



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

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**Commission on Gender Equality Bill [B36-2012]: Summary of Submissions**

24 April 2013

130424 PC WOMEN

NAME OF ORGANISATION	PROPOSED CHANGE	CGE BILL [B36-2012]	OUTCOME
<p>University of the Witwatersrand 4<sup>th</sup> Year Social Work students</p>	<p><b>Name change</b> Commission for Gender Equality In agreement with the amendment because it addresses transformation issues which are vital in South Africa today.</p> <p><b>Preamble</b> Agreed to removal of "the status of women" and replaced by 'gender' it shows equality and neutrality amongst the sexes.</p> <p><b>Preamble</b> In the second bullet point which has been added to the second paragraph in the preamble there is a direct quotation which has been included from Chapter 9; Section 187(1-3) of the Constitution of the Republic of South Africa 1996.  It does not elaborate how the various functions will be carried out; for whom it will be done; under which circumstances it will apply and how it will be applied. We believe that this should be elaborated on and specify the ways in which it will benefit and protect the victims of gender inequality.</p>	<p>Commission for Gender Equality</p> <p>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;</p>	



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	<p><u>Amendment of Section 1(iv) of Act 39 of 1996:</u> We suggest reverting to the Minister of Justice or creating a new one such as the Minister of Gender Equality, which will be in line with the act and what it aims to do.</p>	<p>by the substitution for the definition of "Minister" of the following definition: "<b>Minister</b>" means the Minister <b>[of Justice]</b> responsible for women, children and people with disabilities."</p>	
	<p><u>Amendment of Section 3(5a) of Act 39 of 1996:</u> The grounds under which a member may be removed will be based on the grounds of misconduct, incapacity or incompetence; it can therefore no longer be based on the joint decision of the committee. This change in alignment with Chapter 2, section 33(1) which dictates that "everyone has the right to administrative action that is lawful, reasonably and procedurally fair" (The Constitution of the Republic of South Africa, 1996). A committee member will therefore be dismissed due to their personal actions and can no longer be unfairly dismissed or discriminated against just cause. There are legal procedures which must be enforced and evidence provided before dismissal of a member. This gives every member an equal platform when it comes to the terms under which a dismissal will take place.</p>	<p><u>Amendment of section 3 of Act 39 of 1996</u> by the substitution for subsection (5) of the following subsection: "(5) The President shall, subject to section 194(2) and (3) of the Constitution, remove any member from office [if] only on— (a) [such removal is requested by a joint committee contemplated in subsection (2)(b)] the ground of misconduct, incapacity or incompetence;</p>	
	<p><u>Amendment of Section 3(5b) of Act 39 of 1996:</u> The removal of a committee member now falls under the oversight of the National Assembly and not merely that the National Assembly and the majority of the total</p>	<p>(b) [such request is approved by the National Assembly and the Senate by a resolution adopted by a majority of the total number of members of both Houses at a joint meeting.] a finding</p>	



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	<p>number of members of both houses (the National Assembly and Senate). This is in alignment with Chapter 9, Section 181(1-5), which outlines the State institutions which are in support of constitutional democracy and how they should be governed. These institutions are accountable to the National Assembly hence they should report on all their activities, their performance of functions and their decisions for the removal of members, allowing the National Assembly to have the final say.</p>	<p>to that effect by a committee of the National Assembly;</p>	
<p><b>Sonke Gender Justice Network</b> <b>Women's Legal Centre</b></p>	<p><b>Preamble</b></p> <p>Amend the Preamble of the CGEA to explicitly provide that the CGE, in exercising its duties, upholds and promotes the founding values of the Constitution and that it practices a democratic system of institutional governance that is open, transparent, responsive and accountable to the citizens of South Africa. Such an amendment to the CGEA can further South Africa's constitutional democracy and ensure that the CGE promotes the interests of South African society, more specifically women and other marginalised groups who remain susceptible to unfair gender discrimination.</p>		
	<p><b>Section 2(c)</b></p> <p>Proposed change in the definition of 'Minister' from the Minister of Justice and Constitutional Development to the Minister of Women, Children and People with Disabilities</p>	<p>by the substitution for the definition of "Minister" of the following definition: " 'Minister' means the Minister [of Justice] responsible for women, children and people with disabilities; "</p>	



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	<p>(MWCPD).</p> <p>The CGE's independence, vested in it in terms of Section 181(2) of the Constitution<sup>2</sup> and Section 10 of the CGEA<sup>3</sup>, will be compromised if it is required to both monitor government departments whilst also having to account to the same department, even if it is only in relation to its budget and expenditure.</p> <p>The proposed amendment would effectively subjugate the CGE to the Ministry and compromise its role to independently oversee and monitor the work of the Ministry. Further, it is vitally important that any appearance of conflict be avoided in the eyes of the public, and that the CGE be seen to be independent. Ultimately, in the furtherance of the independence and impartiality of the CGE, the CGE should not in be under the direction of any Minister but Parliament exclusively.</p> <p>We have interpreted Section 2(c) of the Bill to not seek to amend or impact on Section 12 of the CGEA which entails that the CGE will continue to be required to report to the President and Parliament. Should our interpretation be incorrect, we would recommend that the CGE continue to report to Parliament directly. This ensures the CGE's independence from the government departments that it tasked to monitor.</p>		
<p><b>Sonke Gender Justice Network Women's Legal</b></p>	<p><b>Section 3</b></p> <p>We raise issue with the proposed amendments in subsections 3(b)(a) and (d) of</p>	<p>(b) by the substitution in subsection (2) for paragraphs (a), (b) and (c) of the following paragraphs, respectively:</p>	





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Centre	<p>the Bill which would not allow for the public to nominate appropriate candidates to take up positions as members of the CGE and would vest the committee of the National Assembly and Minister with sole power to appoint CGE members. Such an amendment would undermine public participation, which is essential to a functioning constitutional democracy. The public has a direct interest in contributing to the nomination process and in having the democratic opportunity to influence the appointments made by the Minister by motivating for the appointment of strong and appropriate candidates who possess the requisite experience and historical track record, amongst other criteria, to perform the crucial role of CGE member.</p>	<p>"(a) [proposed by interested parties as contemplated in subsection (3)] nominated by a committee of the National Assembly proportionally composed of members of all parties represented in the Assembly;</p> <p>(b) [nominated by a joint committee] approved by the National Assembly by a resolution adopted with a supporting vote of a majority of the members of the Assembly; and</p> <p>(c) [approved by the National Assembly and the Senate by a resolution adopted by a majority of the total number of members of both Houses at a joint meeting:] on the recommendation of the Assembly."</p>	
<p><b>Sonke Gender Justice Network Women's Legal Centre</b></p>	<p><b>Discretionary powers and obligations</b></p> <p>Section 11 of the CGEA provides that the CGE shall investigate any gender-related issues of its own accord or on receipt of a complaint, and shall endeavour to</p> <p>I. Resolve any dispute; or</p> <p>II. Rectify any act or omission, by mediation, conciliation or negotiation.... (emphasis added)</p> <p>We recommend that the Bill amend Section 11 of the CGEA to enhance the powers of the CGE and to place a greater obligation on the institution to take up matters that are relevant to the fulfilment of its mandate, by replacing the word 'shall' with 'must' and by replacing 'of</p>	<p>e. shall investigate any gender-related issues of its own accord or on receipt of a complaint, and shall endeavour to</p> <p>i. resolve any dispute; or</p> <p>ii. rectify any act or omission, by mediation, conciliation or negotiation: Provided that the Commission may at any stage refer any matter to-</p>	



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	<p>its own accord" with 'at its discretion and that is necessary to fulfill its objectives'.</p> <p>These proposed amendments would enhance the CGE's powers and obligations, and, as such, would serve to better equip the institution to tackle current and pressing gender related matters that may arise.</p> <p><b>CGE's functionality and fulfillment of its mandate</b></p> <p>In this section of the submission, we recommend that the CGE's functioning and performance against its mandate be reviewed on an annual basis in order to address concerns highlighted through a 2006 review and current concerns raised by the organisations making this submission.</p>		
<p><b>Sonke Gender Justice Network Women's Legal Centre</b></p>	<p>It is recommended that the Bill put in place measures for the annual review of the efficacy of the CGE by a committee similar to the committee on Chapter 9 and associated institutions and that such a committee follow-up on the findings and recommendations of the 2007 report to assess whether any progress has been made to address its findings. It must be noted that the organisation making this submission are in full support of the existence of the CGE as a separate human rights institution and that it accordingly does not support the long-term recommendation in the report for the CGE to</p>		



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	<p>become part of one larger human rights institution along with other institutions such as the South African Human Rights Commission.</p> <p>It is recommended that the committee be vested with the powers to make recommendations on how the CGE should address issues related to its functioning and performance against its mandate, amongst other relevant issues, based on the findings of the committee and that the committee is entitled to follow-up on progress made bi-annually. The costs of the set up and operation of the committee should be integrated in the CGE's annual budget. It is important to note that we see the proposed committee as serving a separate purpose and addressing different issues to the ad hoc Committee on the Commission for Gender Equality Forensic Investigation.</p>		
<p><b>Sonke Gender Justice Network Women's Legal Centre</b></p>	<p><b>Financing and independence</b>  The organisations making this submission acknowledge that government departments are required to facilitate the transfer of budgets to Chapter 9 institutions and that the respective government departments do not have the power to determine how a Chapter 9 institution makes budget allocations or spends its budget. Nonetheless, in an effort to strengthen its independence and to mitigate the perceived lack of authority of the CGE, it is recommended that the Portfolio Committee consider an amendment to the CGEA that provides an alternative financial mechanism</p>		



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	<p>such that this Chapter 9 institution receives finances directly from Treasury. Such an amendment seems more appropriate and fitting for an oversight body such as the CGE, established in terms of the supreme law of South Africa and currently required to monitor the very government department that facilitates the transfer of its budgets from Treasury.</p>		

