



**Submission to the Portfolio Committee on Women, Children and People with Disabilities  
on the Women's Empowerment and Gender Equality Bill [B50 – 2013]**

**By the Parliamentary Programme of the Community Law Centre, University of the  
Western Cape**

**16 January 2014**

**For Attention: Honourable MP - Mrs Dorothy Mapula Ramodibe**

Chairperson

Portfolio Committee on Women, Youth, Children and People With Disabilities

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We hereby request the opportunity to address the committee at public hearings that may be held in relation to this bill.

We wish to thank the Committee for extending the original deadline for submissions.

**Background to the Community Law Centre**

The Community Law Centre is part of the Law Faculty at the University of the Western Cape. It was established in 1990 under the leadership of the late Advocate Dullah Omar. The CLC is founded on the belief that our constitutional order must promote good governance, socio-economic development and the protection of excluded and disadvantaged groups. Based on quality research, the CLC engages in policy development, advocacy and education. The CLC focuses on areas critical to the realisation of human rights and democracy in South Africa and Africa in general. The CLC currently runs four projects these are the Children's Rights Project, the Socio-economic Rights Project; the Civil Society Prison Reform Initiative and the State Peace and Human Security Project. In addition the CLC has a strong history of research and advocacy relating to the realisation of women's rights, women's rights are integrated across the projects of the Centre.

**This submission is endorsed by:**

1. Africaid Trust
2. Amanda Gouws – Commissioner, Commission for Gender Equality
3. Benita Moolman
4. Centre for Law and Society, UCT
5. Childline South Africa
6. De Heide Children’s Empowerment Centre
7. GRIP – Rape Intervention Project
8. Gender Equity Unit, UWC
9. Gender Health and Justice Research Unit, UCT
10. Her Rights Initiative
11. MOSAIC – Training, Service and Healing Centre for Women
12. National Shelter Movement
13. NICRO
14. Nisaa – Institute for Women’s Development
15. Open Democracy Advice Centre
16. Oxfam in South Africa
17. Resources Aimed at the Prevention of Child Abuse and Neglect
18. Refugee Social Services
19. Shukumisa Campaign
20. Sisters Incorporated
21. Sonke Gender Justice Network
22. St. Anne’s Homes
23. Teddy Bear Clinic
24. Thohoyandou Victim Empowerment Project - TVEP
25. Triangle Project
26. Western Cape Women’s Shelter Movement
27. Women and Men Against Child Abuse

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## 1. Introduction

The Community Law Centre welcomes efforts by the state to address the significant gender inequalities and violations of the rights of women, girls and lesbian, gay, bisexual, transgendered and intersex (LGBTI) people's that persist in South Africa. The Women's Empowerment and Gender Equality Bill [B50-2013] (the bill) represents another step in that direction. However we are concerned that while the bill claims and sets out to achieve much in this regard. In its current form, it will achieve very little to address the inequality and disempowerment of women and of gender non-conforming groups in South Africa.

Firstly, as it stands, although there are sections with which we agree, the bill is generally weak and unfocused; aspects duplicate existing legislation and policy; it fails to address certain important issues that are not currently addressed in law or policy; it's analysis of the drivers of gender inequality and the disempowerment of women is poor; it is vague on key points; and it fails to include sufficient measures to facilitate its implementation. Secondly, the bill fails to effectively engage with the issue of weak implementation of existing laws. Finally and most importantly it has been developed without the input of the people who are most affected by inequality and disempowerment – women from across the country, this is a significant weakness.

While we fully support efforts to address the persistent marginalisation and exploitation of women in South Africa. We do not believe that the bill in this form, developed through the process followed to date, is the correct measure to achieve this.

We recognise the steps taken by government over the past 20 years to address the situation of women in South Africa. These include the reform and passage of numerous pieces of legislation affecting a range of different issues which partly or entirely affect women. These include *inter alia* The Criminal Law (Sexual Offences and Related Matters) Amendment Act no. 32 of 2007, the Domestic Violence Act no. 116 of 1998; the Choice of Termination of Pregnancy Act no. 92 of 1996; Maintenance Act no. 99 of 1998; the Employment Equity Act No. 55 of 1998; the Promotion of Equality and Unfair discrimination Act no. 4 of 2000; and the Traditional Leadership and Governance Framework Act no. 41 of 2003.

In addition to law reform, we recognise efforts to address the disempowerment and inequality of women in the country through the establishment of the initial national gender machinery (NGM), which included the establishment under the Constitution of the Commission on Gender Equality, the Office on the Status of Women, the Joint Monitoring Committee and the Gender Focal Points (GFPs) that were to be set up in government departments. We note that components of this have been replaced by the recently established Ministry of Women, Children and Persons with Disabilities and the associated committees in Parliament and the legislatures.

We note government's success in strengthening women's representation in our legislatures, parliament and ministries. Concerning though, is that this improvement has not been effectively replicated at local levels or in other settings.

However, in spite of these changes, reforms and measures, little has changed in the realities of women's lives across the country. What is currently in place is not having the intended effects. 20 years into the democracy and after 18 years of implementing the South African Constitution, the persistent barriers to

women's equality in the country indicate that a much stronger intervention is required from government to effectively address the underlying problems. We need to do something differently.

## **2. Situation of women in South Africa**

Women in South Africa, from birth to death, continue to face numerous challenges, discriminations and violations across the settings of their lives. In spite of the efforts of government and civil society, very little has substantially changed in the lives and circumstances of most women in South Africa.

The high levels of violence continue unabated. While at the same time challenges to access to justice persist in spite of reforms in the justice system. Conviction rates remain low and the victimisation of women and LGBTI people at the hands of state officials tasked with upholding the Constitution and the law continue.

Quotas for women's representation in traditional councils and business remain largely unmet. Where women are represented in these structures and institutions, their participation in decision making is often limited and prejudice persists. For example it has been reported that although more women are represented on traditional councils, this seldom reaches the one third required by law and in many cases, the women are not allowed to speak nor to sit on chairs as the male councillors do.<sup>1</sup>

Maternal mortality rates have increased, in spite of broad measures to improve access to primary healthcare.<sup>2</sup> Girls continue to be excluded from receiving the same quality of education as boys for a range of reasons. The expectations on girls to undertake duties at home (such as taking care of sick siblings and missing school, and having responsibilities in the households which boys are seldom required to do amongst others). They are also excluded due to policies that expressly exclude them such as those addressing pregnancy and motherhood in learners

### Multiple roles of women and girls

It is well established that across strata in society, women hold a wider range of responsibilities and roles than men. Women (and girls) are generally responsible for childcare, household management and cleaning, cooking, bringing income into the home, and in some areas, food production. The performance of these multiple roles of women impact on their ability to access justice, healthcare, or to perform equally in school or in the workplace with boys and men who do not carry the same weight of responsibilities. Essentially they result in the de-facto exclusion of women from opportunities even when there is no explicit policy barrier to this effect. To seriously address women's empowerment government policy or legislation must address these factors. This includes policy for the provision of childcare by state and private institutions to employees, encouraging a greater role for fathers in the family through workplace policies regarding paternity leave, enabling some flexibility for women to take time off to manage essential tasks such as taking care of sick children.

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<sup>1</sup> Participant in the civil society workshop hosted by the Alliance for Rural Democracy on the Traditional Courts Bill on 17 September 2012

<sup>2</sup> Ministry of Health 'Saving Mothers Report 2008-2010: Fifth Comprehensive Report on Confidential Enquiries into Maternal Deaths in South Africa (May 2012) xii, available at [http://www.doh.gov.za/docs/reports/2012/Report\\_on\\_Confidential\\_Enquiries\\_into\\_Maternal\\_Deaths\\_in\\_South\\_Africa.pdf](http://www.doh.gov.za/docs/reports/2012/Report_on_Confidential_Enquiries_into_Maternal_Deaths_in_South_Africa.pdf) (accessed on 21 May 2013).

### Intersectionality and discrimination

While almost all women are affected by discrimination, certain intersectionalities with other factors exacerbate the experiences of some women. Undoubtedly differences in the experiences based on race and economic circumstances are significant. Black women and girls experience far greater levels of discrimination and fewer opportunities than white women. The same is true of women in lower income brackets and even more so for those living in poverty. Rural women too, experience fewer opportunities and face greater obstacles in accessing services than women in urban areas. Refugee and migrant women are also affected by additional layers of exclusion and discrimination. Women with disabilities experience profound barriers to services, social justice and general participation in social structures. Gender non-conforming people such as lesbian, gay, bisexual, transgendered and intersex people in South Africa are faced with extreme levels of discrimination and violation. Finally, women engaged in sex work are exposed to greater levels of (often state sponsored) discrimination and violation on the basis of the manner in which they earn their income.

A law and any other policy or programming aiming to address women's empowerment and gender equality must engage explicitly and substantially with these intersectionalities in order to provide measures to address the additional barriers and deeply held prejudices experienced by these women, girls and gender non-conforming people.

This bill only refers to the particular vulnerability of rural women and women with disabilities. It fails to address the other important factors that affect women's experiences.

### **3. Broad participation and consultation with women on reforms for empowerment and equality**

At the outset we wish to emphasise that the process of developing this bill has, to date, excluded the participation of the majority of people who are deeply invested in the issues of equality and empowerment, namely women in the country. The Departmental and now the parliamentary processes have only enabled a handful of civil society organisations and private business to provide inputs into its content. Few ordinary women in the country have had the opportunity to participate to date. Although some NGOs have attempted to consult with our various networks to extend the range of people and organisations able to provide input into the bill, the scale of consultation needed and the relatively resource poor civil society sector makes it extremely difficult to achieve this goal. Most importantly, ensuring broad consultation on a bill of this nature is not the responsibility of civil society, rather that lies with the State.

Wide criticism has been raised regarding the limited scope of the bill in its current form as well as regarding the fact that much of the content of the bill duplicates legislative or other policy measures already in place.<sup>3</sup> A broader participatory process with women across the country would help to more effectively identify the range of issues and barriers to equality and empowerment that persist, it would enable the identification of possible state responses to these. It will also enable a process of identifying where existing legislation must

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<sup>3</sup> Civil Society workshops on the WEGE bill held in Gauteng and Cape Town which were attended by delegates from 45 organisations from at least six provinces. 26 November 2013.

be strengthened through amendments or other legislation and where implementation is the problem, how to address the challenges to the implementation of existing laws.

As a result of this bill being tagged as a Section 76 bill, we anticipate that there should at least be hearings in the provinces, hosted by the provincial legislatures, this represents an opportunity to improve the participation in the process to date.

### **Recommendation**

We urge Parliament and the legislatures to undertake a broad process of consultation with women, girls and LGBTI people across the country. In this process we recommend that measures be put in place to ensure that there is meaningful participation (which implies the potential for real influence on the outcomes of the process) rather than tokenistic consultation. This would require holding meetings in various urban and rural areas in all provinces.

It would necessitate:

- That the meetings be conducted in the local language.
- That they be hosted at times of the week and day that will enable participation of the widest range of people.
- That recognise the child-care responsibilities held by most women and provide for this to allow for women who are responsible for the care of children to participate.
- That transport be provided to enable participation.
- That all women irrespective of political party affiliation, or affiliation to local leadership, are provided the same opportunity to participate.
- Importantly, that chairing and facilitation of these meetings is undertaken by individuals with the necessary approach and skills to enable participants to raise and discuss what are often sensitive issues, issues which in some cases may expose participants to further harm, persecution or exploitation as a result of raising these issues.
- That there is recognition of the social, emotional and practical barriers to participation. Thus measures must be put in place to enable different groups of participants (women, young women, children – especially girls, LGBTI people, women with disabilities, refugee and migrant women, or women engaged in sex work) to address the issues affecting them. These measures must address the silencing effect of age (particularly in children or young people); the barriers to participation that result from different forms of disability (physical, sensory or intellectual), the vulnerability of LGBTI people to discrimination, and the vulnerability of women to retributive acts of abuse and discrimination when seeking to address issues relating to abuse and exploitation by men.
- Finally, that the starting point for discussion not simply be the existing bill, but rather, the current challenges faced by participants and their observations and recommendations regarding possible solutions to these.

We recognise that this would require an investment of both time and money. However given the persistent circumstances of abuse, disempowerment, exploitation and inequality of women in South Africa, in spite of the many measures that have been put in place in attempts to address these, this investment is essential.

#### 4. Addressing patriarchy

South Africa remains a deeply patriarchal society, none of the initiatives to date have shifted the secondary status and subservient place that most women and girls continue to experience in their homes, community structures or the workplace. The lower value placed on women and girls in relation to men and boys in almost all settings of their lives underpins the persistence of discrimination, violation and injustice experienced by women. It explains to some extent the failures of implementation of legislation that's been promulgated over the past 15 years. Policy, legislation and government programmes that seek to address the manifestations of patriarchy generally fail to engage with the patriarchal value system that infuses almost all social settings. As such they fail to arrest the persistent inequalities and violations of women. In all contexts, women and girls are still largely considered to be less important than men and boys.

It is clear that different approaches and strategies to the ones currently being employed need to be explored. Broad transformation of patriarchal norms is essential if we are to arrest the pervasive and entrenched discrimination against women. Patriarchy is deeply rooted. It will not be addressed with simple approaches or by laws alone. Addressing it requires long term investment into a programme of action that challenges the relative power of men over women in all settings – the home, the school, community structures, the justice system and health systems amongst others. When power is challenged at any level, this generally results in backlashes from those with power. As such a strong strategy for monitoring and accountability is essential.

Having ratified the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), South Africa has undertaken a commitment under Article 5, to *“take measures to correct patriarchal prejudice and perceptions of the inferior status of women in the family and society, informing gendered norms and stereotypes of men and women’s roles and behaviour. The State must encourage an understanding of the importance of both men and women in society”*.

Similarly by ratifying the Protocol to the African Charter on Human and Peoples’ rights on the Rights of Women in Africa (Maputo Protocol), South Africa is committed under article 2(2) to *“...modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men”*

To date, no strong national programmes have been put in place to achieve this. This represents a failure of the state to uphold its obligations to take measures to correct patriarchal prejudice and the perceptions of the inferior status of women in the family and society.

We recognise the attempt to address patriarchy contained in clause 4(1)(e) of the bill: *“education and training”* which states that designated public and private bodies must develop and implement plans to *“eliminate prejudices and current practices that hinder the achievement and enjoyment of gender equality and social cohesion”*.

The clause in the bill in which patriarchy is specifically mentioned 4(1)(a), only refers to addressing the *'pervasive discriminatory patriarchal attitudes and the lingering effects of apartheid'* in relation to the education system.

The objective in this bill to *"provide for the development and implementation of public education programmes on practises 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"* is weak. It does not directly articulate the necessity to address the widely held notions of women's inferiority or to correct patriarchal prejudice and perceptions.

Clause 9, in spite of its title *"Measures to empower women and eliminate discrimination"* contains no provision to challenge or address patriarchal value systems in South Africa.

These provisions are weak and, noting the complexity of programmes that could address patriarchy, the means for implementing them is unclear.

Addressing patriarchy is no simple task, most government departments or other institutions will not know how to give meaning to a programme of education or other actions across the various spheres of life that could challenge this. Thus guidance will be necessary. Further it is essential that the range of responses and programmes necessary to begin to challenge patriarchal norms, must be informed by evidence of what works and developed by people with expertise in this. This should include experts drawn from government, civil society and academia. On this basis a long term programme can be developed for implementation across a broad range of government departments.

Further, it is foreseeable that there will be resistance in government and private institutions as well as across society more broadly to shifts in women's power. This implies the necessity for accessible and effective complaints mechanisms and other strong strategies to monitor and enforce the range of elements to a framework that can address its manifestations.

The initiatives undertaken to date have failed to address or shift the underlying barriers to equality and empowerment of women in South Africa. In our view, the bill, in its current form does not address these foundational issues meaningfully. After nearly 20 years of programmes to shift the status quo, it is clear that something substantially different is needed.

### **Recommendations**

We recommend that this bill or other strategies of the Ministry articulate more strongly that patriarchal values and systems are a driver of women's inequality, disempowerment and exclusion, and that they articulate that patriarchal norms continue to vex the implementation of existing laws, policies and programmes that could make meaningful differences in the lives of women, girls and gender non-conforming people.

We recommend that the Ministry develop a costed strategy and provide guidance to other relevant government departments across spheres to develop their own strategies to challenge patriarchal within these and across society.

These strategies must take a long term approach, must be informed by consultation with experts, be evidence-based and their impact regularly monitored.

## **5. Limited scope for impact and implementation of the bill**

The current formulation of the bill has limited reach. As it stands its primary area of potential impact would largely be limited to the lives of a few women holding senior positions in formal employment.

The bill's provisions (clauses 7 and 9), include measures that may impact on the lives of those women in senior positions in formal employment which is important and encouraging. However it includes little to address the opportunities and empowerment of women who are unemployed or working in the informal sector.

We do recognise that the bill contains many clauses that could affect a wider range of women than only those in formal employment. Clauses 4 (education and training); 5 (access to health care, including reproductive health); 6 (public education on prohibited practices, including gender based violence); 7 (equal representation and participation); 8 (gender mainstreaming) 9 (measures to empower women and to eliminate discrimination); Clause 10 (economic empowerment); Clause 11 (economic empowerment of women in rural areas) and Clause 12 (socio-economic empowerment of women with disabilities) are all encouraging at first glance and hold the potential to extend the impact of this bill to a wider range of women.

These outcomes listed include amongst others:

- 50% representation of women in decision-making structures.
- women's access to economic, educational opportunities and productive resources (10(3)(b))
- access to financing, procurement, land rights, skills development and capacity building (10(3)(c))
- facilitating access to markets for women and employment opportunities (10(3)(d))
- facilitating sustainable livelihoods and decent work for women in rural areas (11(1)(a))
- Mainstreaming gender in the land reform programme and see more land owned by women in rural areas (11(1)(b))
- improved living conditions including security of tenure, and housing for women in rural areas or working on farms (11(1)(c))
- equal representation and participation of women on traditional councils; and
- equal access to education and employment of women with disabilities (12(1))

However, critically, many of the provisions in this bill, duplicate provisions in the existing legislative and policy framework or in departmental plans. We do not believe that re-stating these goals in a new piece of legislation alone will realise the shifts in implementation that are needed.

The implementation of the provisions of the existing laws and of a bill of this nature will be affected by a number of issues. Clear targets; evidence-based strategies for intervention; clear timeframes for achieving the targets; strong monitoring and reporting requirements on implementation; ensuring that the targets and plans include sufficient human and financial resources to see them implemented; strong internal and public

information and education strategies regarding the provisions and duties of government stakeholders; and clear enforcement and compliance mechanisms.

### **5.1. Solutions lie beyond promulgating new laws**

The examination and transformation of existing laws, government policy, programming, implementation strategies and spending on all issues affecting women's lives, including but not limited to those relating to formal employment and leadership, may be more useful an exercise than passing a new piece of legislation.

A process of this nature will assist to gain better understanding of what the important points of government intervention should be at this stage. This implies assessing the current experiences, needs and recommendations of women, girls and LGBTI people across the country regarding the persistent barriers as well as areas of success in relation to the existing legal framework and government policies and programmes. On this basis a clearer picture can be drawn of what is needed in order to deepen the impact and strengthen the implementation of the existing framework and where changes in that framework are warranted.

For example, we note that while this bill duplicates some existing laws, it fails to address other identified gaps in the framework such as the gap in law reform on the legal status of sex work, the gap in the policy framework regarding housing for women and gaps in the framework of mandates and roles of various parts of the national gender machinery.

Such a process will, in all likelihood, result in the identification of strategies and measures that extend beyond the establishment of new legislation. It would assist to identify areas of existing legislation that may require amendment, in particular amendments to key pieces of legislation that may enable the resourcing and strengthen implementation plans and accountability. It would assist to identify programming needs not only for the DWCPD, but also for all other departments. It would assist in identifying the skills, management and accountability gaps in departments which are undermining the implementation of the current framework. Finally through such a process the current resourcing and spending on programmes to address discrimination against women, girls and LGBTI people can be assessed and plans put in place to increase budget provisions for this purpose over the medium and long term.

We note that clause 9(4)(c)(ii) of the bill requires designated bodies to audit factors that '*cause and contribute to non-compliance*' with existing legislation, policies and strategies and we support such a process. However, we believe that this process should be the starting point for developing new responses and that such a process should include broad consultation with organised civil society as well as with women across the country as discussed above.

### **Recommendation**

We recommend the institution of a comprehensive audit to evaluate the gaps in current legislation and policy relating to all areas of women's lives, such an audit must also identify which failures are the result of poor implementation as opposed to in the legal framework. From this strategies to address these can be identified.

This process of analysis of existing law, policy and programmes, along with broad consultation with women in South Africa should be the starting point for any potential new legislation regarding women's empowerment and gender equality.

Such an exercise, although complex and requiring an investment to the process, would in all likelihood yield more effective results than simply putting in place another piece of legislation, which is itself weak in the area of implementation, resourcing and enforcement. It will enable the legislation only of issues which are not currently legislated and where it is deemed that legislation will be effective. Importantly it can help to identify the range of other interventions to improve compliance with the existing framework.

## **5.2. Timeframes for implementation**

The requirements in the clauses of this bill for plans to be submitted to the Minister within certain timeframes are encouraging. However, none of these clauses, nor the provisions of many other pieces of legislation or policies, set timeframes by which these outcomes should be achieved (only the timeframes for developing the plans are mentioned in some of the clauses of this bill).

### **Recommendation**

We recommend that strategies, whether they be contained in this bill, or in other legislation, policy or programmes, for achieving empowerment, equality, justice and non-discrimination of women must be associated with timeframes by which the various objectives and targets must be achieved.

## **5.3. Monitoring and reporting**

We recognise that the bill includes requirements for reporting to the Minister of Women, Children and People with Disabilities on the range of obligations set out in these clauses. This is positive, however we think that the reporting requirements must be strengthened.

### **Recommendation**

Firstly we recommend that the requirement for reporting be included in clause 15, from which it is currently absent.

Secondly we recommend that the reporting be required not only to the Minister but also to the relevant parliamentary committees and the committees in provincial legislatures at regular intervals.

Finally, designated bodies must be required to report on the implementation of the obligations and strategies as contemplated in this bill, or as set out in the existing legislative and policy framework in all annual reports. This would further enable regular scrutiny and oversight over their implementation.

## **5.4. Budgets, resources and provisioning**

A glaring gap in existing laws and programmes to address shifts in women's lives is the absence of requirements for adequate resourcing of initiatives to achieve this. It is with concern that we note that laws and programmes are regularly adopted without adequate planning for or commitment to funding these initiatives.

Similarly, this bill, contains no provisioning clauses for the measures contained within. The bill contemplates broad strategies and plans, but does not make reference to strategies to ensure that the necessary resources

are committed to evidence-based programmes to address women's empowerment and gender equality. We refer here not only to the resources required by the Ministry of Women, Children and People with Disabilities, but also to the resources that will be required by the range of designated public or private bodies contemplated in the bill. Instead of strengthening the current weak budgeting for addressing discrimination against women, this bill takes a cautious approach in various clauses making reference to concepts such as '*within its available resources*' clauses 5(1) and 10(3) and '*progressive realisation*' clause 12(1). This approach, fails to underscore the importance that should be placed on promoting changes in the lives of more than 50% of our population. It also perpetuates one of the key issues that has hampered the implementation of existing law and policy.

Undoubtedly, implementation of existing legislation and policy, is undermined by lack of adequate resources committed to these aims. This renders many of our current laws unimplementable and contributes to notions that they are aspirational.

### **Recommendations**

We recommend that the impact of implementing a bill of this nature on the Ministry's budget be costed and the necessary measures put in place to ensure that the Ministry can in fact implement the provisions.

Similarly, the costs to other departments of implementing the provisions of this bill must be costed.

We recommend that 'Women's Budgets' be mandatory across government departments, and that a framework for this be included in legislation. This will enable the tracking and identification of gaps in departmental budgets and spending with regard to the range of issues addressed in the bill.

We recommend that all plans and strategies of public bodies as contemplated in this bill or in other legislation and policy, must be costed and a plan for resourcing these be clearly set out in the strategies.

Finally, we recommend that the legislature examine the plethora of existing laws and policies that affect women's lives and identify those in which implementation is undermined due to lack of dedicated resourcing. The Committee could, based on this examination, propose amendments to those pieces of legislation to strengthen the resources available for their implementation.

### **5.5. Enforcement**

The enforcement of the provisions proposed by this bill, as well as of the provisions in existing legislation, policy and programmes is highly concerning. Repeatedly we see ministries failing to comply with mechanisms to promote the implementation of existing laws. The formulation of clause 16 of the bill is weak. No penalties are stipulated, and in many of the areas contemplated by this bill, penalties may not be appropriate. Ultimately, these laws will only be implemented if there is strong political will to see that happen. That political will must come not only from the Ministry on Women, Children and Persons with Disabilities but from the Presidency and the whole Cabinet. This begs the question, can such a law as the proposed WEGE legislation be enforced?

### **Recommendation**

Further debate and consideration is required to understand what penalties and enforcement mechanisms can be employed with respect to all legislation, policy and programmes relating to women's empowerment and gender equality. The extent to which the Ministry of Women, Children and People with Disabilities can enforce these must be critically questioned. The courts and independent oversight bodies such as the Commission on Gender Equality and the Human Rights Commission play a role. However, it is clear from past experience that even these mechanisms may fail to produce results in the absence of political will and leadership, which in turn can lead to failure to commit resources and uphold accountability.

## **6. Definitions**

The current definition of gender contained in the bill is limited. It fails to include the full spectrum of people affected by gender inequalities, in particular lesbian, gay, bi-sexual, transgendered or intersex people.

The bill does not clarify the principles of substantive equality that must be employed to achieve 'gender equality' in the context of the structural inequalities that affect women's lives. The current definition of 'gender equality' reflects a more formal approach to equality.

As noted above, the bill does not address the intersectionalities that exacerbate the experiences of some women. This is critical in order to ensure that policies, programmes and spending are targeted at those women who experience the greatest levels of discrimination.

Also noted above, is the failure of this bill to articulate within the preamble the significant role that patriarchal systems play in maintaining gendered inequality, nor does the definitions section provide clarity on how patriarchy is understood. Including this will assist in developing the understanding and with that developing appropriate legislative or programmatic responses to patriarchy.

### **Recommendation**

Expand the scope of this bill to include the rights of LGBTI people.

The bill must also directly address the range of issues that intersect with gender and exacerbate the exclusion of and discrimination against certain groups of women and girls.

## **7. Education and Training (Clause 4)**

This section fails to achieve what it could, it is an area in which the Ministry could strengthen its activities.

One strategy to address '*the pervasive discriminatory patriarchal attitudes*' should include broad based communication programmes, as well as department and institution-specific education and training strategies. However the current clause refers to this only in the context of the education system. We recommend that this clause be amended to include a sub-clause requiring evidence-based communication and education strategies across government departments and including the public broadcaster. These strategies must challenge entrenched beliefs of women's inferior status.

Further, education to strengthen public knowledge of existing rights and duties under the existing legal and policy framework is essential. Few people are aware the various rights, services, standards and duties of state role players set out in law and policy. Without this knowledge, people are not in a position to request, claim or defend their rights. We note that at times, state employees deliberately mislead members of the public regarding the rights and duties contained in legislation.

### **Recommendation**

We recommend that, under the guidance of the ministry and with oversight by the relevant legislative committees, the various departments responsible for implementing existing legislation, policy and programmes must be required to implement effective public awareness campaigns regarding the content of the existing legal framework. Currently efforts in this regard are weak or non-existent. These campaigns must ensure that information is provided in local languages, and that it is accessible to as wide a range of people as possible, wherever possible making use of local radio and print as well as of social media platforms.

It is not only the public that has weak knowledge of the existing framework, state employees who hold those legal duties are themselves often unaware of what those duties are. We thus also recommend that initiatives to train government officials on the content and duties ascribed through existing legislation and policy be prioritised. Laws addressing sexual offences, maintenance, domestic violence, termination of pregnancy, land reform, and representation are but some that would benefit from such communication and education programmes.

#### **7.1. Going beyond communication and education for implementation**

We note, however, that communications and education alone will not shift the status quo. These must go hand in hand with much stronger strategies for monitoring adherence to legislative and policy requirements across public and private institutions. Often people transgress the requirements of the framework without consequence.

### **Recommendation**

We recommend that across settings, mechanisms for reporting failure to uphold the duties imposed by law and policies (such as complaints or oversight systems) must be instituted or strengthened where they are in place. These mechanisms must be accompanied by sufficient resources to ensure they are effective. Standards must be established to ensure that the consequences for failing to uphold legal or policy duties reflect the seriousness of this failure.

## **8. Equal representation and participation (clause 7)**

We support the setting of quotas for women's representation and participation in decision making structures. However as noted previously many of the provisions of this bill duplicate the existing legislative framework. The question of how the implementation of the measures in this bill will differ from the implementation of existing laws is not addressed. Nor is the question of how implementation of existing measures will be addressed.

### **Recommendation**

The current legal framework must not be duplicated in a new law. Rather failures of implementation in the existing framework must be addressed through a range of possible mechanisms, including but not limited to legislative responses.

## **9. Gender mainstreaming (clause 8) and Gender units (clause 15)**

Clause 8 of the bill contains important measures to promote gender mainstreaming in designated public and private bodies.

We note that clause 8(2) lists five measures in this regard, however the use of the word ‘may’ indicates that they are discretionary.

Clause 15 which deals with the establishment of Gender Focal Points (GFPs) in designated public bodies is also encouraging. This is not the first attempt by government to institute this approach to shifting policies and management of these in the public sector as it was an important element of the original National Gender Machinery. On analysis, these previous attempts failed for a number of reasons including: The failure to appoint GFPs in some departments; insufficient grounding and understanding of the drivers of women’s inequality in the GFPs that were appointed; gender being an added responsibility to the job description of many GFPs; and the relative junior position of many GFPs resulted in a failure of this approach to strengthen the state’s response to gendered inequalities.<sup>4</sup>

The requirement in clause 15(1) that the appointment be made a senior management level is one step in the right direction, however the word ‘senior’ is open to some interpretation.

The provision in 15(3) that the minister must make regulations to set out the qualifications, skills and duties of gender focal points is important and we strongly support its inclusion in this bill. These provisions – depending on the content of the regulations contemplated in 15(3) – should assist in addressing some of the failures in previous attempts to entrench a system of GFPs in government departments. It is essential that the regulations include measures to address these previous failures.

### **Recommendations**

We recommend that the word ‘may’ be replaced with the word ‘must’ as all of the measures listed are essential.

We recommend that the bill stipulate the lowest level on which GFP can be appointed at ‘senior’ level in national departments.

### **9.1. GFPs in provincial and local spheres**

The establishment of GFPs at all levels and structures within public bodies is not addressed in this bill. In particular at local and provincial levels.

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<sup>4</sup> Giesler G; Mokgope K & Svanemyr J. 2009. *South Africa: the national gender machinery, gender mainstreaming and the fight against gender based violence*. African Development Fund. Pp18-20

This would provide greater coherence in implementation of national strategies in the local sphere. Locally located GFPs could be responsible for ensuring knowledge and compliance with relevant law, policy and programmes within local planning offices, councils, hospitals, police stations, courts and schools for example. Further they can function as a point of information to and assist in addressing complaints of the public.

Similar to our comments above, the people appointed at this level would also need to hold the necessary expertise for the task. On the issue of seniority, these GFPs would also need to hold senior positions at this level in order to have influence. Further at this level it is as, if not more important, that the duties of the people appointed be clearly established in regulations and that these duties not simply be added to a pre-existing set of responsibilities.

Undoubtedly, the appointment of senior level GFPs at national and local levels will require budget allocations within the various department's budgets. While appointing a few senior GFPs in National department holds a relatively lower cost implication. The appointment of GFPs to operate at local level will require far greater investment and take a longer time. It thus would require a time-bound strategy to see its realisation.

Such an approach, although more expensive, may yield greater results in mainstreaming and addressing the problems faced by women in the country in the wide range of areas in which this is necessary to see shifts in discrimination against women, the disempowerment of women and the inequalities, than an approach of restating what is already set out in policy and legislation in a new law.

### **Recommendations**

We recommend that the Committee include the establishment of GFPs, with appropriate expertise and level of skill, in senior positions in all spheres of government, particularly in local offices and service delivery points.

We further recommend that this be costed and that an implementation plan be put in place, that includes the necessary budget allocations.

## **10. National Gender Machinery**

It is of concern that this bill does not address some of the issues that are considered to have underpinned the failure of the previous NGM to effect change for women in South Africa.

The impact of the establishment of the Ministry for Women, Children and Persons with Disabilities to replace the Office on the Status of Women (OSW) has not been assessed to date. Notably the previous overlaps in the mandates of different elements of the NGM are to some extent being replicated in the current framework.<sup>5</sup> Clarity on the mandates of the various elements of the new NGM, in particular those that exist between the mandates of the Ministry and the Commission on Gender Equality (CGE) is needed. The

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<sup>5</sup> Giesler G; Mokgope K & Svanemyr J. 2009. *South Africa: the national gender machinery, gender mainstreaming and the fight against gender based violence*. African Development Fund. P14

necessity for an independent, strong and effectively resourced CGE must be taken into account in this regard.

### **Recommendation**

We recommend that the Committee consider legislation to set out the various components of the new NGM and undertake a consultative process in order to achieve clarity of purpose and mandate of the different elements thereof. This must include mechanisms by which organised civil society can engage with state structures.

## **11. Conclusion**

We support the intention of the Ministry to improve circumstances for women's empowerment and gender equality, further we support certain provisions of this bill. However we are not convinced that this bill will have any greater impact on this than any of the laws, policies and programmes currently in place to achieve a number of the same changes that this bill seeks to make. Entrenched value systems of male entitlement and superiority that underpin women's experiences of discrimination, exclusion and disempowerment, and that pervade all aspects of society remain unchallenged by this or other legislation, policy or programmes.

A stronger process of consultation with departments, civil society and most importantly, with women around the country is essential to establish what other measures, besides or in addition to the promulgation of legislation can affect real changes in all aspects of women's lives.

Without political will and without resourcing, no law, policy or programming will be implemented.