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# Submission on the Women's Empowerment and Gender Equality Bill by Tshwaranang Legal Advocacy Centre to end violence against women 16 January 2014

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**The Portfolio Committee on Women, Youth, Children and People with Disabilities**

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

Chairperson

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

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## Contents

1	Introduction.....	3
2	Background to our submission .....	3
3	Consultation Process.....	5
3.1	Our Submission.....	5
3.2	Our Recommendation on the Consultation Process.....	6
4	Addressing Women’s Empowerment and Gender Equality in South Africa.....	6
4.1	Our Overall Submission on the Bill.....	9
4.1.1	Resourcing the Implementation.....	12
4.2	Our Recommendation on the Overall Focus of the Bill.....	12
5	Our Submission on the Substance of the Bill.....	16
5.1	Definitions.....	17
5.2	Scope of the Bill .....	17
5.3	Role of the Gender Machinery .....	17
5.4	Alignment with Other Laws .....	17
5.5	Enforcement of the Legislation.....	18
5.6	“Designated” Bodies .....	18
5.7	Penalties.....	18
6	Conclusion.....	18
6.1	Overall Recommendation .....	18

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## 1 INTRODUCTION

Tshwaranang Legal Advocacy Centre to end violence against women (TLAC) is a non-profit organisation, established in 1996, to promote and defend the rights of women to be free from violence and to have access to quality effective services. We work to improve government accountability on policy/legislative reform and the delivery of services; and increase the awareness of rights and access to justice for women and girls affected by violence. We do this through capacity building, research and advocacy, and impact litigation.

Since its establishment, TLAC has played a key role in driving transformation on a legislative level. In 1997, we were part of the South African Law Commission's committee for the reviewing of the (then) Prevention of Family Violence Act which resulted in the Domestic Violence Act (DVA), recognised to be a significant improvement in this area of the law. We were also part of the committee that worked with the then Department of Justice to establish the Family Court model. Since then TLAC has, with other organisations, played a key role in driving improvements to sexual offences legislation and the establishment of the sexual offences courts.

Over the years we have built strong and lasting relationships with key stakeholders based on the value we add through our work and experience. On a weekly basis we respond to various calls from different media to respond to queries about recent incidents; to findings of our research; or to contribute to discussions on various issues relating to violence against women and girls. We have been a regular contributor to Parliamentary hearings and discussions relating to our work, and we use this opportunity to drive for change. TLAC is known by many government departments as a centre of expertise in the area of violence against women, and we are called upon to contribute in various fora. Recently, with the Institute for Security Studies, we have been participating in a process facilitated by the Civilian Secretariat for Police to develop the Policing White Paper, which will ultimately result in a new Police Act. This is only one of many such critical platforms where TLAC's voice has made an important contribution.

**We would like to thank the Committee for the opportunity make this submission.**

## 2 BACKGROUND TO OUR SUBMISSION

TLAC believes that legislation that seeks to respond to the structural inequality, especially the marginalised position of women in South Africa is critical. To this end, we have sought to find ways to engage a broader community of women and organisations to create broader

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awareness about the **Women Empowerment and Gender Equality (WEGE) Bill** and to obtain feedback from a broad range of stakeholders.

TLAC, in partnership with the Community Law Centre (UWC), the Women's Legal Centre, and Sonke Gender Justice facilitate two workshops in Johannesburg and Cape Town with organisations and individuals representing at least six provinces, and including community based organisations. The focus of these workshops was to share information on the Bill, update stakeholders on the process and to obtain input on the Bill. The list of organisations that attended the workshop is listed below:

#### **Participants at the JHB and Cape Town Workshops**

Cherith Sanger and Katy Hindle, Sonke Gender Justice; Shireen Motara and Welekazi Stofile, Tshwaranang Legal Advocacy Centre, Mcloud Zitshu, VMTEC, Bongiwe Zondi, Justice and Women; Jeanette Makae, Thusanang Advice Centre; Willene Holness, UKZN; Leigh-Ann van der Merwe, Social, Health and Empowerment feminist collective of transgender and intersex women of Africa (SHE); Yasmin Rajah, Refugee Social Services; Jeanne Prinsloo, Rhodes University; Arun Naicker, Umtapo Centre; Lisa Vetten, Independent; Tsakane Bok, Embassy of Finland; Buyi Makhubela, Teddy Bear Clinic; Kgomotso Mokaba and Wendy Issak, Center for Applied Legal Studies; Nondumiso Sibande, People Opposing Woman Abuse; Nick Van Rooyen, UASA; Evan; Inarine Tshikovhi, Thohoyandou Victim Empowerment Programme; Pravisha Dhanaspalan, Lifeline Durban; Daniel Moerane, Lethabong Advice Office; Zamangwe Zwane and Doreen Kotsedi, Johannesburg Society for the Blind; Liesl Reehbock, SAOU; Pam Crowsley, Gun Free SA; Rubeena Partab, UKZN; Sikhathele Nkala, CSV; Amanda Gouws, CGE; Ayanda Denge, SWEAT/Sisonke; Bintou Barrow and Nada Barq, Parliamentary Monitoring Group; Charlene May and Sarah-Jane Frith, Legal Resources Centre; Cheryl Morilly, Lifeline/Childline Western Cape; Danielle Coleman, SWEAT/RADFEM; Genine Josias, Simelela; Glenise Levendal, Oxfam; Ingrid Lynch, Triangle Project; Jennifer Williams, Women's Legal Centre; Joy Watson, Parliamentary Research Unit; Kodwa Tyiso and Michelle Festus, Actionaid South Africa; Lucy Harding, Centre for Applied HR, University of York; Mary Hames, UWC Gender Equity Unit; Matipa Mwamuka, Anex CDW; Monica de Souza and Thuto Thipe, Centre for Law and Society, UCT, Centre for Law and Society, UCT; Nonhlanhla Chanza, Law Society of South Africa; Olivia Bliss; Samantha Waterhouse, Community Law Centre, UWC; Shabashni Moodley, UKZN; Tabeth Masengu, Democratic Governance and Rights Unit, UCT; Violet Adonis, South African Faith and Family Institute; Vivien Mentor, Shukumisa.

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In addition, we conducted a snap online survey to gauge women's awareness of the Bill and their views on whether the Bill is necessary; and what it will need to address in order to support women's empowerment and gender equality. A full copy of the survey report is attached separately for the Committee's information.

Our submission is therefore informed by the feedback from these processes as well as our experience of working in the field of violence against women and girls for over 16 years.

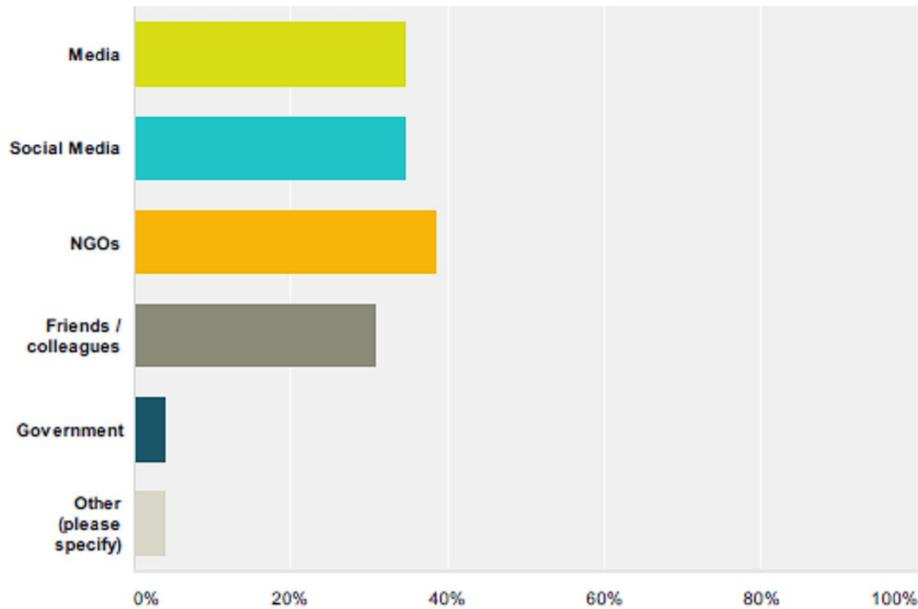
### **3 CONSULTATION PROCESS**

#### **3.1 Our Submission**

The WEGE Bill seeks to address and respond to the significant inequality that pervades South Africa, and which despite 20 years of democracy, sees women continue to be second class marginalised citizens. The ambit of the Bill is far reaching and attempts to cover a wide range of sectors which promotes women empowerment and gender equality across the four corners of the country. It will have an effect on each and every woman and girl, as well as men, boys and the broader society.

We do acknowledge that there has been a call for submissions from the Committee and that there has also been an additional call for submissions. In addition, the Committee acceded to our request to extend the date for submissions – which we are very grateful for. However, our biggest concern with the process is that we believe that it has not been widely consulted with women across the country, from all spheres of life and geographical areas. This has a significant impact on what is covered in the Bill and how responsive it is to the real practical and strategic needs of women. Our worry is that should the Bill not be widely consulted, it may not respond effectively to the key challenges and will essentially become a “white elephant” which may ultimately do more harm than good.

In the survey we asked participants whether they knew about the Bill. It was encouraging that close to 70% had heard about the Bill. The biggest source of information was NGOs, followed by the media and social media. Only about 4% heard about the legislation from government, which is a concern bearing in mind that these participants are likely to have more access to information than women in rural areas for example.



### **3.2 Our Recommendation on the Consultation Process**

Due to the far reaching implications of this legislation, we would like to recommend that a much broader consultation process be embarked upon across the country to effectively engage women and girls on what they believe the Bill should address. This should be a priority. We also believe that it is important to consult different sectors that are likely to be “designated” in terms of the Bill, to understand their views and ensure that the Bill addresses the obstacles that may emerge. The implementation of the Employment Equity (EE) Act has shown that employers find ways to circumvent the legislation because they do not take the transformation imperative seriously. Despite the EE Act being operational since 1998, black women in the workplace have yet to benefit from it.

## **4 ADDRESSING WOMEN’S EMPOWERMENT AND GENDER EQUALITY IN SOUTH AFRICA**

This year we celebrate 20 years of democracy in South Africa. This is a remarkable achievement considering our historical circumstances. During these 20 years we have seen extensive work done on transforming the legislative environment to align to our Constitution and a human rights based framework. Key pieces of legislation which have sought to respond to gender inequality and the protection of women’s rights include the Domestic Violence Act,

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sexual offences legislation and courts, as well as the Employment Equity Act. On the socio-economic front various pieces of legislation has sought to respond to poverty and the structural inequality that characterised our country.

However, while the legislative framework has been good, implementation has fallen far short in many areas especially in addressing and responding to women's unequal position in society and the rampant violence against women and girls. This has taught us that changing the legislative framework is only one part of transforming a society, and if we do not address sexist and misogynist behaviours and social norms; accountability of implementers and the provision of resources - We will fail. This should be top of mind when we are dealing with the WEGE Bill.

There have been various measures put in place to address the seriously disadvantaged position of women, yet few have succeeded. We are internationally recognised for our extensive gender machinery which includes the Ministry for Women, Children, Youth and People with Disabilities, the Commission for Gender Equality and gender focal points in government. Yet the extent to which these have brought substantive improvement to the plight of women is questionable. Lack of role clarity, lack of co-operation amongst gender machinery, and lack of resources has resulted in a disparate system. Instead of an integrated and responsive machinery we have disparate entities that are proving to be ineffective. Our concern is that the WEGE Bill may not resolve this.

When we are asked survey participants if they believed that government is responding to their challenges, they overwhelmingly said "no" (see below). This is very concerning because it points to the fact that despite a great of initiatives on the part of government to act, these are not having the desired effect.



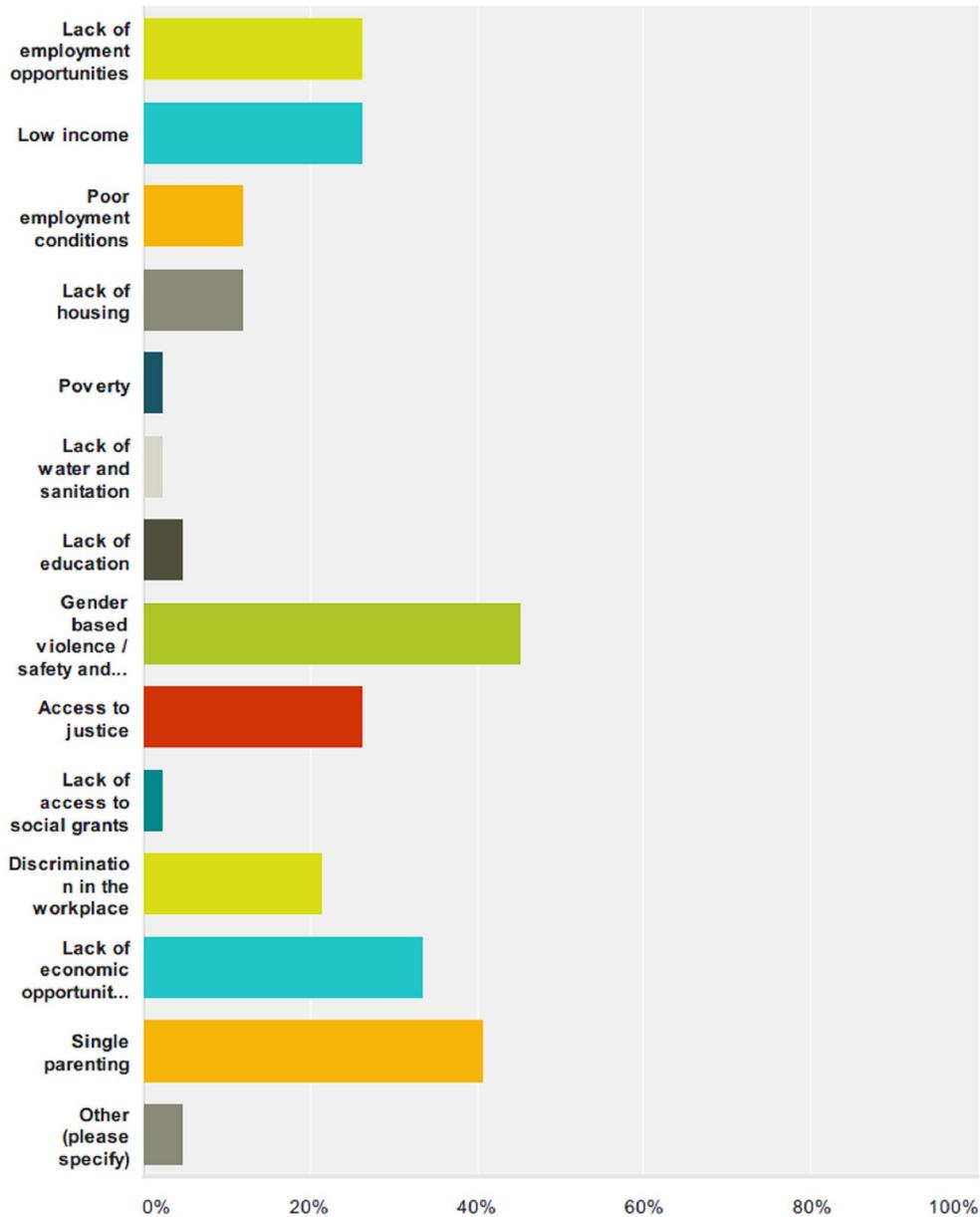


inequality pervasive across our country and entrenched in our services, systems and structures. It must focus on the reasons why women continue to be marginalise and discriminated against. It must also interrogate how patriarchy has permeated our psyche, and how this is played out in employment practices, access to economic resources and access to justice. Without this analysis to understand and respond to the underlying, often overlooked causes, the Bill will just be another piece of legislative paper that promises but does not deliver.

In the survey we asked participants, what the biggest challenges are they face as women and girls. These were their responses:

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The question then becomes to what extent is the WEGE Bill responding to these concerns? If this question is to be asked to women who are unemployed and in rural areas, it is likely that issues of poverty will be significant. What the information above illustrates is that lack of

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Registration of Customary Marriages																				
Addressing barriers to gender equality; gender-based violence, including violence based on sexual orientation and/ or gender identity																				
Empowering women in the work place. Considering that most homes are headed by single females this bill should give this group more support and enforce where necessary. Better schools for our kids closer to where we live.																				
Equality in opportunities and salaries.																				

Once again, addressing employment discrimination and effective access to economic resources are major concerns. Similarly, workshop participants also identified lack of access to economic opportunities and overcoming poverty to be key issues to be addressed.

Overall, we are of the view that the Bill should do more to challenge, interrogate and respond to the system of entrenched patriarchy, and must strive for substantive equality. We are concerned that the current approach by the Bill is ad hoc, and does not respond to the intersectional and multiple forms of discrimination. Significantly, it does not consider the practical and strategic needs of women; and if it is to be effective it must start with understanding and responding to women’s plight on the ground.

We are concerned that with the significant socio-economic priorities facing government and the lack of resources to address these, there may not be sufficient resources to support the implementation of the legislation. Our recommendation is that possible resourcing opportunities and avenues be explored before passing the Act, to ensure that there is an alignment between the two. We would rather have the Act focusing on addressing two or three significant issues which can be resourced, than having a shopping list with no funding to drive it.

## 5 OUR SUBMISSION ON THE SUBSTANCE OF THE BILL

Whilst we are concerned with the fundamental approach of the Bill, we do recognise that there are elements of it which are useful and do deal with key challenges that perpetuate gender inequality. These include access to education and training and economic empowerment. However we do have some serious concerns about certain provisions or lack of it in the Bill itself. These include:

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## **5.1 Definitions**

We are concerned that many of the definitions in the Bill are weak, unclear and seem contrary to the promotion of women empowerment and gender equality. These must be addressed if the legislation is to be effective. These include terms like gender mainstreaming, and gender.

## **5.2 Scope of the Bill**

Women's inequality and disempowerment is underpinned and fuelled by a patriarchal system, structural inequality and the lack of a political and social commitment to addressing sexism and discrimination. While the Bill focuses on addressing some key challenges, our concern is that it does not start with an analysis of the deep seated reasons for gender inequality and as a result does not respond to this. In addition, while the Bill addresses some key concerns such as education, access to economic opportunities, women in rural areas, and women with disabilities, the approach and substance is flawed/weak and will not result in any meaningful difference. As previously mentioned, the Bill also fails to address the wide ambit of sectors/areas which create/perpetuate/drive inequality and disempowerment. Significantly, the Bill does not challenge and respond substantively to addressing religious, cultural and traditional practices that drive and sustain women's status as second class citizens, and are in fact contrary to our broader human rights principles as a country.

## **5.3 Role of the Gender Machinery**

This Bill may have implications for all gender machinery. Yet there is no clarity on what role different entities will have and how co-operation will work to ensure compliance. Our earlier concerns about the challenges with the gender machinery remain and there is a need to address this. This includes the role and responsibilities of the Ministry for Women, Children, Youth and People with Disabilities.

## **5.4 Alignment with Other Laws**

The Bill makes reference to a broad scope of Acts/legislation which will need to be aligned. However, how this will happen is missing. Has there been an analysis of all the affected pieces of legislation to understand how it relates to this Bill and may affect its implementation? Furthermore, there is little or no analysis of international obligations and how the Bill will ensure compliance with these.

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## **5.5 Enforcement of the Legislation**

The Bill in its current form uses the language of “may” which concerns us. Experience with legislation that seeks to address inequality has shown that commitment to implementation is weak across the board. If we use the language that gives options, the legislation will be doomed to failure. We suggest that “may” be replaced with “must” to create and support accountability and transformational change.

## **5.6 “Designated” Bodies**

The Bill makes reference to the fact that Minister will designate which public and private bodies should comply with the Act. Our concern with this is that this provision is vague, and provides no clarity of what the criteria will be for this designation. Gender inequality is pervasive across all sectors of society, how will we ensure compliance with the Act if this is unclear. What is also unclear is whether this will happen once or from time to time? A key concern for us is that there is no recognition of the role of government as being the driver of social and transformational change, and how government will be held accountable to realise the rights of equality and non-discrimination enshrined in the Constitution. Furthermore, we feel this approach may omit many sectors that play a key role in supporting or entrenching inequality. These include private sector employers, unions, the media and political parties.

## **5.7 Penalties**

The previous version of the Bill provided for Offences and Penalties. This has now been removed, which begs the question of how compliance with the legislation will be ensured. If there are no consequences for non-compliance or sexist/misogynist practices, what is the value of this legislation?

# **6 CONCLUSION**

We would like to thank the Committee for providing us with this opportunity to provide input on the WEGE Bill. We believe that this type of legislation is necessary, however, in its current form it is likely to do more harm than good.

## **6.1 Overall Recommendation**

**Our overall recommendation is that the Bill in its current state should be scrapped, save for some of the good elements. A wide consultation process with women and girls across the country, in different geographies and sectors, must be the starting point.**

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