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CHAPTER 1

1.1 Introduction

The purpose of this report is to present the Regulatory Impact Assessment (RIA) on the regulation of women empowerment and gender equality by the Department of Women, Children and People with Disabilities (DWCPD).

The RIA is an analysis of the likely effects of government regulations on the state, regulated entities, the economy and society as a whole. The application of RIA as a tool increases the move towards evidence based policy-making, and improves accountability and transparency in policy making. It makes transparent the expected costs and benefits of options for different stakeholders and the implications for compliance as well as the cost of enforcement for government.

This further enables decision makers to assess whether regulations or legislation contribute to government's socio-economic objectives. The RIA exercise, most importantly, also helps in the identification of the optimum policy option for dealing with the said challenge by assessing the different or alternative policy options that emerge.

The primary objective of regulating women empowerment and gender equality interventions through a Bill is to address gender equality gaps, challenges and inconsistencies that exist in the current legislative and policy framework, especially those for development and equality and the implementation thereof, in order to promote women empowerment and gender equality to ensure a fully inclusive society as enshrined in the Constitution of the republic of South Africa.

This final RIA report therefore examines essentially the central purpose of the Women Empowerment and Gender Equality Bill, identifies other possible options and the likely impacts associated with each identified option. The structure of the report is as follows:

Chapter 1 is the introduction and the executive summary of the RIA Report. This chapter provides the background analysis of the problem of continued and persistent gender inequality and the gendered nature of poverty that has resulted in the need to develop a specific legislation for highlighting and prioritising women empowerment.

Chapter 2 presents the RIA Options analysis of the proposed Women Empowerment and Gender Equality Bill. For the purpose of the RIA Options analysis, the focus is on the possible impacts of the proposed options to facilitate the mainstreaming of gender equality in all state and private sector business with the aim of empowering women for the achievement of gender equality.

Chapter 3 presents a cost-benefit analysis of the three options discussed. The options include the utilisation of existing regulatory frameworks versus the development of specific legislation. The objective of the regulation of women empowerment and gender equality is to achieve gender equality as envisaged in the South Africa Constitution, specifically sections 2 and 9 thereof.

Chapter 4 presents the benefit analysis of the three options and determines the strengths and weaknesses of each option.

Chapter 5 compares the options.

Chapter 6 provides for the monitoring and evaluation methodology that will be used to ensure appropriate implementation of the legislation. It also provides a report on the consultations conducted and a list of all stakeholders consulted.

1.2 Background:

Colonial and Union government policies directed at the extraction of cheap labour were built upon by apartheid legislation. The result was a process of state-driven underdevelopment that encompassed dispossession and exclusion for the majority of South Africans. The central outcome brought about by these policies was the loss of assets, such as land and livestock, and simultaneously the denial of opportunities to develop these assets through limiting access to markets, infrastructure and education. As such, apartheid, and the legislation and institutions through which this ideology was implemented, operated to produce poverty and extreme inequality.¹ Women, in particular black women, bore the brunt of this.

As a result, when South Africa achieved democracy in 1994, central to this democracy was a strong commitment to equality and human dignity, including the empowerment of women

¹ Poverty and Inequality in South Africa, p 4.

and girls, to achieve substantive gender equality.² The Constitutional vision of the realisation of equality, including equality between women and men, is an ideal to be pursued and achieved through the implementation of the Constitution.³ Implied in the last part of the preamble is a commitment to comply with international law and human rights standards.⁴ The Constitution is aligned with and also serves as an instrument for facilitating South Africa's compliance with its international human rights obligations.⁵ Of the many things that can be distilled from the preamble, the commitment to build a new society that is inclusive, just and honours the fundamental human rights while improving the quality of life of all, stands out. Equality is also given prominence in the Preamble to the Constitution where it is stated that: "*South Africa belongs to all who live in it, United in our diversity*"⁶

Consequently, after 1994 the principle of 'gender equality' influenced policy formulation in economic and development-related areas such as access to employment, land, housing, water, health care and public works programmes. The law reform processes undertaken over the past eighteen years have resulted in the production of an unprecedented body of laws⁷ that lay the foundation for the transformation of our society, especially gender transformation. (See the Women's Legal Centre Gender Equality Bill Workshop Report; Annexure A).

Despite an extensive policy and legislative framework in place for the empowerment of women and girl children, more intractable problems of transformation are apparent. Socio-economic indicators of inequality suggest that many women and girl children's lives have not improved substantially since 1994; most women are still in the same position as they were before 1994.⁸ Even with evidence of material gains for some women in terms of greater

² The founding principles of the Constitution of the Republic of South Africa, 1996 elevate human rights, equality and freedom for everyone in South Africa. Gender equality also is a founding principle and core right of the Constitution. Section 9 thereof protects the rights of all persons to equal protection and benefit of the law, and to freedom from unfair discrimination on the basis of gender, sex, pregnancy and marital status.

³ Section 2 of the Constitution provides that the obligations imposed by the Constitution must be fulfilled.

⁴ South Africa is a signatory to many international and regional instruments which are critical for the promotion equality and protection of women's rights. These include the Convention on the Elimination of All forms of Discrimination Against Women, 1979 (CEDAW) which it ratified without a single reservation. The Beijing Declaration and Platform for Action, 1995 (BPA) and the Beijing + 5 Outcome document (2000). The Millennium Declaration and its Development Goals, 2000 (MDGs) which calls for the eradication of extreme poverty and hunger, the achievement of universal primary education and the attainment of gender equality and the empowerment of women. The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003). The Solemn Declaration on Gender Equality in Africa (2004). SADC Protocol on Gender and Development (2007)

⁵ Many of the international human rights standards and resultant obligations relate to women's human rights and the duty of parties to take measures to eradicate inequality between women and men in all spheres of life, including the justice system, the family, societal practices and the economy.

⁶ The reference to diversity includes racial, gender and other forms of human diversity.

⁷ The *Promotion of Equality and Prevention of Unfair Discrimination Act, Employment Equity Act, Preferential Procurement Policy Framework Act, the Broad-Based Black Economic Empowerment Act, the Labour Relations Act, the Basic Conditions of Employment Act, Home Loan and Mortgage Disclosure Act*. It also covers laws seeking to mediate gender power relations within the family. This includes the *Maintenance Act, Mediation in Certain Divorces Act, Recognition of Customary Marriages Act, Reform of Customary Law of Succession and Regulation of Related Matters Bill, Children's Act, Domestic Violence Act, and the Criminal Procedure (Sexual Offences) Amendment Act and others*

⁸ Poverty and Inequality Report, 13 May 1998

access to basic needs such as healthcare, water and housing, overall the record is of deepening gendered and class-based poverty and inequality.⁹

Further, notwithstanding laws aimed at curbing violence against women, women continue to be subjected to violence. For instance, many of the problems that the Domestic Violence Act 116 of 1998 sought to address, persist. This includes recidivism. In many instances, female victims continue to endure abuse despite having secured protection orders.¹⁰ In some instances, the abuse progresses to murder or “intimate femicide”. There is also growing evidence that suggests that in some instances abused women end up retaliating by killing their abusers.¹¹

South Africa is considered to be an upper-middle-income country with a *per capita* income similar to that of Botswana, Brazil, Malaysia or Mauritius. However, notwithstanding this relative wealth, the experience of the majority of South African households is either one of outright poverty, or of continued vulnerability to becoming poor, especially those headed by women.¹² Furthermore, the distribution of income and wealth in South Africa is said to be the most unequal in the world.¹³

It is likely that this situation will have a direct impact upon both the social and political stability of South Africa, as well as upon the nature of the country’s growth path. Recent empirical research has shown that countries with more equal distribution of income and wealth perform better in terms of economic growth than those with less equal distributions. Other studies point to the links between poverty, inequality and political instability. The introduction of policies that act to reduce levels of poverty and inequality could contribute towards the achievement of the economic goals that have been targeted by the South African government while contributing towards higher standards of living for all.¹⁴

In order to elevate women, children and people with disability issues to Cabinet level, government established the Ministry for Women, Children and People with Disabilities¹⁵ and proclaimed the DWCPD in 2009. The Department’s main purpose is to facilitate the

⁹ Social Profile of Vulnerable Groups in South Africa 2002 – 2010; Report no 03-19-00, December 2011

¹⁰ One of the major deficiencies of the current domestic violence framework is the absence of built in provisions that address the underlying causes and influencing factors in domestic violence situations.

¹¹ Department of Justice and Constitutional Development Report on the Evaluation of the Impact of 10 Years of Implementation of the Domestic Violence Act 116 of 1998 (August 2010)

¹² Social Profile of Vulnerable Groups in South Africa 2002 – 2010; Report no 03-19-00, December 2011

¹³ Poverty and Inequality in South Africa, p 1

¹⁴ *Ibid*

¹⁵ At the National Women’s Day, 2009, His Excellency, Mr Zuma the President of the Republic of South Africa indicated that the Ministry “will monitor other government’s departments to ensure the mainstreaming of gender, children’s rights, and disability considerations into all programmes of government and other sectors. This will help government to respond to issues of these targeted groups in an integrated and coherent manner.” (Zuma, 2009).

mainstreaming of gender in governance, the economy and all aspects of state function and social life. One of its mandates is to ensure that the fight against poverty is coordinated, monitored, evaluated and integrates gender equality analysis. In order for the Women's Ministry to achieve its mandate, an enabling legal framework must be developed to provide authority for coordination and oversight. The enabling framework also codify the 50-50 parity principle across public and private sectors, to ensure women representation in all decision making structures and the empowerment of women and girls, with the ultimate goal of achieving substantive gender equality.

The Women Empowerment and Gender Equality Bill (the WEGE Bill) does not intend to be a super law replacing the existing substantive laws on gender equality. Further, it will not override existing substantive law but rather it will facilitate their enforcement to ensure that women benefit equally with men. Similar to laws such as the Promotion of Administrative Justice Act¹⁶ (PAJA), it seeks to transform the way government and the private sector provides services to promote gender equality, and gender relations in society. The WEGE Bill will focus on procedure for how laws, policies, programmes and budgets integrate gender equality analysis to ensure that women and men benefit equally from them.

1.3 Executive Summary of the RIA

Although South Africa has undergone a dramatic economic, social and political transition over the past 18 years since the advent of democracy, many of the distortions and dynamics introduced during the Apartheid era continue to reproduce poverty and perpetuate inequality. Due to power dynamics and added advantages on race and gender, the outcome is the gendered nature of poverty and persistent gender inequalities and vulnerability.¹⁷ Due to the legacy of power dynamics between race, class and gender, as well as the gendered nature of poverty and persistence of patriarchy, there is increasing feminization of poverty and growing inequalities between women and men, resulting in increased vulnerabilities of women and girls.

Government established the Ministry for Women, Children and People with Disabilities to elevate the promotion of equality for women, children and people with disabilities to Cabinet level, to ensure that gender equality is integrated in the business of public and private sectors, to give effect to section 9 of the Constitution and its international commitments on the promotion of women's rights. In order for the DWCPD to achieve its mandate, an

¹⁶ Act 3 of 2000.

¹⁷ 2010/11 Annual Report of the Presidency; See also Social Profile of Vulnerable Groups in South Africa 2002 – 2010; Report no 03-19-00, December 2011

enabling legal framework must be developed.¹⁸ The anticipated legislation will not replace or override existing substantive laws on the promotion of gender equality but will enhance and enforce their application by prescribing the standards to be adhered to and by monitoring and evaluating implementation of those laws.

The RIA document is potentially an enormously valuable tool for better regulation that achieves the government's policy objectives as cost-efficiently as possible. It is based on sound evidence and effective consultation, and minimises risks and unintended consequences. The purpose of this RIA investigation is to test the women empowerment and gender equality regulatory options and assess their likely social and economic impacts, costs and benefits, and to identify and mitigate possible perverse consequences. Three options are discussed below:

- **The first option:** No legislation is developed, thus the status quo is maintained. The DWCPD continues to govern under the *South African National Policy Framework for Women's Empowerment and Gender Equality (2000)*.
- **The second option:** The DWCPD cooperates with the Department of Justice and Constitutional Development to develop regulations to promulgate chapter 5 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA), which is supposed to regulate the promotion of equality.
- **The third option:** Develop a specific legislation that will provide the DWCPD with the necessary authority for oversight over the promotion of women and girl children empowerment and gender equality.

While it is not possible to actually estimate the cost or negative consequences associated with these options, the potential costs for institutions affected may be reflected on. The analysis of all the options, show that there will not be significant cost implications for government and some companies in the private sector. This is because all government departments already have gender units in place and the DWCPD already has a structure approved by Department of Public Service and Administration and the National Treasury. Most companies have diversity or transformation management units operating. There may be slight cost implications for smaller companies. Furthermore, all government departments

¹⁸ Also, in his closing remarks at the 2012 ANC Policy Conference, His Excellency Mr GJ Zuma, President of the Republic of South Africa, said that the conference agreed that the recommendation for the 50-50 parity across public and private sectors must be legislated appropriately and incorporate the acceleration of skills development and empowerment of women.

have or is expected to have, a dedicated budget for women empowerment programmes for the implementation of the South African National Policy Framework for Women's Empowerment and Gender Equality (2000). Some departments have established women's associations to ensure that women participate in the determination of their empowerment activities and programmes.

The risk analysis shows that there are no apparent risks associated with the intended development of legislation, however, failure to establish mechanisms including legislation to facilitate the integration of gender equality analysis in development programmes will result in the continued gendered nature of deep poverty which may lead to political instability or perpetual underdevelopment of majority of the population.

Since the DWCPD is not an implementing department, its role is to coordinate and oversee whether women benefit from government's development programme. In order to monitor and evaluate the implementation of existing laws, it will require access to disaggregated data / information collected by government departments and other monitoring and evaluation institutions. Furthermore it will have to cooperate closely with the Department of Performance Monitoring and Evaluation that have monitoring and evaluation mechanisms in place already, in order to avoid duplication. The DWCPD will – on the basis of information collated, propose feasible short – to – long term measures that will see through progress in women empowerment and gender equality

CHAPTER 2: PROBLEM DEFINITION

2.1 Problem statement

Although there is a comprehensive policy framework that encourages the equal participation of women and men in all spheres, and the mainstreaming of gender in the business of the public and private sectors, the relevant objectives have not yet been realised. Women continue to be the poorest in society and they enjoy a minimal percentage of the economic opportunities that are available and girls continue to be disadvantaged and their rights violated.¹⁹

The implementers of the existing laws fail to take into account the institutional context in which the laws apply, and the way in which power dynamics determine the application of that

¹⁹ Hassim highlights that there is the reality and the on-going risk of "a normative slippage, in which high level policy commitments that may be carefully crafted to include the values of social protection and distribution are incrementally eroded in the implementation process, and deeply embedded patriarchal norms become more dominant in practice" (2011, no page number).

law. They also fail to look at the social institutions that determine the distribution of socio-economic rights. This failure to remove social and economic barriers to women's advancement poses a threat to interventions that are aimed at sustainable development, including human development. Deep poverty remains a continuous threat to the economic and political stability of the country. Constant service delivery strikes are testament to that. Therefore, the South African human development programme is endangered because it not engendered.²⁰

Economic, social and cultural rights have a particular significance for women because they are disproportionately affected by poverty, and social and cultural marginalisation. Women's poverty is a central manifestation, and a direct result of women's lesser social, economic and political power. In turn, women's poverty reinforces their subordination and constrains the enjoyment of their rights.²¹

Government's Medium Term Strategic Framework and outcomes approach express certain overarching and high level priorities that are currently gender neutral or gender blind, at their aggregated level. Each of these priorities and outcomes needs are not unpacked to determine their gender equality implications. Therefore such strategic tenets and centres of government need to mainstream gender into approaches and attendant configurations. Hence, the need to develop a regulatory framework to facilitate gender mainstreaming at all levels of the state and private sector.

2.2 The objective

The primary objective of the final RIA is to investigate the best possible regulatory option that will assist government to promote women empowerment and gender equality, in order to ensure a fully inclusive society free from unfair discrimination, inequality, abuse and exploitation, through:

- i. outlining the mandate to promote and coordinate the achievement of substantive and sustainable gender equality for women and girl children (including those with disabilities)
- ii. providing the premise for regulating the empowerment of women and girl children towards substantive and sustainable gender equality

²⁰ Statistics South Africa (SSA) conducted a study based on the current social agenda of the Government and strategic priorities related to vulnerable groups to analyse and explore changes in the situation of children, the youth, the elderly, women and disabled persons over time. The report used General Household Survey (GHS) data from 2002 to 2010 and focused on a number of broad areas within each vulnerable group, namely: household characteristics and living arrangements; vulnerability to hunger; health; poverty and social grants; economic participation; education; and finally housing and access to basic services. The findings of the report show that gender and population group dimensions further increase the vulnerability of women and children thus impacting negatively on the development programme.

²¹ The Montreal Principles on Women's Economic, Social and Cultural Rights (2002)

- iii. creating an enabling policy environment for translating government commitment to gender equality into a reality
- iv. the establishment, coordination and monitoring of programmes, structures and mechanisms to empower women and to transform gender relations in all aspects of work, at all levels of government as well as within the broader society
- v. ensuring that gender considerations are effectively integrated into all aspects of government policies, activities, programmes and budgets
- vi. establishing an institutional framework for the advancement of women and girls and the achievement of gender equality; and
- vii. advocating for the promotion of new attitudes, values and behaviour, and a culture of respect for all human beings in line with the new policy

CHAPTER 3: POLICY OPTIONS

3.1 Options

On 10 May 2009 the Ministry of Women, Children and People with Disabilities (Women's Ministry) was established by His Excellency, Mr GJ Zuma, President of the Republic of South Africa,²² and subsequently the Department of Women, Children and People with Disabilities (DWCPD) was proclaimed on 7 July 2009.

The mandate of the DWCPD includes the promotion of women and girl children empowerment and the achievement of substantive gender equality; the protection of the rights, freedoms and dignity of women. This will be achieved through exercising oversight and monitoring of compliance with the Constitutional principle of equality and national and international legal framework that promotes women empowerment and gender equality. Currently, the DWCPD's authority is based on the *South African National Policy Framework for Women's Empowerment and Gender Equality, 2000* (National Gender Policy Framework) which was adopted by Cabinet in 2000.

The DWCPD acknowledges the existing legal framework and gender policies, but notes the lack of monitoring, enforcement, inadequate resourcing in operation of existing gender equality laws and the need to make existing rights accessible by the provision of information to enable women to know and enforce their rights. The main problems with the current

²² The ANC 2007 Policy Conference in Polokwane resolved to establish a Ministry for women and called for thorough assessment of the current instruments meant to deal with women's issues to evaluate their impact.

legislative regime identified during the workshops and dialogues of the gender machinery include:²³

- Glitches with implementation of the laws.
- Insufficient funds and resources to implement laws and services.
- Lack of coordination and communication within civil society and government.
- Lack of public understanding of laws and services, especially in those from rural areas.
- Lack of government consultation with the public.
- Lack of gender, race, age and disability disaggregated data to facilitate clear understanding of the impact of implementation of laws and programmes.
- Lack of coordinated and integrated monitoring and evaluation of implementation of laws and programmes aimed at promoting women empowerment and gender equality.

The *South African National Policy Framework for Women Empowerment and Gender Equality, (2000)* is an operational policy and is not a legally binding instrument. As a result, women in the country have called for of a binding legal framework to ensure compliance with its requirements.

In order to test the regulatory options and assess their likely social and economic impacts, costs and benefits, and to identify and mitigate possible perverse consequences, the following three options are analysed:

- **Option 1:** No legislation is developed, the status quo remains where the DWCPD continue to rely on the National Gender Policy Framework.
- **Option 2:** The DWCPD cooperate with the Department of Justice and Constitutional Development to promulgate Chapter 5 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 which deals with the promotion of equality, including gender equality.
- **Option 3:** Develop a specific legislation that will provide authority and mandate for the DWCPD for the coordination, oversight and monitoring of the implementation of laws and programmes on women empowerment and gender equality.

These options are discussed in more detail below.

²³ Audit of existing laws on gender equality & gaps identified in existing laws: Gender Equality (GE) Bill workshop report compiled by Christina Beninger, Alexandra Swain & Jena Neuscheler; Women's Legal Centre.

Option 1: Do nothing (Status quo remains)

The South African National Policy Framework for Women's Empowerment and Gender Equality, 2000

This option suggests that no legislation is developed, thus maintaining the status quo. The DWCPD continues to oversee, monitor and evaluate women and empowerment and gender equality under the *South African National Policy Framework for Women's Empowerment and Gender Equality (2000)* (which is not legally binding).

This *National Policy Framework* establishes a clear vision and framework to guide the processes of developing laws, policies, procedures and practices which ensure equal rights and opportunities for women and men in all spheres, levels and structures of government, workplace, community and the family. It provides the basis for the Public Service to adopt a Gender Management System – which comprises of a network of structures, mechanisms and processes that has enabled the mainstreaming of gender across government. The Eight Principle Plan for Heads of Departments by the Department for Public Service and Administration reinforces and provides a mandate to ensure that gender equality becomes a goal in all aspects of government departments.

In order for the National Policy Framework to be effectively implemented it needs to be aligned and integrated with the provisions of the South African Constitution and South Africa's international obligations, as well as with key pieces of legislation that incorporated gender equality dimensions. The National Gender Machinery (NGM), as outlined in the National Policy Framework, is intended as "an integrated package" of structures located at various levels of state, civil society and within the statutory bodies, in particular the Commission for Gender Equality and the Human Rights Commission to ensure the national and international focus is kept on track.

Gender Focal Points (GFPs) in Government Departments.²⁴ The National Gender Policy Framework requires all departments to establish dedicated Gender Units or Focal Points to assist in the formulation and implementation of effective action plans to promote women's empowerment and gender equality in the work of departments. In par 4.4.2.4.1 it highlights the need to regularise the location of the GFP within departments. To this end, it is recommended that GFPs should be located in the office of the Director General. In par 4.4.2.4.3 it recommends that GFPs be appointed at the director level, taking into

²⁴ *South Africa's National Policy Framework for Women's Empowerment and Gender Equality*; Par 4.4.2.3 p 28

consideration that the eligibility requirements for appointments to this post are commensurate with the skills level required for gender mainstreaming.

Option 2: Promulgate Chapter 5 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

The *Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000* (PEPUDA) is administered by the Department of Justice and Constitutional Development.

PEPUDA gives effect to section 9 of the Constitution by providing for—

- the equal enjoyment of all rights and freedoms by every person;
- the promotion of equality;
- the values of non-racialism and non-sexism contained in section 1 of the Constitution;
- the prevention of unfair discrimination and protection of human dignity as contemplated in sections 9 and 10 of the Constitution; and
- the prohibition of advocacy of hatred, based on race, ethnicity, gender or religion, that constitutes incitement to cause harm as contemplated in section 16(2)(c) of the Constitution.

It provides a framework for eliminating unfair discrimination and the promotion of equality beyond employment matters. It makes affirmative action mandatory.

The promotion of gender equality is given priority under the Act. The Act also provides for enforcement mechanisms which include Equality Courts and Alternative Forums. The Act applies to all employment issues that are excluded from the *Employment Equity Act*. This includes contract work and the Judiciary.

Section 28(1) thereof provides that: “if it is proved in the prosecution of any offence that unfair discrimination on the grounds of race, gender or disability played a part in the commission of the offence, this must be regarded as an aggravating circumstance for purpose of sentencing.”

PEPUDA also provides for measures to educate the public and raise awareness on the importance of promoting equality and overcoming unfair discrimination, hate speech and harassment and to provide remedies for victims of unfair discrimination. The Schedule to PEPUDA provides useful insights on existing systemic inequalities in various sectors to be given priority in the promotion of equality, including gender equality.

This option provides that the DWCPD must cooperate with the Department of Justice and Constitutional Development to develop Regulations to promulgate Chapter 5 of PEPUDA which provides for the promotion of equality, including gender equality, in order to regulate the coordination and oversight for the promotion of women empowerment and gender equality.

Option 3: Women Empowerment and Gender Equality Bill

The DWCPD needs clearly defined authority and functions to be effective in promoting women empowerment and gender equality. It also wants to codify the 50/50 gender parity as well as mainstreaming of gender in policy, programmes and all activities of government structures, private sector and civil society. Therefore a specific legislation must be developed to facilitate the above. It also wants to fast-track or accelerate the attainment of gender equality through the implementation of special measures for empowerment of women and girls, including those with disabilities.

The WEGE Bill will outline the powers of the Minister to promote, coordinate and oversee the achievement of substantive gender equality for women and girls. It will set standards to be complied with in terms of measures and special measures²⁵ to empower women and girls and to provide for equal representation of women in decision-making structures. It will provide for compulsory reporting and outline responsibilities and accountabilities of all entities it applies to. It will also provide authority for the Minister to enforce existing substantive legislation on the promotion of equality to ensure that women benefit equally with men.

The source of the WEGE Bill is section 9 of the South African Constitution, and sections 25(1)(c)(ii), 28 read with section 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) as well as South Africa's international commitments on the promotion of gender equality and the empowerment of women and girls, including those with disabilities.

The objectives of the WEGE Bill is to state the mandate of the minister to promote and coordinate the achievement of substantive and sustainable gender equality for women and girl children, including those with disabilities. The Bill is divided into five chapters: 'General',

²⁵ Section 9(2) of the Constitution of the Republic of South Africa

'Governance', 'Empowerment', 'Enforcement Offences and Penalties' and 'Procedural'. Section 5 provides the mandate of Minister, section 6 provides the Minister authority to issue Directives and section 7 provides the Minister authority to issue Compliance Notices. Confirm deals with Measures to empower women and girls, in particular black women and girl children; women and girl children living in rural areas; and informal settlements women and girl children with disabilities; who have been directly or indirectly disadvantaged, excluded or adversely affected or who are likely to be so disadvantaged, excluded or adversely affected by discriminatory legislation, policy or harmful practice in any sector of life. Section 9 deals with Gender Mainstreaming. Section 10 deals with Economic Empowerment. Section 11 deals with Equal representation and participation. Section 12 deals with enforcement while section 13 prohibits Practices with adverse effects.

The WEGE Bill will regulate the obligation of the State and related agencies to promote gender equality. State and related agencies will be required to promote gender equality systematically and purposefully and change the conditions and circumstances which hinder the achievement of gender equality It will facilitate the following:

- Promoting and advancing the equality of women and the girls in all spheres of life in relation to men and the boys;
- Ensuring the gendered transformation of institutions, laws, policies, procedures, consultative processes, budget allocations by taking into account the needs and aspirations of all women and girls; particularly those who are most disadvantaged, excluded and/or marginalised²⁶;
- Prohibit and facilitate the eradication of multiple forms of unfair discrimination against women and girls, including those forms that are discriminatory in effect²⁷ and addressing the so-called quadruple unfair discrimination based on sex, age, race and disability;
- Consideration of indirect differential treatment - any apparently gender neutral action that in fact has the effect of placing one of the sexes in a worse position than the other²⁸
- Prohibit and eradicate all forms of gender based violence;
- Facilitate the review of priorities, targets, timeframes and performance indicators articulated in existing laws and policies using gender analysis and ensure that gender responsive indicators are included in the Government-wide Monitoring and Evaluation

²⁶ DWCPD: Policy Considerations for Gender Equality Legislation: Draft Discussion Document, May 2011, Version 1, p 7

²⁷ Ibid

²⁸ Government of Norway: The Act Relating to Gender Equality, -10 June 2005, No. 38

Framework as a means to ensuring that gender is being mainstreamed into all aspects of delivery by Government;

- Create an enabling policy environment for translating government's commitment to gender equality into reality;
- Enforce gender mainstreaming across all spheres of government, as well as the private sector;
- Identify mechanisms, processes and sanctions for enforcement and accountability in relation to the goal of 50/50 gender parity.

In addition, where necessary, regulations will be developed to guide private bodies, including financiers, for compliance with the envisaged Act.

3.2 Risk assessment

From the analysis of the options, there are no apparent risks associated with the intended legislation and regulatory framework. However, failure to establish appropriate mechanisms including legislation to facilitate the integration of gender equality analysis in development and equality programmes will result in the continued gendered nature of deepening poverty intersected with the feminization of HIV and Aids pandemic as well as increasing rates of gender-based violence. The 2010/11 Annual Report of the Presidency indicates that in terms of government's programme of action great progress has been made since 1994. The report acknowledges that change is not as rapid as desired. It states that deep poverty, unemployment and inequality persist and that significant sections of the population are rightly impatient with the quality, relevance and adequacy of government services and delivery.²⁹ Women chiefly bear the brunt of this.

Failure to systematically identify, address and remove the underlying and root causes of discrimination and dire poverty will result in continued imbalances and inequalities between men and women, and between races within the country. The continued racial and gendered poverty may lead to underdevelopment of the majority of the population of the country, which are women and girls.

Without the active participation of women and the incorporation of women's perspectives at all levels of decision making, the goals of equality, development and peace cannot be achieved.³⁰ Further it remains the truth that, :

²⁹ Majority of the people affected by this deep poverty are women. Social Profile of Vulnerable Groups in South Africa 2002 – 2010; Report no 03-19-00, December 2011

³⁰ Beijing Platform for Action, 1995; MDGs

“The world has never had a truly great and virtuous nation because in the degradation of women, the very foundations of life are poisoned at their source.” Lucrecia Mott (1783)

Economic growth and human development are linked through the constraints and opportunities that each imposes upon the other. For example, the ability of the government and the private sector to provide services and jobs on a sustainable basis requires that a country prosper through economic growth and investment. Likewise, the ability of a country to prosper is dependent upon the health and skills of its population, reductions in the level of political and social unrest, the reduction of poverty and inequality, and the generation of an effective demand and ability-to-pay for the goods and services produced by the private and public sectors.³¹

Growth and human development are thus linked and are mutually reinforcing. However, although growth is a necessary condition for the alleviation of poverty, it is not a sufficient condition. Enlarging what South Africans can do, or can be, correctly emphasises human development as being the primary objective of government's actions. The policy framework for the reduction of poverty and inequality is one way in which this dynamic relationship can be managed.³²

The Census report released by Statistics South Africa in 2012 provides that there are 50 586 757 people in South Africa, of which women comprise 52% (i.e. 26 071 721) . Therefore, the risk is that the majority of the population in the country will continue living in abject poverty due to failure take the accumulated disadvantages into consideration in policy and legislation, planning, budget allocations and expenditure thereof.

This shows that gender is not mainstreamed in the development programme, and that: “poverty patterns are inherently influenced by gender”. Women, particularly female-headed households, are generally much poorer than men (Bhorat & Van der Westhuizen, 2008).

This is as the result of the past where women were unable to access the same economic resources and opportunities than men. The resulting inequality was, and still is, intensified by additional race-based discrimination and inequality. According to May (1998), female-headed households tend to have fewer adults of working age, while also experiencing higher unemployment rates. Women are overrepresented in low-skilled, low-paying jobs and the wage gap between male and female earnings persists, particularly in low and semi-skilled

³¹ Poverty and Inequality in South Africa, p 6

³² Poverty and Inequality in South Africa. Page 7

occupations (May, 1998; Borat 2009). Hence, a continual division in labour between men and women exists; women's roles are underrated in economic terms and their work is demoted to being domestic and unpaid.”

Women's living conditions are directly affected by the basic services their households receive. In addition to often being responsible to secure basic needs (fetching water and wood), women are often also the primary caregivers of children, orphans, the elderly and people living with disabilities. Improved access to basic services and social grants often assists marginal households to secure secondary sources of income. The persistent lack of access to basic services increases these poor households' vulnerability to disease. Larger percentages of household income is often spent on increasingly less diverse and less nutritious sources of food, which does not promote the health situation in female-headed households (Altman et al 2009). This in turn poses a threat to the country's GDP.

Risks associated with failure to integrate gender equality in all spheres include glass ceiling and under-representation of women in decision making structures. The report of the Commission on Higher Education (CHE)³⁴ reveals that: “overall women are more successful in their studies. In 2007, 59% of graduates were women, although only 55.5% of all enrolled students were women. At the universities of technology, 55% of graduates were women

³⁴ Higher Education Monitor, 8: The State of Higher Education in South Africa, p 33

compared with 51% of enrolments. In the comprehensive universities 62% of graduates were women, while women made up only 57% of enrolments. And at the universities, 59% of graduates were women, compared to 56% of enrolments. There was little change in this pattern during the period under review. Only in the science, engineering and technology fields do more men graduate than women and then by only a small margin. In education more than 70% of the graduates are women and in the human and social sciences, more than 60%. Business, commerce and management showed less of a difference between genders, but still produce more women graduates than men.” However, women are under-represented in the relevant professions.

The relative representation of women in Executive Management and Board Positions does not correspond meaningfully to the proportion that women form of the overall working population of the country. In the economic sector and all areas of employment like all social phenomena, gender discrimination is reproduced through societal value system, including the rewarding and sanctioning of behaviour on a daily basis. It is reinforced through institutional arrangements by those who have historically controlled societal institutions.

Percentages of women in JSE-listed companies and SOEs as a percentage of all positions:

	2010	2011	2012
CEO	4.5%	4.4%	3.6%
Chairpersons	6.0%	5.3%	5.5%
Directorship	16.6%	15.8%	17.1%
Executive Managers	19.3%	21.6%	21.4%
Women as % of South African population	51.6%	51.3%	52.0%

Source: BWASA Women in Leadership Census 2012, Presentation 21052012

2012	MALES	FEMALES
CEO	96.4%	3.6%
Chairpersons	94.5%	5.5%
Directorship	82.9%	17.1%
Executive Managers	78.6%	21.4%
Women as % of South African population	48.0%	52.0%

Source: BWASA Women in Leadership Census 2012, Presentation 21052012

Even in government, women still lag behind in senior positions; men constitute 59.3% while women constitute 40.7%. Most academic research indicates that the glass ceiling is only an effect rather than a cause, and that a wholesale societal shift is required with respect to the concept of empowerment in order for greater equality to be achieved at home, in the workplace and all other sectors.

Failure to align the gender transformation objectives with the organisational business systems, including performance management systems will result in the further deepening of the gendered nature of poverty. The culture and business systems of any organisation play a crucial role in gender transformation generally and the willingness to embrace gender equality and related obligations specifically. Hence, there is a need for the development of a specific regulatory framework to facilitate societal transformation.

Land policies were inextricably intertwined with policies concerned with the supply and regulation of labour, as well as those focused on political control³⁸. As a result of land dispossession processes, it was estimated that in 1996, less than 1% of the population owned and controlled over 80% of farmland. This 1% constituted 10,9% of the population classified as “white”³⁹ whilst 76,7% of the population that is classified as African had restricted access to less than 15% of agricultural land, with less secure tenure rights to land. Added to this, an estimated 5.3 million black South Africans lived with almost no security (of ownership/equity) on commercial farms owned by white farmers.⁴⁰ One of the other results of this massive dispossession of land is the concentration of poverty in South Africa’s agriculturally unproductive rural areas, where about 70% of the population lives below the poverty line.⁴¹

The Nkuzi Development Association (NDA) undertook an eviction survey to establish baseline data for the prevalence of evictions over a 20-year period from 1984 to 2004. This survey, amongst others, found out that in the periods between 1994 and 2004, (during democracy), a total of about a million people were evicted and only 1% received some form of legal or court representation. Just over three quarters of those evicted from farms are women and children and they are more likely to be evicted than men.⁴²

³⁸ Cousins, B. 2008. “Contextualising the controversies: dilemmas of communal tenure reform in post-apartheid South Africa”, in Claassens, A. and Cousins, B. 2008. *Land, Power & Custom. Controversies generated by South Africa’s Communal Land Rights Act*. Cape Town: UCT Press.

³⁹ Wegerif, M. 2004. *A Critical Appraisal of South Africa’s Market-based Land Reform Policy: The Case of the Land Redistribution for Agricultural Development (LRAD) Programme in Limpopo*. Research Report Cape Town: Programme for Land and Agrarian Studies (PLAAS), University of the Western Cape. Pp. 1 See also the CGE Report: A Gendered Analysis of Land Reform Policy and Implementation Outcome in South Africa (2006 – 2008/09); Page 22.

⁴⁰ Wildschut, A. and Hulbert, S. 1998. “A Seed Not Sown: Prospects for Agrarian Reform in South Africa”. Report prepared by the International Fundraising Consortium (Interfund). Unpublished report, Johannesburg. See also the CGE Report: A Gendered Analysis of Land Reform Policy and Implementation Outcome in South Africa (2006 – 2008/09); Page 22.

⁴¹ Levin, R. and D. Weiner. 1997. “No More Tears ...”: Struggles for Land in Mpumalanga, South Africa. Trenton: Africa World Press. Pp. 4 – 5. See also the CGE Report: A Gendered Analysis of Land Reform Policy and Implementation Outcome in South Africa (2006 – 2008/09); Page 22.

⁴² Commission on Gender Equality Report: A Gendered Analysis of Land Reform Policy and Implementation Outcome in South Africa (2006 – 2008/09).

The continued risk for women is that most policies developed during the democratic period are gender neutral. When policies are gender neutral, they perpetuate indirect discrimination, hence the report by the Nkunzi Development Association. These are some of the factors that preserve the gendered nature of poverty patterns (i.e. women bearing a disproportionate amount of suffering due to the effects of poverty) in rural South Africa.

For example, the AgriBEE policy is a policy framework whose main objective is to set guidelines that promote an environment that is conducive to the participation of previously disadvantaged black producers in the mainstream agricultural economy. In other words, the aim of the AgriBEE policy is the re-distribution of economic opportunity among the farmers. With respect to gender concerns, this policy does not make any specific provisions for how female interests will be taken into account both from a policy and implementation perspective.⁴³

The South Africa's Economic Transformation: A Strategy for Broad-Based Black Economic Empowerment report provides that:

“Despite the economic successes and a broad range of state policy, strategy and programme interventions aimed at overcoming economic disparities, entrenched inequalities continue to characterise the economy and act as a deterrent to growth, economic development, employment creation and poverty eradication. Vast racial and **gender** inequalities in the distribution of and access to wealth, income, skills and employment persist. As a consequence, our economy continues to perform below its full potential.

Societies characterised by **entrenched gender inequality** or racially or ethnically defined wealth disparities are not likely to be socially and politically stable, particularly as economic growth can easily exacerbate these inequalities. Therefore the medium- to long-term sustainability of such unequal economies is vulnerable. Accordingly, in South Africa, the socio-political and moral imperative to redress racial discrimination is also an imperative dictated by the need for sustainable growth.”

The advancement of women in all areas of life, including executive positions in South Africa can no longer be seen as an option. It is a requirement.

⁴³ A Gendered Analysis of Land Reform Policy and Implementation Outcome in South Africa (2006 – 2008/09); Page 18.

CHAPTER 4: ANALYSIS OF IMPACTS

4.1 Benefit Analysis

4.1.1 Option 1

The National Gender Policy Framework has provided “an integrated package” of structures located at various levels of state, civil society and within the statutory bodies, in particular the Commission for Gender Equality and the Human Rights Commission to ensure the national and international focus is kept on track. It facilitated the establishment of Gender Units in government at the national, provincial and local government and required the Gender Focal Persons to be appointed at a Director level.

However, since the adoption of the National Gender Policy Framework in 2000, there have been a number of developments in the operations of government and societal behaviour which have led to the current persistent inequalities and the gendered nature of poverty. Some of the developments include the tendency:

- government structures and decision-making to be insular and hierarchical and not inclusive of the Gender Focal Persons/Points (GFP) in order to mainstream gender in the business of government;
- to see gender work, including gender mainstreaming as a responsibility of the GFP instead of the people in the mainstream of decision-making and government programme implementation;
- not to properly capacitate the Gender Units. For example, human resources deficiencies and inadequate financial resources are some of the obstacles that make the GFPs not to be effective.

Accordingly, many of the results that were anticipated from the women empowerment and gender mainstreaming process facilitated through the NGM have not materialized. An example in this regard is the institutionalisation of gender mainstreaming as part of day-to-day decision-making by all role players in all governance structures due to lack of legislation that regulates that. The legal status of the National Gender Policy Framework has led to the lack of explicit gender considerations and/or commitments to real change.

Some of the identified weaknesses in the current institutional framework as provided for in the National Policy Framework include the following:

- Inadequate accountability for the fulfilment of commitments on the advancement of women and gender equality both in public and private sectors
- Failure to institutionalise gender mainstreaming
- The lack of gender disaggregated data on most aspects of government programmes, and inadequate information on the status of South African women in various areas of life, particularly areas such as:
 - Violence Against Women;
 - Access to Justice;
 - Women's Access to Land;
 - Women and Health;
 - Women's paid and unpaid work;
 - Economic situation of South African women, including poverty causes and influencing factors;
 - Skills level of South African women or a comparative analysis with their male counterparts thereof.
- Lack of a comprehensive strategy for addressing the gendered nature of poverty
- The widening economic gap and deepening gendered poverty
- Uneven progress towards gender equality in the various sectors, the different arms of government, the different levels of government and within civil society

4.1.2 Option 2:

PEPUDA excludes from its ambit employees and issues already covered by the Employment Equity Act. Women constitute one of the three designated groups (women, black people and people with disabilities) in favour of whom affirmative action measures must be implemented under the EEA.⁴⁴ The mandate of the DWCPD is the promotion of equality for all women, women with disabilities and girls from all walks of life; however, PEPUDA excludes those that are employed from its application.

The other shortcoming of PEPUDA is that it has been promulgated incrementally. Sections 1, 2, 3, 4(2), 5, 6, 29 (with the exception of subsection (2)), 32, 33 and 34(1) came into effect on 1 September 2000. Sections 4(1), 7 to 23, 30, 31 and 34(2) which provide for the establishment of the Equality Courts came into operation on 16 June 2003. Sections 24 to 28 and 29(2) that deal with the promotion of equality are not yet effective. Chapter 5 is supposed to regulate the promotion of equality, including gender equality and is still to be

⁴⁴ The Preferential Procurement Policy Framework Act and the Broad Based Black Economic Empowerment Act specifically focus on positive measures to promote equality for women, black people and people with disabilities.

promulgated yet. Therefore, PEPUDA currently regulates the prohibition of unfair discrimination only

4.1.3 Option 3:

The objective of the WEGE Bill is to bring a gender perspective into all aspects of policy and legislation development, decision-making, planning, budget allocation, procurement and expenditure thereof; reporting, monitoring and evaluation; and all practice in the government, business sector, organised labour and communities. It will provide mandate for the coordination, monitoring and evaluation of the existing framework for implementation of positive measures to advance women to ensure that government achieves its constitutional mandate of promoting gender equality in law and in fact. It will also provide mechanisms for 'financing for gender equality' or 'gender budgeting' to break the vicious circle of women's low initial human capital endowments and inferior labour market outcomes compared to men's, thus fostering the implementation of the special measures as provided for in s 9(2) of the Constitution.

Gender Responsive Budgeting as understood in this report refers to the allocation of financial resources in a manner that not only ensures that women and men benefit equally from all resources, but also reduces existing patterns of female systemic inequality. The WEGE Bill will establish mechanisms that will outline the responsibility and accountability of all senior managers involved in the budget process or expenditure control on Gender Responsive Budgeting. It will facilitate training and empowerment of all the people involved in financial planning and control to understand the power of budgeting to perpetuate or eliminate inequality.⁴⁵

The WEGE Bill seeks to give effect to section 9 of the Constitution of the Republic of South Africa, 1996 and to sections 25(1)(c)(ii) and 28, read with section 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000). Given that the struggle for women emancipation is older than our democracy – at national, regional and international level, the WEGE Act becomes an imperative measure to accelerate a comprehensive human development that recognise that a high percentage of the population remains at the receiving end of development, which consequently perpetuates underdevelopment of a nation as a whole.

4.2 Costs Analysis

⁴⁵ This definition was retrieved from the following source: Department of Justice and Constitutional Development. 2005. Gender Responsive Budget Report. Pretoria: Government Printers.

4.2.1 Implementation costs

A number of processes and mechanisms were adopted to advance the country towards gender equality. The principle structures of the national machinery are the Department of Women, Children and People with Disabilities, Provincial Offices of the Status of Women (OSW), Gender Focal Points (GFP) in national departments, the Commission for Gender Equality (CGE) and other organs of civil society and the Portfolio Committee on Women, Children and People with Disabilities. This institutional framework is in line with the National Gender Policy Framework of 2000. All government Departments were required to establish Gender Directorates that will form part of the National Gender Machinery. Although the policy framework does not provide explicit recommendations for the institutional arrangement at local government level and the private sector, it was proposed that this framework serve as a guideline for local government and the private sector.

At this point in time most government Departments have gender units, although at different levels of authority or decision making. However, in certain instances the gender equality and women empowerment forms part of employee wellness programme than a clearly committed plan of action. Therefore, the financial implications of implementing the required structure are already incorporated in the MTSF budget processes of all departments (See the reports attached as annexure C and D). Provinces had already incorporated the budget on the NGM through the provincial Office of the Status of Women; even though the challenge remains the discrepancies in terms of ensuring that the financial allocations yield realistic life changing outcomes. Local governments too have established gender units, therefore they are already in the finance structures of the local governments. The cost implications of all the options to be discussed below are dependent on the above information.

4.2.2 Option 1:

There no significant cost implications for option 1 which recommends the maintenance of the status quo, the national gender machinery components already exist and are already budgeted for by Departments. However, there might be indirect costs in cases where government departments which failed to comply with the National Gender Policy Framework in terms of establishing gender units at a Director level may be compelled to comply.

4.2.3 Option 2:

There is no apparent additional cost implications for option 2 as the implementation thereof would be dependent on the Department of Justice and Constitutional Development which

already has a branch responsible for the implementation of PEPUDA and the Equality Courts for enforcement.

There are also no seemingly additional costs to the DWCPD as it already has a structure and budget. Further, the existing national gender machinery components which are already budgeted for by Departments will play their role. However, there might be indirect costs in cases where government who failed to comply with the National Gender Policy Framework in terms of establishing gender units at a Director level may be compelled to comply.

4.2.4 Option 3:

While it is not possible to actually estimate the cost or negative consequences associated with this option, the potential costs for institutions affected may be reflected on. The analysis of all this option, show that there will not be significant cost implications for government and some companies in the private sector, as all government departments already have gender units and the DWCPD already has a structure approved by Department of Public Service and Administration and the National Treasury (Organogram attached as annexure E), and most companies have the diversity or transformation management units. There might be slight cost implications for small companies. Further, all government departments have a dedicated budget for women empowerment programmes. Some Departments have established women's associations to ensure that women participate in the determination of their empowerment activities and programmes.

Other costs that might be incurred will be for the following purposes:

- Establishment of the Gender Management System, this will facilitate the achievement of gender equality through ensuring that accountability and responsibility for women empowerment and gender mainstreaming is borne by all state and non-state actors supported by a Gender Management System(GMS)
- Coordination, capacity building, communication and collaboration towards the implementation of the anticipated legislation will also have cost implications;
- Establishment or employment of a regular technical advisory services need to capacitate the individuals with the responsibility to implement the anticipated legislation will also have cost implications;
- Adequate staffing, institutional infrastructure, monitoring & evaluation, dissemination of anticipated legislation and other information will also have cost implications.
- Procure high level technical expertise in all disciplines numbers to support and monitor the mainstreaming of gender in all government areas. Key expertise and disciplines

would include gender analyses and budgeting, research, planning, monitoring and evaluation, economics and finance, among others. This too will have cost implications

With regard to the national gender machinery there will not be additional cost implications for option 3 as the implementation thereof would be dependent on the existing national gender machinery components which are already budgeted for by Departments. The importance of this option is that it will allow for collective commitment and accounting of intervention at local, provincial and national level, as well as across the public and private sector.

4.3 Compliance costs

4.3.1 The costs of compliance by those affected.

All options will not have any significant cost implications for government departments as they already have gender units or units responsible for gender mainstreaming, and also have budgets for promoting women empowerment and gender equality within their sectors. The only additional costs might be on the upgrading of the gender units to the Directorate level as required by the National Gender Policy Framework, gender responsive budget allocations and will be enforced by the WEGE Bill.

While it is not possible to accurately estimate the cost or negative consequences associated with the implementation of the WEGE Bill by the private sector in the absence of data on company arrangements, it can be argued that it will not have significant cost implications for some of the Companies that already have the "Diversity Management or Transformation Units". These structures or units have been established to facilitate compliance with laws such as the Employment Equity Act, Broad Based Black Economic Employment Act and Mining Charters. The WEGE Act will enforce some aspects of those Acts and Charters which relate to women empowerment. However, it may to a certain extent have cost implications for small companies, even though currently it cannot be accurately estimated.

4.3.2 Indirect costs that may occur due to the new measure.

Even though all Departments are supposed have established the required Gender Directorates, most did not. Therefore, the passing of the anticipated legislation will have indirect cost implications for public service, private sector and civil society through the following requirements among others:

- Establishing the structure required by the Act as a component of the national gender machinery;

- Capacitating of public service officials, private and public sector personnel and civil society personnel, through training on gender mainstreaming;
- Conduct a gap analysis to identify laws and policies that are gender neutral, silent, or unresponsive to women's needs, and the identified gaps should be translated into or inform the plans of actions by different implementing partners
- Gender-responsive research should be undertaken in all sectors in order to report on the women empowerment and gender equality progress.

4.4 Summary of Costs and Benefit

All 3 options will not have any significant cost implications as the affected entities already have gender/diversity units even though at different levels of authority and all have a dedicated budget for the promotion of women empowerment and gender equality.

CHAPTER 5: COMPARING OF OPTIONS

5.1 Comparison of the options.

The options are assessed on the basis of the legal binding nature of the instrument and the following:

- 1) Clarification of the responsibility and accountability for gender mainstreaming and women empowerment,
- 2) The enabling nature of the instrument to facilitate mainstreaming of gender in the key strategic areas 5 priority outcomes of government's.
- 3) The ability of the instrument to outlining the powers and functions of the Ministry and providing for its adequate resourcing with regard to finance, human resources and relevant skills areas.
- 4) Regulating the relationship between the Ministry and other components of government. This includes stipulating that a National Gender Policy, which concretizes these relationships, among other things, should be developed and adopted by government.
- 5) Confirming and upgrading the multi-agency model regarding the National Gender Machinery, which entails coordination points at all levels of government, in all branches of government and within civil society.

5.2 Ranking the options

Option 1:

No legislation is developed, the status quo remains. This option is ranked the third as it is not a legally binding instrument.

Option 2:

This option is ranked the second as the PEPUDA excludes issues addressed by the Employment Equity Act (EEA); as a result it excludes women and those with disabilities who are in the scope of the EEA. This option will not facilitate the achievement of the criteria set in paragraph 5.1 above.

Option 3: Development of a new Regulatory Framework

This option is ranked the first as the WEGE Bill will provide the Ministry and DWCPD with authority and the mandate to facilitate the institutionalisation of gender mainstreaming by the public and private sectors. It will ensure that gender issues are routinely considered in all strategic planning exercises.

Government Departments will be required to reflect gender considerations in their business plans and routinely report on them. It will help government to substantively eradicate poverty and gender inequalities, in line with government priorities and outcomes, as well as the National Development Plan. Further, this option will facilitate the achievement of the criteria set in paragraph 5.1 above.

5.3 The preferred option

Option 3 is the preferred option as it will facilitate the mainstreaming of gender in the entire business of government, private sector and civil society, and will integrate gender consideration in government's monitoring and evaluation mechanisms.

Further to the above, the importance of this OPTION is that it will allow for collective dedicated commitment and accounting of interventions at local, provincial and national level, as well as across the public entities and private sector.

5.4 Enforcement of the option

The legislation will be enforced by defining the scope of its application to ensure that all those it applies to are aware of their responsibilities and understand that they have to comply with the requirements of the Act.

It will also specifically outline that the responsibility and accountability for the implementation of this *National Policy* lies with the Ministers or executive heads, Directors General or

administrative heads of these institutions, including every public employee or agent of the state. It will provide for a complaints mechanism and court litigation mechanism.

Further, the legislation will create an offence for non-compliance with certain sections of the Act and thus the offender may be prosecuted in the Court.

CHAPTER 6: MONITORING AND EVALUATION

6.1 Monitoring and review

The DWCPD will cooperate with the Ministry in the Presidency: Performance Monitoring, Evaluation and Administration and link its Monitoring and Evaluation Framework with the Policy Framework for the Government-wide Monitoring and Evaluation Systems (Government-wide M&E Systems), in order to avoid duplications and to strengthen its capacity. The Government-wide M&E Systems provides that:⁴⁶

- Government's major challenge is to become more effective. M&E processes can assist the public sector in evaluating its performance and identifying the factors which contribute to its service delivery outcomes. M&E is uniquely oriented towards providing its users with the ability to draw causal connections between the choice of policy priorities, the resourcing of those policy objectives, the programmes designed to implement them, the services actually delivered and their ultimate impact on communities. M&E helps to provide an evidence base for public resource allocation decisions and helps identify how challenges should be addressed and successes replicated.
- Monitoring and evaluation is, however, extremely complex, multidisciplinary and skill intensive. Government-wide monitoring and evaluation even more so, since it requires detailed knowledge both across and within sectors, and interactions between planning, budgeting and implementation. The picture is complicated even further when the machinery of government is decentralised, with powers and functions being distributed across three spheres of government. It is precisely this complicated intergovernmental structure with diffused powers and functions which requires strong M&E systems to promote coordination and prevent fragmentation.
- Monitoring involves collecting, analysing, and reporting data on inputs, activities, outputs, outcomes and impacts as well as external factors, in a way that supports effective management. Monitoring aims to provide managers, decision makers and other stakeholders with regular feedback on progress in implementation and results

⁴⁶ The Policy framework for the Government-wide Monitoring and Evaluation Systems, p 1-2

and early indicators of problems that need to be corrected. It usually reports on actual performance against what was planned or expected.

- Evaluation is a time-bound and periodic exercise that seeks to provide credible and useful information to answer specific questions to guide decision making by staff, managers and policy makers. Evaluations may assess relevance, efficiency, effectiveness, impact and sustainability. Impact evaluations examine whether underlying theories and assumptions were valid, what worked, what did not and why. Evaluation can also be used to extract crosscutting lessons from operating unit experiences and determining the need for modifications to strategic results frameworks.

6.1.1 How is the effectiveness of the legislation to be measured and when?

Government has adopted the outcomes approach with the express purpose of ensuring that government is focused on achieving the expected real improvements in the lives of the people of South Africa.⁴⁷ Twelve strategic outcomes have been adopted which directly correspond to the priorities of government as reflected in the MTSF. Further, it adopted key strategic outcomes corresponding to the five (5) priorities of the ruling party, which are education, health, rural development and agrarian reform, the fight against crime, and the creation of decent work.

The five priorities do not specifically mainstream gender and therefore the reporting, monitoring and evaluation of the priorities will mostly be silent on the gender impact, unless a legislative framework is provided (Option 1/3). These priorities are very important for women empowerment and gender equality; therefore the anticipated legislation will facilitate the mainstreaming of gender in the 5 priorities and the inclusion of women empowerment and gender equality as indicators in the outcomes, to ensure that government achieves its goal of substantive gender equality.

The WEGE legislation will facilitate the Ministry's inputs to the review of the performance agreements between the President and Co-ordinating ministers which outline high level outputs, metrics and key activities for each outcome signed. The signed performance agreements were converted to high level outputs and targets, and into detailed implementation plans or delivery agreements by the respective Co-ordinating departments with key partners, and the delivery agreements are negotiated agreements between the Coordinating departments and key partners which spelled out who will do what, by when and

⁴⁷ The 2010/11 Annual Report of the Presidency

with what resources to achieve the outputs and targets. For each outcome, an appropriate co-ordination arrangement that will enable the partners to the Delivery Agreement to work together to 2014 in Co-ordinating implementation of the outcomes, reviewing progress and deciding on interventions when required was set up. The Minister for Women, Children and People with Disabilities will facilitate the integration of gender indicators in the outcomes.

As indicated above that government has developed a Policy Framework to monitor government's impact. The Women's Ministry and the DWCPD will ensure that its mandate is incorporated and integrated in the existing monitoring and evaluation systems and processes in order to avoid duplication with existing processes. For example, the monitoring and evaluation process will be linked to M & E structures of government: Department of Planning, Monitoring and Evaluation; Employment Equity Commission; and those of other Departments such as the Department of Trade and Industry, Department of Mining, Department of Energy.

The WEGE Bill authorises the DWCPD to have access to all M&E Structures, therefore it will utilise the data from these M&E structures and will not collect information from entities. The Act will provide the Minister the authority to issue directives and compliance notices in cases where there is a breach or noncompliance with applicable legislation as picked up from the available data during the evaluation of reports.

The GFP or gender practitioner is an important resource that is there to assist the leadership of the organisation to map out strategic processes and sustain organisational activities that seek to promote gender equality. They also play a critical role in monitoring and evaluating an organisation's gender programme. However, this has to be done with an understanding that management has the responsibility to implement and monitor gender transformation, and that the GFP is there to provide support and not to relieve management of the responsibility.

After the promulgation of the Act, the DWCPD will cooperate with Statistics South Africa which already has the baseline information on the status of women, in order to plan the periodic specific monitoring and evaluation of the impact of the implementation of the WEGE Act and applicable legislation on women, children and people with disabilities. The periodic monitoring and evaluation will be between 3 and 5 years after its promulgation.

6.1.2 What is the broad outline of possible monitoring and evaluation arrangements?

The DWCPD will align its monitoring and evaluation mechanisms to those of the National Gender Machinery to the Policy Framework for the Government-wide Monitoring and Evaluation System.

The institutional mechanism that will be provided for by the WEGE Bill will require that all Departments comply with the requirement of placing the gender units at the Director level or higher and locating them in the Director General's office to ensure that the gender units play the oversight role in their Department in consultation with the DWCPD. Each service/directorate within the organisation must develop its own set of key indicators and targets in compliance with the applicable legislation and that will form the basis for all monitoring and evaluation indicators. These indicators will vary depending on the nature and focus of their core business. The essential activities of reporting, monitoring and evaluation must occur on an on-going and regular basis. Ideally it should coincide with the generally accepted corporate procedures and standards.

GFPs at all levels of government and other supporting structures will enhance the success of the DWCPD in monitoring compliance. Departments will be required to submit quarterly reports or whenever requested to do so. Further there will be quarterly or half yearly meetings of all stake holders including workshops and conferences to address certain issues.

Civil society organizations are important in ensuring that all sectors remain relevant to the needs of women and local citizens generally, therefore the civil society organisations will be part of the institutional mechanism to promote women empowerment and gender equality.

6.2 Consultation

Consultations have been conducted widely on the National Policy on Women Empowerment and Gender Equality as part of the process leading to the development of the Women Empowerment and Gender Equality Bill. The consultation covered Government Departments, Directors General and Ministers Clusters, Civil Society, Academia, Labour Organisations and others. Letters requesting inputs have been sent to the traditional leaders and faith based organisations. The following consultations have been conducted (A consultative report is attached hereto. See annexures F to H):

- National Gender machinery consultation on 13 Issues Papers early 2011
- Two Provincial Consultations (Gauteng and North West)
- Policy Considerations Paper was presented at the Engendering NGP meeting in May 2011

- National Young Women's Consultative meeting (July 2011) and Women with Disabilities Consultations (August 2011)
- National Women's Conference (31 July -3 August 2011)
- Policy paper: Presented to PWMSA (small executive meeting) (October 2011)
- Presented to Cosatu National Gender Committee meeting (Nov 2011)
- Northern Cape Consultations (01-02 November)
- Presented to ANCWL (2012) (still to be concluded)
- National Disability Summit on 16 March
- National Consultative Meeting on 3 April
- Economic Cluster – DGs on 4 April
- G &A Cluster – DGs on 12 April
- Consultations with Rural Women on 12 April
- Social Cluster – DGs on 18 April
- Internal DWCPD – EXCO on 20 April
- Consultation with NEDLAC -
- Round Table on WEGE Bill with academia – 14 August 2012

The WEGE Bill was published in the Government Gazette on 29 August 2012 for 30 days for public consultations, and further substantiating inputs which supported the already provisions provided by the Draft Bill were considered. Overall, this led to inclusion of few definitions (e.g. gender based violence) and strengthening of certain clauses – in the main, the clause on enforcement.

Furthermore, Option 3 will allow for collective dedicated commitment, actions and accounting of interventions at local, provincial and national level, as well as across the public entities and private sector.

CHAPTER 7: RECOMMENDATIONS

7.1 Recommendation

7.1.1 Recommended option?

Option 3 is recommended because of its potential to assist government to improve access to service delivery for women and girl children with an aim of eradicating the gendered nature of poverty and the promotion of gender equality. Further, it will require that the State and related agencies to promote gender equality systematically and purposefully and change the

conditions and circumstances which hinder the achievement of gender equality and result in continued deep poverty which is gendered.

7.1.2 Why the other two options are not recommended?

Both options have not been recommended because they do not provide an enabling mechanism to bring a gender perspective into all aspects of policy and legislation development; decision-making; planning; budget allocation, procurement and expenditure thereof; reporting; monitoring and evaluation; and all practice in the government, business sector, organised labour and communities.

These options may also maintain the slow progress required to ensure comprehensive human development and prosperity of the country, through a clear legislative mandate and intervention that build on existing legislative context and national priority plans.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed _____

Date _____

Name, title, department

Ms Thandeka Mxenge

Director General

Department of Women, Children and People with Disabilities

8. Contact Point

Adv Carien Pienaar

Chief Director: Legal Services

Department of Women, Children and People with Disabilities

Room B 101

36 Hamilton Street

Pretoria

Tel: 012 359 0370/1 Cell: 0822198090

Fax: 0867659905

Email: Carien.Pienaar@dwcpd.gov.za

CHAPTER 8: LIST OF ANNEXURE

- 8 Present technical background material
- 9 Present key public consultation documents and summaries of replies (unless available via internet link)
- 10 Provide key studies/work carried out by external service consultants (unless via internet link)