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Office of the Chairperson

Select Committee on Quality of Life, Status of Women, Children, Youth
and People with Disabilities

Enquiries: Hon AF Mahlelela

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NEGOTIATING MANDATE

- To** : The Chairperson:
Select Committee on Women, Children and People
with Disabilities
- Name of the Bill** : Women Empowerment and Gender Equality Bill
- Number of the Bill** : [B 50B - 2013]
- Date of Deliberation** : 18 March 2014
- Vote of the Legislature** :

The Select Committee on Quality of Life, Status of Women, Children, Youth and People with Disabilities ("the Committee") supports the Women Empowerment and Gender Equality Bill [B50B-2013], and confers on the permanent delegate representing the Province of Mpumalanga in the National Council of Provinces the mandate to vote in favour of the Bill.

The following proposed amendments are submitted to the Select Committee:

CLAUSE 1: Definitions

- On page 3, insert the definitions of "accounting officer", "accounting authority", and "public entity": as follows:

"**accounting officer**" means an accounting officer as defined in section 1 of the the Public Finance Management Act, 1999 (Act No. 1 of 1999) and Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

“accounting authority” means an accounting authority as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“municipal entity” means municipal entity as defined in section 1 of the Municipal Systems Act, 2000 (Act No. 32 of 2000);

“public entity” means a public entity as defined in section 1 the Public Finance Management Act, 1999 (Act No. 1 of 1999);

- On page 4, insert the word “legislation” to read as follows:
‘gender mainstreaming’ means the process of identifying gender gaps and making women’s, men’s, girls’ and boys’ concerns and experiences integral to the design, implementation, monitoring and evaluation of policies, legislation and programmes in all sectors of life to ensure that they benefit equally;

CLAUSE 3: Objectives of the Act

- On page 5, clause 3(e), to delete the word “a” (typing error) to read as:
provide for the implementation of measures to achieve the progressive **[a]** realisation of a minimum of fifty percent...

CLAUSE 7: Equal representation and participation

- On page 6, clause 7(2) delete the word **[may]** insert and insert must
- On page 7, clause 7(4) delete the word **[may]** and insert must
- On page 7, clause 7(6) delete the word **[may]** and insert must

CLAUSE 8: Gender mainstreaming

- On page 6, clause 8(2)(a) insert the word “legislation” to read as follows:
(2) The measures may include—
(a) the integration of gender considerations by all managers into all policies, legislation, structures, systems and processes relating to the designated public bodies and designated private bodies;

CLAUSE 9: Measures to empower women and to eliminate discrimination

- On page 8, clause 9(9), delete the word **[may]** and insert must

CLAUSE 10: Economic empowerment

- On page 8, clause 10(6), delete the word **[may]** and insert must

CLAUSE 14: Gender Units and compliance

- On page 9, clause 14(1), insert the following words as follows:
Every designated public body and designated private body must, within a period of three years from the commencement of this Act, establish a Gender Focal Point and appoint suitable personnel, at senior management level, to assist the designated public body to implement gender mainstreaming and, generally, to assist the designated public body to comply with this Act.

On page 9, clause 14(2), insert and delete the following words:

The accounting officer or accounting authority of the designated public body **[referred to in the Public Finance Management Act, 1999 (Act No. 1 of 1999)]**, and the director of the designated private body referred to in the Companies Act, 2008 (Act No. 71 of 2008) must ensure that the designated public body or designated private body, as the case may be, implements gender mainstreaming and women empowerment.

CLAUSE 15: Review by Minister

- On page 10, clause 15(1) insert the following:
The Minister must annually, conduct a review to determine whether a designated public body or designated private body is complying with this Act.

CLAUSE 17: Failure to comply with Act

- On page 10, clause 17(1)(b) insert the following:
An accounting officer or accounting authority of a designated public body is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years,...

- On page 10, clause 17, insert clause 17(1)(c) as follows;
The accounting officer or accounting authority of a public entity or municipal entity designated as a public body who fails to comply with the relevant provisions of this Act, including a request by the Minister in terms of section 15(2) or a recommendation by the Minister in terms of section 16(b), commits an offence and is liable on conviction to a fine not exceeding 10% of the total annual turnover.
- On page 11, clause 17(3), insert the following:
Subject to section 213 of the Constitution, [A] a fine payable in terms of this section must be paid into a separate account opened by the Department and be utilised for programmes that are aimed at empowerment of women and elimination of gender-based violence.[, referred to in section 213 of the Constitution.]

SCHEDULE 2

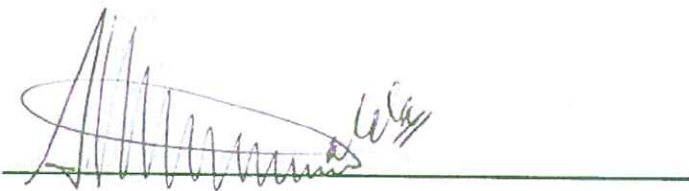
Insert the following legislation:

Act No. 117 of 1998: Local Government: Municipal Structures Act

Act No. 32 of 2000: Local Government: Municipal Systems Act

Act No. 56 of 2003: Local Government: Municipal Finance Management Act

Act No. 41 of 2003: Traditional Leadership and Governance Framework Act



19/03/2014

HON. AF MAHLALELA (MPL)

DATE

**CHAIRPERSON: SELECT COMMITTEE ON QUALITY OF LIFE,
STATUS OF WOMEN, CHILDREN, YOUTH AND PEOPLE WITH DISABILITIES**

140319 SWomen



EASTERN CAPE PROVINCIAL LEGISLATURE

**OFFICE OF THE CHAIRPERSON OF THE PORTFOLIO COMMITTEE ON
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14 MARCH 2014

NEGOTIATING MANDATE

To: The Chairperson
Select Committee on Women, Children and People with
Disabilities

Name of Bill: Women Empowerment and Gender Equality Bill
Number of Bill: [B50B-2013]
Date of Deliberation: 17 March 2013

Vote of the Legislature

The province votes in favour of the Bill and mandates the Eastern Cape delegate to the NCOP to negotiate in favour of the adoption of the Bill within the following parameters.

1. The Bill must be referred to the National House of Traditional Leaders in accordance with section 18(1) of the Traditional Leadership and Governance Act 41/2003 which provides for the referral of any national Bill to the National House of Traditional Leaders for its comments before it is passed by Parliament.

2. The Minister's powers are only limited to requesting and reviewing reports or utilizing weak dispute resolution mechanisms as stated in **Clause 16.**
3. The Commission for Gender Equality proposes that Clause 8 of the Bill be amended so that the Department of Women, Children and People with Disabilities can enlist the assistance of the office of the Auditor General to audit the relevant plans and measures.

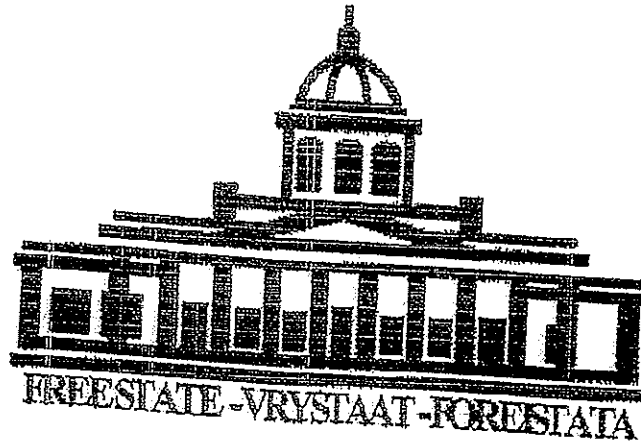


HON. T. XHANTI (MPL)

DATE

17/03/2014

**CHAIRPERSON OF THE PORTFOLIO COMMITTEE ON SOCIAL
DEVELOPMENT AND SPECIAL PROGRAMMES**



FREE STATE LEGISLATURE

**PORTFOLIO COMMITTEE ON PUBLIC ACCOUNTS, FINANCE, OFFICE OF THE PREMIER
AND THE LEGISLATURE**
Negotiating Mandate

TO: Chairperson of the Select Committee on Women, Children and People with
Disabilities

NAME OF BILL: WOMEN EMPOWERMENT AND GENDER EQUITY BILL

NUMBER OF BILL: B50B - 2013

DATE OF DELIBERATION: 14 MARCH 2014

VOTE OF THE LEGISLATURE:

The Portfolio Committee on Public Accounts, Finance, Office of the Premier and
Legislature, as designated by the Free State Legislature: Votes in favour of the Bill

C.J. VAN ROOYEN
CHAIRPERSON: PORTFOLIO COMMITTEE ON PUBLIC ACCOUNTS, FINANCE, OFFICE OF
THE PREMIER AND LEGISLATURE
FREE STATE LEGISLATURE
Date: 18 MARCH 2014



NEGOTIATING MANDATE

TO: The Chairperson of the Select Committee on Women, Children and Persons with Disabilities

Hon. B P Mabe

NAME OF BILL: Women Empowerment and Gender Equality Bill

NUMBER OF BILL: [B50B-2013]

DATE OF DELIBERATION: 11 March 2014

VOTE OF THE LEGISLATURE:

The Gauteng Provincial Legislature supports the principle and the detail of the bill with the proposed amendments.

- Women Empowerment and Gender Equality Bill

Mr C G Tsotetsi

Chairperson of Oversight Committee on the Office of the Premier and Legislature

GAUTENG PROVINCIAL LEGISLATURE

Date: 11/03/2014



**OVERSIGHT COMMITTEE ON PREMIER'S OFFICE AND THE LEGISLATURE
(OCPOL)**

**NEGOTIATING MANDATE ON THE WOMEN EMPOWERMENT AND GENDER
EQUALITY BILL
[B50B-2013]**

(Section 76)

1. INTRODUCTION

The Chairperson of the Oversight Committee on Premier's Office and the Legislature, Hon. G Tsotetsi, tables the Committee's Negotiating Mandate on the Women Empowerment and Gender Equality Bill [B50B-2013], a Section 76 Bill as follows:

2. PROCESS FOLLOWED

The Speaker formally referred the Women Empowerment and Gender Equality Bill [B50B-2013], a Section 76 Bill to the Oversight Committee on Premier's Office and the Legislature on Monday, 03rd March 2014 for consideration and reporting in terms of GPL Rule 248 (1) read with Rules 250, and 251.

On Friday, 07th March 2014, Department of Women Children and People with Disabilities (DWCPD) briefed the Oversight Committee on Premier's Office and the Legislature on the intentions of the Bill. The Committee further received a

4. OVERVIEW OF THE SUBMISSIONS

As part of its functions and obligation, the Committee invited stakeholders to submit comments during the consideration of the Women Empowerment and Gender Equality Bill [B50B-2013]. The Committee received both verbal and written submissions from various stakeholders that are listed hereunder:-

1. Commission for Gender Equality(CGE)
2. MPO: Perseverance
3. Krugersdorp Community Workers Project
4. Seneka a Mehlo in Poortjie
5. Aphrodite Women Empowerment
6. Forum for Empowerment of Lesbian Women
7. Forum for Empowerment of Women
8. COGTA
9. Eldorado Women's Empowerment
10. Women in Agriculture Development
11. Inquisitive Curers
12. Katlehong Ehau Group
13. SANGOCO
14. AMAJUKUJU

The following is the summary of the stakeholders' submissions:

- Definitions should be expanded to embrace LGBTI persons;
- Clause 6 of the Bill not supported. The expectation for entities to craft and deliver education products relating to gender equality and discrimination is onerous;
- Clause 9 of the Bill not supported. The provision of clear guidelines should be set out in supporting regulations.
- Clause 10 of the Bill not supported. The absence of proper economic empowerment benchmarking undermines the intention of this clause.

- Clauses 15 and 16 of the Bill should be amended and that the CGE be expressly referenced, noting its jurisdiction in gender equality related investigations and disputes;
- Education and training not provided to women in co-operatives, particularly those working in factories.
- Court cases reported by women should be handled by female judges in the Judiciary to avoid manipulation of having such cases being scrapped from the court list.
- Skills development and provision of funding for agriculture resources and establishment of businesses to rural women.
- Provision of health facilities in the rural parts of the province such as Poortjie.
- Emphasis should be placed on the Empowerment of Black Women in the Bill to ensure the upliftment of rural and semi-urban women.
- Review mechanisms of publicizing the Bill to reach grassroots level as well as public participation to ensure their involvement.
- Employment creation for women to claim back their independence from spouses.

5. VIEWS OF THE EXECUTIVE (OFFICE OF THE PREMIER)

The Gauteng Provincial Government supports and commends the DWCPDs for developing this Bill. However, the following are the proposed areas for review & inclusion in the Bill.

- **PREAMBLE**

- **Lesbians Gays, Bisexuals, Transgender Intersex (LGBTI)**

Proposal: It is proposed that LGBTI be specifically mentioned under the heading of Gender Based Violence, more so since the Domestic Violence Act and Sexual Offences Act does not specifically address the violation of LGBTI persons.

Proposal: It is further proposed that LGBTI be included under Definitions in Chapter 1: General Provisions

- **CHAPTER 1: GENERAL PROVISIONS**

- **APPLICATION OF THE ACT**

- The application of the Act places much stronger emphasis on organizations than individuals.

Proposal: The focus on individuals needs to be specified under the application of the Act as 2(4)

Proposal: It is proposed that the burden of proof should be on the organization (respondent) and not on the complainant as applied in PEPUDA.

- **CHAPTER 3: EQUAL REPRESENTATION AND EMPOWERMENT**

- **EQUAL REPRESENTATION AND PARTICIPATION**

- Section 7(1) (a) “refers to building women’s capacity to participate” and (c) refers to “developing support mechanisms for women”.

Proposal: It is proposed that the Bill specify more clearly what constitutes capacity building and support mechanisms, e.g. reasonable accommodation for women, affirmative action such as in the EEA, preferential procurement etc.

- **CHAPTER 3: EQUAL REPRESENTATION AND EMPOWERMENT**

- **MEASURES TO EMPOWER WOMEN AND TO ELIMINATE DISCRIMINATION**

Proposal: It is proposed that Gender Based Violence be afforded greater prominence and included as a separate section, in the same way that Gender Mainstreaming and Economic Empowerment have been set out as separate sections.

Proposal: The definition of GBV should be included under definitions. This should go beyond the scope of domestic violence or sexual offences, as women experience violence in the workplace as workers, as business persons or service providers and even as clients.

- **CHAPTER 3: EQUAL REPRESENTATION AND EMPOWERMENT**
- **MEASURES TO EMPOWER WOMEN AND TO ELIMINATE DISCRIMINATION**

Proposal: It is further proposed that the Bill specifies that entities are obliged to:

- create an environment which is safe and free from gender-based violence;
- prosecute GBV perpetrators/offenders, and
- support and rehabilitate victims of GBV

- **CHAPTER 3: EQUAL REPRESENTATION AND EMPOWERMENT**
- **GENDER MAINSTREAMING**

- While the Bill correctly refers to the definition of Gender as inclusive of both men and women, there is little reference in the Bill to discrimination against and practices affecting men.

Proposal: In the future, while adhering to the principle of preventing unfair discrimination, further consideration should be given to legislation which discriminates against men. For example: differing maternity and paternity leave provisions, the rights of fathers etc.

- **CHAPTER 5: REVIEW AND ENFORCEMENT**
- **FAILURE TO COMPLY WITH ACT**

Proposal: GPG proposals on strengthening provisions relating to the enforcement of the Act, including more specific provisions relating to the payment of a fine, have been addressed in Section 17 (2)(a).

- **CHAPTER 1: GENERAL PROVISIONS**
- **APPLICATION OF THE ACT**

The Bill should state that the Act is applicable to the public sector, private sector and civil society, so that it is all embracing.

• **CHAPTER 3: EQUAL REPRESENTATION AND EMPOWERMENT**

- **GENDER MAINSTREAMING**

A timeframe compelling all entities to adopt and implement gender mainstreaming should be attached to this requirement.

- **POWERS OF MINISTER**

Section 13 (2) provides for the Minister to request a designated body to provide any information relating to compliance with this Act. The extent to which the Minister may access classified information is not clarified.

6 FINANCIAL IMPLICATIONS AND SOCIO-ECONOMIC IMPACT ASSESSMENT OF THE BILL FOR THE PROVINCE

6.1. FINANCIAL IMPLICATIONS OF THE BILL

The Committee understand the implications of the Bill taking into consideration that this law will not be creating new legislation altogether but rather strengthening existing legislation. It is further noted that the Bill will not have significant direct financial implications as all mentioned structures pertaining to the provision of the Bill are supposedly already in place and funded.

6.2. SOCIO-ECONOMIC IMPACT ASSESSMENT

The Women Empowerment and Gender Equality Bill [B50B-2013] would respond to the transformation of gender equality and women, in particular, those from historically disadvantaged communities. This Bill contributes to the enhancement and upliftment of the social and economic status of women in society and the workplace. The Bill would ensure compliance of the private and public sectors in elevating and advancing women to entrepreneurial and managerial levels.

7. COMMITTEE RECOMMENDATIONS

The Committee is of the view that the scope of the Bill should takes into considerations the following:

- Chapter 3 (9) (1) should insert “black women in particular” and not generalisation of women.
- This Bill should take prominence over other existing gender based and women empowerment Acts to fast-track issues relating to the advancement of gender equality and women empowerment.

8. NEGOTIATING POSITION ADOPTED BY COMMITTEE

The Committee supports the principle and detail of the Women Empowerment and Gender Equality Bill [B50B-2013] as it seeks to advance gender equality and elevate the social and economic status of women, in particular, those from historically and marginalised communities and lastly, the assertion made in the legal opinion that the Bill conforms to the Constitution.

The Oversight Committee on Premier’s Office and the Legislature (OCPOL) adopt the Women Empowerment and Gender Equality Bill [B50B-2013] with the proposal as stated in this negotiating mandate.



NEGOTIATING MANDATE

TO: HON BP MABE, MP
CHAIRPERSON OF SELECT COMMITTEE ON
WOMEN, CHILDREN AND PEOPLE WITH
DISABILITIES

NAME OF BILL: WOMEN EMPOWERMENT AND
GENDER EQUALITY BILL

NUMBER OF BILL: B50B – 2013


DATE OF DELIBERATION: FRIDAY, 14 MARCH 2014

VOTE OF THE LEGISLATURE:

The Standing Committee on Quality of Life and Status of Women, Children, Youth, People with Disabilities and Elderly met today, Friday, the 14th of March 2014 to consider the Women Empowerment and Gender Equality Bill [B50B-2013].

The following comments and amendments were proposed and considered on the Bill and are attached hereto as Annexure A.

The Committee agreed to mandate the KwaZulu-Natal delegation to National Council of Provinces to support the bill provided that the Proposed amendments and comments are considered and consolidated in the Bill.


.....
HON DN SIKOSANA, MPL
CHAIRPERSON: STANDING COMMITTEE
ON QUALITY OF LIFE AND STATUS OF
WOMEN, CHILDREN, YOUTH, PEOPLE
WITH DISABILITIES AND ELDERLY

.....14/3/2014.....
DATE

ANNEXURE A

QUALITY OF LIFE AND STATUS OF WOMEN, CHILDREN, YOUTH, PEOPLE WITH DISABILITIES AND THE ELDERLY STANDING COMMITTEE REPORT ON THE WOMEN EMPOWERMENT AND GENDER EQUALITY BILL [B50B-2013] IN TERMS OF RULE 229 OF THE STANDING RULES

INTRODUCTION

In terms of section 42(4) of the Constitution, the National Council of Provinces represents provinces to ensure that provincial interests are taken into account in the national sphere of government by participating in the national legislative process. The Women Empowerment and Gender Equality Bill [B50B-2013], which is a Section 76 Bill in terms of the Constitution, was referred to the Life Standing Committee in terms of Rule 228(1). In turn, the Legislature was, in terms of section 118 of the Constitution, compelled to facilitate the public involvement in the legislative process of the legislature and its Committees.

METHOD OF WORK

The Committee subsequently had a briefing from the Department of Women, Children and people with Disabilities in terms of Rule 229(1). Notwithstanding the limited time for public consultation process, one public hearing was held on 13 March 2014 in Pietermaritzburg at the Provincial Legislature. Oral submissions were presented to the Committee during its public hearings and a call for written submissions was opened until 13 March 2014.

The following were proposed amendments to the Bill—

1. Clauses 7(1), 9(1) and 10(1) referring to a 50% quota.

(a) Amend clause 7(1) as follows—

“Despite any other law, designated public bodies and designated private bodies must, within their ambit of responsibilities and available resources and taking into account women’s constitutional rights to choose their trade, occupation or profession freely, develop and implement plans and measures as prescribed, in order to achieve the progressive realization of minimum of 50 percent representation and meaningful participation of women in decision-making position and structures including Boards, which must include—

(a)…”

(b) Amend clause 9(1) as follows—

“Despite any other law, targets for women in all laws and policies on empowerment shall be a minimum of 50[%] percent”

(c) Amend Clause 10(1) as follows—

“Despite any other law, targets for women in all laws and policies on empowerment shall be a minimum of 50[%.] percent.

2. Amend clause 3(b) by inserting the following—

“(vii) The United Nations Convention on the Rights of Persons with Disabilities, 2008.”

3. Clauses 7(2), 8(6), 9(9) and 10(6)

(a) Amend clause 7(2) as follows—

The Minister [**may**] must develop guidelines to assist designated public and designated private bodies to comply with subsection (1) no later than the date of their designation in terms of section 2(2).

(b) Amend clause 8(6) as follows—

The Minister [**may**] must develop guidelines to assist designated public and designated private bodies to comply with subsection (1) no later than the date of their designation in terms of section 2(2).

(c) Amend clause 9(9) as follows—

The Minister [**may**] must develop guidelines to assist designated public and designated private bodies to comply with subsection (1) no later than the date of their designation in terms of section 2(2).

(d) Amend clause 10(6) as follows—

The Minister [**may**] must develop guidelines to assist designated public and designated private bodies to comply with subsection (1) no later than the date of their designation in terms of section 2(2).

4. Obligation to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 14 of 2003) as it affects clause 11(1)(d) was omitted, this clause is flawed as it affects customary law or customs of traditional communities.

5. Amend clause 4(1) as follows—

Designated public bodies and designated private bodies must within their ambit of responsibilities and available resources, develop...

6. Amend clause 6(1) as follows—

Designated public bodies and designated private bodies must, within their ambit of responsibilities and available resources, develop...

7. Amend clause 8(1) as follows—

Designated public bodies and designated private bodies must, within their ambit of responsibilities and available resources, develop...

8. Amend clause 9(2) as follows—

Designated public bodies and designated private bodies must, within their ambit of responsibilities and available resources, develop...

9. Amend Clause 9(3) as follows—

Designated public bodies and designated private bodies must, within their ambit of responsibilities and available resources, develop...

10. Amend clause 9(4) as follows—

Designated public bodies and designated private bodies must, within their ambit of responsibilities and available resources, promote...

11. Amend clause 9(5) as follows—

Designated public bodies and designated private bodies must, within their ambit of responsibilities and available resources, develop...

12. Amend clause 10(2) as follows—

Designated public bodies and designated private bodies must, within their ambit of responsibilities and available resources, develop...

13. Amend clause 11(1) as follows—

Designated public bodies and designated private bodies must, within their ambit of responsibilities and available resources, develop...

14. Amend clause 12(1) as follows—

Designated public bodies and designated private bodies must, within their ambit of responsibilities and available resources, develop...

15. Amend clause 4(1)(a) as follows—

" [address the pervasive discriminatory patriarchal attitudes and the lingering effects of apartheid faced by women in the education system, and ensure that woman's childbearing responsibilities are not the cause for drop out or exclusion, in order to] achieve the progressive realization of access to education for all;"

16. Amend clause 4(1)(c) by inserting the following words after "structures" and before ",contemplated"—

that affect women...

17. Amend clause 9(8) by inserting the following words after "measures" and before "contemplated"—

: policies and programmes

18. Amend clause 11(1) by inserting the word measures "after plans and" and before "prescribed"

19. Amend clause 16(1)(b)(i) and (ii) by replacing the wording "must take" with must consider taking, and insert the word proposed after "the" and before "period".

20. Amend clause 17(1)(b) by deleting the following wording—

[or to imprisonment for a period not exceeding five years.]

21. Amend clause 17(2)(a) by deleting the following wording—

[or a recommendation by the Minister in terms of section 16(b)]

22. Amend clause 17(2)(b) by deleting the wording below and replace it with a reference to a fine not exceeding a specified amount—

[to imprisonment for a period not exceeding five years]

23. In clause 20(1)(d) the wording "institutional mechanisms" is unclear and needs to be defined.

24. Amend clause 20(2) by inserting the following wording at the end of the clause—

after due public consultation:

TEXTUAL/TYPOGRAPHICAL SUBMISSIONS

(a) Clause 3(b)(iv) replace second reference to **[African]** with Africa

(b) Clause 4(1)(c) contains tautologous wording, delete the phrase **[at least a minimum of 50 percent]** as there is already a cross-reference in the clause to sections 7(1) and 10(1).

(c) Clause 9(1) and others, there is a need for consistent use of wording by either using the term "50 percent" or the term "50%" throughout the text.

(d) Clause 17(1)(a), change reference to section **[16(b)]** to section 16(1)(b).

Finally, It is submitted that there needs to be a careful consideration to given to the extent to which duplication that may exist in respect of the areas covered by the Bill and existing legislation in Schedule 2. There needs to be proper implementation of existing empowerment and equality legislation as a priority.

CONCLUSION

Having considered all the above sound proposals, the Standing Committee met on 14 March 2014 and agreed to support the Bill subject to the consideration and incorporation of the amendments in the final version of the Bill. The Democratic Alliance was opposed to supporting the Bill as the public consultation was limited and it viewed is as flawed and prejudicial to the members of the public who may have wanted to participate in the process.

The Committee also confers authority on the provincial delegation to the NCOP to support the Bill with the proposed amendments. Negotiating mandate is attached as Annexure "A" of the report.

HON DN SIKOSANA

**CHAIRPERSON: QUALITY OF LIFE AND STATUS OF WOMEN, CHILDREN,
YOUTH, PEOPLE WITH DISABILITIES AND THE ELDERLY STANDING
COMMITTEE**



Northern Cape
Provincial Legislature

**Standing Committee
on Gender, Women, Children
and Persons with Disabilities**

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Hon BP Mabe

Chairperson: Select Committee on Women, Children and People with Disabilities

NEGOTIATING MANDATE

Name of the Bill: **Women Empowerment and Gender Equality Bill**

Number of the Bill: **B50B – 2013**

Date of deliberation: **Thursday, 13 March 2014**

Vote of the Legislature: **The legislature votes in favour**

(Subject to consideration of the proposed amendments)

Signature:

Hon GG Ollphant

**Chairperson: SC on Gender, Women,
Children and Persons with Disabilities**

2014-03-13

Date:

Negotiating Mandate



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Tel: (053) 839 8310

Reference: 16.7.1.1

Enquiries: Z Mitchell

NEGOTIATING MANDATE FOR WOMEN EMPOWERMENT AND GENDER EQUALITY BILL [B50B – 2013]

(Section 76 Bill)

1. INTRODUCTION

The Chairperson of the Standing Committee on Gender, Women, Children and Persons with Disabilities, Hon GG Oliphant, tables the Committee's negotiating mandate on the *Women Empowerment and Gender Equality Bill [B50B – 2013]* as adopted by the Standing Committee on 13 March 2014.

2. PROCESS FOLLOWED

2.1 The Speaker of the Northern Cape Provincial Legislature, on receipt, referred the *Women Empowerment and Gender Equality Bill [B50B – 2013]* to the Standing Committee on Gender, Women, Children and Persons with Disabilities on 25 February 2014.

2.2 On 06 March 2014, the Standing Committee on Gender, Women, Children and Persons with Disabilities received a briefing on the Bill from the Northern Cape's Permanent Delegate to the NCOP, Hon GG Mokgoro, and the National Department of Women, Children and People with Disabilities.

2.3 The Standing Committee resolved at the meeting of 06 March 2014 to hold public hearings on the referred Bill in the Frances Baard Region to solicit the views of communities and stakeholders with regard to the *Women Empowerment and Gender Equality Bill*.

One (1) Public Hearing was held on 11 March 2014 as per Committee resolution and both written and oral submissions were called for. The public engaged with the Members of the Provincial Legislature in respect of the Bill.

On 13 March 2014, the Standing Committee on Gender, Women, Children and Persons with Disabilities deliberated and considered the *Women Empowerment and Gender Equality Bill [B50B – 2013]*.

3. COMMITTEE INPUTS ON THE BILL

- 3.1 The Bill should also address the treatment of rape victims when they are reporting the case to the police and the accountability of the South African Police Services
- 3.2 The Bill should further address accountability in terms of resolving widow's as well as the girl child's inheritance where no will exists thereby strengthening other legislation on the matter.

4. STAKEHOLDERS'/PUBLIC INPUTS ON THE BILL

Most of the inputs made are addressed in the Bill.

5. **WRITTEN SUBMISSIONS ON THE BILL**

Written submissions were received from the following institutions based in Cape Town:

- 5.1 Commission for Gender Equality dated 10 January 2014.
- 5.2 A further submission from the Commission from Gender Equality dated 07 February 2014.
- 5.3 The Centre for Law and Society Rural Women's Action Research Programme dated 12 March 2014.
- 5.4 Community Law Centre dated 12 March 2014.

6. **STAKEHOLDERS POSITION ON THE BILL**

The majority of the stakeholders voted in favour of the Bill.

7. **PORTFOLIO COMMITTEE POSITION ON THE BILL**

After due deliberation, the Standing Committee on Gender, Women, Children and Persons with Disabilities supports the Bill.

8. **COMMITTEE ADOPTION OF THE BILL**

The Committee adopted this negotiating mandate, duly signed by the Chairperson of the Committee.

The Committee recommends to the House to mandate the Permanent Delegates to participate in deliberations at the negotiating stage and to **support** the Bill taking note of the comments and recommendations raised by the Committee.



HON GG OLIPHANT

Chairperson: SC on Gender, Women,
Children and Persons with Disabilities

2014-03-13

NORTH WEST PROVINCIAL LEGISLATURE

Office of the Speaker

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NEGOTIATING MANDATE

To: Chairperson of Select Committee on Social Services

Name of the Bill/Question: WOMEN EMPOWERMENT AND GENDER EQUALITY

Number of Bill: [B50B - 2013]

Date of deliberation: 13 MARCH 2014

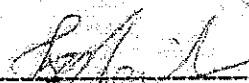
Vote of Legislature

The portfolio on Health and Social Development, Women, Children and People with Disabilities Committee vote in favor of the Bill noting the concerns as raised by community member.

Gender Units and Accountability Clause 14 provides every designated public body must within a period of one year from the commencement of this Act, establish a GFP and appoint suitable personnel at an SMS level as prescribed and resources it appropriately.

The Bill should be implemented.

The recommendation as per attached Annexure "A" and Annexure "B" should be considered before the bill implemented.



Hon B. Moiloa

Chairperson: Health and Social Development,
Women, Children and People with Disabilities.

07 March 2014

Date

**NORTH WEST PROVINCIAL LEGISLATURE
PORTFOLIO COMMITTEE ON HEALTH AND SOCIAL
DEVELOPMENT, WOMEN, CHILDREN & PEOPLE WITH
DISABILITIES**



**WOMEN EMPOWERMENT AND GENDER EQUALITY BILL
[B 50B – 2013]**

13 MARCH 2014



NORTH WEST PROVINCIAL LEGISLATURE

PORTFOLIO COMMITTEE ON HEALTH AND SOCIAL DEVELOPMENT, WOMEN, CHILDREN AND PEOPLE WITH DISABILITIES

PUBLIC HEARING: WOMEN EMPOWERMENT AND GENDER EQUALITY BILL

[B 50B - 2013]

1. INTRODUCTION

Section 114 of the Constitution of the RSA Act (Act 108 of 1996) required the legislature to exercise of provincial executive authority in the province, including the implementation of legislation as well as promoting public participation. As the result, the portfolio committee on Health and Social Development, Women, Children and People with Disabilities conducted public hearings on Women Empowerment and Gender Equality Bill [B50B – 2013] as was referred to by the National Council of Provinces [NCOP]. This report outlines the purpose, background, community concerns and conclusion on the hearings.

The public hearings was held on the 13 March 2014 at Ngaka Modiri Molema District (Madibogo at Longaneng Community Hall), Bojanala Platinum District (Sunrise Community Hall), Dr Ruth Segomotsi Mompati District (Bioemhof Town Hall) and Dr Kenneth Kaunda District (Tlokwe Hall). The committee invited the Department of Health, Members of the community, Hospital and Clinics Managers, Traditional Leaders, Traditional healers, Ward Councilors, the Disability Forums



CAUSE FOR JUSTICE

The Responsible Committee
North West Provincial Legislature

13 March 2014

TO: The Chairperson
AND TO: Namhla Luhabe, Media and Communications Unit

BY MAIL: causforjus@nwpl.org.za
causforjus@nwpl.org.za

SUBMISSION ON WOMEN EMPOWERMENT & GENDER EQUALITY BILL [B50B-2013] ("WEGE BILL")

1. We appreciate the opportunity to provide you with our submissions in respect of the WEGE Bill.

BACKGROUND: CAUSE FOR JUSTICE

2. *Cause For Justice* is a human rights and public interest organisation formed to advance constitutional justice in South Africa, primarily through litigation, creating public awareness, and participation in the legislative process and governmental decision-making structures.
3. The vision of *Cause For Justice* is the establishment and preservation of a South African society in which justice is dispensed to all through the protection and promotion of the constitutional rights and freedoms of each member of society.

INDEX TO SUBMISSIONS

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Cause for Justice is an approved 'public benefit organisation' in terms of the Income Tax Act.

P O Box 15904 Panorama, 7506

Executive Members: WW Viljoen, SA Smit, DP Van Fintal, NC Snyders

INTRODUCTION

4. We firstly want to commend the Minister and her Department for taking up their mandate and carrying it out with dedication. Any action taken to empower the vulnerable and to work towards true gender equality is a step taken from the right starting point.
5. We include in our submission, as a vital part thereof for purposes of consideration by the Committee, our submissions made to the Portfolio Committee on Women, Children and People with Disabilities ("PPC") at the public hearings in Parliament on 29 and 30 January 2014, annexed hereto as "Annexure A".
6. The purpose of our present submission is not to duplicate our submissions to the PPC. The primary focus of this submission is to address matters not previously commented on and matters arising from the amendments made to the Bill by/in the PPC.
7. All references herein to "clause" refer to clauses of the WEGE Bill.

A SUBSTANTIVE SUBMISSIONS

A.1 PRIORITY SUBMISSIONS

8. Our three (3) priority submissions will be discussed by first noting the relevant clauses of the Bill that are affected, followed by our proposals (e.g. proposed amendments) and concluding with the reasons for our submissions.

! 50% quota: *** PRIORITY SUBMISSION 1 *******

(a) Affected clauses:

9. The following clauses of the Bill are relevant for purposes of this submission:
 - Clause 7.(1)
 - Clause 9.(1)
 - Clause 10.(1)

(b) Proposed amendments:

CLAUSE 7.(1)

Proposal 1

10. Insert the following words after "available resources" and before ", develop":

"and taking into account women's constitutional rights to choose their trade, occupation or profession freely"

Proposal 2

11. Delete the words "of 50 per cent" and insert the following words after "Boards" and before ", which":

"equal to a percentage that reflects the prevailing gender demographic profile between men and women in the national economically active population in South Africa"

CLAUSE 9(1)

12. Delete the words "at least 50 %" and insert the following words after "shall be":

"equal to at least a percentage that reflects the prevailing gender demographic profile between men and women in the national economically active population in South Africa, and taking into account women's constitutional rights to choose their trade, occupation or profession freely"

CLAUSE 10(1)

13. Delete the words "at least 50 %" and insert the following words after "shall be":

"equal to at least a percentage that reflects the prevailing gender demographic profile between men and women in the national economically active population in South Africa, and taking into account women's constitutional rights to choose their trade, occupation or profession freely"

(c) Reasons for submissions

Section 22 of the Constitution: Right to choose a trade, occupation or profession freely

14. 50 per cent is overly rigid and unconstitutional as it does not make provision for designated public and private bodies ("bodies") to honour, consider and give effect to the exercise by women of their right to choose their trade, occupation or profession freely, as specifically provided in section 22 of the Constitution.
15. There are certain inherent, physical and genetic differences between men and women which are relevant and play a role in the choices people make regarding their employment. For example:
- 15.1 Men are generally physically stronger than women. There is therefore nothing untoward or unequal about the fact that fewer women than men may choose to work in the construction and other manual labour intensive industries.
- 15.2 On the other hand, fewer men than women may choose to work for a company that manufactures women's sports bras.

16. It would therefore not be unexpected, nor unequal or discriminatory, if the gender split in either of the above industries were skewed to one side or the other. It would in actual fact not be inconsistent with the exercise of people's constitutional rights.
17. The unconstitutionality in the clauses may be removed by including terminology such as "... and taking into account women's constitutional rights to choose their trade, occupation or profession freely ..." after "available resources".
18. It is therefore necessary to employ wording throughout the Bill that allows for a percentage that takes into account women's free occupational choices, as provided in the Constitution.

Prevailing gender demographic profile in the national economically active population

19. 50 per cent may be relevant at the moment, because of the near 50:50 split in the South African gender demographic profile between men and women. However, by fixing the percentage to 50%, the WEGE Bill is unable to adapt to changes in the gender demographic profile over time. It should rather refer to *the prevailing gender demographic profile between men and women in the national economically active population*.
20. Wording to this effect will also bring the WEGE Bill in line with and harmonise it with the *Draft Employment Equity Regulations (Published in Government Gazette 37338 on 28 February 2014, Regulation Gazette No. 10127)*.

II Obligation to develop guidelines:

***** PRIORITY SUBMISSION 2 *****

(a) Affected clauses:

21. The following clauses of the Bill are relevant for purposes of this submission:
 - Clause 7.(2)
 - Clause 8.(6)
 - Clause 9.(9)
 - Clause 10.(6)

(b) Proposed amendments:

CLAUSE 7.(2)

22. Replace the word "may" with the word "must".
23. Insert the following words after "subsection (1)" and before ",develop":

"which guidelines must be provided to designated public bodies and designated private bodies no later than the date of their designation in terms of section 2"

CLAUSE 8.(6)

24. Replace the word "may" with the word "must".
25. Insert the following words after "subsection (1)" and before ", develop":

"which guidelines must be provided to designated public bodies and designated private bodies no later than the date of their designation in terms of section 2"

CLAUSE 9.(9)

26. Replace the word "may" with the word "must".
27. Insert the following words at the end of the clause:

"which guidelines must be provided to designated public bodies and designated private bodies no later than the date of their designation in terms of section 2"

CLAUSE 10.(6)

28. Replace the word "may" with the word "must".
29. Insert the following words after "subsection (1)" and before ", develop":

"which guidelines must be provided to designated public bodies and designated private bodies no later than the date of their designation in terms of section 2"

(c) Reasons for submission

30. To publish the guidelines only after bodies have been designated, would place bodies in a prejudiced position as they would have compliance obligations without knowing what to aim for or what the Minister's requirements are. We submit that such a situation would be unreasonable and unfair.

III *Obligation to refer Bill to Traditional Leaders* ***** PRIORITY SUBMISSION 3 *****

(a) Affected clauses:

- Clause 11.(1)(d)

(b) Proposal:

31. We submit that the WEGE Bill should have been submitted to the National House of Traditional Leaders, because of the wording contained in clause 11.(1)(d).

(c) Reason for submission

32. The WEGE Bill may be unlawful if it is not referred to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) ("TLGFA"). Paragraph 7.2 of the "Memorandum on the Objects of the WEGE Bill" ("the Memo") notes that the Bill does not contain provisions pertaining to customary law or customs of traditional communities.
33. The wording of paragraph 7.2 of the Memo suggests that the prescribed procedure in section 18(1)(a) of the TLGFA, was not followed. The Committee should therefore point this out to Parliament, so that Parliament may take a view as to whether and how to rectify the ostensible non-compliance with the TLGFA.

A.2 "Within their ambit of responsibilities and available resources"

CLAUSE 4.(1)

34. Insert the following words after "responsibilities" and before ", develop":

"and available resources"

CLAUSE 6.(1)

35. Insert the following words after "must" and before "develop":

", within their ambit of responsibilities and available resources,"

CLAUSE 8.(1)

36. Insert the following words after "must" and before "develop":

", within their ambit of responsibilities and available resources,"

CLAUSE 9.(2)

37. Insert the following words after "responsibilities" and before ", develop":

"and available resources"

CLAUSE 9.(3)

38. Insert the following words after "responsibilities" and before ", develop":

"and available resources"

CLAUSE 9.(4)

39. Insert the following words after "must" and before "promote":

" , within their ambit of responsibilities and available resources,"

CLAUSE 9.(5)

40. Insert the following words after "must" and before "develop":

" , within their ambit of responsibilities and available resources,"

CLAUSE 10.(2)

41. Insert the following words after "responsibilities" and before ", develop":

"and available resources"

CLAUSE 11.(1)

42. Insert the following words after "must" and before "develop":

" , within their ambit of responsibilities and available resources,"

CLAUSE 12.(1)

43. Insert the following words after "must" and before "develop":

" , within their ambit of responsibilities and available resources,"

A.3 *Other clause by clause submissions*

CLAUSE 4.(1)(a)

44. Delete the following wording:

[address the pervasive discriminatory patriarchal attitudes and the lingering effects of apartheid faced by women in the education system, and ensure that woman's childbearing responsibilities are not the cause for drop out or exclusion, in order to]

Reasons for submission

45. Legislation should not be clouded with unsubstantiated political jargon and arguments. To argue/claim within the text of an act of parliament that women, 20 years after the demise of apartheid, do not have equal access to education *because of discrimination based on gender*, is unacceptable.

46. Designated public and private bodies ("bodies") are not able to ensure that women do not drop out. Any women may choose to leave work to fulfil the role of a mother on a full-time basis, either through her husband fulfilling the role of sole breadwinner or by living off social grants.

CLAUSE 4.(1)(c)

47. Insert the following words after "structures" and before ", contemplated":

"that affect women"

CLAUSE 9.(8)

48. Insert the following words after "measures" and before "contemplated":

", policies or programmes"

CLAUSE 11.(1)

49. Insert the word "measures" after "plans and" and before "prescribed".

CLAUSE 14.(2)

50. The wording should be clarified to make it clear to which "director of the designated private body" the clause refers. Is it the Managing Director, Financial Director, Director of Operations?

CLAUSE 16.(1)(b)(i) and (ii)

51. Replace the wording "must take" with "must consider taking".
52. insert the word "proposed" after "the" and before "period".

CLAUSE 17.(1)(b)

53. Delete the following wording:

"or to imprisonment for a period not exceeding five years"

Reasons for submission

54. It is overly vindictive, disproportionate and accordingly arguably unlawful to send someone to prison for non-compliance with an administrative request.

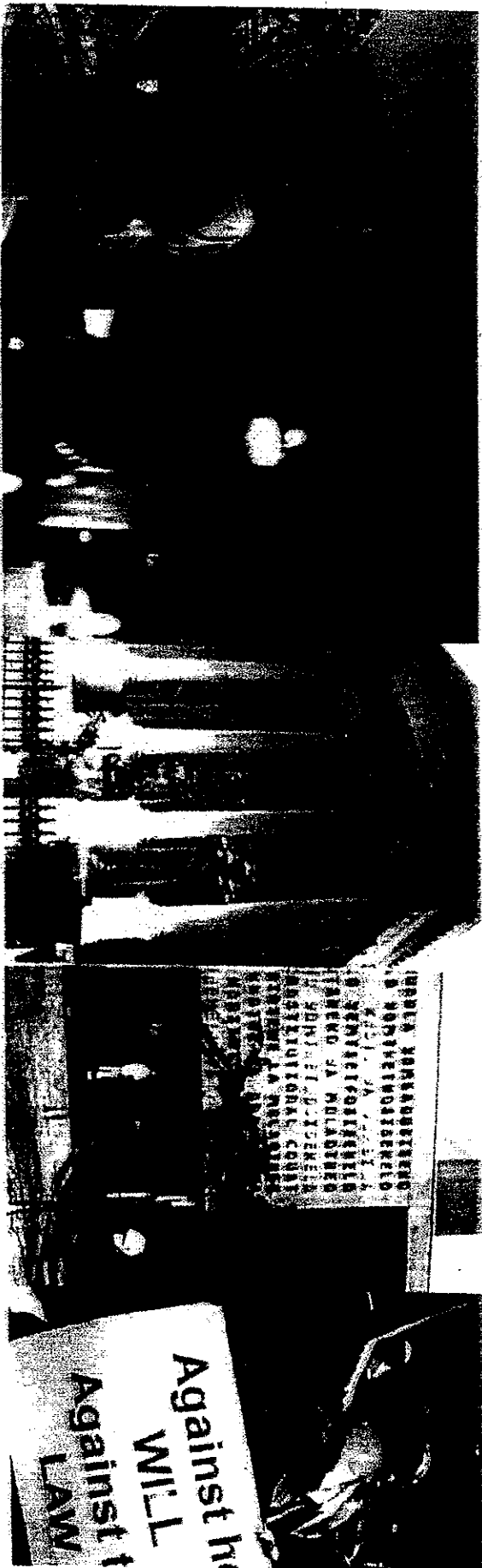
CLAUSE 17.(2)(a)

55. Delete the following wording:

ANNEXURE "B"



Commission for Gender Equality
A South African Commission for Gender Oppression and Inequality



**Presentation on CGE submission
WEGE Bill [B 50-2013]
13 March 2014**

- The Commission for Gender Equality (CGE) is obliged in terms of its constitutional mandate to promote respect for gender equality and the protection, development and attainment of gender equality.
- The Commission's legal mandate in terms of Section 11(1)(c) of the Commission for Gender Equality Act as amended mandates the CGE to evaluate any law being proposed by Parliament that is likely to affect gender equality or the status of women and make recommendations to Parliament thereto.
- The Commission has accordingly tabled before Parliament its submission in response to the Women's Empowerment and Gender Equality Bill [B 50-2013]



- The CGE collaborated with the DWCPD during the development of the draft bill but was unaware and not part of the development of the final bill namely B 50-2013 which is materially different from the draft bill
- The CGE is of the view that to empower women and promote gender equality the following steps *inter alia* must be taken by the state :
 - Create a new economic order based on gender equity, and accelerate women's access to necessary resources for their economic advancement, and enact measures to support women entrepreneurs.
 - Recognise and support the contributions women make to the welfare and economies of families and the development of society.
 - Ensure the perceived societal role of women as mothers is not used as a basis for discrimination against them and limitation of their achievement and attainment of equality within the community and workplace.



- Enact measures to modify social and cultural norms and conduct which legitimise gender discrimination and inequality, and promote changes to the traditional roles of men and women within both society and family relating to their leadership, obligations, rights and benefits.
- Take meaningful and effective legislative measures that will empower women and promote gender equality.
- The CGE is of the view that the WEGE Bill in its present format does not adequately address these critical components fundamental to the empowerment of women and their attainment of gender, nor does it establish any new or creative initiatives which will effectively promote women's empowerment and gender equality.




- S9(2) of the Constitution provides that in order to promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination may be taken.
- Accordingly, the state would be permitted to give women special treatment with regard to their employment, education, housing allocation, land ownership schemes, participation in political life and access to any other resources etc, to address imbalances caused by patriarchy and inequality.
- The CGE proposes that the WEGE Bill implement the affirmative action provision more broadly to embrace women's access to education, health care, land ownership, economic opportunities and political representation
- Accordingly the CGE recommends that the Bill be revised to meet constitutional muster.



- The Bill creates uncertainty regarding the powers of the Minister (Minister for DWCPD) in relation to the CGE, in contravention of protection of the latter by the Constitution. The Bill should define the relationship that will exist between the CGE and the Minister.
- In certain instances the WEGE Bill duplicates the mandate of the CGE which is set out in the CGE Act. The Bill requires express clarity with regard to the powers and functions of the Minister, and those of the CGE.
- Certain operational ambiguities and unrealistic expectations are created, implying for example, that the Minister is accorded unlimited discretion to designate any public or private entity to be subject to her jurisdiction. Such a provision is overbroad and creates legal uncertainty.



- 
- The rights of Lesbian, Gay, Bisexual, Transgendered and Intersex persons (LGBTI), widows and women with disabilities are inadequately protected.
 - More effective provisions are required to recognise and address discrimination on the basis of gender, especially in the workplace.
 - More effective measures are required to promote women's full participation in the economy, such as requiring 50% parity in directorship of companies, and the enactment of legislation allowing for preferential interest rates, as well as less rigid credit assessments for women.
 - The Bill does not comprise adequate or effective enforcement mechanisms which will ensure compliance with the empowerment and equality provisions in numerous pieces of legislation, including the Bill itself, when it is promulgated.



- Significant measures are required to address patriarchy in general and gender inequality in particular, including for instance the ability of women to ascend to senior positions in traditional leadership and religious structures, addressing the practice of male primogeniture in protecting women's right to inherit from their deceased spouse's estate, and ensuring equal pay for work of equal value.
- The issue of patriarchy remains an endemic problem and was included in Clause 13 (2) of the draft bill. The CGE notes with concern the deletion of the aforesaid in the current version of the Bill, and recommends its inclusion.
- The Bill addresses challenges faced by a small percentage of women in South Africa – those who are employed/participating in public life. It does not address the challenges to empowerment and equality experienced by the majority of South African women, namely those unemployed and located in rural areas or vulnerable sectors of the economy.

• Clause 7: The CGE supports the intention of the clause which seeks to ensure women participate and enjoy equal representation on key platforms. No timeframe for compliance is set, however, and the CGE recommends requiring entities to achieve the relevant targets within two years of promulgation of the Act.

• Clause 8: The CGE supports the intention to promote gender equality across systems, structures, institutions, policies and practices, but expresses concern at this extremely onerous task, and the lack of timeframes for compliance. The CGE proposes within one year of promulgation.

The CGE proposes further that the DWCPD enlist the assistance of institutions such as the Auditor-General to audit the relevant plans and measures. Furthermore, the assignment of accountability for implementation of gender mainstreaming must be covered by relevant regulatory mechanisms under the Act, as well as effective monitoring and evaluation mechanisms.