



THE AFRICAN CAPACITY
BUILDING FOUNDATION

GENDER BUDGETING AS A TOOL FOR POVERTY
REDUCTION: CONCEPTS, PRACTICES AND
CAPACITY IMPLICATIONS
- The Case of South Africa

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Gender Budgeting as a Tool for Poverty Reduction: Concept, Practices, and Capacity Implications- The Case of South Africa¹

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1. INTRODUCTION

Throughout the first decade of democracy, the South African National Government has repeatedly and consistently expressed an unwavering commitment to obtaining gender equality on all levels of government and in all sectors. This is evidenced at various levels: the Constitution, ratification of international instruments, implementation of national legislation and policies, and established institutional structures and mechanisms that promote gender equality. During the past ten years South Africa's commitment to gender equity has been translated into a National Gender Empowerment Policy that has been designed to guide and direct national, provincial, and civil society efforts to assist the government in this process.

Gender Budgeting has been mandated in government departments based on based on international legal commitments and national policy documents. Activities have also taken into consideration research conducted by the Women Budget's Initiative (WBI) and the Institute for Democracy in South Africa (IDASA). The WBI became possible when South Africa was chosen as one of four Commonwealth countries to participate in a pilot study aimed at integrating gender into macro-economic policy.

The roots of the Women's Budget Initiative go back to February 1994, to the African National Congress Conference on "Putting Women on the Agenda²." Early on in the process of gendering budgetary processes in South Africa, Pregs Govender noted in the Forward to the first Women's Budget in 1996 that there was agreement then that the new government departments must indicate the impact of programmes on the status of women when requesting funds. She continued, "Women's oppression in South Africa is mediated by the matrix of the race, class, rural/urban, age, marital status, language, culture and other divides. Yet overall women are disproportionately represented among the poorest in our country. They are the majority of the homeless, the landless, the unemployed, and the violated"³.

One of the most significant challenges in determining the level of gender mainstreaming is the lack of sex disaggregated data and that the lack of capacity of national statistical agencies to

¹ An ACBF Technical Advisory Panel and Network on Professionalization of Voices of Civil Society and Private Sector (VOICENET) Working Paper

² Debbie Budlender, ed. **The Women's Budget**, Institute for Democracy in South Africa, Cape Town, 1996, p.3.

³ Ibid. 1-3.

provide timely and reliable statistics. General Statistics provided by the Gender Advocacy Project in 2003 indicates the following statistics for the female population in South Africa⁴.

<ul style="list-style-type: none"> • 52.2 % of the population • 54.8 % of registered voters • 43.8 % of the workforce • 44.8 % of those earning less than R1600 per month • 52.3 per cent of the unemployed • 98% of domestic workers • 4.6 per % of magistrates • 17.3 % of mayors • 29.6 % of municipal councils • 6.3 % of municipal managers - 	<ul style="list-style-type: none"> • 28.2 % of members of local government. • 29.5% of doctors • 2.5 % prison population • 19 % of the news sources in the media • 58 % of the HIV-infected adults in Sub-Saharan Region • 19.4 % of parliamentarians in the Southern African Region • 15.4 percent of parliamentarians in the world • 49.1 % of the working age population
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Within the South African context, core factors that shape women’s experiences of oppression and vulnerability to oppression are race as well as geographical location. Black female-headed households within rural areas are seen as among the most vulnerable groups within South Africa today. Moreover, because women usually assume the role of primary caregiver to their children, the well being of women is inextricably linked to the well being of children.

Placing South African women in a social context⁵:

- Women experience higher unemployment rates than men, who also receive a higher hourly wage
- Employed women spent more time than employed men engaging in unpaid task, e.g. collecting water
- Between the age groups of 25 years and older, 18 percent of African women have no form of formal education
- 80 % of female headed households have no wage earners
- 2 out of 5 African households are headed by women
- 3 out of 5 female –headed households are poor
- 70 % of South African children under 6 years of age live below the poverty line
- 93 % of all children living in poverty are African, 6% Coloured, 0.5% Indian and 0.5% white.
- The majority of children living in poor conditions are denied their right to basic nutrition, shelter, basic health care and welfare
- The majority of these children are living in households with only one parent, in most cases the parent is a woman.

⁴ Women’s Net, “Gender Stats: A Project to provide online qualitative and quantitative information on girls and women’s gendered positions in South Africa”. www.genderstats.org.za

⁵ Quoted in Poggenpoel and Oliver from Debbie Budlender, 2002 Women and Men in South Africa, Five years on. Pretoria: Statistics South Africa, 2002 and The Child Support Grant: Does it Meet the Socioeconomic Rights of the poor, Cape Town: Gender Advocacy Programme, 2001

A review of the shape of the women and men in the South Africa labour force over time reveals that much has not changed. Using figures primarily from Statistics South Africa and Valodia in 1996⁶, Budlender reveals the following about the situation of the labor force:

- In 1994, women accounted for 44% of economically active population, those aged 15-65 who were employed with those who were unemployed and wanting to work. In March 2003, women accounted for a marginally higher 45 % of the economically active population
- In 1994 unemployment rate for women was 40.6% while that for men was 26.2%. In March 2003, the unemployment rate for women was 48.4%, and the male rate was 35.9%
- In 1994, women accounted for 55% of all unemployed people. By March 2003, they accounted for 57% of all unemployed.
- African women and men were worse affected by unemployment than those in other race groups.
- In 1994, the unemployment rate for African women was 50%; 34% for African men; 9% for white women; and 5% for white men. In March 2003, the unemployment rate for African women was 55.5% and that for African men was 42.5%; white men was 11.1 % and white women was 8.2%
- In 1994, 60 % of those employed in the informal sector were African women and 19% were African men. For March 2003, African women accounted for 53% of the informal sector and African men for 35%.
- The Labour Force Survey of February 2001 found that 19% of employed women earned R200 or less per month, compared to 9% of employed men. AT the higher end of the employment scale, 23% of employed men earned R4, 500 or more, compared to only 14% of employed men.
- The Labour Force Survey of February 2001 found that mean hourly earnings of employed African women were R8.40 per hour, while mean hourly earnings were R9.73 for African men, and R28.17 and R39.92 for white women and men respectively.

2. OVERVIEW OF THE RESEARCH REPORT

This research report represents the first phase of a two-phase process to provide a review of how South Africa has attempted to mainstream its budgeting processes in a quest to respond to the challenges of gender equality and women rights. This research report is a review of existing activities that the government has instituted in its quest to secure gender equality within South African government structures and programmes. As such, this report will provide information relative to the legal instruments, policies, practices, and structures that

⁶ I. Valodia, "Women and Work: The Impact of the Budget" in D Budlender (ed) The Women's Budget. Institute for Democracy in South Africa: Cape Town, 1996

have been put in place to guarantee mainstreaming of gender measures across society. Specifically, the objectives Phase One are:

1. To conduct country-level studies of gender budgeting activities
2. To identify legal issues related to gender budgeting at the country level.

Objectives for Phase Two will be:

3. Identify skills and knowledge gaps for building capacity for analyzing and advocating gender budgeting by non-governmental organizations
4. Assess the critical questions for gender budgeting across three African regional levels.

This overall research project has a dual purposes: 1) to provide the documentation that will increase knowledge and understanding at the governmental and non-governmental levels so as to allow more deliberate decision-making about the gender budgeting processes and 2) to provide additional information to substantiate gender budgeting as an effective mechanism for poverty reduction that could have an impact on the achievement of Millennium Development Goals.⁷ The presentation will also document applications of gender budgeting by governments and civil societies and draw best practices for replication by other countries. Similar studies are also being conducted in Rwanda and Uganda.

The overall objective of the research project is to document gender budgeting best practices through the development of the case studies at the country and regional levels. Through this objective it is expected that the primary result of this research project is the identification of implications for capacity building in order to increase the level of compliance with gender responsive budgeting policies and practices.

3. DEFINITION OF GENDER BUDGETING

The most widely used definition of gender budgeting incorporates the need for developing sensitivity in those processes and tools aimed at facilitating an assessment of the gendered impact of government budgets⁸. This presupposes that these budgets are not separate budgets for women, but rather attempts to analyze the government's mainstream budget according to its impact on women and men, and different groups and men, with cognizance being given to the society's underpinning gender relations. The United Nations Development Fund for Women (UNIFEM) refers to Gender Responsive Budgeting as budgeting that integrates a gender perspective and tracks how budgets respond to gender equality and women's rights requirements. This entails examining not only allocations and revenue raising measures but also budgeting systems, budgeting processes and looking at the roles of the various actors throughout the process. It also entails investing in making available mechanisms, guidelines,

⁷ MDGs include: **Goal 1:** Eradicating Extreme Poverty; **Goal 2:** Achieving Universal Primary Education; **Goal 3:** Promoting Gender Equality and Empower Women; **Goal 4:** Reducing Child Mortality; **Goal 5:** Improving Maternal Health; **Goal 6:** Combating HIV/AIDS; Tuberculosis, and Other Diseases; **Goal 7:** Ensuring Environmental Sustainability; **Goal 8:** Developing a Global Partnership for Development

⁸ Budlender, Debbie and Sharp, Rhonda with Kerri Allen. **How to do a Gender Sensitive Budget Analysis: Contemporary Research and Practice.** Australian Agency for International Development. Canberra and Commonwealth Secretariat. 1998

data, and indicators that enable gender equality advocates to track progress, benefit incidence and show how supposedly gender-neutral budgets impact women.

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The United Nations Platform for Action (UNPAC) explains gender budgeting thus, gender budgets do not look at whether or not the same is spent on men and women, but rather at what the impact of the spending is on men and women and whether or not budgets respond to the needs of both women and men adequately¹⁰. UNPAC agrees with others who maintain gender budgets are not gender neutral. Budgets can either promote women's equality or exacerbate women's inequality, in other words, budgets can either increase income gaps and other forms of inequality between women and men, or they can lessen them. Budgets are but one of the most influential policy documents governments have because without money a government cannot implement most of other policies and programs. Gender budgets are not simply about spending, they are about the level of examination of government revenue, how a government gets the money it spends, and the implementation of that for women and men.

4. GENDER BUDGETING AND SOUTH AFRICAN INITIATIVES

South Africa began tracking gender budgeting in 1996 primarily under the direction of the Women's Budget Initiative. Following the example of Australia¹¹, various members of parliament, Institute for Democracy in South Africa (IDASA) and Community Agency for Social Inquiry (CASE), founded the Women's Budget Initiative (WBI). Thus, the SA Women's Budget Initiative was developed through the collaborative efforts of civil society and the government. Through the WBI, each year between 1996 and 2000, the entire national budget is analyzed from a gender perspective. The overall aim was to promote gender analysis in order to change economic and social-policy priorities in an attempt to shift funding to reflect women's interests.

During the activities for the Ten Years Democracy Investigations in 2004, IDASA published a series of gender analyses of the various National Departments, including the Labor¹², Justice and Constitutional Development¹³, Safety and Security¹⁴, and Social Development¹⁵. These

⁹ Debbie Budlender & Rhonda Sharp with Kerri Allen, **How to do a gender-sensitive budget analysis: Contemporary research and Practice**, AusAid and Commonwealth Secretariat: London, 1998.

¹⁰ UN Platform for Action Committee, Gender Budget Project, Manitoba, Canada www.unpac.ca

¹¹ Australia was the first country to develop a gender-sensitive budget with the Federal government publishing in 1984 the first comprehensive audit of a government budget for its impact on women and girls. Women's budget exercises were also undertaken by each of the Australian States and Territory governments. South Africa started working on gender sensitive analysis of budgets in 1995.

¹² Debbie Budlender, *Investigating the Implications of Ten Years of Democracy for Women: The Role of the Department of Labor*, Cape Town: IDASA, 18 May 2004

¹³ Penny Parenzee, "Investigating the Implications of Ten Years of Democracy for Women: The Role the Department of Justice and Constitutional Development," Cape Town: IDASA, 10 June 2004.

reports were instructive in that they 1) verified that some effort had been made to achieve governmental commitments in gender equity, and 2) made important recommendations for enhancement of gender analyses. Following gender-sensitive budget analysis training for parliamentary researchers in March 2005¹⁶, researchers have conducted a series of analyses of national departments in June 2006¹⁷. These 2006 gender analyses will be discussed under phase II of this research project.

The South African Model lays out a five step approach to carrying out gender budget analyses: 1) analyzing the situation of women, men, girls, and boys; 2) assessing the gender responsiveness of policies; 3) Assessing budget allocations; 4) Monitoring spending and service delivery; and 5) assessing outcomes.

Debbie Budlender, the lead researcher and trainer on the Women's Budget Initiative, maintains that the WBI was primarily a research and lobbying mechanism for poor women¹⁸. Women are not viewed homogeneously, but rather viewed from the perspective of differentiated social, racial, and regional backgrounds. WBI does not support the development of a separate budget for women, but analyzes the national budget in terms of its impact on poor women especially.

5. GENDER BUDGETING: CONCEPTUAL PERSPECTIVES

Gender Budgeting continues to be a process that has not been well understood, properly interpreted, and fully applied within Government policy and budget processes. It could even be said that it has been mis-interpreted, misguided, and ambiguous for both governments and civil society. While Gender Budgeting was developed as an effective tool for reducing poverty, its value for poverty reduction strategies within African nations has not been fully recognized by government or civil society. Critics and analysts still argue that when it comes to resource allocation, national annual budgets have not made gendering the budget a high priority. Thus, the gender budgeting initiatives within the overall development process, requirements, and influence on decision-making and decision management have generally failed in attempts to make annual budgets more gender sensitive and development outcomes more equitable. Yet throughout the world women and children comprise the majority of the poor and disadvantaged across the spectrum of sectors.

Gender Budgeting is premised on the assumption that gendered public policies and budgets within central and local government plans and programmes yield more efficient and equitable development outcomes. Yet the practice of mainstreaming gender issues has tended to militate against transparency within many governmental policy making processes, with many of the critical questions remaining unanswered and/or outside of the purview of policy makers

¹⁴ Samantha Waterhouse and Nolitha Mazwayi, "Investigating the Implications of Ten Years of Democracy for Women: The Role of the Department of Safety and Security," Cape Town: IDASA, 11 October 2004.

¹⁵ By Sasha Poggenpoel and Liezl Oliver, Investigating the Implications of Ten Years of Democracy for Women: The Role of the Department of Social Development, Institute for Democracy in South Africa, 19 July 2004.

¹⁶ Workshop Report, Gender-Sensitive Budget Analysis training for Parliamentary Researchers, 15-16 March 2005, Cape Town.

¹⁷ Budgets votes analyses were completed for the Departments of Housing, Health, Labour, Education, Justice and Constitutional Development, Social Development, and Trade and Industry.

¹⁸ Debbie Budlender, ed. **The Women's Budget**, Institute for Democracy in South Africa, Cape Town, 1996.

and civil society. This has been a primary unintended outcome of the mainstreaming process, a process that was intended to ensure the representation of women and children within governmental structures. Moreover, civil society structures that should assume the primary monitoring and evaluation role in the gender budgeting process, remain incapable of performing their role due to lack of capacity and knowledge about budgeting decision-making and advocacy interventions.

In order for gender budgeting to become a high priority by governments within its annual budgetary decision making processes, it must be unequivocal to government development planners and civil society who should obtain knowledge and cultivate the skills to develop and implement gender budgeting tools of analysis. For example, there are practices that have militated against government and civil society's ability to make informed budgetary decisions because of a lack of disaggregated data; lack of will by government to budget for structural programmes within ministries, and the failure to institute monitoring and evaluations procedures to track the progress in gender equality goals.

Various governments around the world have expressed a commitment to obtaining gender equality on all levels and in all areas. This is evidenced at various levels: the Constitution, ratification of international instruments, legislation and policies, and institutional structures and mechanisms that promote gender equality. However, as with all initiatives, research to further inform these decisions is required in order to assist in the examination of how well governments have done in its quest to secure gender equality within governmental structures and programmes. Most significantly, there is a need to provide evidence that substantive attention to gender budgeting is a necessary activity in order to ensure maximization of measures to eliminate poverty.

6. INTERNATIONAL LEGAL INSTRUMENTS THAT MANDATE GENDER EQUALITY

Gender Budgeting has been developed as a mechanism in response to governments' commitment to international legal documents to mandate the institution of gender mechanisms in order to address the inequities in order to raise the level of development. The most significant international gender instruments are:

1. The Convention on the Elimination of all forms of Discrimination Against Women of 1979: CEDAW has been ratified by 179 states of which 76 became parties to its optional protocol, which enables women to file complaints directly with the CEDAW Committee.⁵¹ of 53 African states have ratified CEDAW and 17 have signed its optional protocol CEDAW. This was groundbreaking as it created an international bill of rights for women and established the principle of equality through civil and political rights; and rights affected by cultural factors.

2. The Beijing Platform for Action of 1995. Has been ratified by 189 states and complements the Convention. The platform addresses twelve areas of action for women's development: poverty; education and training; health, including reproductive health; violence; armed conflict; economy; power and decision-making; institutional mechanisms; human rights; media; environment; and the girl child. The Beijing Platform for Action recommends that national machinery be established by UN member states to design, promote the

implementation of, execute, monitor, evaluate, advocate and mobilize support for policies that promote the advancement of women.

3. Millennium Declaration and the Adoption of the Millennium Development Goals (MDGs) in 2000. In the Millennium Declaration, 191 governments resolved to promote gender equality and the empowerment of women as “effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable”, to combat all forms of violence against women and to implement CEDAW. Gender equality was included as a separate goal among the eight MDGs, a breakthrough for women which also strengthened the Beijing Platform as an instrument.

Other international with gender as a crosscutting concern include resolutions of the:

- International Conference on Population and Development of 1994
- Copenhagen Consensus on Social Development of 1995
- Rome Statute of the International Criminal Court of 1998 (declares rape, sexual slavery, enforced prostitution, enforced sterilization, and forced pregnancy and other comparative forms of sexual violence as crimes against humanity.
- The UN Convention Against Organized Crime of 2000
- International Convention on the Protection of Rights of All Migrant Workers and Members of their Families of 1990.

The AU has established a global precedent for gender equality by adopting the principle of gender parity in decision-making and elected an equal number of men and women Commissioners to lead the Union. . The AU is defined within a legal framework in its Constitutive Act that provides for the promotion of gender equality. The Constitutive Act of the African Union provides that the organization “shall function in accordance with the principle of the promotion of gender equality” [Article 4(1)]. There is a commitment to extend the principle of equal representation to all levels of the Commission and to other AU organs and programmes, including NEPAD

At its inaugural summit in 2002, the AU affirmed the pivotal role of women and emphasized that the objectives of the AU cannot be achieved without the participation of women. The Commission of the African Union comprises 50% women. A Gender and Development Directorate has been established in the Office of the Chairperson. The AU has also adopted the Additional Protocol to the African Charter on Human and People’s Rights, addressing the Rights of Women in Africa, the Durban Decision on Parity within the structures of the AU and the Solemn Declaration on Gender Equality. Although only ratified by half of the African Union members, the Solemn Declaration on Gender Equality in Africa affirms commitments made at Dakar, Beijing and CEDAW¹⁹. This Declaration takes into account the major challenges facing women and the girl child, such as HIV and AIDS and the fight against poverty. The Declaration is based on the areas of critical concern articulated in the BPF. In terms of the Declaration, the Chairperson of the AU must report on accomplishments made with respect to the mainstreaming of gender.

The AU has recognized the role of women in civil society who worked very hard in campaigning for gender issues to be integrated into all aspects related to its structure and work. The 2005 **Femme Africa Solidarite** presentation at the 49th Session of the United National Commission on the Status of Women, New York, traced the role of women in civil

¹⁹ Solemn Declaration on Gender Equality in Africa, African Heads of States and Government of Member States, Addis Ababa, Ethiopia, 6-8 July 2004.

society in ensuring that 50% of the Commission comprised women and in impacting on the Solemn Declaration on Gender Equality in Africa²⁰. Civil society groups held public consultation sessions with women on the African Charter on the Rights of Women and engaged in advocacy work for its adoption and the adoption of the Protocol on the Rights of Women. Because of the time that it could take for the ratification of the Protocol, women's organizations are campaigning for the ratification of the Protocol. Seven countries have ratified the Protocol, amongst which are Lesotho, Rwanda, South Africa, the Comores and Nigeria. Women's organizations are campaigning to shift the stances of other States and the indication is that more States will ratify it. Some States have signed, but not yet ratified.

Most African states have adopted the Dakar (the regional meeting held in preparation of the Beijing Conference) and Beijing Platforms for Action, and embarked upon a regional process of creating mechanism for the eradication of gender discrimination. The AU opened space for the increased participation of women in decision-making structures on the national, sub-regional and regional levels. The AU Commission function on the basis of 50-50 gender parity and one in five members of the Pan-African Parliament is required to be a woman. The AU Women's Protocol contains articles on eradication of discrimination against women; women's right to dignity, life, integrity and security; the elimination of harmful practices; equal rights in marriages, separation, and divorce; access to justice and equal protection before the law; participation in political and decision-making processes; right to education, economic and social welfare and health, including reproductive rights; and right to protection in armed conflicts.

Heads of States in Africa also adopted a Declaration of Gender Equality in Africa in July 2004, which states their commitment to the various international instruments, as well as addresses areas of concern to women on the continent. These include women's access to land; their inheritance and property rights; their exclusion from decision-making in conflict resolution while conflicts disproportionately impact on them; the recruitment of girl children as soldiers and sex slaves; the strengthening of the gender machineries on national level with more human and financial resources; the high incidence of HIV/AIDS among women and the lack of state support, given that the burden of care for AIDS-affected people falls on women; and the adverse impact of gender inequality on economic growth in Africa.

7. ROLE OF NEPAD

The Heads of Governments represented in the AU adopted the New Economic Partnership for Africa's Development (NEPAD) in 2001. Because NEPAD's strategy is focused on sustainable development in eight priority areas:

- Peace and security
- Infrastructural development
- Human resource development
- Poverty alleviation
- HIV and AIDS and health
- Agriculture
- Science and technology
- Arts and culture

²⁰ 49th Session of the UN Commission on the Status of Women, New York, March 2005.

Each of focus area stresses that gender equality must be enhanced through the mechanism of the African Peer Review Mechanism's social development indicators. The NEPAD Secretariat has been involved in wide ranging consultations with regional women's networks since 2001 and climaxed at the Maputo NEPAD and Civil Society Organizations (CSOs) consultations in 2003²¹. These consultations culminated in the Elmina-Ghana, Dakar-Senegal, Libreville-Gabon and climaxed in Maputo-Mozambique. Their gender specific proposals were endorsed by Regional Workshops the African Women's Communication Network (FEMNET), in Nairobi, Kenya in October 2003, attended by African women representing over 40 countries. The consultation process called on NEPAD to put in place an institutional mechanism to respond to gender and civil society matters. The NEPAD Secretariat responded by instituting a Gender and CSOs Unit at the Secretariat to spearhead a gendering of NEPAD and the mobilization of CSOs participation in the NEPAD process.

The Gender and Civil Society Organizations Unit at the NEPAD Secretariat has been working on a framework for gender mainstreaming of NEPAD's policies, programmes and activities as well as ensuring effective participation of civil society in NEPAD's work. Thus, the main objective of the NEPAD Gender Task Force is to develop gender mainstreaming tools, guidelines and protocols, provide technical assistance to sectors, conduct gender audits of the institutional structures and carry out a comprehensive needs assessment of NEPAD priority sectors, programmes, and implementation mechanism in preparation on gender mainstreaming to be carried out in accordance with Africa Union/NEPAD Gender Policy²².

In a 2005 analysis of the implementation of the international gender instruments, Van der Westhuizen argues that despite all these noble intentions and declarations, many of the globe's women are worse off than a decade ago.²³ She notes that international research conducted by the Women's Environment and Development Organization and released at the Beijing+10 meeting in New York found that "government inaction has stalled progress on national implementation of global commitment". It was reported that not only have few countries dropped their reservations in terms of CEDAW but "explicitly discriminatory laws still remain in some cases.

Van der Westhuizen also maintains that this situation was confirmed at the preparatory African meeting for the Beijing+10, attended by ministers of women and gender affairs in Addis Ababa in October 2004. It was acknowledged that despite women's mobilization, advocacy and increased political representation at national and regional levels, the "normative gains" made are yet to manifest in "substantive changes in African women's lives. An indication of the difficulties faced in enacting such norms is in the (in) operation of national gender machineries in Africa, which is illustrated by the fact that only 22 African states responded to the review questionnaire on the implementation of the Beijing Platform²⁴.

²¹ Concept Paper for NEPAD Gender Task Force: Launching and Induction Workshop, Pretoria, South Africa, July 2005, page 3.

²² Concept Paper for NEPAD Gender Task Force, page 4.

²³ Christa van der Westhuizen, "Women's Empowerment in Africa: Still mired in Discriminatory Laws, Institute for Global Dialogue, Issue 49, May 2005

²⁴ Quoted in Van der Westhuizen. (These states are: Algeria, Botswana, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Cote d'Ivoire, Djibouti, Egypt, Ethiopia, Guinea, Kenya, Liberia, Mauritania, Malawi, Namibia, Sudan, Togo, Tunisia, Uganda, and Tanzania. South Africa did not respond the questionnaires but did supply the preliminary report as required by the Beijing Platform. SA had not handed in any of the four required yearly reports).

The persistence of unequal impact of poverty and conflict on women let the ministerial meeting to conclude that laws and policies per se will not bring about gender equity or respect for women's human rights. The ministerial meeting highlighted the following specific areas of concern as related to continued gender-specific violation of women and girls human, sexual and reproductive rights; the number of HIV infected and affected girls and women are still growing, giving the pandemic a "female face"; the 1 in 16 ratio of pregnancies in Sub-Saharan Africa end in maternal death; and the fact that Africa is the only developing region in the world where poverty has become exacerbated in the 1990's with women now constituting 70 percent of both the urban and rural poor in some countries²⁵.

Concerns of the Women's Environment and Development Organization (WEDO) are important for understanding the magnitude of the problems with implementation of the legal instruments²⁶.

- Except in sub-Saharan Africa and West Asia, universal enrolment in primary education for girls and boys by 2005 contained in the Beijing Platform and the MDGs will be achieved in all regions. Moreover, the rate of school dropout and illiteracy remain inordinately high for girls due to pregnancies and early marriage; higher level of education remain characterized by gender inequality; and the problem of gender stereotyping in school curricula and texts endures as few governments have taken corrective steps in this regard.
- The issue of access to land is of special significant to African women as they are the primary agricultural producers in Africa. While women sustain households and communities through the management of natural resources, they continue to lack land tenure or inheritance rights in many countries. Trends such as water privatization undermine their ability to own, use and conserve these resources and to provide for themselves and their families.
- The exploitation of "culture" and religion to propagate the "natural" status of women as primarily wives and mothers, and thereby mainlining a system of truncated rights for women.

Moreover, a report by the Expert Group Meeting that highlighted the achievements, gaps and challenges in linking the implementation of the Beijing Platform for Action and the Millennium Declaration and the Millennium Development Goals indicated that at "the bottom of the problem lies the enduring lack of commitment to gender equality among governments."²⁷ This is vividly illustrated in the country reports on the achievement of the MDGs, which in some cases omitted the goal on gender equality or failed to include gender issues in the assessment of other goals. The interpretation of the goal on gender equality has been restrictive and the integration of gender equality into other goals has been uneven.

²⁵ Van der Westhuizen

²⁶ Van der Westhuizen

²⁷ Quoted in van der Westhuizen, Expert Group Meeting, 2005, "Achievements, Gaps, and challenges in the linking the implementation of the Beijing Platform for Action and the Millennium Declaration and Millennium Development Goals," United National Division for the Advance of Women Department of Economic and Social Affairs. 18 February 2005.

8. KEY INTERNATIONAL AND LEGAL INSTRUMENTS RATIFIED BY SOUTH AFRICA²⁸:

- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): ratified without reservations in 1996, established a national gender machinery, and introduced legislation to address social, economic and political inequalities between men and women.
- Beijing Platform of Action: ensures the full implementation of the human rights of women and of girl children as integral to all human rights and fundamental freedoms.
- SADC Declaration on Gender and Development: Signed on 8 September 1997, the government committed itself, among other things, to ensuring equal representation of men and women at all levels of political decision-making.
- SADC Declaration on Violence Against Women and Children, signed in 1998

International instruments such as CEDAW, the African Charter on Human and People's rights, the Universal Declaration of Human Rights, and the Convention on the Rights of Children, have been disseminated to all public officials who have attended training on the Promotion of Equality and Prevention of Unfair Discrimination Act²⁹.

The South African Government has also disseminated and popularized the SADC Declaration on Gender and Development and its Addendum on the Prevention and Eradication of Violence Against Women and Children, since the commencement of the Campaign on 16 days of Activism Against Gender Violence in 1998. These documents were made available in the form of pamphlets, posters, newspaper supplements and the Internet.

The training of Gender Focal Points in government also incorporates the dissemination of CEDAW, BPA, Copenhagen Declaration and related international human rights instruments and a discussion on the interrelatedness of these instruments with regard to the achievement of the human rights of women.

International instruments such as CEDAW, the Constitution and other domestic policy instruments are reportedly disseminated regularly to the public. Some laws and policies are translated into official indigenous languages that are predominantly spoken in the provinces. Braille versions of key policy instruments with an impact on gender equality have been developed and disseminated.

9. PRACTICAL PERSPECTIVES: POLICIES, STRUCTURES, & PROGRAMS

Constitutional Guarantees and Implementation³⁰

²⁸ A Decade Under Review: Overview from 1999 to November 2003: Directors: Human Rights Programmes; Office on the Status of Women and Gender Equality, Western Cape Government, 2004.

²⁹ Beijing+10 Report: Draft Progress Report on the Implementation of the Beijing Platform for Action Plus 5 (BPA+5), The Presidency, Republic of South Africa, undated, p. 164

³⁰ Beijing+10 Report: Draft Progress Report on the Implementation of the Beijing Platform for Action Plus 5 (BPA+5), The Presidency, Republic of South Africa, undated, pp. 153-154.

The South African Constitution places non-racialism and non-sexism at the centre of the founding values of the Republic of South Africa. (Section 1 of the Republic of South Africa, 1996 (Act 108 of 1996)). The founding values also commit the South African democratic state to the protection of human dignity, achievement of equality and the advancement of human rights and freedoms. Section 9 of the Constitution guarantees the right to equality. In line with CEDAW particularly articles 1 and 4 thereof, the Constitution provides that: *“equality includes the equal enjoyment of all rights and freedoms. To achieve equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken”*. The constitutional vision of equality and non-discrimination which embraces both *de jure* and *de facto* equality as envisaged in CEDAW, informs key national transformational priorities such poverty eradication, development, restructuring of the economy and democratization of the state.

Thus, gender equality and the prohibition of sex and gender discrimination are constitutional guarantees. The constitutional commitment to the protection and promotion of equality includes the prohibition of direct and indirect discrimination on the basis of sex, gender and various other grounds or combination of grounds. The prohibited grounds are listed and unlisted grounds with the listed grounds covering race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth (section 9(3)).

Legislation on Equality and Non-discrimination

The Constitution provides that *“national legislation must be enacted to prevent and prohibit unfair discrimination,”* thus national legislation has been enacted to deal with the eradication of discrimination and the promotion of equality through positive measures in a holistic manner. The key pieces of legislation in this regard, are the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000); the Employment Equity Act, 1998 (no55 of 1998); and the National Health Act, 2004.

The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000) provides a comprehensive legal framework for the prevention and prohibition of discrimination, redress for discrimination, progressive eradication of discrimination and the promotion of equality. The Act also makes provision for enforcement mechanisms. The central feature of these mechanisms is the specialist Equality Courts that are based at the Magistrates Courts and High Courts.

The Employment Equity Act of 1998 prohibits unfair discrimination; institutes affirmative action measures; creates a Commission for Employment Equity, and outlines monitoring, enforcement, and legal proceedings for the violation thereof.

A key legislative measure since 2004 includes the National Health Act, 2004 that entrenches principles for promotion and the upliftment of women in South Africa³¹. This legislation builds upon the provisions of the Comprehensive HIV and AIDS Prevention, Care, Management and Treatment Plan for South Africa that was adopted in November 2003. The size of the program is evident from its financing which has increased from R342 million in

³¹ South Africa's Report to the AU Secretariat on the Implementation of the AU Heads of States' Solemn Declaration on Gender Equality in Africa, Addis Ababa, June 2006, p. 8

1994 to a projected R3.6 billion in the 2005/06 financial year. Elements of the Comprehensive Treatment Plan include a life skills programme; post exposure prophylaxis, prevention of Mother to Child transmission; femidoms (female condoms) and partnership programmes.

Implementation Mechanisms: Four Primary Structures for National Gender Machinery³²

In keeping with commitments made with the ratification of international legal instruments, its constitution, and national legislative acts that promote gender equity, the Republic South Africa has made steady progress towards the institutionalization of institutional mechanisms to create gender sensitive policy formulation at all levels of government. Emanating from the national government machinery, the framework for policy development for national departments was first laid out in Act 108 in the 1996 South African Constitution. Joy Watson, the primary researcher for gender equity within the SA Parliamentary Research Unit, states “the Constitution laid the basis for the repeal of many pieces of discriminatory legislation and for the introduction of progressive, rights-based legislation, which takes cognizance of gendered realities. Drawing on the definition of C. Albertyn from the University of the Western Cape Community Law Centre³³, Watson describes the national gender machinery as being responsible for the periodic reviewing of the changing conditions of women’s lives and for eradicating the factors that perpetuate women’s position of subordination. Its purpose is to ‘create a political, economic, legislative and judicial environment that enables women to enjoy, exercise and defend all their economic, social and political rights on an equal basis with men.

The role of the gender machinery serves as a basis to develop an overall policy vision, re-orientate existing policies and create new ones, promote the enactment of laws that will benefit women, monitor progress and assist with providing avenues of redress and enforcement. The South African national gender machinery comprises four structures:

- Office on the Status of Women, located in the executive
- Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women, located in the legislature
- Commission on Gender Equality, an independent statutory body; and
- Gender Focal Points, located in national and provincial government departments

Watson maintains that while there have been some significant achievements; there have also been areas in which there remains significant work to be done. The following discussion provides a review of the national gender machineries in terms of their purpose, policies, and programmes. Efforts to mainstream practices within these mechanisms are outlined in the next section.

³² Joy Watson, “Institutional Mechanisms that Promote Gender Equality, Parliamentary Research Unit, 2005/6

³³ Albertyn, C (1995) “National Machinery for Ensuring Gender Equality” in The Constitution of South Africa from a Gender Perspective, Liebenberg, S (ed), The Community Law Centre, UWC, Cape Town.

10. OFFICE ON THE STATUS OF WOMEN (OSW)

The Mission Statement of the OSW indicates that it was created to establish mechanisms and procedures that will advance Government towards gender equality. According to a report presented to UNDP by OSW³⁴, at the highest levels of government, the importance of gender equality has been underscored in public statements and official documents. The report indicates that five months after the Fourth World Conference in Beijing in September 1995, the Deputy President sent a request to all line ministries urging them to identify precise measures whereby they intended to honor its commitments made in Beijing.

OSW is located in the Office of the President with the mandate to support and monitor gender mainstreaming within government departments. The indicated central goal of the OSW is to ensure that the constitutional imperatives underpinning gender equality and supporting political commitments are translated into real and meaningful government programmes. OSW is intended to facilitate, advocate, and monitor the transformation of government into a non-sexist institution of state, in accordance with local and international norms and standards. Operationally, OSW is responsible for ensuring that government considers gender in all its policies, procedures and programmes; and that the government adheres to its commitments to gender equality that are spelled out in the South African Constitution as well as in the various local, regional and international proclamations³⁵.

In accordance with its mandate, the Office on the Status of Women, established in 1997, prepared a draft National Policy Document that laid the basis for the operationalization of gender equality provisions that were designed as corrective measures for gender-based imbalances. Coupling the provisions for non-sexism with non-racism, the burden was placed on government institution and civil society to develop non-discriminatory procedures and practices. Therefore, in 1997 the principal goal for South Africa was transformation, with the focus placed on de-racialization and engendering institutions at all levels of government.

The intent of the OSW structure, at both the national and provincial levels, is to contribute towards the national goals of gender equality, by working through the Gender Focal Points. The OSW is also tasked with working in concert with other structures of the National Machinery, particularly the Commission on Gender Equality (CGE). There are also now fully developed OSWs in each of South Africa's nine provinces where OSW works and monitors.

The OSW has 13 functions that can be categorized either as Policy Development, Advisory/Coordinating, or Operational.

- Its policy development functions include: advancing a National Women's Empowerment Policy and Prioritization of key concerns and initiation of policy and action-oriented research relevant to gender mainstreaming.
- OSW has enjoyed significant advisory and coordinating functions including: advising the President; liaising between non-governmental organization that deal with women's issues and the Presidency; liaising between international bodies, such as the United Nations, and the Presidency; providing a coordination mechanism for structures at the

³⁴ <http://undp.org.za/programs/GENDER/REPORTS/osw.htm>

³⁵ South Africa's National Policy Framework for Women's Empowerment and Gender Equality, Office on the Status of Women, The Presidency, 2000.

national, provincial and local government levels; and consulting and liaising with civil society.

- Critical operational functions include working with all ministries, provinces and all publicly funded bodies in mainstreaming gender into all policies and programmes; developing key indicators for measuring the national progression towards gender equality; arranging for training in gender analysis and gender sensitization; facilitating awareness raising and confidence building among women at all levels; acting as catalyst for affirmative acting with respect to gender; and initiating and promoting cross-sectoral action on cross-cutting issues such as violence against women; girl child and HIV/AIDS

A 1997 OSW report, list the following among its accomplishments³⁶:

- Production of a framework for activating the OSW mandate;
- Production of the first draft of the National Policy Document;
- Development of a National Plan of Action;
- Development of nine provincial plans;
- Standardization of approach among provincial OSWs;
- Development of a comprehensive Capacity Strategy;
- Development of a Gender Audit Framework;
- Administration of Gender Audit Surveys to all 27 Government Departments;
- Development of a Coordination Framework for the National Gender Programme;
- Develop a Framework for compiling the bi-annual Status of Women Report;
- Identification of clear areas of operation;
- Development of performance indicators for the national and provincial OSWs;
- Identification of priority cross-cutting programmes;
- Initiation of a Capacity Building process for provincial OSWs; and
- Evaluation of 3 years of operation through Strategic Planning Workshops with Provincial OSWs and National Gender Focal Points.

11. GENDER FOCAL POINTS

The cabinet memorandum on the role and functions of the OSW, establishes it as an integrated co-ordination framework, establishing Management Information Systems and a Gender Management System through the development of gender units and gender focal points within government departments. The intention is for the staff within those units to carry out functions in support of mainstreaming policies and programmes in their respective departments and for OSW to have an overview of the work being done. Most departments at the provincial and national levels have already taken steps to assign staff gender planning and monitoring functions; and some have actually established working mechanisms to address gender in their work. For most departments, provincially and nationally, the process of establishing a gender planning structure is still in the formative stages. The noted functions of Gender Focal Points are³⁷:

³⁶ <http://undp.org.za/programs/GENDER/REPORTS/osw.htm>

³⁷ South Africa's National Policy Framework for Women's Empowerment and Gender Equality, Office on the Status of Women, The Presidency, page 28.

- 1) To ensure that gender issues are routinely considered in strategic planning exercises;
- 2) To reflect gender considerations in departmental business plans and routinely report on them;
- 3) To review all policies, projects and programs for their gender implications;
- 4) To ensure that the department provides and uses gender disaggregated data in their work;
- 5) To coordinate gender training and education of all staff within departments to ensure that gender is integrated into all aspects of the work from the outset;
- 6) To review departmental policy and planning in line with the National Gender Policy Framework;
- 7) To ensure that each department implements the National Gender Policy
- 8) To monitor and evaluate departmental projects and programs; and
- 9) To establish mechanism to link up with civil society, in particular, to facilitate electoral organizations in the areas of their work.

Essentially, gender focal points are described most frequently as the gender desks/units in national and provincial government departments. Significantly, Gender Focal Points are responsible for all of the mainstreaming and monitoring of national policies and legislation and are located at both the national and provincial levels. Most national and provincial government departments have now established gender focal points. According to Rustin and Watson of the Parliamentary Research Unit³⁸, many are staffed with one person and in most the gender focal points have not been established as per the requirements of the National Policy Framework for Women’s Empowerment and Gender Equality. For example, many are not located in the Office of the Director General as recommended by the policy framework, which serves to undermine their capacity to act from a strategic point of intervention. Many lack resources to execute their mandate and some have been allocated responsibilities other than gender such as dealing with issues of disability. Implementation of mainstreaming activities is discussed under the next section.

12. COMMISSION ON GENDER EQUALITY (CGE)

Chapter 9 of the South African Constitution provides for the establishment of the Commission on Gender Equality. Section 187 of the Constitution specifically grants the CGE powers to promote respect for, and to protect, develop and attain gender equality. Its primary function is to monitor all policies and practices of all organizations, bodies and institutions in SA to ensure that they promote gender equality in their work.

The Constitution created the CGE as an independent, statutory with advisory, consultative, and research functions. It functions as a watchdog monitoring the policies and practices of the state, statutory bodies, public bodies and private institution. The Commission has investigative authority over government and civil society organizations as related to gender-related issues, can receive complaints, can summon persons to appear before it, and can mediate in the event of disputes. Thus, the Commission’s functional framework divides work into three areas of operation: Public Education and Information; Policy and Research, and Legal Intervention and Complaints³⁹.

³⁸Rustin, C and J Watson, J (2004) “Hearings held with the National and Provincial Gender Machinery”, Research Unit, Parliament of the RSA.

³⁹ Joy Watson, page 3

There are important differences between the OSW and the CGE. The OSW, whose main function is to develop policy, operates within government as a facilitating and coordinating structure for mainstreaming gender considerations into governmental policies and programs at the national, provincial, and local levels. On the other hand, the CGE works in partnership with various civil society structures and other organizations and is responsible for⁴⁰

- gathering information and conducting education on gender equality and the human rights of women
- monitoring and evaluating the policies and practices of state organs, statutory and public bodies, as well as the private sector, to promote gender equality
- evaluating Acts in force, or Acts proposed by Parliament, affecting or likely to affect gender-related and women's human rights
- investigating any gender-related complaints received or on its own initiative
- liaising with institutions, bodies or authorities with similar objectives
- conducting research to further the objectives of the CGE.

As an independent body reporting to Parliament and responsible for monitoring government and civil society, the CGE has become under increasing criticism. Because of internal strife and resource limitations, researchers have found that “the CGE has become insulated from civil society, closed to debate and engagement with external stakeholders, unwilling to espouse a more transformative feminist agenda and therefore unresponsive to the full range of key issues which impact upon gender equality and the lives of women in SA⁴¹.”

Although referred to in the above-mentioned report, as long on talk but short on delivery, the CGE can boast of the following accomplishments up through the end of March 2005. With most complaints handled telephonically or referred, others are conveyed personally for face-to-face intervention and are later referred to relevant institutions, the CGE had handled 429 cases. Of these, 189 were maintenance cases; 121 gender-based violence; 25 labor; eight culture, tradition and religion; 16 social security; 15 inheritance; 26 court processes; and 29 sexual harassment.

The CGE supports strategic interventions in litigation, with the aim of encouraging law reform and stands out in terms of the work that it has developed best practice guidelines for creating a culture of gender equality in the private sector⁴². These guidelines were drawn based on principles, values, and obligations contained in the South African Constitution, CEDAW, Beijing Platform of Action, Charter for Effective Equality, the Reconstruction and Development Programme, the Employment Equity Act and the Basic Conditions of Employment. This has been precipitated by the increased participation of women in the labor market and economic in general. The challenge is to ensure this leads to women’s economic empowerment and does not further exacerbate inequalities between women and men. The guidelines proposed in this document have been developed through an analysis of internationally accepted definitions of gender equality and gender mainstreaming. The stated objectives of the Gender Policy were to:

- 1) Serve as a tool and framework for enhancing gender equality in the private sector, particularly in the work place.
- 2) Enable business to integrate gender into key organizational practices

⁴⁰ South Africa’s National Policy Framework for Women’s Empowerment and Gender Equality, page, 30.

⁴¹ Lynley Donnelly and Fikile-Ntsikelelo Moyo, “Report Slams Gender Watch,” Mail & Guardian Online, 23 February 2007.

⁴² Commission on Gender Equality, Best Practice Guidelines for Creating a Culture of Gender Equality in the Private Sector, Johannesburg, South Africa. Undated.

- 3) Stimulate reflection; provide some direction and a drive to action.

The key goal of a Gender Policy is to provide a framework for mainstreaming gender equality for business leadership and management. Some of the target groups included: business leaders and policy makers; employment equity and affirmative action specialists; managers, especially Human Resource Managers; and Organizational Development specialists. The policy statement indicates that the guidelines were⁴ not meant to be prescriptive but a means to provide a descriptive checklist. The aim was to provide a guideline for businesses to integrate their own vision, goals and circumstances so that they could become more adept and competent in gender mainstreaming. As such much of the policy relates to methods for addressing discrimination in recruitment, remuneration, inflexible working conditions as well as insufficient services such as childcare and how these can restrict employment and advancement opportunities for women.

Along with the CGE are other independent statutory bodies that complement its work, included are: the Human Rights Commission, the Independent Electoral Commission; the Public Protector; the Public Service Commission; the Youth Commission; the Land Commission and the South African Law Commission⁴³.

13. JOINT MONITORING COMMITTEE ON THE IMPROVEMENT OF THE QUALITY OF LIFE & STATUS OF WOMEN

Parliament's central role to play in guaranteeing women's empowerment and gender equality rest with the Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women (hereafter referred to as the Joint Monitoring Committee). The Mission of the Joint Monitoring Committee is to monitor and evaluate progress with regard to the improvement in the quality of life and status of women in South Africa, with specific reference to the Government's commitments towards the implementation of the Beijing Platform for Action the Convention on the Elimination of Discrimination against Women; and) to any other applicable international instruments e.g. SADC Declaration on Gender and Development⁴⁴. The specifically stated monitoring objectives are to:

- 1) monitor and ensure that gender sensitive policies and programmes are implemented in all ministries and departments;
- 2) monitor all legislation including the Budget for compliance with the Beijing Platform for Action and CEDAW; and
- 3) to monitor all ministries and departments in the Republic of South Africa to ensure they have mainstreamed gender in all their programmes and budgets

Having initially operated as an ad hoc committee, the Parliamentary Joint Monitoring, Joy Watson maintained that the work of the Committee has provided the space for women Members of Parliament to communicate with women's organizations and also provides a platform to place gender issues on the national agenda as the Committee has invited women to debate obstacles that impede the implementation of legislation⁴⁵. For example, the Committee

⁴³ National Policy Framework on Women's Empowerment and Gender Equality, page 30.

⁴⁴ Joint Monitoring Committee, Quarterly Report and Appropriations Report, 6 June 2006.

⁴⁵ Joy Watson, "Institutional Mechanisms that Promote Gender Equality, Parliamentary Research Unit, 2005/6. p. 4.

has hosted several public hearings to review the implementation of the Domestic Violence Act, the Maintenance Act and customary law with respect to issues of inheritance and succession. The Committee has prioritized socially vulnerable groups that are rendered voiceless because of their socio-economic status. Their main target group is therefore poor women, particularly rural women.

Former Member of Parliament Pregs Govender⁴⁶, the first Joint Monitoring Committee Chairwoman, has indicated that there has been serious resource constraints, however, the Committee has been instrumental in shaping a number of gender-based legislation including: the Domestic Violence Act; the Maintenance Act; the Recognition of Customary Marriages Act; the Skills Development Act; and the Employment Equity Act. The Committee has been successful ensuring that a sexual harassment code was incorporated into the Labour Relations Act; the Job Summit targeted employment creation for women; and has consistently engaged with the Finance Ministry on the need to engender the country's macro-economic policy and national budget. The Committee has held several public hearings to consult with women on issues related to legislative reform. In 2001, for example, it hosted public hearings on violence against women and HIV/ AIDS.

14. GENDER MAINSTREAMING ACTIVITIES & THE IMPLEMENTATION OF THE NATIONAL GENDER POLICY FRAMEWORK

The four structures that make up the South African National Gender Machinery were created to be complementary, therefore this presentation takes into consideration the integration of the purposes, policies, and practices of mainstreaming activities. Civil Society plays a role, however, within civil society gender coordination remains a challenge as there is no umbrella body at the national level coordinating women's or gender-issue. According to South Africa's Report to the AU Secretariat, currently there are over sixty (60) NGO's participating in the National Gender Machinery meetings⁴⁷. The report indicates that the strongest and most organized sector among the NGOs is those working in the areas of gender-based violence. However, even these NGOs do not have a coordination point. Civil society organizations that attend national gender machinery meetings are noted in the report as comprising national NOGS, community-based organization, faith-based organizations, trade unions and women's groups of political parties.

At the centre of the mainstreaming processes is the Office on the Status of Women (OSW) who has adopted an integrated and coordinated method of operation. Since the OSW does not consider itself a service delivery office, it is able to work closely and collaboratively with all provincial departments. The OSW has adopted a gender mainstreaming strategy to ensure the integration and inclusion of female empowerment and Gender Equality issues in the day-to-day business of national and provincial government departments. OSW defines "Mainstreaming" in this context refers to the organization or re-organization, improvement, development and evaluation of policy processes, practices, procedures, programmes and budgets so that an equality perspective is incorporated in all policies at all levels and at all stages by the people normally involved in policy making. The OSW gives effect to the above

⁴⁶ Govender, Pregs, "Government Budgets and Gender" Speech before Parliament, September 2005.

⁴⁷ Office on the Status of Women, South Africa' Report to the AU Secretariat on the Implementation of the AU Heads of States' Solemn Declaration on Gender Equality in Africa, June 2006, p.6.

strategy through interaction with all line function department. It does this by creating the environment for engendered service delivery and the inclusion of gender consideration into all policies, practices, processes, budgets, programmes and projects. Secondly, it interacts with external gender-based civil society role-players to foster and enhance working relationships and to ensure needs-based gender equality interventions.

The Gender Policy document refers to gender mainstreaming as a process that is goal oriented and “that recognizes that most institutions consciously and unconsciously serve the interests of men⁴⁸”. The Gender Policy thus encourages institutions to embrace a gender perspective in transforming themselves. It also promotes the full participation of women in decision-making so that women’s needs move from the periphery to the centre of development planning and resource allocation.

The Gender Policy emphasizes that gender equality is the responsibility of all institutions of Government and gender mainstreaming makes this possible. This is essentially the task of structures of the National Machinery as well as individual Government Departments at a national, provincial and local level.

The Gender Policy document outlines three main areas of intervention that Government Departments can make in gender mainstreaming. These interventions relate to external and internal gender transformation encompassing the following:

- Promoting women’s empowerment and gender equality in their service provision (external transformation).
- Raising public awareness about gender in their interactions with clients and stakeholders in the private and community sectors (internal and external transformation).
- Promoting women’s empowerment and gender equality in their internal employment policies and practices (internal transformation).

One of the first exercises conducted by the Joint Monitoring Committee to begin the process of gauging the level of mainstreaming, or the success of the OSW in the execution of its mandate was to conduct of hearings in November 2003 to evaluate the level of success in carrying out the State’s obligations to the Beijing Platform for Action and other international instruments. The JMC invited the national and provincial Office on the Status of Women to discuss their structure; status of GFPs in the provinces; programmes and budgets, and impact and monitoring of the programmes. The national Gender Focal Points (GFPs) were requested to provide an overview of the GFP in the Department, including lines of reporting and to discuss its programmes and related budgets⁴⁹.

Altogether the national OSW, 7 provincial OSWs⁵⁰ and 28 GFPS participated in the hearings, by way of either oral presentation and/or written submission.

Analysis of the results of these hearings revealed a combination of challenges that required greater attention by the Committee.⁵¹ OSWs had been established in all provinces that

⁴⁸ South Africa’s National Policy Framework for Women’s Empowerment and Gender Equality, 2000, p. xvii

⁴⁹ Report by the Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women, Hearings held with the National and Provincial Gender Machinery on 21 November 2003, February, 2004. Report compiled by Ms. Carmine Rustin and Ms. Joy Watson of the Information Services Section, Research Unit, Parliament of South Africa

⁵⁰ Eastern Cape, Free State, KwaZulu-Natal, Gauteng, Mpumalanga, North West and the Western Cape.

reported at the hearings, with the exception of Gauteng. In Gauteng, the Social Development Directorate performs this function and a Gender/HIV programme is currently being established in the Directorate. The number of staff in the OSWs ranged from 1 to 12. Most of the Heads of the OSWs, with the exception of Mpumalanga, are appointed at deputy director level and not in the position of director as is recommended by South Africa's National Policy Framework for Women's Empowerment and Gender Equality (hereinafter Gender Policy).

While very little information was available on the budgets of the OSWs, in some instances, OSWs reported budgetary constraints. The report indicates that provincial gender policies have been developed in Gauteng and draft policies in KwaZulu-Natal and the Western Cape. Gender action plans are in operation in Gauteng, and KwaZulu-Natal is in the process of developing one. In 2003, only 3 provinces indicated that gender-mainstreaming policies have been developed. Information on programmes undertaken by OSWs was sketchy. Some of the programmes that were, however, underway in some OSWs include programmes focusing on capacity building, policy development and analysis, gender machinery and coordination and planning.

Nationally, most of the Departments have established GFPs, with many reporting that GFPs are staffed with 1 person and some reporting that 3 or more persons staff them. In most cases, GFPs are not located in the Office of the Director-General and is instead located elsewhere in the Departments, with the Human Resources section being a popular site of location. In addition, most GFP coordinators are appointed at deputy director or even assistant director level. It is noted that some GFPs also have responsibilities other than gender. Furthermore, a number of Departments raised the lack of resources as one of the greatest impediments to the effective implementation of their work.

Less than half of the Departments reported that they are involved in policy development to promote gender equity. In addition, very few Departments have developed a gender policy that defines the organizational framework within which gender equity will be promoted. In addition, very few Departments indicated their role in embarking on a gender mainstreaming strategy in Departments. The implication of this is that Government policy for furthering gender equity is adversely affected as guiding policies and concrete gender mainstreaming strategies constitute the foundation upon which gender-related work should be framed.

With regard to programmes, many Departments focused on the internal projects and programmes that they were implementing, such as employment equity issues, recruitment and selection practices and internal policies. Many Departments made little or no mention of programmatic work done externally. Where external work was being done, it was largely centered around the commemoration of calendar events such as National Women's Day and the 16 Days of Activism on No Violence Against Women. This was viewed as very problematic, as a comprehensive programme of action needs to encompass far more than this.

Generally, information pertaining to the status of provincial GFPs was insufficient and this limits the analysis with regard to provincial GFPs. Many Departments in the Eastern Cape and Western Cape have established GFPs, while the situation in the North West and Mpumalanga was a concern. Information on this matter is unclear for other provinces. The location of GFPs varies, with many being located in the Human Resources sections. In

⁵¹ Report by the Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women, Hearings held with the National and Provincial Gender Machinery on 21 November 2003, February, 2004.

addition, the rank of GFP coordinators also varies, with most being appointed at assistant director level. The implication of this is that most co-ordinators are not equipped with the skills and commensurate level of experience as envisaged by the National Policy Framework for Women's Empowerment and Gender Equality.

While information pertaining to budgets was not available for GFPs in most provinces, 2 provincial OSWs reported that dedicated budgets are available in some Departments in those provinces. With regard to programmes undertaken by GFPs, most of the programmes reported on pertained to external work.

15. JMC RECOMMENDATIONS

Some very specific recommendations, as well as some generic recommendations, were made to the different gender machineries. One of the most important recommendations by the JMC is the need for additional information from all parties that made submissions to the hearings. This would allow the JMC to fill the gaps and make a comprehensive assessment of the national and provincial gender machinery structures.

Another generic recommendation was for structures to be established and resourced in accordance with the National Gender Policy, so as to allow them to fulfill the functions assigned to them. There is a further need to establish the skills level of some of the persons appointed in the OSWs and GFPs and if necessary, to provide them with the necessary training that will enable them to fulfill their functions in their respective positions or operate at a more senior level.

In November 2003, the OSW undertook its 3rd Audit on the status of GFPs in national Departments. Twenty-two Departments responded to the questionnaire distributed by the OSW. The results indicated the following:

- Of the departments that responded, 31.8% (7) have GFPs at the director level, which is the level mandated by the Gender Policy.
- Six of the Departments reported that their GFPs were at deputy director level and 4 GFPs were appointed at assistant director level.
- The understanding of the structure of GFPs varied. In 15 departments, the GFP referred to an individual and in 9 departments, the GFP referred to a unit.
- Only 9 Departments have formally appointed GFPs. In these instances, the person's performance contract refers to their function as that of a GFP, but only 6 Departments assess them on GFP work.
- The GFPs are responsible for work other than gender related functions. Only 6 Departments perform GFP functions exclusively, whilst GFPs in 2 Departments perform 3 functions or less, and in 14 Departments they perform 4 or more functions, over and above their gender functions.

16. KEY CHALLENGES FACING THE GENDER MACHINERY

The November 2003 hearings were instrumental in outlining a number of critical challenges that impede the work of these structures⁵². These challenges include the following:

- Most of the heads of the OSWs, with the exception of one province, have been appointed at a Deputy Director level and not in the position of Director as is recommended by South Africa's National Policy Framework for Women's Empowerment and Gender Equality.
- Very little information has been gleaned on the budgets of OSWs, but in some instances, OSWs have reported on budgetary constraints.
- Not all provincial OSWs have developed gender action plans and gender mainstreaming policies.
- Although most government departments have established gender focal points, many are staffed with one person. In most cases, GFPs are not located in the Office of the Director-General and is instead located elsewhere in the Departments, with the Human Resources section being a popular site of location. In addition, most GFP coordinators are appointed at deputy director or even assistant director level.
- Some GFPs have been allocated responsibilities other than gender.
- A number of GFPs raised the lack of resources as one of the greatest impediments to the effective implementation of their work.
- Less than half of the GFPs reported that they are involved in policy development to promote gender equity. In addition, very few departments have developed a gender policy that defines the organizational framework within which gender equity will be promoted.
- Very few GFPs indicated that they play a role in embarking on a gender mainstreaming strategy in departments.
- Many GFPs have reported that the internal projects and programmes that they are implementing entail work on issues such as employment equity issues, recruitment and selection practices and internal policies. Many departments make little or no mention of programmatic work done externally. Where external work is being done, this is largely centered around the commemoration of calendar events such as National Women's Day and the 16 Days of Activism on No Violence Against Women. This is problematic, as a comprehensive programme of action needs to encompass far more than this.
- The location of GFPs varies, with many being located in the Human Resources sections. In addition, the rank of GFP coordinators also varies, with most being appointed at assistant director level. The implication of this is that most co-ordinators

⁵² Joy Watson, p.6

are not equipped with the skills and commensurate level of experience as envisaged by the National Policy Framework for Women's Empowerment and Gender Equality.

17. MAINSTREAMING NATIONAL LEGISLATION IN SOUTH AFRICA AT THE PROVINCIAL LEVEL

The October 2005 Report of the Joint Monitoring Committee on Improvement of Quality of Life and Status of Women on Province highlights the study tours conducted in three provinces⁵³ in order to conduct an analysis and assess the level of implementation of the Domestic Violence Act and Maintenance Act⁵⁴. The multiparty delegation included members of the Executive, departmental officials, mayors of local municipalities, magistrates, prosecutors, the SA Police Service, NGOs, and civil society. Specifically, the provincial hearings were to determine the level of implementation, problems and make recommendation for successful implementation of the Acts. The delegation was primarily concerned with an assessment of the implementation of the National Gender Machinery including the Provincial OSWs, Gender Focal Points and the Director-General in the Premiers Offices.

Specifically, the Domestic Violence Act of 1998 affords the victims of domestic violence the maximum protection from domestic abuse that the law can provide; and to introduce measures which seek to ensure that the relevant organs of state give full effect to the provisions of this Act, and thereby to convey that the State is committed to the elimination of domestic violence⁵⁵.

The Maintenance Act of 1998, an amendment to the 1963 Act, was legislated in order to give high priority to the rights of children. to their survival and to their protection and development and to honor its commitment with the signing of the World Declaration on the Survival Protection and Development of Children, agreed to at New York on 30 September 1990. and its accession on 16 June 1995 to the Convention on the Rights of the Child, signed at New York on 20 November 1989. This Convention, which is very important to gender equality, requires States Parties to recognize the right of every child to a standard of living which is adequate for the child's physical, mental, spiritual, moral and social development and to take all appropriate measures in order to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child⁵⁶.

The output of the study tours by the JMC was a report with recommendations towards ensuring that women access their rights in terms of CEDAW and the BPFA. Noting that an understanding of the specific challenges facing women in South Africa is intrinsic to proper implementation and mainstreaming of the National Gender Policy, the 2005 Report list the following challenges facing women in South Africa⁵⁷

⁵³ Eastern Cape, Gauteng, and KwaZuluNatal

⁵⁴ Republic of South Africa, Parliament, Announcements, Tablings and Committee Reports No. 62, 1 June 2006.

⁵⁵ Republic of South Africa, Government Gazette, No. 19537, Domestic Violence Act No. 116 of 1998, 2 December 1998.

⁵⁶ Republic of South Africa, Government Gazette, No.1534, Maintenance Act No. 99 of 1998. 27 November 1998

⁵⁷ Report of the Joint Monitoring Committee on Improvement of Quality of Life and Status of Women on Provincial Visit to Eastern Cape, Gauteng, and KZN Provinces (October 2005), with focus on Domestic Violence and Maintenance Act, Committee Reports, National Assembly and National Council of Provinces, Announcements, Tablings, and Committee Reports, No. 62, 1 June 2006.,pp.971-974.

Perception of gender issues: It seems that there is a perception that domestic violence and maintenance are women's issues. Even though the legislation was promulgated in 1998, the nature of the problems experienced by the State, and by women in general, is rooted in constructions of power between males and females in society.

Resources: In the case of the State, magistrates, prosecutors and South African Police Service (SAPS) raised the lack of adequate resources and training as a key obstacle to successfully implementing the law (in the case of the Domestic Violence and Maintenance Acts). To make matters more challenging, women are expected to decipher a complex web of interrelations between the SAPS, prosecutors, magistrates, and courts within the criminal justice system. Rural women must travel great distances, as support systems are not close to them. It was clear from responses by the magistrates, prosecutors and SAPS, that women in situations of domestic violence has little recourse to safe havens, as these do not exist in some areas.

Attitudes towards Violence against Women: In the majority of cases, attitudes of State employees were regarded as a major stumbling block for women. Civil society reflected on the inadequate support available to mostly rural women.

Empowerment through training: There is a lack of understanding of the Acts and it was suggested that the Domestic Violence Act and the Maintenance Act should be included in the curriculum at secondary schools and in training programmes for magistrates, SA Police Service and prosecutors. However, the delegation discovered that people are not well informed about their content of CEDAW and the African Charter and that there is an enormous need for the kind of information and education programmes that the CGE must develop, conduct and manage to foster public understanding. The crucial role of the Commission for Gender Equality (CGE) in expanding their training programmes to ensure that there is information sharing and empowerment was recognized.

Representation on the NGM: It was stated that there is a need for SA Local Government Association to be represented in the National Gender Machinery. At the time of the visit provinces and local authorities had Special Projects Units, which cover Women, Children, the Disabled and Older Persons. The challenge, it was found, was to elevate Women from Special Projects to full projects.

Gender Focal Points (GFPs): Few GFPs were found to be up and running in Departments (at Provincial and Local levels).

National competencies and reporting at provincial level: An issue pertaining to Home Affairs as a national competence highlighted a gap in the legislation, as it is silent on reporting with departments at provincial level.

Independent Complaints Directorate (ICD): It was suggested that complaints about SAPS must be directed to the ICD. The ICD is increasingly finding that magistrates and prosecutors are calling the on ICD to intervene in cases of SAPS not complying with the Domestic Violence Act.

Essentially, the October 2005 Report found that the structures, namely, the OSW and the Gender Focal Points (GFPs) were not consolidated within the provincial structures, or in departments. There was even less evidence of these structures at the local Government level.

This dissonance found in the three provinces seems due to a lack of common understanding about the role and function of the OSW in the provinces and the GFPs in Departments.

A recommendation of the national OSW was that all provincial OSWs be headed by a staff member at the level of chief executive officer (CEO). None of the provinces visited had an OSW official at management level. In addition, the national OSW recommended that the office be staffed by at least 4 people per province. This was not found to be the case in any of the provinces visited. The Committee was requested to assist in an information exchange between the provinces as it was felt that the impact of the legislation had not been felt. It was also felt that input was required from communities. In addition, participants felt that there was a need to share success stories.

18. JUNE 2006 APPROPRIATIONS REVIEW⁵⁸

In response to a Joint Monitoring Committee review that took place between January and April 2006, the Committee Chairperson, MP M R Morutoa, indicated that the Committee was pleased about Parliaments' intensified focus on Budgetary oversight and the Equality Review Campaign that would review progress in the implementation of equality legislation; inform and education the public about equality legislation, and then devise a mechanism of accelerating the implementation of equality legislation. The chairperson noted that during the 2005 study tours and 2003 public hearings, it had become very clear that ordinary people as well as government officials need much more education about their rights and responsibilities. She then drew attention to the complacency within some government departments, both national and provincial, therefore indicating support for renewed education projects about the Constitution and equality legislation aimed at government officials and civil society. The full report to parliament includes a memorandum received about protecting women's rights in relation to gender-based violence; recommendations to enhance communications strategies and integrated data systems, and recommendations from a number of government agencies including the Department of public service and Administration, Statistics SA, Department of Communications, and SA Broadcasting Corporation.

The November 2006 Report highlights the considerations of the Joint Monitoring Committee on the 2006 Appropriation Bill and the associated budget votes, then reported on its deliberations that were reported on 6 June 2006. The Joint Monitoring Committee has over the years consistently focused its attention on the three issues of poverty, gender-based violence, and HIV/AIDS. The reports notes that the JMC achievements in respect of gender equality at the top end of the political and economic arenas in our country. In both the public and private spheres, South Africa does much better than average in having women in powerful positions. Indeed, we have reached the point where it is no longer something to remark on that a chief executive officer or a Minister or a director-general is a woman.

At the bottom end of these arenas, however, there is still much room for improvement. The Committee's comments therefore focus on what the 2006/07 Budget of national Government says in the areas of poverty, gender-based violence and HIV/AIDS. Each of these issues is a major topic in itself, and our comments can therefore not cover all aspects. However, we highlight some of the aspects about which we have concerns.

⁵⁸Joint Monitoring Committee Quarterly Report and Appropriations Bill, Announcements, Tablings, and Committee Reports, No, 64, 6 June 2003

The JMC commended the Treasury and the individual departments on the amount of information that is provided in South African Budget books and felt fortunate compared with many other countries in having a programme-by-programme narrative alongside the Budget figures. This has been taking place for seven years, allowing the JMC to see patterns over time. The JMC also noted in its report that it was also fortunate in having information on objectives and targets and indicators. Perhaps unfortunately for Government, this information makes us hungry for more! It is the Committee's opinion that the potential of this Budget format is currently not being fully utilized. In particular, we would like to see better use made of the targets and indicators as these are a concrete tool that Parliament and civil society can use to monitor Government's achievements.

JMC Review on Poverty: The Expanded Public Works Programme (EPWP) is a flagship programme for South Africa in terms of directly addressing poverty. The EPWP was introduced in 2003, as an expansion of activities previously funded through poverty alleviation funding. One of the changes announced in 2003 was that the scope of the activities covered by Public Works would be expanded. In particular, EPWP would now also include the social sector activities of home- and community-based care (HCBC) and early childhood development (ECD), alongside physical infrastructure activities on which Public Works traditionally focus.

Having public works in home- and community-based care (HCBC) and early childhood development (ECD) is an extremely innovative idea. Perhaps South Africa is the first country to attempt to do this. It is an idea that is welcome from a gender perspective. Firstly, it is innovative to recognize that caring services can also produce a type of infrastructure – an infrastructure that is called healthier people. Secondly, HCBC and ECD are areas of work in which women traditionally predominate, unlike the building of physical infrastructure which is the traditional focus of Public Works. In the latter area, South Africa instituted a quota to ensure that women – who predominate among the poor – could benefit in proportion to their relative need. This quota has not, however, always been observed. Thirdly, HCBC and ECD are types of work that are often done for no pay, and their inclusion in the Expanded Public Works Programme (EPWP) affords some recognition that these activities constitute real, productive work.

The JMC expressed several concerns about the social sector EPWP programme. Firstly, the programme will focus on learnerships rather than on payment to people who are going this work in an ongoing way. If this is the case, the programme will not be especially useful to the many poor women who already have the necessary skills for this work, but are providing the services for free both in their own homes and to others in the community. A focus on learnerships also does not acknowledge that there is a huge ongoing need for both types of services – and a need that is growing in respect of home- and community-based care (HCBC). Women cannot be expected to continue to provide these services for free simply because they are given a few months training during which time they receive a limited stipend.

Secondly – and even more importantly – it seems that implementation of the social sector EPWP has not yet happened. As noted, the EPWP was introduced in early 2003. Yet, in 2006, it seems that the home- and community-based care (HCBC) and early childhood development (ECD) are still only at the planning stage. In his budget vote speech on 17 May the honourable Minister of Social Development stated that R4, 2 billion had been set aside for the social sector EPWP programme. He added that, with the support of the Business Trust, the

sector had 'identified the critical path for implementation' and 'begun to address the capacity and project management deficits' which had been identified. The Joint Monitoring Committee is very concerned that three years after the social sector EPWP was announced, this important activity is still only at the planning stage. The Estimates of National Expenditure state that the Department of Social Development plans to train 5 800 caregivers during this budget year. This is too little too late.

Another poverty-related issue revolves around divorce and maintenance. When marriages split up, women are often left in a precarious position economically. This is so because men tend to earn more than women, because men are more likely to be employed than women, and because women's household responsibilities limit the time and energy they can devote to income earning. In addition, the dwelling in which families live is generally registered in the man's name despite the fact that after divorce the children generally stay with the woman. This places even greater burdens on the woman's time and greatly limits on her ability to earn income. The many women in South Africa who bear children outside marriage face the same impossible burden as those who are divorced and separated.

As indicated in the JMC Report, research commissioned two years ago by the Commission on Gender Equality (CGE) found that the average amount of maintenance per child awarded to women who were persistent and lucky enough to get such an award was only R200 per month. Meanwhile the men concerned were earning an average of nearly R3 000 per month. The Department of Justice and Constitutional Development's Annual Report for 2004/05 acknowledges that even the specialist Family Courts are not able to deliver a satisfactory service in respect of maintenance. The situation in ordinary courts will be even worse. Given these difficulties, the JMC was pleased to see in the Department's Annual Report for 2004/05 that Child Maintenance is regarded as one of the Department's flagship projects. The JMC was pleased to see in the pages of this year's Estimates of National Expenditure relating to the Department of Justice that the Legal Aid Board has named women involved in divorces, maintenance and domestic violence as a priority group.

It was hoped that future reports would provide the actual numbers of women in this situation who have been assisted by the Board. This would be a useful way to utilize the potential of the targets and indicators of our performance budgeting format. Also promising was the restructuring of the Office of the Master of the High Court so that the rulings in the Moseneke and Bhe judgments on Black deceased estates can be properly implemented. The Moseneke issue is also one of the Department's flagship projects, and we therefore hope to see good progress on this, and that this progress will be reflected in the budget documents and annual reports.

The JMC was, however, concerned that the 2006 Budget did not seem to say anything about maintenance investigators and prosecutors. Last year's Budget reported that the appointment of 82 investigators and 100 clerks for maintenance and domestic violence courts had helped improve the system. Despite these improvements, the JMC was well aware that women who approach the courts are still facing major obstacles. The Department of Justice's Annual Report for 2004/05 says that 140 investigators would be in place by the end of 2004/05, and that they would be employed as permanent civil servants rather than – as in the past – as contract staff. The Annual Report also says that the Department has 'prioritized funds' for the appointment of maintenance investigators at the ordinary and Family Courts. The Committee is concerned that the 2006/07 Budget book does not say anything about maintenance

investigators. Without this information it is difficult to monitor if commitments are being carried through.

JMC Review on Violence against women: The Department of Justice and Constitutional Development has a major role to play in respect of gender-based violence. Unfortunately, the Department's Vote in the Estimates of National Expenditure says almost nothing on this topic. The one area related to gender-based violence in which there is an exact number relates to the sexual offences courts. The 2006 Estimates of National Expenditure state that 70 such courts had been established by August 2005, and another 30 would have been established by March 2006. While this was welcomed, the JMC needed more information. Last year's Budget book said that 52 sexual offences courts had been established, but only 52 of these met minimum requirements. Do all 70 courts established by August 2005 meet the minimum requirements? And will the 30 established by March 2006 also meet them? The JMC would also like more information about the sexual offences courts. In particular, we need to know how many cases they are dealing with in respect of children, and how many cases in respect of adult women.

The Committee noted that the Department has set itself a target of a 70% conviction rate in sexual offences courts. This is lower than the target set for all other courts. The Annual Report for 2004/05 states that the conviction rate for the sexual offences courts was 63%. The conviction rate for sexual offences in other courts was only 47%. This means that more than half of cases of the women and children who are not fortunate enough to land up in a specialized court do not result in conviction. These rates are very worrying as there are many more women and children who do not report the violence that they experience in the first place. Low conviction rates increase the chances that they will not consider it worth the trouble to report in the first place.

The significant difference in conviction rates for the sexual offences courts is particularly worrying given recent announcements that the specialist courts are to be abandoned. The JMC is concerned that when available indicators provide strong evidence of the effectiveness of a particular strategy, Government is planning to abandon that strategy. We urge that this decision be reconsidered.

19. JMC REVIEW of HIV/AIDS

Our third special area of interest is HIV/AIDS. This issue is particularly burdensome for women for a number of reasons. Firstly, because of both biological and sociological reasons, women are more vulnerable than men to infection, and are likely to be infected at a young age. Secondly, women and girls tend to predominate among those who care for others in the household and community who are ill. Women are thus both more infected and more affected by HIV/AIDS than men.

In terms of HIV/AIDS, the JMC again referred to the issue of HCBC. Until now, there has been a national conditional grant that has provided money to provinces in respect of home- and community-based care (HCBC). That grant has now come to an end, and provinces are expected to provide for these services in their own budgets. The JMC is not confident that this will happen across all provinces. Government has twice in the past had a bad experience in terms of conditional grants in respect of early childhood development (ECD) which, when

they came to an end, were not adequately replaced by funding from the provinces. The Committee fears that this will again happen in respect of HCBC. The Committee would therefore like information on what the national Government is planning to do to ensure that the careers and those for whom they provide care will not suffer. Our concern is especially acute given the lack of progress in implementing the EPWP in the social sector mentioned above.

There are many other issues that the JMC could raise in respect of the three issues of poverty, gender-based violence and HIV/AIDS. However, the Joint Monitoring Committee offers these examples in the hope that they will assist Government departments in understanding what is required by Parliament. If these and similar improvements can be effected, it will also assist Parliament in better fulfilling its mandate of oversight.

20. JMC REVIEW OF THE IMPLEMENTATION OF NATIONAL GENDER FRAMEWORK IN PROVINCIAL OSWs AND IN LOCAL GOVERNMENT DEPARTMENTS⁵⁹

Following its commitment to both the Convention on the Elimination of all forms of Discrimination (CEDAW and the Beijing Platform of Action, the South African Government committed itself to taking these commitments forward in the form of the Millennium Development Goals. National Departments, other government role-players, and provinces are expected to report regularly on the achievement of the Gender Policy Objectives.

The August 2005 hearings of the Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women became imperative in order to evaluate and review how the government has worked towards the goal of gender equality, examining the stated aims of government departments and, the budgets they are allocated, relevant policy and legislation that has been process and the extend to which transformation has taken place at different levels. As such, in 2005, hearings were held within the Department of Provincial and Local Government, the South African Local Government Association, provincial Offices on the Status of Women and provincial gender focal points for local government. The hearings focused on four main aspects⁶⁰: 1) to assess achievements towards the CEDAW and BPFA objectives; 2) to obtain an overview of the various practices; 3) identify areas of concern, and to assess implementation of legislation and policies, identification of weaknesses and blockages, and 4) make recommendations for improvements.

The JMCs review coincided with the Millennium Development Goals + Review, offering an opportunity for greater coherence and focus on equality and empowerment of women across all MDGs. Similarly, the Beijing +10 process was about accountability for the delivery of existing commitments to ensure gender equality and women's empowerment. Moreover, it was important for the JMC to ensure that the process of improving quality of life and status of women continues to focus on programs and priorities that remain coherent and coordinated

⁵⁹ Report by the Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women, "Evaluation of the Implementation of the National Gender Policy Framework in Offices on the Status of Women and in Local Government Departments, November 2006

⁶⁰ "Evaluation of the Implementation of the National Gender Policy Framework in Offices on the Status of Women and in Local Government Departments, Report of the Joint Monitoring Committee on the Improvement of Quality and Status of Women, SA Parliament, November, 2006.

between the different levels of government so as to guarantee equality in the allocation of sufficient human and material resources.

The hearings that formed a basis for the JMC November 2006 report emanated from the August 2005 hearings to which the Department of Provincial and Local Government (DPLG), the South African Local Government Association (SALGA), provincial Offices on the Status of Women and provincial local government gender focal points were invited to provide information on four main aspects:

- An assessment of departmental programmes nationally, provincially and locally aimed at achieving the objectives of CEDAW and the BPFA.
- An overview of the different practices in each local government department or Office on the Status of Women with reference to government policy, international commitments and the Constitution.
- Identification of areas of concern.
- An assessment of the implementation of legislation and policies, identification of weaknesses and blockages, and recommendations for improvements.

With the DPLG and SALGA and there was provincial participation from local OSWs and eight provincial gender focal points for local government. The JMC made a general observation that the quality of information provided was not of very high standard and that the Committee would need to be more prescriptive with regards to the level and format of the information provided in order to fill the gaps so as to obtain more comprehensive, accurate assessment of gender at the local level.

21. JMC EVALUATION OF GENDER MAINSTREAMING AT THE LOCAL GOVERNMENT LEVEL AND THE NATIONAL OSW: OVERVIEW OF FINDINGS⁶¹:

Department of Provincial and Local Government

- An Equity and Development Unit has been established that deals specifically with the coordination of sector wide policies and programmes such as gender, HIV/AIDS, disability and youth. It has both an external and internal gender focus.
- The Chief Directorate: Human Resource Management and Development is responsible for the internal coordination and monitoring of relevant legislation. Internal focus has been placed on establishment of Women's Forum that seeks to promote internal dialogue; the Employment Equity Plan that monitors the department's recruitment and human resource development processes; and Gender profiles at senior management service level that are reported to the Director General and the Minister on the progress in achieving equity.
- The external program focus includes: Integrated Development Plans (incorporates community participation in local government); Local Economic Development (incorporates small medium and micro enterprises; Urban Renewal Program, Municipal Infrastructure Grant (allocation of grants to the poor); Annual Women in Local Government Conference, a platform for women councilors, municipal managers and officials to hare ideas and raise issues collectively.
- A Women's Forum has been established that seeks to promote internal dialogue around women issues and provide overall support to female employees in the Department.

⁶¹ Ibid, page 10

- In terms of increasing the representativity of black South Africans (African, Coloured, Asian) in public service, the target of 75% was achieved in June 2005 at 84.4%
- With regard to women, the public service target is 30%. The DPLG achieved 36.4% by June 2005.

South African Local Government Association (SALGA)

- A Gender and Women Empowerment Programme has been established that falls under the Directorate: Strategic Affairs headed by the Executive Director. The political champions of the programme are political representatives and officials from all provinces. They constitute the Social Development Working Group, chair by a member of the National Executive Committee
- There is only one woman of the nine Deputy CEOs and three women out of the 14 members of the Executive Management Team
- The 2004 Local Government Gender Audit, revealed that there are 54 or 19.01 percent women mayors; 77 or 27.11 percent women speakers; and 18 or 6.34? women municipal managers
- Successes include: Local Government Gender Audit; Development of the Local Government Policy Framework in partnership with DPLG; Incorporation of gender empowerment in the SALGA constitution; The annual Women in Local Government Conferences; and the Benoni Declaration of 2005, a resolution by the Women Leadership of South African Municipalities meeting in Benoni South Africa, reaffirming its commitment to Gender Equality and Equity in local government.
- Challenges sited included: partnerships sometimes undermine common cause of women's empowerment; there are no common programmes by gov4rnment that adequately address roles and responsibilities and take into consideration the mandate of different spheres of government; while the number of political representatives improved, less was achieved on administration side of municipalities.

Provincial Governments

- With the exception of the Western Cape Province, all provincial governments have established Offices on the Status of Women structures of various kinds and are situated in the Premiers' Offices.
- The Gauteng Province does not have an OSW, but functions are carried out by the Gender and HIV/AIDS sub-directorate and reports to the Director of Social Development within the Premier's Office.
- Both the Western Cape and Gauteng argued that it is not the structure but the function that is important.
- All 30 responding departments had appointed gender focal points
- 13 of the 30 GFPs have appointed persons responsible for gender-related issues at the Director level or higher
- Of the 30 GFPs, 9 (30%) focus only on gender issues, while 21 GFPs (70%) have responsibilities that include gender, disability, youth, child rights, HIV/AIDS, employment equity, human resource management, and/or employee assistance in various combinations.
- None of the GFPs report directly to the Director General in the departments.
- The National OSW Audit Report of 2003 indicated that 31.03% (9) departments had appointed GFPs at the mandated levels in 2003. There was thus a 7.7% drop (from 31.03

to 23.33%) in the number of government department complying with the mandate of the gender policy document and Cabinet Memo of 1997.

- There is not a single female municipal manager in the Eastern Cape Province in 2005.
- The Department of Social Development in Gauteng reported that the provincial department's strategic plans are analyzed to assess if gender issues are incorporated and mainstreamed. The Province also has had success with the Women's Dialogue initiative. Although management representativeness in respect of gender is already in line with minimum national targets (30%), there is a drastic decline in representativeness of female from low level to Senior Management Service, with the majority of female employees at lower levels
- Kwazulu-Natal Province has a draft gender policy and is working on an implementation strategy and gender-monitoring tool.
- There are no GFPs in most municipalities in Limpopo Province, except one municipality that had appointed a GFP at the administrative clerk level.
- Mpumalanga Province reported that a resolution had been taken at the Premier's Coordinating Forum that youth units should be established in all municipalities and that these units would also address gender and disability concerns. The resolution did not say anything about gender. GFP coordinators have been appointed in 10 departments.
- Western Cape Province has an approved Human Rights Mainstreaming Business Plan (2005-2006). The Western Cape Province had an OSW until 1 April 2006. Since then, the OSW has been restructured, although still situated in the Department of the Premier, but now under the Branch: Operations. The Office reports to the Deputy Director General who in turn, reports to the premier. The Premier made the office a "priority-issue office". The new Directorate: Social Dialogue and Human Rights (that incorporated the previous OSW) is divided into four sub-directorates with an overall budget of R8million (approximately \$1.2). At least R3.8 (approximately \$543,000) million has been put aside for the women's programme.

22. ENABLING AND INNOVATIVE APPROACHES AND MECHANISMS FOR GENDER RESPONSIVE BUDGETING.

There have been a myriad of enabling and innovative approaches and mechanisms that have resulted from the programmes and practices in South Africa. Below is a brief listing of those garnered from the existing literature.

Policy and Research Development⁶²

- OSW undertook a research project focusing on the implication of CEDAW and BPFAs for provincial departments. Successfully completed in May 2001 with the delivery of nine individual department indicator frameworks. The frameworks were distributed to the relevant departments, who used them as a baseline and support documents to improve their service delivery.
- National Women Empowerment and Gender Equality Framework was approved in 2001.
- OSW then embarked on the development of the Draft Provincial Gender Equality and Framework. Provincial Gender Equality & Empowerment Implementation Strategy

⁶² **A Decade Under Review: Overview from 1999 to November 2003**, Human Rights Programmes Directorate; Office of the Status of Women and Gender Equality, Western Cape Provincial Government, 2004. pp14-20

(GEWIS), including internal buy-in and consultation; presented to clusters and the Cabinet; launched in 2004

- Short, medium and long-term objectives developed to guide the integration and inclusion of gender equality issues into policies, programmes, projects, and budgets of departments.
- Undertook a provincial consultative Road Show to popularize and consult the GEWIS

Capacity Building & Training

- OSW coordinated a Train-the-Trainer programme called “Free-to-Grow” for a representative group of people working with Gender Equality, disability and youth issues in the Provincial Administration. The training programme focused on self-development and incorporated, among other things, communication skills, conflict resolution and group dynamics. The aim of the programme was to provide a platform for all future training interventions. The first phase was completed in 2001.
- The OSW, in partnership with the Office on the Status of Disabled Persons, developed a mainstreaming training package for trainers in the civil service. The aim of this Train-the-Trainer package was to put trainers in a position to train strategic persons in department to enable them to mainstream Gender Equality into their day-to-day operations. This was done with the assistance of a consultant who was contracted for one year. The training package focused on a methodology to practically include gender consideration in programmes, planning processes and projects of provincial department, as well as in the organizational environment.
- Mainstreaming training package for public servants and specific capacity building for gender focal persons; course titled, “Gender Training Course for Public Sector Managers
- Coordination of Provincial Gender Machinery (Gender Management System): formal structuring of Provincial Gender Management System; Gender Desk on District levels; Metropolitan coordination; capacity building for local government officials.
- OSW granted funds to the Centre for Rural Legal Studies to help with the empowerment of women farm working, with the main focus being on Employment Equity.

Public Education, Awareness-Raising & Communication

- Provincial Administration from all departments attended gender equity workshop facilitated by the National Department of Public Service and Administration.
- Quarterly Women’s Breakfast for senior women managers and ministers in provincial administration.
- Procedure to be followed by department when applying to the OSW for funding for gender-based projects/programmes, documented and made available to Departmental Focal Points in 2002
- A gender and women’s directory of non-governmental and community-based gender organization was compiled and made available to departments in 2000
- OSW designed and facilitated a planning session for the Gender Focal Unit of the Department of Planning, Local Government and Housing.
- OSW provided input to the discussion document calling for a revision of the Provincial Tender Procurement System
- OSW participated in a number of radio and newspaper interviews
- Commemorative Days International 16 Days of Activism Against Gender Violence led to activities that compiled a brochure focusing on domestic violence; trauma room facilities

were provided at police stations and trained volunteer to assist the police with staffing facilities.; supported “Women Demand Dignity” men’s march and the “Stand by Women” on November 2001 to highlight violence against women.

- Development of Promotional Materials
- Partnership with civil society

Auditing, Monitoring and Evaluation and Reporting

- Development and Completion of an integrated audit instrument
- Recognition of the need for international benchmarking

23. CONCLUSIONS

While much remains to be done, the South African government has made significant effort to ensure that it keeps its commitments to its constitutional mandate to ensure substantive gender equality within society⁶³. The government has ratified all of the important international instruments designed to promote gender equity; passed relevant national legislation and instituted the National Gender Policy for the Empowerment of Women and Gender Equality that is designed to direct and guide government and civil society. National Gender Machinery has been institutionalized in order to ensure mainstreaming of international, national, and provincial legal commitments. Parliament has held hearings to evaluate gender mainstreaming and made recommendations that are to be incorporated into current activities at the national and provincial levels.

There is synergy between South Africa’s gender budgeting activities and the poverty alleviation initiatives in government. Although not specifically covered in this report because of space considerations, South Africa has made tremendous strides towards the mainstreaming of national laws and policies that promote gender equality. As carefully outlined in its June 2006 Report to the AU Secretariat on the Implementation of Solemn Declaration on Gender Equality in Africa, a number of laws have been passed relating to health, land reform, housing; violence against women; and in public service and politics⁶⁴. Critical is that programmes have been established and budgetary allocations have been appropriated that signal that the government is concerned that it keeps its international and national commitments to alleviate poverty through the empowerment of women.

As shown in this research report, there is evidence that there have been attempts in South Africa to engage in the three categories of gender budgeting. These are:

1. Attempts to specifically identify gender-based expenditures of government departments and authorities. There have been specifically defined programmes initiatives for women and girls, including employment policy initiatives, health programmes, etc.
2. Attempts to ensure equal employment expenditures by government department and authorities on their employees. There have been a series of programs that focus on

⁶³ Substantive equality is defined as taking into account the different realities of women. It aims to provide a situation where the reality of women and men are granted equal worth and concern. It acknowledges that in some cases this may mean that women and men are treated differently. Debbie Budlender, ed. *The Women’s Budget*, IDASA: Cape Town, 1996, p. 27.

⁶⁴ South Africa’s Report to the AU Secretariat on the Implementation of the AU Heads of States’ Solemn Declaration on Gender Equality in Africa, Office on the Status of Women, Addis Ababa, June 2006.

- training for clerical officers, rewriting job descriptions; crèche facilities and leave provisions.
3. Attempts within the general or mainstream budget expenditures by government departments and authorities to assess for its gender impact. Some of the departments reflect gender equity objectives; and in some cases the users of services can be identified.

Capacity-Building Implications

While South Africa has made tremendous gains in terms of putting in place the structures, policies, and practices, there are many years ahead in which those gains will need to be solidified through intensive programmes and activities. A tentative listing of the capacity gaps that will need to be given attention are listed below. There has been no attempt to categorize or prioritize the capacity gaps and the listing is based solely on a review of the literature.

1. **Awareness Training:** It was repeatedly indicated that, while the government has disseminated documents and policies, few are well informed about their contents and application in their daily lives.
2. **Monitoring and Evaluation:** Failure to institute effective monitoring and evaluation procedures to track progress has limited provincial and local government's ability to participate effectively in legislative hearings.
3. **Research Development:** There is a continuing need for external institutions and organizations to track government progress in its quest to secure gender equality within government structures and programmes. Once an active source of research for the Women's Budget, the Institute for Democracy in South Africa, is not producing the studies that were completed in the past.
4. **Gender Budgeting and Poverty:** Programmes are needed to ensure that place more emphasis on gender budgeting to ensure maximization of measures to eliminate poverty. More awareness training is required at the national level and more training must take place at the provincial and local levels to ensure an understanding of budgetary processes and constraints and citizen engagement in public decision-making.
5. **Report Writing:** It was repeatedly indicated that reports were too sketchy for the legislature and executive to effectively employ the tools of assessments and to efficiently measure the indicators for success.
6. **Policy Development and Analysis:** Training should take place with Gender Focal Points to ensure that national and provincial players understand how to develop strategic gender policies. GFPs need to be able to develop gender action plans and coordinate them in order to effectively engage in gender mainstreaming.
7. **Inclusion of Civil Society:** While there is much that has been done to ensure that government plays an effective role in gender budgeting processes, very little has been done to ensure civil society can effectively acquire the skills and knowledge it requires to participate.

8. **Public Media Campaigns:** There are many of the policies and programmes introduced by government that do and could promote gender equity, however, the government has not been as strident as it could have been in discussing with and reporting these positive aspects to the public.
9. **Disaggregated Statistics:** Training needs to be given in statistics and other methodologies that would allow for the inclusion of disaggregated data in reports and in public campaigns. Such training has taken place with parliamentary researchers and should also become more regular within GFPs.

The Second Phase

The second phase of this research project will focus on a review analysis of gender sensitivity across departments and an in depth analysis within two national departments: Transportation and Education. The primary focus will be on the three elements of a gender analysis of budgets, namely,

1. Expenditures in relation to the programmes and policies underlying them. This explores the ways in which expenditure specifically targets women and girls or men and boys.
2. Expenditures that promote the interests and advancement of women by the public service.
3. Mainstream expenditures in relation to their differential impact on women and men and different groups of women and men.

The primary objectives for Phase Two will be:

1. Identify skills and knowledge gaps for building capacity for analyzing and advocating gender budgeting by non-governmental organizations
2. Assess the critical questions for gender budgeting across three African regional levels.
3. Achievement of these two objectives will allow a more objective review of South Africa's efforts by conducting a more in depth review and analysis of gender mainstreaming efforts in two departments. This will also allow a more comprehensive comparison and contrast with countries in other African regions.