



Second Edition



# Gender Policy Statement

Balancing the scales of justice  
through gender equality



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA



# *Gender Policy Statement*

Department of Justice and  
Constitutional Development





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## FOREWORD

In May 1997 Cabinet approved *Justice Vision 2000*, the strategy to guide the transformation of the Department of Justice and the justice system. One of the key values underpinning the vision is articulated in *Justice Vision 2000*, is the pursuit of **gender equality**.

Various aspects of *Justice Vision 2000* deal with gender inequality, and outline specific activities that we will implement in order to eradicate it. The overarching aim in the eradication of gender inequality being to bring about a truly **non-sexist society**. This is what is envisaged in the *South African Constitution* and various international human rights instruments, particularly the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*.

However, we realise that a broad strategic framework such as the one articulated in *Justice Vision 2000*, cannot provide adequate guidance on **specific issues** such as gender equality and inequality.



That is why we have developed this *Gender Policy Statement*. It deals with specific issues of gender equality in the justice system. It will help us to ensure that the gender equality objectives contained in *Justice Vision 2000* can be implemented effectively, and should therefore be read in conjunction with *Justice Vision 2000*.

In developing our *Gender Policy Statement* we consulted individuals and groups inside and outside the Department. Civil society stakeholders who attended the many consultative workshops included:

- Traditional leaders
- Organised labour
- The legal profession
- Religious leaders
- The rural women's movement
- The business community

It gives us great pleasure to release our *Gender Policy Statement*. It is based on our belief that the essence of true equality lies in the accommodation of difference and disadvantage. We sincerely hope that through its implementation, we will one day be able to take pride in a new justice system as one of the instruments that has contributed significantly

to improving the quality of life for women in this country, and thus in reducing gender inequality. Please join us in the implementation and monitoring partnership.

DR DULLAH OMAR, MP  
Minister of Justice

DR MANTO TSHABALALA-MSIMANG, MP  
Deputy Minister of Justice

Cape Town: March 1999





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Members of the public, personnel in the Department of Justice and various members of parliament have also enriched the document through oral and written comments. Some NGOs conducted workshops on the first draft of the *Policy* as well as on *Justice Vision 2000*, and passed their comments on to us. To all of these people we say a sincere thank you.

Our sincere gratitude also goes to the United States Agency for International Aid (USAID) for making funding available for the consultative process, and to the Swiss Development Agency for making it possible to publish the *Policy* and to kick-start the process of integrating it into the institutional culture of the Department. We have also been supported by the governments and donor agencies of Norway, Denmark, Sweden and Canada.

The Department of Justice deeply appreciates the enthusiasm shown by the public in the development of the policy and hopes that the same enthusiasm will accompany its implementation and monitoring.





# CHAPTER 1

## INTRODUCTION

### 1. THE PURPOSE OF THE GENDER POLICY STATEMENT

The purpose of the Department of Justice's *Gender Policy Statement* is to bring a gender perspective into all aspects of planning, policy, legislation development, and the transformation of the justice system. This means both internally, when the Department acts as an employer, and externally, when it acts as a service agency of the government. We intend this *Gender Policy Statement* to ensure that all decision-making, and all practice in the Department of Justice and the justice system, is informed by gender analysis. Ultimately, this should result in the achievement of gender equity and the substantive equality for women and men, principally through the empowerment of women.

Generally, gender policies seek to address the inequalities between men and women in society. As a Department of Justice, we have come to realise that policies and practices that treat men and women identically, regardless of difference of disadvantage, tend either to result in injustice and inequity or to exacerbate existing inequality. We are also aware that a number of blatantly discriminatory laws are still to be found on our statute books and in common law principles. These treat women as inferior to men, or impose undue burdens on one sex and not the other.

Such discriminatory laws and common law principles are in violation of our *Constitution* as well as our international human rights obligations, particularly our obligations under the *United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*. This *Gender Policy Statement* will provide a framework for removing them. It will also attempt to eradicate sexist or gender discriminatory attitudes and practices within the Department of Justice and amongst all its members of staff, including those involved in policy making, management and service delivery.

The *Gender Policy Statement* also provides a framework for the implementation of positive measures to advance women

in order to achieve fair play between men and women. This approach is consistent with the *Constitution* and *CEDAW*. It acknowledges that:

- The current systemic inequalities, resulting from centuries of legalised injustice against women, cannot simply be eliminated by the identical treatment of men and women.
- The legal system has, until now, failed to accommodate some of the fundamental differences in the social experiences of men and women, and has instead imposed rules on women that are based on men's experiences. These have resulted in further injustice.

The *Gender Policy Statement* prioritises the specific empowerment of women as a way of achieving gender equality. However, some of the interventions will benefit both men and women equally as a way of achieving gender equality.

The *Gender Policy Statement* takes into account the diversity of women's experiences in South Africa, and particularly the compound oppression suffered by African, rural, working class and poor women, as a direct legacy of Apartheid. In this regard, we give priority to those interventions that will uplift the most disadvantaged of women. This is in line with the commitments made by the Department for the implementation of the *Beijing Platform For Action of 1996*.

The *Gender Policy Statement* is based on the premise that gender inequality is about power relations between men and women, and that any policy, plan or practice that seeks to achieve gender equality must equalise those. As such, the *Gender Policy Statement* is informed by gender analysis and requires all future policies, plans and administrative action also be informed by gender analysis. Simply put, a gender analysis seeks to identify and understand the manner in which any proposed policy, plan or action is likely to impact on women and men, taking into account the diversity of their needs and experiences.





## 2. HISTORICAL BACKGROUND

South African women have been oppressed in many ways over the years. Until very recently, women were not even fully recognised as legal persons. This meant that, in many instances, they could not represent themselves in court, enter the legal profession or conclude contracts without the assistance of men.

As recently as last year, African women who married under customary law were without many of the legal powers that go with being recognised by the law as an adult with full legal status. The *Recognition of Customary Marriages Act* will correct this anomaly.

Women's subordination generally cuts across race, class and other social categories. Women tend to be poorer than their male counterparts. The phenomenon of violence against women haunts women from all spheres of life including children, women with disabilities and the aged. This happens both in the public sphere and in the privacy of their homes.

Cultural practices across South Africa generally expect women to defer to men in decision making in both public and private spheres. As a result, women experience obstacles in entering corporate management and other decision making positions, including public office. Those women who have penetrated decision making structures tend to find the environment sexist and are often forced to leave.

The oppression of black women, particularly African women, has been compounded by colonial policies and the subsequent apartheid system. This oppression was primarily located in the distortion of African customary law and economic exploitation. African women found themselves completely excluded from inheritance and other avenues of accessing property and general economic well-being. They were also reduced to a reservoir of cheap and unpaid labour anchoring the apartheid economy. In addition, black women have had to face the multiple jeopardy of the intersection of race, class and gender in their exclusion from social and economic opportunities.

As a result black women are the poorest in society. They are generally invisible in the economy and most likely to be unemployed or clustered in the lower rungs of the informal sector. They occupy the most labour intensive, undervalued and lowest paying jobs. Many of these women live in rural

areas and informal settlements where there is no basic infrastructure such as water, electricity, telephones, let alone court houses and legal aid centres. Many are illiterate and do not understand the languages used in the Justice System and other mainstream institutions in society. Like all other women in society, black women experience gender violence. However, their plight is exacerbated by problems such as poverty, ignorance and lack of infrastructure.

The justice system, operating on supposedly neutral principles has, until now, not tried to respond meaningfully to the specific justice needs of women, especially those that arise from their different situations and disadvantages, as outlined in this section. Instead, rules historically imported from European legal systems and largely developed according to the experiences of affluent white men have been imposed on all. Needless to say, this has resulted in severe injustices. Even the facilities in courts have not, up until now, taken account of women's needs, particularly their needs as parents and as victims of gender violence.

In *Justice Vision 2000* we note that the inherited justice system almost entirely neglected the particular needs of women. Laws regarding violence against women and those impacting on their financial well-being and security were left undeveloped, underdeveloped or poorly implemented. This can be seen clearly in the laws and systems that relate to maintenance, sexual violence, witch-hunting and African customary laws on marriage, matrimonial property and succession.

We are aware that there have been far-reaching changes recently in the area of human rights and women's rights. However, even the new dispensation has not substantially penetrated the ordinary lives of women, particularly those in rural communities. We also note the strides made in getting women into the judiciary and management in the justice systems. However, we acknowledge that much still needs to be done to ensure significant involvement in decision-making at all levels, particularly the judiciary and higher management levels in the Department.

## 3. BACKGROUND TO THE GENDER POLICY STATEMENT

As indicated earlier, we decided that a focussed *Gender Policy Statement* was necessary in recognition of the fact that





*Justice Vision 2000*, as a broad policy framework to inform the entire transformation programme of the Department, was too broad to address specific areas of concern. There are other areas where we have developed focussed policies to elaborate on broad policy guidelines in *Justice Vision 2000*. These include: Transformation of Legal Aid, Employment Equity, Court Management, HIV/AIDS, Model Courts, Service Delivery and The Legal Profession. We are also developing policies on Disability, Elderly Abuse and Victim Empowerment.

The *Gender Policy Statement* aims to open the legal system to both women and men so that they can confidently and successfully assert their rights. But, in order to promote gender equality, the *Policy* is biased in favour of the needs and experiences of women.

The *Policy* identifies the ways in which the legal system fails women. It also tries to provide a philosophical framework for changing the system and making sure that in the future it will address women's needs and concerns and respond to women's experiences. This is done with a view to levelling the playing field between men and women and thus laying the foundation for true, or substantive, gender equality.

The *Policy* reflects the commitments of the Department of Justice in regard to the implementation of the *Beijing Platform for Action*. It is also informed by, and provides for, the implementation of the *UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, which South Africa ratified without reservation in 1995.

The first draft of the *Gender Policy Statement* was developed soon after the establishment of the Gender Unit in the Department of Justice in March 1996. It was released for public consultations in June 1997. It followed the format of the first draft of *Justice Vision 2000* which had been released in 1996. The idea was to give a gender dimension to the transformation strategy of the Department. The contents of the first draft and public responses to it, greatly enriched the gender content of the final draft of *Justice Vision 2000*, which was approved by Cabinet in May 1997 and released for public distribution in September 1998.

#### 4. SCOPE OF APPLICATION OF THE GENDER POLICY STATEMENT

We aim to incorporate the *Gender Policy Statement* into all activities of the Department of Justice and into all aspects of the justice system. It is binding on everyone in the Department and its affiliated structures.

Implementing the *Policy* will not be the responsibility of the Gender Directorate only, but of the Department as a whole and of all the people who work within the justice system. Responsibility and accountability for its implementation therefore lie with every public employee or agent of the state within the justice system. We hope that our partners in the justice system will also take this policy into account in the planning and execution of their services within the justice system.

#### 5 THE RELATIONSHIP WITH JUSTICE VISION 2000

The *Gender Policy Statement* is an essential part of *Justice Vision 2000*, as well as an instrument for interpreting it. *Justice Vision 2000* has three key components:

- (1) **THE GUIDING PRINCIPLES**  
This covers the Mission, Values and Vision of the Department.
- (2) **THE STRATEGY**  
*Justice Vision 2000* is a five-year strategy. In it we identified seven *Key Result Areas* that would guide us toward creating a system of justice that is: “...simpler, cheaper, more efficient and responsive to people's needs”. There are seven *Key Result Areas*:
  - i. An integrated, efficient and representative Department of Justice
  - ii. A legitimate, service-oriented and efficient system of courts and other structures administering justice, staffed by people who represent everybody in South Africa
  - iii. Safety, security and freedom from crime for everybody
  - iv. Fair and equal access to justice for all, taking into account the diversity of people's needs





- v. An effective and efficient human resource development system
- vi. A well-trained, broadly representative, accessible and evenly distributed legal profession
- vii. Effective and efficient provision of legal and legislative services to the state.

**(3) MECHANISMS FOR IMPLEMENTATION AND MONITORING**

This deals with the practical measures that the Department will adopt and the mechanisms that we will put in place, to ensure the implementation of the overall strategy. It also deals with monitoring and review.

The *Gender Policy Statement* does not follow the same format. It adopts a simpler approach. It deals with the major areas that are ordinarily used, both nationally and internationally, in the discourse on gender or women, and the law. This allows for a cohesive presentation of gender issues in term of challenges and strategic interventions, which are linked, where appropriate, to the relevant aspects in *Justice Vision 2000*.

**6. THE BASIC CONTENTS OF THE GENDER POLICY STATEMENT**

The *Gender Policy Statement* is primarily a policy statement. It is not a programme of action. It provides a philosophical framework to guide the thinking and decision-making in the Department of Justice on gender issues. Nevertheless, where ideas for implementing our Policy Commitments have crystallized, we have given a broad indication of our intended programme of action under each Policy Commitment.

In the absence of detailed activities, it has not been possible to allocate budgets. Moreover, many of the activities will be

integrated into existing activities and budgets. For example, for legal research into gender issues will be integrated into the budget of the South African Law Commission, while gender training issues will be integrated into the budgets of Justice College and the Training Directorate in the Department.

In future we will require all implementing structures within the Department to give a gender analysis of their activities and to provide for gender-related activities in their budget and their implementation reports.

**7. THE STRUCTURE OF THE POLICY STATEMENT**

The *Gender Policy Statement* has six chapters. These are:

- Chapter 1: Introduction
- Chapter 2: Guiding Principles
- Chapter 3: Service Delivery and the Legal System
- Chapter 4: Employment Opportunities and Decision Making
- Chapter 5: Institutional Transformation and Monitoring
- Chapter 6: Consultations and Bibliography

Chapter 1 introduces the *Gender Policy Statement* and puts it into context.

Chapter 2 briefly summarises the broad principles upon which it is based and which should inform policy implementation.

Chapters 3 - 5 contain the actual policy.

Chapter 6 lists the consultations that we undertook and gives selected references.

The policy statements contained in Chapters 3 - 5 rest on the three pillars that support the justice system. Each pillar is reflected in one of the chapters.





- **PILLAR 1: CHAPTER THREE**

This pillar covers policy interventions which are primarily directed at the Department's responsibility as a **service provider**.

This pillar comprises the following **five** Critical Areas of Concern:

1. *Violence Against Women*
2. *Victim Support and Empowerment*
3. *Family Law (Including the Administration of Deceased Estates)*
4. *Access to Justice*
5. *Working with Civil Society*

- **PILLAR 2: CHAPTER FOUR**

This pillar deals with changes to be introduced within the Department in its role as an **employer** and in its **decision-making systems and practices**.

This pillar comprises the following **five** Critical Areas of Concern:

1. *Employment Equity*
2. *Sexual Harassment*
3. *Responsive Dispute Resolution Mechanism*
4. *Equitable Distribution of State Contracts*
5. *Involving Women in Decision-Making*

- **PILLAR 3: CHAPTER FIVE**

This pillar deals with **institutional changes** aimed at entrenching gender equality analysis and creating a conducive climate for successful policy implementation. It includes **monitoring** and **review** mechanisms.

The pillar comprises the following **five** Critical Areas of Concern:

1. *Entrenchment of Gender Equality Analysis*
2. *The Gender Budget*
3. *The Gender Unit and Other Implementation Support Mechanisms*
4. *The Judiciary and Judicial System*
5. *International and Inter-Sectoral Cooperation*

Each of the fifteen Critical Areas of Concern is discussed under three broad headings:

- Broad Policy Commitment
- Guiding Principles
- Strategic areas of Intervention

Where the issues dealt with under the Strategic Areas of Intervention are extensive, the activities are further divided as follows:

- Specific Policy Commitment
- Current Policy Challenges
- Implementation Strategies





# CHAPTER 2

## GUIDING PRINCIPLES

### 1 INTRODUCTION

The *Gender Policy Statement* is based on the values and principles enshrined in various instruments that establish a framework for the achievement of gender equality. Among these are:

- The South African Constitution
- The National Gender Policy
- Other National Instruments
- Selected International Human Rights Instruments

Based on the principles contained in these instruments, we have developed a Gender Mission Statement to act as the **founding principle** for our *Gender Policy Statement*. Before detailing our Gender Mission Statement, let us briefly look at the values and principles that have informed it.

### 2. THE SOUTH AFRICAN CONSTITUTION

The Constitution proclaims that the Republic of South Africa is founded on human rights values including:

- **Non-racialism and non-sexism** (Section 1(b))
- **Equality**  
Section 9 states that:
  1. *Everyone is equal before the law and has the right to equal protection and benefit of the law.*
  2. *Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination, may be taken.*
  3. *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.*

- **Human dignity**  
Section 10 states that:  
*“everyone has inherent dignity (and has the right to) have their dignity respected and protected.”*

### 3. THE NATIONAL GENDER POLICY DOCUMENT

During 1995 the office for the Reconstruction and Development Programme (RDP), developed a draft gender policy document called *The National Policy for Women’s Empowerment*. We have made extensive use of this document in developing the Department of Justice’s *Gender Policy Statement*.

The new Office on the Status of Women (OSW), the apex of South Africa’s national gender machinery is currently using the 1995 National Policy for Women’s Empowerment as a basis for developing the final draft for a National Gender Policy. Once published, the national Gender Policy will inform the implementation of the Department’s *Gender Policy Statement*.

### 4. OTHER NATIONAL INSTRUMENTS

Women have been refining their struggle for equality for many years. In 1954 the first **Women’s Charter** was developed. This has influenced the contemporary processes for documenting the rights of women. As part of the process of transformation, South Africa has developed several documents that will contribute to women’s advancement. These include:





- *The Women’s Charter for Effective Equality (1993)*
- *The First Reconstruction and Development White Paper (1994)*
- *The National Policy for Women’s Empowerment (1995)*
- *Batho Pele: The White Paper on Transformation of Public Service Delivery (1997)*

*Batho Pele* is one of the key national transformation frameworks that has informed our *Gender Policy Statement* because it adopts principles such as the need to:

- *Identify and respond meaningfully to the diversity of customer needs*
- *Involve customers in the determination of service standards*
- *Redress inequality in service delivery and to prioritise the needs of the historically marginalised*
- *Work with organs of civil society in the delivery of public services*

All of these national instruments contain recommendations about law reform and the re-alignment of the legal system so that it can respond meaningfully to the experiences and needs of women. They also all emphasise the need for increased participation by women within legal structures and the legal profession.

## 5 INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

With regard to gender issues in general, there are three international documents that inform our *Gender Policy Statement*.

### ► THE UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

South Africa has ratified, without reservation, the *United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*. This calls on state parties to condemn discrimination against women and to take appropriate measures to eliminate it in all spheres of life.

Article 1 of *CEDAW* defines discrimination against women as:

*“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other sphere”.*

We have based our *Gender Policy Statement* on the *CEDAW* definition.

A number of the other articles of *CEDAW* specifically cover legal issues and the involvement of women in decision-making. These are referred to when applicable.

### ► BEIJING PLATFORM FOR ACTION (BPA)

South Africa participated fully in the United Nations Fourth World Conference on Women in Beijing, in September 1995. Both before and during that Conference women internationally expressed the idea that it was time for action and not for words. That is why the document that came out of the conference is called the *Beijing Platform for Action*. It sets out a series of practical actions that governments should take in order to advance and empower women.

The Department of Justice has made specific commitments in respect of the *Beijing Platform for Action* regarding:

- The protection of women against violence
- The improvement of property and inheritance rights
- The recognition of customary and religious marriages
- Combatting discrimination and inequality

The *Beijing Platform for Action* defined twelve critical areas of concern, many of which are directly relevant to our *Gender Policy Statement*. These include:

- The burden of poverty on women
- Violence against women
- Women in armed conflict
- Women in the economy
- Power and decision-making





- Institutional mechanisms for the advancement of women
- The human rights of women and of girl children

► **AFRICAN CHARTER ON HUMAN AND PEOPLE’S RIGHTS**

The *African Charter* entrenches the pursuit of non-sexism as a human rights priority on the continent of Africa. One of the areas of intervention for achieving gender equity in Africa is the area of family law, with special reference to culture and customary law. The reporting guidelines on the *Charter* also highlight the issues of ending violence against women and achieving the economic empowerment of women.

## 6. GENDER MISSION STATEMENT

Informed by the values and principles in the documents cited in this chapter, we have developed a specific **Gender Mission Statement**. It should be read together with the overall Mission Statement for the Department of Justice that is found in *Justice Vision 2000*.

The Gender Mission Statement will inform all the policies and implementation strategies outlined in our *Gender Policy Statement*. It reads as follows:

## GENDER MISSION STATEMENT

- *Within the next five years, we will take all steps necessary to: eradicate all obstacles to women’s access to justice through researching, acknowledging and addressing the needs of women, including race and class differences and disadvantages in the administration of justice, in order to achieve substantive equality for women.*
- *To this end we will: address both our internal policies as an employer, and our external policies as a service provider to the community.*





# CHAPTER 3

## SERVICE DELIVERY AND THE LEGAL SYSTEM

### 1. OUR VISION

We want to achieve a justice system that is equally accessible and responsive to the needs and circumstances of women, and men, from all walks of life, regardless of difference or disadvantage. Our laws and our dispute resolution mechanisms should:

- Promote human dignity
- Ensure freedom and security of the person
- Engender the economic well-being for women

This will comply with our obligations under our *Constitution*, the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* and other human rights instruments that promote equality.

### 2. CRITICAL AREAS OF CONCERN

In order to eliminate gender discrimination and disadvantage, we will prioritise the following Critical Areas of Concern in our policies, laws and administrative changes:

- Violence Against Women
- Victim Support and Empowerment
- Family Law (Including Administration of Deceased Estates)
- Access to Justice
- Working with Civil Society

#### (1) VIOLENCE AGAINST WOMEN

##### Broad Policy Commitments

##### *We commit ourselves to:*

- *Undertaking all possible measures within our mandate to eliminate violence against women in South Africa*
- *Facilitating an integrated national response to violence against women as set out in the SADC*

##### *Declaration on the Eradication and Prevention of Violence Against Women*

- *Developing a specific policy framework on violence against women*

##### Guiding Principles

We have based our Policy Commitments on our obligations in terms of the following, and other, related instruments:

##### ▶ THE CONSTITUTION

- Section 9: Equality
- Section 10: Human dignity
- Section 11: The right to life
- Section 12: Freedom and security of the person

##### ▶ JUSTICE VISION 2000: KEY RESULT AREAS

- Crime, Safety and Security
- Courts and other Structures Administering Justice

##### ▶ INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

- *General Recommendations of the Committee on the Elimination of All Forms of Discrimination Against Women*
  - Recommendation 12 (1989) requires state parties to include information about the situation in their country regarding violence against women as part of reporting process under CEDAW
  - Recommendation 19 (1992) declares gender-based violence a form of discrimination against women, and defines it as:

*“violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”.*





- **United Nations Declaration on the Elimination of Violence Against Women**

In 1993 the United Nations General Assembly adopted a *Declaration on the Elimination of Violence Against Women (DEVAW)*. It calls for state parties to:

*“...condemn violence against women and ... not to invoke any custom, tradition or religious consideration to avoid their obligations with respect to elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women”.*

- **United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

- Article 2 of *CEDAW* includes a definition of violence against women. Our *Policy* uses this definition:

*Violence against women shall be understood to encompass but not be limited to the following:*

- a) *Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.*
- b) *Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.*
- c) *Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”*

- **Beijing Platform for Action**

At the *National Conference of Commitments* held in 1996 as a follow-up to *The Beijing Platform for Action*, we committed ourselves to:

*“take integrated measures to prevent and eliminate violence against women and to facilitate prosecution of perpetrators of violence”*

- **SADC Declaration on the Prevention and Eradication of Violence**

In March 1998 the Department of Justice hosted a *Conference on Violence Against Women for the Southern African Development Community (SADC)*. The Conference published the *Declaration* which included the statement that:

*“Violence against women and children ... reflects unequal relations of power and value between men and women, resulting in domination over, and discrimination of, women by men.”*

The Declaration calls on SADC states to take various legal steps, including reviewing and reforming laws on sexual offences and domestic violence, to eliminate gender bias and ensure justice and fairness to both the victim and the accused. The declaration was subsequently adopted by the SADC heads of state as an addendum to the *SADC Declaration on Gender and Development* at a meeting held in Mauritius in September 1998.

The conference also adopted a *Progress and Accountability Framework on Violence Against Women, Children, the Elderly and People with Disabilities*. It provides mechanisms to measure progress, and to report and compare actions undertaken. It lists various forms of violence of most concern, and requires SADC members states to report on achievements in the following areas:

- government, constitutional and community based structures
- laws
- policies, guidelines and administrative measures
- services for victims
- services for abusers and initiatives to involve men
- public education and awareness and prevention
- staff training
- coordination and integration
- research and evaluation





### Strategic areas of Intervention

- DOMESTIC VIOLENCE
- SEXUAL VIOLENCE
- WITCH HUNTING
- FEMALE GENITAL MUTILATION
- TRAFFICKING IN WOMEN AND CHILDREN
- WOMEN IN ARMED CONFLICT
- REFUGEE WOMEN

Victim Support and Empowerment in relation to violence against women is very significant. We have not omitted it. Rather, because it transcends the issue of violence against women, it is treated as a Critical

Area of Concern on its own, in the next section of this chapter.

All of these interventions cut across different government departments and civil society. The Department of Justice undertakes to address issues within its line functions and to cooperate with other departments and civil society in matters affecting other line functions.

What follows is our intended plan of action for each area of intervention.

## (a) DOMESTIC VIOLENCE

### Policy Commitment

#### *We commit ourselves to:*

- *developing effective and efficient responses to domestic violence through an integrated policy framework and guidelines to facilitate the implementation of the Domestic Violence Act.*
- *ensuring that adequate administrative arrangements are in place for effective implementation of the Act*
- *ensuring that responses to domestic violence prioritise the protection of the safety and dignity of victims*

### Current Policies and Challenges

The Domestic Violence Act of 1998 responds to many of the concerns that were raised in the early stages of developing this policy. This Act recognises that:

*“Domestic violence is a serious crime against society ... that the majority of victims ... are women ... and that it is an obstacle to achieving gender equality.”*

Its provisions cover a more inclusive definition of violence against women. It also addresses a number of other deficiencies in its predecessor, the *Family Violence Act* of 1993. In this regard, the Act introduces critical policy interventions which include:

- A more inclusive definition of domestic relationships that are covered in terms of the Act
- Provision for the granting of emergency financial relief
- Easier access to protection orders.

The Act also deals with access for persons who are unable to afford the administrative fees.

The key challenges to be addressed in the implementation of this policy relate to:

- Administrative arrangements for successful implementation
- Changing the mind sets of service providers
- Public awareness of the Act
- Ensuring strong inter-sectoral coordination at all levels.





### Implementation Strategy

Our Implementation Strategy will include the following:

	ACTION	TIME FRAME
1	Facilitation of the establishment of an inter-sectoral team with representatives from all relevant government departments to <b>develop policy guidelines to guide the conduct of service providers</b> in responding to domestic violence. The guidelines will be distributed widely and all relevant <b>service providers will be trained</b> on the guidelines.	The guidelines completed by September 1999. Training will begin by November 1999.
2	<b>Audit the current levels of service delivery and compile baseline data</b> to facilitate the implementation of the Act and to serve as a benchmark for measuring progress. This exercise will also culminate in the development of clear performance indicators and a framework for capturing reliable statistics on domestic violence.	The audit and development of indicators is to be completed by May 1999
3	Development of a clear administrative <b>strategy for implementation of the Act</b> . The strategy should be informed by contributions from civil society and the other government departments involved in the administering of the Act. It will also incorporate monitoring and review as well as public awareness and training of service providers.	The strategy will be in place by the end of April 1999.
4	Develop and implement a framework for the implementation of <b>informal dispute resolution measures</b> in response to domestic violence.	The framework is to be in place by April 2000.

### (b) SEXUAL VIOLENCE

#### Policy Commitment

##### **We commit ourselves to:**

- *developing a legal framework for addressing the scourge of sexual violence against women and girl children. This will include:*
  - *reviewing the substantive and evidential laws on sexual violence*
  - *reviewing legal procedures related to sexual violence*
  - *improving for victims service provision*
  - *designing structures to ensure justice for victims and a fair trial for the accused*

#### Current Policy and Challenges

Justice Vision 2000 commits the Department to: *“reviewing criminal laws and procedures that relate to vulnerable groups like women and children ...[to] secure their rights and protect their dignity ... (and to) a review of rape laws and other laws that deal with sexual violence”*

The Department has already been very active in this area, particularly with the development of the

guidelines for handling sexual offence cases during 1997. In addition, we have piloted a special court for dealing with sexual offences in Wynberg, Cape Town. The Wynberg Sexual Offences Court commenced operation in 1993 with three broad objectives:

- the reduction or elimination of inappropriate and insensitive treatment, or secondary victimisation, of sexual offence complainants
- the development of a co-ordinated and integrated approach to the processing and management of sexual offence cases by criminal justice agencies; and
- the improvement of the reporting, prosecution and conviction rate for sexual offences.

The court has since been evaluated and a decision to roll out the Sexual Offences Court nationally, has been reached.

Principles of law, and particularly definitions and evidentiary rules relating to rape and other sexual offences have, up until now, presented obstacles to justice for affected women:





- The evidentiary rule, known as the cautionary rule, treats women in rape cases as unreliable witnesses and regards their evidence with severe suspicion
- The restrictive definition of rape excludes many gross sexual abuses of women

The Appeal Court recently abolished the cautionary rule (*Jackson v State 1998 AD*). The demise of this rule improves the position of victims or survivors of sexual violence. However, more interventions are required both with regard to the law and the attitudes of the residual service providers.

The complaint that service providers are not adequately sensitive, persisted throughout the consultations on this *Policy*. The police and defence attorneys were identified as the most insensitive.

A related concern is that there is insufficient coordination of services relating to sexual violence. An example that was frequently cited was the difficulty experienced by rape survivors in rural areas and informal settlements in accessing district surgeons as required by law.

Any changes to the law or procedure will not, however, deviate from the principle of a fair trial for the accused, a right that is also enshrined in our Constitution.

Significant strides have been made with regard to protecting child witnesses from the possibility of secondary abuse in court. This has been primarily achieved through the use of technology such as closed circuit television sets and one way mirrors. Some courts even provide children with a witness' friend or a medium. Unfortunately, many of these services are currently in urban areas and girl children in rural areas are not yet adequately protected.

Another gap that was identified during the consultations was the need to create the necessary framework for allowing digital evidence by adult women in appropriate circumstances.

After the presentation of South Africa's *First Country Report on CEDAW*, the CEDAW Committee recommended that the government undertake research into the causes of the high rape statistics in South Africa, so that effective preventative measures can be developed.

### Implementation Strategy

Our Implementation Strategy will include the following:

	ACTION	TIME FRAME
1	Rollout of the sexual offences court throughout the country and ensure that trials are conducted in a speedy manner.	Full rollout of sexual offences courts by 2003. A significant reduction in the trial periods within a year
2	Review of sexual offences laws to remove gender bias, to bring definitions closer to the experiences of survivors of sexual violence and to address the issue of digital evidence. The review will also cover issues such as testing for and prevention of HIV/AIDS and STDs and access to basic services for victims.	The South African Law Commission is already conducting an investigation. New laws to be in place by the end of 1999.
3	Encourage the provision of a friend of the witness to survivors of sexual violence.	Policy guidelines to be in place by 2000.
4	Intensify professional development of service providers in all relevant sectors. This will cover the review of and intensification of training inter-sectoral service providers on the guidelines on the handling of victims/survivors of sexual violence.	This is ongoing.





	ACTION	TIME FRAME
5	Continuous public awareness campaign to educate people about the new laws and to change the culture which condones violence against women. The public campaigns will include the continuation of the current schools projects that focus primarily on girl children.	This is ongoing.
6	Review of current dispute resolution mechanisms with a view to minimise the harmful effects of the current extremely adversarial approach. This will include policy guidelines to curb unnecessary and invidious harassment of survivors of sexual violence particularly by private defence lawyers.	Policy on appropriate dispute resolution (ADR) to be in place within the next two years.
7	In cooperation with our NCPS partners, to ensure that research is conducted into the cause of sexual violence particularly the causes for the increase in rape. This will assist in the determination of methods of prevention and strategies for the rehabilitation of perpetrators, while at the same time constituting a response to the CEDAW Committee recommendations.	The research will be conducted by 2001.

(c) WITCH HUNTING

Policy Commitment

**We commit ourselves to:**

- *studying the report of the conference on witchcraft violence that was held in Thohoyandou in 1998*
- *participating in further research to establish the extent and the gender implications of witch-hunting in South Africa*
- *facilitating the development of an inter-sectoral response to the problem*
- *coordinating the process of developing new legislation to provide more effective responses to witch violence and other legal concerns regarding witchcraft.*
- *participating in community education programmes, in conjunction with other players, with a view to highlighting the implications of witchcraft violence for gender equality and human rights.*

Current Policy and Challenges

The Thohoyandou Conference and other research initiatives have revealed that current law and the administration of justice have not responded meaningfully to the issues relating to witchcraft. Amongst other things, witchcraft violence is threatening to become a social epidemic in a number of remote rural areas. Although both men and women are targets of this crime, elderly women are the usual victims. Victims are often burnt alive or stripped of all their possessions and thrown out of societies. They are then forced to live a hermit-like existence in areas without any infrastructure and where there are no employment opportunities.

The Thohoyandou Conference adopted a declaration which called for effective measures to curb witchcraft violence and to respond to the needs of its victims. The Department of Justice was called upon to lead the process of reviewing current legislation to improve responsiveness and effectiveness. We responded to this challenge by immediately forming a task team to look into the issue of law reform.





### Implementation Strategy

Our Implementation Strategy will include the following:

	ACTION	TIME FRAME
1	Coordinating an inter-sectoral review of the laws that currently regulate witchcraft and seek to address witchcraft violence.	During 1999
2	Participating in inter-sectoral efforts aimed at promoting peaceful resolution of community disputes and integrate this into the research on Informal Dispute Resolution Mechanisms which is already being conducted by the South African Law Commission.	During 1999
3	Joining hands with civil society and other government departments to popularise human rights and gender equality promoting instruments such as CEDAW, the <i>Universal Declaration of Human Rights</i> and the <i>African Charter on Human and People's Rights</i> .	Ongoing

### (d) GENITAL MUTILATION

#### Policy Commitment

**We commit ourselves to:**

- participating in national research efforts to establish the extent and nature of female genital mutilation in South Africa
- proposing ways to address the issue of female genital mutilation
- coordinating the development of policy and legislation to clarify the criminality of female genital mutilation if the policy shows that it is appropriate
- cooperating with departments such as Health, Culture and Education in the conducting of community awareness campaigns on cultural practices that violate the human rights of women in general, and girl children in particular.

#### Current Policy and Challenges

The consultation revealed that some form of female circumcision was practised in certain communities in South Africa, albeit on a limited scale. The workshop participants argued that the predominant form of circumcision did not amount to genital mutilation. However, the consultations revealed the existence of classical genital mutilation in some small community in the Mpumalanga province.

It was further alleged that in the community in question, young girls were abducted for this purpose. The nature, extent and legality of the various forms of manipulation of the female genitalia is not clear at the moment.

#### Implementation Strategy

Our Implementation Strategy will include the following:

	ACTION	TIME FRAME
1	Supporting efforts by appropriate government departments to research the nature and extent of female genital mutilation in this country	In time for the second country report on CEDAW
2	Participate in the process of developing a legislative response, where appropriate, and tabling this in parliament	One year to enact laws
3	Join hands with other government departments and community agencies in raising awareness on cultural practices which violate the human rights of the girl child	Ongoing activity





## (e) TRAFFICKING IN WOMEN AND CHILDREN

### Policy Commitment

#### ***We commit ourselves to:***

- *creating a legal environment to eliminate all forms of trafficking in women and children. The legal framework will:*
  - *ensure that all women and girl children enjoy the right to freedom and security of the person regardless of economic or occupational status*
  - *contribute towards the promotion of national health by minimising the spread of HIV and other STDs*
  - *help to eradicate the exploitation and abuse of, and discrimination against, women involved in prostitution or sex work and thus enable South Africa to comply with article 6 of CEDAW*
  - *enable us, as a department, to comply with our obligations in terms of the implementation of the Beijing Platform for Action.*

### Current Policy and Challenges

Our international obligations in terms of CEDAW and the *Beijing Platform for Action* require us to adopt measures to protect women involved in prostitution from abuse and exploitation. Violent abuse is the main concern in this regard. The *Beijing Platform for Action* and our Policy Commitments under it, impose an obligation on us as a government service agency, to intervene to protect those who are involved. We are also required to intervene, with a view to eradicating trafficking in women and child prostitution.

The Beijing Platform for Action calls on States to: “...assist victims due to prostitution and trafficking”.

Our own departmental commitment as presented to the national conference on the implementation of the Beijing Platform for Action include the commitment to: “...review sexual offence legislation to decriminalise where necessary and to ensure greater protection of women”.

Current law criminalises prostitution. Research conducted by the Gauteng province revealed, amongst other things, that the current laws exacerbate the vulnerability of the predominantly female prostitutes, to abuse by the predominantly male customers, pimps and corrupt law enforcement agents. In practice it is the prostitutes only, and not the customers, who get arrested. Some of the research has also linked the current legal position on prostitution to the uncontrolled spread of HIV and other sexually transmitted diseases.

It is conservatively estimated that approximately 50,000 women earn their livelihood through prostitution in South Africa. Most of these work in Johannesburg, followed by Durban and Cape Town. Many of them are subjected to physical and other forms of violence. The consultations revealed that most people hold the view that women involved in prostitution need to be protected from violence. There was also some consensus that liberalisation could lead to better access to health care and some reduction in the risk of HIV infection or spread.

Another weakness of the current legal system which emerged during the consultation was its inability to deal effectively with the prostitution and trafficking in children. This concern was underscored by an incident of trafficking in young girls which was uncovered in the Western Cape province around the *16 Days of Activism Against Violence* in November 1998.





### Implementation Strategy

Our Implementation Strategy will include the following:

	ACTION	TIME FRAME
1	Coordinate the process of law reform in fulfilment of our commitments in terms of the <i>Beijing Platform for Action</i> and being guided by <i>CEDAW</i> particularly article 6, which mandates State Parties to “...take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women”.	This exercise will be undertaken within the year of government approval of the <i>Policy</i>
2	Participate in inter-sectoral efforts to educate the public on the new policy and law particularly on the basis for the policy choices	Activity during the development of the new policy framework
3	Provide for professional development of all service providers, to bring their understanding and behavior in line with the new policy framework	To commence within six months of the passing of new legislation
4	Do everything possible within our scope of work, to support poverty alleviating strategies particularly those aimed at achieving economic empowerment of women	Ongoing

### (f) WOMEN IN ARMED CONFLICT

#### Policy Commitment

##### *We commit ourselves to:*

- *undertaking research on the concern and experiences of women in South Africa who have been caught up in armed conflict, and developing strategies to ensure that the justice system responds to their needs by:*
  - *effective prosecution of perpetrators of organised violence, including rape in this country*
  - *supporting international endeavours to acknowledge rape as a war crime and a serious violation of human rights*
  - *ensuring in consultation with relevant role players, that refugee women are not prone to additional discrimination as a result of their legal status*

#### Current Policy and Challenges

Gender concerns regarding armed conflict are currently dealt with in ordinary criminal laws of the country. Our obligations in regard to women in armed conflict derive from international instruments and our national Constitution.

We have tried to include rape as a war crime, in the document that is setting up an International Criminal Court, in pursuit of our commitment to gender equality and the fulfilment of our obligations in terms of *CEDAW*. However, a lot still needs to be done, particularly in regard to speedy and effective response of the criminal justice process and ensuring victim support in general.

#### Implementation Strategy

Our Implementation Strategy will include the following:

	ACTION	TIME FRAME
1	Facilitate and participate in an inter-sectoral investigation into the gender equality impact of armed conflict giving special attention to women’s needs and concerns. The research will also cover non-conventional forms of armed conflict and will provide policy recommendation.	The research will take place by 2003





	ACTION	TIME FRAME
2	Integrate the needs of women survivors of violence in armed conflict in our Victim Empowerment Strategies	As for Victim Support and Empowerment
3	Contribute towards the promoting of peace through encouraging and availing avenues to effective and relationship building dispute resolution mechanisms in communities	As for alternative dispute resolution mechanisms in Access to Justice

**(g) REFUGEE WOMEN**

**Policy Commitment**

***We commit ourselves to:***

- *promoting and protecting the human rights of refugee women by ensuring that the rule of law and due legal processes in the criminal and civil justice system are applicable and responsive to the needs of such women.*

**Current Policy and Challenges**

The regulating of matters relating to refugees and aliens are primarily the concern of the Department of Home Affairs. However, our department is responsible for ensuring that the justice system is available to and responsive to the needs of refugees when needed.

In 1996, South Africa acceded to a number of international instruments relating to the treatment and status of refugees. Law seeking to facilitate our country's compliance with the relevant international instruments was promoted by the Department of Home Affairs in 1998.

It has been suggested that women constitute about 5% of the persons who have been formally granted refugee status in South Africa. Women on the other hand, constitute the majority amongst displaced persons in South Africa who fled the civil war in Mozambique. About 70% of this group comprises women and children.

However, South Africa, being relatively new in the international community, has not yet developed comprehensive support mechanisms for refugees. We also lack research which clearly indicates their needs and the necessary responses. While we are aware that women refugees suffer compound discrimination and other obstacles to societal obstacles because of the intersection of their gender and non-national status, we have not assessed their specific needs in regard to the justice system.

**Implementation Strategy**

Our Implementation Strategy will include the following:

	ACTION	TIME FRAME
1	Facilitate and participate in an inter-sectoral investigation into the gender equality impact of armed conflict giving special attention to women's needs and concerns. The research will also cover non-conventional forms of armed conflict and will provide policy recommendation.	The research will take place by 2003.
2	Research into the needs of refugee women and design appropriate responses within the scope of our work as a government service agency.	The research will begin before the end of 1999





	ACTION	TIME FRAME
3	Ensure the integration of the concerns and rights of refugees in our human rights and diversity awareness public education and professional development programmes	Ongoing
4	Support initiatives aimed at curbing xenophobia	Ongoing

## (2) VICTIM SUPPORT AND EMPOWERMENT

### Broad Policy Commitment

#### **We commit ourselves to:**

- enshrining a victim-centered approach in all matters of policy
- introducing policy, legislative and administrative changes in the justice system that aim to ensure a balance in the rights and services rendered to victims and alleged perpetrators

#### To this end we will:

- develop a policy framework and legislation within our mandate, on victim empowerment and support,
- lead the process of developing a Charter on Victim's Rights
- expand existing victim support initiatives within our budgetary constraints.

### Guiding Principles

We have based our Policy Commitments on our obligations in terms of the following, and other related instruments:

#### ▶ THE CONSTITUTION

- Section 9: Equality
- Section 10: Human dignity
- Section 11: The right to life
- Section 12: Freedom and security of the person

#### ▶ JUSTICE VISION 2000: KEY RESULT AREAS

- Crime, Safety and Security
- Access to Justice
- Courts and other Structures Administering Justice

One of the strategies in *Justice Vision 2000* states that we will:

*"...review laws and procedures so that we can increase victim support services" and we will "...develop and implement training mechanisms that will ensure that victims of crime get support and sensitive treatment."*

We will also: *"...Institute restorative justice mechanisms where appropriate, to ensure that we meet the needs of victims"*.

#### ▶ INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

- *The Universal Declaration of Human Rights*, particularly the sections dealing with security of the person

#### ▶ THE SADC DECLARATION ON GENDER AND DEVELOPMENT

- Read with the *Addendum on The Eradication and Prevention of Violence Against Women and Children*, that identifies victim support services as one of the critical areas where government action aimed at ending violence against women and children should focus.

### Current Policy and Challenges

Victim support and empowerment policy considerations are generally embedded in ordinary laws and procedures within the administration of justice. Legal attempts to empower victims and protect their rights inform laws and administrative policies in areas such as witness protection and the use of audio-visual and other media to insulate vulnerable witnesses from secondary victimisation. The Criminal Procedure Act with particular reference to s300 thereof, seeks to empower victims of crime by providing for compensation in appropriate circumstances.





At an administrative level, the Department has introduced a number of administrative guidelines and an infrastructure in an effort to respond to the needs of victims. These include the introduction of information services and in some courts, advice and social services such as counselling, as well.

The sexual offences courts mentioned earlier aim to empower victims of sexual violence. In partnership with civil society and in some instances our government partners within the National Crime Prevention Strategy (NCPS), we have been able to introduce a number of services for victims. Many are, however, currently limited to urban and formerly white courts. The victim support services include the following:

- Pre-trial Service Pilot in which victims are given information about their rights and the legal process. Volunteers provide support to victims and monitor compliance with bail conditions. The project also ensures that bail management takes care of the security of victims.
- Information desks which offer information and referral. In some courts there are advice desks which offer legal advice.
- Witness friends who assist witnesses with practical matters at court.
- Separate waiting rooms for victims of violence, with a particular focus on women and children.
- Installation of closed-circuit television sets and one-way mirrors.
- Catering facilities.
- Regular consultation with all key role players in the justice system to encourage victim empowerment initiatives. This activity has also involved the compilation of baseline data on the current level of services and regular review of progress.
- Counselling services mainly provided by employees of the Department of Welfare and volunteers from NGOs.

At the policy and legislation levels, we have introduced stringent sentences for violent crimes including rape, tightened the regulation of bail and introduced a national prosecutorial policy which provides a framework for balancing the rights of victims and alleged offenders. The witness protection

programme is also a victim empowerment service. We also sponsored and coordinated the process of developing National Policy Guidelines on Victims of Sexual Offences and a victim information brochure by a multi-sectoral task team in 1997.

The team included representatives from the Departments of Health, Welfare, Correctional Services and Safety and Security, the South African Police Service, prosecutors, magistrates, judges and the national Network on Violence Against Women. We convened the launch of these guidelines in September 1997 and are currently sponsoring and coordinating the implementation process.

We have also maintained a public awareness campaign aimed primarily on eliminating violence against women and children, and highlighting the issue of victim empowerment. The victim empowerment theme ran through:

- The SADC Conference on Violence Against Women that we hosted in Durban in March 1998
- The Progress and Accountability Framework that was approved as an instrument for monitoring the implementation of the declaration that came out of the conference
- Public awareness campaigns on violence against women and children
- A day in the *16 Days of Activism on Violence Against Women*, which kick-started with the National Conference of Commitments, was devoted to victim empowerment.

There are still many gaps concerning victim empowerment in current policy, law administrative arrangements and practice. The consultative process unveiled a lot of dissatisfaction particularly amongst women, concerning the current levels of victim empowerment. The challenges which were identified include:

- The need for improved coordination amongst service providers from different sectors
- The call for health, social and legal advisory services for victims



- The call for fuller participation and access to information about the case for victims or survivors of crime. Suggestions in this regard included the implementation of victim impact statements
- The need to improve the provision for victim compensation in s 300 of the *Criminal Procedure Act* to expedite victim compensation and to generally improve restorative justice elements in the criminal justice system
- The need for one-stop service centres where the public can receive all related services in regard to sexual violence in particular
- The need to extend the concept of victim empowerment beyond the criminal justice process and in particular, to explore and address its relevance in civil matters.

#### Strategic areas of Intervention

- DEVELOPMENT OF A VICTIM CHARTER
- DEVELOPMENT OF POLICY ON VICTIM EMPOWERMENT
- VICTIM SUPPORT SERVICES IN COURTS
- VICTIM EMPOWERMENT GUIDELINES FOR THE PROSECUTORIAL SERVICES
- REVIEW OF SYSTEMS AND PROCEDURES
- IMPROVEMENT IN DATA COLLECTION AND STORAGE
- MULTI-DISCIPLINARY SERVICES FOR VICTIMS AND PERPETRATORS
- INTER-SECTORAL INITIATIVES ON PUBLIC AWARENESS

*What follows, is our intended programme of action for each strategic area of intervention.*

#### (a) DEVELOPMENT OF A VICTIM CHARTER

We are leading the process of developing a charter for victims. The charter is a statement of the rights of victims in the justice system. We have already commenced the development of a *Charter of Victims' Rights* in fulfilment of our sectoral obligations under the National Crime Prevention Strategy. The charter aims to ensure that the justice system strikes a balance between the rights and dignity of victims and the rights of accused persons. We will also lead initiatives aimed at popularising the charter amongst service providers and the public.

We envisage a charter that incorporates the seven core rights which have been identified internationally. These form the basis of the draft we have developed.

#### **THE SEVEN CORE RIGHTS OF VICTIMS**

##### **All victims have a right to:**

- *be treated with dignity and respect*
- *offer information to the professionals involved in the case*
- *receive information and be informed timeously about the status and progress of their case, court dates, witness fees, continuances and possible final disposition*
- *legal advice and representation (This requires unpacking the traditional concept of the prosecutor as representative of the State and the victim as a State witness. It also introduces the concept of separate victim advocates)*
- *protection*
- *restitution*
- *compensation (This is difficult for South Africa, given the current financial constraints. We intend to explore ways to ensure the prompt return of property in applicable cases. In respect of personal injury, we are investigating options to require the offender to pay compensation and exploring the feasibility of a State Compensation Fund.)*

**TIME FRAME:** We are awaiting the Law Commission report, but we hope that the charter will be completed by the end of 1999.



**(b) DEPARTMENTAL AND NATIONAL POLICY ON VICTIM EMPOWERMENT**

We will be developing a comprehensive policy statement on victim empowerment within the scope of the department. This policy will also constitute departmental input into the national policy on victim empowerment to be developed under the NCPS.

**TIME FRAME:** We hope that the Departmental policy will be in place by April 2000.

**(c) VICTIM SUPPORT SERVICES IN COURTS**

Implementation of the following guidelines to ensure an affirming court environment and victim assistance:

- Personnel from courts throughout the country should:
  - Meet regularly (perhaps annually) to discuss local initiatives on victim empowerment
  - Wear name tags to promote a more personalised service, and to enable victims who are treated irregularly, to hold them to account
- Senior court personnel should organise regular consultative meetings with all court personnel dealing with the public, NGOs, other government departments, the business community and personnel from the Attorney-General's office.
- All court should try to:
  - Implement pre-trial services in which victims are given information and brochures about their rights and the legal system. This should include providing support to victims and monitoring compliance with bail conditions
  - Establish information desks which offer legal advice, information and referral and ensure that the personnel who staff those desks received training in the relevant areas of the law, gender sensitivity, violence against women, customary law - particularly law relevant to the local area, and diversity
  - Engage the services of witness friends who assist witnesses with practical matters at the court
  - Provide separate waiting rooms for victims of

violence, with a particular focus on women and children, should be established

- Work towards the provision of child care facilities for parents who bring their children to court
- Facilitate the provision of catering facilities
- All courts should:
  - improve their client service in respect of maintenance applications and enforcement to ensure that applicants are treated with dignity and respect and are not required to wait long periods of time in uncomfortable surroundings
  - Install closed-circuit televisions, one way mirrors, screens and other equipment for use in cases of sexual violence and potentially over cases of violent crime
  - Improve directional signage so that public are able to locate different courts, services and facilities
  - Provide effective mechanisms for handling customer complaints and to obtain customer needs and views on services. The mechanisms should be informed by an understanding of gender related and other forms of difference and disadvantage. This could include the installation of suggestions boxes to obtain client feed-back.

**TIME FRAME:** The services are to be phased in progressively over the next four years. Closed circuit television sets and one-way mirrors are to be available in all relevant courts by 2001.

**(d) GUIDELINES FOR THE PROSECUTIONAL SERVICES**

We will, in consultation with the National Directorate of Public Prosecutions (NDPP), implement the following guidelines in the Prosecutorial Services:

- Guidelines for handling of violence against women as part of the overall formulation of prosecutorial guidelines in the DOJ, should be developed. *The National Prosecuting Authority Act of 1998* has already been introduced. It provides for the development of a coherent and uniform





prosecuting policy to be applied throughout the country.

- NGOs working with women victims of violence should be closely consulted in the development and subsequent review of the prosecuting policy.
- Consideration should be given to establishing a Special Unit to support women victims of crime and their families in the prosecutor's office. This should be done in consultation with NGOs.

**TIME FRAME:** The special guidelines are to be in place by the mid-1999. Consultations on the first prosecutorial policy have taken place. The investigation on the desirability and feasibility of the women's unit, is to be conducted by 2001.

**(e) REVIEW OF SYSTEMS AND PROCEDURES**

We will review systems and procedures to improve responsiveness to victims. We will prioritise the following:

- Ensuring that the victim is able to place information before the court regarding their concerns relevant to bail. The pre-trial services which have been established provide models for this process
- Investigating ways to obtain more community participation in bail decision
- Exploring the possibility of the use of victim impact statements in sentencing procedures
- Providing a framework for greater participation by community assessors in the criminal justice system. The implementation will require that assessors are gender inclusive and that they receive training on the relevant areas of the law, gender sensitivity, violence against women and diversity. There is also the need to appoint more women assessors. The *Magistrates' Courts (Assessors) Amendment Act of 1998*, provides a framework for the expansion of the use of lay assessors in criminal proceedings in lower courts. This should be monitored and evaluated in ways in which community feedback can also be sought.
- Reviewing the current witness protection programme to assess its gender impact and improve responsiveness to the needs of women.

**TIME FRAME:** Research on the above issues is to be conducted within the next three years.

**(f) IMPROVEMENT IN DATA COLLECTION AND STORAGE**

We will take all possible measures to improve our data collection and storage systems to facilitate the monitoring and improvement of service delivery.

This intervention will be executed in partnership with the South African Police Services and other NCPS partners. It will involve automation and to the extent possible, integration of information systems. The pre-trial service pilot programme is already using a custom-built computer database which is the first link into a national justice information system. It will link justice to the SAPS, Correctional Services and other justice-related government departments as it expands. This intervention is also envisaged in the NCPS project involving the development of an Integrated Justice System.

The key interventions in this regard, will include:

- The collection of specific data on gender related crimes such as domestic and sexual violence.
- Exploring the feasibility of responding positively to the public call for a computer database for recording all domestic violence offenders, sexual violence offenders and maintenance defaulters.

**TIME FRAME:** The collection of domestic violence and maintenance statistics is to be prioritised in 1999 as indicated earlier.

**(f) MULTI-DISCIPLINARY SERVICES FOR VICTIMS AND PERPETRATORS**

In partnership with our NCPS partners, we will investigate avenues for and where possible, provide improved social services for victims and perpetrators. We will also continue to support current NGO initiatives in this regard. Our role will include:

- Establishing a toll-free helpline that provides immediate advice, information and referral to victims of abuse. The primary target group will be women and child victims of sexual and domestic violence.
- Exploring ways for improving access to places of





safety for women and children fleeing violence - particularly for those fleeing violence which has occurred in their home or local community. This will include consultations with institutions of local governance.

- Ensuring, in partnership particularly with the Departments of Welfare and Health and with NGOs, the availability of comprehensive trauma counselling services. For this reason and other problems relating to the current accountability of social workers, move towards a system where social workers are integrated as employees of the courts.
- Supporting current initiatives aimed at providing perpetrator rehabilitation programmes and other services for perpetrators and work towards integrating these in the dispute resolution processes, to the extent possible within our scope of work.

**TIME FRAME:** The toll-free helpline will be in place by the end of 1999. The investigations and consultations on places of safety, trauma counselling services and perpetrator rehabilitation programmes will commence in 1999.

#### (h) PUBLIC AWARENESS AND PREVENTION

We will play an active role in inter-sectoral initiatives aimed at conducting Public Education and Prevention, through:

- Sustaining the national campaign on violence against women
- Continued involvement in initiatives that reach out to men and encourage their participation in efforts to educate the public. We played an active role in the Men's March in November, 1997. Our strategies will include placing publicity materials in places frequented by men such as sports grounds and taverns.
- School education programmes aimed at empowering young people with knowledge and skills to keep them away from violent crime.
- Implementing innovative forms of community education. This will include the use of community radio stations and television advertisements. It

will also involve targeting influential groups in the community, such as traditional leaders and religious leaders.

- Prioritising community education on bail, sentencing practices and parole. These matters are not well understood in the community.
- Supporting and, where possible, participating in the conduct of safety audits in communities as planned in the NCPS. These involve the local community and relevant government departments such as Safety and Security in the process of identifying public places of danger where crime may be likely to occur.

**TIME FRAME:** Public awareness raising is an ongoing process in the department. Responsibility has been cascaded to regions and sub-offices.

### (3) FAMILY LAW

#### Broad Policy Commitment

*We commit ourselves to cooperate with other departments in:*

- reviewing, improving, monitoring and evaluating the family law system to ensure that it gives paramountcy to the best interests of children, and prioritises the safety, protection and economic well-being of women and children
- amending existing legislation, transforming courts and legal procedures, and ensuring that departmental personnel are sensitive to gender issues and skilled in implementing laws efficiently and effectively.

#### Guiding Principles

We have based our Policy Commitments on our obligations in terms of the following, and other, related instruments:

#### ▶ THE CONSTITUTION

- Section 9: Equality
- Section 15(3): Freedom of Religion
- Section 28: Children's rights

#### ▶ JUSTICE VISION 2000: KEY RESULT AREAS

- Access to Justice





- INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) requires parties to:

“...take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women...”

- Article 16 which deals with marriages generally and states that:

“States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality to women:”

- a the same rights and responsibilities during marriage and its dissolution;
- b the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interest of the children shall be paramount; and
- c the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property...”

- Articles 2, 5, 13 and 15 also inform the core principles that underpins this section of the Gender Policy Statement.

- **African Charter on Human and People’s Rights**  
The Charter entrenches equality in family relations and eliminating cultural biases that violate equality and other human rights.
- **The Beijing Platform for Action**
- **Departmental Commitment in Regard to the Implementation of the BPA**

**Strategic areas of Intervention**

- MAINTENANCE
- CUSTOMARY AND RELIGIOUS MARRIAGES
- SUCCESSION AND ADMINISTRATION OF DECEASED ESTATES

What follows is our intended plan of action for each area of intervention.

(a) MAINTENANCE

**Policy Commitment**

**We commit ourselves to:**

- improving the maintenance system through legislation, administrative and other reforms;
- ensuring that all those involved in the delivery of maintenance services go through a professional development programme that seeks to improve their skill, diversity awareness, attitudes and customer care;
- developing an integrated policy framework on maintenance; and
- providing efficient and responsive service delivery

**Current Policy and Challenges**

Justice Vision 2000 commits the Department to redesign the maintenance system to ensure that it is efficient, effective, racially integrated and sensitive to all users. The South African Law Commission has a long-term project to review maintenance laws. Consideration is being given to the possibility of moving towards a more administrative approach linked to the revenue and other national data bases.

Workshops have revealed that some of the current administrative arrangements need a serious review. One of these is the role and conduct of sheriffs and the police. There has been a lot of negative feedback on service delivery by these agencies.

The Maintenance Act has been changed to deal with some of the critical problems in the current system while the long-term view of the system continues. The key provisions of the new Maintenance Act, 1998 include:

- The provision for the appointment of tracers to locate liable parents who are not complying with orders
- The provision for automatic deduction of payments from wages through garnishee orders
- Enabling the court to make orders in absence of the respondent
- Providing for the submission of particulars of defaulters to the Credit Bureau
- Appointing maintenance officers





At the moment, the key challenge is to ensure that adequate and effective administrative measures are in place for the successful implementation of the Act. The consequent administrative challenges include:

- The need to conduct on an urgent basis, an audit of current levels of service delivery and emerge with baseline data to be used to measure progress in the process of implementing the Act and to identify administrative gaps that may undermine the Act.
- The need to upgrade infrastructure, particularly in the rural areas and to mobilise adequate and appropriately skilled human resources to implement some of the innovative ideas in the Act, for example the engagement of tracers.
- Professional development of service providers with a view to engendering attitudes that are more responsive to customer needs and to equip them with the provisions of the Act.

- Extensive public awareness measures to familiarise the public with the vision behind and the provisions of the Act.

South Africa has a well-entrenched culture of non-payment in regard to maintenance. This leads to liable parents (usually fathers) believing it is acceptable not to pay, and custodial parents (usually mothers) believing they will have no success in obtaining maintenance.

For this reason, we have embarked on a community education campaign involving regional officers, NGOs, community radio and the production of posters and pamphlets.

The themes have stressed that parents have a responsibility to support their children, that maintenance is the right of the child and is required to provide children with their basic needs.

### Implementation Strategy

Our Implementation Strategy will include the following:

	ACTION	TIME FRAME
1	Design and execute an Implementation Plan for the Maintenance Act. Planning must include an audit of current levels of service and preparation of a baseline data report, which shall facilitate the identification of priorities for administrative reforms and to serve as a benchmark for measuring progress in the future. The compilation of baseline data is in progress.	To be in place by the end of March 1999.
2	Review of the formula for calculating maintenance to ensure that the amount stipulated for payment is inflation linked, and payment is set at a specified percentage of income.	To be achieved by April 2000
3	Automate maintenance services and involve service agencies in civil society through the use of institutions such as banks and the Post Office for paying maintenance.	To be achieved over the next five years
4	Encourage the emerging trend of Maintenance Fora, and particularly empower NGOs to bring maintenance applications on behalf of their clients.	
5	Develop a framework for interdepartmental co-operation and coordination and the use of computer data bases to improve the maintenance system. The new framework will also review the role of institutions such as the police and sheriffs.	To be achieved by the end of 1999.
6	Develop and implement a framework for the use of mediation services and other informal forms of dispute resolution in maintenance cases. Service providers are to be equipped with ADR skills through training.	The time frame is integrated in the section on dispute mechanisms.





	ACTION	TIME FRAME
7	Ensure that effective mechanisms are in place for monitoring and reviewing purposes. This will include the establishment of an effective and efficient complaints mechanism. The baseline data that is being collected kick-starts this process. A maintenance steering committee has also been formed as a monitoring mechanism. The national Maintenance Forum is represented in the Steering Committee.	Ongoing
8	Professionalise maintenance service providers and integrate maintenance services in specialised family courts.	Over the next three years

**(b) CUSTOMARY AND RELIGIOUS MARRIAGES**

**Specific Policy Commitment**

***We commit ourselves to:***

*Introduce changes in the substantive law and the administration of Justice with a view to engendering a legal framework which promotes equality between women and men in all marriages, including customary and religious marriages and in all other family relationships. The framework will also seek to ensure equal protection of the law and enjoyment of human rights for all regardless of culture through:*

- *Recognising and regulating customary and religious marriages.*
- *Abolishing the minority status and related legal, and proprietary consequences for women married under customary law.*
- *Ensuring access to justice for marriage and other family-related disputes for all persons especially women living under customary law.*

**Current Policy and Challenges**

The key challenge in the immediate future is to introduce the necessary administrative arrangements for implementing the *Recognition of Customary Marriages Act*. Equality issues addressed in the Act include the following:

- Full recognition of customary marriages and placing them at par with civil marriages.
- The provision that a “wife in a customary marriage has in all respects a status equal to that of her husband”, so as to do away with the minority status currently experienced by women married under customary law.
- The provision that subject to the *Matrimonial Act*, 1984, both spouses have equal powers to dispose of assets, contract debts and manage the joint estate.

- The provision for safeguards to protect existing wife/wives if the husband wishes to enter into a further marriage, including some protection of her property rights and requiring her/their consent to the marriage.
- The provision for the dissolution of an existing marriage by a competent court, on ground of irretrievable breakdown.
- The extension of Section 6 of the *Divorce Act, 1979*, and the *Mediation in Certain Divorce Areas, 1987* to apply at the dissolution proceedings. This provides for the involvement of a family Advocate to protect the best interest of the child.

The Act alone will not be sufficient to address all gender problems related to customary marriages and customary practices which undermine gender equality. Administrative interventions are also critical. Some of the issues that we will be addressing in this regard include:

- The provision of professional development with a view to improving the attitudes, knowledge and skills of service providers.
- Educating the public on the law, human rights and gender equality awareness, and to eradicate undesirable cultural attitudes and practices.
- Ensuring the existence of adequate and responsive dispute resolution mechanisms for the successful implementation of the Act.
- Strengthening inter-sectoral coordination particularly with a view to bring critical stakeholders such as traditional leaders, on board.
- Strengthening the effectiveness of and access to complaints mechanisms and ensure that there is always recourse for customers in instances where service standards are not met.





### Implementation Strategy

Our Implementation Strategy will include the following:

	ACTION	TIME FRAME
1	Improving access to courts in local areas by providing either mobile or circuit courts and review and where necessary, strengthen the role of relevant traditional institutions such as the family and traditional courts, in the provision of dispute resolution and related services. Such review will be informed by CEDAW and the Constitution.	Research finalised by 2002
2	Researching the role of traditional leaders as counsellors and mediators in marital disputes and implement measures to ensure that the processes and outcomes are responsive to the needs and human rights of women.	To be achieved by 2002
3	Conducting public educational campaigns about the new laws in partnership with traditional leaders and other organs of civil society. The campaign will also target cultural attitudes and practices which undermine the pursuit of gender equality. One of the issues to be dealt with in this regard is the issue of maintenance, highlighting that the <i>Maintenance Act of 1998</i> applies to all.	Ongoing for the next five years
4	Conducting research into cultural practices or customs which force women into or keep them in unwanted marriages, such as: child abduction ( <i>Hoshobedisa</i> ), <i>Ukungena</i> and Sorority, and develop responsive measures to protect women's freedom, particularly the girl child. These measures shall include legal and educational interventions.	
5	Fast-tracking the review of laws and practices regarding religious marriages to achieve full recognition and promote gender equality, especially with respect to property rights. The implementation of new laws is to be accompanied by training of service providers and public education. Consultations with relevant stakeholders have commenced under the auspices of the South African Law Commission and a draft bill has been developed.	Law in place by July 2000
6	Mobilising the necessary resources for extending the services of the Family Advocate and the concept of the Family Court to rural areas.	Currently receiving attention
7	The provision of professional development to service providers involved in family related services, paying special attention to social context awareness, diversity and the understanding of customary and religious laws. Social context and diversity awareness training are already taking place.	Training in custom and religion to commence by July 1999
8	Reviewing laws regulating relationships other than marriage with a view to accommodating the reality of contemporary forms of the family which often do not amount to marriage. The purpose would be to ensure that women therein, are not disadvantaged simply because they are not married.	Implementation within two years





(c) **SUCCESSION AND ADMINISTRATION OF DECEASED ESTATES**

**Policy Commitment**

**We commit ourselves to:**

- *aligning the laws on succession and administration of estates with the Constitution particularly, the Equality Clause, and with our commitments in terms of CEDAW and the Beijing Platform for Action through the:*
  - *review of the current framework for administration of estates and the removal of obstacles that undermine women through the proposed Act;*
  - *development and maintenance of a system of administering deceased estates which yield just, equitable and responsive service delivery particularly for women;*
  - *restating and updating principles of succession under customary law in order to synchronise with the modern economy and ensure gender equality.*

**Current Policy and Challenges**

*Justice Vision 2000* commits the Department to achieving: “social justice with a strong emphasis on family law, property law of inheritance, for everybody, especially vulnerable groups like women and children”.

This includes:

- Reviewing laws relating to succession, the administration of estates and the ownership and use of property to ensure efficiency, equity and justice.
- Harmonising the common law, African customary law and religious law with the constitution, in areas like the law of succession, property and issues of legal status, whilst giving all persons the right of choice.

The *Customary Law of Succession Amendment Bill* has recently been introduced into Parliament. It provides that the *Intestate Succession Act of 1987* applies to persons who are married under African customary law at the time of death of a spouse. This means that women have a right to inherit from their husbands, and girls, children born out of wedlock, and sons who are not firstborn, have a right to inherit from the fathers.

The Act is aimed at:

- Eliminating racial inequalities and discrimination in succession laws
- Eliminating gender inequalities in succession laws and offering special protection to girl children and married women
- Equalising the succession rights of children born inside and outside of wedlock
- Eliminating the uncertainty and gender discrimination in regards to access to property and contractual capacity for women by living under customary law.

Other challenges within the current policy framework include the following:

- Gaps in the current policy and administrative procedures which include the segregation of services on racial basis
- General ignorance of customary law amongst service providers
- Sexist attitudes amongst members of the public and service providers
- Similar problems with regard to inheritance rights under religious laws.

**Implementation Strategy**

The implementation of our Policy Commitments with regard to maintenance law and administrative reform, will focus on improving the system of administration of estates and monitoring the effects of the new legislation and other changes to the law to ensure that women and girls enjoy equal rights as men and boys. This will be achieved through:

- Fast-tracking the process of passing the proposed legislation on succession under customary law.
- Integrating the services and professional development of service providers targeting areas like: social context awareness, knowledge of the law and the engendering of sensitive and responsive treatment of customers.
- Improving service delivery and information mechanisms that are responsive to the needs of disadvantaged communities, with special reference to the rural poor.
- Holding public awareness campaigns aimed at educating and encouraging the public on drawing and understanding wills and discouraging cultural





beliefs and practices which underpin the denial of inheritance and other economic rights and opportunities to women.

- Providing protection for girl children against practices that undermine their economic welfare and informing them about access to legal advice and their rights to representation.

**TIME FRAME:** Legislation is currently being promoted through Parliament. Administrative arrangements for the Act will be finalised within six months of the passing of the Act.

#### (4) ACCESS TO JUSTICE

##### Broad Policy Commitment

###### *We commit ourselves to:*

- *ensuring that all laws, structures, procedures and practice yield a system of justice that is affordable, fast, effective and responsive to the needs of all women and men, regardless of race, culture, economic status and other social differences. To this end we will develop a legal system where:*
  - *access to legal aid is gender inclusive*
  - *there are appropriate dispute resolution mechanisms that are more accessible and responsive to the needs of women, regardless of difference and disadvantage*
  - *law and practice operate to eliminate economic abuses of particularly the poor and facilitate economic empowerment of women*
  - *women in conflict with the law are treated equitably and justly*
  - *the law and administrative institutions and practices are in tune with the needs of society taking into account gender difference and disadvantage and other social dynamics.*

##### Guiding Principles

We have based our Policy Commitments on our obligations in terms of the following and other, related instruments:

#### ▶ THE CONSTITUTION

- Section 9: Equality
- Section 34: Access to the courts
- Section 12: Freedom and security of the person
- Section 35: Arrested, detained and accused persons
- Section 33: Just administrative action

#### ▶ JUSTICE VISION 2000: KEY RESULT AREAS

Access to justice

#### ▶ THE NATIONAL ACTION PLAN FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN SOUTH AFRICA (NAP)

#### ▶ INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

- *The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and in particular Articles 1, 2 and 15.*
- *The Beijing Platform for Action*
- *The African Charter on Human and People's Rights*
- *The Universal Declaration on Human Rights*

#### ▶ BATHO PELE: WHITE PAPER ON TRANSFORMATION OF PUBLIC SERVICE DELIVERY

##### Strategic areas of Intervention

- Legal Aid
- Access to Courts and other Dispute Resolution Services
- Civil Justice
- Women in Conflict with the Law
- The Legal Profession
- Law Reform and Research

What follows is our intended plan of action for each area of intervention.

#### (a) LEGAL AID

##### Policy Commitment

###### *We commit ourselves to:*

- *reviewing legal aid funding guidelines, procedures and distribution of service centres to ensure that any gender bias in the operation of legal aid whether direct or indirect, is eliminated.*
- *creating and maintaining a policy framework that optimises access to responsive legal services to women and men from all walks of life, incorporating special measures to accommodate the needs of women particularly those in rural and isolated areas.*
- *ensuring the accountability of service providers.*





### Current Policy and Challenges

Legal aid is provided by the Legal Aid Board. The Legal Aid Board Guidelines and regulations do not contain express rules that exclude women from any opportunities, or impose unfair burdens on them. Gender discrimination arises from the discriminatory impact of superficially neutral rules. The system fails women by not taking into account the reality of their lives and related needs. On the face of it, the system treats men and women identically. However, the impact is to favour men since the formula for rendering legal assistance is closer to the experiences of men than of women. As a result, it is mainly men who benefit from legal aid.

In practice, legal aid is primarily directed at assisting indigent, accused persons in serious crimes. This appears to be a neutral rule. However, the main beneficiary group is men, since they are the ones most likely to commit, or be accused of, serious crimes. Women, on the other hand, usually need legal assistance in civil matters including matrimonial disputes, succession-related disputes, domestic violence and labour matters, particularly matters involving domestic and farm workers.

Current legal aid policy and practice do not respond meaningfully to the needs arising from this reality.

If we examine the per capita expenditure by gender, of our legal aid budget, it becomes clear that we are spending far more of our limited resources on men than on women. This means women are benefiting far less from our services than their male counterparts. Women are also practically disadvantaged in that they have to go without legal aid in the cases where they predominate as these tend to fall outside the legal aid formula.

Other compounding issues include different knowledge levels regarding the availability of services between men and women and the fact that the majority of women are clustered in rural areas where there are no service-delivery centres for legal aid. The fact that service providers are predominantly men and that many of them are unable to relate meaningfully to the experience and related needs of women further reduces

the likely quality of enjoyment of service delivery for women.

We have committed ourselves to the implementation of a number of changes in the Legal Aid System, with a view to broadening access to legal aid. These include:

- Developing a cost effective state-funded legal aid that is accessible to everybody, taking into account the limited resources available.
- Restructuring the legal aid board to improve community representation.
- Reviewing the current criteria for legal aid to ensure equal access.
- Implementing policies that will encourage the use of legal services offered by NGOs and para-legals, including optimising the use of legal aid clinics which utilise the services of students, paralegal services and advice centres; and implementing a pilot project to explore the feasibility of community legal centres and improve community access to one-stop centres that offer a number of socio-legal services such as information, counselling, legal advice and representation, mediation and arbitration.

These interventions will make a significant contribution to our pursuit of gender equality because they will introduce measures that will empower women. The interventions were informed by a gender equality analysis. As indicated earlier, gender equality analysis requires that the likely differential impact of intended policies, plans or decisions be involved in both decision-making and service-delivery. It was also emphasised that the state should provide funds for NGOs and student legal aid clinics to ensure that there are sufficient numbers of fully qualified staff to supervise the work of para-legals.

The idea of service delivery through partnership with NGOs and law clinics is already being put into practice. This approach is important for women because most of the NGO service-providers understand women's concerns or are made up mainly of women. The centres also render access to services in rural and other and isolated areas.





### Implementation Strategy

Our implementation programme will include the following:

	ACTION	TIME FRAME
1	Establish and maintain a gender inclusive Legal Aid Board	
2	<p>Review the systems and practices for legal aid delivery using the framework in <i>Batho Pele</i> : White Paper on Transformation of the Public Service Aid. Special attention is to be paid to:</p> <ul style="list-style-type: none"> <li>• eliciting the views of women and rural communities on the current levels of service and preferred approaches to service delivery;</li> <li>• adopting a gender inclusive set of legal aid priorities. This will include reevaluating the priority given to criminal and to a lesser extent, family law matters;</li> <li>• reexamining of the means test;</li> <li>• improving the efficiency of the Legal Aid Board, particularly in regard to payment for services rendered. This will enable the Board to attract more competent lawyers in private practice;</li> <li>• improve service standards and accountability to customers;</li> <li>• ensure that women, especially the most historically disadvantaged, are equitably represented in all structures, decision-making mechanisms and amongst service providers;</li> <li>• involving NGOs such as legal advice centres and law clinics in service delivery.</li> </ul>	This process has begun. A White Paper on the Transformation of Legal Aid will be developed in cooperation with the Legal Aid Board. The review process in terms of the <i>Batho Pele</i> guidelines will be completed by 2000.
3	Implement effective professional development interventions for service providers targeting knowledge of the law, social context awareness, affirming diversity and the generation of a culture of customer service. This intervention is to be supported by effective quality control measures. Consideration will be given to the implementation of a code of conduct for both full-time and part-time service providers.	Professional development initiatives have commenced
4	Implement a public awareness strategy aimed at informing the public about the nature of and access to services and to improve image of legal aid in communities	The strategy will be in place soon after the policy is finalised.
5	Fast-track the piloting of the concept of community legal centres as articulated in <i>Justice Vision 2000</i> .	First pilot to be up and running by 2001
6	Explore the feasibility of entering into some partnerships with legal assistance avenues such as legal insurance, and taking whatever possible measures to encourage these.	To be achieved by 2001.

### (b) ACCESS TO COURTS AND OTHER DISPUTE RESOLUTION SERVICES

#### Policy Commitment

##### ***We commit ourselves to***

- *creating and maintaining of a system of dispute resolution mechanisms in which structures, processes, language and practices all respond meaningfully to the needs of women and men regardless of difference or disadvantage*
- *implementing special measures to accommodate the needs of poor and traditional rural communities.*





### Current Policy and Challenges

In the historical analysis, we indicated that the current justice system which is facially neutral, tends to fail women. The system generally renders women invisible. This is primarily because the norms and processes were carved by and primarily around the experiences of men. When blindly applied to women, in many instances, these fail to accommodate the gender specific needs arising from the different circumstances and related needs of women. This amounts to what is called indirect and systemic discrimination. In some cases the failure of the justice system to respond sympathetically to the needs of women is compounded by residual gender prejudices in the law and in the attitudes of service providers.

Our present court system provides a classical example of an institutional framework and culture that discriminates indirectly against women and other historically marginalised groups. Features of the framework include the following:

- It is Euro-centric and masculine in nature because of its European origin and the fact that it was initially set up on the basis of the needs of men as the key participants
- Over the years it has been managed and developed by European men
- It is adversarial in nature, a characteristic that is alien to the majority of the population whose culture is essentially conciliatory and whose normal dispute resolution mechanism is inquisitorial
- Because most women have been socialised generally to be non-confrontational, the present court culture has an alienating effect on them
- The use of technical rules and jargon that most people do not understand turns the courtroom into a place that is the terrain exclusively of lawyers. In view of the fact that women tend to be more likely to be poor and uneducated, they are equally more likely to feel the exclusionary effect of the exclusive dialogue in court
- Law and practice have become so complicated that even a simple case generally requires a lawyer
- Lawyers charge exorbitant fees for their service and often do not deliver value for money. This adds another disadvantage for women as they tend to be the poorest and least sophisticated in society, and as a result of the intersection of race, economic status and gender disadvantage, black women are in the worst position.

Other gender equality gaps in current policy include:

- Fragmentation of the laws and court system. People generally and women in particular, often have no idea where to go or have to go to different places at cost, for interrelated services. An example cited during the consultations in this regard. Was the issue of accessing service in rape cases.
- The strict distinction between civil and criminal justice. In certain cases, women are interested in getting back whatever was taken from them or its value, rather than seeing the perpetrator incarcerated or punished by the state. Some rural women expressed this preference even in matters of sexual abuse.
- Lack of infrastructure for parents with children in most courts.
- Lack of support systems including the media for giving evidence for women with disabilities.
- Sexism, often combined with racism and discrimination against persons with disabilities amongst many of the service providers because they lack gender analysis tools to assess the gender impact of their conduct.
- Inadequate understanding, or complete ignorance, of customary law amongst many service providers, including judicial officers and lawyers.
- Inadequate regulation and professional support for informal dispute resolution institutions such as traditional courts and small claims courts. The culture in these courts tends to be sexist and paternalistic.
- Informal dispute resolution institutions are not courts of record.
- Lack of court infrastructure, including courthouses in the remote rural areas and informal settlements. This is a critical problem for women seeking emergency services in matters such as domestic violence.





### Implementation Strategy

Our Implementation Strategy will include the following:

	ACTION	TIME FRAME
1	Design a policy guide on the distribution of courts taking into account issues such as population size, geographic size, infrastructure and trends in regard to crime and other legal disputes. The policy guide should incorporate interventions such as the use of mobile courts and the need to work in partnership with local government and other community structures with a view to sharing resources.	To be achieved by 2000
2	Review court systems, procedures and language to improve simplicity, speed and to align with the diverse social backgrounds in our community. This will include ensuring that procedures, language and practices are gender and culturally inclusive. In regard to language, issues to be reviewed will include: increasing changes for allowing parties to use their first language, simplification of language in court documents and procedures, integrating a gender perspective in language and the provision of interpreting services including interpreting for people with disabilities. This exercise will also cover the integration of informal dispute resolution elements in the mainstream court procedures and processes. However, the pursuit of ADR should be informed by an understanding of the negative gender impact of ADR in certain circumstances. It will cover issues around the use of digital evidence in appropriate circumstance.	To be achieved by April 2002
3	Review administrative arrangements in regard to the administration of sexual abuse laws with a view to improving integration of and access to services such as appropriate health workers, etc. This activity will also incorporate a review Policy Guidelines for Handling Victims/Survivors of Sexual Violence, with a view to formalising them and extending their application to all service providers in the criminal justice process. This will also deal with the concept of one-stop service centres.	This is to be achieved by the end of 2000
4	Fast-track research already being conducted on restorative justice and make sure that such research is enriched by practices in traditional communities in this country	The investigation and policy proposals will be finalised by April 2000
5	Review the budget allocation within the department with a view to assessing inequality in per capita expenditure between men and women customers and between urban and rural services, and adopt measures to redirect resources to redress inequalities where such are indicated.	The assessment and review will be done in time to integrate in the budget allocations from 2000/1 and the next MTEF input from the Department.
6	Develop a policy framework for a system of community courts integrating Small Claims Courts, Informal Courts in Communities and Traditional Courts and ensure that the policy addresses women's needs. Issues to be addressed will include gender composition of such courts, codes of conduct for service providers and their accountability, relationship with formal courts, harmonisation with <i>CEDAW</i> and the <i>Constitution</i> and exploring the possibility of making some of these institutions into courts of record. The South African Law Commission is already conducting an investigation into Community Courts. A gender perspective will be integrated therein.	To be completed by April 2000





	ACTION	TIME FRAME
7	Commission an inquiry into residual discrimination in the judicial system focussing of sexism and for the purposes of black women also racism and make recommendations on how to engender equality of treatment between men and women.	Report to be finalised by 2001
8	Implement extensive community education on laws particularly those with gender implications and court procedures to assist disadvantaged groups such as women to understand and execute their rights. Such education will incorporate ideas to help communities use law preemptively to minimise disputes. This will include information about and encouragement to draft instruments such as wills.	Ongoing
9	Provide for professional development and improved accountability for all service providers including the institution of the sheriff, administrative personnel, operations managers and legal professionals in the employ of the department and affiliated institutions.	Ongoing. Current development programmes are to be given a gender perspective
10	Implement effective and efficient monitoring and complaints mechanisms. This will include codes of conduct for all service providers, help desks, name badges for those in the frontline of service delivery, a helpline, suggestion boxes and community justice fora which are gender inclusive. Customer Service Charters which are being developed by courts under the Service Delivery Improvement Project of the Department referred to as the <i>Batho Pele</i> - Justice For All Project, will form part of the monitoring mechanisms.	Planning has begun. Implementation by December 2000
11	implement specialist court services such as Family Courts, Sexual Offences Courts and appropriate enforcement mechanisms for administration justice. This will be done in a manner that does not exacerbate fragmentation and the confusion already experienced by customers.	
12	Ensure that the planning of new courts and renovation of existing ones is preceded by gender impact assessment. Family court legislation which is being developed will be given a gender perspective.	Full implementation in three years
13	Review current mechanisms aimed at preventing and eradicating corruption and ensure that, where customers have been prejudiced due to corruption, there is always swift and effective redress.	To be achieved by 2001.

(c) CIVIL JUSTICE

Policy Commitment

**We commit ourselves to:**

- reviewing the civil justice system in order to eliminate unfair discrimination, both direct or indirect, against women and poor people
- ensuring that adequate mechanisms are in place to protect women from economic abuse





### Current Policy and Challenges

The consultative process revealed that current policy and practice of civil matter result in gross inequities especially for poor people and women. The system does not contain any rules that expressly impose burdens upon or exclude women or the poor from opportunities. The problem lies in the disparate impact of rules that are superficially neutral but in practice, are discriminatory. Problem areas include the following:

- Anachronistic, alien, adversarial and complicated principles and court procedures
- Unfair and anachronistic principles of contract
- Corruption and insensitive attitudes amongst the sheriffs
- Lack of access to legal advice and representation
- Expensive and often lengthy dispute resolution processes in the formal courts even on matters that could easily be resolved through arbitration or other less formal, and less expensive, dispute resolution procedures
- Special problems experienced by domestic and farm workers particularly with respect to legal advice and representation in their use of the Commission for Conciliation Mediation and Arbitration (CCMA) and the Labour Court.

### Implementation Strategy

Our Implementation Strategy will include the following:

	<b>ACTION</b>	<b>TIME FRAME</b>
1	Availing legal aid to civil law disputes. In doing so, we will also explore the feasibility of providing legal assistance to facilitate the use of informal dispute resolution avenues and providing assistance to domestic and farm workers to help them access the labour court in appropriate circumstances.	This forms part of the review of legal aid policy
2	Reviewing the gender implications of the reservation of certain types of cases to the private legal profession. Conveyancing is one of the areas to be prioritised in this regard.	To be achieved by 2002
3	Reviewing the civil justice process with a view to eliminating practices and procedures which operate to unfairly disadvantage women. This will cover the service of process and the feasibility of imposing an ADR routing of appropriate cases. It will cover a review of the effectiveness of interdicts.	To be achieved by the end of 2000
4	Exploring the possibility of imposing certain requirements to protect unsophisticated persons in respect of contracts. This could include requiring that all contracts should be in plain language. With regard to the use of private lawyers, clients should be informed in advance about the likely cost.	To be achieved by 2003
5	Implementing mechanisms for ensuring value for money to customers and to improve the accountability of service providers. This will include the development and implementation of a policy framework for establishing an ombud or similar entity for the civil justice system.	To be achieved within three years
6	Empower para-legals to assist in the small claims courts	To be achieved by 2001
7	Implement public education and professional development programmes on current and new laws and also to transform attitudes. Service providers will also be equipped with ADR skills.	Ongoing from 1999-2003





**(d) WOMEN IN CONFLICT WITH THE LAW**

**Policy Commitment**

***We commit ourselves to:***

- *cooperating with our government partners in the criminal justice process and with relevant NGOs, in researching and eliminating laws and practices that directly or indirectly discriminate against women accused or convicted of crimes.*

**Current Policy and Challenges**

The consultation process revealed that women who have been accused or convicted of crimes, tend to be treated less favourably than their male counterparts. An

example of this is the fact that women who are convicted of killing their partners receive much harsher sentences than men who are convicted of killing their partners.

There is insufficient understanding of the circumstances of women, particularly those who are survivors of domestic violence. It is believed that defences that should be available to women, based on their particular circumstances, are not taken seriously. For example, women who kill their partners after ten years of abuse should be able to plead special defences.

Concerns were also raised about the treatment of women who have been imprisoned.

**Implementation Strategy**

Our Implementation Strategy will include the following:

	<b>ACTION</b>	<b>TIME FRAME</b>
1	Facilitation of research on the extent to which the substantive legal defences in homicide cases are not relevant to women's circumstances and, if necessary to develop new laws.	By April 2001
2	Review of the sentencing procedure for women convicted of the homicide of a violent partner	By April 2000
3	Review of the sentences of all women who have already been imprisoned for homicides involving their violent partners	By the end of 1999

**(e) THE LEGAL PROFESSION**

**Policy Commitment**

***We commit ourselves to***

- *reviewing policy and laws that regulate entry into the functioning and the governance of the legal profession*
- *eliminating any residual discrimination, either direct or indirect.*
- *prioritising discrimination on the ground of gender and its intersection with race, disability and economic background.*

**Current Policy and Challenges**

The legal profession is one of the critical pillars of the justice system. Legal professionals, both within the state employ and in the private sector, play a vital role in the access to justice. It is their knowledge, skills, attitudes and practice that determine whether ordinary people are able to enjoy, practically speaking, the right to understand and to be understood when

they use the dispute resolution processes offered by government through the court system.

The consultations in the development of this policy revealed that women generally, regardless of their social and economic background, experience numerous difficulties in their interaction with the legal profession. This included the judiciary, the magistracy, the prosecutorial services, the masters of the high court, registrars and private attorneys and advocates.

The consultations and other research initiatives by the Department of Justice, further revealed that the legal profession is predominantly male, both in terms of composition and culture. Women are virtually unrepresented in the decision-making structures and in the higher echelons in the various institutions that make up the profession. Research into the judiciary and magistracy reveals that:





- There are a handful of women judges
- There are no women among the judges presidents or their deputies
- There are no women among the regional court presidents
- Only two women are chief magistrates
- Very few women are senior magistrates
- There are few women in the Judicial Service Commission
- Only four of the members of the Magistrates Commission are women

The private legal profession is also predominantly male, both in terms of composition and governance.

Research also indicates that women face additional obstacles in entering the profession. Studies done by the Centre for Applied Legal Studies revealed that:

- Law schools produced comparable numbers of male and female graduates, yet women were less likely to be absorbed into the profession
- Black women and women from rural communities face even greater difficulty.

The current entry requirement for the profession, which is primarily based on articles of clerkship or pupillage, was identified as the key impediment. It was observed that the men who already control the profession, are more likely to engage other men, particularly those who share a common background, when recruiting candidate attorneys or pupils.

Problems relating primarily to cultural bias were also identified in the current exam system. This is essentially controlled and conducted by white men. The initiatives that have been made to broaden entry into the profession so far, are inadequate.

Another issue that was identified was the issue of advancement and access to clients. In this regard, gender bias was identified amongst the consumer communities as well. The state, also as a consumer of legal services generally engages men, mainly as counsel.

In the past, only senior advocates were appointed as judges in the High Courts. Recently, this has been opened up to include senior attorneys. However, recent appointments still reflect a pattern of preference for white male advocates over attorneys and when attorneys have been appointed, they too have been predominantly white and male, with long years of experience. This means that many women who could make a significant contribution in the judiciary are excluded.

We are currently working towards transforming the legal profession. This follows on earlier initiatives aimed at improving the representation of women in the judiciary, management of the prosecutorial services, the state legal services (state attorneys and state Law advisors) and the master's division. The initiatives have also opened other channels of entry which include work in law clinics, public interest law institutions, and recognition of foreign legal qualifications. We have also facilitated a move toward common academic qualifications in the form of a uniform LLB degree.

The involvement of women in the legal profession is not an issue of opportunity for them, but also a crucial issue of service delivery. We believe that the particular knowledge and skills that women possess, based primarily on their gender-related experiences, enable them to bring in an indispensable dimension into our service delivery and to strengthen the responsiveness of a justice system that has many diverse customers.





## Implementation Strategy

Our Implementation Strategy will include the following:

	ACTION	TIME FRAME
1	Facilitate the inclusion of gender issues and concepts such as access to justice, human rights and diversity awareness, in the education of all legal professionals including those in the employ of the state. This will be done in the execution of our responsibility to provide a policy framework for judicial education in terms of <i>Section 180(a) of the Constitution</i> .	To be achieved by the end of 2000
2	Develop and implement a framework which allows law students to undertake direct clinical work and other alternatives to articles of clerkship.	
3	Review entry qualifications into the profession and explore the possibility of creating a single profession with uniform entry qualification as envisaged in <i>Justice Vision 2000</i> . This will include exploring the possibility of allowing state lawyers such as prosecutors to move directly into the private profession when they desire to do so. It also includes investigating the pros and cons of a fully fused legal profession.	
4	Facilitate the establishment of mechanisms to assist women to enter and stay in non-traditional areas of legal practice. These will include: <ul style="list-style-type: none"><li>• Special training and internship programmes. The internship programme will involve the corporate sector locally and internationally</li><li>• Encouraging law firms to engage women through our tenders or state contracts.</li></ul>	
5	Adopt measures to improve the status of all legal professional categories within the state employ, prioritising the prosecution and master's division.	
6	Implement positive measures to ensure that a fair number of our legal briefs go to women lawyers. With regard to advocates, this may mean requiring senior advocates to involve junior women advocates to facilitate exposure and skills acquisition.	
7	Develop a data base of women lawyers to assist with identification of reasons for low retention rates and also to facilitate recruitment into positions in the state employment, including the judiciary.	
8	Explore the possibility of using training and internship programmes to fast-track the recruitment of women into the judiciary.	
9	Design and implement measures to encourage gender inclusiveness in the governance of the legal profession.	Implementation between 1999 and 2004.





(f) LAW REFORM AND RESEARCH

Policy Commitment

**We commit ourselves to:**

- *undertaking ongoing research on the position of women in our society, and the impact of current policies, law and practices on them*
- *exploring possible ways through which the justice system can be made to respond more meaningfully to the needs of both women and men from diverse social backgrounds*

Current Policy and Challenges

Earlier in this policy statement, we have referred to the lack of reliable information, particularly statistics, relating to the impact of the current justice system on gender equality. We have also not been able to secure adequate funding to do this kind of research because at present, there are so many challenges and needs regarding the general transformation of the justice system.

Many of the preceding sections contain inputs towards a gender research agenda. In addition to these, we have identified a number of areas that need attention over the next five years.

Implementation Strategy

Our Implementation Strategy will include the following:

	ACTION	TIME FRAME
1	Research into the possibility of changing the law to make certain crimes gender specific crimes. Such crimes would include: stalking, domestic violence, femicide and violence against women. The legislation would put the gender of victims at the core of the offence and facilitate legal responses and the collection of statistics specific to these gender-related crimes.	This will be achieved by March 2001.
2	Research into the causes, vulnerable groups and the reason for the increase in reported rape cases particularly cases involving the girl child, as required by the <i>CEDAW Committee</i>	This will be achieved by June 2000
3	Other areas specifically mentioned during the consultations as being in dire need of research include: <ul style="list-style-type: none"> <li>• the economic cost to the government and the community of violence against women</li> <li>• how to best establish and maintain an effective and efficient integrated model for responding to violence against women</li> <li>• the effectiveness of the interdict system</li> <li>• the prevalence and causes of domestic and sexual violence</li> <li>• service quality and availability, including client satisfaction, attitudes and accountability of personnel and victim support services</li> <li>• the development and establishment of systems which allow for the collection of data desegregated by gender</li> <li>• an inquiry into gender bias in the law and the operation of the legal system</li> <li>• the situation of refugee women in South Africa</li> <li>• the circumstances of women prisoners</li> <li>• the needs of women and children within the law system</li> <li>• the reason for lack of retention and advancement of women within the legal profession</li> <li>• the establishment of a Women's Information Centre which would strengthen women's access to information on justice and gender</li> </ul>	This research will be spread over five years





**(5) WORKING WITH CIVIL SOCIETY**

**Broad Policy Commitment**

**We commit ourselves to:**

- strengthen relationships and partnerships with NGOs and CBOs
- sharing resources on initiatives of common concern, whenever possible
- taking into account the policy directives of the National Development Agency in formalising our relationships with the non-government sector
- facilitating research both within the Department and the NGO sector on violence against women and women's experiences within the legal system
- liaising with key role-players in developing or improving an existing centralised data base with information on the legal system

**Guiding Principles**

We have based our Policy Commitments on our obligations in terms of the following, and other, related instruments:

▶ **THE CONSTITUTION**

Chapter 10: Public administration  
Section 32: Access to information

▶ **INTERNATIONAL HUMAN RIGHTS INSTRUMENTS**

- *The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*
- *The Beijing Platform for Action*
- *The SADC Declaration on Gender and Development and the Addendum on the Prevention of Violence Against Women and Children*

▶ **BATHO PELE: WHITE PAPER ON TRANSFORMATION OF PUBLIC SERVICE DELIVERY**

The *Batho Pele* initiative places the issue of government partnership with organs of civil society amongst the key areas of focus in the transformation of public service delivery.

▶ **JUSTICE VISION 2000: OUR MISSION STATEMENT**

This states that we: “...will incorporate and expand

*community participation in the administration of justice.”*

▶ **GOVERNMENT POLICY ON SOCIAL AND ECONOMIC RECONSTRUCTION AND DEVELOPMENT**

**Strategic areas of Intervention**

- JOINT MONITORING AND REVIEW OF THE POLICY IMPLEMENTATION PROCESS
- A NATIONAL WOMEN’S JUSTICE PROGRAMME

What follows is our intended plan of action for each area of intervention.

**(a) JOINT MONITORING AND REVIEW OF POLICY IMPLEMENTATION**

**Policy Commitment**

**We commit ourselves to:**

- *doing everything possible to facilitate the involvement of community organisations, particularly those who focus on gender and women’s issues, in the development and review of policy within the justice system*

*We will do this through consultative fora, monitoring mechanisms and information services at all levels of our work.*

**Current Policy and Challenges**

Government has generally committed itself to democratising the state, ensuring greater accountability and making sure that government activities at all levels are transparent. This commitment is clearly articulated in Chapter 12 of the *Constitution*, dealing with Public Administration.

*Batho Pele: The White Paper on Transforming the Public Service* provides further policy guidelines on how to take the constitutional provisions forward, especially regarding the involvement of civil society in governance. We are currently leading the process of developing the necessary legislation to improve openness. Our own *Justice Vision 2000* also places a lot of emphasis on facilitating greater accountability to civil society.





### Implementation Strategy

Our Implementation Strategy will include the following:

	ACTION	TIME FRAME
1	An Annual National Consultative Forum on Justice and Gender began in 1998. We hold ourselves accountable to this forum with regard to delivery on this policy and other gender specific promises. We will continue to provide funding and administrative support for this forum.	
2	Provincial Consultative Fora	To start in 1999
3	Special fora such as the Maintenance Forum. We will facilitate access of these fora to our courts and other institutions within the limits of the independence of the judicial system as enshrined in Section 165 in the Constitution.	
4	Ongoing interaction to share information.	
5	Supporting the monitoring role of key institutions within the national gender machinery with special reference to the Office on the Status of Women (OSW) and the Commission on Gender Equality (CGE).	

### (b) NATIONAL WOMEN’S JUSTICE PROGRAMME (NWJP)

#### Policy Commitment

##### **We commit ourselves to:**

- designing and implementing a programme of action to take forward the aspects of this gender policy that are specifically targeted at empowering women.

*This programme of action will be referred to as a National Women’s Justice Programme (NWJP). It will be implemented in cooperation with NGOs, CBOs, government departments and other institutions whose work has an impact on justice and gender.*

#### Current Policy and Challenges

We currently enjoy a solid working relationship with NGOs and CBOs particularly those that focus on matters relating to violence against women, maintenance and human rights. We also have a solid working relationship with government departments involved in the justice system and the state institutions supporting democracy. We have ongoing partnership ventures with the Commission on Gender Equality (CGE) and the South African Human Rights Commission (SAHRC). Our parastatal partners include the Office on the Status of Women (OSW),

the nerve centre of the national gender machinery and Spoornet. The latter has been an outstanding partner in ventures relating to violence against women.

We have recently expanded our partnerships into local government institutions and government departments that have not been traditionally involved in justice matters. These include departments such as Education, Culture, Mineral Affairs and Agriculture. An example of this extended partnerships is the 16 Days Campaign on No Violence Against Women and the process of developing a National Plan of Action for the Protection and Promotion of Human Rights (NAP).

Our partnership with NGOs primarily revolves around sharing of resources and synchronisation of strategies in respect of matters of mutual interest. In this regard, we are already working together on maintenance matters, violence against women - particularly awareness raising and provision of support systems to victims - the implementation of CEDAW in so far as it relates to the justice system and the initiatives around aligning customary law with CEDAW and the Constitution.





The basis of the partnership with NGOs has usually been around the fact that NGOs have expertise, interest and the necessary logistics extending to rural communities, while government's capacity to deliver is limited even in instances where money is available.

However, up until now, we have operated on an ad hoc basis without a clear partnership framework which specifies roles and responsibilities. This policy seeks to formalise the partnerships with civil society and to provide some guidelines regarding our role, responsibility and expectations in respect of the partnership.

### Implementation Strategies

Our Implementation Strategy will include the following:

	ACTION	TIME FRAME
1	The establishment of a joint task team to formulate draft policy on the funding of NGOs, including paralegal organisations, to deliver services as agents of the Department. This will include possibilities for active sourcing of donor funds by government with a view to directing such funds to justice-related NGO services delivered on behalf of the Department.	This will be achieved by December 1999
2	Establishment of a unit within the Department of Justice possibly within the Gender Directorate, to coordinate the implementation of the NWJP.	To be achieved by April 2001
3	Designing a framework for executing the NWJP and implementing the programme accordingly. We will identify and consult with relevant role-players, based on an audit of NGO-provided services that is currently being conducted. The NWJP will: <ul style="list-style-type: none"> <li>• Prioritise the establishment of legal services for women in rural communities. This will entail extending the capacity of existing NGOs in some instances.</li> <li>• Explore the feasibility of setting up a legal advocacy clinic for abused women in South Africa. This is a recommendation from NGOs.</li> <li>• Provide legal information, advice and representation to women in respect of matters involving family law issues such as custody, parental access, maintenance, distribution and control of matrimonial and family property, civil disputes, inheritance and labour law.</li> </ul>	Design and framework to be completed by April 1999. Execution immediately afterwards.
4	Provide the following support services through NWJP: <ul style="list-style-type: none"> <li>• staffing of information desks</li> <li>• assisting victims in pre-trial services</li> <li>• accompany victims to court</li> <li>• trauma counselling</li> <li>• assist with community education and translation of materials developed by the department</li> <li>• perpetrator rehabilitation</li> </ul>	As for 3 above
5	Through the NWJP, to train on gender sensitivity, violence against women and children. This will include training on the Sexual Offences Guidelines and popularisation of the SADC Declaration on Violence Against Women and Children, victim empowerment, maintenance, popularisation of justice aspects of CEDAW and education on other key policy issues.	As for 3 above
6	Through the NWJP, to provide a framework for constituting NGOs as the major agency for implementing the above. They will also provide relevant policy and legislative advice.	As for 3 above





# CHAPTER 4

## EMPLOYMENT OPPORTUNITIES AND DECISION-MAKING

### 1 OUR VISION

We seek to create a department and justice system where the personnel profile reflects the gender and cultural diversity in society and where no person shall be denied any opportunity or subjected to a burden because of their gender or any other attribute of combination of social attributes. We also seek to create an institution where decision-making at all levels and in all structures within the ministry of justice incorporates both male and female perspectives through equitable representation of both men and women at all levels, structures and processes.

*in the Department and to adopt positive measures aimed at eliminating discrimination and achieving equitable representation of women at all levels in the Department of Justice. This will include:*

- *undertaking research to identify, with precision, the location of women in the Department and to regularly consult with them on their needs and concerns and to create an affirming work environment;*
- *establishing gender related needs of both men and women;*
- *review of systems and practices to identify and eliminate practices which directly or indirectly undermine the recruitment, development, advancement and retention of women in the department and affiliated institutions.*

### 2 CRITICAL AREAS OF CONCERN

The Critical Area of Concern where policy and administrative changes are to be prioritised over the next five years will include the following:

- Employment Equity
- Sexual Harassment
- Responsive Dispute Resolution Mechanisms
- Gender Equity in the Distribution of State Contracts
- Involving Women in Decision-making

We will discuss each of these below in terms of:

- Our specific Policy Commitments
- Our Guiding Principles
- Current Policy and Challenges
- Strategic areas of Intervention

#### (1) EMPLOYMENT EQUITY

##### Broad Policy Commitment

*We commit ourselves to undertake research to identify all the barriers to equality between men and women*

##### Guiding Principles

We have based our Policy Commitments on our obligations in terms of the following, and other, related instruments:

#### ► THE CONSTITUTION

- Section 9: Equality
- Section 165: Public Administration
- Section 174: Appointment of Judicial Officers

#### ► INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

*The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*

- Article 11 of CEDAW states that:  
*“State parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on the basis of equality of men and women, the same rights .... And state parties shall ... encourage the provision of the necessary supporting social services to enable parents to combine*





*family obligations with work responsibilities ... through promoting the establishment and development of a network of child care facilities”*

- Article 4 of CEDAW deals with the adoption of positive measures to address inequality in employment opportunities.
- Article 8 of CEDAW deals with equality in regard to participation in international relations
- Article 7 deals with equal representation in decision-making structures and processes.
- *Beijing Platform for Action*  
Our commitments in respect of the BPA cover the adoption of positive measures to achieve equitable representation of women in all structures and at all levels and to involve women in all decision-making processes. The commitments also cover the intention to introduce a women’s leadership development programme as a supporting strategy to involve women and sustain their participation in decision-making.
- *ILO Convention on Workers with Family Responsibilities*  
This provides guidelines on measures to be adopted by state parties with a view to accommodating the needs of personnel with family responsibilities so that they may participate in equality with others in employment opportunities.
- *The African Charter on Human and People’s Rights*
  - Article 15 deals with measures to be adopted by the state to eliminate discrimination in employment and to achieve equitable representation of women
- ▶ **THE WHITE PAPER ON TRANSFORMING THE PUBLIC SERVICE**  
This requires amongst other things the achievement of the target of 30 percent new women recruits at senior management by the year 2000.
- ▶ **THE WHITE PAPER ON AFFIRMATIVE ACTION**  
This has similar provisions and emphasises the need for identifying and eliminating environmental factors which undermine full participation by women and

other historically disadvantaged groups.

- ▶ **THE EMPLOYMENT EQUITY ACT 1998**  
This has similar provision and extends to the prohibition of discrimination and sexual harassment.
- ▶ **JUSTICE VISION 2000**  
This makes provisions for transforming the Department into an equitable employer whose personnel profile mirrors the diversity in broader society, and where all women enjoy equality of opportunity regardless of their social attributes.
- ▶ **THE DEPARTMENT OF JUSTICE POLICY ON EMPLOYMENT EQUITY AND THE ACHIEVEMENT OF REPRESENTIVITY**  
This also refers positive measures to be adopted to get women into management positions and historically exclusive occupations, to identify discriminatory practices and provide an affirming environment.

#### Current Policy and Challenges

The policy parameters on employment equity are provided by the national instruments listed in the previous paragraph. In addition, the *Basic Conditions of Employment Act* deals with policy relating to the accommodation of workers with family responsibilities and the *Labour Relations Act* deals with extra-departmental mechanisms for dispute resolution.

Current policy has provided a healthy shift in regard to the issue of gender equality at work. For example, the *Employment Equity Act* and white papers referred to in the above extensively deal with the two critical issues of achieving equitable representation of women in meaningful employment positions and transforming environment. These themes are reiterated in *Justice Vision 2000* and the Department’s policy on Employment Equity.

A recent analysis of the personnel profile and trends within the Department revealed that a lot of progress has been made in regard to integrating women in the historically exclusive professional categories such as the judiciary, state attorneys, masters and registrars of the high court and into senior management. However, the analysis also revealed that a lot still needs to be done.





In particular, the analysis suggested that we may not be able to meet the White Paper target of 30% women recruits in senior management (from the post of director upwards) by 2000, unless we dramatically improve our recruitment outputs. It further suggested that retention and advancement of women still lagged behind that of men. What emerged from the analysis and confirmed in the consultation process, was that there was a need to improve our recruitment strategies and to transform organisational culture to affirm difference paying particular attention to gender differences.

Some of the specific concerns that emerged in regard to our pursuit of employment equity and ultimately, equality of opportunity within the Department as an employer included the following:

- Recruitment strategies which are not aligned with women's life-partners and in particular the life-partners of black women
- Superficial and sometimes total lack of representation of women in selection panels
- Inadequate provisions to accommodate persons with disabilities
- Lack of access to training opportunities by women, particularly those in the peripheral offices. Participants indicated that training took lengthy periods in Pretoria, thus excluding personnel with domestic responsibilities
- Lack of career pathing and promotional opportunities for women. Women in the department expressed a concern that they found themselves in glass ceilings particularly in jobs where they predominated such as typing and in traditionally male exclusive jobs such as financial services and the professional occupational categories.
- Absence of a database to utilise for the purposes of identifying women professionals to determine the supply pool and for possible use for recruitment purposes.
- The management culture in the department is rather masculine and gender diversity was often perceived and treated as deviance. This was reflected in:

- Working hours, travel and other conditions of service
  - Human Resources development practices
  - Accommodation facilities. This includes lack of child care facilities
  - Management style.
- General organisational culture tends to be hostile to women's life partners. Participants indicated that they were subjected to various kinds of indirect discrimination. One of the issues identified in this regards was Sexual Harassment. We deal with this matter separately below, in recognition of its seriousness.
  - The independence of institutions such as the judiciary has tended to be construed in a manner which limits possibilities for policy interventions aimed at ensuring the adoption of positive measures to bring about equitable representation of women and other historically excluded groups and to engender an institutional culture which affirms diversity both in terms of how we perceive service excellence and in respect to our interpretation of employment concepts such as "merit".

#### Strategic areas of Intervention

- RESEARCH INTO THE POSITION OF AND WORK RELATED NEEDS OF WOMEN
- REVIEW OF SYSTEMS AND PRACTICES TO IDENTIFY AND ELIMINATE DISCRIMINATION
- TARGETED RECRUITMENT SELECTION AND PROMOTION
- HUMAN RESOURCES DEVELOPMENT AND CAREER-PATHING
- TRANSFORMATION OF ORGANISATIONAL CULTURE
- IMPROVED EFFECTIVENESS OF ENFORCEMENT AND MONITORING MECHANISMS
- EQUALISING OPPORTUNITIES WITHIN THE JUDICIARY

*What follows is our intended plan of action for each area of intervention.*





**(a) RESEARCH INTO THE POSITION AND WORK RELATED NEEDS OF WOMEN**

This will entail a headcount, profiling of women and soliciting their views on interventions that could empower them. A questionnaire will be designed for this purpose. Workshops with focus groups will also be utilised as part of qualitative research. We will try to establish amongst other things:

- How long each person has been in the organisation
- How many times they have been promoted or appointed in comparison with similarly placed male colleagues
- Their views on child care and stress management facilities at work
- Qualifications on recruitment and at time of interview
- Training opportunities that have been accessed in comparison to men
- Reasons why women do not apply for positions even when qualify objectively
- Experiences and views on sexual and other forms of harassment
- Views on starting time in the Department and on parental leave
- Staff turnover analysed by gender.

**TIME FRAME:** This will be achieved by April 2000.

**(b) REVIEW OF SYSTEMS AND PRACTICES TO IDENTIFY AND ELIMINATE DISCRIMINATION**

We will investigate management systems and practices throughout the Department with a view to identifying arrangements or practices that discriminate, directly or indirectly, on the basis of gender, or gender combined with other attributes such as race, culture and disability. This is a requirement under the *Employment Equity Act* and will form part of the Department's implementation of the Act. The areas to be prioritised will include:

- Human resources management systems, including labour relations arrangements
- Decision-making systems
- Communication and information management
- Occupational health arrangements

**TIME FRAME:** This will be achieved by March 2000.

**(c) TARGETED RECRUITMENT, SELECTION AND PROMOTION**

We will evaluate current practices on recruitment, selection and promotion to assess gender impact. Policy guidelines will be developed and implemented with a view to correcting identified discriminatory trends.

The consultation process identified recruitment and selection practices as a major weak link in Departmental endeavours to attract suitably qualified women. Discriminatory patterns were also pointed out in current promotion practices. We will, therefore, develop new policy guidelines and these will include:

- Adopting positive measures such as head-hunting and liaising with women's NGOs to attract suitably qualified women.
- The design and maintenance of a database of women lawyers.
- Certification that a selection panel constitutes at least 40% of either gender. Where there are no women in the Department to sit on a panel, appropriately qualified persons from other government departments or NGOs should be used.
- Criteria for promotion and promotion practices should be subjected to a gender equality impact analysis.
- Accountability of managers with regard to the achievement of gender equality targets within their scope of work.
- Requiring managers to certify that innovative measures were adopted to encourage women to apply for senior positions in cases where men have recently been appointed and where women are grossly under-represented.

As a general rule, all posts should be advertised widely, and in such a way the previously disadvantaged groups will find them and be attracted to them. This will include:

- advertising in media used by historically disadvantaged groups
- distributing adverts to NGOs and in local community centres
- ensuring that the language does not intimidate historically disadvantaged groups into thinking they do not qualify for consideration when they do.





With regard to selection criteria, experience and academic qualifications should not override comparable experience and qualifications. Equal consideration should be given to the attributes outlined in the Employment Equity Policy of the Department. These include:

- Multicultural ability
- Knowledge of communities, clients and citizens
- Language skills
- Communication ability
- Commitment to the process of national transformation and development
- Ability to work as a team player
- Functional skills
- Comparable experience
- Potential for development.

**TIME FRAME:** The research and consequent policy guidelines will be finalised by December 1999.

**(d) HUMAN RESOURCES DEVELOPMENT AND CAREER-PATHING**

We will thoroughly examine current trends in human resources development in the Department. We will assess the extent to which women and men have equal access to developmental opportunities including: training, acting assignments, representing the Department or Ministry in meetings, working groups or committees and exposure to different ideas and new trends through travel and consultation. The remedial programme of action will include the following:

- The implementation of a Women’s Leadership Development Programme, in fulfilment of our commitment to the implementation of the *Beijing Platform for Action*. We will run a pilot programme from March 1999. We will review it and then design a five-year programme. The programme will fast-track a pool of suitably qualified women who will then be ready to be taken into senior management at all levels. This will enable women to participate effectively in decision-making processes.
- Empowering managers with knowledge and skills to deal with diversity and to manage related conflict effectively.
- Addressing career-pathing issues such as succession planning. This will include measures aimed at breaking the “glass ceiling”, particularly for women in administrative support positions and certain

professional occupational categories.

- Implementation of other measures to facilitate accelerated development for women. These will include mentoring and internship programmes.
- Review of mainstream training programmes to determine whether women are prevented in any way from accessing them, and if so, what the barriers are and how they can be overcome.
- The development of customised support programmes for new appointees in positions which carry substantial responsibility.

**TIME FRAME:** The Women’s Leadership Development Programme has begun. The support programme for new appointees will be developed by June 1999. All developmental interventions will be ongoing.

**(e) TRANSFORMATION OF ORGANISATIONAL CULTURE**

This will include adopting measure to accommodate members of staff with:

- family responsibilities
- disabilities
- religious commitments
- cultural patterns
- HIV/AIDS

We commit ourselves to facilitating affordable child care for members of staff and to ensuring that people with parental responsibilities are not disadvantaged when it comes to career advancement opportunities. In the meantime, we will be piloting the concept of workplace-based child care centres in three districts. The Durban Magistrate’s Court has already established such a centre. Our activities will also include the following:

- Exploring the feasibility of introducing flexi-time and additional parental or compassionate leave for personnel with domestic responsibilities;
- Integrating employment equity objectives for women into our service delivery strategies;
- Conducting mandatory exit interviews with all members of staff who resign or take voluntary transfers. This will help to establish the reasons for staff turnover, particularly among women and other historically excluded groups, who were brought into the Department in order to make it





more representative. This will help us to avoid the phenomenon which is currently being referred to as an ‘affirmative action cycle’ or ‘revolving door syndrome’.

**TIME FRAME:** The pilot child care centres will be running by December 2000 and the research will be completed by April 2000.

**(f) IMPROVED EFFECTIVENESS OF MONITORING AND REVIEW MECHANISMS**

We will ensure that we put mechanisms in place to enforce employment equity policies, and provide redress for people who suffer from policy infringements. We will make all managers accountable for implementation. A key intervention will be the inclusion of employment equity objectives in the performance contract of every manager in the Department. This will be achieved through the following:

- Requiring managers to submit their targets and to make regular reports regarding the achievement of the targets set by the DPSA in terms of the employment of women, people with disabilities and black people by the year 2000.
- Requiring managers to submit Employment Equity Plans for their areas of work with gender-specific goals.
- Designing and implementing a framework for measuring employment equity goals in relation to gender. This will provide us with reliable and readily available statistics for human resource trends.

**TIME FRAME:** Policy guidelines will be finalised by May 1999.

**(g) EQUALISING OPPORTUNITIES WITHIN THE JUDICIARY**

The programme of action for the judiciary will focus on research into the nature of current obstacles to women’s participation. This will involve identifying discriminatory policies and practices, whether direct or indirect, and drawing up a policy framework on measures to be adopted to remove such obstacles or discriminatory practices. The measures will also aim to accelerate the achievement of equitable representation of women and other historically excluded groups in the judiciary, as required by the Constitution. We will focus on the following:

- The possibility of the use of special training programmes to accelerate the entry into the judiciary for women and other historically excluded groups. This could involve an internship programme for aspirant judicial officers.
- Expanding the pool from which applicants are drawn, by developing policy guidelines to facilitate a more inclusive interpretation of the constitutional criteria of a “fit and proper person”.
- Speeding up the processes aimed at integrating the judiciary so that women magistrates have opportunities of advancement into the higher levels of the judiciary. This will also require some accelerated development intervention.

**TIME FRAME:** The research will be concluded by April 2000.

**(2) SEXUAL HARASSMENT**

**Broad Policy Commitment**

***We commit ourselves to:***

- *viewing sexual harassment as a violation of the Constitutional rights to dignity and equality*
- *developing and implementing an organisational policy on sexual harassment in order to provide a safe environment that protects and promotes the human dignity of all members of staff*
- *ensuring that there are clear and accessible enforcement mechanisms that take into account the sensitive nature of sexual harassment.*

**Guiding Principles**

We have based our Policy Commitments on our obligations in terms of the following, and other, related instruments:

- ▶ **THE EMPLOYMENT EQUITY ACT OF 1998**  
This deals with sexual harassment as a form of gender discrimination. It requires employers to adopt measures to eradicate it within their workplace.
- ▶ **INTERNATIONAL HUMAN RIGHTS**  
We will be guided by those that deal with sexual harassment not only as a workplace issue, but also as a form of gender violence.





### Current Policy and Challenges

Prior to the *Employment Equity Act*, sexual harassment was dealt with under the *Labour Relations Act* as an unfair labour practice. The *Employment Equity Act* deals with it as gender discrimination.

In 1995 we published a circular that set out the policy guidelines for cases of sexual harassment in the Department. The circular briefly defines what constitutes sexual harassment and outlines a few dos and don'ts. The enforcement mechanisms are the same mechanisms used for misconduct and grievances within the Department.

Our consultations revealed that the current arrangements are not working optimally for cases of sexual harassment. Very few people know of the existence of the circular, and those who do know about it, do not believe that it is detailed enough to cater for their needs. The existing enforcement mechanisms are regarded as ineffective and unable to respond to the sensitive nature of sexual harassment. For example, in the current set-up, a victim would have to report the sexual harassment to her or his supervisor even when the supervisor is the alleged perpetrator, or a friend of the alleged perpetrator. This policy statement seeks to address these gaps.

We have studied the *Code of Good Practice on Handling Sexual Harassment* that was developed by the national Economic, Development and Labour Council (NEDLAC) in consultation with stakeholders. These included organised labour, government, organised business and the Sexual Harassment Education Project (SHEP).

A significant feature of the *Code* is that it regards sexual harassment as unacceptable behavior and that it constitutes serious misconduct. We also subscribe to the idea that sexual harassment can also be perpetrated through creating a hostile environment without asking for sexual favours.

### Strategic Areas of Intervention

- DEVELOPMENT OF AN INTERNAL REGULATORY FRAMEWORK
- ENSURE THAT ALL PERSONNEL ARE

#### AWARE OF THE POLICY

- DESIGNING AND IMPLEMENTATION OF EFFECTIVE ENFORCEMENT MECHANISMS

*What follows is our intended plan of action for each area of intervention.*

#### (a) DEVELOPMENT OF AN INTERNAL REGULATORY FRAMEWORK

We will develop a policy statement on sexual harassment that will be binding on all members of staff in the justice system. The policy will use the current circular as a basis and will be informed by consultations with different members of staff in the Department. The policy statement will not allow culture to be used as a defence to an allegation of sexual harassment.

In addition to the policy statement, we will develop a code of conduct for employees of the Department. People in allied, independent institutions will be required to develop their own codes of conduct in line with the Department's policy.

**TIME FRAME:** The policy and code of conduct will be in place by the end of 1999.

#### (b) ENSURE THAT ALL PERSONNEL ARE AWARE OF POLICY

We will integrate training on sexual harassment into the following courses:

- diversity awareness
- social context training
- human rights training
- employment equity

We will also use a variety of publicity materials to acquaint people with the policy. This will include posters of the policy that will be displayed in every office.

**TIME FRAME:** This will be ongoing and will begin as soon as the policy is in place.





(c) ENFORCEMENT MECHANISMS AND DISPUTE RESOLUTION

We will review the current enforcement mechanisms and bring them in line with the understanding of power imbalances between men and women and the sensitive nature of sexual harassment.

Informal dispute resolution mechanisms will be offered. However, the system will allow victims to choose the dispute resolution option that is most responsive to their needs. We are currently exploring the notion of a sexual harassment panel that is inclusive in terms of race and gender.

**TIME FRAME:** This will be achieved concurrently with the policy.

(3) RESPONSIVE DISPUTE RESOLUTION MECHANISMS

Broad Policy Commitment

*We commit ourselves to:*

- reviewing current dispute resolution mechanisms in order to assess their effectiveness and responsiveness to the different needs of men and women at all levels within the Department.
- developing new mechanisms which, in particular, seek to address gender-related conflict.
- encouraging the same exercise in the independent institutions that fall within the broad scope of the justice system.

Guiding Principles

We have based our Policy Commitments on our obligations in terms of the following, and other, related instruments:

▶ THE CONSTITUTION

Section 33: Just administration action  
Section 180(b): Procedures for dealing with complaints about judicial officers

▶ THE EMPLOYMENT EQUITY ACT OF 1998

▶ THE WHITE PAPER ON AFFIRMATIVE ACTION IN THE PUBLIC SERVICE

▶ JUSTICE VISION 2000

Current Policy and Challenges

We need to make sure that our dispute resolution mechanisms are not merely available, but that they are also easily accessible for everybody, regardless of difference or disadvantage, and responsive to everybody's needs.

We will try to balance the rights and needs of victims and accused persons. As far as we can we want to ensure that our dispute resolution processes:

- Are gender inclusive
- Produce lasting solutions
- Foster relationship-building and peace in the workplace.

This approach is articulated in *Justice Vision 2000* in relation to the transformation of court services and other dispute resolution mechanisms.

At present, dispute resolution mechanisms are adversarial in nature and focus on punishment for misconduct. We believe that this is too narrow. The consultation process also suggested that we need a major paradigm shift away from misconduct and towards relationship-building. In the light of this we recently introduced a special panel to deal with cases involving allegations of discrimination.

Consultations also revealed that gender problems in the workplace are sometimes compounded by race and culture issues. This is clearly the case in the current handling of grievances involving the judiciary. The lower court judiciary is directly responsible for human resources management of the administrative and support staff in the courts. They also supervise the work of court interpreters or language services. Until recently, they also supervised the work of prosecutors. In some instances, the removal of prosecutors from the control of magistrates has resulted in friction.

In order to preserve judicial independence, complaints against judicial officers go to the two judicial governing bodies: The Magistrates Commission and the Judicial Service Commission. There appears to be dissatisfaction concerning both the process and the outcome of complaints against judicial officers.





Strategic areas of Intervention

- REVIEW CURRENT DISPUTE RESOLUTION MECHANISMS
- REVIEW CURRENT SYSTEM AND PRACTICES RELATING TO COMPLAINTS INVOLVING THE JUDICIARY
- EDUCATION AND TRAINING

What follows is our intended plan of action for each area of intervention.

(a) REVIEW CURRENT DISPUTE RESOLUTION MECHANISMS

We will review current dispute resolution systems and practices in order to determine the extent to which they can respond to employment equity issues generally, and gender equity issues in particular. We will redesign the systems based on the findings of the review.

TIME FRAME: This will be achieved by April 2000.

(b) REVIEW CURRENT SYSTEMS AND PRACTICES IN REGARD TO THE HANDLING OF COMPLAINTS INVOLVING THE INDEPENDENT JUDICIARY

In consultation with relevant stakeholders, we will conduct a review of current systems and practices regarding complaints against the judiciary. We will facilitate a process of redesigning the systems to ensure their effectiveness and responsiveness, particularly to the needs of particularly women.

TIME FRAME: This will be achieved by 2001.

(c) EDUCATION AND TRAINING

We will implement education and training interventions to inform all members of staff about our employment equity policy and the related dispute resolution mechanisms. The training will also cover life skills such as peer mediation, team building and leadership. We will also ensure that professional development in the independent institutions incorporates employment equity issues and workplace dispute resolution.

TIME FRAME: This will be ongoing from the year 2000.

(4) GENDER EQUITY IN THE DISTRIBUTION OF STATE CONTRACTS

Broad Policy Commitment

We commit ourselves to increase the number of women who obtain state contracts by:

- actively seeking out women with appropriate skills and ensuring that they are aware of tendering opportunities
- endeavouring to ensure that NGOs working in the field of gender and the law are aware of tendering opportunities
- including gender sensitivity and inclusiveness in own contracting practices as criteria for successful tenders.

Guiding Principles

We have based our Policy Commitments on our obligations in terms of the following, and other, related instruments:

▶ BEIJING PLATFORM FOR ACTION

The Department has committed itself to giving “a reasonable percentage of legal briefings to women lawyers in addition to ensuring that there are more women in all structures and levels”.

▶ NATIONAL POLICIES AND STRATEGIES ON RECONSTRUCTION AND DEVELOPMENT AND ON POVERTY ALLEVIATION

Women’s empowerment is a core value in poverty alleviation and development strategies. This is a recognition of the role that women play in community development, particularly rural development. It is also a recognition of the phenomenon known as the “feminisation of poverty” by development experts.

▶ JUSTICE VISION 2000

This commits the Department to making sure that tendering policies give equal access of opportunity to all entrepreneurs, especially those from disadvantaged groups, and that briefing policies contribute toward eliminating current race and gender disparities in the legal profession.



### Strategic Areas of Intervention

- REVIEW OF TRENDS IN THE ISSUING OF DEPARTMENTAL TENDERS
- IMPROVEMENT OF POSITIVE MEASURES
- STRATEGIC INTERVENTIONS IN THE LEGAL PROFESSIONS

*What follows is our intended plan of action for each area of intervention.*

#### (a) REVIEW OF TRENDS IN THE ISSUING OF DEPARTMENTAL TENDERS

We will review current trends with regard to the issuing of tenders and other contracts in order to ascertain the gender composition of beneficiaries, and to assess whether the trends indicate any improvement in equity.

**TIME FRAME:** This will be achieved by April 2000.

#### (b) IMPROVEMENT OF POSITIVE MEASURES

We will improve our efforts to equalise opportunities to tenders and other contracts within our scope of work. We will use positive measures to alert women and other historically disadvantaged groups to the availability of contracting opportunities within our scope of business and, where possible, provide some training in the legal profession in order to strengthen gender inclusiveness in their own private dealings. Our implementation strategies will include:

- Effective utilisation of our interaction with NGOs, our community outreach initiatives and our publications.
- Clear and enforceable guidelines on gender issues in tendering or contracting. Relevant personnel in the Department will be specifically trained in the application of the guidelines.
- Requiring that private legal professionals who get business opportunities from us, to reflect a gender and racially inclusive profile. They will have to show us that they regularly give business to women and that, where appropriate, they include disadvantaged women in the teams that do business for us. This could be achieved by briefing women as junior counsel or as additional team members.

**TIME FRAME:** This will be achieved by September 2000.

## (5) INVOLVING WOMEN IN DECISION-MAKING

### Broad Policy Commitment

#### *We commit ourselves to:*

- *adopting all possible means of involving women in all decision-making processes within the justice system*
- *ensuring that there is a critical mass of women involved in decision-making to avoid tokenism*

#### *This will enable us to:*

- *provide leadership opportunities for women*
- *include a female perspective in decision-making and thus to respond more effectively to the diverse needs of our society.*

### Guiding Principles

We have based our Policy Commitments on our obligations in terms of the following, and other, related instruments:

#### ▶ THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

Article 7 requires, amongst other things, that party states must adopt measures to ensure the involvement of women at all levels of governance.

#### ▶ THE BEIJING PLATFORM FOR ACTION

We are committed to adopting positive measures to ensure meaningful involvement of women in all structures and at all levels of decision-making

#### ▶ THE SADC DECLARATION ON GENDER AND DEVELOPMENT (1997)

This requires member states to:

*“Ensure equal representation of women and men in the decision-making of member states....”*

This theme is reiterated in the Addendum on the Eradication and Prevention of Violence against Women and Children.

### Current Policy and Practices

*Justice Vision 2000* spells out our commitment to involving women in decision-making at all levels and in all structures, in fulfilment of our obligations in terms of CEDAW and the *Beijing Platform for Action*. The employment equity policy of the Department



repeats this theme as far as employment decision are concerned.

Significant strides have been made in appointing women to positions in the upper management structure of the Department. In 1994 there was only one female Director in the Administrative component of the Department. Four years later there are:

- 3 female Chief Directors out of 10 at the national office
- 3 female Regional Heads out of 9, two of whom hold the rank of chief director

In the professional categories we now have:

- 2 female Chief magistrate out of 28
- 11 female judges out of 183.

Nevertheless, a lot of gender gaps persist. In most of these structures, the women do not constitute sufficient mass or, what is referred to as a critical mass, to influence decisions meaningfully. For example, at the senior management level, the higher courts judiciary, women are not represented at all. There is also no female representation in many other decision-making departmental structures. We want to ensure that women are meaningfully represented in all these processes and that to the extent possible, they play a leadership role.

### Strategic Areas of Intervention

- GENDER INCLUSIVE DECISION-MAKING STRUCTURES
- POLICY GUIDELINES FOR ADDRESSING IMBALANCES

*What follows is our intended plan of action for each area of intervention.*

#### (a) GENDER INCLUSIVE DECISION-MAKING STRUCTURES

All decision-making structures should comprise at least 40% of each gender.

**TIME FRAME:** This will take effect on the day that this *Gender Policy Statement* is passed.

#### (b) POLICY GUIDELINES FOR REDRESSING IMBALANCES

We will adopt positive measures to achieve a gender balance in structures where the currently neutral criteria have the impact of excluding women, or of involving them only superficially.

**TIME FRAME:** Policy guidelines will be in place by August 1999.





# CHAPTER 5

## INSTITUTIONAL TRANSFORMATION AND MONITORING

### 1. OUR VISION

We want to create a set of policy guidelines to guide all future decisions and processes within the Department and Ministry of Justice, to ensure that all our activities are informed by:

- A clear understanding of gender implication
- The needs of both women and men from diverse social contexts

We also want to ensure that the implementation of the agenda for change, as reflected in the chapters of this *Gender Policy Statement*, is effectively monitored and regularly reviewed.

### 2. POLICY AND ADMINISTRATIVE CHANGES

We envisage that the following policy and administrative changes will take place:

- Entrenchment of Gender Equality Analysis
- Gender Budget
- The Gender Unit and Other Implementation Strategies
- The Judiciary and Judicial System
- International and Inter-Sectoral Cooperation

#### (1) ENTRENCHMENT OF GENDER EQUALITY ANALYSIS

##### Broad Policy Commitment

**We commit ourselves to:**

- *entrenching gender equality analysis as a fundamental requirement in all activities throughout the justice system.*

*This will mean that in the future:*

- *a systematic process of assessing the likelihood that any process, law, plan or activity that will impact*

*differently on men and women, with the effect of prejudicing one or the other gender, will precede all activities in the justice system.*

##### General Principles for Proper Application

Gender equality analysis:

- Moves from the premise that gender equality can only be achieved by recognising the differential impact of norms or measures on women and men, according to their diverse life situations, and including other factors of diversity such as race, culture, sexual orientation, disability and social class;
- Takes into account the historical and current social contexts that create inequality, and seeks to redress such inequality;
- Focuses on the concepts, arguments and language that are used in the work process, and not only on the results;
- Must be free from prejudices and stereotypes in its basic assumptions, as well as in its approach and processes;
- Must lead to remedies for inequality.

##### Current Policy and Challenges

By adopting an official policy on the integration of gender equality analysis into every aspect of work performed under its scope, the Department of Justice is formalising its commitment to ensuring that every justice issue is analysed for its impact on gender equality. This allows us to implement the equality clause in the *Constitution* within our scope of work.

The constitutional idea of equality goes beyond the idea of equality as identical or equal treatment, regardless of the outcome. The equality clause recognises current inequality and disadvantage and envisages the possibility of the implementation of:

*"...legislative and other measures designed to protect and*





*advance persons or categories of persons, disadvantaged by unfair discrimination ...” With a view to ensure “... the full and equal enjoyment of all rights and freedoms” (Section 9(2))*

The entrenchment of gender equality analysis is consistent with our departmental vision which prioritises equitable access to justice for all, regardless of difference and disadvantage. It is further consistent with our mission, and in particular, our commitment to the implementation of the provision of CEDAW and the *Beijing Platform for Action*.

**Strategic Areas of Intervention**

- INTEGRATION OF GENDER EQUALITY ANALYSIS IN ALL WORK
- MANAGEMENT RESPONSIBILITY AND ACCOUNTABILITY
- DEVELOPMENT OF AWARENESS AND SKILLS

*What follows is our intended plan of action for each area of intervention.*

**(a) INTEGRATION OF GENDER EQUALITY ANALYSIS IN ALL WORK**

Gender equality analysis is to be integrated into every activity that is performed within the policy scope of this department and ministry. This includes:

- Policy and programme development
- Research
- The interpretation of judgments
- Legal advice
- The drafting of legislation and regulatory provisions
- Litigation instructions and strategies
- Dispute resolution
- Establishing management policies and practices
- Consultations
- Communication plans

This will involve:

- Identifying gender equality issues that arise in any of the above activities
- Approaching each activity in a way that recognises the material differences in the life-patterns of women and men. Where gender equality issues

arise, solutions will be developed to prevent or eliminate any inequalities.

**(b) MANAGEMENT RESPONSIBILITY AND ACCOUNTABILITY**

We will hold managers accountable for conducting gender equality analyses in the scope of work, and for promoting work by all employees aimed at addressing gender equality issues. Departure from the recommendations of a gender equality analysis will have to be explained in writing. We will also require managers and all other members of staff to use gender equality analyses in the implementation of *Justice Vision 2000*.

**(c) DEVELOPMENT OF AWARENESS AND SKILLS**

Through professional development and other awareness raising measures under the guidance of gender experts mostly located in the gender unit and the rest of experts within the national gender machinery, we will ensure that all personnel are empowered to recognise gender equality issues in all substantive work and to seek remedies to inequalities. Attendance at relevant courses will be compulsory for all personnel.

**(2) GENDER BUDGET**

**Broad Policy Commitment**

***We commit ourselves to:***

- *ensuring that all our budget processes and the content of budgets reflect our commitment to redirecting resources toward addressing historical disparities with regard to access to justice and employment opportunities, whether those disparities arise from gender, or a combination of gender, race and disability.*

*We will achieve this through:*

- *undertaking a gender analysis of our spending and to integrating this into our budget planning for the future.*

**Current Policy and Challenges**

For the last three years a “*Women’s Budget*” has been produced in South Africa. The Women’s Budget is not a separate budget for women. It proposes that all programmes of every department, at national,





provincial or local level, be examined for their impact on women. It targets women as the lowest common denominator of poverty among the population, and is, therefore, an effective strategy for reducing poverty in South Africa.

It explains the need to influence three types of spending:

- specially targeted programmes
- programmes aimed at change in departments themselves such as affirmative action
- mainstream programmes

As a government department and ministry, we embrace the concept of gender budgeting. We see it as a tool for planning and monitoring the spending of the Department to ensure that both women and men are the beneficial recipients of the Department's policies and programmes. However, the process of execution has taken a while within the Department. The delay has been primarily due to a lack of reliable statistics on our customer base, expenditure per service and then per capita. The absence of a gender-analysis framework and related tools, has also served as an impediment to gender budgeting.

### (3) GENDER UNIT AND OTHER IMPLEMENTATION STRATEGIES

#### Broad Policy Commitment

##### *We commit ourselves to:*

- *establishing and supporting a coherent network of monitoring mechanisms to facilitate effective implementation of this gender policy, and to review progress and redirect strategies where necessary.*

The following mechanisms will be used to facilitate the implementation process and to monitor and review progress regularly:

- THE GENDER DIRECTORATE
- DEPARTMENTAL GENDER FORA
- CHANGE MANAGEMENT TEAM
- PERFORMANCE MANAGEMENT SYSTEMS
- NATIONAL GENDER MACHINERY.

#### (a) THE GENDER DIRECTORATE

The Gender Directorate is the gender focal point in terms of the national gender machinery within the Department. It is essentially not an implementing structure, but a management resource agency within the Department. Regional and local offices are also being encouraged to establish their own internal gender units to:

- Monitor the implementation of this *Gender Policy Statement*, including the gender impact analysis
- Advise managers on gender issues.

The major functions of the Gender Directorate are to:

- Ensure on-going development of the gender policy
- Facilitate the integration of gender concerns into mainstream policy development
- Monitor and facilitate implementation of the gender policy
- Drive a gender budgeting process within the Department
- Facilitate the establishment of regional gender sub-structures
- Facilitate the relationships between the Department and other government departments and constitutional bodies within the national gender machinery
- Facilitate the relationship between the Department and civil society, including NGOs and CBOs.

#### (b) DEPARTMENTAL GENDER FORUM(S)

In the performance of its work, the gender directorate will be closely assisted by a National Gender Forum with branches in the provinces. Local offices are also free to constitute their own gender fora.

The National Gender Forum will comprise representatives from all branches at head office and the nine regions based in the nine provinces. The gender directorate will provide secretarial services to the forum. The forum will meet at least four times per year. It will provide an opportunity for members of staff in the Department to meet and share experiences. Its terms of reference will include the following:



## TERMS OF REFERENCE FOR THE NATIONAL GENDER FORUM

- To act as an advisory body and monitoring mechanism to ensure that gender considerations are integrated in mainstream issues
- To advise the Department on the integration of gender concerns into mainstream policy and planning
- To apply gender equality analysis tools in assessing and monitoring departmental policies, legislation, procedures, practices and programmes
- To monitor progress in the implementation of this gender policy, identify blockages and facilitate the process of redressing gender imbalances in departmental policies and practices.

### (c) THE CHANGE MANAGEMENT TEAM (CMT)

The Change Management Team (CMT) is responsible for driving and managing the transformation process within the Department. To the extent that the move toward gender equality is a transformation issue, the CMT will be required to ensure that gender equality analysis, the gender budget and the rest of the programme of action in this *Policy Statement*, is implemented successfully, and within the allocated time-frames. The CMT will also be responsible for ensuring that adequate funding is allocated for the implementation programme of action. This gender agenda will also be integrated in the programmes of the other transformation coordinating structures as envisaged in *Justice Vision 2000*. It will also be integrated in the activities of the budget monitoring mechanisms.

### (d) PERFORMANCE MANAGEMENT SYSTEMS

A new results-focussed Personnel Performance Management System (PPMS) has been introduced by government. At the same time we are required, together with other government departments, to design organisational performance management mechanisms to facilitate the implementation of service delivery improvement, as required under *Batho Pele: White Paper on Public Service Delivery*. We, therefore, require that responsibilities for all personnel arising from this gender policy be integrated in the Department's personnel performance management and organisational performance management systems.

### (e) NATIONAL GENDER MACHINERY

The process of promoting the advancement of equality between women and men in all spheres of life, will vest in the national and provincial machinery for the advancement of gender equality. This comprises a

network of advocacy and monitoring agencies within and outside government.

The Office of the Status of Women (OSW) and the Commission on Gender Equality (CGE) are central to this network. The OSW is the formal government apex of the gender machinery while the CGE is a constitutional structure, with a broad mandate relating to the promotion of gender equality.

All levels of government have a role to play. The arrangement includes Gender Focal Points in departments. The Gender Directorate is one of these.

We are committed to strengthening our existing relationship with these institutions, without compromising their independence. They will play a major role in the monitoring process. The Annual NGO Consultative Forum mentioned under "Working With Civil Society", will also play a crucial role in the monitoring process.

## (4) THE JUDICIARY AND JUDICIAL SYSTEM

### Broad Policy Commitment

#### **We commit ourselves to:**

- providing a policy framework, through a consultative process, and within our powers in terms of Sections 165 and 180 in the Constitution, with a view to facilitating the transformation of the judicial system to achieve equality between women and men within the administration of justice
- consulting with the judiciary with a view to encouraging their own internal process of identification of obstacles to the achievement of women's equality with men and the implementation



*of measures to address the obstacles within their sphere of work.*

### Guiding Principles

Our interventions are always informed by our respect for, and commitment to, upholding and strengthening the independence of the judiciary. We are therefore confining the impact of this *Gender Policy* to our policy responsibilities as defined in the following, and related instruments:

▶ **THE CONSTITUTION**

Section 265(4) which states that:

*“Organs of state, through legislative and other measures, must assist and protect the courts to ensure independence, impartiality, dignity, accessibility and effectiveness of the courts”.*

▶ **JUSTICE VISION 2000: KEY RESULT AREAS**

- Courts and Other Structures Administering Justice
- The Legal Profession
- Access to Justice
- Human Resource Development

## (5) INTERNATIONAL AND INTER-SECTORAL COOPERATION

### Broad Policy Commitment

***We commit ourselves to:***

- *strengthening and sustaining current efforts at ensuring an integrated response to women’s inequality in all its manifestations, and the pursuit of gender equality.*

*We will strengthen our partnerships in this regard, with*

- *civil society, government departments and the international community.*

### Guiding Principles

Our Policy Commitment in regard to international and inter-sectoral cooperation are informed by our international and national obligations as well as understanding of gender inequality as a multi-faceted issue which requires an integrated response. We will be particularly guided by the following instruments:

▶ **THE CONSTITUTION**

Chapter 3 on cooperative government  
Section 39 Interpretation of the Bill of Rights

▶ **THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)**

▶ **THE BEIJING PLATFORM FOR ACTION**

▶ **SADC ADDENDUM ON THE ERADICATION AND PREVENTION OF VIOLENCE AGAINST WOMEN AND CHILDREN**

▶ **THE REPORT OF THE PRESIDENTIAL REVIEW REPORT**

▶ **THE NATIONAL CRIME PREVENTION STRATEGY (NCPS)**

▶ **JUSTICE VISION 2000.**





# CHAPTER 6

## CONSULTATIONS AND BIBLIOGRAPHY

### LIST OF CONSULTATIONS AND WRITTEN INPUTS RECEIVED ON THE DRAFT GENDER POLICY CONSIDERATIONS DOCUMENT

#### A: PROVINCIAL WORKSHOPS

1.	North West Province	Mmabatho	10 November 1998
2.	Northern Cape Province	Upington	8 December 1997
3.	Kwa-Zulu Natal	Durban	28 January 1998
4.	Northern Province	Lebowakgomo	2 February 1998
5.	Free State	Bloemfontein	4 February 1998
6.	Eastern Cape	Bisho	6 February 1998
7.	Mpumalanga	Nelspruit	12 February 1998
8.	Gauteng Province	Johannesburg	13 February 1998
9.	Western Cape Province	Athlone	16 February 1998

#### B: NATIONAL WORKSHOPS WITH FOCUS GROUPS

1.	Legal Profession	Pretoria	18 February 1998
2.	Organised Labour	Pretoria	19 February 1998
3.	Traditional Leaders	Pretoria	20 February 1998
4.	Religious Leaders	Pretoria	23 February 1998
5.	Rural Women's Movement	Johannesburg	12 June 1998
6.	NGO Consultative Meeting	Johannesburg	21 to 22 April 1998

#### C. OTHER INTEREST GROUPS

1.	Muslim and Hindu Community	Laudium/Pretoria	28 April 1998
2.	Malibongwe	Pretoria	6 to 7 May 1998
3.	Natal Women's Resource Centre	Durban	30 April 1998

#### D. WRITTEN INPUTS

1. Community Agency for Social Enquiry (CASE)
2. Department of Justice Personnel: Human Resources Policy and Equity
3. Department of Safety and Security
4. Gender Advocacy Programme (GAP)
5. National Association of Democratic Lawyers (NADEL)
6. Offices of the Premiers
7. Tshwaranang Legal Advocacy Centre
8. University of the Western Cape: Community Law Centre
9. Women's National Coalition

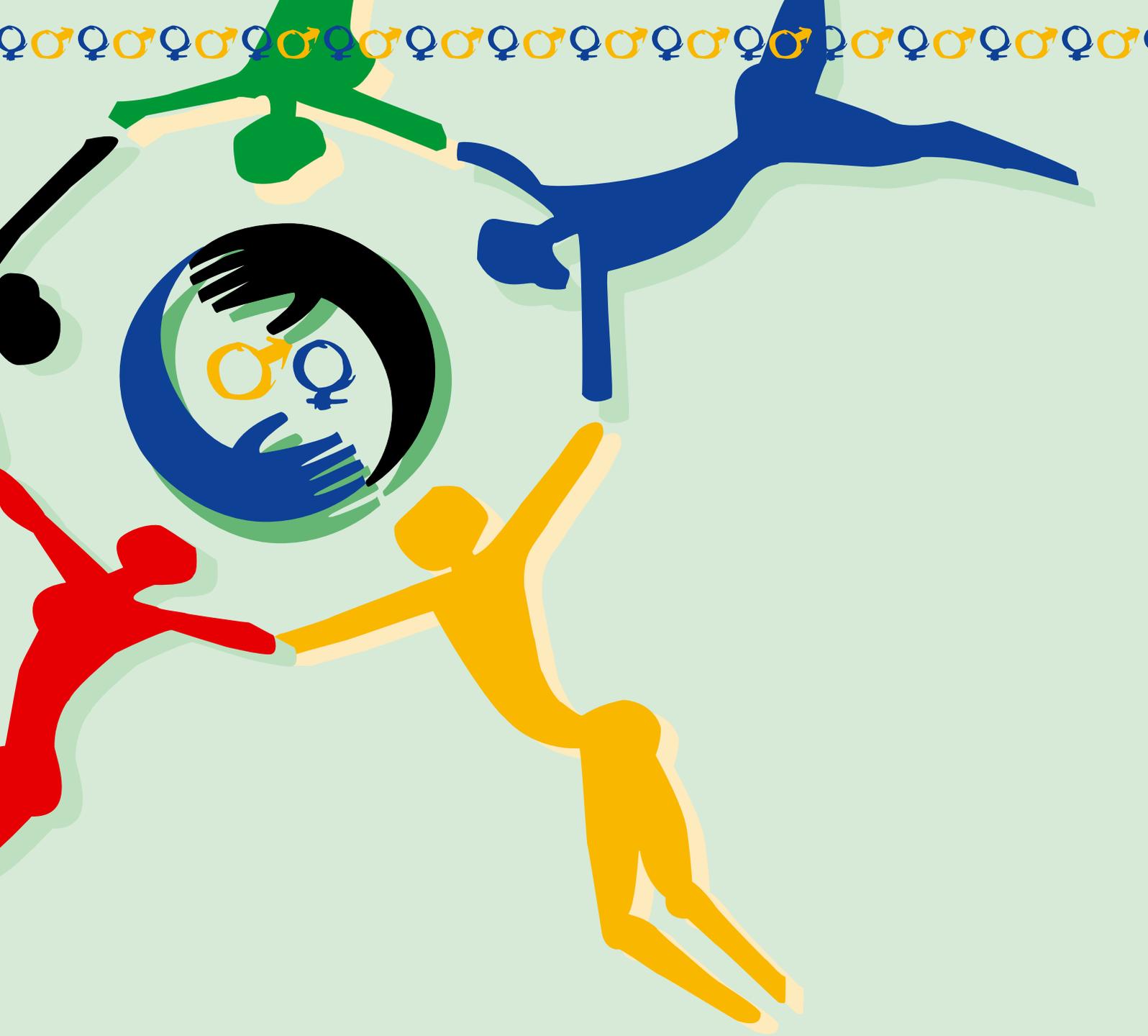




## SELECTED REFERENCES

1. Canadian Department of Justice, *Policy of the Department of Justice on Gender Equality Analysis*.
2. Centre for Applied Legal Studies, Human Rights Institute of South Africa, National Institute for Public Interest Law and Research, Development Bank of South Africa, Department of Welfare and Population Development and Commonwealth Secretariat, 1996, *Mainstreaming Gender Considerations in Policies and Programmes: A Manual for National and Provincial Departments*
3. Budlender, D. 1998, *Women and Men in South Africa*, Central Statistical Service
4. Centre for Applied Legal Studies and Commonwealth Secretariat, 1996, *Handbook on National and Provincial Machinery for Advancing Gender Equality*
5. Budlender, D. 1996, *The Women's Budget*, Joint Standing Committee on Finance: Gender and Economic Policy Group, Community Agency for Social Enquiry, Law, Race and Gender Project, UCT and Institute for Democracy in South Africa
6. Department of Public Service and Administration, (November 1995) *White Paper on Transformation of the Public Service*
7. Department of Public Service and Administration, (April 1998) *White Paper on Affirmative Action in the Public Service*
8. Human Rights Watch/Africa, 1995, *Violence Against Women in South Africa: State Response to Domestic Violence*, New York
9. Lochrenberg, M., Stanton, S., and Mukasa, V., 1997., *Evaluations Report of the Wynberg Sexual Offences Court*, Rape Crisis Centre
10. Women in Development Southern Africa Awareness and University of Cape Town Gender Equity Unit, 1997, *Beyond Equalities: Women in South Africa*, Southern African Research and Documentation Centre
11. Ministry of Justice, South Africa, 1998, *SADC Conference on Violence Against Women: Summary Report*
12. Women in Law and Development in Africa, 1998. *Information Packet for the Session on the Committee on the Status of Women on the Four Critical Areas of Concern: Women's Rights are Human Rights, Violence Against Women, Women in Armed Conflict and the Girl-Child*
13. *First South African Report on CEDAW*, 1998, 9-2 to 9-3
14. Gauteng Department of Safety and Security, 1996, *Decriminalisation of Sex Work: A Draft Report by the Task Team*
15. Lawyers for Human Rights (Pietermaritzburg) and the Pietermaritzburg AIDS Training, Information and Counselling Centre, 1996, *Decriminalisation of Commercial Sex Work in South Africa: An Exploratory Survey*
16. Transitional National Development Trust, 1998. *Structuring Effective Development-oriented Interactions between the State and Civil Society in South Africa: A Comparative Analysis of Mechanisms in Place*
17. Fedler, J., 1995, *Feasibility Study to Set up a Legal Advocacy Clinic for Abused Women in South Africa*
18. *Justice Vision 2000: Five-year National Strategy for Transforming the Administration of Justice and State Legal Affairs*, September 1997
19. Department of Justice: *Departmental Commitments in Regard to the Implementation of the Beijing Platform for Action*, 1996





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