

Assessment Report

“It is also in this way that we seek to establish and entrench the understanding among all our people, for all time, that we are building a system of justice that must define its justness by the extent to which it enriches our humanity”

The Honourable Thabo M. Mbeki

*President of South Africa, at the opening
of the new Constitutional Court Building*

**Department of Justice and
Constitutional Development**



Foreword

It gives me great pleasure to release this *Gender Mainstreaming and Gender Budgeting Package*.

I believe that the information in this package will contribute enormously to our efforts around gender transformation through which we seek to comply with the Constitution and our international human rights obligations in terms of CEDAW and related instruments.

In a way the package is based on looking back at what we did or did not do in the last decade with regard to addressing the gender imbalances that we inherited at the dawn of democracy.

The importance of mainstreaming gender in everything we do as a Department cannot be over-emphasised, otherwise we will continue to fail to meet the needs of some of those we seek to serve, especially women from disadvantaged communities. The National Gender Policy Statement states that the implementation of gender equality is first and foremost the responsibility of all the institutions in government. To achieve gender equality the government must embark on a rigorous gender mainstreaming strategy.

I call all members of the justice community to join me and my Department as we implement the *Gender Mainstreaming and Gender Responsive Budgeting* package. I sincerely hope that the lives of women and other disadvantaged groups will be improved as a result.

*Minister for Justice and Constitutional Development
Pretoria, August 2004*

Acknowledgements

The *Gender Mainstreaming Assessment Report* is part of the *Gender Mainstreaming* package developed by the Gender Directorate within the Department of Justice and Constitutional Development (hereafter referred to as the Department or DoJCD).

The Gender Directorate is delighted to finally release the *Gender Mainstreaming* and *Gender Responsive Budgeting* package and believes it will assist all role players within the Department, particularly those in leadership positions, to understand the principles of *Gender Mainstreaming* and *Gender Responsive Budgeting*. This will facilitate the integration of gender considerations into all plans, policies and day to day implementation decisions.

The *Gender Mainstreaming* project was inspired by the Directorate's *Gender Needs Assessment Report* which identified an immediate need to build capacity in the Department for both *Gender Mainstreaming* and *Gender Responsive Budgeting*. The target group for the package includes other role players who contribute to policy development, interpretation and implementation within the Justice System.

The Directorate hopes that the application of the information and tools in the *Gender Mainstreaming* and *Gender Responsive Budgeting* package will accelerate the elimination of systematic gender discrimination in the Department, and contribute towards the achievement of gender equality in the Department and the society in general.

Sincere gratitude needs to be extended to the Centre for Reconciliation and Equality Studies (CRES)/ Waweth Agency and DoJCD team for their assistance in the research and writing of the *Assessment Report*, and the development of the *Gender Mainstreaming* and *Gender Responsive Budgeting* package. The following people need special mention:

Department of Justice

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- Ms Thuli Madonsela
- Ms Sury Pillay

Adv Mikatelo Joyce Maluleke

Director Gender Directorate, Department of Justice and Constitutional Development
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Key Concepts and Acronyms

Key Concepts

Black Economic Empowerment

Black Economic Empowerment refers to the implementation of measures to advance black people in order to equalise economic opportunities between them and white people.

Black Empowerment

Black empowerment refers to measures that seek to advance black people in order to achieve equality between them and white people.

Disaggregate

Disaggregate means subdivide into constituent parts.

Employment Equity

Employment Equity refers to the process and outcomes relating to the equalisation of and enjoyment of all employment opportunities and benefits, and the ending of gender, racial, disability and other forms of disadvantage and (unfair) discrimination.

Equality

Equality refers to the equal enjoyment of all rights and freedoms. It entails the absence of direct or indirect (unfair) discrimination.

Gender

Gender refers to the power relations between women and men. It is a social construct that assigns roles and worth to each sex based on group culture.

Gender Analysis	A gender analysis or gender equality analysis refers to a systematic process which involves assessing the impact of or likelihood that each decision, policy, law, plan, programme, situation, process or activity will impact differently on women and men because of their diverse socio-economic or physical circumstances, with the effect of prejudicing one gender.
Gender Awareness	Gender awareness refers to the state of being conscious of inequality arising from the power relations between women and men.
Gender Balance	Gender balance refers to an equitable distribution of life's opportunities and resources between women and men.
Gender Bias	Gender Bias refers to any act that advantages or perpetuates an existing advantage of one sex over the other.
Gender Budget	A Gender Budget, also referred to as a <i>Gender Responsive Budget</i> , refers to a budget or expenditure arrangement which is structured in a manner that ensures that women and men benefit equitably from financial resources.
Gender Disaggregated Data	Gender disaggregated data means information subdivided in terms of women and men.
Gender Mainstreaming	<i>Gender Mainstreaming</i> refers to the integration of gender equality considerations in all policy, law, plans, programmes, administrative and financial activities, organisational procedures, processes and decision making, in order to effect profound organisational and ultimately, societal transformation, towards the realisation of <i>de jure</i> and <i>de facto</i> equality between women and men.
Gender Management System	A Gender Management System is a network of structures, mechanisms and processes that are put in place within an organisational framework to facilitate <i>Gender Mainstreaming</i> in pursuit of equality between women and men. (<i>Adapted from Common Wealth Gender Management System Handbook</i>).
Gender Responsive Budgeting	<i>Gender Responsive Budgeting</i> refers to the allocation of financial resources in a manner that not only ensures that women and men benefit equally from all resources but also reduces existing patterns of women's systemic inequality. Gender budgeting is one of the mechanisms of an effective Gender Management System.

National Gender Machinery	National Gender Machinery refers to a network of coordinated structures within and outside government which operate cooperatively in facilitating political, social, economic and other forms of transformation to dismantle systemic gender inequality and promote equality between women and men.
Per Capita	<i>Per capita</i> means the average per person. This is worked out by dividing total cost with the number of actual beneficiaries.
Practical Gender Needs	Practical Gender Needs refers to women's day to day needs that result from their subordinate position in society. Addressing Practical Gender Needs does not challenge or transform structural gender inequality but simply helps women cope better with their present position.
Preferential Procurement	Affirmative action in procurement.
Procurement Equity	Procurement Equity refers to the process and outcomes relating to the equalisation of enjoyment in all procurement opportunities and incorporates affirmative procurement.
Pro-women Programmes	Pro-women programmes refers to services and programmes for everyone but that are most likely to respond to the needs of women, for example domestic violence services.
Sex	Refers to the biological difference between women and men.
Sex Disaggregated	Has the same meaning as gender disaggregated. It means broken down according to women and men.
Strategic Gender Needs	Strategic Gender Needs refers to women's long-term needs relating to fundamental social transformation to end their subordination in society.
Unfair Discrimination	Unfair discrimination refers to the direct or indirect unfair denial of opportunities to or imposition of an undue burden on a person or group, on the basis of their gender, race, disability or some other difference, or combination of differences.
Women's Budget	A women's budget has the same meaning as a gender budget or gender responsive budget. 'Women' is used to emphasise the fact that women are the targeted beneficiaries of the budget reform that is entailed in gender budgeting.

Women Empowerment	Women Empowerment means establishing programmes that exclusively target women as a form of affirmative and positive action to empower them in order to equalise opportunities between women and men.
Women's Equal Access	Promoting women's equal access to mainstream services is about mainstreaming gender into all services to ensure that women and men benefit equitably.

Acronyms

ADR	Alternative Dispute Resolution (also referred to as Informal Dispute Resolution)
BBBEEA	Broad Based Black Economic Empowerment Act
BEE	Black Economic Empowerment
BPA	Beijing Platform for Action
CCMA	Commission for Conciliation, Mediation and Arbitration
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CGE	Commission on Gender Equality
DGPS	Departmental Gender Policy Statement
DoJCD	Department of Justice and Constitutional Development
DVA	Domestic Violence Act
EEA	Employment Equity Act
ERC	Equality Review Committee
GFP	Gender Focal Point or Person
GENMACC	Gender Mainstreaming Advisory and Compliance Committee
IDASA	Institute for Democracy in South Africa
IPOA	Integrated Plan of Action
MAGCOM	Magistrate's Commission
MTEC	Medium Term Expenditure Committee
MTEF	Medium Term Expenditure Framework
NGPF	National Gender Policy Framework
OSW	Office of the Status of Women
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
PFMA	Public Finance Management Act
PPFPA	Preferential Procurement Policy Framework Act
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission

SALC	South African Law Commission
SMART	Simple, Measurable, Achievable, Realistic and Tangible
SMME	Small Medium and Micro Enterprises
UPP	Unfunded Priority Project
VAW	Violence Against Women
WCAR	World Conference Against Racism and Related Intolerances

Assessment Report

1. EXECUTIVE SUMMARY

The implementation of gender equality is first and foremost the responsibility of all the institutions in government. To achieve gender equality, the government must embark on a rigorous gender mainstreaming strategy.

National Gender Policy Framework

1.1 Purpose

This *Gender Mainstreaming* assessment was conducted by the Gender Directorate of the Department of Justice and Constitutional Development (DoJCD). The purpose of the study is to enhance the Gender Directorate's effectiveness in working with the leadership of the Department to accelerate progress made in the pursuit of gender transformation in order to achieve equality between women and men as envisaged in South Africa's new Constitution.

The aim is to examine the extent to which gender equality considerations are regularly integrated in all organisational decisions, policies, laws, plans, processes and activities. The *Gender Mainstreaming* assessment seeks to establish the nature and extent of gaps, if any, and use the information as a basis for working with the leadership of the Department and the various Components within the Justice System, in order to build adequate capacity for effective *Gender Mainstreaming*.

The integration of gender considerations into all mainstream structures, systems and processes is referred to as *Mainstreaming Gender* or *Gender Mainstreaming*. *Gender Mainstreaming* is a strategic intervention that seeks to transform the core values, structures and systems in society and its institutions in order to eliminate structural inequality and systemic discrimination experienced by women and to promote equality between women and men.

Gender Mainstreaming involves intervening in and transforming the mainstream by ensuring that “*the process of achieving gender equality is at the very centre of the transformation process in South Africa, within all the structures, institutions, policies, procedures, practices and programmes, its agencies, parastatals, civil society and the private sector*”. (National Gender Policy Framework)

The basic operational principle underpinning *Gender Mainstreaming* involves: *regularly assessing the differential impact that every decision, plan or action has or is likely to have on women and men, taking into account their different circumstances, including women’s accumulated socio-economic disadvantages in society as a result of gender and related historical injustices. It further involves adjusting the decision, plan or action in question to ensure that women and men benefit or are likely to benefit equally, while operating to reduce existing structural inequality between women and men.*

Gender Mainstreaming was officially adopted by United Nations Member States, including South Africa, at the Beijing Conference in 1995. It was adopted as a strategy for accelerating the advancement of women and the realisation of women’s human rights. South Africa further committed itself to the implementation of *Gender Mainstreaming* as one of its National Commitments, through the *Implementation of the Beijing Declaration and Platform for Action* (BPA), 1996. *Gender Mainstreaming* is also a requirement under South Africa’s *National Policy Framework for Women’s Empowerment and Gender Equality* (National Gender Policy Framework). The President made government’s commitment to *Gender Mainstreaming* clear in his February 2003 State of the Nation Address where he called for the acceleration of efforts on *Gender Mainstreaming* and the implementation of the *National Gender Policy Framework*.

The development of a *Gender Policy Statement* by the Department of Justice and its adoption by Cabinet in 1998 was one of the earliest concerted efforts by the Department’s leadership to respond holistically to its international and national *compliance obligations* regarding the advancement of women. It seeks to ensure women’s enjoyment of all human rights and freedoms, equal with men, and the eradication of gender inequality. The *Gender Policy Statement* adopts *Gender Mainstreaming* as an official operational paradigm upon which all decisions, plans and activities performed within the Department’s mandate should be based.

The report is divided into the following sections:

- Introduction;
- Objectives and Methodology;
- Findings; and
- Conclusion and Recommendations.

1.2 Summary of Findings

The findings are based on a *Gender Mainstreaming Assessment Instrument* which is premised on twelve dimensions of effective *Gender Mainstreaming*.

The twelve dimensions were elicited from international and national legal and policy instruments on the advancement of women, the promotion of women's human rights and gender equality. It includes measures outlined in the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*¹, the *Beijing Declaration and Platform for Action (BPA)*, *SADC Declaration on Gender and Development*, the Constitution and national as well as departmental policies on women's empowerment and gender equality. The *Assessment Instrument* was also benchmarked against the *Gender Mainstreaming Assessment Tools* and *Implementation Guidelines* of UN Agencies, other international and justice institutions in comparably situated democracies. It was also tested against *principles of organisational behaviour*.

Below is a summary of the findings.

1. There is generally a sense of awareness that something needs to be done in respect of women within leadership of the Ministry/Department. This is coupled with a commitment to implement change, and there are a number of measures that have been implemented at various levels and in most of the Components in this regard.
2. Measures on matters readily associated with women seem to be fairly sustained over time. These include violence against women and maintenance. However, these are not backed by a systematic, integrated or holistic strategy, with monitoring and evaluation systems, or regular reporting on progress made against agreed targets.
3. The study found no evidence indicating organisational appreciation of the need to mainstream gender or to integrate gender considerations into all aspects of the Ministry/Department. As such there seemed to be no goals or targets in this regard. In fact attitudes, structures and practices revealed that the average person in the organisation does not appreciate that many seemingly neutral practices operate to discriminate indirectly against women, due to the accumulated socio-economic disadvantages and consequent systemic inequality experienced by all women.
4. In fact, there generally seemed to be no clear organisational targets or systematic strategy or plans on the achievement of gender equality or any aspect of women's empowerment.
5. There also seems to be no clear organisational vision on gender equality within the Ministry/Department and its components.

1. Read with the General and Country Specific Recommendations of the **CEDAW Committee**.

The most serious weaknesses with regard to *Gender Mainstreaming* in the DoJCD, are listed below.

- 5.1 The lack of awareness of key international obligations and local concerns, constant linkages of dialogue on gender with international/national compliance obligations on the advancement of women, women's human rights and the promotion of gender equality, from the most senior leader to the lowest rung personnel.
- 5.2 The lack of recognition that issues of women's empowerment and the promotion of gender equality need to be placed high amongst organisational strategic objectives, and not as a separate 'add on' matter.
- 5.3 The lack of systematic planning with a clear vision, goals/targets, implementation plans and effective monitoring of progress against set goals or targets. This is exacerbated by the absence of clear organisational goals or annual objectives and an integrated strategy for the pursuit of such goals. The Department's new mission and vision which fails to mainstream equality considerations also emerged as a major weakness regarding the development of a strategy on *Gender Mainstreaming*.
- 5.4 The failure to involve women in decision-making at all levels, and to link all decisions to legal and policy obligations. This includes public partnerships and ensuring that women from diverse backgrounds are consulted equally with men in planning court and other justice services, including automation processes.
- 5.5 The failure to ensure an integrated systems approach to programme implementation. This includes ensuring that measures strike at the various pillars that anchor gender inequality. Specific weaknesses in this regard include the following:
These include:
 - inadequate or ineffective laws and policies;
 - ineffective administrative arrangements, including coordination between various role players;
 - unsupportive attitudes and consequent behaviour amongst role players in the court system, the administration and the public in general;
 - inadequate resources, including infrastructure; and
 - the prevalence of legal illiteracy.
- 5.6 The lack of adequate financial, human and other resources allocated towards programmes in order to address issues listed within international and national documents, including the *Critical Areas of Concern* within the *Beijing Platform for Action* (BPA).
- 5.7 The absence of effective capacity building measures aimed at yielding changes in individual and organisational behaviour and that target everyone in the Ministry/

Department/Component. Capacity building should include changes in organisational systems to ensure that mainstream systems are capable of supporting all the various dimensions of gender transformation. This includes special programmes on matters such as accelerated leadership and skills development for women, taking into account their diversity in terms of race, disability and other factors that compound women's subordination in society and institutions.

- 5.8 The failure to address employment related issues such as affirming and managing diversity, sexual harassment, the balancing of work and family responsibilities, the impact of HIV/AIDS and stress management. It is apparent that there is still an urgent need to achieve a gender balance with regard to representation of women and men in personnel within all structures and at all levels. This includes reviewing Departmental recruitment process, human resource development, succession planning and retention strategies, against objectives relating to the advancement of women and the promotion of gender equality.
- 5.9 The weaknesses in the development of special measures to accelerate the advancement of women through procurement practices. This includes integrating terms of reference that ensure women's empowerment in tender and other procurement specifications and contract appointment processes.
- 5.10 There is a serious lack of systems that ensure that knowledge generation, data collection and management is gender disaggregated to support *Gender Mainstreaming*. This would include the production of accurate information or statistics that can enable the establishment of baseline reports and the generation of regular indicators to support the tracking of progress on the achievement of gender equality. The statistics would cover sexual violence, domestic violence, divorce, maintenance, legal representation, administration of estates, personnel and procurement profiles and skills development activities. There should also be regular dissemination of some of these indicators.
- 5.11 There is a need for a reporting system that is aligned with organisational targets and compliance obligations on gender. These reports should reflect aspects of progress achieved in the implementation of measures to advance women, women's human rights and gender equality, and need to be discussed regularly by management.

1.3 Summary of Recommendations

The study established that although there is a lot of movement in the Ministry/Department with regard to women this does not translate into *Gender Mainstreaming* or fundamental organisational transformation

on gender equality. Current activities have thus failed to achieve substantive compliance with constitutional obligations, commitment made through the signing of the Convention to Eradicate Against All Forms of Discrimination Against Women (CEDAW) and other international and national instruments.

A recurring theme in the findings is the need for conscious alignment of all organisational and component plans, decisions and practices with international, national, departmental policy and legal frameworks and related compliance obligations.

Opportunities have been presented by recent developments, including the President's call for accelerated progress on women's empowerment and gender mainstreaming (*State of the Nation Address* February 2002 and 2003), the requirement for all organisations to align their systems and practices with the *Promotion of Equality and Prevention of Unfair Discrimination Act* and the reorganisation of the Director General's Office. These should be utilised to accelerate progress on *Gender Mainstreaming* and transformation in the Ministry/Department.

It is proposed that leadership for *Gender Mainstreaming* should come from the highest levels of decision-making. Specific recommendations on what measures should be taken with immediate effect are captured in the findings outlined in Chapter 4 of this report. Recommended action is outlined in Chapters 4 and 5.

2. INTRODUCTION

We must also refer to the important matter of gender equality. Some progress is being made in government to address this issue. And in the private sector and civil society, the campaign on the rights of women has started at least to form part of the national discourse. But society still lags far behind in terms of actual implementation, particularly in mainstreaming gender issues.

President Thabo Mbeki

State of the Nation Address February 2003

2.1 Background

The Department of Justice and Constitutional Development (DoJCD) was among the first to develop a written Gender Policy after extensive consultation with civil society. The policy was formally presented to and adopted by Cabinet in 1998.

The Gender Policy provides a framework for managing gender transformation which includes *Gender Mainstreaming* in the DoJCD. The *gender management* strategy represented in the *Gender Policy Statement* combines women empowerment programmes, which involves interventions that are directed at women, and *Gender Mainstreaming* where gender equality considerations are integrated in all organisational decisions, policies, plans, programmes, procedures, practices and the development as well as application of the law. This is in line with South Africa's *National Policy Frame Work for Women's Empowerment and Gender Equality* (National Gender Policy Framework) adopted by Cabinet in December 2000. The use of *Gender Mainstreaming* as a strategy for achieving women's advancement, their full enjoyment of all human rights and freedoms in equality with men, and the elimination of all inequality between women and men is in line with contemporary international approaches and international human rights obligations.

The *Gender Policy* seeks to *mainstream gender* through bringing a gender perspective into all aspects of planning, policy, legislation development and interpretation, decision-making, transformation activities and other activities within the scope of the Ministry and the Department. This means both internally, when the Department acts as an employer or contractor, and externally, when the Department acts as a service agency of the government. *Gender Mainstreaming* requires that all decision-making and practices in the Ministry/Department and allied institutions should be informed by a gender equality analysis and an endeavour to reduce existing systemic structural inequality and discrimination that is experienced by women in different degrees depending on their racial and other forms of diversity and historically accumulated disadvantage. Ultimately, this should result in the achievement of substantive equality between

women and men and the absence of both *de jure* and *de facto* discrimination against women, primarily through the empowerment and advancement of women.

This report is based on a *Gender Mainstreaming* assessment of institutional practices as reflected in annual reports, strategies and plans, submitted by the eight Business Units of the DoJCD between 2000 and 2003, discussions with various role players in the Ministry and Department and an analysis of written responses by some Business Units to preliminary findings sent to them in December 2002.

The assessment was carried out by the Gender Directorate of the DoJCD in order to establish the extent to which gender mainstreaming is being implemented in every aspect of the Ministry/Department. It also sought to identify obstacles faced by various role-players in this regard, and to ascertain needs for capacity building in order to accelerate progress in the implementation of *Gender Mainstreaming* in the Ministry/Department and affiliated institutions.

2.2 Conceptual, Legal and Policy Framework

Gender Mainstreaming or *Mainstreaming Gender* is a strategy for effecting systematic gender transformation in organisations and society, in order to eradicate the subordination of women and achieve equality between women and men. *Gender Mainstreaming* involves:

Integrating gender equality considerations in all policy, law, plans, programmes, administrative and financial activities, organisational procedures, processes and decision-making in order to effect profound organisational and ultimately, societal transformation towards the realisation of *de jure* and *de facto* equality between women and men.

In practice, *Gender Mainstreaming* entails:

Preceding all organisational decisions and activities with a gender equality analysis and implementing corrective measures to prevent or alleviate prejudicial impact or the likelihood of such prejudice on either gender and contemporaneously reduce existing disparities between women and men.

A *gender equality analysis* is:

A systematic process which involves assessing the impact of or likelihood that each decision, policy, law, plan, programme, situation, process or activity will impact differently on women and men because of their diverse socio-economic or physical circumstances, with the effect of prejudicing one gender.

This process is often referred to as the subjection of all decisions and actions to a *gender lens*. The

Gender Policy of the Department entrenches gender equality analysis as a fundamental requirement in all departmental operations. The *Gender Policy Statement* stipulates that:

“... a gender equality analysis is to be integrated into every activity that is performed within the scope of the Ministry and Department”.

It further provides examples of decision-making processes to be subjected to *Gender Mainstreaming*. These include:

- Policy and Programme Development;
- Interpretation of law;
- Legal Advice;
- Drafting of legislation and regulatory provisions;
- Litigation instructions and strategies;
- Dispute resolution, including the judicial process;
- Management policies and practices;
- Consultations; and
- Communication plans and practices.

The *Gender Policy Statement* indicates that operationally the process of mainstreaming gender 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 and the likelihood that a seemingly neutral course of action could exacerbate the disadvantaged position of either gender, taking into account additional historical disadvantages relating to race, disability, poverty and other factors that tend to compound women's subordination; and
- Developing solutions to prevent or eliminate any inequalities where gender equality issues arise.

The pursuit of *Gender Mainstreaming*, in response to the obligation of the DoJCD, is to implement gender transformation to align the Department with South Africa's first democratic Constitution and in particular, the achievement of equality as a core value and critical component of the societal vision underpinning the Constitution.

In addition to singling out non-sexism as one of the core values upon which the new South Africa is founded, the Constitution champions the achievement of equality, including gender equality, throughout its provisions and particularly s9 thereof. It is stated in s9 that neither the state, nor any person, may discriminate directly or indirectly on the grounds of gender, sex, pregnancy, marital status or any other ground or combination of grounds listed or unlisted in s9 (3). To clarify its approach to equality, the Constitution further states that:

“Equality includes the full and equal enjoyment of all rights and freedoms. To promote equality, legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination may be taken”

Equality is also given prominence in the Preamble to the Constitution where it is stated that:

“South Africa belongs to all who live in it, united in our diversity”

The reference to diversity includes racial, gender and other forms of human diversity. However, the drafters of the Constitution recognised and made it clear that the realisation of equality, including equality between women and men, was an ideal to be pursued and achieved through the implementation of the Constitution. The Constitution seeks, amongst other things, to:

“Heal the divisions (including gender divisions)² of the past and establish a society based on democratic values, social justice and fundamental human rights, lay the foundations of a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;

Improve the quality of life of all citizens and free the potential of each person;

and

Build a United and democratic South Africa able to take its rightful place as a sovereign state in the family of nations”

Implied in the last part of the preamble is a commitment to comply with international law and human rights standards. In fact the Constitution is aligned with and also serves as an instrument for facilitating South Africa’s compliance with its international human rights obligations. Many of the international human rights standards and resultant obligations relate to women’s human rights and the duty of parties to take measures to eradicate inequality between women and men in all spheres of life, including the justice system, the family, societal practices and the economy. Indeed South Africa has specifically committed itself to comply with the provisions of various international instruments, which either specifically promote gender equality or have this as one of the critical compliance responsibilities.

South Africa has ratified without a single reservation, the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW)³. The significance of not making any reservations is that South Africa gave up the possibility of arguing for the retention of laws and practices that violate CEDAW and women’s human rights as envisaged there-under. An example in this regard is traditional practices, culture, customs and customary or religious laws that are based on male superiority and which nullify

2. Implied but not stated in the Constitution

3. South Africa ratified CEDAW in 1996 and presented its First Country in 1998. Its First Subsequent Report was due in 2002 and has at the country’s request been postponed to 2004.

women's enjoyment of all rights and freedoms on an equal basis with men. The country has since submitted its First Report on CEDAW in which several undertakings were made regarding further measures to be adopted to accelerate progress on the realisation of women's human rights.

South Africa also undertook to implement the *Concluding Comments of the CEDAW Committee* at the reading of its First Country Report in 1998. South Africa is a party to and was one of the countries that submitted written *National Commitments Regarding Implementation of the Beijing Platform for Action* (BPA)⁴. In fact the BPA makes Gender Mainstreaming a mandatory element of compliance. The DoJCD was one of the key contributing Departments to the National Commitments. *Gender Mainstreaming* is, accordingly, also an instrument to facilitate compliance by the Department and ultimately, the country, with these international obligations.

The generic human rights instruments which require the mainstreaming of gender to foster the realisation of women's human rights through the implementation of such instruments include:

- Universal Declaration of Human Right (UN 1948);
 - Charter of the United Nations (1945);
 - Vienna Declaration on Human Rights, an instrument that placed women's rights at the centre of the human rights dialogue;
 - International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
 - Convention on the Rights of the Child (CRC);
 - International Covenant on Economic, Social and Cultural Rights;
 - International Covenant on Civil and Political Rights; and
 - Rome Statute on the International Criminal Court (ICC).
- PTO

Gender Mainstreaming is also identified as a compliance obligation to ensure that women benefit equally with men in the implementation of generic international policy instruments such as:

- Agenda 21 and the Outcomes Document of the World Summit on Sustainable Development (WSSD) in Johannesburg;
- International Convention on Population and Development (ICPD);
- Declaration and Programme of Action of the World Conference Against Racism (WCAR) and Related Intolerances;
- UN Declaration on Disabled People;
- Copenhagen Declaration on Social Integration; and
- Other policies that deal with the integration of and ending discrimination against vulnerable groups such as elderly people, refugees and people affected by HIV/AIDS.

Membership of the international family also includes membership of the African Union (AU) and the Southern African Development Community (SADC). Amongst other things, the country has a duty to comply

4. See Country's Commitments submitted to National Conference of Commitment in 1995 and noted in SADC and UN reports

with gender equality provisions of the *African Charter of Human and People's Rights* and the implementation of policy instruments such as the *New Partnership for Africa's Development* (NEPAD). The country and its institutions must also comply with the *SADC Declaration on Gender and Development* (1998) and its addendum on the *Prevention and Eradication of Violence Against Women and Children*. Compliance issues on gender also arise with regard to *International Labour Organisations* (ILO) instruments that South Africa has signed. This includes *Convention 111 on Discrimination Convention on Maternity Protection and the Workers with Family Responsibilities* (Convention 156).

Gender Mainstreaming also supports compliance with the Department's obligations arising from national laws and policies. *Gender Mainstreaming* enhances compliance with and should be viewed as an element of, the implementation of transformation laws seeking to equalise opportunities. These include the *Promotion of Equality and Prevention of Equality and Prevention of Unfair Discrimination Act*⁵, *Employment Equity Act*⁶, *Preferential Procurement Policy Framework Act*, *Home Loan and Mortgage Disclosure Act* and the *Black Economic Empowerment Act*. It also covers laws seeking to mediate gender power relations within the family. This includes the *Domestic Violence Act*, *Maintenance Act*, *Mediation in Certain Divorces Act* and *Recognition of Customary Marriages Act*. It also includes efforts seeking to reform *sexual offences laws* and *customary law of succession*.

Key transformation policy frameworks where *Gender Mainstreaming* is critical for ensuring that such policies do benefit women and also operate to reduce existing structural disparities between women and men, include the *White Paper on Reconstruction and Development* (RDP), *White Paper on Transforming the Public Service*, *Batho Pele: White Paper on the Transformation of Service Delivery*, *White Paper on Affirmative Action in the Public Service*, *National Skills Development Strategy* as well as *Development and Poverty Alleviation Policies*.

The *Gender Policy Statement* sought to institutionalise the mainstreaming of gender into everything in the Department as a strategy to eradicate women's subordination and promote gender equality in and through the Department.

It needs to be noted that while most of the provisions of the *Gender Policy Statement* are limited to the Department's narrower mandate prior to June 1999, the provisions relating to *Gender Mainstreaming*, including provisions on institutional transformation and those on employment, apply to all aspects of the Ministry/Department. This includes the Department's additional mandate regarding Constitutional Development

One of the implications of *Gender Mainstreaming* is that all Departmental plans, including *Business Plans* of all the entities in the Department, should be informed by a gender equality analysis. This means that every aspect of the *Business Plan* should be based on a clear understanding of its gender implications and a conscious attempt to meet the needs of both men and women from diverse socio-economic backgrounds.

5. No.4 of 2000

6. No.55 of 1998

The ultimate goal of *Gender Mainstreaming* and other gender management strategies is the achievement of real or substantive equality between women and men taking into account the diversity of women's circumstances and related needs. This is often referred to as *substantive (gender) equality or equity*.

Substantive or real equality combines *de jure* equality or equality in law and *de facto* equality, which incorporates equality of outcomes. This is at the core of the constitutional vision of equality. As indicated earlier, the Constitution adopts a substantive approach to equality, hence the contents of s9(2) referred to earlier. The substantive notion of equality is also at the core of the Department's *Gender Policy Statement*. This notion of equality also underpins the provisions of CEDAW, the BPA, *SADC Declaration on Gender and Development* and *Reporting Guidelines* for various generic human rights instruments, including the two *Covenants* and the *African Charter on Human and People's Rights*.

The element of mainstreaming gender is evident in the insistence on measures to eradicate both *de jure* and *de facto* discrimination and special (temporary) measures to equalise enjoyment of all rights and freedoms in some of the human rights instruments⁷. Reporting Guidelines on instruments such as the two *Covenants* and the *African Charter on Human and People's Rights*, also insist on reporting on measures taken to ensure *de jure* and *de facto* enjoyment by both women and men of all human rights and freedoms protected by the instrument and on special measures adopted to advance women and eliminate existing structural inequality and discrimination against them. This is in response to provisions such as the non discrimination clause⁸ and undertaking in the *International Covenant on Civil and Political Rights* that:

“States parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the instrument”

This means that real equality between women and men, as envisaged in the above human rights instruments, particularly women's human rights instruments, the Constitution, Equality Laws, *National Gender Policy Framework* and *Departmental Gender Policy* transcends the traditional notion of equality referred to as *formal equality*. *Formal equality* is focused on the form of treatment rather than the substance of experience arising from the treatment.

With regard to gender, the understanding was that equality was achieved when women and men were treated identically regardless of difference or accumulated disadvantage. In practical terms this meant extending *carte blanche* to women, principles and practices previously carved for and by men. This *assimilationist approach* failed to take into account material differences between women and men, including biological differences such as child bearing and accumulated socio-economic disadvantages

7. See Articles 2, 3 and 4 of CEDAW. Article H of the SADC Declaration on Gender and Development and various articles in the BPA and Beijing +5 Programme of Action.

8. Article 2(2) of the International Covenant on Civil and Political Rights states that “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, religion, political or other opinion, national or social origin, property, birth or other status”(UN 1966)

9. See similar provision in the International Covenant on Economic, Social and Cultural Rights (UN1966) quoted at the beginning of this chapter.

due to centuries of women's subordination. The result was perpetuation of women's subordination through mainly means that appear neutral on the surface but impact more harshly on women. This has been the case in all spheres of life, including the justice system where examples include male centred court facilities and language, adversarial engagement, an exclusive dialogue, masculine inclined assumptions about human behaviour and circumstances and the ability to hire a good lawyer as one of the key determinants of success.

Substantive equality, often referred to as *real equality*, on the other hand, seeks to treat all with equal consideration and to affirm the equal worth of all human beings and human dignity regardless of difference or disadvantage. This approach focuses mainly on the impact of treatment while paying some attention to form. *Substantive equality* also has a remedial component in that it does not simply stop at avoiding prejudicial impact on an already disadvantaged party or group, but also intervenes to reduce existing structural inequalities with regard to gender. The *substantive equality* approach recognises that all human beings, including women and men, are worthy of equal consideration, protection of their dignity and enjoyment of human rights, by paying attention to and addressing difference and accumulated disadvantage. This includes recognising that an individual's practical access, as opposed to theoretical access, to opportunities and control over resources, is determined by many factors. Such factors include accumulated disadvantages and unequal power relations due to historical injustices based on race, gender, disability and culture, as well as factors such as education, geographic location and social conventions.

To achieve a balanced outcome, *substantive equality* generally, and between women and men in particular, involves taking social context factors into account and modifying treatment to reduce existing systemic inequalities experienced by women and accommodating material differences between them and men. This is often referred to as *gender fairness* or *gender balance*. The challenge for the Justice System involves adapting systems and practices so that both women and men are treated in a manner that fully affirms their humanity and that none of them are treated as some deviation from the 'norm' to be accommodated only to the extent that their life experiences approximate the 'norm' against which everything is modelled.

It is only through the application of the substantive approach to equality that the *Vienna Declaration's* call for "All Human Rights for All", adopted as South Africa's own human rights principle in the *National Action Plan for the Protection and Promotion of Human Rights* can be realised. The same applies to the realisation of equal enjoyment by women and men, of all the rights and freedoms enshrined in our Constitution. This is particularly critical given the contemporary realisation that *human rights are integrated, interdependent and indivisible* and that a violation in one area impacts on enjoyment of the other human rights and freedoms¹⁰. The CEDAW Committee and Beijing Platform for Action have made this point repeatedly in respect of violence against women and poverty. This understanding also informs the *National Gender Policy framework* and *Departmental Gender Policy Statement* hence their insistence on a *systems approach*, also referred to as an *integrated approach* to gender transformation.

10. The Vienna Declaration (1993), is credited with the formal adoption of this approach by the UN and its popularisation.

A quick analysis of the international framework for the advancement of women and women's human rights yielded a list of 15 Critical Areas of Concern to be given priority in Departmental interventions regarding *Gender Mainstreaming*. The basis of the list is the 12 *Critical Areas of Concern* in the *Beijing Platform for Action* read with provisions of *CEDAW*, *SADC Declaration on Gender and Development*, the *SA Constitution*, *Promotion of Equality Act* and other standard setting instruments on women's advancement and human rights. The *Gender Mainstreaming* programme of the Department should accordingly prioritise these areas in its efforts to advance women and promote equal enjoyment of all rights and freedoms by women and men regardless of gender and other forms of diversity. *Critical Areas of Concern* identified for priority action with regard to gender mainstreaming include the following:

1. **Women, Law and the Constitution**
2. **Women, Culture, Customary Law and Practices**
3. **The Girl Child and other subjects of multiple forms of discrimination**
4. **Women and the Budget (Engendering the Budget)**
5. **Research and Information Management to support Advancement of Women**
6. **Human Rights of Women**
7. **Women and the Family**
8. **Women and Victim Empowerment**
9. **Education and Training of Women and Capacity Building**
10. **Women, Health and the Environment**
11. **Violence Against Women**
12. **Women, Poverty and the Economy**
13. **Women in Power and Decision-making**
14. **Institutional Mechanisms for the Advancement of Women**
15. **Women, Communications and the Media**

It must be noted that the separation of the *Critical Areas of Concern* is purely for emphasis and that in reality there are inextricable overlaps between them. For example, Violence Against Women is a human rights violation, a legal matter and a capacity building concern. At the same time, all rights violations, including indirect violations or indirect discrimination against women such as failure to implement positive action to eradicate existing gendered power imbalances in the other Fourteen (14) Critical Areas, constitute human rights violations with implications for each other, while constituting matters of women and the law.

Gender Mainstreaming ensures that the above dialogue informs every activity in the Department. *Gender Mainstreaming* requires that all action be preceded by two simple questions:

- What are the likely differential implications of the intended decision or action for women and men? Take into account material differences between them and accumulated disad-

vantages experienced primarily by women as well as women's diversity in terms of race, disability and other factors that compound disadvantage; and

- How can the intended decision or action be adapted not only to reduce the possibility of negative impact on women or a particular class of women, but to reduce existing systemic inequalities?

2.3 The Case for Gender Mainstreaming

The move towards mainstreaming gender rather than addressing women's issues separately from mainstream activities is a recent move which got an official UN Stamp in 1995 through the BPA. The rationale for mainstreaming gender is to ensure that the problem of gender inequality is tackled at its source, which is within all mainstream societal belief systems, values, policies, laws, structures and activities.

The idea is to transform the mainstream to ensure that it affirms gender and other forms of difference. What makes *Gender Mainstreaming* effective as a strategy is that it focuses on the mainstream decision-making systems, policies, laws and activities where unequal power relations between women and men in institutions, systems and society are rooted and reproduced. As indicated earlier, the courts in this regard have to be transformed so that the language used, the systems, processes and decision-making affirm women's experiences and related needs as much as they are responsive to men's experiences and needs.

Effective *Gender Mainstreaming* also requires that women's diversity and consequent needs are taken into account to ensure responsiveness to the needs of all women regardless of race, culture, disability, socio-economic status, HIV status and other social factors. The ultimate goal is to eradicate systemic inequalities between women and men that have been accumulated over centuries of women's oppression and to achieve equality between them and men. This includes the alignment of all societal policies, laws, values, systems and activities with the experiences and needs of women and men and to ensure that both sexes fully experience equal enjoyment of all human rights and freedoms. Only then can we talk about equal enjoyment of all human rights by women and men regardless of gender and other forms of diversity or accumulated disadvantage or power.

In addition to facilitating compliance with the country's human rights obligations, society as whole stands to benefit on many fronts from the transformation resulting from mainstreaming gender. Benefits include the promotion of peace and stability and the harnessing of the potential of all women and men so that they may contribute fully to the society's productivity and global competitiveness.

In view of the fact that women also tend to carry the burden of development, gender mainstreaming also contributes to the achievement of sustainable development and the alleviation of poverty. This is in line with the constitutional commitment to "*Improve the quality of life of all citizens and free the potential of each person*". With South Africa playing a critical role in the pursuit of NEPAD, *Gender Mainstreaming* in

the DoJCD also seeks to ensure that the Department is repositioned as a critical player in ensuring women's full participation in and benefit from efforts seeking to achieve the rebirth of the African continent.

Women constitute 52% of the population, and as such, they constitute a significant component of users of the services offered under the DoJCD, particularly through courts and related dispute resolution mechanisms. However, the representation of women in decision-making in the justice system, remains dissatisfactory although this has improved significantly since 1994. For example, women only account for 25 of the 204 judges (11%). No woman occupies a Judge President position and only 1 is a Deputy Judge President. Women account for only 2 of the 11 positions in the Constitutional Court (18%), and none of the new appointees since 1994 has been a woman. The Supreme Court of Appeal recently had its first appointment of a woman to the 19 positions on the bench. The position of black women generally and African women in particular, is worse. Although constituting the majority in the country's demography, black women only account for 11 of the 204 judges (5%). None of them holds a management position in the senior judiciary.

Better progress has been achieved with regard to advancing women in the magistracy. They occupy 394 of the 1776 (22%) judicial positions in the lower courts. Three of the 25 (12%) Chief Magistrates positions are held by women and two of the six (16%) Regional Court Presidents are women. However, significant gaps still exist even in the magistracy. For example, none of the Head of Regions in the lower courts (Cluster Heads) is a woman. Women, and particularly black women, are grossly under represented in the regional courts. Even with the progress made in the lower courts, the overall picture compares poorly with international benchmarks, and achievements made in comparative democracies.

Women are also better represented in decision-making within the National Prosecutorial Authority (NPA), and non-judicial positions in the courts, which include Registrars and Clerks of Court. However, in the senior management positions in the Department, women are grossly underrepresented. While significant strides were made between 1994 and 1999, the position has worsened since 1999. Examples in this regard include the percentage of women in Deputy Director General positions (1/6 or 17% in 1999 and 1/8 or 12.5% in 2003) and those in Regional Head positions (3/9 or 33% in 1999 and 2/9 or 22% in 2003).

Transforming the courts to ensure that service structuring and delivery is equally informed by the needs of both women and men and is accordingly responsive to the circumstances and needs of both genders, is one of the greatest challenges faced by the Department with regard to *Gender Mainstreaming*.

While significant measures have been adopted to make court services user friendly, the legacy of the historical marginalisation of women in the law and court processes, culture and facilities, persists. This is particularly felt in the handling of crimes such as rape and domestic violence. Contemporary problems are usually not rooted in the formal provisions but rather in the attitudes and resultant practices of judicial officers, prosecutors, court administrative personnel and defence lawyers. A matter that illustrates this point very clearly is the *cautionary rule* that was traditionally applied to the testimony of rape victims because of assumptions regarding the reliability of women. While the cautionary rule is no longer part of the formal law, there is evidence that the legacy of the rule persists in the minds of those who

handle rape cases. This is particularly the case in respect of child survivors of rape. Even the manner in which rape is conceptualised fails to capture fully the practical experience of rape victims.

While a number of courts have transformed their physical environments to provide a more user-friendly atmosphere which affirms the diversity of court users, progress in this area has not gone far enough. For example, only a few courts have made these improvements and even where these have been made, it was found that improvements are out of order or inadequate in meeting the needs of victims of violence and other court users, particularly vulnerable groups such as people with disabilities, poor people and those lacking in legal and general literacy. The language used in court remains masculine and obscure with the dialogue being generally exclusive. While this affects court users from all walks of life, women are more severely affected due to the accumulated social and economic disadvantages that they generally experience in society.

Problems of this nature are not only felt in respect of matters relating to gender violence. They also bedevil the maintenance system, divorce procedures and administration of Black Intestate Estates, the general civil justice system including the practices of sheriffs, principles of contract and access to legal advice and related services. For black women and other women, historically subjected to multiple injustices, the disadvantages suffered in regard to access to justice, are compounded.

The court system, as with other institutions in South Africa, is required in terms of the constitutional vision and South Africa's international human rights obligations on gender and other human rights, to transform itself. The transformation objective is not only to ensure that all forms of discrimination against women are eliminated within the system but also to reposition the courts so that they play a more meaningful role in the eradication of systemic gender discrimination and inequality elsewhere in society.

Gender Mainstreaming in the Ministry and Department accordingly, also targets the court system and service providers within. This includes ensuring visible transformation in the profile of the judiciary, administrative components and other decision-making structures in the courts. The issue of service provider profile remains a major challenge as progress on women's representation, particularly at management levels, has hitherto been rather poor, as indicated from the figures presented above. Bringing more women into decision-making processes contributes significantly to the integration of women's perspectives in mainstream societal systems and processes where key decisions are made. Notable instruments that expressly require measures to ensure women's equal participation with men at all levels of decision-making include *CEDAW*, the *BPA* and the *SADC Declaration on Gender and Development*. The obligation is also implied in generic instruments such as the *Universal Declaration of Human Rights* and the *African Charter on Human and People's Rights*¹¹.

Gender Mainstreaming efforts in the Ministry and Department should also cover constitutional development and interpretation. This is specifically provided for in *Articles 1 and 2 of CEDAW* where one of the requirements is that gender discrimination must be defined in the Constitution. *Gender Mainstreaming*

11. See Reporting Guidelines.

is also required to inform the development of new laws and review of existing ones. As indicated earlier, practically every decision or activity has to be preceded by a gender impact analysis or gender lens. This is to ensure that every decision and activity works cooperatively to advance the country's constitutional and policy objectives with regard to the achievement of (substantive) equality between women and men in every sphere of life.

2.4 The Role of the Gender Directorate

The Gender Directorate is a component of the country's *National Gender Machinery* established in fulfilment of the *country's commitments with regard to the implementation of the Beijing Platform for Action*. The mission of the *Gender Machinery* is to facilitate the achievement of gender equality through advice, capacity building, advocacy and monitoring. The machinery includes the *Office on the Status of Women* (OSW) in the Presidency, the *Commission for Gender Equality* (CGE) which is an independent Constitutional Institution, the *Joint Monitoring Committee on the Improvement of the Quality of Life and the Status of Women*, *Gender Focal Points* (GFPs) in various Departments, and other role players, including civil society. The role of the *Gender Machinery* and the country's commitment to mainstream gender into all activities are reiterated in the *National Gender Policy Framework* issued by the Presidency in 2000. It is within this context that the Gender Directorate has conducted this study primarily as a needs assessment, to provide a basis for its technical support to the various Components and independent institutions affiliated to the Department.

3. OBJECTIVES & METHODOLOGY

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in this Covenant

International Covenant on Economic Social and Cultural Rights (UN1966)

The current systemic inequalities, resulting from centuries of legalised injustice against women, cannot simply be eliminated by the identical treatment of men and women; and

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 injustices.

Gender Policy Statement

Department of Justice (RSA1998)

3.1 Scope of the Study

The study involved a *Gender Mainstreaming Assessment* of institutional practices in the Ministry and Department of Justice. This covered recent Annual Reports of the Department, interviews and an analysis of the Business Plans of the following Business Units:

- Court Services;
- Legal Services;
- Legislation and Constitutional Development;
- Masters;
- Finance;
- Human Resources;
- Public Education and Communication; and
- Information Management Systems.

3.2 Study Objectives

The objectives of the *Gender Mainstreaming Assessment* included the following:

- To identify the extent to which gender considerations are regularly integrated in all laws, organisational policies, plans, processes and activities;
- To assess the Business Plans to establish if concerns relating to the different circumstances and needs of men and women have been considered and addressed;
- To ascertain progress made with regard to the incorporation, application and implementation of the *Department's Gender Policy*;
- To establish the level of understanding and compliance with relevant national and international obligations on the advancement of women gender equality;
- To enhance the level of awareness on issues regarding equality between women and men;
- To identify gaps, including needs for capacity building; and
- To recommend measures to be implemented to enhance organisational performance with regard to gender mainstreaming.

3.3 Methodology

The methodology consisted of the following:

- Analysis of the legal and policy framework for compliance on the advancement of women, gender equality and women's human rights¹²;
- Development of a *Gender Mainstreaming Assessment Instrument*;
- Application of the instrument in conducting a review and analysis of Business Plans, reports and interviews with personnel at different levels in the Department, including senior leadership; and
- Report Writing.

The development of the *Gender Mainstreaming Assessment Instrument* was guided by principles of *Gender Mainstreaming*. The *Assessment Instrument* was developed to establish the extent to which gender is being mainstreamed in the organisation by probing into all organisational aspects to identify the manner in which women and men are currently treated and the extent to which their different needs are appreciated and steps taken to accommodate the differences. The probing also covered the extent to which women and men are equally involved in all decision-making processes and the existence of measures implemented to accelerate the eradication of existing structural and systemic inequalities, primarily experienced by women.

12. This also included literature review, which covered gender mainstreaming guidelines and reports of international agencies such as UNDP and practices in similarly placed democracies and institutions.

The assessment instrument in Table 1, see page 34, has 12 Key Result Areas (KRA'S) based on the Critical Dimensions of effective gender mainstreaming, namely:

1. Awareness;
2. Commitment;
3. Decision-making;
4. Planning;
5. Implementation;
6. Resources;
7. Capacity Building;
8. Communication and Information Systems;
9. Employment;
10. Procurement;
11. Monitoring and Evaluation; and
12. Reporting.

A number of probing questions are posed under each Key Result Area (KRA) to elicit indicators of *Gender Mainstreaming* practices or results. The application of the *Gender Mainstreaming Assessment Instrument* and questions under its 12 KRA'S in the study involved asking questions based on what should ideally be taking place in an organisation if *Gender Mainstreaming* was optimally taking place in respect of each of the critical dimensions of effective *Gender Mainstreaming* and eliciting indicators in this regard.

During the study the same Matrix was uniformly applied to all Business Units and individual respondents with minor modifications in questions to address differences in the circumstances and opportunities in each of the key areas of operation. A summary of the *Gender Mainstreaming Assessment Instrument* on which the findings of this study are based is presented in Table 1, see page 34.

Table 1: Gender Mainstreaming Assessment Instrument

KEY RESULT AREA	INDICATORS
<p>1. Awareness</p>	<p>Reference to Gender Issues and Policy</p> <p>Q: Do business discussions and documents regularly refer to gender obligations, priorities and targets? Are all managers made fully aware of their accountability with regard to <i>Gender Mainstreaming</i>?</p> <p>Q: Are there regular references to organisational and government policy/policies on gender, including justification of decisions on such?</p> <p>Reference to International Instruments</p> <p>Q: Are there regular references to instruments such as <i>CEDAW</i>, <i>BPA</i>, <i>SADC Declaration on Gender and Development</i> and the <i>Addendum on Violence Against Women</i>?</p> <p>Reflection of Compliance Obligations</p> <p>Q: To what extent are all the <i>12 critical Areas of Concern in the BPA</i> referred to in business processes and do plans and decision-making processes reflect commitment to giving priority to justice and constitutional issues in the <i>BPA</i>, <i>CEDAW</i> and the <i>SADC Declaration on Gender and Development</i>?</p>
<p>2. Commitment</p>	<p>Policy</p> <p>Q: Is there regular reference to gender mainstreaming, gender transformation and related legal/policy obligations in all processes, including decision-making?</p> <p>Q: Is there specific organisational policy on all key gender concerns?</p> <p>Q: Are practices that contravene or undermine the commitment towards the advancement of women and promotion of gender equality openly sanctioned and achievements rewarded?</p> <p>Structure and Workforce Profile</p> <p>Q: To what extent are women involved at the highest level of decision-making in all processes?</p> <p>Q: Does the structure and decision-making process encourage equal participation for women?</p> <p>Q: What is the current workforce profile with regard to men and women?</p> <p>Advocacy</p> <p>Q: Does the leadership play a prominent and consistent advocacy role on women's issues and gender equality?</p>

KEY RESULT AREA	INDICATORS
	<p>Q: Are there conscious efforts that encourage value transformation to affirm women and effect individual and organisational behaviour modification in line with this?</p> <p>Finances</p> <p>Q: Are there any measures that have been implemented to engender the budget? If so do expenditure patterns in the organisation, including <i>per-capita</i> expenditure, reflect a commitment to gender balance and adequate resourcing of gender transformation and related programmes?</p>
<p>3. Planning</p>	<p>Strategy/Plan(s)</p> <p>Q: Is there a <i>Gender Mainstreaming</i> strategy or plan which incorporates a clear vision and values underpinning gender transformation?</p> <p>Q: Are there specific organisational/component goals/targets regarding gender transformation?</p> <p>Q: Does the organisational mission, vision and values reflect an integration of gender equality considerations?</p> <p>Q: Are gender considerations (involving specific goals) demonstrably/consciously addressed/integrated in the strategic and other plans/planning processes?</p> <p>Gender Analysis</p> <p>Q: Are questions regarding gender impact raised consistently in the process of planning?</p> <p>Q: Is Planning Data disaggregated by gender and the intersection of gender with compounding factors such as race, disability and other socio-economic disparities in society?</p> <p>Consistency</p> <p>Q: Are gender issues in general programmes or projects regularly raised throughout the different project phases, from project design to monitoring and evaluation?</p>
<p>4. Policy and Decision-making</p>	<p>Women's Equal Participation in Decision-making</p> <p>Q: Are women placed in positions and structures that allow them to participate fully in decision-making?</p>

KEY RESULT AREA	INDICATORS
	<p data-bbox="402 243 1007 323">Q: What is the extent of women's participation at the highest level of decision-making and what special measures are being implemented to accelerate progress in this regard?</p> <p data-bbox="402 334 1007 414">Q: Does the current structure(s) and decision-making processes encourage equal participation for women and men. If not, what special measures are in place to foster women's participation in the short term and in the long term?</p> <p data-bbox="402 424 1007 474">Q: : Are women as service users fully consulted in equality with men in all decision-making processes?</p> <p data-bbox="402 511 617 533">Policy and Legal Compliance</p> <p data-bbox="402 541 1007 621">Q: Does the leadership insist on alignment of all decisions with legal/policy compliance obligations on women's advancement, women's human rights and gender equality?</p> <p data-bbox="402 632 1007 712">Q: Are there any risk management systems and do these incorporate the reduction of non-compliance with policy and law on the advancement of women and the promotion of gender equality?</p> <p data-bbox="402 748 601 771">Responsiveness to Women</p> <p data-bbox="402 778 1007 858">Q: Is decision-making supported by gender disaggregated data that accurately reflects the position and consequent needs of women from various racial, socio-economic and other backgrounds?</p> <p data-bbox="402 869 1007 1034">Q: What measures are in place to mediate the negative impact that many seemingly neutral decisions and practices have on women? Do special measures seeking to mediate unequal gender relations also take into account and address additional disadvantages faced by black women, particularly African women, women with disabilities and other victims of multiple discrimination?</p> <p data-bbox="402 1070 586 1093">Organisational Priorities</p> <p data-bbox="402 1100 1007 1150">Q: Are women's concerns reflected in organisational priorities as indicated in annual budget and implementation processes?</p> <p data-bbox="402 1161 1007 1301">Q: Do decision-making policies and processes encourage policy compliance on gender and other policies? For example, do decision makers regularly consider what the implications are of decisions they are about to make? Are proposed decisions that violate policy or undermine progress on gender equality regularly referred back?</p> <p data-bbox="402 1338 632 1360">Law Making and Interpretation</p> <p data-bbox="402 1368 1007 1388">Q: Do legislative priorities and the legislative process give priority to women's</p>

KEY RESULT AREA	INDICATORS
	<p>human rights concerns as reflected in <i>CEDAW</i> and related human rights instruments? In particular, are the <i>15 Critical Areas of Concern on Women and Gender issues</i> reflected in the legislation programme and achievements every year? If so what has been achieved since the reading of the country's <i>CEDAW Report</i> in 1998?</p> <p>Q: Are all laws that are passed annually, as well as existing laws subjected to a gender equality (impact) analysis? If so what have been the achievements since 1998? Is this also extended to the certification of laws, state contracts and advice given to the state by the State Law Advisors and Attorneys?</p> <p>Q: What measures have been implemented to test the country's Constitution against <i>CEDAW</i> and the Country's National Commitments regarding the implementation of the BPA?</p>
5. Implementation	<p>Gender in Programmes and Projects</p> <p>Q: What measures have been put in place regarding the creation of an environment that affirms women and promotes gender equality?</p> <p>Q: Do women and men benefit equally from current programmes and services?</p> <p>Q: What processes are being implemented to transform gender relations to equalise service and opportunities to address inequality between men and women?</p> <p>Q: Are women's concerns, particularly those singled out in <i>CEDAW</i>, the <i>BPA</i>, <i>SADC Declaration</i>, <i>Equality Act</i>, <i>Preferential Procurement Policy Framework Act</i> and <i>Employment Equity Act</i>, reflected in Departmental programme implementation priorities?</p> <p>Beijing and CEDAW Priorities</p> <p>Q: Do programmes and projects priorities on gender transformation address all of the <i>15 Critical Areas of Concern</i> regarding the advancement of women and realisation of women's human rights extracted from international and national human rights framework?</p> <p>Q: Does project content cover all key issues under each Critical Area and the 12 dimensions of <i>Gender Mainstreaming</i> outline as key Result Areas in the <i>Assessment instrument</i>?</p> <p>Integrated and Holistic Approach</p> <p>Q: Is the implementation of gender programmes and interventions a deliberate systematic goal driven, holistic and integrated process that is collectively coordinated and monitored by the senior leadership?</p>

KEY RESULT AREA	INDICATORS
	<p>Special Programmes</p> <p>Q: What special programmes are in place for accelerating the advancement of women and women's empowerment?</p> <p>Q: What programmes are in place for involving men and transforming male attitudes and behaviour?</p> <p>Mainstreaming Equality and Other Human Rights</p> <p>Q: Are human rights and equality considerations mainstreamed and factored into all decisions, systems, processes and practices?</p>
6. Resources	<p>Engendering Budget</p> <p>Q: Is consideration given to per capita expenditure between male and female beneficiaries of different races, disability and others in general budgets?</p> <p>Q: Are questions regarding gender equality impact regularly raised in the budget process and are measures implemented to equalise expenditure and related benefits?</p> <p>Human and Other Resources</p> <p>Q: Does the component have a <i>Gender Focal Point</i> (GFP) and how often does the leadership interface with the <i>GFP</i>, <i>Gender Directorate</i> and external experts?</p> <p>Q: What structures are in place to coordinate gender programming?</p> <p>Q: What percentage of the budget is allocated to gender transformation work, including the budget of the gender Unit, expertise, literature and coordinating mechanisms?</p> <p>Funding For Special Programmes</p> <p>Q: What budget has been allocated to capacity building on gender mainstreaming, related skills and other programmes to facilitate institutional transformation?</p> <p>Q: What budget has been set aside for special programmes on women's empowerment in all aspects of the Department's work, including accelerated leadership development, access to justice, victim support and empowerment, economic empowerment and professional and technical skills development?</p>

KEY RESULT AREA	INDICATORS
<p>7. Capacity Building</p>	<p>Education and Training on CEDAW and Other Obligations</p> <p>Q: What measures have been implemented to familiarise senior managers and the rest of personnel with the provisions of <i>CEDAW</i> and specific obligations for the Unit?</p> <p>Q: What other instruments have been dealt with and have obligations for each component been elicited and if so, do these cover all of the <i>15 Critical Areas</i> and the various gender issues emerging from relevant articles as well as the <i>12 Dimensions of effective Gender Mainstreaming</i> outlined in the <i>Assessment Instrument</i>?</p> <p>Q: Are there any long term skills development measures that seek to empower managers and staff with effective gender mainstreaming skills, including gender analysis, equality and diversity management as well as change leadership?</p> <p>Q: Are there any interventions seeking to involve men and transform male perceptions and behaviour as part of gender transformation?</p> <p>Learning Resources and Aids</p> <p>Q: Are members of the component familiar with the text of the <i>Gender Policy</i> of the Department, <i>National Gender Policy, Equality Laws, Constitution and key human rights instruments on women's advancement</i> and the promotion of gender equality. Do they know their obligations?</p> <p>Technical Support and Expertise</p> <p>Q: Does the component habitually engage in discussions with or seek advice from the <i>GFP, Gender Directorate</i> and external experts on gender?</p> <p>Specialist Skills and Professional Development</p> <p>Q: What programmes or resources are in place for accelerated professional development of <i>Gender Focal Points</i> and specialist <i>Equality or Equity Managers</i> to strengthen their technical input and gender management support?</p> <p>Q: What measures are in place to accelerate women's skills, professional and leadership development to support their entry, advancement and retention in areas where they are currently underrepresented?</p>

KEY RESULT AREA	INDICATORS
<p>8. Communication / Information</p>	<p>Internal and External Communication Processes</p> <p>Q: Does communication consciously address the situation of women and their concerns (how)?</p> <p>Q: Are women consulted equally with men in decision-making processes (on what and how often)?</p> <p>Q: Does all departmental communication (speeches, newsletters, press releases, etc) consistently convey the importance of women's advancement and the promotion of gender equality?</p> <p>Knowledge Generation and Information Management</p> <p>Q: Do research interventions and management systems, including information technology, facilitate a better understanding of gender concerns and enable the assessment of progress made on the advancement of women and women's enjoyment of all human rights?</p> <p>Q: What programmes are in place to measure progress on each of the <i>15 Critical Areas</i> identified earlier and on all <i>12 dimensions of the Assessment Instrument</i>?</p> <p>Q: Are women's concerns appreciated and given priority in research and/or knowledge generation?</p> <p>Readily Available Reliable Indicators</p> <p>Q: Are accurate gender disaggregated statistics also broken down in terms of race, disability and other grounds for multiple forms of discrimination, and are these regularly maintained and readily available?</p> <p>Q: Do such statistics provide baseline information on the extent of systemic and structural gender inequality and discrimination in the Department's scope of work and society, with specific reference to the various gender issues under each of the <i>15 Critical Areas of Concern</i>?</p>
<p>9. Employment</p>	<p>Gender Profile and Trends</p> <p>Q: Does the organisational profile reflect a gender balance at all levels and in all occupational categories and do current trends reflect significant movement towards achieving this?</p> <p>Q: Are women and men equally involved in employment related decision-making, including recruitment and appointments?</p>

KEY RESULT AREA	INDICATORS
	<p>Legal and Policy Compliance and Planning</p> <p>Q: Do organisational practices reflect a full understanding of and commitment to comply with all the provisions of the Employment Equity Act and related national and international legal and policy frameworks?</p> <p>Q: Is there a holistic <i>Employment Equity Plan</i> with clear targets and time-frames for the empowerment and advancement of women and is such plan integrated in the main strategy?</p> <p>Q: Is the plan rigorously adhered to in all employment practices, from recruitment to retention, and is non-compliance backed by appropriate sanctions? Does this include clear responsibilities and accountability for performance on gender transformation?</p> <p>Q: What changes have been effected in the work place to affirm gender diversity and to comply with relevant law and policy?</p> <p>Q: What policies are in place to support organisational transformation and gender equity in the workplace and are such policies rigorously enforced?</p> <p>Special Measures and Skills Development</p> <p>Q: What special measures are in place to accelerate women's recruitment, development, advancement and retention at all levels and in all occupational categories? (This includes the judiciary and the legal profession.)</p> <p>Q: What is being done to align skills development initiatives with employment equity objectives relating to the advancement of women?</p> <p>Q: What measures are in place to enhance diversity awareness and management and to enhance change management capacity and resilience at all levels?</p> <p>Monitoring and Evaluation</p> <p>Q: Have decision-making and performance management systems been adjusted to support effective progress tracking and accountability on targets set for the advancement of women and related organisational transformation?</p> <p>Q: Is progress monitored regularly and management advised to change course where necessary?</p>
<p>10. Procurement</p>	<p>Contractor Profile</p> <p>Q: Are women and men from all races benefiting equitably from tenders and other Departmental or Component contractual opportunities?</p>

KEY RESULT AREA	INDICATORS
	<p>Legal and Policy Compliance</p> <p>Q: Are all managers and personnel involved in procurement informed on relevant law and policy obligations regarding women's empowerment and the promotion of gender equality?</p> <p>Q: Have all organisational systems been aligned with relevant legal and policy obligations? This includes standardisation of practices, existence of Departmental policy and standards and gender disaggregated data to generate indicators for tracking progress?</p> <p>Q: Have targets been set for increasing the number and value of contracts received by women, taking into account race and other forms of diversity?</p> <p>Special Programmes</p> <p>Q: What special programmes are being implemented to accelerate women's full participation in state contracts?</p> <p>Q: Do special programmes take into account and address additional barriers to women accessing state contracts that are based on race, disability and other factors that compound women's inequality and disadvantage?</p>
<p>11. Monitoring and Evaluation</p>	<p>Disaggregated Data</p> <p>Q: Are service, employment and procurement statistics disaggregated in terms of gender?</p> <p>Q: Have adjustments been made to information and statistics collection to ensure that there is baseline data which is regularly available, with accurate indicators for tracking progress on all key issues under each of the 15 <i>Critical Areas of Concern</i> on women's human rights?</p> <p>Accountability</p> <p>Q: Are gender indicators, targets and benchmarks incorporated in performance agreements of management and general personnel?</p> <p>Q: Are questions regarding performance on gender targets raised constantly by the leadership?</p> <p>Risk Management and Benchmarking</p> <p>Q: Are monitoring systems and practices aligned with compliance obligations under international instruments and policies?</p> <p>Q: Are there any checks and balances that facilitate early detection of non-compliance with, or potential violation of international and national legal and policy obligations?</p>

KEY RESULT AREA	INDICATORS
12. Reporting	<p>Gender Disaggregated Records and Reports</p> <p>Q: Are gender disaggregated records kept on all key operations and are these readily available for swift compilation of accurate reports?</p> <p>Q: Are reports on gender and the advancement of women regularly required, submitted and discussed in all key management structures?</p> <p>Standardised Reporting on Gender</p> <p>Q: Are all managers fully aware of reporting obligations under various international and national instruments and have they aligned their internal reports with this?</p> <p>Q: How often are gender issues mentioned in general reports and do the mentioned issues cover all of the 15 Critical Areas of Concern and relevant issues under each area? Furthermore are gender concerns integrated in all items or segregated and addressed as an add-on matter?</p> <p>Q: Are reports standardised and aligned with agreed goals and targets?</p>

The *Gender Mainstreaming Assessment Instrument* has been developed on the basis of a synthesis of ideas extracted from *Guidelines for the Preparation of Country Reports* on international instruments such as CEDAW, the BPA and the SADC Declaration on Gender and Development, *Gender Mainstreaming Guidelines*, formulated by the various international agencies and *Principles of Organisational Behaviour*¹³.

The theory behind the *Gender Mainstreaming Assessment Instrument* is that an *organisation operates as a system* and that through an examination of the *behaviour of an organisation*, it is possible to ascertain the *gender character* of or the extent to which *Gender Mainstreaming* is practiced in that organisation. The underlying assumption is that an analysis of *organisational behaviour* (or *institutional character*) can provide pointers as to whether or not gender is being mainstreamed in that organisation. It can also indicate the extent to which such mainstreaming is succeeding in transforming gender relations in the organisation and the sector where that organisation operates within the broader society. This will be reflected in an organisation's structure and policies (including mission, vision and value statements); its strategic and operational plans; all publications and other forms of corporate and public communication; its decisions and decision-making systems and participation therein; the behaviour of the leadership and ordinary members; its composition; its reward and disciplinary practices; and its staff turnover trends.

13. Developed by T. Madonsela, J. Maluleke, and S Pillay 2002.

The *systems approach* to organisational behaviour incorporates an appreciation of the fact that what happens in any part or aspect of the organisation impacts on other parts of the organisation. In this regard, organisational components such as structure, policies, processes and actors within and outside the organisation determine organisational behaviour and the impact of such behaviour on women and men. This means that certain *gender behavioural traits* are expected from an organisation where gender considerations are routinely integrated in all decisions and operations, and that such trends are not likely to be indicated in an organisation where gender mainstreaming is not a core value.

The theory assumes that the composition of an organisation, the beliefs of the people in it and outsiders who play a critical role in its decision-making processes determine organisational outlook. The organisational outlook will include organisational priorities, values and understanding of who the main customers are, what needs to be done to meet the needs of the identified customers, and ultimately who and what is worth spending limited organisational resources on.

Another element of the *Assessment Instrument* is the understanding that people's beliefs, values and inputs into the decision-making processes and operations of the organisation are influenced by their perceptions or 'world view'. Such perceptions or paradigms are shaped by each person's years of socialisation before and after entering the organisation. Social factors such as race, sex, culture, religion, class, geographic location, age, exposure to information, and an understanding of what is regarded as important by those in power (eg political and administrative heads), play a major role in shaping a person's behaviour in, and contribution to an organisation. This includes a person's perception of which customers matter, what are their needs and how best to respond to such needs, including what to prioritise and what to spend most of the limited resources on.

With regard to the gender character of an organisation, or the gender dimensions of its behaviour, the factors outlined above are best summarised in what gender activists refer to as a *Gender Tree*. The *Gender Tree* depicted in *Figure 1* below, presents a framework for understanding the gender character or behaviour of an organisation.

This is one way of eliciting indicators on the extent of *Gender Mainstreaming* in an organisation. *Gender Mainstreaming*, as indicated earlier, consciously intervenes into all organisational aspects, including policies, laws, processes and activities to ensure that each of these is based on a proper understanding of the differential circumstances and consequent needs of women and men from diverse racial, cultural, class and other backgrounds. It also includes efforts to respond meaningfully to these different needs while progressively eradicating inequality between women and men.

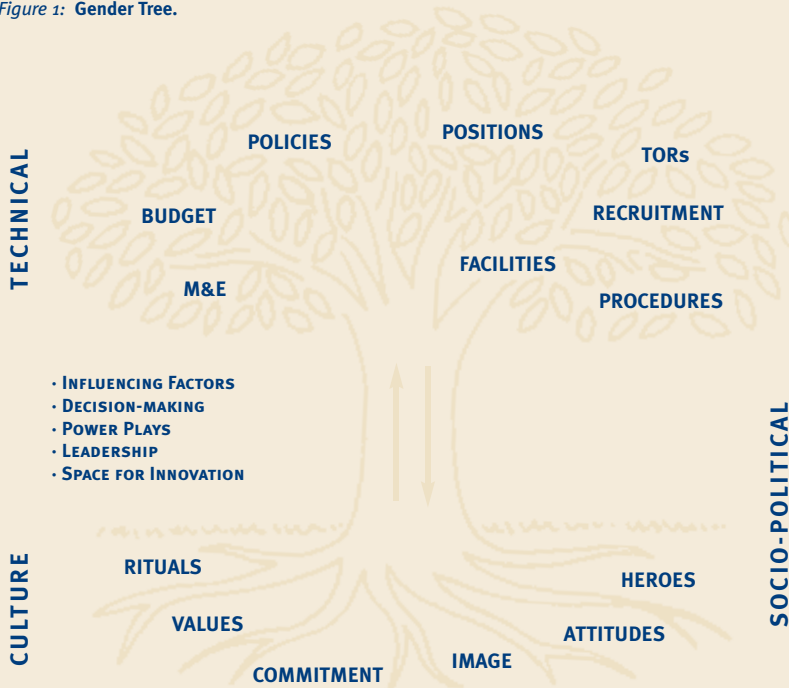
The *Gender Tree* is based on the understanding that an organisation is like a tree with *three main dimensions* that work together to determine its gender character or the extent to which it progressively operates to eradicate inequality between women and men.

The first is a cultural dimension. This is likened to *roots of a tree* and covers *key norms and values* indicating what the organisation stands for and how it wishes to operate. This is expressed through symbols, slogans, leadership behaviour and staff behaviour. This dimension also includes relationships and change processes. (An example in this regard is the new South African Coat of Arms which carries a message strongly indicating that diversity is valued.)

The second is a socio-political dimension. This is likened to the *stem of a tree* and covers *policy influences, decision-making and space allowed for individual contributions*, including involvement in decision-making. For example, the *Batho Pele* White Paper clearly indicates that the Government values putting customers first in all decisions and redirecting resources to address inherited unequal distribution of public service resources and benefits, while pursuing global competitiveness.

The third is a technical dimension. This is likened to the *branches, leaves and fruits of a tree* and is informed by the roots and stem. This dimension covers *policies, action tasks, responsibilities and expertise*. An example in this regard is tender specifications that indicate that teams should be gender and racially balanced and that experts within such teams should embrace non-sexism and non-racialism.

Figure 1: Gender Tree.



The development of the Assessment Instrument depicted in *Table 1* above also drew from the Model depicted in *Table 2* below. This model focuses on the various phases through which an ideal organisation evolves as it implements Gender Mainstreaming.

Table 2 Gender Mainstreaming Continuum

Extent to which gender considerations are integrated in every part of an organisation

(Adapted from: Verona and Gurung 2001: 46)

I
The organisation reflects roles and values of women and men in society. Both women and men are employed but mainly do different types of work. The services of the organisation are carved on the experiences of and operate mainly in response to the needs of men.
II
In the organisation it is recognised that there are differences between women and men in terms of access to opportunities, resources and services offered by the organisation. It is also realised that women and men have different perceptions and interests owing to their position in society. Problems resulting from gender differences are identified.
III
In the organisation it is recognised that there are underlying and hidden causes of inequality between women and men which are being identified. The observed differences are considered undesirable, unjustifiable and unfair.
IV
In the organisation willingness exists to take action to reduce undesirable, unjustifiable and unfair discrimination. This includes indirect discrimination.
V
In the organisation actions and measures are taken at all levels to ensure fair and just distribution of tasks, responsibilities, resources, benefits and contractual opportunities between women and men. This includes eradicating gender inequalities in the services delivered by the organisation, thus ensuring that women and men benefit equally from resources employed, policies made, decisions taken and activities implemented.
VI
In the organisation both women and men feel at ease in the working environment, which is gender balanced and fair with both sexes equally represented at all levels of decision-making. This is also evident for all working for the organisation through outsourcing or prioritising public partnership and equal opportunities. Male and female customers from diverse racial socio-economic and other backgrounds receive services that are tailored to their experiences and related needs. They are satisfied with the responsiveness of services. Efforts are taken to maintain this situation.

The conceptualisation of the *Gender Mainstreaming Assessment Instrument* was informed by the *National Gender Policy Framework* and in particular by the following Four Pillar Gender Management System:

Table 3: Gender Mainstreaming System (GMS)

ENABLING ENVIRONMENT	GMS PROCESSES	GMS STRUCTURES	GMS MECHANISMS
<ul style="list-style-type: none"> • Political Will • Legislative and Administrative Framework • Active involvement of civil society • Adequate human and financial resources • Women in decision-making positions at all levels 	<ul style="list-style-type: none"> • Setting up GMS Structure and Mechanisms • Developing and Implementing a National Gender Action Plan • Mainstreaming Gender in the National Development Plan and Departments 	<ul style="list-style-type: none"> • OSW Mechanisms • Gender Coordinating Structures • Gender Focal Points • Parliamentary Women's Caucus • Commission For Gender Equality 	<ul style="list-style-type: none"> • Gender (Equality) Analysis • Gender Training and Education • Management & Information System • Performance Appraisal systems

4. FINDINGS

When you presume you are not treating me as the person I am; when you do not presume you are treating me as the person I am in a minimal sense; when you recognise and respond to the person I am; you are treating me as the person I am in a maximal sense.

Spelman E 1978

The findings of the study are summarised under two categories. These are: *General Observations* and *Specific Findings on Business Units*.

4.1 General Observations

1. Significant strides have been made in the Ministry and Department of Constitutional Development with regard to effecting gender transformation in pursuit of the constitutional vision of a non sexist and non racial society based on human dignity, equality and the advancement of human rights and freedoms and where the quality of life of all citizens is improved and the potential of each person is freed ¹⁴
2. Measures have been taken to effect gender transformation over the last nine years. These have covered a broad spectrum of issues in the area of law and policy, planning, placement of women in senior decision-making positions and the recruitment of women into management and professional positions, from which they were previously excluded. There have also been efforts to address gender and women's concerns in internal and public communication and to effect visible changes in service delivery systems, particularly the courts and prosecutorial.

Specific measures have included:

- Varying degrees of awareness reflected in discussions on issues such as appointments within the Magistrates Commission, Lower Courts Management Committee, National Prosecutorial Authority and some of the Business Units in the Department;
- An open commitment to implement measures to advance women and promote gender equality. Examples include the *Gender Policy Statement* of the Department, *Speeches* by the leadership, including the Ministers and Director General and *Reports* of the Department and affiliated institutions;

¹⁴ Adapted from the *Preamble and Founding Provisions of the Constitution*. (The Constitution of the Republic of South Africa, 1996).

- Mainstreaming women's concerns and gender issues in the Department's first Strategic Plan: *Justice Vision 2000* and some women's concerns are articulated in some of the *Business Plans* of the present Business Units and the Department's *Employment Equity Plan*;
 - Policy interventions in pursuit of gender transformation including the Department's *Gender Policy Statement* and the articulation of gender issues in Departmental policies such as the *Employment Equity Policy, HIV/Aids Policy, Disability Policy and Human Resource policies*, including policy regarding starting times for work in the Department;
 - Law reform to address women's concerns and eliminating some of the justice concerns of women relating to the following issues:
 - Recognition of customary marriages;
 - Maintenance;
 - Gender violence with particular reference to management of domestic violence cases and sentencing in sexual violence; and
 - Family law with particular reference to divorce.
3. Incomplete initiatives on measures that seek to deal with women's enjoyment of human rights in respect of:
- Sexual offences against children and others;
 - Victim's rights and empowerment;
 - Succession under customary law;
 - Legal advice and related services;
 - Equality and non discrimination in all spheres of life; and
 - Freedom from trafficking in women and children.
4. Administrative improvements in some of the courts that seek to improve access to justice and user friendliness, covering:
- Victim protection services, including one way mirrors, television circuits, separate waiting rooms and automated screening services for rape cases;
 - Victim support services, including waiting rooms, information services and NGO provided services, such as counselling for victims of violence;
 - Stress management services for court personnel to enhance empathy;
 - Improved court facilities and environments which are less intimidating and accommodate some of the needs of Women with Disabilities;
 - Improved language services, including the accommodation of disability;
 - Public education and information services on various aspects of the law and justice processes;
 - Better coordination with other role players, including the police, probation officers and civil society agencies;
 - Court improvements in preparation of the implementation of Equality Courts; and
 - Bringing courts physically closer to some of the historically neglected communities;

5. Some improvements have been effected in resource allocation towards services that are mainly used by women. This includes a special allocation towards maintenance administration. It also includes the setting up of a Gender Focal Point at a very senior level (directorate), appointment of gender personnel at various levels in some of the regions of the Department and establishment of a Gender Committee attached to the Lower Courts Management Committee.
6. Some effort has gone towards capacity building to improve the ability to understand and tackle gender and women's concerns. Initiatives include training provision to a number of court personnel including judicial officers, covering matters such social context, diversity, awareness, domestic violence and general equality. The prohibition of unfair discrimination and training of some managers and admin staff on *Batho Pele*, employment equity and affirmative action, HIV/AIDS, disability and diversity management has also taken place.
7. Some attention is paid to employment equity principles and aspects of the Preferential Procurement Policy Framework Act, in the handling of procurement, and to some level of monitoring evaluating and reporting on progress made in the implementation of the few programmes in place on women and gender.

Significant gaps, however, exist with regard to the following:

Awareness

1. There is inadequate awareness of the international and national frameworks for women's human rights and appreciation of the full nature and scope of the compliance obligations applicable to the Ministry and Department regarding the advancement of women and promotion of gender equality. Similar gaps exist with regard to full appreciation of the different circumstances and needs of women and men from diverse racial and other backgrounds. Due to this, seemingly neutral decisions and operations within the Ministry and Department tend to impact negatively on women, and this will impact further due to race, disability and other factors that underpin multiple injustices.
2. The current level of dialogue in the Ministry and Department and resultant initiatives on the advancement of women's human rights do not cover the full spectrum of Critical Areas of Concern captured in the *Beijing Platform for Action (BPA)*, the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, the *SADC Declaration on Gender and Development and Addendum on the Prevention and Eradication of Violence Against Women*, the *Bill of Rights in the Constitution*, the *Promotion of Equality and Prevention of Unfair Discrimination Act* and *Prevention of Unfair Discrimination Act, Employment Equity Act, Preferential Procurement Policy Framework Act*.

In addition, there needs to be more observance of government policy on women empower-

ment and the transformation of the public service, including the *Batho Pele White Paper* and the *National Policy Framework For Women's Empowerment and Gender* and the *National Skills Development Strategy Equality*

Further, there are Departmental policy pronouncements captured in amongst others, *Justice Vision 2000*, the *Gender Policy Statement*, *Employment Equity Policy*, *National Commitments on the Implementation of the BPA* and *SADC Addendum on Violence Against Women and Children*, that need to be better observed.

3. Not much dialogue or action is taking place on *Critical Areas of Concern* such as the following:
 - Women and the Constitution;
 - The relationship between gender equality and customary law as undertaken in the ratification of CEDAW;
 - Women and the law broadly, including the Civil Justice System (other than Family Law);
 - Women's human rights broadly, as articulated in the two Human Rights Covenants, CEDAW, the Constitution and other instruments;
 - Women and culture, including customary law practices (other than Recognition of Customary Marriages);
 - The placement of women in decision-making positions;
 - Engendering the budget;
 - Research and information management to support efforts to advance women;
 - Poverty and women's economic empowerment;
 - Women's health; and
 - Women and the environment .

4. Areas covered in the gender dialogue within the Ministry and Department are not only narrower than the 15 Critical Areas of Concern derived from the international and national Legal and Policy Compliance Framework on women's advancement and the promotion of gender equality, but also cover a very narrow spectrum of compliance issues under each *Critical Area of Concern*. For example, with regard to violence against women, focus has primarily been on general public awareness and the Domestic Violence Act. Departmental initiatives have not consistently captured all the issues outlined in *CEDAW General Recommendations 12 and 19*, the *SADC Addendum on Violence Against Women and Children*, *Promotion of Equality Act* and other legal and policy frameworks. An example of an issue that is consistently left out is the issue of *Trafficking in Women and Children*.

5. Even on issues that are covered in programming, there is often lack of follow through or focussed implementation. For example, progress made in following through with law reform directed at gender discrimination in the provisions of the Black Administration Act relating to succession under customary law, seems to be omitted from departmental priorities (the Bill was returned by parliament for further consultations nearly 5 years ago, 1998). The implementation of the Maintenance Act is an example of poor follow through on laws already passed. This Act, the Domestic Violence Act and the Family Court Project are also examples of poor monitoring and evaluation of fairly

meaningful interventions. Another example relates to gender budgeting. Although the Department has committed itself to Gender Budgeting, a commitment noted by SADC and the United Nations, no meaningful measures are being taken towards gender budgeting.

6. Some of the legal and policy interventions fail to respond to all the critical elements of the problem or compliance obligations in terms of CEDAW and other women's human rights instruments. An example in this regard is the *Recognition of Customary Marriages Act* which leaves unanswered the question of proprietary rights for women married under Customary Law before the enactment of this law, a condition that falls short of compliance with CEDAW, the BPA, SADC Declaration on Gender and Development and other human rights obligations.
7. Most of the issues dealt with under the *Critical Areas of Concern* are often dealt with uni-dimensionally and usually seen as isolated women's concerns without appreciation of the structural gender relations and bias within organisational systems, values and practices and the implementation of measures aimed at broader organisational transformation in response to this. For example, gender violence is not systematically integrated in general departmental planning and processes on policy review, budgets, capacity building, communication and information management systems, human resource planning and management, procurement, monitoring and evaluation and regular reporting. There is not a holistic strategy that responds to the multifaceted nature of the problem of gender violence through multifaceted measures in response to each dimension of the problem. This observation applies in respect of the other 14 *Critical Areas of Concern* referred to earlier.

Commitment

1. There is generally a serious gap with regard to aligning policy development and planning processes within the Ministry and Department and its Components with international and national compliance obligations on gender. A gap exists with regard to the implementation of relevant policies whether internal, national or international. Evidence of this weakness includes:
 - A general lack of references to international and national legal and policy frameworks or compliance obligations there-under in Departmental and Component policies or plans. For example, Plans of Business Units in the Department do not make any reference to the Departmental *Gender Policy Statement* or any other superior policy or legal instrument and compliance obligations under such instrument. An exception is some cursory reference to the *Employment Equity Act* and *Preferential Procurement Policy Framework Act* in some of the Business Plans;
 - A general absence of a culture of justifying decisions or rejecting proposals on the basis of international and national legal and policy frameworks and compliance obligations on women's advancement and human rights. Decisions that contradict own policies or national or international obligations on women's advancement and human rights are often made

without reference to these frameworks or obligations there-under. Appointments present an excellent example in this regard;

- Absence of any meaningful action taken towards engendering the budget despite the undertaking made in this regard in the *National Commitments regarding the Implementation of the BPA and in the Department's Gender Policy Statement*; and
 - The absence of implementation strategies or conscious implementation efforts on the Department's *Gender Policy Statement, National Gender Policy Framework, Departmental Compliance with Gender Provisions of the Promotion of Equality Act, the Preferential Procurement Policy Framework Act, Skills Development Act & Strategy, Batho Pele* and other policies with critical gender dimensions.
2. The Ministry and Department appear to have no clear vision underpinning gender transformation and other equality initiatives. While there is a general sense that something needs to be done to address women's needs, there does not seem to be much appreciation of the link between this and the eradication of women's inequality within the sector and society as a whole. Furthermore, initiatives do not target the transformation of all organisational aspects to affirm women and gender equality.
 3. There is inadequate advocacy for holistic and systematic gender transformation at leadership levels. This includes frequency of leadership references to organisational commitments regarding the advancement of women, contribution to the delivery of women's enjoyment of all human rights and freedoms and the achievement of gender equality in the Ministry and Department and all spheres of life. It also includes paucity leadership of pronouncements on key objectives to be achieved and practices to be changed¹⁵.
 4. The current organisational structure and decision-making model used by the Department undermines efforts to promote women's participation at all levels of decision-making and does not ensure that all decisions are in line with gender compliance obligations arising from international and national legal policy frameworks. The rank-based representation in key decision-making structures undermines equitable representation of women in such structures because they are grossly under-represented at top and senior management. Another aspect of weakness in decision-making is that there are no checks and balances that ensure that proposed decisions that violate gender and other legal and policy compliance obligations, are referred back.
 5. There is fragmented and often ad hoc implementation of interventions on women and the promotion of gender equality. For example, the various plans contained disparate provisions on common issues such as employment equity, procurement equity and resource allocation towards gender programming. Some had no gender provisions on these issues. Most of the gender or women's empowerment issues outlined in business plans and annual reports, did not translate into sus-

¹⁵ This compares poorly with the President's visible advocacy for women's empowerment for women's human rights, as may be gleaned from his key addresses, including State of the Nation addresses.

tainable, holistic transformation programmes, but rather tended to be ad hoc. Examples include violence against women, maintenance, family court project and initiatives relating to achieving user-friendly courts.

6. There is a limited understanding of the content and accordingly compliance action required under some of the policies. An example in this regard is the fact that employment equity transcends representivity and gender transcends issues that specifically relate to women. On the broader question of *Gender Mainstreaming*, no evidence was found indicating organisational appreciation of the need to mainstream gender or integrate gender considerations into all aspects of the Ministry and Department and as such there seemed to be no goals or targets in this regard. In fact attitudes, structures and practices revealed that the average person in the organisation did not appreciate that many seemingly neutral practices operated to discriminate indirectly against women due to the accumulated socio-economic disadvantages and systemic inequality experienced by women in society with the position of black women and other victims of multiple historical injustice being more acute. This was accompanied by apparent indifference to the reality that structural inequality within the socio-economic stratification in society replicates itself in all organisations, including the Ministry and Department, unless deliberate positive interventions were taken to address the historical imbalances. An example in this regard is a response from one of the Business Units that said there were no gender problems because everyone was new and that similar treatment and therefore equal treatment was extended to women and men. They further stated that gender concerns were being addressed through a specific project on maintenance. Another example was the apparent lack of appreciation that rank based participation in decision-making automatically prejudiced women, due to their under-representation in most senior positions.
7. There is a lack of social context awareness, particularly, appreciation of the position of women in society, their experiences in the justice system due to their accumulated socio-economic disadvantages, and the fact that the court structures and processes that were initially modelled against the experiences of men as primary users, fail to accommodate the experiences of women that are not shared by men. There is also failure to appreciate that seemingly neutral decisions, plans or practices, often operate in a manner that discriminates indirectly against women by perpetuating existing structural and systemic inequalities between women and men in society.

Planning

1. There is a lack of clear vision and values on gender transformation with the situation compounded by a mission and vision statement, which fails to mainstream equality and other human rights.
2. There is poor planning, policy alignment and co-ordination, accountability and monitoring of transformation interventions, including those relating to gender. This includes the absence of clear goals and targets aligned with customer needs and compliance obligations under interna-

tional/national legal and policy frameworks on human rights and other issues.

3. There is a lack of clarity on the goals of transformation, including gender transformation. Each Business Unit apparently follows its own. For example, finance and automation changes could easily move towards the ruthless efficiency that grinds the souls of justice users, particularly women and other disadvantaged groups whose experiences and needs have been historically marginalised. Problems include a general absence of target setting, including SMART organisational goals for the MTEF and SMART annual objectives, including those relating to gender and other equality issues.
4. There is poor planning data (statistics and other information) available, and inadequate use of available data to plan organisational changes, particularly those relating to service delivery and employment with the problem exacerbated by the fact that most data is not centralised. Further, the data is not disaggregated by gender and compounding factors such as race, socio-economic status, disability, HIV status, culture, religion and language.

Policy and Decision-making

1. There is a hierarchical organisational culture with participation mainly linked to rank in a context where women's representation is very thin at the top and virtually non-existent in some of the structures. It has been proven that you need a critical mass of any group for their voices to make an impact with regard to organisational behavioural change in order to affirm the experiences of that group.
2. There is a general failure to mainstream equality and other human rights in organisational policies, systems, processes, actions and regular pronouncements, including statements made in internal and external media opportunities.
3. There is a poor 'follow-up' culture, with many policies never being implemented consciously and only mentioned during development stage. This usually happens when the organisation has to submit accountability and or progress reports to government or international forums. This includes apparent organisational indifference to many of its own and government policies on equality or aspects thereof, e.g. *Departmental Policies on Employment Equity, Gender and National Gender Policy Framework* and policy directives on Black Empowerment.

Implementation

1. There are unclear responsibilities and accountability for different managers and ordinary persons with regard to the implementation of gender transformation, including *Gender Mainstreaming*, women empowerment and interventions seeking to change male and organisational behaviour.

2. There is fragmented implementation and the absence of a results focussed systems approach for the prioritisation of transformation interventions, where interventions complement each other. For example, gender budgeting, preferential and affirmative procurement, pay equity and other employment equity issues, such as targeted recruitment and retention strategy for groups designated in the Employment Equity Act, do not appear to be systematically coordinated between the different components.
3. The organisational interventions generally seem to deviate from systems thinking and do not reflect a desire to address all key compliance obligations that arise from international and national legal and policy frameworks that are binding on the South African government.

Resources

1. A budget which is not engendered with no visible efforts to address this weakness and the situation is compounded by acute weaknesses with regard to engaging in results based decision-making, including the achievement of outcomes or objectives based budgeting that is zero-based and takes into account the need to redirect resources to historically neglected areas as required by *Batho Pele*.
2. Inadequate resources allocated towards gender transformation programmes, including the work of the Gender Directorate and special programmes to accelerate the equalisation of opportunities between women and men.

Capacity Building

1. There is weak organisational capacity for *Gender Mainstreaming* owing to poor policy awareness and lack of overall strategy, appropriate skills, values and knowledge.
2. The resources invested in the Gender Directorate and related support mechanisms are also limited, as the work involved is not seen as value adding.
3. There are inadequate skills for implementing technical *Gender Mainstreaming* tasks, such as conducting a gender equality analysis, gender budgeting, managing gender and related forms of diversity as well as managing change, with no ongoing systematic measures to address this.

Employment

1. There is a lack of an integrated uniform strategy for accelerating the recruitment, development, advancement and retention of women of all races, at all levels, and in all occupational categories where they were historically excluded. In many instances, employment related decisions, including appointments, are not aligned with the provisions of the Department's Employment Equity Policy and Plan.
2. There is an absence of systematic efforts aimed at transforming organisational values and behaviour in order to affirm difference as well as skills to manage diversity and related change.

Procurement

1. There is an absence of an integrated organisational policy and/or strategy for accelerating equal access to procurement opportunities for women, black people and People with Disabilities. About two Business Units make casual references to the *Preferential Procurement Policy Framework Act* without clarity as to own policy, strategy or goals as envisaged under the Act read with s217 of the Constitution (and s9(2)) and the *Promotion of Equality and Prevention of Unfair Discrimination Act*.

Communication and Information Management Systems

1. There are weak monitoring and evaluation systems with virtually no arrangements for effective tracking of progress on gender transformation. This is compounded by the fact that there is generally poor internal policy enforcement mechanisms and management of risks.

Reporting

1. There is a lack of systematised reporting formats, and in particular, there is a need to insist on reporting against predetermined and agreed targets, including those relating to gender. This includes the need for enhanced reporting capacity which covers efficient information management, and knowledge generation on critical gender issues, and good reporting skills,

4.2. Specific findings on business units

Specific findings on gender mainstreaming practices in each of the eight (8) Business Units in The DoJCD are outlined in the following tables.

4.2.1 Court Services

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
1. Awareness	<ul style="list-style-type: none"> • There appears to be a limited awareness regarding the differential needs of women and men as court users. 	<ul style="list-style-type: none"> • There is no indication that measures are implemented to make it clear to all managers regarding their accountability with regard to <i>Gender Mainstreaming</i>; • Awareness of gender issues appears to be limited to issues where the implications for women are obvious to all, for example domestic violence, sexual offences, maintenance and family law services; and • There is no evidence of regular reference to the departmental Gender Policy Statement, government policy and relevant international instruments. 	<ul style="list-style-type: none"> • Raise awareness on gender by constantly engaging in dialogue and providing literacy on gender issues; • Brief all managers and staff about all key policy frameworks (international, national and departmental) on their accountability with regard to <i>Gender Mainstreaming</i>; • Ensure that all managers are fully informed of their accountability with regard to <i>Gender Mainstreaming</i>; and • Provide capacity building to all managers and staff to bring to their attention the unequal and different circumstances of women and men. (This will help them understand that because of those differences, virtually all laws, policies, plans and activities, including court processes, impact differently on women and men and often exacerbate existing inequalities.)
2. Commitment	<ul style="list-style-type: none"> • There appears to be reasonable commitment to addressing some of the issues with obvious implications for equality between women and men, for example, sexual offences, domestic violence and maintenance; • There appears to be some level of representation of women in decision-making; • Efforts to enhance the effectiveness of court management, including case management, in the courts is likely to impact positively on women and other disadvantaged court users; and 	<ul style="list-style-type: none"> • There are no activities that demonstrate an appreciation of the need for and implementation of gender analysis in all court related policies, plans and activities; • Total profile and plan of the Business Unit do not adequately demonstrate real commitment to progressively equalise opportunities between women and men; • Gender neutrality in the implementation of plans may fail to address existing inequalities between women and men with regard to access to justice. The emphasis on speedy justice may leave women behind. 	<ul style="list-style-type: none"> • Ensure that equality and other human rights concerns are integrated in all Unit activities from planning, through implementation, to monitoring and reporting. This entails making it mandatory to assess the effect or likely impact of all policies, programmes and activities on women and men. The aim is to ensure that all these respond meaningfully to the circumstances of women and men and reduce existing inequalities; • Insist on equal participation of women and men in decision-making in all areas and at all levels; • Conduct an audit to establish the gender profile of the Unit, covering employment profile trends, decision-making trends, procurement, information, knowledge generation and management, communication patterns and reporting practices; continued ...

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
2. Commitment continued ...	<ul style="list-style-type: none"> The various transformational initiatives introduced in the courts over recent years, which include the criminal justice strengthening programme, has potential to reduce gender gaps in the responsiveness of the justice system. 	<p>This is particularly true for those women from historically disadvantaged backgrounds, as they may be unable to readily adapt to the use of technology or enjoy access to such technology.</p>	<ul style="list-style-type: none"> Ensure that gender issues are raised regularly and with conviction in policy and other forms of dialogue with internal and external stakeholders; Ensure that achievements on gender targets are celebrated and rewarded; Develop and display appropriate policy statements, gender profiles and progress reports on targets, in places where all members of the Unit can regularly view them; Ensure that the gender mainstreaming strategy or plan is viewed as one of the key result areas of the overall strategy of the Business Unit; Incorporate or make reference to specific sections in the department's Gender Policy in the Unit's Business Plan and link this to service delivery in the Unit; Allocate adequate resources for gender transformation; Integrate non-sexism and the achievement of gender equality in the statement of values, and discourage sexist jokes; and Create an enabling environment that supports initiatives towards fundamental gender transformation.
3. Planning	<ul style="list-style-type: none"> Plan to address fragmentation and role clarification for all key role players (judges, magistrates, prosecutors and administration) in the courts; and Plan to enhance security in courts. This has the potential to address security concerns of women. 	<ul style="list-style-type: none"> No gender mainstreaming strategy or plan; and The plan does not reflect a gender analysis or assessment of the different needs of women and men. There is no conscious attempt to improve responsiveness to women, and to respond to the specific needs of women, who have been historically marginalized. 	<ul style="list-style-type: none"> Conduct research to identify women's circumstances and needs with regard to court services, disaggregating women in terms of various categories. These should include occupational categories (judges, magistrates, managers, clerks of courts, secretaries, etc), court users and social factors such as race, class, disability, etc. Use this information to review current information management plans and to establish impact on women and implement corrective action; Develop a <i>Gender Mainstreaming</i> strategy or plan and ensure that this plan covers all Critical Areas of Concern and key issues on women's advancement and human rights in CEDAW, BPA and other relevant instruments. Ensure that the plan is integrated into the Business Plan of the Unit and in operational or project plans of all components of the Business Unit and collaborate activities with other stakeholders;

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
3. Planning continued ...			<ul style="list-style-type: none"> • Ensure that the plan, sub-plans and future plans are subjected to a gender analysis (being an assessment of the likely differential impact on women and men taking into account all material differences in the circumstances of women and men from diverse backgrounds). Data relied on for planning should be disaggregated by gender and its intersection with race, disability, HIV status and other forms of difference; • Subject all plans to compliance tests regarding key international, national and departmental policies, targets and benchmarks; • Request comments from the Gender Directorate, Gender Expert or Gender Forum on plans before they are finalised; • Incorporate gender analysis in planning and policy formulation within the Unit; and • Ensure that women committed to women's emancipation are involved in all stages of planning especially in policy formulation.
4. Policy and Decision-making	<ul style="list-style-type: none"> • The greatest challenge for the Unit is to integrate a gender analysis in all activities, structures and systems, including the prioritisation of activities, allocation of resources, and implementation and monitoring. 	<ul style="list-style-type: none"> • Decision-making is not always informed by a gender analysis and an attempt to comply with relevant international obligations, the Constitution, national policies and departmental policy frameworks; • Measures on the transformation of courts do not reflect an attempt to ensure gender inclusiveness; • No indication that women and organisations that focus on increasing women's access to justice and opportunities in the justice system are consulted, or that they participate in decision-making regarding courts; and • Current court priorities, including budgets and implementation actions and processes, do not reflect an appreciation or an attempt to address women's pressing needs regarding justice; and 	<ul style="list-style-type: none"> • Mandatory requirements regarding <i>Gender Mainstreaming</i> (as stated in Chapter 5 of the Gender Policy) to be reflected in all polices, plans, activities and decision-making processes; • Organisational memoranda and other decision-making processes should always include a clause indicating gender impact, also taking into account the diversity of women's circumstances and needs; • Institute measures to affirm women and accelerate their equal representation in all aspects of the court system in response to an audit of the current gender profile and trends and identification of obstacles; • Make it mandatory that women and men be equally represented in all committees, conferences, decision-making processes, including representation in international structures and processes; • Make it a mandatory requirement that suitably qualified women and organisations that work for gender equality are consulted and participate fully and equally with men in decision-making regarding the courts; <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
4. Policy and Decision-making continued ...		<ul style="list-style-type: none"> No evidence of policies that specifically seek to identify and alert all role players to address the gender dimensions of all justice processes, structures and systems. 	<ul style="list-style-type: none"> Ensure that women's needs are established and reflected in the Top 5 organisational priorities and that this is also reflected in budget and processes; Develop <i>Gender Mainstreaming</i> guidelines covering all aspects of the court system and incorporating aspects relating to the needs of women as employees, contractors and customers. Incorporate these into all strategic and operational documents relating to courts and familiarise all role players with such. Deal with the gender dimensions of HIV and AIDS; and Insist on basing all decisions on the gender strategy of the Unit and a gender equality analysis.
5. Implementation	<ul style="list-style-type: none"> There appears to be some attempts to equalise responsiveness of the judicial system to both women and men. These initiatives give priority to improving (the delivery of) services that specifically address women's critical needs (for example Maintenance and Violence against Women); Generic victim support services that are being enhanced have potential to address women's concerns; Court Process Project (Bureau of Justice) focussing on sexual offences could, in the long term, improve justice experiences of victims of crime; Some judicial officers and administrative personnel in the courts have been exposed to education interventions to improve appreciation of women's circumstances and gender issues. 	<ul style="list-style-type: none"> Negative perceptions continue to bedevil service delivery in the justice system, especially the courts. Women, in particular, continue to experience the justice system in a hostile and unfriendly manner; Core services have not been adequately adjusted to respond meaningfully to specific justice needs of women from diverse backgrounds, including race, culture, disability, socio-economic status, language, literacy levels, etc; Court facilities in most of the courts have not been adequately adjusted to address women's needs particularly as parents, survivors of gender-based violence and as a socio-economically disadvantaged group, and the plan does not reflect an intention to address this; The continuing court problems (including case management) such as case backlogs and unduly long case turnover due to, amongst other things, poor productivity in the courts, 	<ul style="list-style-type: none"> Conduct a customer survey disaggregated by gender, race, disability and the intersection of these to establish how women and men from diverse backgrounds experience the justice system; Conduct a gender analysis of all core services to ascertain the differential impact on women and men from diverse backgrounds. Consider, in particular, responsiveness to women's needs, taking into account their diversity in terms of race, gender, disability, socio-economic status, language, literacy levels, geographic location, etc. Adopt measures to address these; Conduct a gender audit of all court facilities based on customer surveys regarding women's circumstances and related needs and ensure that court transformation processes respond to identified problem areas; Review court and case flow management processes to elicit gender dimensions (employment, services, decision-making and procurement) and deal with gaps regarding responsiveness to women's needs and the achievement of (substantive) equality; Review current co-ordination processes to establish and address weaknesses, particularly those that contribute to failure of the justice system. <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
5. Implementation continued ...		<p>impacts more negatively on women. Current initiatives do not adequately reflect an awareness of this dimension and a conscious effort to respond to it;</p> <ul style="list-style-type: none"> • Inadequate synergy in the operations of the key role players in the justice process and weaknesses in managing change in the recent separation and redefinition of roles and responsibilities between the prosecution, administration and the judiciary. This continues to undermine an integrated justice system required for responsive delivery of services that are primarily used by women; • The continued existence of inefficient and outmoded structures, processes and legal principles in the courts, particularly the district courts, has a compounded adverse impact on women (for example the processing of maintenance); • There is no evidence of appreciation and or plans to address the possibility that planned speedy justice processes may undermine participation by disadvantaged groups, particularly women who may be slow to understand the changed procedures. 	<ul style="list-style-type: none"> • Review departmental priorities in terms of infrastructure and ensure a balance between the basic needs approach, taking into account the diversity of needs of court users, whilst ensuring that all courts move towards globally competitive standards; • Review case flow management plans and implementation processes to elicit gender dimensions; and • Implement empowerment interventions to address gender and related imbalances.
6. Resources	<ul style="list-style-type: none"> • Current plan to address structural problems and historical imbalances in court infrastructure is likely to reduce women's frustrations. Measures to extend infrastructure to historically neglected areas are being implemented 	<ul style="list-style-type: none"> • Most of the well-resourced courts continue to be located in the historically white areas. Thus women in the rural areas, historically black townships and informal settlements continue to face serious obstacles in accessing courts; and 	<ul style="list-style-type: none"> • Allocate specific resources towards gender programming, including special programmes to empower women and those directed at altering male behaviour; • Appoint gender focal persons in branches and provinces with clear powers, resources and responsibilities on gender dimensions of issues, in decision-making processes; <p>Continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
6. Resources continued ...		<ul style="list-style-type: none"> Most of the expenditure on courts and related facilities appears to continue to be directed at the historically advantaged centres. 	<ul style="list-style-type: none"> Prioritise basic infrastructure for all courts, taking into account specific gender needs relating to gender violence, maintenance, family law and access to Equality Courts; Redirect expenditure to historically neglected areas and needs, as required by <i>Batho Pele</i>, and ensure that an impact analysis incorporating this aspect precedes all decisions regarding resource allocation; Implement measures to engender the entire budget, paying attention to achieving a gender balance in <i>per capita</i> expenditure in the courts; and Engender the entire budget.
7. Capacity Building		<ul style="list-style-type: none"> No indication of executed or planned training relating to <i>Gender Mainstreaming</i> capacity building for management and employees; No indication of regular consultation with the Gender Directorate or use of gender specialists or experts; No indication of planned or executed diversity awareness and management programme to assist personnel to value and manage difference at work, decision-making and service delivery. 	<ul style="list-style-type: none"> Ensure that all Unit members, starting with management, are exposed to an induction and thereafter have regular exposure to <i>Gender Mainstreaming</i> training and related materials; Integrate <i>Gender Mainstreaming</i> training in all general training and communication activities, including induction courses, information booklets and regular newsletters; Include representation of the Gender Unit and if possible, other specialists in the Unit's management structures and consult regularly with these bodies; Provide adequate resources for Gender Focal Points in Units, and ensure that adequate capacity in terms of skills, budget, office space, infrastructure and information resources is provided; and Implement accelerated professional and leadership development and succession planning in respect of women.
8. Communication and Information		<ul style="list-style-type: none"> Except for employment, information management systems do not reflect a conscious effort to collect and maintain information disaggregated by gender or relating to the advancement of women and women's human rights; 	<ul style="list-style-type: none"> Collect, maintain and regularly disseminate gender disaggregated data on all aspects of the Unit, with special attention paid to employment, procurement, service (usage and per capita expenditure) and decision-making systems; Allocate a percentage of the budget to research or knowledge generation on women and men and women's circumstances and diverse needs;

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
8. Communication and Information continued ...		<ul style="list-style-type: none"> • No indication or appreciation of, and/or conscious efforts to align internal and external communication with the differential circumstances and needs of women and men; • Women do not appear to be consulted equally with men and no plan seems to be in place to address this gap; • Women's concerns do not appear to be prioritised in research or knowledge generation and storage; • No conscious plan appears to be in place to address gender gaps in IT issues; and • There appears to be no regular reference to the department's national and international compliance standards, in order to justify or motivate for specific decisions. 	<ul style="list-style-type: none"> • Design communication material that will reach, address and prioritise the needs of women taking into account the diverse social contexts that different women and men live under; • Prepare a gender profile of those consulted on courts in the past year, and develop a strategy to enhance consultation with women and women's NGOs; • Conduct a gender audit of all IT processes, plans and activities to establish responsiveness to women's circumstances and related needs; • Make it mandatory for all written decisions within the Unit to indicate implications for compliance with gender related international and national standards; • Mainstream equality and other human rights in all communication and information systems and processes; and • Implement research and knowledge generation measures to accurately establish the position of women in the justice system and related needs.
9. Employment		<ul style="list-style-type: none"> • There appears to be no plan or activity that seeks to create an employment environment which validates women and men equally while responding meaningfully to their different needs; • There appears to be inadequate efforts to enhance women's representation in the judiciary generally and the decision-making structures therein; • There appears to be no institutional policies to address gender concerns such as sexual harassment, parental rights and value transformation; and 	<ul style="list-style-type: none"> • Be uncompromising on compliance with the <i>Employment Equity Act</i> and related instruments including the employment equity plan and progress reports; • Mainstream employment equity in the Unit's Plan and sub-plans, and consider development and enforcement of a policy statement on ensuring an environment that validates women and men equally throughout the Unit and courts; • Ensure that policy includes measures to eradicate existing inequalities and unfair discrimination, and is designed to accelerate women's entry, advancement and retention in critical decision-making positions; • Conduct an audit to establish the profile of the courts, including obstacles to women's entry, development, advancement and retention; <p>Continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
9. Employment continued ...		<ul style="list-style-type: none"> • There appears to be no programmes specifically for accelerating women's entry, development, advancement and retention in the Unit while creating an environment, which affirms them. 	<ul style="list-style-type: none"> • Develop an implementation strategy with a clear vision, targets and milestones to address obstacles, taking into account women's diversity and, international benchmarks and commitments; and • Review Unit's Employment Equity Plan and ensure that there is a specific programme to accelerate the entry, development, advancement and retention of women from diverse backgrounds. This should be done while transforming work relations to affirm women's human dignity, and respond to the gender impact of HIV and AIDS.
10. Procurement		<ul style="list-style-type: none"> • No indication of any deliberate attempt to achieve gender inclusiveness in outsourcing work; • No indication that the Unit has identified women as a target for preferential treatment; • No evidence of attempts to actively target suitably qualified women for contracts; and • No indication of any effort to comply with Preferential Procurement Policy Framework Act generally and the promotion of equal access to contracts by women in particular. 	<ul style="list-style-type: none"> • Familiarise all managers and staff with compliance requirements regarding equity. This should include preferential procurement in terms of the law and international obligations; • Gender disaggregated profiles (including race, gender and disability) of contractors and outsourcing trends over the last year should be prepared; • Set targets and standards for remedial action directed at improving women's representation and an implementation protocol be prepared and enforced through decision-making channels such as approval of memoranda; • Implement measures to identify and affirm women from diverse backgrounds; • Ensure that judiciary and court personnel are made aware of their accountability for accessing opportunities; • Consider special programmes to empower women through providing them with information on the availability of contract opportunities and on procedures to access such contracts; • Take special measures to involve women and women's NGO's in Public, Private Partnership (PPP) initiatives, avoid limiting those opportunities to historically advantaged groups, and promote skills transfer; and • Communicate and advertise tenders in places that are accessible to women; and • Implement special measures to ensure that women benefit equally with men from contracts issued by the Unit.

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
11. Monitoring and Evaluation		<ul style="list-style-type: none"> • No express mention of gender indicators and mechanisms for tracking gender progress; • Performance agreements in Unit currently do not hold people accountable for promoting gender equality and facilitating departmental compliance with relevant instruments; • No indicators to monitor compliance with international instruments; • Provision is not made for monitoring performance on gender equity in procurement, or within representation with regard to decision-making; • Business decisions are not regularly analysed in terms of implications for equality between women and men; • Plans do not reflect intention to mainstream gender in the judicial system, or to monitor compliance; • There appears to be inadequate appreciation of compliance responsibilities in relation to matters other than employment; and • No monitoring mechanisms seem to be in place for services and programmes that are mainly for women's use. 	<ul style="list-style-type: none"> • Stipulate gender disaggregated indicators, benchmarks and milestones in Unit's Plan and sub-plans for tracking gender progress; • Integrate specific gender indicators, including milestones in performance agreements of all in the Unit and affiliated institutions; • Indicate specific gender targets and benchmarks drawn from international instruments such as the Beijing Platform for Action and SADC Declaration on Gender and Development, in the Unit's Plans and sub-plans and monitor these rigorously; • Implement gender disaggregated reporting, covering service, employment equity, procurement and decision-making structures. Prepare to be tabled to management meetings, including the Board, Magistrate Commission and JSC, with questions raised on non-performance; • Require regular gender disaggregated reports on procurement for tracking gender progress and planning corrective action; • Ensure that board, mini-boards and other meetings regularly ask questions on employment equity, with regard to gender, including questions relating to planned or recent appointments; • Ensure that milestones achieved are celebrated and publicised in newsletters and meetings, and are regularly presented in all key meetings and pasted on bulletin boards; • Give consideration to the development and implementation of a risk management tool to limit non-compliance with international, national and internal policy and legal frameworks on gender equality matters; • Use any opportunity presented by the <i>Promotion of Equality Act</i> and black empowerment initiatives to strengthen monitoring of transformation relating to equalising opportunities between women and men. This should take women's diversity in terms of race, disability, impact of HIV and AIDS and other factors, into account; and <p>Continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
11. Monitoring and Evaluation continued ...			<ul style="list-style-type: none"> Align information management systems with information needs for effective tracking of progress on women's empowerment and the promotion of women's human rights through the courts. Attention to be paid to diversity of women's circumstances and needs.
12. Reporting	<ul style="list-style-type: none"> Reporting on issues generally identified with women is effected. This includes violence against women and maintenance. 	<p>* General records on the courts are not disaggregated by gender, race, disability and other forms of diversity and there appears to be no plan to address this;</p> <p>* Specific information for effective monitoring of issues such as sexual violence, rape and gender dimensions of the rest of civil and criminal court processes is not available;</p> <ul style="list-style-type: none"> Court related reports do not reflect an attempt to account on gender progress on all court activities, and not only those obviously associated with women; Reporting forms and practices on mainstream court services relating to crime, family law, etc, are gender neutral, thus making it difficult to elicit gender issues; and Gender issues appear to be marginalised in court related reports. 	<ul style="list-style-type: none"> Make it a mandatory requirement for all components, including structures responsible for managing the judiciary and judicial system, to maintain in an easily retrievable form, reliable gender disaggregated data; Ensure that all managers and governing bodies are made aware that they are accountable with regard to mainstreaming gender. All reports should indicate progress made to promote equality between women and men, and planned action to address setbacks; Make it a mandatory requirement for all reports in the Unit to indicate progress made on gender and gender implications of all other activities and challenges and that reports are always against plans; Ensure that standardised reporting formats are adhered to and that data collection, storage and retrieval supports effective reporting on gender transformation; Reorganise reporting requirements to ensure that court statistics indicate race, gender and disability of parties involved and that gender based crimes such as rape and domestic violence are labelled as such; and Ensure that gender issues are given priority in court related reports and that such reports should also cover progress made on all aspects of gender transformation including women's representation in the judiciary and other judicial decision-making structures.

4.2.2 Legal Services

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
1. Awareness	<ul style="list-style-type: none"> Some training on human rights and the Constitution provided to personnel in State Law advisor section. 	<ul style="list-style-type: none"> No indication of awareness of gender issues. Departmental Gender Policy Statement and related instruments not mentioned once in key documents; No reference to department and related gender instruments; and There is no indication that measures are implemented to acquaint all managers with their accountability regarding gender mainstreaming. 	<ul style="list-style-type: none"> Raise the level of awareness on gender by constantly engaging in debates and discussions on those issues; Brief all managers and staff about all key policy frameworks (international, national and departmental) regarding their accountability with regard to gender mainstreaming; Provide literacy on gender issues; Ensure that all managers are fully informed of their accountability with regard to gender mainstreaming; Capacity building to be provided to all managers and staff to bring to their attention the unequal and different circumstances of women and men. This will also help them to understand that because of those differences, virtually all laws, policies, plans and activities, including legal services, impact differently on women and men and often have the impact of exacerbating existing inequalities; and Incorporate references to the Gender Policy Statement of the department especially Chapters 3 and 5 and other international instruments on gender and the advancement of women.
2. Commitment	<ul style="list-style-type: none"> Profile reflects an attempt to equalise representation and participation in decision-making between women and men. 	<ul style="list-style-type: none"> No indication of commitment to gender issues or mainstreaming in Business Plan. 	<ul style="list-style-type: none"> Ensure that equality concerns are integrated in all Unit activities from planning, through implementation, to monitoring and reporting. This entails making it mandatory to assess the effect or likely impact of all policies, programmes and activities on women and men. Ensure that all these respond meaningfully to the circumstances of women and men and reduce existing inequalities. The business plan should incorporate or make reference to specific sections in the Department's Gender Policy and link it to service delivery in the Unit; Insist on equal participation of women and men in decision-making in all areas and at all levels; <p>Continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
2. Commitment continued ...			<ul style="list-style-type: none"> • Conduct an audit to establish the gender profile of the Unit, covering employment profile and trends, decision-making trends, procurement, information, knowledge generation and management, communication patterns and reporting practices; • Ensure that gender issues are raised regularly and with conviction in policy and other forms of dialogue with internal and external stakeholders; • Ensure that achievement on gender targets is celebrated and rewarded and that non-compliance is openly sanctioned; • Develop and display appropriate policy statements, gender profile and progress reports, in places where all members of the Units can regularly view; • Ensure that gender mainstreaming strategy plan is viewed as one of the key result areas of overall strategy of the Business Unit; • Allocate adequate resources for gender transformation; and • Integrate non-sexism and the achievement of gender equality in value statements and discourage sexist jokes.
3. Planning		<ul style="list-style-type: none"> • No gender mainstreaming strategy, plan or protocol; • Gender goals, objectives and milestones not reflected in Business Plan. 	<ul style="list-style-type: none"> • Conduct research to identify women's circumstances and needs with regard to legal services; • Disaggregate women in terms of various categories, including occupational categories (judges, magistrates, managers, clerks of courts, secretaries, etc), court users and social factors such as race, class and disability; • Use this information to review current information management plans and to establish impact on women and implement corrective action; • Develop a Gender mainstreaming strategy or plan and ensure that this is integrated in the operational and project plans of all components of the Business Unit and in joint activities with other stakeholders; • Ensure that Business Plans, all sub-plans and future plans are subjected to a gender analysis (being an assessment of the likely

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
3. Planning continued ...			<p>differential impact on women and men taking into account all material differences in the circumstances of women and men from diverse backgrounds);</p> <ul style="list-style-type: none"> • Dissagregate data relied on for planning by gender and its intersection with race, disability, HIV status and other forms of difference; • Subject all plans to a compliance test regarding key international, national and departmental policies, targets and benchmarks; • Request comment from the Gender Directorate, experts and gender forums on plans before they are finalised; • Incorporate gender analysis in planning and policy formulation within the Unit; and • Ensure that women committed to women's emancipation are involved at all stages of planning especially in policy formulation.
4. Policy and Decision-making	<ul style="list-style-type: none"> • Women and men are involved in decision-making and recent appointments have increased the representation of women in senior positions. 	<ul style="list-style-type: none"> • The greatest challenge for the Unit is to integrate gender in the technical advice given to the state and in decision-making processes. 	<ul style="list-style-type: none"> • Ensure that women are consulted at all levels and stages as both stakeholders and members of the Unit; • Put mechanisms in place that facilitate women's participation in decision-making; • Ensure that legal services is gender inclusive; • Ensure that the impact of the legal services provided operate in a way that eliminates gender imbalances; and • Insist on the basing of all decisions, including legal advice, on gender analysis and objectives in gender mainstreaming strategy or plan.
5. Implementation	<ul style="list-style-type: none"> • There is some representation in senior structures and decision-making. 	<ul style="list-style-type: none"> • The plan does not show specific programme of action or processes to address gender gaps and mainstreaming gender in advisory services; • No evidence of measures towards creating an environment that affirms women and promotes gender equality; 	<ul style="list-style-type: none"> • Ensure that legal services are responsive to the needs of women within the context of the state as its client; • Integrate gender considerations in litigation and certification of legislation; • Implement professional and leadership development programmes to fast track women's advancement and involvement at all decision-making levels; and <p>Continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
5. Implementation continued ...		<ul style="list-style-type: none"> No evidence of processes to equalise services and opportunities between women and men. 	<ul style="list-style-type: none"> Strengthen efforts to appoint women in senior decision-making positions and ensure their advancement, job satisfaction and retention.
6. Resources	<ul style="list-style-type: none"> Plan to establish Constitutional Litigation Unit likely to enhance awareness of human rights, including gender. 	<ul style="list-style-type: none"> No budget for gender programming. 	<ul style="list-style-type: none"> Identify a specific budget for women's empowerment programmes as well as set aside funds for supporting gender mainstreaming in the Unit; Reprioritise activities in response to gender inequalities in the Unit and its work and allocate resources accordingly; and Engender the entire budget.
7. Capacity Building		<ul style="list-style-type: none"> No indication of training activity on mainstreaming gender; and No indication of consultation with the Gender Directorate or use of expert advice on mainstreaming gender. 	<ul style="list-style-type: none"> Promote women's access to wider opportunities in education, vocational training, and acting appointment in senior levels of responsibility; Implement induction and ongoing development programmes to skill personnel on gender mainstreaming, social context awareness, affirming diversity and change management; Study the impact of the interaction of automation on women and their needs more closely; Implement bursaries and incentives specifically targeted at recruiting women; Use effective training and internal placements to accelerate and promote women in the Unit; and Allocate money towards gender programming, including resources for a Gender Focal Point and those for transforming human and organisational behaviour to affirm gender diversity.
8. Communication and Information	<ul style="list-style-type: none"> Some progress appears to have been achieved with regard to consulting women and men within the Unit. 	<ul style="list-style-type: none"> Communication does not appear to deliberately address women's concerns where such differ from men's; and The leadership does not regularly raise the need to achieve equality between women and men internally and externally in dialogues, debates and other forms of communication. 	<ul style="list-style-type: none"> Communicate with women in a manner that best meets their needs as consumers and providers of services; Ensure that information relating to the legal services is accessible and friendly to women; and Ensure that communication covers all Critical Areas of Concern as identified in this report.

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
9. Employment		<ul style="list-style-type: none"> No evidence of policies that specifically address the elimination of unfair discrimination and promotion of gender equality in the Unit. 	<ul style="list-style-type: none"> Develop targets for the filling of vacancies in accordance with the Employment Equity Plan; and Create a work environment that is conducive to women, for example, gender bias-free attitudes, rights in respect of family responsibilities, and absence of sexual harassment, etc.
10. Procurement		<ul style="list-style-type: none"> No indication of deliberate attempt to achieve gender inclusiveness in outsourcing work; No indication that Unit has identified women as a target for preferential treatment as required by the Preferential Procurement Policy Framework Act; and No evidence of attempts to actively seek out suitably qualified women for contracts. 	<ul style="list-style-type: none"> Incorporate gender criteria into the procurement policies and practices of the Unit; Set quotas and targets for women contractors; Communicate and advertise tenders in places that are accessible to women. Incorporate gender criteria into the procurement policies and practices of the Unit; and Implement special measures to ensure that suitable women professionals get an equitable share of contracts from the Unit.
11. Monitoring and Evaluation		<ul style="list-style-type: none"> No visible arrangements for monitoring and evaluation on the achievement of gender equality; No indication that questions regarding performance on gender targets are raised constantly; Statistics on service provision, procurement and aspects of employment are not disaggregated; and No evidence of incorporation of gender indicators targets and benchmarks in performance agreements. 	<ul style="list-style-type: none"> Develop a monitoring and evaluation system for the Unit that incorporates goal, targets and Key Performance Indicators for women; Develop gender sensitive instruments that would track progress on the key target areas; Use the monitoring and evaluation information obtained from the collection of gender disaggregated data to analyse the impact on gender equality and to plan for service delivery improvement and budgeting; Align current research, information generation and data management systems and practices with objectives relating to the advancement of women, women's human rights and gender transformation in all aspects of Unit; and Enforce accountability by integrating gender mainstreaming objectives in performance contracts of all, including contractors.

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
12. Reporting		<ul style="list-style-type: none"> No evidence of reporting mechanisms in place for tracing gender impact of services. 	<ul style="list-style-type: none"> Keep record on data disaggregated by gender on all aspects of operations; Ensure that data is stored in accordance with gender goals, targets and indicators for the Unit; Structure all reports in a manner that ensures that each report speaks to the agreed goals, targets and indicators on gender and other matters; and Ensure that all senior managers report on gender indicators as part of the performance management system.

4.2.3 Legislation and Constitutional Development

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
1. Awareness	<ul style="list-style-type: none"> Some recognition of different needs of diverse communities, but no specific reference to gender differences and the need for all activities to be responsive to this reality. 	<ul style="list-style-type: none"> No reference to departmental Gender Policy Statement and international instruments such as CEDAW, BPA, etc; No reference to different impact of laws on women and men; and No reference to gender gaps in the legislative framework; and There is no indication that measures are implemented to make it clear to all managers regarding their accountability with regard to gender mainstreaming. 	<ul style="list-style-type: none"> Raise awareness on gender by constantly engaging in debates and discussions on those issues; Brief all managers and staff about all key policy frameworks (international, national and departmental) regarding their accountability in respect of mainstreaming; Provide literacy on gender issues; Provide capacity building to all managers and staff to bring to their attention to the unequal and different circumstances of women and men; and Incorporate references to the Gender Policy Statement of the department and other international instruments on gender and development and review of all laws.
2. Commitment	<ul style="list-style-type: none"> Commitment to implementation of employment equity plan to promote representivity has positive implications for gender. 	<ul style="list-style-type: none"> No reference to gender issues in goals relating to service delivery improvement; Employment Equity is restricted to representivity and not disaggregated on the basis of gender or disability; 	<ul style="list-style-type: none"> Insist on equal participation of women and men in decision-making in all areas and at all levels; Conduct an audit to establish the gender profile of the Unit; covering employment profile and trends, decision-making patterns, procurement, information, knowledge generation and management communication patterns and reporting practices;

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
2. Commitment continued ...		<ul style="list-style-type: none"> • There appears to be no significant involvement of women in decision-making; and • Current workforce profile is skewed in favour of men at the senior and top leadership levels. 	<ul style="list-style-type: none"> • Ensure that gender issues are raised regularly and with conviction in policy and other forms of dialogue with internal and external stakeholders; • Ensure that achievement on gender targets is celebrated and rewarded and that non-compliance is openly sanctioned; • Develop and display appropriate policy statements, gender profile and progress reports in places where all members of the Units can regularly view; • Ensure that gender mainstreaming strategy or plan is viewed as one of the key result areas of the overall strategy of the Business Unit; • Ensure that the Business Plan incorporates or makes reference to specific sections in the Department's Gender Policy and link it to service delivery in the Unit; • Allocate adequate resources for gender transformation; and • Integrate non-sexism and the achievement of gender equality in value statements and discourage sexist jokes.
3. Planning	<ul style="list-style-type: none"> • Goals to rationalise structures and bodies to bring them in line with constitutional principles covers gender by implication; • Goals to develop legislation to give effect to the Bill of Rights covers gender equality by implication. 	<ul style="list-style-type: none"> • If the numbering of the goals reflects prioritisation, this fails to prioritise pressing needs of women, particularly those due to the intersection of gender and racial oppression; • No gender mainstreaming strategy or plan; and • <i>Gender Mainstreaming</i> does not appear to be integrated in all aspects of business plans and sub-plans. 	<ul style="list-style-type: none"> • Develop a <i>Gender Mainstreaming</i> strategy or plan and ensure that this is integrated in the operational and project plans of all components of the Business Unit and collaborate activities with other stakeholders; • Ensure that the plan, sub-plans and future plans should be subjected to a gender analysis; • Ensure that data relied on for planning should be disaggregated by gender and its intersection with race, disability, HIV status and other forms of difference; • Subject all plans to compliance test regarding key international, national and departmental policies, targets and benchmarks; • Request comment of the Gender Directorate, expert or Gender Forum on plans before they are finalised; • Incorporate gender analysis in planning, policy formulation and decision-making within the Unit; <p>Continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
3. Planning continued ...			<ul style="list-style-type: none"> • Ensure that women committed to women's emancipation are involved at all stages of planning especially in policy formulation; • Prioritise those activities that have been identified by the Unit as having a gender focus; and • Ensure that the Customary Succession Legislation are passed and that an effective implementation strategy is developed and budgeted for.
4. Policy and Decision-making	<ul style="list-style-type: none"> • Some level of participation of women in decision-making is made possible through the work of the South African Law Commission. 	<ul style="list-style-type: none"> • Inadequate participation in and consultation of women from all walks of life in decision-making; and • No evidence that women concerns are integrated in organisational priorities as reflected in organisational budget and process. 	<ul style="list-style-type: none"> • Consult women at various levels, that is, as stakeholders and as members of the Unit; • Ensure that women's concerns relating to existing and pending legislation are documented and reflected in the core business of the Unit; • Put mechanisms in place to enhance women's participation in decision-making, including the legislative processes; • Identify and remove discriminatory legislation and pass legislation that will protect and advance women's rights; and • Ensure that all decisions, including policy related decisions, are preceded by a gender analysis.
5. Implementation	<ul style="list-style-type: none"> • The goal regarding implementation of the Constitution and increased number of persons exercising their rights covers women by implication; and • The goal to promote the rights of vulnerable groups and persons covers gender concerns such as HIV testing for persons accused of rape, the possibility of criminalising wilful HIV transmission and law reform on adoption, marriage and succession. 	<ul style="list-style-type: none"> * Gender targets or concerns are not specifically articulated in the goal relating to the implementation of the Constitution; • No indication of measures to create an environment that affirms women and promotes gender equality; • There appears to be no appreciation of the unequal benefits between women and men from current programmes and services; • There appears to be no systematic process to equalise services and opportunities between women and men; 	<ul style="list-style-type: none"> • Specify gender targets to be achieved within a specified timeframe in each activity; • Indicate what processes will be set in motion to overcome obstacles to achieve gender targets in respect of each activity; • Prioritise the implementation of law reform on customary law of succession and other gender priorities that affect women who are victims of multiple forms of discrimination; • Ensure that all legislation drafted to respond to women's needs must be evaluated before enactment to ensure that such needs are in fact concretely addressed; • Link implementation of the Unit's activities to national priorities regarding gender and Departmental compliance

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
5. Implementation continued ...		<ul style="list-style-type: none"> • Goal relating to traditional leaders fails to reconcile the intended transformation with existing gender inequalities and unfair practices, under customary law and traditional authorities; and • Other gender issues raised in the Gender Policy Statement of the Department are not taken cognisance of. 	<p>obligations in terms of CEDAW, BPA, SADC Declaration on Gender, the Constitution and Equality Legislation. This includes policy on transformation and gender policy; and</p> <ul style="list-style-type: none"> • Make a concerted effort to appoint women in senior decision-making positions.
6. Resources		<ul style="list-style-type: none"> • No clear personnel/ financial systems or plans for supporting and implementing gender programming; • No analysis appears to have been conducted on expenditure inequalities between women and men; • Questions regarding gender impact do not appear to be asked during decision-making; and • Budget makes no reference to gender priorities. 	<ul style="list-style-type: none"> • Identify a specific budget for women's empowerment programmes as well as set aside funds for supporting <i>Gender Mainstreaming</i> in the Unit; • Re-prioritise activities in response to the expenditure inequalities relating to gender and allocate resources accordingly; and • Engender the budget of the Unit and allocate an adequate budget towards systematic gender transformation.
7. Capacity Building	<ul style="list-style-type: none"> • Commitment to induction programmes for new personnel can be of assistance to women as new entrants. 	<ul style="list-style-type: none"> • Training is not specific or targeted with regard to <i>Gender Mainstreaming</i>. 	<ul style="list-style-type: none"> • Use an induction programme and other training opportunities to skill people on gender mainstreaming, change management and diversity management; • Implement special training interventions and use training to accelerate skills and leadership development for women; • Implement succession planning to accelerate women's entry, advancement and retention in the Unit; and • Establish a Gender Focal Point and resource it adequately.
8. Communication and information		<ul style="list-style-type: none"> • Communication does not reflect gender awareness or commitment to meeting the communication needs of women from diverse background; 	<ul style="list-style-type: none"> • Communicate with women in a manner that best meets their needs; • Demystify the legislative process so that it is more accessible to all women; <p>Continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
8. Communication and information continued ...		<ul style="list-style-type: none"> • No clear plan or demonstration of commitment to enhance participation of women in decision-making, both as internal and external stakeholders; • If the numbering of goals reflects priorities, women's programmes are at the bottom of the list; • There appears to be no plan or action seeking to equalise opportunities between women and men; • The leadership does not appear to raise questions regarding the need to achieve equality between women and men internally and externally in dialogues, debates and other forms of communication; and • Data management and knowledge generation does not effectively support gender mainstreaming. 	<ul style="list-style-type: none"> • Identify the appropriate forums and medium of communication for legislation; • Build a strong lobby inside and outside the Unit advocating gender issues; • Align knowledge generation and information management systems and priorities with national priorities regarding the advancement of women; • Ensure that communication practices are based on an understanding of the different circumstances of women and men; and • Align knowledge generation systems and priorities with gender transformation objectives and targets.
9. Employment	<ul style="list-style-type: none"> • Although gender blind, goals to improve salaries, may benefit women by broadening their access to the Unit. 	<ul style="list-style-type: none"> • Employment goals, strategies and action plans are gender neutral and do not reflect an appreciation of employment problems relating to employee diversity. 	<ul style="list-style-type: none"> • Use effective training and internal placements, including succession planning, to accelerate and promote women in the Unit; • Implement innovative recruitment strategies to ensure that recruitments to key positions in the Unit advance employment equity objectives relating to gender; • Promote women's access to wider opportunities in vocational training and other types of training; • Promote the appointment of women to senior levels of responsibility; • Adapt working conditions to suit the needs of employees with family responsibilities; and • Implement special programmes to promote diversity awareness and management in the Unit in order to create an environment which affirms women of all races and encourages their retention and advancement.

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
10. Procurement		<ul style="list-style-type: none"> • No indication of any deliberate attempts to achieve gender inclusiveness in outsourcing work; • No indication that the Unit has identified women as a target for preferential treatment; and • No evidence of attempts to actively seek out suitably qualified women for contracts. 	<ul style="list-style-type: none"> • Incorporate gender criteria into the procurement policies and practices of the Unit; • Set quotas and targets for women contractors; • Communicate and advertise tenders in places that are assessable to women; and • Implement special measures to ensure that women benefit equally with men from contracts issued by the Unit.
11. Monitoring and Evaluation		<ul style="list-style-type: none"> • Key Performance Indicators deal mainly with family law and women's concerns in other areas of law, particularly civil law, are ignored; • No specific arrangements or performance indicators are made for tracking gender progress; and • No specific arrangements are in place for monitoring compliance with international law and state obligations. 	<ul style="list-style-type: none"> • Develop a monitoring and evaluation system for the Unit that incorporates goals, targets and Key Performance Indicators for women; • Develop gender sensitive instruments that would track progress on the key target areas; • Use the monitoring and evaluation information obtained from the collection of gender disaggregated data to analyse the impact on gender equality; and • Integrate accountability for performance on gender transformation and related targets in the performance contracts of all managers in the Unit.
12. Reporting		<ul style="list-style-type: none"> • No indication of incorporation of indicators, targets and benchmarks in performance agreements of management and staff; • No indication of reporting arrangements on equality generally and gender equality specifically; • No evidence of gender disaggregated records except employment statistics; and • No arrangements appear to exist for monitoring programmes. 	<ul style="list-style-type: none"> • Keep record on data disaggregated by gender; • Store all data in accordance with goals, targets and indicators for the Unit; • Structure all reports in such a way that each report speaks to the gender goals, targets and indicators; • Require all senior managers to report on gender indicators as part of the performance management system; and • Report regularly on gender transformation based on standard formats and discuss such reports in all key meetings.

4.2.4 Masters

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
1. Awareness		<ul style="list-style-type: none"> No indication of awareness of gender issues; No indication of awareness of different needs between women and men; No reference to departmental Gender Policy Statement and related international instruments; and There is no indication that measures are implemented to make it clear to all managers regarding their accountability with regard to gender mainstreaming. 	<ul style="list-style-type: none"> Raise awareness on gender by constantly engaging in dialogue on gender issues; Brief all managers and staff about all key policy frameworks (international, national and departmental) regarding their accountability for gender mainstreaming; Provide literacy on gender issues; Provide capacity building to all managers and staff to bring to their attention the unequal and different circumstances of women and men; and Incorporate references to the Gender Policy Statement of the department especially Chapter 3 and 5 and other international instruments on gender.
2. Commitment		<ul style="list-style-type: none"> No reference to gender issues in goal relating to service delivery improvement; Reference to employment equity is cursory and makes no reference to gender specific goals; There appears to be no significant involvement of women in decision-making; and Current workforce profile is skewed in favour of men at the senior and top leadership levels. 	<ul style="list-style-type: none"> Conduct an audit to establish the gender profile of the Unit. This should cover employment profiles and trends, decision-making patterns, procurement, information, knowledge generation and management communication patterns and reporting practices; Ensure that gender issues are raised regularly and with conviction in policy and other forms of dialogue with internal and external stakeholders; Ensure that achievement on gender targets is celebrated and rewarded and non-compliance is openly sanctioned; Develop and display appropriate policy statements, gender profiles and progress reports in places where all members of the Units can regularly view; Ensure that the <i>Gender Mainstreaming</i> strategy or plan is viewed as one of the key result areas of the overall strategy of the Business Unit; Allocate adequate resources for gender transformation;

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
3. Planning	<ul style="list-style-type: none"> Plan includes an accelerated development programme for legal personnel from disadvantaged groups as part of implementation strategy for the employment equity. 	<ul style="list-style-type: none"> It appears that plans have not been formulated on the basis of gender disaggregated information to address gender inequality; Customary law and practices that undermine women's proprietary rights with regard to succession are not clearly addressed; Plans do not show that they were preceded by a situation analysis to establish the diversity of stakeholders' needs particularly gender diversity; and None of the objectives refers to unequal power relations between women and men and efforts to empower women and other disadvantaged groups. 	<ul style="list-style-type: none"> Conduct research to identify women's circumstances and needs with regard to the Master's office. This means disaggregating women in terms of various categories including occupational categories. It also means considering social factors such as race, class, disability, etc. This information should be used to review current information management plans and to establish the impact on women, as well as to implement corrective action; Develop a <i>Gender Mainstreaming</i> strategy and plan and ensure that this is integrated in the operational and project plans of all components of the Business Unit and collaborate activities with other stakeholders; Ensure that the plans, sub-plans and future plans are subjected to a gender analysis. Data relied on for planning should be disaggregated by gender and its intersection with race, disability, HIV status and other forms of difference; Subject all plans to a compliance test regarding key international and national and departmental policies, targets and benchmarks; Request comment of the Gender Directorate, experts and or Gender Forum on plans before they are finalised; Incorporate gender analysis in planning and policy formulation within the Unit; Ensure that women committed to women's emancipation are involved at all stages of planning, especially in policy formulation; and Incorporate gender analysis in planning and policy formulation within the Unit.
4. Policy and Decision-making		<ul style="list-style-type: none"> No indication of women's full participation or efforts to achieve such in decision-making. 	<ul style="list-style-type: none"> Ensure that women are consulted at various levels, that is, as stakeholders and as members of the Unit; Put mechanisms in place that facilitate participation and decision-making in the Unit; Consult women on their concerns relating to customary law, property, traditional practices, civil law, economic justice, etc; <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
4. Policy and Decision-making continued ...			<ul style="list-style-type: none"> • Reflect all responses from women in policy; and • Ensure that all decisions are informed by a gender analysis and gender transformation objectives.
5. Implementation	<ul style="list-style-type: none"> • Unification of the administration of estates may enhance responsiveness to economic power inequalities between women and men. This works to reduce the risk of gender and racial discrimination. 	<ul style="list-style-type: none"> • The move towards a tariff based approach to services does not seem to have taken into account or made provision for unequal economic power between women and men; and • Plans are neutral and therefore gender inequality may not necessarily be addressed. 	<ul style="list-style-type: none"> • Develop mechanisms for the implementation of services for the Master's offices that protect and advance women's rights; • Identify activities for the Unit and specify gender targets to be achieved within allocated timeframes; and • Ensure that Key Performance Indicators for gender are implementable.
6. Resources		<ul style="list-style-type: none"> • Although reference is made to Batho Pele, no clear strategy is articulated for redirection of resources to historically neglected areas, or to equalise service for women and men; and • The is no budget or personnel assigned specifically for gender programming. 	<ul style="list-style-type: none"> • Identify a specific budget for women's empowerment programmes as well as set aside funds for supporting gender mainstreaming; • Establish structures and allocate sufficient financial and human resources to ensure policy and planning objectives for gender integration; and • Engender the entire budget of the Unit and ensure that women and men benefit equally from all resources.
7. Capacity Building	<ul style="list-style-type: none"> • Scholarships and planned strategies have the potential for improving access to opportunity for women. 	<ul style="list-style-type: none"> • No indication of planned or executed training initiatives on gender sensitivity and mainstreaming skills for professionals in this division; and • No specific programmes to empower women. 	<ul style="list-style-type: none"> • Implement special measures to accelerate women's access to wider opportunities in education, vocational training and acting appointments at senior levels of responsibility; • Implement induction programmes to introduce personnel to gender mainstreaming with more sustainable training provided to skill personnel on various aspects of gender mainstreaming, including gender analysis, diversity awareness and management as well as change management.; • Establish and address the impact of automated services on women; • Ensure that bursaries and incentives are specifically targeted at recruiting women from all racial and sub-racial categories; and <p>Continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
7. Capacity Building continued ...			<ul style="list-style-type: none"> Use effective training and internal placements to accelerate and promote women in the Unit.
8. Communication and information		<ul style="list-style-type: none"> No clear strategy to address differential needs of women and men in communication; Women concerns not reflected in issues prioritised in Business Unit's Newsletter; No indication that women stakeholders are consulted equally with men in decision-making processes; and Inadequate representation of women in decision-making structures in the Unit and no clear plan to address this gap. 	<ul style="list-style-type: none"> Communicate with women in a manner that best meets their needs as consumers and providers of services; Ensure that information relating to the Masters' Office is accessible to women; Identify linguistic needs of women and adopt policies to provide for the identified needs; and Align research, knowledge generation and information management with women's human rights issues and needs and ensure that information management systems effectively support efforts to track progress on gender transformation.
9. Employment	<ul style="list-style-type: none"> Reference made to employment equity goals although not gender disaggregated. 	<ul style="list-style-type: none"> Human Resources references do not deal with gender equality; and No programme appears to systematically eliminate unfair discrimination on the ground of gender. 	<ul style="list-style-type: none"> Use effective training and internal placements to accelerate and promote women in the Unit; Implement special measures to recruit women of all races, and develop and promote them into key areas in the Unit in accordance with Employment Equity Plan; Promote women's access to wider opportunities in vocational training and acting appointments at higher levels of responsibility; Adapt working conditions to suit the needs of employees with family responsibilities; and Implement measures to prevent sexual harassment and measure to deal with it appropriately if it does happen.
10. Procurement		<ul style="list-style-type: none"> No indication of efforts to comply with the Preferential Procurement Policy Framework Act generally, and the promotion of equal access to contracts by women, in particular. 	<ul style="list-style-type: none"> Incorporate gender criteria into the procurement policies and practices of the Unit; Set quotas and targets for women contractors; <p>Continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
10. Procurement continued ...			<ul style="list-style-type: none"> • Communicate and advertise tenders in places that are accessible to women; and • Implement special measures to ensure that women of all races benefit equally with men in tenders and other contracts from the Unit.
11. Monitoring and Evaluation		<ul style="list-style-type: none"> • Monitoring and evaluation does not address the need for women's involvement as stakeholders and does not deal with tracking progress on gender equality; • Questions regarding performance on gender equality do not appear to be raised regularly; • There appears to be no appreciation of unequal circumstances for women and men; and • There appears to be no processes to equalise benefits and opportunities between women and men. 	<ul style="list-style-type: none"> • Develop a monitoring and evaluation system for the Unit that incorporates goals, targets and KPI's for women; • Develop gender sensitive instruments that would track progress on the key target areas; • Use disaggregated data to assess impact on gender equality; and • Align data management systems with gender objectives and targets and the generation of effective indicators for the monitoring of progress on all aspects of gender transformation.
12. Reporting		<ul style="list-style-type: none"> • Report back mechanisms address Business Plans generically with no specific reference to gender and its intersection with other forms of inequality and difference; • Unit does not appear to keep gender disaggregated records; • There appears to be no specific monitoring mechanisms for services or programmes that are used by women mostly, for example the administration of deceased estates; and • Unit does not appear to keep gender disaggregated records. 	<ul style="list-style-type: none"> • Maintain records on data disaggregated by gender; • Store Data in accordance with goals, targets and indicators for the Unit; • Structure reports in such a way that each report speaks to the goals, targets and indicators; • Ensure that all senior managers report on gender indicators as part of the performance management system; • Ensure that reports on progress with regard to the advancement of women and gender transformation are aligned with international and national compliance obligations and are regularly presented to and discussed at management meetings; and • Employ standardised reporting formats for all gender related reports.

4.2.4 Finance

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
1. Awareness	<ul style="list-style-type: none"> • Specific reference made to staff (employee) diversity in terms of race, gender, disability as a strength. 	<ul style="list-style-type: none"> • No mention of gender budget as provided for in item 2 of Chapter 5 of the Departmental Gender Policy Statement; • No specific reference to departmental Gender Policy Statement or other related instruments; • No mention of need for mainstreaming gender; • Stakeholder analysis does not reflect an appreciation and attempt to address gender difference; and • There is no indication that measures are implemented to acquaint all managers regarding their accountability in respect of <i>Gender Mainstreaming</i>. 	<ul style="list-style-type: none"> • Raise the awareness on gender by constantly engaging in debates and discussions on those issues; • Brief all managers and staff about key policy frameworks (international, national and departmental) regarding their accountability with regard to <i>Gender Mainstreaming</i>; • Provide literacy on gender issues; • Provide capacity building to all managers and staff to bring to their attention the unequal and different circumstances of women and men; and • Incorporate references to the Gender Policy Statement of the Department and other international instruments on gender.
2. Commitment		<ul style="list-style-type: none"> • No indication of commitment to <i>Gender Mainstreaming</i> or programming in the Business Plan; and • Leadership predominantly male with no visible attempts to address gender gaps. 	<ul style="list-style-type: none"> • Conduct an audit to establish the gender profile of the Unit covering employment profile and trends, decision-making patterns, procurement, information, knowledge generation and management communication patterns and reporting practices; • Ensure that gender issues are raised regularly and with conviction in policy and other forms of dialogue with internal and external stakeholders; • Ensure that the achievement on gender targets is celebrated and rewarded and that non-compliance is openly sanctioned; • Develop and display appropriate policy statements, gender profiles and progress reports in places where all members of the Units can regularly view them; • Ensure that the <i>Gender Mainstreaming</i> strategy or plan is viewed as one of the key result areas of the overall strategy of the Business Unit; <p>Continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
2. Commitment continued ...			<ul style="list-style-type: none"> • Incorporate or make reference to specific sections in the Department's Gender Policy in the Business Plan and link it to service delivery in the Unit; • Allocate adequate resources for gender transformation; • Integrate non-sexism and the achievement of gender equality in value statements and discourage sexist jokes; and • Disaggregate the Unit's personnel profile on the basis of gender and commit the Unit to placing women of all races and sub-racial categories in positions that enhance participation in decision-making.
3. Planning		<ul style="list-style-type: none"> • No indication of conscious integration of gender considerations in planning process and plans; and • No indication of questions asked on the likely gender impact of budgets and other plans. 	<ul style="list-style-type: none"> • Conduct research to identify women's circumstances and needs with regard to finance, disaggregating women in terms of various categories including occupational categories (Judges, Magistrates, Managers, Clerks of Courts, Secretaries, etc). Also consider court users. This should be done taking social factors such as race, class, disability, etc, into account; • Develop a <i>Gender Mainstreaming</i> strategy and or plan and ensure that this is integrated in the operational and project plans of all components of the Business Unit and collaborative activities with other stakeholders; • Subject the Business Plan, sub-plans and future plans to a gender analysis (being an assessment of the likely differential impact on women and men taking into account all material differences in the circumstances of women and men from diverse backgrounds). Data relied on for planning should be disaggregated by gender and its intersection with race, disability, HIV status and other forms of difference; • Subject all plans to compliance tests, taking into account all key international and national policies, as well as departmental policies, targets and benchmarks; • Request comments from the Gender Directorate, gender experts and or the Gender Forum on the plans, before they are finalised; and • Incorporate gender analysis in planning and policy formulation within the Unit.

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
4. Policy and Decision-making		<ul style="list-style-type: none"> No indication of women's full participation or efforts to achieve such in decision-making. 	<ul style="list-style-type: none"> Ensure that women are consulted at all levels, as stakeholders and as members of the Unit; Put mechanisms in place that facilitate participation and decision-making in the Unit; Reflect issues raised by women in all policy; and Ensure that all decisions are informed by a gender analysis and gender transformation objectives.
5. Implementation		<ul style="list-style-type: none"> No visible indication of consciously creating an environment that affirms women and promotes gender equality; No budget analysis or review to ascertain benefits, per capita, by women and men to address gaps; and No evidence of processes devoted to equalising services and opportunities between women and men. 	<ul style="list-style-type: none"> Introduce a women's budget, not as a separate budget, but as an integral part of the department's programme to ensure the implementation of gender programmes; Examine the impact of all programme implementation to ensure responsiveness to women and men from diverse social and economic backgrounds; Develop mechanisms for the implementation of finance services that ensures that gender programmes and priorities are achieved; Ensure that a reasonable share of the Unit's and Department's budget is allocated to programmes seeking to equalise opportunities and services for women and men from all walks of life; and Ensure that gender priorities are visibly integrated in all aspects of the budget.
6. Resources		<ul style="list-style-type: none"> No indication of conscious analysis of expenditure patterns in terms of responsiveness to women's needs; No indication of questions asked regarding gender impact; No indication of resources allocated specifically to gender programming or capacity building; and No provision for a Gender Focal Point in the Unit. 	<ul style="list-style-type: none"> Identify a specific budget for women's empowerment programmes and set aside funds for supporting gender mainstreaming in the Unit; Re-prioritise activities and allocate resources accordingly in response to identified expenditure inequalities relating to gender; Analyse all gender related services and provide a database on expenditure per service and on a per capita basis; Allocate a budget for skills development relating to <i>Gender Mainstreaming</i> and change management in this regard; and Use gender disaggregated data for planning all institutional activities.

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
7. Capacity Building	<ul style="list-style-type: none"> Planned skills development including Project Management and Teambuilding could have positive implications for gender equality although articulated in neutral language. 	<ul style="list-style-type: none"> No indication of training executed or planned on gender; No indication of Gender Focal Person; and No indication of use of gender experts. 	<ul style="list-style-type: none"> Train management and personnel specifically on the concept of gender budgeting and other dimensions of <i>Gender Mainstreaming</i>, including valuing and managing diversity, commencing with senior management; Use induction programmes to introduce people to principles of <i>Gender Mainstreaming</i> and provide long term training for related skills development; Implement special programmes to accelerate professional, management and leadership development of women, particularly black women. This is to fast track their recruitment and advancement into senior decision-making positions; and Allocate a budget for measures seeking to mainstream equality and other human rights in the Ministry and Department and affiliated institutions.
8. Communication and information		<ul style="list-style-type: none"> No gender advocacy statements from the leadership; No evidence of conscious effort to address the situation of women and their concerns; No evidence of conscious effort to equally consult women and men in planning and decision-making; and No indication of prioritisation of the budget for women's concerns in research or knowledge generation. 	<ul style="list-style-type: none"> Build strong advocacy, especially amongst the leadership that advocates women's and gender issues; Ensure that the Unit communicates its priorities and gender targets; Translate and communicate financial language in a manner that meet women's needs as consumers, and service providers in the department; Ensure that financial information is readily accessible and user-friendly; and Communicate in a manner that ensures that linguistic and other diverse needs of women are catered for.
9. Employment		<ul style="list-style-type: none"> No reference to gender equity planning; No indication of plans to address inequality of opportunities between women and men; and No indication of plans to address gender related employment needs. 	<ul style="list-style-type: none"> Specify targets for women of all races and other forms of diversity in accordance with the employment equity plan; Use effective training and internal placements to accelerate and promote women in the Unit; Implement special measures to recruit, develop and promote women of all races and sub-racial categories in key areas that ensure their involvement in decision-making in the Unit, in accordance with Employment Equity Plan;

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
9. Employment continued ...			<ul style="list-style-type: none"> Promote women's access to wider opportunities in vocational training and training in the Unit and acting appointments to higher levels of responsibility; and Adapt working conditions and adjust the organisation to suit the needs of the employee with family responsibilities.
10. Procurement		<ul style="list-style-type: none"> No indication of efforts to comply with Preferential Procurement Policy Framework Act generally and the promotion of equal access to contracts by women in particular. 	<ul style="list-style-type: none"> Since the management of the procurement function falls within the ambit of this Unit it is crucial that the procurement policy and procedures incorporate women as a target group; Consider introducing an Implementation Protocol for Equalisation of Procurement Opportunities. Ensure that all in the Unit and the Department are aware of this protocol and their specific responsibilities with regard to its implementation; Review current contractor profile and practices to establish gender patterns, taking into account the intersection of gender with race and other factors; Incorporate gender criteria into the procurement policies and practices of the Unit and the Department; Set targets for engaging women contractors; Communicate and advertise tenders in places that are accessible to women from diverse backgrounds; and Implement special measures to ensure that women benefit equally with men from all contractual opportunities.
11. Monitoring and Evaluation		<ul style="list-style-type: none"> No indication of plans to monitor gender targets; No indication of gender disaggregation of statistics on service, employment, procurement and stakeholder participation; No reference to monitoring compliance with international instruments; and 	<ul style="list-style-type: none"> Develop a monitoring and evaluation system for the Unit that tracks budget information on the following: <ul style="list-style-type: none"> specialty targeted programmes for women; programmes aimed at change within the Unit; mainstreaming gender. Align all systems and processes with gender transformation objectives to facilitate effective monitoring and decision-making that is based on gender analysis; and <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
11. Monitoring and Evaluation continued ...		<ul style="list-style-type: none"> No indication of incorporation of gender targets and benchmarks in performance agreements of management and staff. 	<ul style="list-style-type: none"> Use the gender disaggregated data to assess impact of budget and decisions on gender equality.
12. Reporting		<ul style="list-style-type: none"> No indication of the keeping of records of data disaggregated by gender; No indication of specific monitoring mechanisms for programmes mainly used by women; No indication of regular reporting on gender progress; and No indication of reporting on gender budget. 	<ul style="list-style-type: none"> Keep records of data disaggregated by gender and its intersection with race and other factors; Ensure that data is stored in accordance with gender goals, targets and indicators for the Unit; Structure reports in such a way that each report speaks to the goals, targets and indicators on gender and other matters; and Ensure that all senior managers report regularly on gender indicators and accountability on gender transformation, against predetermined targets. This should be integrated in performance contracts, as part of the performance management system.

4.2.6 Human Resources

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
1. Awareness	<ul style="list-style-type: none"> Conscious mention of need to align organisational processes with Employment Equity Act, Skills Development Act and Gender issues; and Gender specifically mentioned as a critical element of Key Performance Indicators. 	<ul style="list-style-type: none"> <i>Gender Mainstreaming</i> is not mentioned at the level of goal setting; No mention of Departmental Gender Policy Statement and related national and international instruments; Specifically no mention of issues dealt with in Chapter 4 and 5 of the Gender Policy Statement; and 	<ul style="list-style-type: none"> Raise the level of awareness on gender by constantly engaging in dialogue on gender issues; Implement measures to ensure that all managers and staff in the Business Unit, and employees in the Department, and affiliated institutions, are fully informed of their accountability with regard to gender mainstreaming; Ensure that all role-players are aware of their duty to integrate gender considerations in all organisational processes and that all decisions should clearly reflect this awareness; <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
1. Awareness continued ...		<ul style="list-style-type: none"> • There is no indication that measures are implemented to acquaint all managers regarding their accountability in respect of <i>Gender Mainstreaming</i>. 	<ul style="list-style-type: none"> • Brief all managers and staff in the Unit about key international, national and Departmental policy frameworks and related compliance responsibilities regarding the achievement of gender equality; and • Familiarise all members with provisions of Chapter 4 and 5 of the Department's Gender Policy Statement and assist the Gender Directorate in ensuring that all persons in key leadership positions are appraised of their compliance responsibilities as spelt out in these chapters.
2.. Commitment	<ul style="list-style-type: none"> • Conscious mention of the need to align organisational processes with gender issues; and • Gender referred to as critical element of key performance indicators. 	<ul style="list-style-type: none"> • No indication of specific goals on gender equality; • Gender does not permeate the entire plan and ethos of the Business Unit; and • No indication of a culture of justifying decisions on the Gender policy objectives. 	<ul style="list-style-type: none"> • Conduct an audit to establish the gender profile of the Unit, covering employment profile and trends, decision-making patterns, procurement, information, knowledge generation and management, communication patterns and impact and reporting practices; • Ensure that gender issues are raised regularly and with conviction in policy and other forms of dialogue with internal and external stakeholders; • Ensure that achievement on gender targets is celebrated and rewarded and that non-compliance is openly sanctioned; • Develop and display appropriate policy statements, gender profile and progress reports on targets, in places where all members of Units can regularly view them; • Ensure that the gender mainstreaming strategy plan is viewed as one of the key result areas of the overall strategy and plan of the Business Unit; • Ensure that the Unit's business plan incorporates or makes reference to specific sections in the department's Gender Policy and link it to service delivery in the Unit; • Allocate adequate resources for gender transformation; • Integrate non-sexism and achievement of gender equality in value statements and discourage sexist jokes; • Implement measures to ensure that all organisational activities reflect an appreciation of and meaningful effort to address equality concerns, particularly of women; <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
2. Commitment continued ...			<ul style="list-style-type: none"> • Ensure that understanding of and responsiveness to equality concerns, particularly those relating to historically marginalised women, permeate all activities of the Unit and the Department, from planning through implementation, to reporting. Ensure that principles of gender equality are visibly treated as an integral part of core institutional values; • Make it a habit to regularly benchmark or justify decisions on the basis of gender analysis; • Make it mandatory that the likely impact on equality between women and men of every decision in the Unit be indicated before adoption. The same should be done with all human resources decisions in the entire Department and affiliated institutions; and • Ensure that all senior managers report regularly on gender indicators and accountability on gender transformation, against predetermined targets. This should be integrated in performance contracts and institutionalised as part of the performance management system.
3. Planning	<ul style="list-style-type: none"> • Gender disaggregated data used for planning; and • Conscious decision to regard gender as an element of key performance indicators. 	<ul style="list-style-type: none"> • Use of gender disaggregated data appears to be limited to employment equity profile only; • No gender mainstreaming strategy and plan; and • Gender considerations not fully integrated throughout plan. 	<ul style="list-style-type: none"> * Conduct research to identify women's circumstances and needs, disaggregating women in terms of various categories including occupational categories and social factors such as race, class and disability, into account; • Develop a <i>Gender Mainstreaming</i> strategy or plan aligned with the Employment Equity Plan and ensure that this is integrated in the operational and project plans of all components and collaborate activities with other stakeholders; • Ensure that the Business Plan, all sub-plans and future plans are subjected to a gender analysis. Data relied on for planning should be disaggregated by gender and its intersection with race, disability, HIV status and other forms of difference; and • Subject all plans to compliance testing regarding key international, national and Departmental policies, targets and benchmarks. <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
3. Planning continued ...			<ul style="list-style-type: none"> Request comment of Gender Directorate, expert or Gender Forum on plans before they are finalised; Incorporate gender analysis in planning and policy formulation within the Unit; Ensure that women committed to women's emancipation are involved at all stages of planning especially in policy formulation; Use gender disaggregated data for planning all institutional activities, including all aspects of Human Resource Development and Management, HIV and AIDS Management and Employee Assistance Programme (EAP), procurement and decision-making systems; Ensure that all aspects of plans and sub-plans reflect an appreciation of different circumstances and needs of women and men; Facilitate the development or review of policy directives on various aspects of gender and work, including harassment (sexual and other forms), stress management and rights of workers with family responsibilities; Acquaint staff with policies, including the Department's Employment Equity Plan, Department's Employee Profile and other departmental policies, and ensure that they are displayed where all can read them regularly; Ensure that remuneration and employment conditions' plans incorporate an appreciation of systemic inequalities between women and men in earnings and benefits and strategic interventions to progressively address the imbalances; and Integrate non-sexism and the achievement of equality amongst institutional values.
4. Policy and Decision-making	<ul style="list-style-type: none"> There is some participation of women in decision-making. 	<ul style="list-style-type: none"> Women's concerns not consciously reflected in organisational priorities; Budget process and outcomes does not reflect gender concerns; 	<ul style="list-style-type: none"> Enhance women's participation in decision-making and ensure that this happens at all levels and in all structures and that women's concerns are directly and indirectly reflected in organisational priorities; <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
4. Policy and Decision-making continued ...		<ul style="list-style-type: none"> • No specific programmes targeted at value transformation and skills development for gender mainstreaming; • Inadequate appreciation of gender issues and gender mainstreaming is reflected in plans and activities; • Gender mainstreaming principles and values do not appear to permeate decisions regarding plans, policies and practices in Unit and Department; • No evidence of involvement of gender specialists or women's organisations in decision-making. 	<ul style="list-style-type: none"> • Review the budget to ensure that <i>per capita</i> expenditure between women and men is progressively equalised and that a fair amount is specifically allocated to special programmes seeking to empower women and eradicate inequality between them and men; • Encourage through rewards and sanctions, value based decision-making which incorporates values of non-sexism and the achievement of gender equality in and through all Unit and Departmental activities; • Note and enforce compliance with the mandatory requirement (in Gender Policy) that all policies, plans, activities and decision-making processes must include a gender equality analysis to establish the likely impact on women and men and current systemic inequality between them; • Make it a mandatory requirement that all human resource decisions, from recruitment to dismissal and resignation, are preceded by a gender analysis and written impact statement regarding the likely impact on the achievement of employment equity in respect of women and men from diverse backgrounds, including race, disability and HIV status; and • Consult with the Gender Directorate and external gender experts regularly and particularly in the process of decision-making.
5. Implementation	<ul style="list-style-type: none"> • Mention of learning organisation and 21 century leadership alignment has positive implications for gender. 	<ul style="list-style-type: none"> • No indication of specific measures in place to create an environment that affirms women and promotes gender equality; • No indication of plans to equalise services received by women and men; and • No indication of plans to equalise benefits and opportunities between women and men. 	<ul style="list-style-type: none"> • Conduct survey to ascertain the impact on equality between women and men from diverse backgrounds, including race, culture, disability, language, geographic location and people affected by HIV and AIDS; • Ensure that there are projects under the Employment Equity Plan that specifically target women for empowerment and eradication of gender discrimination in employment practices; and • Adopt and publicise special measures to empower women and close identified gaps between women and men.

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
6. Resources	<ul style="list-style-type: none"> • HRD and EAP create an opportunity for specific programmes for the advancement of women. 	<ul style="list-style-type: none"> • No resources specifically allocated for gender programming; and • Questions regarding gender impact not reflected in resource allocation processes. • No indication that the Gender Unit or Gender experts are consulted as a resource; and • No indication of analysis of expenditure on men and women's issues (for example salaries, benefits and training) in the department. 	<ul style="list-style-type: none"> • Establish a 'resident' Gender Focal Point and Support Team to coordinate and help the Unit head to plan and execute gender transformation programmes and monitor progress; • Allocate adequate resources towards <i>Gender Mainstreaming</i> and related programmes, including capacity building; • Allocate a budget towards special programmes involving accelerated professional, skills and leadership development to empower women for absorption, advancement and retention in key leadership positions throughout the Department; • Allocate specific and adequate funds to gender programming and ensure that all women and men benefit equally from the budget; • Ensure that all allocations are preceded and informed by an analysis of the likely implications for per capita expenditure and inequality between women and men; and • Resource allocation should aim to reduce current inequalities and aim to achieve gender equality in all activities, including remuneration.
7. Capacity Building	<ul style="list-style-type: none"> • Induction programme which is likely to support gender transformation. 	<ul style="list-style-type: none"> • No specific programmes targeted at value transformation and skills development for gender mainstreaming; and • No reference to the use of gender experts likely to impact negatively on gender. 	<ul style="list-style-type: none"> • Ensure that all Unit members, starting with management, are exposed to an induction, and continuing courses on <i>Gender Mainstreaming</i> and gender analysis; • Provide continuing training to strengthen knowledge, values and skills on gender mainstreaming; • Ensure ongoing provision of capacity building on change management, affirming diversity and managing diversity; • Ensure that adequate resources and skills are provided to the Gender Focal Point in the Unit; • Make use of gender experts on matters where there is inadequate or no resident expertise, facilities or time for research or training; • Ensure that knowledge generation and information management systems support planning, implementation and monitoring of gender transformation and women's advancement; continued ...

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
7. Capacity Building continued ...			<ul style="list-style-type: none"> • Conduct a needs assessment and facilitate the development and implementation of a Gender Management Course with <i>Gender Mainstreaming</i> including gender analysis and diversity management as key modules, and ensure that all are exposed to adapted versions of the course; and • Integrate <i>Gender Mainstreaming</i> in all training activities, including induction courses and management development courses as well as reading materials, and other training aids.
8. Communication and information	<ul style="list-style-type: none"> • Employment is disaggregated by gender, race and disability. 	<ul style="list-style-type: none"> • Statistics do not appear to be released regularly to facilitate the tracking of gender progress and revitalise levels of commitment; • No indication of attempts to address differential circumstances and needs of women and men; • No indication of conscious endeavour to consult women and men in decision-making on employment, HR matters across the board; * No evidence of special measures to address gender related gaps regarding access to opportunities in communication activities such as advertisements and requests for nominations for training and international trips. 	<ul style="list-style-type: none"> • Release gender disaggregated statistics on human resource practices, on a regular basis. These should cover the process from planning through recruitment, to employee retention for the Unit and the Department; • Integrate Employment Equity Plan provisions relating to the achievement of gender equality in mainstream communication. Also integrate the overall dialogue on human resource activities as reflected in the Unit's Plan; • Ensure that communication on opportunities, including appointments and developmental opportunities, reach women of all races through out the country • Align knowledge generation, management and data management systems with the national objectives for gender transformation; • Implement special measures to consult women as a group on ongoing transformation and reflect their views in all activities including the Unit's Newsletter and other communication activities; and • Consider special programmes to empower women with information on available opportunities in the Department and affiliated institutions, including opportunities relating to overseas trips and how to access such opportunities.
9. Employment	<ul style="list-style-type: none"> * Commitments in respect of Employment Equity and Skills Development Act include gender. 	<ul style="list-style-type: none"> • Decision-making processes, including memoranda do not appear to be aligned with Departmental compliance obligations in terms of the Employment Equity Act, Equality Act and 	<ul style="list-style-type: none"> • Make it compulsory that all memoranda seeking a decision should advise the person approached for decision on the gender implications of the proposed decision; <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
9. Employment continued ...		<p>related instruments, as well as the Department's own Employment Equity Plan;</p> <ul style="list-style-type: none"> • There is no indication of gender analysis and plans to equalise (on the basis of gender) all employment opportunities in the Department; and • There appears to be no policies in the Unit and Department specifically addressing women's concerns relating to their treatment with equal consideration to their male counterparts. 	<ul style="list-style-type: none"> • Use the gender disaggregated data to estimate the likely impact on women and men of all employment practices and to reduce existing systemic inequalities; and • Develop, review and or publicise existing policies on pressing gender issues.
10. Procurement		<ul style="list-style-type: none"> • No reference is made to gender inequalities in procurement of human resources and related services; • No indication exists of a plan for addressing gaps; and • There appears to be no uniformity of practice with regard to procurement equity, including Black Empowerment and Women's Empowerment. 	<ul style="list-style-type: none"> • Familiarise management and staff with the provisions of the Preferential Procurement Policy Framework Act (read with s217 of the Constitution and the Promotion of Equality Act) and clarify their compliance responsibilities in the process; • Establish the gender profile of all contractors and outsourced activities in the past year, and identify gender gaps (in numbers and amounts involved); • Develop a plan for the Unit targeted procurement strategy with clear targets and milestones as well as remedial action to address barriers to contracting women; • Consider introducing an Implementation protocol for equalisation of procurement opportunities and ensure that all in the Unit are aware of this protocol and plan their specific responsibilities with regard to implementation; • Review current contractor profile and practices to establish gender patterns also taking into account the intersection of gender with race and other factors; • Adopt special measures to ensure that women and men benefit equally from contract opportunities in the Unit and to involve women's NGOs in public and private partnerships; • Familiarise all managers and staff with compliance requirements regarding preferential procurement in respect of women; <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
10. Procurement continued ...			<ul style="list-style-type: none"> • Implement gender disaggregated reporting covering service, employment equity, procurement and decision-making structures to be tabled to management meetings, including the Board, with questions raised on non-performance; • Require gender disaggregated reports on procurement regularly for tracking gender progress and planning corrective action; • Develop a gender disaggregated profile (including race, gender and disability) of contractors and outsourcing trends over the last year; and • Set targets and standards for remedial action directed at improving women's representation and implementation protocol to be prepared and enforced through decision-making channels such as approval of memoranda.
11. Monitoring and Evaluation	<ul style="list-style-type: none"> • Gender disaggregated data; and • Gender indicators (but not targets and benchmarks) planned to be incorporated in performance agreements of management and staff. 	<ul style="list-style-type: none"> • No express mention of gender indicators and mechanisms for tracking gender progress; • No indicators for monitoring compliance with international instruments; and of gender equality is not reflected as a key performance area in performance agreements. 	<ul style="list-style-type: none"> • Include gender specific indicators, targets and milestones in the Unit's Business Plan and sub-plans to facilitate the tracking of gender progress; • Draw up specific indicators and benchmarks to be drawn from international instruments such as the Beijing Platform for Action and the SADC Declaration on Gender and Development; • Incorporate specific gender indicators and targets in performance agreements of all senior managers in the Department and affiliated institutions; and • Align data management systems to ensure that accurate and centralised data is readily available on all aspects of gender transformation throughout the Department and affiliated institutions.
12. Reporting	<ul style="list-style-type: none"> • Records of gender disaggregated data kept. 	<ul style="list-style-type: none"> • No express plan to report on gender progress; and • No mention of measuring mechanisms for services seeking to address women's specific needs as workers and employees. 	<ul style="list-style-type: none"> • Keep records on data disaggregated by gender; • Store data in accordance with gender goals, targets and indicators for the Unit; • Structure reports in such a way that ensures that each report speaks specifically to agreed goals, targets and indicators on gender and other matters; <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
12. Reporting continued ...			<ul style="list-style-type: none"> • Reports should be presented by all senior managers as part of the performance management system; • Ensure regular reporting on all aspects of gender transformation is done and that these reports are discussed at management meetings, and integrated into mainstream reports; and • Ensure that all reporting on human resources is standardised through out the Department.

4.2.7 Public Education and Communications

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
1. Awareness	<ul style="list-style-type: none"> • There is an awareness that communities are not homogeneous, and in prioritising its activities women will be the focus and receive benefits from departmental programmes. 	<ul style="list-style-type: none"> • No indication that measures are implemented to make it clear to all managers regarding their accountability with regard to <i>Gender Mainstreaming</i>; and • No mention of Department's Gender Policy Statement. 	<ul style="list-style-type: none"> • Raise the level of awareness on gender by constantly engaging in debates and discussions on gender issues; • Brief all managers and staff about key policy frameworks (international, national and departmental) regarding their accountability with regard to gender mainstreaming; • Provide literacy on gender issues; • Ensure that all managers are fully informed of their accountability with regard to gender mainstreaming; • Provide capacity building to all managers and staff to bring to their attention the unequal and different circumstances of women and men. (This will also help them to understand that because of those differences, virtually all laws, policies, plans and activities, including court processes, impact differently on women and men and often have the impact of exacerbating existing inequalities); and • Incorporate references to the Gender Policy Statement of the department and other international instruments on gender.

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
2. Commitment	<ul style="list-style-type: none"> There is a focus on specific women's events, that is gender and children's leaflet, maintenance, customary marriages and domestic violence. 	<ul style="list-style-type: none"> No conscious commitment to addressing gender issues in the course of doing business; and Gender considerations are not incorporated into operational procedures: <ul style="list-style-type: none"> Publications (how do you cater for women's needs, specifically how to bring issues of gender into all communications rather than just gender and children's leaflet) Imaging (do you have to profile women different from men). 	<ul style="list-style-type: none"> Conduct an audit to establish gender profile of Unit covering employment profile and trends, decision-making trends, procurement, information, knowledge generation and management communication patterns/ impact and reporting practices; Ensure that gender issues are raised regularly and with conviction in policy and other forms of dialogue with internal and external stakeholders; Ensure that gender mainstreaming strategy plan is viewed as one of the key result areas of overall strategy of the Business Unit; Incorporate or make reference to specific sections in the department's Gender Policy in Unit's Business Plan and link it to service delivery in the Unit; Allocate adequate resources for gender transformation; Integrate non-sexism and achievement of gender equality in value statements and discourage sexist jokes; Ensure that the Unit's Business Plan incorporates or makes reference to specific sections in the department's Gender Policy and link it to service delivery in the Unit; and Disaggregate the Unit's work profile on the basis of gender and commit to placing women in positions that enhance decision-making.
3. Planning	<ul style="list-style-type: none"> Lack of recognition in the planning that all development and Business Unit efforts need to consciously plan and seize opportunities that link gender to programmes and resources. 		<ul style="list-style-type: none"> Conduct research to identify women's circumstances and needs with regard to finance and disaggregating women in terms of various categories. These categories include occupational categories (Judges, Magistrates, Managers, Clerks of Courts, Secretaries, etc). Court users should also be considered. This should be done taking social factors such as race, class, disability, etc, into account; Develop a <i>Gender Mainstreaming</i> strategy and plan, and ensure that it is integrated into the operational and project plans of all components of Business Unit and collaborate activities with other stakeholders; <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
3. Planning continued ...			<ul style="list-style-type: none"> • Ensure that the Business Plan, all sub-plans and future plans are subjected to a gender analysis (being an assessment of the likely differential impact on women and men taking into account all material differences in the circumstances of women and men from diverse backgrounds); • Ensure that data relied on for planning should be disaggregated by gender and its intersection with race, disability, HIV status and other forms of difference; • Subject all plans to compliance test regarding key international/national and departmental policies, targets and benchmarks; • Request comment of gender directorate, experts and Gender Forum on plans before they are finalised; • Incorporate gender analysis in planning and policy formulation within the Unit; and • Ensure that women users and those who work towards women's emancipation are involved in all stages of planning, especially in policy formulation.
4. Policy and Decision-making	<ul style="list-style-type: none"> • No commitment in the policy that addresses gender directly by providing mechanisms or processes in the plans that enhance women's decision-making; and • While the Unit identifies leadership and managerial development and character development as critical it does not specify the needs of women leaders. 		<ul style="list-style-type: none"> • Consult women at various levels, that is as stakeholders and as members of the Unit; • Put mechanisms in place that facilitate participation and decision-making in respect to the Unit; • Consult women on the concerns relating to customary law, property, traditional practices, civil law, etc; • Reflect these issues in policy and ensure that women are involved in all decision-making processes; and • Consider altering the standard provisions of organisational memoranda to insert a requirement on equality implications and compliance with relevant national and international legal and policy obligations.
5. Implementation		<ul style="list-style-type: none"> • Public education and communication appears not to challenge the stereotypes of the different information that women and men need; and 	<ul style="list-style-type: none"> • Conduct a gender needs assessment; • Develop an education programme aimed at creating an awareness and providing services that are directed at women; <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
5. Implementation continued ...		<ul style="list-style-type: none"> No evidence of the methods of data collection and information utilization as it applies to women and men; No evidence that the implementation of activities will benefit women and men equally; It appears that a gender needs assessment of the kind of information needed to educate both the staff at PEC and members of the public has not been conducted; The plan does not indicate how the personnel of the department will be educated to initiate changes that impact on the values and attitudes regarding a gender-blind culture in some sectors of the department; and There appears to be a perpetuation of gender-based roles that prevent information getting to women, for example religious, tradition, societal and cultural taboos. 	<ul style="list-style-type: none"> Develop mechanisms for the implementation of PEC services that protects and advances women's rights; Identify activities for the Unit and specify gender targets to be achieved with allocated timeframes; Implement programmes targeting legal literacy on Critical Areas of Concern and key issues arising from the BPA, CEDAW, Equality Legislation and other standard setting instruments on women's human rights and gender equality; Ensure that Unit's Key Performance Indicators for gender are implementable; Ensure that implementation increases the likelihood that benefits accrue equally to women and men; Implement public and corporate awareness programmes that cover the full spectrum of Critical Areas of Concern for Women and the key issues that arise under each Critical Area of Concern; Ensure that education and awareness on each issue is sustained, effective and responsive to diverse circumstances of women and men from different walks of life. Implement special programmes that seek to alter male perceptions and attitudes in the organisation and the community sector within which the department operates; and Ensure that gender considerations are integrated in all communication and women and men are equally involved in all communication processes.
6. Resources		<ul style="list-style-type: none"> No resources are allocated to gender specific programmes; No gender coordinator identified; and Gender Directorate is not utilized as a resource. 	<ul style="list-style-type: none"> Identify a specific budget for women's empowerment programmes as well as set aside funds for supporting gender mainstreaming; and Establish structures and allocate sufficient financial and human resources to ensure policy and planning objectives for gender.

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
7. Capacity Building		<ul style="list-style-type: none"> • Training and education not specifically geared for women; and • No training for staff on gender equity. 	<ul style="list-style-type: none"> • Promote women's access to wider opportunities in education, vocational training and employment in senior levels of responsibility; • Ensure that induction programmes are used to introduce personnel to gender mainstreaming and ongoing capacity building is provided to develop more technical skills on gender, diversity management and change management; • Allocate a budget towards technical support for gender mainstreaming; and • Use effective training and internal placements to accelerate and promote women in the Unit.
8. Communication and information		<ul style="list-style-type: none"> • Several strategies are identified to reach consumers of the Business Unit and the general public, however, its impact on women and men are not identified; and • Lack of language policy; 	<ul style="list-style-type: none"> • Communication is the cornerstone of this Unit and for its successful placing of 'gender' on the agenda it should: <ul style="list-style-type: none"> • Analyse the internal and external customer on the basis of gender; • Communicate with women in a manner that best meets their needs as consumers and providers of services; • Ensure that linguistic needs of women are identified and policies adopted to provide for their needs; and • Ensure that gender considerations are integrated in all communication and that the power of communication is harnessed to contribute meaningfully towards gender transformation in the organisation and society.
9. Employment		<ul style="list-style-type: none"> • No indication that certain jobs have been earmarked for women in accordance with the Employment Equity Plan; and • No evidence of reference to labour policies that are sensitive to gender issues, for example sexual harassment, maternity leave. 	<ul style="list-style-type: none"> • Use effective training and internal placements to accelerate and promote women in the Unit; • Recruiting and promoting for key areas in the Unit in accordance with employment equity plan; • Promote women's access to wider opportunities in vocational training and training in the Unit and at higher levels of responsibility; <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
9. Employment continued ...			<ul style="list-style-type: none"> Adapt working conditions and adjusting work organisation to suit the needs of employees with family responsibilities; and Ensure that the Sexual Harassment policy for the department is adopted and incorporated into the business plan of the Unit.
10. Procurement		<ul style="list-style-type: none"> No evidence that procurement of services for tenders identify women as a preferential group in terms of legislative requirements; No evidence that the Unit includes gender sensitivity and inclusiveness in contracting practices as criteria; and It appears that the Unit does not actively seek women with appropriate skills and ensure they are aware of tenders. 	<ul style="list-style-type: none"> Incorporate gender criteria into the procurement policies and practices of the Unit; Familiarise all managers and staff with compliance requirements regarding preferential procurement in respect of women; Implement gender disaggregated reporting covering service employment equity, procurement and decision-making structures to be tabled to management meetings, including the board, with questions raised on non-performance; Ensure that there are gender disaggregated regular reports on procurement for tracking gender progress and planning corrective action; Develop a gender disaggregated profile (including race, gender and disability) of contractors. A report on and outsourcing trends over the last year should be prepared; Set targets and standards for remedial action directed at improving women's representation; Prepare implementation protocol to be and ensure that it is enforced through decision-making channels such as approval of memoranda; Implement special measures to ensure that women benefit equally with men from all contractual opportunities; Communicate and advertise tender in places friendly to women; and Incorporate gender criteria into the procurement policies and practices of the Unit.

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
11. Monitoring and Evaluation		<ul style="list-style-type: none"> No monitoring and evaluation system to track the progress on gender issues; Activities do not have baseline data on gender; and No systematic capturing of data on a gender disaggregated basis and the impact of programmes on women and men, is evident. 	<ul style="list-style-type: none"> Develop a monitoring and evaluation system for the Unit that incorporates goal, targets and KPI's for women; Develop gender sensitive instruments that would track progress on the key target areas; and Use the monitoring and evaluation information obtained from the collection of gender disaggregated data to analyse the impact on attaining gender equality.
12. Reporting		<ul style="list-style-type: none"> No indication of gender sensitive reporting that provides data on how information and communication affects women and men differently; No indication of reporting on compliance with international and national human rights instruments; and No reporting on service delivery. 	<ul style="list-style-type: none"> Keep records on data disaggregated by gender; Ensure that data is stored in accordance with gender goals, targets and indicators for the Unit; Structure reports in such a way that each report speaks specifically to the goals, targets and indicators on gender and other matters; and Ensure that all senior managers report on gender indicators as part of the performance management system.

4.2.8 Information Management Systems

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
1. Awareness		<ul style="list-style-type: none"> While there is an acknowledgment that information technology can be a 'strategic enabler' there is no conscious mention of programmes and activities that would address the diverse needs of women and men where such differ; No mention of the Gender Policy Statement and national as well as international policy framework with compliance obligations on gender; and 	<ul style="list-style-type: none"> Raise the level of awareness on gender by constantly engaging in debates and discussions on those issues; Brief all managers and staff about all key policy frameworks (international, national and departmental) regarding their accountability with regard to gender mainstreaming; Provide literacy on gender issues; Ensure that all managers are fully informed of their accountability with regard to gender mainstreaming; <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
1. Awareness continued ...		<ul style="list-style-type: none"> There is no indication that measures are implemented to make it clear to all managers what their accountability is with regard to <i>Gender Mainstreaming</i>. 	<ul style="list-style-type: none"> Incorporate references to the Gender Policy Statement of the department and other international instruments on gender; Incorporate relevance of gender in strategy formulation using gender disaggregated data for both internal and external customers and factor gender into continuing dialogue on IT; Raise the level of gender awareness in the Unit through training and related capacity building interventions; and Read and discuss the Departmental gender policy statement and national and international instruments (SADC and UN).
2. Commitment	<ul style="list-style-type: none"> Fair representation of women in decision-making at least at senior management. 	<ul style="list-style-type: none"> No conscious commitment to incorporating gender issues into the operational procedures, for example the Business Unit mentions its challenges such as: <i>Increased incidence of crime in an increased population</i> What is the nature of the crimes against women? How many women are affected? How does the justice system deal with those women? <i>Increased number of cases withdrawn from courts</i> What impact does withdrawal have for women? 	<ul style="list-style-type: none"> Make it a specific requirement that gender concerns are integrated in all Unit activities from planning through implementation to monitoring and reporting. (This entails making it mandatory for an assessment of the effect and likely impact of all policies, projects, plans and activities on women and men and the adoption of measures to ensure that such policies, projects and activities respond meaningfully to the circumstances of women and men and reduce existing inequalities); Insist on equitable representation of at least 40% of women in decision-making in all areas and at all levels; Conduct an audit to establish a gender profile of the Unit and targeted users and ensure that results are integrated in planning, implementation and monitoring with specific targets and progress in factors agreed to and submitted to EXCO and Departmental Board; Ensure that the issue of gender impact is always raised in all Information Technology dialogue and that achievements of gender targets is celebrated and revisited while non-compliance is openly questioned; and Give a high profile to gender advocacy in all communication, including speeches, press releases and newsletters. Ensure that the full spectrum of issues on the advancement of women and women's human rights beyond gender violence and maintenance is regularly covered in communication.

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
3. Planning		<ul style="list-style-type: none"> • There is no gender disaggregated data of employees emigrating from the Unit – thus reflecting on the loss of experience and institutional memory; • No <i>Gender Mainstreaming</i> strategy or plan; • Plan does not reflect awareness of and attempt to deal with gender differences and consequence in the use of IT and information management services by women and men; • No integration of the engendering the e-justice plan; • The Business Plan does not give an indication of relevant identification and prioritisation of technological needs of women in the Unit; • Lack of recognition in the planning that links gender to objectives like infrastructure development, management and the court process and project information system; and • Since intellectual capital is the most valuable asset to the department, this Unit does not appear to collect data on: • Gender disaggregation of IT skills, needs and utilisation. 	<ul style="list-style-type: none"> • Conduct research to identify women's circumstances and needs with regard to finance and disaggregating women in terms of various categories including occupational categories (Judges, Magistrates, Managers, Clerks of Courts, Secretaries, etc). Also consider court users. This should be done taking social factors such as race, class, disability, etc, into account; • Develop a <i>Gender Mainstreaming</i> strategy and plan and ensure that this is integrated in the operational and project plans of all components of Business Unit and collaborate activities with other stakeholders; • Ensure that the Business Plan, all sub-plans and future plans should be subjected to a gender analysis (being an assessment of the likely differential impact on women and men taking into account all material differences in the circumstances of women and men from diverse backgrounds). Data relied on for planning should be disaggregated by gender and its intersection with race, disability, HIV status and other forms of difference; • Subject all plans to compliance test regarding key international and national and departmental policies, targets and benchmarks; • Request comment of gender directorate, experts and Gender Forum on plans before they are finalised; • Implement measures to ensure that gender equality considerations are integrated in all communication processes, including digital communication; and • Ensure that women committed to women's emancipation are involved in all stages of planning especially in policy formulation.
4. Policy and Decision-making	<ul style="list-style-type: none"> • Lack of recognition in the planning that links gender to objectives like infrastructure development, management and the court process and project information system. 	<ul style="list-style-type: none"> • The plan clearly identifies decision-makers in the Unit – system managers, chief users, strategic planners, but deals with them in a gender neutral manner, that is it does not identify key roles for women as decision-makers or experts in a particular area. 	<ul style="list-style-type: none"> • Ensure that the mandatory requirement (as in Chapter 5 of Gender Policy) to subject all policies, plans, activities and decision-making processes to a gender equality analysis to ascertain current or likely impact on women and men and opt for an approach which promotes (substantive) equality is adhered to and enforced always; <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
4. Policy and Decision-making continued ...			<ul style="list-style-type: none"> Require that organisational memoranda and other decision-making processes always includes a clause indicating gender impact, also taking into account the diversity of women's circumstances and needs; Institute measures to affirm women and accelerate their equal representation in all aspects of the Information Technology and information management processes in response to an audit of the current gender profile and trends and identification of obstacles; Make it mandatory that women and men are equally represented in all committees, conferences and decision-making processes, including representation in international structures and processes; Make it a mandatory requirement that the Gender Directorate and organisations that work for gender equality are consulted and participate fully and equally with men in decision-making within and regarding the Unit; Ensure that women's needs are established and reflected to the Top 5 organisational priorities and that this is also reflected in budgeting and all other processes; and Develop gender policy covering all aspects of the ISM and incorporating aspects relating to generic needs of women as employees, contractors and customers. Incorporate gender policy provisions in all strategic and operational documents relating to ISM and familiarise all role players on such policy.
5. Implementation	<ul style="list-style-type: none"> Acknowledgement in plan that women should be targeted in implementation. 	<ul style="list-style-type: none"> Implementation of the Unit's vision does not refer to the empowerment of women and men as customers of the justice system, for example provide Information Technology infrastructure, what are the specific needs on women in the Judiciary with regard to accessing information and developing their administration capacity; and 	<ul style="list-style-type: none"> Review current plans and ensure that these and future plans have implementation provisions for indicators which consciously address different circumstances and needs of women and men with regard to all aspects of plan and project through provisions of special measures to accommodate difference and eradicate inequality between women and men; Consider a requirement that all memoranda should stipulate implications for equality and compliance with relevant international and national and legal and policy obligations of the Ministry and Department; and

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
5. Implementation continued ...		<ul style="list-style-type: none"> Financial Administration System for minor children and poor women' while there is an acknowledgement that women should be targeted, the systems, processes and benefits are not clearly defined. 	<ul style="list-style-type: none"> Require and enforce that all implementation structures/processes should involve at least 40% of either gender using special measures to boost women's participation as employees, contractors and as customers/users.
6. Resources		<ul style="list-style-type: none"> No resources allocated to gender specific programmes and addressing historical imbalances; and Resources for personnel are generalised and without a proactive policy on women empowerment, the resource allocation can perpetuate gender inequality. 	<ul style="list-style-type: none"> Allocate specific resources towards gender programming, including special programmes to empower women (incorporating skills development) interventions directed at improving access for women users of information management services and special interventions directed at altering male behaviour and organisational culture.
7. Capacity Building		<ul style="list-style-type: none"> Expenditure on Information Technology and management systems does not appear to be conscious of or to address existing systemic imbalances between women and men and those relating to race, geographic disparities, disability and other factors; No indication of executed or planned training relating to gender mainstreaming capacity building for management and employees; and No indication of regular consultation with or use of gender specialists/experts; No indication of planned or executed diversity awareness and management programme to assist personnel to value and manage difference at work, in decision-making and service delivery. 	<ul style="list-style-type: none"> Ensure that all Unit members, starting with management, are exposed to an induction course and thereafter regular exposure to <i>Gender Mainstreaming</i> training and related materials; Integrate <i>Gender Mainstreaming</i> training in all general training and communication activities, including induction courses, information booklets and regular newsletters; Include representation of gender Unit and if possible and other specialists, in Unit's board and consult regularly with these on gender dimensions of issues under consideration; Implement special measures to accelerate the professional and management/leadership development of women (of all races and sub-racial categories) to ensure their absorption, advancement and retention at all levels of decision-making. Organise ongoing diversity awareness and management training for all staff, starting with management. Ensure that diversity is a regular element of planning, implementation and monitoring dialogue.

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
8. Communications		<ul style="list-style-type: none"> • The core business of this Unit is to address the information and systems development needs of the department; and • The objective of transforming the business Unit from its current state of low technology utilisation to one that effectively recognises information technology as a strategic enabler does not specify how women will become consumers of high technology utilisation. 	<ul style="list-style-type: none"> • Collect, maintain and regularly publicise gender disaggregated data on all aspects of the Unit with special attention paid to employment, procurement, service (usage and per capita expenditure) and decision-making systems; • Allocate some of the budget to research and knowledge generation on women and men, focussing on women's circumstances and diverse needs; • Establish the ability of communication to reach, address and prioritise the needs of women, taking into account the diverse social contexts that different women and men live under; • Prepare a gender profile of those consulted on ISM in the past year and develop strategy to enhance consultation with women and women's NGOs; • Align all systems with gender objectives and monitoring of progress against targets; • Make it mandatory for all written decisions and memos to advise on implications for compliance with gender related international and national standards as well as departmental policies and plans on gender equality; • Mainstream equality in all communication and information systems and processes; • Ensure that Information Technology as a 'strategic enabler' clearly identifies its target groups and that different communication strategies are developed for women and men in terms of their diverse needs; and • Ensure that Information Technology is repositioned as a support function that is to be exploited maximally to support gender transformation and other organisational transformation objectives.
9. Employment		<ul style="list-style-type: none"> • There appears to be no plan or activity that seeks to create an employment environment which validates women and men equally while responding meaningfully to their different needs; 	<ul style="list-style-type: none"> • Be uncompromising on compliance with the Employment Equity Act and related instruments including display of Employment Equity Plan and progress reports as prescribed by law;

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
9. Employment continued ...		<ul style="list-style-type: none"> • Inadequate efforts appear to enhance women's representation in the judiciary generally and the decision-making structures therein; • There appears to be no institutional policies to address gender concerns such as sexual harassment, parental rights and value transformation; and • There appears to be no programmes specifically for accelerating women's entry, development, advancement and retention in the Unit while creating an environment, which affirms them. 	<ul style="list-style-type: none"> • Mainstream employment equity in Unit's plan and sub-plans and consider development and enforcement of a policy statement on ensuring an environment that validates women and men equally through out the Unit; • Ensure that policy includes women's empowerment to eradicate existing inequalities and unfair discrimination; • Conduct an audit to establish profile of the ISM, including obstacles to women's entry, development, advancement and retention, and develop implementation policy to address women's diversity and targets which should take national and international benchmarks and commitments into account; • Review Unit's employment equity plan and ensure that there is a specific programme to accelerate the entry, development, advancement and retention of women from all racial, sub-racial disability and other diverse backgrounds, while transforming work relations to affirm women's human dignity and respond to gender impact of HIV/AIDS; • Ensure that the board, mini-boards and other meetings regularly ask questions on employment equity with regard to gender, including questions relating to planned or recent appointments; • Ensure that milestones achieved are celebrated and publicised in newsletters and meetings, and that a gender disaggregated employment report, including changes in the profile of the Unit, and contractors engaged by Unit, are regularly presented in all key meetings and discussed as well as pasted on bulletin boards.
10. Procurement		<ul style="list-style-type: none"> • The Unit awarded several tenders, for example the Body Shop tender, as well as programme management services. However, the procurement of services for these tenders do not identify women as a preferential group in terms of legislative requirements; 	<ul style="list-style-type: none"> • Familiarise all managers and staff with compliance requirements regarding preferential procurement in respect of women; • Implement gender disaggregated reporting covering service employment equity, procurement and decision-making structures. These should be tabled to management meetings, including the board, with questions raised on non-performance; <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
10. Procurement continued ...		<ul style="list-style-type: none"> No evidence that the Unit includes gender sensitivity and inclusiveness in its criteria for selection; and It appears that the Unit does not actively seek women with appropriate skills, and thus does not attempt to make women aware of tenders. 	<ul style="list-style-type: none"> Require gender disaggregated reports on procurement regularly for tracking gender progress, and planning corrective action; Develop a gender disaggregated profile (including race, gender and disability) of contractors and outsourcing trends; Set targets for remedial action directed at improving women's representation. Protocol should be prepared and enforced through decision-making channels, such as approval of memoranda; Implement special measures to ensure that women benefit equally with men from all contractual opportunities; Consider special programmes to empower women through knowledge on availability of contract opportunities and procedures; and Take special measures to involve women and women's NGO's in public and private partnership initiatives. Avoid limiting those opportunities to historically advantaged groups such as BAC. Promote skills transfer.
11. Monitoring and Evaluation		<ul style="list-style-type: none"> No monitoring and evaluation of system in place to track progress on issues of gender; No specific targets set for achieving gender equity; No baseline data on activities; No systematic capturing of data on a gender disaggregated basis and the impact the services have on women and men; 	<ul style="list-style-type: none"> Gender disaggregated indicators, benchmarks and milestones to be stipulated in Unit's plan and sub-plans for tracking gender progress; Specific gender indicators, including milestones, to be integrated in performance agreements of all in the Business Unit; Specific gender targets and benchmarks drawn from international instruments such as the Beijing Platform for Action and SADC Declaration on Gender and Development should be included in Unit's plans and monitored rigorously; Consideration should be given to the development and implementation of a risk management tool to limit departmental non-compliance with international, national and its own policy and legal frameworks on gender equality matters; and <p>continued ...</p>

KEY RESULT AREA	INDICATORS		RECOMMENDATIONS
	PROGRESS	GAPS	
11. Monitoring and Evaluation continued ...			<ul style="list-style-type: none"> Unit to use opportunity presented by the <i>Promotion of Equality Act</i> and black empowerment initiatives to strengthen its monitoring of transformation, relating to equalising opportunities between women and men, taking into account women's diversity in terms of race, disability, impact of HIV/AIDS and other factors.
12. Reporting		<ul style="list-style-type: none"> No indication of gender sensitive reporting or providing of information on how an integrated information management system will impact on women specifically. 	<ul style="list-style-type: none"> Make it a mandatory requirement for all components, including the structure responsible for managing the judiciary and judicial system, to maintain in an easily retrievable form, gender disaggregated data, to facilitate all human resources issues; Ensure that all managers and governing bodies are made aware that they are accountable with regard to <i>Mainstreaming Gender</i> in their human resource matters, and that all their reports in this regard should indicate progress made; Make it a mandatory requirement for all reports in the Unit to indicate progress made on gender and gender implications of all other activities and challenges and that reports are always against plans; Reorganise reporting requirements to ensure that all statistics indicate race, gender and disability and that gender based crimes such as rape and domestic violence are labelled as such. Ensure that reports against gender objectives and targets are regularly prepared and discussed at decision-making level, and disseminated as widely as possible; Ensure that data collection, storage and retrieval supports planning, implementation and monitoring of all critical aspects of gender transformation.

5. CONCLUSION & RECOMMENDATIONS

Although in our society discrimination on the grounds of sex has not been as visible, nor as widely condemned as discrimination on the grounds of race, it has non the less resulted in deep patterns of disadvantage. These patterns of disadvantage are particularly acute in the case of black women, as race and gender discrimination overlap. That all such discrimination needs to be eradicated is a key message of the Constitution.

O'Reagan J
Brink v Kitshof

5.1. Progress Indicators

The study revealed that significant progress has been made with regard to embracing gender equality and implementing related transformation processes within the DOJCD and affiliated institutions such as the Judiciary.

In particular, visible progress can be noted in the following areas:

- The existence of a general sense that something needs to be done to affirm women is exhibited in most Business Plans, communication and general practices;
- A degree of representation of women in top management and decision-making level is evident. For example one of the eight Managing Directors is a woman, the Head of CGE is a woman, equally, the head of SALC, as well as one Deputy Judge President and two Regional Court Presidents;
- There is also an increase within the judiciary (judges and magistrates), prosecutorial services, masters division, state attorneys and state legal advisors;
- Attention has also been given to improving service delivery in areas addressing women's practical needs. These include:
 - Maintenance;
 - Family Court Services, including racial unification;
 - Domestic Violence;
 - Improvement of court infrastructure to enhance user friendliness, which includes information services, waiting rooms and victims support services in some of the courts;
 - Law reform to ensure recognition of Customary Marriages;
 - Race unification of Administration of Interstate Estates (Substantive law not changed);
 - General transformation interventions, which are likely to enhance the position of women or address their gender related disadvantages;

- Judicial Education particularly on equality, social context awareness and specialised areas of the law such as administrative justice, domestic violence and human rights;
- Interventions seeking to improve court management and case flow management;
- Interventions relating to anti-corruption, access to information and administrative justice; and
- Policies on Employment Equity, HIV/AIDS, disability and human resources.

5.2 Key Weaknesses

The study revealed a number of areas where corrective action needs to be taken to enhance *Gender Mainstreaming*. This includes accelerating the progress made in improving the position of women in the Department and the representation of women at the highest levels of decision-making.

The achievements made in the Department contribute to the broader transformation of society, and to achieving the constitutional vision of a non-sexist and non-racial society based on human dignity. This includes the achievement of equality and the equal enjoyment of all human rights and freedoms by all women and men without limitations based on race, disability and other factors, which have combined with gender oppression to inflict multiple injustices on women.

The key weaknesses regarding *Gender Mainstreaming* within the Department are outlined under the heading of general observations and the tables presented in Chapter 3 of this report.

The key elements of identified weaknesses revealed that *Gender Mainstreaming* could be accelerated through:

- Ensuring that there is adequate awareness of the relevant international and national legal and policy frameworks and related compliance obligations for the Ministry and Department and their components;
- Securing agreement on an overall strategic plan which clearly indicates key performance areas and targets for the department, within which gender is mainstreamed, and against which all leaders of Business Units are measured. This would ensure synergy in the Department's activities regarding *Gender Mainstreaming*, while facilitating effective monitoring. This should include a review of the *Mission and Vision* and the development of core values to support fundamental *gender transformation and mainstreaming* in the Ministry and Department and all its components;
- Reviewing the current organisational structure and decision-making model to eliminate elements that undermine the achievement of meaningful progress on women's participation at all levels of decision-making. The rank based representation in key decision-making structures should be evaluated in terms of its impact on equitable representation of women in all structures and at the highest level of decision-making, and corrective measures should be implemented;

- Implementing the Department's Commitment on Gender Budgeting, a commitment noted by SADC and the United Nations. No meaningful measures are being taken towards gender budgeting. There is a need to review the Department's budget and budget processes, the MTEF and annual objectives, as well as expenditure patterns, incorporating gender budgeting;
- Institutionalising international and national compliance obligations and commitments, and ensure purposeful alignment of organisational goals, systems and processes with these. Examples in this regard include commitments regarding the implementation of the BPA and Gender Benchmarks in international instruments such as the SADC Declaration on Gender and Development;
- Ensuring a common approach to crosscutting issues such as Planning templates and matrixes, human resource strategies, policy guidelines on budgeting, including priorities and guidelines on procurement equity based on applicable law. Uncoordinated approaches undermine *Gender Mainstreaming* by making it impossible to have an integrated approach;
- Strengthening policy implementation processes and monitoring systems to support gender mainstreaming. This includes giving consideration to amending the current format for memoranda to include a provision on gender equality impact, and similar requirements in respect of decision-making at meetings as a measure that strengthens checks and balances on the implementation of *Gender Mainstreaming*, to make all role players accountable. This should also include capacity building to strengthen change management effectiveness;
- Agreeing on a uniform definition of transformation generally, and gender transformation in particular, to clarify the vision of the Department that is being created. Ideally the Mission Statement of the Department should incorporate the constitutional values of the achievement of equality, human dignity and equal enjoyment of all human rights by all persons regardless of gender race or any other factor or combination thereof. These values should be binding on the entire department and also integrated in the Department's vision and value statements;
- Strengthening co-ordination of strategy development and implementation to minimise gaps in *Gender Mainstreaming*. Some of the issues currently end up with nobody taking responsibility for them. For example there is no clarity on responsibility regarding *mainstreaming gender*, including the achievement of employment equity in respect of women within the judiciary;
- Implementing measures to *mainstream gender* into the transformation of the legal profession which should include giving effect to the specific provisions of the Departmental Gender Policy Statement in this regard and those of the Beijing Platform for Action, including the Beijing Plus 5 Platform and declaration;
- Ensuring that gender programme implementation is adequately broad and detailed to ensure that all Critical Areas of Concern regarding the advancement of women, women's human rights and gender equality are covered and that key issues under each Critical Area of Concern Area are addressed. This should also involve ensuring that all of the 12 critical dimensions of effective *Gender Mainstreaming* are dealt with in respect of each key issue under each Critical Area of Concern;

- The provision of adequate resources towards gender programming, including budget allocations to special projects on each of the issues dealt with under identified Critical Areas of Concern. Measures in this regard should also include providing an adequate budget to the Gender Unit and related coordinating and technical support machinery;
- Providing capacity building to all role players commencing with the highest decision-making levels. This should cover education and training on issues such as international and national legal and policy compliance obligations, social context and diversity awareness, and skills for conducting gender equality analysis, change management and leadership and diversity management. Capacity building should also be provided to internal gender specialists in the form of an adequate budget, operational space, specialist skills and adequate information resources. Capacity building should also address accelerated leadership and professional development for women and success planning to speed up their absorption into, advancement and retention at all levels and in all structures.
- Implementing measures to ensure that gender is mainstreamed in all advocacy and training activities. This should be supported by an integrated training strategy for the department which addresses issues such as institutional transformation and the role of training in fostering broader transformation in the Department and the justice system;
- Agreeing on standard guidelines on consultations with and ensuring participation by the public in the justice system, to ensure inclusiveness and discard practices that favour the consultation of the historically advantaged as they have means to lobby;
- Clarifying various levels of responsibility and accountability regarding managing and achieving gender transformation in the judiciary and judicial process. The current situation leaves gaps that pose serious impediments to the pursuit of *Gender Mainstreaming* within the judiciary and judicial process;
- Ensuring that there is strict accountability for *Gender Mainstreaming* by Business Units and Components, and all decision-making structures. This requires that reports against own predetermined and organisationally agreed goals to ensure effective enforcement of gender mainstreaming commitments, including those in the Departmental Gender Policy Statement be submitted by managers;
- Providing effective research support and data management systems and skills in the generation and management of gender disaggregated data for *Gender Mainstreaming* and tracking progress on all aspects of the Department's work. For example, it is impossible to obtain readily available data on issues such as domestic violence protection orders and rape. It is also impossible to get general *per capita* expenditure on services and accordingly, not easy to implement gender budgeting. A similar problem exists with regard to ascertaining inequality between women and men in employment benefits and access to and distribution of Departmental contracts;
- Enforcing compliance with all own policy and external policies and law on gender, women's empowerment and other issues in decision-making and practice. Special attention should be given to laws and policies that facilitate mainstreaming equality and other human rights in government operations.

Examples in this regard include the Department's policies on:

- Employment Equity;
- HIV/AIDS;
- Gender; and
- Equality and the Eradication of Discrimination in General.

Examples of the Department's positive response to government policies include, its response to:

- *Batho Pele*;
- White Paper on Transforming the Public Service;
- NEDLAC Sexual Harassment Policy;
- National Policy Framework;
- National Action Plan on Human Rights; and
- National Skills Development Strategy.

Other Departmental commitments include:

- Implementation of the Beijing Platform for Action (1996);
 - Implementation of the SADC Addendum on the Prevention; and
 - Eradication of Violence Against Women.
- Ensuring strict compliance with internal and external reporting obligations. This includes ensuring that all reports are against relevant policy/legal compliance obligations and agreed targets/Goals relating to Critical Areas of Concern arising from the BPA, CEDAW and other relevant instruments, the various issues that arise and gender mainstreaming dimensions to be attended to in respect of each Critical Area of Concern.

5.3 Recommendations: Taking the Process Forward

It is clear from the findings of this study that although there is a lot of movement in the Ministry and Department with regard to issues on women, the absence of a clear vision, direction and decisive systematic, sustained action on *mainstreaming gender* into all organisational aspects undermines the achievement of meaningful progress on fundamental organisational transformation to advance and deliver to all women.

This generally means that there is adequate movement towards the realisation of both *de jure* and *de facto* equality between the sexes as envisaged in the Constitution and international human rights instruments such as law the Universal Declaration of Human Rights and the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW)¹⁶.

16. CEDAW was ratified by South Africa in 1996 without a single reservation. Reservations are usually made by States Parties who wish to retain the superiority of their culture, customs and related laws over CEDAW provisions on women's human rights and the promotion of equality between women and men. By ratifying without reservations, South Africa, accordingly, excluded this limitation on its compliance obligations.

A recurring theme in the findings is the need for conscious alignment of all organisational and component plans, decisions and practices with international, national and departmental policy, legal frameworks and related compliance obligations. For *Gender Mainstreaming* to succeed, alignment of decisions and practices with legal and policy obligations must be a central aspect of organisational culture and related practices. It is also important that plans and policies across the department be integrated with each other. This is a critical element of systems approach to organisational change. Appropriate knowledge, values and skills is also critical for effective *Gender Mainstreaming*.

It is recommended that opportunities presented by developments such as the establishment of a Chief Directorate to coordinate strategic planning through the Office of the Director General, be utilised. This should include aligning general Departmental and Component plans, systems, policy, laws and activities with binding international and national laws and policies and related compliance obligations for the Ministry and Department, as well as mainstreaming gender equality considerations into everything that the Ministry and Department does.

Furthermore, this is an opportune moment for the Department to consolidate the progress it has made and address the gaps with regard to *mainstreaming gender* in its transformation and day to day activities. With South Africa having postponed its second CEDAW Country Report to 2004¹⁷, this gives the Department at least another full year to consolidate its work so as to have a meaningful country report in 2004 and SADC Country Report on the Declaration on Gender and Development in 2005. Such consolidation would also enhance the Ministry and Department's capacity to comply with the Provisions of the Promotion of Equality and Prevention of Unfair Discrimination Act, particularly those relating to women, including the girl child and the promotion of gender equality.

The benefit to the Ministry and Department will not be limited to the achievement of visible progress, with minimum effort, on the advancement of women, realisation of equal enjoyment of all human rights and freedoms by all women and men from all walks of life and general achievement of gender equality as envisaged in the Constitution and other national and international policy frameworks on equality and the eradication of discrimination. The benefits will also include reduced risk of non-compliance with international/national law and policy in the Ministry and Department as a component of the South African state.

The recommended course of action will also place the Ministry and Department in an excellent position to respond meaningfully to the president's call for the acceleration of the emancipation of women in his *State of the Nation Address, February 2002* and *ANC Newsletter, August 2002* and further call for accelerated action with regard to women's empowerment and the mainstreaming of gender in all aspects of governance in his *State of the Nation Address* in February 2003.

It is proposed that advocacy and leadership with regard to taking the process forwarded must come from

17. This will be the first subsequent report. The CEDAW Committee will expect the country to have dealt with issues raised in the Committee's Concluding Comments in 1998.

the most senior decision-making levels in the Ministry and Department and Components within. This should be done in partnership and the technical support of the Gender Directorate. Specific recommendations on measures to be implemented immediately are captured in the findings outlined in Chapter 3 of this report and measures recommended in Chapters 4.

It is further proposed that the Department's leadership implement the following:

- All Business Units to review their policies, plans and implementation strategies in the light of this report, the Department's Gender Policy Statement, the Department's commitments regarding the implementation of the BPA and SADC Addendum on Violence Against Women, as well as the Recommendations of the CEDAW Committee at the recalling of South Africa's first report in 2000 and the outcomes government of WCAR;
- All Business Units to use Gender *Mainstreaming Guidelines* to be submitted by the Gender Directorate to amend plans, procedures, policies and processes;
- The Departmental Board and EXCO to require New Plans with full integration of *gender considerations* in all aspects review with the help of the Gender Directorate;
- The Board to set clear Annual and MTEF Targets on Gender Transformation backed by an adequate budget and integrate these in general annual objective and targets for 2004/5 and goals and targets for the next MTEF cycle on all aspects of departmental work This to be rigorously reviewed quarterly and relevant aspects included in performance contracts of all managers as envisaged in the *President's State of the Nation Address* – February 2003. The integration should ideally be done at a *Strategic Planning Seminar on Gender Mainstreaming and Transformation* attended by the middle and senior leadership of the Ministry/Department and affiliated institutions and consolidated in a *Gender Mainstreaming Strategy*¹⁸ for the Ministry/Strategy for the Ministry/Department of Justice and Constitutional Development;
- Departmental budget, speeches, newsletters, press releases and annual reports to highlight gender equality, including non-sexism in all its manifestations, as a key institutional value alongside values such as anti-corruption, fiscal discipline and responsive service delivery.

18. This is a similar instrument to the Plan of Action envisaged in the *National Gender Policy Framework* and should be a consolidation of *Gender Mainstreaming Programmes of Action* of all the Business Plans/Components as envisaged in the *Gender Mainstreaming Guidelines*.

Implementation Guidelines

2

“It is also in this way that we seek to establish and entrench the understanding among all our people, for all time, that we are building a system of justice that must define its justness by the extent to which it enriches our humanity”

The Honourable Thabo M. Mbeki

President of South Africa, at the opening of the new Constitutional Court Building

**Department of Justice and
Constitutional Development**



Foreword

It gives me great pleasure to release this *Gender Mainstreaming* and *Gender Responsive Budgeting Package*.

I believe that the information in this package will contribute enormously to our efforts around gender transformation through which we seek to comply with the Constitution and our international human rights obligations in terms of CEDAW and related instruments.

In a way the package is based on looking back at what we did or did not do in the last decade with regard to addressing the gender imbalances that we inherited at the dawn of democracy.

The importance of mainstreaming gender in everything we do as a Department cannot be over-emphasised, otherwise we will continue to fail to meet the needs of some of those we seek to serve, especially women from disadvantaged communities. The National Gender Policy Statement states that the implementation of gender equality is first and foremost the responsibility of all the institutions in government. To achieve gender equality the government must embark on a rigorous gender mainstreaming strategy.

I call all members of the justice community to join me and my Department as we implement the *Gender Mainstreaming* and *Gender Responsive Budgeting* package. I sincerely hope that the lives of women and other disadvantaged groups will be improved as a result.

Ms Brigitte Mabandla, MP

Minister of Justice and Constitutional Development

Pretoria, August 2005

Acknowledgements

The *Gender Mainstreaming Reporting Protocol* is part of the *Gender Mainstreaming* package developed by the Gender Directorate within the Department of Justice and Constitutional Development (hereafter referred to as the Department or DoJCD).

The Gender Directorate is delighted to finally release the *Gender Mainstreaming* and *Gender Responsive Budgeting* package and believes it will assist all role players within the Department, particularly those in leadership positions, to understand the principles of *Gender Mainstreaming* and *Gender Responsive Budgeting*. This will facilitate the integration of gender considerations into all plans, policies and day to day implementation decisions.

The *Gender Mainstreaming* project was inspired by the Directorate's *Needs Assessment* which identified an immediate need to build capacity in the Department for both *Gender Mainstreaming* and *Gender Responsive Budgeting*. The target group for the package includes other role players who contribute to policy development, interpretation and implementation within the DoJCD.

The Directorate hopes that the application of the information and tools in the *Gender Mainstreaming* and *Gender Responsive Budgeting* package will accelerate the elimination of systematic gender discrimination in the Department, and contribute towards the achievement of gender equality in the Department and the society in general.

Sincere gratitude needs to be extended to the Centre for Reconciliation and Equality Studies (CRES)/ Waweth Agency and DoJCD team for their assistance in the research and writing of the *Assessment Report*, and the development of the *Gender Mainstreaming* and *Gender Responsive Budgeting* materials. The following people need special mention:

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Director Gender Issues, Department of Justice and Constitutional Development
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Key Concepts and Acronyms

Key Concepts

Black Economic Empowerment	Black Economic Empowerment refers to the implementation of measures to advance black people in order to equalise economic opportunities between them and white people.
Black Empowerment	Black empowerment refers to measures that seek to advance black people in order to achieve equality between them and white people.
Disaggregate	Disaggregate means subdivide into constituent parts.
Employment Equity	Employment Equity refers to the process and outcomes relating to the equalisation of and enjoyment of all employment opportunities and benefits, and the ending of gender, racial, disability and other forms of disadvantage and (unfair) discrimination.
Equality	Equality refers to the equal enjoyment of all rights and freedoms. It entails the absence of direct or indirect (unfair) discrimination.
Gender	Gender refers to the power relations between women and men. It is a social construct that assigns roles and worth to each sex based on group culture.

Gender Analysis	A gender analysis or gender equality analysis refers to a systematic process which involves assessing the impact of or likelihood that each decision, policy, law, plan, programme, situation, process or activity will impact differently on women and men because of their diverse socio-economic or physical circumstances, with the effect of prejudicing one gender.
Gender Awareness	Gender awareness refers to the state of being conscious of inequality arising from the power relations between women and men.
Gender Balance	Gender balance refers to an equitable distribution of life's opportunities and resources between women and men.
Gender Bias	Gender Bias refers to any act that advantages or perpetuates an existing advantage of one sex over the other.
Gender Budget	A Gender Budget, also referred to as a <i>Gender Responsive Budget</i> , refers to a budget or expenditure arrangement which is structured in a manner that ensures that women and men benefit equitably from financial resources.
Gender Disaggregated Data	Gender disaggregated data means information subdivided in terms of women and men.
Gender Mainstreaming	<i>Gender Mainstreaming</i> refers to the integration of gender equality considerations in all policy, law, plans, programmes, administrative and financial activities, organisational procedures, processes and decision making, in order to effect profound organisational and ultimately, societal transformation, towards the realisation of <i>de jure</i> and <i>de facto</i> equality between women and men.
Gender Management System	A Gender Management System is a network of structures, mechanisms and processes that are put in place within an organisational framework to facilitate <i>Gender Mainstreaming</i> in pursuit of equality between women and men. (<i>Adapted from Common Wealth Gender Management System Handbook</i>).
Gender Responsive Budgeting	<i>Gender Responsive Budgeting</i> refers to the allocation of financial resources in a manner that not only ensures that women and men benefit equally from all resources but also reduces existing patterns of women's systemic inequality. Gender budgeting is one of the mechanisms of an effective Gender Management System.

National Gender Machinery	National Gender Machinery refers to a network of coordinated structures within and outside government which operate cooperatively in facilitating political, social, economic and other forms of transformation to dismantle systemic gender inequality and promote equality between women and men.
Per Capita	<i>Per capita</i> means the average per person. This is worked out by dividing total cost with the number of actual beneficiaries.
Practical Gender Needs	Practical Gender Needs refers to women's day to day needs that result from their subordinate position in society. Addressing Practical Gender Needs does not challenge or transform structural gender inequality but simply helps women cope better with their present position.
Preferential Procurement	Affirmative action in procurement.
Procurement Equity	Procurement Equity refers to the process and outcomes relating to the equalisation of enjoyment in all procurement opportunities and incorporates affirmative procurement.
Pro-women Programmes	Pro-women programmes refers to services and programmes for everyone but that are most likely to respond to the needs of women, for example domestic violence services.
Sex	Refers to the biological difference between women and men.
Sex Disaggregated	Has the same meaning as gender disaggregated. It means broken down according to women and men.
Strategic Gender Needs	Strategic Gender Needs refers to women's long-term needs relating to fundamental social transformation to end their subordination in society.
Unfair Discrimination	Unfair discrimination refers to the direct or indirect unfair denial of opportunities to or imposition of an undue burden on a person or group, on the basis of their gender, race, disability or some other difference, or combination of differences.
Women's Budget	A women's budget has the same meaning as a gender budget or gender responsive budget. 'Women' is used to emphasise the fact that women are the targeted beneficiaries of the budget reform that is entailed in gender budgeting.

Women Empowerment	Women Empowerment means establishing programmes that exclusively target women as a form of affirmative and positive action to empower them in order to equalise opportunities between women and men.
Women's Equal Access	Promoting women's equal access to mainstream services is about mainstreaming gender into all services to ensure that women and men benefit equitably.

Acronyms

ADR	Alternative Dispute Resolution (also referred to as Informal Dispute Resolution)
BBBEEA	Broad Based Black Economic Empowerment Act
BEE	Black Economic Empowerment
BPA	Beijing Platform for Action
CCMA	Commission for Conciliation, Mediation and Arbitration
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CGE	Commission on Gender Equality
DGPS	Departmental Gender Policy Statement
DOJCD	Department of Justice and Constitutional Development
DVA	Domestic Violence Act
EEA	Employment Equity Act
ERC	Equality Review Committee
GFP	Gender Focal Point or Person
GENMACC	Gender Mainstreaming Advisory and Compliance Committee
IDASA	Institute for Democracy in South Africa
IPOA	Integrated Plan of Action
MAGCOM	Magistrate's Commission
MTEC	Medium Term Expenditure Committee
MTEF	Medium Term Expenditure Framework
NGPF	National Gender Policy Framework
OSW	Office of the Status of Women
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
PFMA	Public Finance Management Act
PPPFA	Preferential Procurement Policy Framework Act
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission

SALRC	South African Law Reform Commission
SMME	Small Medium and Micro Enterprises
UPP	Unfunded Priority Project
VAW	Violence Against Women

Implementation Guidelines

1. PURPOSE

The purpose of the *Gender Mainstreaming Implementation Guidelines* is to assist the leadership and personnel in the Department of Justice and Constitutional Development (hereafter referred to as the DoJCD or the Department) and Ministry of Justice and Constitutional Development (the Ministry) to mainstream gender in all departmental decision making and activities in order to achieve advancement of women and gender equality.

These guidelines seek to respond to and build upon recommendations made in the Gender Mainstreaming Report (May 2004), undertaken by the Gender Directorate to establish the extent to which gender is currently being mainstreamed in the Department.

The guidelines also attempt to address the Department's need for capacity building to ensure that all policies, laws, plans, programmes, decisions and activities are aligned with international and national policy frameworks regarding women empowerment and the achievement of gender equality.

2. OBJECTIVES

These guidelines seek to ensure that persons operating under the scope of the Ministry/Department understand the differential circumstances of women and men in society and the impact of seemingly neutral decisions, plans, laws, policies and practices on either gender. The idea is to ensure that all activities and decisions avoid indirect discrimination against either gender, and consciously contribute to the eradication of existing structural inequality experienced by women. The guidelines also seek to

accelerate gender transformation within and through the work of the Ministry/Department, and to facilitate compliance with CEDAW, the constitution and other binding instruments.

3. BACKGROUND

South Africa has ratified without a single reservation, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), thus incurring compliance obligations to transform society to advance women and ensure that they enjoy all human rights on an equal basis with men and without discrimination. CEDAW is very specific that the equality that is envisaged is substantive and involves the absence of both *de jure* (legal) and *de facto* (factual) discrimination. This is the idea of equality that underpins the South African Constitution and which is reflected in the Bill of Rights. Section 9(2) of the constitution states that 'equality involves the full and equal enjoyment of all rights and freedom'. To promote the achievement of equality, legislative and other measures designed to protect persons disadvantaged by unfair discrimination may be taken.

The position of black women, particularly those affected by customary law, is compounded by systemic racial discrimination and related factors. One critical human rights concern in this regard is the issue of women's succession rights under customary law. Women with disabilities, young women, children and elderly women also face additional obstacles with regard to full and equal enjoyment of human rights and freedoms. South Africa undertook to rectify this situation when it ratified CEDAW without any reservation in 1996.

South Africa is also signatory to other regional and national instruments whose implementation requires Gender Mainstreaming in order to be compliant. These instruments include:

- Beijing Platform for Action (BPA);
- African Charter on Human and People's Rights;
- SADC Declaration on Gender and Development and Addendum on Violence Against Women;
- Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA);
- National policy on the transformation of the public service;
- White Paper on the Transformation of Public Service Delivery (Batho Pele); and
- National Policy Framework on women's empowerment and the achievement of gender equality.

However, a huge gap remains between compliance with constitutional and international obligations and the reality of women's subordination in South Africa. This applies also to the position of women in the Ministry/Department. For example, women are barely represented within senior leadership of the Ministry/Department and in the Judiciary. Women experience additional obstacles in accessing justice, particularly in respect of gender violence, family law and the civil justice system. They tend to

be marginalized in court dialogue and are more likely than men to lack resources for legal advice and victim support.

4. APPLICATION

- 4.1 Guidelines apply to all employees and structures in the Ministry/Department. All institutions and bodies that fall within the scope of the Ministry/Department should apply the guidelines.
- 4.2 All employees, structures, institutions/ bodies that fall within the scope of the Ministry/ Department should apply the guidelines in planning *Gender Mainstreaming* activities, taking into account the specific circumstances of their own Units/Components.
- 4.3 These guidelines should be read in conjunction with the Departmental Gender Policy Statement and other Gender Instruments applicable to the Ministry/Department.
- 4.4 These guidelines apply to all activities that fall within the scope of the Ministry/Department including aspects of the judicial system that report under this Ministry/Department.

The areas to be prioritized for *Gender Mainstreaming* include but are not limited to the following:

- Service delivery and related programmes;
- Employment;
- Decision making processes and structures;
- Procurement;
- Systems and procedures;
- Communication processes, including interface with the community;
- Budgets, budget processes and expenditure patterns;
- Monitoring and reporting practices;
- Research, policy, legislation and law reform;
- Litigation strategies;
- Inter-departmental, inter-governmental and international relations; and
- The judicial process.

5. GENDER MAINSTREAMING 9 POINT STRATEGY

The following 9 point strategy is recommended for accelerating *Gender Mainstreaming* efforts in the Ministry/Department and all components therein:

- Provide leadership and create an enabling environment;
- Clarify concepts and understand legal and policy compliance frameworks;
- Conduct a Compliance Audit;
- Establish a *Gender Mainstreaming* facilitating structure/mechanism;
- Develop and implement an integrated programme of action for *Gender Mainstreaming*;
- Assign responsibility and accountability;
- Allocate an adequate budget and other resources;
- Integrate a programme of action in your mainstream strategic and other plans; and
- Monitor and report progress.

The following table provides recommended action for the 9 point strategy:

5.1 Provide leadership and create an enabling environment	Recommended Action
<p>Senior leadership up to the highest position in the Department/Component to facilitate a change process to generate commitment to <i>Gender Mainstreaming</i> in the Department/Component and create an enabling environment.</p>	<ul style="list-style-type: none"> • Statement of commitment to a process of accelerating efforts to mainstream gender; • Build and maintain a shared vision and values on gender equality; • Take responsibility for policy and legal compliance within your sphere of competence; • Provide policy clarity on critical gender issues; • Play a visible role in advocating for action on gender equality and women’s empowerment; • Demand accountability on gender compliance from all your subordinates; • Work with and support the work of the Gender Focal Point (GFP) or Directorate; • Commit to global and national mandates on gender equality; • Develop an institutional and legislative environment that is conducive to advancing equality between women and men; • Ensure a critical mass of women in decision making at all levels; • Ensure active involvement of women and men in civil society; and • Assign adequate human, financial and other resources to gender programming.

5.2 Clarify concepts and understand legal and policy framework	Recommended Action
<p>Ensure that everyone in the Department/ Component from top management to the lowest level is familiar with all the key national and international standard setting instruments on gender equality and fully appreciates the nature of compliance required from the Department/ Component.</p> <p>Ensure that there is a common understanding of all key concepts in the gender transformation dialogue.</p>	<ul style="list-style-type: none"> • Provide a briefing pack with copies of all key human rights and legal policy instruments on gender equality to personnel in the Department, starting with senior leadership. At minimum, the following documents, including summaries if possible, should be provided: <ul style="list-style-type: none"> - Beijing Platform for Action (BPA) include National Commitments on Implementation and the BPA+5; - CEDAW Reporting Protocol and the CEDAW Committee Concluding Comments; - SADC Declaration on Gender and Development and the Addendum on the Prevention and Eradication of Violence Against Women and Children; - The South African Constitution; - Employment Equity Act (EEA), 1998 ; - Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA); - Preferential Procurement Policy Framework Act (PPPFA), 2000; - Broad Based Black Economic Empowerment Act (BBBEEA), 2003; - National Policy Framework for Women’s Empowerment and Gender Equality; - Skills Development Act, 1998 and Strategy, - Batho Pele: White Paper on Transformation of Public Service Delivery; - Department’s Gender Policy Statement; - Gender Mainstreaming Assessment Report; and - Gender Mainstreaming Guidelines and Reporting Protocol. • Disseminate simplified and accessible information on the above instruments, for example posters, pamphlets, web pages and speeches; • Conduct briefing sessions/workshops with all personnel (top to bottom), to familiarize them with the applicable national and international standard setting instruments on Gender Mainstreaming and women’s empowerment; • Identify a Gender Focal Person or Point as a central information centre for sustainable technical support; • Consult regularly with the gender focal person/point/directorate to clarify difficult concepts and compliance

	<p>obligations regarding Gender Mainstreaming/equality; and</p> <ul style="list-style-type: none"> • Identify Department/Component's obligation in relation to each gender priority and strategic objective arising from the standard setting instruments.
5.3 Conduct a Compliance Audit	Recommended Action
<p>Review the situation in the department and assess the extent to which policies, programmes, plans, structures, processes, decisions and activities are aligned with compliance obligations under national and international standard setting instruments.</p>	<ul style="list-style-type: none"> • Prepare a checklist of all compliance obligations applicable to the Department/Component arising from the standard setting instruments; • Read the Gender Mainstreaming Assessment Report and identify issues that apply to your sphere of responsibility and determine action required; • Conduct a detailed gap analysis on all aspects of the Department/Component prioritizing the following: <ul style="list-style-type: none"> - Employment; - Decision making processes and structures; - Procurement; - Systems and procedures; - Communication processes, including interface with civil society; - Budgets, budget processes and expenditure patterns; - Monitoring and reporting practices; - Service delivery and related programmes; - Research, policy legislation and law reform; - Litigation strategies; - Interdepartmental, intergovernmental and international relations; and - The judicial process; and • Ascertain the nature of obstacles that prevent effective gender mainstreaming in the Department/Component that has been identified during the compliance audit.
5.4 Establish a Gender Mainstreaming facilitating structure/ mechanism	Recommended Action
	<ul style="list-style-type: none"> • Establish a Gender Mainstreaming Advisory and Compliance Committee (GENMACC); • Establish a GFP in each Unit/Component or reinforce an existing one and ensure that it is empowered through inter alia:

<p>Establish an advisory and compliance committee that will drive the Gender Mainstreaming process in the Department/ Component.</p>	<ul style="list-style-type: none"> - An adequate budget; - Human Resources; - Space and Equipment; - Authority; - Support from leadership; and - Capacity Building. <ul style="list-style-type: none"> • Empower the GFP to participate as a technical advisor in the GENMACC and other key decision making structures; • Ensure that the GENMACC is representative in terms of components within the Department and with regard to gender and race, and that appointed persons have high-level decision-making powers/authority in the Department/Component; • Assign adequate authority and resources to the GENMACC to enable it to operate effectively; • Ensure that the GENMACC meets regularly, has a clear programme of action with clear deliverables, and reports regularly (in writing) to the head of the Department/ Component, who in turn should integrate the report into their mainstream report to the Executive Committee/ Departmental Board or any other relevant structures; and • Cascade the GENMACC to all levels of decision making in the Department.
<p>5.5 Develop and implement an Integrated Programme of Action (IPOA) for mainstreaming gender</p>	<p>Recommended Action</p>
<p>Develop a coherent and Integrated Programme of action which provides a framework for ensuring that all parts of the Department/ Component contribute effectively to and complement each other. Ensure that gender is being mainstreamed into all decisions and</p>	<ul style="list-style-type: none"> • Develop a Vision and Value Statement for Gender Mainstreaming; • Develop an IPOA for mainstreaming gender in the Department/Component; • Ensure that the IPOA has clear goals, targets and activities to achieve such goals during the next 5 years, 3 years, 12 months, quarter and month; • Base Departmental goals/objectives on compliance obligations arising from international and national Human Rights treaties and policies on women’s advancement and gender equality, using the Gender Equality Compliance Map (Table A) and the Gender Mainstreaming Planning Matrix (Table B) and the Gender Policy Statement of the Department;

<p>activities, thus advancing women and eliminating systematic gender equalities.</p>	<ul style="list-style-type: none"> • Ensure that the IPOA also incorporates measures that address each and every obstacle to Gender Mainstreaming that has been identified;
<p>5.6 Assign responsibility and demand accountability</p>	<p>Recommended Action</p>
<p>Clarify the role and responsibility of each manager/employee and ensure that they are informed accordingly.</p> <p>Implement measures to enforce accountability.</p>	<ul style="list-style-type: none"> • Ensure that the role and responsibility of each manager/employee is clarified and that they are all informed accordingly; • Clarify the role, responsibility, powers and accountability of the GFP and inform everyone accordingly; • Integrate gender responsibilities and accountability in all performance contracts and systems; and • Implement mechanisms for rewarding performance and sanctioning non-performance.
<p>5.7 Allocate an adequate budget and other resources</p>	<p>Recommended Action</p>
<p>Allocate sufficient funds, personnel and required resources to provide effective support to the Gender Mainstreaming processes in the Department/Component.</p>	<ul style="list-style-type: none"> • Integrate gender consideration into the mainstream budget of the Department/Component; • Allocate sufficient budget for gender focal person/point; • Allocate a reasonable budget for GENMACC and reviewing of systems and processes and engendering mainstream systems processes; and • Allocate adequate resources to pro-women programmes.
<p>5.8 Integrate the IPOA in your Mainstream Strategic plans and all other plans</p>	<p>Recommended Action</p>
<p>Ensure that elements of the IPOA are incorporated in the strategic and other general plans, including the MTEF of the Department/Components.</p>	<ul style="list-style-type: none"> • Review existing plans/budget and adjust provisions in accordance with commitments in the IPOA ; and • Adjust targets and indicators in strategic and other general plans to accommodate contents of the IPOA that are not covered in existing plans.

<p>The IPOA should also be incorporated into all programmes and projects.</p>	
<p>5.9 Monitor and report on progress</p>	<p>Recommended Action</p>
<p>This information includes reporting on and regularly disseminating information on progress against agreed targets.</p> <p>Ensure that reporting compliance is rigorously enforced by the Department/Components.</p>	<ul style="list-style-type: none"> • Review existing data management systems to determine capacity to capture baseline data and progress indicators on Gender Mainstreaming and if, necessary make adjustments; • Ensure that there is the necessary capacity to link Gender Mainstreaming to data management and reporting; • Establish baseline data disaggregated by gender and its intersection with factors such as race, on all the activities of the Department/Component, prioritising the following: <ul style="list-style-type: none"> - Employment; - Decision making processes and structures; - Procurement; - System and procedures; - Communication Processes; - Budgets, budget process and expenditure patterns; - Monitoring and reporting practices; - Service delivery and related programmes; - Research, policy, legislation/law reform; - Litigation strategies; - Interdepartmental, intergovernmental and international relations; and - Interface with civil society. • Align sanctions and rewards with performance against Gender Mainstreaming objectives and accountabilities; • Align internal reporting formats with national and international reporting obligations; • Ensure that regular reports are submitted and discussed at management meetings; and • Ensure that compliance reports to appropriate agencies are prepared and submitted timeously.

6. USEFUL RESOURCES

The decision makers are advised to familiarize themselves with other resources that provide them with knowledge and skills on *Gender Mainstreaming*.

6.1 Documents include:

- National and international standard setting instruments;
- National and international case law;
- International and national literature on gender equality, mainstreaming and management; and
- United Nations Agencies and other useful websites and audio visual material.

6.2 Human resources include:

- Internal GFP;
- Gender Directorate and Advisory Committee;
- Office on the Status of Women (OSW);
- Commission for Gender Equality (CGE); and
- Civil society experts.

7. BENCH MARKS

Benchmarks are important for the purpose of setting targets and milestones, and for reviewing and extracting standards and compliance obligations applicable to the Department/Component. These should then be integrated into the Programme of Action in point 5 above. The *Gender Equality Compliance Map* and the *Gender Mainstreaming Planning Matrix* should provide some guidance in this regard.

It is important to regularly seek the technical input or advice of specialist gender structures. This should include structures mentioned in point 6 in the table above.

It is also important to note the specific benchmarks captured in the following standard setting instruments:

- 7.1 BPA and the National Commitments;
- 7.2 CEDAW Reporting Protocol and recommendations of the CEDAW Committee;
- 7.3 SADC Declaration on gender and development and the Addendum on Violence against Women and Children;

- 7.4 National Policy Framework for Women's Empowerment and Gender Equality;
- 7.5 Department's Gender Policy Statement; and
- 7.6 National and international best practices on gender.

It is recommended that the IPOA incorporates best practices from similarly situated institutions, nationally and internationally, for example the Departments of Minerals and Energy, Water Affairs, Transnet, Eskom and Telkom, as well as the Departments of Justice in countries such as Canada, Australia and United States of America.

8. IMPLEMENTATION

The following points suggest a process for implementation:

- Distribute the Gender Mainstreaming Assessment Report, the Guidelines and Reporting Protocols within each Business Unit/Component;
- Organise a meeting to plan process;
- Identify a GFP from within the Unit/Component to provide technical and coordination support;
- Organise Briefing Packs for every person, starting with the most senior leadership, using the services of the Gender Directorate and the identified GFP;
- Implement the 9 point strategy in 5 above;
- Utilise the Gender Equality Compliance Map and the Gender Mainstreaming Planning Matrix to support the implementation of the 9 point strategy; and
- Review progress periodically and redirect where necessary.

10. TABLE 1: GENDER EQUALITY COMPLIANCE MAP

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
1. Violence Against Women	<p>Women are entitled to the right to bodily and psychological integrity.</p> <p>This means women have the right to security and to make decisions over their own bodies.</p> <p>Key Issues:</p> <ul style="list-style-type: none"> • Enhance effective implementation of Domestic Violence Act; • Fast track Sexual Offence Bill and develop strategy for implementation thereof; • Provide adequate resources to sexual offences courts; • Develop and implement legislative and administrative action to address trafficking of women and children; 	<p>Article 2 and 12, 6</p> <p>General Recommendation 19 of CEDAW</p>	Paragraph 112 to 130	Article (Iv) H(viii)	<p>Article 8, 9 10, 11, 12, 13, 14, 17, 20, 21 and 22</p> <p>All articles</p>	Article 1, 2, 3, 4, 5, 6 and 12 and 28	<p>Section 9,10,11, 12 and 13 of the South African Constitution</p> <p>Domestic Violence Act of 1998</p> <p>State of Emergency Act of 1997</p> <p>The Criminal Law Amendment Act of 1997</p> <p>Criminal Procedure Second Amendment Act of 1997</p> <p>Criminal Matters Amendment Act of 1998</p> <p>Justice vision 2000</p> <p>National Gender Policy Framework - Chapter 2 pages 9-17</p> <p>Gender Policy Statement of Department of Justice Chapter 3 page 9</p>

¹ These reference are not exhaustive but tends to highlight some of the relevant sources as a starting point

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
1. Violence Against Women (Continued)	<ul style="list-style-type: none"> Finalise legislation regarding willful infection of HIV/AIDS; Improve and standardize victim empowerment; and Institutionalize understanding that violence against women is a form of unfair discrimination against women and a violation of women's human dignity. 						
2. Human Rights of Women (including equality)	<p>Women's rights are human rights as enshrined in the Bill of Rights. They apply to all human beings. Human rights are integrated and indivisible.</p> <p>Key issues:</p> <ul style="list-style-type: none"> Implement administrative measures to address cultural values and practices that violate women's dignity; Ratify the optional protocol to CEDAW; Eliminate unfair discrimination and ensure state compliance Mainstream equality; 	Article 1 and 2	Paragraph 210 to 233 Paragraph 102g Paragraph 102k	Article H(vii) Article A(i), B(i) and H(vii)	Article 13	Whole Chapter and NB Article 1, 2, 5 and 28	Chapter 2 (Bill of Rights) of the Constitution. Section 34 South African National Gender Policy Framework Chapter 2 page 19

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ³
2. Human Rights of Women (including equality)	<ul style="list-style-type: none"> Modify and repeal of laws that constitute discrimination against women; and Ensure that the justice system guarantee Women's equal enjoyment of all human rights, including social economic, cultural and development rights. 						
3. Women, Culture and Customary Law /Practices	<p>The right of all persons to enjoy and practice their cultural and religious beliefs without discriminating on the basis of gender is recognized subject to the protection of women's human dignity and gender equality.</p> <p>Key issues:</p> <ul style="list-style-type: none"> Modify social and cultural practices to eliminate discrimination against women; 	Article 5, 14 and 16	Paragraph 210 to 233 and paragraph 259 to 286 Paragraph 103 d, e and g Paragraph 128h paragraph 130a and c paragraph	Article H(iv)	Article 13,14 and 15	Article 1, 2, 3, 4, 13 and 18	Section 9, 15(3), 31(2) and 38 Section, 186 and 235 Recognition of Customary Marriages Act 120 of 1998 National Gender Policy Framework - Chapter 2 Page 9

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ³
<p>3. Women, Culture and Customary Law /Practices (Continued)</p>	<ul style="list-style-type: none"> • Respond to rural women's needs; • Implement administrative measures to effectively address women's rights in customary marriages; • Address women's rights in religious marriages and domestic partnerships; • Address women's inheritance and succession rights under customary law; • Undertake constitutional and law review on women's rights and customary law; • Conduct effective gender sensitizing and public awareness; • Discourage media stereotyping of women; and • Implement measure to be adopted to ensure that cultural and religious rights are exercised in a manner that is consistent with the Bill of Rights as stipulated in S31(2). 						<p>Gender Policy Statement of Department of Justice Chapter 3 page 27-30</p>

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
4- Woman and the family	<p>The state is required to take all appropriate measures to protect and advance women's equality within the family.</p> <p>Key issues:</p> <ul style="list-style-type: none"> • Strengthen administrative arrangements for maintenance and domestic violence; • Address women's rights in dissolution of marriage/domestic partnerships; • Implement administrative measures to address parental rights and achieve a balance between work and family; and • Implement administrative interventions to discourage attitudes that undermine women's access to and control of family property. 	Article 5(b) and 16	Paragraph 112 to 130 and article 210 to 233	Article H(iii), (iv), (v), (vi), (viii), (ix) and (x)	Article 5 (a), (b) Article 11,13	Article 18	Section 9, 10, 15(3) of the constitution Divorce Courts Amendment Act No 65 of 1997 Maintenance Act No 99 of 1998 Marriage Act, No 50 of 1997 Domestic Violence Act No 116 of 1998 Adoption matters Amendment Act No 56 of 1998 National Gender Policy Framework – Chapter 3 page 21

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
5. Women, poverty and the economy	<p>The state is required to adopt measures to ensure that women have equal access to and control over economic resources to alleviate poverty and improve the quality of their lives.</p> <p>Key issues:</p> <ul style="list-style-type: none"> • Review employment equity/affirmative action measures and implement special strategies to improve the position of women; • Audit remuneration practices and implement measures to ensure pay equity; • Address workplace health and safety issues affecting women in the Department; • Review policies and practices on family benefits; • Address gender gaps if any; • Address legal and administrative gaps to ensure that women have equal access to succession/inheritance; 	Article 11, 13 and 14	Paragraph 47 to 68 and Paragraph 150 to 180 Paragraph 135 (d)	Article H(iii), (V)	Article 13 – 15	Article 8, 10, 13, 15, 23 and 27	Section 9, 22, 23, 24, 25, 26 and 27 of the Constitution Basic Conditions of Employment and Employment Equity Act of 1998 Skills Development Act Social Assistance Act of 1992 The unemployment Insurance Act of 1996 White Paper on Affirmative Action on the Public Service P P P F A B B E E A P E P U D A National Gender Policy Framework Chapter 2 page 11 Addendum articles 13, 18 and 34 Implement measures to facilitate women's equal participation in employment related decisions Workers Compensation Act

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
5. Women, poverty and the economy (Continued)	<ul style="list-style-type: none"> • Improve effectiveness of maintenance administration and prioritize systems for improved collection; • Implement special measures to ensure procurement equity for women and other disadvantaged groups; • Implement accelerated development for women including career pathing; • Develop and implement an implementation strategy for the B B E E A, prioritizing women; and • Review justice services to ensure responsiveness to the needs of people. This should include legal aid and payment of service of process where applicable. 						

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
6. Women, the Law and the Constitution	<p>The constitutional and national laws and implementation thereof should facilitate women's equal enjoyment of all human rights and freedoms in the political, social, cultural environment, development, family and other spheres of life.</p> <p>Key Issues:</p> <ul style="list-style-type: none"> • Eliminate laws which unfairly discriminate against women; • Enhance the functioning of the Equality Courts; • Implement special measures to empower women to ensure de facto equality; • Address the tension between gender equality and the recognition of cultural / customary / religious rights; 	Article 1,2,15 and 16	Paragraph 112 to 130 and paragraph 210 to 233	Article H(vii), (iv) and (x)	Article 8, 9, 10, 11, 12 and 18	Article 1, 2, 3, 5, 7, 9, 13, 26 and 28	Section 9, 165, 175 of the constitution PEPUDA Employment Equity Act of 1998 Skills Development Act of 1996 The Unemployment Insurance Act State of Emergency Act of 1997 Divorce Courts Amendment Act No 65 of 1997 Adoption Matters Amendment Act No 56 of 1998 Maintenance Act No 99 of 1998 Domestic Violence Act No 116 of 1998 National Gender Policy Framework - Chapter 2 page 9 Gender Policy Statement (Department of Justice)

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
6. Women, the Law and the Constitution (Continued)	<ul style="list-style-type: none"> • Audit all laws to eliminate negative gender impact; • Facilitate women's equal enjoyment of all rights enshrined in the Bill of Rights; • Facilitate women's access to justice in respect of all Departmental services; • Enhance protection of women consumers / civil litigants; • Undertake constitutional reviews to balance rights of victims and accused; • Implement standardized legal and administrative measures to enhance victim empowerment, including restorative justice; • Ratify the CEDAW Optional protocol and familiarize all service providers with 						

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
6. Women, the Law and the Constitution (Continued)	<p>CEDAW; and</p> <ul style="list-style-type: none"> Address succession/inheritance rights of women affected by customary and religious laws. 						
7. The Girl-Child and other victims of multiple forms of discrimination	<p>Special measures are required to accommodate the needs of the girl child and to respond meaningfully to the diverse needs of women affected by the intersection of gender and other forms of oppression.</p> <p>Key Issues:</p> <ul style="list-style-type: none"> Address rural poor women's and girl children's access to justice; Address disabled women's access to justice and employment opportunities in the Department; Address the intersection of race and gender in economic and professional opportunities within the Department/Ministry's scope of work; 	Article 4, 7 10 and 16(2)	Paragraph 259 to 285 and paragraph 210 to 233 paragraph 103c	Article H (vi), (vii), (ix)	Article 8, 9,20	Article 18	Section 9, 10, 11, 12 and 28 of the Constitution Chapter 2 (Bill of Right) of the Constitution Basic Conditions of Employment Act of 1997 The Protection Of Children and young persons from Economic and Social Exploitation Act The National Gender Policy - Chapter 2 page 12 Gender Policy Statement Framework of Department of justice page 15

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
7. The Girl-Child and other victims of multiple forms of discrimination (Continued)	<ul style="list-style-type: none"> • Improve responsiveness to violence against the girl child and other vulnerable groups; and • Conduct a needs assessment on the diversity of women's justice needs and respond accordingly. 						
8. Women in power and decision-making	<p>The state is required to ensure women's equal representation in senior positions in government, the judiciary and the private sector; and</p> <p>This enhances diverse gender perspectives, responsiveness to women's circumstances and the promotion of gender equality.</p> <p>Key issues:</p> <ul style="list-style-type: none"> • Implement special measures to enhance participation of women in management structures and processes; 	Article 1, 2, 3, 4, 5, 7, 8,10, 11 and 14	paragraph 185 to 195, 117(a) bis	Article H(ii)	Article 20, 24	Article 13 and 11	Section 9, 19 (1), 19 (3) (b) of the Constitution Employment Equity Act of 1998 White Paper on the transformation of the Public Service (1995) White Paper on Affirmative Action in the Public Service (1998) South African National Gender Policy Framework - Chapter 2 page 18

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
8. Women in power and decision-making (Continued)	<ul style="list-style-type: none"> Accelerate management and professional development for women; Implement gender awareness raising and skills development for decision makers; and Involve women in civil society adequately in the formulation and implementation of government policies. 						<p>PEPUDA</p> <p>Gender Policy Statement of Department of Justice Chapter 4 page 56</p>
9. Women and Victim Empowerment	<p>Victim support and empowerment policy considerations should be embedded in all laws, procedures and practices for vindication of women's rights.</p> <p>Key issues:</p> <ul style="list-style-type: none"> Finalise and implement the Victims' Charter; Institutionalise the seven core rights of victims; Establish uniform victim support services in all courts; 	Article 1, 2c, 2d, 2e 6, 12 and 19	Paragraph 210 to 233 and paragraph 112 to 130	Article H (vii), H (ix), H (x)	Article 11, 16, 17, 18 and 19	Article 3, 5, 12 and 18	<p>Chapter 2 (Bill of Rights) of the Constitution</p> <p>Criminal Procedure Act 1997</p> <p>National Crime prevention strategy</p> <p>Gender Policy Statement of Department of Justice page 19</p> <p>Domestic Violence Act</p> <p>Draft Violence Act</p> <p>Sexual Offence Legislation</p> <p>Maintenance Act</p> <p>PEPUDA</p>

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
9. Women and Victim Empowerment (Continued)	<ul style="list-style-type: none"> • Train all service providers on responsive service delivery; • Review and strengthen legal and administrative mechanisms on victim empowerment; and • Strengthen civil society initiatives on victim empowerment. 						
10. Women and the budget	<p>The state is required to ensure that all budget processes and the content thereof reflect a commitment to redirecting resources towards gender transformation and that ultimately women and men from all walks of life benefit equally from all resources used.</p> <p>Key issues:</p> <ul style="list-style-type: none"> • Implement measures to ensure that women benefit 	Article 1, 2, 3, 4	Paragraph 345 to 361 Paragraph 30 Paragraph 109(a)	F (i) and (ii) H (iii)	Article 24	Article 1 – 13	Section 9, 195(d) and (e) 217 and of the Constitution Public Finance Management Act of 2000 Batho Pele National Gender Policy Framework page 51 – table 7; page 55 – paragraph 7.3.1.

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
<p>10. Women and the budget (Continued)</p>	<p>equitably from procurement opportunities;</p> <ul style="list-style-type: none"> • Implement capacity building measures on gender budgeting for all decision makers; and • Mainstream gender considerations into all budget processes and expenditure items. • Top slice funding for pro-women and women empowerment programmes; • Top slice funding for pro-women / gender equality promoting services (e.g. domestic violence / maintenance / sexual offences and equality courts); • Allocate an adequate budget towards sustained public education on new laws; • All decision makers to prepare and submit annual budget statements; 						<p>Gender Policy Statement of Department of Justice pages 18 – 24</p> <p>P P P F A</p> <p>B B B E E A</p>

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
10. Women and the budget (Continued)	<ul style="list-style-type: none"> Allocate an adequate budget and other resources towards gender programming; and Prepare a gender disaggregated per capita expenditure baseline report and regular progress report on gender gaps thereafter. 						
11. Education, training and capacity building	<p>States are required to ensure that women and men have equal access to education, training and capacity building opportunities.</p> <p>Furthermore, education and training should promote gender equality.</p> <p>Key Issues:</p> <ul style="list-style-type: none"> Implement special developmental measures to accelerate women's leadership, management and professional advancement; and 	Article 10	Paragraph 69 to 88	Article H(v) and H(x)	Article 14, 20	Article 8, 17 and 25	Section 9, 10 and 29 of the Constitution South African Qualifications Authority Act of 1995 PEPUDA Employment Equity Act of 1998 White Paper on Affirmative Action in the Public Service Gender Policy Statement of the Department of Justice chapter 4 page 46 - 57

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
11. Education, training and capacity building (Continued)	<ul style="list-style-type: none"> • Facilitate women's entry and development in the legal profession. • Implement special measures to accelerate entry, development and advancement of women in the judiciary; • Align skills development strategies with employment equity objectives; and • Implement special development measures to ensure career pathing for women (especially those experiencing glass ceilings). • Implement gender awareness and skills development measures to enhance gender management capacity for all decision makers; and • Implement measures to ensure gender balanced representation in decision making regarding education and training. 						Skills Development Act National Gender Policy Framework Chapter 2 page 12

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
<p>11. Education, training and capacity building (Continued)</p>	<ul style="list-style-type: none"> • Implement mentorship programmes to accelerate women's professional and management advancement; • Review mainstream programmes to assess development barriers faced by women in the Department; • Implement personal development and career pathing for everyone in the Department/Ministry; and • Review public education programmes to ensure that women's legal literacy and gender awareness are effectively addressed. 						
<p>12. Institutional mechanism or the advancement of women</p>	<p>States are required to establish and support a coherent network of institutional mechanisms to ensure effective promotion of gender equality</p>						

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
12. Institutional mechanism or the advancement of women (Continued)	<p>and monitoring on the status of women.</p> <p>Key issues:</p> <ul style="list-style-type: none"> • Strengthen the Gender Directorate through access to decision making and resources, such as human resources, finance, infrastructure and research capacity; • Establish and resource gender focal point in all units; and • Establish a crosscutting coordinating mechanism for gender issues. • Clarify the responsibility of all managers and integrate accountability in performance contracts; • Mainstream gender in general management and monitoring mechanisms; • Implement capacity building on Gender Mainstreaming for all relevant decision makers; and 	Article 7(c)	Paragraph 196 to 209 and paragraph 286 to 344	Article F(i), (ii) and (v) Article (g)	Article 23	Article 1 and 26	<p>Section 9(2), 33, 34, 187 and chapter 8 and 9 of the Constitution</p> <p>National Gender Policy Framework – Chapter 4 pages 25 – 34</p> <p>Gender Policy Statement of the Department of Justice Chapter 5 page 58 – 63</p>

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
<p>12. Institutional mechanism or the advancement of women (Continued)</p>	<ul style="list-style-type: none"> • Assign an adequate budget for coordination of gender programming. • Prepare and discuss regular reporting on all aspects of Gender Mainstreaming; • Implement urgent measures to ensure that all court statistics are gender disaggregated and specific on women's concerns such as rape, domestic violence etc; and • Review complaints mechanisms, particularly in respect of courts, to ensure effective redress for users. • Allocate resources to research/knowledge generation on the position and needs of women in respect of all Department/Ministry services. 						

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
<p>13. Research and information management for advancing women</p>	<p>States are required to integrate gender considerations into every plan, activity, policy and research;</p> <p>Gender disaggregated information is to be kept to facilitate planning, implementation, monitoring and evaluation of gender programming.</p> <p>Key issues:</p> <ul style="list-style-type: none"> • Review management information systems to ensure that all data is disaggregated by gender and its intersection with race and other compounding factors; and • Prepare base line information on the status of women in terms of all aspects of the Department/Ministry services. 	2 (e), 4	Paragraph 196 to 209 and article 286 to 344	F (i), H (i) and (iv)	Article 21 and 22	Article 1	<p>Section 9, 10, 15, 16, 19(e) 30, 31, 32 and 165(4) of the Constitution</p> <p>National Gender Framework - Chapter 2 page 18</p> <p>Gender Policy Statement of the Department of Justice page 59</p> <p>PEPUDA</p> <p>E E A</p>

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
14. Women, health and the Environment	<p>States are required to adopt appropriate measures to eliminate discrimination against women with regard to health and the environment.</p> <p>This includes health concerns relating to the work place.</p> <p>Key issues:</p> <ul style="list-style-type: none"> • Establish and address women's health and safety needs in the administration and courts; • Audit the working environment to establish the impact on women's wellness; • Review HIV and AIDS policies and programmes and address gender dimensions; and • Provide education and training on health and safety in relation to Information Technology utilisation. 	Article 11(i) (f), 12, 13 and 14(b)	Paragraph 89 to 111 and paragraph 246 to 258	Article H(iii), H(vi), H(viii) and H(ix)	Article 19, 23 and 24	Article 4, 16 and 22	<p>Section 9, 11, 12, 24 and 27 of the Constitution.</p> <p>The Choice of Termination of Pregnancy Act of 1996</p> <p>The National Health Act of 1995 (Towards a National System)</p> <p>National Gender Policy Framework - Chapter 2 page 13</p> <p>Basic Conditions of</p> <p>BCEA Employment Act</p> <p>Occupational Health</p> <p>W C A</p>

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
15. Women, communication and the media	<p>States are required to mainstream gender into all communication processes to ensure that women and men benefit equally. Communication should contribute fairly towards transformation of gender relations.</p> <p>Key issues:</p> <ul style="list-style-type: none"> • Review current communication programmes to establish gender content and impact and implement measures to address gaps; • Implement special measures to reach out to women on Department/Ministry mainstream issues; • Develop and implement a sustained high impact communication strategy on pro-women interventions such as equality legislation, the Maintenance Act, Domestic Violence Act, Recognition of Customary Marriages Act, Succession/ Administration of Estates/ Administrative Justice Act, PAIA and Sexual Offences Legislation; 	Article 1, 2, 3, 4, 5, 7, 10 (c) and 11	Article 234 to 245	Article H(x)	Article 15	Article 2, 9 and 25	<p>Section 9, 10, 15, 16 and 32 of the Constitution</p> <p>Independent Broadcasting Authority Act of 1998</p> <p>Promotion of Access to Information Act (PAIA)</p> <p>Gender Policy Statement of the Department of Justice</p> <p>Chapter 2 page 18</p> <p>PEPUDA</p>

CRITICAL AREA OF CONCERN	KEY ISSUES TO BE PRIORITISED IN PROGRAMME OF ACTION	CEDAW	BPA AND BPA +5	SADC DECLARATION ON GENDER AND DEVELOPMENT	SADC AND ADDENDUM ON VIOLENCE AGAINST WOMEN & CHILDREN	AFRICAN CHARTER ON HUMAN & PEOPLES RIGHTS & PROTOCOL	CONSTITUTION AND OTHER LEGISLATION AND POLICY INSTRUMENTS ¹
15. Women, communication and the media (Continued)	<ul style="list-style-type: none"> • Introduce mechanisms to ensure that all women and men are aware of opportunities for advancement in the Department/Ministry; • Implement special measures to communicate with women on economic and professional opportunities in the Department/Ministry; and • Use departmental powers including procurement to modify media behavior regarding stereotyping of women. 						

TABLE 2: GENDER MAINSTREAMING PLANNING MATRIX

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
1. Awareness	<p>Implement measures to ensure that all personnel in the Department/Component are fully informed of their accountability with regard to gender mainstreaming, starting with the most senior leadership;</p> <p>Brief all management and personnel in the Ministry/ Department about all key international and national legal and policy frameworks on the advancement of women and the promotion of gender equality. Ensure that they are fully aware of the compliance action required of the Department and their responsibilities in this regard; and</p> <p>Provide capacity building to all managers and staff to ensure that they fully appreciate the unequal and different circumstances of women and men and that seemingly neutral decisions or actions may have a prejudicial impact on either gender. Ultimately they should be</p>							

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/ TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
1. Awareness (Continued)	<p>able to align their decisions and actions with such appreciation.</p> <p>Ensure that all structures, decisions and processes are informed by a gender equality analysis. This entails assessing the effect or likely impact of all policies, programmes and activities on women and men and ensuring that all these respond meaningfully to the diverse circumstances of women and men and reduce existing systemic inequalities;</p> <p>Ensure a consistently high profile for the issue of gender equality;</p> <p>Insist on equal participation of women and men in decision-making in all structures at all levels and within all processes²⁷;</p> <p>Ensure that the organizational profile reflects an equitable balance between women and men at all levels;</p> <p>Allocate adequate resources for gender transformation;</p>							

²⁷ The Gender Policy Statement of the Department stipulates that "All decision making structures should comprise at least 40% of each gender." This is in line with compliance obligations in terms of the SADC Declaration which requires member states to "ensure equal representation of women and men in the decision making of member states... at all levels." This is also in line with article 7 of CEDAW which requires, amongst other things, that party states parties must adopt measures to ensure the involvement of women at all levels of governance. The South African Government committed itself in compliance with the BPA, to adopting positive measures to ensure meaningful involvement of women in all structures and at all levels of decision making.

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/ TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
2. Commitment	Ensure that gender issues are raised regularly and with conviction in policy and other forms of dialogue with internal and external stakeholders;							
	Provide support to the GFP and ensure adequate resources for all gender mainstreaming activities;							
	Ensure that the achievement of gender targets is celebrated and rewarded and that non-compliance is openly sanctioned;							
	Develop and display appropriate policy statements, Departmental gender profiles and progress reports on targets, in places where all members of Department/Component can regularly view them;							
	Ensure that the I P O A for Gender Mainstreaming is viewed as one of the key result areas of the overall strategy of the Business Unit; and							
	Integrate Departmental commitment to non-sexism and achievement of							

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
2. Commitment (Continued)	gender equality in institutional value statements and discourage sexist jokes or language.							
3. Planning	<p>Conduct an audit to establish the gender profile of the Department covering the employment profile and trends, decision-making trends, procurement, information, knowledge generation and management, communication patterns, impact and reporting practices. This should include a customer survey disaggregated by gender, race, disability and other factors. Align services and systems with the findings;</p> <p>The I P O A and Department's strategic sub-plans and planning system should be subjected to a compliance test against key international and national laws, policies and benchmarks²⁸;</p> <p>Agree on a vision and values to underpin gender mainstreaming in the Department/Component;</p>							

28 For example the SADC Declaration requires a 30% representation of women at all senior management structures. (Including the judiciary). Article 3 of CEDAW states that "states parties shall take in all fields . . . all appropriate measures including legislation, to ensure the full development and advancement of women, for the purposes of guaranteeing them the exercise and enjoyment of all human rights and fundamental freedoms on the basis of equality with men." The Promotion of Equality Act has identified the need for measures to be taken to address issues such as gender violence and equal access to social resources and family property for women and men, (chapter 3)

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
3. Planning (Continued)	Ensure that such vision and values are aligned with international human rights obligations regarding women, and the constitutional vision regarding non sexism and the realization of the full and equal enjoyment of all human rights for all;							
	Integrate gender considerations into business/ operational project plans of all components at all levels in the Department/Ministry and collaborative activities with other stakeholders;							
	Set clear time bound targets and milestones for Gender Mainstreaming and incorporate these in main-streaming plans and goals/objectives of the Department/Component;							
	Develop an I P O A based on the international and national compliance obligations on the advancement of women and gender equality ²⁹ . Ensure							

29 refer to the 15 critical areas of concern outlined in table 1 above, the article identified under each critical area of concern

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
<p>3- Planning (Continued)</p>	<p>that this is integrated in the mainstream plans;</p> <p>Disaggregate planning data by gender and its intersection with race, disability, HIV status and other forms of difference;</p> <p>Align data management systems and information generation priorities with the I P O A; and</p> <p>Conduct a customer survey disaggregated by gender, race, disability and the intersection of these and other social factors and align services accordingly to maximize responsiveness to the diverse needs of women.</p>							
<p>4- Policy and Decision-Making</p>	<p>Subject all policies, plans, programme activities and decision-making processes to a gender equality analysis to ascertain current or likely impact on women and men and opt for an approach which promotes (substantive) equality. This is mandatory and should be enforced (chapter 5 GPS);</p>							

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
4- Policy and Decision-Making (Continued)	<p>Ensure that all organizational memoranda and other decision-making processes include a clause indicating anticipated gender impact, also taking into account the diversity of women’s circumstances and needs;</p> <p>Conduct an audit of the current gender profile and trends and identify obstacles that hamper women’s full participation in decision making;</p> <p>Institute measures to affirm women and accelerate their equal representation in all aspects of the Ministry/ Department including the judiciary;</p> <p>Apply a mandatory requirement that women and men be equally represented at all levels of decision making, including committees, conferences, decision-making processes, and representation in international structures. Where representation is rank based,</p>							

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/ TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS	
						PRINCIPAL	SUPPORT		
4. Policy and Decision-Making (Continued)	<p>introduce special temporary measures to ensure that women are included in the interim, while progress towards permanent representation is accelerated;</p> <p>Consult the Gender Directorate, gender experts, and organizations that work on gender equality, and ensure that they participate fully and equally with men in all decision making structures and processes³⁰; and</p> <p>Ensure that the Department / Component's GFP is consulted and participates fully in decision-making at all levels.</p> <p>Ensure that women's needs are established and reflected in the Top 5 organizational priorities and that this is also reflected in budget processes and content;</p> <p>Ensure that organizational policy on all key gender issues is clearly stated</p>								

³⁰ A neutral approach that fails to take into account unequal power relations between women's organizations and men led organizations indirectly exclude women and women's perspectives, For example, consulting only organizations such as BAC, fails to capture women's perspectives on the work of the department.

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
4. Policy and Decision-Making (Continued)	<p>in a separate or generic instrument and that policy serves as a reference point when relevant decisions are made³¹; and</p> <p>Ensure that all written decisions/memorandum advice on implications for compliance with international and national standards on gender.</p>							
5. Implementation	<p>Develop mechanisms for effective implementation of programmes in response to international and national obligations and against agreed departmental targets and plans;</p> <p>Implement contents of the I P O A and track progress on agreed gender targets;</p>							

³¹ For example this may include policy on preferential procurement for women and other disadvantaged groups as envisaged in section 217 of the Constitution and the *Preferential Procurement Policy Framework Act of 2000*. This could also include a policy on accelerating the appointment and advancement of women in the judiciary as envisaged in the Department's Gender Policy Statement which reiterates commitments in instruments such as, the SADC Declaration on Gender Development [article h (ii)], BPA and CEDAW (article 3 and 4) and the Constitution (section 174).

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
5. Implementation (Continued)	<p>Take appropriate measures to eliminate and prohibit unfair discrimination against women whether it is direct or indirect, and ensure that all decisions, processes and practices in the Department/Component accelerate the realization of substantive equality for women³²;</p> <p>Implement activities including training and dialogue forums, to facilitate behavior modification, targeting men in particular;</p> <p>Ensure that programme implementation covers all the fifteen (15) Critical Areas identified in the Gender Equality Compliance Map (Table 1) and issues identified in the audit referred to above; and</p> <p>Implement measures to empower women in order to level the playing field between them and men in all operations of the Department/Component.³³</p>							

32 This is a requirement under article 2 of CEDAW. It is also a requirement under the Prevention of Equality Prevention of Unfair Discrimination Act
 33 The Department's Gender Policy Statement commits the Department to adopt measures to equalize opportunities between women and men within the judiciary through programmes which include accelerated development for women, reviewing the appointment criteria and speeding up the process of integrating the different levels of the judiciary.

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
6. Resources	<p>Allocate specific resources towards gender programming, including a substantial budget for special programmes to empower women and those directed at modifying organizational and male behavior³⁴;</p> <p>Identify a specific budget for supporting Gender Mainstreaming.³⁵ This should include setting aside funds for capacity building and monitoring;</p> <p>Engender the budget by integrating gender considerations in all aspects of the budget of the Department/Component. At all stages of the budget cycle, ensure that the content of the budget reflects the Department's commitment towards re-directing resources to women and other historical disadvantaged groups;³⁶</p>							

34 Determine the percentage of the total budget of the Department/Component that is allocated to Gender Mainstreaming and use this information to allocate an adequate budget on Gender Mainstreaming.

35 Gender inequalities in budget could be addressed by reprioritizing activities and redeploying resources accordingly.

36 This is mandatory requirement under Batho Pele: White Paper on the Transformation of Public Service Delivery. The Department of Justice committed itself to a gender budget in its input to the

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
6. Resources (Continued)	<p>Prioritize basic infrastructure for all courts, taking into account specific gender needs relating to gender violence, maintenance, family law, access to equality courts, civil justice, victim empowerment and general access to justice; and</p> <p>Assign adequate resources to support gender mainstreaming. This should include the identification of a GFP or strengthening an existing one, and provision of infrastructure and an adequate budget</p>							
7. Capacity Building	<p>Ensure that all Department/Component members starting with the most senior management levels, are exposed to an induction course and thereafter have regular exposure to gender mainstreaming training and related materials;</p>							

36 This is mandatory requirement under Batho Pele: White Paper on the Transformation of Public Service Delivery. The department of justice committed itself to a gender budget in its input to the national commitments regarding the implementation of the Beijing Platform for Action. This commitment is reflected in the UN Report.

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
7. Capacity Building (Continued)	and the GENMACC to assist them to discharge their responsibilities effectively. ³⁷							
8. Communication and Information Management	<p>Collect and maintain data and regularly disseminate gender disaggregated indicators on all aspects of the Department/ Component, with special attention to employment, procurement, service delivery (usage and per capita expenditure) and decision-making systems;³⁸</p> <p>Assess the ability of current communication to reach, address and prioritize the needs of women, taking into account the diverse social contexts that different women and men live under, and develop a strategy to address identified gaps;³⁹</p> <p>Allocate a specific budget towards research and knowledge generation</p>							

37 For example the Department of Correctional Service sent the person in charge of the gender focal point overseas on a one year course, on Gender Mainstreaming.

38 Employment Equity Act requires all employers to regularly display their progress indicators on the implementation of their employment equity plans.

39 This should include Demystifying the legislative making process so that it is more accessible to women.

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
8. Communication and Information Management (Continued)	<p>on women and women's circumstances and their diverse needs;</p> <p>Prepare a gender profile of those consulted in courts in the past year and develop strategies to enhance consultation with women and women's organizations;</p> <p>Conduct a gender audit of all Information Technology processes, plans and activities to establish responsiveness to women's circumstances and related needs. This should include customer consultation to identify needs;</p> <p>Mainstream equality in all communication and information systems and processes; and</p> <p>Reflect a commitment to non-sexism and the promotion of women's equality with men in all Departmental/Component communication, including speeches, letters, reports and media releases.</p>							

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
9. Employment	<p>Enforce compliance with the EEA and related instruments including the display of the Department/Component's EEA plan and progress report;</p> <p>Mainstream employment equity in Department/Component's strategic plan, sub-plans/projects and ensure that all practices validate women and men equally;</p> <p>Regularly review the Departmental employment policies and practices to eradicate continuing gender inequalities and systemic unfair discrimination. For example, the Department/Component should develop policy on matters such as sexual harassment, family responsibility and equal pay for equal work.⁴⁰</p> <p>Implement special measures to accelerate the recruitment, development, advancement and retention of women at all levels and structures of the Department, as envisaged in Article 4 of CEDAW; and</p>							

⁴⁰ This includes the identification of obstacles to women's entry, development, advancement, retention and the implementation of measures to remove the obstacles. It should take into account the diversity women's experiences (e.g. race, gender, disability, age and health status) as well national and international benchmarks/ commitments regarding power sharing and involving women in decision making;

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
9. Employment (Continued)	<ul style="list-style-type: none"> Review the Department/Component's Employment Equity Plan and ensure that there is a specific programme to accelerate the entry, development, advancement and retention of women from diverse backgrounds. This should happen while transforming work relations to affirm women's human dignity and respond to the gender impact of HIV/AIDS. 							
10. Procurement	<p>Implement measures to familiarize managers and personnel with compliance requirements regarding the equalization of procurement opportunities for women and men of diverse backgrounds. This includes preferential procurement in terms of the PPPFA, and constitutional and international obligations regarding advancing women in the economy;</p>							

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/ TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
10. Procurement (Continued)	<p>Prepare a gender disaggregated profile (including race, gender and disability) of contractors and outsourcing trends over the last year in order to identify gender and race gaps and to plan special interventions to empower women;</p> <p>All personnel, including the judiciary, to be made aware of their accountability for implementing preferential procurement for women and other disadvantaged groups;</p> <p>Set targets for remedial action directed at improving women's representation amongst recipients of government contracts. This is to ensure that racial and other dimensions of gender are addressed;⁴¹</p> <p>Consider special programmes to empower women through knowledge on availability of contract opportunities and procedures, and other supportive programmes. Best practices in this regard may be sought</p>							

⁴¹ Implementation could be facilitated through a departmental preferential procurement protocol to be prepared and enforced through decision-making channels such as approval of memoranda;

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
10. Procurement (Continued)	<p>from government departments that have introduced empowerment programmes for women and other historically disadvantaged groups;⁴²</p> <p>Implement special measures to involve women and women's organizations in Public Private Partnership (PPP) initiatives, promote skills transfer and avoid limiting opportunities to historically advantaged groups; and</p> <p>Request regular gender disaggregated reports on procurement for tracking gender progress and planning corrective action.</p>							
11. Monitoring and Evaluation	Review current information management systems, including the management of statistics, to establish							

⁴² Examples in this regard, include Departments of Minerals and Energy, Public Works, Trade and Industry and Agriculture.

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/ TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
11. Monitoring and Evaluation (Continued)	<p>capacity for generating base line data and regular indicators for tracking gender progress and addressing gaps where necessary;</p> <p>Develop gender disaggregated indicators, benchmarks and milestones to be integrated in Department/Component's strategic plan and sub-plans/projects for tracking gender progress;</p> <p>Integrate specific gender indicators, including targets and milestones, in all performance agreements in the Department/Components;</p> <p>Ensure that all Departmental/Component plans and projects incorporate gender targets and benchmarks drawn from national, international and Departmental instruments as stated above;</p> <p>Ensure that a gender disaggregated report, which includes progress on service delivery, employment equity, procurement and decision-making processes, is regularly tabled at management meetings, including the Board, MAGCOM and JSC, with</p>							

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
11. Monitoring and Evaluation (Continued)	<p>questions raised on non-performance;</p> <p>Ensure that management meetings regularly ask questions on employment equity, procurement equity, progress against gender targets in respect of service delivery, expenditure patterns and plans to accelerate progress in the future;</p> <p>Ensure that milestones achieved are celebrated and publicized in newsletters and meetings. Also ensure that a gender disaggregated employment equity report, which includes changes in the profile of the Department/ Component, is regularly presented in all key meetings and posted on bulletin boards;</p> <p>Give consideration to the development and implementation of a risk management tool to limit departmental non-compliance with international, national and its own policy and legal frameworks on</p>							

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
11. Monitoring and Evaluation (Continued)	<p>gender and other equality issues; and</p> <p>Use the opportunity presented by PEPUDA and proposed BBBEEA to strengthen the evaluation and monitoring of progress on the equalization opportunities between women and men, taking into account women's diversity in terms of race, disability, impact of HIV/AIDS and other factors.</p>							
12. Reporting	<p>Ensure that all components falling within the Ministry/Department maintain gender disaggregated data for monitoring and reporting on gender equality in an easily accessible form;</p> <p>Ensure that all managers and governing bodies are made aware that they are accountable for mainstreaming gender in their work. Also ensure that all their reports indicate progress made on promoting equality between women</p>							

STRATEGIC OBJECTIVE	COMPLIANCE MEASURE	PLANNED ACTION	MILESTONE	TARGET/TIMEFRAME	RESOURCES	RESPONSIBILITY		STATUS
						PRINCIPAL	SUPPORT	
12. Reporting (Continued)	<p>and men and that they have developed action plans to address gaps;</p> <p>Ensure that all reporting on gender is aligned with agreed targets and reporting obligations arising from international and national standard setting instruments; and</p> <p>Ensure that gender issues are given priority in general reports and that clear indicators are provided to show progress made with regard to reducing the gap between women and men in every aspect of the Department/Component.</p>							

Reporting Protocol

3

“It is also in this way that we seek to establish and entrench the understanding among all our people, for all time, that we are building a system of justice that must define its justness by the extent to which it enriches our humanity”

The Honourable Thabo M. Mbeki
*President of South Africa, at the opening
of the new Constitutional Court Building*

**Department of Justice and
Constitutional Development**



Foreword

It gives me great pleasure to release this *Gender Mainstreaming and Gender Budgeting Package*.

I believe that the information in this package will contribute enormously to our efforts around gender transformation through which we seek to comply with the Constitution and our international human rights obligations in terms of CEDAW and related instruments.

In a way the package is based on looking back at what we did or did not do in the last decade with regard to addressing the gender imbalances that we inherited at the dawn of democracy.

The importance of mainstreaming gender in everything we do as a Department cannot be over-emphasised, otherwise we will continue to fail to meet the needs of some of those we seek to serve, especially women from disadvantaged communities. The National Gender Policy Statement states that the implementation of gender equality is first and foremost the responsibility of all the institutions in government. To achieve gender equality the government must embark on a rigorous gender mainstreaming strategy.

I call all members of the justice community to join me and my Department as we implement the *Gender Mainstreaming and Gender Responsive Budgeting* package. I sincerely hope that the lives of women and other disadvantaged groups will be improved as a result.

Ms Brigitte Mabandla, MP

Minister of Justice and Constitutional Development

Pretoria, August 2005

Acknowledgements

The *Gender Mainstreaming Reporting Protocol* is part of the *Gender Mainstreaming* package developed by the Gender Directorate within the Department of Justice and Constitutional Development (hereafter referred to as the Department or DoJCD).

The Gender Directorate is delighted to finally release the *Gender Mainstreaming* and *Gender Responsive Budgeting* package and believes it will assist all role players within the Department, particularly those in leadership positions, to understand the principles of *Gender Mainstreaming* and *Gender Responsive Budgeting*. This will facilitate the integration of gender considerations into all plans, policies and day to day implementation decisions.

The *Gender Mainstreaming* project was inspired by the Directorate's *Needs Assessment* which identified an immediate need to build capacity in the Department for both *Gender Mainstreaming* and *Gender Responsive Budgeting*. The target group for the package includes other role players who contribute to policy development, interpretation and implementation within the DoJCD.

The Directorate hopes that the application of the information and tools in the *Gender Mainstreaming* and *Gender Responsive Budgeting* package will accelerate the elimination of systematic gender discrimination in the Department, and contribute towards the achievement of gender equality in the Department and the society in general.

Sincere gratitude needs to be extended to the Centre for Reconciliation and Equality Studies (CRES)/ Waweth Agency and DoJCD team for their assistance in the research and writing of the *Assessment Report*, and the development of the *Gender Mainstreaming* and *Gender Responsive Budgeting* materials. The following people need special mention:

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- Ms Sizzy Mdluli
- Ms Jacqui Ngeva (Project Sponsor)
- Mr Dominick Mashishi

CRES/WAWETH Agency

- Ms Thuli Madonsela
- Ms Sury Pillay

Adv Mikatelo Joyce Maluleke

Director Gender Issues, Department of Justice and Constitutional Development
August 2005

Reporting Protocol

August 2005

Gender Mainstreaming in the Ministry/Department of Justice and Constitutional Development

Notice is hereby given that the Minister of Justice and Constitutional Development and the Director General, within the Department of Justice and Constitutional Development have approved the following protocol to be used in the preparation of all periodic reports on progress made with regard to accelerating the mainstreaming of gender into all structures, policy, plans, programmes, projects, processes and decisions in the Ministry and Department.

Advocate M. Simelane

Director General

Department of Justice and

Constitutional Development

Ms B.S. Mabandla

Minister of Justice and Constitutional

Development

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Key Concepts and Acronyms

Key Concepts

Black Economic Empowerment

Black Economic Empowerment refers to the implementation of measures to advance black people in order to equalise economic opportunities between them and white people.

Black Empowerment

Black empowerment refers to measures that seek to advance black people in order to achieve equality between them and white people.

Disaggregate

Disaggregate means subdivide into constituent parts.

Employment Equity

Employment Equity refers to the process and outcomes relating to the equalisation of and enjoyment of all employment opportunities and benefits, and the ending of gender, racial, disability and other forms of disadvantage and (unfair) discrimination.

Equality

Equality refers to the equal enjoyment of all rights and freedoms. It entails the absence of direct or indirect (unfair) discrimination.

Gender

Gender refers to the power relations between women and men. It is a social construct that assigns roles and worth to each sex based on group culture.

Gender Analysis	A gender analysis or gender equality analysis refers to a systematic process which involves assessing the impact of or likelihood that each decision, policy, law, plan, programme, situation, process or activity will impact differently on women and men because of their diverse socio-economic or physical circumstances, with the effect of prejudicing one gender.
Gender Awareness	Gender awareness refers to the state of being conscious of inequality arising from the power relations between women and men.
Gender Balance	Gender balance refers to an equitable distribution of life's opportunities and resources between women and men.
Gender Bias	Gender Bias refers to any act that advantages or perpetuates an existing advantage of one sex over the other.
Gender Budget	A Gender Budget, also referred to as a <i>Gender Responsive Budget</i> , refers to a budget or expenditure arrangement which is structured in a manner that ensures that women and men benefit equitably from financial resources.
Gender Disaggregated Data	Gender disaggregated data means information subdivided in terms of women and men.
Gender Mainstreaming	<i>Gender Mainstreaming</i> refers to the integration of gender equality considerations in all policy, law, plans, programmes, administrative and financial activities, organisational procedures, processes and decision making, in order to effect profound organisational and ultimately, societal transformation, towards the realisation of <i>de jure</i> and <i>de facto</i> equality between women and men.
Gender Management System	A Gender Management System is a network of structures, mechanisms and processes that are put in place within an organisational framework to facilitate <i>Gender Mainstreaming</i> in pursuit of equality between women and men. (<i>Adapted from Common Wealth Gender Management System Handbook</i>).
Gender Responsive Budgeting	<i>Gender Responsive Budgeting</i> refers to the allocation of financial resources in a manner that not only ensures that women and men benefit equally from all resources but also reduces existing patterns of women's systemic inequality. Gender budgeting is one of the mechanisms of an effective Gender Management System.

National Gender Machinery	National Gender Machinery refers to a network of coordinated structures within and outside government which operate cooperatively in facilitating political, social, economic and other forms of transformation to dismantle systemic gender inequality and promote equality between women and men.
Per Capita	<i>Per capita</i> means the average per person. This is worked out by dividing total cost with the number of actual beneficiaries.
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Sex	Refers to the biological difference between women and men.
Sex Disaggregated	Has the same meaning as gender disaggregated. It means broken down according to women and men.
Strategic Gender Needs	Strategic Gender Needs refers to women's long-term needs relating to fundamental social transformation to end their subordination in society.
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Women's Equal Access	Promoting women's equal access to mainstream services is about mainstreaming gender into all services to ensure that women and men benefit equitably.

Acronyms

ADR	Alternative Dispute Resolution (also referred to as Informal Dispute Resolution)
BBBEEA	Broad Based Black Economic Empowerment Act
BEE	Black Economic Empowerment
BPA	Beijing Platform for Action
CCMA	Commission for Conciliation, Mediation and Arbitration
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CGE	Commission on Gender Equality
DGPS	Departmental Gender Policy Statement
DoJCD	Department of Justice and Constitutional Development
DVA	Domestic Violence Act
EEA	Employment Equity Act
ERC	Equality Review Committee
GFP	Gender Focal Point or Person
GENMACC	Gender Mainstreaming Advisory and Compliance Committee
IDASA	Institute for Democracy in South Africa
IPOA	Integrated Plan of Action
MAGCOM	Magistrate's Commission
MTEC	Medium Term Expenditure Committee
MTEF	Medium Term Expenditure Framework
NGPF	National Gender Policy Framework
OSW	Office of the Status of Women
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
PFMA	Public Finance Management Act
PPPFA	Preferential Procurement Policy Framework Act
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission

SALRC	South African Law Review Commission
SMME	Small Medium and Micro Enterprises
UPP	Unfunded Priority Project
VAW	Violence Against Women

Reporting Protocol

1. PURPOSE

The purpose of the *Reporting Protocol* is to provide an accountability framework and set of guidelines for the preparation of reports on progress made in the implementation of *Gender Mainstreaming* in the Department/Ministry of Justice and Constitutional Development (hereafter referred to as the DoJCD or the Department). The reports are to be submitted to the office of the Director General. The same protocol should inform preparation of any reports requested on an ad hoc basis.

The reporting protocol should also be used to integrate gender considerations and accounting on progress in the preparation of reports that are not gender specific. This includes annual reports, Portfolio Committee reports and status reports on matters such as the state of service delivery in the courts, employment equity, Black Economic Empowerment, children, disability, HIV/AIDS, automation of systems, legislation and legislative programmes, and periodic reports to management and governing structures in the Ministry and Department.

2. SCOPE

The protocol applies to all employees, structures, institutions and bodies that fall within the scope of the Ministry and Department.

All employees, structures, institutions and bodies that fall within the scope of the Ministry and Department

should apply the guidelines in preparing their reports, taking into account the specific circumstances of their own Units/Components.

This protocol should be read in conjunction with the *Gender Mainstreaming* and other reporting guidelines applicable to the Ministry and Department, particularly in the preparation of specialised reports required by national or international agencies.

3. OBJECTIVES

The reporting protocol seeks to:

- 3.1 Standardise and regularise accountability with regard to the implementation of *Gender Mainstreaming* in the Ministry and Department;
- 3.2 Provide a framework for monitoring progress regularly and timeously, while providing measures to address weaknesses in the implementation of *Gender Mainstreaming* in the Ministry and Department;
- 3.3 Enhance the capacity of the Ministry and Department and components within, to readily generate professional reports that accurately reflect progress achieved on the advancement of women and promotion of gender equality while strengthening the capacity to manage gender programmes effectively;
- 3.4 Foster institutional and individual accountability for *Gender Mainstreaming* and strengthen the capacity of the Ministry and Department to comply with the National Policy Framework for Women's Empowerment and Gender Equality;
- 3.5 Enhance the Department's meaningful response to the President's call for accelerated progress in the implementation of *Gender Mainstreaming* and the provisions of the National Gender Policy Framework;
- 3.6 Provide a standard matrix for co-ordinating the preparation of compliance reports on international human rights instruments such as the *Convention for the Elimination of All Forms of Discrimination Against Women* (CEDAW), *Beijing Platform for Action* (BPA), *SADC Declaration on Gender and Development*, and the *Addendum on the Prevention and Eradication of Violence Against Women and Children*, *International Covenant on Civil and Political Rights*, the *Convention on the Rights of the Child*, the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *African Charter on Human Rights and the International Covenant on Economic, Social and Cultural Rights*;

- 3.7 Highlight critical areas based on the BPA, CEDAW and other international and national legal or policy frameworks on gender equality that need to be given priority in gender programming and reporting within the Ministry/Department as well as providing guidelines on effective measures to be prioritised in respect of each area; and
- 3.8 Facilitate an integrated approach to gender transformation in and through the work of the Ministry and Department.

4. RELATIONSHIP WITH GENDER MAINSTREAMING GUIDELINES

- 4.1 The protocol constitutes an accountability instrument for reporting on progress achieved in the implementation of the *Gender Mainstreaming Guidelines*;
- 4.2 The protocol should accordingly be read and applied together with the Guidelines; and
- 4.3 Reference should also be made to the *Gender Mainstreaming Assessment Report* in the preparation of reports as envisaged under this protocol.

5. STRUCTURE

- 5.1 The *Gender Mainstreaming* reporting Guidelines outlined in 6 below should be used for preparing periodic reports and on progress made with regard to *Gender Mainstreaming* in the Ministry and Department and Components under them;
- 5.2 As indicated earlier, the protocol is based on and must be read together with the *Gender Mainstreaming Guidelines* and *Assessment Report*; and
- 5.3 All periodic reports should be prepared in accordance with the following reporting guidelines.

Department of Justice and Constitutional Development (DoJCD)

GENDER MAINSTREAMING REPORT

UNIT/COMPONENT:

NAME OF HEAD OF UNIT/COMPONENT:

DETAILS OF CONTACT PERSON:

- Name:
- Position:
- Address:
- Telephone/Fax:
- E-mail:

REPORT PERIOD

DATE OF SUBMISSION

Signature of Head of Department/Unit/Component

Department of Justice and Constitutional Development (DoJCD)

(1) GENERAL MEASURES

This section is general and seeks to facilitate broad accounting on the 9 Point Programme outlined in the *Gender Mainstreaming Guidelines*.

Kindly answer the following questions on leadership, vision and values:

- (i) Have you agreed on a vision and values to underpin *Gender Mainstreaming* in the Unit/Component? (Please indicate the contents.)
- (ii) Has a statement been issued to all that indicates the commitment of the leadership to accelerate efforts on Mainstreaming Gender in the Component? (The President's State of the Nation address provides an example in this regard.)
- (iii) What measures have been implemented to:
 - (a) Provide policy clarity on critical gender issues?
 - (b) Engage in advocacy for gender equality, women's advancement and mainstreaming gender consideration in all aspects of the Unit/Component's work?
 - (c) Enforce accountability?
- (iv) What measures have been implemented to create an enabling environment for *Gender Mainstreaming* and Women's Empowerment?

(2) CLARIFICATION OF CONCEPTS

- (i) Has everyone in the Unit/Component, from the most senior leadership and management level to the lowest rank been familiarised with the key international and national and departmental standard setting instruments on gender equality? What measures were implemented to achieve this?
- (ii) What measures have been implemented to facilitate the process of identifying the Department or Component's obligations in relation to each Critical Area of Concern and gender priority arising from the standard setting instruments?
- (iii) Does every person fully appreciate the nature of compliance required of the Department, their component and themselves as individuals?
- (iv) Has every person in the Unit/Component been provided with a Briefing Pack containing the instruments outlined in the Gender Mainstreaming guidelines? Have summaries been provided as well?

(3) COMPLIANCE AUDIT

- (i) Has a checklist summarising all obligations arising from the standard setting instruments applicable to the Department and Component been prepared?
- (ii) Has everyone in the Unit/Component read and analysed the *Gender Mainstreaming Assessment Report*, identified issues that are applicable to the Unit/individual's sphere of competence, and determined action required? Please elaborate.
- (iii) Has a detailed gender gap analysis been conducted in respect of all aspects of the Unit/Component prioritising:
 - (a) Employment;
 - (b) Decision making processes and structures;
 - (c) Policy, legislation and research; and
 - (d) Procurement?
- (iv) Has the Unit/Component identified obstacles preventing effective Gender Mainstreaming in all its operations? How and when was this done? What obstacles/barriers have been identified?

(4) GENDER MAINSTREAMING FACILITATING STRUCTURE

- (i) Has a Gender Mainstreaming Advisory Compliance Committee (GENMACC) been established?
- (ii) Has a Gender Focal Person/Point (GFP) been established in the Unit/Component?
- (iii) Has the Gender Focal Person/Point (GFP) been empowered with the following:

ACTIVITY	YES/NO	QUANTITY/INDICATOR
Adequate budget		
Human resources		
Space equipment		
Authority		
Support		
Leadership/enabling environment		
Capacity building		
Participation as a technical advisor in GENMACC and other key decision making structures		

- (iii) Is the GENMACC adequately representative in terms of constituent components and in terms of gender, race and disability?

COMPOSITION OF THE GENMACC

NAME	RACE	GENDER	STRUCTURE	DECISION MAKING LEVEL

- (iv) Has adequate authority and resources been assigned to the GENMACC to enable it to operate effectively?
- (v) Is the GENMACC functioning effectively? For example does it:
 - (a) Hold regular meetings? If so, how many meetings have been held in the last year or the period under review?
 - (b) Does the GENMACC have a clear Programme of Action with clear deliverables?
 - (c) Does the GENMACC submit regular reports to the head of the Unit/Component? How many reports have been submitted in the last year or period under review?
 - (d) Has the GENMACC report been integrated into the Unit's mainstream reports to the Executive Committee/Departmental Board or other decision making structure? Please elaborate.
 - (e) Has the GENMACC been cascaded to all key levels of decision making in the Unit/Component?

(5) INTERGRATED PROGRAMME OF ACTION

- (i) Has an Integrated Programme Of Action (IPOA) been developed for the Unit/Component?
- (ii) Is the IPOA Programme of Action aligned with the vision and values?
- (iii) Does the IPOA have clear goals, targets and activities for the next five years, three years, one year, six months, quarter and one month?
- (iv) Are the goals, targets and activities aligned with legal and policy obligations arising from national and international instruments? Please insert the Unit's/Component's Integrated Programme of Action here. Make sure that the (status) column is filled with information indicating progress achieved in respect of each item. (See attached Gender Equality Compliance Map and Gender Planning Matrix.)

- (v) Does the IPOA incorporate measures that address all obstacles outlined in (3) above? Please indicate as directed in the following table.

OBSTACLE	MEASURE	STATUS/PROGRESS MADE

(6) RESONSIBILITY AND ACCOUNTABILITY

- (i) Has the responsibility of each manager/employee been clarified? Please elaborate.
- (ii) Have all members of the Unit been informed about their responsibilities? How?
- (iii) Has the role and responsibility of the Gender Focal Point/ Person been clarified? Please elaborate.
- (iv) Has everyone been informed about the responsibility, powers and accountability of the Gender Focal Point? Please elaborate.
- (v) Has accountability with regard to mainstreaming gender been integrated in all performance contracts and systems?
- (vi) Has the Unit/Component introduced mechanisms for rewarding performance and sanctioning non performance in respect of *Gender Mainstreaming*? Please elaborate.

(7) BUDGET AND OTHER RESOURCES

- (i) Is gender regularly mainstreamed into the Unit/Component's budget, budget processes and expenditure? Please elaborate.
- (ii) Has sufficient budget been allocated to the GFP?
- (a) How much?
- (a) What percentage of the Unit/Component's budget does this constitute?
- (iii) What other resources have been allocated to the GFP?

- (iv) Has a sufficient budget been allocated to GENMACC? Please elaborate as directed below:
 - (a) How much?
 - (a) What percentage of the Unit/Component's budget does this constitute?
- (v) Has an adequate budget been allocated towards reviewing all systems, procedures and processes to mainstream gender? Please elaborate.
- (vi) What budget/resources have been allocated towards the following measures/programmes?

MEASURES/PROGRAMMES	VALUE/AMOUNT ALLOCATED	PERCENTAGE OF TOTAL UNIT/COMPONENT'S BUDGET	TIMEFRAME
Women Empowerment measures/programmes			
Pro-women or programmes/services mainly benefiting women			
Promoting women's equal access to mainstream services			

(8) INCORPORATING THE INTERGRATED PROGRAMME OF ACTION INTO MAINSTREAM PLANS

- (i) Have existing plans and budgets been reviewed and adjusted in line with the contents of the Integrated Programme of Action (IPOA)? Please elaborate.
- (ii) Has the Unit/Component adjusted the targets and indicators in its strategic and other mainstream plans to accommodate contents of the IPOA not covered in existing Unit/Component plans?

Please elaborate and use the following table:

PLAN	GENDER	STATUS

- (iii) Has the content of the IPOA been integrated into mainstream projects? Please provide a list of projects that have been adjusted in the light of the IPOA?

PROJECT	GENDER ADJUSTMENT	STATUS/COMMENTS

- (iv) Have sanctions and rewards within the Unit/Component been aligned with performance against *Gender Mainstreaming* objectives and accountabilities? Please elaborate.
- (v) Have internal reporting and decision making formats including memos, been aligned with national and international obligations on gender? Please elaborate.
- (vi) Are progress reports on *Gender Mainstreaming* regularly submitted and discussed at management meetings? Please elaborate.

(9) MONITORING AND REPORTING

- (i) Has the unit reviewed all its data management systems to determine capacity to capture baseline data and progress indicators on Gender Mainstreaming, and if necessary make adjustments? Please elaborate.
- (ii) What measures have been implemented to ensure that there is adequate capacity to link data management to gender compliance reporting?
- (iii) Has the Unit prepared baseline data disaggregated by gender and its intersection with factors such as race, in respect of all its activities including:

AREA	MEASURES ADOPTED	STATUS
Employment		
Decision making		
Processes and structures		
Procurement		
Systems and procedures		
Communication processes		
Budgets		
Monitoring		
Courts and other service delivery programmes		
Interdepartmental		
Interaction with civil society		

- (iv) Have compliance reports on gender required by appropriate agencies been prepared and submitted timeously?
- (v) What other measures have been implemented to strengthen monitoring, evaluation and reporting?

7. PREFERENTIAL PROCUREMENT AND BLACK EMPOWERMENT

7.1 Kindly provide a gender breakdown of all contracts awarded by the Unit/Component in the past year or period under review.

CLASSIFICATION OF CONTRACTS	TOTAL NO. OF CONTRACTS	TOTAL VALUE OF CONTRACTS	NO. AND VALUE OF CONTRACTS AWARDED TO AFRICAN WOMEN	NO. AND VALUE OF CONTRACTS AWARDED TO COLOURED WOMEN	NO. AND VALUE OF CONTRACTS AWARDED TO INDIAN WOMEN	NO. AND VALUE OF CONTRACTS AWARDED TO WHITE WOMEN	PERCENTAGE OF TOTAL NO. AND VALUE OF CONTRACTS AWARDED TO WOMEN
Under R500,000							
Under R2 million							
Over R2 million							
Total							

7.2 What measures are being implemented to achieve procurement equity or equal access and benefit for women and men in respect of all Unit/Component contracts and black empowerment initiatives?

Needs Assessment Report

4

“It is also in this way that we seek to establish and entrench the understanding among all our people, for all time, that we are building a system of justice that must define its justness by the extent to which it enriches our humanity”

The Honourable Thabo M. Mbeki

President of South Africa, at the opening of the new Constitutional Court Building

**Department of Justice and
Constitutional Development**



Foreword

It gives me great pleasure to release this *Gender Mainstreaming and Gender Budgeting Package*.

I believe that the information in this package will contribute enormously to our efforts around gender transformation through which we seek to comply with the Constitution and our international human rights obligations in terms of CEDAW and related instruments.

In a way the package is based on looking back at what we did or did not do in the last decade with regard to addressing the gender imbalances that we inherited at the dawn of democracy.

The importance of mainstreaming gender in everything we do as a Department cannot be over-emphasised, otherwise we will continue to fail to meet the needs of some of those we seek to serve, especially women from disadvantaged communities. The National Gender Policy Statement states that the implementation of gender equality is first and foremost the responsibility of all the institutions in government. To achieve gender equality the government must embark on a rigorous gender mainstreaming strategy.

I call all members of the justice community to join me and my Department as we implement the *Gender Mainstreaming and Gender Responsive Budgeting* package. I sincerely hope that the lives of women and other disadvantaged groups will be improved as a result.

Mrs B S Mabandla

Minister of Justice and Constitutional Development

Pretoria, August 2005

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EEA	Employment Equity Act
ERC	Equality Review Committee
GFP	Gender Focal Point or Person
GENMACC	Gender Mainstreaming Advisory and Compliance Committee
IDASA	Institute for Democracy in South Africa
IF	Indian Female
IM	Indian Male
IPOA	Integrated Plan of Action
MAGCOM	Magistrates Commission
MTEC	Medium Term Expenditure Committee
MTEF	Medium Term Expenditure Framework
NGPF	National Gender Policy Framework
OSW	Office of the Status of Women

PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
PFMA	Public Finance Management Act
PPPFA	Preferential Procurement Policy Framework Act
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SALRC	South African Law Review Commission
SMME	Small Medium and Micro Enterprises
UPP	Unfunded Priority Project
VAW	Violence Against Women
WF	White Female
WM	White Male

Needs Assessment Report

EXECUTIVE SUMMARY

Purpose

The *Needs Assessment* was conducted as an integral part of the *Gender Budget Analysis* of the Ministry/Department of Justice and Constitutional Development (herein after referred to as the DoJCD or the Department). The process formed part of a drive to develop *Gender Budgeting Guidelines* to help the Ministry/Department to mainstream gender in all aspects of the budget and expenditure activities.

Process

The process involved a policy and best practices scan, followed by the development of a *Service Feedback Questionnaire*, which formed the basis for interviewing 130 randomly selected women and men from various walks of life.

Summary of Findings

The feedback received confirmed that women and men experience life differently in many respects and that responsive service delivery to women requires the acknowledgement and accommodation of material gender differences.

Summary of Recommendations

The *Needs Assessment* led to the following summary of recommendations:

- (a) There is an urgent need for implementation of a massive communication strategy covering the role and functions of the DoJCD, rights arising from new laws (legislation and court jurisprudence), and information on how to access such rights;
- (b) The Department and its components should apply targeted budgeting, based on periodic needs assessments that clearly reflect the diverse needs of customers, including women from different walks of life;
- (c) Gender considerations need to be mainstreamed into all aspects of the Department budget and women's priorities are to be clearly spelt out and integrated in organisational priorities, as reflected in the strategic plans and annual objectives, with implementation that is enforced and monitored;
- (d) Serious consideration should be given to a review of the Civil Procedure System, particularly process serving and exploring the use of Alternative Dispute Resolution (ARD) for consumer issues;
- (e) Consideration should be given to a review of the divorce system, particularly the process serving therein;
- (f) Consideration to be given to extending legal aid, educating service providers about service excellence and involving the public a lot more in the monitoring and evaluation of the legal aid system;
- (g) Serious consideration should be given to the role of paralegals in expanding access to legal advice, particularly in respect of civil matters in Magistrates Courts;
- (h) Specific funding needs to be allocated towards women empowerment and mainstreaming gender into all aspects of the budget;
- (i) Access to the legal profession needs to be restructured along the lines of other professions with the main feature being state provided or supervised and unhampered entry into the profession. This means the removal of labour market competition prior to entry to the profession;
- (j) Special measures to enhance women's involvement at all levels of decision-making within the Department should be introduced;
- (k) There is a need for a review of procurement processes and outcomes relating to distribution of state contracts within the Department and the implementation of special measures to remove barriers that prevent equal access to contract opportunities for historically disadvantaged groups, accelerate the leveling the playing field;
- (l) A more elaborate Needs Assessment is to be conducted for gender and targeted budgeting; and
- (m) A policy and legal *Compliance Map* is to be developed and used to inform choices.

1. INTRODUCTION

This report provides a summary of the findings of a *Needs Assessment* that was conducted with members of the public in respect of the services provided by the DoJCD and forms part of a gender budget analysis process. This is an integral part of the *Gender Mainstreaming* programme that has been embarked upon in the Ministry/ Department. The *Needs Assessment* covered 130 respondents from both genders and drawn from the major demographic categories in South Africa, namely:

- Africans;
- Coloureds;
- Indians; and
- Whites.

Each category was further disaggregated by gender. The purpose of the *Needs Assessment* was to get some idea of what the differential needs of women and men from various walks of life are with regard to services delivered by the DoJCD.

The objective of the gender budget exercise is to review expenditure patterns within the Ministry and Department, and align departmental budgets and expenditure with the actual and differential needs of women from different walks of life.

The ultimate goal is to ensure that all women and men benefit equally from all public finances spent by the Department, regardless of difference or systemic disadvantage. The findings of the needs assessment were ultimately be integrated in the Assessment Tool that was developed for use to analyse the budget of the Department/Ministry.

In addition to supporting gender budgeting, a *Needs Assessment* will foster targeted and responsive budgeting and expenditure patterns within all aspects of the Department. Targeted and disaggregated budgeting is rapidly becoming a common feature of the South African governance landscape. For example, when the Minister of Finance announces the national budget, he outlines the features of the budget that seek to address specific needs of historically marginalized sections of society such as women and the poor.

The Department of Trade and Industry (DTI) also disaggregates the communities it serves into various categories, including micro enterprises, small and medium enterprises and big business. It also has a specific budget and related programmes that target women in business. The idea of special programmes and budgets for women in business has become common. Pioneers in this regard include the Departments of Trade and Industry, Minerals and Energy, Agriculture and Public Works.

2. BACKGROUND

As one of its National Commitments with regard to the implementation of the Beijing Platform for Action (BPA), South Africa committed itself to implement a gender budget as part of its national strategies to empower women and promote equality between women and men. The Department formally aligned itself with this national undertaking. This is reflected in amongst others, its Gender Policy Statement.

The idea of a *Needs Assessment* is also anchored in the government policy of *Batho Pele*, articulated in the *White Paper on the Transformation of Public Service Delivery*. Among other things, the Batho Pele White Paper requires that customers be consulted on their service needs and that a concerted effort is made to redirect services to historically marginalized areas in order to equalize access to government services and contribute to societal transformation. The results of the needs assessment are to provide an indication of the pressing needs of women and men. This information has been incorporated into the Gender Budget Assessment tool to ensure that gender budget assessment is informed by an accurate understanding of the differential needs of women and men from different walks of life.

The project is part of the *Gender Mainstreaming Programme* within the Gender Directorate, mandated by the Department's Gender Policy Statement. *Gender Mainstreaming* is about:

Integrating gender equality considerations in all policy, laws, plans, programmes, administrative and financial activities, organisational procedures, processes and decision making, in order to effect profound organisational and ultimately, societal transformation towards the realization of de jure and de facto equality between women and men.

In practice, *Gender Mainstreaming* entails:

Preceding all organisational decisions and activities with a gender equality analysis and implementing corrective measures to prevent or alleviate prejudicial impact or the likelihood of such prejudice on either gender, and contemporaneously reduce existing disparities between women and men.

A *gender equality analysis* is:

A systematic process which involves assessing the impact of, or likelihood that, each decision, policy, law, plan, programme, situation, process or activity will impact differently on women and men because of their diverse socio-economic or physical circumstances, with the effect of prejudicing one gender.

3. METHODOLOGY AND PROCESS

The process involved the development of a *Service Feedback Questionnaire*. The questionnaire was used as a basis for conducting interviews with about 130 randomly selected respondents in Gauteng. Respondents were approached in courts (Pretoria Central and Protea, Soweto), malls (Pretoria), bus stops (Johannesburg and Pretoria) and meetings. The questionnaires were then analysed. Although the interviews took place between Pretoria and Johannesburg in Gauteng, some of the respondents happened to be visiting from other parts of the country. As a result, a number of the residential areas reflected under 'Profile of Respondents' include other provinces and cities. The original plan also anticipated focus groups, but these were subsequently abandoned in the light of time and resource considerations.

Participants were asked questions that included services known to them and/or used by someone known to them. They were also asked to explain the nature of their experiences in interfacing with the DoJCD and to indicate areas where they would like to see improvements. A *Service Map* was created to summarise all the key services offered under the DoJCD. The DoJCD Service Map is attached to this report as *Annexure B*. The feedback from respondents was analysed and summarised in the tables numbered 4.3 - 4.9 below. The tables cover the following headings:

- Services known to respondent;
- Services previously used by respondent;
- Services used by someone known to respondent;
- Services where respondent experienced problems;
- Services where respondent's family/friend experienced problems;
- Nature of problems experienced in respect of each service; and
- Recommendations by respondents.

3.1 Limitations

Limitations of the study included the following:

- Limited timeframe and resources. Thus the survey was confined to Gauteng over a period of approximately six weeks;
- Unequal numbers of women and men, with respondents being mostly women; and
- Respondents were mainly educated people living in urban areas.

4. FINDINGS

The findings of the Service Feedback Survey are categorized in the following manner:

- General Observations;
- Summary of Findings on Public Service Users; and
- Summary of Findings on State Contracts/Business Opportunities.

4.1 General Observations

4.1.1 The *Needs Assessment* established that although there are a lot of common justice needs amongst women and men, diverse culture, race, class, gender and other dynamics such as income level, occupation and standard of education, play a major role in determining a person's needs, in respect of services offered by the DoJCD or any service agency. For example, most women's brush with the justice system is either in respect of family law (including domestic violence) or consumer issues. With regard to consumer issues, most women who had been to court had been dragged to court, usually by major retail entities, as respondents.

In the few instances where women had been initiators, they tended to abandon the process before completion due to frustration caused by delays, uncooperative and rude court officials, lack of knowledge and resources, as well as lack of legal advice and/or representation. Most women were also respondents in divorce matters, often indicating that they would have preferred to be initiators had they had resources for engaging a lawyer. Women tended to be process initiators in maintenance and domestic violence cases.

4.1.2 Lack of knowledge emerged as the key source of inequality between women and men with regard to understanding and using the justice system to vindicate one's rights. Women, whether interviewed in court or in other public places, generally had no idea what the DoJCD offers and how they could use its services to better their lives. People generally, and women in particular, interviewed in court, seemed to be lost with no idea what to expect and where to go. Many indicated that they had had to stand in long queues for long periods of time only to be told they were at the wrong place or to come back the following day. The position of African people, particularly women within this group, was compounded by language limitations.

4.1.3 In addition to ignorance, there appeared to be a stigma attached to any association with the justice system and difficulty in relating the concept of "service" to the work of the DoJCD.

While the stigma attached to any brush with the justice system applied to both women and men, this phenomenon was more acute amongst women, particularly Indian and White women above the age of 35.

- 4.1.4 Clerks and volunteers at the entrance and Information Desk did not seem to be of much help in alleviating confusion. In fact most respondents specifically indicated that they were unhelpful. It was alleged that there was no useful information offered and that volunteers at the desk were generally ignorant and not particularly enthusiastic to help. The clerks were said to be down right rude and lacking knowledge about the general operations of the court. This was confirmed by some of the lawyers and court regulars, such as interpreters, who claimed that they often ended up assisting people in the lobby, who had been sent from pillar to post with no idea what to do or where to go.

The interviewers also experienced the Information Desk to be lacking in user friendliness. The positioning of the Information Desk, away from the entrance, also did not help matters. A number of Clerks of Court were also found to be rather ignorant about the general operations of the court. Some did not even know that there was an Equality Court in their building and/or what services were offered by such a court.

- 4.1.5 There was much more ignorance and confusion regarding the general operations and services offered by the DOJCD as a whole. The respondents including professional women, associated the services of the DoJCD with the police and correctional processes. One respondent associated the regulation of domestic workers' contracts and conditions of service with the DoJCD. Many of the services of the DoJCD had never been heard of, amongst these, the constitutional development function.

Some services were virtually unknown with only one or two respondents, usually lawyers, having some vague idea of their existence. This includes the Commission for Gender Equality, Access to Information, Administrative Justice and Law Reform Service. Not even lawyers were aware, at the time of the interview, that the Equality Courts are now functional. Only two respondents, both lawyers, knew that the Labour Court fell under the DOJCD.

4.2 Profile of Respondents

(a) Gender and Race Breakdown

The survey covered a hundred and thirty (130) respondents comprising the following race and gender breakdown:

	Women	Men
Africans	56	19
Coloureds	9	8
Indians	6	3
Whites	19	10
Total	90	40

(b) Age Groups

LEVEL	AF	AM	CF	CM	IF	IM	WF	WM	TOTAL
Under 30	8	5	2	1	1	0	6	1	24
30-59	43	13	7	7	4	3	12	9	98
60+	5	1	0	0	1	0	1	0	8
TOTAL	56	19	9	8	6	3	19	10	130

(c) Education Qualifications

LEVEL	AF	AM	CF	CM	IF	IM	WF	WM	TOTAL
Tertiary	28	6	4	6	3	1	8	7	63
Matric	18	7	4	1	2	1	7	3	43
Grade 9	3	4	0	1	0	0	4	0	12
Grade 9	4	0	1	0	0	0	0	0	5
Primary	3	2			1	1			7
Total	56	19	9	8	6	3	19	10	130

(d) Occupational Levels

LEVEL	AF	AM	CF	CM	IF	IM	WF	WM	TOTAL
Senior Management	3	4	0	1	0	0	0	2	10
Professional and Middle Management	30	6	6	7	4	1	11	7	72
Elementary	14	8	3	0	0	2	4	1	32
Unemployed	7	1	0	0	2	0	2	0	12
Learner	4	0	0	0	0	0	2	0	06
Total	56	19	9	8	6	3	19	10	130

(e) Business Categories

LEVEL	AF	AM	CF	CM	IF	IM	WF	WM	TOTAL
Big Business		3						1	4
SMME	6	2			1	2	1	1	13
Micro									
Total	6	5	0	0	1	2	1	2	17

(f) Residential Areas

PROVINCE	AF	AM	CF	CM	IF	IM	WF	WM	TOTAL
Gauteng Province	54	18	9	7	5	2	13	10	126
KZN	0	1	0	0	1	1	0	0	2
W Cape	0	0	0	1	0	0	1	0	2
Limpopo	2	0	0	0	0	0	0	0	2
Other	0	0	0	0	0	0	0	0	0
Total	56	12	9	8	6	3	6	10	130

Cities

CITY	AF	AM	CF	CM	IF	IM	WF	WM	TOTAL
PTA	38	12	7	5	3	1	15	7	87
JHB	16	6	2	1	2	1	4	3	35
CT				1					1
Midrand				1					2
DBN		1			1	1			3
Other PKN	2								2
Total	56	12	9	8	6	3	19	10	130

Areas

AREA	AF	AM	CF	CM	IF	IM	WF	WM	TOTAL
Township	20	10	2	0	0	0	0	0	32
Suburb/City	18	7	4	4	5	1	19	7	65
Other	18	2	3	4	1	2		3	33
TOTAL	56	19	9	8	6	3	19	10	130

Notes for the tables

Dbn – Durban

KZN – KwaZulu Natal

CT – Cape Town

Jhb – Johannesburg

PKN - Polokwane

4.3 Services Known by Respondent

CATEGORY	NO	SERVICE	AF	AM	CF	CM	IF	IM	WF	WM	TOTAL
COURTS	1	Family/Divorce	38	13	7	4	6	2	15	8	93
	2	Custody/Access	26	6	6	3	3	1	4	5	54
	3	Domestic Violence	44	12	7	4	3	1	11	8	90
	4	Sexual Offences	31	6	7	6	6	1	16	5	71
	5	Maintenance	46	16	7	6	6	3	19	9	112
	6	Admin of Deceased Estates	18	11	5	5	2	2	5	8	56
	7	Admin of Estates	10	6	8	3	2	3	5	6	43
	8	Child Justice	29	9	4	2	3	0	15	7	69
	9	Other VAW	12	4		3	1	3	1	4	28
	10	Criminal	40	17	4	8	4	3	19	9	104
	11	Civil	18	11	2	6	2	3	4	6	47

CATEGORY	NO	SERVICE	AF	AM	CF	CM	IF	IM	WF	WM	TOTAL
COURTS	12	Small Claims	14	7	4	5	1	3	2	8	12
	13	Equality Court	5	3		1	1	0	0	2	12
	14	Administrative Justice	2	2		1	1	0	0	1	7
	15	Labour	0	3	3	1	1	0	6	4	18
	16	Land Claims	0	0		0	1	0	0	1	2
	17	Inquests	0	1		1	1	0	0	1	4
	18	Access to Information	0	1		1	1	0	0	1	4
COURT SUPPORT	19	Legal Aid	20	9	2	4	1	2	3	7	48
	20	Administration/ Information	8	2		1	1		0	4	16
	21	Victim Support	3	5		0	1		1	3	13
	22	Prosecutorial	13	12		6	3		5	7	46
	23.	Family Advocate	0	0		0	1		1	1	3
	24	Other	1	0		0	1		0	1	3
POLICY FRAME WORK	25	Constitutional Development	2	2		3	1		2	3	13
	26	Law Reform	1	0		2	1		1	1	6
	27	Admin Policies	0	0		0	1		0	1	2
ADMINISTRATIVE MEASURES	28	Communication/ Public Education	12	4		2	1		2	2	23
	29	Consultation	1	0		0	1		1	2	5
	30	Business Opportunities	3	4		3	1		2	4	17

CATEGORY	NO	SERVICE	AF	AM	CF	CM	IF	IM	WF	WM	TOTAL	
ADMINISTRATIVE MEASURES	28	Communication/ Public Education					1				1	
	29	Consultation					1				1	
	30	Business Opportunities		3			1				4	
	31	Public Complaints Mechanisms					1				1	
CHAPTER 9 AND OTHER GOVERNMENTAL BODIES	32	SAHRC					1				1	
	33	CGE					1				1	
	34	Public Protector	1								1	
	35	SALRC					1				1	
	36	ERC									0	
	37	JSC									0	
	38	MAGCOM									0	
	39	Other									0	

4.6 Services Where Respondents Experienced Problems

CATEGORY	NO	SERVICE	AF	AM	CF	CM	IF	IM	WF	WM	TOTAL
COURTS	1	Family /Divorce				1	1				2
	2	Custody/Access									-
	3	Domestic Violence	5								5
	4	Sexual Offences					1				1
	5	Maintenance	6		2	1	1				10

4.8 Nature of Problem Experienced in Respect of Each Service

CATEGORY	NO	SERVICE	NATURE OF PROBLEM EXPERIENCED IN RESPECT OF SERVICE
COURTS	1	Family /Divorce	Fraud in respect of process, lack of legal advice/representation, legal illiteracy, control and division of property and customary law problems.
	2	Custody/Access	A few men complained about custody and access.
	3	Domestic Violence	Protection orders ineffective to deal with socio-psychological causes underlying violence against women. Lack of resources/support services for victims. Furthermore, protection orders are usually not enforced and in some cases failure or tardiness leading to client's death (femicide).
	4	Sexual Offences	Poor investigation particularly in respect of child abuse. Lack of facilities and support services for victims. Release of recidivist offenders without effective rehabilitation or community warnings.
	5	Maintenance	Tracing failures, including tracing of teachers, police and other public servants. Poor enforcement of orders. Difficulty getting increase in pay.
	6	Administration of Deceased Estates	Process takes too long. Lack of knowledge of the system among users and unnecessary bureaucratic requirements. One woman mentioned the pain of being sent from pillar to post in trying to claim maintenance from the child's father's estate.
	7	Administration of Estates	Most respondents had no knowledge of this service. The one female lawyer interviewed was concerned about women's access to liquidation contracts.
	8	Child Justice	Problems were expressed about lack of a systematic child justice system that keeps young people involved in non violent crimes and without criminal records, and that sees to their effective rehabilitation.
	9	Other VAW	Lack of an integrated multidisciplinary response to violence against women, including the absence of victim empowerment and reparation.

CATEGORY	NO	SERVICE	NATURE OF PROBLEM EXPERIENCED IN RESPECT OF SERVICE
COURTS	10	Criminal	Poor investigations, poor advocacy and in some cases, disappearance of files. Restorative justice needed.
	11	Civil	Expense involved in hiring compulsory lawyers is too high for low-income brackets, particularly women. As a result most of them are only exposed to the service as respondents sued by retail companies. The position of women, particularly African women, is compounded by lack of knowledge of the system, further complicated by language and the Eurocentric cultural paradigm from which courts operate. Feeling of being taken advantage of by those able to hire expensive lawyers. Need for leveling the playing field and improving efficiency as well as user friendliness for low-income bracket people. Another complaint was that people often queue for a whole day or days without much progress and those queuing are from low income groups who stand to lose their salary for the day or even their jobs.
	12	Small Claims	Lack of knowledge about the service, poor enforcement of court orders and low threshold (R3 000.00) Too much time wasted in queues.
	13	Equality Court	Only referred to by a few lawyers who had no idea that these courts were now operational. Some interviewed in Pretoria court had only seen the court sign.
	14	Administrative Justice	No knowledge or usage of this service.
	15	Labour	No idea that this service is part of Justice.
	16	Land Claims	No idea that this service is part of Justice.
	17	Inquests	No idea that this service is part of Justice.
	18	Access to Information	Virtually unknown. Only one person had used it.
COURT SUPPORT	19	Legal Aid	Distrust of this service, which was labeled as involving "useless lawyers" by at least two respondents.
	20	Administration and Information Desk	Perceived as "useless" by many respondents interviewed in one of the courts. Key problems are said to include demotivated volunteers who do not know

CATEGORY	NO	SERVICE	NATURE OF PROBLEM EXPERIENCED IN RESPECT OF SERVICE
COURTS	20		much about what's happening in court. The one found by the interviewers was unfriendly, inattentive and ignorant.
	21	Victim Support	Mostly voluntary in nature and therefore not consistent or systematic or present in all courts.
	22	Prosecutorial	Poor investigative standards and advocacy on matters relating to violence against women and children.
	23.	Family Advocate	Virtually unknown
	24	Other	A lot of concerns were raised about the court environment, including the slackness and rudeness of service providers such as Clerks of Court and Magistrates. Issues of gender and racial representation in some courts or areas of the court were also raised.
POLICY FRAMEWORK	25.	Constitutional Development	Virtually unknown.
	26	Law Reform	Virtually unknown.
	27	Admin Policies	Virtually unknown.
ADMINISTRATIVE MEASURES	28	Communication/ Public Education	Virtually unknown.
	29	Consultation	Virtually unknown.
	30	Business Opportunities	Virtually unknown.
	31	Public Complaints Mechanisms	Virtually unknown.
CHAPTER 9 and OTHER GOVERNMENTAL BODIES	32	SAHRC	Known by a few witnesses with no clarity on service.
	33	CGE	Virtually unknown. Even less known than SAHRC.
	34	Public Protector	Virtually unknown.

CATEGORY	NO	SERVICE	NATURE OF PROBLEM EXPERIENCED IN RESPECT OF SERVICE
	35	SALRC	Virtually unknown.
	36	ERC	Completely unknown.
	37	JSC	Virtually unknown (Only known by lawyers).
	38	MAGCOM	Virtually unknown (Only known by lawyers).
	39	Other	One respondent complained about being unable to have her case heard at the Jali Commission (a Correctional Services ad hoc structure).

4.9 Recommendations by Respondents

CATEGORY	NO	SERVICE	NATURE OF PROBLEM EXPERIENCED IN RESPECT OF SERVICE
COURTS	1	Family /Divorce	Access to Legal Aid. Review of process rules. Public education on nature of services and how to access them.
	2	Custody/Access	More information required about this service.
	3	Domestic Violence	Integrated response required and review of current process to include mediation and offender rehabilitation as formal aspects of the Domestic Violence Act. Victim Support to be formalised and provided throughout the country. Follow up on cases to ensure there is no recidivism in domestic violence cases or take appropriate action where necessary.
	4	Sexual Offences	Victim support, integrated multidisciplinary approach and retraining of service providers, including prosecutors. Strengthen measures aimed at eliminating corruption. Involve more women as service providers, including prosecutors and judicial officers. Many judgments reflect lack of understanding of women and children's circumstances and life experiences.
	5.	Maintenance	Improve tracing, criteria for determining pay, policy on pay points and legal assistance. Prioritize cases for unemployed mothers. Customer service training and sanctions for service providers. Legal assistance required.

CATEGORY	NO	SERVICE	NATURE OF PROBLEM EXPERIENCED IN RESPECT OF SERVICE
COURTS	6	Administration of Deceased Estates	Legal aid and review of procedures to ensure affordability, expediency and responsiveness to low- income groups. Massive public education.
	7	Administration of Estates	Public education.
	8	Child Justice	Education required about nature of services. Acquittal of offenders on technicalities has left many disillusioned with the justice system, particularly with regard to sexual offences.
	9	Other VAW	Integrate restorative justice as formal aspect of justice system.
	10	Criminal	Integrate restorative justice as formal aspect of justice system. Improve mechanisms for reporting corruption and ensure that feedback is regularly provided to victims at all stages of legal process. Introduce Jury.
	11	Civil	Legal aid, review of procedure, and need to simplify procedures, including ADR. Introduce Jury for public participation.
	12	Small Claims	Education on and lifting of ceiling.
	13	Equality Court	Massive ongoing public education through all modes of communication, taking into account diverse socio-economic circumstances of potential court users.
	14	Administrative Justice	Massive education about rights and related services.
	15	Labour	Education about place in justice system and services.
	16	Land Claims	Education about place in justice system and services.
	17	Inquests	Education about place in justice system and services.
	18	Access to Information	Massive education needed.
COURT SUPPORT	19	Legal Aid	Public education to build trust, re-skilling of service providers and improved quality management with internal and independent lawyers. Massive education needed.

CATEGORY	NO	SERVICE	NATURE OF PROBLEM EXPERIENCED IN RESPECT OF SERVICE
COURT SUPPORT	20	Administration and Information Desk	Integrate fully into court system and budget. Employ full time public relations professionals and consider relocation to entrance. Consideration to be given to an additional digital service involving a big screen audio service that welcomes people to the court and tells them upfront where to go for what.
	21	Victim Support	Integrate victim support resources into Department's budget and plan and execute, in cooperation with civil society and justice partners, such as SAPS and Social Development.
	22	Prosecutorial	Improve investigative methods (including police supervision) and advocacy training incorporating gender mainstreaming, in order to improve responsiveness to gender violence and child abuse.
	23	Family Advocate	Public Education about role and services and improve cultural inclusiveness.
	24	Other	Customer service training for all to improve professionalism, courtesy and social context awareness. Address women's access to the legal profession and participation at all levels of decision making in DoJCD.
POLICY FRAMEWORK	25	Constitutional Development	Public education and consultation with the public generally, and women in particular, about constitutional review needs.
	26	Law Reform	Fast-track the reform of customary and Muslim laws dealing with succession, and address the gap in marriage laws, focusing in particular on marriage and succession in respect of religious marriages, pre-2000 customary marriages and domestic partnerships.
	27	Admin Policies	Implement public education on role and services offered by DoJCD and prioritise development and implementation of policies responding to women's needs.

CATEGORY	NO	SERVICE	NATURE OF PROBLEM EXPERIENCED IN RESPECT OF SERVICE
ADMINISTRATIVE MEASURES	28	Communication/ Public Education	Employ as many strategies as possible to educate the public on all aspects of the DoJCD's work and ensure that communication is always targeted, taking into account diverse circumstances of women and men from various walks of life.
	29	Consultation	Involve women and employ consultative means that respond to women's lived out experiences.
	30	Business Opportunities	Information is required regarding what opportunities are available and how to access them. Special measures should be implemented to accelerate women's access to state contracts awarded by the DoJCD.
	31	Public Complaints Mechanisms	User-friendliness and effectiveness of mechanisms for complaining and obtaining redress against service providers to be improved.
CHAPTER 9 AND OTHER GOVERNMENTAL BODIES	32	SAHRC	Improve communication about role.
	33	CGE	Communicate effectively about role and services.
	34	Public Protector	Communicate effectively about role.
	35	SALRC	Communicate effectively about role, prioritise law reform addressing women's critical needs and consult women on mainstream issues.
	36	ERC	Communicate role to public.
	37	JSC	Communicate role and services to public.
	38	MAGCOM	Communicate role and services to public.
	39	Other	Communicate effectively about all aspects of the DOJ and demarcations between its role and that of fellow justice partners such as correctional services, South African Police Services and Social Development. Also clarify independence of the judiciary.

4.10 Interviewer's Impressions

- 4.10.1 Interaction with the respondents, comprising women and men from diverse backgrounds, over a period of about two months, confirmed that gender differences exist in the way women and men experience life and respond to life challenges. Responses to the Service Feedback Survey clearly established that women, more than men, experience the justice system as not being user friendly.
- 4.10.2 The researchers were struck by the general fear and stigma attached to involvement with the justice system. The DoJCD is generally associated with criminality, shameful behavior and punishment, and respondents displayed discomfort with the idea of having been involved with the Department. The stigma attached to any association with the justice system was particularly acute amongst women, and as such, most of them were initially reluctant to be interviewed on justice matters. Those interviewed in court, particularly women, appeared to be even more petrified.
- 4.10.3 A curious discovery was that the DoJCD is not perceived as a "service provider" respondents generally appeared to have difficulty with relating the word "service" to the Department's work. It was clear that most respondents, particularly women, did not perceive the justice system as a place to be approached for help, except in respect of limited matters such as maintenance and domestic violence. The concept of "service" seemed to be commonly associated with Departments such as Social Development, Health and Labour.
- 4.10.4 There was widespread lack of knowledge and understanding regarding what the DoJCD does and what help was to be sought from its components. The position was particularly acute amongst black women, including educated black women in fairly high-income categories. There seemed to be a virtual blackout with regard to knowledge of some of the services, particularly amongst women. Strangely enough, respondents, including women, seemed to know far more about the South African Human Rights Commission than the Commission for Gender Equality. Services that were virtually unknown, included:
- Equality Courts;
 - Administrative Justice;
 - Public Protector;
 - Access to Information;
 - Inquests; and
 - Administration of Estates (Other than Deceased Estates).
- 4.10.5 There is generally a lack of understanding regarding the demarcation between the different roles played by the DoJCD, Correctional Services, South African Police Services and Social

Development in the justice process. For example, a lot of the complaints regarding the handling of domestic and sexual violence related to the conduct of the police. A number of complaints were also raised regarding the non-involvement of victims from parole processes, particularly in matters relating to sexual violence. There were also concerns regarding ineffective prisoner rehabilitation.

- 4.10.6 There was also confusion regarding the services themselves. For example, Violence Against Women (VAW) tends to be seen as synonymous with domestic violence. Some of the respondents confused sexual harassment with child abuse. Where English was not a first or fluently spoken language, the problem was more acute. This problem mostly affected black women with less than matric education.
- 4.10.7 In most instances, respondents professing knowledge of services, only had a vague idea of those services with no understanding of how to use them to vindicate their rights. This seemed to be the case for women and men within lower levels of education and income brackets. The problem was more acute amongst women. Many women, even professional women, tended to have a vague idea of their rights and the processes involved in the vindication of their rights in regard to:
- The Civil Justice System, including Small Claims Court;
 - Administration of Estates;
 - Family Court Services; and
 - Administrative Justice.
- 4.10.8 The Information Desks were found not to be functioning as intended. Many respondents interviewed in the courts confirmed that there were major problems with the effectiveness of Information Desks. The problems included complaints that the Desk in some courts was not strategically located at a place where it would be the "first port of call". The personnel who are meant to provide information did not appear user friendly and were not knowledgeable. As a result a lot of court users ended up queuing in the wrong queue or waiting in the wrong court until the end of the day. Interviewers came across a number of victims in this regard during their court visits.
- 4.10.9 There were serious concerns regarding the quality of services, particularly regarding the conduct of service providers such as clerks, magistrates, prosecutors and legal aid lawyers. Some respondents, particularly women, also complained about the conduct of private lawyers, and the lack of effective avenues for addressing complaints against state employed service providers and independent legal professionals.

- 4.10.10 The efficacy of current arrangements regarding domestic violence was brought to question time and again. Apart from the common problems regarding obtaining protection orders and having these properly served expeditiously, respondents raised the fact that the relevant "piece of paper" without any socio-psychological intervention to deal with causal factors, often left victims in aggravated circumstances.
- 4.10.11 Inefficiency and responsiveness emerged as major problem areas. Respondents complained about long waiting hours and postponements. The affected people were low- income litigants or witnesses. This is mainly because in the case of represented civil court users, it is their lawyers who go to court and they only call their client at the appropriate time whenever personal appearance was necessary. There were also various complaints regarding bureaucracy with two respondents complaining that it took more than two years for them to get help in respect of small (deceased) estates. One Respondent also complained that she was compelled to engage an attorney for an estate comprising only non-liquid assets and worth less than Fifty Thousand Rand (R50,000-00), while the other, whose estate reported in 2001 had not been finalized at the time of the interview, complained that she had "been sent from pillar to post". She also complained that she had not even received maintenance against the estate as yet, even though she had applied for it.
- 4.10.12 Most interviewees had been respondents in cases, and not initiators. This was particularly the case for women, and black people, in virtually all civil cases reported during the interviews. As indicated earlier, women only tended to be initiators in maintenance and domestic violence cases. However, most of the interviewed women had had civil disputes that they would have brought to the system if they had known how and had the resources to do so.
- 4.10.13 A number of respondents, mainly women, remarked about the inadequate representation of women in decision-making, including in the judicial process. They felt that the court environment would be less intimidating if women from all races were equally represented in all aspects of the courts, including the prosecution, private lawyers and the judiciary.
- 4.10.14 There was extreme distrust associated with some services, particularly legal aid, referred to by a number of respondents as "useless lawyers". One of the respondents reported that he had opted to pay for his own lawyer even though he was unemployed at the time, because he did not have confidence in the legal aid lawyers.
- 4.10.15 Other issues that surfaced a number of times during the interviews included:
- Harmful racial, cultural and gender blindness of the processes, including language used;

- Poor information dissemination and information resources in courts;
- Complaints regarding the conduct of service providers, including judicial officers;
- Inadequacy of legal aid coverage and lack of knowledge regarding what is currently covered;
- Poor maintenance administration;
- Unsatisfactory divorce administration, which includes wives being divorced without their knowledge even though living with their "husbands";
- Serving of process in civil matters, with many claiming they only got to know about the process when the ITC informed them they were blacklisted due to a default judgment against them; and
- Poor information dissemination in respect of deceased estates, which encourages exclusion of some of the lawful beneficiaries.

4.11 Summary of Findings on State Contracts/Business Opportunities

- 4.11.1 Responses to the procurement section of the Service Feedback Questionnaire revealed that while there was generally a lot of ignorance regarding contract opportunities within the DoJCD, the position was more acute among women, including women professionals. Even those who had a vague idea that the same business opportunities available in other government departments were possibly available in the DoJCD, they had no idea what was available in concrete terms and how to access it.
- 4.11.2 A striking observation was that even legal professionals, particularly black and female professionals, seemed to be unaware that there were contract opportunities relating to their field.
- 4.11.3 The position of women was generally worse with not a single one of the interviewed women having received any business contract from the DoJCD despite the fact that women, especially African women, were disproportionately represented in the sample.
- 4.11.4 One of the few white men interviewed co-owned a major construction company that had been a beneficiary of a multimillion construction contract, which included the construction of courts in historically black residential areas. Two other white male respondents reported that the companies they worked for had received major contracts from the DoJCD. The one involved multimillion construction projects in the courts and the other involved professional services relating to legal advice and representation for the Department. One black male respondent reported that his micro business had benefited from a small contract involving maintenance work at a court in one of the historically black townships.
- 4.11.5 Not much seemed to be known with regard to contract opportunities in areas such as legal research within the scope of governmental bodies falling under the Ministry and

Department, including the work of the South African Law Reform Commission. Questions regarding opportunities in respect of administration of estates also generally drew a blank, including amongst women legal professionals.

4.11.6 Women generally had no idea what contract opportunities were available under the DoJCD. This was the case whether the respondents were poorly educated elementary workers or highly educated professional women. The position was worse with respondents from outside Gauteng. A number of the women professionals in the sample offered services that the DoJCD regularly procures, and yet these women had no idea that such opportunities existed and much less how to access them. The services currently offered by women covered in the survey include:

- Legal services;
- Socio-legal research;
- Recruitment and related human resources services;
- Education and Training;
- Organisational Development;
- Events Management;
- Communication and Marketing;
- Catering; and
- Cleaning.

5 CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

5.1.1 A lot has been done to transform the justice system and other services offered by the DoJCD to ensure responsiveness to the needs of ordinary women and men, including those from historically marginalized communities. However, the culture, systems and processes involved in the operations of the DoJCD remains Eurocentric, male centred and generally oriented towards the affluent.

5.1.2 The most chronic area of need is information and knowledge. While this seems to be a general need, the survey established that women's access to justice and to business opportunities offered under the DoJCD, are particularly undermined by lack of appropriate information and knowledge. It also established that current public education and communication is inadequate to reach the rest of the public. It is not targeted or

continuous, and the content is not accessible to all groups, including historically marginalised communities whose language and culture do not resonate with the nomenclature of the legal system.

- 5.1.3 The survey confirmed that the historical disadvantages that undermine women's equal access to justice and opportunities within the DoJCD were not necessarily created by the justice system or DoJCD. They are, however, reinforced by the identical treatment of clients as customers, which results in failure to respond to the systemic social, economic and cultural disparities in society caused by centuries of unfair discrimination against women, black people and other historically oppressed groups.
- 5.1.4 The survey further confirmed that the position of women who are subject to the intersection of oppression based on gender, race, class, culture, language and other factors, are worse off with regard to access to justice and equal enjoyment of all services and opportunities offered under the DoJCD.
- 5.1.5 The survey revealed that there is growing sensitivity to pro-women services, such as those relating to maintenance, violence against women and family disputes. However, there is no appreciation of gender dynamics in respect of general services such as civil justice, including the Small Claims Court, legal aid, administration of estates (particularly deceased estates), prosecution (particularly in respect of matters involving gender violence), administrative justice, access to information, and knowledge.
- 5.1.6 It was further established that aspects of the pro-women laws had been ill conceived with inadequate appreciation of real life experiences of targeted beneficiaries of the law, resulting in legal and administrative gaps. Key issues in this regard included the Recognition of Customary Marriages Act, where in fact most problems relate to pre-2000 marriages or succession issues, and both are not dealt with in current legislation. Administrative gaps in maintenance and domestic violence also featured prominently amongst concerns raised by respondents.
- 5.1.7 Failure to prioritise pro-women legislation also emerged as a major sore point with the issue of succession under customary law recurrently mentioned to illustrate this point. A woman lawyer pointed out that the *Customary Law of Succession Amendment Bill*, which had been referred back by parliament for further consultation, at the behest of traditional leaders in November 1998, was still not back on the legislative schedule, five years later.
- 5.1.8 The survey established that there had not been much consultation of women on general aspects of the work of the DoJCD, including law reform, constitutional development and administrative aspects of the Department.
- 5.1.9 The need for equal representation between women and men at all levels of decision making, including decisions relating to determining service priorities and resource within the Department, was highlighted as an area needing accelerated attention.
- 5.1.10 Except for ad hoc interventions, involving the empowerment of women judges, and a once off women's leadership development event, no systematic women empowerment or special programmes seeking to level the field between women and men were discovered during the

service feed back survey. This is despite commitments in this regard, reflected in the Department's *Gender Policy Statement, Commitments with regard to the implementation of the Beijing Platform for Action*, and government commitments articulated in the *National Gender Policy Framework*, the *Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)* and the *Broad Based Black Economic Empowerment Act (BBBEEA)*, the *Employment Equity Act (EEA)* and the *Preferential Procurement Policy Framework Act (PPPFA)*.

5.2. Recommendations

5.2.1 Information

- (a) There is a need to dedicate massive amounts of resources towards sustained, targeted and effective public education, particularly on new laws such as equality legislation, family laws and administration of estates. This means that content and communication avenues should be different and responsive to each of the diverse circumstances. The concomitant needs of the groups should be reached through such communication. Television and radio were highly recommended.
- (b) Information services in courts need to be rethought with consideration given to immediate accessibility in terms of location, user friendliness and effectiveness. As indicated earlier, users complained that many of the current volunteers are not very helpful, due in the main, to their ignorance on court issues and processes. Paid professional employees, such as public relations officers and Information Desk employees, also taking care of community liaison, and audio-visual information at the entrance in courts, were recommended.
- (c) Regular service feed back through short questionnaires handed out, preferably by the public relations officer in court, is recommended. Snap surveys through other avenues such as bus stops, malls, radio and television, could also be included.

5.2.2 Targeted Budgeting and Gender Mainstreaming

- (a) Overall budgeting needs to be based on zero budgeting and preceded by some needs assessment, as required in terms of *Batho Pele*, to ensure that the resultant budget is targeted. *Targeted budgeting* entails a budget that reflects what services and money is assigned to each section of users. Elements of this approach can be gleaned from the budgets of the *National Treasury* and Departments such as Trade and Industry and Minerals and Energy.

Critical categories should include:-

- Income Brackets;
 - Men and Women;
 - Business and Community Services;
 - Various Categories of Business, for example, Small Medium and Micro Enterprises (SMMEs), as well as big business; and
 - Different geographic, cultural and language groups.
- (b) Gender needs to be mainstreamed into budgeting. The actual practice is called *Gender Budgeting* and involves making special allocations towards services for women's exclusive use. It also includes making budget allocations towards services that are mainly used by women or that empower them, for example maintenance, domestic violence, family court services and the implementation of the *Equality Act* and the *Access to Information Act*. Gender budgeting also incorporates allocating a budget towards measures to ensure that women benefit equally from mainstream services such as civil justice, legal aid, administration of estates and administrative justice.
- (c) Women's priorities should be understood and mainstreamed, particularly into policy priorities, strategic plans and annual organisational objectives. This would eliminate the possibility of a critical area of concern for women such as succession rights, being forgotten for a decade (counting from 1994).

5.2.3 Specific Recommendations

- (a) A review of the Civil Procedure System, particularly process serving and exploring the use of ADR for consumer issues, should be given serious consideration;
- (b) Serious consideration must be given to a review of the divorce system, particularly process serving therein;
- (c) Extending legal aid to all should be given attention. Attention should also be given to educating service providers about service excellence and involving the public a lot more in the monitoring and evaluation of the legal aid system;
- (d) Serious consideration needs to be given to the role of paralegals in expanding access to legal advice, particularly in respect of civil matters in Magistrates Courts;
- (e) Specific funding should be allocated towards women empowerment and mainstreaming gender into all aspects of the budget;
- (f) Restructuring of access to the legal profession along lines of other professions, with the main feature being state provided or supervised unhampered entry into profession. The removal of labour market competition prior to entry to the profession should be considered;

- (g) Special measures to enhance women's involvement at all levels of decision-making within the Department should be implemented;
- (h) There must be a review of procurement processes and outcomes relating to distribution of state contracts within the Department, and the implementation of special measures to remove barriers preventing equal access to contract opportunities and other historically disadvantaged groups, should be accelerated to level the playing field;
- (i) A more elaborate Needs Assessment is to be conducted for gender and targeted budgeting; and
- (j) A policy and legal *Compliance Map* is to be developed and used to inform choice of priorities.

6 ANNEXURES

Annexure A: Department of Justice and Constitutional Development: Service Feedback Survey

PURPOSE :

To:

- Establish women's needs in relation to justice and constitutional development services;
- Determine how far current forms of public service delivery meet women's needs; and
- Determine how far current patterns of public expenditure (within the Department) accord with women's priorities.

A. QUESTIONNAIRE FOR THE PUBLIC.

Area: _____

Race: _____ Sex: _____

Highest level of education attained: _____

Occupation: _____

Age: (a) Under 20 (b) 20-29 (c) 30-39 (d) 40-49 (e) 50-59 (f) 60 and above

1. Which services offered by the Departmental of Justice and Constitutional Development are you aware of? _____

2. Have you ever used any of these services? _____
 Which Ones? _____

3. Did you get any assistance or help? _____
 If not, why? _____

 If yes where? How? _____

4. Were you happy with the service/s? _____
 Elaborate _____

5. Do you know another person (Friend/ Relative/Colleague) who has used any of the above services? _____
 How was their experience? _____

6. Would you confidently attempt to access these services if you had to? _____

7. What improvements or other services would you like added? _____

B. SERVICE FEEDBACK SURVEY (CONTINUED) : PROCUREMENT

1. What contract opportunities are you aware of in the Department of Justice and Constitutional Development Services? _____

2. If you are aware of some, which of these have you accessed? _____

What was the total value? _____

3. Were you happy about the outcome? _____
If NOT, elaborate _____

4. Do you know anyone who has accessed these opportunities? _____

5. Were they happy about outcome? _____
If NOT, elaborate _____

6. Are you planning to use or access opportunities in the future? _____
If NO why? _____

Annexure B: Department of Justice and Constitutional Development Service Map

CATEGORY	No.	SERVICE	COMMENTS
COURTS	1	Family /Divorce	
	2	Custody/Access	
	3	Domestic Violence	
	4	Sexual Offences	
	5	Maintenance	
	6	Admin of Deceased Estates	
	7	Admin of Estates	
	8	Child Justice	
	9	Other VAW	
	10	Criminal	
	11	Civil	
	12	Small Claims	
	13	Equality Court	
	14	Administrative Justice	
	15	Labour	
	16	Land Claims	
	17	Inquests	
	18	Access to Information	
COURT SUPPORT	19	Legal Aid	
	20	Admin and Info Desk	
	21	Victim Support	
	22	Prosecutorial	
	23	Family Advocate	
	24	Other	
POLICY FRAMEWORK	25	Constitutional Development	
	26	Law Reform	
	27	Admin Policies	
ADMINISTRATIVE MEASURES	28	Communication/Public Education	
	29	Consultation	
	30	Business Opportunities	
	31	Public Complaints Mechanisms	
CHAPTER 9 AND OTHER GOVERNMENTAL BODIES	32	SAHRC	
	33	CGE	
	34	Public Protector	
	35	SALRC	
	36	ERC	
	37	JSC	
	38	MAGCOM	
	39	Other	

Gender Responsive Budget Analysis and Assessment Instrument

5

“It is also in this way that we seek to establish and entrench the understanding among all our people, for all time, that we are building a system of justice that must define its justness by the extent to which it enriches our humanity”

The Honourable Thabo M. Mbeki

*President of South Africa, at the opening
of the new Constitutional Court Building*

**Department of Justice and
Constitutional Development**



Foreword

It gives me great pleasure to release this *Gender Mainstreaming and Gender Budgeting Package*.

I believe that the information in this package will contribute enormously to our efforts around gender transformation through which we seek to comply with the Constitution and our international human rights obligations in terms of CEDAW and related instruments.

In a way the package is based on looking back at what we did or did not do in the last decade with regard to addressing the gender imbalances that we inherited at the dawn of democracy.

The importance of mainstreaming gender in everything we do as a Department cannot be over-emphasised, otherwise we will continue to fail to meet the needs of some of those we seek to serve, especially women from disadvantaged communities. The National Gender Policy Statement states that the implementation of gender equality is first and foremost the responsibility of all the institutions in government. To achieve gender equality the government must embark on a rigorous gender mainstreaming strategy.

I call all members of the justice community to join me and my Department as we implement the *Gender Mainstreaming and Gender Responsive Budgeting* package. I sincerely hope that the lives of women and other disadvantaged groups will be improved as a result.

*Minister of Justice and Constitutional Development
Pretoria, August 2004*

Acknowledgments

The *Gender Responsive Budget Analysis and Assessment Instrument* are part of the *Gender Mainstreaming* package developed by the Gender Directorate within the Department of Justice and Constitutional Development (hereafter referred to as the Department or DoJCD).

The Gender Directorate is delighted to finally release the *Gender Mainstreaming* and *Gender Responsive Budgeting* package and believes it will assist all role players within the Department, particularly those in leadership positions, to understand the principles of *Gender Mainstreaming* and *Gender Responsive Budgeting*. This will facilitate the integration of gender considerations into all plans, policies and day to day implementation decisions.

The *Gender Mainstreaming* project was inspired by the Directorate's *Needs Assessment* which identified an immediate need to build capacity in the Department for both *Gender Mainstreaming* and *Gender Responsive Budgeting*. The target group for the package includes other role players who contribute to policy development, interpretation and implementation within the DoJCD.

The Directorate hopes that the application of the information and tools in the *Gender Mainstreaming* and *Gender Responsive Budgeting* package will accelerate the elimination of systematic gender discrimination in the Department, and contribute towards the achievement of gender equality in the Department and the society in general.

Sincere gratitude needs to be extended to the Centre for Reconciliation and Equality Studies (CRES)/ Waweth Agency and DoJCD team for their assistance in the research and writing of the *Assessment Report*, and the development of the *Gender Mainstreaming* and *Gender Responsive Budgeting* materials. The following people need special mention:

Adv Mikatelo Joyce Maluleke

*Director Gender Directorate, Department of Justice and Constitutional Development
August 2004*

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Key Concepts and Acronyms

Key Concepts

Black Economic Empowerment

Black Economic Empowerment refers to the implementation of measures to advance black people in order to equalise economic opportunities between them and white people.

Black Empowerment

Black empowerment refers to measures that seek to advance black people in order to achieve equality between them and white people.

Disaggregate

Disaggregate means subdivide into constituent parts.

Employment Equity

Employment Equity refers to the process and outcomes relating to the equalisation of and enjoyment of all employment opportunities and benefits, and the ending of gender, racial, disability and other forms of disadvantage and (unfair) discrimination.

Equality

Equality refers to the equal enjoyment of all rights and freedoms. It entails the absence of direct or indirect (unfair) discrimination.

Gender

Gender refers to the power relations between women and men. It is a social construct that assigns roles and worth to each sex based on group culture.

Gender Analysis	A gender analysis or gender equality analysis refers to a systematic process which involves assessing the impact of or likelihood that each decision, policy, law, plan, programme, situation, process or activity will impact differently on women and men because of their diverse socio-economic or physical circumstances, with the effect of prejudicing one gender.
Gender Awareness	Gender awareness refers to the state of being conscious of inequality arising from the power relations between women and men.
Gender Balance	Gender balance refers to an equitable distribution of life's opportunities and resources between women and men.
Gender Bias	Gender Bias refers to any act that advantages or perpetuates an existing advantage of one sex over the other.
Gender Budget	A Gender Budget, also referred to as a <i>Gender Responsive Budget</i> , refers to a budget or expenditure arrangement which is structured in a manner that ensures that women and men benefit equitably from financial resources.
Gender Disaggregated Data	Gender disaggregated data means information subdivided in terms of women and men.
Gender Mainstreaming	<i>Gender Mainstreaming</i> refers to the integration of gender equality considerations in all policy, law, plans, programmes, administrative and financial activities, organisational procedures, processes and decision making, in order to effect profound organisational and ultimately, societal transformation, towards the realisation of <i>de jure</i> and <i>de facto</i> equality between women and men.
Gender Management System	A Gender Management System is a network of structures, mechanisms and processes that are put in place within an organisational framework to facilitate <i>Gender Mainstreaming</i> in pursuit of equality between women and men. (<i>Adapted from Common Wealth Gender Management System Handbook</i>).
Gender Responsive Budgeting	<i>Gender Responsive Budgeting</i> refers to the allocation of financial resources in a manner that not only ensures that women and men benefit equally from all resources but also reduces existing patterns of women's systemic inequality. Gender budgeting is one of the mechanisms of an effective Gender Management System.

National Gender Machinery	National Gender Machinery refers to a network of coordinated structures within and outside government which operate cooperatively in facilitating political, social, economic and other forms of transformation to dismantle systemic gender inequality and promote equality between women and men.
Per Capita	<i>Per capita</i> means the average per person. This is worked out by dividing total cost with the number of actual beneficiaries.
Practical Gender Needs	Practical Gender Needs refers to women's day to day needs that result from their subordinate position in society. Addressing Practical Gender Needs does not challenge or transform structural gender inequality but simply helps women cope better with their present position.
Preferential Procurement	Affirmative action in procurement.
Procurement Equity	Procurement Equity refers to the process and outcomes relating to the equalisation of enjoyment in all procurement opportunities and incorporates affirmative procurement.
Pro-women Programmes	Pro-women programmes refers to services and programmes for everyone but that are most likely to respond to the needs of women, for example domestic violence services.
Sex	Refers to the biological difference between women and men.
Sex Disaggregated	Has the same meaning as gender disaggregated. It means broken down according to women and men.
Strategic Gender Needs	Strategic Gender Needs refers to women's long-term needs relating to fundamental social transformation to end their subordination in society.
Unfair Discrimination	Unfair discrimination refers to the direct or indirect unfair denial of opportunities to or imposition of an undue burden on a person or group, on the basis of their gender, race, disability or some other difference, or combination of differences.
Women's Budget	A women's budget has the same meaning as a gender budget or gender responsive budget. 'Women' is used to emphasise the fact that women are the targeted beneficiaries of the budget reform that is entailed in gender budgeting.

Women Empowerment	Women Empowerment means establishing programmes that exclusively target women as a form of affirmative and positive action to empower them in order to equalise opportunities between women and men.
Women's Equal Access	Promoting women's equal access to mainstream services is about mainstreaming gender into all services to ensure that women and men benefit equitably.

Acronyms

ADR	Alternative Dispute Resolution (also referred to as Informal Dispute Resolution)
AF	African Female
AM	African Male
BBBEEA	Broad Based Black Economic Empowerment Act
BEE	Black Economic Empowerment
BPA	Beijing Platform for Action
CCMA	Commission for Conciliation, Mediation and Arbitration
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CF	Coloured Female
CGE	Commission on Gender Equality
CM	Coloured Male
DGPS	Departmental Gender Policy Statement
DoJCD	Department of Justice and Constitutional Development
DVA	Domestic Violence Act
EEA	Employment Equity Act
ERC	Equality Review Committee
GFP	Gender Focal Point or Person
GENMACC	Gender Mainstreaming Advisory and Compliance Committee
IDASA	Institute for Democracy in South Africa
IF	Indian Female
IM	Indian Male
IPOA	Integrated Plan of Action
MAGCOM	Magistrates Commission
MTEC	Medium Term Expenditure Committee
MTEF	Medium Term Expenditure Framework
NGPF	National Gender Policy Framework

OSW	Office of the Status of Women
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
PFMA	Public Finance Management Act
PPPFA	Preferential Procurement Policy Framework Act
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SALRC	South African Law Review Commission
SMME	Small Medium and Micro Enterprises
UPP	Unfunded Priority Project
VAW	Violence Against Women
WF	White Female
WM	White Male

PART ONE

Gender Responsive Budget Analysis

1. EXECUTIVE SUMMARY

1.1 Overview

The *Gender Responsive Budget Analysis* is part of a *Gender Mainstreaming* exercise that has sought to ascertain the extent to which *Gender Mainstreaming* is currently practiced within the Department of Justice and Constitutional Development (hereafter referred to as the Department or DoJCD). This has been done with the aim of preparing a baseline report in order to provide guidance on how to address gaps where they exist. The gender budget analysis has focused on the budget with a view to assessing the extent to which women and men benefit equitably from every aspect of the budget implemented within the Department. The *Gender Responsive Budget Analysis* has been followed by the development of *Gender Budgeting Guidelines* to help the Ministry/Department to mainstream gender in all aspects of the budget and expenditure activities.

1.2 Process

The process involved a policy and best practices scan, after which a *Gender Needs Assessment* was conducted. The *Gender Needs Assessment* involved a *Service Feedback Questionnaire*, which formed the basis for interviewing 130 randomly selected women and men from various walks of life to establish their needs and experiences in respect of services offered under the Department. A *Gender Budget*

Assessment Tool was developed and used as the basis of the gender budget analysis. The key components of the tool included a *Gender Budget Analysis Checklist*, the *Gender Needs Assessment Report* and a *Departmental Service Map*.

Summary of Findings

The study established that although significant progress has been made with regard to improved service responsiveness to women's circumstances and concomitant needs, women continue to benefit far less than men from public resources used to deliver services within the scope of the DoJCD. This is primarily due to inadequate transformation to shift service focus, from a justice service user that is homogeneous and historically male, to an appreciation of the fact that ideal users are diverse in terms of gender, race, class, culture, age and other factors.

The study further established that gender should be mainstreamed into all budget items and processes to ensure that all services offered through the budget at the Department are equally responsive to both women and men, taking into account the diversity of experiences and needs of each gender. This is premised on the understanding that women and men experience life differently in many respects and that responsive service delivery to women requires the accommodation of material gender differences. This philosophy is part of the substantive notion of equality that underpins the South African Constitution, national equality legislation, and international treaty obligations relating to the advancement of women and the achievement of gender equality.

1.3 Summary of Recommendations

The budget analysis led to a number of recommendations which are summarised below. The Department is advised to take forward the matter of *Gender Responsive Budgeting* by:

- (a) Investing resources in and implementing a massive communication strategy covering the role and functions of the Department, rights arising from new laws (legislation and court jurisprudence), and information on how to access such rights;
- (b) Applying targeted budgeting based on periodic needs assessments that clearly reflect the diverse needs of customers, including women from different walks of life;
- (c) Mainstreaming gender considerations into all aspects of the Department's budget and ensuring that women's priorities are clearly spelt out and integrated into organisational priorities as reflected in Strategic Plans and Annual Objectives, with implementation monitored and enforced;
- (d) Entrenching a requirement that all budgets and expenditure reports be accompanied by a gender impact statement;

- (e) Allocating a specific sizeable budget towards special programmes aimed at empowering women as justice service users, as employees within the justice system, and as contractors and professionals in the sector. The aim is to equalise access and opportunities between them and men in respect of all aspects of the Department's operations. This should include an integrated response to violence against women, including the girl child;
- (f) Reviewing current budget allocations and the impact on women of programmes or interventions seeking to address women's needs through pro-women service areas such as :
- sexual offenses;
 - domestic violence;
 - maintenance;
 - family law (including customary law);
 - administration of deceased estates, particularly those affected by customary law;
 - mainstreaming of human rights, including equality;
 - the implementation of employment equity and diversity management; and
 - judicial education, particularly on issues such as mainstreaming human rights, social context awareness and gender.
- (g) Allocating resources towards gender assessment and reform of the Civil Procedure system, particularly aspects such as process serving and exploration of the use of Alternative Dispute Resolution (ADR) for consumer issues;
- (h) Reviewing the divorce system, particularly process serving therein;
- (i) Extending legal aid to all matters, educating service providers about service excellence and involving the public a lot more in the monitoring and evaluation of the legal aid system;
- (j) Investing state resources towards paralegals to expand access to legal advice, particularly in respect of equality and civil matters in Magistrates Courts;
- (k) Increasing the budget of the Gender Directorate and allocating special funding within each Component for programmes aimed at strengthening capacity for mainstreaming gender into all aspects of the Department's operations;
- (l) Fast tracking the restructuring of the legal profession to broaden women's access and ensure that entry arrangements are as unhampered as should be relating to professions such as medicine. The main feature being state provided or supervised entry into the profession, without labour market competition prior to entry;
- (m) Allocating significant resources towards special measures to enhance women's involvement at all levels of decision-making within the Department;

- (n) Reviewing procurement processes and outcomes relating to distribution of state contracts within the Department, and implementing special measures to remove barriers preventing equal access to contract opportunities for women and other historically disadvantaged groups. The process of levelling the playing field needs to be accelerated;
- (o) Conducting a more elaborate needs assessment to facilitate gender budgeting and targeted budgeting;
- (p) Developing a *Policy and Legal Compliance Map* and use the map to inform budget priorities;
- (q) Implementing special measures to enhance women's participation at all levels of decision making regarding the budget and public resource utilisation in the Department; and
- (r) Adhering to a strict balance between a basic needs approach and the achievement of global competitiveness in resource allocation and implementation activities.

2. PURPOSE AND BROAD OBJECTIVES

The *Gender Responsive Budget Analysis* was conducted to ascertain the extent to which gender equality is systematically and consistently mainstreamed into all aspects of the budget of the DoJCD, all budget processes, expenditure patterns and revenue sources. This is to establish the gender equality impact of the current budget and its responsiveness to the differential needs of women and men as targeted external and internal customers. This exercise has been followed by the development of *Gender Budgeting Guidelines*, to assist decision makers in the Department to review their budgets and expenditure patterns to enhance responsiveness to the circumstances and needs of women from diverse backgrounds. The ultimate objective is to ensure equitable distribution of government resources to the women and men that such resources are targeted at.

3. BACKGROUND

3.1 Historical Background

The project is an integral part of and a follow up to a *Gender Mainstreaming* exercise which involved the systems and processes in the Department. The *Gender Mainstreaming* exercise sought to establish the extent to which gender equality considerations are routinely integrated in all aspects of the DoJCD and to provide guidelines on how to ensure that this is done.

The issue of equitable distribution of government resources between women and men and the use of resources to 'level the playing field', have emerged as critical components of effective *Gender Mainstreaming*. A Gender Audit, which was part of the *Gender Mainstreaming* exercise, broadly established that women and men were not benefiting equally from resources spent in the operations of the Department. It further established that a lot of practical and strategic needs of women were not being responded to in the planning and implementation of departmental programmes and related services.

This was not surprising because historically the justice system was crafted by, and in response to, the needs of affluent men of European descent, a fact noted in *Justice Vision 2000* and the *Gender Policy Statement* of the Department of Justice. For the justice system to be responsive to women, transformation is necessary. The content of such transformation must include the alignment of all systems, processes and practices, with the needs of women, particularly those historically marginalised due to race and other factors. Like all social phenomena, this cannot be an overnight achievement.

The gender budget initiative seeks to consolidate the *Gender Mainstreaming* exercise by ensuring that not only is gender mainstreamed in all departmental aspects, but the money trail therein effectively supports gender transformation within the Department and the sector within which it operates.

3.2 The Policy Context

Following the adoption of constitutional democracy, crystallised in the first non-racial democratic elections in 1994, and the adoption of a new Constitution incorporating a justiciable Bill of Rights, South Africa embarked on a path of social and economic reconstruction whose main focus was redressing the lasting legacy of previously legalised injustice.

Ending sexism and promoting gender equality is a central part of the government's quest for a society based on equal enjoyment of all human rights, freedoms and life opportunities, as envisaged in the Constitution. This mission is also part of South Africa's obligations arising from binding instruments such as *CEDAW* and the *African Charter on Human and People's Rights*.

In addition to constitutional and international obligations, the state's duty to promote gender equality also arises from various equality laws and transformation policies. These include the *Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)*, *Employment Equity Act (EEA)*, *Preferential Procurement Policy Framework Act (PPPFA)*, *Broad Based Black Economic Empowerment Act (BBBEEA)*, and various transformation policies including *Batho Pele: White paper on Transformation of Public Service Delivery* and the *National Policy Framework For Women Empowerment and Gender Equality*.

The Department's obligations regarding the promotion of gender equality include its ordinary duties as a state entity and its duties as the sponsor of the *Promotion of Equality and Prevention of Unfair Discrimination Act*. The emphasis on promoting equality rather than protecting equality is premised on the understanding that despite the new constitutional vision, systemic inequality continues to define the lives of many women and other historically disadvantaged groups in society and that such systemic inequality is rooted in all societal systems.

The drafters of the Constitution were very much alive to this reality, hence the reference to 'the achievement of equality', in the founding principles and the substantive equality clause in Section 9 of the Constitution. The essence of substantive equality is recognition and responsiveness to difference and disadvantage. The idea is to achieve equal enjoyment of all rights and freedoms by ensuring appropriate and responsive treatment for all, regardless of difference or disadvantage. With regard to government service delivery, this entails ensuring that all have factual rather than theoretical access to services and that such services meaningfully respond to their needs.

Mainstreaming gender is an instrument for promoting substantive equality between women and men. The essence of *Gender Mainstreaming* is ensuring that all activities, decisions and plans operate to benefit women and men, taking into account their different circumstances and the diversity of women's experiences. *Gender Responsive Budgeting* is an integral part of mainstreaming gender, which in turn is part of mainstreaming equality as envisaged in the constitutional vision of an equal society based on non-racialism and non-sexism. It is also one of the key goals of the national policy framework on social transformation. The duty to mainstream gender, which includes gender budgeting, applies to all operations of the Ministry and Department.

3.3 Profile of the Department

Strategic leadership of the Department is provided by:

Supported by:	THE MINISTER
Supported by:	THE DEPUTY MINISTER
Supported by:	THE DIRECTOR GENERAL
Supported by:	THE BOARD OF DIRECTORS
and:	EXECUTIVE COMMITTEE (EXCO)

The operational structures comprise eight Deputy Director Generals who head the eight Branches of the Department. The Branches are: Court Services; Office of the Master; Legislative and Constitutional Development; Legal Services; Human Resources (HR); Office of the Chief Financial Officer (CFO); Communications; and Public Education and Information and Management System (IMS).

The Department also houses a number of Constitutional and Statutory bodies or components, that resort under the Ministry for policy purposes.

These include:

- The Judiciary (Lower and Higher Courts);
- Magistrates Commission (MAGCOM);
- Judicial Service Commission (JSC);
- National Prosecuting Authority (NPA);
- Public Protector;
- Commission on Gender Equality (CGE);
- South African Human Rights Commission (SAHRC);
- Legal Aid Board (LAB); and
- South African Law Review Commission (SALRC).

The Department also houses Justice College, a judicial training institute that focuses on the lower court judiciary, prosecution and administrative education and training.

3.4 The Position of Women

While women and men are fairly represented in the body of the Department, the senior management level is predominantly male. Poor representation of women is more acute as you go higher up the leadership ladder. For example, out of eight Deputy Director Generals heading the eight branches, only one is a female. None of the Judge Presidents in the country is a woman and only one of the Deputy Judge Presidents is a woman. Women are better represented in the leadership of the magistracy, National Prosecutorial Authority (NPA) and state legal services.

3.5 Mandate

The mandate of the DoJCD is *“To facilitate a safe and secure environment for nation building and for working for a better life for all by providing accessible and speedy judicial and allied services and ensuring compliance with the Constitution”* (Constitution ch 8, Strategic Framework, 2003).

The Department has set itself the core goal of *“... making justice more accessible to all the people of the land and making the transformation of the justice process and its ends, conform to the spirit of our Constitution and the betterment of the life of the citizens of the land”* (Strategic Framework, 2003).

The mandate of the Department also extends to providing legal advice and drafting services to the rest of government. The Department is also responsible for law reform, constitutional development and administration of estates.

3.6 Beneficiary Profile and Social Context

The targeted beneficiaries or users of DoJCD services, as indicated in the Strategic Framework, and also as derived from the outcome of the Needs Assessment study, are as follows:

- Women and men;
- Black, white and diverse cultural and language groups;
- Rural, township, suburban and city dwellers;
- Children, elderly, people with disabilities, poor, indigent, middle income and affluent;
- Victims of crime and discrimination;
- Illiterate and sophisticated users;
- Corporate business / private sector companies (SMME's, and big business);
- Diverse litigants in civil disputes, family matters and deceased estates;
- Some Stakeholders such as lawyers, NGOs, other professionals and institutions of learning; and
- Government Departments as users of State Legal and Law Reform Services.

More often than not, services, especially general services, such as administration of estates, criminal justice processes and civil justice processes, are planned and implemented without due regard to the diverse circumstances of users. This disadvantages women in the main, as they tend to be further away from the ideal user against which departmental services have been historically pitched. For example, women tend to be poorer than men, or the ideal user against which court services are modelled. They also tend to be more socially disadvantaged. This includes language disadvantage, cultural disadvantage and poorer access to general knowledge, including the knowledge that informs legal presumptions.

Women also tend to be disadvantaged with regard to the use of information communication technology. For black women the disadvantage is compounded by the intersection of race and gender oppression. The position of black working class women is even worse due to the intersection of race, class and gender, a condition historically referred to as 'triple oppression'. Some of the common indicators of systemic inequality in society that operate to undermine women's equal enjoyment of justice services are reflected in the following summary which has been extracted from the *Second Women's Budget*, IDASA 1996:

SELECTED INDICATORS OF INEQUALITY

20% of African women aged 20 or above have received no formal education, compared to 14% African men, and 0% of white men (1996:12)

47% of economically active African women were unemployed in October 1995, compared to 29% of African men, 38% of white women and 23% of white men (1996:6)

52% of economically active women in the Northern Province and Mpumalanga and 47% in the Eastern Cape were unemployed compared to 27% in Gauteng and 25% in Western Cape (1996:17)

50% of employed African women were working in elementary or unskilled occupations such as cleaning, garbage collection and farm work compared to 34% of African men (1996:19)

75% of African workers in the informal sector are women, 82% of these women are in elementary occupations such as street vending, domestic work and scavenging. Conversely, 37% of the men are in higher status – and better paid – artisan and craft occupations and 20% manage or run micro-businesses (1996-25)

In addition to the above, women's inequality is also expressed through structurally entrenched sexism which is also pervasive in public institutions, including the courts and other structures that operate under the ambit of the DoJCD.

The above and other aspects of systemic inequality and disadvantage in society invariably play themselves out when women and men from various walks of life interface with services offered under the Department. The result is that women do not get an equitable quantity and quality of services as received by their male counterparts. Many of the “one size fits all” services are not suited to their circumstances or means. The *Needs Assessment* established that most women interface with the Department and affiliated institutions as:

- Complainants in maintenance courts;
- Applicants for Domestic Violence Protection Orders;
- Victims of crime, particularly sexual, mugging and other forms of violence;
- Plaintiffs or respondents in divorce matters;
- Unrepresented defendants in civil disputes, particularly in matters relating to consumer contracts;
- Complainants in labour and employment matters in the Labour Courts;
- As legal professionals and law graduates, including law graduates unable to obtain apprenticeships necessary for entry into the legal profession;
- As parents of children accused of crime; and
- As employees, contractors, consultants and job seekers.

Some women interface with the justice system as accused persons in matters such as petty crime, and in some instances serious crimes such as spousal murder. In many such cases women are not represented, or are poorly represented.

Although meant to be more accessible, women rarely use the Small Claims Court, as the system is not as informal as Alternative Dispute Resolution (ADR) forums such as the Commission for Conciliation, Mediation and Arbitration (CCMA). The same applies to the recently established Equality Courts.

Women also often appear before quasi-judicial forums that are more male dominated and have a more entrenched patriarchal ethos. A key example in this regard is the Traditional Courts.

One of the premises underpinning the *Gender Budget Analysis* is that responsive service delivery requires understanding of the circumstances of all users and the pitching of services at a level that ensures equitable access for all despite difference or disadvantage. This requires transformation with regard to the paradigm of the ideal service user from one that is homogeneous and unintentionally exclusive, to one that is heterogeneous and inclusive.

Gender Responsive Budgeting is a critical tool for ensuring responsive service delivery to all regardless of difference or disadvantage. Not only is it about ensuring equitable benefit for women and men from all public resources, it also incorporates special measures involving the preference of women in appropriate circumstances, as a temporary measure to level the playing field. Many examples of special projects targeting women as exclusive beneficiaries, with a view to promoting equal participation and benefit from all mainstream services, programmes or opportunities, can be found within government. The aim of these projects is to empower women with a view to cultivating gender equality.

4. METHODOLOGY

The methodology employed in the study and development of guidelines has involved the following stages:

- Phase 1:** Conducting Desk Research which included a preliminary analysis of the Department's budget to identify all key services constituting expenditure items in order to compile a Service Map and benchmarking against similar studies, nationally and internationally.
- Phase 2:** Developing a Draft *Gender Budget Assessment Instrument*, incorporating *Gender Budget Assessment Guidelines*, a *Draft Gender Budget Analysis Checklist* and a *Service Feedback Questionnaire*.
- Phase 3:** Conducting interviews based on the *Service Feedback Questionnaire* involving 130 randomly selected respondents from both genders and all the formal racial categories (African, Coloured, Indian and White). Respondents were all found in courts, bus ranks and shopping malls in Pretoria and Johannesburg.
- Phase 4:** Preparing a *Gender Needs Assessment Report* after analysis of the feedback and use of findings to consolidate the *Gender Budget Assessment Instrument*.
- Phase 5:** Conducting the *Gender Budget Analysis* involving the application of the *Gender Budget Assessment Instrument* to review the Department's Budget and expenditure reports.
- Phase 6:** Preparing the *Gender Responsive Budget Report* incorporating Findings, Conclusions and Recommendations

5. GENDER BUDGET ASSESSMENT GUIDELINES

The Gender budget analysis involved the following processes:

5.1 General Principles

- Testing for differential budget and expenditure implications or impact on women and men;
- Identifying resources allocated to and spent on:
 - Women empowerment or women's programmes (special programmes or preferential measures that exclusively target women to empower them in order to equalise opportunities and access to resources);
 - Pro-women programmes (programmes, services or activities that mostly benefit women or actively contribute towards the promotion of gender equality); and
 - Action taken to equalise women's benefit from general programmes (this includes inquiring into resources allocated towards equalising women and men's benefit from mainstream services and related budget allocations.)
- Measuring budget allocations and expenditure patterns against the findings of the *Gender Needs Assessment*, paying special attention to women's priorities as identified in the *Gender Needs Assessment*;
- Disaggregating gender in terms of race, disability, socio-economic status and other factors that impact on women's equal enjoyment of all rights, freedoms and related opportunities; and
- Benchmarking the Departmental budget and expenditure patterns against government policy pronouncements, international obligations and sectoral best practices.

5.2 Expenditure Clusters Reviewed

- Consolidated Medium Term Expenditure Framework (MTEF) Budget of the Department;
- Annual Financial Statements and the budgets of Business Units or Components;
- Expenditure Reports of all the major components, including Court Services, National Prosecuting Authority, Master's Division, Human Resources, Public Education and Communication, Communication, State Contracts, Legislation and Constitutional Development, Information Management Systems and affiliated governmental bodies, including the Legal Aid Board; and
- The Department's Strategic Framework and those of Departmental Components.

5.3 Expenditure Items Examined

Expenditure items that were examined included:

- Allocations for items individually and collectively within each of the above groups;
- Paid time spent on gender issues;
- Paid time spent on matters, including law reform and services used mostly by women. Findings of the *Gender Needs Assessment* guided this exercise;
- Extent of human resources (measured in terms of remuneration packages and time utilised) and other resources utilised as inputs for programmes or services on matters benefiting each gender; and
- Overall per capita expenditure on women and men.

5.4 Tools of Analysis

- Service usage statistics (from the DoJCD *Needs Assessment Report* and other data sources);
- National statistics on women and men's socio- economic profiles;
- Available impact studies; and
- *Gender Budget Analysis* Check List.

6. THE GENDER BUDGET ANALYSIS

6.1 Introduction

The thrust of the gender budget analysis and outcomes thereof follows. The *Gender Budget Analysis* involved the application of a *Gender Budget Analysis Checklist* on budgets, strategic documents and annual reports. The analysis was divided into nine (9) steps, which are generally regarded as critical components of the budget and budget process. The steps and outcomes of the analysis in respect of each step are outlined in the following:

STEP 1

The Budget Process

1. Is the budget process informed by a needs assessment and structured planning data?

The budget process is informed by some appreciation of differential needs of users. For example, most budgets reflect some understanding of the special needs of what is referred to as 'vulnerable groups'. However, there is no structured and regular needs assessment or customer feedback survey. There is no evidence of the existence of structured or regularly updated planning data.

2. Are the needs assessment and planning data gender disaggregated?

Except for human resource planning as reflected in the Employment Equity Plans, there is no indication that planning data is disaggregated by gender.

3. Who participates in the budget process? What is the gender and race breakdown of such participants?

There is no uniformity with regard to involvement in the budget process. It is mostly done at SMS level, including Court Managers, resulting in men being the main participants because of their over-representation at SMS level. (See Departmental Profile)

4. Is the budget informed by policy guidelines and if so, do such guidelines mention the need for Gender Mainstreaming?

There are some guidelines but they are not widely known or applied. For example, a number of senior managers had no idea that such guidelines existed. There is no express provision for mainstreaming gender. However, the guidelines have a number of provisions with limited positive implications for

the promotion of gender equality. This includes provisions relating to the impact on equality legislation, as well as impact on ‘vulnerable groups’. When unpacked this mainly covers *16 Days of Activism on Violence Against Women and Children, Sexual Offenses, Family Courts, Family Advocates, Maintenance, National Forum Against Racism and Repealing Discriminatory Legislation*. While this is a positive start, it fails to address the need to mainstream gender and other equality concerns into every aspect of departmental operations.

5. Is the principle of redirecting resources to previously neglected needs or areas to promote equality, incorporated in the budgeting guidelines?

The *Batho Pele* guideline of redirecting resources to historically neglected areas is not specifically mentioned in the guidelines. However the question of broadening access and specifically ensuring access to justice for historically disadvantaged groups, is central to the strategic framework of the Department. The Court Services Business Plan also places emphasis on the need to ensure that courts are accessible to all communities and reflects some allocation of resources towards the implementation of this vision. However, previous budgets, including the 2002/3 budget and expenditure report, as well as the 2003/4 budget, still reflect a disproportionate leaning of the budget towards the historically advantaged metro courts.

6. Is gender placed amongst departmental priorities for top sliced budgetary allocations?

The issue of vulnerable groups, and in particular the issue of 16 Days of Activism, features prominently in the budgeting guidelines and strategic frameworks. However, when it comes to the budgetary allocations, the *16 Days of Activism* and other ‘vulnerable groups’ are mostly catered for under the Unfunded Priority Projects (UPPs). Gender as an equality and transformation issue is not really one of the budgetary priorities. In particular *Gender Mainstreaming* and gender programming are not mentioned in budgetary priorities, the Departmental Strategic Framework and Business Plans of the Business Units and Components.

7. Is the issue of gender and gender targets amongst the Medium Term Expenditure Framework (MTEF) strategic priorities?

Specific gender targets are not really reflected in MTEF priorities. However, targets relating to some equality issues and ‘vulnerable groups’ are mentioned in the MTEC submissions. Employment is another area where specific targets are mentioned but limited to Employment Equity Plans and some of the Business Plans of Units or Components. However, the issue of *‘16 days of*

Activism’ features amongst prioritised future projects, albeit, as an Unfunded Priority Project (UPP).

8. Are all Departmental/Component plans, programmes and activities subjected to a gender audit or analysis before, during and after implementation?

Departmental and Component plans are not, as a general practice, subjected to a gender audit or analysis before, during and after implementation. However, as an emerging practice, some projects have been subjected to some equality or equity audit, which has included identifying possible differential impact or likely differential impact on women and men. An example in this regard is the conduct of an employment equity audit. With women being a designated group under the *Employment Equity Act*, gender was a critical element of the employment equity audit. There is no indication that all plans, policies or activities are tested for gender impact before approval. This includes new legislation, other legal drafting activities and litigation on behalf of the state. It also applies to appointments and award of state contracts.

9. Is the achievement of equality part of the criteria for budget review (midterm) and redirection of resources?

The achievement of equality is not expressly covered amongst the budget guidelines and mid term review frameworks. *Gender Mainstreaming* and its implications for gender equality do not seem to be a midterm review criteria. In this regard, the Gender Issues Directorate is apparently not even consulted over the midterm review of the budget.

10. What is the extent of ‘none implementation’ of planned gender activities?

Quite a number of gender projects have not been implemented. For example, the review of customary law of succession has been planned since 1994 but never finalised. The last attempt, which took place in 1998, resulted in very weak follow up. Five years later this process has not delivered new legislation. Maintenance Law implementation took a while and so did Domestic Violence Legislation. Planned translation of legislation into all official languages has apparently not commenced as planned. Entrenchment of *Batho Pele* principles and achievement of staff knowledge of customer care has not materialised although planned for the first half of 2003/4. However, the Gender Directorate has now initiated a process for the implementation of the Victims Charter, which will cover *Batho Pele* and Administrative Justice education and training.

STEP 2

General Policy Considerations

1. Are policy and legal compliance critical considerations in Departmental budgeting?

The new budget guidelines do incorporate some consideration of impact on policy and legal compliance. Compliance with policy and law, including the Constitution and international obligations, is also highlighted in the Department's strategic framework. However, commitment to legal and policy compliance is not systematically followed through in the body of the Strategic Framework, Business Plans, projects, and day-to-day implementation activities. Examples in this regard include the *Batho Pele* policy framework, particularly principles relating to customer consultation and redirection of resources to historically neglected areas. Constitutional and international compliance is also not consistently weaved throughout budgetary items and processes. The same applies to compliance with laws such as the *Promotion of Equality and Prevention of Unfair Discrimination Act*.

2. Which policies are given priority? Do these include Batho Pele and the White Paper on transformation of the public service?

The budget guidelines do not mention any specific policies. However, the Strategic Framework of the Department does mention the Constitution and in particular, the principles of non-racism and non-sexism within it. The strategic framework places a lot of emphasis on *Batho Pele*, while noting other transformation policy frameworks. At least one Unit also mentioned compliance with the *Employment Equity* and *Skills Development Acts*, as desired outcomes. Unfortunately the issue of legal and policy compliance is not cascaded throughout all business levels, from Business Plans to projects.

3. Is compliance with policy and legal frameworks a critical consideration for budget approval?

Except for enforcement of compliance with financial and procurement pre-scripts, there is no indication that legal and policy compliance are regarded as critical factors to the point of having the weight of determining budget approval. For example, most of the resources of the Department are targeted at achieving world-class standards in metropolitan courts that are already disproportionately resourced.

4. How is policy compliance enforced in the budget process?

Compliance enforcement mechanisms include budget coaching, referral back of budgets for review, a system of approval of memoranda and Executive Committee approval of Unit plans. However, there presently is no policy compliance checklist and strict adherence to policy compliance in the current process of approving budgets.

STEP 3

Specific Compliance With Gender Policy/Obligations

1. Are the provisions of the Departmental Gender Policy Statement, National Gender Policy Framework and gender equality obligations in terms of regional and international instruments integrated in policy considerations underpinning the budget?

Compliance with the *Department's Gender Policy Statement* is not specifically mentioned in the Budget Guidelines. The same applies to compliance with the *National Gender Policy Framework* and international obligations relating to gender. However, the budget guidelines make reference to the 'impact on vulnerable groups' a concept that is loosely unpacked (in various documentation) to include issues such as 16 Days of Activism on Violence Against Women and Children, Sexual Offences Courts, Maintenance, Family Law and Child law. Even the Strategic Framework of the Department does not mention compliance with gender policy frameworks.

2. What funding (amount and percentage of total budget) has been allocated towards gender programming aimed at implementing specific provisions of instruments such as CEDAW, BPA, SADC Addendum on Violence Against Women and Children, PEPUDA, EEA, NGPF and DJPS?

Except for funding allocated to projects that will mostly benefit women under the 'vulnerable groups' budget line, no budget seems to have been allocated towards gender programming in the overall budget and within Units.

Since its establishment in 1997, the Gender Directorate has been allocated a budget for its role in facilitating gender programming.

3. What percentage of budget is allocated towards gender skills and awareness education and training?

Except for the limited budget of the Gender Directorate, no specific funding has been allocated towards gender skills and awareness education and training. However, the Court Services and Justice College budgets include activities relating to social context awareness. The Gender Directorate uses most of its activity budget on capacity building activities. This has included the *Gender Mainstreaming* exercise and a number of on going capacity building interventions directed at courts. Some Business Units have included Diversity Awareness and Management Training in their Employment Equity Plans. However, none of the Business Units has spent resources on either gender specifically or diversity awareness or management issues in the last 20 months.

STEP 4

Social Context Analysis

1. What is the position of women and men to whom departmental/ component services are targeted?

The strategic framework of the Department reflects some understanding of the diversity of service users. The customer and stakeholder analysis, for example, indicates that customers include Black, rural, poor, female children, disabled, old and illiterate people. Unfortunately, intersections are not taken into account and the differentiation of customers is not systematically integrated in the Business Plans or carried throughout all programmes. Specifically, the planning, implementation and evaluation of services does not test for differential impact and responsiveness to women and men and the diversity of each gender's circumstances.

2. What differential needs arise from the above?

Whereas differential needs relating to human diversity or disadvantage are, as attested to by the *Gender Needs Assessment*, relevant in respect of virtually all Departmental services or operations, the body of the Strategic Framework does not reflect this understanding. In other words, considerations of impact on equality of all policies and operations are not mainstreamed throughout the strategy and Business Plans.

Disadvantaged groups, problematically referred to as 'vulnerable groups', are only seen as targets of certain specific programmes which include Family Courts, Maintenance, Domestic Violence, Sexual Offences Courts, Child Justice and Legal Aid. In some instances, Equality Courts are also included. This approach is carried through in the budget as reflected in votes 22 and 24, and the most recent Medium Term Expenditure Committee submission. The impact of this jaundiced view is that women and other disadvantaged groups tend to fall through the cracks in so far as benefit from the 'one size fits all' mainstream services is concerned.

3. Have such needs been verified through a needs assessment and are the findings integrated in planning data?

There is no indication that the budget or sub-budgets are based on structured needs assessments. This conclusion is supported by, amongst other things, the fact that women's concerns are restricted to the limited matters in respect of which women are perceived as needing protection as a 'vulnerable group'. The Department does not seem to have any structured needs assessment on which service improvement planning and implementation is based.

4. What amount and percentage of total budget is allocated towards gender disaggregated customer consultation to ascertain specific circumstances and needs of women and men from different race and other backgrounds?

No amount seems to be allocated towards a gender disaggregated customer feedback survey. The closest attempt at understanding customers is the Public Education and Communication (PEC) Unit's 2003/4 budget. It planned to spend R210 000 on internal customers and R150 000 on external customers for what they regard as 'market intelligence', which focuses on customer perceptions. This apparently had no actual budget allocation and had not yet been executed at the time of this analysis. Another area where some limited consultation has taken place was with regard to employment equity and skills development planning.

STEP 5

Women Empowerment Locations

What positive measures or special interventions seeking to advance women to 'level the playing field' have been implemented or planned in respect of the following:

1. Human resources matters (including Employment Equity, Skills Development and EAP)

The budget and sub-budgets do not indicate any specific allocations for interventions aimed at levelling the (employment) playing field in favour of women. Amongst the *Premier Projects under Justice Vision 2000* was a *Women's Leadership Development Programme* which was implemented in the form of two seminars about four years ago. Nothing of a similar nature appears to have been implemented thereafter. Although not included in the budget, donor funding was recently spent by the Gender Directorate on a conference aimed at empowering women judges. The initiative was to have included lap-tops for the women judges, but this component fell through. While the *Skills Development Framework* stipulates that women should benefit from at least 54% of skills development learnerships, no specific allocations seem to be in place to address gender disparities in terms of access to skills development opportunities within the Department.

2. Service delivery matters

The *16 Days of Activism Campaign on Violence Against Women* constitutes one of the critical areas where the Department continuously invests resources in pursuit of women empowerment. Unfortunately, and in deviation from the *SADC Addendum on the Prevention and Eradication of Violence Against Women and Children*, the investment seems to focus only on awareness rais-

ing during the once a year 16 Days of Activism period, without establishing and maintaining an integrated response to violence against women and children as envisaged in Government Commitments presented at the *National Conference of Commitments*, Addendum A in 1998.

A *National Women's Justice Programme* (NWJP) that was envisaged in the *Gender Policy Statement* has not yet materialised. This programme, which is comparable to women empowerment initiatives in other government departments (e.g *Women in Construction, Women in Technology, Women in Mining and Women in Agriculture*), would have gone a long way towards equalising women's access to justice.

Except for the 16 days of Activism Campaign, no specific allocations appear to have been made towards special measures aimed at empowering women to level the playing field in the following areas of service delivery that emerged as critical in the Gender Needs Assessment – see table on page 33. Although not reflected in the budget, some resources have been allocated towards research for the purposes of advising the President on how to respond to a request for Presidential Pardon made by women who are serving long sentences for killing their allegedly abusive spouses. In addition, donor funding totalling over half a million Rand has also been used for a Women Judges Empowerment Project.

3. How does the women empowerment budget compare with the other empowerment programmes, if at all?

The DoJCD is generally not very involved in empowerment initiatives, including black empowerment. However, some of the empowerment programmes, including those for children, have consistently received hefty investments. This is true in respect of both state finances and donor funding.

4. Do women empowerment programmes, projects or activities feature highly in Departmental and Component priorities as reflected in Strategic Plans, MTEF and Annual Objectives?

Only the 16 days of Activism event features in the Department's 2004/5-2006/7 MTEF priorities and even then as an UPP. No other women empowerment project or programme features in the Department's MTEF Strategic Framework and Annual Objectives.

However, as a follow up to the Women Judges Conference, a local chapter of the *International Association of Women's Judges* (IAWI) has emerged. The Gender Directorate plans to use some of its budget to support this structure and its activities. The Gender Directorate also plans to assist the Human Resources Business Unit to develop a sustained Executive Leadership Development Programme for women at various levels and in various occupational categories, including legal professionals in the Department and the judiciary.

SERVICE	PROJECT/ ACTIVITY	BUDGET 2003/4 R'000	% AGE OF TOTAL BUDGET	BUDGET 2004/5	% AGE OF TOTAL BUDGET	OBSERVATIONS
Court Services	–	–	–	–	–	Women Judges project funded from donor funding
NPA	–	–	–	–	–	No projects found
Masters	–	–	–	–	–	No projects found
Public Awareness and Education	16 days of Activism (Gender Directorate and Ministry)	Unspecified	Unfunded Priority Project (UPP)	980	Unfunded Priority Project (UPP)	Reflected in budget as an Unfunded Priority Project
Law Reform and Constitutional Development	–	–	–	–	–	No projects found
Data Generation and Management	–	–	–	–	–	No projects found
Information Communication Technology	–	–	–	–	–	No projects found
Other (Incl. BEE)	–	–	–	480	–	One year salary for researcher on women convicted of murdering spouses and one year salary for researcher on transformation of the judiciary

5. What policy considerations underpin women empowerment interventions?

The *16 Days of Activism* event is rooted in the Department's commitment to combat violence against women. Sadly the resource allocation does not reflect a commitment to an integrated response to violence against women and children as required in terms of *CEDAW*, the *Beijing Platform for Action* and the *SADC Addendum on Violence Against Women and Children*. However, there are a number of specific allocations and or projects that are budgeted for as part of UPPs, that fall under the category of pro-women budgetary allocations. These are outlined in Step 6 below.

6. What have been the outputs and impact of previous women empowerment interventions?

As a result of the Women Judges intervention, a South African Chapter of the International Women Judges Association has been formed. This structure unifies women judges and magistrates. Furthermore, some measure of awareness of the differential gender circumstances and consequent different needs of women and men is emerging amongst judges and magistrates. Another outcome of the empowerment initiative involving women judges and magistrates has been an offer by the International Association of Women Judges to provide training to South African judges on Integrating International Human Rights Instruments into Domestic Law. The South African Chapter also has plans to train, with the help of the Gender Directorate, South African judges on gender sensitivity.

7. What are the anticipated outputs and outcomes of planned interventions?

The *16 days of Activism* Campaign seeks to raise the profile of and the level of awareness of the issue of violence against women and children. This has been significantly achieved as more media coverage and stakeholder cooperation on the issue has been achieved since 1998. In the last two years, this event has also been used to mobilise funds for NGO projects on violence against women. In this regard, over a million Rand has been raised over the last two years. The Women Judges and Executive Leadership Development Programme for women seek to strengthen women's leadership capacity, participation in decision making and influence, and accordingly, impact on the justice system. Immediate outputs include placing a specified number of women on an extensive Leadership Programme in 2004/5.

STEP 6

Pro-Women Allocations

1. What services, programmes or activities, mainly used by women, that contribute significantly to the reduction of gender inequality, have been implemented or planned?

The budget reflects significant allocations towards a number of pro-women services and programmes. These are services or activities that are mainly used by women or contribute significantly towards the reduction of gender inequality. Unfortunately, although reflected on the budget, some of the activities have not materialised. This includes customary law reform relating to succession and legislation on Muslim marriages.

2. Do these include critical issues identified in the Needs Assessment Report?

The services, programmes and activities that are budgeted for do include pro-

women services identified in the needs assessment as critical for the achievement of gender equality through and within the justice system.

A summary of findings on pro-women services is presented in the following table:

SERVICE	PROJECT/ ACTIVITY	BUDGET 2003/4 R'000	% AGE OF TOTAL BUDGET	BUDGET 2004/5	% AGE OF TOTAL BUDGET	OBSERVATIONS
CRITICAL PRO-WOMEN ISSUES IDENTIFIED IN NEEDS ASSESSMENT						
Public Education	Unspecified	5 350	–	One budget	–	Strategy figure not reconciled with actual budget
Maintenance	General and maintenance Investigators	41 600	–	Same budget Cont.	–	Strategy figure
Domestic Violence	Unspecified	2 068	–	Same budget	–	Strategy figure
Sexual Offenses	Unspecified	2 000	–	–	–	Strategy figure
Victim Empowerment	–	–	–	–	–	No budget for Victim Charter
Family Court and Family Adv.	Extension	55 650	–	13 388	–	Strategy figure
Information Desks and Related Services	Only for user-friendly reception at new justice building and other centres	1 025	–	Same budget	–	Strategy figure No budget for Information Desks in Court
Customary Marriages and Deceased Estates	Global Admin of Estates budget	–	–	–	–	No specific customary marriages budget, but donor funds totalling about a million Rand allocated for awareness on customary marriages in 2003/4
Equality Legislation	Not specified	8 000	–	9 600	–	No budget or implementation beyond courts and ERC

SERVICE	PROJECT/ACTIVITY	BUDGET 2003/4 R'000	% AGE OF TOTAL BUDGET	BUDGET 2004/5	% AGE OF TOTAL BUDGET	OBSERVATIONS
CRITICAL PRO-WOMEN ISSUES IDENTIFIED IN NEEDS ASSESSMENT						
Employment Equity	–	–	–	–	–	–
Skills Development	Unspecified	–	–	–	–	Only total budget reflected
Gender Awareness	Gender Directorate's Budget	3 000	–	No allocation	–	Budget covers salaries and activities
Human Rights	No Human Rights allocation Other than SAHRC and CGE Budgets	–	–	–	–	–
EAP	–	–	–	–	–	No budget reflected even for staff salaries

3. How does the budget for pro-women services compare with other programmes, if at all?

The investment of resources towards pro-women services, most of which are (mistakenly) covered under the umbrella category of 'vulnerable groups', has improved significantly over the years.

4. Do pro-women programmes, projects or activities feature highly in Departmental and Component priorities as reflected in Strategic Plans, MTEF and Annual Objectives?

Pro-women services such as maintenance administration, domestic violence, family law and sexual offenses, feature quite visibly in the budget of the Department. However, although a number of the pro-women interventions feature as priorities in the Strategic Framework of the Department and Annual Objectives of Components, most of the above projects do not feature in MTEF priorities. Instead they are listed in the MTEF as UPPs.

In the current budget, the Gender Issues Directorate received about 3 million Rand (for salaries and activities) from the state finances and the same amount from donor funding for its programmes, which are primarily pro-women in nature. One of the key projects on which these resources were spent is a successful Maintenance Process Mapping Project. This project,

SERVICE	PROJECT/ ACTIVITY	BUDGET 2003/4 R'000	% AGE OF TOTAL BUDGET	BUDGET 2004/5	% AGE OF TOTAL BUDGET	OBSERVATIONS
ADDITIONAL PRO-WOMEN SERVICES/ACTIVITIES						
Review of Discriminatory Laws	Unspecified in amorphous legislation budget	6 000	UPPs	6 000	UPPs	No specific budget for Customary Law Succession and Muslim marriage legislation
Alignment of legislation with the Constitution	Amorphous budget	5 342	–	–	–	No clear priorities
Translation of Documents into all Languages	Part of state Law Advisor	Unspecific	–			Not Executed Was for 2003/4
<i>Batho Pele</i> (Customer Care Training)	PEC project	200	–	–	–	Not Executed Was for 2003/4 Now to Be covered in Victim Charter Education
Corporate communication	General corporate communication	583	–	–	–	Includes market survey
ADR	Court Services/ SALC Project	–	–	–	–	Was for 2003/4
Access to Justice	One-stop justice Centres and lay Assessor legislation	Unspecified in inclusive budgets	–	–	–	Access mentioned by Law reform, court services

which includes strategic automation of the maintenance system, has been extended to all family court services, including Domestic Violence.

The budget includes a two-year salary for a consultant. The Gender Directorate also previously organised a workshop for about 300 magistrates on improving service delivery with emphasis on Domestic Violence, Sexual Offences and Maintenance. The workshop resulted in the development of *Magisterial Guidelines on the Implementation of the Domestic Violence Act (DVA)*

In the context of human resources, the issue of social context awareness is consistently covered in a number of plans, particularly those that are donor funded. However, pro-women interventions such as diversity awareness, education and training, social context awareness and accelerated development for historically disadvantaged groups, do not appear to feature prominently and consistently in the budget and strategic framework.

5. What policy considerations underpin pro-women interventions?

Except for the operations of the Commission on Gender Equality, whose mandate is determined by the Constitution, the main policy consideration underpinning budgeting for pro-women interventions in the Department is the protection of 'vulnerable groups'. Another exception is the work of the Gender Directorate which has tenaciously followed the *Department's Gender Policy Statement*, which, like the *National Gender Policy Framework*, follows a two-pronged approach of *Gender Mainstreaming* and women empowerment.

The rest of the budget of the Department does not seem to reflect a full appreciation of the substantive equality paradigm entrenched in the Constitution, the National Gender Policy Framework and the Departmental Gender Policy Statement. There also does not seem to be a culture of striving towards compliance with relevant laws such as the *PEPUDA* and international treaty obligations, including those relating to *CEDAW*. Throughout the policy framework informing the budget, the conceptual framework within which pro-women interventions are dealt with, appears to be the 'protection of vulnerable groups', as opposed to institutional transformation to eliminate discrimination and achieve substantive equality. The latter is a *Gender Mainstreaming* approach, which is consistent with *Gender Responsive Budgeting*.

6. What has been the outputs and impact of previous pro-women interventions?

It appears that impact assessments are not regularly conducted in respect of gender equality promoting interventions. The exception is with regard to training, where some kind of evaluation is usually conducted at the end of each event. Accessible data has not made it possible for this analysis to assess the impact of current pro-women interventions.

7. What are the anticipated outputs and outcomes of planned interventions?

Most of the Business Plans were not very helpful in identifying gender disaggregated intended outputs and outcomes of currently planned programmes. This is particularly the case with regard to quantitative and qualitative indicators relating to the narrowing of the gender gap in various facets of the justice system. With regard to employment equity, clear targets and indicators are reflected in the Department's Employment Equity Plan. However, these may

need to be subjected to a reality test. Furthermore, the processes aimed at generating these targets may need to be reviewed as they appear to be rather weak in comparison to the intended outcomes.

The Process Mapping Project promises unprecedented effectiveness and efficiency in the maintenance system whose beneficiaries are mostly women. More women will receive maintenance faster and more consistently. Similar results are anticipated from the extension of the Process Mapping Project to domestic violence and other family services. Should the Department be in a position to allocate the necessary resources towards the planned educating of judges on Gender Awareness and on International Human Rights instruments such as CEDAW, all judges will have been reached within the next two years. This will result in improved sensitivity and responsiveness to women's experiences and needs.

STEP 7

Equalising Benefits in General Services

1. What is the *per capita* expenditure on each service offered under the DoJCD with regard to Service Delivery, Human Resources and Skills Development?

The Department has not yet been able to work out how much it spends per head on each of its services as outlined in the *Service Map*. The paucity of user/beneficiary statistics and service/project based budget allocations made it impossible for the gender budget analysis to work out *per capita* expenditure, except in relation to human resources and Legal Aid Board expenditure. However, it is advisable for the Department to begin to work out and use as planning data, beneficiary statistics, including gender disaggregated per capita expenditure. This will not only facilitate gender budgeting, but will ensure targeted or problem directed budgeting and expenditure.

2. Who, in terms of gender disaggregated by race, currently benefits most-ly from each of the key services outlined in the service map?

While there are no gender disaggregated user/beneficiary statistics in the Department, there is a significant body of empirical and anecdotal evidence indicating that women and in particular black women, poor women and women affected by additional disadvantage such as age, language, disability and rural life, benefit least from current services offered through the budget of the Department. Most services currently assume an affluent Eurocentric user who is sophisticated in terms of language and general knowledge. Most women fall outside this paradigm and are consequently either excluded from the services or face additional obstacles in accessing the services.

In terms of current services, women benefit mostly from pro-women services such as Maintenance, Family law, Domestic Violence and Sexual Offenses. However, even in respect of these, a lot of gender-related obstacles still need to be addressed. Women are severely disadvantaged when it comes to accessing and vindicating their rights through mainstream services such as Civil Courts, particularly in respect of consumer protection and services. They are also disadvantaged with regard to access to services such as Administration of Estates, legal aid (for civil matters), and the use of information communication technology. The criminal justice system also presents additional obstacles for women in accessing justice, not only as victims but also as alleged offenders, and as women working in the justice system.

The current policy paradigm, which focuses on the protection of vulnerable groups as opposed to institutional transformation to eliminate sexism and promote gender equality, is too narrow to be of any use with regard to ensuring women's equal enjoyment and benefit from most of the services offered under the Department. By failing to address itself to systemic institutional inequality and the elimination thereof, the vulnerability paradigm leans towards a welfare as opposed to a human rights and transformational paradigm. This is contrary to the constitutional vision which is replicated in national transformation policy frameworks, including *Batho Pele* and the *National Gender Policy Framework*. A *Gender Mainstreaming* paradigm, grounded on substantive equality, would not only look at expanding women's benefit from existing general services, but would also consider alternative services that may be more suitable and responsive to their unique social and economic circumstances.

3. What is the *Per Capita* expenditure, disaggregated by gender, for each service within the total budget of the Department?

In the absence of information on *per capita* expenditure per service, and gender disaggregated user/beneficiary statistics, it is not possible at this point to ascertain how much is budgeted or spent for each average female or male user of services offered under the Department. It is critical that the Department moves speedily towards *per capita* and gender disaggregated budgeting. This would help clarify the true extent of the current gender gap in terms of women and men's benefits from current services and inform interventions aimed at narrowing the gap.

4. Has the gap been narrowing over the years? At what rate?

While there are no exact figures on how much is spent on each woman and man as beneficiaries or users, there is reasonable evidence pointing to the fact that a lot more resources are being invested towards enhancing women's

benefit from justice services. There has been a particularly marked improvement in women's access to human resource benefits as more women are appointed into high paying jobs in management and professional occupational categories such as legal administration officers, prosecutorial ranks and the judiciary. Improvements in pregnancy, parental and other benefits for workers with family responsibilities have also, over the years, ensured that the women's share of the human resource budget increases significantly.

With regard to service delivery, the move towards including civil cases in legal aid has somewhat narrowed the gender gap. This is attributed to the universal phenomenon that less women use legal aid as defendants in crime since less of them tend to be accused of crime. Another area that is contributing to narrowing the gender gap is the increase in resources spent towards making courts user-friendly in terms of information services, warmer environments and other victim empowerment initiatives.

Resources currently being invested in exploring Alternative Dispute Resolution (ADR), particularly in matters involving consumer related civil disputes, also have, if implemented in a manner sensitive to gender dynamics, a lot of potential for bridging the gender gap. However, available information is inadequate to allow a concrete estimation of the extent and rate of the narrowing of the gender gap in the distribution of justice resources.

5. What budgetary measures are being employed to identify and narrow gender and other equality gaps?

It may be safely said that budgeting for increased women's access, particularly in respect of pro-women services, has undoubtedly improved. However, there is no indication that the Department fully appreciates the existence of a gender gap in the distribution of public resources at its disposal. While the strategic framework aligns the Department with *Batho Pele*, which includes the principle of redirecting resources to historically neglected areas, the Department does not seem to be exploring avenues for giving effect to this. Instead, projects or interventions seeking to improve services that respond to women's critical justice needs appear to be treated as 'extra', 'optional' and ghettoised.

The last three budgets, Vote 22, 24 and the most recent MTEC submission, place most such services or interventions under the budget line for 'Vulnerable Groups' within UPPs.

6. Is the gap likely to narrow, remain constant or widen if current budgetary trends continue?

The lack of targeted budgeting runs the danger of worsening the resource distribution between women and men. For example, a significant amount of resources are spent on senior management training or capacity building as opposed to the lower level employees. The effect of this is that more resources are spent on men as they predominate in the higher echelons, particularly the Senior Management Service (SMS) level.

In regard to service delivery, a lot of resources are being channelled towards modernisation. However, this does not seem to be consistently benchmarked against the *Batho Pele* requirement that the meeting of basic needs for all sections of society be prioritised while global competitiveness is also being pursued. For example, while millions of Rands have, over the last few years, been channelled towards modernisation, endeavours such as automation and Commercial Courts, pro-women services such as Maintenance Courts, Domestic Violence Services, Family Courts and Sexual Offenses Courts, have had to scratch around for the most basic administrative needs.

In fact many interventions that have improved or have the potential of improving women's lives have depended largely on donor funding and NGO goodwill. This includes Victim Support Services, Information Desks in some courts, Social Context Training for the Judiciary, public education on matters such as Recognition of Customary Marriages and administrative interventions relating to sexual offenses and domestic violence. PEPUDA, which has largely depended on donor funding until today, still features in the most recent MTEC submission (2004/5-2006/7) as a UPP.

Accordingly, it does seem that if current trends continue, the gender gap with regard to benefiting from the Department's budget, may worsen rather than narrow.

7. What programmes are in place and how much has been allocated to each programme, project or activity that has been implemented or planned with a view to reducing gender inequality in respect of the following:

(a) Services

In addition to the Customary Marriages Public Education Project, mentioned under pro-women programmes, the Department has a number of public education interventions, which seek to ensure that women know their rights and the processes for vindicating such rights. The problem with some of these is that they are not sustained or results driven. The matter is compounded by the amorphous nature of the PEC budget.

(b) Employment Opportunities and Benefits

The Department has an uncosted Employment Equity Plan, which seeks, amongst other things, to equalise employment opportunities between women and men. There does not seem to be any programme in place for equalising benefits between women and men with regard to skills development, participation in decision making forums, and participation in international forums outside the country. The Department's Employee Assistance Programme (EAP), a service with a lot of potential for improving the quality of the lives of women working in the Department generally, and women affected by problems such as HIV/AIDS and Sexual Harassment in particular, appears to have withered away.

(c) Public Involvement?

Apart from the work of the South African Law Review Commission (SALRC), most public engagement ventures of the Department tend to be targeted at organised business, regulatory bodies for the legal profession, and to a limited extent, urban NGOs. Except for the inclusion of some general issues in the annual NGO Consultative Forum organised by the Gender Issues Directorate, women's organisations and ordinary women, tend to be engaged only on matters that expressly concern women. The result is to exclude women from making an input into mainstream justice issues such as modernisation, re-engineering of case-flow management and general law reform. As a result resources spent on most consultations mainly benefit men as they dominate the groupings that have access to current consultative channels. Service priorities and resource allocations based on such priorities are also influenced by such exclusive consultations.

8. Has the above been informed by a needs assessment or gender audit?

Gender gap bridging interventions relating to the distribution of scarce resources in the Department and Components therein do not seem to be informed by any structured needs assessment or gender audit.

9. Are the following areas covered in Departmental corrective measures? If so, what are the amounts and what budget percentages, outputs and outcomes are involved in respect of each? See page 44.

10. What policy considerations have informed decisions with regard to mainstreaming gender in general services?

As indicated above, not much has been done with regard to mainstreaming gender in general services. It would appear that the problem lies in the mistaken understanding that women's concerns only relate to matters covered under the category of 'vulnerable groups'.

SERVICE	PROJECT/ ACTIVITY	BUDGET 2003/4 R'000	ALLOCATION TOWARDS SPECIAL POSITIVE MEASURES AIMED AT PROMOTING GENDER EQUALITY	BUDGET 2004/5	ALLOCATION TOWARDS SPECIAL POSITIVE MEASURES AIMED AT PROMOTING GENDER EQUALITY	OBSERVATIONS
Admin of Deceased Estates	Admin of Deceased Estates mentioned by Masters BU	4 900	–	–	Unspecified	Multiple project budget mentions transformation to enhance responsiveness to black deceased estates
Public Education	No specific Gender Focus	unspecified	–	–	–	Plan not specific on corrective measures
Civil Procedure	Budget Unspecified	unspecified	–	–	–	Women to benefit from case flow management project
Small Claims	Ceiling to be increased to R7 000	unspecified	–	–	–	Mentioned in amorphous budget
Admin. Justice	Public Education	unspecified	–	1 400		UPP Budget
Mainstreaming Human Rights, including Equality	Only SAHRC and CGE budgets specified	5 500	–	6 050	–	UPP budget for Anti-Racism forum
Access to Information	Information society learnerships	9 600	–	9 600	–	UPP Budget
Criminal Courts	Uniform sentencing	–	–	–	–	Backlog reduction and re-demarcation of boundaries. UPP budget will benefit women
Gender Management	Only Gender Issues that Directorate's budget reflects	3 000	unspecified	–	–	No budgets for Business Units and Components

Anecdotal evidence suggests that women-owned or women-led enterprises only got a fraction of the contracts awarded by the Department. These were predominantly in consulting services within Human Resources components and the Gender Issues Directorate. The analysis revealed that there was no uniformity with regard to implementation of the PPPFA, hardly any operational reference to the BBBEEA, and certainly nothing about mainstreaming gender into the implementation of these policy frameworks.

3. What programmes, projects or activities have been implemented or planned to address systemic inequality and promote gender equality in access to state contracts and Public Private Partnerships (PPPs) in the DoJCD and Components?

Apart from the bureaucratic attention paid to the point system as prescribed in the PPPFA, there appears to be no programme, project or activity that is being implemented or planned as an intervention seeking to level the (procurement) playing field in favour of women. The *Framework for Re-engineering of Purchasing Operations* (2003) is silent on the issue of achieving equity in and through procurement.

4. What amount has been allocated to each intervention and what outputs and outcomes are involved?

No amount appears to be earmarked or previously employed to review and broaden access to procurement opportunities within the Department. However, there seems to be attempts in the Master's and State Legal Services components to involve historically disadvantaged people in procurement opportunities. None of this seems to include resource allocation towards some special programme to empower women and other historically disadvantaged groups.

5. What policy considerations and arrangements inform positive measures aimed at achieving gender equality in and through procurement?

In the documentation, including the *Framework For Re-engineering of Purchasing Operations*, mention is made of the PPPFA and the *Public Finance Management Act* (PFMA). However, this does not translate into any special programmes that specifically seek to affirm historically disadvantaged contractors, particularly women in this group, as currently practiced in other government departments. The BBBEEA and the PEPUDA do not receive any attention in current procurement policy pronouncements. The same applies to the gender question generally and the contents of the *Departmental Gender Policy Statement* in this regard.

STEP 9

General Considerations

1. What is the place of gender and the general promotion of equality motivation accompanying Departmental/Unit budgets?

Departmental budget submissions are silent on the specific issue of eradicating gender discrimination and achieving gender equality. Some mention is made of “... promoting access to justice of vulnerable groups, including women and children” (Vote 22). The promotion of equality is not mainstreamed. Documentation only mentions the implementation of the PEPUDA, with no reference made to Departmental compliance with the same Act. Some Business Units mention compliance with the EEA in their budget submissions.

2. Does the budget incorporate a gender impact statement? If so, are issues that emerged as critical concerns in the Gender Needs Assessment Report, given prominence?

The budget does not specifically incorporate a gender impact statement. However, the policy guidelines include some consideration for the impact on ‘vulnerable groups’ and impact on access to justice. These themes are however not mainstreamed in budgets. This is demonstrated amongst other things, by the fact that most of the issues that emerged as critical concerns in the *Gender Needs Assessment*, are mostly budgeted for as UPPs.

3. Do gender issues and related equality issues fair favourably in comparison with other issues in the implementation of activities that are planned or budgeted for in MTEF and annual budgets.

Many of the pro-women activities prioritised in departmental plans have suffered severe implementation delays in the past. This includes the implementation of the Maintenance Act, Domestic Violence Act, Family Courts, Recognition of Customary Marriages Act and Sexual Offences reforms. The PEPUDA also suffered severe delays with regard to operationalisation and serious obscurity when its critical parts were finally operationalised. By far the greatest delay has been suffered by legislation relating to customary law of succession and recognition of Muslim marriages. These are law reform interventions that black women need desperately. This has been on the law reform programme for the last decade and yet much newer and often unplanned mainstream concerns have been quickly legislated and such legislation implemented immediately.

4. What are the general gender trends in budgetary behaviour and what is the likely impact on gender equality in the next five to ten years?

Current budgetary trends show an increasing commitment to take on board a

number of services that are critical to women. However, the question of equalising resource benefits between women and men does not appear to be in the Department's agenda. As a result, not much is being done to redress gender imbalances in general programmes or services under the Department. The limited attention paid to gender issues is, as indicated earlier, narrowly confined to issues seen as critical for the protection of the so-called 'vulnerable groups'. This is not likely to foster a significant shift with regard to equitable distribution and benefit from state resources for all women and men from diverse social and economic backgrounds. The situation is compounded by the fact that most of the budget for the so called 'vulnerable groups', is not mainstreamed, but presented as part of the UPPs, thus implying that the items therein are perceived as optional and extra to the core business.

5. What is the role of women at different levels in the budget and expenditure control processes?

Much fewer women compared to men are involved at different levels in the budget process and expenditure determination. Women participate in the budget process mostly as SMS level managers, Court managers and a few members of the Office of the Chief Financial Officer (CFO). This means women generally have less say in how the resources of the Department are to be spent.

6. What is the general level of awareness of the role and power of the budget in addressing systemic gender inequality?

The adoption of special measures to accelerate progress towards gender equality is expected of the Department in terms of its own *Gender Policy Statement, Justice Vision 2000*, the *National Gender Policy Framework* and international treaty obligations, especially those arising from the country's ratification of CEDAW in 1995.

However, there seems to be no significant level of awareness of the power of and the potential role the budget can play in addressing systemic gender inequality in the Department and the sector within which the Department operates. Unlike the trend in a number of government departments, including Trade and Industry, Minerals and Energy, Public Works, Agriculture, Water Affairs and Health, the Department does not have special allocations towards on-going special programmes that seek to empower women in order to equalise life opportunities and benefits from state resources between them and men.

7. What is the extent of leadership commitment to addressing gender imbalances through the budget?

It appears that there is a fair amount of leadership commitment to address gender imbalances within and through the budget. However, there seems to

be inadequate understanding of the areas that need to be prioritised within budget reform, to address gender inequality. It appears that the Department's main weakness lies in lack of understanding of the principles of *Gender Mainstreaming* and the nature of women's justice needs beyond matters that obviously concern them.

Available statistics reveal that women are most likely to be victims of violent crimes such as rape and personal property crimes such as mugging. The mugging crimes which usually involve personal items such as purses jewellery and cell phones are never reported, and if reported rarely followed up. Women are accordingly, not likely to benefit much from crime combating expenditure with an emphasis on the prosecution of property crime that currently focuses mainly on property of high value. They are more likely to benefit from crime prevention expenditure directed at personal crimes, including rape and other assaults, committed or threatened against them by persons related or connected to them in some way. This is an area that the Department's budget is increasingly giving attention to, albeit at a rather slow pace.

A gap exists with regard to expenditure on social interventions aimed at behaviour modification in its UPPs. Further, there is a gap in terms of domestic violence protection orders, and with regard to the prosecution and conviction in respect of rape and other sexual offenses, particularly in matters involving the girl child.

One of the key weaknesses of the budget of the Department is that it is not informed by a clear beneficiary analysis covering all key justice needs of all targeted beneficiaries, taking into account gender and other forms of diversity. With regard to women specifically, it appears that understanding of their unique circumstances is only restricted to issues such as maintenance and violence, that are obviously associated with women. There seems to be no appreciation of gender concerns in respect of general services such as Civil Procedure, Nonviolent Crime, Administration of Estates other than Customary Law governed Deceased Estates and the provision of Legal Aid.

Linked to the problem of the absence of a clear beneficiary or user analysis, is the issue of establishing average expenditure per beneficiary (*per capita* expenditure) in respect of each of the main services provided under the current budget and using this information to plan service delivery improvement. As indicated earlier, available information is only restricted to the Unit cost of legal aid and human resource benefits.

Public ignorance regarding services offered under the Department and current expenditure patterns in this regard emerged as another major weakness. While this seems to affect everyone, the position of historically marginalised groups generally, and women in particular, was more serious.

During the Customer Feedback survey, one respondent observed that *“the most critical black empowerment initiative that needs to be undertaken in respect of justice services is the provision to the public, especially communities that were historically marginalised, of information regarding rights and the services available for vindicating such rights”*.

Contrary to this reality, Justice expenditure on public education is one of the lowest in government. Furthermore, no sustained programmes seem to target women to address issues that undermine their equal enjoyment of all rights and freedoms while keeping them abreast of all sectoral developments.

The issue of public awareness and education is explored more extensively in the *Gender Needs Assessment Report*.

8. CONCLUSION AND RECOMMENDATIONS

The thrust of the findings on gender responsive budgeting in the Department of Justice and Constitutional Development is that some progress has been made towards increasing women's benefit from state resources. However, the visible progress is mainly in respect of those issues that are obviously associated with women. Except for the *Gender Mainstreaming* capacity building exercise currently being implemented by the Gender Directorate in the Department, not much seems to be taking place with regard to using the budget as a transformational instrument to equalise women's access to mainstream or general services. The following general recommendations are suggested to strengthen the gender responsiveness of the budget of the Department:

8.1 General Recommendations

- (a) There is a need for a paradigm shift towards *Gender Mainstreaming*, as opposed to the 'ghetorisation' of women's issues by giving them segregated attention;
- (b) The mainstreaming of policy and legal compliance enforcement of such in budget processes should take place. This includes compliance with the President's addresses and with international treaty obligations, including those relating to women and gender;
- (c) The mainstreaming of gender equality and related policy considerations in the Department's strategic and policy frameworks while giving the pursuit of gender equality the priority it deserves is critical;
- (d) The departmental gender programmes, projects or activities must be benchmarked against the Department's *Gender Policy Statement*, the *National Gender Policy Framework*, *PEPUDA* and international instruments such as *CEDAW*, *Beijing Platform for Action* and the *SADC Declaration on Gender and Development*. This includes effective approaches to women empowerment, pro-women interventions and mainstreaming gender into all organisational operations and services;
- (e) There should be increased funding for all services or activities aimed at bettering women's lives with emphasis on areas highlighted in the needs assessment. These include Sexual Offences, Domestic Violence, Maintenance, Family Matters, including Customary Marriage disputes, Victim Empowerment and Administration of Deceased Estates particularly those affected by customary law;

- (f) The strengthening of the capacity and role of the Gender Directorate to provide effective support for *Gender Mainstreaming*, including *Gender Budgeting* should take place. This includes the establishment of a Gender Responsive Budgeting Technical Support Team;
- (g) There should be agreement on and institutionalisation of *Gender Responsive Budgeting Guidelines* that incorporate a requirement of gender disaggregated *per capita* expenditure, coupled with the establishment of the unit cost of all services; and
- (h) There should be strict enforcement of policy compliance (including gender policy) throughout the budget.

8.2 Specific Recommendations

The Department is further advised to take forward the matter of gender responsive budgeting by:

- (a) Investing resources in and implementing a massive communication strategy covering the role and functions of the Department, rights arising from new laws (legislation and Court jurisprudence) and information on how to access such rights;
- (b) Applying targeted budgeting based on periodic needs assessments that clearly reflect the diverse needs of customers, including women from different walks of life;
- (c) Mainstreaming gender considerations into all aspects of the Department's budget and women's priorities needs to be clearly spelt out and integrated into organisational priorities, as reflected in Strategic Plans and Annual Objectives, with implementation monitored and enforced;
- (d) Entrenching a requirement that all budgets and expenditure reports be accompanied by a gender impact statement;
- (e) Allocating a specific sizeable budget towards special programmes aimed at empowering women as justice service users, employees within the justice system, contractors and as professionals in the sector, to equalise access and opportunities between them and men in respect of all relevant aspects of the Department's operations. This should include an integrated response to violence against women, including the girl child;
- (f) Reviewing current budget allocations and the impact on women of programmes or interventions seeking to address women's needs through pro-women service areas such as: Sexual Offences; Domestic Violence; Maintenance; Family Law, including Customary Law;

Administration of Deceased Estates, particularly those affected by Customary Law; Mainstreaming of Human Rights, including Equality; the implementation of Employment Equity and Diversity Management and judicial education, particularly on issues such as mainstreaming human rights, social context awareness and gender;

- (g) Allocating resources towards a gender assessment and reform of the Civil Procedure system, particularly aspects such as process serving and exploration of the use of ADR for consumer issues;
- (h) Reviewing of the divorce system particularly the issue of process serving therein;
- (i) Extending legal aid to all matters, educating service providers about service excellence and involving the public a lot more in the monitoring and evaluation of the legal aid system;
- (j) Investing state resources towards paralegals to expand access to legal advice, particularly in respect of equality and civil matters in Magistrates Courts;
- (k) Increasing the budget and structure of the Gender Directorate and allocating special funding within each Business Unit or Component for programmes aimed at strengthening capacity for mainstreaming gender into all aspects of the department's operations;
- (l) Fast tracking the restructuring of the legal profession to broaden women's access and ensure that entry arrangements are unhampered. The main feature being state provided or supervised smooth entry into the profession without labour market competition, prior to entry in to the profession;
- (m) Allocating significant resources towards special measures to enhance women's involvement at all levels of decision-making within the DoJCD in cooperation with the JSC and MAGCOM;
- (n) Reviewing procurement processes and outcomes relating to distribution of state contracts within the Department and implement special measures to remove barriers preventing equal access to contract opportunities, in order to accelerate the levelling of the playing field;
- (o) Conducting a more elaborate Needs Assessment, nationally, to facilitate gender and targeted budgeting;
- (p) Developing a *Policy and Legal Compliance Map* and use the map to inform the choice of budget priorities;

- (q) Implementing special measures to enhance women's participation at all levels of decision-making regarding the budget and public resource utilisation in the Department; and
- (r) Adhering to a strict balance between a basic needs approach and achievement of global competitiveness in resource allocation and implementation activities.

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PART TWO

Gender Responsive Budget Assessment Instrument

1. PURPOSE AND BROAD OBJECTIVES

The purpose of the *Gender Budget Assessment Instrument* is to serve as a basis for analysing the budget, expenditure patterns and revenue sources in the DoJCD. The aim is to establish the impact of the budget on women and responsiveness to the differential needs of women and men. This will be followed by the development of *Gender Budgeting Guidelines* to assist decision makers in the DoJCD to review their budgets and expenditure patterns to enhance responsiveness to the circumstances of women.

2. BACKGROUND

2.1 Historical Background

The project is a follow-up to a *Gender Mainstreaming* audit of the systems and processes in the DoJCD, which sought to establish the extent to which gender considerations are routinely integrated in all aspects of the Department.

The issue of equitable distribution of government resources between women and men and the use of resources to level the playing field between the two genders emerged as a critical component of effec-

tive *Gender Mainstreaming*. The gender audit exercise broadly established that women and men were not benefiting equally from resources spent in the operations of the Department and that a lot of practical and strategic needs of women were not being responded to in departmental programmes.

This was not surprising because historically the justice system was crafted by and in response to the needs of affluent men of European descent, a fact noted in *Justice Vision 2000* and the *Gender Policy Statement* of the DoJCD.

This exercise seeks to consolidate the *Gender Mainstreaming* exercise by ensuring that not only is *Gender Mainstreamed* practiced within the DoJCD, but that the money trail effectively supports gender transformation within the Department, and the broad sector within which it operates.

The Social and Political and Policy Context

The adoption of constitutional democracy, crystallised in the first non-racial democratic elections in 1994, and the adoption of a new Constitution, saw South Africa embarking on a path of social and economic reconstruction.

The main focus was on redressing the lasting legacy of previously legalised injustice. The promotion of gender equality is a central part of government's quest for a society based on equal enjoyment of all human rights, freedoms and life opportunities. This mission is also part of South Africa's obligations arising from binding instruments such as CEDAW and the *African Charter on Human and People's Rights*. In addition to constitutional and international obligations, the duty of the state to promote equality also arises from various equality laws and transformation policies. These include the *Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)*, *Employment Equity Act (EEA)*, *Preferential Procurement Policy Framework Act (PPPFA)* and the *Broad Based Black Economic Empowerment Act (BBBEA)*.

The DoJCD's obligations regarding the promotion of gender equality includes its ordinary duties as a state entity and its duties as the sponsor of the PEPUDA. *Gender Budgeting* is an integral part of mainstreaming gender, which in turn is part of mainstreaming equality as envisaged in the constitutional vision of an equal society and national policy framework on social transformation. The duty applies to all operations of the Ministry/Department of Constitutional Development.

The Department of Justice and Constitutional Development sees its mandate as being:

"To give effect to the constitutionally mandated requirement that South Africa has a fair, equitable and accessible system of justice", and to... "provide certain legal services to government".

The mandate has been translated into five organisational objectives. These are:

- Maintain, improve and streamline a system of courts in which legal proceedings of a criminal, civil and administrative nature are processed efficiently and effectively;
- Investigate certain crimes and prosecute all criminal offenders;
- Provide legal services to government and represent it in legal proceedings;
- Research, draft and promote legislation; and
- Facilitate the delivery of additional services linked to the administration of justice, including services delivered by constitutionally independent institutions.

3. METHODOLOGY

The methodology employed in the study and development of guidelines involves the following stages:

- Conducting desk research, including preliminary analysis of the DoJCD budget to identify all key services constituting expenditure items, in order to compile a *Service Map*;
- Developing a *Draft Gender Budget Assessment Instrument*;
- Developing a *Service Feedback Questionnaire*;
- Conducting interviews based on the *Service Feedback Questionnaire*, involving 130 randomly selected respondents from both gender and all formal racial categories (African, Coloured, Indian and White). All Respondents were interviewed in courts, bus ranks and shopping malls in Pretoria and Johannesburg;
- Analysing feedback and compiling a gender *Needs Assessment Report*;
- Consolidating the *Draft Gender Budget Assessment Instrument*;
- Applying the *Gender Budget Assessment Instrument* to review the DoJCD Budget and expenditure reports;
- Drafting of Findings; and
- Developing the *Recommendations and Guidelines on Gender Budgeting*.

4. GENDER BUDGET ASSESSMENT GUIDELINES

Gender budget analysis involves:

4.1 General Principles

The general principles include:

- Testing the budget and expenditure for gender impact and implications;
- Identifying resources allocated to, and spent on:
 - Women's programmes;
 - Pro-women programmes; and
 - General programmes and the extent to which women benefited through the spending. This includes inquiring into resources allocated towards equalising women and men's benefit from mainstream services and related budget allocations.
- Measuring budget allocations and expenditure patterns against findings of the *Gender Needs Assessment*, paying attention to women's priorities as identified in the *Gender Needs Assessment*;
- Disaggregating gender in terms of race, disability, socio-economic status and other factors that impact on women's equal enjoyment of all rights, freedoms and related opportunities; and
- Benchmarking Departmental budget and expenditure patterns against government policy pronouncements, international obligations and sectoral best practices on gender.

4.2 Expenditure Clusters to be reviewed

The three areas to examine are:

- Consolidated MTEF Budget of the DoJCD;
- Annual Financial Statements and budgets; and
- Expenditure reports of all the major components, including Courts, NPA, Master's Division, Human Resources, Communication, State Contracts, Legislation, ISM and Research, as well as Constitutional Development.

4.3 Expenditure items to be examined

These include:

- Allocations for items individually and collectively within each of the above three areas;
- Time spent on gender issues;
- Time spent on matters, including law reform and services, used mostly by women. The findings of the *Gender Needs Assessment* should guide this exercise;
- Extent of human and other resources utilised as outputs on matters benefiting each gender; and
- Overall *per capita* expenditure on women and men.

4.4 Tools of Analysis

- Service Usage Statistics (from DoJCD, *Needs Assessment Report*) and other Data Sources;
- National Statistics on women and men's socio-economic profiles;
- Available impact studies; and
- *Gender Budget Analysis Check List*.

5. GENDER BUDGET ASSESSMENT CHECKLIST

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
<p>STEP 1</p> <p>The Budget Process</p>	<ol style="list-style-type: none"> (1) Is the budget process informed by a needs assessment and planning data? (2) Are these disaggregated by gender and intersectional factors such as race? (3) Who participates in the budget process? What is the gender and race breakdown of such participants? (4) Is the budget informed by policy guidelines and if so, do such guidelines mention the need for <i>Gender Mainstreaming</i>? (5) Is the principle of redirecting resources to previously neglected needs or areas in order to promote equality, incorporated in the budgeting guidelines? (6) Is gender placed within departmental priorities for top sliced budgetary allocations? (7) Is the issue of gender and gender targets among the MTEF strategic priorities? (8) Are all Departmental and Component plans, programmes or activities subjected to a gender audit or analysis before, during and after implementation? (9) Is the achievement of equality part of the criteria for budget (mid-term) review and redirection of resources? 	

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
	<p>(10) What is the extent of implementation of planned gender activities?</p>	
<p>STEP 2</p> <p>General Policy Considerations</p>	<p>(1) Are policy and legal compliance critical considerations in Departmental budgeting?</p> <p>(2) Which policies are given priority? Do these include <i>Batho Pele</i> and the White Paper on Transformation of the Public Service?</p> <p>(3) Is compliance with policy and legal frameworks a critical consideration for budget approval?</p> <p>(4) How is policy compliance enforced in the budget process?</p>	
<p>STEP 3</p> <p>Specific Compliance with Gender Policy/Obligations</p>	<p>(1) Are the provisions of the Departmental Gender Policy Statement, National Gender Policy Framework and gender equality obligations in regional and international instruments integrated in policy considerations underpinning the budget?</p> <p>(2) What funding (amount and percentage of total budget) has been allocated towards gender programmes aimed at implementing specific provisions of instruments such as CEDAW, BPA, SADC Addendum on VAW&C, PEPUDA, EEA, NGPF and DGPS?</p> <ul style="list-style-type: none"> • In all Units and components? • Through the work of the GFP? 	

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
	<p>(3) What percentage of the budget is allocated towards gender skill, awareness training and education?</p>	
<p>STEP 4</p> <p>Social Context Analysis</p>	<p>(1) What is the position of women and men to whom Departmental and or Component services are targeted?</p> <p>(2) What differential needs arise from the above?</p> <p>(3) Have such needs been verified through a needs assessment and are the findings integrated in planning data?</p> <p>(4) What amount and percentage of total budget is allocated towards gender disaggregated customer consultation to ascertain specific circumstances and needs of women and men from different races and backgrounds?</p>	
<p>STEP 5</p> <p>Women's Empowerment Programme Allocations</p>	<p>(1) What positive measures or special interventions seeking to advance women to 'level the playing field', have been implemented or planned in respect of:</p> <p>(a) Human resources matters (including Employment Equity, Skills Development and EAP);</p> <p>(b) Service delivery matters in:</p> <ul style="list-style-type: none"> • The courts; • NPA; • Master's; 	

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
	<ul style="list-style-type: none"> • Public Education; • Law reform; • Constitutional Development; and • Other. <p>(c) Procurement; and</p> <p>(d) Black Economic Empowerment.</p> <p>(2) What amount and percentage of Departmental and or Component budget has been allocated towards each of these?</p> <p>(3) What percentage of the total budget does the total allocation towards women empowerment represent?</p> <p>(4) How does this compare to other empowerment programmes if any?</p> <p>(5) Do these programmes, projects or activities feature high in Departmental and or Component priorities as reflected in Strategic Plans, MTEF and Annual Objectives?</p> <p>(6) What policy considerations underpin women empowerment interventions?</p> <p>(7) What has been the outputs and impact of previous women empowerment interventions?</p> <p>(8) What are the anticipated outputs and outcomes of planned interventions?</p>	

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
<p>STEP 6</p> <p>Pro-Women Allocations</p>	<p>(1) What services, programmes or activities that are mainly used by women or contribute significantly to the reduction of gender inequality, have been implemented or planned?</p> <p>(2) Do these include:</p> <ul style="list-style-type: none"> (a) Maintenance; (b) Domestic Violence; (c) Sexual Offenses; (d) Victim Empowerment; (e) Family Court; (f) Public Education; (g) Information Desks and Related Services; (h) Customary Marriages and Deceased Estates; (i) Equality Legislation; (j) Employment Equity; (k) Skills Development; and (l) Human Rights. <p>(3) What amount and percentage of the Departmental and or Component budget has been allocated towards each of these?</p> <p>(4) What percentage of the total budget does the allocation represent?</p> <p>(5) Do these programmes, projects or activities feature highly in Departmental and or Component priorities as reflected in Strategic Plans, MTEF and Annual Objectives?</p> <p>(6) What policy considerations underpin women empowerment interventions?</p> <p>(7) What has been the outputs and impact of previous women empowerment interventions?</p>	

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
	<p>(8) What are the anticipated outputs and outcomes of planned interventions?</p>	
<p>STEP 7</p> <p>Equalising Service Benefits in General Services</p>	<p>(1) What is the <i>per capita</i> expenditure on each service offered under the Departmental and or Component with regard to:</p> <ul style="list-style-type: none"> (a) Service Delivery; (b) Human Resources; and (c) Skills Development. <p>(2) Who (in terms of gender disaggregated by race) currently benefits mostly from each of the key services provided through the budget of the Departmental and or Component, as outlined in the Service Map?</p> <p>(3) What is the <i>per capita</i> expenditure disaggregated by gender and race for:</p> <ul style="list-style-type: none"> (a) Each service; and (b) All services. <p>(4) Has the gap been narrowing over the years? At what rate?</p> <p>(5) What budgetary measures are being employed to identify and narrow gender and other equality gaps?</p> <p>(6) Is the gap likely to narrow, remain constant or widen if current budgetary trends continue?</p> <p>(7) What programmes are in place and how much has been allocated towards each programme, project or activity that has been implemented or</p>	

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
	<p>planned with a view to reducing gender inequality in:</p> <ul style="list-style-type: none"> (a) Services; (b) Employment opportunities and benefits; and (c) Public involvement? <p>(8) Has the above been informed by a needs assessment or gender audit?</p> <p>(9) Are the following areas covered in departmental corrective measures? If so, what are the amounts and what budget percentages, outputs and outcomes are involved in respect of:</p> <ul style="list-style-type: none"> (a) Administration of Deceased Estates; (b) Public Education; (c) Civil Procedure; (d) Small Claims; (e) Administrative Justice; (f) Access to information; and (g) Legal Aid. <p>(10) What policy considerations have informed decisions with regard to mainstreaming gender in general services?</p>	
<p>STEP 8</p> <p>Procurement Equity Measures</p>	<ul style="list-style-type: none"> (1) How much and what percentage of its total budget has the Departmental and or Component spent on procurement in the last three years (state and donor funds)? (2) How many contracts and, of what amounts and nature were involved? (3) What is the gender (disaggregated by race) breakdown of each contract 	

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
	<p>awarded by the Departmental and or Component?</p> <p>(4) What is the gender (disaggregated by race) breakdown of the contracts awarded by the Departmental and or Component?</p> <p>(5) What programmes, projects or activities have been implemented or planned to address systemic inequality and promote gender equality in accessing state contracts and public in private partnerships in the Departmental and or Component?</p> <p>(6) What amount has been allocated to each intervention and what outputs and outcomes are involved?</p> <p>(7) What policy considerations and arrangements underpin the above interventions?</p>	
<p>STEP 9</p> <p>General Considerations</p>	<p>(1) What status is accorded to gender and the general promotion of equality in Departmental dialogue on the budget?</p> <p>(2) Does the budget incorporate a gender impact statement and if so, are issues that emerged as critical concerns in the <i>Gender Needs Assessment Report</i>, given prominence?</p>	

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
	<p>(3) Does gender and related equality issues fair favourably in comparison with other issues in regard to implementation of activities that are planned or budgeted for in MTEF and annual budgets?</p> <p>(4) What are the general gender trends in budgetary behaviour, and what is the likely impact on gender equality in the next five to ten years?</p> <p>(5) What is the role of women at different levels in the budget and expenditure control processes?</p> <p>(6) What is the general level of awareness of the role and power of the budget in addressing systemic gender inequality?</p> <p>(7) What is the extent of leadership commitment to addressing gender imbalances through the budget?</p> <p>(8) What are the key constrains undermining the implementation of gender budgeting?</p>	

Gender Responsive Budgeting Guidelines

6

“It is also in this way that we seek to establish and entrench the understanding among all our people, for all time, that we are building a system of justice that must define its justness by the extent to which it enriches our humanity”

The Honourable Thabo M. Mbeki

*President of South Africa, at the opening
of the new Constitutional Court Building*

**Department of Justice and
Constitutional Development**



Foreword

It gives me great pleasure to release this *Gender Mainstreaming and Gender Budgeting Package*.

I believe that the information in this package will contribute enormously to our efforts around gender transformation through which we seek to comply with the Constitution and our international human rights obligations in terms of CEDAW and related instruments.

In a way the package is based on looking back at what we did or did not do in the last decade with regard to addressing the gender imbalances that we inherited at the dawn of democracy.

The importance of mainstreaming gender in everything we do as a Department cannot be over-emphasised, otherwise we will continue to fail to meet the needs of some of those we seek to serve, especially women from disadvantaged communities. The National Gender Policy Statement states that the implementation of gender equality is first and foremost the responsibility of all the institutions in government. To achieve gender equality the government must embark on a rigorous gender mainstreaming strategy.

I call all members of the justice community to join me and my Department as we implement the *Gender Mainstreaming and Gender Responsive Budgeting* package. I sincerely hope that the lives of women and other disadvantaged groups will be improved as a result.

Ms Brigitte Mabandla, MP
Minister of Justice and Constitutional Development
Pretoria, August 2005

Acknowledgements

The *Gender Mainstreaming Reporting Protocol* is part of the *Gender Mainstreaming* package developed by the Gender Directorate within the Department of Justice and Constitutional Development (hereafter referred to as the Department or DoJCD).

The Gender Directorate is delighted to finally release the *Gender Mainstreaming* and *Gender Responsive Budgeting* package and believes it will assist all role players within the Department, particularly those in leadership positions, to understand the principles of *Gender Mainstreaming* and *Gender Responsive Budgeting*. This will facilitate the integration of gender considerations into all plans, policies and day to day implementation decisions.

The *Gender Mainstreaming* project was inspired by the Directorate's *Needs Assessment* which identified an immediate need to build capacity in the Department for both *Gender Mainstreaming* and *Gender Responsive Budgeting*. The target group for the package includes other role players who contribute to policy development, interpretation and implementation within the DoJCD.

The Directorate hopes that the application of the information and tools in the *Gender Mainstreaming* and *Gender Responsive Budgeting* package will accelerate the elimination of systematic gender discrimination in the Department, and contribute towards the achievement of gender equality in the Department and the society in general.

Sincere gratitude needs to be extended to the Centre for Reconciliation and Equality Studies (CRES)/ Waweth Agency and DoJCD team for their assistance in the research and writing of the *Assessment Report*, and the development of the *Gender Mainstreaming* and *Gender Responsive Budgeting* materials. The following people need special mention:

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Adv Mikatelo Joyce Maluleke

Director Gender Issues, Department of Justice and Constitutional Development
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Key Concepts and Acronyms

Key Concepts

Black Economic Empowerment

Black Economic Empowerment refers to the implementation of measures to advance black people in order to equalise economic opportunities between them and white people.

Black Empowerment

Black empowerment refers to measures that seek to advance black people in order to achieve equality between them and white people.

Disaggregate

Disaggregate means subdivide into constituent parts.

Employment Equity

Employment Equity refers to the process and outcomes relating to the equalisation of and enjoyment of all employment opportunities and benefits, and the ending of gender, racial, disability and other forms of disadvantage and (unfair) discrimination.

Equality

Equality refers to the equal enjoyment of all rights and freedoms. It entails the absence of direct or indirect (unfair) discrimination.

Gender

Gender refers to the power relations between women and men. It is a social construct that assigns roles and worth to each sex based on group culture.

Gender Analysis	A gender analysis or gender equality analysis refers to a systematic process which involves assessing the impact of or likelihood that each decision, policy, law, plan, programme, situation, process or activity will impact differently on women and men because of their diverse socio-economic or physical circumstances, with the effect of prejudicing one gender.
Gender Awareness	Gender awareness refers to the state of being conscious of inequality arising from the power relations between women and men.
Gender Balance	Gender balance refers to an equitable distribution of life's opportunities and resources between women and men.
Gender Bias	Gender Bias refers to any act that advantages or perpetuates an existing advantage of one sex over the other.
Gender Budget	A Gender Budget, also referred to as a <i>Gender Responsive Budget</i> , refers to a budget or expenditure arrangement which is structured in a manner that ensures that women and men benefit equitably from financial resources.
Gender Disaggregated Data	Gender disaggregated data means information subdivided in terms of women and men.
Gender Mainstreaming	<i>Gender Mainstreaming</i> refers to the integration of gender equality considerations in all policy, law, plans, programmes, administrative and financial activities, organisational procedures, processes and decision making, in order to effect profound organisational and ultimately, societal transformation, towards the realisation of <i>de jure</i> and <i>de facto</i> equality between women and men.
Gender Management System	A Gender Management System is a network of structures, mechanisms and processes that are put in place within an organisational framework to facilitate <i>Gender Mainstreaming</i> in pursuit of equality between women and men. (<i>Adapted from Common Wealth Gender Management System Handbook</i>).
Gender Responsive Budgeting	<i>Gender Responsive Budgeting</i> refers to the allocation of financial resources in a manner that not only ensures that women and men benefit equally from all resources but also reduces existing patterns of women's systemic inequality. Gender budgeting is one of the mechanisms of an effective Gender Management System.

National Gender Machinery	National Gender Machinery refers to a network of coordinated structures within and outside government which operate cooperatively in facilitating political, social, economic and other forms of transformation to dismantle systemic gender inequality and promote equality between women and men.
Per Capita	<i>Per capita</i> means the average per person. This is worked out by dividing total cost with the number of actual beneficiaries.
Practical Gender Needs	Practical Gender Needs refers to women's day to day needs that result from their subordinate position in society. Addressing Practical Gender Needs does not challenge or transform structural gender inequality but simply helps women cope better with their present position.
Preferential Procurement	Affirmative action in procurement.
Procurement Equity	Procurement Equity refers to the process and outcomes relating to the equalisation of enjoyment in all procurement opportunities and incorporates affirmative procurement.
Pro-women Programmes	Pro-women programmes refers to services and programmes for everyone but that are most likely to respond to the needs of women, for example domestic violence services.
Sex	Refers to the biological difference between women and men.
Sex Disaggregated	Has the same meaning as gender disaggregated. It means broken down according to women and men.
Strategic Gender Needs	Strategic Gender Needs refers to women's long-term needs relating to fundamental social transformation to end their subordination in society.
Unfair Discrimination	Unfair discrimination refers to the direct or indirect unfair denial of opportunities to or imposition of an undue burden on a person or group, on the basis of their gender, race, disability or some other difference, or combination of differences.
Women's Budget	A women's budget has the same meaning as a gender budget or gender responsive budget. 'Women' is used to emphasise the fact that women are the targeted beneficiaries of the budget reform that is entailed in gender budgeting.

Women Empowerment	Women Empowerment means establishing programmes that exclusively target women as a form of affirmative and positive action to empower them in order to equalise opportunities between women and men.
Women's Equal Access	Promoting women's equal access to mainstream services is about mainstreaming gender into all services to ensure that women and men benefit equitably.

Acronyms

ADR	Alternative Dispute Resolution (also referred to as Informal Dispute Resolution)
BBBEEA	Broad Based Black Economic Empowerment Act
BEE	Black Economic Empowerment
BPA	Beijing Platform for Action
CCMA	Commission for Conciliation, Mediation and Arbitration
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CGE	Commission on Gender Equality
DGPS	Departmental Gender Policy Statement
DOJCD	Department of Justice and Constitutional Development
DVA	Domestic Violence Act
EEA	Employment Equity Act
ERC	Equality Review Committee
GFP	Gender Focal Point or Person
GENMACC	Gender Mainstreaming Advisory and Compliance Committee
IDASA	Institute for Democracy in South Africa
IPOA	Integrated Plan of Action
MAGCOM	Magistrates Commission
MTEC	Medium Term Expenditure Committee
MTEF	Medium Term Expenditure Framework
NGPF	National Gender Policy Framework
OSW	Office on the Status of Women
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
PFMA	Public Finance Management Act
PPPFA	Preferential Procurement Policy Framework Act
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SALRC	South African Law Reform Commission

SMME	Small Medium and Micro Enterprises
UPP	Unfunded Priority Project
VAW	Violence Against Women

Needs Assessment Report

1. INTRODUCTION

The *Gender Responsive Budgeting Guidelines* contained in this book have been developed to assist the Department of Justice and Constitutional Development (herein after referred to as the DoJCD or the Department) to integrate gender considerations into all aspects of the Department's budget processes and programme planning, and at all levels of implementation. The ultimate goal is to make the budget of the Department equally responsive to women and men, as well as girls and boys.

The guidelines follow on from, and seek to address, gender gaps identified during a *Gender Responsive Budget Analysis* of the Department's budget.

The *Gender Responsive Budget Analysis* and the *Gender Responsive Budget Guidelines* are part of an initiative which seeks to strengthen efforts to mainstream gender in all aspects of the Department and related institutions.

The guidelines are premised on:

- The global consensus that has crystallised in the last few years regarding the effectiveness of *Gender Mainstreaming* as a strategy for bringing about meaningful transformation towards equality;
- The substantive notion of equality, which refers to equality in terms of not only the form or appearance of treatment that persons or group of persons may be subjected to, but also to

the outcome of such treatment. This idea of equality underpins the constitutional vision of a new South Africa, as reflected in amongst others, the founding values where it is stated that:

"The republic of South Africa is one sovereign democratic state founded on the following values:

- (a) human dignity, the achievement of equality and the advancement of human rights and freedoms; and*
- (b) Non-racialism and non-sexism."*

- The substantive notion of equality in the Constitution is also reflected in s9(2) thereof, which states:

"Equality includes the full and equal enjoyment of all rights and freedoms. To promote equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination, may be taken"

- The concept of Mainstreaming Gender or Gender Mainstreaming has become central to global strategies for promoting gender equality since its official endorsement at the Beijing Conference, which resulted in the Beijing Declaration and Platform for Action. In the Gender Mainstreaming Guidelines (2004), Gender Mainstreaming is defined as:

"Integrating gender equality considerations in all policy, law, plans, programmes, administrative and financial activities, organisational procedures, processes and decision making in order to effect profound organisational and ultimately, societal transformation towards the realization of de jure and de facto equality between women and men.

In practice, Gender Mainstreaming entails preceding all organisational decisions and activities with a gender equality analysis and implementation of corrective measures to prevent or alleviate prejudicial impact or the likelihood of such prejudice on either gender, and contemporaneously reduce existing disparities between women and men."

- The idea of an effective *Gender Management System* as envisioned in the *National Policy Framework for Women Empowerment and Gender Equality* (National Gender Policy Framework). A *Gender Management System* facilitates effective *Gender Mainstreaming* by providing an enabling environment, structures, mechanisms and processes for mainstreaming gender. Gender budgeting is one of the mechanisms within a *Gender Management System* that anchor an affirming environment for effective *Gender Mainstreaming*, thus accelerating progress towards the achievement of full equality between women and men.

2. WHAT IS GENDER RESPONSIVE BUDGETING?

Gender responsive budgeting refers to the allocation of financial resources in a manner that is equally responsive to the needs and interests of women and men and which ensures that each gender benefits equitably from services delivered through the use of resources.

If we imagined the budget to be a cake, gender budgeting would mean giving women and men equal amounts of the cake. However, this does not mean identical treatment for women and men where their circumstances differ. A Gender Responsive Budget takes into account material differences and deploys resources in a manner that accommodates material differences. In the context of a cake, it may mean giving each gender different amounts of parts of the cake according to their needs, but the sum total of such parts should be of equal value.

Gender budgeting involves preceeding all financial and resource deployment decisions and activities with a gender equality analysis. It means implementing redistributive measures to prevent or alleviate prejudicial impact, or the likelihood of such prejudice, on either gender, to contemporaneously reduce existing disparities between women and men.

The outcome of gender budgeting is gender balanced distribution of resources and benefits. This presupposes that current budgets are gender biased in favour of men and their circumstances. This is a legacy of the fact that public life and public institutions were fashioned by and against men's lives and needs.

Over the years formal laws and policies that (unfairly) discriminated against women with regard to full participation in and benefit from public life, including decision making, have been removed. However, the

accumulated disadvantage which emanates from the social and economic consequences of previously legalised injustice, continues to define the lives of most women. What this means is that in most instances women approach public institutions from a position of disadvantage.

Furthermore, most aspects of public institutions, including those within Justice, have not sufficiently shifted from the historical assumption of the ideal user or beneficiary as an adult male of European descent. This makes the institutions not only *gender biased*, but also racially biased.

The ending of discrimination and achievement of equality accordingly, requires the acknowledgement and accommodation of material difference, and redressing disadvantage. To achieve this a paradigm shift towards an ideal beneficiary/user who is diverse in terms of gender, race, disability and other factors or combination of factors, is necessary.

Although women are the key beneficiaries of a gender responsive budget exercise, the outcome of the exercise brings about benefits for all. Firstly, the exercise ensures targeted budgeting. Secondly, all resources are to be directed at problems identified through service feedbacks and towards clearly defined outputs and outcomes. This is in line with, and accordingly, goes a long way towards taking forward the government's zero budgeting initiative. Ultimately all diverse beneficiaries of public expenditure stand to benefit more realistically in the context of gender budgeting, with no group monopolising the lion's share.

3. WHY GENDER RESPONSIVE BUDGETING?

Gender Responsive Budgeting is a strategy for accelerating institutional transformation to eliminate structural inequality between women and men. Like *Gender Mainstreaming*, upon which it is rooted, gender budgeting involves targeting mainstream budgeting and resource deployment processes, to ensure that women and men are given a fair share of the budget and related resources.

Gender Responsive Budgeting focuses on the entire budget, ensuring that women and men benefit equally from every aspect of the budget and consequent expenditure or resource utilisation, including paid-time for personnel or consultants. It moves from the premise that the current budgets are gender biased in favour of men, and sets about to transform this reality so that both women and men may benefit equally. The result is a gender balanced budget.

Gender Mainstreaming, including *Gender Responsive Budgeting*, has become a mandatory requirement under various international instruments that are binding on South Africa and accordingly, the Department. There are a number of instruments that provide guidance on gender budgeting. This includes the *Beijing Platform for Action* (BPA) and the *Convention on the Elimination of All Forms of Discrimination* (CEDAW). It is also inconceivable that the constitutional vision of a non-sexist South Africa, based on the equal enjoyment by all of all rights and freedoms, can be possible without mainstreaming gender equality considerations into everything.

4. WHO SHOULD APPLY GENDER RESPONSIVE BUDGETTING?

The *Gender Responsive Budgeting Guidelines* are primarily directed at all managers and financial practitioners. However, all personnel should eventually be acquainted with, and required to adhere to the principles underpinning the guidelines.

Gender Responsive Budgeting is the responsibility of all senior managers involved in the budget process or expenditure control. However, since financial planning is primarily in the hands of financial practitioners, particularly those in the Office of the Chief Financial Officer, their involvement is critical.

It is important that people involved in financial planning and control understand the power of budgeting to create or undo inequality. They are strategically placed to use such knowledge effectively, and to redirect resources to redress gender and other historical imbalances. This is required in terms of *Batho Pele*.

It is also an assumption that underlies the constitutional vision on the achievement of equality. The constitutional vision of equality, which incorporates redressing gender and other imbalances, is carried forward in the *Promotion of Equality and Prevention of Unfair Discrimination Act (2000)*, *Employment Equity Act (1998)*, *Broad Based Black Economic Empowerment Act (2003)*, *Preferential Procurement Policy Framework Act (2000)* and related laws.

Since compliance with law and policy is the responsibility of every manager and government employee, gender budgeting, as a means to comply with policy and legal obligations, is a critical part of their responsibilities.

5. HOW IS GENDER RESPONSIVE BUDGETTING IMPLEMENTED?

Various best practices on *Gender Responsive Budgeting* have been developed over the years. At the international level, the Commonwealth has been the main pioneer in this regard. Australia is one of the leading Commonwealth countries that have successfully adopted gender budgeting as a mandatory government policy and standard practice. A number of African countries have joined, including Tanzania and Mauritius.

Closer to home, the Institute for Democracy in South Africa (IDASA), working with various gender specialists and economists, including Debbie Budlender, Renosi Mokate, Neva Maketla and Pregs Govendor, have done extensive pioneer work on the Women's Budget initiative. Over the years, the Women's Budget initiative has developed into a gender budget exercise which has been adopted by various government components, amongst them the Gauteng Provincial Government.

A simplified way of approaching *Gender Budgeting* has emerged from the above and other best practices. This involves dividing the budget into the following:-

- **Women Empowerment or Women's Programmes** refers to special programme funding or preferential measures that exclusively target women to empower them in order to equalise opportunities and access to resources between women and men.
- **Pro-Women Programmes** refers to programme funding or resources that are spent on services or activities that mostly benefit women or actively contribute towards the promotion of gender equality.
- **Ensuring Women's Equal Benefit from General Programmes** refers to the extent to which women and men benefit from resources spent on general services or activities, and action taken to equalize women's benefit from general programmes. This includes inquiring into resources allocated towards equalising women's and men's benefit from mainstream services and related budget allocations.

To conduct the above analysis on the budget and redirect resources to ensure that women receive their fair share of public resources, gender disaggregated beneficiary statistics are required. Furthermore, those involved in financial planning need to have planning data that reflects, amongst other things, current needs in respect of each gender. With regard to women, it is important to distinguish between, and address both, practical gender needs and strategic gender needs.

6. GETTING STARTED

6.1. What do you Need?

An effective gender budgeting exercise has a number of prerequisites.

These include:

- Unwavering leadership commitment to the process;
- Core participation and process ownership by the Office of the Chief Financial Officer and the office responsible for Strategic Planning and Policy Compliance;
- Understanding of Gender Budgeting principles;
- Gender disaggregated beneficiary/user statistics for each key service reflected in the attached Service Map (Annexure A). This must include per capita expenditure per service. To work this out, divide amount spent per service by number of beneficiaries served or intended to be served; and
- Needs of each gender as reflected in results of the most recent Service Feedback Survey Covering External and Internal Customers, and disaggregated by gender, race and other critical categories that coincide with the major social, economic and cultural cleavages in society.

6.2 Conducting the Gender Budgeting Exercise

The following Ten Steps are proposed for implementing gender budgeting effectively:

- Step One** **Issue a Written Statement of Intent** to ensure that every person in the organisation or unit is aware of leadership commitment to and is ready to play a role in the gender responsive budgeting exercise.
- Step Two** **Assign Responsibility** for process coordination.
- Step Three** **Appoint an Intra Departmental Technical Support Team** involving all components falling within the scope of the Department.
- Step Four** **Conduct a policy scan** within which budgeting has to comply. This should look at general policies, including laws and specific gender policies and related international obligations. Prepare a Legal and Policy Compliance Check List at the end of this step.

- Step Five** **Conduct a Social Context Analysis** which involves examining the position of women and men (within and outside the Department), their needs and gender disaggregated data on justice service beneficiaries/users, both targeted and actual users, in the past two years. Data should be disaggregated in terms of intersectional categories such as race, disability, socio economic status and language.
- Step Six** **Audit current budget and expenditure patterns** against policy compliance checklist and social context analysis results.
- Step Seven** **Divide all budgets for services or activities into Women Empowerment, Pro-Women and General Programmes** and indicate figures and the percentage of the budget in respect of each service or activity, as done in the *Gender Responsive Budget Analysis Report*. (Procurement and Employment benefits are also to be covered.)
- Step Eight** **Prepare a Gender Budget Statement** indicating the impact of each budget item (illustrated with rands and cents, as well as gender disaggregated beneficiary statistics) on all women and men from diverse socioeconomic, age and cultural backgrounds. For each planned expenditure the *statement* must indicate the *planned intervention*, intermediate *gender outputs*, intended long-term *gender outcomes or impact*. The *statement* must also indicate budget implications for the intersection of gender, race and HIV/AIDS, disability, age and rural life.
- Step Nine** **Cascade the process to all levels.** This should happen both at the level of inputs for the Departmental Budget, including the Medium Term Expenditure Framework (MTEF), and component budgets. It is important that budgets reflect the unit cost per service, in addition to the broad programme allocations.
- Step Ten** **Enforce compliance strictly.** This includes changing budget and expenditure approval mechanisms to integrate enforcement of gender budgeting commitments.

The following matrix is recommended for presentation of the gender responsive budget statement:

PROGRAMME/ SERVICE	PLANNED INTERVENTION	ALLOCATED AMOUNT	PERCENTAGE OF TOTAL	OUTPUT INDICATORS	IMPACT	STATUS

7. MEASURING SUCCESS

It is important to integrate monitoring and evaluation of gender budgeting into mainstream compliance enforcement mechanisms and mechanisms that track progress. This information includes reporting on and regularly disseminating progress indicators against agreed targets.

The following should also be part of the monitoring and evaluation mechanisms:

- Requiring a gender impact statement as a mandatory feature of every budget or expenditure report;
- Requiring all memoranda or similar documents relating to financial planning or expenditure, to include a gender impact clause; and
- Rewarding performance and sanctioning noncompliance.

8. USEFUL RESOURCES

1. Strategic Framework, DOJCD, 2003
2. Gender Policy Statement, DOJCD, May 1999
3. MTEF Submission, DOJCD, 4 August 2003
4. Presentation (speech) by the Director General of DOJCD, 10 September 2003
5. Vote 22 and 24; MTEF Submission, DOJCD, 2001/2002

6. Service Level Agreement (service contract) between CFO and MD Court Services, DOJCD
7. Project RE AGA BOSWA, Design and Implementation of the Decentralized Court Services Model, DOJCD, December, 2002
Progress to Date, Key Challenges and the Road Ahead, 15 August 2003
8. South Africa's National Policy Framework for Women Empowerment and Gender Equality, The Office of the Status of Women
9. Court Services, Three Year Strategic Plan (2003 to 2005), DOJCD
10. Business Plan, Office of the CFO; DOJCD, May 2003
11. Mid year Strategic Evaluation Report on the Performance of DOJCD
12. Gender Needs Assessment Report, DOJCD, October 2003
13. Annual Report, Legal Aid Board, DOJCD, 2002/3
14. Gender Format, Allocations for Women and Gender Equality, Debbie Budlender
15. Commonwealth Gender Briefs, Commonwealth Secretariat Issue No 9, February 2002
16. Fourth Conference of the International Budget Project, www.internationalbudget.org/conference/mexico.htm. March 10, 2003
17. Commonwealth Gender, [www.thecommonwealth.org/gender/htm/what we do/activities/macro.../budget.htm](http://www.thecommonwealth.org/gender/htm/what_we_do/activities/macro.../budget.htm), September 2003
18. Gender Responsive Budget, UNIFEM, [www.unifem.undp.org/gender budgets](http://www.unifem.undp.org/gender/budgets), October 2001
19. Gender Management System Handbook, Commonwealth Secretariat, June 1999
20. Gender Mainstreaming Implementation Guidelines, DOJCD, April 2003
21. Gender Mainstreaming Reporting Protocol, DOJCD, April 2003
22. The Second Women's Budget, IDASA, 1997
23. Gender Responsive Budget Analysis Report, DOJCD, December 2003