup>28</sup> *Ibid*

practices resulting in forced and early marriages and harmful cultural and traditional practices such as Ukuthwala. The Act also gives effect to the domestication of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons.

93. This legislation has to date not yet been implemented and government is putting in place all measures to have this legislation implemented. The country continues to use the range of legislation reported in the previous report to prosecute perpetrators related to trafficking in women.
94. During 2013/2014 financial year, there were 22 cases of human trafficking opened, with one case for labour exploitation and the rest related to human trafficking for sexual exploitation. Of these 22 cases, six (6) are withdrawn; seven (7) under investigation with arrests still to be made while nine (9) are in the court system. Furthermore fifty five (55) victims were rescued and of these victims, 43 were South Africans and the others from China, Thailand, Nigeria and Mozambique<sup>30</sup>. The cases of trafficking in persons were reported in the National Prosecuting Authority Report of January 2015<sup>31</sup>.

### Adult Prostitution / Sex work

95. Adult prostitution<sup>32</sup> is a highly contested issue in which societal opinions are often highly polarised. In this regard, the perspective ranges from the constitutional protection of human rights and human dignity and safety of the person enforcing particular moral or religious values, there are therefore no new measures in place to be reported.
96. South Africa is in the process of looking at whether or not sex work should be decriminalised. In this regard the South African Law Reform Commission (SALRC) produced a comprehensive Discussion Paper in 2009 entitled “Project 107: Sexual Offences – Adult Prostitution”. In its Discussion Paper the SALRC found that adult prostitution has been the subject of considerable public debate in South Africa. The topic remains an emotive one. In South Africa the socio-economic determinants of prostitution suggest that prostitution is driven by a complex intersection of social and economic factors in which poverty and inequality are key drivers.
97. The South African National Aids Council (SANAC) ensures the health of sex workers and their clients through the implementation of the South African National Strategic Plan (NSP) on HIV, STIs and TB 2012-2016 which makes it clear that sex workers need a comprehensive response. SANAC raises the importance of providing HIV prevention, care and treatment to key populations, including sex workers. Other areas covered by the NSP includes access to justice, addressing violence and harassment often meted out to them, and the culture of substance abuse amongst sex workers thereby smoothing the way for sex worker access to health services – particularly STI treatment, HIV testing and ART provision.

<sup>29</sup> JCPS Development Committee input: January 2015

<sup>30</sup> Annual Report 2013/2014 of the HAWKS: Directorate for Priority Crime Investigations

<sup>31</sup> Trafficking in Persons (TiP) Cases finalised with convictions

i. S v Ronel Eloff and Antoinette Godfrey - both accused convicted and sentenced in 2009 for trafficking for sexual exploitation (Welkom Free State Province)

ii. S v Nokuzola Ntonga and Lionel Bell - a conviction for TiP (sexual exploitation) was confirmed on appeal by the Grahamstown High Court on 22 August 2013. (Eastern Cape Province)

iii. S v Aldina Dos Santos - sentenced to life imprisonment for TiP for sexual exploitation of children in 2011. Accused was a Mozambican female (Gauteng Province)

iv. S v Jezile - sentenced to 20 years in January 2014 for TiP for sexually exploiting a child. (Western Cape Province)

v. S v Nahima Allima - sentenced to life imprisonment for TiP for sexual exploitation in June 2014. (Nongoma KwaZulu- Natal Province)

vi. S v Foster Simelane - sentenced to 30 years for TiP for sexual exploitation of a child in August 2014. (Potchefstroom North West Province)

vii. S v Gwambe - sentenced to 15 years in 2013 for TiP for sexual exploitation of children. Accused is a Mozambican female (Mpumalanga Province)

viii. S v Vukile Shembe - sentenced to 23 years imprisonment in 2012 for TiP for sexual exploitation. (Western Cape Province)

<sup>32</sup> Prostitution and sex work are, strictly speaking, not the same concept. Prostitution is viewed as coerced sex work where women have no choice in the matter and is necessarily demeaning and women are victims. Sex work, on the other hand, allows for women's decision making power in capitalist thinking on issues of prostitution. (Commission for Gender Equality, “Decriminalising Sex Work in South Africa”, 2013)

## PART II: ARTICLE 7-9

### Article 7: Political and public life

98. No new policy has been in place since the last reporting period. The governing party continues to implement its 50/50 gender representation policy while government implements the “Head of Department’s 8 Principle Action Plan for Promoting Women’s Empowerment and Gender Equality within the Public Service Workplace”. Considerable progress has been noted in the participation of women in various sectors such as political, public service and the judiciary.
99. The 20 Year Review released in 2014 confirms that South Africa is a much better place to live in now than it was in 1994, and highlights the remarkable progress made since the dawn of democracy. Evidence in political, social and economic sectors of the society shows that we have made and continue to make progress in ensuring that voices of women can be heard through the creation of various structures and the provision of opportunities.
100. Women continue with their keen interest in political participation and increased the percentage of registration as voters from 55% in 2009 to 56% in 2014 while they further constitute the highest number of voters at 54.9% in 2009 and 2014 compared to 45.1% of men.
101. Since the last reporting period and the General Election in 2014, strides have been made in the representation of women in decision making. Both the Speaker and the Chairperson in the two Houses of Parliament are women. Although there has been a decline in the percentage of women representation in the National Assembly from 43.3% in 2009 to 41% in 2014, there has also been an increase in the representation of women in the National Council of Provinces from 32.08% in 2009 to 35.84% in 2014.
102. Within the twenty years of democracy, women Ministers have held important portfolios previously held by men. Among these are Basic Education, Small Business Development, Intelligence, Defence, Environmental Affairs, Water Affairs and Sanitation, Home Affairs, International Relations and Cooperation, Correctional Services, Transport; Labour, Energy, Science and Technology, Mineral Resources, Social Development and Women’s Agenda. Under the stewardship of the Minister for Science and Technology, who is a woman, South Africa has won the bid for the Square Kilometre Array (SKA) project.
103. The representation of women in Cabinet level following the 2014 general election stands at approximately 42.85% while it was 43% and 41% in 2004 and 2009 respectively. The representation of women Deputy Ministers rose to 48.6% in 2014<sup>33</sup>.
104. Diplomatic appointments of women have increased. In 2008, women accounted for 26% of appointed Ambassadors, High Commissioners and Consul-Generals, increasing to 29.13% in August 2012 and to 29.3% in 2013.

33 Millennium Development Goal: Country Report 2015: The South Africa I Know, the Home I understand.

34 DPSA: PERSAL

35 South African Women in Leadership Census 2009 by the Businesswomen’s Association (BWA).



- 105.** There are 40.6% representations of women in senior management in the public service as at June 2015 with an average annual increase of approximately 1% point since 2009 when representation stood at 34.8%<sup>34</sup>. Government has continued with its 2% policy on the representation of people with disability in public sector. Within the 2% target, 41.1% are women and 58.9% were men in 2012/13.
- 106.** There has been a remarkable increase in the percentage of women judges, in 2011-2013 from 28%, 28.7%, 32% and 33.6% in 2011, 2012, 2013 and 2014 respectively. As at October 2014, there are approximately 40% women magistrates in South Africa, with most of them located as Regional Court Presidents (i.e. 50%). Overall women magistrates exceed the 30% mark in all categories of the Magistracy.
- 107.** The representation of women in decision-making positions in corporate boards and as Chairpersons of Boards or CEOs of corporate companies listed in Johannesburg Stock Exchange in South Africa is indicated in the table below<sup>35</sup>.

Representation of Women in Corporate Positions	2008	2009	2010	2011	2012
Chief Executive Officers / Managing Directors	3.9%	3.6%	4.5%	4.4%	3.6
Chairpersons	3.9%	5.8%	6.0%	5.3%	5.5
Directorships	14.3%	14.6%	16.6%	15.8%	17.1
Executive Managers	25.3%	18.6%	19.3%	21.6%	21.4

- 108.** Women are making inroads into business leadership and heading up global giants in the country. Women own conglomerates in the country with some business women being millionaires. Women are also entering and leading in previously male dominated territories. For example, the head of the Palaeontology Department in the University of Cape Town, the head of the ABSA bank. South African Airways now has women pilots, some flying internationally bound flights.
- 109.** A “board-ready women” database was launched in South Africa in 2014, in partnership between the Business and Professional Women South Africa and Government, through the Department of Trade and Industry (the dti). It is the first database of its kind in South Africa of trained senior businesswomen - from which both the public and private sector can access potential non-executive board members

#### **Article 8: International Representation and Participation**

- 110.** South Africa has seen a number of women taking up leadership positions at the international level. They include Dr Nkosazana Dlamini-Zuma, the first woman in Africa to chair the African Union Commission; Dr. Phumzile Mlambo-Ngcuka, former Deputy President of the country, as the Under-Secretary-General and Executive Director of UN Women; and the positioning of other South African women such as Ms. Geraldine Frazer-Moleketi, Special Gender Envoy to the African Development Bank; Ms Rashida Manjoo, Special Rapporteur on Violence against women, its causes and consequences; and Judge Navi Pillay as the former High Commissioner for Human Rights and formerly as a judge in the International Criminal Court (ICC). This is an indication of the impact that women in decision-making have in winning the trust and confidence of citizens in South Africa, on the continent and internationally

#### **Article 9: Nationality**

- 111.** The establishment of the National Population Register marked a significant milestone in 2010, ensuring that the right of the child to be registered would be achieved. South Africa is already

very close to universal birth registration, with an estimated 92 per cent of all children under five having their birth registered with the state<sup>36</sup>. The legislative requirement is that newborn babies must be registered within 30 days after birth. The number of newborns registered has increased by 11.2% from 500,524 in 2010/11 to 556,762 in 2011/12.

### **PART III: ARTICLES 10-14**

#### **Article 10: Education**

- 112.** Government has embarked on several strategies to promote school safety as well as enhance the implementation of the Guidelines for the Prevention and Management of Sexual Violence and Harassment. The Guidelines were distributed to all schools and serve to enhance measures to create a safe and caring school environment free from all forms of sexual harassment and violence, as well as to assist public schools in maintaining the minimum standard procedures for addressing allegations of sexual violence in schools (DBE, 2010c).
- 113.** South Africa is deeply concerned about the indication made in the report by the Committee which states in the Concluding Observation that “prostitution, exploitative sex and rape are perpetrated in connection with a child’s access to education”. In order to be able to identify the exact areas and to address them, South Africa requests the source of the report.
- 114.** The previous report has already indicated that parity has been achieved and the status remains for all levels of education<sup>37</sup>.
- 115.** Since May 2009, the function of national education was administered by two departments, namely the Department of Basic Education (DBE) and the Department of Higher Education and Training (DHET). The DBE is responsible for the school system, from reception year to grade 12 and Adult Basic Education and Training qualification, while the DHET is responsible for the higher education system, further education and training institutions, national skills authority, sector education and training, trade testing centres and skills development institutions.
- 116.** The Ministerial Committee was established to review the National Curriculum Statement (NCS) in 2009 to address curriculum gaps that were apparent in the outcomes-based curriculum and had proved difficult to implement. The Curriculum and Assessment Policy Statement (CAPS) was introduced between 2011 and 2014 to streamline and clarify the curriculum policy.
- 117.** Government is providing learners with easy to-use workbooks in all 11 official languages translating to the provision of nationally standardised, high-quality learning for Grades R to 9 since 2012. Workbooks assist in teaching and monitoring the tasks that learners are required to do. However they do not replace textbooks and other resources, but serve as additional resources.
- 118.** The National School Nutrition Programme aims to promote better quality education for the poorest learners by providing a daily meal to learners benefiting from the programme. In the 2010-2011 financial year, a total of 8 281 927 learners in 20 815 schools were reached: 6 536 744 learners in 17 315 primary schools and 1 745 183 learners in 3 500 secondary schools. Since 2008, the budget of the programme has progressively extended to include poor learners in secondary schools and in 2013, it provided meals to over 8 million learners in over 20 000 schools.

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<sup>36</sup> South African Integrated Programme of Action addressing Violence Against Women & Children (2013-2018)

- 119.** The Talent Development Strategy supports youth into Science and Mathematics Olympiads and competitions for learners. The programme reserves 60% of the participants for female learners who are in grade 10-12. Between 2011 and 2013, 70% of the participants in the Programme were girls.
- 120.** Older females aged 16 to 18 years are more likely to be out of school than males were. In 2013 15% of females were not attending school compared to almost 13% of males in the same age group. The 15% of females decreased from approximately 21% in 2002 while the percentage of males remained stable at an average of 14% between 2002 and 2013.<sup>38</sup>
- 121.** Achievement in the National Senior Certificate (NSC) in 2014 by gender, when comparing the overall performance of candidates, indicate that a higher percentage (77.5%) of males compared to females (74.4%) passed the NSC examination in 2014. This might be related to care work in which girls still engage. The performance of learners by gender in Mathematics and Physical Sciences between 2010 and 2014 in the NSC indicated that male learners are performing better than females in both subjects.
- 122.** South Africa has nearly achieved universal functional literacy for youth aged 15 to 24 with an overall literacy rate of 91% in 2011. Literacy rates were higher for female youth than male youth for the period 2002 to 2011. This contrasts with the adult literacy rate where fewer women were literate than men indicating the gender based generational shift that took place during the past 20 years in relation to literacy. The youth literacy rate for females increased from 88.4% in 2002 to 94.6% in 2011 and for males from 83.3% in 2002 to 90.7% in 2011.<sup>39</sup>
- 123.** The Kha Ri Gude (Let us Learn) Mass Literacy Campaign is regarded as one of the important ways in which the developmental state prioritises the needs of the poor and addresses the right of all citizens to basic education in the official language of their choice. The campaign is intended to provide 4.7 million South Africans with the opportunity to become literate. The campaign targets vulnerable groups, including the deaf and the blind. Currently, 80% of the learners are women, of which 8% are disabled, 25% are youths and 20% are over the age of 60. The programme increased the literacy rate across all population groups from 79% in 2009 to approximately 82% in 2012.
- 124.** With regard to employment of educators, there were more female teachers in the basic education system between 2009 and 2013 at 68% as opposed to 32 % males; however, the majority of women occupy lower level posts, with more men at the management level. Studies (Chisholm, 2001; Diko, 2007; Nkomo & Ngambi, 2009)) indicate a reluctance by women to enter management as they view it as masculine and unsupportive of their other roles as mothers and partners.
- 125.** The Accelerated Schools Infrastructure Delivery Initiative is aimed at achieving a level of optimum functionality in targeted schools over the period of five years. The focus for the 2010 – 2014 strategic planning period include schools without water, sanitation, electricity and/or fencing; schools that constitute a danger to learners and educators from a construction perspective and overcrowded schools.
- 126.** The country's Strategic Plan for Higher Education and Training 2010–2015 highlights the importance of tertiary education in relation to Government's development agenda. Over the ten year period 2001 to 2011, females made more gain than males as they improved their participation rate by 7% from 15% to 22%, when compared to the 3% gain observed for males. More females (8.7%) had higher

<sup>37</sup> Statistics South Africa (Stats SA), General Household Survey (GHS), 2002- 2013, DBE own calculations

<sup>38</sup> General Household survey 2013

<sup>39</sup> Department of Basic Education General House Hold Survey (GHS) 2011 Focus on Schooling

education as compared to males (7.9%)<sup>40</sup>.

- 127.** In 2011 women have significantly shifted towards business, commerce or management science (26,1%) and away from education, training and related fields (19,8 %), which was formerly the dominant field. Women, especially black women, were under represented in science, engineering and technology, as well as in business and commerce programmes- the critical areas needed in the country. Black women, especially African women are still underrepresented in postgraduate studies which are dominated by white males.
- 128.** The National Research and Development Strategy and the 2008 Ten Year Innovation Plan transformed the Science and Technology workforce which resulted in an equitable representation of women and blacks in science and technology in particular. Following the implementation of these strategies, women enrolment in higher education has increased from 48% in 1996 to 58% in 2012, with the proportion of women enrolled in honours programmes from 44% to 49% and in doctoral programmes from 38% to 44%. The 2011 Africa Innovation Outlook report indicates that Tanzania and South Africa are leaders in terms of participation of women in research and development with women accounting for 40% of all researchers in Tanzania and 43% of all researchers in South Africa compared to an OECD average of 34%.
- 129.** The enrolment of women in science, engineering and technology fields increased from 43.8% in 2000 to 45% in 2012 and graduating women increased from 48.4% to 51% during this period. Guidelines on improving the distribution of bursaries and scholarship has set a target of 55% of post graduates support designated for women and this has shown an improvement from under 50% in 2011/2012 to 53% in 2013 - with women constituting 53% of all honours students, 49% doctoral degrees and 45% of postdoctoral degrees.
- 130.** The Thuthuka programme supports women and blacks who are emerging as researchers and this programme has to date awarded 1 058 research grants to 698 women and 594 black researchers.

## Article 11 Employment

- 131.** The Employment Equity Act, 1998 (Act No. 55 of 1998), has been amended by the Employment Equity Act, 2013 (Act No. 47 of 2013). The amendment has explicitly incorporated the concept of equal pay for work of equal value, into the unfair discrimination provisions and aligns the Act with the International Labor Organization prescripts. This stipulates that it is unfair for an employer, based on a prohibited ground, or analogous arbitrary ground, to have different terms and conditions of employment for employees doing the same work. Provision is now made in the Act for the Minister, after consultation with the Commission for Employment Equity, to issue regulations to prescribe the criteria and methodology for assessing work of equal value<sup>42</sup>. Furthermore, all cases of sexual harassment can be arbitrated irrespective of earnings.
- 132.** The labour force participation rate of males was higher than that for females in both 2001 and in 2014. Even though both sexes were participating at rates in 2014 lower than in 2001, the gap between male and female participation rates remained stable over the reference period. Nationally, the labour force participation rates of both males and females was higher in 2001 than in 2014. The participation rate of males decreased from 67.4% in 2001 to 63.6% in 2014. The participation rate of males decreased from 67.4% in 2001 to 63.6% in 2014. The participation rate of females was 54.9% in 2001 and declined to 51.0% in

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<sup>40</sup> Census 2011

2014. The study also indicated that levels of employment increased by 2.5 million and males reported the highest increase of about 1.7 million, while the number of employed females only increased by 826 000.

133. The percentage distribution of women aged 15-64 years employed by occupational category indicates that 6% of women are in the professional category as compared to 5.4% males but 6.1% females are in the managerial category as compared to 10.4% males, suggesting that men are more likely to be decision-makers in their jobs compared to women<sup>43</sup>.
134. The Census 2011 report highlights that when education was assessed in relation to field of study, it was found that employed persons with a tertiary education were more likely to be qualified in the economic and management sciences. Gender differences were observed in relation to qualifications. Males were three times more likely (with a percentage share of 75.4%) to be qualified in physics/mathematics/engineering than females. On the other hand, females were more likely to be in possession of qualifications in the field of social studies/health sciences and arts/education/hospitality (approximately 66% and 68%, respectively).
135. With regard to earnings, females continued to dominate among those earning in the bottom range of earnings. However, the last 13 years saw noticeable shifts in male and female earnings, with the gender gap between males and females earning in the upper salary ranges (i.e. R7 501–R11 500 and R11 500+) narrowing considerably.
136. In South Africa it is estimated that around 38% of businesses are owned by women and that the use of preferential procurement policies created greater opportunities for women to access opportunities to public procurement spending. Women-owned businesses are still underrepresented in public procurement when compared to their male counterparts, and are unlikely to account for more than 25% of procurement spend<sup>44</sup>. Over the 2011/12 financial year, the study undertaken by the Business Women's Association of South Africa indicates that women-owned businesses were recipients of R16.56 billion in government procurement spending out of a total of R183.3 billion in the research sample (which represents only 30% of total procurement spend in this year), thus accounting for only 9% of the total procurement spend in the sample studied<sup>45</sup>.
137. The role of small, medium and micro enterprises (SMME) is vital to drive economic growth, employment, innovation and competitiveness. It is estimated that South Africa has some 5.9 million SMMEs which generate 40% of its gross domestic product and 60% of employment in the country. Women-owned enterprises are largely represented in SMMEs. Following the 2014 South African elections, His Excellency, President Jacob Zuma proclaimed the Department of Small Business Development to champion the support of small businesses.
138. The National Empowerment Fund Act (NEF), 1998 (Act No. 105 of 1998) established the NEF as a driver and a thought-leader in promoting and facilitating black economic participation through the provision of financial and non-financial support. Since operational inception of the NEF in 2004 to early 2015, 21% of the businesses funded by the NEF are owned and managed by black women. The NEF recently established the Women Empowerment Fund, whose ethos is "Fund a Woman is to Fund a Nation", and through this initiative it is expected to increase the funding for women owned businesses to a minimum of 40% in the medium term.

41 Department of Labour, 2014: 14th Commission for Employment Equity – Annual Report 2013-2014

42 Gender Series Volume 1: Economic Empowerment 2001-2014

44 Wits Business School Journal, 2011 – as quoted in the research study by the Business Women's Association of South Africa (BWASA), 2013: "The Current Status of Policies, Practices, Measures and Barriers regarding Women-Owned Businesses in Government Procurement".



**139.** In 2012, the various national small business finance agencies were consolidated into the Small Enterprise Financing Agency (sefa), which is housed in the Industrial Development Corporation (IDC). This was initiated after the adoption of the New Growth Path in 2010 which identified enterprise development as a key priority. Resultant policies aim to promote small business and entrepreneurship by improving access to and efficiency of government funding and making more resources available to SMMEs. sefa's mandate is to foster the establishment, survival and growth of SMMEs and contribute towards poverty alleviation and job creation.

**140.** The Small Enterprise Development Agency (seda) is an agency established in December 2004, through the National Small Business Amendment Act, 2004 (Act No. 29 of 2004) with the mandate to implement National Government's Small Business Strategy and integrate all government funded small enterprise support agencies across all tiers of government. Seda's mission is to develop, support and promote small enterprises.

## **Article 12: Equality in Access to Health Care**

**141.** The majority of South African women still rely heavily on health services that are provided by the State. This is evidenced by the low percentage of private medical scheme coverage and the numbers that are using private health facilities. Overall South African women are less likely (38.8%) to visit private health facilities when they need health care than men (39.9%) and only 32.3% of African women and men use private health facilities. Access to private medical scheme coverage is lowest at 9.3% for black African women compared to 70.7% for white women, 9.1% for black African men and 70.5% for white men. Therefore, increasing access to public health care will benefit the majority of Black African women to a large extent<sup>4</sup>.

**142.** Women living in rural areas struggle to gain physical access to hospitals or clinics and adequate information on the healthcare options open to them. The State rolled out mobile clinics and extensive information campaigns to visit the larger rural areas in an attempt to address this challenge.

**143.** There has been a demonstrable increase in women's access to reproductive health care services resulting in a reduction in illness and death amongst women. For example, the percentage of women in South Africa whose live birth occurred in a health facility increased from 76.6 % in 2001 to 94.1 % in 2009.

## **Implementation of the Maternal Child and Women's Health Strategy (2009-2014)**

**144.** 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 reached. 96.9 % pregnant women agreed to be tested for HIV. A total of 81% maternity facilities conducted monthly maternal and perinatal morbidity and mortality meetings. Health workers were trained in emergency and comprehensive obstetric care to improve their skills in intravenous fluid line, manual removal of placenta and provision of parenteral analgesia during labour, blood transfusion, perform caesarean sections in case of emergency and surgical intervention in cases of post-partum haemorrhage.

**145.** The country continues with No fee services for family planning and contraception services, ante natal, post natal and delivery services, cervical cancer screening, termination of pregnancy and care for survivors of sexual assault and rape.

45 Gender Statistics in South Africa (2011) by STASSA

- 146.** The human papilloma virus (HPV) is a major cause of cervical cancer (CA) and is responsible for the deaths of over 3 000 women in South Africa every year. The launch of the HPV vaccine campaign in March 2014 is a major step towards protecting women against CA. The campaign targets girl-children aged between 9 and 12 years old and aims to vaccinate an estimated 500 000 girls in 17 000 schools. 2000 trained vaccination teams visited 90% schools and over 87% of Grade 4 girls were immunised. Planning forward each year, new Grade 4s will be immunised to prevent CA for women in the future.

### **Measures to address the impact of HIV/AIDS on women and girls**

- 147.** The approach to deal with HIV and AIDS for women and children is a multipronged strategy comprising of prevention, treatment and support. The prevention component focuses on advocacy and social mobilisation, training of peer educators, provision of male and female condoms and correct treatment of sexually transmitted infections. The treatment component focuses on managing opportunistic infection through Cotrimoxazole and INH prophylaxis, providing anti-retroviral treatments and treating Tuberculosis (TB) as part of co-infection with HIV while care and support component focuses on providing nutrition for people living with HIV and AIDS, providing Home Based Care, providing Step Down Care to minimise the cost of admitting patients at higher level institutions.
- 148.** South Africa provided stipends to 42 756 community care givers, supporting people living with AIDS and its debilitating conditions. Additional intervention for the Care and Support Component was the availability of 97 Step-Down Care Facilities in South Africa and the facilities contributed to improving quality of care to sub-acute patients.
- 149.** The National Strategic Plan on HIV and AIDS, Sexually Transmitted Infections (STIs) and Tuberculosis (TB) for 2007-2011 was developed, reviewed and updated for 2012-2016 by SANAC in consultation with a range of stakeholders to prevent and mitigate the impact of HIV, AIDS and TB. This strategy is being implemented.
- 150.** The Campaign on Accelerated Reduction of Maternal and Child Mortality (CARMMA) has contributed to the reduction of deaths of mothers and infants. CARMMA focuses on promoting sexual and reproductive health services; antenatal care; access to skilled birth attendants; allocating dedicated obstetric ambulances and establishing maternity homes; strengthening human resources for maternal and child care; intensifying management of HIV positive mothers and children; promoting child survival through supporting exclusive breast-feeding, and the provision of lactating mothers facilities in hospitals and promoting kangaroo mother care.
- 151.** From 2002 -2009, South Africa experienced a significant increase in maternal deaths, with the MMR estimated at 134 per 100 000 in 2002 and 311 per 100 000 in 2009. But by 2010 the maternal mortality rate had declined significantly to 270 per 100 000 and this decline has been sustained. In 2013, the maternal mortality rate was at 141 per 100 000.<sup>46</sup>

### **Access to reproductive rights and contraceptives**

- 152.** The ability of women to control their own fertility is fundamental to women's empowerment

46 Millennium Development Goal. Country Report 2015. The South Africa I know, the Home I understand.

and equality issue as it include the right to decide on the number, timing and spacing of children, and to make decisions regarding reproduction free of discrimination, without coercion and violence, contribute to gender equality and empowerment. All public sector health facilities are providing family planning services with a varying mix of contraceptives. A protection rate of 37.8% was recorded, marginally exceeding the 35% national target set for 2012/13.

- 153.** During the financial year 2012/13 the updated National Contraception and Fertility Planning Policy and Service Delivery Guidelines was approved by the National Health Council aimed at reprioritising contraception and fertility planning, with an emphasis on dual protection. Furthermore the Contraceptive Policy and Clinical Guidelines were developed to expand the choice of contraceptive methods and improve access to contraception and family planning for women. In February 2014, the country launched the National Family Planning Campaign under the theme “My Responsibility, My Choice, Our Future- I choose dual protection”. The aim of the Campaign is to provide information and services about various methods that prevent HIV, STI’s and unwanted pregnancies. The campaign encourages the use of a combination of condoms and a second method of protection.
- 154.** During the Campaign, a new Sub-Dermal Contraceptive Device, which is a long acting progesterone-contraceptive method that is inserted under the skin in the upper arm was also launched providing protection from pregnancy for up to 3-5 years.
- 155.** The Choice on Termination of Pregnancy Act, 1996 was amended in 2008 through the Choice on Termination of Pregnancy Amendment Act, 2008<sup>47</sup> to, amongst other things, empower a Provincial Member of the Executive Council to approve facilities where a termination of pregnancy may take place. A total of 77 771 legal terminations of pregnancy were performed in South Africa in 2011, which indicated a 31% increase since 2010. In 2010, 59 447 terminations were carried out.

#### **Measures to broaden and strengthen Prevention of Mother to Child Transmission (PMTCT) services**

- 156.** In April 2010, South Africa launched the Presidential National HIV Counselling and Testing Campaign which was aimed at testing 15 million people by June 2011. As at mid-2011, 15.1 million people had been tested and an additional 4.8 million people have since been tested. On average, close to 10 million people are testing for HIV every year. Based on this Presidential mandate, there has been a collaborative effort with partners to ensure implementation of the HIV Counselling and Testing campaign for pregnant women and expanded treatment care and support.
- 157.** 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 reduction in mother to child transmission from 8% in 2008 to 2.0% in 2013<sup>48</sup>. This resulted in 97% reduction in mother-to-child transmission of HIV. The PMTCT had managed to attain a total of 79.4% eligible HIV positive pregnant women placed on Highly Active Anti-Retroviral Therapy.
- 158.** The initiation of ARTs for all pregnant women living with HIV with a CD4 count of less than 350, and provision of treatment to all other pregnant women living with AIDS at 14 weeks of pregnancy has positively impacted in reducing maternal and child mortality rates. At present, the guideline

<sup>47</sup> Act No. 1 of 2008

<sup>48</sup> Inputs from Department of Health, South Africa: November 2014

for prevention of mother-to-child transmission, paediatric and adult treatment was revised due to changes in the eligibility criteria of ART where all pregnant women irrespective of CD4 cell count are initiated on lifelong ART.

- 159.** In 2014, of the total number of patients receiving ARTs (47 500), women comprised 25 600 while in 2011, of the total figure of 1 793 000 patients, women comprised 1 090 000 of those receiving ARVs. In April 2013, South Africa rolled out fixed-dose combination antiretroviral medication, which is one tablet instead of three pills a day, reducing the risk of patients defaulting from treatment. The fixed-dose combination ARV is given to newly diagnosed HIV-positive people, including HIV-positive pregnant women and breast-feeding mothers. The fixed-dose combination helps to reduce the pill burden as it is easy to take; highly effective and in no way inferior to taking three individual drugs.

### **The intersection between violence against women and HIV/AIDS**

- 160.** South Africa developed a National Strategic Plan on HIV, STIs and TB 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) reduce self-reported stigma related to HIV and TB by at least 50%.
- 161.** The key strategic objectives of the National Strategic Plan include: (a) addressing social and structural barriers that increase vulnerability to HIV, STI and TB 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 the sex workers.

### **Awareness-raising campaigns on prevention, protection and maintenance of confidentiality in order to systemise and integrate approaches for multiple government sectors**

- 162.** Programmes to reduce barriers faced by women in accessing HIV/AIDS services are in place such as eliminating user fees, addressing stigma and discrimination in health care setting. Post-Exposure Prophylaxis (PEP) interventions continue to be provided to victims of sexual violence.
- 163.** The Sonke Gender Justice Network's Community Education and Mobilisation (CEM) unit works closely with men and women from all walks of life and in many different communities across all of 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 (CATs). Measures used include participatory workshops, digital stories, photo-voice, ambush theatre, street soccer, murals and community radio.
- 164.** Other measures implemented to raise awareness include: (a) 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; (b) 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; (c) Women in Partnership Against Aids (WIPAA) and Men in Partnership Against Aids (MIPAA); (d) Programmes targeting the High Transmissions Areas (HTAs) such as the Commercial Sex Workers. In this programme, peer educators address and educate women about prevention of HIV & other STIs, use of condoms (both male & female), sexual and reproductive health and distribution of condoms; (e) HIV prevention programmes for young girls

(15-24yrs) where they are taught health education and skills to protect them from contracting HIV; (f) LoveLife, funded by the National Department of Health assist with prevention of HIV transmission amongst the youth; (g) Ground breakers programmes targeted at young girls where they are taught on sexual and reproductive health, the Youth festivals and First-Things-First at universities and higher education institutions on prevention of HIV and access to Anti retro viral treatment for HIV infected learners; and (h) the Khomanani Campaign outreach programme which provides information and educational programmes that have extended their prevention focus to school leavers and young adults implemented through well trained volunteers, who interact face-to-face with residents.

- 165.** First-Things-First Campaign was launched at the Mangosuthu University of Technology on 7 March 2013. This Campaign targets students in universities by making Life Orientation a compulsory first year subject in Universities and Further Education and Training Colleges where students are introduced to HIV and AIDS, health and reproductive rights issues.

### **Article 13: Economic and Social life**

- 166.** The economic and social life of women has been elaborated in article 11 of this report where measures that are in place to support women in business have been stated and cannot be repeated.
- 167.** South Africa has seen women participating in sporting activities such as soccer, boxing, netball, rugby and athletics, to mention a few. In this regard, during 2013/2014, the Andrew Mlangeni green jacket evening was held to recognise men and women who have excelled in sport either as players or officials. Women in Boxing also receive government support and focus and a strategic plan is in place to assist in elevating the status of participation.

### **Article 14: Special measures for rural women**

#### **Participation of women in rural development**

- 168.** The Green Paper on Land Reform 2011 is a strategic policy document that intends to bring changes in the implementation of Land Reform and overhaul the rural communities into vibrant, equitable and sustainable rural communities. This strategy has been approved by Cabinet and is being implemented.
- 169.** During the fiscal year 2009-2010, a total of 5681 females were beneficiaries of the redistribution and land tenure reform programme. This amounted to women benefiting from a total of 150 925.16 hectares of land, worth approximately R1.1 billion. In terms of the land restitution programme, of the 9 294 house-holds making up 48 233 beneficiaries that benefited from the programme, 4177 were female headed house-holds. Figures for the shorter period April 2010 to January 2011 indicate that out of 8 658 house-holds with successful claims, 4 412 (51%) were female headed house-holds. The total land awarded to women in this programme amounted to 145 492 hectares worth some R810 million.
- 170.** The overall progress from 1994 to 31 March 2014 regarding the redistribution target of 30% white owned agricultural land (or 24.5 million ha) in South Africa (total of 82 million ha) is 4 313 168 million ha under land redistribution through 5 015 projects, benefiting 233 250 beneficiaries of which 50 473 are women, 32 589 are youth and 674 are people with disabilities.
- 171.** The Municipal Systems Act, 2000 (Act No. 32 of 2000) – Chapter 2 sets out the requirement that the development of Integrated Development Plan (IDP) should include a Spatial Development Framework which provides basic guidelines for a land use system for the municipality and this requirement



protects women to ensure that they are included in the use of land in municipalities.

**172.** Women's access to education and health has been elaborated on in the relevant article.

**173.** South African Social Security Agency (SASSA) Act, (Act No. 9 of 2004) continues to be implemented through the SASSA which was established to provide an income transfer in the form of different kinds of social grants such as disability grant; a grant for older persons and a war veteran's grant; foster child grant; care dependency grant; child support grant and a grant-in-aid through direct and unconditional cash transfers. The social grant programme has resulted in a reduction in poverty levels in these vulnerable groups.

**174.** The poverty alleviation programmes addressing income, human capital and asset poverty resulted in more South Africans today having access to some form of household income, even if only in the form of a social grant, formal housing, piped water, electricity and decent sanitation. Social wages are packaged in different forms such as free primary health care; no-fee paying schools; social grants and Reconstructive Development Plan housing; provision of free basic services in the form of reticulated water; electricity; sanitation and sewerage as well as solid waste management to house-holds and in particular those categorised as indigent. The proportion of indigent house-holds with access to free water, electricity, sanitation and sewerage as well as solid waste management increased by 9.8, 30.3, 19.4 and 15.4 percentage points from 2004 to 2011 respectively.

**175.** During 2013/2014 year, through the DRDLR awarded 134 bursaries for studies in Survey-Geometrics and Town and Regional Planning, in order to address scarce skills in the country. Beneficiaries are women and students from rural areas. Currently there are 220 bursary holders. 53 have completed their studies and were employed permanently in the government.

## **PART IV: ARTICLE 15-16**

### **Article 15: Equality before the law in civil matters**

#### **Sexual Orientation**

**176.** The National Task Team (NTT) on Gender and Sexual Orientation Based Violence perpetrated against LGBTI persons, formed by government departments, Chapter 9 institutions and civil society organisations was established to develop a National Intervention Strategy 2014-2017 on LGBTI issues. The aim of the Strategy is to address the so-called "corrective rape" and other forms of violence against LGBTI persons.

**177.** At the moment, the applicable laws for the crimes of murder, assault and rape against specific persons or groups, still provides for murder as murder, assault as assault and rape as rape, however is it important to stress that courts are proactively beginning to address hate crimes even in the absence of specific hate crimes legislation<sup>49</sup>.

**178.** The Rapid Response Team (RRT) was established in 2013 with the purpose of attending urgently

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<sup>49</sup> In the recent case involving the conviction and sentence of the man who murdered Duduzile Zozo, Judge Tshifwa Maumela acknowledged the problem of hate-crimes in South Africa. He sentenced the man responsible for killing Duduzile Zozo, a young lesbian from Thokoza, to an effective 30 years in prison. Judge Maumela said a harsh sentence for the 23-year-old would serve as a warning to those who threatened the vulnerable and he told the perpetrator to reconsider his attitude towards gay people while he served his sentence. "Lead your life and let gays and lesbians be," he said.

to pending and reported cases on hate crimes perpetrated against LGBTI persons. A list of cases was received from civil society organisations and the RRT meets quarterly to updates each other regarding pending cases. The total number of cases on the list was 45, and the following were finalised: (i) 8 cases resulted in sentences of imprisonment of 30 years, 22 years, 10 years, 6 years, 15 years, 19 years, 20 years and 15 years, respectively; (ii) Of the two accused persons facing murder and robbery charges, one was sentenced to 20 years imprisonment for murder and the other one sentenced to life imprisonment for murder, plus 13 years imprisonment for robbery; (iii) Charges in 11 cases were withdrawn for various reasons including unavailability of or reluctant witnesses and untraceable accused persons; and (iv) In only 2 cases, the accused persons were acquitted<sup>50</sup>.

## Article 16: Equality in marriage and family

### Marriage and family relations

179. Marriage, including customary marriages, family relations and unified family code has been responded to and submitted to the United Nation Office of the High Commissioner on Human Rights in September 2015.
180. The country continues with the implementation of the Maintenance Act, 1998<sup>51</sup> through the *Isondlo* Project which helps to alleviate the problem of tracing defaulters through the training of investigators. This project has delivered improved maintenance services. This project has been replaced by the *Kariunde* Project, whose main focus is managing and processing maintenance cases in order to deliver best service to customers.
181. In an effort to address the neglect of children and youth in society, government has identified child maintenance as one of its key priorities. It receives more than 200 000 new applications annually. The number of maintenance enquiries has increased by 50% from 2011/12 to 2012/13, while the number of maintenance orders granted increased by 56% over the same period.
182. The issue of maintenance and the protection of children were again recently highlighted in a decision of the North Gauteng High Court in the Mthimunye case<sup>52</sup>. In light of the judgment, government has put steps in place to address the shortcomings identified. The strategies contain both proactive and reactive measures. Proactive measures target the making of orders prior to default as many orders were poorly framed. The defaulter will now pay the beneficiary directly into their bank account. It was further felt that increasing the efficiency and effectiveness of the use of recovery measures would ensure that there was an increased success rate in the payment of outstanding maintenance to beneficiaries. Government has adopted a zero tolerance approach when dealing with maintenance defaulters. This includes the attachment of pension funds for maintenance.

<sup>50</sup> Report on the Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: 01 April 2014 to 31 March 2015

<sup>51</sup> Act No. 99 of 1998 <sup>50</sup>In the recent case involving the conviction and sentence of the man who murdered Duduzile Zozo, Judge Tshifwa Maumela acknowledged the problem of hate-crimes in South Africa. He sentenced the man responsible for killing Duduzile Zozo, a young lesbian from Thokoza, to an effective 30 years in prison. Judge Maumela said a harsh sentence for the 23-year-old would serve as a warning to those who threatened the vulnerable and he told the perpetrator to reconsider his attitude towards gay people while he served his sentence. "Lead your life and let gays and lesbians be," he said.

<sup>52</sup> Ms Mthimunye, a single mother, was in an ongoing struggle to obtain child maintenance from her ex-husband. Her ex-husband had from the outset been delinquent in paying his maintenance. They had two minor children and the primary residence of the children was with Ms Mthimunye. Her ex-husband then resigned from his employment, but a pension payout was due to him. The issue in the case was the failure of the maintenance officers to attach the pension payout for the recovery of arrear maintenance. The High Court found that the maintenance officers in the case were negligent. The Court ruled, correctly, in favour of Ms Mthimunye and held that the father of her minor child, along with the State role-players, are liable for the payment of R24 500 in arrear child maintenance.

## **Implementation of the Beijing Declaration and Platform for Action (BPfA), the Millennium Development Goals (MDG) and other international instruments**

- 183.** South Africa notes the interrelatedness of the BPfA and MDG to the CEDAW and considers all these documents in implementation of projects towards women empowerment and promotion and protection of women's rights. The country developed a report on Beijing +20 and MDG Country report in 2015. These reports have been used as a reference during the compilation of this report.
- 184.** South Africa signed the International Covenant on Economic, Social and Cultural Rights International Covenant on Economic, Social and Cultural Rights (ICESCR) on 3 October 1994 and ratified this Covenant on 12 January 2015. By ratifying the Covenant, South Africa has reaffirmed its commitment, under the international human rights framework, to achieving social and economic justice in South Africa which is core to the transformative principles at the heart of the Constitution.

### **PART V: GENERAL RECOMMENDATION 12 AND 19**

- 185.** General recommendations 12 and 19 have to a large extent been covered earlier in the report as they mainly deal with violence against women. To avoid repetition, this section of the report will reflect on other measures that South Africa has in place to promote women's rights and prevent discrimination.
- 186.** The Protection from Harassment Act, 2011 (Act No. 17 of 2011) is aimed at protecting victims of harassment (including sexual harassment), in order to put into effect the right of all people in South Africa to be free from all forms of violence from either public or private sources. Harassment in this regard means directly or indirectly engaging in conduct that causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person.
- 187.** The MATTSO report recommended that all court personnel must undergo Trauma Debriefing Session to minimise and eliminate the vicarious trauma that they often suffer from dealing with sexual offences cases on a daily basis. Government developed the Debriefing Programme for the intermediaries and all front line staff servicing victims of sexual assault. During the period 01 April 2014 to 31 March 2015, 7 Trauma Debriefing Sessions were held in 7 Provinces, in which 250 court personnel participated.
- 188.** Stress Management Workshops for magistrates presiding over sexual offence cases were conducted by the SAJEI. 130 magistrates were assisted through this programme.
- 189.** A Protection Order is another means to protect women and any victims of violence or harassment. During 2013/14, the new applications for Protection Orders increased by 3.56% from 246 609 in 2012/2013 to 255 395 in 2013/2014<sup>54</sup>.
- 190.** The abuse of older persons is also a concern for the country and since August 2010 government has, been collecting statistics on reported cases of abuse against older persons in terms of the Older Persons Act 2006, Act No. 13 of 2006. Statistics of court registered cases are 1 458 cases in 2010/11, 1 887 cases in 2011/12, and 2 497 cases in 2012/13. The total number of reported cases during this period is 5 842<sup>54</sup>. The information assists government in the implementation of targeted programmes.

<sup>53</sup> Department of Justice and Constitutional Development input: January 2015

<sup>54</sup> Department of Justice and Constitutional Development input: January 2015

**191.** Statistics<sup>55</sup> on misconduct related to sexual harassment in the Public Service as at 30 August 2014 highlight that 426 cases were reported from 1996 to 2014. These statistics include 87 cases of sexual assault on learners by educators; 13 cases of Regulation 20(k) acts of sexual harassment; 41 cases of sexual relations between learners and educators; and 285 cases of sexual harassment in general. Over this period, sentences given out to those found guilty range from fines to dismissals, including referrals for counselling, written warnings and suspensions for stipulated periods.

## CONCLUSION

**192.** The empowerment of women cannot be achieved without the socio economic transformation of society to accelerate economic growth and overcome the triple challenge of inequality, unemployment and poverty.

**193.** Research shows that in instances where the woman is unemployed and the partner is a sole provider, the woman may end up without any financial portfolio should the partner refuse to provide financial assistance other than that of the essential needs of the woman. The woman is economically dependent on the partner who may be abusive at times. Violence and abuse exerts fear in victims to the extent that they do not believe that they can survive on their own in the absence of the abuser. Women thus remain in the abusive relationship to avoid the unknown life of “poverty” whilst living in poverty in reality.

**194.** On August 9, 2015, the President released the report on the Status of Women in South African Economy. The report covers five broad themes within this area: education; labour market; access to credit, land and property; poverty and inequality and unpaid work. However, the report is not exhaustive of all facets of women’s economic interactions. It also identifies some of the areas where society broadly has been successful in enabling women’s full participation in the economy, and where there is a need for refocused efforts. The President further requested that the Ministries in the Economic Sectors, Employment and Infrastructure Development should develop implementation measures to close the gaps identified by the Report and report back to Cabinet every quarter.

**195.** Education underpins much of women’s full engagement in the economy and is seen as key to promoting economic growth and reducing poverty. In this regard, strides have been made in achieving gender equity within education in South Africa with girls and young women having overtaken their male counterparts in terms of functional literacy, educational attainment and mean years of education.

**196.** In the labour market, although the evidence may be mixed, it is clear that women are still disadvantaged relative to men, as they tend to be clustered in less-skilled occupations, including domestic work.

**197.** Another area of success is the expansion and deepening of the social welfare system and the provision of services and housing towards the reduction of poverty over the past 20 years. In both instances, although females remain poorer than males, the improvements for women have been substantial and in some cases the improvements have narrowed the gender gap.

<sup>55</sup> Source: PERSAL: DPSA, 2014

**198.** It is acknowledged that little data exists with respect to ownership of land and property amongst women as well as gender disaggregated data in some areas. There is a need to engage on a set of guidelines to ensure that data are correctly captured and disaggregated in order to identify gaps in women empowerment and thus propose further measures to close these gaps<sup>56</sup>.

**199.** There is no law that prohibits women's participation in a particular job opportunity. Both males and females have equal opportunity for employment in line with our Constitutional framework. However, gender stereotypes, such as those listed below, still persist and reduce women's participation in the labour force:

- A good woman is viewed as the one who maintains the best home: Within households, the responsibility of maintaining homes is perceived to be a woman's role.
- Child rearing is a woman's responsibility: Related to the aforementioned stereotype, is the perception that child care is a female responsibility.
- Certain jobs are for females and others for males: When fields of study were analysed, both males and females continued to select fields of study associated with gender stereotypes<sup>57</sup>.

**200.** The role of societal norms in dictating the behaviour of women as well as men is having an impact in shaping behaviour towards women's empowerment. This is not just a "women's issue" in that these norms and stereotypes do not only constrain females' choices, but may also remove the power of choice from men.

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<sup>56</sup> The Status of Women in the South African Economy, August 2015

<sup>57</sup> Gender Series: Volume:1 Economic Empowerment 2001-2014



## ANNEXURE 1

### CONSULTATION REPORT ON THE DEVELOPMENT OF THE SOUTH AFRICA'S 5TH PERIODIC REPORT ON THE IMPLEMENTATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 2009-2014

#### Introduction

1. This is the consultation report on the development of South Africa's 5th Periodic Report on the Implementation of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). The report serves to respond to paragraph 49 of the Committee's Concluding Observation-CEDAW/C/ZA/CO/4 where the Committee requested the State Party to *"ensure the wide participation of all ministries and public bodies in the preparation of its next report, as well as to consult a variety of women's and human rights organizations during that phase"*.
2. The report is also intended to provide the CEDAW Committee with comprehensive processes that the country followed for the development of the report as well as consultations to ensure that participation and inputs were received from all stakeholders that include civil society, non-governmental organisations, research institutions and academics, government and all interest groups. The report highlights consultations that took place from the development of the report until the finalised report was approved for depositing with the CEDAW Committee.
3. This report will also reduce the potential of increasing the number of pages of the main CEDAW report should this information be incorporated in it. The country therefore took a decision to annex the consultation report.

#### Phase 1: The development of the report

4. The Department of Women, the core coordinator of South African's reporting on all regional, continental and international instruments on the promotion and protection of women's rights, women's empowerment and gender equality issues, hosted a two day consultation meeting with stakeholders on 21-22 May 2015. The purpose of the meeting was to bring together all stakeholders to participate in the development of the CEDAW country report, encourage unity and to report in one voice on the implementation of CEDAW in the country.
5. An open invitation was sent to government, civil society organisations and interest groups. Interested participants, particularly from the civil society organisation situated far from the venue of the meeting, with challenges related to transport and accommodation to attend the meeting, were offered support.
6. A total of 89 participants attended the two day meeting representing national and provincial government (33 National Departments, five provinces i.e. Mpumalanga, Free State, Northern Cape, KwaZulu-Natal and Gauteng), Commission for Gender Equality, Congress of South Africa Trade Union and Democratic Nursing Organisation of South Africa, United Nation Development Partners (United Nations Development Programme, United Nations Population Fund, UN Women, International Labor Organization) and non-governmental organisations (Centre for the Study of Violence and Reconciliation, Women's Legal Centre, Human Rights Institute Of South Africa, South African Faith and Family Institute, Sonke Gender Justice and the research organisation represented by the Medical Research Council).
7. The meeting started with a presentation covering the Convention, Concluding Observations, General Recommendations in order to assist all participants to understand and link these issues to the current report. The presentation was followed by the establishment of four commissions planned and grouped in line with

the relatedness of the articles. The instructions provided were for each commission to emerge with a draft report that had taken the following into consideration:

- First respond to the Committee's Concluding Observations;
  - Update the previous report in line with the relevant general recommendation; the Articles and consider crosscutting Articles, such as Articles one to four;
  - Provide data and information covering the period between 2010 to end of 2014 financial year (March 2015); and
  - Ensure that the report does not repeat what was alluded to in the previous report.
8. By the end of the second day, each Commission emerged with its draft report. The Department consolidated the reports from the commissions into the first draft South African 5th Periodic Report on the Implementation of CEDAW of about 109 pages. Additional information was received from participants to close gaps in areas where participants could not have information at hand during the meeting.

### **Phase Two: Consultation on the initial Draft Report**

9. In this phase, the quality of the draft report is improved by the Cluster working group which ensures that the report is of good quality and has captured at least all relevant information before it is approved for submission to the Director-General Cluster level (accountable heads of government departments). The Director-General Cluster approved the report for submission to the Cabinet Committee.
10. The Cabinet Committee is composed of Ministers. They approved the report for publication in the Government Gazette for the prescribed period of 30 days. The report was gazetted on 28 August 2015, with closing submissions due on 02 October 2015. The purpose of the gazette was to provide more opportunities for the country to access and comment on the report.

### **Phase 3: Comments on the Published Report**

11. The Department of Women supported stakeholders to access the gazetted report by circulating it through emails and making hard copies available on request.
12. Submissions were received from government, NGOs and individuals. The non-governmental organisations that submitted their comments include: (i) Joint submission by Tshwaranang Legal Advocacy Centre (TLAC) and People Opposing Women Abuse (POWA), (ii) Legal Resources Centre (LRC), (iii) Centre for Applied Legal Studies (CALS), (iv) Sex Workers Education & Advocacy Taskforce (SWEAT), (v) the Commission for Gender Equality (CGE) and Women's Legal Centre (WLC). These are well known organisations in the country which take the human rights of women seriously. Where applicable, the inputs were consolidated into the report although most of inputs provided suggestions on the future report.
13. The gazetted report increased in size after considering comments received after public comment. This size is far too large for the UN guidelines stated in paragraph 19 of HRI/GEN/2/Rev.6. Therefore, the report was summarised into 44 pages, leaving therein substantial content. The full report, which contains the detailed information may be made available on request by the CEDAW Committee.

### **Phase 4: Consultation meeting on the final draft report**

14. The Department of Women hosted the second round consultation meeting on 19 October 2015. The purpose of the consultation was to present the summary version of the report that will be deposited to the CEDAW Committee. The meeting accepted the report with suggestion that the stakeholders need to start with preparation for the next report to avoid late submission again.
15. The meeting was attended by 148 participants representing the national and provincial government

(22 National Departments, 6 provinces i.e. Gauteng, North West, Mpumalanga, Free State, Limpopo, KwaZulu-Natal), Commission for Gender Equality, Trade Unions Federation represented by South African Democratic Teachers Union (SADTU), Health and Other Services Personnel Trade Union of South Africa (HOSPERSA) and South African Municipal Workers' Union (SAMWU), Non-government organisation (South African Faith and Family Institute, National Film and Video Foundation (NFVF), Sonke Gender Justice, Agisanang Domestic Abuse Prevention and Training (ADAPT), Amnesty International South Africa, Centre for Applied Legal Studies (CALS), South African Women in Dialogue (SAWID), Centre for the Study of Violence and Reconciliation (CSVR), Dream Team Foundation, South African Local Government Association (SALGA), Human Rights Institute of South Africa (HURISA), People Opposing Women Abuse, Legal Resource Centre, Moral Regeneration Movement (MRM) and the UN Partners (UN Women), Academic Institution (Medical Research Council (MRC), University of South Africa.

#### **Phase 5: Final approval of the report by Cabinet**

16. The report was re-submitted to Cabinet on the 9 December 2015 for final approval and was submitted to Parliament in February 2016 prior to depositing it with the CEDAW Committee. Parliament held debate on the report in May 2016 and endorsed for depositing with the UN CEDAW Committee through the Department for International Relation and Cooperation.



**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

**2009 - 2014**

**GAZETTED REPORT**

October 2015



**REPUBLIC OF SOUTH AFRICA**

## WOMEN'S CHARTER OF 1954

The Charter was adopted at the Founding Conference of the Federation of South African Women. It expressed the philosophy and aims of the newly established Federation of South African Women (FSAW) and was included in the final report of the conference (17 April 1954 Johannesburg)

**Preamble:** We, the women of South Africa, wives and mothers, working women and housewives, African, Indians, European and Coloured, hereby declare our aim of striving for the removal of all laws, regulations, conventions and customs that discriminate against us as women, and that deprive us in any way of our inherent right to the advantages, responsibilities and opportunities that society offers to any one section of the population.

**A Single Society:** We women do not form a society separate from the men. There is only one society, and it is made up of both women and men. As women we share the problems and anxieties of our men, and join hands with them to remove social evils and obstacles to progress.

**Test of Civilisation:** The level of civilisation which any society has reached can be measured by the degree of freedom that its members enjoy. The status of women is a test of civilisation. Measured by that standard, South Africa must be considered low in the scale of civilised nations.

**Women's Lot:** We women share with our menfolk the cares and anxieties imposed by poverty and its evils. As wives and mothers, it falls upon us to make small wages stretch a long way. It is we who feel the cries of our children when they are hungry and sick. It is our lot to keep and care for the homes that are too small, broken and dirty to be kept clean. We know the burden of looking after children and land when our husbands are away in the mines, on the farms, and in the towns earning our daily bread.

We know what it is to keep family life going in pondokkies and shanties, or in overcrowded one-room apartments. We know the bitterness of children taken to lawless ways, of daughters becoming unmarried mothers whilst still at school, of boys and girls growing up without education, training or jobs at a living wage.

**Poor and Rich:** These are evils that need not exist. They exist because the society in which we live is divided into poor and rich, into non-European and European. They exist because there are privileges for the few, discrimination and harsh treatment for the many. We women have stood and will stand shoulder to shoulder with our menfolk in a common struggle against poverty, race and class discrimination, and the evils of the colourbar.

**National Liberation:** As members of the National Liberatory movements and Trade Unions, in and through our various organisations, we march forward with our men in the struggle for liberation and the defence of the working people. We pledge ourselves to keep high the banner of equality, fraternity and liberty. As women there rests upon us also the burden of removing from our society all the social differences developed in past times between men and women, which have the effect of keeping our sex in a position of inferiority and subordination.

**Equality for Women:** We resolve to struggle for the removal of laws and customs that deny African women the right to own, inherit or alienate property. We resolve to work for a change in the laws of marriage such as are found amongst our African, Malay and Indian people, which have the effect of placing wives in the position of legal subjection to husbands, and giving husbands the power to dispose of wives' property and earnings, and dictate to them in all matters affecting them and their children.



We recognise that the women are treated as minors by these marriage and property laws because of ancient and revered traditions and customs which had their origin in the antiquity of the people and no doubt served purposes of great value in bygone times.

There was a time in the African society when every woman reaching marriageable stage was assured of a husband, home, land and security.

Then husbands and wives with their children belonged to families and clans that supplied most of their own material needs and were largely self-sufficient. Men and women were partners in a compact and closely integrated family unit.

**Women who Labour:** Those conditions have gone. The tribal and kinship society to which they belonged has been destroyed as a result of the loss of tribal land, migration of men away from the tribal home, the growth of towns and industries, and the rise of a great body of wage-earners on the farms and in the urban areas, who depend wholly or mainly on wages for a livelihood.

Thousands of African women, like Indians, Coloured and European women, are employed today in factories, homes, offices, shops, on farms, in professions as nurses, teachers and the like. As unmarried women, widows or divorcees they have to fend for themselves, often without the assistance of a male relative. Many of them are responsible not only for their own livelihood but also that of their children.

Large numbers of women today are in fact the sole breadwinners and heads of their families.

**Forever Minors:** Nevertheless, the laws and practices derived from an earlier and different state of society are still applied to them. They are responsible for their own person and their children. Yet the law seeks to enforce upon them the status of a minor.

Not only are African, Coloured and Indian women denied political rights, but they are also in many parts of the Union denied the same status as men in such matters as the right to enter into contracts, to own and dispose of property, and to exercise guardianship over their children.

**Obstacle to Progress:** The law has lagged behind the development of society; it no longer corresponds to the actual social and economic position of women. The law has become an obstacle to progress of the women, and therefore a brake on the whole of society.

This intolerable condition would not be allowed to continue were it not for the refusal of a large section of our menfolk to concede to us women the rights and privileges which they demand for themselves.

We shall teach the men that they cannot hope to liberate themselves from the evils of discrimination and prejudice as long as they fail to extend to women complete and unqualified equality in law and in practice.

**Need for Education:** We also recognise that large numbers of our womenfolk continue to be bound by traditional practices and conventions, and fail to realise that these have become obsolete and a brake on progress. It is our duty and privilege to enlist all women in our struggle for emancipation and to bring to them all realisation of the intimate relationship that exists between their status of inferiority as women and the inferior status to which their people are subjected by discriminatory laws and colour prejudices.

It is our intention to carry out a nation-wide programme of education that will bring home to the men and women of all national groups the realisation that freedom cannot be won for any one section or for

the people as a whole as long as we women are kept in bondage.

**An Appeal:** We women appeal to all progressive organisations, to members of the great National Liberatory movements, to the trade unions and working class organisations, to the churches, educational and welfare organisations, to all progressive men and women who have the interests of the people at heart, to join with us in this great and noble endeavour.

## Our Aims

### We declare the following aims:

This organisation is formed for the purpose of uniting women in common action for the removal of all political, legal, economic and social disabilities. We shall strive for women to obtain:

1. The right to vote and to be elected to all State bodies, without restriction or discrimination.
2. The right to full opportunities for employment with equal pay and possibilities of promotion in all spheres of work.
3. Equal rights with men in relation to property, marriage and children, and for the removal of all laws and customs that deny women such equal rights.
4. For the development of every child through free compulsory education for all; for the protection of mother and child through maternity homes, welfare clinics, crèches and nursery schools, in countryside and towns; through proper homes for all, and through the provision of water, light, transport, sanitation, and other amenities of modern civilisation.
5. For the removal of all laws that restrict free movement, that prevent or hinder the right of free association and activity in democratic organisations, and the right to participate in the work of these organisations.

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# INTRODUCTION

## Background

1. The Republic of South Africa signed the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) on 29 January 1993 and ratified it without reservation on 15 December 1995. The Convention entered into force for South Africa on 15 January 1996. South Africa also ratified the Optional Protocol to CEDAW in 2005.
2. Article 18 of CEDAW stipulates that state parties must submit a report to the Secretary-General of the United Nations (UN), for consideration by the UN CEDAW Committee. This report is to cover the legislative, judicial, administrative or other measures adopted to give effect to the provisions of the Convention. In line with Article 18, South Africa submitted its Initial Report on 5 February 1998 (CEDAW/C/ZAF1). A combined 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Periodic Report on the progress of implementation of the Convention was submitted on 14 January 2009 (CEDAW/C/ZAF/2-4). The combined report covered the period from 1998 to 2008, and was considered by the UN CEDAW Committee at its 48<sup>th</sup> Session on 21 January 2011. A set of Concluding Observations was issued by the Committee to which South Africa is expected to respond in the 5<sup>th</sup> Periodic Report due in 2015 to the Committee.
3. The 5<sup>th</sup> Periodic Report will therefore indicate progress made by the country in implementing the Convention for the period 2009 to 2014. In addition, the report will address measures that the country has taken to respond to the Concluding Observations from 2011, as well as General Recommendations No.1 to 32 of the Committee. The Concluding Observations were circulated to the National Gender Machinery, which comprises government, parliament, the Commission for Gender Equality, civil society organisations and any other interested party.
4. The legislative framework of South Africa is rooted in the Constitution of the Republic of South Africa, 1996 (the Constitution). Encapsulated in Chapter 2 thereof is the Bill of Rights, which affords all South Africans certain civil and political rights and socio-economic rights, such as: the right to housing<sup>32</sup>; healthcare; food; water and social security;<sup>33</sup> and education.<sup>34</sup>
5. The Constitution, as the supreme law of the land, provides the normative foundation for the advancement of women's rights in South Africa. It provides for the establishment of one sovereign state, a common South African citizenship and a democratic system of government committed to achieving equality between men and women of all races. Moreover, the Constitution provides for the prohibition of racial, gender and all other forms of discrimination. In particular, section 9 of the Constitution stipulates that neither the state, nor any person, may discriminate directly or indirectly on the grounds of gender, sex, pregnancy, marital status or any other ground or combination of grounds listed or unlisted therein.
6. Since the end of apartheid and the advent of a constitutional democracy in South Africa in 1994, underpinned by values such as equality and the rule of law, the country has endeavoured to put in place legal and policy frameworks that promote and protect the rights of women, in addition to ensuring equality for women.
7. Since the 1990's, empowerment of women has increasingly been incorporated into national development agendas in the country. During the past decade, various quota systems and equity measures and mechanisms have been introduced to measure the levels of participation of women in the economy and in decision-making. These will be discussed in more detail in this report.

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1 S 26

2 S 27

3 S 29

8. South Africa's Constitution has a mixed approach to the incorporation of international law into the country's domestic law. It assumes a dualist approach in relation to treaties and a monist stance in respect of customary international law.<sup>35</sup> The dualist approach means that international law is not directly applicable domestically. It must first be translated into national legislation before it can be applied by domestic courts.
9. According to section 231(4) of the Constitution, an international agreement becomes law in South Africa when it is enacted into national legislation.<sup>36</sup> Furthermore, section 39(1) (b) states that when interpreting the Bill of Rights, a court, tribunal or forum must consider international law. South Africa has therefore considered CEDAW in drafting legislation, and many of its provisions have already been incorporated into a number of national statutes. The details of this were spelled out at great length in South Africa's combined 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Periodic Reports submitted in 2009.
10. Moreover, section 233 of the Constitution compels every court, when interpreting any legislation, to prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with such law. The courts are also obliged to consider international law when interpreting the Bill of Rights. South African courts, in accordance with the Constitution, have established the practice of using international human rights treaties as interpretative guidelines when interpreting the Bill of Rights.<sup>37</sup>

## OVERVIEW

11. The South African female population is not a homogenous group. This report therefore acknowledges that fact and seeks to capture, in so far as it is possible, the vast differences between the different members of this population, in terms of their race, language, religion, circumstances, aspirations, geographic location, historic location, historic disadvantages, levels of education, self-esteem, cultural beliefs, values, and access to and control of opportunities and resources.
12. Census 2011 data indicates that the South African population is predominantly female. Women constitute 51.3% of the population (26,581,769), while men constitute 48.7% (25,188,791). Of the total population of 51 770 560, children (0-18 years) make up 36.8% and people with disabilities constitute 10.3%.

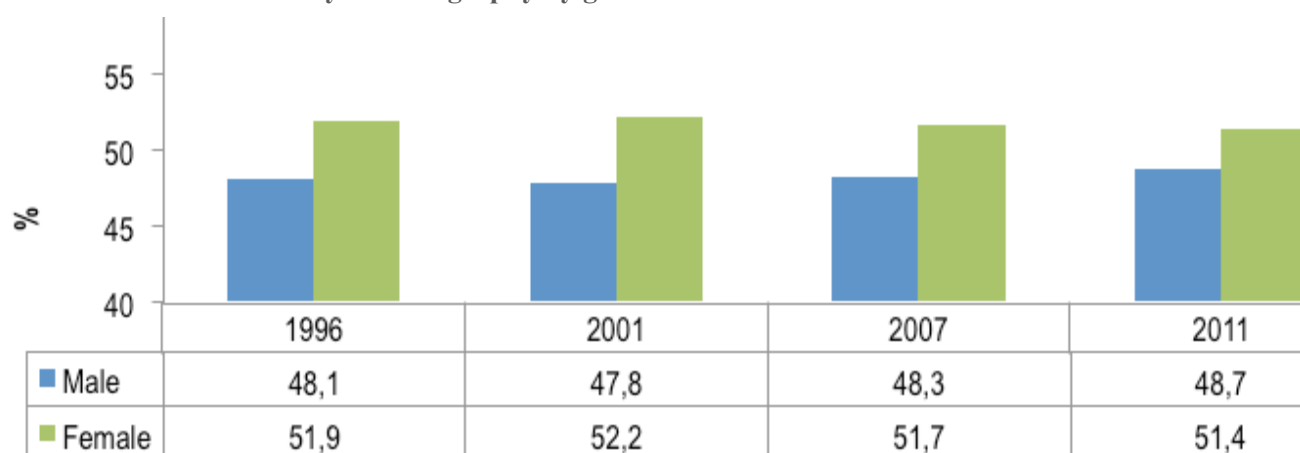
4 Deputy Chief Justice D Moseneke, *"The role of comparative and public international law in domestic legal systems: a South African perspective"* December 2010

5 S 231: "(1) The negotiating and signing of all international agreements is the responsibility of the national executive. (2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection 3. (3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time. (4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament. (5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect."

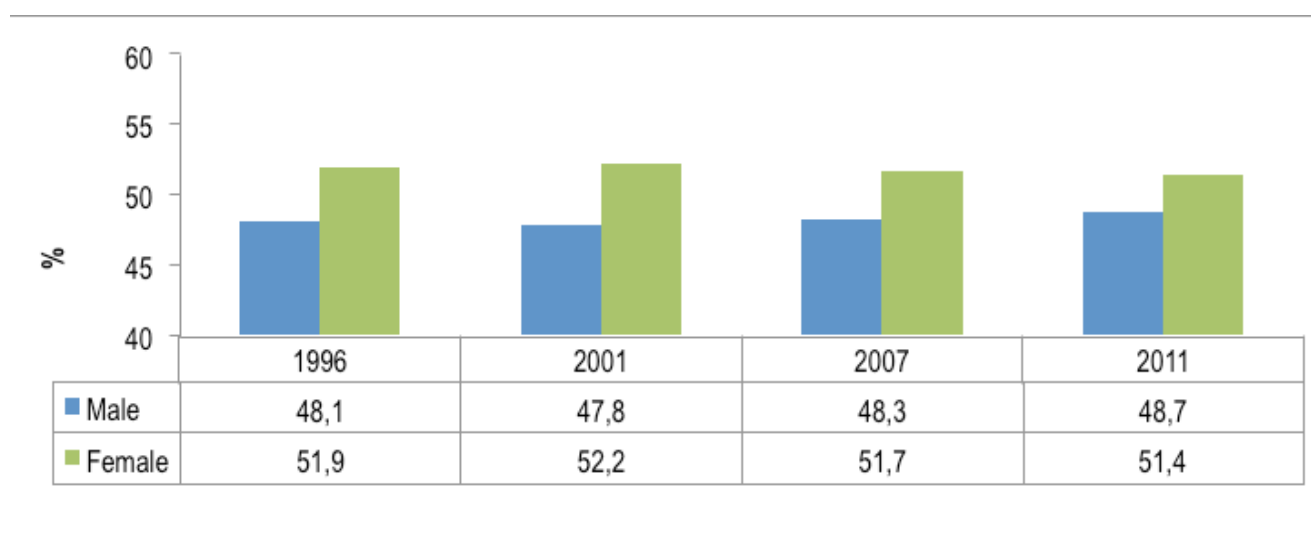
6 In *Bhe and Others v Magistrate, Khayelitsha* 2005(1) SA 580 (CC), the Constitutional Court observed that a number of international instruments, to which South Africa is a party, underscored the need to protect the rights of women, and to abolish all laws that discriminate against them. In *Gumede v President of the Republic of South Africa* (2008) ZACC 23, the Constitutional Court cited articles 2, 6, and 7 of the African Women's Protocol to support its position that the eradication of all laws and practices that discriminate against women was not only a constitutional obligation, but that it was also an obligation that flowed from international instruments to which South Africa is signatory.



Summary of demography by gender in South Africa from 1996 to 2011



13. The 2011 Census shows that more people in South Africa are living in urban areas than in rural areas. More women can be found in urban areas (62.5%), compared to 37.5% in rural areas. However, men outnumber women in urban areas while there are more women than men in rural areas. This can be attributed to migratory labour patterns in the country.



Geographic distribution of males and females, 2011

14. According to the census, 41.2% of households were headed by females in the country<sup>38</sup>. The percentage of female heads of households increased with age, as shown in the following:

Age	% female heads of households	% Male heads of households
18-34 years	34.4	65.6
35-59 years	40.2	59.8
60-69	47.7	52.3
70 years and older	60.2	39.8

15. Female-headed households generally have more dependents and have a larger average household size than male headed households in South Africa. Women headed households in general also tend to be predominantly responsible for the care of children. Approximately 10% of

7 According to Census 2011, Statistics South Africa

female-headed households are “skip-generation” households (where grandparents, especially grandmothers, care for orphaned children or grandchildren from absent parents), compared to 3.2% of male headed households.<sup>39</sup> The percentage of “skip generation” households is even larger among older persons (15.1%). Census 2011 also found that extended families comprised 31.8% of female-headed households compared to 18.4% of households headed by males.

## Poverty

16. Poverty patterns in South Africa continue to be gendered. Female-headed households are consistently more likely to be poor, more likely to have low incomes, more likely to be dependent on social grants, and less likely to have employed members. More than half (51.4%) of female-headed households are poor compared to 29.5% of male-headed households. Some 44.3% of female-headed households were without a single employed member compared to 23.5% of male-headed households.
17. Child-inclusive, female-headed households are consequently much more likely to experience hunger and food insecurity than other households. For example, the Living Conditions Survey for 2008/9 found that female-headed households at the food poverty line (R305 per capita per month in 2009 prices) were almost twice as likely to be poor (22.7% were below the poverty line) than male-headed households (where 11.9% were below the poverty line). At the upper level (R577 per capita in 2009 prices), 49.9% of households headed by women were found to be poor, compared to 30.4% of male-headed households.<sup>40</sup>
18. In the past, women were unable to access the same economic resources and opportunities as men. The resulting inequality was, and still is, intensified by additional race-based discrimination and growing inequality in the country. Women are over-represented in informal job markets, and in low-skilled, low-paying jobs, while the wage gap between male and female earnings persists, particularly in low and semi-skilled occupations.<sup>41</sup>
19. There is continuous division of labour between women and men, where women’s roles are largely confined to reproductive, care and community roles. Women’s roles are underrated in economic terms and their work is demoted to being domestic and unpaid.<sup>42</sup>
20. As a result of their longer life-expectancy, elderly females are more vulnerable to poverty and food insecurity, quite often compounded by being primary care-givers to grandchildren.
21. Women’s living conditions and quality of life are directly affected by the basic services their households receive. In addition to being responsible for securing basic needs (such as fetching water and firewood), women are often primary care-givers to more than just their own children in families. This role is compounded by increasing numbers of child orphans and the HIV and AIDS pandemic. A lack of access to basic services increases poor households’ vulnerability to disease. Larger percentages of household income is often spent on increasingly less diverse and less nutritious sources of food, which does not promote the health situation in female-headed households.<sup>43</sup>
22. Overall, many inequalities that are based on gender in South Africa are often deepened by characteristics such as age, disability, violence, harmful cultural practices, patriarchy, negative stereotyping and geographical location.

8 *Ibid*

9 Statistics SA, 2013: Men, Women and Children: Findings of the Living Conditions Survey 2008/9. Pretoria

10 *Ibid*: page 62. (And see May, 1998; Bhorat 2009)

11 *Ibid*: Page 62

43 Statistics SA: December 2011, Social Profile of Vulnerable Groups in South Africa 2002-2010: p 62 (And also Altman et al 2009)

## Gender responsive budgeting

23. Since the advent of constitutional democracy, South Africa has implemented various measures that seek to ensure financing for women's empowerment at all levels of government. This has entailed the integration of gender considerations in the preparation and implementation of the national and other budgets to become responsive to the needs of women. The process also seeks to ensure that where possible, resources are deployed as a positive measure to equalise opportunities between men and women. As a result, a substantial portion of the budget is increasingly being invested in services that advance women.
24. In light of this, the South Africa Women's Budget Initiative was formed in 1994 by the first women parliamentarians, members of the Parliamentary Joint Standing Committee on Finance and two NGOs with expertise on gender responsive budgeting. Its aim was to:
- develop an alternative set of values and principles to prioritise the socio-economic needs of poor women;
  - provide a critical tool to monitor spending;
  - empower the Standing Committee to oversee government spending on gender mainstreaming;
  - empower government to take responsibility for drawing up gender sensitive budgets; and
  - empower civil society.<sup>44</sup>
25. Furthermore, in 1995, the Gender and Economic Policy Group of the Joint Standing Committee on Finance was established to produce, in conjunction with NGOs, annual women's budgets. Since then, the Policy Group has issued research reports that have informed budgeting for women.
26. Despite these efforts, challenges remain. The Fiscal and Financial Commission is a body tasked with making recommendations to parliament, provincial legislatures, organised local government and other organs of state on financial and fiscal matters as envisaged in the Constitution and other national legislation. In 2012, the Commission analysed gender responsive budgeting at the local government level.<sup>45</sup> The Integrated Development Plans (IDPs) of 30 municipalities were reviewed for their gender sensitivity. In addition, the gender responsiveness of local government budgets was evaluated using case studies of seven selected municipalities. The findings indicated that gender budgeting in the local government sector is limited. There must be a committed implementation for women's advancement, development and gender equality at this level, where most sustainable effects in this regard can be felt by women on the ground.
27. While many challenges were experienced with respect to the full implementation of gender responsive budgeting in South Africa over the years, the initiative has found renewed energy in the country. The country is currently in the process of consolidating gender responsive budgeting interventions and processes. One of the envisaged tasks is to forge an alliance with the National Treasury to ensure integration of the principles of gender responsive budgeting in government's planning and budgeting cycle.
28. This renewed energy is shown in the following examples of good practices on gender responsive budgeting within government, amongst others:

44 "Gender Budgets Make Cents" Budlender *et al.* 2002

45 "Gender Budgeting: Translating Government Gender Equality Commitments into Reality," October 2012

- The Department of Trade and Industry is able to budget for women in trade, broadly including Small, Medium and Micro Enterprises (SMME).
- The Department of Health budgets for maternal and child mortality and HIV and AIDS with a considerable annual increase in the budget from 71% in 2009 to 99% in 2013. This has resulted in a reduction in mother-to-child transmission of HIV and AIDS.
- The Department of Environmental Affairs has set aside R800 million for green economy initiatives, a percentage of which is earmarked for women in businesses and entrepreneurs in environmental issues.
- The Department of Social Development has increased social grants for children of single mothers, which is alleviating child poverty by 17%. Social grants for the elderly are mostly taken up by women.

29. While these budgets are responding to women's needs, they cannot be said to have been analysed in a systematic manner using gender responsive budgeting principles. In order to address this, government, working with the Motsepe Foundation, had undertaken an analysis of the national budgets of four national departments namely the Departments of Energy; Health; Agriculture, Forestry and Fisheries; and Trade and Industry in 2013. These are departments which have line-functions that directly impact on the lives of women, particularly those in rural areas. Meanwhile, gender responsible budgeting work on gender-based violence has been mainly undertaken by civil society organisations as part of broader research and advocacy. The overall aim of the work is to promote improved implementation of key legislation such as the Domestic Violence Act, 1998,<sup>46</sup> and Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.<sup>47</sup> This has been done by researching and reporting on the resources allocated as well as on the experiences of women who attempt to access the services provided for in the different pieces of related legislation. The work has contributed to a growing knowledge base on facts and figures in South Africa.

## Gender mainstreaming

30. In South Africa, gender mainstreaming is envisaged as the responsibility of every government department and official. The South African National Gender Policy Framework provides the blueprint for gender mainstreaming, a process which began in South Africa in 1995 following the adoption of the Beijing Platform for Action. The result has been the institutionalisation of gender mainstreaming within state organs and government departments. At a minimum, gender focal points have been established in all national departments.
31. In order to accelerate gender mainstreaming, a training manual on gender mainstreaming for the Public Service was developed in 2004 by the former Office on the Status of Women in the Presidency in partnership with the National School of Government (formerly known as the Public Administration Leadership and Management Academy – PALAMA). The National School of Government is mandated to provide leadership training across the Public Service, including training on gender mainstreaming for senior management officials. The training programme was developed and institutionalised from 2005. To date, 2000-4000 public officials have been trained on this manual.
32. Gender mainstreaming in the Public Service is also guided by the implementation of the Gender Equality Strategic Framework. This has an annual implementation plan which requires departments

<sup>46</sup> Act No. 116 of 1998

<sup>47</sup> Act No. 32 of 2007

to submit reports at the end of each financial year. The implementation plan has a specific strategic objective titled “Adopt a wide set of options for organisational support in order to promote women’s empowerment and gender equality” and a specific sub-objective focusing on “Mainstreaming of gender in strategic plans, MTEF, cluster & sector plans and gender responsive budgeting”.

**33.** A few of the many examples of government departments using the gender mainstreaming approach include:

- The Department of Justice and Constitutional Development’s Gender Directorate, which is responsible for gender mainstreaming in the department. In 1998, the department adopted a Gender Policy Statement, which places gender mainstreaming as an official operational paradigm upon which all decisions, plans and activities performed within the department’s mandate should be based.
- The South African Police Service has established a women’s network to advocate for gender equality.
- The Department of Correctional Services has undertaken an audit to integrate gender equity into the department’s strategy to accelerate the appointment of staff.
- The Department of Cooperative Governance and Traditional Affairs, formerly known as the Department of Provincial and Local Government, has also mainstreamed gender into its operations. In 2007, the department launched the Local Government Gender Policy Framework. This comprehensive policy is crucial in ensuring that the provisions relating to gender equality and equity find practical expression in local government’s core policies, planning processes, programmes, projects and budgets. The policy proposes mainstreaming as a strategy for promoting gender equality and women’s empowerment in the local government sphere. Furthermore, it advances a monitoring and evaluation framework to track progress.

**34.** The Local Government: Municipal Systems Act, 2000,<sup>48</sup> also provides for mainstreaming gender in participation within municipal structures. It provides the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities, and ensure universal access to essential services that are affordable to all.

**35.** Despite the many gains that have been made in this regard, many challenges still exist. The intervention to address gender mainstreaming challenges should be the full implementation of existing legislation that protects and promotes women’s rights, empowers women and promotes gender equality. The legislation must also be resourced and enforced. Measures to maximise the implementation and monitoring the implementation of the legislation are being championed by the Department of Women working with line function departments mandated with implementation.

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<sup>48</sup> Act No. 32 of 2000



## Audit of gender law

36. After the 1994 democratic elections, South Africa embarked on elaborate law reform aimed at aligning its laws with the values that underpin a constitutional democracy. Shortly before this, the General Law Fourth Amendment, 1993,<sup>49</sup> was specifically enacted to repeal or to amend provisions that differentiated between men and women. It repealed discriminatory laws regarding, inter alia, citizenship, attendance at trials, dismissal of female employees on marriage, and the prohibition of women from performing dangerous work or night shifts.
37. In 1998, the Commission for Gender Equality (CGE) concluded a comprehensive study that identified laws which discriminated against women, either directly or indirectly. On the basis of this study, South Africa embarked on an elaborate law reform programme that has seen the repeal and amendment of statutes and provisions that discriminated directly or indirectly against women.
38. The Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005,<sup>50</sup> amended the Black Administration Act, 1927,<sup>51</sup> which was reminiscent of past divisions and discrimination in general, and regarded women as minors who could not own property or conclude contracts in their own right. This has since been repealed in its entirety.
39. In the public service sector, a comprehensive review with the aim of eradicating all discriminatory practices resulted in the passing of the Public Service Act, 1994,<sup>52</sup> the provisions of which are all recast in non-sexist language. In addition to repealing or amending discriminatory laws, South Africa has also ensured that gender considerations are mainstreamed into new laws and in generic instruments in areas such as education, skills development, broadcasting, mining, and land redistribution.

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<sup>49</sup> Act No. 132 of 1993

<sup>50</sup> Act No. 28 of 2005, as amended by Act No. 7 of 2008

<sup>51</sup> Act No. 38 of 1927

<sup>52</sup> Proclamation 103 of 1994

### Summary of legislation pertaining to women's rights

Legislation	Brief summary of legislation
Choice of Termination of Pregnancy Act, 1996 (Act No. 92 of 1996)	Provides for the circumstances and conditions under which pregnancy may be terminated.
Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)	Seeks to protect women and children by criminalising a wide range of acts of sexual abuse and exploitation.
Domestic Violence Act, 1998 (Act No. 116 of 1998)	Seeks to afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide.
Children's Act, 2005 (Act No. 38 of 2005)	Provides a broad framework for the protection of children's rights including those of the girl child.
Employment Equity Act, 1998 (Act No. 55 of 1998)	Seeks to promote equal opportunity and fair treatment in employment through the promotion of affirmative action and the elimination of unfair discrimination.
Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997)	Protects labour rights including those that are specific to women workers.
Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)	Provides a framework for preferential treatment of historically disadvantaged groups (such as women) in procurement transactions. The Act provides specific targets for women and people with disabilities.
Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998)	Recognises and protects women in customary marriages, including those in polygamous marriages.
Maintenance Act, 1998 (Act No. 99 of 1998)	Protects children (including the girl child) during the dissolution of a marriage, or of children borne out of wedlock, or to absentee fathers.
Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013)	Protects women and children from trafficking.

## PREPARATION AND CONSULTATION OF THE REPORT

*This section will be completed during the finalisation stages of the report following the consultation processes and publication in the Government Gazette. (Refer Annexure 1 in the report)*

## **4. PART 1: RESPONSES TO CEDAW COMMITTEE'S CONCLUDING OBSERVATIONS ON PREVIOUS REPORT**

40. This section of the report provides responses to the CEDAW Committee's principle areas of concerns and recommendations raised through the Committee's Concluding Observations following the presentation of South Africa's combined 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Periodic Reports in January 2011. Part 1 therefore highlights the State's response to questions raised and clarification requested by the CEDAW Committee towards increasing the impact on the implementation of the Convention. The report provides, where possible, results achieved in the areas of concern and on recommendations made by the Committee.

### **Paragraph 10: Involvement of Parliament in the implementation of the Convention and the Concluding Observations**

41. The report of the CEDAW Committee and the Concluding Observations were presented to and discussed with the Parliamentary Portfolio Committee on Women in the Presidency and the Parliamentary Select Committee on Women in the Presidency during the 2014/15 financial year. Both Parliamentary Committees highlighted their role in accelerating the implementation of the Convention. This was done through exercising their oversight functions by requesting government departments to account to the Committees on measures undertaken in empowering women. These Parliamentary Committees also conduct monitoring visits to government programmes on empowerment at the provincial level. The Department of Women is invited by the Parliamentary Committees to participate in these initiatives as part of the mechanism through which parliament and government work together in the country. In addition, the Portfolio Committee holds public hearings on issues concerning women, and especially the impact of certain legislation on the lives of women, such as: the Domestic Violence Act; the Maintenance Act; Criminal Law (Sexual Offences and Related Matters) Amendment Act. Parliament and provincial legislatures also
- hold an annual 'Women's Parliament' session during the National Women's Month in August;
  - host debates on the '16 Days of Activism for No Violence Against Women and Children' campaign; and
  - conduct annual sessions on 'Taking Parliament to the People'.

### **Paragraph 13 (a) Visibility of the Convention and its Optional Protocol**

42. The state has raised awareness on women's human rights as outlined in these instruments by mobilising all its stakeholders, which includes: Government Ministries and Departments; Parliamentarians; the judiciary; law enforcement officers, religious and traditional leaders; the labour movement; business; media; the sports fraternity; and civil society organisations.
43. In order to popularise the CEDAW Committee's General Recommendations 12 and 19, the State mobilised all stakeholders to promote collective responsibility in the fight to eradicate violence against women and children. The "#Count Me In" campaign aims to encourage a shift in society's view to acknowledge that violence against women and children is a crime that affects the entire society.
44. The participants of the "#Count Me In" campaign include leaders of government, business, civil society, traditional leaders and religious organisations who pledged to be "counted in" in eradicating the scourge of violence against women and children.

45. The Women's Human Rights Resource Book was distributed to all judicial workshops and conferences, and these workshops and conferences included a slot in their programmes to provide briefing on the resources distributed. Furthermore, the South African chapter of the International Association of Women Judges adopted the Jurisprudence of Equality Programme with its objective to train members of the judiciary on the development of the jurisprudence of equality through the use of international instruments where there is no legislation that promotes women's rights. The international instruments they are trained on include CEDAW and its Optional Protocol.
46. The South African Women Lawyers Association also has training programmes for its members on litigation to promote human rights which involve male lawyers as 'friends of the Association'. Training material includes international instruments.

#### **Paragraph 14: Incorporation of the Convention**

47. South Africa refutes the assertion made in this paragraph. Article 1 of the Convention may not be verbatim in the Constitution and legislation on equality, but they both embody the principle of substantive equality between women and men and prohibit direct and indirect discrimination against women. South Africa has one of the best Constitutions in the world. It also has a strong legislative framework and institutional mechanisms such as the Constitutional Court and Equality Courts.
48. South Africa is signatory to many international instruments which makes it difficult to mention all these instruments in the Constitution. However, section 39(1)(b) provides that the court must consider international law on interpretation of the Bill of Rights, and this includes consideration of CEDAW and its Optional Protocol. The founding principles of the Constitution elevate human rights, equality and freedom for everyone in South Africa. Gender equality is a founding principle and core right in the South African Constitution. In addition to singling out non-sexism as one of the core values upon which the new South Africa is founded, the Constitution champions the achievement of equality, including gender equality, throughout its provisions and particularly section 9 thereof.

The Constitution of the Republic of South Africa provides:

#### **Republic of South Africa**

S1. The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- (b) Non-racialism and non-sexism.
- (c) Supremacy of the constitution and the rule of law.
- (d) Universal adult suffrage, a national common voter's roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

#### **Supremacy of Constitution**

S2. This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

This means that any law that violates any right in the Bill of Right in this instance, the right to equality, that law will be invalid.

## **Rights**

- S7. (1) The Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
- (2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.

## **Equality**

- S9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection.
- (3) National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

## **Human Dignity**

- S10. Everyone has inherent dignity and the right to have their dignity respected and protected.

## **Interpretation of Bill of Rights**

- S39. (1) When interpreting the Bill of Rights, a court, tribunal or forum –
- (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
  - (b) must consider international law; and
  - (c) may consider foreign law.

49. In addition, Section 1 (viii) of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) (PEPUDA) defines discrimination as follows:

“Discrimination” means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly—

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



### **Paragraph 15: Progress regarding the Gender Equality Bill**

50. South Africa has identified gender equality as one of its national priorities, and all institutions in society remain conscious of the need to mainstream gender transformation in their policies and programmes. The President, HE Mr Jacob Zuma, in his address to the High-Level Event on women's access to justice on the Margins of the UN General Assembly in New York on 24 September 2012 said: "We commit ourselves to pass into law by 2013 the Women's Empowerment and Gender Equality (WEGE) Bill, in support of achieving 50/50 gender equality across government, public and private sectors, particularly at leadership and decision-making levels."
51. The Women's Empowerment and Gender Equality Bill is currently non-existent as it lapsed in April 2014. The explanation that follows seeks to show this occurred while still seeking to provide a response to the request contained in the CEDAW Committee Concluding Observations.
52. The Women's Empowerment and Gender Equality Bill sought to provide a premise for the accelerated implementation of the vision of non-racialism and non-sexism, and the protection of freedom, equality and human dignity of all citizens, espoused by the Bill of Rights. The specific targeted citizens in this Bill were women in all their diverse categorisations.
53. South Africa has recorded great strides in the attainment of women's empowerment and gender equality. Nevertheless, there is marked persistence of inequality between women and men, compounded by the continuing practices of patriarchy and sexism, in the country. In order to accelerate and expedite the transformation of women's lives, it was thought prudent that a legal instrument be enacted to ensure accountability, responsibility and enforcement for women's empowerment and gender equality. Thus, a Green Paper was developed which outlined challenges that were still being experienced in this regard and proposed actions that needed to be taken to overcome these challenges going forward. The Green Paper towards the Women's Empowerment and Gender Equality Bill therefore set the context within which the Bill was to be drafted.
54. Clause 3 of the Bill, reads as follows:
- The objectives of this Act are to—
- (a) give effect to the letter and spirit of the Constitution, in particular—
    - (i) the equal enjoyment of all rights and freedoms by every person;
    - (ii) the promotion of equality, specifically gender equality; and
    - (iii) the values of non-racialism and non-sexism contained in section 1 of the Constitution;
  - (b) facilitate compliance with the country's commitments to international agreements, including—
    - (i) the Convention on the Elimination of All Forms of Discrimination Against Women (December 1979);
    - (ii) the Beijing Declaration and Platform for Action (September 1995);
    - (iii) the Millennium Declaration and Development Goals (September 2000);
    - (iv) the Protocol to the African Charter on Human and Peoples' Rights and the Rights of Women in Africa (2003);
    - (v) the Solemn Declaration on Gender Equality in Africa (July 2004); and
    - (vi) the SADC Protocol on Gender and Development (August 2008);
    - (vii) the United Nations Convention on the Rights of Persons with Disabilities, 2008.

- (c) align all aspects of the laws and the implementation of the laws relating to women empowerment and the appointment and representation of women in decision-making positions and structures;
- (d) facilitate the development and implementation of plans and measures by designated public bodies and designated private bodies for the promotion of women empowerment and gender equality, and the submission of those plans and measures to the Minister for consideration, review and guidance;
- (e) provide for the implementation of measures to achieve the progressive realisation of a minimum of 50 percent representation and meaningful participation of women in decision-making positions and structures including Boards by designated public bodies and designated private bodies, as contemplated in section 7;
- (f) provide for the implementation of gender mainstreaming by designated public bodies and designated private bodies as contemplated in section 8; and
- (g) provide for the development and implementation of public education programmes by designated public bodies and designated private bodies on practices that unfairly discriminate on grounds of gender as contemplated in the applicable legislation and in international agreements in order to promote gender equality and social cohesion;
- (h) address the pervasive discriminatory patriarchal attitudes and the lingering effects of apartheid faced by women in the education system, and to ensure that women's responsibilities are not the cause for drop out or exclusion.

### **Steps undertaken to expedite the consultations on the Women's Empowerment and Gender Equality Bill towards adoption by Parliament:**

55. It is important to note that the Green Paper was indicated in South Africa's responses to a list of issues raised by the CEDAW Committee (CEDAW/C/ZAF/Q/4) in consideration of the combined 2nd, 3rd and 4th Periodic Reports of South Africa (CEDAW/C/ZAF/2-4). At that time, the name of the proposed Bill was the Gender Equality Bill. It was changed, following several consultations held in the country, to the Women's Empowerment and Gender Equality Bill.
56. Progress was made with regard to the development of the Bill since reporting to the UN CEDAW Committee in January 2011. At the National Gender Machinery consultation held on 7 October 2010, 13 Issues Papers were tabled. These discussion papers outlined and engaged with various issues that led towards conceptualising a Gender Equality Bill. The Issue Papers (see Annex A) comprised the following discussion issues:
  - Towards a Gender Equality Bill;
  - Gender responsive implementation and service delivery;
  - Closing the gender equality gap between theory and practice;
  - Partnerships that deliver gender responsive services;
  - Unpacking patriarchy and institutionalised sexism;
  - Financing gender equality;

- Women and health;
- Women in education;
- Role of men and boys in gender equality;
- Addressing violence against women and girls;
- Young women and gender equality;
- Women empowerment and representation in local government;
- The challenges of co-ordination in implementation of the National Policy Framework for WEGE;
- Strengthening institutional arrangements for women's empowerment and gender equality;
- Rural women and development; and
- Assessing gaps in existing legislation and policies.

**57.** Following the engagement with these documents, a discussion document entitled “Policy Considerations for Gender Equality Legislation” was compiled (see Annex B). The Policy Considerations document served as the base document for engagement with different stakeholders. The intention was to identify the core issues that would be included in a Bill and to review the South African National Policy Framework for Women's Empowerment and Gender Equality (2000) to take cognisance of changes in both institutional arrangements and in transformation issues or lack thereof.

**58.** As a result of the several consultations on the Policy Considerations document, the National Policy for Women's Empowerment and Gender Equality was crafted, and the Department of Women, Children and People with Disabilities undertook several consultations on this document. A report outlining a comprehensive consultative process, detailing who was consulted, when (dates), where (venues), was developed and the report contains and provides a summary of issues raised during these consultations.

**59.** The following consultations took place:

- A National Gender Machinery consultation on a draft paper titled “Towards a Gender Equality Bill” on 14 April 2011;
- Three provincial consultations (Gauteng on 5 May 2011; North West on 6 May 2011, and Northern Cape on 1 – 2 November 2011);
- A Policy Considerations paper was developed by DWCPD and presented at a consultative meeting on 27 May 2011;
- A National Young Women's Consultative meeting on 22 – 23 July 2011;
- National consultations with Women with Disabilities on 13 August 2011;
- National Women's Conference on 31 July – 3 August 2011;
- Policy consultation with the Congress of South African Trade Union (COSATU) National Gender Committee meeting on 12 October 2011;
- National Policy developed and consultation held with Executive Committee of the Progressive Women's Movement South Africa (PWMSA) on 25 October 2011;
- Consultation on the policy held at the National Disability Summit on 16 March 2012;
- Consultations with rural women on 12 April 2012;
- Consultation with ANC Women's League on 10 June 2012;
- Consultation with Governance and Administration Directors General's Cluster on

11 June 2012;

- Consultation with the with Economic Sectors and Employment Directors General's Cluster on 4 April 2012;
- Consultation with the Governance and Administration (G&A) Directors General's Cluster on 12 April 2012;
- Consultation with the Social Sector Directors General's Cluster on 18 April 2012;
- Consultation with the Justice, Crime Prevention and Security (JCPS) Directors General's Cluster on 08 May 2012;
- Presented policy at the Ordinary Session of the Development Chamber of National Economic Development and Labour Council<sup>53</sup>(NEDLAC) on 7 June 2012;
- Presented policy for adoption to the Social Sector Directors General's Cluster on 13 June 2012;
- Presented policy at the G&A Working Group on 21 June 2012; and
- The Bill was presented for consultation at the International Cooperation, Trade and Security (ICTS) Directors General's Cluster on 3 July 2012.

60. The Bill was published in the Government Gazette on 29 August 2012 for public comment for a period of 30 days. A copy of the Bill, as it appears in the Government Gazette, is attached as Annex D. Comments and submissions received from about 40 organisations in the country were analysed, and issues, where appropriate, were incorporated into the Bill.
61. As indicated above, the Bill formed the subject of consultations with the South African National Economic Development and Labour Council (NEDLAC), which took place from 7 June 2012 to 4 May 2013 in preparation for the final submission to Cabinet. In May 2013, NEDLAC withdrew the Bill from its schedule.
62. The Bill was simultaneously going through the Cabinet adoption processes. An Inter-Ministerial Task Team was set up by Cabinet to discuss possible overlaps and duplications with other existing pieces of legislation pertaining to women's rights issues, but also to determine how Government Departments could cooperate to ensure that women benefitted from the full and effective implementation of all such existing legislation.
63. The Bill was approved by Cabinet for tabling in Parliament as a Section 75 Bill on 23 October 2013 and tabled on 6 November 2013 in Parliament. The Bill and related documents (the Regulatory Impact Assessment, the Objectives Statement and the Chief State Law Adviser's Report) are attached as Annex E. The Bill was tagged as a Section 76 Bill by Parliament on 14 November 2013 and was referred to the National House of Traditional Leaders on 19 November 2013.
64. The Bill was published by the Parliamentary Portfolio Committee on Women for public hearings in national newspapers across the country as follows: the Sunday Times on 1 December 2013; the Rapport on 1 December 2013 and in the Sowetan on 3 December 2013. Public hearings were held on 28 and 29 January 2014. This included the participation of many women's organisations, civil society organisations and entities in the private sector, including Business Unity South Africa (BUSA). The Department of Women, children and People with Disabilities responded to the public hearings on 5 February 2014.
65. The Parliamentary Portfolio Committee deliberated on the Bill on 18 February 2014. However, the deliberations were stopped due to the argument that clause 7(2) in the Bill was considered

<sup>53</sup> NEDLAC consists of four chambers namely the Public Finance and Monetary Policy Chamber; Trade and Industry Chamber; Labour Market Chamber; and Development Chamber and its purpose is to consider significant changes in social and economic policies.

unconstitutional and the deliberations were thereafter postponed to the 25 February 2014. The Bill was adopted by the Portfolio Committee on 26 February 2014.

66. The Bill was debated in the National Assembly on 4 March 2014 and thereafter referred to the National Council of Provinces (NCOP), and a briefing was provided to the National Select Committee in Parliament. The mandate of the Bill was discussed on 19 March 2014 and the National Select Committee adopted the Bill on 25 March 2014. The NCOP adopted the Bill on 26 March 2014, where eight of the nine provinces supported the Bill. The Western Cape Province, an opposition run province, was the only province that did not support the Women's Empowerment and Gender Equality Bill.
67. Following the processes mentioned above, the Bill was sent back to the National Assembly with inputs from the NCOP in April 2014. This process had delayed the adoption of the Bill, and by this time Parliament had risen for the national elections in April 2014. Consequently, the Bill lapsed.

### **The current status of the Bill**

68. Following the national elections, the President of the Republic created the Ministry in the Presidency Responsible for Women as champion of the socio-economic empowerment of women in the country. The decision was taken to hold off on reviving the Bill processes, or even redrafting the Bill, in lieu of ensuring that exiting legislation is fully and effectively implemented. This decision is also based on the fact that the Bill had areas of overlapping responsibilities with more than one Government Department which would affect its implementation. It is important to mention upfront that women empowerment and gender equality in the country are well covered by the Constitution and several legislative frameworks that are in place to protect women against discrimination, violence, including sexual violence and promote women empowerment and rights of women. Most of the legislation and its impact on the life of women has been well elaborated on in South Africa's combined 2nd, 3rd, and 4th Periodic Reports to CEDAW. They include, but are not limited to:
- the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000);
  - the Employment Equity Act, 1998 (Act No. 55 of 1998);
  - the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
  - the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2000);
  - the Labour Relations Act, 1995 (Act No. 66 of 1995);
  - the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
  - the Home Loan and Mortgage Disclosure Act, 2000 (Act No. 63 of 2000);
  - the Maintenance Act, 1998 (Act No. 99 of 1998);
  - the Domestic Violence Act, 1998 (Act No. 116 of 1998);
  - the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998);
  - the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009 (Act No. 11 of 2009);
  - the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998); and
  - the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)
69. Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) (PEPUDA) makes affirmative action mandatory. It gives effect to section 9 of the Constitution by



providing for the –

- equal enjoyment of all rights and freedoms by every person;
- promotion of equality (including gender equality);
- values of non-racialism and non-sexism contained in section 1 of the Constitution;
- prevention of unfair discrimination and protection of human dignity as contemplated in sections 9 and 10 of the Constitution; and
- prohibition of advocacy of hatred, based on race, ethnicity, gender or religion, that constitutes incitement to cause harm as contemplated in section 16(2)(c) of the Constitution.

70. PEPUDA also provides for enforcement mechanisms, which include Equality Courts, and applies to all employment issues that are excluded from the Employment Equity Act. This includes contract work and the Judiciary. Section 28(1) thereof provides that “[i]f it is proved in the prosecution of any offence that unfair discrimination on the grounds of race, gender or disability played a part in the commission of the offence, this must be regarded as an aggravating circumstance for purposes of sentencing”.
71. PEPUDA also provides for measures to educate the public and raise public awareness on the importance of promoting equality and overcoming unfair discrimination, hate speech and harassment and to provide remedies for victims of unfair discrimination. The Schedule to PEPUDA provides useful insights on existing systemic inequalities in various sectors to be given priority in the promotion of equality, including gender equality.
72. The Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) was amended in 2013 specifically to include women and people living in rural areas, among others, in the definition of “broad-based black economic empowerment”. The amendment also included the creation of incentive schemes to support black owned and managed enterprises in the strategy for broad-based black economic empowerment and established a Broad-Based Black Economic Empowerment Commission to monitor the implementation of the Act. It further creates offences and penalties for non-compliance.
73. The Housing Act, 1997 (Act No. 107 of 1997) obliges national, provincial and local governments to promote measures that prohibit unfair discrimination on the grounds of gender by all role-players in the housing development sphere. This Act addresses the historic discrimination against black women, who were not allowed to own property; even where the property was purchased by them, it would be in the name of their husband, child or male relative.
74. The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 Act No. 19 of 1998) was not included in the previous CEDAW report. The Preamble to this Act makes specific reference to women and notes that special consideration should be given to the rights of certain vulnerable groups, which include female-headed households.
75. The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) revises the law relating to sexual offences, including the Sexual Offences Act, 1957 (Act No. 23 of 1957), in order to bring it into line with South Africa’s the new constitutional dispensation and to provide maximum protection to victims of sexual offences, who are mostly women and children. It also provides a mechanism through which victims of sexual offences (mostly women) can apply to have the alleged sex offender tested for HIV. The Act broadened the definition of rape, and addressed the problem of single witness indirect customary rule, and the administrative procedures

to be followed in courts in order to protect witnesses from secondary victimisation by the criminal justice system.

76. In conclusion, the need to develop a separate Gender Equality Act is not as urgent as the need to monitor and evaluate the full implementation of existing Acts, which already have resources and enforcement mechanisms, as well as the need to identify root causes of the continued gender equality gaps, implementation challenges and inconsistencies within the Acts.
77. National Government Departments are the custodians of these Acts. Integrated and collaborative measures to maximise and monitor the implementation of these Acts for effectiveness in protecting and promoting women's rights and empowerment and in achieving gender equality, are the fundamental tenets on which the mandate of the Department of Women is premised.

### **Paragraph 17(a) Access to justice**

78. Legal Aid South Africa is an independent statutory body established by the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014) (Legal Aid Act) with a mandate to make legal aid available to indigent persons within its financial means. It provides legal representation at State expense, as set out in the section 35(2)(c) of the Constitution and relevant legislation giving content to the right to legal representation at State expense.
79. Section 35(2)(c) of the Constitution states the following in relation to arrested, detained and accused persons:
  - (2) "Everyone who is detained, including every sentenced prisoner, has the right —
    - (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly."
80. Legal Aid South Africa's role is to provide legal aid to those who cannot afford their own legal representation. This includes poor people and vulnerable groups such as women, children and the rural poor. It does this in an independent and unbiased manner with the intention of enhancing justice and public confidence in the law and administration of justice.
81. The Legal Aid Board recently launched a system of nationwide Justice Centres. In the past, the Legal Aid Board compensated private attorneys/advocates in a system known as Judicare. There has been a move away from using private lawyers to providing a legal aid service for the poor through salaried lawyers working in Justice Centres in various places around the country. This service was initially available only in the big urban areas, but is gradually being rolled out in smaller centres.
82. The Legal Aid Board Justice Centres are spread throughout South Africa and employ attorneys and candidate attorneys to provide legal representation to the indigent, and also funds candidate attorneys in rural law firms and law clinics. The addresses of the Justice Centres are made available to the public.
83. At the Centres, there is a specific focus on criminal practice. The representation of juvenile accused is an important aspect of the work of the Justice Centres. The Legal Aid Board has identified women and children's rights (as well as land issues) as deserving of special attention in the provision of its legal services.

### **Paragraph 16: Progress regarding the Traditional Courts Bill**

84. The Traditional Courts Bill was not passed by Parliament because in its form, the Bill was seen not to be women friendly. There was strong opposition voiced by women who mobilised against it. The following concerns were raised:
- It was prescriptive;
  - It gave more power to the traditional leaders, as it has in the past;
  - It did not allow equal participation and representation of women;
  - It entrenched apartheid boundaries;
  - It excluded of legal representation
  - The nature of the traditional courts; in particular the use of the name court;
  - It failed to provide for the rights to opt out;
  - Criminal jurisdiction must be the role of the National Prosecuting Authority and not traditional courts;
  - Sanctions were likely to be abused by the traditional leaders;
85. It is acknowledged that these courts exist and therefore the constitutional imperative is that they be transformed to suit the democratic dispensation. In light of this, the process on policy dialogue on traditional courts reform has started. The dialogue focuses on how to address the identified gaps and concerns raised.

### **Paragraph 17: Training on application of legislation prohibiting discrimination**

86. The South African Government has established the following training institutions, amongst other things, to provide systematic training on the application of legislation prohibiting discrimination:
- South African Judicial Education Institution;
  - Justice College;
  - Police Academies in all Provinces; and
  - National School of Governance, which provides training to all public servants. Its training includes Gender Mainstreaming and Gender Budgeting.

### **Paragraph 19: National machinery**

87. In 2014, South Africa restructured its gender institutions to strengthen the national gender machinery by establishing a stand-alone Ministry Responsible for Women, located in the Presidency. Its mandate is to promote women's socio-economic empowerment, and gender equality. The Ministry has reviewed its institutional capacity and is putting in place human, financial and technical resources in order to strengthen its coordinating capacity.
88. Furthermore, the South African Management Development Institute (SAMDI) had undergone continuous review to enhance the government's effectiveness in training the public servants to meet its service delivery needs. The Public Administration Leadership and Management Academy (PALAMA) replaced SAMDI as a training academy for the South African Government, and was renamed the National School of Government in October 2013. Its role is to assume the responsibility of leading public sector learning and development of programmes and related services; ensuring the provision of these guided by policy, norms and standards; and ensuring effective monitoring measures applied uniformly across the public sector. The primary objective behind all programmes of the National School is that of developing a professional, responsive and capable public sector,

driven by the imperative of a developmental state.

89. The linkage between national and local levels is based on the Constitution which declares that government is comprised of national, provincial and local spheres of government. They operate as follows:

- Government departments operating in the national sphere have linkages to all spheres of government and therefore have set up national, provincial and local training institutions to facilitate the linkages in training gender mainstreaming among others.
- Government departments operating in the provincial sphere have linkages to both national and local government MINMEC Structures that bring national ministers and provincial Members of Executive Councils (MEC) together in planning and budgeting for all programmes, including training.
- The linkage with the local sphere of government is through the Department of Cooperative Governance and Traditional Affairs which also has established its implementation agency, the South African Local Government Association (SALGA). SALGA is represented in Parliament at the National Council of Provinces. SALGA has established a Women's Committee with women representatives from all regions. Its purpose is to promote gender equality and women empowerment, including training on gender mainstreaming and gender budgeting.

#### **Paragraph 20: Stereotypes and harmful practices**

90. The South African Government has initiated a strong nation building programme in the country and actively promotes the concept of social cohesion in line with the country's National Development Plan's 2030 vision and trajectory. Government's Medium Term Strategic Framework (2014-2019) comprises 14 outcomes. Outcome 14 focuses on nation building and social cohesion.

91. The activities identified in Outcome 14 on nation building and social cohesion's are aimed towards South Africans being more conscious of the things they have in common than their differences. The intention is that peoples' lived experiences will progressively undermine the divisions caused by race, gender, disability, space and class. It is envisaged that in this way the nation will:

- (i) be more accepting of peoples' multiple identities;
- (ii) have broad-based knowledge about, and support for, a set of values shared by all South Africans, including the values contained in the Constitution;
- (iii) become an inclusive society and economy and be able to tackle the factors that sustain inequality of opportunity and outcomes by building capabilities, removing participating barriers and redressing the wrongs of the past;
- (iv) increase interaction between South Africans from different social and racial groups; and
- (v) enjoy strong leadership across society and a mobilised, active and responsible citizenry.

92. Nation building and social cohesion approach is about the degree of social integration and inclusion in communities and society at large, and the extent to which mutual solidarity finds expression among individuals and communities. In terms of this definition, a community or society is cohesive to the

extent that the inequalities, exclusions and disparities based on ethnicity, gender, class, nationality, age, disability or any other distinctions which engender divisions, distrust and conflict are reduced and/or eliminated in a planned and sustained manner. This, with community members and citizens as active participants, working together for the attainment of shared goals, designed and agreed upon to improve the living conditions for all.

### **Paragraph 21(a): Measures to address harmful traditional practices**

93. Harmful traditional practices have been addressed in the Constitution and legislation that was put in place in the country. In 2009, the South African government was made aware of the practice where young girls between the ages of 12 and 15 years are subjected to Ukuthwala. During this period, Ukuthwala was defined by the Ministry of Justice and Constitutional Development as: A form of abduction that involves kidnapping a girl or a young woman by a man and his peers with the intention of compelling the girl or young woman's family to endorse marriage negotiations. At a roundtable meeting hosted by the South African Law Reform Commission, it was agreed that the form of Ukuthwala described above is a very different version of Ukuthwala as practised in the past. Traditionally, it was a legitimate practice that did not involve children at all. It was a staged abduction between two consenting adults who either lacked the bride price to get married, or whose parents were disapproving of the proposed marriage. The main aim was to force the girl's family to enter into marriage negotiations. The practice in its original form had a number of legitimate cultural goals and had built-in protection for the young woman; the man was not permitted to seduce the girl once she has been "thwala'd," and if he did do so, he was fined. In sum, in its old form, children were not involved in Ukuthwala and rape was not permitted.<sup>54</sup>
94. In its original form, Ukuthwala was one of the "irregular" forms of marriage, observed predominantly by the Nguni-speaking groups. The practice has been vividly described by Koyana and Bekker as follows: "The intending bridegroom, with one or two friends, will waylay the intended bride in the neighbourhood of her home, quite late in the day, towards sunset or at early dusk, and they will 'forcibly' take her to the young man's home. Sometimes, the girl is caught unaware, but in many instances she is 'caught' according to plan and agreement. In either case, she will put up a show of resistance to suggest to onlookers that it is all against her will when, in fact, it is hardly ever so".<sup>55</sup>
95. The Commission for the Promotion and Protection of the Rights of Culture, Religion and Linguistic Communities ("the Commission) also conducted a research on Ukuthwala and has identified the basic principle of Ukuthwala as involving a man and a woman agreeing to this as a result of breakdown in lobola negotiations. The woman would be taken by a man and his friends to the man's home. On the way the woman would pretend to be reluctant to come along so as to maintain her dignity. The young men would carry her to his homestead. On arrival at his home, they would immediately hand her over to other female members of the family. A delegation from the man's family would be sent to the woman's family to inform them that she is in their homestead.<sup>56</sup> The Commission also stated in its conclusion that the views has opened windows for the public to understand and appreciate the cultural milieu and cultural idiosyncrasies in this practice, and create a learning space to understand the criminal elements who oftentimes engage in criminal activities under the guise of Ukuthwala.
96. South Africa does not condone the practice of forced marriage of young girls in the name of Ukuthwala; this is seen as a harmful practice of and old custom of Ukuthwala. Addressing Ukuthwala, section 28 of the Constitution states that a child's best interests are of paramount importance in every matter

<sup>54</sup> An exploratory study on the interplay between African customary law and practices and children's protection rights in South Africa, 2011, commissioned by Save the Children Sweden Southern Africa Regional Office.

<sup>55</sup> South African Law Reform Commission: Discussion Paper 132: Project 138 The Practice of Ukuthwala May 2014

<sup>56</sup> CRL Rights Commission: Public Hearing and Research on Ukuthwala: Views and Perspectives Emerging from South African Communities



concerning the child and that a “child” means a person under the age of 18 years.

97. As a child’s best interests are of paramount importance in every matter concerning the child, custom, cultural or religious rights cannot trump the rights of children. South Africa regards the abuse of Ukuthwala as a harmful practice that robs children of their childhood and impacts negatively on their health, development and on gender equality. It is considered a criminal offence liable to conviction when found guilty.
98. In terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) (Sexual Offences Act, 2007), having sex with a child without her consent following her kidnapping and abduction (Ukuthwala) constitutes rape in violation of the Sexual Offences Act (section 15).
99. Section 17 of the Sexual Offences Act prohibits the sexual exploitation of children by their parents and others. Parents, relatives or others who collude in, or aid and abet, the Ukuthwala of a girl child commit the crime of the sexual exploitation of children. These parents and relatives also face being charged with Trafficking in Persons, under section 71 of the Sexual Offences Act.
100. Similarly, the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013) (Trafficking Act) prohibits the recruitment, sale, supply, procurement, transportation, transfer, harbouring, disposal or receipt of persons by means of the use of threat, force, intimidation or other forms of coercion; or by abusing vulnerability, for the purpose of exploitation. Parents, relatives and others who hand over a child into a forced marriage for financial or any other type of gain can be prosecuted under section 4 read with section 1 of the Trafficking Act.
101. *Ukuthwala* is not considered as a valid marriage: According to the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998) (RCMA), both the bride and the bridegroom must consent to a marriage. The age of consent is 18 years of age. In the practice of *Ukuthwala*, there is no consent.
102. *Ukuthwala* is also considered a discriminatory practice. The definition of discrimination in PEPUDA was taken as it is from the CEDAW definition of discrimination. Chapter 2 of the Act deals with the prevention, prohibition and elimination of unfair discrimination, hate speech and harassment on any of the prohibited grounds, as set out in the definition of ‘prohibited grounds’ (which is not a closed list, but all of the 17 prohibited grounds are contained in the Constitution). Section 8 provides that the following constitute unfair discrimination:
  - (a) gender-based violence;
  - (b) female genital mutilation;
  - (d) any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and wellbeing of the girl child.
103. This means that Ukuthwala and other practices (except polygamy) that dehumanise young girls are regarded as unfair discrimination by PEPUDA. The rights in PEPUDA can be enforced in Equality Courts.
104. The practice of Ukuthwala perpetuates the cycle of poverty. Research indicates that there is a proven link between Ukuthwala and the lack of education, underdevelopment and poverty of girl



children. Ukuthwala deprives girl children opportunities to education and development. Furthermore, majority of the girls and young women that are victims of Ukuthwala are from poor families. Their lack of education and underdevelopment due to Ukuthwala perpetuate the cycle of poverty. In many instances, the children born into poverty tend to be caught up in this cycle of poverty throughout their lives. This contributes to the cycle of poverty in the communities, particularly rural communities, where Ukuthwala is rife.

### **Court Decisions on Ukuthwala**

- 105. Jezile v S and Others (A 127/2014) [2015] ZAWCHC 31 (23 March 2015):** In February 2014, the Wynberg Regional Court convicted a man found guilty of Ukuthwala on three counts of rape, human trafficking and assault and sentenced him to 22 years behind bars. In addition, court ordered that his details be included in the National Register for Sexual Offenders in accordance with section 50(2)(a) of the Criminal Law Amendment Act, 2007 (Act No. 32 of 2007) (the Sexual Offences Act). He appealed the conviction and sentence at the Western Cape High Court. The full bench of the High Court rejected his appeal and confirmed the decision of the court a quo.
- 106. Limpopo Province Court decision on child marriage:** In 2015, the Mokerong Regional Magistrates Court sentenced a 60 year old man who married a 13 year old girl to 5 years imprisonment. The state is appealing the sentence and has indicated that it will review the laws governing child marriages to increase protection.
- 107. Recognition of polygamy in South Africa:** In South Africa, customary marriages include polygamous marriages, which are valid in terms the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998) (RCMA) and are not considered harmful practices but marriages similar to civil marriages.
- 108.** Prior to the promulgation of the RCMA on 15 November 2000, customary marriages were not recognised as valid legal marriages under the South African law. The consequences of non-recognition meant that parties in customary unions, more specifically women, were not afforded the protection of the law in the same way that the parties in civil marriages were. With the non-recognition of customary marriages, it was customary law which regulated issues of inheritance and land rights, family relations, marriage, divorce and custody. Women were and are the most discriminated against under customary law. For example, under customary law women were not allowed to inherit property as African custom follows the system of primogeniture where it is the eldest male who inherits. Women were not allowed to own land and upon termination of the customary union it was the husband's family group which had absolute rights to any children born to the wife.
- 109.** The RCMA gives recognition to both monogamous and polygamous marriages, meaning that where a person is a spouse in more than one customary marriage, all such valid customary marriages entered into before and after the commencement of the Act are, for all purposes, recognised as valid marriages.
- 110.** The guiding principle in the development of legislation relating to customary and religious marriages has been the Bill of Rights in the Constitution which is the supreme law of the land. In terms of section 8 of the Constitution, the Bill of Rights applies to all law and binds the legislature, the executive, the judiciary and all organs of state. The development of legislation relating to customary and religious marriages had to comply with the provisions of the Constitution. These are:
  - Section 9 – the right to equality, including the right to freedom from unfair discrimination;

- Section 10 – the right to dignity;
  - Section 15 – the right to freedom of religion, belief and opinion;
  - Section 30 – the right to language and culture; and
  - Section 31 – the rights of cultural, religious and linguistic communities.
111. The right to practice one's culture is entrenched in section 30 of the Constitution which provides that: "Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights."
112. In addition, section 31 of the Constitution states that a community may not be denied the right to enjoy their culture, as long as this is not done in a manner that is inconsistent with the Bill of Rights.
113. The right to practise one's culture includes the right to marry according to its customs. This means that customary and religious marriages can be protected by law as long as they do not violate the rights in the Bill of Rights.

#### **Paragraph 21(b): Awareness measures on the harmful traditional practice**

114. The establishment of the Ministry in the Presidency Responsible for Women in May 2014 has championed the prevention of violence against women through awareness raising programmes and debates with different stakeholders, including Parliament, under the theme "Count me in: Together moving a non-violent South Africa forward". The Ministry also works in collaboration with other departments and local government to convert crime hot spot areas into sports grounds and/or communal vegetable gardens. The Ministry, in partnership with Crime Line South Africa, activated the #365 Days of no violence against women campaign immediately after the end of the 16 Days of Activism for No Violence against Women and Children campaign in 2014, and called on all stakeholders to come on board. Pledges of commitments that were made by participating organisations will be implemented throughout 2015 and going forward.
115. The Department of Women has since been running national gender campaigns throughout the country to raise awareness on different issues towards non-discrimination and the empowerment of women under the theme: "Count Me In". Other awareness-raising initiatives for the public take place in different forms, such as radio and television interviews on sexual offences topics highlighting the measures that are in place for the victims; how implementation of measures are taking place; possible challenges; and the responsibilities of the different role-players.
116. Government, in collaboration with the National Prosecuting Authority, continues to run the Ndabezitha Programme initiated in 2006 (reported in the previous report), which seeks to train traditional leaders and court clerks in rural areas on domestic violence matters and to uproot all cultural beliefs and practices that lead to domestic violence from rural communities. The Department of Justice and Constitutional Development, in partnership with the National Prosecuting Authority and the National House of Traditional Leaders, co-developed the Personalised Safety Plan for Victims of Domestic Violence.
117. During 2012/2013, imbizos (campaigns) were held in Limpopo Province and in the Eastern Cape Province. The programme predominantly focused on the Domestic Violence Act, as well as on protection orders, defaulters, general information about the content of legislation and reference to the Thuthuzela Care Centres.

118. In 2014/2015, seven Ndabezitha imbizos were conducted, focusing on public awareness / education on sexual and other forms of gender based violence, in conjunction with relevant traditional leaders. Included in the programme was an introduction of the Sexual Offences and Community Affairs mandate, the Thuthuzela Care Centres (TCC) model and the position of law relating to sexual offences, domestic violence, child justice, maintenance and trafficking<sup>57</sup>.
119. In a bid to sensitise society on the rights of victims, South Africa also launched the Victims' Rights Week in September 2010. During this week, which is still held annually in September, government departments within the criminal justice system, coordinated by the Department of Social Development, seek to raise public awareness about victims' rights. The public is provided with information about what interventions and services are made available by government to victims of crime. In addition, the week affords government departments an opportunity to respond to issues faced by the public and crime victims, in a coordinated manner.
120. Government forged a partnership with the men's organisation to address violence against women and children and to raise awareness against child poverty and economic abuse of children. The Deputy President is a patron of the Men's Forum.
121. During the 2013/2014 financial year, four national public education and awareness raising events were carried out to educate members of the public about the Maintenance Act and the services offered at courts. These campaigns were also carried out at the provincial level, in Limpopo, KwaZulu-Natal, Eastern Cape and Mpumalanga.
122. From October – November 2014, the National Maintenance Campaign was implemented by Government. Using radio and TV advertisements, fathers were called upon to take pride in supporting their children. The public message / pay-off line for the campaign was: "My child's future is my priority. I pay maintenance".
123. During 2012/2013, Government also conducted the following public education interventions:
  - (i) Stop Teenage Pregnancy campaign, which reached 274 schools and 60 367 teenage learners;
  - (ii) School for the Blind to launch the Braille FAQ's on the Children's Act, which reached 250 blind learners;
  - (iii) Door-to-Door Educational campaign on gender-based violence and trafficking in persons, which reached 80 communities;
  - (iv) Media outreach which involved conducting 11 radio and TV interviews on violence against women;
  - (v) 9 public exhibitions which reached about 31 968 people; and
  - (vi) 8 public service fairs which reached about 12 803 people.

#### **Paragraph 21(c): Media role in addressing violence against women**

124. Media has managed to expose and heighten awareness on the issue of violence against women. In this section results from public perception research on issues affecting South African women are explored.
125. The South African Broadcasting Act, 1999 (Act No. 4 of 1999), provides that the public service delivered by the South African public broadcaster shall strive for a broad range of services targeting women and the previously disadvantaged groups. As a result, policies have been put in place to give guidance on how matters of discrimination and stereotyping are to be dealt with. Arising out of this, the public broadcaster must strive to ensure that when judged, its programming does not –

<sup>57</sup> National Prosecuting Authority: Annual Report 2014/2015

- Promote violence against women;
  - Depict women as passive victims of violence and abuse;
  - Degrade women and undermine their role and position in the society; and
  - Reinforce gender oppression and stereotypes.
126. The implementation of this legislation is monitored through the Independent Communications Authority Act, 2000 (Act No. 13 of 2000) (ICASA). In terms of the Films and Publication Act, 1996 (Act No. 65 of 1996), it is a legal transgression to distribute publications or films which advocate hatred based on race, gender, ethnicity or religion and which incite others to harmful practices. Furthermore, to ensure that women and girls are not portrayed or depicted adversely through advertising in the media, the Advertising Authority (ASA) has been set up to monitor all complaints.
127. Media coverage on gender equality and women empowerment appears to be seasonal and event driven, increasing during Women's Month (August) and during the 16 Days of Activism for No Violence against Women and Children campaign each year, and dropping in the subsequent months. From February 2013, reporting on issues affecting women has shifted from that of empowerment to issues of violence against women, i.e. rape.
128. South Africa adopted the United Nations campaign, 16 Days of Activism for No Violence against Women and Children as one of its strategies to address this scourge. Over the past 16 years, all partners, including government, the private sector, civil society organisations, faith based organisations, the media and others, have generally been successful in raising awareness on the negative impact of violence against women and children, including stereotypes. Every year, all these partners work together to broaden the impact of the 16 Days of Activism campaign.
129. The approach of the Department of Women is to move away from the event-driven 16 Days of Activism for No Violence against Women and Children strategy to programmes that happen 365 days a year. Hence, the launch of the #365 Days for No Violence Against Women and Children campaign, where members of society, including men are mobilised to join hands with government against this scourge, under the theme "Count me in".

#### **Paragraph 21(d): Impact of measures against harmful traditional practices**

130. Through partnerships with the media, this campaign reached out to about half a billion people in 46 African countries through One Gospel, SABC, ANN7, Etv and other media platforms. Interfaith organisations and civil society organisations have been critical in social mobilisation and have expressed appreciation of the closer partnership in the campaigns against gender based violence.

#### **Paragraph 21(e) Development on legislation prohibiting Ukuthwala by the South African Law Reform Commission**

131. The South African Law Reform Commission (SALRC) has issued a Discussion Paper 32, Project 139: The Practice of Ukuthwala, and is currently developing the Bill in this regard in order to determine either abolishing or regulating this practice and has consulted widely on the Discussion Paper. It is currently in the process of developing a Bill to be submitted to Parliament.

#### **Paragraph 22: The practice of virginity testing on girls as young as 3 years old**

132. In order to address the assertion that children as young as 3 years old have undergone virginity testing, South Africa requests the source of this information from the Committee.

### **Paragraph 23: Culture and tradition in South Africa**

133. The Preamble of the Constitution provides that the new post-colonial South Africa “belongs to all who live in it, united in [their] diversity,” that the new South African society shall be one based on democratic values, social justice and fundamental rights and one in which the government is based on the will of the people and where every citizen is equally protected by law.”
134. Culture and its practices are protected in the Bill of Rights. The equality clause (section 9) in the Bill of Rights specifically provides that “everyone is equal before the law and has the right to equal protection and benefit of the law.”
135. It goes further to specifically prohibit the State and all persons from unfairly discriminating, both directly or indirectly, against anyone on one or more grounds, including culture, as detailed in section 9(3) and (4).
136. In section 30, the Constitution provides that “[e]veryone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.”
137. In section 31, the Constitution provides that –  
S31 (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community –  
    (a) to enjoy their culture, practise their religion and use their language; and  
    (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society;  
S31 (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.
138. Commenting on these provisions, the Constitutional Court in *Prince v President of the Law Society of the Cape of Good Hope & Others* 2002 (3) BCLR 231(CC), para 49 said: “Our society is diverse. It is comprised of men and women of different cultural, social, religious and linguistic backgrounds. Our Constitution recognises this diversity. This is apparent in the recognition of the different languages; the prohibition of discrimination on the grounds of, amongst other things, religion, ethnic and social origin; and the recognition of freedom of religion and worship. The protection of diversity is the hallmark of a free and open society.”
139. Given our past in South Africa, it is important that we strive to protect our indigenous cultural practices. These were the subject of domination and subjugation during colonial and apartheid years. In our new constitutional dispensation, we need to strive to give recognition to cultural practices within our constitutional parameters. Culture, however, is not static, but dynamic. We therefore need to question many of our cultural practices and interrogate in a constructive manner the extent to which they conform to the Constitution.
140. Further, the consultation process during the development of the Children’s Act revealed that some of the young girls believed that virginity testing encourages them to abstain until marriage.

### **Paragraph 23: Amendment of the Children’s Act**

141. The challenge to the country’s democracy is that, in the context of our history, indigenous cultural practices were marginalised and distorted for so long. There is a need to find the appropriate balance



between recognising our wonderfully diverse cultural practices and respecting the constitutional framework which promotes the values of "... human dignity, the achievement of equality and the advancement of human rights and freedoms..." and of "... non racialism and non-sexism" as articulated in section 1 of the Constitution. Further, we must also take into consideration that section 16(1) of the Constitution provides that: "Everyone has the right to freedom of expression ...". In order to protect children who may not be able to express themselves freely, section 12 of the Children's Act, 2005 (Act No. 38 of 2005) deals with social, cultural and religious. Practices and provides as follows:

S12 (1) Every child has the right not to be subjected to social, cultural and religious practices which are detrimental to his or her wellbeing.

S12 (4) Virginity testing of children is prohibited."

#### **Paragraph 24: Violence against women**

142. South Africa comes from a past where violence was a norm and justified by the previous state. Within this context, women and children suffered violence and abuse in various forms, including physical, sexual, emotional, psychological and economic.
143. South African law has been, and is still, an amalgam of different legal systems, with its origin on the continent and in Great Britain. The foundation of South African law is Roman-Dutch law, which is itself a blend of indigenous Dutch customary law and Roman law, all of which were influenced by patriarchy. Under Roman law, the marital power of a husband was absolute, and he could chastise his wife even to the point of killing her. Under the old Common law rule, a husband had the right to inflict moderate personal chastisement of his wife, provided he used, as some of the old authorities stated it, something no larger than his thumb.
144. However, at the dawn of democracy, South Africa embarked on a rigorous law reform process to remove the apartheid system laws and to address the history of legally sanctioned violence generally, and violence against women in particular.
145. The South African law reform processes addressed the history of legally sanctioned violence against women in the form of marital power which translated in the woman being treated as a minor as she was seen as her husband's property. South Africa abolished the law on the husband's marital power in 1984.
146. The Prevention of Family Violence Act, 1993 (Act No. 133 of 1993) abolished violence against the wife and members of the family, and criminalised the rape of a wife by her husband (marital rape). The Prevention of Family Violence Act was repealed by the Domestic Violence Act, 1998 (Act No. 116 of 1998). However, it was not entirely abolished as some of its elements were retained, such as section 5 that provided that rape of wife by husband is an offence liable to conviction when found guilty. Currently, marital rape is prosecuted through section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) (Sexual Offences Act) with the notification of the charge in terms of section 5 Prevention of Family Violence Act.
147. Not only does the Constitution prohibit discrimination on the basis of listed grounds in section 9(3), it also provides for the establishment of institutional mechanisms to promote human rights. Chapter 9 of the Constitution establishes six institutions supporting constitutional democracy, which are independent, subject only to the Constitution and the law, and must be impartial and exercise their



powers and perform their functions without fear, favour or prejudice. These institutions have the responsibility to promote the Bill of Rights and to educate the public about the respect of human rights and the negative impact of gender based violence. The relevant institutions in this regard are:

- The South African Human Rights Commission (SAHRC);
- The Commission for Gender Equality (CGE); and
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

Their functions are listed in the Constitution and their relevant legislation applicable to the institution.

**148.** Functions of SAHRC are to:

- (a) promote respect for human rights and a culture of human rights;
- (b) promote the protection, development and attainment of human rights; and
- (c) monitor and assess the observance of human rights in the Republic.

**149.** The SAHRC has the powers, as regulated by national legislation, necessary to perform its functions, including the power to investigate and to report on the observance of human rights; to take steps to secure appropriate redress where human rights have been violated; to carry out research; and to educate.

**150.** Each year, the SAHRC must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment. It also has the additional powers and functions prescribed by national legislation.

**151.** The CGE functions include that it must promote respect for gender equality and the protection, development and attainment of gender equality. The CGE has the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality. It also has the additional powers and functions prescribed by national legislation.

**152.** Further, the work of the SAHRC and the CGE entails proactively conducting investigations on gender and human rights related matters or in response to requests from the members of the public or any institution or organisation submitting such requests. These bodies also deal with complaints received from the public or issues identified proactively by the Commissions, and engage in litigation where necessary in order to promote gender equality and human rights, and to eradicate patriarchal, cultural and religious practices that perpetuate the subordination of women.

**153.** The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, a chapter 9 institution for the promotion of constitutional development, has the following primary objects:

- (a) to promote respect for the rights of cultural, religious and linguistic communities;
- (b) to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and
- (c) to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa.

154. The Commission has the power, as regulated by national legislation, necessary to achieve its primary objects, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities.
155. The South African Government's National Development Plan (NDP) Vision for 2030 places emphasis on 'building safer communities through an integrated approach'. One of the outcomes identified in the Medium Term Strategic Framework (2014 – 2019) is to ensure that "All people in South Africa are, and feel safe". In order to realize the vision of safer communities there is a need to focus on prevention of gender based violence (GBV), through the strengthening of response, support, awareness raising interventions, and communication and information sharing.

**Paragraph 25(a): The report commissioned by the Government, done by the Centre for the Study of Violence and Reconciliation**

156. The report commissioned by the Government, compiled by the Centre for the Study of Violence and Reconciliation did not provide any new information other than confirming what Government already knew and had developed a plan for, a plan which was implemented through the establishment of the Sexual Offences and Community Affairs (SOCA) Unit, IDMT, TCCs, Ndabezitha dialogues, and many other initiatives.
158. Section 65(3) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) (the Sexual Offences Amendment Act) requires the Minister of Justice and Constitutional Development, after consultation with the Minister's responsible for Safety and Security, Correctional Service, Social Development and Health and National Director of Publications, to submit reports to Parliament on the implementation of the Act. As a result, the Justice, Crime Prevention and Security Inter-Ministerial Committee (JCPS IMC) is convened and chaired by the Minister of Justice and Correctional Services to submit these reports annually. It is a Ministerial Committee that performs an oversight role in the execution of the JCPS Delivery Agreement. Outcome 3 provides that "All people in South Africa are and feel safe", and includes government interventions against sexual offences. It therefore becomes the appropriate platform for the implementation of section 65 of the Act.
159. The Ministerial Task Team on the Adjudication of Sexual Offences Matters (MATTSO) was established to investigate the viability of re-establishing the Sexual Offences Courts. The MATTSO officially handed their report to the former Minister of Justice in August 2013, and it ceased to exist in September 2013. The report recommended the re-establishment of the sexual offences courts, and provided a new sexual offences court model that must be followed. It identified 57 regional courts that were resourced closest to the model and recommended that those courts be upgraded to Sexual Offences Courts over a period of 3 years, commencing in the 2013/2014 financial year.
160. MATTSO also recommended the establishment of the governance structure: the National Sexual Offences Courts Committee, to manage the sexual offences courts. This Committee was established in October 2014, led by the DoJ&CD. The Committee has achieved the following to date:
  - Considered the draft regulations for sexual offences courts in terms of the Judicial Matters Second Amendment Act, 2014 and made its recommendations;
  - Considered the National Strategic Plan for the Establishment and Management of Sexual Offences Courts, and made its recommendations; and

- Considered report of the Feasibility Study on the Provision of Nutritional Food for Child Witnesses. This study was conducted by government in partnership with UNICEF.

160. As at December 2012, there were 322 CCTV systems, 98 one-way mirrors and 220 witness testifying rooms. The re-establishment of the sexual offences courts has therefore increased the physical resources by adding the following:

### **Sexual Offences Courts Established during the Period 01 August 2013 to 31 March 2014**

Sexual Offences Courts Established during the Period 01 August 2013 to 31 March 2014							
Region	Dual View CCTV System	Testi-fying Rooms	Private Child/Teen Waiting Rooms	Private Adult Waiting Room	Bar Fridge	Micro Wave Oven	Information Screens
<b>Total</b>	<b>21</b>	<b>21</b>	<b>17</b>	<b>17</b>	<b>18</b>	<b>18</b>	<b>34</b>

Source: Departmental Annual Reports on the Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: April 2013 – March 2014

### **Sexual Offences Courts Established during the Period 01 August 2014 to 31 March 2015**

Sexual Offences Courts Established during the Period 01 August 2014 to 31 March 2015							
Region	Dual View CCTV System	Testi-fying Rooms	Private Child/Teen Waiting Rooms	Private Adult Waiting Room	Bar Fridge	Micro Wave Oven	Information Screens
<b>Total</b>	<b>34</b>	<b>33</b>	<b>28</b>	<b>27</b>	<b>28</b>	<b>28</b>	<b>55</b>

Source: Departmental Annual Reports on the Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: April 2014 – March 2015

161. Training to capacitate criminal justice officials to deal with violence against women has been elaborated on in paragraph 7 of the report.
162. Provincial and national Domestic Violence Work Sessions were facilitated in 2012 to address challenges experienced in terms of the implementation of the Act and National Instruction on domestic violence. An impact study on the Domestic Violence Learning Programme was conducted during period 2013/2014. The South African Police Service conducts regular station visits to monitor compliance.
163. With the promulgation of the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), effective from 1 April 2012, and the Civilian Secretariat for Police Act, 2011 (Act No. 2 of 2011), effective from 1 December 2011, the SAPS is now obligated to report all misconduct cases pertaining to non-compliance with the Domestic Violence Act, 1998 (Act No 116 of 1998) to the Secretariat as of 1 April 2012.

### **Paragraph 25(b) Violence against women awareness raising and education programme through the media**

164. Section 63 of the Sexual Offences Amendment Act makes provision for the establishment of the National Inter-Sectoral Committee on the Management of Sexual Offences Matters (the Committee). The Committee must, among others, advise all the Ministers responsible for the implementation of the Sexual Offences Amendment Act on various matters, including training on the provisions

of the Sexual Offences Amendment Act. The Committee is constituted by departments within the Justice, Crime Prevention and Security cluster. The Department of Women has been co-opted into the Committee since it had not yet been established at the promulgation of the Sexual Offences Amendment Act.

165. This Committee is critical for the coordination and successful implementation of the Sexual Offences Amendment Act, including facilitation and monitoring of the training on the Act. The Departments of Justice and Constitutional Development (DoJ&CD) and Social Development (DSD) have developed and piloted an integrated capacity training manual on Sexual Offences Amendment Act, Victims Charter & Victim Empowerment Policy, and rolled it out to the 9 Provinces between 2008 and 2013.
166. South Africa adopted the United Nations Campaign, 16 Days of Activism on no violence against women and children as one of its strategies to address this scourge. Over the past 16 years, all partners including government, private sector, civil society organisations, faith based organisations, media and others have generally been successful in raising awareness on the negative impact of violence against women and children, including stereotypes. Every year, all these partners work together to broaden the impact of the 16 Days Campaign.
167. Other awareness programmes include 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; as well as the “Brothers for Life” campaign which engages men (aged 30-50) 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.
168. South Africa launched the “#365DaysOfActivism” campaign, which is implemented in partnership with the media and mobilises members of society including men to join hands with government against this scourge with the theme “#CountMeIn”.
169. Through the partnership with media, this campaign reached out to 46 African countries, reaching about half a billion people through One Gospel, SABC, ANN7, Etv and other media platforms. The interfaith organisations and civil society organisations have been critical in social mobilisation and have expressed appreciation of the closer partnership in the campaigns against gender based violence.
170. Public education receives focused attention as a means of preventing sexual violence and gender-based violence, as well as the key driver in empowering the citizens of this country, and court users, with information that they can use to seek legal recourse and redress. The promotion of the rights of women, children, older persons, persons with disabilities, and marginalised LGBTI persons forms a substantial thrust of communication initiatives, driven as part of the commemoration of the government calendar events (i.e. Child Protection Week, World Day of the Elderly, Women’s Month, Youth Month, International Day Disability, 16 Days of Activism, etc.). It is also through proactive and consistent efforts to embed these interventions into all communication platforms, such media, public exhibitions, educational imbizo’s, and government websites, that an impactful and sustainable different against sexual violence is made.
171. During 2014/2015, a detailed public awareness campaign was conducted through: a media education campaign; a television advert on LGBTI issues; decentralised public education campaigns in the regions; public education campaigns for older persons; and public education campaigns on the

ukuthwala custom. The public awareness campaigns reached large numbers of people.

Media public awareness on sexual offences

Format	Type	Language	Estimated listenership / viewership
Radio Public Education	Talk Show	7	33 337 000
Television Public Education	Talk Show / Actuality	4	n/a
National register for Sex Offender Media Campaign	Talk Show	4	23 390 000
Sexual Violence & Child Justice in School	Actuality	4	10 438 000
Print Media Campaign on the National Register for Sex Offenders	Advertorial	1	15 465 000
LGBTI Television Advert [Minister]	Advertorial		TV: 23 000 000 Radio: 118 000 000
Imbizos & Door-to-Door Campaigns	In 9 provinces [Rural & Semi-Urban Communities]	11	34 603
Schools Campaign against Rape, Cyber-Bullying, Sexting and related GBV Crime	In 9 provinces [122 Schools]	11	30 194
Public Education for Older Persons	4 Provinces [7 interventions]	6	2 850
Ndabezitha Programme with Traditional Leaders	3 interventions	3	896
Public Education on the ukuthwala Custom	2 Provinces [3 Intervention]	3	520

### **Paragraph 25(c): Accountability mechanism for implementation of policies and legislation**

172. There are institutional mechanisms that have been established to ensure the implementation of the provisions contained within policies and legislation. These include the MATTSO Team, which was set up in June 2012 to strengthen the sexual offences courts.

### **Paragraph 25(d): budgetary allocations to ensure the necessary implementation of the various projects and programmes, including social support services for victims**

173. There is budget allocated to different departments to carry out responsibilities and support the services that they provide. The reported spending by the Department of Justice and Constitutional Development and the SAPS is detailed in the report on the “Financial year estimates for spending on gender-based violence” by the South African Government<sup>58</sup>. The report indicated a total of R106,855,823 spent by the DOJ&CD, and R40,604,988.58 spent by the SAPS. Thus, a sub-total amount for spending by those two Departments during 2013/14 is R147,460,811.58.

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174. The amount has been utilised as indicated in the tables below:

Summary of costs reported by the Department of Justice for the 2013/14 financial years

Summary of costs reported by the Department of Justice for the 2013/14 financial years	
Item	Cost
Dedicated staff for domestic violence cases	R 30 233 452
Domestic violence research & programmes	R 4 000 000
Establishment of 42 sexual offences courts	R 22 000 000
Specialised sexual offences staff	R 42 172 371
Research on sexual offences	R 450 000
Maintenance of National Register on Sexual Offenders	R 8 000 000

Summary of reported South African Police Service costs related to gender-based violence for the 2013/14 financial years

Summary of reported South African Police Service costs related to gender-based violence for the 2013/14 financial years	
Item	Cost
Training related to domestic violence and sexual offences	R 14 730 000.00
Vehicles related to the policing of sexual offences	R 10 374 988.58
Research & public awareness	R 4 500 000.00
New victim friendly rooms	R 11 000 000.00
Total 2013/14	R 40 604 988.58

## Paragraph 26: Causes, scope and extent of all forms of violence against women

175. The Inter-Ministerial Committee on the Root Causes of Violence Against Women and Children was established by the Cabinet in May 2012 to investigate root causes of violence in general, and specifically violence against women and children and to develop a comprehensive strategy to deal with the scourge of violence against women and children. The Committee comprises of the Ministers of Social Development, Women, Justice and Constitutional Development, Health, Home Affairs, Police and Basic Education. The Committee has commissioned research on the root causes of violence against women and children with the view to develop strategies to fight any form of violence against women and children. The findings of the research report has led to the development of the Integrated Programme of Action which will address violence in general, as well as violence against women and children, working hand in hand with all relevant stakeholders, including civil society and communities. This Integrated Programme of Action has the following four key outcomes that must be achieved by 2018:

- i. The creation of a national enabling environment to transform attitudes, practices and behaviours leading to women and children living free from violence in line with human rights principles;
- ii. Women and children at risk and survivors of violence must benefit from improved access to comprehensive, integrated and timely support services;
- iii. There must be an increased number of female and child survivors utilising long-term care, support and empowerment services; and finally
- iv. Ensuring that women and children are better protected from violence through a strengthened system with supportive legislative, policy, institutional frameworks, adequate resources, organisational capacity and a comprehensive and evolving evidence base.



### **Paragraph 28(a): The status of the Prevention and Combating of Trafficking in Persons Bill**

176. The Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013) was promulgated in 2013.

### **Paragraph 30(a): Women's full and equal participation in decision-making and leadership**

177. Section 174(2) of the Constitution requires the judiciary to reflect broadly the racial and gender composition of South Africa, therefore South Africa embarked on many initiatives to ensure the inclusion of women in the judiciary and to transform the judicial system.
178. The School for Legal Practice, established by the Law Society of South Africa in 1990, is a practical law school. It offers an intensive, postgraduate vocational course at one of the School's nine centres situated around the country. After a student obtains an LLB degree from a South African university, one of the main requirements for admission as an attorney is two years of service under a contract of articles of clerkship with a South African firm of attorneys, or two years' recognised community service. If the prospective attorney attends a full-time practical law school, the two years are reduced to one year. A candidate attorney who completed the School for Legal Practice and served articles of clerkship for a period of one year may sit for the Attorneys' Admission Examination.
179. Acting as a judge or magistrate has also been a practice of allowing suitable candidates to act at the high court or magistrates in order to expose the candidates to judicial work and to train them in order to qualify for being nominated and interviewed for the equivalent position they acted on. This practice has facilitated the appointment of many women into the judicial system.
180. The Gender Statistics in South Africa, 2011 Report, released in 2013 by Statistics South Africa, highlights that according to the percentage distribution of women aged 15-64 years by occupational category, 6% of women are in the professional category as compared to 5.4% males.
181. The Thuthuka programme supports emerging black researchers, more specifically women. Talent Development Strategy supports youth in Science and Mathematics Olympiads and competition for learners and the programme reserves 60% of the participants to girls' learners who are in grade 10-12. Between 2011 and 2013, 70% of the participants in the Talent Development Programme were girls. The Thuthuka programme support women and blacks who are emerging as researchers and this programme have to date awarded 1 058 research grants to 698 women and 594 black researchers.
182. The South African Agency for Science and Technology Advancement (SAASTA) implements a number of projects on behalf of other agencies, including the national Department of Science and Technology. One of these is a Primary School Science Day, which is devoted to promoting science in primary schools and is intended to address the weak international ranking of South African mathematics and sciences, especially in younger learners.
183. The country continues with the implementation of the TechnoGirl programme which is a strategic partnership between the Government of South Africa, UNICEF as a development partner, and an independent service provider. This programme is on-going in the country since its inception in 2005, and targets young female learners in public schools from grades 9 to 12 for job shadowing in the corporate sector. The intention is to create opportunities for career-pathing for young girls,

especially into fields previously dominated by males.

### **Paragraph 30(b): Women candidates and women elected to public office**

- 184.** The Electoral Commission (IEC) is a constitutional body which manages free and fair elections of legislative bodies and institutions through the participation of citizens, political parties and civil society in deepening electoral democracy. In terms of section 181 of the Constitution, the Electoral Commission is one of the institutions that strengthen constitutional democracy. It is independent, and subject only to the Constitution and the law, and must be impartial and exercise its powers and perform its functions without fear, favour or prejudice.
- 185.** The duties and functions of the IEC are further defined in section 5 of the Electoral Commission Act, 1996 (Act No.51 of 1996). These include to:
- (a) manage any election;
  - (b) ensure that any election is free and fair;
  - (c) promote conditions conducive to free and fair elections;
  - (d) promote knowledge of sound and democratic electoral processes;
  - (e) compile and maintain a voters' roll by means of a system of registering eligible voters by utilising data available from government sources and information furnished by voters;
  - (f) compile and maintain a register of parties;
  - (g) establish and maintain liaison and co-operation with parties; and
  - (h) undertake and promote research into electoral matters.
- 186.** Therefore, the IEC and other chapter 9 institutions have programmes to educate the public on their right to vote and be voted for and to investigate violations of those rights. Further, most women in South Africa do participate in the voting processes.
- 187.** There has been a remarkable increase in the number of judges. In 2005, about 28 (13.5%) of 207 judges were women, as reported in the previous report. By 2008, the number of women judges had risen to 30% of the total number of judges in the country, increasing to approximately 34% in 2014.

**Table indicating % representation of women judges from 2011-2014**

Court	September 2011				September 2012				September 2013				June 2014			
	Male	Female	Total	% of female	Male	Female	Total	% of female	Male	Female	Total	% of female	Male	Female	Total	% of female
Constitutional Court	7	3	10	30%	9	2	11	18%	8	3	11	27%	8	2	10	20%
Supreme Court of Appeal	18	7	25	28%	18	8	26	30.7%	17	8	25	32%	18	7	25	28%
Provincial Divisions	129	50	179	27%	136	55	186	28.6%	130	61	191	32.6%	131	72	203	35%
Labour Court					8	4	11	36%	7	3	10	30%	8	3	11	27%
Competition Appeal Court	-	-	-	-	-	-	-	-	-	-	-	-	1	0	1	00%
<b>Total</b>	<b>154</b>	<b>60</b>	<b>214</b>	<b>28%</b>	<b>171</b>	<b>69</b>	<b>234</b>	<b>28.7%</b>	<b>162</b>	<b>75</b>	<b>237</b>	<b>32%</b>	<b>166</b>	<b>84</b>	<b>250</b>	<b>33.6%</b>

- 188.** There are approximately 40% women magistrates in South Africa, with most of them located as Regional Court Presidents (i.e. 50%). Overall women magistrates exceed the 30% mark in all categories of the Magistracy.

**Table showing representation of magistrates according to gender as at October 2013**

Post Class	Total Males	Total Females	Total
Regional Court President	5	4	9
Regional Magistrate	212	112	324
Chief Magistrate	9	9	18
Senior Magistrate	70	40	110
Magistrate	742	508	1250
Percentages	61	39	100
Grand Total	1038	673	1711

### Paragraph 31: Education

- 188.** Government has embarked on several strategies to promote school safety and enhance the implementation of the Guidelines for the Prevention and Management of Sexual Violence and Harassment. The Guidelines were distributed to all schools and serve to enhance measures to create a safe and caring school environment free from all forms of sexual harassment and violence, as well as to assist public schools in maintaining the minimum standard procedures for addressing allegations of sexual violence in schools (DBE, 2010c).
- 189.** South Africa is also deeply concerned about the Committee indicating in the Concluding Observation that “prostitution, exploitative sex and rape are perpetrated in connection with a child’s access to education”. In order to address these issues, South Africa requests the source document.
- 190.** With regard to parity at schools, the report “Education for All (EFA) 2013 Country Progress Report: South Africa”; indicates that gender parity in early childhood development has been achieved between 2007 and 2012 for female and male learners aged 0-4 years. The compulsory education age group is characterised by high enrolments, with 99% of children aged 7-15 years accessing schooling. The table below indicates that parity was achieved in the participation of male and female children in this age group. Between 2002 and 2013, there is approximately equal participation in education by both sexes, with a Gender Parity Index (GPI) of 1 for 7 to 15 years being achieved.

**Percentage of 7-15 years old attending educational institution by gender, 2002-2013**

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Male	96.0	96.7	97.4	97.6	97.4	97.6	97.8	98.3	98.6	98.7	98.5	98.6
Female	96.6	97.6	98.1	97.9	97.8	98.2	98.1	98.6	98.7	98.8	99.1	98.9
Total	96.3	97.2	97.7	97.8	97.6	97.9	97.9	98.5	98.7	98.8	98.8	98.8

### Paragraph 33: Employment

- 191.** In the public service, the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) (BCEA) applies to all employers and workers, but not members of the National Defence Force, State Security Agency or unpaid volunteers working for charity. Section 25 of the BCEA provides that workers may not go back to work within 6 weeks after the birth of a child unless their doctor or midwife says it is safe.
- 192.** There is no wage disparity between men and women holding the same position in the public service; furthermore, the government has issued a Cabinet decision for 50/50 call in the public service to promote non-discrimination against women in employment.
- 193.** Unemployment Insurance Fund (UIF) Maternity Benefits allow that workers on maternity leave whose companies do not have a policy to pay for maternity leave have the right to claim from the UIF. Workers must apply and will be paid at the labour centre of their choice.

194. According to Gender Series Volume 1: Economic Empowerment 2001-2014 released by Statistics South Africa, the table below indicates that the decrease in employment of women is not related to discrimination as there are few gender disparities in employment rates existing for males and females with higher levels of education in 2001 and 2014.

**Percentage of employment rate by sex and Geo-Type, 2001 and 2014**

Geo-type	Male			Female			Total		
	2001	2014	change	2001	2014	change	2001	2014	change
Urban	57.4	55.4	-2.1	45.0	42.8	-2.2	51.1	49.1	-2.0
Rural	42.7	33.4	-9.3	33.9	25.7	-8.2	37.8	29.4	-8.4
Total	51.9	48.6	-3.3	40.4	37.2	3.2	45.8	42.8	-3.0

Source: LFS March 2001 and QLFS Q1: 2014

### **Paragraph 34: Measures to ensure equal opportunities for women in the labour market**

195. The Employment Equity Amendment Act, 47 of 2013 (EEA) and the Employment Equity Regulations, 2014 (EER) came into effect on 1 August 2014, after being amended in order to promote the principle of 50/50 gender representation. Following thereon, the Minister of Labour, in terms of section 54(1) of the Employment Equity Act, 1998 (Act No 55 of 1998 as amended), and on the advice of the Commission for Employment Equity, published a draft Code of Good Practice on Equal Pay for Work of Equal Value ('the Code') for public comment.
196. The objective of the Code is "to provide practical guidance to employers and employees on how to apply the principle of equal remuneration for work of equal value in their workplaces. This Code seeks to promote the implementation of remuneration equity in the workplace by employers, including the State, employees and trade unions through human resources policies, procedures, practices and job evaluation processes."

### **Paragraph 36(a): Implementation of the Maternal Child and Women's Health Strategy (2009-2014)**

197. Diverse interventions to improve maternal child and women's health were implemented in 2010, where South Africa conducted a nation-wide polio and measles campaign targeting children from 6 to 59 months, with 90% coverage respectively. Also, a total of 89.4% South African children under the age of 1 year were immunised to protect them against vaccine preventable diseases. Further, 72.8% of children were immunised with pneumococcal conjugate vaccine. Additionally, 72.2% were immunised with the rotavirus vaccine to reduce their susceptibility to pneumonia and diarrhoea respectively. These were identified as the common causes of mortality amongst children in South Africa and globally.
198. Efforts to improve maternal health were scaled up, and a total of 72% of primary health care facilities providing basic antenatal care was reached. Moving further, 96.9 % of pregnant women agreed to be tested for HIV, and were tested. A total of 81% of maternity facilities conducted monthly maternal and peri-natal morbidity and mortality meetings. Training for health workers in emergency obstetric care and comprehensive obstetric emergency care was also conducted. Emergency obstetric care is the care provided to specific groups of women in cases of emergency, and this includes availability of skills for interventions such as having intravenous fluid line, manual removal of placenta and provision of parental analgesia during labour. Emergency obstetric care also includes the ability to transfuse blood and perform caesarean sections in case of emergency, as well as surgical intervention in cases of post-partum haemorrhages.

199. Sexual and reproductive health services are provided in health facilities at no cost, including family planning and contraception services, cervical cancer screening, termination of pregnancy and services for survivors of sexual assault and rape.
200. Cervical cancer kills more than 3000 women every year, coming second after breast cancer as the most prevalent cancer. As such, a decision was made to roll-out the Human Papilloma Virus vaccine in 2013. 2000 trained vaccination teams visited 90% of schools and over 87% of grade 4 girls were immunised. Going forward, each year, new grade 4s will be immunised to prevent cervical cancer in our future women.

**Paragraph 36(b): Measures to address the impact of HIV/AIDS on women and girls**

201. In 2010, an initiative was launched to overhaul the South African health care system, consisting of the reinvigoration of the Primary Health Care approach to health care delivery, and improving the functionality and management of the health system.
202. South Africa's approach to dealing with HIV and AIDS for women and children is a multipronged strategy comprising of prevention, treatment and support.
  - **Prevention component:** advocacy and social mobilisation, training of peer educators, provision of male and female condoms and correct treatment of sexually transmitted infections.
  - **Treatment component:** managing opportunistic infection through Cotrimoxazole and INH prophylaxis, providing ARTs and treating TB as part of co-infection with HIV.
  - **Care and support component:** providing nutrition for people living with HIV and AIDS, providing Home Based Care, providing Step Down Care to minimise the cost of admitting patients at higher level institution (tertiary or regional hospitals). South Africa provided stipends to 42 756 community care givers, supporting people living with AIDS and its debilitating conditions. Additional intervention for the Care and Support component was the availability of 97 Step Down Care facilities in South Africa, and the facilities contributed to improving quality of care to sub-acute patients.
203. In the treatment of HIV exposed infants, 69% of infants were initiated on Contrimoxazole Prophylaxis therapy to reduce opportunistic infections. This was a critical intervention as opportunistic infections could compromise the health of children and could also result in recurring hospital admissions, which is costly to the state. Moreover, 83.1% of HIV exposed infants were diagnosed during the dried blood spot test. In 2010, exclusive breastfeeding for infants aged 0-6 months was introduced, as it was identified that breastfeeding is an important element of the child survival strategy. As a result, 25% of infants aged 0-6 months were exclusively breastfed.
204. In 2014, the National Department of Health launched the Contraceptive Policy and Clinical Guidelines as a measure to expand the choice of contraceptive methods available. In launching the new Family Planning Campaign, the Minister of Health introduced the new Sub-Dermal Contraceptive Device with the theme "dual protection", advocating consistent use of condoms and another method of contraceptives.

### **Paragraph 36(c): Measures to broaden and strengthen Prevention of Mother to Child Transmission (PMTCT) services**

205. The Prevention of Mother to Child Transmission (PMTCT) attained a total of 79.4% of eligible HIV positive pregnant women placed on Highly Active Anti-Retroviral Therapy (HAART). The PMTCT programme reflected improved outcomes, including improved coverage and sustained declines in transmission rates. In addition, the HIV positivity rate amongst babies decreased in all provinces. The transmission of HIV from mother to newborn child has continued to decline, with fewer infants born HIV positive). The Polymerase Chain Reaction (PCR) positivity rate around six weeks is 1.5% of all babies born to HIV positive women.
206. Measures taken to improve the health of mothers, infants and children include encouraging women to present within 14 weeks of pregnancy for antenatal care, in order to ensure early detection of HIV and AIDS and provision of HIV counselling and testing, thereby promoting the opportunity for monitoring the health of mother and the baby during pregnancy.
207. In 2012, South Africa committed to the ‘ten point plan’, aimed at overhauling the health system and strengthening health care system effectiveness. The focus was on four major outputs:
- increasing life expectancy;
  - decreasing maternal and child mortality;
  - combating HIV and AIDS; and
  - decreasing the burden of death from TB.
208. Government HIV prevention programmes were enhanced by the first initiative of introducing HIV Counselling and Testing Campaign in 2012. The primary focus was scale-up the integrated prevention strategy based on behavioural change, provision of medical male circumcision, scale up syndrome management of STI’s and early Prophylaxis prevention of mother to child transmission.

### **Paragraph 36(d): The intersection between violence against women and HIV/AIDS**

209. Due to the generalised HIV epidemic in South Africa, the National Department of Health (NDOH) and partners developed a National Strategic Plan on HIV, STIs and TB, for implementation starting 2012 until 2016. This was aimed at addressing the structural, social, economic and behavioural factors that drive the HIV and TB epidemics. The main objectives of the strategy were:
- (a) Mainstreaming HIV and TB and its gender and rights based dimensions;
  - (b) Focusing on primary strategies to prevent sexual and vertical transmissions of HIV and STIs, and to prevent TB infections and diseases using a combination of prevention approaches;
  - (c) Achieving a significant reduction in deaths and disability as a result of HIV and TB; and
  - (d) Ensuring the protection of human rights and improving access to justice.

### **Paragraph 36(e): Awareness-raising campaigns on prevention, protection and maintenance of confidentiality in order to systemise and integrate approaches for multiple government sectors**

210. In April 2011, South Africa conducted a nursing summit through the National Department of Health, with the main aim to reconstruct and revitalise the nursing profession for “*a long and healthy life for all South Africans*” through developing an action plan to address nurses’ education, training and practice.



211. PMTCT programmes include strategies to increase male involvement, offer reproductive choices to women living with HIV and provide comprehensive treatment, care and support for the mother.
212. Promotion and distribution of female condoms
213. 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 health care setting.
214. Post-Exposure Prophylaxis (PEP) interventions provide comprehensive medico-legal services to victims of sexual violence including emergency contraception, PEP, trauma counselling and legal services.
215. Gender Equality and HIV Prevention Programme is implemented through strategic research and policy interventions. This programme seeks to mobilise evidence to strengthen the integration of gender equality into the response to HIV and AIDS in southern and eastern Africa. The Programme is framed within a gender equality lens, emphasising that the HIV and AIDS epidemic is not going to be resolved unless gender inequalities are tackled. The Programme also has a specific focus on HIV prevention.
216. The Sonke Gender Justice Network's Community Education and Mobilisation (CEM) unit works closely with men and women from all walks of life and in many different 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 encourages community members to form community action teams (CATs). Government then supports CAT members to use a range of tools and strategies, including participatory workshops, digital stories, photo-voice, ambush theatre, street soccer, murals and community radio. The campaigns that the CEM team implements include:
  - 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.
217. Other programmes include Women in Partnership Against Aids (WIPAA) and Men in Partnership Against Aids (MIPAA).
218. The High Transmissions Areas (HTAs) have programmes that target women at high risk of contracting HIV, such as commercial sex workers. In this programme, peer educators address and educate women about the prevention of HIV and other STIs, the use of condoms (both male & female), and sexual and reproductive health, while condoms are distributed.
219. LoveLife, funded by the National Department of Health, assists with prevention of HIV transmission amongst the youth.
220. HIV prevention programmes for young girls/ young women are implemented through young girls/ young women' clubs targeting females (15-24yrs) where they are taught health education and skills to protect them from contracting HIV.

221. There are also specific programmes targeted at young girls/ young women such as “ground breakers”, where they are taught about sexual and reproductive health, as well as Youth festivals and ‘First Things First’ events at universities and higher education institutions focused on the prevention of HIV and access to ART for HIV infected learners.
222. The Khomanani Campaign outreach programme provides information and educational programmes that have extended their prevention focus to school leavers and young adults and are implemented through well trained volunteers, who interact face-to-face with residents.

#### **Paragraph 36(f): Measures taken, obstacles encountered and results achieved**

223. In April 2010, South Africa launched a national HIV counselling and testing campaign which aimed to test 15 million people by June 2011. On average, close to 10 million people are testing for HIV every year.
224. Regarding access to services and treatment, from January 2010 to September 2011, South Africa increased the number of public health facilities initiating patients on antiretroviral treatment from 495 to 2,948.
225. South Africa has increased the number of nurses accredited to initiate and provide treatment on HIV from 290 to 10,542. All public health facilities in South Africa offer services to pregnant women, including HIV testing.
226. Another major achievement for South Africa is that between April 2010 and June 2011, more than 300,000 people were placed on preventive treatment to stop the activation of TB.
227. South Africa developed a National Strategic Plan on HIV, STIs and TB for 2012-2016 which consists of five goals, namely:
  - (a) reduce new HIV infections by at least 50% using a combination of prevention approaches;
  - (b) initiate at least 80% of eligible patients on antiretroviral treatment, with 70% alive and on treatment five years after initiation;
  - (c) reduce the number of new TB infections as well as deaths from TB by 50%;
  - (d) ensure an enabling and accessible legal framework that protects and promotes human rights in order to support implementation of the NSP; and
  - (e) reduce self-reported stigma related to HIV and TB by at least 50%.
228. The key strategic objectives of the National Strategic Plan include: (a) addressing social and structural barriers that increase vulnerability to HIV, STI and TB infection; (b) preventing new HIV, TB and STI infections; (c) sustaining health and wellness; and (d) increasing the protection of human rights and improving access to justice.

#### **Paragraph 37: Rural women**

229. After the promulgation of the Constitution in 1996, a number of laws on land reform were enacted. The laws included those that defined procedures and circumstances in which an eviction of occupiers may occur. A land reform policy was developed, with the aim to give effect to sections 121-123 of draft the Constitution, and sections 25 and 26 of the final Constitution. However, despite this policy and legislative framework, land is in the hands of whites.
230. The South African Government is fully committed to actively promoting the implementation of legislation to guarantee women’s land, property and inheritance rights, including their right to

housing. In this regard, legislation that guarantees women's access to and control over land and property has been enacted and continues to be implemented.

**231.** The Communal Land Rights Act, 2004 (Act No. 11 of 2004) was enacted:

- to provide for legal security of tenure by transferring communal land, including KwaZulu-Natal Ingonyama land, to communities, or by awarding comparable redress;
- provide for the conduct of a land rights enquiry to determine the transition from old order rights to new order rights;
- to provide for the democratic administration of communal land by communities;
- to provide for Land Rights Boards;
- to provide for the co-operative performance of municipal functions on communal land;
- to amend or repeal laws; and
- to provide for matters incidental thereto.

At the same time, the Agricultural Development Fund Act, 1993 (Act No. 175 of 1993) provides for the establishment of and control over an agricultural development fund for the handling of money received for development. The National Treasury is responsible for the application of the Act.

**232.** Land and Agricultural Development Bank Act, 2002 (Act No. 15 of 2002) (Development Bank Act) provides for a juristic person known as the Land and Agricultural Development Bank. The objectives of the Development Bank are:

- to provide for the mandate of the bank; to provide for the governance of the bank; to regulate the management and control of the bank;
- to provide for the funding of the bank; to provide for the business of the bank;
- to provide for risk management of the bank; and
- to provide for related matters.

However, the country acknowledges the delays in implementation of the legislation in this regard; Government developed a Green Paper on Rural Development and Land Reform to strengthen existing policies and legislation towards addressing the concerns, needs and development of people in the country.

**233.** During the fiscal year 2009-2010, a total of 5,681 females were beneficiaries of the redistribution and land tenure reform programme. This amounted to women benefiting to a total of 150,925.16 hectares of land worth some R1.1 billion. In terms of the land restitution programme, of the 9,294 households making up 48,233 beneficiaries that benefited from the programme, 4,177 were female-headed households. Figures for the shorter period April 2010 to January 2011 indicate that out of 8,658 households with successful claims, 4,412 (51%) were female-headed households. The total land awarded to women in this programme amounted to 145,492 hectares worth some R810 million.

**234.** The target for the land redistribution process was 30% of white owned agricultural land (or 24.5 million ha) in South Africa (which totals 82 million ha). The overall progress from 1994 to 31 March 2014 is that 4,313,168 million ha has been redistributed through 5,015 projects, benefiting 233,250 beneficiaries, of which 50,473 are women, 32,589 are youth and 674 are people with disabilities.

**Paragraph 38: Measures to increase and strengthen the participation of rural women in designing and implementing local development plans**

235. Chapter 2 of the Municipal Systems Act, 2000 (Act No. 32 of 2000) sets out the requirement, amongst others, for newly elected municipal councils to prepare and adopt an integrated development plan (IDP) for their respective areas and to provide for annual revision thereof. The IDP is required, in terms of the Act, to include a spatial development framework (SDF) which must include the provision of basic guidelines for a land use system for the municipality.
236. The Development Facilitation Act, 1995 (Act No. 67 of 1995) (DFA) was originally envisaged as interim legislation post the 1994 national elections to facilitate accelerated housing delivery by waiving other legislation and giving decision making to provincial Development Tribunals (where established). However, it was utilised, to a large extent, by the private sector for the development of, amongst other things, shopping centres, golf course estates, etc. Sections of this legislation have since been declared unconstitutional by the Constitutional Court as it usurped the decision making powers of municipalities and is required to be repealed or amended by June 2012. Note: Despite sections of the Act being declared unconstitutional by the court, its General Principles for Land Development, as contained in Chapter 1, section 3 of the Act, are still deemed valid.
237. The Less Formal Township Establishment Act, 1991 (Act No. 113 of 1991) provides for shortened procedures for the establishment of townships, for less formal forms of residential settlement and to regulate the use of land by tribal communities for communal forms of residential settlement. This Act is administered by the provinces and it provides for the exclusion of certain laws and the suspension of servitudes and restrictive title deed conditions. Although not challenged as yet in the Constitutional Court, this legislation might also, like the DFA, be declared unconstitutional as it shifts decision making from the municipalities to the provinces.
238. In relation to Planning Acts and Ordinances in the provinces, the majority of legislation directly controlling planning in the nine provinces is still pre-1994 legislation enacted by the original four provinces of South Africa. They are all also generally unconstitutional in some or other aspect. Only in KwaZulu-Natal and in the Northern Cape has new planning legislation been enacted and put into effect since 1994 and even here certain aspects (relating to appeals) are challengeable. Some of the other provinces are in the process of drafting new planning legislation. As a result of the Constitutional Court ruling with respect to the DFA and the tardiness of the preparation of the new legislation in some provinces, the Department of Rural Development and Land Affairs recently published the Spatial Planning and Land Use Management Bill for comment and which it hopes to have enacted by June 2012.

### **Paragraph 38: Improved access to health**

239. South Africa continues with the provision of free health care service for all citizens, pregnant women and children under 6 years at hospital level, which has resulted in enhanced access to primary health care services for all in South Africa since 1994.
240. In 2012, Government introduced the Integrated School Health Policy which is linked to the National Health Insurance (NHI) and the revitalisation of primary health care in schools. The policy aims to provide a more comprehensive package of services, which addresses not only barriers to learning, but also other conditions which contribute to morbidity and mortality amongst learners during both childhood and adulthood. The programme also includes a new, more prominent emphasis on the provision of health services in schools, which previously only conducted health screenings and referrals. School-based health services are also set to expand over time, as are services for learners with special needs. More effort is also required on training public servants to assist with implementation of the policy.

### **Paragraph 38: Measures to promote access to education**

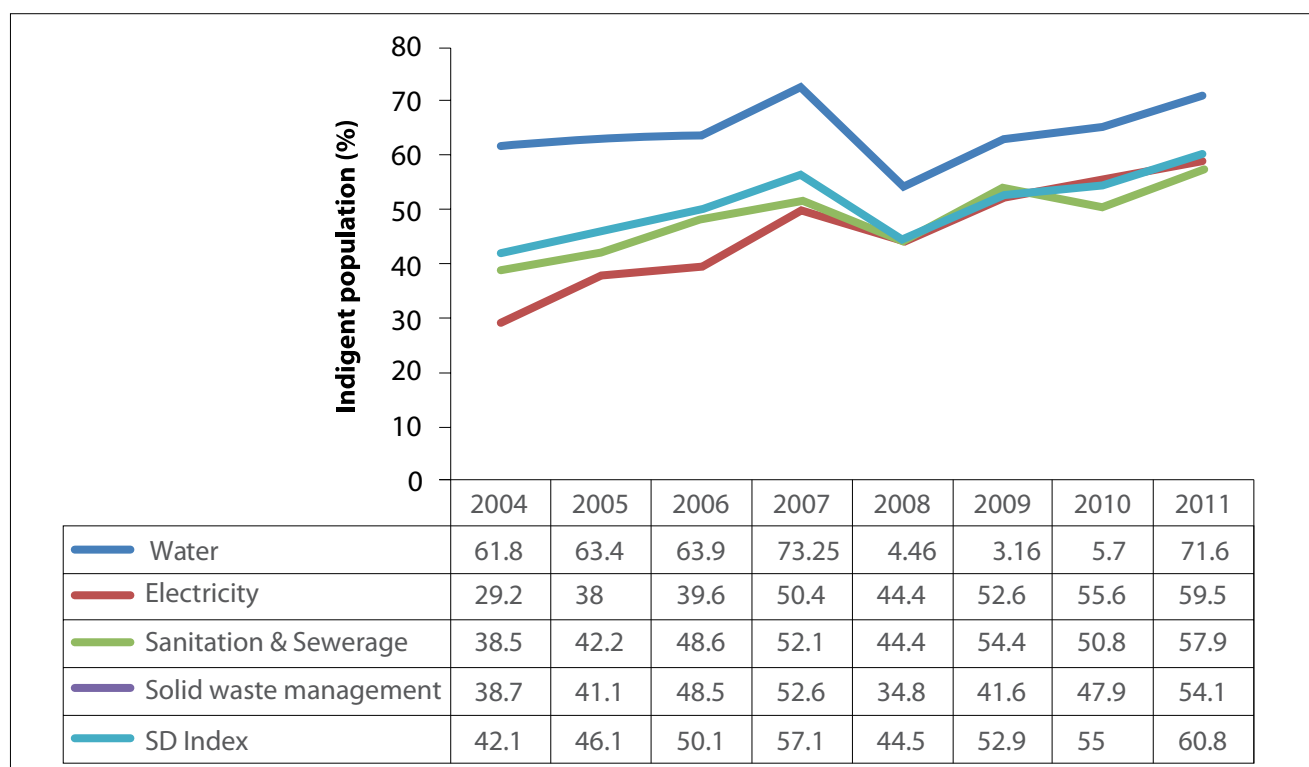
241. There are programmes aimed at retaining learners in schools that have led to dramatic increases in both primary and secondary school enrolment, which include the No-Fee Schools Policy and the National School Nutrition Programme. The programmes assisted many young children living in poverty who may be food-deprived and therefore enabled them to participate fully in education for their own development.
242. The National School Nutrition Programme (NSNP) provides a daily meal to learners, and in the 2010-2011 financial year, a total of 8,281,927 learners in 20,815 schools were reached: 6,536,744 learners in 17,315 primary schools and 1,745,183 learners in 3 500 secondary schools. Since 2008, the budget of the programme has progressively extended to include poor learners in secondary schools and in 2013, it provided meals to over 8 million learners in over 20 000 schools.
243. The No-Fee Schools Policy supports children from poor families as well as orphans (in 2012 at least 6% of all children attending school were orphans). In 2012, 97.5% of learners who did not pay schools fees indicated that schools did not ask for fees or the school was a “no fee paying school”. There was an increase in the percentage of children who are not paying school fees from 94% in 2009 to 97.7% in 2012. The increase in the percentage of learners not paying school fees augurs well with the government for making schooling more accessible through the introduction of no fee schools. Furthermore, it confirms that the national education policies are being implemented successfully in the provinces.
244. The Kha Ri Gude (Let us Learn) Mass Literacy Campaign is regarded as one of the important ways in which the developmental state prioritises the needs of the poor and addresses the right of all citizens to basic education in the official language of their choice. The campaign is intended to provide 4.7 million South Africans with the opportunity to become literate. The campaign enables adult learners to read, write and calculate in their mother tongue, which is in line with the unit standards for ABET Level 1, as well as to learn conversational English. The campaign targets vulnerable groups, including the deaf and the blind. Currently, 80% of the learners are women, 8% are disabled, 25% are youths and 20% are over the age of 60.
245. The National Student Financial Aid Scheme (NSFAS) provides financing opportunities to address poverty as an obstacle to young women accessing higher education and training. The disbursed amount increased from R3.5 billion in 2009 to R7.4 billion in 2011. Government has made huge strides in increasing access to higher education and as many as 991,759 student beneficiaries received R25 million in NSFAS loans and bursaries between 1991 and 2011. However, lack of disaggregation in data does not show how many young women benefitted.

### **Paragraph 38: Measure to promote access to basic services such as clean water and sanitation services.**

246. Social wages in South Africa are packaged in different targeted forms. In the list of these are the following: free primary health care; no-fee paying schools; social grants, (such as old age pensions, and child support grants) and RDP housing; provision of basic and free basic services in the form of reticulated water; electricity; sanitation and sewerage as well as solid waste management to households and in particular those categorised as indigent. In this regard, since 2001, the indigent household is entitled to free six kilolitres of water, fifty kwh of electricity, R50 worth of sanitation, sewerage and refuse removal on monthly basis.



### Access to Free Basic Services for Indigent Households



Access to Free Basic Services for Indigent Household 2004-2011

247. The graph above indicates that for all four services outlined above, a significant improvement has been made from 2004 to 2011. The proportion of indigent households with access to free water, electricity, sanitation and sewerage as well as solid waste management increased by the following percentage points: 9.8, 30.3, 19.4 and 15.4 respectively from 2004 to 2011. These basic services illustrate the extent to which the poor in South Africa access different types of services and have their living conditions cushioned against debilitating vicissitudes of poverty.

### Paragraph 38: Women, land, income-generation projects, ownership, co-sharing and inheritance of land

248. The Constitution and a considerable array of legislation that controls planning within the geographic boundaries of the Republic of South Africa, which includes local and rural development plans comply with the Bill of rights and therefore has since democracy eliminated discrimination against women.
249. Women's ownership of and control over resources is increasingly seen as a key element of women's empowerment. The proportion of households headed by females who owned land used for agricultural purposes exceeded that of males within each province in 2013. The largest growth in the share of households headed by females owning the agricultural land they cultivated within each province occurred in Free State, followed by Western Cape and Northern Cape. In terms of the gender gap in 2013, gender parity ratios in ownership of land used for agricultural purposes were higher among households headed by the white and coloured population groups (GPRs of 1,07 and 0,93 respectively) and lowest amongst black Africans (1,24).

### Paragraph 40: Sexual orientation



250. The National Task Team (NTT) on Gender and Sexual Orientation Based Violence perpetrated against Lesbian, Gay, Bisexual, and Transgender and Intersex (LGBTI) persons was established to develop a National Intervention Strategy 2014-2017 on LGBTI issues. The aim of the National Intervention Strategy is to address so-called “corrective rape” and other forms of violence against LGBTI persons. The NTT was constituted by government departments, chapter 9 institutions and civil society organisations that specialise in issues related to LGBTI persons.
251. The government significantly strengthened the participation of NGOs and civil society in the NTT through a process of consultative workshops with all provinces. A rapid response team was also established to track the pending cases in the criminal justice system, as well as to respond as soon as possible, to cases of violence being reported.
252. The National Intervention Strategy followed a multi-sectoral approach. It included government and civil society and related organisations and addresses sexual orientation-based violence and gender-based violence against LGBTI persons through two programme areas, namely Prevention and Response, on a national level. The ultimate aim is for national, regional and municipal policies, strategies, plans, budgets and legislation to have an integrated, mainstreamed approach to eradicating sexual orientation-based violence.
253. The key motivations for the proposed changes to the law are included in a draft policy framework. At the moment, for the crimes of murder, assault and rape against specific persons or groups, the applicable law still provides for murder as murder, rape as rape, and so forth. But is it important to stress that courts are proactively, and even in the absence of specific hate crimes legislation, beginning to address hate crimes.<sup>59</sup>
254. In this regard, it is important to address the misconception that, in the absence of specific hate crimes legislation, those who commit hate crimes will get away with it. They do not get away with it – they still face the full might of the law, as the case of Duduzile Zozo proves. Our courts are, more and more frequently, handing down appropriate sentences, and where prejudice, hatred or bias is established, this is often found to be an aggravating factor used to impose a harsher sentence.
255. The Rapid Response Team (RRT) was established in 2013 with the purpose to urgently attend to pending and reported cases on hate crimes perpetrated against LGBTI persons. A list of cases was received from civil society organisations. The Rapid Response Team meets quarterly to discuss, amongst others, updates regarding pending cases. The total number of cases on the list in was 45. A selected few of the 45 cases was finalised as follows:
- (i) 8 cases resulted in sentences of imprisonment of 30 years, 22 years, 10 years, 6 years, 15 years, 19 years, 20 years and 15 years, respectively;
  - (ii) Of the two accused persons facing murder and robbery charges: one was sentenced to 20 years imprisonment for murder and the other one sentenced to life imprisonment for murder, plus 13 years imprisonment for robbery;
  - (iii) Charges in 11 cases were withdrawn for various reasons including unavailability of or reluctant witnesses and untraceable accused persons; and
  - (iv) In only 2 cases, the accused persons were acquitted.<sup>60</sup>

<sup>59</sup> In the recent case involving the conviction and sentence of the man who murdered Duduzile Zozo, Judge Tshifwa Maumela acknowledged the problem of hate-crimes in South Africa. He sentenced the man responsible for killing Duduzile Zozo, a young lesbian from Thokoza, to an effective 30 years in prison. Judge Maumela said a harsh sentence for the 23-year-old would serve as a warning to those who threatened the vulnerable and he told the perpetrator to reconsider his attitude towards gay people while he served his sentence. “Lead your life and let gays and lesbians be,” he said.

<sup>60</sup> Report on the Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: 01 April 2014 to 31 March 2015

256. An inter-sectoral communication plan outlining a number of public education and communication initiatives has also been developed. This seeks to popularise inter-sectorial interventions aimed at addressing the violence committed against LGBTI persons, to promote partnerships amongst government, civil society, business and the media in the fight against gender based violence and to encourage communities to report these crimes. A television advert was made to convey a national message to South Africans to promote equality, dignity and freedom protected under the Constitution. The television advert was first flighted during the launch of the LGBTI Programme in April 2014. With SABC, 13 million people were reached through the LGBTI TV advert, a further 10 million people through eTV and community radio reached a further 6.1 million people.

#### **Paragraph 42: Marriage and family relations**

257. The Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009 (Act No. 11 of 2009) was assented to on 19 April 2009 and commenced on 20 September 2010. The Long Title of the Act reads as follows:

“To modify the customary law of succession so as to provide for devolution of certain property in terms of the law of intestate succession; to clarify certain matters relating to the law of succession and the law of property in relation to persons subject to customary law; and to amend certain laws in this regard; and to provide for matters connected therewith.”

#### **Marriage and family relations**

258. Government has put in place a White Paper on Families which contains proposals on how South African families should be supported in order to flourish and function optimally. It calls for families to play a central role in the national development pursuits of the country and the building of a better South Africa. This was preceded by the Green Paper on Families, which is a consultative document.
259. It has become apparent to policy-makers, academics, civil society actors and concerned people over the years that there was no policy framework that specifically addressed the family in South Africa. Given the history of the country and the nature of its political economy, as well as the multiplicity of social ills from the past, which continue to confront the country, the absence of a policy framework in this area was identified as a critical policy shortcoming that needed to be addressed urgently. On the other hand, it is evident that the detrimental effects of the policies of colonial apartheid on the family, for example, land disposessions, and the migrant labour and homeland systems, have a connection with contemporary South Africa.
260. On the issue of family and marriage, social science research demonstrates two almost incontestable conclusions: stable marital structures provide profound benefits for men, women and children, while, on the other hand, the breakdown of stable, marital structures imposes significant social costs upon individuals and society. Marriage is more than the union of two persons; it is a social institution that is culturally patterned and integrated into basic social institutions<sup>61</sup>.
261. Marriage in South Africa is honoured by the Constitution. The Constitution also prohibits marriage discrimination based on sexual orientation. The South African legal system recognises different forms of family: extended families, nuclear families, one-parent families, same-sex families. Marriage is also safeguarded by legislation, such as the Marriage Act, 1961 (Act No. 25 of 1961), the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), and the Civil Union

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61 Young, 2004

Act, 2006 (Act No.17 of 2006). These Acts allow for the legal standing of marriages and civil unions between persons, regardless of their sexual orientation or gender. Broadly speaking, family law supplements the roles of these Acts. It covers substantive and procedural family law rules and norms. These are important in the protection and preservation of families, because they deal with different aspects of the law that have a bearing on family life. Family law governs domestic or family-related issues that pertain to marriage or a legal status similar to marriage, the dissolution of marriage, and aspects relating to children and death.

### **Inheritance**

262. The right to inherit is not expressly provided for in the Constitution. However, cases regarding racial, gender and other forms of discrimination have been dealt with satisfactorily within the existing Bill of Rights and through court decisions. Section 9 on equality and the right against unfair discrimination, has been the basis of inheritance claims involving discrimination. For example, in **Bhe v Magistrate Khayelitsha 2005 (1) BCLR 1 (CC)** the intestate succession scheme under the Black Administration Act, 1927 (Act No. 38 of 1927) (Black Administration Act) preventing succession by women and extra-marital children was declared invalid. The Act and associated regulations (applicable only to persons governed by ‘black law and custom’) were intended to give effect to the customary law principle of male primogeniture. The Constitutional Court declared the Act, the regulations and the rule of male primogeniture invalid, as they infringe on the right to equality.
263. The case of **Shilubana v Nwamitwa 2008 (9) BCLR 914 (CC); 2009 (2) SA 66 (CC)** raised issues about a traditional community’s authority to develop their customs and traditions so as to promote gender equality in the succession of traditional leadership, in accordance with the Constitution. A woman was appointed to a chieftainship position for which she was previously disqualified by virtue of her gender. The Court was called on to decide whether the community has the authority to restore the position of traditional leadership to the house from which it was removed by reason of gender discrimination, even if this discrimination occurred prior to the coming into operation of the Constitution. The matter also raises issues regarding the relationship between traditional community structures and courts of law envisaged by our constitutional democracy. This Court had to consider how courts of law are to apply customary law as required by the Constitution, while acknowledging and preserving the institution and role of traditional leadership and the functioning of a traditional authority that observes customary law.
264. The Legal Resources Centre represented parties in the Constitutional Court cases reported as **Kambule v Master of the High Court and Others (85) [2007] ZAECHC 2; [2007] 4 All SA 898 (E)**. The Legal Resources Centre obtained a judgment, which provided that a customary marriage, though not registered under the Transkei Marriages Act was still valid, helping to ensure legal benefits for the surviving spouse.

### **Property ownership of women**

265. The case of **Gumede v President of the Republic of South Africa and Others 2009 (3) BCLR 243 (CC)** deals with the unfair customary law rule that women could not own property. Mrs Gumede brought a claim of unfair discrimination on the grounds of gender and race in relation to women who are married under customary law as codified in the province of KwaZulu-Natal. The case brought into sharp focus the issues of ownership, including access to and control of family property by women during and upon dissolution of their customary marriages. On one level, it

underlines the stubborn persistence of patriarchy and conversely, the vulnerability of many women during and upon termination of a customary marriage, while at another level the case poses intricate questions about the relative space occupied by pluralist legal systems under the umbrella of one supreme law, which lays down a common normative platform. The Constitutional Court declared, *inter alia*, that the provisions of section 7(1) of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), which regulate the proprietary consequences of a customary marriage, are inconsistent with the Constitution and therefore invalid.

### Uniformed family code

266. The uniform family code recommended by the CEDAW Committee aims to promote equal treatment of all individuals in the family, whatever their race, gender or social origin. This, in principle, means that South Africa should have one marriage law. In any country which does not have a history as complex as that of South Africa, this would be ideal. However, historically speaking, in South Africa other marriages, whether customary or religious, had an unequal status to the marriage concluded under legislation. The system of customary marriage was viewed as ‘inferior’ to the common law and legislation. Its acceptance as ‘law’ was based on a concept of ‘repugnancy’ defined by western, colonial and Christian values. For example, customary unions were not fully recognised because as marriages, being ‘potentially polygamous’, they were ‘against good morals’ (European morals). This inequality between customary law and civil law also reflected a cultural imperialism that denigrated African customs, cultures and values, and regarded these as ‘inferior’.
267. Customary unions, as codified in the Black Administration Act, and as interpreted in the courts, were also institutions in which women suffered an unequal status and rights. The Black Administration Act treated all women, regardless of age, capacity and marital status, as minors [section 11(3)(b)]. As a result, women were not allowed to own property, sue or be sued in court, or to exercise the power to contract. Women could not negotiate or terminate their marriages, nor could they have legal custody of their children. In addition, women were ineligible for rights to communally held land and disqualified from inheriting immovable property.<sup>62</sup>
268. Thus customary law enshrined both ‘internal’ and ‘external’ inequalities. As a system of law that was the personal law of the majority of the population in urban and rural areas, it was unequal to the civil system of law in South Africa. However, customary law was also a major source of gender based discrimination for women who were subject to it. Both of these inequalities (the fact that customary unions were treated unequally by the law and the inequality of women in these unions) drove the reform process after the advent of democracy in 1994.
269. The founding principles of the post-1994 Constitution elevate human rights, equality and freedom for everyone in South Africa. Gender equality is a founding principle and core right entrenched in the South African Constitution. Section 9 of the Constitution protects the rights of all persons to equal protection and benefit of the law, and to freedom from unfair discrimination on the basis of gender, sex, pregnancy and marital status.
270. In addition to singling out non-sexism as one of the core values upon which the new South Africa is founded, the Constitution champions the achievement of equality, including gender equality, throughout its provisions and particularly section 9 thereof. It is stated in section 9 that neither the state, nor any person, may discriminate directly or indirectly on the grounds of, *inter alia*, gender, sex, pregnancy, marital status or any other ground or combination of grounds listed or unlisted in section 9(3). To clarify its approach to equality, the Constitution further states that:

62 For an extensive discussion of women’s inequality in customary marriage see the research by the CALS Gender Research Project published by K Robinson ‘The Minority and Subordinate Status of African Women under Customary Law’ (1995) 11 SAJHR 457.

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

271. Equality is also given prominence in the Preamble to the Constitution where it is stated that –

**“South Africa belongs to all who live in it, united in our diversity”.**

272. The reference to diversity includes racial, gender and other forms of human diversity such as cultural, religious, etc. However, the drafters of the Constitution recognised and made it clear that the realisation of equality, including equality between women and men, was an ideal to be pursued and achieved through the implementation of the Constitution.

273. In the Preamble to the Constitution the following is stated:

“We [the people of South Africa] therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to—

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;

Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;

Improve the quality of life of all citizens and free the potential of each person; and

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.”

274. Implied in the last part of the Preamble of the Constitution is a commitment to comply with international law and human rights standards. In fact the Constitution is aligned with and also serves as an instrument for facilitating South Africa’s compliance with its international human rights obligations. Many of the international human rights standards and resultant obligations relate to women’s human rights and the duty of Parties to take measures to eradicate inequality between women and men in all spheres of life, including the justice system, the family, societal practices and the economy. Indeed, South Africa has specifically committed itself to comply with the provisions of various international instruments, which either specifically promote gender equality or have this as one of the critical compliance responsibilities.

### **The Development of Customary and Religious Marriage Laws**

275. The guiding principle in the development of customary and religious marriages has been the Bill of Rights. The Constitution is the supreme law of the land. In terms of section 8 of the Constitution, the Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state. The development of legislation relating to customary and religious marriages had to comply with the provisions of the Constitution. These are:

- Section 9 – the right to equality, including the right to freedom from unfair discrimination;
- Section 10 – the right to human dignity;
- Section 15 – the right to freedom of religion, belief and opinion;
- Section 30 – the right to language and culture; and
- Section 31 – the rights of cultural, religious and linguistic communities.



## Culture and custom

276. The right to practise one's culture is entrenched in section 30 of the Constitution, which provides as follows:

“Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.”

In addition, section 31 of the Constitution states that a community may not be denied the right to enjoy their culture, as long as this is not done in a manner that is inconsistent with the Bill of Rights. The right to practise one's culture includes the right to marry according to its customs. This means that customary marriages can be recognised by law as long as they do not violate the rights in the Bill of Rights.

277. The need to eradicate the former colonial and apartheid prejudices against African cultural and other religious institutions such as those of the Muslims and Hindus suggests that customary law and the excluded religious laws deserve new respect. Balancing considerations of a uniform, national standard and the pluralism implicit in recognising customary and religious laws involved a lot of debate. Ideals, however, had to be compromised. Plans to unify substantive laws soon foundered on the problem of which law to take as the basis for a new regime: the received European law or an indigenous system? And, if indigenous law, which one? The South African Constitution provides that we can be united in our diversity and we do not have to compromise for the sake of formal equality. Therefore, African law and religious law are to be treated as a national heritage, something to be protected and cultivated.
278. The Recognition of Customary Marriages Act, 1998 (Act No.120 of 1998), gives full legal recognition to customary marriages. In addition, the Act sets out the following main objectives to –
- Recognise customary marriages;
  - Set out the requirements for a valid customary marriage;
  - Provide for registration of customary marriages;
  - Provide for equal status and capacity of spouses;
  - Regulate the proprietary consequences of customary marriages; and
  - Regulate the dissolution of customary marriages.
279. The same applies to the Muslim Marriages Bill, 2010, which has not yet been promulgated as law. Its main objectives are to –
- Recognise Muslim marriages;
  - Set out the requirements for a valid Muslim marriage;
  - Provide for registration of these marriages;
  - Provide for equal status and capacity of spouses;
  - Regulate the proprietary consequences of Muslim marriages;
  - Regulate the dissolution of Muslim marriages; and
  - Provide that custody of the children is determined by the ‘best interests of the children’.
280. In 2009 the South African Law Reform Commission has issued a Discussion Document on Hindu Marriages. The main objective of the proposed Bill is similar to the Act and Bill discussed above, that is, to promote equality between the spouses in any marriage.



281. For South Africa, a unified family code might result in achieving formal equality which, in many instances, discriminates against others indirectly. The aim of recognising diversity is to ensure substantive equality for all.

### **Paragraph 44 and 45: Implementation of the Beijing Declaration and Platform for Action and the Millennium Development Goals**

282. South Africa notes the interrelatedness of the Beijing Declaration and Platform for Action and Millennium Development Goals (MDG) to the CEDAW, and considers all documents in implementations toward women empowerment and promotion and protection of women's rights. The country developed a report on Beijing +20 in early 2015 and is currently finalising its MDG reports that follows the MDG report released in 2014. These reports have been used as reference during compilation of this report.

## **5. PART 2: TREATY-SPECIFIC REPORT**

### **6. ARTICLE 1 - 6**

283. There has been substantial reporting in the combined 2nd, 3rd and 4th Periodic Report on CEDAW in 2008-09 under Article 1, pages 21-2663 on the definition of discrimination against women in the South African Constitution and other legal frameworks. The definition of equality as contained in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No.4 of 2000) (Equality Act), is “the full and equal enjoyment of rights and freedoms as contemplated in the Constitution and includes de jure and de facto equality and also equality in terms of outcomes”<sup>64</sup>. The reach of this Act is broad enough to cover the scope of relevant section in CEDAW. In fact, some of the specific forms of gender discrimination that are prohibited by the Act are paraphrased from CEDAW.
284. Most of these are captured in section 8 of the Equality Act which states that: “Subject to section 6, no person may unfairly discriminate against any person on the ground of gender, including:
- (a) gender-based violence;
  - (b) female genital mutilation;
  - (c) the system of preventing women from inheriting family property;
  - (d) any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl-child;
  - (e) any policy or conduct that unfairly limits the access of women to land rights, finance, and other resources;
  - (f) discrimination on the grounds of pregnancy;
  - (f) limiting women's access to social services or benefits, such as health, education, and social security;
  - (g) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons; and
  - (h) systemic inequality of access to opportunities by women as a result of the sexual division of labour”<sup>65</sup>.

<sup>63</sup> The Presidency, Republic of South Africa: 2008, South African CEDAW Report: progress made on the Implementation of the Convention for the period 1998 to 2008, Pretoria. ISBN: 978-0-621-38280-8

<sup>64</sup> The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No.4 of 2000)

<sup>65</sup> The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No.4 of 2000), Section 8

**285.** Furthermore, South Africa is a signatory to a range of international, continental and regional instruments that inform equality, empowerment of women, promotion of women's rights and dignity as well as protecting children's rights in the legislative, policy and implementation frameworks in the country. Among the raft of human rights and women's empowerment instruments are the following:

- The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa was ratified on 17 December 2004. South Africa is finalising its report which forms the first report on the African Women's Protocol as Part B to the second country report on the African Charter, following the Protocol's entry into force.
- The African Charter on the Rights and Welfare of the Child was ratified in 2000 and South Africa has presented its report in October 2014.
- The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was ratified in 1995 without reservation and its Optional Protocol in 2005. South Africa has since presented a combined 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> periodic report to the CEDAW Committee in January 2011 and the 5<sup>th</sup> periodic report by South Africa is due in 2015.
- The UN Convention on the Rights of the Child was ratified by South Africa in 2000 and the country has submitted its report to the United Nations on the Rights of the Child in 2015.

**286.** The Equality Act calls for the establishment of Equality Courts which have been established in the country. The purpose of Equality Courts is to adjudicate matters specifically relating to infringements of the right to equality, unfair discrimination and hate speech, with a view toward eradicating the ever present post-apartheid spectre which essentially divided the country along racial, gender and monetary related lines. The essence is not in treating everyone equally, but in treating everyone with the same concern and respect.

**287.** The Equality Act stipulates that all High Courts are automatically designated as Equality Courts, but more importantly affords the bulk of adjudicative powers relating to equality matters to the Magistrates Courts. The Department of Justice designates Magistrates Courts as having jurisdiction to entertain equality matters once presiding officers and staff of such Courts receive the appropriate training.

**288.** In 2009, all Magistrates Courts were designated as Equality Courts. Regulations for Equality Courts have also been promulgated.<sup>66</sup> This has improved access to justice as the public can now lodge complaints of unfair discrimination at the Magistrates Court nearest to their community.

**289.** Persons needing assistance when approaching the Equality Court are usually assisted by the clerk of the Equality Court, the South African Human Rights Commission or the Commission for Gender

Equality, as the need may be. Although the Equality Court is a formal court sitting, the rules and procedures are more relaxed than in normal courts. In order to institute proceedings in the Equality Court, it is not a requirement that one must have legal representation. The Equality Courts are free of charge, so the complainant does not have to pay any court fees.

Equality Court: Matters registered

Type of Complaint	2012/2013	2013/2014	%Change
(Dissemination and publication that unfairly discriminates)	27	27	0.00
(Harassment)	78	71	-8.97

<sup>66</sup> Government Notice No R764 of 13 June 2003 (Government Gazette 25065)

(Harassment)(dissemination and publication that unfairly discriminates)	21	1	-95.24
(Hate speech)	255	244	-4.31
( Hate speech) (dissemination and publication that unfairly discriminates)	1	0	100
(Hate speech)(harassment)	50	45	-10.00
(Unfair discrimination)	154	217	40.91
(Unfair discrimination)(dissemination and publication that unfairly discriminates)	5	5	0.00
(Unfair discrimination)(harassment)	10	9	-10.00
(Unfair discrimination)(hate speech)	8	9	12.50
(Unfair discrimination)(hate speech)(harassment)	9	9	0.00
Did not indicate	0	1	100
<b>Grand total</b>	<b>618</b>	<b>638</b>	<b>3.24</b>

**290.** During the reporting period, a 3.2% increase of new matters was observed. Hate speech and unfair discrimination were the leading complaints in 2013/2014, with 255 and 217 matters registered respectively. While there is a 4% decrease in hate speech complaints, unfair discrimination increased by more than 40% .

Equality Court: Matters disposed of

Reporting Period	Dismissed	Finalised	Judgment	Referred to Alternative Forum - Other	Settled Out of Court	Withdrawn	Total Disposed of
2012/2013	28	5	9	54	7	29	132
2013/2014	26	6	5	29	7	19	92
%Change	-7.14	20.00	-44.44	-46.30	0.00	-34.48	-30.30

**291.** During the reporting period, there was a 30% decrease in the total number of cases disposed of. Out of the total cases disposed of, 31.5% were referred to alternative forums. Although an increase in cases enrolled at these courts has been witnessed, it is nonetheless a matter of concern to the government that the Equality Courts are underutilised.

**292.** The South African Government has also made significant progress with the Policy Framework on Combating Hate Crimes, Hate Speech and Unfair Discrimination. The Policy Framework is a result of intense research and will provide for the development of measures to combat hate crimes, hate speech and unfair discrimination. The Policy Framework seeks to introduce a further category of newly-defined hate crimes in instances where the conduct would otherwise constitute an offence, recognised at common law or by statute, and where there is evidence of a discriminatory motive on the basis of characteristics such as race, nationality, religion, sexual orientation and the like. The Policy Framework has largely been finalised. The next step is to open it for public debate.

**293.** A significant development in relation to strengthening South Africa's commitment to deal with discrimination is the development of policy on the Prevention and Combating of Hate Speech, Racial Discrimination, Xenophobia and Related Intolerance. This policy has been approved by Cabinet and is being translated into legislation. As required by the Declaration and Programme of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban in 2001, South Africa has developed a National Action Plan (NAP) of to address the above forms of discrimination. The NAP has been developed by Government, in consultation with national human rights institutions and civil society organisations. The NAP has been submitted to Cabinet, and is being refined with a view to having public consultations, where after it will be deposited to the United Nations.

294. South African Courts have also focused on clamping down discriminatory laws and practices. In **MEC for Education: KwaZulu-Natal v Pillay**<sup>67</sup> the Constitutional Court held that a school policy that forbids the wearing of a small nose stud, worn as a religious and cultural expression, is discriminatory and unconstitutional. The evidence before the Court showed that the wearing of a nose stud was a voluntary practice that formed part of the learner's South Indian Tamil Hindu culture, which was part of her Hindu religion. The school and its policy had therefore interfered with her right to religion and culture. As that burden was not imposed on others, the school's interference amounted to discrimination against her.
295. In **Bhe v Magistrate, Khayelitsha**<sup>68</sup> the Constitutional Court declared unconstitutional and invalid the African customary rule of male primogeniture which only allows an oldest male descendant or relative to succeed the estate of a deceased man. Other cases of note include **Minister of Finance v Van Heerden**<sup>69</sup> which dealt with discrimination within the area of pension fund benefits. The Court held that the Constitution recognises the incontrovertible fact that all are not equal in our country. If legal rules and policies deny this reality, it will simply lead to an entrenchment of existing inequalities: *"The jurisprudence of this Court makes plain that the proper reach of the equality right must be determined by reference to our history and the underlying values of the Constitution."*<sup>70</sup> *As we have seen a major constitutional object is the creation of a non-racial and non-sexist egalitarian society underpinned by human dignity, the rule of law, a democratic ethos and human rights.*<sup>71</sup> *From there emerges a conception of equality that goes beyond mere formal equality and mere non-discrimination which requires identical treatment, whatever the starting point or impact"*<sup>72</sup>.
296. In **Shilubana and Others v Nwamitwa 2008 (9) BCLR 914 (CC)** a dispute arose between Ms Shilubana, the daughter of Hosi Fofeza Nwamitwa, and Mr Nwamitwa, the son of Hosi Malathini Richard Nwamitwa. On 24 February 1968 Hosi Fofeza died without a male heir. At that time, succession to Hosi (the Chieftainship) was governed by the principle of male primogeniture. Therefore, Ms Shilubana, Hosi Fofeza's eldest daughter, was not considered for the position, despite being of age in 1968. Instead, Hosi Fofeza's younger brother, Richard, succeeded him as Hosi of the Valoyi community. The dispute in this case arose following the death of Hosi Richard on 1 October 2001. The Constitutional Court explained that the issue to be decided was whether the community has the authority to restore the position of traditional leadership to the house from which it was removed due to gender discrimination, even if this discrimination occurred prior to the coming into operation of the Constitution. The Court reiterated that section 211(2) specifically provides for the right of traditional communities to function subject to their own system of customary law, including amendment or repeal of laws. If the traditional authority had only those powers accorded it by the narrow view; it would be contrary to the Constitution and would frustrate the achievement of the values in the Bill of Rights as Section 39(2) of the Constitution obliges the Court to develop the customary law in accordance with the spirit, purport and aims of the Bill of Rights.
297. In the case of **Bato Star Fishing (Pty) Ltd v The Minister of Environmental Affairs and Tourism**<sup>73</sup> Ngcobo J observed that: *"In this fundamental way, our Constitution differs from other*

67 2008 (1) SA 474 (CC)

68 2005 (1) SA 563 (CC)

69 2004 (11) BCLR 1125 (CC)

70 Brink v Kitshoff NO 1996 (4) SA 197 (CC); 1996 (6) BCLR 752 (CC) at para 40; Hugo above n 26 at para 41; Prinsloo v Van der Linde and Another 1997 (3) SA 1012 (CC); 1997 (6) BCLR 759 (CC) at para 31; Pretoria City Council v Walker 1998 (2) SA 363 (CC); 1998 (3) BCLR 257 (CC) at para 26; Satchwell above n 26 at para 17.

71 See, for example, sections 1(a), 7(1) and 39(1)(a).

72 Para 26.

73 2004 (7) BCLR 687 (CC).

*constitutions which assume that all are equal and in so doing simply entrench existing inequalities. Our Constitution recognises that decades of systematic racial discrimination entrenched by the apartheid legal order cannot be eliminated without positive action being taken to achieve that result. We are required to do more than that. The effects of discrimination may continue indefinitely unless there is a commitment to end it.”<sup>74</sup>*

**298.** In **Minister of Home Affairs v Fourie 2006 (1) SA 524 (CC)** Sachs J held that: “*A democratic, universalistic, caring and aspirationally egalitarian society embraces everyone and accepts people for who they are. To penalise people for being who and what they are is profoundly disrespectful of the human personality and violatory of equality. Equality means equal concern and respect across difference. It does not presuppose the elimination or suppression of difference. Respect for human rights requires the affirmation of self, not the denial of self. Equality therefore does not imply a levelling or homogenisation of behaviour or extolling one form as supreme, and another as inferior, but an acknowledgement and acceptance of difference. At the very least, it affirms that difference should not be the basis for exclusion, marginalisation and stigma. At best, it celebrates the vitality that difference brings to any society*”.<sup>75</sup>

**299.** The table below presents a summary of some of the landmark decisions made the Constitutional Court, Supreme Court of Appeal and the High Courts that have been rendered since the advent of constitutional democracy in South Africa.

Landmark cases on the rights of women

	Case	Summary
<b>Violence against women</b>		
1	<b>S v Jackson, 1998 (4) BCLR 424 (SCA)</b>	The common law cautionary rule in cases of sexual violence was abolished since it was based on discriminatory, irrational and outdated perceptions.
2	<b>S v Baloyi, 2000 (1) BCLR 86 (CC)</b>	Constitutional Court declined to declare unconstitutional the reverse onus of proving absence of guilt on a person charged with breach of a family violence interdict.
3	<b>Carmichele v Minister of Safety &amp; Security &amp; Another, 2001 ZACC 22</b>	Constitutional Court upheld an application by a woman to have the state held liable for her brutal attack by a man, who at the time, was awaiting trial for having attempted to rape another woman and had been released without bail despite his history of sexual violence.
4	<b>Ntsabo v Real Security, 2003 4 ILJ 2341 (LC)</b>	The Court held that an employer is liable in damages for the sexual harassment of an employee if he fails to investigate allegations of such harassment.
5	<b>Van Eeden v Minister of Safety &amp; Security, 2003 1 SA 398 (SCA)</b>	Supreme Court of Appeal upheld an appeal by a woman who sought damages from the state following her sexual assault, rape and robbery by a known criminal who had escaped from police custody.
6	<b>S v Ferreira, 2004 4 All SA 373 (SCA)</b>	Taking into account the grim complexities of battered women’s choices, the Supreme Court drastically reduced the sentence of a woman who had hired killers to murder her domestic partner after enduring years of abuse from the partner.
7	<b>Grobler v Naspers BPK en ‘n Ander, 2004 (4) SA 220 (C)</b>	The Court held an employer vicariously liable for damages caused by sexual harassment of its employee.
8	<b>Masiya v Director of Public Prosecutions Pretoria &amp; Another, 2007 (8) BCLR 827</b>	Constitutional Court extended the definition of rape to include non-consensual anal penetration of the anus of females, which was until then not provided for in the statutory definition of rape.
<b>Succession</b>		
9	<b>Amod v Multilateral Motor Vehicle Accidents Fund, 1999 (4) SA 1319 (SCA)</b>	The Supreme Court of Appeal upheld a widow’s compensation claim relating to the loss of a breadwinner following the death of her husband, to whom she had been married in terms of Islamic Sharia law.

<sup>74</sup> Para 74

<sup>75</sup> Para 60



10	<b>Bhe &amp; Others v The Magistrate, Khayelitsha, 2005(1) SA 580 (CC)</b>	The Constitutional Court declared unconstitutional and invalid the African customary rule of male primogeniture, which allows an oldest male descendant or relative to succeed to the estate of a Black person.
11	<b>Gumede v President of South Africa, 2008 ZACC 23</b>	Constitutional Court held that a woman who entered into a customary marriage before the commencement of the Recognition of Customary Marriages Act was still entitled to a share of the matrimonial property upon the dissolution of the marriage.
12	<b>Shilubana &amp; Others v Nwamitwa, 2008 (9) BCLR 914 (CC)</b>	Constitutional Court held that the traditional practice of appointing males as chiefs could be developed. In this case, the court did so in order to allow for the appointment of a woman as a chief in line with right to equality.
13	<b>Hassam v Jacobs NO, 2009 ZACC 19</b>	Constitutional Court declared invalid provisions of the Intestate Succession Act 81 of 1987 which excluded widows of polygamous Muslim marriages from the protection of the Act.
<b>Socio-economic rights</b>		
14	<b>Minister of Health &amp; Others v TAC, 2002 (10) BCLR 1075</b>	Constitutional Court held that a restriction on the public availability of Nevirapine, an antiretroviral drug that reduces HIV mother-to-child-transmission during pregnancy, was unreasonable.
<b>Nationality and immigration</b>		
15	<b>Dawood &amp; Another v Minister of Home Affairs, 2000 (8) BCLR 837</b>	Constitutional Court upheld an application to declare unconstitutional provisions of the Aliens Control Act restricting foreign spouses from joining their South African spouses in South Africa.
16	<b>Booyesen &amp; Others v Minister of Home Affairs &amp; Another, 2001 (7) BCLR 645 (CC)</b>	Constitutional Court confirmed an order declaring unconstitutional and invalid provisions of the Aliens Control Act which required an application by a foreign spouse for a work permit to be only made while the applicant is still outside the country.
17	<b>Minister of Home Affairs and Others v Watchenuka and Others, 2004 1 All SA 21 (SCA)</b>	Asylum seekers were granted the right to work.

**300.** In essence, the judgments of South African courts are continuously being factored into the policies of Government to ensure the strengthening of a human rights culture in the country. In order to further combat unfair discrimination, it is imperative that people and communities are made aware of their constitutional rights. In this regard, various programmes have been undertaken by government to raise human rights awareness.<sup>76</sup>

**301.** South Africa still remains one of the most inequitable countries in the world. When using the Gini coefficient measurement, inequality increased from 0.64 in 1995 to 0.69 in 2005, but improved to 0.65 in 2010/2011. In 2012, the median earnings for a white man were six times as high as for an African woman. The disparity was mostly not a result of unequal pay for the same kinds of work, although that remained a factor. The main reason for pay differentials was that Africans,

and especially African women, were more likely to be employed in lower-level jobs. As a result of this disparity in employment, the average income for females remains far less than their male counterparts' salaries. Inequalities in access to work and pay are also reflected in household incomes. In 2012, the median income for an African household was under R3, 000. For Coloureds and Indians, it was just over R7, 000, while for whites it was around R20, 000.<sup>77</sup>

**302.** The past decade has seen the rise of the black middle class. There was a significant shift in the country's Living Standard Measure (LSM) distribution between 2001 and 2010. The LSM is a tool

<sup>76</sup> For example, the Department of Justice and Constitutional Development's Access to Justice and Promotion of Constitutional Rights Programme set out to contribute to the strengthening of democracy by improving access to justice and promoting constitutional rights. The aim of the programme was to build greater awareness and knowledge of constitutional rights. The three key result areas of the programme were improved access to justice, including restorative justice mechanisms; improved awareness and knowledge of constitutional rights in South Africa, and enhanced participatory democracy through public policy dialogue and strengthening of civil society organisations. Under those goals, particular attention was given to vulnerable and marginalised groups, particularly those in townships and rural areas and to the building of partnerships with CSOs. 9 million persons were reached through popular education programmes, 360 000 farm workers and farm dwellers and 5 400 CSO members benefited from capacity building programmes. In addition 100 Community-based Advice Offices - who ensured that more than 100 000 migrants were provided with legal support services - and more than 1 300 civil society organisations benefited from the programme.

<sup>77</sup> 20 Year Review



to group populations in terms of their living standards, based on the goods, services or luxuries available to them. The ranking ranges from 1 (poorest living standards) to 10 (highest living standards). Specifically, between 2001 and 2010:

- The LSM 1–4 bracket shrank by 4.6 million people
- The LSM 5–6 group grew by 5 million people
- The LSM 7–10 group swelled by 4.7 million people

303. Despite rising average income levels and the rise in the black middle class, levels of inequality have remained high, with the richest 10 percent of households capturing over half of the national income.
304. Broad-Based Black Economic Empowerment (B-BBEE) aims to ensure that the economy is structured and transformed to enable the meaningful participation of the majority of its citizens and to further create capacity within the broader economic landscape at all levels. This will be achieved through skills development; employment equity; socioeconomic development; preferential procurement; enterprise development, especially small and medium enterprises; promoting the entry of black entrepreneurs into the mainstream of economic activity; and the advancement of co-operatives. B-BBEE needs to be implemented in an effective and sustainable manner in order to unleash and harness the full potential of black people and to foster the objectives of a pro-employment developmental growth path.
305. Following the 2014 national elections, His Excellency President Jacob Zuma pronounced on the establishment of a Ministry in the Presidency Responsible for Women with its concomitant Department of Women. The South African Government's commitment towards equity, equality, women's rights and dignity as well as the provision of development opportunities for women and girls, keeping in mind the heterogeneity and diversity that exists among women, is manifest in the manner in which the institutional arrangements for advancing women have evolved since the country's adoption of the Beijing Declaration and Platform for Action in 1995. This evolutionary trajectory began with the subsequent establishment in 1997 of the Office on the Status of Women at the highest nodal point of Government, i.e. the Presidency.
306. Around 2009, South Africa undertook a fifteen year review of the progress made by the country following the nascent of democracy in 1994. This process resulted in Government embarking on an accelerated process towards transformation, the attainment of freedom, human rights, especially women's rights and dignity, development and empowerment of its citizens. Consequently, after an assessment of the progress made and challenges that still persisted regarding women's advancement, the Fourth Administration that came into Government following the national elections in April 2009, maintained women's development and empowerment as a national priority issue. This was underscored by the establishment of a line Ministry of Women, Children and People with Disabilities on 10<sup>th</sup> May 2009.
307. In 2014, the incoming Fifth Administration elevated the status of women's issues by establishing a dedicated Ministry and locating it back into the Presidency. This strategic move provides the Ministry with greater authority on matters of women's rights, empowerment and equality. Thus, the mandate of the Minister in the Presidency Responsible for Women includes an oversight function over other line ministries to monitor the progress of women's empowerment and development. Furthermore, the Minister's mandate includes promoting mainstreaming of women's empowerment and equality across Government, the private sector and in civil society in general. The work of the

Ministry and its Department is guided by the South African National Policy Framework, adopted by Cabinet in 2000.

308. This Policy was outlined in great detail in Article 3 (p 43) of the previous periodic report of the country in 2008<sup>78</sup>. It specifically vests the responsibility for women's empowerment and gender equality with the Minister in the Presidency Responsible for Women, while placing the responsibility for gender mainstreaming as a strategy for realising gender equality in all members of Cabinet, government entities, the private sector and civil society, and at all levels of decision-making.
309. This National Policy Framework outlines the mandates, structure and functions of the facilitative components of the National Gender Machinery (NGM) for women's empowerment. In South Africa, the term "national gender machinery" refers to "an integrated package" of structures located at various levels of state (in National, Provincial and Local Government and in National Parliament, Provincial Legislatures and Local Municipal Councils), civil society and within the statutory bodies (such as the Commission for Gender Equality [CGE]). The NGM is primarily a facilitative mechanism for women's empowerment, and its role is therefore accordingly that of advisory and technical assistance to facilitate compliance by the mainstream structures. It was outlined at length in Article 3 (pp 44-45) of the previous periodic report of the country in 2008<sup>79</sup>.
310. Other public institutions such as the South African Human Rights Commission (SAHRC); the Commission for Gender Equality (CGE); Equality Courts; the Commission for Conciliation, Mediation and Arbitration (CCMA); the Office of the Public Protector; Sexual Offences Courts; Family Courts; Land Commission; and the Land Claims Courts are available for challenging discrimination and obtaining recourse.
311. Institutional mechanisms were also established at the National Parliamentary and Provincial Legislative levels where a Women's Caucus and multi-party oversight parliamentary committees were created on women's empowerment and gender equality.
312. The Independent Police Investigative Directorate Act<sup>80</sup> established the Independent Police and Investigative Directorate (IPID). IPID replaces the Independent Complaints Directorate (ICD). IPID is a government department established to investigate all deaths as a result of police action or that occur in police custody, and complaints of brutality, criminality and misconduct against members of the South African Police Service (SAPS) and the Municipal Police Service (MPS). It is established in terms of section 206(6) of the Constitution, which makes provision for the establishment of an independent police complaints body. It operates independently from the SAPS and the municipal police department in the investigation of alleged misconduct and criminality by SAPS members.
313. The mandate of IPID is to conduct independent and impartial investigations of specified criminality committed by members of the South African Police Service and the Municipal Police Services. IPID must, amongst other things, investigate the following matters: any deaths in police custody; deaths as a result of police actions; any complaint relating to the discharge of an official firearm by any police officer; rape by a police officer, whether the police officer is on or off duty; rape of any person while that person is in police custody; any complaint of torture or assault against a police officer in the execution of his or her duties.
314. In **Head of Department, Department of Education, Free State Province v Welkom High School; Head of Department, Department of Education, Free State Province v Harmony High School**<sup>81</sup> the Court considered the rights of pregnant learners and policies which state that

78 The Presidency, Republic of South Africa: 2008, South African CEDAW Report: progress made on the Implementation of the Convention for the period 1998 to 2008, Pretoria. ISBN: 978-0-621-38280-8

79 The Presidency, Republic of South Africa: 2008, South African CEDAW Report: progress made on the Implementation of the Convention for the period 1998 to 2008, Pretoria. ISBN: 978-0-621-38280-8

80 Act No 1 of 2011

81 2013 (9) BCLR 989 (CC)

pregnant learners must be absent from school for a certain period of time. In this case, a 16-year old learner in Grade 10 at Harmony High School in the Free State fell pregnant. She continued attending classes and passed her grade 10 examinations. The following year she returned for grade 11 and attended classes for the first and second terms. During the winter school holidays she gave birth. She then returned to school for the third and part of the fourth school terms. In October, only a month before final examinations and in accordance with the school's pregnancy policy, the learner and her mother were instructed that she would not be admitted to school for the remainder of the year and should return only in January of the next year. This meant that the learner would not be allowed to write her year-end examinations and would then have to repeat grade 11.

315. The Court found that these policies violate pregnant learners' constitutional rights and therefore ordered that the policies be reviewed. The Court considered the policies and found that the policies differentiated between male learners and female learners. At Harmony High School only pregnant learners (or learners who have given birth) are required to leave school – male learners who are equally responsible for the pregnancy are permitted to continue their education without interruption and the policy contains no provisions regarding a “leave of absence” for paternity purposes. Therefore the policies lead to unfair discrimination, as it treats boys and girls differently.
316. Secondly, the policies limit pregnant learners' fundamental right to basic education in terms of section 29 of the Constitution by requiring them to repeat up to an entire year of schooling. Although in theory they are entitled to return to school and therefore to complete their education, many learners simply cannot afford to add an extra year to their studies. Moreover, statistics from Harmony indicated that two-thirds of the learners who fell pregnant never returned to complete their secondary-school education. The policies thus have drastic effects on learners' ability to complete their schooling.
317. Thirdly, the policies violated learners' rights to human dignity, privacy and bodily and psychological integrity by obliging them to report to the school when they believe they are pregnant. In addition, all other learners are required to report to school authorities when they suspect that a fellow learner is pregnant. The policies thus have the effect of creating an atmosphere in which pregnant learners feel the need to hide their pregnancies rather than seek help from school authorities for medical, emotional and other support.
318. Since the dawn of democracy in South Africa in 1994, the Government of the Republic of South Africa has committed to a determined human rights framework. In the same year, the second Women's Charter, the Women's Charter for Effective Equality was adopted and launched on 9<sup>th</sup> August 1994, National Women's Day, by the Women's Coalition. This charter was to form the basis for all political, legal and legislative strategies on women, as well as a source for contributing to the writing of the Interim Constitution of South Africa, 1993 to ensure that women's rights were integrated. This Charter gave expression to the common experiences, visions and aspirations of South African women, providing the platform for women to voice out their call for respect and recognition of their human dignity, rights and change in their status and material conditions in a future South Africa.
319. From 1994, the principle of ‘gender equality’ influenced policy formulation in development-related areas such as access to land, housing, water, health care, protection and public works programmes as well as significant increase in women's representation in decision-making positions in the state, private sector, political parties and all aspects of life.
320. With regards to female inmates, South Africa implements the UN Standard Minimum Rules for

the Treatment of Women Prisoners, and more so the elimination of violence against women in the field of crime prevention. Key to the frameworks being implemented is the White Paper on Corrections, which is viewed as a blue print for ensuring humane, just and safe correctional facilities that focus on the rehabilitation of offenders. Government has further adopted an approach that is focused on improving the conditions of female inmates in correctional facilities, and is committed to taking special care of the female offender population. This means that there had to be an increase in resources allocated to female correctional centres. A very significant achievement during the 2011/12 financial year was the establishment of Mother and Baby Units for women offenders who are serving time and have their babies with them in correctional centres.<sup>82</sup>

**321.** Government is ensuring that the sentences of the courts are carried out, but that offenders are incarcerated and rehabilitated in such a manner that they can be successfully re-integrated back into the community and there is minimum recidivism, and aims to achieve the following:

- Regular review of all standard operating procedures and policies to ensure that issues of women are favourably addressed in the implementation of incarceration and corrections;
- Ensuring that national special commemorative days, such as Women's Day, are made available to the offender population;
- Providing women placed on parole with opportunities to develop themselves as part of the development possibilities available to sentenced offenders;
- Partnering with external stakeholders such as NGOs, faith based organisations and other civil society structures to enhance support provided to women in the form of corrective and rehabilitation initiatives; and
- Developing and implementing mother and child units in the correctional facilities to ensure that mothers take care of their children and that those children born in incarceration are afforded a normal life as much as possible through early childhood development programmes and interaction with other children of mothers in incarceration.

**322.** Several interventions were introduced or strengthened to address gender-based violence and sexual offences against vulnerable groups, in particular women and children. These interventions included the following:

- Specialised courts dedicated to sexual offences;
- Thuthuzela Care Centres to help prevent secondary trauma for victims of these crimes;
- Introducing specialised police units (such as family violence, child protection and sexual offences units);
- Resourcing and establishing victim-friendly rooms at police service points;
- Empowering prosecutors, police officers, magistrates and doctors with specialised skills; and
- Keeping dangerous sexual offenders under long-term supervision on release from prison.

**323.** The Criminal Law (Sexual Offences and Related Matters) Amendment Act<sup>83</sup> was passed in 2007. This Act provides for expanded definitions of crimes, such as rape, and provides greater protection for children. A number of new policy frameworks were also introduced and implemented, including the Child Justice National Policy Framework, the Restorative Justice National Policy Framework (including forming linkages with traditional justice), the Social Crime Prevention Strategy and the Diversion Accreditation Framework. Government has also adopted a Plan of Action to combat violence against women and children.

<sup>82</sup> Department of Correctional Services Annual Report 2011/2012

<sup>83</sup> Act 32 of 2007

- 324.** The increase in the number of reported sexual cases in 2008/09 is most probably due to the expansion in the definitions of certain sexual offences in 2007. Since then, the number of cases per annum has generally declined, but it is cause for concern that the number of reported cases rose again by almost 2,000 in 2012/13, in comparison with 2011/12. This indicates that the country clearly still needs to reduce violent and sexual attacks against the vulnerable, in particular women, children, the elderly, and lesbian, gay, bisexual, transgender and intersex people.<sup>84</sup>
- 325.** In 2014, South Africa re-established Sexual Offences Courts as an innovative measure to improve the prosecution and adjudication of sexual offences and ensure that vulnerable groups get the care, respect and support they need. In December 2014, Government finalised a National Strategy for Intersectoral Management of Sexual Offences<sup>85</sup> which encourages an intersectoral approach to all matters relating to Sexual Offences Courts. It sets out clear duties and responsibilities of all stakeholders in the establishment and management of these courts. The National Strategic Plan also provides for the minimum uniform personnel required at each sexual offence court to include: (i) 1 presiding officer; (ii) 2 prosecutors; (iii) 1 intermediary; (iv) 1 designated clerk; (v) 1 designated social worker; (vi) 1 legal aid practitioner; and (vii) 1 court preparation / victim support officer.
- 326.** All victims should have access to services such as court preparation programme; information material in form of text, visuals and Braille; allocation of food for children, vicarious trauma programmes for personnel working with victims of sexual violence as well as a case-flow management system and screening policy to direct sexual offences cases to sexual offences courts where they are established.
- 327.** At present, there are 185 intermediaries deployed to all Sexual Offences Courts and other regional courts dealing with sexual offences cases<sup>86</sup>. There is further a pool of 48 ad hoc intermediaries to close the gap whenever the need arises. In some courts, 46 social workers employed by Government continue to augment these services. These dedicated services use intermediaries, audio-visual equipment and specialised training, among others. Government has a very clear and well-coordinated strategy and we are beginning to see the results thereof – the drop in the number of cases of reported sexual offences being a case in point.
- 328.** In the past 5 years, several interventions were introduced to address gender-based violence and sexual offences against women and children. Government re-introduced the specialised Family Violence Child Protection and Sexual Offences (FCS) Units and nationally there are 176 established FCS units attached to all police stations. This has resulted in lengthy convictions, achieved through the dedicated work of detectives and prosecutors. In 2013, since the re-establishment of the FCS units, there were 1,194 life sentences secured over a three-year period: 306 in 2010/2011; 389 in 2011/2012 and 499 in 2012/2013. Sentences past over this period led to a combined 36,225 years of imprisonment.
- Resourcing and establishing victim-friendly rooms at police service points are on-going. There are currently 919 Victim Friendly Facilities rendering victim support services in place and it is envisaged that this will be rolled out to all police stations.
- 329.** Thuthuzela Care Centres (TCCs) embody a coordinated approach in the way the country effectively manages sexual offences. In 2013, at the 51 TCCs providing services, a total number of 30,706 matters were reported, of which 2,769 were trafficking, domestic violence or Children’s Act matters; the remaining 27,947 matters were sexual offences related.

<sup>84</sup> 20 Year Review, p.140

<sup>85</sup> JCPS Working Group (DEVELOPMENT COMMITTEE) input: January 2015

<sup>86</sup> Ibid



- 330.** For the same year, the National Prosecuting Authority produced an average conviction rate for TCC cases of 65.9%, which was the best conviction rate over a period of 5 years. Of the 2,357 cases finalised with a verdict, 1,554 (65.9%) resulted in a conviction. This is also an improvement of 13.3% compared to the 2012/13 financial year. During the 2013/14 financial year, the TCC cases per accused and per offence, which resulted in convictions included, amongst other things, 151 sentences of life imprisonment, 132 sentences of 20-25 years imprisonment and 455 sentences of between 10 and less than 20 years imprisonment.
- 331.** The TTC's integrated approach to rape care is one of respect, comfort, restoring dignity and ensuring justice for victims of sexual violence. The management of the TCC model and roll-out falls within the responsibility of the NPA. Its success is based on effective and efficient stakeholder cooperation, such as between the Departments of Justice, Health, Education, Treasury, Correctional Services, Social Development, the South African Police Service and designated civil society organisations. The TCC model is specifically focused on being victim-friendly and court-directed, with prosecutor-guided investigations and stakeholder cooperation. The ultimate goal is to minimise secondary victimisation, reduce the cycle period for the finalisation of cases and to increase the conviction rates of these cases. When reporting a crime, the victim is removed from an environment such as a police station, to a more victim-friendly environment before being
- 332.** transported by police or an ambulance to the Thuthuzela Care Centre at the hospital. The person also receives crisis counselling. If the medical examination happens within 72 hours of the incident, post-exposure prophylaxis is given. The investigating officer on call at the centre will take the person's statement. The person will receive appropriate medication and is given a follow-up date for further medical treatment, before being transported home or a place of safety. A referral letter will be given or an appointment made for long-term counselling.
- 333.** Before the trial, as part of the TCC model, a case manager will oversee the prosecutor-guided investigation and will ensure that the case is trial and court ready. The case manager is a legally qualified official with specific additional expertise in dealing with gender-based violence matters.
- 334.** With regards to the trial, consultations with a specialist prosecutor will take place before the case goes to court and court preparation by a victim-assistant officer will be undertaken. The person must also be given an explanation of the possible outcome and regular updates of the trial process by the case manager. The Thuthuzela model is an outstanding example of interdepartmental cooperation.
- 335.** Through sexual offences courts, we are able to provide specialised victim-support services, improve the effectiveness of witnesses in court, reduce the turnaround time in the finalisation of sexual offences matters, and improve conviction rates. The courts aim to minimise secondary trauma for victims.
- 336.** Rape and sexual offences are more difficult to prosecute for a variety of reasons; often the perpetrator is known or related to the victim or witnesses are hesitant to come forward.
- 337.** Despite the country's successes some broader challenges remain. These include the need for a better understanding of line functions of inter- and intra-departmental structures and the need for an improved synergy with regard to departmental policy areas for service delivery. In certain instances, a lack of coordination and uniformity of services has been identified. Conviction rates are definitely not as high as Government would like them to be. On-going specialist training for police and prosecutors is vital.



338. A strategy to address gender-based and sexual orientation-based violence against lesbian, gay, bisexual, transgender and intersex people is being developed.
339. The National Register for Sex Offenders came into operation on the 30th of June 2009 in terms of chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No 32 of 2007. The objects of the Register are to protect children and persons who are mentally disabled against sex offenders by establishing and maintaining a record of persons who have been convicted of a sexual offence against a child or a person who is mentally disabled; or are alleged to have committed a sexual offence against a child or person who is mentally disabled.
340. As at 31 March 2014, 15,545 names of convicted sex offenders appear in the Register<sup>87</sup>. The registration progression in the past three (3) financial years is as follows:

Current Registered Convictions

2011/2012	2012/2013	2013/2014	2014/2015 (Apr to Dec 14)
2 340	3 526	15 545	16 868

341. The latter figure clearly indicates a steep progressive increase from 2012/2013 to 2013/2014 resulting from the robust intervention actions since 2012 to populate and update the Register. However, while the national register is not open to the public, employers in the public or private sectors, such as schools, crèches and hospitals, are accorded the right to check whether a job applicant is fit to work with children or mentally disabled people.
342. A number of statutes have been adopted to fight national and transnational crime and corruption.<sup>88</sup> In the last five years, a cyber-crime policy has been developed and is being implemented. During 2011/12 and 2012/13, the courts finalised 216 cyber-crime cases with a conviction rate of 87.5% and 136 cyber-crime cases with a conviction rate of 97.8% respectively.
343. In terms of case law, several court decisions have affirmed the state's duty to ensure the security of individuals within South Africa.<sup>89</sup>
344. In addition, during 2011 the Civilian Secretariat of Police developed a policy framework in relation to Community Safety Forums (CSF). The concept of a CSF is based on the premise that increased co-operation and interaction would improve the functioning and deliberations within the local criminal justice system and the delivery of crime prevention projects. The framework resulted in the CSF concept evolving as a replicable structure that can be established in the various cities and towns country-wide. The CSF structure acts as an integrated problem solving mechanism at local

level; provides a further means for sharing information between government (and in particular the police and the local authorities) and civil society; and also leads to an inter-disciplinary approach to crime prevention. The model has been rolled out country-wide and has had a positive impact at local level.

<sup>87</sup> Department of Justice and Constitutional Development input: January 2015

<sup>88</sup> The Prevention of Organised Crime Act, 1998 (Act No 121 of 1998); Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004); Firearms Control Act, 2000 (Act No 60 of 2000); National Convention Arms Control Act, 2002 (Act No 41 of 2002); and Financial Intelligence Act, 2001 (Act No 38 of 2001) serve as legal frameworks to fight transnational crime corruption, illegal arms and money laundering. The Criminal Procedure Act, 1977 (Act No 51 of 1977) provides for rules of procedure in dealing with criminality from the investigation and trial stages.

<sup>89</sup> In *Minister of Safety and Security and Others v WH 2009 (4) SA 213 (E)*, it was held that the Minister of Safety and Security and police officers who failed to arrest the plaintiff's rapist in terms of a warrant of arrest issued together with a protection order prior to her rape, were jointly and severally liable to the plaintiff.

345. CSF's are meant to facilitate the delivery of a multi-sectoral governmental approach on safety in local communities and is distinguished from the CPF through its jurisdiction and tasks. In addition to this model, there are also Community Police Forums (CPF's). The CPF is a legal community structure established in terms of the South African Police Service Act and is mandated to facilitate community–police relations within a specific police station precinct and serves as the mouthpiece of the community with the police and vice versa on policing matters and other relevant safety issues. Members of this forum are elected during formal election processes and get their mandate from the community to execute the legal powers and functions. The jurisdiction of a CSF is aligned to the municipal and/or district municipal jurisdiction/boundary. Once a CPF is formalised and established, it facilitates and enhances co-operation, ensures integrated planning and coordinates implementation of safety programmes and projects in the local sphere. It consists of representatives formally nominated and endorsed by the respective department, institution or community based organisation. In this regard, the CPF is but one of the stakeholders represented in the CSF structure.
346. One of the recently enacted legislation in the country is that which particularly addresses trafficking of persons, especially, women and girls. The Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013) gives South Africa, for the first time, a single statute that tackles human trafficking holistically and comprehensively by providing a maximum penalty of R100 million or life imprisonment or both in the case of a conviction. The legislation fulfils the objectives to provide for an offence of trafficking in persons and other offences associated with trafficking in persons to prevent and combat the trafficking in persons within or across the borders of the Republic; to provide for measures to protect and assist victims of trafficking in persons; and to provide for the establishment of the Intersectoral Committee on Prevention and Combating of Trafficking in Persons and the criminalisation of practices resulting in forced and early marriages and harmful cultural and traditional practices such as ukuthwala. It also has the effect of domesticating the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons. This legislation has, to date, not yet been implemented and government is putting in place all measures to have this legislation implemented. The country continues to use a range of other legislation to prosecute perpetrators for offences related to trafficking in women.
347. South Africa has measures in place to capacitate officials handling both the victim and the perpetrator of violence in a form of training and workshops. The Sexual Offences and Community Affairs (SOCA) Unit in the National Prosecuting Authority highlights that in 2010/2011 there was an increase in capacitation of prosecutors. 79 prosecutors were trained on human trafficking related topics.
348. By October 2009, at least 6 provinces had One-Stop Service Centres for victims of abuse in South Africa and 109 shelters throughout the country accommodating and rendering psychosocial services to women and their dependent children who are victims of abuse. These are Government funded facilities, with Minimum Standards for Shelters for Abused Women developed. During 2011; 13 of these shelters were strengthened to host victims of human trafficking and trained personnel to assist trafficking victims. Government identified 22 additional shelters that could potentially care for trafficking victims. It has begun provision of a nine-week rehabilitation program to address the psycho-social well-being of trafficked victims in the care of these shelters. However, more still needs to be done to improve the quality, care and services at these centres. Accessibility to such centres should be looked at as most of these centres tend to be concentrated in urban areas whereas rural areas still remain neglected.

349. A more detailed report is provided in the section: General Recommendation 12 and 19 at the end of this report.

## 7. ARTICLES 7-9

350. Women in Parliament: The table below indicates the representation of women members of Parliament and Provincial Legislature over the five elective periods 1994 – 2014.

Women Representation in legislature	1994	1999	2004	2009	2014
% women in Parliament	27.8%	30%	32.8%	43.3%	41%
% women in Provincial Legislature	23.5%	27.7%	31.7%	41.5%	37 %

351. Women Speakers: The table below indicates the number of women elected as speakers in Parliament and legislatures over the five elective periods.

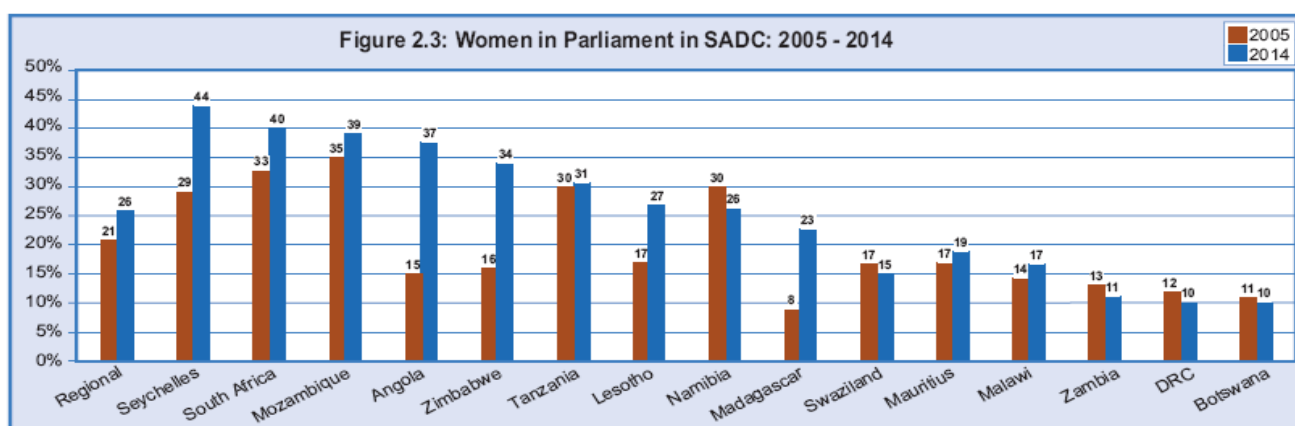
Representation of female speakers	1994-1999	1999-2004	2004-2009	2009-2014	2014-2019
Female Speaker in National Assembly	1	1	1	0	1
Female Speakers in Provincial Legislatures	2	1	4	6	8

352. In 2014, the Chairperson of the NCOP was a female. The table below indicates the representation of women in the National Council of Provinces (NCOP).

National Council of Provinces				
Division	Male	Female	Total	%
NCOP Members 2012	36	17	53	32.08
NCOP Members 2014	34	19	53	35.84

Table 2.11: Portfolio committees in the SA parliament led by women	
Portfolio Committee	Chairperson of Committee
Arts and Culture	Xoliswa Sandra Tom
Basic Education	Nomalungelo Gina
Communications	Joyce Clementine Moloi-Moropa
Economic Development	Elsie Mmathulare Coleman
Health	Mary-Ann Lindelwa Dunjwa
Higher Education and training	Yvonne Nkwenkwezi Phosa
Human Settlements	Nocawe Noncedo Mafu
Labour	Lumka Elizabeth Yengeni
Public enterprise	Ms Dipuo Bertha Letsatsi-Duba
Public Service, Administration, Monitoring and evaluation	Bertha Peace Mabe
Rural development and Land reform	Phumuzile Catherine Ngwenya-Mabila
Small business development	Nozabelo Ruth Bhengu
Social development	Rosemary Nokuzola Capa
Sport and recreation	Beauty Nomvuzo Dlulane
Telecommunications and postal services	Mmamoloko Tryphosa Kubayi
Tourism	Beatrice Thembekile Ngcobo
Trade and Industry	Joanmariae Louise Fubbs
Transport	Dikeledi Phillistus Magadzi
Women in the Presidency	Thandi Cecilia Memela

Source: [http://www.parliament.gov.za/live/content.php?Item\\_ID=137](http://www.parliament.gov.za/live/content.php?Item_ID=137) September 2014.



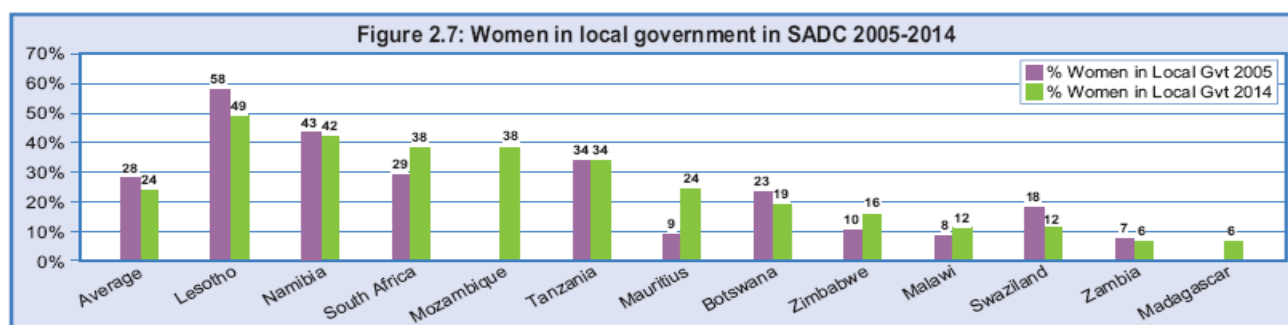
Source: Gender Links 2014, SADC Gender Protocol Barometer.

353. The Local Government level is showing steady progress in the representation of women. Following the 2011 Local Government Elections, the representation of females in Local Government Councils was at 38.4% as compared to 28.2% in 2000. The table below indicates the trends in the representation of women members of local government councils per major local government elections.

Representation of women in Local Govern-	2000	2009	2011	2015
% women: Proportional representation	38%	42.4%	43.3%	44.83%
% women: Ward	17%	36.6%	32.9%	33.4%
Overall %age of women councillors	28.2%	39.7%	38.4%	40.18%

Source: Department of Cooperative Governance, 2015:

354. According to the South African Local Government Association (SALGA), the number of women councillors increased from 29% to 42% between 1994 and 2006 due to its 50/50 campaign that contributed significantly to this increase. As the country continues to advocate for equity, women in local government levels have organised themselves and have formed the SALGA Women's Commission.
355. The table above highlights the steady progress made over the first three local government elections, with women's representation increasing from 19% in 1995 to 29% in 2000. Following the adoption by the ANC of the 50/50 quota at a party level in 2006, this figure rose dramatically to 40% in the 2005 Local Government Elections. There is however a slight decline in the representation of women in ward seats to 33% in 2011, as well as a corresponding overall 2 percentage point decline in women representation.



Source: 2014 SADC Gender Protocol Barometer.

356. In the 2014 elections, women comprised 56% of the total number of registered voters, compared to 55% in 2009. This shows that South African women have a keen interest in political participation.

**Table 2.2: Gender and decision-making in South Africa**

	2004	2009	2014	Comment
Women voters	55%	55%	56%	Increase
Women premiers	44%	55%	22%	Sharp decrease
Women MPs	33%	43%	40%	Decrease
Women MPLs	30%	41%	37%	Decrease
Women in cabinet	42%	41%	41%	Slight decrease
Women deputy ministers	60%	39%	44%	Slight increase, but decrease since 2004
Women in the NCOP	41%	30%	28%	Decrease
Women as news sources	22%	24%	25%	Slight increase
	<b>2001</b>	<b>2006</b>	<b>2011</b>	
Women in local government	29%	40%	38%	Decrease

Source: *Gender in the 2014 South Africa National Elections*, Lowe-Morna C, Mbadhlanyana N, Ndlovu S, and Robinson K.

#### Gender and political parties

**Table 2.3: Representation of women and men in key party structures**

Party	Head		Treasurer		Secretary general		Fourth top position		Fifth top position		Sixth top position	
	M	F	M	F	M	F	M	F	M	F	M	F
Agang SA	M		M		M		M		M		M	
African National Congress	M		M		M			F		F	M	
Democratic Alliance		F	M		M		M			F		F
COPE	M			F	M			F	M		M	
Inkatha Freedom Party	M											
Independent Democrats		F		F	M		M		M		M	
United Democratic Movement	M			F	M		M		M		M	
Economic Freedom fighters	M											
Totals	6	2	3	3	6	0	4	2	4	2	5	1
Total males	28 (74%)											
Total females	10 (26%)											

Source: ANC, DA, COPE, EFF, ID, UDM and AGANG websites (August 2014).

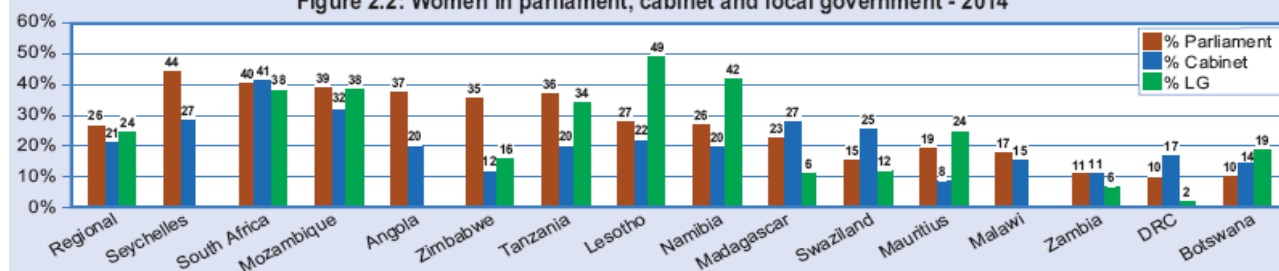
**Table 2.5: Number of women MPs in main political parties in South Africa**

Level	2009	2014	Variance
AGANG		1	+1
ANC	130	115	-15
COPE	15	1	-14
EFF		9	+9
ACDP		1	+1
NFP		2	+2
DA	20	27	+7
IFP	4	2	-2
Other	3	1	-2
Total women	172	159	-13
Total national assembly	400	400	0
% Women	43%	40%	-3%

Source: Gender in the South African 2014 National Elections, Gender Links (August 2014).

#### Election outcomes

**Figure 2.2: Women in parliament, cabinet and local government - 2014**



Source: 2014 SADC Gender Protocol Barometer, Gender Links.

357. South Africa has made great strides in ensuring women's involvement in political and decision-making processes. At the legislative level, the Electoral Act, 1998 (Act No. 73 of 1998) requires every registered party and candidate to respect the rights of women and to communicate freely with parties and candidates; facilitate full and equal participation of women in political activities; ensure free access for women to all public meetings, marches, demonstrations, rallies and other public events; and take all possible steps to ensure that women are free to engage in political activities. According to the Independent Electoral Commission (IEC), women constituted the highest number of registered voters in both 2009 and 2014 with 54.9% women compared to 45.1% of men. The Local Government Municipal Structures Act, 1998 (Act No. 117 of 1998) makes provision for the equal representation of women and men in political party lists and ward committees.
358. At the political level, the African National Congress (ANC) is the only political organisation that has adopted the 50/50 quota at a party level in 2007. This has resulted in a number of women participating in Parliament from the ruling party.



**359.** The Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) requires that at least 30% of members of the National House of Traditional Leaders should be women. The Act provides for measures on parity of representation between female and male traditional leaders in district and local municipalities, and is explicit about the promotion of gender equality and non-sexism. Section 2B(4) of the Act provides as follows:

“A principal traditional community must transform and adapt customary law and customs relevant to the application of this Act so as to comply with the relevant principles contained in the Bill of Rights in the Constitution, in particular by—

- (a) preventing unfair discrimination;
- (b) promoting equality; and
- (c) seeking to progressively advance gender representation in the succession to traditional leadership positions.”

The Institution of Traditional Leadership has established a Portfolio Committee on Gender, Youth, Children and People with Disabilities that helps to monitor cultural practices and customs that undermine gender equality. It also sustains gender debate within the Traditional Leadership Institution.

**360.** Women have also held the office of Deputy President such as Ms Phumzile Mlambo-Ngcuka from 2005 – 2008 and Ms Baleka Mbete from 2008 – 2009 respectively. The first Speaker of the National Assembly was a woman, Ms. Frene Ginwala, followed by Ms. Baleka Mbete in 2004 – 2009 who was re-elected following the 2014 elections. Women have also been deputy Speakers in the National Assembly.

**361.** Women Ministers have within the twenty years of democracy held important portfolios previously held by men such as: Basic Education; Small Business Development; Defence; Environmental Affairs; Water Affairs and Sanitation; Home Affairs; International Relations and Cooperation; Transport; Labour; Energy; Science and Technology; Mineral Resources; Social Development; and the women’s agenda. In fact under the stewardship of the Minister for Science and Technology, who is a woman, South Africa has won the bid for the Square Kilometre Array (SKA) project.

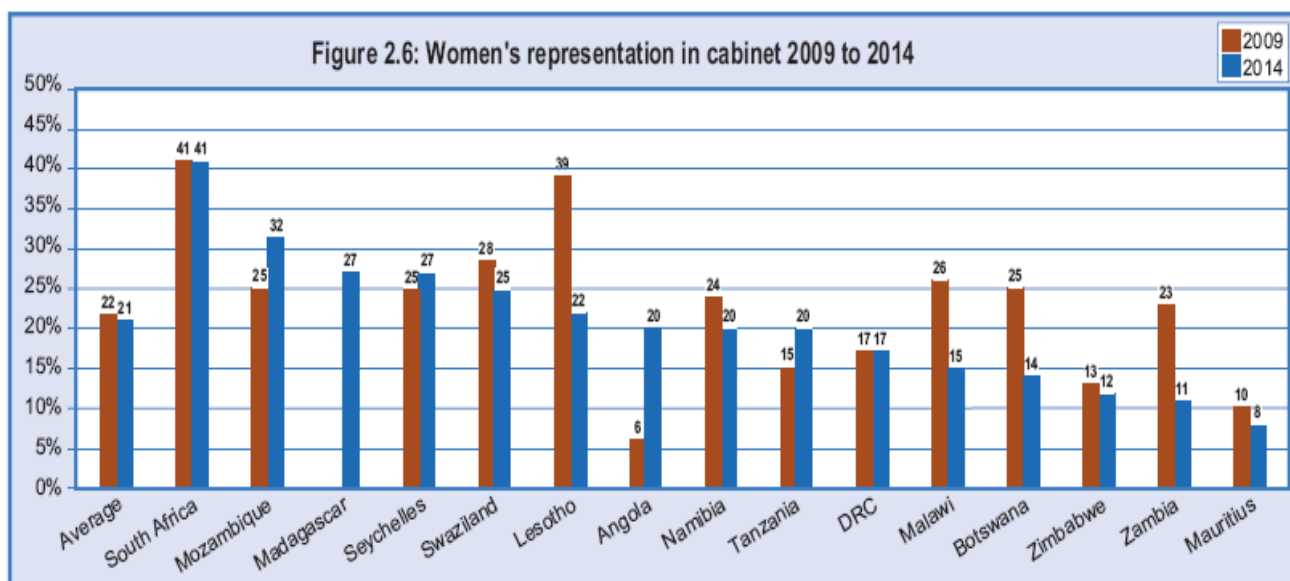
**362.** There has been a steady growth in the representation of women at Cabinet level since the first democratic elections held in 1994. South Africa reached the target of 30% representation of women in political decision-making positions in line with the SADC target in 2003. In 2005 South Africa adopted the 50% gender parity principle in line with the AU Commission target, and in 2008 with the SADC Protocol on Gender and Development. The representation of women at Cabinet level following the 2014 general election stands at approximately 43%. The table below highlights the trends in the pattern of representation of women Cabinet Ministers from 1994 to 2014.

Women Cabinet Ministers from 1994 to 2014

	1994	1996	2003	2004	2009	2014
No. of Women Ministers	3	4	9	12	14	15
No. of Male Ministers	24	21	18	16	20	20
Total No. of Ministers in Cabinet	27	25	27	28	34	35
% representation of Women Ministers	11%	16%	33.3%	42.8%	41%	42.85%

**363.** The representation of women Deputy Ministers currently is 45.9%. The table below highlights the trends in the pattern of representation of women Deputy Ministers from 1994 to 2014.

## Cabinet



Source: 2014 SADC Gender Protocol Barometer.

Women Deputy Ministers from 1994 to 2014

	1994	1996	2003	2004	2009	2014
No. of Women Deputy Ministers	3	8	8	10	11	17
No. of Male Deputy Ministers	9	5	8	10	17	20
Total No. of Deputy Ministers in Cabinet	12	13	16	20	28	37
% representation of Women Deputy Ministers	25%	62%	50%	50%	39%	45.9%

- 364.** It is also important to note that following the 2014 elections, the country has seen an increase in appointment of persons with disabilities in Cabinet, with Ministers at 2,8% and Deputy Ministers at 5,4%. This has exceeded the 2% employment of people with disabilities that government set itself.
- 365.** In the twenty years of democracy women have and are heading portfolios such as the National Commissioner of Police; the Public Protector; CEO of the Johannesburg Stock Exchange; the Independent Electoral Commission; Governor of the Reserve Bank, the South African Law Reform Commission and others.
- 366.** Women are making inroads into business leadership in the country and heading up global giants such as ABSA bank. Women own conglomerates in the country with some business women occupying millionaire status. Women also can be found as Chairpersons of corporate boards in the country, while others are entering and leading in previously male dominated territories, for example, the head of the Palaeontology Department at the University of Cape Town is a woman, and South African Airways (SAA) now have women pilots, some flying international bound flights. Women are in the defence force, navy and air force in South Africa. In fact, women make up almost 40% of the Senior Management Service in the public service and overall women comprise more than 50% of employees in the Public Service.
- 367.** The public service comprises a Senior Management Service (SMS) which is made up of four categories ranging from levels 13 at the entry level, to SMS i.e. Director; at level 16, to the topmost

levels i.e. Directors General or Heads of Departments, also commonly known as Accounting Officers. The data provided is obtained from the Persal System of Government. As abovementioned, women currently represent 40% of Senior Management Service in the public service. The table below indicates trends in representation of women within management positions in government from 2005 to date, with an average of approximately 1% point increase annually.

Trends in the percentage representation of women in Senior Management Service in Government: 2005-2014

YEARS	PERCENTAGE REPRESENTATION OF WOMEN IN SMS LEVELS
December 2005	30%
December 2008	34.3%
March 2009	34.8%
March 2010	36%
March 2011	37%
March 2012	38.1%
March 2014	39.8%
June 2014	40%
June 2015	40.6%

**368.** The table below indicates the representation in actual numbers and percentages of women in senior management by race and gender as at June 2014 and 2015. Black African females made up 28.91% of the total SMS membership.

Representation of women in SMS by race and gender as at June 2014

Race	Gender				
	Female	Male	Total	% women per population group	% women per total SMS members
African	2728	3980	6708	40.66%	28.91%
Asian	240	348	588	40.81%	2.54%
Coloured	293	493	786	37.27%	3.10%
White	520	832	1352	38.46%	5.51%
Total	3781	5653	9434		40.07%

Representation of women in SMS by race and gender as at June 2015

Race	Gender				
	Female	Male	Total	% women per population group	% women per total SMS members
African	2859	4115	6974	40.99	29.47%
Asian	248	367	615	40.33	2.65%
Coloured	317	493	810	39.14%	3.27%
White	519	785	1304	39.80%	5.35%
Total	3943	5760	9703	40.67%	40.67%

Representation of SMS levels by gender as at June 2014

Salary Level	No of women	No of Males	Total No	% of women
13	2722	3915	6637	41.01%
14	792	1252	2044	38.74%
15	226	377	603	37.48%
16	41	109	150	27.33%
Grand Total	3781	5653	9434	40.07%

**369.** The figures in the table above indicate that women in the senior management service of government tend to be aggregated at the entry level of management (i.e. level 13) at 41.01%, and their numbers taper, in line with the typical global trends and patterns, towards the more senior decision-making positions in the public service (i.e. level 16) at 27.33%. This level represents where Directors Generals and Heads of Departments are located.

**370.** Out of the 9,434 SMS positions filled as at June 2014, 3,781 (40.07%) were filled by women and 5,653 (59.93%) were filled by men. The table below indicates that of the total number of black African females at the senior management level (i.e. 2728 or 28.91%), the majority of them (i.e. 1969 or 72.18%) are located within the entry level of the management levels (i.e. level 13), while only 33 (i.e. 3.85%) out of the total of 2728 are at the top-most level of management. I

Representation at Senior Management Level by Gender

Level	Male				Female				Male Total	Female Total	Total
	White	Asian	Coloured	African	White	Asian	Coloured	African			
13	597	221	319	2778	379	174	200	1969	3,915	2,722	6,6037
14	155	90	130	877	106	49	68	569	1,252	792	2,044
15	64	31	37	245	31	17	21	157	377	226	603
16	16	6	7	80	4	0	4	33	109	41	150
Grand-Total	832	348	490	3980	520	240	293	2728	5,653	3,781	9,434
Percentage									59.93%	40.07%	100%

Representation by Gender and Disability at SMS for 2012/13

Table : Representation by Race and Gender at SMS level

Race	Gender				Total
	Female		Male		
	Average no	%	Average no	%	
African	1387	26.91	1950.33	37.84	3337.33
Asian	55.33	1.07	86	1.67	141.33
Coloured	168	3.26	287	5.57	455
White	508	9.86	712	13.82	1220
Total	2118.33	41.1	3035.67	58.9	5154

DPSA: PERSAL

**371.** As more women have consistently entered SMS positions in the public service, diplomatic appointments of women have equally increased. In 2001, only eight women, constituting 17.4% of the total number, were serving as Heads of Missions abroad. This number increased to 24.2% in 2005. In 2008, women accounted for 26% of appointed Ambassadors, High Commissioners and Consul-Generals, increasing to 29.13% in August 2012 to 29.3% in 2013. As at November 2014, this figure remained at 29%.

AMBASSADORS AND HIGH COMMISSIONERS

	Male	Female	Vacant	TOTAL	% of women
August 2012	73	30	10	113	29.13
April 2013	87	36	4	127	29.3
Nov 2014	84	35	6	125	29

- 372.** In 2005, women comprised 28 (13.52%) of the 207 judges in the country, one of whom was a Deputy Judge President. By 2008, the number of women judges had risen to 30% of the total number of judges in the country, increasing to approximately 34% in 2014.

Table indicating % representation of Women Judges from 2011-2014

Court	September 2011				September 2012				September 2013				June 2014			
	Male	Female	Total	% of female	Male	Female	Total	% of female	Male	Female	Total	% of female	Male	Female	Total	% of female
Constitutional Court	7	3	10	30%	9	2	11	18%	8	3	11	27%	8	2	10	20%
Supreme Court of Appeal	18	7	25	28%	18	8	26	30.7%	17	8	25	32%	18	7	25	28%
Provincial Divisions	129	50	179	27%	136	55	186	28.6%	130	61	191	32.6%	131	72	203	35%
Labour Court					8	4	11	36%	7	3	10	30%	8	3	11	27%
Competition Appeal Court	-	-	-	-	-	-	-	-	-	-	-	-	1	0	1	00%
Total	154	60	214	28%	171	69	234	28.7%	162	75	237	32%	166	84	250	33.6%

- 373.** At present there are approximately 40% women magistrates in South Africa, with most of them located as Regional Court Presidents (i.e. 50%). Overall women magistrates exceed the 30% mark in all categories of the Magistracy.

Table showing representation of Magistrates according to gender as at October 2013

Post Class	Total Males	Total Females	Total
Regional Court President	5	4	9
Regional Magistrate	212	112	324
Chief Magistrate	9	9	18
Senior Magistrate	70	40	110
Magistrate	742	508	1250
Percentages	61	39	100
Grand Total	1038	673	1711

- 374.** Representation of Women in the South African Defence Force: The overall equity progress per gender of both uniformed and personnel employed under the Public Service Act (PSA) in South Africa indicate an upward trend since 1994 and currently is almost at the 30% mark. The graph below highlights the progress made from 1994 to 2014.
- 375.** The total strength for uniformed members is 66,326 which comprises 84% of the total armed forces population in the country. Of this 16,395 (25%) are women. The graph below shows the representation across rank and gender as at October 2014, where the representation of women at senior and middle management remained a challenge.
- 376.** The equity status for the Military Skills Development System as at 2014 is 34%, and from 2011 to 2013, approximately 37% of females received contracts. In the South African Defence Force, 32,905 members are utilised in the sharp-end (tooth) corps, of which women make up 19%. There is a 26% female representation in critical mustering in the Defence Force, which includes females in Air Space Control (34%), Air Crew (8%), Anti-Air Craft (25%), Artillery (25%), Combat Navy (11%), Engineers (12%), Medical Professionals (59%), Nursing (75%), Technical (11%) and Technical Air (12%). Women can now be seen within previously male dominated areas, but in

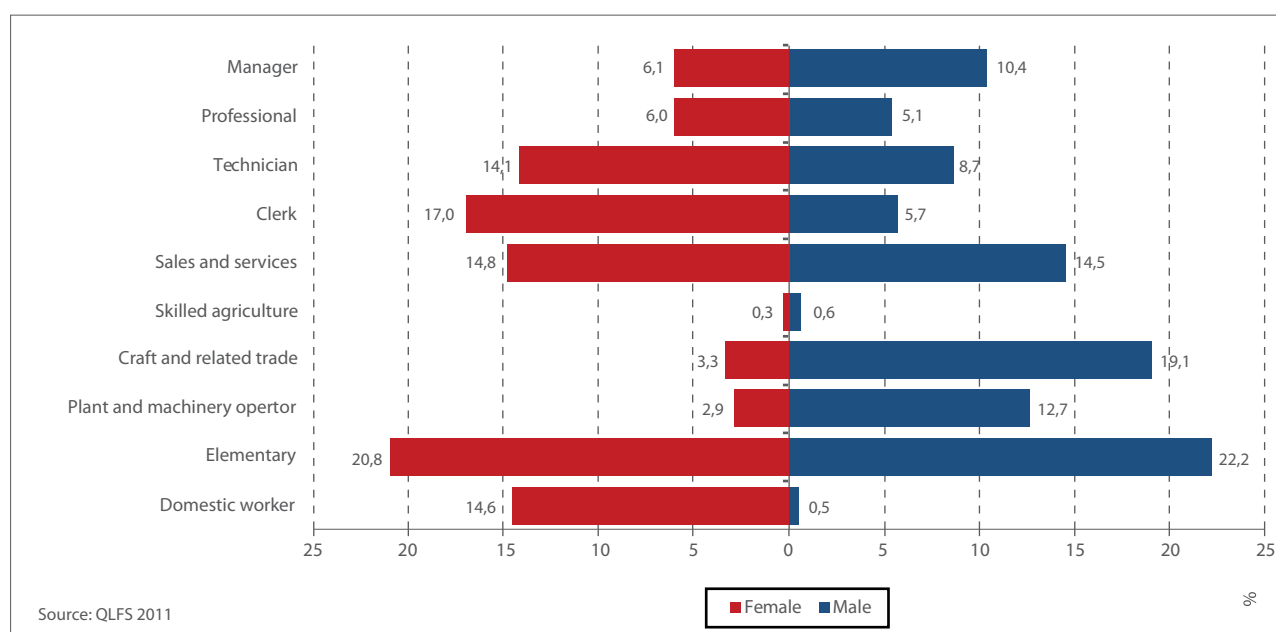
keeping with historical trends, women are concentrated in medical and nursing areas of work.

- 377.** However, transformation is clearly happening in the armed forces. From 1994 onwards, females have been encouraged to follow career paths in all mustering and occupational spheres, including in the combat (tooth) environment. In 1997, the first five females qualified as pilots and currently there are 29 qualified female pilots in the South African Air Force. In 1998, there were only five female Brigadier Generals and four female Directors in the SANDF, with females only comprising 13% of the total population in the SANDF in 1998. Currently there are 19% female Brigadier Generals and the overall representation of females is 28.6%.
- 378.** The representation of women in decision-making positions such as corporate boards and as Chairpersons of Boards or CEOs of corporate companies in South Africa is obtained from the South African Women in Leadership Census conducted annually since 2004 by the Businesswomen's Association (BWA). The most recent statistics that are available are those of the 8th Women in Leadership Census Survey, undertaken in 2013 and released in 2013 which provides a comprehensive analysis of women on boards, and in executive management of companies in the private sector in South Africa., especially Johannesburg Stock Exchange listed companies.

Women in Corporate Position: 2008- 2012

Representation of Women in Corporate Positions	2008	2009	2010	2011	2012
Chief Executive Officers / Managing Directors	3.9%	3.6%	4.5%	4.4%	3.6
Chairpersons	3.9%	5.8%	6.0%	5.3%	5.5
Directorships	14.3%	14.6%	16.6%	15.8%	17.1
Executive Managers	25.3%	18.6%	19.3%	21.6%	21.4

- 379.** The Gender Statistics in South Africa 2011 Report released in 2013 by Statistics South Africa, highlights that the percentage distribution of women aged 15–64 years by occupational category indicates that 6% of women are in the professional category as compared to 5.4% males, but 6.1% females are in the managerial category as compared to 10.4% males, suggesting that men are more likely to be decision-makers in their jobs compared to women.



- 380.** Through the Department of Trade and Industry, a “board-ready women” database was launched in South Africa, in partnership between the Business and Professional Women South Africa



(BPWSA) and Government,. It is the first database of its kind in South Africa of trained senior businesswomen—from which both the public and private sector can access potential non-executive board members. Women represent a significant part of the workforce and of the customer base of most companies. Yet, with a few notable exceptions, their representation on boards is lacking. Broadening the gender diversity of boards not only helps increase the size of the candidate pool and therefore the quality of potential board members, but it also helps broaden the perspectives and experience of an entire team.

381. South Africa has seen a number of women taking up leadership positions at the international level. Involving women in governance processes constitutes one of South Africa's globally acclaimed success stories. The election of Dr Nkosazana Dlamini-Zuma in July 2012 as the first woman in Africa to chair the African Union Commission; the appointment of Dr. Phumzile Mlambo-Ngcuka, former Deputy President of the country, as the Under-Secretary-General and Executive Director of UN Women; and the positioning of other South African women such as Ms. Geraldine Frazer-Moleketi, Special Gender Envoy to the African Development Bank; Ms Rashida Manjoo, Special Rapporteur on Violence against women, its causes and consequences; and Judge Navi Pillay as the former High Commissioner for Human Rights and formerly as a judge in the International Criminal Court (ICC), is an indication of the impact that women in decision-making have in winning the trust and confidence of citizens in South Africa, on the continent and internationally.
382. The marriage institution in South Africa is governed under civil law, religious laws, and customary laws. The Marriage Act, 1961 (Act No. 25 of 1961) governs civil marriages. Prior to 1994, the Act was not applicable in the whole of South Africa. This changed with the enactment of the Marriage Act, Extension Act, 1997 (Act No. 50 of 1997) that extended the operation of the Marriage Act to the whole of South Africa.
383. There are two kinds of civil marriages i.e. (i) marriage in community of property and (ii) marriage out of community of property. The proprietary consequences of these marriages are governed by the Matrimonial Property Act, 1984 (Act No. 88 of 1984). In a marriage in community of property, spouses pool their assets into a joint estate. Upon dissolution of the marriage each is entitled to a half /equal share of the joint estate. Marriages out of community of property are divided into three distinct types and all are preceded by an ante-nuptial contract:
  - The first category is a marriage out of community of property with communal sharing, and in such a union both parties keep their pre-marital estates separate but form a communal estate as a married couple, and upon dissolution share in the joint communal estate wrought from the civil union.
  - The second type of marriage is a marriage out of community of property but with the accrual system. In this union, the partners' relative financial value is assessed upon dissolution and paid a balance based on this worth.
  - The third type of marriage out of community of property is a marriage without profit sharing, where upon dissolution of the marriage each party is entitled to what they personally had at the time of marriage, and anything that they earned or acquired during the marriage.
384. The Civil Union Act, 2006 (Act No. 17 of 2006) provides for the solemnization and registration of same-sex marriages. Therefore, same-sex couples are entitled to the same rights and benefits as heterosexual spouses. The enactment of the Civil Union Act and the recognition of same-sex marriages in South Africa followed the decision of the Constitutional Court in **Fourie v Minister**

of **Home Affairs 2006 (1) SA 524 (CC)** in which it was held that the definition of marriage as a union between a man and a woman in the Marriage Act was unconstitutional insofar as it excluded the recognition of the union of same-sex partners.

385. Four kinds of religious marriages are recognised in South Africa: (i) Christian, (ii) Islamic, (iii) Hindu, and (iv) Jewish marriages. There was no specific law in South Africa which recognised any religious marriage. Until the Constitutional Court intervened, Muslim marriages were not recognised in law. In **Amod v Multilateral Motor Vehicle Accidents Fund 1999 (4) SA 1319 (SCA)** the Supreme Court of Appeal upheld a widow's compensation claim relating to the loss of a breadwinner following the death of her husband, to whom she had been married in terms of Muslim law, in a car accident. The impact of this decision was the legal recognition of monogamous Muslim marriages. Although the Court recognised that Muslim women in a monogamous marriage could be considered a "wife" or "spouse", the court did not pronounce on the legality of the marriage in respect of Sharia law.
386. In **Daniels v Campbell NO & Others 2004 (7) BCLR 735 (CC)**, the Constitutional Court held that women married under Muslim law could inherit, claim maintenance from and be appointed as administrators of their deceased husbands' estates. In **Hassam v Jacobs NO (2009) ZACC 19**, the Constitutional Court declared that the Intestate Succession Act, 1987 (Act No. 81 of 1987), does in fact and should recognise that a woman married in a polygamous marriage has the right to be a beneficiary in respect of her deceased husband's estate regardless of the fact that the marriage was polygamous.
387. In **Govender v Ragavayah No and Others (2008) ZAKZHC 86**, the Court was requested and decided on whether a woman married in terms of Hindu rights in a monogamous marriage qualified as a spouse in respect of the Intestate Succession Act, 1987. The Court granted the relief sought. However, it did not pronounce on the issue of the validity of the marriage. In fact the court pointed out that the issue of recognition of Hindu marriages was dealt with the previous year in **Singh v Rampersad 2007 (3) SA 445D** where the Court did not recognise the validity of marriages concluded in respect of Hindu rights.
388. South African laws grant equal rights between women and men in respect of acquisition, transmission and changing of citizenship. The South African Citizenship Act, 1995 (Act No. 88 of 1995) (which repealed the South African Citizenship Act, 1949 (Act No. 44 of 1949)) provides that marriage does not affect citizenship in the sense that a married person is capable of acquiring or losing citizenship in all respects as if he or she were unmarried, and that no person can acquire or lose citizenship by reason merely of a marriage contracted by him or her.
389. South African laws have also been reformed to remove barriers that previously undermined the unification of foreign spouses with their South African spouses of either sex. These reforms were prompted by the Constitutional Court's decision in **Dawood, Shalabi & Thomas v Minister of Home Affairs 2000 (3) SA 93** and **Booyesen & Others v Minister of Home Affairs & Another 2001 (4) SA 485**. In these cases, provisions of the Aliens Control Act that restricted foreign spouses from joining their South African spouses in South Africa were declared unconstitutional. The decisions in these cases led to the enactment of the Immigration Amendment Act, 2004 (Act No. 19 of 2004).
390. Under South African common law, which was codified in the Births and Registration Act, 1992 (Act No. 51 of 1992) a wife assumed her husband's 'rank and dignities'. She could neither retain her surname nor pass it on to her children. Once she was married, the Department of Home Affairs

automatically changed her surname to that of her husband's. She was legally prevented from using her maiden name.

- 391. These common law provisions as reflected in the Births and Registration Act discriminated against women. Thus, in 2002 the Births and Deaths Registration Amendment Act, 2002 (Act No. 1 of 2002) was enacted to remove the discriminatory laws and practices. In terms of this Act, a woman has the right to retain her surname upon marriage. She is also equally entitled to pass her surname to her children.
- 392. The minimum age for consent to marriage in South Africa is 18 years for both men and women, and this has been extended to customary marriages through the Recognition of Customary Marriages Act.
- 393. The Marriage Act provides for the registration of civil marriages. The registration of a marriage serves as a *prima facie* proof of the existence of the marriage, although non-registration does not affect the validity of the marriage. The Department of Home Affairs keeps the marriage register, which is signed by the marriage officer, the parties, and two competent witnesses.
- 394. The Civil Union Act provides for the registration of same-sex relationships. In this regard, section 12 of the Act provides that prospective civil union partners must individually and in writing declare their willingness to enter the civil union with one another by signing the prescribed document in the presence of two witnesses.
- 395. Customary marriages are registered pursuant to section 4 of the Recognition of Customary Marriages Act. In this regard, it is stipulated that the spouses in a customary marriage have a duty to ensure that their marriage is registered. However, the failure to register a customary marriage does not affect the validity of the marriage.

## 8. ARTICLES 10-14

- 396. Since May 2009, the function of national education has been administered by two departments, namely the Department of Basic Education (DBE) and the Department of Higher Education and Training (DHET). The DBE is responsible for the school system, from Grades R—12 and Adult Basic Education and Training (ABET) qualifications. While the DHET is responsible for the higher education system: further education and training institutions; national skills authority; sector education and training; trade testing centres; and skills development institutions. Each province has its own Department of Education that is responsible for the administration of education in terms of national policy and legislation supplemented by provincial policies and legislation.
- 397. The South African education system has fared well in advancing gender parity in Early Childhood Development (ECD), Grade R, and the enrolment of 7 to 15-year-olds attending schools and educational institutions. The General Household Survey (GHS) for 2002 to 2013 undertaken by Statistics South Africa reports that in 2013, approximately 45% of children aged 0 to 4-years-old were attending an ECD facility. This is an increase of 38% since 2002, when only approximately 7% of this cohort attended an ECD facility.
- 398. In terms of gender, there is gender parity in this age group regarding ECD attendance. Although there were more female children in attendance in 2002, this changed from 2006 to 2012, where the percentage of children attending ECD facilities by gender became almost equal.

Percentage of 0 to 4-year-old children attending ECD facilities by gender, 2002 – 2013

Gender	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Male	6.8	11.4	11.4	13.7	16.0	16.5	16.6	29.4	32.3	34.3	36.2	44.2
Female	7.7	11.8	11.5	14.9	16.1	15.7	16.7	29.4	32.4	34.7	36.9	45.2
Total	7.3	11.6	11.5	14.3	16.0	16.1	16.7	29.4	32.3	34.5	36.5	44.7
GPI	1.14	1.04	1.01	1.09	1.01	0.95	1.01	1.00	1.00	1.01	1.02	0.98

Source: Statistics South Africa, General Household Survey, 2002–2013, DBE own calculations

**399.** The compulsory education age group (7 to 15-year-olds) is characterised by high enrolments, with 99% of children in this group accessing schooling. The table below indicates that parity was achieved in the participation of male and female children in this age group. Between 2002 and 2013, there is approximately equal participation in education by both sexes, with a GPI of 1.

Percentage of 7 to 15-year-old children attending an educational institution by gender, 2002 – 2013

Gender	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Male	96.0	96.7	97.4	97.6	97.4	97.6	97.8	98.3	98.6	98.7	98.5	98.6
Female	96.6	97.6	98.1	97.9	97.8	98.2	98.1	98.6	98.7	98.8	99.1	98.9
Total	96.3	97.2	97.7	97.8	97.6	97.9	97.9	98.5	98.7	98.8	98.8	98.8
GPI	1.01	1.01	1.01	1.00	1.00	1.01	1.00	1.00	1.00	1.00	1.01	1.00

Source: Statistics South Africa, General Household Survey, 2002-2013, DBE own calculations

It is also apparent that the participation of 16 to 18-year-old children in education institutions is almost equal for both male and female children in this age group.

Percentage of 16 to 18 year-olds attending educational institutions by gender, 2002 - 2013

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Male	85.9	86.5	87.2	86.6	87.1	88.8	88.7	88.5	87.6	89.6	91.1	91.0
Female	89.3	89.5	89.9	90	88.9	90	89.6	89.1	89.6	90.7	89.8	89.6
Total (%)	87.7	88.1	88.6	88.4	88.1	89.4	89.2	88.8	88.6	90.2	90.5	90.3
GPI	1.04	1.03	1.03	1.04	1.02	1.01	1.01	1.01	1.02	1.01	0.99	1.02

Source: Statistics South Africa (Stats SA), General Household Survey (GHS), 2002- 2013, DBE own calculations

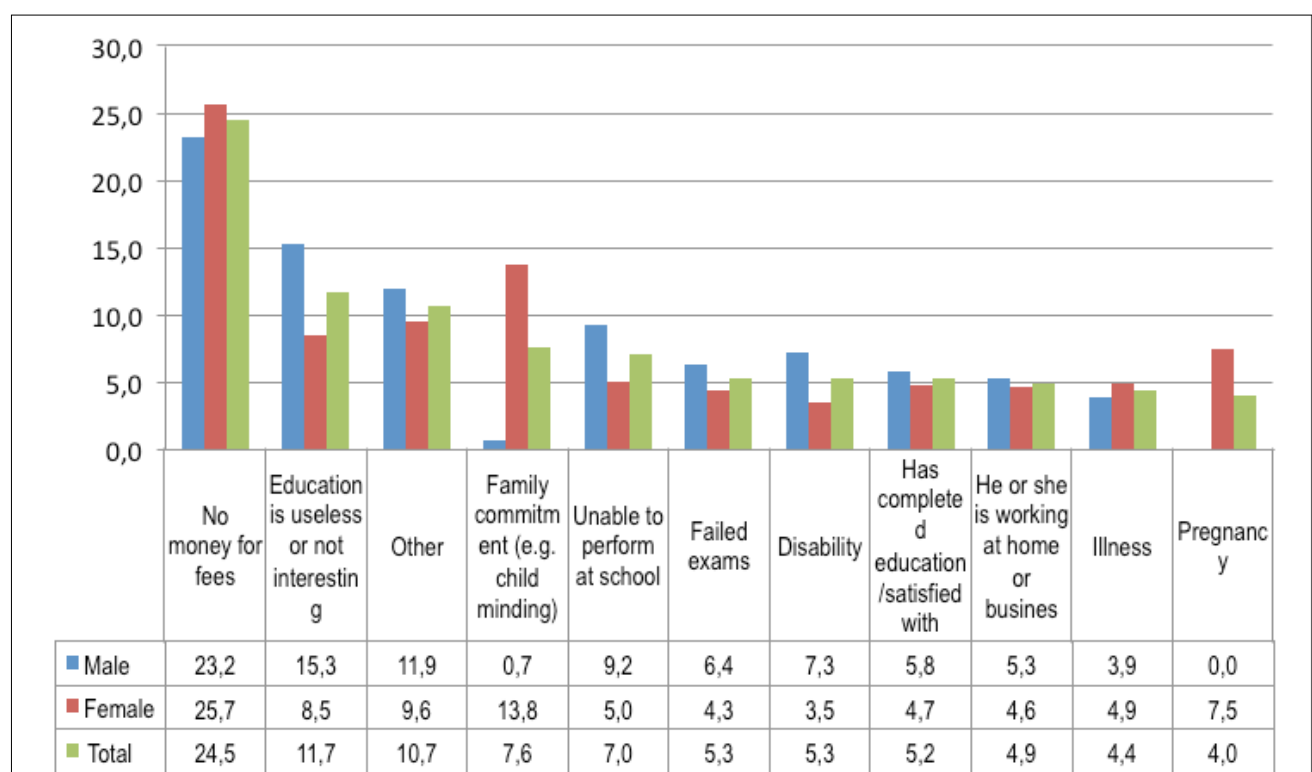
- 400.** Older females are more likely to be out of school than males in this age group. The 2013 GH S found that 15% of females aged 16 to 18 years were not attending an educational institution compared to almost 13% of males in the same age group. While the percentage of females that were not attending educational institutions had decreased from approximately 21% in 2002 to almost 15% in 2013, the percentage of males remained stable at an average of 14% between 2002 and 2013.
- 401.** We have noted, however, sustained increases in up to 18-year-olds. This may be expected as the completion of Matric usually takes place when a learner turns 18. These sustained increases may be attributed to the growing emphasis on the acquisition of completed basic education as a pre-requisite for semi-skilled and skilled employment in the labour market.
- 402.** The 2013 GHS found that over half a million children aged 7 to 18 years were out of school. That means that they were not attending any form of educational institution. In 2013, there were 1.2% of children aged 7 to 15 years who were not attending educational institutions, of this number 1.1% were female and 1.4% were male. Previous GHS surveys indicated that in 2002, more male compared to female children were out of school, with the gap closing between 2010 and 2013. In 2013, almost the same proportions of female and male children aged 7 to 15 years were out of school.

Percentage of 16 to 18-year-old youth not attending education institutions by gender, 2002 – 2012

Gender	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Male	14.3	14.6	14.1	14.8	15.7	13.4	15.5	15.9	15.2	14.3	12.8	12.6
Female	20.9	19.8	20.5	20.9	19.5	16.3	16.9	17.5	19.0	16.0	15.4	15.1
Total	17.6	17.2	17.3	17.8	17.5	14.8	16.2	16.7	17.1	15.1	14.1	13.9

Source: Statistics South Africa, General Household Survey, 2002-2013, DBE own calculations

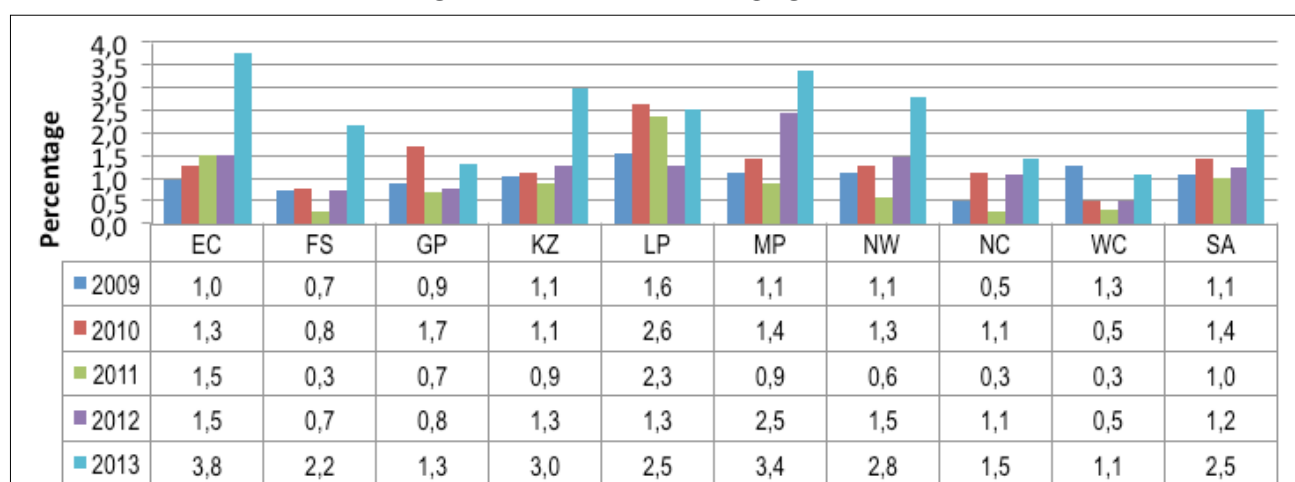
The figure below indicates reasons for non-attendance of educational institutions for 7 to 18-year-olds by gender, 2013



Source: Statistics South Africa, General Household Survey, 2013, DBE own calculations

**403.** In South Africa pregnant learners are allowed to attend schools until a child is born and are also re-admitted as soon they are ready to proceed with their schooling. **The Figure below** shows that the percentage of school-attending learners who fell pregnant increased between 2009 and 2013. In 2013, 2.5% of female learners were pregnant in schools compared to 1% in 2009. The Eastern Cape and Mpumalanga have the highest percentage of learners that fell pregnant in 2013 at approximately 4% and 3% respectively.

Percentage of female learners that fell pregnant, 2009 – 2013



Source: Statistics South Africa, General Household Survey, 2009-2013, DBE own calculations

404. The achievement in the National Senior Certificate (NSC) by gender, when comparing the overall performance of learners by gender, indicates that a higher percentage (77.5%) of males compared to females (74.4%) passed the NSC examination in 2014.

Overall performance of learners in the NSC examination by gender, 2014

Province	Gender	No. Wrote	No. Achieved	% Achieved
National	Male	243 065	188 257	77.5
	Female	289 795	215 617	74.4
	Both	532 860	403 874	75.8

Source: DBE, NSC 2014 Technical Report

405. The table below shows learners' performance in Mathematics and Physical Sciences by gender, between 2010 and 2014 in the NSC. Male learners performed better than females in both Mathematics and Physical Sciences between 2010 and 2014

Percentage of learners' performance in Mathematics and Physical Science by gender, 2010 – 2014

Year	Mathematics			Physical Science		
	female	male	total	female	male	total
2010	43.5	52.1	47.4	45.7	50.2	47.8
2011	41.9	51.3	46.3	50.2	56.8	53.4
2012	49.2	59.7	54.0	58.9	64.0	61.3
2013	54.3	64.9	59.1	65.7	69.3	67.4
2014	48.6	59.3	53.5	59.1	64.2	61.5

Source: DBE, NSC 2014 Technical Report, 2010-2014

406. With regard to gender parity in adult literacy, there were more literate male adults between 1995 and 2012 than literate females. The adult literacy rate for males increased from 72% in 1995 to 83% in 2012 as well as for females, increasing from 67% in 2002 to 81% in 2012. The gap has therefore narrowed over time, reflecting better educational participation among females in recent years.

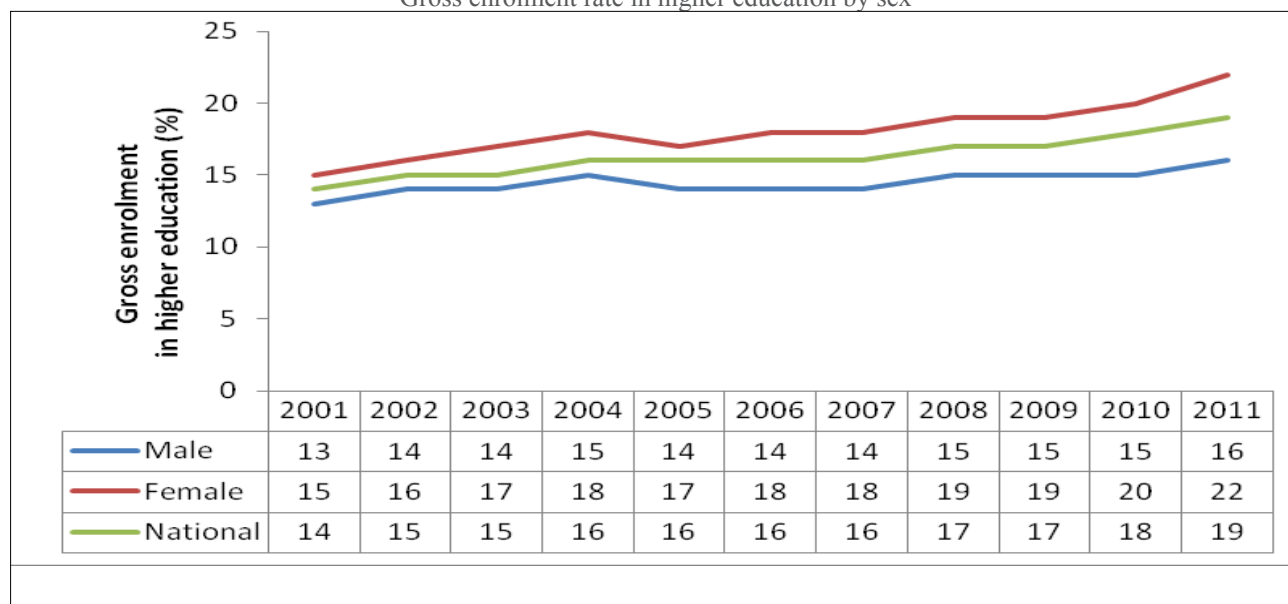


Number of learners, educators and institutions in Adult Education and Training programmes 2005 – 2011

	2005	2006	2007	2008	2009	2010	2011
Learners	269 140	251 610	292 734	290 618	297 900	297 491	297 634
Educators	17 181	18 608	19 200	19 454	15 657	16 034	15 965
Institutions	2 278	2 176	2 476	2 482	2 395	2 558	3 305

407. The country's Strategic Plan for Higher Education and Training 2010 – 2015 highlights the importance of tertiary education in relation to the Government's development agenda. Higher education aims to provide at least 20% of learners who successfully complete Grade 12 with access to tertiary institutions. When comparing males and females, a slightly different scenario is observed. Over the ten year period between 2001 and 2011, females made more gains than males as they improved their participation rate by 7% (from 15% to 22%), whereas only a 3% gain was observed for males as illustrated in the Figure below.

Gross enrolment rate in higher education by sex



408. South Africa has nearly achieved universal literacy for youth aged 15 to 24, with an overall literacy rate of 92.7% in 2011. Literacy rates were higher for female youth than male youth for the period 2002 to 2011. This contrasts with the adult literacy rate where fewer women are literate than men, indicating that a gender-based generational shift has taken place in the past 20 years in relation to literacy. The youth literacy rate increased from 88.4% in 2002 to 94.6% in 2011 for females and from 83.3% in 2002 to 90.7% in 2011 for males.

Youth functional literacy rate for youth aged 15 to 24 by sex (2002 – 2011)

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Male	83.3	84.7	84.9	86.6	87.3	87.6	88.5	88.9	90.4	90.7
Female	88.4	89.7	90.5	90.9	91.4	92.5	92.0	93.1	94.6	94.6
National	85.9	87.3	87.8	88.8	89.4	90.1	90.3	91.0	92.5	92.7

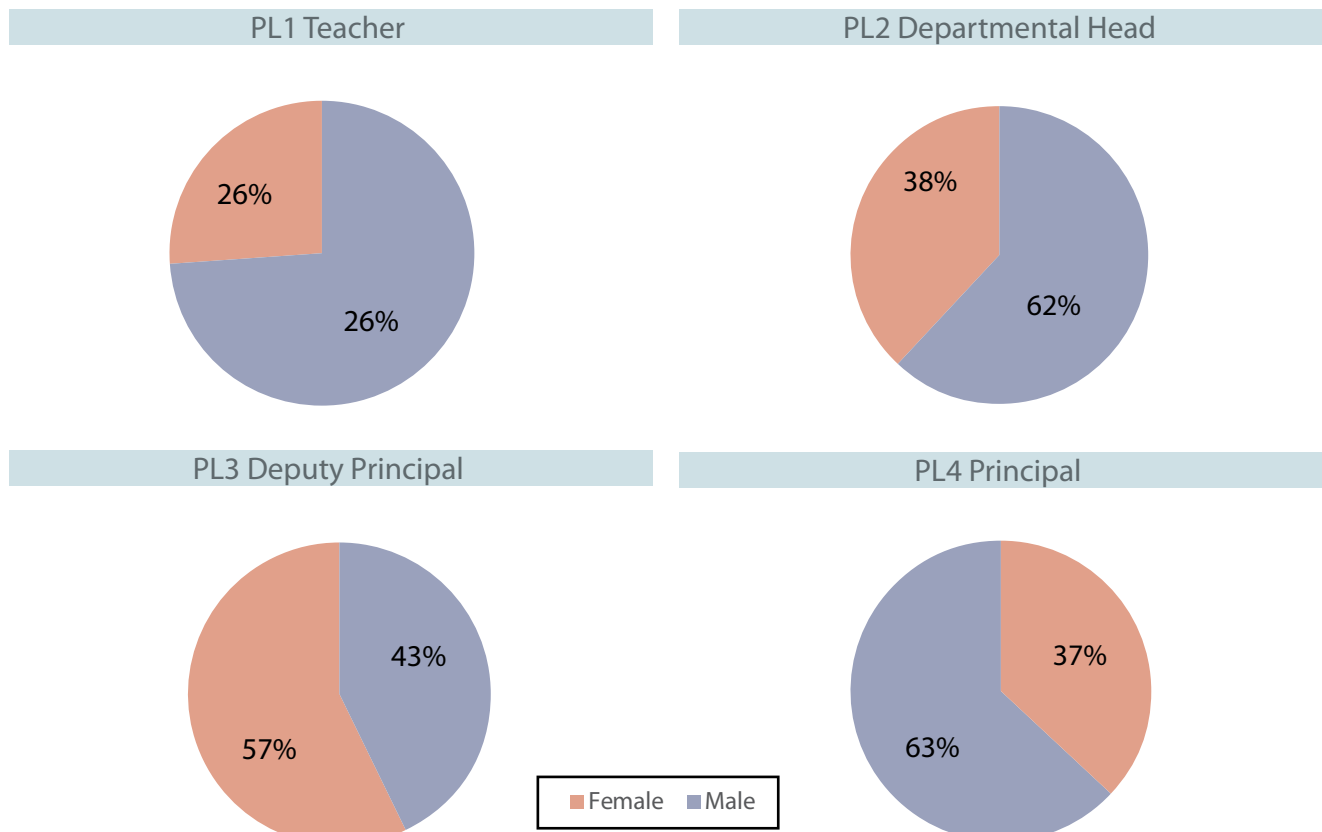
409. The table below indicates the highest level of education amongst those aged 20 years and older in the Black African population group, according to the Census 2011. The table indicates that more females (8.7%) had higher education as compared to males (7.9%).

Highest level of education amongst those aged 20 years and older for Black Africans

	No schooling	Some primary education	Completed primary education	Some secondary education	Completed Grade 10/ Standard 10	Higher
Male %	8.7	13.9	4.9	36.4	28.2	7.9
Female %	12.1	13.8	4.8	36.3	26.1	8.7
Total %	10.5	13.9	4.9	35.3	27.1	8.3

- 410.** The percentage of people aged 20 years and older who have received no formal education has decreased steadily between 1996 and 2011. In 1996, 17% of males had no formal education. This decreased to 15.5% in 2001 and further to 7.2% in 2012. For females, the percentage with no formal education decreased from 20.9% in 1996 to 20% in 2001 and 9, 9% in 2011. These findings also indicate that women have always been less likely than men to have a formal education, with a slight narrowing of the gap between these two groups toward 2011.
- 411.** The country has reviewed the National Curriculum Statement in 2009 following negative public perceptions about Outcomes-Based Education (OBE) in South Africa. The Ministerial Committee was established to undertake a review of the curriculum. In response to the recommendation of the Ministerial Committee to streamline and clarify the curriculum policy, Curriculum and Assessment Policy Statements (CAPS) were developed for each subject listed in the National Curriculum Statement (NCS) for Grades R to 12. The Department acknowledges that CAPS is not a panacea for implementation challenges. It asserts though, that the simplification of the curriculum will go a long way in assisting with overcoming other barriers to quality education.
- 412.** Government is committed to providing learners with easy to-use workbooks in all 11 official languages of the country. This translates, among other things, to the provision of nationally standardized, high-quality workbooks to all learners in Grades R to 9. In 2012, the workbooks were distributed to all learners in Grades 1 to 9 in public ordinary schools. The rationale for the workbooks is based on the three core T's of schooling: textbooks, teachers and time. Workbooks serve as a kind of adjunct textbook for learners. They assist teachers in teaching content knowledge and to monitor the tasks that learners are required to do in the workbooks. As a readily available and user-friendly classroom resource, they promote effective and efficient use of teaching time. Workbooks do not replace textbooks and other resources, but should be regarded as additional resources.
- 413.** With regard to the employment of educators by gender, there were more female teachers in the basic education system between 2009 and 2013 at 68%, versus 32% male teachers during this time. Overall there was a high percentage of female teachers in post level 1 and 2 (teachers and Heads of Department posts) in 2014. However, for post level 3 and 4 (Deputy Principal and Principal levels), there were more male teachers than females teachers.

Post levels 1 to 4 by gender, August 2014



414. The management of education is therefore largely done by men and is therefore defined by them (DBE draft Gender Equity Policy Framework, 2014). Studies (Chisholm, 2001; Diko, 2007; Nkomo & Ngambi, 2009) indicate a reluctance by women to enter management as they view it as masculine and unsupportive of their other roles as mothers and partners.
415. Equity in education must be viewed in light of several mutually supporting components: schools operate as both spaces for the transmission and transformation of cultures, values, and norms through both formal and informal means and as workplaces. The education system is a crucial link in the reproduction of social inequalities (and by extension then, in their subversion). Schools then, “do not simply ratify externally generated inequalities, but also produce or actively reproduce inequalities, thereby damaging some groups, especially working class, ethnic minorities and females” (Benadusi, 2002, p. 32). Hence, the school must be reclaimed as a site to advance gender equality and not subvert it.
416. The Teacher Development Summit, held in July 2009, aimed to break the paralysis that seemed to have gripped teacher education and development. It was a ground-breaking event which brought together all the stakeholders from across the sector in South Africa for the first time, with the goal of addressing the challenges being experienced in teacher education and development. The Summit resulted in a declaration calling for the development of a new, strengthened and integrated plan for teacher development in South Africa. This plan has now been drafted, with the involvement of teacher unions, Government, and relevant institutions related to teacher development and profession.

417. In recognising the need to encourage more able students to consider the teaching profession, government introduced the Funza Lushaka (Teach the Nation) bursary scheme in 2007. Awarded on a ‘work back’ basis, the full-cost bursary enables students of high ability to complete a full teacher education programme at a university of their choice, after which they are obliged to ‘work back’ the number of years they received the bursary by teaching in public schools in a provincial education department. The introduction of the Funza Lushaka scheme has resulted in a significant increase in the number and quality of applicants for teacher education programmes at higher education institutions, in some cases doubling the intake.

Funza Lushaka Bursary Programme, 2007 – 2013

	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Number of Funza Lushaka bursaries awarded per year	30 662	5 185	9 141	10 073	8 817	11 650
Number of qualified students	812	1 058	1 754	2 167	2 300	
Budget allocated in R millions	120	180	400	424	449 440	671 912
Budget utilized in R millions	109 770	171 019	377 738	462 198	439 258	

Source: DBE, Initial Teacher Education Programme Manager. Note: 2011-2012 figures are provisional while 2012/13 figures are projected.

418. The Accelerated Schools Infrastructure Delivery Initiative forms part of a broader infrastructure programme, aimed at achieving a level of optimum functionality in targeted schools over the next five years. It aims to fast-track the provision of basic infrastructure to schools that are currently unable to operate properly due to inadequate infrastructure. The emphasis is on the improvement of existing schools’ infrastructure, rather than the building of new schools. One of the expected benefits is improved infrastructure planning, with a pronounced focus on life cycle planning and maintenance. The focus for the 2010 – 2014 strategic planning period includes schools without water, sanitation, electricity and/or fencing; schools that constitute a danger to learners and educators from a construction perspective; and overcrowded schools.
419. The Kha Ri Gude (“let us learn”) Mass Literacy Campaign is regarded as one of the important ways in which the developmental state prioritises the needs of the poor and addresses the right of all citizens to basic education in the official language of their choice. The campaign is intended to provide 4.7 million South Africans with the opportunity to become literate. The campaign enables adult learners to read, write and calculate in their mother tongue, outcomes in line with the unit standards for ABET Level 1, as well as to learn conversational English. The campaign targets vulnerable groups, including the deaf and the blind. Currently, 80% of the learners are women, 8% are disabled, 25% are youths and 20% are over the age of 60. These programmes have increased the literacy rate across all population groups from 79% in 2009 to approximately 82% in 2012.
420. The achievement of education for all has been fast-tracked by national education policies that have significantly impacted access to learning. They include the introduction of the No-Fee Schools Policy, the National School Nutrition Programme, and other programmes aimed at retaining learners in schools that have led to dramatic increases in both primary and secondary school enrolment. Many young children living in poverty are food-deprived and are therefore not able to participate fully in their own development. The National School Nutrition Programme aims to promote better quality education for the poorest learners by providing a daily meal to learners benefiting from the programme. In the 2010 – 2011 financial year, a total of 8,281,927 learners in 20,815 schools were reached: 6,536,744 learners in 17,315 primary schools and 1,745,183 learners in 3,500 secondary schools. Since 2008, the budget of the programme has progressively extended

to include poor learners in secondary schools and in 2013, it provided over 8 million learners in over 20 000 schools.

421. The No-Fee Schools Policy has been of support to children from poor families as well as orphans, where in 2012 at least 6% of all children attending school were orphans. In 2012, 97.5% of learners who did not pay school fees indicated that schools did not ask for fees or the school was a “no-fee paying school”. There was an increase in the percentage of children who are not paying school fees, from 94% in 2009 to 97.7% in 2012. The increase in the percentage of learners not paying school fees augurs well with the Government’s goal of making schooling more accessible through the introduction of no-fee schools. Furthermore, it confirms that the national education policies are being implemented successfully throughout the provinces.

Reasons for non-payment of school fees, 2009 – 2012



Source: Statistics South Africa, General Household Survey, 2009-2012, DBE own calculations

422. Poverty is one of the challenges inhibiting young women’s access to higher education and training in South Africa. To address this issue, and promote access to higher education by young women and men from poor and working class families, the National Student Financial Aid Scheme (NSFAS) was introduced to assist students in this group with the potential to achieve academically. This is a category of students who would not be able to pursue higher education without financial assistance. The amount disbursed to students as loans and bursaries through NSFAS has increased from R3.5 billion in 2009 to R7.4 billion in 2012. Since 2012, NSFAS provides 100% bursary allocations for all students with a family joint income of under R122 000.00 per annum.
423. In 2011, women have significantly shifted towards business, commerce or management science (26,1%) and away from education, training and related fields (19,8 %), the former dominant field. Women, especially black women, were underrepresented in science, engineering and technology, as well as in business and commerce programmes—the critical areas needed in the country. Moreover, black women, especially African women, are underrepresented in postgraduate studies which are dominated by white males.

- 424.** Government has made huge strides in increasing access to higher education and as many as 991,759 student beneficiaries received R25 million in National Student Financial Aid Scheme loans and bursaries between 1991 and 2011. However, lack of disaggregation in data does not show how many young women benefitted.
- 425.** The National Research and Development Strategy and the 2008 Ten Year Innovation Plan transformed the Science and Technology workforce which resulted in an equitable representation of women and blacks in science and technology in particular. Following the implementation of these strategies, women enrolment in higher education has increased from 48% in 1996 to 58% in 2012, the proportion of women in honours programmes has increased from 44% to 49%, and in doctoral programmes from 38% to 44%. South Africa has the highest women enrolment in higher education in Africa at 44%, matched only by Tanzania.
- 426.** The enrolment of women in science, engineering and technology fields increased from 43.8% in 2000 to 45% in 2012 and women graduation increased from 48.4% to 51% during this period. Guidelines on improving the distribution of bursaries and scholarships has set a target of 55% of total support to postgraduate studies to go to women. This has shown an improvement from under 50% in 2011/2012 to 53% in 2013 - with women constituting 53% of all honours students, 49% doctoral degrees, and 45% of postdoctoral degrees.
- 427.** The Talent Development Strategy supports youth into Science and Mathematics Olympiads and competitions for learners. The programme reserves 60% of the participants positions for girl learners who are in Grade 10–12. Between 2011 and 2013, 70% of the participants in the Talent Development Programme were girls. The Thuthuka programme supports women and blacks who are emerging as researchers and this programme has to date awarded 1,058 research grants to 698 women and 594 black researchers.
- 428.** As the table below shows, slightly over 400,000 students were enrolled in Further Education and Training (FET) colleges in 2011, reflecting an increase of approximately 23,000 students since 2005. Despite improvements in FET college enrolments over the past few years, the sector has not yet expanded sufficiently to absorb children who drop out of school. This sector needs to grow substantially to ensure that the country's massive skills needs; the relatively scarce alternative education or skills pathways available to young people; and the high levels of youth unemployment are addressed. It is important to note though that the figures provided in the table below only reflect enrolment in public FET colleges. According to Lolwana (2009), private colleges accommodate close to a million students.

Number of learners, educators and institutions in Adult Education and Training programmes 2005 – 2011

	2005	2006	2007	2008	2009	2010	2011
Learners	269 140	251 610	292 734	290 618	297 900	297 491	297 634
Educators	17 181	18 608	19 200	19 454	15 657	16 034	15 965
Institutions	2 278	2 176	2 476	2 482	2 395	2 558	3 305

Sources: DBE, EMIS, Education Statistics in South Africa: 2006 – 2009; DHET, 2010 –2011.ii

- 429.** The ability of women to control their own fertility is fundamental to women's empowerment and equality. Reproductive rights including the right to decide on the number, timing and spacing of children, and to make decisions regarding reproduction free of discrimination, without coercion and violence, contribute to gender equality and empowerment. On improving access to contraception and family planning for women, the country launched the National Family Planning Campaign



in February 2014 under the theme “My Responsibility, My Choice, Our Future- I choose dual protection”. The aim of the campaign is to provide information and services about various methods that prevent HIV, STIs and unwanted pregnancies. The campaign encourages the use of a combination of condoms and a second method of protection. The sub-dermal implant which is a long acting progesterone- contraceptive method that is inserted under the skin in the upper arm provides protection from pregnancy for up to 3 – 5 years was also launched with this campaign.

430. South Africa continues to implement legislation that has been previously reported such as the Basic Conditions of Employment Act (BCEA), the Labour Relations Act (LRA) and the Employment Equity Act (EEA). During this reporting period, the country amended some of the legislation to strengthen its effect and protection of women, such as the EEA to cover equal pay for equal work. Furthermore, access is enhanced in relation to unfair discrimination cases as employees earning under the BCEA threshold or employees that allege unfair discrimination on the basis of sexual harassment may now have their cases conciliated and arbitrated by the Commission for Conciliation, Mediation and Arbitration (CCMA). Previously these cases would have been adjudicated upon by the Labour Court – a much longer and more expensive process. In order to ensure fairness and in light of the legal importance of such cases, a full right of appeal is available for discrimination matters that are adjudicated upon by the CCMA.
431. South Africa believes that equal representation of both sexes in the labour force is of great importance. The influential role of gender equality in economic growth is most directly illustrated in the participation of women in the labour force. The workforce is under-utilised and economic resources are wasted when women are not active. Gender equality allows for an increase in the number of women in the working sector, thereby leading to an expansion of the labour force and an increase in economic productivity (Chung et al., 2013).
432. Males are more likely to participate in the labour market than females. Furthermore, the gap between male and female participation rates has remained stable over the past 13 years.
433. Between 2001 and 2014, the working-age population (age 15–64) increased for both sexes. The total increased from 27,3 million to 35,2 million. The number of males has increased by 35% and that of females by 24%. There was a considerable demographic gender gap in 2001 in favour of females, as there were 1,12 females for every male. This gap decreased considerably to 1,03 females to every male in 2014, resulting in greater equity between the two groups.
434. The participation of females in the economy can have an impact on raising the overall income for households. Raised income for females in turn increases their chances for better access to and control over resources, and can have a statistically significant impact on poverty reduction (Bravo & Contreras, 2004). This section accordingly examines gender disparities of males and females who are participating in the South African labour market.

Labour force participation rate by sex, 2001 and 2014

	Male	Female	Total
2001	67.4%	54.9%	60.8%
2014	63.6 %	51.0%	57.2%

Source: LFS March 2001 and QLFS Q1: 2014<sup>90</sup>

435. The labour force participation rates for both males and individuals who are married or cohabiting

90 Statistics South Africa, 2014: Gender Series 1: Economic Empowerment: 2001-2014, Pretoria

accounted for a 74,9% participation rate in 2001, and in 2014 the total males and females who were married or cohabiting accounted for 71,6%.

436. There is a positive relationship observed between the levels of education and the labour force participation rate for all population groups and for both males and females, where labour force participation rates were the highest for those with a tertiary education for males as well as females across all population groups. Amongst black African women with a tertiary education, participation rates were lower in 2014 (85.6%) than in 2001 (91.1%), whilst it remained stable for females of other population groups at approximately 79%.
437. The labour participation rate by presence of minor children in the household in 2001 was highest among males who lived in urban areas without minor children. Males with no minor children present in the household accounted for a 74.8% rate compared to females with no minor children in the household who accounted for a 63.2% rate. These rates were higher than those noted for households with at least one child. In general, as confirmed in earlier sections, males had higher participation rates than females in both urban and rural areas and regardless of the number of children present in the household.
438. Similar trends were observed in 2014 for urban males and females. Males had higher participation rates than females in both urban and rural areas, and males living in households without minor children were more likely to participate (72,5%) than males with minor children (71,1%) in the household. The gender gap in labour force participation was highest between males and females living in households with at least one minor child residing in urban areas. The participation rate of males in these households was almost 15 percentage points higher than their female counterparts. It can therefore be concluded that the number of young children is expected to negatively affect labour participation of women in the labour market. Access to childcare is relevant in a gender study because where childcare is not available outside the family, it is usually the female members of the household who are responsible for this task.
439. There is no law in the country that prohibits women's participation in a particular job opportunity. Both males and females have equal opportunity for employment in the country as the country strives to be in line with the Constitution. The Gender Series 1 identified the gender stereotype as responsible for reducing the number of women participating in the labour force:
- A good woman is one that maintains the best home: Within households, the responsibility of maintaining homes is perceived to be a woman's role.
  - Child rearing is a woman's responsibility: Related to the aforementioned stereotype, is the perception that child care is a female responsibility.
  - Certain jobs are for females and others for males: When fields of study were analysed, both males and females continued to select fields of study associated with gender stereotypes.
440. The Employment Equity Act, 1998 (Act No. 55 of 1998) protects employees in areas of remuneration and has been amended by the Employment Equity Act, 2013 (Act No. 47 of 2013). The amendments have explicitly incorporated the concept of equal pay for work of equal value into the unfair discrimination provisions. This stipulates that it is unfair for an employer, based on a prohibited ground, or analogous arbitrary ground, to have different terms and conditions of employment for employees doing the same work, similar work or work of equal value. The law is now explicitly aligned with the International Labour Organisation prescripts on equal pay for work of equal value. Provision is now made in the Act for the Minister, after consultation with the Commission for Employment Equity, to issue regulations to prescribe the criteria and methodology for assessing

work of equal value<sup>91</sup>.

441. The National Empowerment Fund Act, 1998 (Act No. 105 of 1998) established the National Empowerment Fund (NEF) as a driver and a thought-leader in promoting and facilitating black economic participation through the provision of financial and non-financial support to black empowered businesses, as well as by promoting a culture of savings and investment among black people with a vision to become the leading provider of innovative transformation solutions for an economically inclusive South Africa.
442. Since operational inception of the NEF in 2004, until early 2015, 21% of the businesses funded by the NEF are owned and managed by black women. The NEF recently established the Women Empowerment Fund, whose ethos is “to Fund a Woman is to Fund a Nation”. Through this initiative the NEF is expected to increase their funding for women owned businesses to a minimum of 40% in the medium term. This is the NEF’s commitment towards advancing the historic quest of bringing about gender parity through initiatives aimed at radically transforming society and ending patriarchy by mainstreaming gender in the ownership, management and control of the economy. The long-term objective of the Women Empowerment Fund is to ensure that women comprise a critical mass of beneficiaries in respect of the development of black industrialists, sustainable and decent jobs, skills transfer, preferential procurement and enterprise development.
443. South Africa has implemented measures to encourage women to start their own businesses and also form co-operatives which will further open employment opportunities to other women. Several initiatives are in place to assist women who want to start their own businesses.
444. The Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), including related regulations (the Codes and Sector Codes) are aimed, amongst other things, at the following:
  - Increasing the extent to which communities, workers, co-operatives and other collective enterprises own and manage existing and new enterprises and increasing their access to economic activities, infrastructure, and skills training;
  - Increasing the extent to which black women own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure, and skills training.
445. In 2007 the Codes of Good Practice were published to assist and advise both the public and private sectors in their implementation of the objectives of the BBBEE Act. The Codes also provide principles and guidelines that facilitate and accelerate the implementation of broad-based empowerment in a meaningful and sustainable manner.
446. The Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) provides a framework for preferential treatment of historically disadvantaged groups (such as women) in procurement transactions. The Act provides specific targets for women and people with disabilities. The act has been put in place recognising that public procurement can serve as an important policy instrument for advancing marginalised groups, such as women-owned businesses. Study findings show that public procurement constitutes 10-15% of Gross Domestic Product (GDP) in developed countries and up to 20% in developing countries.
447. The establishment and success of small, medium and micro enterprises (SMMEs), including survivalists and co-operatives, is globally recognised as critical to address the challenges of job creation, poverty alleviation, socio-economic conditions and equality for all. This is especially the case in South Africa where the role of SMMEs is vital to drive economic growth, employment,

91 Department of Labour, 2014: 14th Commission for Employment Equity – Annual Report 2013-2014

innovation and competitiveness. It is estimated that South Africa has some 5.9 million SMMEs which generate 40% of its GDP and 60% of employment in the country. Women enterprises are largely represented in SMMEs. Following the 2014 South African elections, His Excellency, President Jacob Zuma, proclaimed the Department of Small Business Development to champion the support of small businesses.

- 448.** Government has implemented various approaches to support SMMEs, which include; measures to reduce the tax compliance burden, providing dedicated credit facilities, establishing support and extension agencies and incubators, and diversifying procurement towards emerging enterprises where possible. In 2012, the various national small business finance agencies were consolidated into the Small Enterprise Financing Agency (SEFA), which was housed in the Industrial Development Corporation (IDC). This was initiated after the adoption of the New Growth Path in 2010, which identified enterprise development as a key priority. Resultant policies aim to promote small business and entrepreneurship by improving access to and efficiency of government funding and making more resources available to SMMEs. SEFA's mandate is to foster the establishment, survival and growth of SMMEs and contribute towards poverty alleviation and job creation.

### **Co-operative**

- 449.** The Small Enterprise Development Agency (SEDA) is an agency of the South African Department of Trade and Industry. SEDA was established in December 2004, through the National Small Business Amendment Act, 2004 (Act No. 29 of 2004) with the mandate to:
- Implement National Government's small business strategy;
  - Design and implement a standard and common national delivery network that must uniformly apply throughout the Republic in respect of small enterprise development; and
  - Integrate all government funded small enterprise support agencies across all tiers of government.
- 450.** SEDA's mission is to develop, support and promote small enterprises throughout the country, ensuring their growth and sustainability in co-ordination and partnership with various role players, including global partners, who make international best practices available to local entrepreneurs.
- 451.** The Isivande Women's Fund under the Department of Small Business Development is an exclusive fund that aims to accelerate women's economic empowerment by providing more affordable, usable and responsive finance than is currently available. The Fund targets formally registered, 60% women-owned and/or managed enterprises that have been in existence and operating for two or more years with a loan range of R30 000 to R2 million.
- 452.** The B'avumile skills development programme is a women's empowerment initiative aimed at enhancing talent in the arts and crafts, and textiles and clothing sectors among women. It consists of a formal training programme to develop women enterprises' expertise in the production of marketable goods and the creation of formal enterprises in the creative and clothing and textiles industry. This initiative provides the country with an opportunity to fast-track rural women's economic empowerment, as well as increase the number of women-owned enterprises that are integrated into the economic mainstream.
- 453.** Technology for Women in Business is an initiative aimed at enhancing the accessibility of Science and

Technology in SMMEs. This programme was initiated in 1998, with the emphasis on the application of science and technology solutions to achieve business growth in women-led enterprises and consequently move women-led enterprises from the side-lines towards the mainstream economy. The objectives are facilitating focused action by women entrepreneurs at all levels; creating successful role models; unlocking solutions to progressive approaches to doing business in a global economy; and exploiting partnerships with government, corporate and women-focused organisations. The programme also holds an annual awards ceremony to recognize and reward women entrepreneurs who have successfully used appropriate technologies to improve the performance of their businesses. The national programme focuses on female entrepreneurs at all levels of business, particularly from SMMEs. It aims to accelerate business growth through partnerships, education, mentoring and training.

454. Many women's enterprises are established as co-operative, supported by the Co-operative Incentive Scheme (CIS). This is a 100% grant for registered primary co-operatives (a primary co-operative consists of five or more members). The objective of the CIS is to improve the viability and competitiveness of co-operative enterprises by lowering their cost of doing business through an incentive that supports broad-based black economic empowerment. The objectives are as follows:
  - Promote co-operatives through the provision of a matching grant;
  - Improve the viability and competitiveness of co-operative enterprises by lowering the cost of doing business;
  - Assist co-operatives to acquire their start up requirements;
  - Build an initial asset base for emerging co-operatives to enable them to leverage other support; and
  - Provide an incentive that supports broad-based black economic empowerment.
455. A study, titled the Gender Series: Volume 1: Economic Empowerment 2001 – 2014 released in 2014 by Statistics South Africa, focused on gender disparities in economic empowerment and provided in-depth analyses covering different focal areas related to gender. The Report reiterated findings articulated in paragraph 436, indicating that labour force participation of females in the economy can have an impact on raising the overall income for households. Raised income for females in turn increases their chances for better access to and control over resources, and can have a statistically significant impact on poverty reduction (Bravo & Contreras, 2004).
456. The labour force participation rate of males was higher than that for females in both 2001 and in 2014 (see Figure in 436). Even though both sexes were participating at lower rates in 2014 than in 2001, the gap between male and female participation rates remained stable over the reference period. Nationally, the labour force participation rates of both males and females were higher in 2001 than in 2014. The participation rate of males decreased from 67.4% in 2001 to 63.6% in 2014. The participation rate of females was 54.9% in 2001 and declined to 51.0% in 2014. The study also indicated that levels of employment increased by 2.5 million and males reported the highest increase of about 1.7 million, while the number of employed females only increased by 826,000.
457. The Census 2011 report highlights that when education was assessed in relation to field of study, it was found that employed persons with a tertiary education were more likely to be qualified in the economic and management sciences. Gender differences were observed in relation to qualifications. Males were three times more likely (with a percentage share of 75.4%) to be qualified in physics/mathematics/engineering than females. On the other hand, females were more likely to be in possession of qualifications in the field of social studies/health sciences and arts/education/



hospitality (approximately 66% and 68%, respectively). The table below indicates analyses of the share in employment levels of males and females with tertiary qualifications by sex and field of study in 2011.

Field of Study	Males		Females		Both sexes	
	Numbers	%	Numbers	%	Numbers	%
Social Studies/health sciences	139	34.6	263	65.4	402	17.4
Arts/Education/hospitality	154	32.4	321	67.6	475	20.6
Economic and management Science	325	45.3	335	50.7	661	28.6
Physical/mathematical science/engineering	373	75.4	121	24.6	495	21.5
Agriculture/others	145	54.9	129	47.1	274	11.9
Total	1136	49.3	1170	50.7	2306	100

Source: Census 2011

- 458.** With regard to earnings, females continued to dominate among those earning in the bottom ranges of earnings. However, the last 13 years saw noticeable shifts in male and female earnings, with the gender gap between male and female earnings in the upper salary ranges (i.e. R7 501–R11 500 and R11 500+) narrowing considerably. Analysis by population group further showed that the percentage share of females with monthly earnings between R11 501 or more was highest among females with a tertiary education who belonged to other (not black African) race groups (56.2%) in 2001. However, 13 years later, the largest percentage share for females with monthly earnings of R11 501 or more was found amongst black African females with a tertiary qualification (64.3%). This percentage was higher than the percentage depicted for their male counterparts, irrespective of race.
- 459.** Business enterprises in the country show an increase in percentage shares amongst females owning small to medium-sized businesses. Furthermore, while most females continue to be employed in the informal sector, the percentage share of females operating businesses in the formal sector has increased over time.
- 460.** Women's ownership of and control over resources is increasingly seen as a key element of women's empowerment. The proportion of households headed by females who owned land used for agricultural purposes also exceeded that of males within each province in 2013. In terms of the gender gap in 2013, gender parity ratios in ownership of land used for agricultural purposes were higher among households headed by the white and coloured population groups (GPRs of 1.07 and 0.93 respectively) and lowest amongst black Africans (1.24).
- 461.** In 2013, the unemployment rate was approximately 25%. The unemployment rate has increased between 1994 and 2013, despite the large growth in employment over the period, which could be ascribed to the high number of people entering the labour market as well as the high number of people being counted in the labour market. The number of people entering the labour market has increased both due to population growth and the end of apartheid. More people began actively seeking work, particularly in urban areas, as the restrictions placed on black people, especially women, were removed.
- 462.** Decreasing the levels of unemployment is particularly important because of its direct impact on the reduction of levels of poverty. Unemployment affects men and women equally. However, the rate of unemployment tends to be higher for women than it is for men. Overall unemployment rates for males and females grew slightly (0.6 percentage points) between 2001 and 2014 from 24.6% in 2001 to 25.2% in 2014<sup>92</sup>. Females aged 15–24 years were most likely to be unemployed with

<sup>92</sup> Statistics south Africa, 2014 employment figures



an unemployment rate of 56.3% in 2014. The largest increase was observed between 2001 and 2014 (5.8 percentage points).

463. In South Africa it is estimated that around 38% of businesses are owned by women<sup>93</sup>, and that the country has made use of preferential procurement policies to create greater opportunities for women to promote their access to, and visibility in, public procurement spending. However, women-owned businesses still face various barriers in accessing government procurement and supply chains. Participation of women in previously male dominated sectors is still a problem, most women are still in possession of qualifications in social studies/ health sciences, arts, hospitality and education.
464. In South Africa, women-owned businesses are still underrepresented in public procurement when compared to their male counterparts, and are unlikely to account for more than 25% of procurement spend<sup>94</sup> in the country. Over the 2011/12 financial year, the study undertaken by the Business Women's Association of South Africa indicates that women-owned businesses were recipients of R16.56 billion in government procurement spending out of a total of R183.3 billion in the research sample (which represents only 30% of total procurement spend in this year), thus accounting for only 9% of the total procurement spend in the sample studied.
465. Women owned/managed enterprises shows that there are different levels at which these women entrepreneurs operate their businesses, each facing different challenges. Women who have lower educational backgrounds tend to continually seek government support in understanding how to run a business, yet these women can support their businesses with the income generated from the business itself so they need to be given training in this regard. Women entrepreneurs with a savvy business background usually need marketing support for their businesses to take them into a higher level of wealth creation.
466. The level at which these women entrepreneurs aspire to grow their businesses also differs. Most women use their businesses as a means of income generation to feed their families. However, some women seek ways to make the business grow and expand to other parts of the country. They also want to explore other measures to process their products in-house. This means that training is required as well as access to resources which would allow them to expand their businesses.
467. The general socio-economic, cultural and environmental conditions that include living and working conditions; social and community influences; and individual lifestyle factors<sup>95</sup> are social determinants of health in South Africa. There have been major efforts to address factors such as poverty, underdevelopment and unemployment; access to basic services such as water, sanitation, electricity, fuel, housing; and provision of social security nets such as social grants. These are having positive impacts on health outcomes and the empowerment of women in the country. South Africa has improved access to basic services through improving access to water, sanitation, electricity, roads and housing to a large extent, which is critical for good health outcomes.
468. South Africa's National Health Act, 2003 (Act No. 61 of 2003) provides free health care services at public hospital level for pregnant women and children under 6 years. The Act has resulted in enhanced access to primary health care services for all in South Africa.
469. Government, through the South African National AIDS Council (SANAC), developed the National

93 Wits Business School Journal, 2011 – as quoted in the research study by the Business Women's Association of South Africa (BWASA), 2013: "The Current Status of Policies, Practices, Measures and Barriers regarding Women-Owned Businesses in Government Procurement".

94 Ibid

95 Bradshaw (2008): Determinants of Health and their Trends; South African Medical Research Council

Strategic Plan on HIV and AIDS, Sexually Transmitted Infections (STIs) and Tuberculosis (TB) for 2007 – 2011, and reviewed and updated this plan for 2012 – 2016. This was undertaken through an extensive consultative process with a range of stakeholders in the health, education, mining,

transport sectors; trade unions; other government departments; research bodies; and civil society organisations, to prevent and mitigate the impact of HIV, AIDS and TB.

470. Women make up 65% of the more than 20.2 million people that have to date been tested for HIV through the HIV Counselling and Testing (HCT) campaign between April 2010 and June 2011. Approximately 17% of South African women in their reproductive age are HIV positive<sup>96</sup>. Statistics South Africa estimated that the mid-year population of South Africans in 2014 would be at 54 million and approximately 51% (approximately 27.64 million) of the population is female. Life expectancy at birth was estimated at 59.1 years for males and 63.1 years for females in 2014. According to the 2014 mid-year population estimates released by Statistics South Africa, the life expectancy for women has increased from 55.7 years in 2002 to 63.1 years in 2014<sup>97</sup>.
471. South Africa accelerated the implementation of key health programmes such as the provision of Anti-Retroviral Treatment (ART); the prevention of mother-to-child-transmission of HIV; and HIV counselling and testing. Access to life saving anti-retroviral (ARV) treatment has improved the life expectancy for women in the country.
472. There has also been a 97% reduction in mother-to-child transmission of HIV. Progress has been recorded in scaling up Prevention of Mother-to-Child Transmission (PMTCT) of HIV from a budget of 71% in 2009 to 99% in 2013, resulting in reduction in mother to child transmission from 8% in 2008 to 2% in 2013. This has improved the health and well-being of both mother and child. The number of people receiving ART in South Africa has increased exponentially between 2004 and 2011, with women and users of the public sector gaining greater access to ART<sup>98</sup>.
473. The introduction of District Clinical Specialist Teams as part of Primary Health Care (PHC) Re-engineering has contributed to improving maternal and child health. The campaign on accelerated reduction of maternal and child mortality (CARMMA) has contributed in the reduction of deaths of mothers and infants. CARMMA focuses on promoting sexual and reproductive health services; antenatal care; access to skilled birth attendants; allocating dedicated obstetric ambulances and establishing maternity homes; strengthening human resources for maternal and child care; intensifying management of HIV positive mothers and children; promoting child survival through supporting exclusive breast-feeding, and provision of lactating mothers facilities in hospitals; and promoting kangaroo mother care. Evidence<sup>99</sup> also shows that as a result of these interventions, the maternal mortality rate is steadily decreasing. In 1998 the maternal mortality rate was standing at 150 per 100,000 live births and then increased sharply to 310 per 100,000 live births in 2008, and is now gradually declining to 269 per 100,000 live births for population based figures, and 149 per 100,000 live births for facility based figures.
474. According to the Department of Health, significant progress has been made in initiating people on treatment. By 2011, there were 1.79 million people who started on ARTs, an increase from 1.1 million in 2009. The country appeared to be on track to meet its target of 3 million by 2014 as 2.4 million patients had received ARTs by the end of the financial year in 2013. The initiation of ARTs for all pregnant women living with HIV with a CD4 count of less than 350, and provision

<sup>96</sup> Inputs from Department of Health, South Africa: November 2014

<sup>97</sup> Statistics South Africa (2014): Statistical Release P0302. Mid-year population estimates, 2014

<sup>98</sup> Inputs from Department of Health, South Africa: November 2014

<sup>99</sup> Ibid

of treatment to all other pregnant women living with AIDS at 14 weeks of pregnancy, has reduced maternal and child mortality rates. In 2004, of the total number of patients receiving ARTs (47,500), women comprised 25,600. In 2011, of the total figure of 1,793,000 patients, women comprised 1,090,000 of those receiving ARVs.

475. This turnaround can be attributed to an acceleration and expansion of HIV awareness and prevention campaigns, counselling and testing, treatment, care, and support. For example, since the presidential launch of the HCT campaign in April 2010, the number of people tested has increased substantially, confirming improvements in health-seeking behaviour among South Africans. As at mid-2011, 15.1 million people had been tested and an additional 4.8 million people have since been tested. Based on this Presidential mandate, there has been a collaborative effort with partners to ensure implementation of the HCT campaign for pregnant women and expanded treatment care and support. The accelerated efforts included expanding health facilities offering prevention of mother-to-child transmission programmes, and training of midwives on Nurse Initiated Management of Antiretroviral Therapy programme, which makes lifelong access to ARVs possible for pregnant women.
476. In April 2013, South Africa rolled out fixed-dose combination antiretroviral (ARV) medication, which is one tablet instead of three pills a day, reducing the risk of patients defaulting from treatment. The fixed-dose combination ARV is given to newly diagnosed HIV-positive people, including HIV-positive pregnant women and breast-feeding mothers. The fixed-dose combination will help reduce pill burden as it is easy to take; highly effective and in no way inferior to taking three individual drugs. The guideline for prevention of mother-to-child transmission, paediatric and adult treatment, was revised due to changes in the eligibility criteria so that all pregnant women irrespective of CD4 cell count will now be initiated on lifelong ART.
477. The number of public facilities initiating patients on ARVs increased from 490 in 2010 to 2,948 in 2011 and the number of nurses trained to provide treatment increased from 290 in 2010 to 10,000 in 2011. Through improving procurement processes, there has been a 50% decrease in the prices of ARV drugs, which will enable the public health sector to treat more patients with the same amount of resources. The country has also begun to implement a comprehensive information management system to keep track of the number of people on treatment.
478. A significant amount of knowledge, capacity and information has been generated, thus enabling the country to be in a significantly better position to develop and implement a plan that is more focused, evidence-informed and sustainable. Several studies have shown that integration, co-ordination and intradepartmental planning and execution has been the weakest aspect of the response to date and thus one of the key areas of focus during the development of the new strategic plan has been the identification of areas of synergy and integration, synchronisation and eventually mainstreaming of the response in a deliberate, focused and sustainable manner.
479. In terms of women's health, the human papillomavirus (HPV) is a major cause of cervical cancer and is responsible for the deaths of over 3,000 women in South Africa every year. Cervical cancer is the second most common cancer among women in South Africa and the National Cancer Registry reports that the highest rates can be found among black women aged 66 to 69 years of age. The launch of the HPV vaccine campaign in March 2014 was a major step towards protecting women against cervical cancer. The campaign targets girl-children aged between nine and 12-years-old and aims to vaccinate an estimated 500,000 girls in 17,000 schools. The HPV vaccine will contribute to reducing the number of women dying as a result of cervical cancer, although it will be of little use to those women who already have cancer of the cervix.

480. The First-Things-First Campaign was launched at the Mangosuthu University of Technology on 7 March 2013. This Campaign targets students in universities by making Life Orientation a compulsory first year subject in Universities and Further Education and Training Colleges where students are introduced to HIV and AIDS, health and reproductive rights issues.
481. The majority of South African women still rely heavily on health services that are provided by the state. This is evidenced by the low percentage of private medical scheme coverage and the numbers that are using private health facilities. According to Statistic South Africa's publication titled "Gender Statistics in South Africa (2011)", overall South African women are less likely (38.8%) to visit private health facilities when they need health care than men (39.9%), and only 32.3% of black African women and men use private health facilities. Access to private medical scheme coverage is lowest at 9.3% for black African women compared to 70.7% for white women, 9.1% for black African men and 70.5% for white men. Therefore increasing access to public health care will significantly benefit the majority of black African women.
482. South African women continue to bear the burden of inequality which is compounded by the feminisation of poverty, the HIV and AIDS pandemic, inadequate access to health care and persistent gender-based violence.
483. The levels of maternal mortality remain high, a key challenge for the health sector. Various factors contribute to this challenge. These range from the uneven quality of public health care service delivery; inadequate health infrastructure; inadequate human resources for health; delayed health seeking behaviour by women; violence against women and girls including high levels of domestic violence and rapes; substance abuse; lack of accountability by professionals; and a high burden of disease particularly HIV and AIDS.
484. A large percentage of the female population live in isolated areas, and therefore struggle to gain physical access to hospitals or clinics. The State has attempted to address this problem by rolling out mobile clinics to visit the larger rural areas. The second problem facing rural women is that they are not informed of the health care options open to them, and therefore do not seek treatment for treatable problems. This issue receives on-going attention by mobile clinics and extensive information campaigns.
485. There has been a demonstrable increase in women's access to reproductive health care services in South Africa. Improved reproductive health services have resulted in a reduction in illness and death amongst women. For example, the percentage of women in South Africa whose live birth occurred in a health facility increased from 76.6% in 2001 to 94.1% in 2009. This indicates a significant improvement in the extent of services provided at health care facilities in South Africa.
486. Family planning is a broad term that encompasses the provision of contraception methods to sexually active women and includes fertility planning, for example spacing and management of infertility, and termination of pregnancies. The provision of appropriate and adequate family planning services in South Africa is critical in a context of high rates of teenage pregnancies, as well as high rates of mother and child mortality and HIV.
487. According to Statistics South Africa in its estimates of the 2013 population of just less than 53 million people, the total fertility rate<sup>100</sup> had dropped from 2.7 children per woman in 2002 to 2.3 children per woman in 2013. Many factors influence the fertility rate, including urbanisation, female

<sup>100</sup> The total fertility rate of a population is the average number of children that would be born to a woman over her lifetime.

educational levels, infant mortality, costs of raising children, cultural and religious beliefs as well as the use of contraception. In South Africa, estimates show that about two thirds of sexually active 15 to 49-year-old women use a modern contraceptive method. This usage contributes to the decline in the total fertility rate.

488. Access to and use of contraceptives by women is improving. Contraceptive use is an important element in the promotion of sexual and reproductive health. The strategic objective set for improving women's health was to improve access to sexual and reproductive health services. All public sector health facilities are providing family planning services with a varying mix of contraceptives. A protection rate of 37.8% was recorded, marginally exceeding the 35% national target set for 2012/13.
489. During the financial year 2012/13 the updated National Contraception and Fertility Planning Policy and Service Delivery Guidelines were approved by the National Health Council. The National Contraception and Fertility Planning Policy, Service Delivery Guidelines, and National Contraception Clinical Guidelines are extremely important documents aimed at reprioritising contraception and fertility planning in South Africa, with an emphasis on dual protection.
490. Contraception is one of the most powerful public health tools for any country. As abovementioned, providing women with access to safe and effective contraception is a critical element of women's health. Enabling women to make choices about their fertility is empowering and offers women better economic and social opportunities. Birth spacing also improves the opportunities for children to thrive physically and emotionally. Engaging men in sexual and reproductive health encourages shared responsibility in their roles as partners and parents.
491. The adoption of the revised Contraception Policy takes place within the context of renewed international focus. One of the key changes in the policy is to increase the range of contraceptive commodities available in the public sector, thereby increasing the contraceptive method mix. The most notable additions are sub-dermal contraceptive implants and a greater variety of intra-uterine devices. These additions to the method mix should provide more choice and security in terms of contraceptive protection to women, thus improving family planning<sup>101</sup>.
492. In 1997, South Africa enacted the Choice on Termination of Pregnancy Act, 1996<sup>102</sup> that permits the termination of pregnancy. Pursuant to the Act, a pregnancy may be unconditionally terminated within the first 12 weeks of the pregnancy. From the 13th up to the 20th week of gestation, a pregnancy may be terminated if a medical practitioner is of the opinion that: (i) the pregnancy would pose a risk to the woman's physical or mental health; or (ii) there exists a substantial risk that the foetus would suffer from a severe physical or mental disability; or (iii) the pregnancy resulted from rape or incest; or (iv) the continued pregnancy would significantly affect the social or economic circumstances of the women. After the 20th week of gestation, a pregnancy may be terminated if a medical practitioner after consultation with another medical practitioner or a registered midwife is of the opinion that the continued pregnancy would: (i) endanger the woman's life; (ii) result in a severe malformation of the foetus; or (iii) pose a risk of injury to the foetus.
493. Only a medical practitioner or a registered midwife may carry out a termination of pregnancy. Such termination may take place only at a facility designated in accordance with the Act. The termination of pregnancy can only take place with the informed consent of the pregnant woman. In the case of a pregnant minor, she must be advised to consult with her parents, guardian, family members or

<sup>101</sup> Department of Health, 2013: Annual Report 2012/2013, Pretoria

<sup>102</sup> Act No. 92 of 1996



friends before the pregnancy is terminated. However, the termination of the pregnancy shall not be denied because the minor chooses not to consult.<sup>103</sup> Designated facilities at which terminations are carried out are required to collate and forward to the Department of Health information on all terminations carried out. The said information does not include the name and address of the women who have requested or obtained termination of pregnancy. The Act was amended in 2008 through the Choice on Termination of Pregnancy Amendment Act, 2008<sup>104</sup> to, amongst other things, empower a provincial Member of the Executive Council to approve facilities where a termination of pregnancy may take place.

494. A total of 77,771 legal terminations of pregnancy were performed in South Africa in 2011, which indicated a 31% increase since 2010. In 2010, 59,447 terminations were carried out. The province with the highest termination rate is the Free State, where 21,994 terminations were performed during 2011, followed by 12,138 in the North West and 11,239 in Gauteng.<sup>105</sup>
495. The laws and policies that South Africa has put in place to address poverty concerning women are two-fold: these include addressing women in abject poverty to meet human rights need as well as measures that are used to empower women for entrepreneurship, employment opportunities, and for their economic independence and sustainability.
496. There are various ways in which poverty can be measured; however, the use of an absolute measure that conceptualises poverty as lacking the income to purchase a minimum basket of food and non-food items was adopted in the discussion of Millennium Development Goal 1 (MDG1) by South Africa. Several international poverty thresholds have been adopted, with one dollar per person per day being one that reflects the most extreme condition of poverty.
497. With each passing year South Africa has seen visible improvements in the life circumstances of its citizens. According to the MDG Country report 2013: The South Africa I know, the Home I understand, released by Statistics South Africa, statistics indicate that as far as poverty is concerned, the country has made a lot of progress and yet we are aware that the levels of poverty among vulnerable groups such as children and women, which is higher than the poverty levels for the general population, still remain a major challenge.
498. South Africa, more importantly, has a policy that provides for strategies addressing the vulnerable groups. Halving the share of the population earning less than \$1.25 (PPP) per person per day is already achieved, while the share of those experiencing hunger has also been halved, at least in terms of self-reported hunger. Despite this progress, there are differentiation in poverty outcomes according to age and gender: in particular, youth and women remain disproportionately vulnerable to all forms of poverty.
499. Section 27 of the Constitution makes provision for the development of an extensive social security system, and this led to the South African Social Security Agency Act, 2004 (Act No. 9 of 2004) and the establishment of the South African Social Security Agency (SASSA). SASSA provides an income transfer in the form of different kinds of social grants such as disability grant; a grant for older persons and a war veteran's grant; foster child grant; care dependency grant; child support grant and a grant-in-aid through direct and unconditional cash transfers. The social grant programme has resulted in a reduction in poverty levels in these vulnerable groups.
500. The myriad of poverty alleviation programmes addressing income, human capital and asset poverty

<sup>103</sup> In this regard, see *Christian Lawyers Association v Minister of Health* 2005 (1) SA 509 (T) which involved the right of a child to make a decision about a termination of pregnancy without the assistance or guidance of her parents.

<sup>104</sup> Act No. 1 of 2008

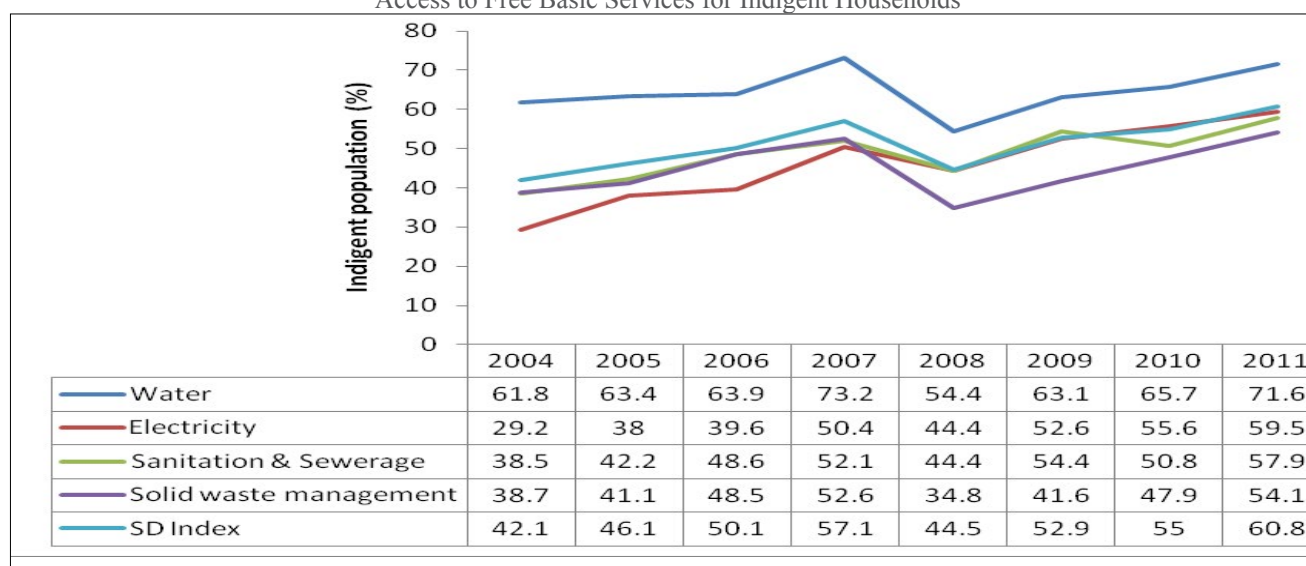
<sup>105</sup> Reply by the Minister of Health to a Parliamentary question, 21 August 2012



resulted in more South Africans today having access to for example, some form of household income, even if only in the form of a social grant, formal housing, piped water, electricity and decent sanitation. Overall South Africans are enjoying a higher standard of life, particularly in formal urban areas.

- 501.** The poverty narrative, and how South Africa is addressing it, would therefore not be complete without discussing the unique impact of a targeted social wage on the triple challenge of poverty, unemployment and inequality. Social wages in South Africa are packaged in different targeted forms. In the list of these are the following: free primary health care; no-fee paying schools; social grants, (such as old age pensions, and child support grants) and RDP housing; provision of basic and free basic services in the form of reticulated water; electricity; sanitation and sewerage as well as solid waste management to households, in particular to those categorised as indigent. In this regard, and since 2001, the indigent household is entitled to a monthly free six kilolitres of water, fifty kwh of electricity, R50 worth of sanitation, sewerage and refuse removal.

Access to Free Basic Services for Indigent Households



- 502.** The figure above indicates that for all four services outlined above, a significant improvement has been made from 2004 to 2011. The proportion of indigent households with access to free water, electricity, sanitation and sewerage as well as solid waste management increased by the following percentage points 9.8, 30.3, 19.4 and 15.4 respectively from 2004 to 2011. These basic services illustrate the extent to which the poor in South Africa access different types of services and have their living conditions cushioned against debilitating vicissitudes of poverty.
- 503.** South Africa has done a lot to improve the living conditions of all citizens as indicated, however the Living Conditions Survey 2008/2009 showed that females had a higher poverty headcount (27.3%) than males (25.2%) during the survey period when using the food poverty line. The table below indicates that the poverty headcount for females was 2.1% higher than that of males. A similar pattern is observed when using the upper-bound poverty line, yielding 54.1% for females and 50.4% for males. The percentage difference for males and females using the upper-bound poverty line was higher at 3.7%.

Poverty indicators by sex

Sex	Food poverty line (R305)			Lower-bound poverty line (R416)			Upper-bound poverty line (R577)		
	P0	P1	P2	P0	P1	P2	P0	P1	P2
Male	25.2	8.1	3.6	37.3	14.3	7.2	50.4	22.7	12.3
Female	27.3	8.8	3.9	40.4	15.5	7.8	54.1	24.5	13.8
RSA	26.3	8.5	3.8	38.9	15.0	7.5	52.3	23.6	13.3

**507.** The poverty gap for males was also lower than that of females, indicating that males living below the poverty line were closer to the poverty line as compared to females living below the same poverty line. The severity of poverty estimates further highlighted this pattern in gender poverty.

Percentage share of poverty by sex

Sex	Food poverty line (R305) (%)	Lower-bound poverty line (R416) (%)	Upper-bound poverty line (R577) (%)	RSA (%)
Male	46.2	46.2	46.4	48.2
Female	53.8	53.8	53.6	51.8
RSA	100.0	100.0	100.0	100.0

**504.** In general, the total number of females in the country is estimated to be greater than that of males by roughly 3.6%. However, looking at the poverty shares using the upper-bound poverty line, the proportion of the female population living below the poverty line exceeded that of males by 7.2% during the period of September 2008 to August 2009; while the proportion of the female population living below the food poverty line exceeded that of males by 7% and 6%.<sup>106</sup>

**505.** The low rate of participation of women in employment is another reason why the majority of women are living in poverty.

**506.** The pattern of higher unemployment rates among women than men is maintained over time. Moreover, many women are doing unpaid work such as being care givers in the home, which is not recognised as employment. Women are also commonly found in particular informal sectors such as street hawking which is not considered employment in statistics and therefore not reflected.

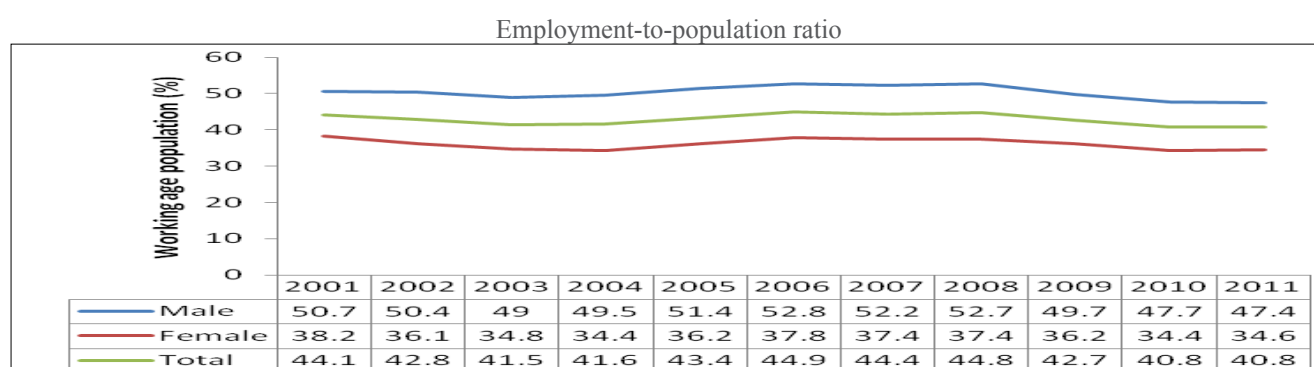
**507.** Employment grew by approximately 5.6 million between 1994 and 2013, or by 60%. While there has been a large increase in the number of people employed, this has been offset by a larger increase in the number of people looking for work. The reasons for this include population growth, increasing urbanisation (which in turn was partly a result of the dismantling of the homeland system and the removal of the pass laws) and increasing numbers of women looking for work, due to advances in gender equality. Considerable progress has been made in ensuring greater equality in employment in terms of race and gender, although challenges persist. In 1994, just 34% of working-age black Africans were employed and only 26% of black African women. In contrast, 66% whites and 51% Coloured and Asians were employed. By 2013, black African employment had climbed to 43%, and 38% of black African women had paid work.

**509.** An on-going concern is the disparity between men and women in earned income. In 2001, the average annual income of households headed by women was R27,864, compared with R63,626 for households headed by men. By 2011, despite an increase in the average income for females, households headed by women still earned less than 50% of households headed by men. The median

<sup>106</sup> Stats SA, 2012: Living Conditions survey, 2008/2009

earnings for a white man were six times as high as for a black African woman. The disparity was mostly not a result of unequal pay for the same kinds of work, although that remained a factor. The main reason for pay differentials was that black Africans, and especially black African women, were more likely to be employed in lower-level jobs. As a result of this disparity in employment, the average income for females remains far less than their male counterparts' salaries. Inequalities in access to work and pay are also reflected in household incomes.

- 510.** The figure below indicates the proportion of the country's working-age population that is employed, which remained around 41–45%. The trend shows a slight decrease between 2008 and 2009, which may be attributed to the global financial crisis mentioned earlier. The ratio is higher for males compared to females indicating better employment prospects for males as opposed to females. For both males and females, the ratio declines between 2008 and 2009.



Labour Force Survey (2001 - 2007); Quarterly Labour Force Survey (2008 - 2011), Statistics South Africa

- 511.** The goal to halve extreme poverty has effectively been comfortably dealt with, but there is deep concern that relative inequality remains high. This is so in part because of the high unemployment rate and the low labour force participation rate in our country.
- 512.** The Expanded Public Works Programme (EPWP) is one of many programmes contributing towards supporting employment generation. It provides short-term job opportunities for the unemployed (to unskilled unemployed people in particular). In addition, the aim of the EPWP is to provide training for participants. Due to the short nature of most EPWP projects, this training has generally been at a basic level. Most EPWP work opportunities result from using more labour-intensive construction and maintenance methods in public infrastructure projects. Further upscaling the EPWP resulted in more than 3 million work opportunities being created between 2009 and the end of March 2013. This included the introduction of the Community Works Programme (CWP) in 2009, with funding for employment creation projects prioritised by communities.
- 513.** The employment created through the EPWP programmes is still small compared with the number of unskilled unemployed people. Nevertheless, public employment programmes are crucial income-supporting programmes. Both the EPWP and the CWP have been successful in targeting women, the youth and people with disabilities. In addition to providing income, the opportunity to work provides dignity and meaning in the lives of participants in public works programmes. Generally, besides accessing income, public works programmes help reduce the negative effects of unemployment, which include social isolation, erosion of self-esteem, drug and alcohol abuse, as well as a loss of knowledge, skills and habits associated with having a job.
- 514.** On August 7, 2014, the Human Sciences Research Council (HSRC) finally launched the publication of the research study on civil society best practices commissioned jointly by the International

Women's Forum of South Africa (IWFSa) and South African Women in Dialogue (SAWID) as part of their South African Women as Champions of Change Program of Action [2]. The research addresses civil society best practices regarding the main issues identified as facing South African women as part of a civil society programme of action for the African Women's Decade, and it also explores the theme which cuts across the others, namely employment creation through the professionalization of women's unpaid work, and income generation in all these areas of human need.

515. There are pockets of best practices programmes implemented in civil society, government and the private sector, like the Consumer Council achieving a Pick n Pay contract of US \$ 25 million, equivalent to about R271,740,000,; to woman piggery co-operatives; the Coca Cola 5X5 programme supporting emerging entrepreneurs in distribution and bottling; Massmart Project in supplier development of women and women-focused skills; and development projects implemented by African Women Chartered Accountants encouraging young girls to take up studies to become chartered accountants amongst other related professions. These programmes have great potential to economically empower women, however they are operated at a very small scale and there is a need to find ways to upscale them.
516. Lastly, there is a need to address the unpaid work of women in family and community resilience, as well as environmental sustainability by creating employment in areas like food and retail, water harvesting, alternative energy sources, green technologies, sanitation, etc.

## 9. ARTICLES 15-16

517. A key development during the period under review has been the recognition of religious marriages which were not recognised during the apartheid regime.
518. In **Daniels v Campbell NO**<sup>107</sup> the applicant was a woman married in terms of Muslim rites, whose husband had died intestate. The court noted that Muslim marriages were not recognised in South African law and concluded that this violated section 9 of the Constitution. Accordingly, it was held that the applicant could inherit. The Constitutional Court thus recognised Muslim marriages, but the recognition was only in relation to monogamous Muslim marriages.
519. In the case of **Hassam v Jacobs NO**<sup>108</sup>, the applicant was a party to a polygamous Muslim marriage, whose husband had died intestate. The Constitutional Court held that precluding the applicant from inheriting unfairly discriminated on the grounds of religion and was therefore inconsistent with section 9 of the Constitution. The Court thus declared invalid section 1(4)(f) of the Intestate Succession Act<sup>109</sup> which excluded widows of polygamous Muslim marriages from the protection of the Act. Accordingly, it was held that the applicant could inherit. The ambit of this judgment extended the ruling in **Daniels v Campbell** to polygamous Muslim marriages.
520. Monogamous Hindu marriages also received legal recognition during the period under review. In the case of **Govender v Ragavayah NO**<sup>110</sup> the court examined Constitutional Court cases which have extended the ambit of the Intestate Succession Act. The court found that the conclusion of a marriage in terms of Hindu rites and custom is an inherent element of the right and freedom associated with religious and cultural choices. Accordingly, it held that there is judicial support for

107 2004 (7) BCLR 735 (CC)

108 (2009) ZACC 19

109 Act No 81 of 1987

110 2009 (3) SA 178 (D)

the proposition that a spouse of a “marriage” by Hindu rites may well have the religious “marriage contract” given some recognition by South African law.

- 521.** Following the courts’ interventions, several pieces of legislation have been amended and/or enacted to recognise religious marriages, as are discussed elsewhere in the report.
- 522.** The equality clause in the Constitution expressly mentions marital status as one of listed grounds upon which unfair discrimination is prohibited. The Department of Social Development’s White Paper on Families in South Africa<sup>111</sup> provides that along with the economy, polity and education, the family is universally viewed as one of the essential sectors without which no society can function. As the setting for demographic reproduction, the seat of the first integration of individuals into social life, and the source of emotional, material and instrumental support for its members, the family influences the way society is structured, organised, and how it functions.
- 523.** The solemnisation and registration of civil marriages, customary marriages and civil unions are managed by the Department of Home Affairs. Civil marriages are governed by the Marriage Act, 1961<sup>112</sup> and regulations issued in terms of the Act. South Africa also recognises customary marriages through the Recognition of Customary Marriages Act, 1998<sup>113</sup> which became effective in November 2000. Civil unions are recognised in terms of the Civil Union Act, 2006.<sup>114</sup>
- 524.** In terms of the Marriage Act, only marriage officers authorised in terms of the Act to perform marriages, may do so. Presently civil marriages are solemnised at offices of the Department of Home Affairs and at churches (by authorised marriage officers). A marriage must be conducted in the presence of at least two witnesses in a church or another building used for religious services, in a public office or private house, with open doors and, in the case of serious illness or injuries, the marriage may take place in a hospital or any concerned facility.
- 525.** If one of the parties is a minor (younger than 18 years) in the care of their parents or a legal guardian, only the parents’/guardian’s written consent is required. If a parent whose consent is legally required cannot be found to grant consent, or is legally incompetent to do so, then an application may be made to a Commissioner of Child Welfare for consent to the marriage. If the parents and/or a Commissioner of Child Welfare refuse to grant consent for the marriage, a party may apply to a judge of the High Court for consent. The judge will not grant consent unless there is sufficient evidence that the marriage is in the interest of the minor and that prior consent has been unreasonably refused. In addition to getting consent from the parents or guardian, boys under the age of 18 and girls under the age of 16 may also be required to seek the consent of the Minister of Home Affairs. The Minister may, on application, condone a marriage which required his/her consent but was contracted without such consent.
- 526.** In South Africa, the definition of a customary marriage is one that is “negotiated, celebrated or concluded according to any of the systems of indigenous African customary law which exist in South Africa”. For a customary marriage to be recognised as a valid marriage, it has to have been entered into before 15 November 2000. However, if entered into after 15 November 2000, it must comply with the following requirements: The marriage must be negotiated, entered into or celebrated in accordance with customary law, the prospective spouses must be above the age of 18 years and both prospective spouses must consent to the marriage. Although there is no restriction on the number of customary marriages that a person may enter into, no further customary marriage

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<sup>111</sup> October 2012

<sup>112</sup> Act No. 25 of 1961

<sup>113</sup> Act No. 120 of 1998

<sup>114</sup> Act No. 17 of 2006



may be entered into unless an order of court regulating the future matrimonial property system of their marriages has been obtained. Customary marriages must be registered within three months of taking place.

- 527.** The Civil Union Act allows anyone, regardless of their sexual orientation, to marry either through a civil union, a civil marriage or a customary marriage. Civil unions may be conducted by designated marriage officers for specific religious denominations or organisations and designated officers employed by the Department of Home Affairs and the Magistrates Courts. At least two competent witnesses must be present at the ceremony. Requirements for registering a civil union are that both persons must be 18 years or older and both persons may not be already married in terms of any other Act. Furthermore, with regards to the rights of LGBTI persons in South Africa, in addition to having legalised same-sex marriages, both joint and step adoption by same-sex couples is allowed.
- 528.** Courts have interpreted other clauses in the Bill of Rights, including equality, human dignity and sexual orientation, to give concrete recognition to the rights of marriage. A recent Constitutional Court decision in this regard involved the issue as to whether non-nationals who are married to South African citizens ought to enjoy rights regarding the processing of residence permits above those enjoyed by other non-nationals. The Court affirmed that non-nationals who are married to South African citizens are entitled to such special rights.<sup>115</sup>
- 529.** The table below shows selected statutes recognising religious marriages.

	Act of Parliament	Relevant provision
1	Civil Proceedings Evidence Act, 1965 (Act No. 25 of 1965)	Section 10A recognises religious marriages for the purposes of the law of evidence.
2	Criminal Procedure Act, 1977 (Act No. 51 of 1977)	Section 195(2) recognises religious marriages for the purposes of the compellability of spouses as witnesses in criminal proceedings.
3	Pension Funds Act, 1956 (Act No. 25 of 1956)	Definition of “dependents” under section 1(b)(ii) includes dependents in religious marriages.
4	Special Pension Act, 1956 (Act No. 69 of 1956)	Definition of “dependents” under section 31(b)(ii) includes dependents in religious marriages.
5	Government Employees Pension Law, 1996 (Act No. 21 of 1996)	Definition of “dependents” under section 1(b)(ii) and definition of “spouse” under Schedule 1 item 1.19 include dependents and spouses in religious marriages respectively.
6	Demobilisation Act, 1996 (Act No. 99 of 1996)	Definition of “dependent” under section 1(vi)(c) includes dependents in religious marriages.
7	Valued Added Tax Act, 1991 (Act No. 89 of 1991)	Notes 6 and 7 to item 406.00 of schedule 1 recognise religious marriages for the purposes of tax exemption in respect of goods imported to South Africa.
8	Transfer Duty Act, 1949 (Act No. 40 of 1949)	Section 9(i)(f) read with the definition of “spouse” in section 1 exempts from transfer duty property inherited by the surviving spouse in a religious marriage.
9	Estate Duty Act, 1955 (Act No. 45 of 1955)	Section 4(q) read with the definition of “spouse” in section 1 exempts from estate duty property accruing to the surviving spouse in a religious marriage.

- 530.** Dissolution of marriages, civil and customary, is governed by the Divorce Act, 1979 (Act No. 70 of 1979).
- 531.** During the period under review, the implementation of the Children’s Act, 2005,<sup>116</sup> changed the terminology previously used in respect to children. It has also defined the parental rights and responsibilities that parents or other parties may have, and confers equal and joint guardianship status on parents of children born from marriage. The child’s best interest is a constitutional right

<sup>115</sup> Dawood & Another, Shalabi & Another, Thomas & Another v Minister of Home Affairs 2000 (8) BCLR 837 (CC)

<sup>116</sup> Act No. 38 of 2005



of every child. In all matters concerning a child, the best interests of the child is paramount. The Act provides a list of factors that have to be considered when determining a child's best interests.

- 532.** The parental responsibilities and rights that a person may have in respect of a child, include the responsibility and the right to care for the child, to maintain contact with the child, to act as guardian of the child; and to contribute to the maintenance of the child. The biological mother of a child, whether married or unmarried, has full parental responsibilities and rights in respect of the child. The biological father of a child has full parental responsibilities and rights in respect of the child if he is married to the child's mother; or if he was married to the child's mother at the time when the child was conceived (in other words, when the mother fell pregnant) or at the time of the child's birth; or any time between these events.
- 533.** Unmarried fathers have full parental responsibilities and rights in respect of the child if: at the time of the child's birth, he is living with the mother in a permanent relationship; or even if he is not living with the mother or has never lived with her; he is identified as the child's father and/or pays damages in terms of customary law; he contributes or has tried to contribute to the child's upbringing for a reasonable period; and contributes or has tried to contribute towards the child's maintenance for a reasonable period.
- 534.** However, this does not affect the duty of a father to contribute towards the maintenance of the child. If there is a dispute between the unmarried father and the mother of a child regarding any of these conditions, the matter must be referred for mediation to a family advocate, social worker, social service professional or any other qualified person.
- 535.** Both parents have a legal duty to support their children. Where children are not given reasonable care, then the court may remove the child from the parent's care in terms of child care provisions. The duty of parents to support their children ends when the children become independent, for example when they marry, or when they become self-supporting. If the children are not living with the mother or the father, the person who is looking after them can apply for maintenance from the parents. For example, if a child is living with their grandparents, the grandparents can apply to get maintenance from the father and the mother of the child.
- 536.** The Maintenance Act, 1998<sup>117</sup> provides the framework for monitoring and implementing maintenance orders. It provides for the handling of complaints received from persons seeking maintenance, who have experienced difficulties with the tracing of maintenance defaulters and the enforcement of maintenance orders, as well as complaints from the respondents on the inability to comply with the maintenance orders and of abuse of the maintenance system. The Isondlo Project has helped alleviate the problem of tracing defaulters through the training of investigators; thereby delivering better maintenance services. This project has been replaced by the Kariunde Project, with the main focus on managing and processing maintenance cases with the intention of delivering best service to customers.
- 537.** In an effort to address the neglect of children and youth in society, government has identified child maintenance as one of its key priorities. It receives more than 200,000 new applications annually. The number of maintenance enquiries has increased by 50% from 2011/12 to 2012/13, while the number of maintenance orders granted has increased by 56% over the same period.

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<sup>117</sup> Act No. 99 of 1998

538. The issue of maintenance and the protection of children were again recently highlighted in a decision of the North Gauteng High Court in the Mthimunye case.<sup>118</sup> In light of the judgment, government has put steps in place to address the shortcomings identified. The strategies contain both proactive and reactive measures. Proactive measures target the making of orders prior to default. Many orders were poorly framed and this contributed to the incidence of maintenance default. The defaulter will now pay the beneficiary directly into their bank account. It was further felt that increasing the efficiency and effectiveness of the use of recovery measures would ensure that there was an increased success rate in the payment of outstanding maintenance to beneficiaries. Government has adopted a zero tolerance approach when dealing with maintenance defaulters. This includes the attachment of pensions for maintenance.

### **10. PART 3: SOUTH AFRICA'S RESPONSE TO GENERAL RECOMMENDATION 12 AND 19 ON VIOLENCE AGAINST WOMEN**

539. South Africa has put in place and implemented a comprehensive legislative framework that looks at addressing violence against women and girls in all its manifestations and in its myriad of forms. Priority has been accorded to sexual offences and domestic violence, and considerable attention has been given to crimes such as trafficking in women and children and child pornography. Some specific areas targeted by the law include issues of bail, sentencing, victim empowerment and integrated responses to gender-based violence.
540. The Domestic Violence Act, 1998 (Act No. 116 of 1998): seeks to strengthen protection against domestic violence. The Act broadens the scope of what constitutes domestic relationships and domestic violent actions. It defines violence against women as including in addition to physical abuse, other forms of abuse such as emotional, verbal, psychological, sexual, economic, damage to property, harassment and stalking. The main strength of the legislation lies in protection orders against perpetrators and the institution of criminal action against perpetrators where the alleged act(s) of domestic violence constitute a crime. The Act affords victims of domestic violence with the maximum protection from domestic abuse and establishes Domestic Violence Courts. The Act applies to a range of relationships and covers both heterosexual and same-sex relationships.
541. Criminal Procedure Second Amendment Act, 1995 (Act No. 75 of 1995): deals with, amongst other things, bail guidelines that cover violence against women.
542. Criminal Procedure Second Amendment Act, 1997 (Act No. 85 of 1997): tightens bail provisions relating to serious crimes, including violence against women.
543. The Criminal Procedure Act, 1997 (Act No. 51 of 1997): the Act further amended the provisions relating to bail to ensure that persons who are accused of having committed serious offences are not released on bail. These offences often involve women and children as victims.
544. The Firearms Control Act, 2000 (Act No. 60 of 2000): enables the State to remove illegally possessed firearms from society, control supply, possession, storage and transportation, and to detect and punish the negligent and criminal use of firearms.
545. The Protection from Harassment Act, 2011 (Act No. 17 of 2011) is aimed at protection of

<sup>118</sup> Ms Mthimunye, a single mother, was in an ongoing struggle to obtain child maintenance from her ex-husband. Her ex-husband had from the outset been delinquent in paying his maintenance. They had two minor children and the primary residence of the children was with Ms Mthimunye. Her ex-husband then resigned from his employment, but a pension payout was due to him. The issue in the case was the failure of the maintenance officers to attach this pension payout for the recovery of arrear maintenance. The High Court found that the maintenance officers in the case were negligent. The Court ruled, correctly, in favour of Ms Mthimunye and held that the father of her minor child, along with the State role-players, are liable for the payment of R24 500 in arrear child maintenance.

victims of harassment (including sexual harassment), in order to put into effect the right of all people in South Africa to be free from all forms of violence from either public or private sources. Harassment in this regard means directly or indirectly engaging in conduct that causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably (a) following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be; (b) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or (c) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving it where it will be found by or given to, or brought to the attention of, the complainant or a related person. In this regard, no longer will you be able to send someone an anonymous SMS with some kind of sexual innuendo or constantly bully a classmate at school without facing legal consequences.

546. The Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013) gives South Africa, for the first time, a single statute that tackles human trafficking holistically and comprehensively by providing a maximum penalty of R100 million or life imprisonment or both in the case of a conviction. The legislation fulfills the objectives to provide for an offence of trafficking in persons and other offences associated with trafficking in persons to prevent and combat the trafficking in persons within or across the borders of the Republic; to provide for measures to protect and assist victims of trafficking in persons; and to provide for the establishment of the Intersectoral Committee on Prevention and Combating of Trafficking in Persons and the criminalization of practices resulting in forced and early marriages and harmful cultural and traditional practices such as Ukuthwala. It also has the effect of domesticating the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons. This legislation has to date not yet implemented and government is putting in place all measures to have this legislation implemented. The country continues to use a range of other legislation to prosecute perpetrators related to trafficking in women.
547. In 2014 Parliament passed the Judicial Matters Second Amendment Act, 2013 (Act No. 43 of 2013) to support the establishment of sexual offences courts. This Act amends the Criminal Law (Sexual Offences and Related Matters) Amendment Act by inserting section 55A to provide the Minister of Justice and Correctional Services with the authority to designate a court as a Sexual Offences Court for the purposes of hearing cases of sexual offences. The Act further requires Government to develop regulations for Sexual Offences Courts that will guide the intersectoral establishment, resourcing and management of these courts. The draft regulations have already been produced and are now being taken through the intersectoral adoption process<sup>119</sup>.
548. South Africa established Sexual Offences Courts as an innovative measure to improve the prosecution and adjudication of sexual offences. By March 2003, twenty (20) Sexual Offences Courts had been established, and by March 2004, a year later, the number had increased to forty-seven (47) courts. At the end of 2005, there were seventy-four (74) such courts in the country.
549. South Africa has adopted an integrated approach to the management of violence against women and children called an Inter-Departmental Management Team. This is a multi-disciplinary expert team, established in 2005 to design and implement programmes aimed at addressing gender-based violence.

119 Input from Department of Justice and Constitutional Development: January 2015

Its programmes were integrated in the objectives of the National Crime Prevention Strategy, which, with evolution of crime approaches, resulted in the adoption of the Justice Crime Prevention Strategy. This strategy has several components including programmes to address sexual violence as a priority; interdepartmental initiatives to improve criminal justice processes; education and awareness programmes; partnership with civil society; and victim empowerment.

550. In a bid to integrate gender equality and prioritise violence against women in the prosecution of crime, the Sexual Offences and Community Affairs (SOCA) Unit was established within the National Prosecuting Authority in 1999. SOCA focuses primarily on sexual offences, domestic violence, trafficking in persons, enforcement of child maintenance, management of young offenders and other issues involving the victimisation of women and children. Their role is to formulate policy, build capacity, increase sensitisation and provide scientific and functional training of officials who prosecute these crimes. It also facilitates research and training for prosecuting sexual offences, domestic violence and maintenance cases, and managing young offenders; as well as developing and implementing community awareness programmes and plans for the participation of NGOs in these processes and procedures. Since 2008, SOCA has organised an annual Sexual Offences Indaba, a conference that brings together stakeholders that are involved in the prevention and management of sexual offences.
551. The Inter-Departmental Management Team led by the SOCA Unit established Thuthuzela Care Centres (TCCs), one-stop facilities that have been introduced as a critical part of South Africa's anti-rape strategy, aiming to reduce secondary trauma for the victims, improve conviction rates and reduce the cycle time for finalising cases. The TCCs are in operation in public hospitals in communities where the incidence of rape is particularly high. They are also linked to sexual offences courts, which are staffed by prosecutors, social workers, investigating officers, magistrates, health professionals, NGOs and police, and are located in close proximity to the centres. The centres are managed by a top level inter-departmental team comprising Justice, Health, Education, Treasury, Correctional Services, Safety and Security, Local Government, Home Affairs, Social Development and designated civil society organisations.
552. A Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters (MATTSO) Team was set up in June 2012 to strengthen the Sexual Offences Courts.
553. In 2012, MATTSO conducted an international comparative analysis of the NPA Blueprint of the former Specialist Sexual Offences Courts with the models of other countries, and made a finding that the NPA Blueprint was still the best comprehensive model in the world in seeking to address the special needs of the victim. In addressing the gaps identified from its investigation, MATTSO revised the Blueprint and added more features intended to provide more requisite support services to the victims of sexual offences.
554. The MATTSO Report requires the Department to establish 57 Sexual Offences Courts over a period of 3 years with effect from 2013/2014 financial year. On 23 August 2013 the Department launched its first Sexual Offences Court in the rural community of Butterworth, Eastern Cape. From the period 6 August 2013 to 31 March 2014, a total of 21 Sexual Offences Courtrooms were established in accordance with the requirements of the new Sexual Offences Courts Model provided by the MATTSO Report. During the period under review, the Department upgraded 12 more regional courts as Sexual Offences Courtrooms to bring them to a total of 33 Sexual Offences Courtrooms.

These courtrooms are listed as hereunder follows:

Sexual Offences Courtrooms- 2013/14 to 2014/15

Number of Sexual Offences Courtrooms		
2013/14	2014/15	Total C/Rooms
21	12	33

- 555.** The Sexual Offences Courts Model is a home-grown model which has received recognition for being the international best practice model. By establishing this Model about two decades ago, South Africa set a trend that some countries leading in the intervention against gender-based violence have found worthy of adoption. In 2011, the UN Secretary-General, Mr. Ban Ki Moon, recognised the ‘Thuthuzela model’ as a ‘world best practice model’ in the field of gender violence management and response.
- 556.** All 33 Sexual Offences Courtrooms, including the 12 courtrooms established in 2014/15, comply with the MATTSO Sexual Offences Courts Model. The Model seeks to provide a variety of support services to the victims of sexual offences, which include the following standard physical resources:
- (i) A private testifying room is used by traumatised victims who may suffer undue mental stress when testifying in the physical presence of the accused and other people.
  - (ii) A two-way closed circuit television system is installed to enable the witness to identify the accused from the testifying room, when required to do so. This system provides a separate monitor for the presiding officer to ensure increased visibility of the image.
  - (iii) A private children’s waiting room provides privacy to child witnesses. It is a room equipped with standard furniture.
  - (iv) An adult waiting room provides a calm and comfortable space equipped with educational resources.
  - (v) A fridge and a microwave oven are part of the physical resources offered by the MATTSO Sexual Offences Courts Model.
  - (vi) Witness fees: The Department also provides witness fees to cover the return travelling costs and food of the subpoenaed (court warned) witness while in court.
  - (vii) Anatomical dolls are designed according to the specifications provided by the MATTSO Sexual Offences Courts Model.
- 557.** In 2014/15, Government established a personnel structure creating 185 posts of court intermediaries and nine posts of regional intermediaries. The recruitment process of newly created posts will commence in 2015/16 as follows:

Province	Permanent Posts of Court Intermediaries to be filled in 2015/16		New Posts of Regional Intermediaries	Total Posts
	Contract Posts to be phased out	New posts		
TOTAL	173	12	9	194

- 558.** The effectiveness of the legislation and policies is evident in the Landmark Court Decisions in the examples of sentencing handed down for prosecutions of sexual offences in 2012/13.



- i) The matter of the **State v Kili**, involved the rape and killing of a 48-year-old woman from Lesseyton, Queenstown in her home during the day. The deceased's boyfriend had left their home to go to his parental homestead, when the accused accosted her. He raped her and cut her throat, severing all neck muscles, blood vessels and even the spinal cord. The Judge handed down a life sentence on the murder count and ten years on the rape and refused leave to appeal.
- ii) In **State v Nofemele** the accused abducted and raped twelve children between the ages of two and eight years. He also killed one of the little girls when she started crying while he was raping her. The accused was convicted of 12 counts of rape, 12 counts of abduction and one count of murder. The Western Cape High Court sentenced him to **11 life sentences** and ten years for abduction.
- iii) In the matter of the **State v Rodolo** which stems from Kenton-on-Sea, the accused went on a rampage during the course of one night, first breaking into the house of the deceased to rob and kill him and thereafter breaking into the house of an elderly female whom he held up at knife point and raped. The accused was arrested in possession of the deceased's cell phone and this was the only evidence linking him to the murder scene. The accused was given a life sentence on the murder trial and a further 22 years effectively on the other charges.
- iv) The South Gauteng High Court convicted and sentenced the accused in the matter of **State v Rikhotso**. The accused was convicted of multiple charges of kidnapping, rape, and robbery. During a reign of terror in the Soweto area, 12 victims were raped. The accused was subsequently sentenced to **17 life sentences** and an additional 161 years imprisonment, to run concurrently.
- v) The much publicised trial of the so-called "**Sunday Rapist**", Jacobus Steyn, commenced in the South Gauteng High Court during July 2012. On 19 September 2012 the accused was convicted and sentenced to **five terms of life imprisonment, and a further 170 years imprisonment**.
- vi) In **State v LL Gagu**, the accused was charged with seven counts of rape, one count of sexual grooming and three counts of exposing children to pornography. The complainants were aged between ten and 15 years and were young girls who attended a dance school operated by the accused. The accused was convicted of sexual grooming and exposing children to harmful pornography. He was sentenced to four years imprisonment on the sexual grooming count and to five years imprisonment for each count of exposure to pornography. These sentences will run concurrently with the **three life sentences** imposed by the Western Cape High Court in respect of the seven rape convictions.

The annual report of the National Prosecuting Authority 2012/2013

**559.** In December 2014, Government finalised a National Strategy for Inter-sectoral Management of Sexual Offences<sup>120</sup> which encourages the inter-sectoral approach to all matters relating to sexual offences courts. It sets out clear duties and responsibilities of all stakeholders in the establishment and management of these courts. The National Strategic Plan also provides for the minimum uniform personnel required at each sexual offence court to include: (i) 1 presiding officer; (ii) 2 prosecutors; (iii) 1 intermediary; (iv) 1 designated clerk; (v) 1 designated social worker; (vi) 1 legal aid practitioner; and (vii) 1 court preparation / victim support officer. All victims should have access to services such as court preparation programmes; information material in form of text, visuals and braille; allocation of food for children, vicarious trauma programmes for personnel working

<sup>120</sup> JCPS Working Group (DEVELOPMENT COMMITTEE) input: January 2015



with victims of sexual violence as well as a case-flow management system and screening policy to direct sexual offences cases to sexual offences courts where they are established.

- 560.** <sup>121</sup>At present, there are 185 intermediaries deployed to all Sexual Offences Courts and other regional courts dealing with sexual offences cases. There is further a pool of 48 ad hoc intermediaries to close the gap whenever the need arises. In some courts, 46 social workers employed by Government continue to augment these services.
- 561.** Based on the MATTSO Report recommendation, all court personnel must undergo a Trauma Debriefing Programme to minimize and eliminate the vicarious trauma that they often suffer from dealing with sexual offences cases on a daily basis. Government developed the Debriefing Programme for the intermediaries and all front line staff servicing victims of sexual assault.
- 562.** Government conducted Trauma Debriefing Sessions for intermediaries and court interpreters to minimise and eliminate the vicarious trauma that is often suffered from dealing with cases of sexual offences on a daily basis. The Programme covers emotional impact, coping skills, and self-help physical exercises to debrief the participants of the vicarious trauma, which is often drawn from the daily traumatic experiences of the victims of sexual offences. During the period 1 April 2014 to 31 March 2015 the Department held seven Trauma Debriefing Sessions in seven Provinces, where 250 court personnel participated.
- 563.** Stress Management Workshops for magistrates presiding over sexual offences cases were conducted by the South African Judicial Education Institute (the SAJEI), which is accountable for all training intervention held for members of the judiciary. 130 magistrates were assisted through this programme.
- 564. National Policies:** Section 65(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) requires the Directors-General Inter-sectoral Committee under the leadership of the Director-General: Justice and Constitutional Development, to develop the National Policy Framework on the Management of Sexual Offences Matters. This Policy sets out guidelines for the inter-sectoral monitoring of the implementation of the Act. In 2013, Government gazetted this Policy in a *Government Notice No 3684* dated 6 September 2013. Its implementation is monitored by the Directors-General Inter-sectoral Committee.
- 565. The National Register for Sex Offenders** came into operation on the 30<sup>th</sup> of June 2009 in terms of Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007). The objects of the Register are to protect children and persons who are mentally disabled against sex offenders by establishing and maintaining a record of persons who have been convicted of a sexual offence against a child or a person who is mentally disabled; or are alleged to have committed a sexual offence against a child or person who is mentally disabled.
- 566. Current Registered Convictions:** As at 31 March 2014, **15 545** names of convicted sex offenders appear in the Register<sup>122</sup>. The registration progression in the past three (3) financial years is as follows:

2011/2012	2012/2013	2013/2014	2014/2015 (Apr to Dec 14)
2 340	3 526	15 545	16 868

The latter figure clearly indicates a steep progressive increase from 2012/2013 to 2013/2014 resulting from the robust intervention actions since 2012 to populate and update the Register.

<sup>121</sup> Ibid

<sup>122</sup> Department of Justice and Constitutional Development input: January 2015

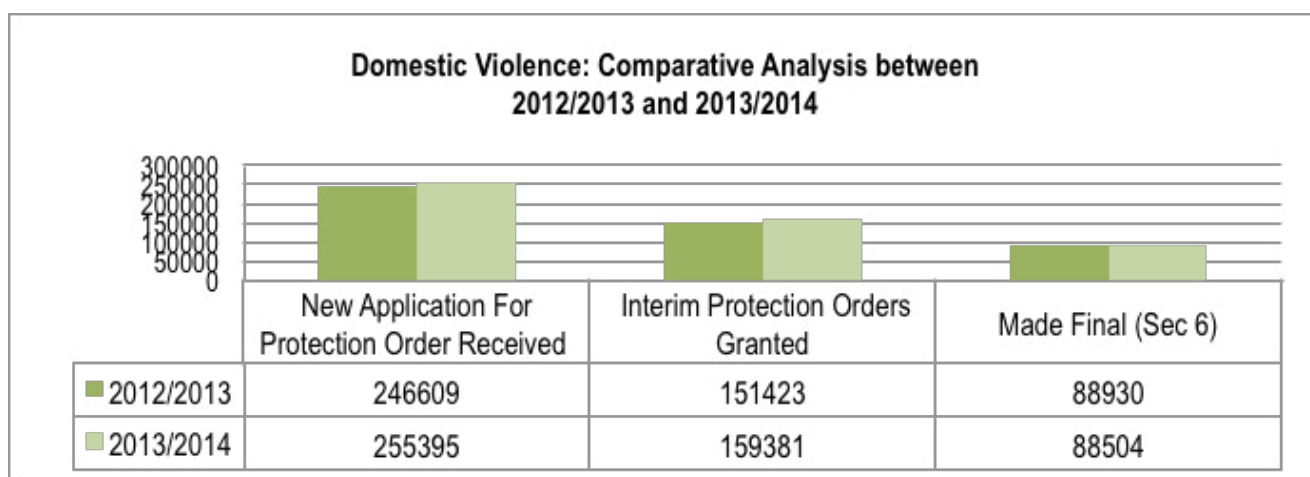
567. In 2009, ten years after the promulgation of the Domestic Violence Act, a review of its implementation was conducted. Following the findings of this review, a Domestic Violence Prevention Strategy is currently being prepared and the Magisterial Guidelines on the Implementation of the Domestic Violence Act were developed.
568. Government in conjunction with the National Prosecuting Authority (NPA) has also been running the Ndabezitha Project, which seeks to train traditional leaders and court clerks on domestic violence matters in rural areas. The Department of Justice and Constitutional Development, in partnership with the National Prosecuting Authority and the National House of Traditional Leaders, co-developed the Personalized Safety Plan for Victims of Domestic Violence. This initiative is part of the NDABEZITHA PROGRAMME that started in 2006 between the three stakeholders to uproot all cultural beliefs and practices that lead to domestic violence from rural communities.
569. Early in November 2013, forms prescribed by Regulations for the Domestic Violence Act have been translated into all 11 official languages, and distributed to all lower courts in the country. This is to ensure greater language accessibility, less dependency of applicants on the court staff, and ultimately less queues in courts.
570. Government has also produced braille public education material to raise the awareness of visually impaired court users on the Domestic Violence Act, Maintenance Act, and the Children's Act. Government launched these booklets and the braille version of the Constitution of South Africa in November 2014 during a round-table discussion on "Equal Access to Justice for Persons with Disabilities". The aim of Government is to have public information on all legislation and human rights issues available in braille.
571. Government has also been running awareness campaigns (through the media, booklets, pamphlets, etc.) aimed at sensitising the masses on domestic violence services. The Police Service has also been conducting public education campaigns, with a focus on domestic violence, under its Social Crime Prevention Programme.
572. Most recently, electronic forms and systems have been developed and approved to be piloted at two Magistrates Courts after which they will be rolled out to all Magistrates Courts' service points in order to improve the handling of domestic violence cases. The Government is also in the process of developing a booklet called "No More Violence", which is aimed at teaching the role-players at service points as well as victims how to manage and alleviate domestic violence matters and the impact of such crimes on their lives. In December 2014, Government developed a public educational DVD titled: "Court-based Support for Victims of Domestic Violence" for all the courts across the country.
573. A Domestic Violence Register has been developed and kept at all police stations in the Client Service Centre, to register all incidents and cases reported on domestic violence. A domestic violence incident form is used to record all incidents of domestic violence whether a case has been opened or not. There is also a form on the notice of rights which is issued to the complainant which stipulates all options and rights that the complainant has in dealing with domestic violence. In addition, there is a service provider referral list which lists particulars of other service providers that are also providing services to the victims of gender-based violence.
574. **Protection Orders:** During 2013/14, the new applications for Protection Orders increased by 3.56%<sup>123</sup>. The table below shows the status of protection orders from application to issue of warrants of arrest for the period 2012/13 to 2013/14.

<sup>123</sup> Department of Justice and Constitutional Development input: January 2015

### Domestic Violence: Civil Process

Reporting Period	New Application For PO Received	IPO Granted	Protection Orders			Interim Monetary Relief Applications		Warrant Of Arrest Applications Issued
			Made Final (Sec 6)	Set Aside	Varied	Received	Granted	
2012/2013	246 609	151 423	88 930	36 757	5 536	25 454	17 932	34 419
2013/2014	255 395	159 381	88 504	39 243	4 391	23 083	16 646	40 183

### Domestic Violence: Protection Orders: 2012/2013 and 2013/2014



575. The figure above indicates the total number of applications for Protection orders, the number of Interim Protection orders issued and the number of Protection orders made final.
576. Since August 2010, Government has been collecting statistics on reported cases of abuse against older persons in terms of the Older Persons Act and the number of registered cases of abuse appears to be increasing<sup>124</sup>.

Statistics of Abuse of Older Persons (Court registered cases only)			
2010/11	2011/12	2012/13	Total Registered
1 458	1 887	2 497	5 842

577. South Africa has measures in place to capacitate officials handling both the victim and the perpetrator of violence in a form of training and workshops. The SOCA Unit in the National Prosecuting Authority highlights that in 2010/2011 there was an increase in capacitation of prosecutors:
- 180 prosecutors trained on the comprehensive manual on maintenance matters in line with the Maintenance Act and latest developments in law,
  - 349 prosecutors trained on the Child Justice Act,
  - 102 prosecutors on integrated Domestic Violence Skills manual training, and
  - 79 prosecutors were trained on human trafficking related topics.

<sup>124</sup> Department of Justice and Constitutional Development input: January 2015

Prosecutors were trained as indicated below:

Type of training	2012/2014	2013/14 <sup>1</sup>
Sexual offences	40	158
Maintenance	24	50
Child justice	54	185
Domestic violence	35	54
Trafficking in persons	-	193

**578.** Government provides annual training interventions on all pieces of legislation promoting the rights of women and children. In 2012/13<sup>125</sup>:

- 330 regional and district magistrates were taken through the Trauma Debriefing Programme;
- 111 prosecutors were trained on the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;
- 74 clerks of the court were trained on the sexual offences legislation and HIV;
- 450 Frontline Officials drawn from key government departments and Legal Aid SA were trained on Sexual Offences, Victims Charter and Victim Empowerment Framework;
- 45 Registrars, Clerks of the Court, IT Coordinators and Administrative Officers were trained on the Integrated Case Management System for the National Register for Sex Offenders;
- 258 officials participated in the Intersectoral Training on Sexual Offences;
- 342 Intermediaries were trained on Information Management on Cases of Sexual Offences involving child victims and persons with mental disabilities.

**579.** In 2013/14<sup>126</sup>:

- 688 officials were trained on the National Register of Sex Offenders;
- 544 on sexual offences and related forms of abuse;
- 180 frontline officials trained on Victims Charter, Victim Empowerment, and sexual offences legislation so as to minimize the incidence of secondary victimisation from the justice system, and
- 68 intermediaries were taken through the Trauma Debriefing Programme to reduce the vicarious trauma they often experience from dealing with child-victims of sexual violence.

**580.** From 1 January to 31 March 2014, there were 4422<sup>127</sup> members trained in the Victim Empowerment Programme and related courses such as domestic violence and sexual offences.

**581.** Police officers also received training on handling sexual offences, and during 2010/2011, a total of 1,117 police officers were trained in the Sexual Offences First Responders course which aimed at first responders to sexual offences. Other officials who receive this training include the community service centre personnel, emergency police service personnel, and detectives.

**582.** An impact study on the Domestic Violence Learning Programme was conducted during period 2013/2014. South African Police Service conducts regular station visits to monitor compliance. Provincial and National Domestic Violence Work Sessions were facilitated in 2012 to address challenges experienced in terms of the implementation of the Act and National Instruction on domestic violence.

**583.** With the promulgation of the Independent Police Investigative Directorate Act, 2011 (Act No.1 of 2011) effective from 1 April 2012 and the Civilian Secretariat for Police Act, 2011 (Act No. 2 of 2011) effective from 1 December 2011, the SAPS have been obligated to report all misconduct cases pertaining to non-compliance with the Domestic Violence Act, 1998 (Act No 116 of 1998) to the Secretariat since 1 April 2012.

<sup>125</sup> Department of Justice and Constitutional Development input: 2015

<sup>126</sup> Ibid

<sup>127</sup> JCPS Development Committee input: January 2015

- 584.** The establishment of the Ministry of Women in May 2014 has championed the implementation of the prevention programme for violence against women through awareness raising programmes and debates with different stakeholders such as business, religious based organisations including Parliament under the theme “Count me in: Together moving non-violent South Africa Forward”. The Ministry also works in collaboration with other departments and local government municipalities to convert crime hot spots into sport grounds and /or communal vegetable gardens. The Ministry in partnership with Crime Line activated the #365 Days of no violence against women immediately after the end of the 16 Days Campaign in 2014 and called on all stakeholders to come on board. Pledges of commitments were made by participating organisations that will be implemented through the year.
- 585.** Awareness-raising to the public in general takes place in different forms such as radio and television interviews on sexual offences topics highlighting the measures that are in place for the victims; how implementation of measures are taking place; possible challenges; and the responsibilities of the different role-players.
- 586.** During the 2012/2013<sup>128</sup> year, two Imbizos were held in Limpopo Province as well as in the Eastern Cape. The programme predominantly focused on the Domestic Violence Act, as well as on protection orders, defaulters, general information about the content of legislation and reference to the Thuthuzela Care Centres.
- 587.** In a bid to sensitise the society on the rights of victims, South Africa also launched the Victims’ Rights Week in September 2010. During this week, which is still held annually in September, government departments within the criminal justice system; coordinated by the Department of Social Development, seek to raise public awareness about victim rights. The public is provided with information about what interventions and services are provided by government to victims of crime. In addition, the week provides government departments with an opportunity to respond to issues faced by the public and crime victims, in a coordinated manner.
- 588.** Government forged a partnership with the Men’s Organisations to address violence against women and children and to raise awareness against child poverty and economic abuse of children. The Deputy President is a patron of the Men’s Forum.
- 589.** During October-November 2014, the National Maintenance Campaign was implemented by Government<sup>129</sup>. Using radio and TV advertisements, fathers were called upon to take pride in supporting their children. The public message / pay-off line for the campaign was: ‘My child’s future is my priority. I Pay Maintenance’.
- 590.** During the 2013/14<sup>130</sup> financial year, four national public education and awareness raising events to educate members of the public about the Maintenance Act and the services offered at courts was carried out. These campaigns were also carried out at the provincial level, viz. Limpopo, Kwa-Zulu Natal, Eastern Cape and Mpumalanga provinces.
- 591.** During 2012/13, Government also conducted the following public education interventions: (i) Stop Teenage Pregnancy Campaign: Reached 274 schools and 60,367 teenage learners; (ii) School for the Blind to launch the braille FAQ’s on the Children’s Act, and reached 250 blind learners; (iii) Door-to-Door Educational Campaign on gender-based violence and Trafficking in Persons, and reached 80 Communities; (iv) Media Outreach: 11 radio and TV interviews conducted on violence

<sup>128</sup> National Prosecuting Authority

<sup>129</sup> Department of Justice and Constitutional Development input: January 2015

<sup>130</sup> Ibid



against women; (v) Public Exhibitions: Held nine and reached about 31,968 people; and (vi) Public Service Fairs: Held eight and reached about 12,803 people.

- 592.** As at November 2014, there were 1,137 police stations rendering victim-friendly services to victims of crime (100%) which provide a private place where victims can be interviewed and statements can be taken assuring that the victims' rights are protected.
- 593.** All these services work towards reducing secondary victimisation and enabling victims to provide details that not only assist them as part of a cathartic experience, but also assist in investigations.
- 594.** By October 2009, at least six provinces had One-Stop Service Centres of Abuse in South Africa and 109 shelters throughout the country accommodating and rendering psychosocial services to women and their dependent children who are victims of abuse, including victims who have been trafficked.
- 595.** The number of Thuthuzela Care Centres (TCCs) in the country has increased.<sup>131</sup>
- 596.** Conviction rates in the prosecution of sexual offences reported at TCCs was 60.7% in 2011/12 and improved to 61.03% in 2012/2013. The conviction rate for 2013/14 increased to 65.9%<sup>132</sup>.
- 597.** Government officially launched the National Command Centre on Gender-based Violence. The call centre is utilised by all victims of gender-based violence who receive counselling by trained social workers. The police provide services as required in support of the programme.
- 598.** Police released statistics for 2013/14 that indicated a total of 62,649 reported sexual offences cases in the country. In 2012/13, police statistics showed that 66,387 such cases were reported. Thus, there is a decrease by 3738 reported cases in 2013/14. In 2004/05, there were 69,117 reported cases. This indicates a decrease of 9.4% in reported cases over a period of ten years, indicating either that there has been a decrease in sexual offences crimes over ten years or that there is decreased confidence in the criminal justice system. The Victims of Crime Survey 2013/14 by Statistics South Africa in November 2014 shows that there are changes in the level of satisfaction with the police between 2012 and 2013/14, where there was a 3.2% point decrease with the level of satisfaction decreasing from 62.4% in 2012 to 59.2% in 2013/14. There is a general perception in the country that many sexual offence crimes actually go unreported. Furthermore, in the Victims of Crime Survey 2013/14, Statistics South Africa shows that the survey population perceived sexual assault as the sixth most common (17.1% of the survey population) and feared (30.5% of the survey population) crime in South Africa.
- 599.** Police statistics released for 2013/2014 shows that the ratio of sexual crimes per 100,000 of the population is 118.2 cases. When compared to 2004/05, this figure stood at 148.4 cases per every 100,000 people. Thus in 2013/14 there is a 20.4% point decrease from 2004/05 in all sexual offences reported.
- 600.** However, the Victims of Crime Survey 2013/14 indicates, based on population surveys, that an estimated 72.4% of sexual offences incidents were reported for 2013/14. In 2011, it stood at 92.3% increasing to 94.2% in 2012. The Report highlights that individual crimes tend to be less frequently reported to the police than household crimes. The reasons for the sudden drop in the reported sexual offence cases from 2012 to 2013/14 were provided for as: (i) 26.5% have reported

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<sup>131</sup>

<sup>132</sup> Ibid



to other authorities; (ii) 21.9% because of no insurance; (iii) 7.4% saying police could do nothing; (iv) 11.8% saying police will not do anything about it; and (v) 32.4% did not dare report for fear of reprisals. It must be noted that incidents such as sexual offences are of a sensitive nature and may potentially be undercounted.

- 601.** The Victims of Crime Survey 2013/14 indicates that assault and sexual offences are difficult to capture in the household survey because of their sensitivity, as a result they are normally under-reported. The Victims of Crime Survey 2013/14 shows that about 25.1% of sexual offences victims (16 years and older) were victimised by their relatives, followed by known community members from their area (24.0%). Approximately 34.2% of female assault victims were victimised by known community members, while 16.8% of women were assaulted by their spouses or lovers.
- 602.** 49.3% of incidences of sexual offences occur in the victim's home followed by: (i) those which occur in someone else's home (15.4%); (ii) in the street in a residential area (9.6%); (iii) in the street outside office/shops (5.7%); (iv) in places of business (1.9%); (v) in a field / park (6%); (vi) in some other indoor area (4.7%); and (vii) while travelling on public transport (7.3%). Most assaults were reported to be committed in the home (22.6%) which includes domestic violence. The Report suggests that the chief motivation for assault is "sudden personal anger" at 21.8%; "jealousy" at 21.1%; "attempted rape" at 1.9%; and "money or other financial motives" at 14.9%.
- 603.** The Victims of Crime Survey 2013/14 also highlights that most households surveyed will take a victim of crime to either a hospital or trauma unit (65.9%) and local clinic (65.1%) to access counselling services. 10.5% of households surveyed are aware that they can take victims of crime to victim empowerment or Thuthuzela Care Centres to access such services. 53.9% of households surveyed will take victims of domestic violence to a state-run organisation to receive assistance, while an estimated 40% households surveyed will take such victims to an NGO/volunteer-run organisation.
- 604.** The Report also indicates that 81.6% of sexual victims had knowledge of where they can access assistance, while 76.8% knew of a place they could go for counselling and 54% knew where to obtain protection orders.
- 605.** The Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013) has not yet been implemented, while awaiting the implementation of this law, interim measures are in place where several pieces of legislation are used to address the problem of trafficking in persons. The legislation used included the Sexual Offences Act, 2007 (Act No. 32 of 2007) (SOA) which prohibits sex trafficking of children and adults and the Labour Act of 1997 prohibits forced labour. The SOA prescribes punishments of up to 20 years' imprisonment for sex trafficking offenses, penalties which are sufficiently stringent and commensurate with penalties prescribed for other serious offenses, such as rape. Effective in 2011, the Children Act, 2005 (Act No 38 of 2005) and its Amendment Act prescribes penalties of five years to life imprisonment or fines for the use, procurement, or offer of a child for slavery, commercial sexual exploitation, or to commit crimes. The Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998) was often used in combination with the SOA to add additional charges and stiffer penalties against offenders.
- 606.** According to the Annual Report 2013/2014 of the HAWKS: Directorate for Priority Crime Investigations, 22 cases of human trafficking were opened, with one case for labour exploitation and the rest related to human trafficking for sexual exploitation. Of these 22 cases, six are withdrawn;

seven are under investigation with arrests to be made and nine are in the court system. During this financial year, 55 victims were rescued and of these victims, 43 were South Africans, while the others were from China, Thailand, Nigeria and Mozambique.

607. The “Tsireledzani programme”<sup>133</sup>, which means “Let us protect each other” in Tshi-Venda—one of the country’s official languages—is the name given to the initiative to combat trafficking in persons and to comply with international commitments. The programme was initiated in 2007, and relied on the input of a wide range of partners both within Government, civil society and international partners.
608. The “Tsireledzani Programme” consists of various pillars. Of these pillars, the International Organisation for Migration (IOM) was responsible for the area that focused on capacity building and its aim was to provide government officials with the necessary skills to adequately identify and respond to incidences of both, internal and international, trafficking in persons in South Africa. The IOM provided technical capacity building support through designed, developed and tested curricular/ training modules tailored to selected government departments. The training modules are accredited by the South African Qualifications Authority (SAQA). As part of the Tsireledzani programme, the IOM also compiled a ‘Handbook on Counter-Trafficking for South African Government and Civil Society’.

#### **Trafficking in Persons (TiP) Cases finalised with convictions**

- (i) **S v Ronel Eloff and Antoinette Godfrey** - both accused convicted and sentenced in 2009 for trafficking for sexual exploitation (Welkom Free State Province)
- (ii) **S v Nokuzola Ntonga and Lionel Bell** - a conviction for TiP (sexual exploitation) was confirmed on appeal by the Grahamstown High Court on 22 August 2013. (Eastern Cape Province)
- (iii) **S v Aldina Dos Santos** - sentenced to life imprisonment for TiP for sexual exploitation of children in 2011. Accused was a Mozambican female (Gauteng Province)
- (iv) **S v Jezile** – sentenced to 20 years in January 2014 for TiP for sexually exploiting a child. (Western Cape Province)
- (v) **S v Nahima Allima** - sentenced to life imprisonment for TiP for sexual exploitation in June 2014. (Nongoma KwaZulu- Natal Province)
- (vi) **S v Foster Simelane** - sentenced to 30 years for TiP for sexual exploitation of a child in August 2014. (Potchefstroom North West Province)
- (vii) **S v Gwambe** - sentenced to 15 years in 2013 for TiP for sexual exploitation of children. Accused is a Mozambican female (Mpumalanga Province)
- (viii) **S v Vukile Shembe** - sentenced to 23 years imprisonment in 2012 for TiP for sexual exploitation. (Western Cape Province)

<sup>133</sup> This Programme, initiated by the National Prosecuting Authority, was funded by the European Union

and started in 2007. It ran until the end of 2011 after which the South African government continued the anti-trafficking efforts with its partners: Input from the National Prosecuting Authority, January 2015

- 609.** Ke Bona Lesedi, which means “I see the light”, is a court preparation programme designed to address fears and concerns of child witnesses going to court. It is intended to contribute towards the effective implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), and to assist prosecutors to have effective, non-traumatised and credible witnesses. The programme contributes towards successful convictions and a reduction in the withdrawal of cases. In 2014/15, 22,276 children under the age of 18 years received court preparation services, compared to 23,171 in 2013/14.
- 610.** The Court Preparation Programme is a realistic and practical programme aimed at preparing witnesses to effectively testify in court. In order to attain this aim, Court Preparation Officers have to be equipped to identify and address the individual needs of witnesses. Witnesses are informed of the court environment, legal processes and legal terms. The fears and concerns of witnesses about testifying are addressed and the programme aims to reduce secondary victimisation. The witness is provided with skills and information to cope with the stress of giving evidence through the use of a specific model. Furthermore, the merits of the case are not discussed during the court preparation process.

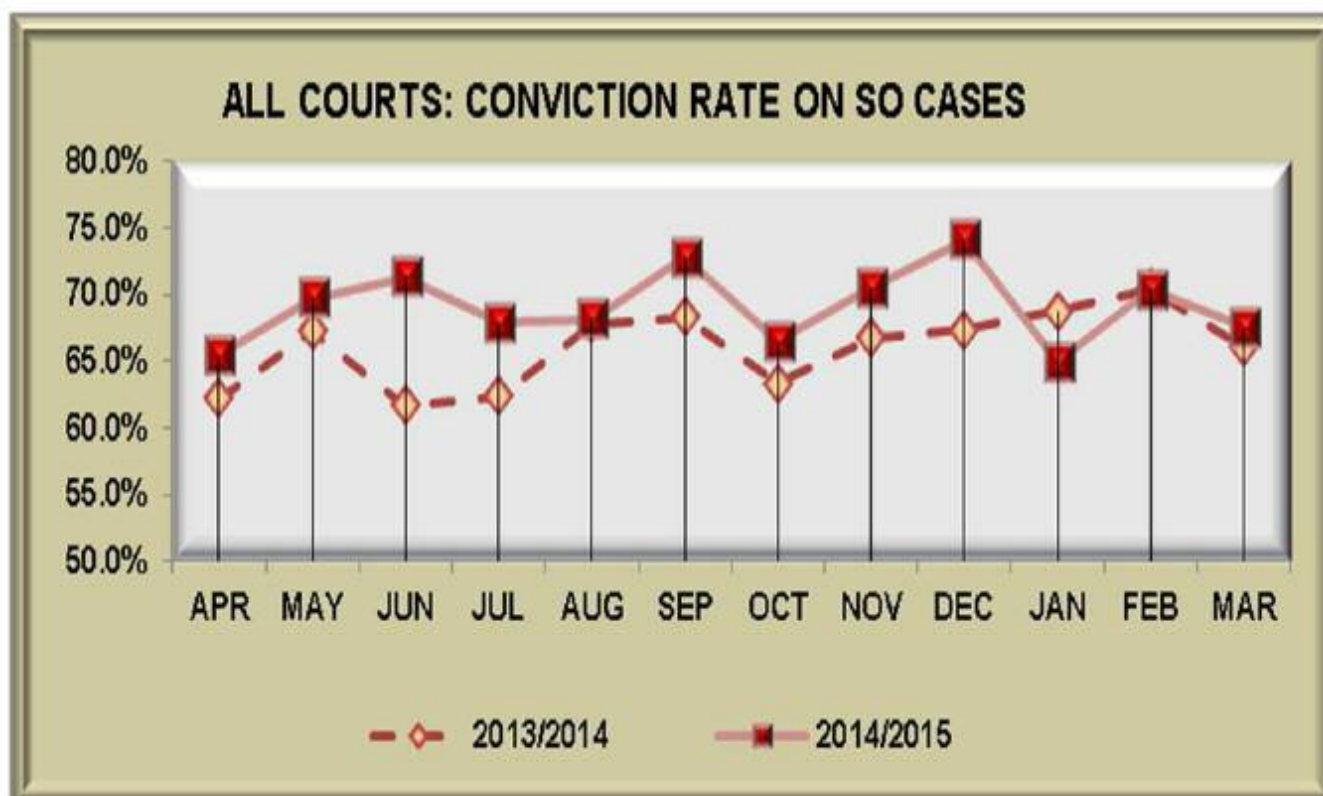
#### **Conviction rate of sexual offences <sup>134</sup>**

- 611.** In accordance with the Presidential Directives to enhance the focus on sexual offences matters through the establishment of dedicated courts, the NPA has shown its commitment by finalising 7,372 sexual offences verdict cases with an improved conviction rate of 69%. Not only was the conviction rate target of 67% exceeded by 2%, but an overall improvement was maintained throughout the year.
- 612.** A multi-disciplinary approach followed by provincial structures established with stakeholders have contributed to the achievement in finalising and improving the conviction rate in sexual offence cases. A comparison with the previous year indicates the improved conviction rates and a decline in the number of cases finalised.

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<sup>134</sup> National Prosecuting Authority South Africa: Annual Report 2014/2015

Figure below indication all courts: Conviction rate in sexual offences cases



The table below indicates the comparison of sexual offences finalised in 2013/2014 and 2014/2015 financial year

Financial year	Convictions	Acquittal	Total finalised	Conviction rate
2013/2014	5484	2690	8174	67.1%
2014/2015	5084	2288	7372	69.0%
Progress	-7.3%	-14.9%	-9.8%	1.9%

- 613.** Sexual harassment is prohibited and punishable in South Africa. The Protection from Harassment Act, 2011 (Act No. 17 of 2011) is supported by the Equality Act which prohibits harassment, which is defined as ‘unwanted conduct which is persistent or serious and demeans, or humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to (a) sex, gender or sexual orientation, or (b) a person’s membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with that group’. The Equality Courts are thus empowered to deal with cases of sexual harassment.
- 614.** Sexual harassment in the workplace is prohibited under the Employment Equity Act, 1998 (Act No. 55 of 1998) and the Labour Relations Act, 1995 (Act No 66 of 1995). In this regard, the Code of Good Practice on the Handling of Sexual Harassment has been issued in terms of the Labour Relations Act. In schools, sexual harassment is addressed under the Employment of Educators Act, 1998 (Act No. 76 of 1998) (as amended in 2000) and the South African Schools Act, 1996 (Act No. 84 of 1996), both of which make sexual harassment a serious misconduct.

615. Statistics<sup>135</sup> on misconduct related to sexual harassment in the Public Service as at 30 August 2014 highlights that 426 cases were reported from 1996 to 2014. These statistics include 87 cases of Sexual assault on learners by educators; 13 cases of Regulation 20(k) acts of sexual harassment; 41 cases of sexual relations between learners and educators; and 285 cases of sexual harassment in general. Over this period, sentences given out to those found guilty range from fines to dismissals, including referrals for counselling, written warnings and suspensions for stipulated periods.
616. In 2011, Government introduced a Maintenance Turnaround Strategy aimed at reducing the turnaround times in the maintenance system. This project focuses on the improvement of the pre-order maintenance services, and is currently in its third year of implementation. A further improvement brought about by this Maintenance Turnaround Strategy was the introduction of the Electronic Fund Transfer (EFT) system that allows beneficiaries to receive monies within four days after receipt of such payments by the courts. Through the EFT system, monies are now transferred directly into the beneficiaries' bank accounts. This approach does not only speed up the receipt of maintenance monies by the beneficiaries, but also saves them time and money from travelling to courts to collect these monies. Currently, there are magistrates offices that record almost zero queues at Cash Hall136 due to the effectiveness of the EFT system. Because of its remarkable success, this system has been successfully rolled out to all maintenance courts.
617. **Establishment of the National Maintenance Signage System (NMSS):** This signage system introduces standard branding colours & design for maintenance signage throughout the pilot sites so as to establish a standardised and uniform identification of the Maintenance Divisions and their service points within court buildings. In addition to the pilot sites, this system has been introduced at the 32 Sexual Offences Courts (established during the period August 2013 to 30 November 2014). This is to aid maintenance clients to quickly find their way to service points with minimal or no assistance. This signage system has significantly reduced the waste of time often spent at wrong queues by clients. It must be noted that the signage system reflects directional signs to increase its accessibility to court users, especially those who cannot read. In other courts, colour branded foot prints are part of the signage to quickly lead clients to the appropriate service points.
618. In February 2013, a radio advert campaign was held in 65 community radios nationwide and as at 31 March 2014, R1,707,403.50 was paid out to beneficiaries. As at 30 June 2014, there were courts in rural communities like Kokstad, KZN, which reported an amount of about R1 000 remaining unclaimed from the system. Unclaimed Maintenance Monies were included again in the National Media Campaign on Maintenance which was conducted in September 2014.
619. **Integrated Case Management System (ICMS) and SMS NOTIFICATION:** To improve the turnaround time on maintenance services, during the previous financial year the Department introduced the improved module of the Maintenance Integrated Case Management System (ICMS) at the nine identified pilot sites. This module caters for, among others things, the automation and tracking of business processes from the registration of the maintenance application to the issuing of the maintenance order, thus leading to a better data capturing system and faster delivery of maintenance services. Most of the paper work that courts were doing manually is now done electronically so as to save time. At a click of the button, the maintenance prescribed forms and administration pro-forma letters are generated and quickly made available to clients. The new system also provides '**sms**' notifications to keep the maintenance client abreast of the developments in their applications. The roll out of the ICMS Maintenance Module to more courts is in progress in this financial year.

<sup>135</sup> Source: PERSAL: DPSA, 2014

<sup>136</sup> Department of Justice and Constitutional Development input: January 2015

**620. Training Initiatives:** In 2012, the Maintenance Mediation Training Course offered assistance to all maintenance officers to conduct their investigations in terms of Section 6 of the Maintenance Act, 1998 (Act No. 99 of 1998). The Participant's Workbook, titled: 'Mediation as a Tool in ensuring Restorative Justice in Maintenance Disputes' was produced for use in these training sessions.

**621.** The table below refers to the civil processes for maintenance matters.

Maintenance Matters: Civil Process

Reporting Period	New App Received	Enquiries Received	Orders Granted	Orders by consent	Orders by default	Orders varied
2012/2013	174 875	334 218	90 343	86 592	8 562	20 180
2013/2014	176 485	225 634	55 227	82 811	6 242	17 352
% Change	0.92	-32.49	-94.26	-4.37	-27.10	-14.01

**622.** The table below refers to the criminal processes for maintenance matters. Once a court has granted a maintenance order and the respondent does not comply, it may become a criminal matter – Section 31 of the Maintenance Act, 1998.

Maintenance Matters: Criminal Process (Section 31 of the Maintenance Act)

Financial Year	Cases Brought Forward	New Cases	Finalised			Removed from Roll					Cases Disposed of	Outstanding Cases
			Guilty	Not guilty	Other: Finalised	Struck off roll	Transferred	Warrant of arrest	Withdrawn	Other: Removed from the roll		
2012/2013		14 384	1 017	339	1 025	2 383	12	1 787	5 755	36	12 354	3179
2013/2014	3179	10 952	1 051	294	707	2 165	36	1 603	6 130	125	12 111	1 603
% Change		-23.9	3.3	-13.3	-31	-9.1	200	-10.3	6.5	247.2	-2.0	-49.6

**623.** As at the end of 31 March 2014, 12,111 matters were outstanding.

<sup>1</sup> National Prosecuting Authority input: January 2015



[illegible]