

**SUBMISSION TO THE PORTFOLIO COMMITTEE ON
WOMEN, CHILDREN AND PEOPLE WITH DISABILITIES**

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WOMEN EMPOWERMENT AND GENDER EQUALITY BILL

[B50-2013]

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1. Introduction

Despite the adoption of a number of progressive laws and policies, South African women do not enjoy gender equality, evident in their higher rates of unemployment, lower earnings, under-representation at senior management and leadership level, as well as high rates of gender-based violence and HIV infection, amongst other things. In addition, key laws aimed at challenging aspects of women's subordination such as the 1998 Domestic Violence Act of 1998 and the Prevention of Unfair Discrimination and Promotion of Equality Act (PEPUDA) of 2000 are not effectively implemented. Initiatives challenging weak compliance with law and policy and inadequate progress towards achieving gender equality are therefore to be applauded. In this regard the Portfolio Committee on Women, Children and People with Disabilities (WCPD) has requested comments around the Women Empowerment and Gender Equality (WE&GE) Bill [B50-2013]. The aim of the Bill is threefold:

- To give effect to section 9 of the Constitution of the Republic of South Africa, 1996 in so far as the empowerment of women and gender equality is concerned;
- To establish a legislative framework for the empowerment of women; and
- To align all aspects of laws and implementation of laws relating to women empowerment and the appointment and representation of women in decision-making positions and structures;

In essence, the following measures are proposed to achieve the Bill's objectives:

- regular reporting to the Minister by the entities specified by the Bill on their compliance with the Bill's provisions, including submission of their programmes, plans and strategies;
- the development and implementation of public education programmes intended to reduce and challenge gender discrimination, including gender-based violence;
- enforcing existing gender equality legislation, policies and strategies;
- mainstreaming gender in all policies, programmes and activities and, where indicated introducing special measures to advance women in a variety of ways;
- legislating a quota of 50% representation of women in decision-making structures;

This submission makes general comments around the Bill and then focuses specifically on the National Gender Machinery (NGM). The submission has been prepared by Lisa Vetten, a research associate based at the Wits Institute for Social and Economic Research (WiSER) housed by the University of the Witwatersrand. The substance of this submission is based on research published in 2013,¹ copies of which are available from the author on request. The submission has been endorsed by:

- The Community Law Centre, University of the Western Cape
- The Teddy Bear Clinic for Abused Children
- The Thohoyandou Victim Empowerment Programme
- The Women's Legal Centre
- Women and Men Against Child Abuse
- The Shukumisa Campaign, a national coalition of 30 organisations addressing sexual violence (listed in an appendix to the submission)

¹ Vetten, L. (2013). 'The Simulacrum of Equality? Engendering the Post-94 South African State' in Mcebisi Ndletyana and David Maimela (eds). *Essays on the Evolution of the Post-Apartheid State*. Johannesburg: Mapungubwe Institute for Strategic Reflection.

- Dr Lillian Artz, Associate Professor University of Cape Town
- Vivienne Lulu, co-ordinator of the Shukumisa Campaign
- Professor Jeanne Prinsloo, Rhodes University

2. Existing legislation and policy promoting gender equality

As a point of policy principle it is undesirable to proliferate markedly similar laws, both because of the challenges this poses to the harmonisation of law, as well as the administrative and resource burden it imposes. The Bill is a particular concern in this regard as it duplicates functions and provisions in existing legislation including the Skills Development Act of 1998, the Employment Equity Act of 1998 and PEPUDA. Indeed were Chapter 5 of PEPUDA in effect, much of the WE&GE Bill would be rendered redundant. It must therefore be asked whether the WE&GE Bill seeks to address weaknesses in the implementation of these laws, or actual defects in the legislation. Point 6.3 of the *Memorandum on the Objects of Women Empowerment and Gender Equality Bill, 2013* (“the Memorandum”) notes that “the proposed legislation does not aim to create new anti-gender discrimination legislation, or additional mechanisms to enforce existing legislation and policies” which suggests that the defect lies in the application of existing laws, rather than their content. But if the problem the Bill is designed to address is the problem of inadequate implementation, then the solution does not lie in the introduction of yet another law destined to be inadequately implemented. Required instead is diagnosis of the factors contributing to non-implementation, matched by interventions intended to address these factors. Such a comprehensive diagnosis would not appear to exist.

Policy in the form of the 2009 *Gender Equality Strategic Framework for the Public Service* developed by the Department of Public Service and Administration (DPSA) is also already in place attempting to address the public service’s application of gender mainstreaming and gender equality principles. Measures introduced to encourage implementation of the Framework include the development by each department of an implementation plan; quarterly progress meetings between the various steering committees recommended by the Framework; biannual reporting by departments to the Director-General of the DPSA on progress towards the implementation of the Framework; annual steering committee meetings; and the submission of annual Performance Progress reports (DPSA 2008: 50). The WE&GE Bill thus appears to also duplicate aspects of this Framework, which suffers too from problems of implementation, as the Department of Performance Monitoring and Evaluation (DPME) has made abundantly clear.

The DPME sought to evaluate compliance with the DPSA’s directive in terms of standard 3.2.4. – management of diversity. According to the DPME, 97% of departments did not meet this standard in 2012/13, with 88% of departments unable to meet more than the requirements of Level 1, the lowest standard of performance. These sub-standard ratings were the result of departments failing to submit to the DPSA their Job Access Strategic Framework Implementation report and/or a Gender Equality Strategic Framework Implementation Report (DPME 2013: 34). The DPME also noted that aspects of the DPSA Framework duplicated functions and responsibilities mandated to the Minister of Labour in terms of the Employment Equity Act of 1998. The DPME concluded that the DPSA’s duplication of functions was potentially one factor contributing to departments’ low levels of compliance with its policy prescripts (*ibid*). This observation that duplication aggravates problems of implementation is one that needs to be seriously considered in relation to the WE&GE Bill.

Recommendations:

1. Chapters 2 and 3, along with sections 13 and 14 of Chapter 4 should be removed in their entirety from the WE&GE Bill. Comprehensive research must first be undertaken to identify barriers to the effective implementation of existing laws such as the Employment Equity Act of 1998 and the Skills

- Development Act of 1998 and interventions designed only once the findings have been made available.
2. Chapter 5 of PEPUDA has been in abeyance for over a decade now. As a matter of priority the Portfolio Committee should investigate the causes of the delay and ensure that the necessary steps are taken to put this chapter into operation. Every precaution should be taken to ensure the harmonisation of existing legislation before any new law is considered.
 3. As a practical instance of gender mainstreaming and given the DPME's demonstrable ability to monitor and evaluate departments' performance, it is recommended that the monitoring functions of the Department of Women, Children and People with Disabilities (DWCPD) be formally incorporated into the work of the DPME and DPSA. Given the dismal compliance found by the DPME with the DPSA Framework it is recommended that Chapter 5 of the WE&GE Bill dealing with enforcement be retained but allocated to the proposed Gender Unit in the DPME tasked with monitoring and evaluating departments' compliance with law and policy.

3. The National Gender Machinery

The WE&GE Bill also overlaps and duplicates portions of the Commission on Gender Equality (CGE) Act of 1996, section 11 in particular. This provision ought to be utilised far more often than is currently the case because the CGE, as an independent institution, is far better placed to hold departments to account than the DWCPD – and perhaps even the DPME. Overlooking the powers and functions of the CGE in this way illustrates a further concern around the WE&GE Bill – its potential to inadvertently undermine the NGM.

The DWCPD is neither the first nor only structure tasked with the promotion of gender equality in South Africa. Discussions around South Africa's NGM first began in 1992 and accelerated following the democratic elections of 1994. By 1998 the NGM comprised a set of institutions distributed across government, parliament, civil society and the independent Chapter 9 bodies. Elements of the NGM were also consolidated in legislation and policy, specifically the CGE Act of 1996, followed in 2000 by the release of *South Africa's National Policy Framework for Women's Empowerment and Gender Equality* ("the NPF"), prepared by the Office on the Status of Women (OSW). In addition to the CGE and OSW, the Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women (JMC), the Women's Empowerment Unit (WEU) and the Women's Caucus were established in parliament; and Gender Focal Points (and/or Gender Units) were established within both national and provincial departments. Local government has also established gender structures largely institutionalised within the South African Local Government Association (SALGA). Later, following the 2009 elections, the JMC was disbanded and replaced with the Portfolio Committee on Women, Children and People with Disabilities in the National Assembly and the Select Committee on Women, Children and People with Disabilities in the National Council of Provinces. These committees were established to also provide oversight of the newly-created DWCPD.

The NGM therefore comprises a complex and wide-ranging set of institutional arrangements, with each component responsible for a different aspect of gender equality. The introduction of the DWCPD has reconfigured these arrangements in a range of ways and it is of concern that the WE&GE Bill largely either overlooks or duplicates the roles of these other bodies, creating the impression that efforts to promote gender equality are largely being concentrated in the DWCPD. A second, related concern is the erasure of civil society from the NGM, which this Bill endorses.

Strong women's organisations within civil society were considered integral to the effectiveness of the NGM, (Mabandla, 1994; Mbete-Kgotsile, 1995; Albertyn, 1995; Madonsela, 1995; OSW, n.d.). To quote the OSW's NPF:

"It is the experience of many countries that that national machinery alone cannot shift public policy

agendas for women without the participation of organisations of civil society. Strong women's organisations are therefore an important part of effective national machinery. This implies that the institutions of the national machinery must have structures and mechanisms to facilitate close and effective relationships with organisations in civil society" (OSW n.d: 32).

Despite this statement of policy intent, no formal mechanism was ever created to institutionalise the participation of the broad spectrum of women's organisations within the NGM, ensuring that women's organisations have consistently remained the most neglected and marginal component of the machinery (see Gouws, 2006; Parliament of the Republic of South Africa, 2007; Geisler, Mokgope and Svanemyr, 2009). The establishment of the DWCPD is itself illustrative of the marginalisation of women's organisations. According to a report by the South African Government News Agency, only four women's organisations were included in consultations around the creation of the DWCPD (these being South African Women in Dialogue, the Progressive Women's Movement of South Africa, People Opposing Women Abuse and the Gender Advocacy Programme [Khumalo, 2009]). Following its establishment the DWCPD was also criticised both by the ANC Women's League and other women's organisations for failing to consult on its programme of action with groupings outside government (Mataboge, 2009).

In terms of the NPF the OSW was responsible for convening NGM meetings and including women's organisations within these. No such duty inheres in the DWCPD (which replaced the OSW). This has rendered the participation of women's organisations *ad hoc* and discretionary, rather than obligatory – a supreme irony in a Bill that seeks to legislate women's participation in decision-making. Section 19(a) of the WE&GE Bill does not address this lack of participation adequately, leaving both the establishment and composition of the institutional mechanisms to the Minister's discretion. In effect, the *de facto* exclusion of women's groupings from the NGM has been accomplished through the establishment of the DWCPD and is arguably being further entrenched through the WE&GE Bill. Such changes to the composition and functioning of the NGM represent significant policy shifts which have not been widely canvassed, particularly amongst the grouping most affected by this policy change – women's groupings. Further, the status and fate of the provincial remnants of the OSW is not clear and nor are the roles and relationships of the other gender structures sprinkled throughout the state, such as the DPSA and the local government structures, as well as other provincial structures located in the Offices of the Premier. Were all these various parts to be spelt out clearly, better implementation of existing law and policy may result

Recommendations:

1. Wide-ranging and extensive consultation is required around the future of the NGM. This should result in new provisions in the WE&GE Bill that set out these institutional arrangements, with section 15 of the Bill forming part of what such a provision might contain.
2. It is recommended that the WE&GE Bill legislate the creation of a National Gender Council that allows for the full participation of a diverse range of women's groupings in the creation of policies and programmes promoting gender equality. Sections 9 – 12 of the WE&GE bill would largely fall within the purview of this Council, which should also include private sector participation. Existing structures like the National Council on Gender-based Violence would thus become a sub-structure of this Council. The Council, which could be modelled along the lines of NEDLAC would provide the space for the diversity of women's voices to be better reflected in policy affecting their lives.

4. Resourcing of the WE&GE Bill

Point 6.2. of the Memorandum to the Bill states: "In terms of the Policy Framework of 2000, all government Departments have gender units even though at different levels. The financial implications of implementing the

required structure are therefore already incorporated in the Medium Term Strategic Framework budget processes of all departments. Provinces had already incorporated the budget on the National Gender Machinery through the Provincial Offices on the Status of Women. Similarly, local governments have established gender units which should thus already be in the finance structures of the local governments.” On this basis it has been concluded that the Bill does not imply the allocation of additional financial resources. This is not correct.

A number of government reports highlight the lack of knowledge about gender equality and gender mainstreaming within government – including amongst Gender Focal Points (Geisler, Mokgope and Svanemyr, 2009; DPSA, n.d.; Public Service Commission, 2006). With considerable donor support from the Canadian International Development Agency (CIDA), the Public Administration Leadership and Management Academy (PALAMA) has been offering accredited training programmes around gender mainstreaming to public servants since 2008. This contract with CIDA concluded in June 2012 (PALAMA, 2012). It must be asked whether PALAMA and other government departments have the financial resources necessary to implement the kind of wide-spread training this Bill demands.

In addition, in 2011 the DPSA embarked on a second survey of gender mainstreaming in 141 national and provincial departments. Less than half (66 or 47%) of departments responded and of those which did, five national and 31 provincial departments were found to still have no Gender Unit (DPSA, n.d). This implies that a number of departments do not have an existing budget for gender focal persons or units. In addition, many of these staff are employed at relatively junior levels. Elevating these current positions to more senior rankings entails definite budget increases.

Recommendations:

1. An audit of all tiers of government is required to establish the existence of gender focal points/units and the salary grade they occupy. This audit should form the basis of a costing that allows for all government departments to appoint such staff at the appropriate level of seniority.
2. A costed training plan is also required.

5. Conclusions

In conclusion, parts of the WE&GE Bill provide an important foundation for future legislation promoting gender equality. However, significant revision of other parts is essential to ensure that the proposed legislation does not duplicate existing legislation and further strain limited resources.

APPENDIX: MEMBERS OF THE SHUKUMISA CAMPAIGN

ADAPT,
AIDS Legal Network,
Childline SA,
CINDI Network,
Ekupholeni Mental Health and Trauma Centre,
eMPathy Trust Southern Africa,
FAMSA Pietermaritzburg,
Gender Health and Justice Research Unit (GHJRU),
Greater Rape Intervention Project (GRIP),
Justice and Women (JAW),
Legal Resources Centre,
Lethabong Legal Advice Centre,
Lifeline/Rape Crisis Pietermaritzburg,
Limpopo Legal Advice Centre,
Masimanyane Women's Support Centre,
Mosaic,
Nisaa Institute for Women's Development,
Ikhwezi Women's Support Centre,
Peddie Women's Support Centre,
People Opposing Women Abuse (POWA),
Port Elizabeth Rape Crisis,
Project Empower,
RAPCAN,
Rape Crisis Cape Town Trust,
Remmoho,
Sexual Assault Clinic,
Sonke Gender Justice Network,
Sex Worker Education and Advocacy Taskforce (SWEAT),
Thusanang Advice Centre,
Tipfuxeni Community Counselling Centre,
Triangle Project,
Tshwaranang Legal Advocacy Centre,
Western Cape Network on Violence Against Women,
Women on Farms Project. .

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