



Commission for Gender Equality
A society free from gender oppression and inequality



REPORT: GENDER TRANSFORMATION ON
PROCUREMENT
2018 / 2019



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ABBREVIATIONS

The Constitution:	The Constitution of the Republic of South Africa, 108 of 1996,
The CGE Act:	The Commission for Gender Equality Act 39 of 1996, as amended,
The Commission:	The Commission for Gender Equality,
Accounting Officer:	Director General of the relevant Government Department,
BBBEE:	Broad-Based Black Economic Empowerment Act 53 of 2003,
Beijing Platform:	Beijing Platform for Action (United Nations Fourth World Conference on women September 1995,
CEDAW:	The Convention on the Elimination of All Forms of Discrimination Against Women,
DOE:	National Department of Basic Education,
DOH:	National Department of Health,
DRDLR:	National Department of Rural Development and Land Reform,
DSD:	National Department of Social Development
EEA:	The Employment Equity Act 55 of 1998 (EEA), as amended,
HDI:	Historically disadvantaged Individuals,
KPA's:	Key Performance Areas,
NHI:	National Health Insurance,
PEPUDA:	The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000,
PFMA:	Public Finance Management Act 1 of 1999,
PPPFA:	The Preferential Procurement Policy Framework Act 5 of 2000,
PSETA:	Public-Sector Education and Training Authority,
PWD:	Persons with Disability
SCM:	Supply Chain Management,
SDG's:	Sustainable Development Goals,
UFH:	University of Fort Hare,
UP:	University of Pretoria,
WEP:	Women's Empowerment Principles,



1. INTRODUCTION

The Commission for Gender Equality ('the Commission') is an independent statutory body established in terms of Chapter 9 of the Constitution of the Republic of South Africa, 108 of 1996 ('the Constitution'). The Commission is mandated to promote and protect gender equality in government, civil society and the private sector. To this end, the Commission for Gender Equality Act 39 of 1996, as amended, ('the CGE Act') gives the Commission the power to monitor and evaluate policies and practices of organs of state at any level; statutory bodies and functionaries; public bodies and authorities and private businesses, enterprises and institutions to promote gender equality and make any recommendations that the Commission deems necessary.

2. BACKGROUND

The Annual Performance Plan 2018/2019 (APP) requires the Commission to conduct transformation hearing into procurement practices at public institutions. The hearing serves as a platform to establish the gains, challenges, application, compliance and systemic barriers encountered by the public sector in relation to procurement practices and ultimately the measures to be put in place by the public sector to comply with the array of local and international legislative prescripts set to promote gender transformation.

It has been globally observed that very few "countries have designed public procurement policies which provide special derogation for competing companies based on gender (or ethnicity, for racially polarised countries)".¹ Gender is an important element in public procurement policy because it can contribute positively to ensure equitable access and provide benefits by diversifying the supply chain. Public procurement has great potential to promote gender equality². It has therefore been suggested that "whenever possible ... gender equality should be incorporated in the subject of the contract itself" and that this will mean "the incorporation of gender equality clauses requiring gender technical competence ... as well as the inclusion of gender criteria for the evaluation of the submitted proposals and for further implementation."³

It is trite in South Africa that the Constitution requires that national legislation be enacted to ensure that public procurement provide for categories of preference in the allocation of contracts as well as the "protection or the advancement of persons"

¹ Akithatu-kiwekete, *gender-based e-procurement within the City of Johannesburg metropolitan municipality*, *international journal of -business and e-government studies* vol 9, no 1, 2017 issn: 2146-0744 (online).

² European Institute for Gender Equality (EIGE), 2016: 1.

³ Ibid.



who have been “disadvantaged by unfair discrimination”⁴ due to the economic disparities entrenched by apartheid. The contestation for economic redress that drives the agenda for economic transformation in South Africa provides the leverage for enhancing gender equality. The result is an evolving dynamic legal framework for procurement that governs all state agencies and spheres of government. Legislation that recognizes the need to include previously excluded groups, such as all categories of women, offers the opportunity to promote gender inclusiveness through procurement. Laws such as the Preferential Procurement Policy Framework Act, 2000; and the Broad Based Black Economic Empowerment (BBBEE) Act, 2003 with its corresponding Codes of Good Practice (2007), stipulate a preferential point system that encourages the use of women-owned enterprises to benefit from preferential procurement of all state organs.

It is against this backdrop that the APP 2018/2019 requires the Commission to conduct a transformation hearing into procurement practices at public institutions to:

- Assess compliance with National Treasury guidelines within the public sector;
- Assess the impact of procurement processes and policies on women in the public sector;
- Address institutional and systemic barriers to women's economic progress;
- Raise awareness of relevant international commitments and the importance of compliance;
- Assess what measures have been put in place in the workplace to bring about transformation in terms of gender and race in procurement;
- In-depth consultation on policy gaps; and
- Monitoring the implementation of the Commission's recommendations by each entity.

To achieve the above, the Commission conducted transformation hearings and the following National Departments participated:

- Department of Health;
- Department of Rural Development and Land Reform;
- Department of Basic Education; and
- Department of Social Development;

⁴ Section 217 of the Constitution.



3. RATIONALE

The procedure for the determination of any investigation is provided for in terms of Sections 10, 11, 12, 13, 14, 15, 17 and 18 of the CGE Act as amended, and regulated in terms of the procedure set out herein read in conjunction with the relevant CGE Complaints Manual, a public document gazetted in July 2016. All persons, including Commissioners and Officials of the Commission as well as entities and individuals subject to an investigation inclusive of any other person or organisation which has been appointed to assist or participate in an investigation will be subject to the procedures set out herein.

Section 12 (4) (b) of the CGE Act provides that the Commission may:

“Require any person by notice in writing under the hand of a member of the Commission, addressed and delivered by a sheriff, to appear before it at a time and place specified in such notice and to produce to it specified articles or documents in the possession or custody or under the control of any such person: Provided that such notice shall contain the reasons why such person's presence is needed and why any such article or document should be produced.”



4. LEGAL FRAMEWORK

4.1 Constitution of the Republic of South Africa, 108 of 1996 (The Constitution)

Section 7(1) of the Constitution states that the Bill of Rights is a corner stone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. Section 7(2) states that the state must respect, protect, promote and fulfill the rights in the Bill of Rights. Section 9(3) states that the rights in the Bill of Rights are subject to the limitation contained or referred to in section 36, or elsewhere in the Bill.

Section 9(1) of the Constitution states that everyone is equal before the law and has the right to equal protection and benefit of the law. Section 9(3) further states that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

4.2 The Commission for Gender Equality Act 39 of 1996, as amended (the CGE Act)

The CGE Act was promulgated into law in 1996. The Commission has been established in accordance with the CGE Act to promote respect for, the protection of, development and attainment of gender equality. In terms of Section 11(1)(e) read with Section 12, the Commission is mandated to investigate any gender related issue on its own accord or on receipt of a complaint and shall endeavour to resolve same. The procedure to be followed in any investigation shall be determined by the Commission in terms of Section 12 of the CGE Act.

Furthermore, in terms of Section 12 of the CGE Act, the Commission is obliged to make known the procedure that it has determined by way of notice in the Government Gazette. Accordingly, the Commission sets out the procedure to be adopted in respect of investigations relating to gender discrimination in the CGE Complaints Manual.

4.3 Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA)

PEPUDA came into effect in 2000. This law prohibits gender-based discrimination and provides for remedies designed to protect any person who experiences discrimination across the full spectrum of society including gender-based discrimination. PEPUDA was enacted because of section 9(4) of the Constitution which requires the State to pass legislation which promote equality and prevent unfair discrimination. PEPUDA gives effect to section 9 of the Constitution and binds the State and all persons.



However, PEPUDA does not apply to any person to whom and to the extent to which the Employment Equity Act (EEA)⁵ applies.⁶

Neither the State nor any person may unfairly discriminate against any person.⁷ No person may unfairly discriminate against anyone on the ground of race, gender, disability, including the engagement in any activity which is intended to promote, or has the effect of promoting, exclusivity, based on race, gender based violence, female genital mutilation and the system of preventing women from inheriting family property⁸ and failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons.⁹

PEPUDA addresses systemic inequalities and unfair discrimination that manifest in the institutions of society and the practices and attitudes of South Africans insofar as these 'undermine the aspirations of our constitutional democracy'.¹⁰ PEPUDA puts two responsibilities on persons that are operating in the public domain: to promote equality¹¹ and on the social commitment for all persons to promote equality.

4.4 Public Finance Management Act 1 of 1999 (PFMA)

The PFMA regulates financial management in national and provincial government to ensure that all expenditure, assets and liabilities of those departments are managed effectively. The PFMA also provides for the responsibilities of persons entrusted with financial management in those departments among others.

Part 16.6 of the PFMA Regulations deal with the procurement process of all government departments.¹²

Part 16.6.4 states that the procurement procedure may include a preference for categories of bidders, such as persons disadvantaged by unfair discrimination, if this

⁵ The Employment Equity Act 55 of 1998 as amended.

⁶ Section 5(3) of PEPUDA.

⁷ Section 6 of PEPUDA.

⁸ See *Bhe v the Magistrate, Khayelitsha*, *Shibi v Sithole* and *South African Human Rights Commission v President of the Republic of South Africa* 2005 (2) SA 580 (CC).

⁹ Section 7,8 and 9 of PEPUDA.

¹⁰ Preamble of PEPUDA.

¹¹ Section 26 of PEPUDA states that It is the responsibility of any person directly or indirectly contracting with the State or exercising public power to promote equality by –(a)Adopting appropriate equality plans, codes, regulatory mechanisms and other appropriate measures for the effective promotion of equality in the spheres of their operation;

(b) enforcing and monitoring the enforcement of the equality plans, codes, regulatory mechanisms developed by them; and
(c) Making regular reports to the relevant monitoring authorities or institutions as may be provided in regulations, where appropriate.

¹² Treasury Regulations Issued In terms of the Public Finance Management Act 1 of 1999, April 2001.



does not compromise the value for money requirement.¹³

4.5 Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA) and Broad-Based Black Economic Empowerment Act 53 of 2003 as amended (BBBEE)

The PPPFA gives effect to section 217(3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution. The BBBEE on the other hand establishes a legislative framework for the promotion of black economic empowerment and the issue of codes of good practice that stipulate a preferential point system that encourages the use of women-owned enterprises to benefit from preferential procurement of all state organs.

International law Instruments

1. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

In terms of Article 11 of CEDAW, the South African Government is obliged to take all appropriate measures to eliminate discrimination against women in the field of employment to ensure, on a basis of equality of men and women, the same rights in the work place.

2. The Sustainable Development Goals (SDG'S).

The SDG'S are set by the United nations. The goals cover the range of social and economic development issues. Gender Equality is one of the goals, targeting the empowerment of women and girls.

SDG 5 provides that gender equality is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world.

SGD 10 provides that to reduce inequalities, policies should be universal in principle, paying attention to the need of the disadvantaged and marginalized populations.

3. Women Empowerment Principles.¹⁴

WEP 2 provides for equal opportunity, inclusion and non-discrimination; assure sufficient participation of women – 30% or greater – in decision-making and governance at all levels and across all business areas.

WEP 5 provides for enterprise development, supply chain and marketing practices; expand business relationships with women-owned enterprises, including small businesses, and women entrepreneurs.

¹³ Ibid.

¹⁴ UN Women and UN Global Compact Office "Women's Empowerment Principles", Equality Means Business, second edition 2011, 2. List of WEP are as follows; 1. Leadership Promotes Gender Equality, 2. Equally Opportunity Inclusion and Non-Discrimination, 3. Health, Safety and Freedom from Violence, 4. Education and Training, 5. Enterprise Development, Supply Chain and Marketing Practices, 6. Community Leadership and Engagement, and 7. Transparency, Measuring and Reporting.



WEP 7 provides for transparency, measuring and reporting; make public the company policies and implementation plan for promoting gender equality, establish benchmarks that quantify inclusion of women at all levels, measure and report on progress, both internally and externally, using data disaggregated by sex and incorporate gender markers into ongoing reporting obligations.

4. Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (UN Guiding Principles).

The Operational Principle provides that “*guidance to business enterprises on respecting human rights should indicate expected outcomes and help share best practices. It should advice on appropriate methods, including human rights due diligence, and how to consider effective issues of gender, vulnerability and/or marginalization, recognising the specific challenges that may be faced by indigenous people, women, national and ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families*”.

5. Beijing Declaration and Platform for Action (Beijing Platform).

In accordance with Article 35 of Beijing Declaration and Platform for Action, the States parties are determined to “Ensure women's equal access to economic resources, including land, credit, science and technology, vocational training, information, communication and markets, as a means to further the advancement and empowerment of women and girls, including through the enhancement of their capacities to enjoy the benefits of equal access to these resources, inter alia, by means of international cooperation”

Article 36 provides that “We are determined to ensure the success of the Platform for Action, which will require a strong commitment on the part of Governments, international organizations and institutions at all levels. We are deeply convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people. Equitable social development that recognizes empowering the poor, particularly women living in poverty, to utilize environmental resources sustainably is a necessary foundation for sustainable development. We also recognize that broad-based and sustained economic growth in the context of sustainable development is necessary to sustain social development and social justice. The success of the Platform for Action will also require adequate mobilization of resources at the national and international levels as well as new and additional resources to the developing countries from all available funding mechanisms, including multilateral, bilateral and private sources for the advancement of women; financial resources to strengthen the capacity of national, subregional, regional and international institutions; a commitment to equal rights, equal responsibilities and equal opportunities and to the equal participation of women and men in all national, regional and international bodies and policy-making processes; and the establishment or strengthening of mechanisms at all levels for accountability to the world's women”.



Action 166(h) provides that the government must take action to review, reformulate, if necessary, and implement policies, including business, commercial and contract law and government regulations, to ensure that they do not discriminate against micro, small and medium scale enterprises owned by women in rural and urban areas.

Action 176(d) provides for the government to strengthen the participation of women, including marginalized women in production and marketing cooperatives by providing marketing and financial support, especially in rural and remote areas.

Action 177(b) provides that the government should recruit women for leadership, decision-making and management and provide training programmes, all on an equal basis with men.

Action 177(c) provides that the government should observe national labour, environment, consumer, health and safety laws, particularly those that affect women.



5. TRANSFORMATION HEARINGS: PROCUREMENT PRACTICES

The Commission issued notices to appear in terms of section 12 of the CGE Act to four National Departments to participate in the transformation hearings for the 2018/19 financial year to account on gender transformation surrounding their procurement practices. The transformation hearings were conducted on 14th and 15th November 2018.

The Commission formulated a questionnaire addressing the issues surrounding procurement practices. The questionnaire was designed in a manner to determine the procurement practices of the Departments in detail i.e. the compliance, non-compliance, successes, challenges and policy gaps on Local, Regional, and International transformation and procurement prescripts. The said questionnaire was dispatched to the four Departments and was responded to.

When analyzing the information submitted by the Departments, the Commission considered gender representation at all occupational categories, race and disability in addition to the provisions of the prescripts listed above.¹⁵ The Commission also took into consideration the WEP's, SDG's, CEDAW, UN Guiding Principles, and Beijing Platform.

Despite challenges by some Departments of late submission of the responses, non-appearance by the Accounting Officers, lack of preparation, Accounting Officer's lack of knowledge and understanding of procurement principles and inadequate information among others, the Commission successfully hosted the transformation hearings.

5.1 The National Department of Health

5.1.1 Background

The National Department of Health (DOH) participated in the gender transformation hearings on procurement practices. The Commission requested information from the DOH through a questionnaire and the responses were analysed. The DOH appeared before the Commission on the 14th of November 2018, represented by the Director-General.

Pursuant to the presentation of the DOH the Commission required more information and clarity on the following issues:

- a. Disaggregated data of the beneficiaries in relation to the budget of R 3 billion.
- b. Procurement practices for Legal Services for DOH: Data submitted should be disaggregated in terms of gender, race and disability.
- c. The total amount of money for services.

¹⁵ See paragraph 4.1 to 4.4.



- d. Gender budgeting and the amount set-aside for this area.
- e. The level in terms of salary of the person who was appointed to deal with issues of disabilities, gender and race.
- f. Elaboration of the information that the DOH employment equity plan indicate that some PWD do not meet the requirements.
- g. Whether DOH previously waived any requirements to accommodate PWD
- h. The number of PWD that DOH employed through this waiver of requirements.
- i. Whether the DOH has considered partnering with organisations like Disability South Africa.
- j. Regarding gender mainstreaming, the DOH to come up with a strategy to ensure gender equality is realised and or achieved.
- k. Information relating to the aim and the beneficiaries of the Albertina Sisulu programme in the form of disaggregated data in terms of race, gender and disability.
- l. Information on training and skilling on procurement practices.
- m. Detailed information relating to ICT and laboratories procurement.
- n. Information relating to employment of young people, particularly from designated groups.
- o. Information relating to the work of the clusters, nationally and provincially.
- p. Information regarding the roll-out of National Health Insurance and its procurement.
- q. Information relating to procurement of medical treatment/services for persons with albinism i.e. sunscreens.
- r. Information relating to internationally based companies providing services as opposed to locally based companies. Including the details and clarity of the case study the DOH presented regarding the KwaZulu Natal procurement matter in which women among others were denied oncology services by a local supplier.

The DOH submitted further information as requested. The said information was analysed.

5.1.2 Analysis of information submitted by the DOH

In terms of section 2 of the BBBEE regarding the increase of black owned and managing existing and new enterprises, the DOH submitted that prior to the PPPFA Regulations, pre-qualification "set-asides" were not expressly catered for in the public procurement prescripts and as a result DOH was not obliged to comply despite paragraph 9 of the



Codes of Good Practice (BBBEE 2007) providing for the enhanced recognition of Black women, Black people with disabilities, Black youth, Black people living in rural areas and Black unemployed youth.

However, the DOH also indicated that there was a tender for stationery consumables supplies, which was awarded to an entity that is 100% owned by an Indian female. The contract or the tender was for a budget ceiling of R 12 million over a period of three years, and the spend to date as in November 2018 against the said contract was R 738 891.05.

The DOH further submitted that of the 20 open bid transaction executed during 2017/2018 financial year, and with emphasis on health infrastructure related contracts which constituted 6 contracts at the cost of R 278 Million, 5 of these contracts were awarded to Black-owned business and one of the 5 business being 100% owned by a black woman, receiving R 88 Million of the R 278 Million. However, the DOH did not provide disaggregated data in terms of people with disabilities.

It is important to mention that the DOH in their submission indicated that their target of Women participation in decision making is 50% being greater than the minimum of 30% provided for in the WEP 2 and they have been able to achieve the target.

Figure 1: The Disaggregated Data at Top and Senior Management as at 31st March 2018:

	WHITES	AFRICANS	INDIANS	COLOURED	TOTALS
TOP MANAGEMENT					
Male	1	3	3	0	7
Female	0	4	1	2	7
SENIOR MANAGEMENT					
Male	8	40	3	2	53
Female	5	32	3	5	45
TOTALS	14	79	10	9	
Male= 60				GRAND TOTAL	112
Female= 52					

The disaggregated data as per the above statistics shows a fair representation of males and females in the mentioned occupational categories and it reflects the demographics of South Africa.



Figure 2: Head of Procurement and Senior Procurement Directors

A: Africans C: Coloureds I: Indians W: Whites

DESIGNATION	A: MALE	C: MALE	I: MALE	C: MALE	A: FEMALE	C: FEMALE	I: FEMALE	W: FEMALE	TOTAL
Head of Procurement	0	0	0	0	1	0	0	0	1
Senior Procurement Directors	1	1	0	0	0	0	0	0	2
TOTAL	1	1	0	0	1	0	0	0	3

The above table (Figure 2) reflects that the Head of Procurement is an African female which represents 100% as opposed to their male counterpart which reflects 0%. On the level of senior procurement directors' males are overrepresented with 100% as opposed to their female counterparts.

The Commission considered the workplace profile of the DOH as submitted before the hearings. The statistics below will show that the number of all employees across the categories and races, females are overrepresented as opposed to their male counterparts.



Figure 3: DOH Workforce as at the 31st of March 2018

Occupational Categories	A: Male	C: Male	I: Male	W: Male	A: Female	C: Female	I: Female	W: Female	Total
Legislators, senior officials and managers	38	2	3	6	30	5	3	2	89
Professionals,	104	1	3	8	138	4	7	23	288
Technicians and associate professionals	242	12	8	19	425	16	16	33	771
Clerks	102	2	2	3	219	16	7	35	386
Service and sales workers	51	0	2	0	27	0	1	0	81
Skilled agriculture and fishery workers	0	0	0	0	0	0	0	0	0
Craft and related trades work	1	0	0	0	0	0	0	0	1
Plant and machine operators and assemblers	1	0	0	1	1	0	0	0	3
Elementary occupations	31	1	0	0	45	1	0	0	78
Total	570	18	18	37	885	42	34	93	1697
Employees with disabilities	2	0	0	1	2	1	0	3	9

The statistics reveals that the DOH has 9 employees with disability and their race and gender cut across. The DOH submitted to the Commission that the challenge is that some employees do not wish to disclose their disability or to be categorised as disabled, thus cannot be forced to disclose.

The table and or statistics also show that females are overrepresented at the clerk level as opposed to their male counterpart accounting for 277 and males a mere 109. The worrying fact is that most of them are at lower levels.

The DOH has allocated a budget that is geared towards gender transformation within the department.

The DOH submitted that all Senior Managers, inclusive of male leaders joining the DOH, are inducted on SMS induction programme. The aim of the programme as highlighted by the DOH is to empower them to understand their rights and obligations as employees, which includes enhancement of women's participation and inclusion.

The DOH through the Directorate: Performance Management & Corporate Human Resource Development takes a lead in ensuring that the Departmental Human



Resource Development Strategic Framework which is submitted annually to the Department of Public Service and Administration prioritises training programmes that strive to empower women and ensure inclusion.

Other programmes include Diversity Management and Management Development Programme i.e. Oliver Tambo Fellowship that prepare Middle and Senior Management for Leadership and Management Roles. The DOH prepares and submits the Departmental Workplace Skills Plan annually to the Public-Sector Education and Training Authority (PSETA), and make use of the Health and Welfare Sector Education and Training (HWSETA).

Female employees at DOH received more bursary opportunities (62%) as compared to their male counterparts (38%). The Departmental Training Plan for the financial year 2017/18 indicates that 65% of female officials attended different training programmes as compared to 35% of their male counterparts. The DOH indicated that it will continue to identify and implement transversal and core training programmes that will ensure women empowerment.

The DOH has a programme called Albertina Sisulu Leadership Programme in Health (ASELPH). This programme is in partnership with University of Pretoria (UP), the University of Fort Hare (UFH), Harvard School of Public Health (HSPH). The programme is customised to address the needs of senior experienced public officials, referred to as Executive fellows, and junior level officials who will complete postgraduate training programmes and will be referred to as Emerging Fellows.

UFH offers Masters in Public Health, and UP offers a post Graduate Diploma in Executive Leadership, under the umbrella of ASELPH. It was highlighted during the hearings that between 2013-2018, a total of 340 strategically chosen health leaders were inducted into 4 cohorts of ASELPH fellows at Fort Hare and 4 cohorts at UP.

According to DOH 38 (11.2%) enrolees/beneficiaries withdrew from the program for various reasons including personal issues, poor health and one death. As of September 2018, a total of 302 were deemed to be, or have been, "active participants". To date there are a total of 160 who have graduated with Masters in Public Health, or Post Graduate Diploma in Public Health from UFH and UP, respectively.

Figure 4: Disaggregated Data of Beneficiaries of the ASELPH (2013-2018)

Male	Female	Disability	African	Coloured	Indian	White
37.7%	62.3%	0	92.4%	3.3%	2.3%	2%

The statistics reflected on the above table shows that females are the overall beneficiaries of this program compared to males. The statistics reflects the demographics of South Africa. The above statistics, however, indicates that PWD are not represented.



The DOH entered into Supply Agreement for Vaccines with Biovac Institute of Southern Africa (Pty) Ltd. The appointment was through a Public Private Partnership initiative and is due to expire on the 31st of December 2018. Frost and Sullivan undertook a socio-economic impact study of Biovac in 2016. The findings are that Biovac contributes a total of R 604.5 million annually to the South African economy. This is through the creation of 200 direct and permanent jobs (60% of Biovac staff have minimum of a bachelor's degree), and highly complex capital infrastructure build program. Biovac has been able to consistently maintain level 2 BBBEE rating under the previous codes and is now level 4 rating under the new legislated 2016 BBBEE codes.

Biovac employs largely black and female employees as shown.

Figure 5: Disaggregated Data of Biovac Workforce

Male African	Male, coloured	Male Indian	Male, White	Female, African	Female, Coloured	Female, Indian	Female, White	Total
31	40	6	8	37	45	7	19	193

The table above (Figure 5) reflect all races and gender. It is noteworthy that the number of people who participated in the Biovac reflects males at 85 as opposed to females who account for 108.

In terms of the DOH having an effective gender responsive procurement programme, the DOH submitted that it uses the Integrated Procurement Strategy outcome 7. Outcome 7 of the strategy provides for increased procurement goods and services to entities as per the table below.



Figure 6: Targets of Outcome 7 for 2016 and 2020

No	Performance Measure	Measure Definition	Target, 2016	Target, 2020
1.	% of acquisition spend through B-BBEE Level 1-4 compliant entities	Accumulative amount of acquisition spends with B-BBEE Level 1-4 Compliant entities divided by the total addressable spend	50%	100%
2.	% of acquisition spend through partially-Black owned (>51% Black ownership) Entities.	Accumulative amount of the addressable spend with partially Black-Owned (>51% Black Ownership) entities divided by the total addressable amount of spend per FY.	30%	60%
4.	% of acquisition spend through partially Black-Women Owned (>51% Black Ownership) Entities.	Accumulative amount of addressable spend with partially Black-Women Owned (> 51% Black ownership) entities divided by the total addressable amount spend per FY.	10%	30%

DOH strives towards gender responsive budgeting as demonstrated by budget allocations in the table below.

Figure 7: Budget Allocation for Gender Transformation (2018/19)

PROGRAM	BUDGET
Directorate: Employment Equity and Gender focal point	R 5, 761,000.00
Cluster: Clinical Trials Management, Trauma, Violence and EMS	R 8,497,000.00
Cluster: Women, Maternal, Neonatal and Reproductive health	R 19, 907,000.00
Branch: HIV/AIDS, TB and Maternal child health	R 162,730,000.00
Directorate: Chronic Diseases disabilities and Geriatrics	R 74,183,000.00
Cluster: Health Promotion, Nutrition, Oral Health and food control	R 24, 682,000.00

The table above (figure 7) reflects the budget used by the DOH on issues relating to gender, race and disabilities. It was also highlighted by the DOH that transformation as a subject item, is presented during induction for new officials and this is done on quarterly basis.

There was an open discussion held with officials in May 2018, to sensitize them about the prevalence of sexual harassment in the workplace and the need to report same. The responsibility lies with the cluster of Health, employment equity, gender focal point and labour relations.



Breastfeeding is a continuous programme aiming to create a conducive environment for returning mothers to breastfeed exclusive for 6 months to ensure child nutrition. The DOH progressed in terms of creating a breastfeeding programme at the workplace.

The DOH was further requested to provide information in relation to the MomConnect programme. The program was launched in August 2014, to improve access to early antenatal services and to empower pregnant women with relevant health knowledge. Pregnant women register via their mobile phones to receive weekly messages appropriate to their stage of pregnancy. The number of pregnant women and mothers registered on MomConnect doubled from 917 053 in the 2016/17 financial year to 1 888 918 in the 2017/18 financial year. It was further submitted that a total of 1 549 complaints and 14 337 compliments have been registered and resolved since its inception. At the end of March 2018, a total of 818 688 pregnant women and mothers were receiving health promotion messages.

The DOH will continue to approach Treasury for an increase of its budget to enable the DOH to implement its mandate. This shows the willingness to improve on the services provided and on procurement of services. There are number of activities that the DOH is embarking on among others, discussions on the HOD's 8 principles, "She conquers Campaign", which aims is to empower young women and girls.

The DOH highlighted that the officials dealing with gender, disability and gender mainstreaming are on level 13, which is at Director level and others are Chief Directors. This is important because they will be able to influence decisions in relation to their directorate as opposed to when they are at a junior level with no decision-making powers.

The DOH works with various Non-Governmental Organizations through Committees and Council where gender is being mainstreamed to realize and achieve gender equality including women empowerment. The Commission observed that one of the key committees is the National Health Council Technical Committee. It is comprised of the Director-General, Deputy Director-Generals and Provincial Heads of Departments. The disaggregated data in terms of gender is 5 Females and 11 Males.

There is also the National Health Council, which comprises of the Minister, MEC's and HOD's (16 males & and 12 Females). These statistics shows a fair representation of females in the Council although there is no disaggregated data in terms of disability and race.

In terms of the training and skilling on procurement practices, the DOH submitted that employees responsible for Supply Chain Management must be properly trained, formally assessed and certified to the following learning outcomes: demand management processes and practices, tendering processes and practices, acquisition processes and responsibilities, the evaluation processes required for both large and small



purchases as defined by the NDH SCM policy:- pricing or cost analysis, adjudication processes, effective contract management, and governance processes as defined in the SCM National Treasury Regulations, NDH Delegations of Authority, and NDH SCM Policy. Crucially, the learning outcomes are aligned to SAQA unit standards and SETAs. The DOH furnished the Commission with information relating to the employment of the youth.

Figure 8: Disaggregated Data for Youth Employees at DOH

AGE GROUP									
	African	African	Coloured	Coloured	Indian	Indian	White	White	Total
	Female	Male	Female	Male	Female	Male	Female	Male	
20-25	10	5	1		2	1			19
26-29	82	39			2		2		125
30-35	262	136	7	4	2	2	2	2	417
Grand total	354	180	8	4	6	3	4	2	561

The table above (Figure 8) depicts the statistics of young people employed by the DOH. The total number of employees is 1718 of which 561 is young people and constitutes 32.7% of the workforce.

The Commission commends DOH for providing clear disaggregated data in terms of race, gender and age. This is of assistance in analyzing the data provided and the measuring of transformation. The females are overrepresented. They account for 372 as opposed to 189 males, however it is concerning that most females are employed at administrative level.

It is commendable that the DOH is making strides in bringing the youth into the workplace, particularly young women.

In terms of procurement of legal services, the DOH submitted a list of advocates and attorneys briefed. Male attorneys and/or advocates are overrepresented. Out of the total number of 95, females only account for 35 and their male counterparts 60. The DOH must however, be commended for its efforts, to bring females legal practitioners on board in terms of their briefing patterns.

The DOH provide information in relation to Oncology services below:

Figure 9: Current Oncology Services (Adult and Pediatric) in the public sector

Province and Hospital	Medical oncology/ hematology permanent staff	Radiation Oncology / Permanent staff	Pediatric Oncology/ Permanent staff	Radiation equipment	Surgical expertise	Pharmacy	Waiting times (Prostate and or Gynae)
GP: CMJAH (3)	6 (7)	2 (11)	2 (6)	Insufficient outdated, poor maintenance	Sufficient	Good	12 Weeks (Wits)
GP: CHBAH	0+3 (4)	N/A	3 (10)	N/A	Good	Sufficient	
GP: SBPAH	3 (5)+2(2)	2(7)	3(7)	Sufficient but poor maintenance	Sufficient	Good	
GP: Kalafong (satellite of SBPAH)	0	N/A	N/A	N/A	Refer to SBPAH	Sufficient	
GP: George Mukhari	Not known	N/A	1(3)	Refer to SBPAH	Refer to SBPAH	Sufficient	
GP: Nelson Mandela Children's fund	To be determined	To be determined	To be determined	Available	Unknown	Available	
FS: National and Universities	2 (4)	5 (7)	1 (10)	Sufficient	Insufficient	Sufficient	10-12 weeks
KZN: Addington/ IALH	0(0) +(4)	0 (7)	2 (7)	Insufficient and no maintenance	Sufficient	Sufficient	Minimum 8 months
KZN: Greys	2 (4) + 0	2(4)	1(2) sufficient for adult service only	Sufficient	Sufficient		
WC: GSH	5(5)	9(9)	3(Red Cross) 6	Sufficient	Sufficient	Good	6 weeks(Stel-lenbosch) 12 weeks (UCT)
WC: Tygerburg	3 (3) +4 (4)	6(6)	2(4)	Sufficient	Sufficient		6 weeks(Stel-lenbosch) 12 weeks (UCT)



In respect of sunscreen for people with albinism, the DOH does not procure medical treatment /services. Procurement of these services is done by respective provinces. The DOH is responsible for setting standards and identifying essential medicines and products which must be available at District and Tertiary/ Quaternary levels of care. It is noteworthy that sunscreen SPF30 is on the current tender, HP08-2017SSP.

The National Health Insurance (NHI) aims to ensure that good quality health services are provided irrespective of socio-economic status, thereby eradicating financial barriers to health care access. The White Paper on NHI policy was published in the Government Gazette on 30 June 2017.

This initiative is commendable on the part of the DOH and must be supported, to ensure that the county offers access to quality medical services.

5.1.3 Findings and recommendations

1. The Commission found that DOH progressed in terms of gender representation at top management positions. It has achieved 50% gender parity and all races are represented. The DOH has fair representation of females and males at top and senior management positions. The DOH has complied with the WEP2 and surpassed the target of 30%.
2. The Commission observed that the DOH has identified relevant stakeholders to assist them in terms of sourcing PWD, but the process seems to be very slow. The Commission recommends that the DOH should speed up the process of sourcing PWD.
3. The Commission observed that DOH employed young women but mostly at administrative levels. The Commission recommends that the DOH train, mentor and upskill young women to ensure their upward mobility to occupy decision making positions. This will assist the country in achieving gender parity.
4. The Commission commends the DOH for appointing an official at the level of Director to deal specifically with issues of disabilities. The Commission emphasises the importance of having sufficient representation of PWD within the workplace. The Commission observed that a tender was awarded to a business owned by a woman, but what is concerning is that the DOH does not necessarily consider the gender demographics of prospective suppliers or vendors. The Commission recommend the DOH to speed up the employment of PWD, and to procure services from businesses owned by persons with disabilities.
5. The Commission commends DOH for having the South Africa's National Strategic Plan for HIV, TB and STI's 2017-2022 in Braille format, this is accommodative to the visually impaired.



6. The Commission commends the DOH for appointing a Gender focal person at the level of Director and the person responsible for implementation of EEA at the level of Chief Director. These are people who will be able to influence decisions for their respective directorates.
7. The Commission observed that women are overrepresented at administrative levels.
8. The Commission commends DOH's collaboration on the Albertina Sisulu Leadership Programme in Health with University of Fort Hare and University of Pretoria and its yielding of desired results.
9. The Commission observed that there is gender budget at DOH geared towards gender transformation.
10. The Commission recommends the DOH to procure more services from local manufactures as opposed to international suppliers for the advancement of local businesses.
11. The Commission observed that the DOH awarded contracts to few women and black people but with little significance to reaching gender equality on its procurement practices. The DOH failed to specifically and practically (also specifying on the tender document) apply the provisions of the PPPFA and BBBEE to expedite and reach gender parity. The Commission recommends the DOH to revisit and implement these provisions to give preference to women, youth, PWD and other previously disadvantaged persons. Following the implementation, the DOH should be able to provide disaggregated data and importantly measure performance in monetary value. Comparison should be made on contracts, with specific reference to monetary value to indicate contracts awarded to both genders and other categories of the previously disadvantaged persons.
12. In addition, the Commission found that the DOH has not awarded any contract to a tenderer not scoring highest points in efforts of advancing historically disadvantaged persons as required by the PPPFA. The Commission recommends DOH to implement this provision.
13. The Commission recommends DOH to conduct workshop/training to employees on the aims and implementation of the PPPFA, BBBEE and procurement transformation or a refresher workshop/training on same.



5.2 The National Department of Rural Development and Land Reform

5.2.1 Background

The National Department of Rural Development and Land Reform (DRDLR) appeared before the Commission. The Head of the DRDLR did not appear before the Commission and as such requested to delegate the Chief Financial Officer (the CFO) of DRDLR to account during the hearing. It was highlighted that the CFO was competent to fully engage the Commission as procurement process were part of her directorate. The Commission expressed its concerns and displeasure with this request which was only brought to the Commission a day before the hearing. The DRDLR presented on the 14th of November 2018. The Commission expressed its concerns that DRDLR did not properly complete the Commission's questionnaire and this made it difficult for the Commission to determine the extent of gender transformation of procurement practices at DRDLR.

Due to insufficient information provided during the hearing the Commission resolved *inter alia* that:

- a. DRDLR must respond to all the questions delineated in the questionnaire. The DRDLR must substantiate all its answers to the questionnaire including all questions relating to the WEP. This will assist the Commission to apply its mind and determine whether gender issues are considered in the DRDLR's procurement practices.
- b. The DRDLR needs to clearly outline *inter alia* whether there are programmes in place to empower women, black youth, black women, black, PWD etc. These programmes must also indicate how it empowers the mentioned groups who are in the rural areas and peri urban areas.
- c. The DRDLR needs to advance how the PPPFA & BBBEE are utilized to advance women.
- d. The DRDLR needs to explain what role does the Directorate: Women, Children and Disability play towards mainstreaming women in procurement practices.
- e. The DRDLR needs to explain what its percentage as per 2017 PPPFA Regulations. This question is against the background that the DRDLR highlighted in its answers that it is busy drafting a sourcing strategy that will encourage the implementation of the 2017 PPPFA Regulations.
- f. The DRDLR needs to outline the category of persons it considers for procurement of goods and services. what
- g. DRDLR to share public policies and implementation plans for promoting gender equality.
- h. DRDLR to share mechanisms put in place ensuring women participation in decision making.



- i. To share with the Commission the enterprises that the DRDLR targeted to expand relationships in an endeavour to empower women.
- j. To share the affirmative action policy and EE Plan.
- k. In order determine gender wage gap, to advise if all procurement directors are on the same level in terms of remuneration.
- l. To stipulate the gender-based opportunities offered in entrepreneurship capacity-building programmes at the Department, empowering both men and women in the use of technology, bidding processes, tender procedures, establishment of SMMEs, business and finance management etc.
- m. To indicate if the DRDLR has a gender responsive budget.
- n. To provide the Commission with the SCM Policy and Delegation of Authority.
- o. To attend to the Giyani Land matter as a test case where a group of women who have been using land for cultivation purposes were unlawfully evicted by a resident Chief.

The DRDLR was given 7 days to finalise the report that is signed by the Accounting Officer. Consequently, a follow-up questionnaire was dispatched to the DRDLR to respond within the prescribed time. The DRDLR resubmitted its questionnaire to the Commission on the 25th of November 2018. Against this backdrop, this report contains the analysis of the resubmitted questionnaire to the Commission. The findings and recommendations of the Commission are based on the analysis.

5.2.2 Analysis of information submitted by the DRDLR

The Commission observed that in compliance with section 2 of the BBBEE and paragraph 9 of the Codes of Good Practice, the DRDLR applied a HDIs category (Historically disadvantaged Individuals) in its procurement process until the introduction of the revised PPPFA Regulations of 2011. This introduced claiming of points through BBBEE level contributor certificates that replaced the old practice of incorporating into a tender document that various Reconstruction and Development Programmes goals i.e. HDI, locality and municipality

On the 25th May 2017, the Acting Head of DRDLR issued Circular 52 of 2017 that essentially required all branches of the DRDLR to comply with the national transformation prescripts of Women Empowerment, Gender Equality and Job Access Strategic Frameworks. The Circular requested all the branches to ensure that their programme's Organisational Reports are disaggregated by sex (women and men) in terms of their beneficiaries reached, resources allocated, and services delivered. This Circular is fundamental to assist in determining the impact of DRDLR's Women empowerment programmes. This Circular would assist to indicate how many women and men are reached as



beneficiaries of socio-economic opportunities, how many women are in control or the resources and how many women are represented in Departmental structures.

The DRDLR approved the Implementation Plan for Gender Equality on the 15th March 2018, which sought to *inter alia* influence policies bargaining by ensuring that gender is mainstreamed in Departmental policies, develop a plan to create a leadership pipeline through which women can be capacitated and also mentored by senior managers, popularising of sexual harassment policy, introduction of child facilities, establish and strengthen mainstreaming structures, ring fencing of posts for Senior Management Service (SMS) women and establishing programmes that focused on women economic empowerment. The Commission commends the DRDLR for the establishment of a Gender Equality Implementation Plan and has observed that most targets on the Plan were due by December 2018. The Plan is however not clearly stating how DRDLR envisages to influence the enhancement of either Black women, Black people with disabilities, Black youth, Black people living in rural areas and Black unemployed people in procurement services.

The performance agreement between the Accounting Officer and the Minister relating to procurement is silent on the responsibility of the Accounting Officer to ensure that enhancement of either Black women, Black people with disabilities, Black youth, Black people living in rural areas and Black unemployed people in procurement services at DRDLR. The performance agreement however, requires the Accounting Officer to ensure that equity targets are met with 50% representation of women at SMS, 2% representation of persons with disabilities across all levels, ensuring reasonable accommodation to employees with disabilities and employees with small children. The Commission commends the inclusion of these critical components in the Performance Agreement.



Figure 10: Table indicating the award of tenders (Head Office) in monetary terms by gender and race for 2017/18 FY

2017/18 Gender Representation on Tenders Awarded							
Programme/Branch	Awarded	Value	Gender		Race		
			Male	Female	Black	White	Other
1. PROGRAMME: ADMINISTRATION							
1.1 MINISTRY	-	-	-	-	-	-	-
1.2 MANAGEMENT	-	-	-	-	-	-	-
1.3 INTERNAL AUDIT	1	R 2 427 941.00	4		5	-	-
1.4 FINANCIAL SERVICES	4	R 67 582 007.75	4	4	4	1	-
1.5 CORPORATE SERVICES	16	R 94 825 451.88	20	19	20	13	-
1.6 OFFICE ACCOMODATION	-	-	-	-	-	-	-
1.6 PROVINCIAL COORDINATION	-	-	-	-	-	-	-
2 PROGRAMMES: GEO-SPATIAL & CADAS							
2.1 NATIONAL GEOMATICS MANAGEMENT	1	R 4 327 541.78	2	2	2	2	-
2.2 SPATIAL PLANNING AND LAND USE	9	R 58 552 841.66	16	2	9	9	-
3 PROGRAMMES: RURAL DEVELOPMENT							
3.1 RURAL INFRASTRUCTURE DEVELOP	42	R 193 039 173.29	90	35	74	55	2
3.2 RURAL ENTERPRISE & INDST DE	-	-	-	-	-	-	-
3.3 NATIONAL RURAL YOUTH SERV CO	1	R 55 864 359.86	2	3	2	3	-
4 PROGRAMMES: RESTITUTION							
4.1 RESTITUTION	-	-	-	-	-	-	-
5 PROGRAMMES: LAND REFORM							
5.1 LAND RESTITUTION	-	-	-	-	-	-	-
5.2 LAND TENURE & ADMINISTRATION	-	-	-	-	-	-	-
Grand Total	74	R 476 619 317.22	138	66	116	83	2
2018/19 Gender Representation on Tenders Awarded							

It is evident from the above table that most tenders at DRDLR were awarded to males during the financial 2017/2018.



Figure 11: Table indicating the award of tenders provincially in monetary terms by gender and race for 2017/18 FY

2017/18 Gender Representation on Tenders Awarded							
Office	Awarded	Value	Gender		Race		
			Male	Female	Black	White	Other
National Office	68	R 437 597 462.22	95	53	92	53	-
Eastern Cape	37	R 16 806 898.20	36	30	49	17	-
Free State	-	-	-	-	-	-	-
Gauteng	-	-	-	-	-	-	-
KwaZulu-Natal	-	-	-	-	-	-	-
Limpopo	-	-	-	-	-	-	-
Mpumalanga	-	-	-	-	-	-	-
Northern Cape	17	R 47 506 654.00	56	15	39	30	-
North West	-	-	-	-	-	-	-
Western Cape	-	-	-	-	-	-	-
Grand Total	122	R 501 911 014.42	187	98	180	100	-

It is evident that the most beneficiaries of the tenders awarded at DRDLR are African males during the financial year 2017/2018. From the above table (Figure 11) the Eastern Cape DRDLR offices had a fair balance between males and females who were awarded tenders.

The Supply Chain staff members of DRDLR comprised of more females than males, and African females are in the majority as stipulated in the table below (Figure 12).

Figure 12: Table indicating the supply chain staff composition by gender and race

AGE 18 TO 35					
	AFRICAN	COLOURED	INDIAN	WHITE	GRAND TOTAL
FEMALE	49	2	1	1	53
MALE	48	5		2	55
GRAND TOTAL	97	7	1	3	108
AGE 36 TO 65					
	AFRICAN	COLOURED	INDIAN	WHITE	GRAND TOTAL
FEMALLE	100	7	3	10	120
MALE	95	3	1	4	103
GRAND TOTAL	195	10	4	14	223

The DRDLR has a considerable number of co-operatives that focus on women and some of these co-operatives are headed by women in different provinces. These co-



operatives include *inter alia* agriculture, sewing, construction, fishing, arts and craft, sawmilling etc. From a transformation perspective DRDLR has progressive measures to advance women, however such measures are not expressed in the awarding of tenders to women.

Pertaining to prequalification and sub-contracting to advance designated groups in accordance with Section 2 (1) PPPFA read with the PPPFA Regulations, 2017, the Commission found that DRDLR does not apply these provisions. The DRDLR however argued that it has revised and approved its supply chain management policy and delegations of authority which forces pre-qualification. The afore-mentioned policy was approved on 12 September 2018 and the DRDLR is currently implementing workshops around the policy. Similarly, the DRDLR submitted that during the financial year 2017/2018 it did not issue any bid with a compulsory sub-contracting requirement. Nonetheless, the DRDLR has an approved internal SCM Policy and delegations of authority to enforce sub-contracting where feasible in accordance with the PPPFA Regulations. After the approval of the internal SCM Policy and delegation of authority, the DRDLR has issued tenders with the pre-qualification requirements. The following tenders were advertised with a pre-qualification condition: 5/2/2/1 DRDLR-0023(2018/2019), 5/2/2/1 DRDLR-0050(2018/2019), 5/2/2/1-DRDLR-0051 (2018/2019), 5/2/2/1-DRDLR-0052(2018/2019).

The Commission has found that the DRDLR has not awarded a tender to a bidder that did not score the highest points in accordance with section 2(1)(f) of the PPPFA to advance the historically disadvantaged by discrimination based on race, gender or disability. The DRDLR has reasoned that it has instead applied PPPFA to award bid(s) to the highest points scoring bidder without applying any objective/specific goal criteria.

In accordance with the WEP 2 the DRDLR has set a target greater than 30% (i.e. 50%) and accordingly achieved 38%. This is commendable; however, the Commission finds that there is room to improve the 38% representation considering that women in South Africa are in the majority. In compliance with WEP 5 the DRDLR has established relationships with agricultural and non-agricultural enterprises through the rural development programme (Rural Enterprise and Industry Development, Rural Infrastructure Development).

The DRDLR argues that it has been using PPPFA Regulations issued in 2011. It is argued that the 2011 Regulations states that the tender must be awarded to a bidder scoring highest points in price and BBBEE and does not allocate tenders or quotations based on gender.

DRDLR has a gender responsive budget of R 6 212 000-00 for the financial year 2018/19, R 6 448 000-00 for 2019/20, R 6 846 000-00 2020/21, and R 7 263 000 for 2021/22.

In terms of the workplace profile, the top management (Level 14) of the DRDLR reflects



more women than men. Similarly, at level 14 women with disability are the majority. At senior management (level 13) there is a balance between female and male employees. The male employees dominate predominately at level 9-12. It is observed that the DRDLR had only African interns and the majority were females. Overall the DRDLR is commended for ensuring that women and persons with disabilities are represented at managerial positions. The DRDLR does implement affirmative action to ensure representation of the previously disadvantaged.

5.2.3 Findings and recommendations

1. DRDLR ensured that previously disadvantaged groups are represented at all levels. The Commission recommends the establishment of the Gender Equality Plan as a progressive tool to ensure that the women are retained at all SMS levels. The Plan needs to outline how the DRDLR intends to improve the awarding of tenders to females.
2. The Commission found that the DRDLR has a designated board-level individual who champions the organization's gender equality policies and plans. The DRDLR is commended for further conducting training, including for male leaders, on the importance of women's participation and inclusion. It is recommended that refresher sessions be conducted, and the Commission be invited to observe these sessions and/or training.
3. The Commission found that the DRDLR's annual report does not include leadership statements on reaching gender equality goals. It is recommended that the DRDLR's annual report include leadership statements on reaching gender equality goals.
4. The Commission found that DRDLR does not request information from current and potential suppliers on their gender and diversity policies in an endeavour to include these in criteria for business selection. However, the DRDLR relies on the suppliers' BBBEE level contributor certificates which shows ownership by gender and race. Similarly, it is found that DRDLR does not encourage suppliers and vendors to advance performance on gender equality. The Commission accepts that the supplied BBBEE level contributor certificates mostly indicates ownership by gender however recommends DRDLR to encourage suppliers and vendors to advance performance on gender equality.
5. The Commission found that the DRDLR does not encourage and work with suppliers to adopt policies and practices that support quality health and hygiene for both male and female workers, or work with suppliers to develop a corrective action plan pertaining to gender equality risks or challenges. The Commission noted DRDLR's submission that it is planning to improve in special conditions of contracts to accommodate requirements of gender equality risks and challenges. It is recommended that the DRDLR submits the improvements in special conditions of contracts to the Commission upon finalisation.



6. The DRDLR does not encourage suppliers to set and measure targets and benchmarks on gender equality transparency, including gender equality criteria in standard auditing protocols, supplier scorecards, or other supply chain management tools includes gender-specific questions in supplier self-assessments. The Commission recommends the DRDLR to encourage suppliers to do same.
7. DRDLR is found not to have an approach to responsible marketing that considers the portrayal of gender stereotypes. To address this, The Commission recommends that such gender sensitive approaches be adopted to curb the patriarchal and gender stereotypes about women with current and potential suppliers.
8. It is found that the DRDLR is tracking the number of beneficiaries from community projects and initiatives in terms of the land allocation to women and youth in the Restitution and Land Reform programme also with Rural Development. The Commission on Restitution of Land Rights has settled 80 785 claims from inception to date. Out of this number a total of 164 168 are female headed households and 1 148 relates to PWD.
9. The Commission observed that DRDLR uses affirmative action mechanisms, particularly the preference points as per PPPFA, in public procurement practices to ensure that a non-discriminatory approach is followed in tender allocations.
10. The Commission observed further that there are gender-based opportunities offered at DRDLR in entrepreneurship capacity-building programmes empowering both men and women in the use of technology bidding processes, tender procedures, establishment of SMMEs, business and finance management, etc. This is commendable as it promotes inclusivity. The DRDLR has a gender responsive budget.
11. The Commission found that DRDLR does not have an effective gender responsive procurement programme but the DRDLR envisages to use the SCM Policy to enforce procurement regulation 2017 in terms of pre-qualification from 12 the year 2019
12. The Commission found that DRDLR has developed provincial reporting tool in terms of gender representation on procurement practices. This has been established to develop, implement and track gender-responsive procurement programmes.
13. The Commission recommends that the DRDLR consult with the relevant stakeholders like the Construction Industry Development Board to implement ways of support and empower the previously disadvantaged to procure or supply services to the State. It seems there are many challenges and disqualification for the previously disadvantaged to possess sufficient grades and participate in massive tenders (tenders involving high monetary value, extensive demand, experience or major supply). The Commission recommends



the DRDLR to develop a way to support the previously disadvantaged for them to possess sufficient grades to qualify for massive tenders.

14. The Commission observed that the DRDLR partially complied with BBBEE and PPPFA but with little significance to reaching gender equality on its procurement practices. The DRDLR failed to specifically and practically (also specifying on the tender document) apply the provisions of the PPPFA and BBBEE to expedite and reach gender parity. The Commission recommends the DRDLR to revisit and implement these provisions to give preference to women, youth, persons with disabilities and other previously disadvantaged persons. Following the implementation, the DRDLR should be able to provide disaggregated data and importantly measure performance in monetary value. Comparison should be made on how monetary value was awarded to both genders and other categories of the previously disadvantaged persons.
15. In addition, the Commission found that the DRDLR has not awarded any contract to tenderers not scoring the highest points in efforts of advancing historically disadvantaged persons as required by PPFAs. The Commission recommends DRDLR to implement this provision.
16. The Commission recommend that the DRDLR conducts workshop/training to employees on the aims and implementation of the PPPFA, BBBEE and procurement transformation or a refresher workshop/training on the same with specific referenced to employees working on procurement/SCM.

5.3 The National Department of Basic Education

5.3.1 Background

The National Department of Basic Education (DOE) deals with all schools from Grade R to Grade 12, inclusive of adult literacy programmes.

The DOE was requested to complete a questionnaire which was served on the Director General. The deadline for submission of the completed questionnaire was 03 August 2018 and the DOE submitted their response on 07 August 2018.

In addition to the responses received from the DOE, the Commission also required the attendance of the Accounting Officer at an investigative hearing, to account and present on procurement practices. It is prudent to note that on the day of the hearings, the Commission received correspondence from the Accounting Officer indicating that he was unable to attend and that he delegated two senior officials to attend the hearing.

The Commission highlighted its displeasure at the non-attendance of the Accounting Officer. The delegates of the DOE gave a presentation that was materially different to the information provided to the Commission on 07 August 2018. As a result, the Commission requested the delegation to submit the outstanding information in writing.



The Commission required more information and clarity on the following issues:

- a. Provide baseline information on how far the DOE is in advancing the previously disadvantaged, with particular reference to procurement practices.
- b. The DOE to segment information for the Commission and provide disaggregated data in relation to contracts/tenders awarded to women and women owned enterprises and other previously disadvantaged persons including PWD.
- c. To provide information on DOE procurement practices for the nutrition programmes, legal services, publishing services, technology, provision of furniture, construction and school nutrition. Data submitted to be disaggregated in terms of gender, race and disability.
- d. Beyond gender mainstreaming, to elaborate what other plans/programmes are in place to advance gender transformation in the DOE i.e. inclusion of gender transformation targets on the performance agreements.
- e. Provide DOE's empowerment programmes for women in procurement. Data should be disaggregated in terms of the industries procured for.

5.3.2 Analysis of information submitted by the DOE

The DOE elaborated that the role of enhancing people who were previously disadvantaged by unfair discrimination lies with the Project Managers, seeing that they are the custodians of the final product and the budget. The Commission required clarity on and details on how the DOE communicated same to the Project Managers, clarity on what measures were put in place to implement the BBBEE, and to provide disaggregated data on the monetary value procured in respect of previously disadvantaged persons including PWD and black women.

Figure 13: DOE Workforce Profile

RACE	FEMALES	MALES	TOTAL
AFRICAN	369	262	631
COLOURED	15	14	29
INDIANS	19	12	31
WHITE	38	25	63
TOTAL	441	313	STAFF TOTAL 754

The DOE workforce profile indicates more females compared to males at all levels. At senior management level, the DOE has 63% males and 37% females. However, the DOE indicated that they are in a process of hiring a female Director which would then translate into 62% males and 38% females. The DOE is male dominated at senior management positions.



The DOE indicated that it has not reached the 50% equity targets due to retirements, resignations, transfers and promotions to other organisations. The programme is implemented to promote women and men by giving employees the opportunity to improve their skills and address their training needs.

The DOE employed 10 PWD. There are capacity building programmes for both males and females, including PWD.

The DOE has not practically applied the PPPFA which provides that preferential procurement practices may be implemented to advance the previously disadvantaged. The DOE awards a contract to a bidder who competed fairly and scored the highest points on price and BBBEE. DOE only recently advertised infrastructure tenders where subcontracting is a condition of the tender in line with the PPPFA Regulations. However, the tenders had not yet been evaluated or finalised.

The DOE has not awarded any contract to tenderers not scoring the highest points in efforts of advancing historically disadvantaged persons as required by PPPFA.

Initially the DOE indicated that they have not set a target higher than the 30% in accordance with the WEP 2. Subsequent to the hearings the DOE indicated that they have set the target at greater than 30% in assuring sufficient participation of women in decision making.

The DOE elaborated that they adhere to WEP 5 in that they have expanded relationships with women owned enterprises, including small business and women entrepreneurs. However, the spreadsheet they provided does not articulate the relationship or to what extent they have adhered to WEP 5, apart from the fact that they have received goods and/or services from women entrepreneurs.

The DOE has not applied WEP 7 to measure and report on progress using data disaggregated by sex.

The DOE designated a person at Director level who champions the gender equality policies and plans. The Director will assume her position on 01 December 2018; the successful incumbent is a woman.

The DOE does not request information from current and potential suppliers on their gender and diversity policies to include these in their criteria for business selection.

The DOE did not perform an analysis of its existing supply chain practices to establish the baseline number of suppliers that are women owned enterprises, despite this being on the Accounting Officer's KPAs. However, the existing database is being developed and it will include the designated areas (race, gender and disability) to be targeted when procuring goods/services.

The DOE observed that Black Women owned companies always quote exorbitant prices which creates challenges towards the meagre budget and they eventually



become non-competitive. Such companies also fail to respond on time to the request for quotations.

DOE does not have a Head of Procurement, Senior Procurement Directors or Individual Procurement Officers but the designated Directors perform these procurement functions.

The DOE does not have a budget that is geared towards gender transformation and there are no community outreach/social responsibility programmes aimed at the empowerment or development of women in relation to procurement.

For the period 01 April 2018 to 30 September 2018, the DOE spent R1 503 631 000 on women owned businesses excluding compensation of employees, examiners and moderators, transfers to public entities, other transfers and conditional grants. Of the 1.503 billion, an amount of R54 886 889 was spent on companies owned by women/ or where women are shareholders as indicated in the table below.

Figure 14: Spending by the DOE on Businesses Owned by Women/ or where women are Shareholders

WOMEN SHAREHOLDING	NUMBER OF COMPANIES	NUMBER OF ORDERS/ CONTRACTS	AMOUNT SPENT
100%	11	30	R 966 664
52%	1	1	R 259 983
51%	5	8	R 19 907 476
50%	6	27	R 112 702
49%	1	1	R 6 475
33%	1	2	R 324
32%	1	1	R 5 195
30%	5	53	R 341 657
26%	1	1	R 4 140
21%	1	2	R 11 423 271
18%	1	1	R 17 581
15%	1	2	R 21 828 546
10%	2	4	R 10 883
2.58%	1	1	R 1 992
	38	134	R54,886,889

The DOE spent 3.65% on women owned businesses out of R1.503 billion, which the Commission deems to be extremely low. There is a slow pace of advancing the interests of women in the market place.

The DOE has a significant budget and its procurement is on a large scale. This should enable the DOE to empower the previously disadvantaged.



The DOE launched a campaign called 'Thursdays in Black' to empower women to stand against any form of abuse in the workplace, community and society at large. The campaign forms part of the DOE's transformation agenda and it encourages everyone to wear black on Thursdays.

5.3.3 Findings and recommendations

1. The Commission found that no significant measures have been taken to advance gender transformation in relation to procurement practices at the DOE. There is no implementation plans, training and preferential procurement practices that are meant to assist the previously disadvantaged. The Commission recommends DOE to provide training on procurement legislation and practices to staff dealing with procurement.
2. The DOE initially provided insufficient and contradictory information to the Commission. Pursuant to the hearing, DOE re-submitted information that gave the Commission a clearer picture.
3. It is encouraging that the DOE has programmes that are geared towards transformation and the empowerment of women in the workplace and the DOE needs to be applauded on this, however, the DOE's workplace profile is highly concerning because senior management levels are dominated by men. The Commission recommends DOE to increase women representation at senior management.
4. The Commission commends the DOE for the Accounting Officer's KPA's which include, amongst others, an indicator to develop and implement an effective and efficient supply chain management system and to develop and implement an efficient and effective diversity management and transformation system, which includes ensuring that reports have disaggregated data to reflect beneficiaries in terms of age, race, disability and gender. However, the DOE failed to hold the Accounting Officer accountable for non-compliance with the performance contract and to ensure implementation and compliance with gender equality and the representation of PWD. The Commission recommends DOE to hold the Accounting Officer accountable for no-compliance with the KPA's.
5. The Commission finds the DOE 's procurement profile to be concerning, with only 3.65% being spent on companies that are owned by women and/or companies where women are shareholders. The Commission recommends DOE to increase the spending on companies owned by women.
6. The DOE failed to specifically and practically apply the provisions of the PPPFA and BBBEE to expedite and reach gender parity in procurement practices. The Commission recommends DOE to implement these provisions.



7. In addition, the Commission found that the DOE has not awarded any contracts to tenderers not scoring the highest points in efforts of advancing historically disadvantaged persons as required by the PPPFA. The Commission recommends DOE to implement this provision.
8. The Commission recommends that the DOE conducts workshop/training to employees working on procurement on the aims and implementation of the PPPFA, BBBEE and procurement transformation or a refresher workshop/training on same.
9. The Commission recommends that the DOE revisit and implement the provisions of the PPPFA to give preference to women, youth, PWD and other previously disadvantaged persons. Following the implementation, the DOE should be able to provide desegregated data and importantly, to measure performance in monetary value.
10. A comparison should be made on contracts, with specific reference to the monetary value to indicate contracts awarded to both genders and other categories of the previously disadvantaged persons.

5.4 The National Department of Social Development

5.4.1 Background

The National Department of Social Development (DSD) appeared before the Commission to account on their procurement practices and transformation.

The Accounting Officer did not appear before the Commission and delegated the Chief Financial Officer and Deputy-Director focusing on Gender. The delegation requested a postponement because they were mandated in writing to request a postponement only and not to proceed with the hearing. The Commission expressed its disappointment and concerns with the DSD's request which was brought to the attention of the Commission on the day of the hearing.

The delegation was not prepared to proceed with the hearing. The Commission resolved to request further information in writing and expressed its displeasure with the DSD's commitment to proceed with the hearing. The Commission requested the following from DSD:

- a. To respond to all questions outlined in the questionnaire.
- b. To provide information of the DSD's Agencies regarding procurement practices.
- c. DSD to provide a breakdown (gender, race and disability) of the DSD's procurement of legal services.

Subsequently, a follow-up questionnaire was forwarded to the DSD to respond within



7 days. The Commission received DSD's response on the 14th of December 2018. This report contains the information as per the resubmitted information. The Commission and the DSD resolved that the DSD's Agencies should account on the procurement practices directly to the Commission as both agencies are not accountable to the DSD's Director General. Same information will be requested at subsequent hearings in the new financial years.

5.4.2 Analysis of information submitted by the DSD

The DSD is promoting black women owned cooperatives in provinces and rural areas. In addition, the DSD conducts major events where deviations are sought to promote co-operatives (mainly black women) in compliance with section 2 of the BBBEE and paragraph 9 of the Code of Good Practice of the BBBEE 2017.

The DSD has not applied the PPPFA Regulations regarding subcontracting, if feasible, to contracts above R30 million to advance designated groups, neither did the DSD set a prequalification condition on their identified tender documents to advance designated groups on the basis of B-BBEE status level of the contributor.

The DSD has not awarded a tender to a bidder not scoring the highest points to advance historically disadvantaged groups by unfair discrimination based on race, gender, or disability as per section 2(1)(f) of the PPPFA regulations.

The DSD did not set a target greater than 30% of inclusion of women in decision making and governance level as per the WEP 2. However, the DSD highlights that it has exceeded this target without setting a target greater than 30% since it promotes co-operatives which are largely owned by black women.

The DSD extended business relationships with women-owned enterprises, including small business as per WEP 5 which extend to cooperatives, ECD centres, Youth centres and drop-in centres. However, the DSD did not submit documentation articulating the relationship but argued that the Chief Directorate: Sustainable Livelihood in the DSD is dealing with community development which empowers cooperatives and the Gender Chief Directorate provides business training skills for women start-ups and those already in business.

The DSD does not incorporate gender markers into ongoing reporting obligations on the KPA's of the Chief Director: Gender. This is a red flag towards the commitment of the DSD in driving gender transformation. The DSD does not have an effective gender responsive procurement programme.

The DSD did not provide information in accordance with the PPFPA relating to measures put in place to create new jobs, promote local enterprises and supporting local product but indicated that the Provincial Departments are suited to provide the information to the Commission.



The DSD's workforce profile indicates that from level 10 to level 15, which are senior levels and managerial positions, females are more represented than their male counterparts. The table below shows DSD workforce profile.

Figure 15: DSD Workforce Profile.

A: Africans C: Coloureds W: Whites I: Indians

TOTAL WORK FORCE

SALARY LEVEL	FEMALE				FEMALE TOTAL	MALE				MALE TOTAL	GRAND TOTAL
	A	C	I	W		A	C	I	W		
1	32				32	12				12	44
3	3				3	6				6	9
4	58	2			60	30 (1)	1			31 (1)	91 (1)
5	52 (2)			4	55 (2)	36		2	2 (1)	40 (1)	96 (3)
6	66	3	1	5	76	10				10	85
7	69	2		1	72	36		1		37	109
8	38	2	1	3	44	30 (1)				30 (1)	74 (1)
9	43	1		1	45	31		1	1	33	78
10	23	1		3	27	14			3	17	44
11	45 (1)	4	2	5	56 (1)	26 (1)	2	1	3 (1)	32 (2)	88 (3)
12	56 (1)	1	1	4	62 (1)	19		2 (1)	1	22 (1)	84 (2)
13	22 (2)		3 (1)	5	30 (3)	33 (1)	1	2	2	38 (1)	68 (4)
14	11	1	1	2	15	8	1	1	2	12	27
15	3				3	2 (1)	1			3 (1)	6 (1)
Grand Total	521 (7)	17	9 (1)	33	580 (8)	293 (5)	6	10 (1)	14 (2)	323 (8)	903 (15)

From the above statistics, the DSD has women at decision-making positions in accordance with the Women Empowerment Principle 2, which the DSD is applauded for although the DSD did not set such a target. At level 15 which is the highest level at the DSD, 3 females and 3 males are employed being 50/50 ratio.



Out of 1 483 personnel employed by the DSD, 15 are PWD as designated by the below graph:

Figure 16: Persons with Disability at DSD

Level	Total	Disability (add race)		Female				Male			
		F	M	B	C	I	W	B	C	I	W
4	1		1					1			
5	3	2	1	2							1
8	1		1					1			
11	3	1	2	1				1			1
12	2	1	1	1				1			
13	4	3	1	2		1		1			
15	1	1							1		
Grand Total	15	8	7	6		1		5	1		2

Out of the 6 employees at level 15, 3 are PWD. The DSD is applauded for such and it can be regarded as a best practice for other institutions and Government Departments to emulate in respect of PWD at senior management levels. However, the department still falls short of the 2% work force profile target in respect of PWD.

In terms of setting a budget geared towards empowering women the DSD has not committed any amounts and provided no reason for the lack of commitment towards such a budget. Despite that, the DSD has made a commitment to mainstream gender into its' procurement processes to fully integrate gender equality on procurement practices.

The Department of Social Development puts the National Treasury's misalignment of policies on procurement as a reason for the challenges that the Department encounters in promoting businesses that are owned by the historically disadvantaged groups.

5.4.3 Findings and recommendations

1. The Commission found that DSD's workforce profile at senior levels and managerial positions, females are more represented. The Commission applauds the DSD for appointing more females than males at senior levels addressing the past disadvantages that women experienced.
2. The Commission found that the DSD has an individual who is designated to champion gender transformation, being the Chief Director: Gender. Gender indicators are not part of the individuals KPA's as indicated. The Commission recommends that same be included in the KPA's.



3. The Commission found that DSD does not keep a record of monetary values of tenders awarded to previously disadvantaged groups disaggregated in terms of race, gender, and disability. This could present difficulty for the DSD to track the impact it has in advancing businesses that are owned by the previously disadvantaged groups. The Commission recommends that DSD to develop a strategy to keep a record of monetary values of tenders awarded to previously disadvantaged groups according to the above-mentioned criteria.
4. The Commission found that the DSD does request their suppliers to provide their gender and diversity policies and include the aforementioned criteria for business selection. It is found that the DSD does not analyse its existing supply chain to establish a baseline of women suppliers and entrepreneurs doing business with the DSD. The Commission recommends DSD to request and analyse same.
5. The Commission found that the DSD does encourage and work with suppliers that adopt policies and practices that support quality health and hygiene for both male and female employees especially when procuring catering services for the DSD. The Commission recommends DSD to do same.
6. The Commission found that the DSD does track the number of beneficiaries from community projects and initiatives that is disaggregated in terms of sex. The Commission recommends DSD to do same.
7. The Commission recommends that the DSD develop a policy that require more than 30% of women in decision making-position in line with the WEP 2 notwithstanding that DSD has sufficient representation of women in decision-making positions.
8. The Commission found that the DSD does not incorporate gender markers into ongoing reporting and KPA's. This is a red flag towards the commitment of the DSD in driving gender transformation. The Commission recommends that gender markers be incorporated in all senior managers' contracts and KPA's.
9. The Commission observed that the DSD partially applied the BBBEE but did not provide the gender, racial and disability disaggregated data in support. Nevertheless, the efforts of DSD are of little significance to reaching gender equality on its procurement practices. The DSD failed to specifically and practically (also specifying on the tender document) apply the provisions of the PPPFA and BBBEE to expedite and reach gender parity with reference to procurement practices. The Commission recommends the DSD to revisit and implement these provisions to give preference to women, youth, PWD and other previously disadvantaged persons. Following the implementation, the DSD should be able to provide disaggregated data and importantly measure



performance in monetary value. Comparison should be made on contracts, with specific reference to monetary value to indicate contracts awarded to both genders and other categories of the previously disadvantaged persons.

10. In addition, the Commission found that the DSD has not awarded any contract to tenderers not scoring the highest points in efforts of advancing historically disadvantaged persons as required by PPPFA. The Commission recommends DSD to implement this provision.
11. The Commission recommends that the DSD conducts workshop/training to employees working on procurement on the aims and implementation of the PPPFA, BBBEE and procurement transformation or a refresher workshop/training on same.



6. CONCLUSION

1. The Departments that appeared before the Commission generally demonstrated lack of efforts to integrate gender as a fundamental component in their procurement practices. The Commission espouses that the transformed procurement practices would result in ensuring equitable access and provide benefits by diversifying the supply chain.
2. The Commission finds that generally the Departments failed to specifically and practically apply the provisions of the PPPFA and BBBEE to expedite and reach gender equality. Most importantly, the Departments showed lack of understanding of these critical transformation provisions. The Departments are required to revisit and implement these provisions to give preference to women, youth, PWD and other previously disadvantaged persons. These provisions permit preference to be given to advance the previously disadvantaged even to tenderers not scoring the highest points. Upon implementation the Departments should be able to provide disaggregated data and importantly, to measure performance in monetary value. Comparison should be made on how monetary value was awarded to both genders and other categories of the previously disadvantaged.
3. The Commission recommends that the Departments conducts a workshop/ training to employees on the aims and implementation of the PPPFA, BBBEE and procurement transformation or refresher workshop/training on same. The workshop/training will not only empower the employees but will enhance their competency in the procurement processes of the Departments.
4. The Commission notes with concern minimal compliance with the EEA. Some Departments are still male dominated especially at top and senior management. Same applies to PWD, they remain marginalised from the employment of the State and from occupying senior management positions. Constant monitoring of the Departments is required to achieve compliance and transformation in the workplace.
5. The Commission found that some Departments has not in line with the WEP 2, 5 and 7 assured sufficient participation of women – 30% or greater – in decision-making and governance at all levels and across all business areas, has not expand business relationships with women-owned enterprises, including small businesses, and women entrepreneurs, do not measure and report on progress, both internally and externally, not using data disaggregated by sex and do not incorporate gender markers into ongoing reporting obligations. The Departments should procure more of their services from local manufacturers as opposed to international ones.



6. The Commission found that some Departments did not incorporate gender markers into ongoing reporting and KPA's. The Commission recommends that the Departments include, in all senior manager's contracts and KPA's the gender and equality markers, this will demand not only commitment but compliance and monitoring.
7. The Commission found that the Departments do not request their suppliers to provide their gender and diversity policies and include the aforementioned criteria for business selection. It is found that the Departments do not analyse its existing supply chain to establish a baseline of women suppliers and entrepreneurs doing business with the Departments. The Commission recommends the Departments to do same.
8. The Commission found that the Departments do not encourage and work with suppliers that adopt policies and practices that support quality health and hygiene for both male and female employees especially when procuring services. The Commission recommends the Departments to do same.
9. The Commission found that some Departments do not track the number of beneficiaries from community projects and initiatives that is disaggregated in terms of sex. The Commission recommends the Departments to do same.
10. The Commission did not find challenges, policy gaps and systemic barriers experienced by the Departments in their procurement practices. There are international and domestic procurement prescripts put in place to promote gender transformation. However, the Departments are reluctant to comply with the prescripts, disadvantaging women from benefiting economically. The Commission recommends that the Departments put measure in place for monitoring and compliance purposes.
11. The transformation hearings did raise awareness to the Departments on relevant international and domestic commitments and the importance of compliance.
12. The Commission will monitor compliance with the recommendations as contained in this report.

In conclusion, the following table shows the overall summary of performance of the Departments in respect of compliance, consideration and implementation of procurement legislation:



Figure 17: Overview of the four Departments regarding application of procurement legislation

LEGISLATIVE PRESCRIPTS/INSTRUMENTS	DOH	DRDLR	DOE	DSD
<p>1. Section 2 of the BBEE (Broad-Based Black Economic Empowerment Act 53 of 2003) provides that the objectives of this Act are to facilitate broad-based black economic empowerment by-</p> <p>...(d) increasing the extent to which black women own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and skills training;</p> <p>Paragraph 9 of the Codes of Good Practice (BBEE 2007), provides for the enhanced recognition of Black women, Black people with disabilities, Black youth, Black people living in rural areas and Black unemployed people.</p>	Compliant	Compliant	Non-compliant	Non-compliant
<p>2. Section 2 (1) PPPFA (Preferential Procurement Policy Framework Act 5 of 2000) provides that the preferential procurement policy may be implemented to achieve specific goals...</p> <p>d) the specific goals may include-</p> <p>i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination based on race, gender or disability;</p> <p>ii) implementing the programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994;</p> <p>Prequalification and sub-contracting must be used in identified tenders to advance designated groups based on B-BBEE Status Level of contributor, EME,QSE or on the basis of subcontracting with EMEs or QSEs which are 51% owned by either of the following: Blacks; Black Youth; Black Women; Black people with disabilities; Black people living in rural or underdeveloped areas or townships; cooperatives owned by Black people; Black people who are Military Veterans.</p>	Non-compliant	Partial-compliant	Non-compliant	Non-compliant



<p>3. The PPPFA Regulations, 2017 provides for award of contracts to tenderers not scoring highest points; 11(1) A contract may be awarded to a tenderer that did not score the highest points only in accordance with section 2(1)(f) of the Act, being; i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of based on race, gender or disability; ii) implementing the programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994; (2) If an organ of state intends to apply objective/specific goal criteria in terms of section 2(1)(f) of the Act, the organ of state must stipulate the objective criteria in the tender documents.</p>	Non-compliant	Non-compliant	Non-compliant	Non-compliant
<p>4. Dedicated Budget Geared Towards Transformation</p>	Compliant	Compliant	Non-compliant	Non-compliant
<p>5. Women Empowerment Principle 2 (WEP) provides for equal opportunity, inclusion and non-discrimination; Assure sufficient participation of women – 30% or greater – in decision-making and governance at all levels and across all business areas.</p> <p>WEP 5 provides for enterprise development, supply chain and marketing practices; Expand business relationships with women-owned enterprises, including small businesses, and women entrepreneurs.</p> <p>WEP 7 provides for transparency, measuring and reporting</p> <ul style="list-style-type: none"> •make public the company policies and implementation plan for promoting gender equality. •establish benchmarks that quantify inclusion of women at all levels. •measure and report on progress, both internally and externally, using data disaggregated by sex. •Incorporate gender markers into ongoing reporting obligations. 	<p>WEP2 Compliant</p> <p>WEP5 Compliant</p> <p>WEP7 Non-compliant</p>	<p>WEP2 Compliant</p> <p>WEP5 Compliant</p> <p>WEP7 Partial-compliant</p>	<p>WEP2 Compliant</p> <p>WEP5 Compliant</p> <p>WEP7 Non-compliant</p>	<p>WEP2 Compliant</p> <p>WEP5 Compliant</p> <p>WEP7 Non-compliant</p>

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