



## **OVERVIEW OF LEGISLATION, PROGRAMMES AND CHALLENGES RELATED TO THE ARTICLES IN THE WOMEN'S CHARTER FOR EFFECTIVE EQUALITY**

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## 1. Introduction

The first Women's Charter was adopted on 17 April 1954 during the founding conference of the Federation of South African Women (FEDSAW). This charter called for the enfranchisement of men and women of all races, for equal opportunities in employment, equal pay for equal work, equal rights in relation to property rights, marriage and children, and the removal of all laws and customs that denied women such equality. These demands remain as relevant today as they were then. The Women's Charter is widely held to be the cornerstone of the Women's Charter for Effective Equality, which the first democratic Parliament adopted in 1994.

The articles encompass the following broad themes and call for the equal participation, recognition and development of women in all aspects of life and society:

- Equality
- Law and the administration of justice
- Economy
- Education and training
- Development, infrastructure and the environment
- Social services
- Political and civic life
- Family life and partnerships
- Custom, culture and religion
- Violence against women
- Health
- Media

This paper aims to identify relevant legislation, policies, programmes and challenges related to the specific articles/sectors which can be used as a mechanism for gauging what the impact of these has been towards meeting the ideals as envisaged by the Charter.

The articles of the Charter are inextricably linked and mutually dependent and as such there will be partial overlap in information provided across sectors. It must be noted that there are not necessarily policies and programmes for each article per se, however, as far as possible, all relevant information related to the articles has been identified. Whilst the information related to challenges is not exhaustive, care has been taken to note key matters for consideration per article/sector.



## **2. Article 1: EQUALITY**

The South African Constitution (Act 108 Of 1996) lays the foundation for protecting women's rights. The equality clause in Chapter two of the Constitution provides the legal framework within which gender equality is enshrined and prohibits discrimination against anyone on the grounds of race, gender, sex, pregnancy, marital status, sexual orientation and ethnic or social origin. The Constitution laid the basis for the repealing of many pieces of discriminatory legislation and for the introduction of progressive, rights-based legislation, that takes cognisance of gender realities. The Constitution (Sections 59 and 72) further makes provision for public access and involvement in the law-making processes of Parliament. The enabling environment created by the post-1994 period had a positive impact on women being able to take up issues in legislative processes. Many lobby and advocacy groups have been active in campaigning for gender sensitive legislation.

### **2.1 Key legislation related to the sector**

Since 1994, a gender sensitive legislative framework has been put in place with a view to ensuring gender equality and the empowerment of women. Key amongst this was the Promotion of Equality and Prevention of Unfair Discrimination Act (Act 4 of 2000), commonly known as PEPUDA. PEPUDA is the national legislation mandated by section 9 (4) of the Constitution, and thus enjoys special constitutional status. Significantly, the Act recognises the need to address systemic discrimination and specifically aims at the 'eradication of social and economic inequalities'.

Section 8 of PEPUDA speaks to the prohibition of unfair discrimination on ground of gender. It states that subject to section 6 (neither the State nor any person may unfairly discriminate against any person), no person may unfairly discriminate against any person on the ground of gender, including-

- gender-based violence;
- the system of preventing women from inheriting family property;
- any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men,
- any policy or conduct that unfairly limits access of women to land rights, finance, and other resources;
- discrimination on the ground of pregnancy;
- limiting women's access to social services or benefits, such as health, education and social security;
- the denial of access to opportunities, including access to services or



- contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons;
- systemic inequality of access to opportunities by women as a result of the sexual division of labour.

The empowerment of women and girls and the realisation of their human rights are essential to the achievement of the Beijing Declaration and the 2030 Agenda for Sustainable Development. Achieving gender equality and the empowerment of women and girls is integrally linked to ending poverty, eradicating hunger and achieving full employment and decent work for women. The attainment of these goals is essential to the promotion of human rights, which is essential to the livelihoods, well-being and resilience of women and girls. Integral to this is the ability of women to be free from all forms of violence, discrimination and harmful practices.

## **2.2 Key challenges in the sector**

There remain significant challenges associated with protecting the rights of women, particularly for women and girls living in rural parts of the country. These include:

- Patriarchy - Gender equality and respect for women's rights starts at home, where power and wealth are still in the hands of men. Patriarchal values imbibed within society deem women incapable of decision-making and responsibility outside of those traditionally prescribed. Patriarchal norms result in economic, legal, political, and social discrimination against women and girls, reflected at individual, household, community and organisational levels; and in the public arena.
- Traditional societal expectations of women, i.e. predetermined social roles as child-bearers and carers - Prescribed gender roles, such as women's propensity to assume larger responsibility for childcare and domestic work, often leaves women with little time to engage in activities outside the home.
- Women throughout the country, and particularly those living in rural areas, continue to face challenges in service delivery in areas such as public health care, quality education, access to justice, social assistance, water and sanitation, and infrastructure. Paramount in this regard is the issue of poverty-stricken and disempowered women.
- Women continue to be disempowered in the economic sector, leaving them economically vulnerable, which in turn influences their decision-making capacity.
- Insufficient resources to address challenges relating to women's disempowerment.



### 3. Article 2: LAW AND THE ADMINISTRATION OF JUSTICE

While a progressive legislative framework has been put in place in South Africa, there are still significant challenges in ensuring that women's rights are promoted and protected. Women and girls face a number of structural barriers to the realisation of their human rights, which are either overlooked or not adequately addressed in national laws, policies and budgets. In addition, women face significant challenges in engaging with the criminal justice system and often experience secondary victimisation when taking up issues such as gender-based violence through the system.

The Constitution aims to 'dismantle systemic forms of disadvantage and subordination in our post-apartheid society.'<sup>1</sup> Law and justice institutions play a key role in the distribution of rights and resources in South Africa.<sup>2</sup> The mainstreaming and institutionalisation of a gender perspective in the justice system is an essential step toward recovering a feeling of trust and security in it and combating its impunity.<sup>3</sup> This mainstreaming entails an analysis of women within the justice system as users, as administrators and actors in the legal field.<sup>4</sup>

#### 3.1 Key legislation and policy in the sector

South Africa is yet to achieve full transformation of the legal practice landscape. Many old order practices, including discrimination, overt or covert, along the lines of race and gender, remain.<sup>5</sup> The challenge of transformation permeates all areas of life in South Africa, and the legal profession and the judiciary are no exceptions. These realities have defined the law and the composition of the legal profession and ultimately the judiciary.<sup>6</sup> Transformation of these institutions is particularly critical for gender equality because it enables equitable enjoyment of a whole range of rights and resources.<sup>7</sup>

Key legislation in this regard includes:

- Judicial Service Commission Act 9 of 1994

<sup>1</sup> Phooko MR and Radebe SB, Twenty-Three Years of Gender Transformation in the Constitutional Court of South Africa: Progress or Regression Constitutional Court Review (Accessed at <http://www.saflii.org/za/journals/CCR/2018/24.pdf>)

<sup>2</sup> Chiongson, RA, Desai D, Marchiori T, and Woolco M, Role Of Law And Justice In Achieving Gender Equality (Accessed at [http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210\\_1322671773271/Chiongson-law-and-justice.pdf](http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210_1322671773271/Chiongson-law-and-justice.pdf))

<sup>3</sup> Ibid

<sup>4</sup> Mainstreaming a Gender Perspective into the Programs and Policies of Ministries of Justice or Offices of Attorneys General (Accessed at [https://www.oas.org/en/cim/docs/SEPIA\[Justice\]-REMJA\[EN\].pdf](https://www.oas.org/en/cim/docs/SEPIA[Justice]-REMJA[EN].pdf))

<sup>5</sup> Reilly K, Progress only achievable through a united profession discussed at NADEL's National Young Lawyers Summit <http://www.derebus.org.za/progress-achievable-united-profession-discussed-nadels-national-young-lawyers-summit/>

<sup>6</sup> Phooko MR and Radebe SB, Twenty-Three Years of Gender Transformation in the Constitutional Court of South Africa: Progress or Regression Constitutional Court Review (Accessed at <http://www.saflii.org/za/journals/CCR/2018/24.pdf>)

<sup>7</sup> Chiongson, RA, Desai D, Marchiori T, and Woolco M, Role Of Law And Justice In Achieving Gender Equality (Accessed at [http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210\\_1322671773271/Chiongson-law-and-justice.pdf](http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210_1322671773271/Chiongson-law-and-justice.pdf))



- Magistrates Act 32 of 1944
- Magistrates Act 90 of 1993
- South African Judicial Education Institute Act 14 of 2008
- Legal Practice Act 28 of 2014

### **3.2 Key Programmes relating to/ impacting on women**

- *Transformation of the Judiciary as a Change Agent for Gender Equality.* The magistracy, with 47% women judicial officers, has made some progress in respect of transformation. The number of women advocates sits at 30.4 percent. Of 246 judges, only 94 are female and of this number, only 3 are part of the 11 Justices of the Constitutional Court.<sup>8</sup> Women judges contribute to the representativeness and diversity of the courts. While it is important for women to have equality of opportunity, the courts themselves should be reflective of society and not draw upon a narrow demographic. The Magistrates Commission and Judicial Services Commission play a critical role in ensuring gender diversity in judicial appointments. Linked to this is the ongoing work of the South African Judicial Education Institute through gender sensitivity training, as well as the aspirant women judges programme. Equally critical is the training done with traditional leaders, particularly given the potential impact of the Traditional Courts Bill.
- *Special jurisdictions.* The state, by creating special courts (e.g. family courts, maintenance courts and courts for sexual offenses) or specific regimes (e.g. family matters reserved to religious or customary courts) can influence outcomes and shape the content of rights in different ways for different individuals. These special jurisdictions need specific legal frameworks. Special courts, created by specific legal frameworks, as well as gender units within the judiciary, can use specially trained judicial actors on gender equality and rules and regulations that are gender-sensitive.
- *Briefing patterns.* Briefing patterns, or the allocation of legal work, especially by the Government has been a challenge. In South Africa, briefing patterns have heavily favoured male counsel. It is particularly problematic that the numbers of women legal counsel in South Africa, remain skewed, because women currently make up only 25 percent of Bar members and 9 percent of Senior Counsel. The empowerment of women counsel is a priority programme for the Justice Department to redress the imbalances of the past. The Department allocated 2 109 legal briefs to women counsel to a value of R255.9 million during 2018/19.

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<sup>8</sup> Judiciary Annual Report 2018/19





- *Implementing the Legal Practice Act.* The top positions in the legal profession, from senior partners of law firms, to senior counsel at the Bar and senior members of the judiciary remain largely homogenous. However, the Legal Practice Act brings into operation a single unified statutory Legal Practice Council that will regulate all legal practitioners, and candidate legal practitioners. The Act provides that appointments to the Legal Practice Council and provincial councils must take into account gender demographics in all its structures. The Act also requires that all forms of racial and gender discrimination, mistreatment and victimisation, or any unfair discrimination that have affected the legal profession and hindered transformation must be addressed.

### 3.3 Key challenges in the sector

- *Gender-bias and lack of sensitivity.* Justice mechanisms may be gender-biased or lack gender sensitivity. For example, there are still prevailing beliefs within justice institutions that domestic violence is a private matter. There is also a lack of understanding of the impact of secondary victimisation in the criminal justice system processes. Even where judges, magistrates and justice personnel in general are not biased and understand gender issues, they may not have the skills or the institutional capacity to address gender inequalities (e.g. ensuring privacy and confidentiality to victims of violence).<sup>9</sup> In addition, in a country such as South Africa with social systems which recognise more than one source of law, a situation of legal pluralism arises. In such arenas, everyday transactions such as marriage, inheritance and land exchange fall into the jurisdiction of entities ranging from the state (sometimes at multiple levels) to customary (such as traditional courts) and religious authorities applying a variety of rules: state law, customary law, religious law and local norms.<sup>10</sup> These may lack a gender perspective or fail to acknowledge the need for gender equality in the administration of justice.
- *Lack of funding and capacitation.* Structures within Government institutions, such as the Directorate for the Promotion for the Rights of Vulnerable Groups in the Justice Department, and the Sexual Offences and Community Affairs Unit at the National Prosecuting Authority, are often not adequately funded or capacitated. Inter-agency structures such as the Directors-General Inter-sectoral Committee on the Management of Sexual Offences are often not adequately supported by senior officials within Departments and state institutions.

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<sup>9</sup> Chiongson, RA, Desai D, Marchiori T, and Woolco M, Role Of Law And Justice In Achieving Gender Equality (Accessed at [http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210\\_1322671773271/Chiongson-law-and-justice.pdf](http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210_1322671773271/Chiongson-law-and-justice.pdf))

<sup>10</sup> Ibid





- *Patriarchy in the legal landscape.* Decades have passed since women began graduating from law schools in numbers equal to, or higher than men, yet they make up significantly lower proportions of attorneys and practising advocates, and are sparsely represented in the senior ranks of the Bar.<sup>11</sup> The numbers do creep upwards, but haltingly, with meaningful increases in entry numbers persistently offset by attrition. The legal landscape remains very patriarchal. Motherhood, for example, is perceived as career limiting.<sup>12</sup> Issues of sexual harassment are often not dealt with openly and transparently and discourage women from remaining in the profession.<sup>13</sup> There is still a general perception that women lawyers are only good in certain areas of law and are not good in complex litigation matters.<sup>14</sup> This leads to them not getting the experience and exposure in lucrative areas of law both from the public and private sectors. There may also be limited structures to consciously and specifically respond to gender concerns; (e.g. no gender strategy, no systematic referral systems to sources of support for violations).<sup>15</sup> There is still a need to remove the barriers that impede talented lawyers from opportunities to develop and gain skills, experience and knowledge within the legal profession because they are women or, in some way, non-compliant with the dominant homogenous culture.<sup>16</sup> The empowerment of women practitioners remains a specific focus area in order to redress the imbalances of the past.<sup>17</sup>
- *Barriers to accessing justice.* Women often experience additional or different “barriers” in accessing justice. The lack of legal guarantees and the existence of unequal or gender-blind legal provisions, such as in the area of property and personal status laws hinder women’s access to justice.<sup>18</sup> In addition, male perspectives still greatly influence the law. As a result, there is an ongoing risk of creating laws that do not match the playing field. For instance, the Basic Conditions of Employment Act, still sees parental leave still being a responsibility that rests greatly on women. This in turn has a dire effect on their careers and the gender equality gap in the workplace.<sup>19</sup>

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<sup>11</sup>Norton M, The Other Transformation Issue: Where are the Women? Accessed at <https://www.sabar.co.za/law-journals/2017/april/2017-april-vol030-no1-pp27-34.pdf>

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup>Commission on Gender Equality, Lack of Gender Transformation in the Judiciary Investigative Report (Accessed at <http://www.cge.org.za/wp-content/uploads/2016/12/CGE-Lack-of-Gender-Transformation-in-the-Judiciary-Investigative-Report-.pdf>)

<sup>15</sup> Ibid

<sup>16</sup> Chiongson, RA, Desai D, Marchiori T, and Woolco M, Role Of Law And Justice In Achieving Gender Equality (Accessed at [http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210\\_1322671773271/Chiongson-law-and-justice.pdf](http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210_1322671773271/Chiongson-law-and-justice.pdf))

<sup>17</sup>Norton M, The Other transformation issue: Where are the Women? Accessed at <https://www.sabar.co.za/law-journals/2017/april/2017-april-vol030-no1-pp27-34.pdf>

<sup>18</sup> Chiongson, RA, Desai D, Marchiori T, and Woolco M, Role Of Law And Justice In Achieving Gender Equality (Accessed at [http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210\\_1322671773271/Chiongson-law-and-justice.pdf](http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210_1322671773271/Chiongson-law-and-justice.pdf))

<sup>19</sup> Law for All, Challenges Facing Women Lawyers In South Africa, (Accessed at <https://www.lawforall.co.za/women-lawyers-equality-south-africa/>)



Furthermore, women's ability to access justice mechanisms, such as courts, legal aid clinics, and administrative bodies, can also be limited due to economic (lack of money), social and psychological (stigma, restrictions on mobility, time constraints) and educational (limited education, limited access to information and social networks) factors, among others.<sup>20</sup>

- *Delays in implementing critical policy frameworks and in reviewing and amending legislation.* The Prevention and Combatting of Trafficking in Persons Act 7 of 2013 was introduced because of concerns about the increase of trafficking in persons, especially women and children, and the role played by organised criminal networks in the trafficking of persons globally. However, although the Act came into force in August 2015 there was an extensive delay in the development of the National Policy Framework (NPF). The NPF is essential for the co-ordinated implementation, application and administration of the Act but it was only launched in April 2019. Similarly the delays in finalising the Regulations for the Sexual Offences Courts, which are vital to ensure the application of minimum standards in these courts, as well as long overdue reviews of vital but defective pieces of legislation such as the Maintenance Act and Domestic Violence Act, are indicative of a lack of commitment to ensure the law and administration of justice is gender responsive.

#### **4. Article 3: ECONOMY: ADVANCING THE INCLUSIVE ECONOMIC GROWTH PARADIGM FOR WOMEN**

The Charter notes that key sectors of the South African economy are occupied and dominated by men. Women face social, economic and ideological barriers to full and equal participation in the economy. Often, women are perceived in terms of their domestic and reproductive role. Women participate in large numbers in sectors of the economy which are characterised by low wages and poor working conditions. Low remuneration is worsened by discrimination against women in the receipt of social benefits. As a result, many women are forced to make a living outside the formal economy.<sup>21</sup>

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<sup>20</sup> Ibid

<sup>21</sup> The Women's Charter for Effective Equality (1994).



Inclusive economic growth means that the effort to advance a country's growth and development should be produced with the contribution of all citizens. Considering the assessment that "gender equality brings about economic growth but economic growth does not necessarily bring about gender equality", it is then pertinent to focus on the gender factors that trigger an increase in and stimulate economic growth in a country, for both low and high income countries, and thus result in inclusive economic growth.<sup>22</sup>

Women in Southern Africa form one of the fastest growing markets with great purchasing power. As such, the composition of organisations and institutions involved in supplying, designing, and marketing goods and services should reflect this market. Women invest upwards of 90 percent of their earnings in their families' health and education as well as in their communities. Yet women continue to be side-lined in accessing opportunities for significant economic empowerment and continue to largely exist on the periphery of economic decision-making.<sup>23</sup>

Appold et al (2007) argue that women offer valuable human resources that can be captured by national economies to achieve macro-economic growth. Yet, despite the advantages to be gained from employing women at their capacities, women continue to be underutilised.<sup>24</sup> Women are more likely than men to be employed in the informal economy and to work without pay, both in the home or in family businesses. This underutilisation of women in the labour force results in a waste of valuable resources as women could make a large contribution to productivity and the economic prospects of a society.

Among the barriers which affect women's participation to developmental opportunities are access to education; unfavourable economic structures including limited access to credit facilities and financial skills training, traditions and the disregard of women's unpaid care work.

#### 4.1 Key Legislation and policy in the sector

- **Broad-Based Black Economic Empowerment (B-BBEE) Act, 2003 (Act No. 53 of 2003):** The Black Economic Empowerment legislation was adopted in 2003 with the aim of addressing racial-economic imbalances. The legislation seeks to reduce economic inequality equitably through the transfer of ownership, management and control of economic resources to the majority of South Africans.<sup>25</sup>

<sup>22</sup> Cabeza-García, L., Del Brio, E.B. and Oscanoa-Victorio, M.L. (2018). Gender Factors and Inclusive Economic Growth: The Silent Revolution

<sup>23</sup> SADC Gender Protocol Barometer (2011).

<sup>24</sup> Appold et al, 2007, The Employment of Women Managers and Professionals in an Emerging Economy, in Background Guide, National Model United Nations.

<sup>25</sup> Black Economic Empowerment Act (Act 53 of 2003)



Initially adopted as Black Economic Empowerment, the legislation was broadened to “broad-based black economic empowerment”. This provides for the economic empowerment of all black people, including women, workers, youth, people with disabilities and people living in rural areas. The purpose of the B-BBEE Act is to reduce economic inequality by:

- Increasing the number of black people who manage, own and control enterprises and productive assets;
  - Facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
  - Promoting human resource and skills development;
  - Achieving equitable representation in all occupational categories and levels in the workforce;
  - Promoting preferential procurement; and
  - Promoting investment in enterprises that are owned or managed by black people<sup>26</sup>.
- **National Credit Act, 2005 (Act No. 34 of 2005):** The National Credit Act was developed to promote access to credit to all South Africans equally and to eliminate discriminative practises towards certain racial groups in the credit market. The purpose of the Act is to “promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry, and to protect consumers”<sup>27</sup> by :
    - Promoting a fair and non-discriminatory environment in which consumers acquire credit;
    - Eliminating reckless lending practices thus promoting responsible credit rating;
    - Providing for the administration of debt where over-indebtedness occurs;
    - Protecting consumers and preserving consumer rights within the credit market;
    - Regulating credit information; and
    - Ensuring the registration of credit bureau, credit providers and debt counsellors.<sup>28</sup>

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<sup>26</sup> Black Economic Empowerment Act (Act 53 of 2003)

<sup>27</sup> National Credit Act, 2005 (Act No. 34 of 2005)

<sup>28</sup> National Credit Act, 2005 (Act No. 34 of 2005)



- **National Empowerment Fund Act, 1998 (Act No. 105 of 1998):** The Act establishes the National Empowerment Fund (NEF), an entity of the Department of Trade and Industry. The NEFs mandate is to provide financial and non-financial support to black empowered businesses. The NEF offers a range of products and services aimed at assisting black empowered businesses. These include;
  - financial support through various funds targeted at starting businesses, expansions and acquisitions; and
  - non-financial support such as mentoring of small businesses, providing funding and business planning advice, as well as risk monitoring for start-ups<sup>29</sup>.
- **National Small Business Act of 1996 and as amended in 2004 (Act No. 29 of 2004):** The purpose of the Act is mainly to establish entities that support small businesses in South Africa, namely; the Small Enterprise Finance Agency (SEFA) and the Small Enterprise Development Agency (SEDA).
  - Small Enterprise Finance Agency (SEFA) – SEFA is an entity of the Department of Small Business Development. SEFA's mandate is to foster the establishment, development and growth of small businesses through providing finance to SMMEs and Co-operatives, therefore contributing to poverty alleviation, job creation and economic growth<sup>30</sup>.
  - Small Enterprise Development Agency (SEDA) – SEDA is an entity of the Department of Small Business Development. SEDA's mandate is to promote the development of small businesses and entrepreneurship through providing non-financial support to SMMEs and Co-operatives, SMMEs and Co-operatives<sup>31</sup>.
- **Industrial Policy Action Plan:** Government's plan to revive productive sectors of the economy with the potential of creating significant employment and contributing to economic growth. IPAP seeks to address the challenges of economic and industrial growth, poverty, inequality and unemployment.

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<sup>29</sup> National Empowerment Fund Act, 1998 (Act No. 105 of 1998)

<sup>30</sup> Small Enterprise Finance Agency (2019)

<sup>31</sup> Small Enterprise Development Agency (2019)



#### 4.2 Key Programmes relating to/ impacting on women

- **Women Empowerment Fund of the National Empowerment Fund:** This fund was established in 2013. The Women Empowerment Fund provides funding to businesses owned by black women (at least 51 percent women in ownership). The fund provides finance of between R25 000 and R75 million.
- **Women Enterprise Coaching Programme (WECP) of the Small Enterprise Finance Agency:** The programme aims to ensure a transfer of skills among different women business owners through networking and sharing of business experience. The WECP provides women owned businesses with skills and tools for growth.
- **Loan Financing Programmes of the Small Enterprise Finance Agency:** SEFA has a number of financing programmes targeted at women, black people, the youth, rural communities and people with disabilities. SEFA has a target (percentage) on disbursements to women owned businesses.
- There are also other programmes that do target not women specifically, such as the black industrialists programme. The Department of Small Business Development (DSBD) has a process of linking procurement opportunities to SMMEs and Co-operatives and the Red Tape Reduction Programme, among others. There are also targets (percentage) on disbursements to women owned businesses.
- **Enterprise and Supplier Development Programmes (ESD):** ESD Programmes are guided by Government's Competitive Supplier Development Programme and informed by the B-BBEE Codes of Good Practice. They are aimed at increasing the competitiveness and capacity of black-owned suppliers through financial and non-financial support. They are targeted at ESD initiatives that support localisation and industrialisation, and provide opportunities for black people, youth, women, small businesses, people with disabilities and people living in rural communities.

#### 4.3 Key challenges in the sector

- Poor or limited coordination of government interventions/support among departments. Non-enforcement of legislation, particularly when there is a shared mandate among Government departments<sup>32</sup>. For example, the implementation and enforcement of the local procurement legislation is difficult because while the DTI is the custodian of the legislation, other Government entities, such as State Owned Enterprises, are the implementing agencies that sometimes fail to implement the legislation.

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<sup>32</sup> Parliament (2019)



- Competing priorities between the need for transformation and economic growth.
- Lack of awareness of and access to programmes targeted at certain groups in the economy.
- Reduction of funding to incentives and other forms of Government funding due to fiscal constraints
- Red tape: Small businesses perceive some pieces of legislation and regulations as strict and difficult to comply with given their limited resources.
- Heavy reliance on Government support by some industries.
- Delays in payments to small businesses for goods provided or services rendered to Government.
- Lack of demand of goods and services due to low economic growth, which leads to businesses being unsustainable (without support, they may eventually close down), which this negatively impacts on the level of unemployment.

In the workplace:

- Representation: Often there is a lack of appropriately skilled women in sectors such as engineers, technicians, skilled labourers as well as board members.
- Lack of resources (financial and human resources) to address gender equality issues in the workplace
- Lack of information on how to address gender equality
- Sexual harassment and workplace bullying

## **5. Article 4: EDUCATION AND TRAINING**

The Women's Charter highlights that education and training in South Africa has been centred around men and ignored the needs and experience of women. It notes that education and training must meet the economic, social, cultural and political needs of women.

*"The systematic exclusion of black South Africans from educational opportunities prior to 1994 have resulted in a large pool of unskilled labour that the economy has proven unable to absorb. Within each race group, women have historically been relatively disadvantaged in terms of access to education."*<sup>33</sup>

Access to education and training is important for women for numerous reasons. Education narrows pay gaps and increases a woman's chance of entering the workforce. United Nations Women (UN Women) notes that education is essential for women to attain gender equality and become leaders of change. At the same time, educated women benefit entire societies. They make substantial contributions to flourishing economies and the improved health,

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<sup>33</sup> Department of Women in the Presidency, 2015, The status of women in the South African Economy, page 33





nutrition and education of their families.<sup>34</sup> “Female illiteracy and low female education hurt productivity and earnings – for women and the economy. Less schooling may also mean more limited capacity to upgrade technical skills (which is vital for sustainable development).”<sup>35</sup>

Notwithstanding the huge leaps that have been made in advancing women and girls’ access to education, there are still areas where boys are favoured over girls to receive education and skills training. Restricted schooling for women implies missed opportunities for a better-educated and more productive future generation. UN Women notes that biased teaching and educational materials limit fields of study, marginalising women in various fields of study, such as science and technology, for example. Only 30 per cent of the world’s researchers in science are women. The 2015 Report on the Status of Women in the South African Economy finds that data on enrolment indicates that women account for an increasing proportion at higher levels of education. As a result, by the time they reach post-secondary education, women outnumber men by a ratio of around three to two.<sup>36</sup> Despite this favourable position, women remain less likely than men to enrol in higher degrees. In addition, regardless of access to education, women remain more likely to be employed in lower skilled occupations.

There is a need to continually monitor spending in relation to the education and training of women and girls, both in the public and private sector. Interventions that should be considered in relation to education and gender equality include removing financial barriers to education, especially for girls; increasing the number of women in decision-making in all areas; expanding life-skills based adult literacy programmes (given the link between education of mothers and health and education outcomes for their families); and making gender awareness training part of the education and training curriculum. In addition, women and girls will benefit from improved coordination between departments dealing with the well-being and development of women and girls, such as the departments of Education, Health and Social Development.

### **5.1 Key Legislation and Policy in the sector<sup>37</sup>**

- **White Paper on Post School Education and Training (PSET) (2013)**
  - Aims to improve student access, success and throughput rates in particular in improving access and success for those groups whose race, gender or disability status had previously disadvantaged them.

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<sup>34</sup> <http://beijing20.unwomen.org/en/in-focus/education-and-training>

<sup>35</sup> World Bank, 2001, Engendering Development, page 84

<sup>36</sup> Department of Women in the Presidency, 2015, The status of women in the South African Economy

<sup>37</sup> White Paper on PSET (2013), Department of Higher Education Annual Performance Plan (2019a), National Plan for PSET (2019b).



- **National Plan for Post School Education and Training (2019)**
  - Acknowledges that there must be a strong focus on improving equity in relation to gender, race and disability at postgraduate level.
- **Policy framework on gender-based violence (2019)**
  - The Policy Framework on Gender-Based Violence in the PSET Sector intends to assist PSET institutions to address gender-based violence and to provide a monitoring instrument to the Department of Higher Education and Training to ensure that the policy is implemented. Through this policy framework, the Department is creating an enabling environment for the respect, protection, promotion and fulfilment of human rights as enshrined in the Bill of Rights of the Constitution of the RSA.
- **Key performance targets relating to gender equity**
  - These include initiatives to create additional first-time entrants (black and women) to the academic workforce so as to increase the number of new black and women academics entering the system;
  - High-level postgraduate output must increase, by encouraging those already in the system as well as by developing future researchers, and with a strong continued focus on improving equity in relation to gender, race and disability.

## **5.2 Key Programmes relating to/ impacting on women<sup>38</sup>**

- Higher Education and Training HIV and AIDS (HEAIDS) Programme: The aim of which is to develop HIV/TB/STIs/SRH prevention programmes for students and staff in the post school education and training system. In addition, it supports the development of institutional capacities and facilities for the treatment, care and support of students and staff living with HIV//TB/STIs/SRH and/or suffering from some other related diseases or conditions falling within the broad sphere of public health.
- Relaunch of the Employment Equity Forum;
- The new Generation of Academic Programme (nGAP) is a dedicated programme focusing on attracting and developing young black scholars to be the future generation of academics with a focus on women.
- International scholarship and bursaries made available to the Department are being directed to meeting policy goals such as expanding the numbers of South Africans, especially black people and women, with Masters and Doctoral degrees.

<sup>38</sup> White Paper on PSET (2013), Department of Higher Education Annual Performance Plan (2019a).



- The National Skills Fund was established through the Skills Development Act. The funding is meant to target disadvantaged groups, including the unemployed and those preparing to enter or re-enter the labour market. Particular attention is paid to black people, women, persons with disabilities and others whose training opportunities had previously been limited by law and custom.

### **5.3 Key challenges in the sector<sup>39</sup>**

- The Department is currently not meeting its requisite employment equity targets, including disability and gender, which has highlighted a need for more advocacy work.
- The issues of disability and gender equity are more prevalent at senior management level with lack of visibility of females and people living with disability. Women, particularly black women, are not well represented in senior academic, professional and leadership positions in public universities.<sup>40</sup>
- Despite 45 percent of academic staff being women in 2011, there were four times as many men as women in the senior ranks of the academy.
- There remain disparities of wealth, educational access and attainment, health status and access to opportunities, which are still largely based on race and gender. Patriarchy, which still exists and is a legacy of the past, ensures that women and girls continue to experience a subordinate position in many areas of life, including in much of the education and training system.
- The Not in Education, Employment or Training (NEET) rate is gender-skewed, being 29.7 percent among men and 36.1 percent among women, thus emphasising the need to focus on the expansion of opportunities for women.
- The adults (mainly women) who attend the DBE's KhaRiGude mass adult literacy initiative and some of those who attend Public Adult Learning Centres (PALCs) often find that there is no opportunity to continue their education.
- While there are almost equal numbers of men and women overall, women are clustered in the lower ranks of the academic hierarchy

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<sup>39</sup> White Paper on PSET (2013), Department of Higher Education Annual Performance Plan (2019a), National Plan for PSET (2019b).



Even though relative progress has been made with respect to the race and gender transformation of the research and innovation workforce, inequalities persist.

## **6. Article 5: DEVELOPMENT, INFRASTRUCTURE AND THE ENVIRONMENT**

The 2018 Budget Review indicates that while economic and fiscal outlook in South Africa has improved overall since October 2017, the country continues to face some very significant challenges.<sup>41</sup> These include, rising debt, revenue shortfalls and the financial situation of many of the state-owned enterprises. The National Development Plan had set a policy vision to reduce unemployment to 6 percent by 2013. To achieve this, the South African economy would have had to grow at a rate of about 5.4 percent per annum. In October 2017, the growth rate was scaled-down to 0.7 percent in 2017, 1.1 percent in 2018 and 1.5 percent in 2019.<sup>42</sup> In this context, the 2018 budget had 3 key priorities, which were to narrow the budget deficit, to stabilise debt and to turn around economic growth.

Chapter three of the National Development Plan sets out the vision for growing the economy and increasing employment. The pillars upon which this plan is built are:

- The elimination of poverty and reduction of inequality will be attained through raising the levels of employment, as well as through productivity and growth. Specifically, the unemployment rate should fall from 25 percent to 14 percent in 2020 and to 6 percent in 2030.
- The key plan for creating faster growth and employment is the New Growth Path, which sets out the vision for Government investment, microeconomic reforms that lower the cost of doing business and unblocking constraints to investment in certain sectors.
- The rate of labour force participation should rise from 54 percent in 2010 to 65 percent in 2030.
- An additional 11 million additional jobs should be created by 2030.

The release of the recent 'Poverty Trends in South Africa'<sup>43</sup> report by Statistics South Africa shows that the face of poverty is female. One of the key challenges in bringing about development and economic transformation in South Africa is the fact that the structure of the economy has not changed and continues to reflect distorted patterns of ownership and exclusion, which has very specific race and gendered dimensions. South Africa remains an

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<sup>41</sup> Budget Review 2018

<sup>42</sup> Budget Review, 2018

<sup>43</sup> Poverty Trends in South Africa, Statistics South Africa, 2017



unequal society and this is reflected in gross disparities in income and wealth. Survey data shows that an estimated 10 percent of South Africans own 90 – 95 percent of all assets.<sup>44</sup>

Women and girls are disproportionately affected by poverty in South Africa. Research has shown that as a result of global gender inequalities, women and girls are often the first to be taken out of school and are more likely to have the quantity or quality of their food reduced, to forego medical treatment or sell sex for survival.<sup>45</sup> A great deal of most women's productive energy goes into just making ends meet. In general, women remain in a disadvantaged position in terms of access to productive employment in the formal sector, with the vast majority of South African women working in vulnerable employment.<sup>46</sup> In addition, due to the gendered division of labour, the burden of care work almost always falls on women and girls to fulfil the family's needs for food, water, clothing, shelter and care for children, the elderly and sick. This, in turn, limits women's opportunities for paid work and other activities. Factors such as women's lack of access to social protection, limited education and training and lack of control of and equal access to economic and financial resources, combine to reinforce inequalities and further impoverish women and girls. Government policy responses need to include good quality child-care to support working women, reducing women's workload overall and creating an enabling regulatory environment. In addition, there is a need for more gender-aware social protection and sectoral policies for more balanced growth and employment-centred growth. An estimated R196.3 billion has been allocated to community development over the course of the medium-term.<sup>47</sup> This has been targeted at supporting the development of human settlements, water and electrification programmes, public transport and municipal infrastructure.

Information is provided in terms of the environment, transport and human settlements.

## **6.1 Environment**

Women are disproportionately affected by environmental and climate change. Women's human rights are undermined by the impacts of, and responses to, climate change. It is recognised that women are exposed to increased risks because of their primary role in care work and agricultural production, as well as their role in water and food collection. Rural women, in particular, are more likely to suffer higher disaster-related mortality and carry the burden of the long-term impacts of loss of land, livelihood and security because of climate change.

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<sup>44</sup> Orthofer, 2016

<sup>45</sup> UNAIDS. Impact of the global economic crisis on women, girls and gender equality, 2012

<sup>46</sup> Gender Statistics in South Africa, 2011

<sup>47</sup> Budget Review, 2018



To mitigate the impacts of climate change on women and girls, it is important to build mitigation strategies by developing and adopting gender responsive strategies to climate change and by giving women a greater voice in discussions about climate change mitigation. Climate change exacerbates the risks and impact of disasters globally by increasing the frequency and severity of weather and climate hazards, which heightens the vulnerability of communities to these hazards. Scientific evidence shows that human-caused changes in climate are responsible for a large proportion of extreme weather events around the world. The human rights consequences of these disasters are apparent in political and economic instability, growing inequality, declining food and water security and in increased threats to health and livelihoods. Women and girls are affected differently by climate change and disasters, with many women and girls experiencing greater risks, burdens and impacts. Situations of crises exacerbate pre-existing gender inequalities and also compound intersecting forms of discrimination against women.

### **6.1.1 Key Legislation and policies in the sector**

The policies and laws under the Department of Environmental Affairs (DEA) is divided into 5 key environmental areas, namely integrated environmental management, biodiversity and heritage resources, oceans and coastal environmental management, climate change and air quality and chemicals and waste management.

#### **6.1.1(a) Integrated Environmental Management**

- **Policies**

Key policies include the White Paper on Environmental Management (1998), the National Framework Strategy for Sustainable Development (2009) and the National Strategy for Sustainable Development 1 (2011).

- **The National Environmental Management Act (No 107 of 1998)**

The National Environmental Management Act (No 107 of 1998) (NEMA) is the framework environmental act and establishes a number of concepts, such as participatory, cooperative and developmental governance in environmental management. It also establishes principles for environmental management and provides the necessary structures to facilitate the principles.<sup>48</sup>

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<sup>48</sup> Department of Environmental Affairs (2019).



Some of the key principles include<sup>49</sup>:

- Environmental management must place people and their needs at the forefront of its concern and serve their physical, psychological, developmental, cultural and social interests equitably;
- Development must be socially, environmentally and economically sustainable;
- Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons;
- Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination;
- The vital role of women and youth in environmental management and development must be recognised and their full participation therein must be promoted;
- The right of workers to refuse work that is harmful to human health or the environment and to be informed of dangers must be respected and promoted.

#### **6.1.1(b) Biodiversity and Heritage Resources**

- **Policies**

Key policies include the White Paper on conservation and sustainable use of biodiversity (1997).

- **The World Heritage Convention Act (No 49 of 1999)**

The World Heritage Convention Act (No 49 of 1999) provides for the cultural and environmental protection and sustainable development of (and related activities) in a world heritage site.<sup>50</sup>

- **The National Environmental Management: Biodiversity Act (No 10 of 2004)**

The National Environmental Management: Biodiversity Act (No 10 of 2004) (NEMBA) reforms South Africa's laws regulating biodiversity. It sets out the mechanisms for managing and conserving South Africa's biodiversity and its components, protecting species and ecosystems that warrant national protection and the sustainable use of indigenous biological resources, among other matters.<sup>51</sup>

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<sup>49</sup> NEMA (1998).

<sup>50</sup> Ibid.

<sup>51</sup> Department of Environmental Affairs (2019).





#### **6.1.1(c) Oceans and coastal environmental management**

- **Policies**

A key policy is the White Paper for Sustainable Coastal Development in South Africa (2000).

- **The National Environmental Management: Integrated Coastal Management Act (No 24 of 2008)**

The National Environmental Management: Integrated Coastal Management Act (No 24 of 2008) establishes a system of integrated coastal and estuarine management in the Republic and ensures that the development and use of natural resources within the coastal zone is socially and economically justifiable and ecologically sustainable, among other matters.<sup>52</sup>

#### **6.1.1(d) Climate Change and Air quality management**

- **Policies**

A key policy is the White Paper on National Climate Change Response (2012).

- **The National Environmental Management: Air Quality Act (No 39 of 2004)**

The National Environmental Management: Air Quality Act (No 39 of 2004) reforms the law regulating air quality in order to protect the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development. It also provides for norms and standards regulating air quality monitoring.<sup>53</sup>

#### **6.1.1(e) Chemicals and Waste Management**

- **Policies**

A key policy under the chemicals and waste management aspect of environmental management is the White Paper on Integrated Pollution and Waste Management (2000).

- **The National Environmental Management: Waste Act (No 59 of 2008)**

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<sup>52</sup> Department of Environmental Affairs (2019).

<sup>53</sup> Ibid.



The National Environmental Management: Waste Act (No 59 of 2008) reforms the law regulating waste management in order to protect health and the environment by providing reasonable measures for the prevention of pollution; national norms and standards for regulating the management of waste by all spheres of Government; and provides for the licensing and control of waste management activities.<sup>54</sup>

### **6.1.2 Key programmes relating to/ impacting on women**

The DEA has developed a gender strategy (2016 – 2021) and a framework for gender mainstreaming. The strategy outlines key strategies that assist the sector with implementing the Gender Action Plan. The Sector Gender Framework (SGF) outlines critical areas that required ensuring the facilitation and achievement of the objectives of the Framework document in accordance with key government legislation and international best practice.<sup>55</sup>

The development of the SGF enabled the DEA to highlight the gender empowerment and equality progress made thus far in response to the policy imperatives. The framework further outlined key issues for consideration towards the development of the sector gender strategy that will have an action plan that includes a monitoring and evaluation component.<sup>56</sup>

- **Working for Water**

Working for Water (WfW) is a globally recognised programme and is regarded as one of the most outstanding environmental conservation initiatives on the continent. It continue to enjoy sustained political support for its job creation efforts and the fight against poverty. WfW considers the development of people as an essential element of environmental conservation.

Short-term contract jobs are created through the clearing of invasive and alien plant species, with the emphasis on recruiting women (the target is 60 percent women), youth (20 percent) and the disabled (5 percent). Creating an enabling environment for skills training, it is investing in the development of communities wherever it works. Implementing HIV and Aids projects and other socio-development initiatives are important objectives and since its inception in 1995, the programme has cleared more than one million hectares of invasive alien plants providing jobs and training to approximately 20 000 people from among the most marginalised sectors of society per annum. Of these, 52 percent are women.

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<sup>54</sup> Department of Environmental Affairs (2019).

<sup>55</sup> Department of Environmental Affairs (2019a).

<sup>56</sup> Ibid.



- **Working for Land**

Working for Land (WfL) is a project in partnership with Land Care Programme, communal farmers and community leaders to prevent and continuously control natural resources. The purpose is to mitigate bush encroachment/thickening and the loss of top soil. This would create employment opportunities and socio-economic benefits for the local residents, making the necessary contribution to the Expanded Public Works Programme (EPWP). The Special Public Works Programme includes the targets of 60 percent women, 20 percent youth and 2 percent disability.

- **Working for Wetlands**

The Working for Wetlands programme is implemented by the South African National Biodiversity Institute (SANBI) on behalf of the departments of Environmental Affairs (DEA); Agriculture, Forestry and Fisheries (DAFF) and Water Affairs (DWA). It forms part of the EPWP, which seeks to attract unemployed people into the productive sector of the economy.

- **Working on Fire**

The Working on Fire (WoF) project was launched in September 2003 as part of an initiative to create jobs and to alleviate poverty. WoF employs more than 5000 young men and women who have been fully trained as veld and forest fire fighters and are stationed in more than 200 teams throughout the country. WoF addresses the prevention and control of wild fires to enhance the sustainability and protection of life, property and the environment. An estimated 85 percent, are youth, 37 percent are women (the highest level in any comparable fire service in the world).

- **The Women in Environment Dialogue Conference**

The Department of Environmental Affairs (DEA) annually hosts the Women in Environment Dialogue Conference. The main purpose of the event is to share experiences, best practices and knowledge on initiatives through which women and young people around the world in general, and particularly in South Africa, are leading solutions for environmental sustainability.<sup>57</sup> The conference brings together women in the environmental sector from across South Africa to deliberate on issues and initiatives that enhanced their role in environmental conservation, while creating economic and social opportunities.<sup>58</sup> The ultimate objective of the conference is to mainstream women into the sector and bridge the gender gap.<sup>59</sup> The 2019 conference took place in Gauteng in August 2019. The theme was “women leading for climate action”.<sup>60</sup>

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<sup>57</sup> Department of Environmental Affairs (2019).

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Department of Environmental Affairs (2019a).



### 6.1.3 Key challenges in the sector

- Degrading environmental quality (air, water, land, oceans)
- The slow pace of the transition from an open to a circular economy
- Climate change and South Africa's carbon footprint
- Biodiversity loss and the spread of invasive species
- Illegal wildlife, and vegetation poaching and trade
- Unsustainable use of resources
- Issues relating to access to safe and clean drinking water, sanitation facilities and waste management, particularly in rural areas and informal areas, impacts on the health and safety of women.

## 6.2 Transport

Transport networks are one of the most important elements of a country's infrastructure, and they are key to reducing poverty and promoting equality. A country's transport infrastructure generally centres on enabling the supply of goods, connecting and providing access to people, services and trade, with the objective of bringing economic prosperity to a nation. However, it has been only in the past five to ten years that infrastructure projects have started to include gender awareness as part of their investment decisions. As women become even more central to a country's economy, addressing their transportation needs takes on an essential role in promoting economic growth and prosperity.<sup>61</sup>

Men and women use public transport in different ways because of their distinct social roles and economic activities. Since women's reasons for traveling generally differ from men's, the purpose, frequency, and distance of their trips are also different. Additionally, safety and perceived social status play a complex role in shaping women's transport behaviour as they move between urban, suburban, and rural areas. Equitable access to public transport is about making the transport system work for women and meeting their need for safe, efficient, sustainable mobility.<sup>62</sup>

The transport sector is not typically associated with female entrepreneurship opportunity or women-owned business; however, given the increasing emphasis on economic and gender equality, opportunities exist for women-owned enterprise development within this sector<sup>63</sup>

<sup>61</sup> World Economic Forum, 2015, <https://www.weforum.org/agenda/2015/09/why-we-need-gender-strategies-in-the-transport-sector/>

<sup>62</sup> <https://www.smartcitiesdive.com/ex/sustainablecitiescollective/why-public-transport-needs-work-women-too/1044816/>

<sup>63</sup> <http://www.seda.org.za/Publications/Publications/Seda%20Women%20Owned%20Enterprise%20Development%20Information%20Booklet.pdf>



### 6.2.1 Key Legislation and Policy in the sector

- **Preferential Procurement Policy Framework Act (No. 5 of 2000):** The Act provides for procurement contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability
- **Preferential Procurement Regulations 2017, 2017. National Treasury, Government Gazette No. 40553** – women are part of the designated groups to be advanced through preferential procurement.
- **Integrated and Sub-Sector Broad-Based Black Economic Empowerment (B-BBEE) Charters of Transport.** The Charter applies to all modes of transport, namely air transport (aviation/airlines); land transport (road and rail) and sea transport (maritime), the trades and services, as well as the supplies in these areas.<sup>64</sup>

### 6.2.2 Key Programmes relating to/ impacting on women

- **South African Network for Women in Transport (SANWIT):** This concept emanated from a need to break existing barriers for entry into the transport sector and demystify existing myths. SANWIT was established as a strategic vehicle to engage business and Government on issues that impact on women development in the transport sector, including entrepreneurship.
- **Provision of skills development by the Transport Education and Training Authority (TETA),** including engineering skills for roads, rail, aviation, as well as maritime.

### 6.2.3 Key challenges in the sector

- Transport is notorious for being a male dominated sector.
- Although the taxi industry has boomed since the advent of democracy, very limited gains have been made pertaining to women's involvement. For example, women have raised concerns that even when their husbands would have been running a taxi business, they are unable to inherit the business in the unfortunate event of their husbands passing on.<sup>65</sup>

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<sup>64</sup> Department of Transport (n.d).

<sup>65</sup> Mhlana & Mokonyama (n.d.).



- There is a feeling that both public and private sectors tend to reduce women empowerment to the mere training of women rather than providing actual work opportunities.
- There is also a sentiment that there is no monitoring and evaluation of women empowerment as companies make use of female contractors only to get contracts (fronting), but then do not make use of them.
- There is a low participation of women in downstream public transport industries: fuel retail, spare parts and tyre companies, as well as vehicle repairs.
- Unequal access to and unreliability of public transport.
- Safety of women at stations and in vehicles remain persistent problems.

### **6.3 Human Settlements**

The underdevelopment of housing and infrastructure contributes to the poor conditions in which the majority of South Africa's communities live. However, female-headed households constitute a disproportionate number of the poor and they experience greater extremes of poverty than male-headed households. Although women are generally targeted in urban policies concerned with population control, health and family planning, women are less often included in policies which directly address the problems of low-income housing and infrastructure provision. Since female-headed households are required to provide these services to their families, gender should play a prominent role in policy consideration.<sup>66</sup>

Since 1994, the national Government has implemented a number of policies, laws and programmes to ensure the progressive realisation of the right to housing. Government is currently in the process of drafting a White Paper on Sustainable Human Settlements and preparing for the eventual revision of the Housing Act to the Human Settlements Act.<sup>67</sup>

#### **6.3.1 Key legislation in the sector**

- **The National Housing Act**

The National Housing Act (Act 107 of 1997) entrenched the key policy principles contained in the White Paper and is the primary housing legislation in South Africa.<sup>68</sup> The Housing Act provides for sustainable housing development progress and the progressive realisation of the

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<sup>66</sup> Venter, A and Marais, L, 2005, Gender and gender sensitivity in the South African housing policy: preliminary evidence from Mangaung (Bloemfontein)

<sup>67</sup> Department of Human Settlements (2016).

<sup>68</sup> Tissington (2011).



right to housing.<sup>69</sup> The Housing Act, and later the National Housing Code (promulgated in 2000 in terms of section 4 of the Housing Act), define the roles and responsibilities of local, provincial and national Government with regards to housing.<sup>70</sup>

- The role of national government is to establish and facilitate a sustainable process for national housing development;
- The role of provincial government is to create an enabling environment and to promote and facilitate the provision of adequate housing in the respective provinces, working within the framework of national housing policy;
- Local governments are responsible for the delivery of housing and every municipality must, within the framework of national and provincial housing legislation and policies, ensure that the housing right in Section 26 of the Constitution is realised.<sup>71</sup>

- **The Social Housing Act**

The Social Housing Act addresses the housing needs of poor households through a variety of mechanisms to contribute to equity and creating a supporting environment for individuals and families. It also specifically addresses the needs of vulnerable individuals in society, such as women, children, people with disabilities and the elderly to promote a just society. By ensuring that social housing is located close to amenities and economic opportunities, the Social Housing Act also integrates the principle of inclusiveness in its programmes.

- **The Rental Housing Act**

The Rental Housing Act (No 50 of 1999) was developed to regulate the relationship between landlords and tenants in the housing sector.<sup>72</sup> Section 2(1)(a) of the Act requires that Government promotes a stable and growing market which progressively meets the demand for affordable rental housing for people who are historically disadvantaged, as well as poor households.<sup>73</sup> The Act states that this can be accomplished through making use of incentives and other mechanisms that improve conditions in the housing market and to facilitate the provision of rental housing through working with the private sector.

- **The Prevention of Illegal Eviction and Unlawful Occupation of Land Act**

The Prevention of Illegal Eviction and Unlawful Occupation of Land Act (No 19 of 1998, as amended) provides for a fair and reasonable process to evict people who occupy land and

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<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Tissington (2010).

<sup>72</sup> Tissington (2010).

<sup>73</sup> Ibid.





houses unlawfully. It is an offence to evict someone without following the correct process. The Act states that eviction or property repossession on the grounds of non-payment may only happen if a reasonable amount of warning has been served on the owner or tenant.<sup>74</sup>

- **Planned policy and legislative initiatives**

There are two noteworthy policy and legislative developments in the human settlements sector. The first relates to the development of the White Paper for Human Settlements and the second, to the amendment of the Housing Act to the Human Settlements Act.

This new White Paper on Human Settlements policy will strive to provide a framework for the realisation of sustainable human settlements and improved quality of household life. This will form the basis for establishing viable, socially and economically integrated communities, located in areas that allow for convenient access to economic opportunities, health, educational and social amenities.<sup>75</sup>

Key approaches and considerations of the policy will include:

- Improving the planning, design and development of human settlements.
- Facilitating access to adequate housing and quality living environments.
- Improving access to the residential property market for poor households.
- Fiscal sustainability and financial affordability.
- Intervening in land markets.

In recognising that the attainment of the outcomes of spatial changes is a long-term goal and that it requires adjustments to policies and legislation, the revision of the Housing Act (Act 107 of 1997) to the Human Settlements Act will guide the transformation of human settlements. This is a large and complex task that requires far reaching changes and shifts in practices across all spheres of government.<sup>76</sup>

### **6.3.2 Key Programmes relating to/ impacting on women**

- **The National Home-Builders Registration Council (NHBC) Women Empowerment Programme**, which was formed in partnership with the Gordon Institute of Business Science, comprises a developed and customised programme for women entrepreneurs in the construction industry. As part of the initiative, a hundred women who own construction-related businesses are taken through a 10-month programme that includes business skills training, mentorship, coaching, access to finance and new markets, as well as peer-learning opportunities.

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<sup>74</sup> DHS (2019).

<sup>75</sup> Department of Human Settlements (2015).

<sup>76</sup> Ibid.



- **The National Urban Reconstruction and Housing Agency (NURCHA)**, is an innovative partnership between the South African government and international and domestic donors that offers guarantees to banks that agreed to provide loans to contractors and developers. Between 1995 and 2015, NURCHA financed the construction of at least 350 000 houses in neglected and poor communities. NURCHA also significantly contributed to the transformation of the housing sector, promoting a new generation of black, female, construction company owners.
- **Specific focus on women in the work of the Department of Human Settlements**
  - One of the targets under Programme 4 of the Department for 2019/20 is “30 percent of Human Settlement Development Grant and Urban Settlements Development Grant budget allocated to women owned entities monitored.”<sup>77</sup>

The annual report for the Department for 2018/19 stated that:

- The Department has supported the establishment of construction and non-construction Cooperatives to deliver various services in the human settlements value chain. During 2018/19, the Department, in partnership with provinces and municipalities, delivered a total of 125 618 housing opportunities funded through the Human Settlements Development Grant (HSDG), with the primary beneficiaries of housing opportunities being the elderly, destitute people, women, child-headed households and people living with disabilities.
- The passing of the Property Practitioners Bill by Parliament was a milestone, which will advance the transformation of the property sector. The Bill provides measures that will promote the participation of young people, black women and people living with disabilities in the sector.

### 6.3.3 Key challenges in the sector<sup>78</sup>

- The geography of apartheid has remained largely unchanged for the poorest and most vulnerable South Africans. The spatial inequality traps disadvantaged communities in poverty and unemployment, has created inefficient cities, and robs the poor, rural people of secure livelihoods.
- Despite the massive expansion of low-cost state-subsidised housing, the supply is not fast enough to offset the growing demand for housing, partly because of rapid

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<sup>77</sup> Le Roux (2019).

<sup>78</sup> Parliament (2018).



urbanisation. Since poor rural migrants are predominantly African, it means that the proportion of African households living in informal settlements is higher than commonly reported.

- There are powerful special interests that are intent on maintaining the spatial status quo, which are known as not- in- my backyard (NIMBY) syndrome, where middle and higher income neighbourhoods actively oppose low-cost housing developments in close proximity, citing the risk of diminishing property values. At provincial level, it is often seen in the form of evictions where strong private sector interests override public sector interests.
- Economic and social policies are implemented with spatial outcomes that are not only diverse, but often also conflicting. Policies and programmes in the areas of trade and industry, transportation, environment, human settlements, health, education, infrastructure, etc. are not routinely scrutinised for their potential spatial impact, while there has been limited effort to achieve sustained spatial alignment. The absence of an overarching strategic approach to spatial planning results in a fragmented system across different sector departments. Spatial planning also lacks sufficient institutional authority within the system of Government.
- There is considerable red tape around the approval processes for environmental, heritage, water use and land use planning, leading to slower processes of development, which affects development of housing for the poor.
- In many townships, there is poor correspondence between the layout and extent of each property in the official register and the reality on the ground. Many structures, boundaries and access routes that have emerged over time, bear little or no relationship to the official plans. This leads to challenges with, and often an inability to issue title deeds.
- The transformation of the built environment and construction sectors needs to move at a greater pace, and conditions need to be improved to make it possible for more females to participate in the sectors.

## **7. Article 6: SOCIAL SERVICES**

The Charter acknowledges that women are primarily responsible for maintaining the household and the community. To this end it highlights that social services should apply to all areas of women's lives, in particular in the home, the workplace, health and education and should pay special attention to the needs of rural and disabled women.

Women, particularly those in developing countries, generally work longer hours than men as they often bear much more of the household and care responsibilities. This affects women's ability and opportunities to participate in the labour market, as well as earning an independent income. Unpaid care work, which includes housework, childcare and care of the elderly and frail, contributes to well-being and contributes to economic growth. However, the



positive impact of women's unpaid care work is not often taken into account. A woman's time spent as an unpaid caregiver restricts her ability to perform paid work or to migrate to higher paying jobs. Not having a paid job also makes women economically dependent on someone else. Furthermore, women are not as likely as men to work in the formal economy. Thus, they are not as likely as men to have direct access to pension programmes.

South Africa has an extensive social protection/ grants programme. Patel (2016) notes that despite negative views about these grants, positive outcomes are achieved in reducing poverty and inequality, with particular benefits for women. The Centre for Social Development in Africa (CDSA) highlights that although the monetary value of the grant is small it increases women's financial and decision-making powers.<sup>79</sup>

Gender inequality and dependency is inherently linked to lack of access and power. When women are limited in their ability to participate in the mainstream economy, they are more likely to be dependent on state interventions. There is therefore a need to provide women with greater access to employment opportunities, skills development and training, as a mechanism to reduce inequality. In addition, the improved provision of childcare and elder care services (amongst others), may also have a significant impact on reducing inequality and poverty amongst women.

## **7.1 Key legislation and policies in the sector**

- **The Constitution of South Africa**

Section 27 (1) (c) of the Constitution provides for the right of access to appropriate social assistance to those unable support themselves and their dependants. In addition, Section 28 (1) of the Constitution sets out the rights of children with regard to appropriate care (basic nutrition, shelter, health care services and social services) and detention. Schedule 4 of the Constitution further identifies welfare services, population development and disaster management as functional areas of concurrent national and provincial legislative competence.

- **Social Assistance Act, no. 13 of 2004**

This Act regulates the administration and the payment of social grants. It says who is eligible for grants and ensures that there are minimum standards for the delivery of social assistance. It also provides for the establishment of a body to monitor the quality of delivery:

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<sup>79</sup> Patel, L, 2016, Lessons from South Africa on why gender matters in social welfare policies



the Inspectorate for Social Assistance. According to the Act, the State must make money available for the following grants:

- A child support grant
- A care dependency grant
- A foster child grant
- A disability grant
- An older person's grant
- A war veteran's grant, and
- A grant-in-aid.

## **7.2 Key Programmes relating to/ impacting on women**

- **Women Empowerment Framework**

The project's goal is to empower and to secure the livelihoods and rights of women living in rural areas in the context of sustainable development goals and the current national discourse on women's rights to equitable access to productive land in South Africa. The project, launched in Mawewe, Mpumalanga in August 2018, seeks to synergise the Department's efforts and partnerships with both public and private entities to generate more lasting and wider scale improvements in the livelihoods and rights of women. This will include amongst others, training and capacity building, skills development, support to women-led cooperatives to improve their access to funding and market opportunities and ensure linkages for rural women and young girl's access to interventions such as prevention of and response to sexual and gender-based violence, as well as sexual and reproductive health services.

- **Victim Empowerment Programme (VEP)**

The Department of Social Development is the lead department in the provision of victim empowerment services. The Victim Empowerment Programme is based on strong partnerships with Government, civil society organisations, volunteers, business, academics and research institutions. It focuses on a victim-centred, restorative justice approach to crime and strives towards developing knowledge of victim issues, strengthening resources, addressing the needs of victims, stimulating volunteer participation and prevention of secondary victimisation. It facilitates the establishment and management of safe and secure shelters in South Africa and is also responsible for monitoring and evaluating the impact of services rendered in the Victim Empowerment sector.



- **HIV& AIDS Services to Women and Children – Home and Community Based Care Programmes**

The Home and Community Based Care Programmes (HCBC) programme seeks to:

- Address needs of the most vulnerable people in communities of which the majority is women and children,
- Address the vulnerability of women and children by providing them with the necessary information and appropriate services in supporting their roles as women through economic and social empowerment programmes, and
- Relieve the burden care on women through greater involvement of men in the Home and Community Based Care Programmes to encourage shared responsibilities

- **Expanded Public Works Programme**

Examples of work opportunities created by (Department of Social Development (DSD) through EPWP: interns placed at Mass participation; Opportunity and access; Development and growth (MOD) Centres, Early Childhood Development (ECD) assistants placed at regional and local offices, interns placed at Community Nutrition Development Centres (CNDC's), interns placed at older persons facilities, interns placed at institutes for the intellectually disabled.

### **7.3 Key challenges in the sector**

- Women bear a greater responsibility than men do for the care of family members. The care of young children, older people and ill family members, which increases in the context of high burdens of disease and lack of adequate care facilities, has resulted in women being locked in their domestic and nurturing roles.
- Poverty, inequality and high unemployment rates which continue to place the burden of care on the State.
- Continued high levels of abuse against women and children which indicates a disintegration of the social fabric of society and places pressure on already limited resources for service provision.
- Continued high levels of substance abuse without congruent services for recovery being available.
- Insufficient resources in the sector, both human and financial.
- Lack of services delivery structures at community level.
- Inadequate coordination and monitoring of services to women and children.



## **8. Article 7: POLITICAL AND CIVIC LIFE: ADVANCING WOMEN'S RIGHTS AT LOCAL GOVERNMENT LEVEL**

The Charter notes that women have traditionally been excluded from participation and decision-making in political, civic and community life and recognises that for democracy to be sustained and flourish women's right to participate equally in all levels of political activity must be acknowledged.

Political participation matters a great deal to women as a group and as individuals.<sup>80</sup> Particularly at a group level, the most important benefit from women's political participation is their access to and influence in decision-making processes which will result in making public policies sensitive to women's needs. The increased representation of women in decision-making positions is a vital step towards the attainment of gender equality. It is critical to creating a platform for women's issues to be placed on the political agenda. In addition, women may find it easier to access and relate to women in public office than they would men, particularly as women are better able to relate to gendered experiences. Lastly, the equal representation of women in decision-making processes must be considered a human rights issue - women should be entitled to occupy public office and have their interests represented in elected office.

Since 1994, the representation and participation of women in the public sphere in South Africa has been greatly enhanced. Over the past 20 years, the numbers of women elected into public office at national level has increased significantly. In the pre-1994 period, the Women's National Coalition played an instrumental role in bargaining for a high level of representation of women in public office. In the period leading up to the 1999 elections, women and civil society organisations also ensured that there was a fairly high level of mobilisation around gender issues, which further contributed to increasing the number of women in parliamentary positions.

Contrary to the gains made at national level, women are not as well represented at local government level. Local government plays an important role in impacting on communities. Elected local representatives give communities a voice and encourage community participation in political processes. Women are directly affected by the delivery of services or lack thereof in communities. In most communities women and children are the majority recipients at local level, but do not have the voice to speak out when these services are not provided, as gender roles have made women the primary caretakers for all levels of the

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<sup>80</sup> Goetz, 2003





family. Rural communities in particular do not allow for women to participate in processes of politics and change.

At the time of the 1996 local government elections, only 19 percent of elected representatives were women. It is important that at local level more women are elected to facilitate policy changes and development as more significant change is likely to emanate from larger numbers of women being elected to represent women's concerns. In 2002 women comprised approximately 17 percent of local government councillors. This number increased to 28 percent in 2003 and to 40 percent in 2007, indicating a significant increase in the number of women at local government level. In 2011 the figure declined to 38 percent. Following the 2016 local government elections, women's representation reached 41 percent. The South African Local Government Association (SALGA) constitution commits organised local government to pursuing the 50/50 campaign that guarantees women 50 percent of elected leadership positions in local government and within local government administration. Given that this target has not yet been reached, it is clear that efforts to improve women's representation need to be intensified and monitored.

### **8.1 Key legislation/policy/agencies in the sector**

- **The Electoral Act 73 of 1998** and the **Local Government: Municipal Electoral Act 27 of 2000** requires every registered party and candidate to respect the rights of women. The Acts mandate political parties to ensure that women candidates should be able to communicate freely with parties and candidates and to participate fully and equally with their male counterparts. It also encourages political parties to ensure free access for women to all public meetings, marches, demonstrations, rallies and other public events and takes all possible steps to ensure that women are free to engage in political activities
- **South African Local Government Association (SALGA) Women's Commission (SWC)**  
The SWC had its origin in the need "to coordinate, promote and advocate for gender appropriate strategies and practices within member municipalities and feed into regional and continental processes." The SALGA Women's Commission was formally launched in 2010 at the Women in Local Government Summit and was enabled through a provision in Article 4 of the SALGA constitution that commits organised local government to promoting the interests of women in local government through the 50/50 campaign. The launch of the SWC gave effect to the 2008 Women in Local Government Summit Resolution to promote the participation of women in local government and give effect to the international commitments at the local level. The objectives and governance structures of the SWC. Article 4 of the SALGA constitution commits organised local government to pursuing the



50/50 campaign that guarantees women 50 percent of elected leadership positions in local government.

## **8.2 Key challenges in the sector**

- Despite the Electoral Act 73 of 1998, we are still yet to see many political parties taking positive affirmative action and other measures to increase women's participation in politics.
- Politically, women lack the numbers in elected representation to effect the changes related to their economic and social status. Without equitable representation, there cannot be a meaningful policy and social commitment to empowering women.
- Limited access to education and training which adequately equip women for the political environment
- Gender stereotypes and traditional societal expectations restrict women's ability to enter public office. The continuance of patriarchal traditional value systems, which enforces the gender-segregated roles of women as apolitical mothers and wives, impedes their access to political processes.
- Rural/Urban divide and accessibility: women in urban areas often have greater access, mobility, resources and confidence to engage with politics in the formal arena, than their rural counterparts who are often more active in the "informal" political environment.

## **9. Article 8: FAMILY LIFE AND PARTNERSHIPS**

The Women's Charter notes that there are many different types of families which have not enjoyed the same rights, duties and benefits. Women bear an unequal burden in maintaining the family and yet have little power to make decisions. It calls for the equal recognition of all types of families, and particularly the equality of women within the family, within marriage and within intimate relationships. It further calls for women's equal decision-making powers and access to financial resources, as well as the sharing of domestic responsibilities.

The White Paper on Families<sup>81</sup> states that along with the economy, polity and education, the family is universally viewed as one of the essential sectors without which no society can function. It also acknowledges that there is a strong link and interplay between the family and other institutions in society. For example, the structure of a country's economy will not only influence the extent to which members of a family are able to enter and participate in the labour market but it will also determine, to a large extent, whether family members are able to derive livelihoods from decent work opportunities, earn a living wage and have benefits which enable them to have acceptable

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<sup>81</sup> Department of Social Development, 2013, White Paper on Families in South Africa



standards of living. The way an economy is structured will also have a bearing on the ability of family members to access quality health care and education.

A recent critique of the White Paper on Families<sup>82</sup> notes that there are a number of key factors that have impacted negatively on families over the last century in South Africa. Apartheid's discriminatory policies, its exploitation of migrant labour, and its erosion of rural life were key factors in the rapid change in family structure and function in the twentieth century. In addition, development and urbanisation ensured that men were largely forced to search for wage labour far from family homes, and women, black women in particular, bore the burdens of social reproduction and care. In the new dispensation since 1994, gender equality is constitutionally guaranteed. However, women in South Africa continue to be more vulnerable to poverty and get lower wages when they do access work. In addition, there are a range of social issues that impact negatively on families. Two stand out as having particularly harmful outcomes: one is the public health crisis of the HIV/AIDS epidemic and the other is the country suffering unacceptable levels of domestic violence at all socio-economic levels, which is extremely damaging to the individuals involved as well as their families.

## **9.1 Key legislation and policies in the sector**

- **Civil Union Act 17 of 2006**

The Civil Union Act, 2006 is an act which legalises same-sex marriage. It allows two people, regardless of gender, to form either a marriage or a civil partnership.<sup>83</sup>

- *In terms of Marriages:* This Act caters for a specific form of marriage, providing for both opposite and same-sex couples. Both prospective spouses must be at least 18 years of age; in contrast with the Marriage Act, no provision is made for persons younger than 18 to marry each other.
- *Civil partnerships:* Over and above marriage, the Act also provides for persons (irrespective of gender) involved in a monogamous relationship to enter into a civil partnership with each other. This is the legislature's attempt to create a mechanism whereby two people can formalise their relationship in instances where they do not wish to marry but nevertheless wish to ensure that their relationship has legal recognition. An example of such a relationship may occur within the context of more conservative same-sex couples, who view marriage as an institution exclusively associated with heterosexual relationships.

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<sup>82</sup> Patel, L, Hochfeld, T and T Englert, 2018, Reviewing the implementation of the White paper on Families: lessons learned for future practice, policy and research, Centre for Social Development in Africa, University of Johannesburg

<sup>83</sup> <https://www.divorcelaws.co.za/formalities-for-marriage-in-south-africa.html>



- **Domestic Partnership Bill**

Domestic partnerships, also known as cohabitation relationships, are becoming more common in our modern day society, and it therefore becomes ever more important for parties to understand the different legal implications of being married and merely cohabiting. Parties to a domestic partnership do not enjoy the same legal protection as married couples upon termination of the partnership with regards to maintenance claims, property division or succession. In 2006, the South African Law Reform Commission acknowledged the need for legal protection to be granted and drafted the “Draft Domestic Partnership Bill.” Parliament has, however, shown no urgency to pass the Draft Bill, and the legal position in South Africa thus remains unchanged.<sup>84</sup>

- **Intestate Succession Act 81 of 1987**

The aim of the act is to regulate the law relating to intestate succession; and to provide for matters connected therewith. The Act states that if after the commencement of the act a person dies intestate, either wholly or in part, and is survived by a spouse, but not by a descendant, such spouse shall inherit the intestate estate

- **Maintenance Act 99 of 1998**

This Act governs all the laws that relate to maintenance, and honours the ruling that both parents have a legal duty to support their children, and that, in some cases, a duty of support exists between family members. It governs all the legal procedures used by Maintenance Courts, officers and investigators to ensure a sensitive and fair approach to the payment of maintenance.

- **Marriage Act 25 of 1961**

Only monogamous, heterosexual civil marriages may be solemnised in terms of this Act. As a general rule, both prospective spouses must have reached the age of majority (18 years) in order to marry in terms of this Act, but the Act does make provision for minors to be permitted to marry under certain circumstances.

- **Matrimonial Property Act 88 of 1984**

In accordance with the Matrimonial Property Act 88 of 1984, which came into operation on 1 November 1984, there are three forms of matrimonial property regimes in South Africa,

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<sup>84</sup> <https://heyns.co.za/2018/03/26/the-rights-of-a-domestic-partnership/>



namely: Marriages in community of property, marriages out of community of property without accrual and marriages out of community of property with accrual.

- **Recognition of Customary Marriages Act 120 of 1998**

This Act makes provision for the legal recognition of both monogamous and polygamous customary marriages, provided they are concluded according to 'the customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of those peoples'.

- An amendment bill has been introduced which brings Section 7(1) and (2) of the Recognition of Customary Marriages Act (RCMA), 1998 (Act 120 of 1998) in line with the judgments of the Constitutional Court, which declared the sections constitutionally invalid. The sections discriminated unfairly against women in customary marriages.
- The bill provides for the equal treatment of women in pre-act monogamous and polygamous customary marriages. The amendments eliminate the gender-based discrimination in polygamous marriages entered into before the commencement of the RCMA of 1998. Spouses will now have joint and equal proprietary rights over marital property.
- The bill also provides for the equal treatment of women in pre-act monogamous and polygamous customary marriages. The amendments eliminate the gender-based discrimination in polygamous marriages entered into before the commencement of the RCMA of 1998.

- **White Paper on Families**

The White Paper on Families views the family as a key development imperative and seeks to mainstream family issues into Government-wide, policy-making initiatives in order to foster positive family well-being and overall socio-economic development in the country. The specific objectives are to:

- Enhance the socialising, caring, nurturing and supporting capabilities of families so that their members are able to contribute effectively to the overall development of the country;
- Empower families and their members by enabling them to identify, negotiate around, and maximise economic, labour market, and other opportunities available in the country; and
- Improve the capacities of families and their members to establish social interactions which make a meaningful contribution towards a sense of community, social cohesion and national solidarity.

The White Paper recognises various forms of family including female-headed, sibling and single-parent families.



## 9.2 Key challenges in the sector

- Disproportionately high levels of gender-based violence and femicide indicate uneven power relations and dynamics in intimate partner relationships.
- Religious marriages, such as Muslim Marriages, have no legislative framework governing them. These religious marriages are not legally recognised as marriages. The consequence of this is that there are no legislative protections for persons married according to religious rites, which includes Muslim rites. Women entering into Muslim marriages have not been able to enjoy the same rights and legal protection as those entering into civil marriages, customary marriages, or civil unions, thus facing discrimination.
- Unfair distribution of labour: Women spend at least twice as much time as men on domestic work, and when all work (paid and unpaid) is taken into account, women work longer hours than men do.
- Poverty and economic dependence of women disempower them from leaving abusive relationships.

## 10. Article 9: CUSTOM, CULTURE AND RELIGION

Culture and religion have played a significant role in preventing women from accessing their human rights. Many cultures, throughout the course of history, have traditionally exercised strict control over women and girls, reflected in a wide range of customs and practices.<sup>85</sup> Domestic violence and the exclusion of women from inheriting land are examples of cultural practices that have harmed women's human rights. It is important to promote the understanding that while culture is an important part of informing identity, it is not sacrosanct. It does not stay static over time and is able to adapt to new ideas and thinking as people change over time, allowing societies to grow and adjust to different ways of thinking. In addition, it is important to note that both culture and religion are permeated by power relations, where power is skewed so that women are at a disadvantage.

The 2018 Commission on the Status of Women noted that harmful traditional practices fuel gender-based violence.<sup>86</sup> Harmful cultural practices are associated with issues such as ukhutowala and female genital mutilation. In South Africa, the issue of forced early marriages of girl is a serious human rights violation. These marriages take place, either with the consent of the families involved, or girls are abducted and forced to have sexual relations with and then marry their abductor. While work has been done to eradicate such practices,

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<sup>85</sup> Terry, 2007

<sup>86</sup> Report on the Commission on the Status of Women, Parliament of South Africa, 2018



the problem is that they exist because many families and communities support and hold them in place. In extreme situations, girls have committed suicide to escape from a lifetime of a marriage that is abusive and violent.

Prevailing social norms reinforce gender stereotypes to create an enabling environment within which gender-based violence can occur. These are the norms that society takes for granted, such as holding girls responsible for domestic chores, treating them as if they have less rights than boys and limiting their life opportunities. The system of patriarchy operates in a number of ways to hold girls back from reaching their full potential. The restrictive social norms that prevent women from having equality are held together by belief systems that both men and women buy into. These belief systems are deeply entrenched and are often linked to cultural and religious practices. They allow for the harmful practices that negatively affect women's lives. In effect, they allow for women and girls to become versions of modern slaves, serving the needs of their men, families and communities and, at times, at the expense of their well-being.

Landlessness is one of the most critical challenges holding rural women in poverty. In South Africa, this is compounded by the fact that mothers and daughters are evicted from their homes when their husbands pass on. Inheritance practices that favour men at the expense of women who should rightfully inherit property, are placing many women in precarious positions where they have to live at the mercy of others. A related challenge in this regard is the issue of wife inheritance, where women who refuse to marry the family member of her deceased husband, lose rights to both their property and their children.

## **10.1 Key legislation and policy in the sector**

- **Constitution of the Republic of South Africa (Act No108 of 1996)**

The South African Constitution lays the basis for the promotion of gender equity. Sections 9(2) and (3) prohibit discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

Section 31 (1a) provides that persons belonging to a cultural, religious or linguistic community may not be denied the right to enjoy their culture, practise their religion and use their language. However, the right in this sub-section may not be exercised in a manner inconsistent with any provision of the Bill of Rights.





- **Promotion of Equality and Prevention of Unfair Discrimination Act (Act No 4 of 2000)**

Section 8 of the Prevention of Unfair Discrimination and Promotion of Equality Act provides that no person may discriminate against another person on the basis of gender, including in relation to:

- Gender based violence
- Female genital mutilation
- The system of preventing women from inheriting family property
- Any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines the equality between women and men.
- Any policy or conduct that limits women's access to land.

- **The Traditional Leadership and Governance Framework Act (Act No 41 of 2003)**

The Act recognises traditional communities as those who are subject to traditional leadership and observe customary law. The Act seeks to bring traditional governance in line with the constitutional principles of democratic rule and equality, requiring that 40 percent of traditional councils are democratically elected and that a third of all members must be women. The Act also recognises and affirms the powers of traditional leaders.

- **Recognition of Customary Marriages Act (Act No 120 of 1998)**

The Act provides for the recognition of customary marriages, specifies the requirements of a valid customary marriage and regulates the administration of customary marriages. It gives spouses in a customary marriage equal status. It also regulates the dissolution of customary marriages.

- **Reform of Customary Law of Succession and Regulated Matters Act (Act No 11 of 2009)**

This Act reformed the customary law of succession by prohibiting the principle of primogeniture. The Act recognises that women and children of a customary marriage were not adequately protected under the customary laws of succession.

## **10.2 Key Programmes relating to/ impacting on women**

- **Institutional Development and Capacity Building Programme** in the Department of Traditional Affairs: The initiative seeks to ensure that traditional communities are



empowered by reviewing and developing national support programmes for these communities and their governance structures.

- **Intergovernmental Relations and Partnerships Programme:** Promotes and integrates the role and place of traditional affairs and the institutions of traditional leadership in the South African governance system by establishing synergistic relationships with other governance structures across the spheres of Government.
- **The National House of Traditional Leadership** enhances cooperation between Government and institutions of traditional leadership and advises Government on programmes, policies and legislation that affect traditional communities.
- **The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities** promotes and protects the cultural, religious and linguistic rights of communities.

### 10.3 Key challenges in the sector

- Cultural, religious and customary practices have been used to exercise strict control over women and girls. Ongoing violence against women and the exclusion of women from owning land and property are some of the practical ways in which this control has been manifested.
- Access to land is a key challenge for many women living under customary law. With secure land rights, rural women usually have a greater say in their household investments and in community matters.
- Harmful cultural practices are usually associated with issues such as ukhutowala and female genital mutilation. In reality, it is the prevailing social norms that reinforce gender stereotypes to create an enabling environment within which gender-based violence can occur. These are the norms that society takes for granted, such as holding girls responsible for domestic chores, treating them as if they have less rights than boys and limiting their life opportunities.
- Notwithstanding legislative reform, women and girls are often evicted from their homes when their husbands/ fathers pass on. Inheritance practices that favour men at the expense of women who should rightfully inherit property, are placing many women in precarious positions where they have to live at the mercy of others.
- There is a need to increase the numbers of women in positions of traditional leadership.



## 11. Article 10: VIOLENCE AGAINST WOMEN

“Violence in all its forms is endemic to South African society. Both sexual and domestic violence are pervasive and all women live under the threat of or experience violence. Women experience secondary victimisation at all stages of the criminal justice system.”<sup>87</sup>

This introduction to article 10 of the Women’s Charter was drafted in 1994 and still rings true today. South African Police Services crime statistics released in October 2017 provides an overview of the crime situation in the country for the period 1 April 2016 – 31 March 2017. The information provided is not disaggregated, however women are often the primary victims of sexual offences. This is noted by the Statistics South Africa 2016/17 victims of crime survey. The survey found that from an estimated 50 883 victims of sexual offences, 63% are women.<sup>88</sup> In addition, women also constitute more than 50 percent of victims of assault. A total of 49 660 sexual offences were reported for the 2016/17 financial year.

It must however be remembered that not all incidents of sexual offences are reported. The World Health Organisation highlights that many women do not report sexual violence to police because they are ashamed, or fear being blamed, not believed or otherwise mistreated.<sup>89</sup>

Jewkes, et al (2009) list several reasons why there are such high levels of violence in South Africa. These include:<sup>90</sup>

- Poverty and social inequity are key drivers of violence and South Africa is an incredibly unequal society.
- Dominant ideas of manhood: There is an emphasised gender hierarchy and competition between men. Ideas of manhood are founded on the domination of women, and carrying weapons and the abuse of alcohol are part of these ideas.
- Widespread exposure of children to violence promotes anti-social behaviour.
- Widespread abuse of alcohol and drugs. This both increases the likelihood of violence and renders victims vulnerable.
- Guns: legal and illegal guns are still widely used to threaten and kill.
- Social norms that support and legitimise the use of violence are prevalent, and in particular, acts such as sexual harassment and sexual violence are perceived as normal by many South Africans.

<sup>87</sup> Women’s Charter for Effective Equality, 1994, Article 10

<sup>88</sup> Statistics South Africa, 2017, Victims of Crime Survey 2016/17, Statistical release P0341

<sup>89</sup> World Health Organisation, 2014, Global status report on violence prevention, [http://www.who.int/violence\\_injury\\_prevention/violence/global\\_campaign/en/chap6.pdf](http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf)

<sup>90</sup> Jewkes et al, 2009



- Law enforcement is generally very weak; legislation does not form a deterrent.
- The response from Government to violence prevention has been very weak, and does not include social reforms.

Violence in South Africa is common despite the proliferation of legislation and state measures to prevent the crime before it happens, and protect victims after the fact. For this reason, innovative measures to combat the problem are critical. Over the past decade, more than a million women in the country have been the victim of gender-based violence. The cost of this violence is not only to the victim, but to her family, the economy, and to the state. In addition, it hinders women's ability to exercise their constitutional rights to live and move freely within South Africa's borders.<sup>91</sup>

### 11.1 Key legislation and policy in the sector

- **The Domestic Violence Act (Act No. 116, 1998):** The Act established options to victims of domestic violence through identifying obligations on law enforcement bodies and made provision for the application of protection orders.
- **The Criminal Law Amendment Act 105 of 1997:** The Act established mandatory minimum sentences for certain rapes.
- **The Criminal Law Second Amendment Act 85 of 1997:** The Act allowed for bail conditions to be tightened in rape cases.
- **The Criminal Law Sexual Offences and Related Matters Amendment Act (Act No. 32, 2007):** The Act broadened the definition of rape and other sexual offences and introduced new offences that relate to gender-based violence, including digital distribution of pornography.
- **The Criminal Law (Sexual Offences and Related Matters) Amendment (Act 6 of 2012):** The Act was passed to provide for effective prosecution and conviction of offenders.

### 11.2 Key Programmes/initiatives impacting on/relating to women

- **Development of the National Gender-based Violence and Femicide Strategic Plan:** The Presidential Summit on Gender-based Violence and Femicide took place on 1-2 November 2018. The summit aimed to strengthen the response to gender-based violence at the highest levels, as well as across all levels of Government and all levels of society. The summit led the formation of an Interim Steering Committee that has

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<sup>91</sup> Thorpe, J, 2015, Innovating to end violence against women and harmful practices, Research Unit, Parliament of South Africa



been tasked with developing a National Gender-based Violence and Femicide Strategic Plan. The process for developing the plan entails a critical reflection on the country's existing interventions to gender-based violence and seeks to identify new directions in the development of coordinated responses to the problem, including its prevention.

- **Additional funding to prioritise 6 key areas:** In September 2019, President Ramaphosa announced an additional budget allocation to fight gender-based violence. The Interim Steering Committee has identified 6 priority areas to which this funding will be allocated:
  - The clearing of backlogs at forensic laboratories related to gender-based violence, especially sexual assault.
  - The hiring of additional staff for sexual offences courts, Thutuzela Care Centres, Child Protection and Sexual Offences Investigation Units.
  - The procurement of evidence-collection kits (paediatric rape kits, adult rape kits and buccal sample kits).
  - Behaviour-change interventions to influence changed behaviour for men and boys, while involving all sectors of society.
  - The establishment of at least one shelter per province to accommodate people who identify as lesbian, gay, bisexual, transsexual, intersex or queer.
  - The immediate roll-out of training on victim-centric, survivor-focused services, with a specific drive to train police, prosecutors, magistrates and policy makers.
  - The establishment of a gender-based violence and femicide fund for rapid response to assist survivors at community level, including access to justice through Legal Aid.
- **Finalisation of the National Prevention Strategy against Femicide:** The Department of Justice and Constitutional Development is in the process of developing a National Integrated Prevention Strategy against domestic violence and femicide. This is as a result of statistics that show a disturbing increase in cases of femicide in South Africa.
- **Review of the Domestic Violence Act:** The Department of Justice and Constitutional Development conducted a ten-year review of the Domestic Violence Act in 2018/19 in order to improve service delivery to victims of domestic violence.



- **Victim Empowerment Programme:** The Department of Social Development has finalised the Victim Support Bill, the purpose of which is to address gaps in all the existing empowerment legislation.
- **Roll-out of dedicated sexual offences courts:** In the 2018/19 period, as part of enhancing a victim-centred criminal justice system, 15 courts were adapted in line with the sexual offences courts model. However, a significant challenge has been the fact that no prosecutor posts have been filled since 2016. The National Prosecuting Authority has 4 408 posts, of which 1 142 are vacant due to a lack of funding, a vacancy rate of 25.0 percent.

### 11.3 Key challenges in the sector

- Resource and financial constraints: Within a fiscal context of having to adopt austerity measures to deal with a lack of growth in the economy, there have been funding cuts for service delivery across Government departments. The long-term of not addressing gender-based violence has to be considered within the context of the short terms in providing adequate service provision.
- The need for a comprehensive approach to providing psycho-social support to victims of gender-based violence.
- Service delivery in the criminal justice system often leads to secondary victimisation and negatively affects the inclination of victims to seek recourse to justice.
- There is a need to develop and resource a comprehensive gender-based violence prevention programme, focusing on behaviour change at all levels of society.
- There is no real complaint mechanism for when things go wrong and Government provides inadequate services. When service delivery is poor or inadequate, victims generally are at a loss in terms of knowing what to do. There is a need for the development of an accountability mechanism in this regard.

## 12. Article 11: HEALTH

The Women's Charter highlights that health services in South Africa have traditionally been unequal, inaccessible and inappropriate. It also notes that a lack of basic services impacts negatively on health. It emphasises that affordable and accessible health care services must be provided for women and that women have control over decisions about their bodies.

Women's improved health status have benefits beyond the individual - when women have adequate access to healthcare and health-related resources they are more likely to not only ensure better health for themselves, but also their families and ultimately their communities.



Healthier families and communities are able to result in a more productive labour force which, given the right conditions, contributes to economic and sustainable development. The relationship between women's economic empowerment and reproductive health is often mutually enforcing. In every society and every household, women provide critical economic support to their families, whether in agriculture or by earning income in the informal or formal labour market. Therefore, reproductive decisions and sexual health have a great impact on women's ability to engage in productive labour and contribute to family well-being and that of the nation.

The World Bank highlights that investments in women's health have multiple payoffs: in addition to improving women's well-being and productivity, such investments also yield significant benefits for families, communities and the national economy. Women's health has a major impact on the health and productivity of the next generation.

The Commission for Gender Equality indicates that a number of barriers exist in terms of women's access to health care. These include vast distances and high travel costs, especially in rural areas; high out-of-pocket (OOP) payments for care; long queues and disempowered patients. It further notes that women need access to antenatal care during pregnancy, they need skilled care during childbirth and further care and support in the weeks after childbirth. In some instances women have access to the health facilities but are not attended to by a skilled health professional i.e. doctor, midwife or trained nurse.<sup>92</sup> In addition, there are still barriers to accessing contraceptives which disproportionately impact on vulnerable and marginalised populations, such as adolescents, and persons living with disabilities.

Women are less likely to have access to most forms of health insurance that are based on formal employment, and to this end the provision of efficient and accessible primary health care is imperative for women's development and empowerment.

## **12.1 Key Legislation and Policy in the sector**

- **The National Health Act (Act No. 61 of 2003)**

Chapter 1 of the Act reaffirms the right of access of pregnant and lactating women and children below the age of six to free health services, provides for categories of vulnerable persons, and those not covered by a medical aid scheme.

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<sup>92</sup> Commission for Gender Equality, 2016, Gender & Health Issues in South Africa





- **National Development Plan (NDP) Vision 2030**

According to the National Development Plan (NDP), South Africa should promote a healthy lifestyle incorporating a healthy diet and physical activity. It advocates a culture of wellness that is part of home, work, communities, and schools. This would include elements such as compulsory physical education in schools, and communities with facilities for exercise and sports. Health and wellness are seen as “critical to preventing and managing lifestyle diseases” like heart disease, high blood cholesterol, and diabetes.

- **Choice of Termination of Pregnancy Act, (Act No. 92 of 1996), as amended**

It recognises that some pregnancies are not an expression of love, planning and volition, hence it makes provision for an abortion up to 12 weeks gestational age and after 20 weeks but under specified conditions. HIV-positive women who choose to terminate their pregnancies in order to safeguard their health may find this legislation helpful though studies found that at the initial stage, there were several challenges with its implementation.

- **Sexual Offences and Related Matters Amendment Act, (Act No. 32 of 2007)**

Chapter 5 recognises the possibility of a sexual offence victim being exposed to HIV infection, and therefore provides for access to free post exposure prophylaxis, subsequent to reporting the crime to the South African Police Service within 72 hours after the alleged sexual offence. It also permits a victim to have the offender tested for HIV within 90 days of the alleged offence.

## **12.2 Key Programmes relating to/ impacting on women**

- **She Conquers Programme**

She Conquers is a three-year national campaign that aims to improve the lives of adolescent girls and young women in South Africa through amongst others, increasing access to health, educational, job and academic services.

- **Integrated School Health Programme (ISHP)**

The objective of the programme is to reach all learners, offering health promotion and education, individual learner assessment and treatment, provision of services on site at schools, the opportunity for referrals and follow-ups, and to do an environmental assessment of schools to ensure that they had sanitation, clean water and safety fencing. The package of services offered to the learners under the health promotion and education



include individual assessments that focus on any barriers to learning, education and offering of sexual reproductive health services, with an emphasis on abstinence and delayed sexual debut.

- **Comprehensive micronutrient control programme**

This programme was introduced to mitigate the inadequate maternal diet and reduced nutritional reserves as these were considered to impede foetal growth among pregnant women and infant development.

- **South African National Sex Worker HIV Plan 2016-2019**

A national plan to reach a number of targets related to health and safety in the context of HIV. Goals include at least 95% of sex workers use condoms with clients and partners, gender-based violence falls by 50 percent, and the 90-90-90 targets<sup>93</sup> are met for sex workers. The plan includes the provision of PrEP (Pre-Exposure Prophylaxis).

- **A national project on Foetal Alcohol Syndrome launched in 1998**

The main target group of the project was women of childbearing age.

- **Young Women and Girls Programme sponsored by the (Global Fund)**

The Global Fund (GF) Programme for Young Women and Girls (YW&G) is an intensive, comprehensive HIV prevention intervention that aims to use a combination prevention approach to reduce new HIV infections among YW&G.

- **South Africa's National Strategic Plan for HIV, TB and STIs 2017-2022.**

### **12.3 Key challenges in the sector**

- HIV and AIDS epidemic; as well as diseases such as tuberculosis and cholera and the growing burden of non-communicable diseases place a tremendous strain on South Africa's health care system
- High maternal and child mortality;
- High levels of violence and injuries continue to impact the public health sector adversely;

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<sup>93</sup> Implies that 90% of sex workers know their HIV status, 90% of those testing positive are on antiretroviral treatment, and 90% of sex workers on ARVs are virally suppressed



- Accessibility and costs- Having to travel long distances (often at great cost) for medical care as well waiting in long queues and long waiting times frustrates patients and may result in defaulting and non-compliance which may result in further health implications;
- Ageing infrastructure and ageing medical equipment impacts on the quality of services provided in the public healthcare system;
- Rising Medico Legal Claims; and
- Inadequate Human Resources - the public sector is stretched and under-resourced in places, impacting on service delivery.

### **13. Article 12: MEDIA**

The Women's Charter requires that in terms of the media:

- Women must have equal access to all media and media institutions.
- The contribution of women in all areas of public and private life must be reflected in the media.
- The promotion of equality, including affirmative action, in employment must redress current imbalances in the status of women in the media.
- There is a need to monitor the representation of women in the media.
- Negative or injurious stereotypes of women must be eliminated.

#### **13.1 Key legislation and Policy in the sector**

The media is regulated by, amongst others, the following key legislation:

- **The Constitution of the Republic of South Africa**

Media freedom is seen as the cornerstone of the democratic state and has been guaranteed in law. Section 16 of the Constitution of the Republic of South Africa states that:

"Everyone has a right to freedom of expression, which includes:

- (a) freedom of the press and other media, and
- (b) freedom to receive or impart information or ideas."

- **The Broadcasting Act, no 4 of 1999**

The object of this Act is to establish and develop a broadcasting policy in the Republic in the public interest and for that purpose to-



- contribute to democracy, development of society, gender equality, nation building, provision of education and strengthening the spiritual and moral fibre of society;
- safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa;
- encourage ownership and control of broadcasting services through participation by persons from historically disadvantaged groups;
- ensure plurality of news, views and information and provide a wide range of entertainment and education programmes;
- cater for a broad range of services and specifically for the programming needs in respect of children, women, the youth and the disabled;
- encourage the development of human resources and training, and capacity building within the broadcasting sector especially amongst historically disadvantaged groups.

- **Films and Publications Act, No. 65 of 1996**

The objects of this Act are to regulate the creation, production, possession and distribution of films, games and certain publications to

- provide consumer advice to enable adults to make informed viewing, reading and gaming choices, , both for themselves and for children in their care;
- protect children from exposure to disturbing and harmful materials and from premature exposure to adult experiences;

### **13.2 Key Programmes/ Agencies relating to/ impacting on women**

The Media Development and Diversity Agency (MDDA) is a statutory development agency for promoting and ensuring media development and diversity. It is a partnership between the South African Government and major print and broadcasting companies to assist in, amongst others, developing community and small commercial media in South Africa. It was established in 2003, in terms of the MDDA Act No. 14 of 2002 and started providing grant funding to projects on 29 January 2004. It targets historically disadvantaged communities, historically diminished language and cultural groups, and inadequately served communities.

### **13.3 Key Challenges in the sector**

In its overview of transformation of the media in South Africa, the African Media Barometer highlighted the following challenges:<sup>94</sup>

- South African media lacks diversity regarding offering content that addresses the gender, class, race and ethnic complexities of the country. Voices of women, rural citizens, the

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<sup>94</sup> African Media Barometer 2018



disabled, sexual minorities, ethnic and religious groups are marginalised in the media. There is also little diversity of styles, genres and formats.

- Furthermore, women continue to be marginalised in the newsrooms. Although the number of women reporters has increased, there are very few women at editorial and management levels. Research has shown that creating gender equality in the newsroom is more than fulfilling a quota or being politically correct – it is good business as gender balance not only helps build readership and a publication's impact but eventually, its overall revenue.
- Women remain under-represented professionally in newsrooms, making it harder for women's voices to be heard on certain issues. Women also tend to be stereotyped in terms of topics and are rarely called upon by the mainstream media to discuss certain subjects (such as science).
- Research conducted by Media Monitoring Africa found that media sources in South Africa give voices to women only 18-23% of the time in terms of news stories, while male voices remain dominant
- A 2018 Sanef/Genderlinks report on the glass ceiling for women in South African newsrooms indicated that there was an invisible yet real barrier to the advancement of senior women through pervasive sexism in media houses. The report noted that challenges for women in the South African media are becoming less about numbers and more about the underlying sexism in the media, with new threats such as cyber-based misogyny emerging. In addition, issues such as the impact of working hours on childcare, further compounds the unequal burden on women in the media.



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