Submission on the Women’s Empowerment and Gender Equality Bill by Tshwaranang Legal Advocacy Centre to end violence against women
16 January 2014

The Portfolio Committee on Women, Youth, Children and People with Disabilities

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Portfolio Committee on Women, Youth, Children and People with Disabilities

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Board of Directors: Ms. Heather van Niekerk (Chairperson), Ms. Sherry Mclean, Ms. Ayanda Mvimbi, Mr. Desmond Lesejane, Ms. Loveday Penn Kekana, Ms. Shireen Motara (Executive Director)

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Contents
1 Introduction.......................................................................................................................... 3
2 Background to our submission............................................................................................ 3
3 Consultation Process............................................................................................................ 5
  3.1 Our Submission.................................................................................................................. 5
  3.2 Our Recommendation on the Consultation Process.......................................................... 6
4 Addressing Women’s Empowerment and Gender Equality in South Africa .................... 6
  4.1 Our Overall Submission on the Bill.................................................................................. 9
    4.1.1 Resourcing the Implementation.................................................................................. 12
  4.2 Our Recommendation on the Overall Focus of the Bill.................................................. 12
5 Our Submission on the Substance of the Bill .................................................................... 16
  5.1 Definitions....................................................................................................................... 17
  5.2 Scope of the Bill............................................................................................................... 17
  5.3 Role of the Gender Machinery......................................................................................... 17
  5.4 Alignment with Other Laws............................................................................................. 17
  5.5 Enforcement of the Legislation......................................................................................... 18
  5.6 “Designated” Bodies........................................................................................................ 18
  5.7 Penalties......................................................................................................................... 18
6 Conclusion............................................................................................................................. 18
  6.1 Overall Recommendation............................................................................................... 18
1 INTRODUCTION

Tshwaranang Legal Advocacy Centre to end violence against women (TLAC) is a non-profit organisation, established in 1996, to promote and defend the rights of women to be free from violence and to have access to quality effective services. We work to improve government accountability on policy/legislative reform and the delivery of services; and increase the awareness of rights and access to justice for women and girls affected by violence. We do this through capacity building, research and advocacy, and impact litigation.

Since its establishment, TLAC has played a key role in driving transformation on a legislative level. In 1997, we were part of the South African Law Commission’s committee for the reviewing of the (then) Prevention of Family Violence Act which resulted in the Domestic Violence Act (DVA), recognised to be a significant improvement in this area of the law. We were also part of the committee that worked with the then Department of Justice to establish the Family Court model. Since then TLAC has, with other organisations, played a key role in driving improvements to sexual offences legislation and the establishment of the sexual offences courts.

Over the years we have built strong and lasting relationships with key stakeholders based on the value we add through our work and experience. On a weekly basis we respond to various calls from different media to respond to queries about recent incidents; to findings of our research; or to contribute to discussions on various issues relating to violence against women and girls. We have been a regular contributor to Parliamentary hearings and discussions relating to our work, and we use this opportunity to drive for change. TLAC is known by many government departments as a centre of expertise in the area of violence against women, and we are called upon to contribute in various fora. Recently, with the Institute for Security Studies, we have been participating in a process facilitated by the Civilian Secretariat for Police to develop the Policing White Paper, which will ultimately result in a new Police Act. This is only one of many such critical platforms where TLAC’s voice has made an important contribution.

We would like to thank the Committee for the opportunity make this submission.

2 BACKGROUND TO OUR SUBMISSION

TLAC believes that legislation that seeks to respond to the structural inequality, especially the marginalised position of women in South Africa is critical. To this end, we have sought to find ways to engage a broader community of women and organisations to create broader
awareness about the **Women Empowerment and Gender Equality (WEGE) Bill** and to obtain feedback from a broad range of stakeholders.

TLAC, in partnership with the Community Law Centre (UWC), the Women’s Legal Centre, and Sonke Gender Justice facilitate two workshops in Johannesburg and Cape Town with organisations and individuals representing at least six provinces, and including community based organisations. The focus of these workshops was to share information on the Bill, update stakeholders on the process and to obtain input on the Bill. The list of organisations that attended the workshop is listed below:

### Participants at the JHB and Cape Town Workshops

Cherith Sanger and Katy Hindle, Sonke Gender Justice; Shireen Motara and Welekazi Stofile, Tshwaranang Legal Advocacy Centre, Mcloud Zitshu, VMTEC, Bongiwe Zondi, Justice and Women; Jeanette Makae, Thusanang Advice Centre; Willene Holness, UKZN; Leigh-Ann van der Merwe, Social, Health and Empowerment feminist collective of transgender and intersex women of Africa (SHE); Yasmin Rajah, Refugee Social Services; Jeanne Prinsloo, Rhodes University; Arun Naicker, Umtapo Centre; Lisa Vetten, Independent; Tsakane Bok, Embassy of Finland; Buyi Makhubela, Teddy Bear Clinic; Kgomotso Mokaba and Wendy Issak, Center for Applied Legal Studies; Nondumiso Sibande, People Opposing Woman Abuse; Nick Van Rooyen, UASA; Evan; Inarine Tshikovhi, Thohoyandou Victim Empowerment Programme; Pravisha Dhanaspalan, Lifeline Durban; Daniel Moerane, Lethabong Advice Office; Zamangwe Zwane and Doreen Kotsedi, Johannesburg Society for the Blind; Liesl Reehbock, SAOU; Pam Crowsley, Gun Free SA; Rubeena Partab, UKZN; Sikhathilele Nkala, CSVR; Amanda Gouws, CGE; Ayanda Denge, SWEAT/Sisonke; Bintou Barrow and Nada Barq, Parliamentary Monitoring Group; Charlene May and Sarah-Jane Frith, Legal Resources Centre; Cheryl Morilly, Lifeline/Childline Western Cape; Danielle Coleman, SWEAT/RADFEM; Genine Josias, Simelela; Glenise Levendal, Oxfam; Ingrid Lynch, Triangle Project; Jennifer Williams, Women’s Legal Centre; Joy Watson, Parliamentary Research Unit; Kodwa Tyiso and Michelle Festus, Actionaid South Africa; Lucy Harding, Centre for Applied HR, University of York; Mary Hames, UWC Gender Equity Unit; Matipa Mwamuka, Anex CDW; Monica de Souza and Thuto Thipe, Centre for Law and Society, UCT, Centre for Law and Society, UCT; Nonhlanhla Chanza, Law Society of South Africa; Olivia Bliss; Samantha Waterhouse, Community Law Centre, UWC; Shabashni Moodley, UKZN; Tabeth Masengu, Democratic Governance and Rights Unit, UCT; Violet Adonis, South African Faith and Family Institute; Vivien Mentor, Shukumisa.
In addition, we conducted a snap online survey to gauge women’s awareness of the Bill and their views on whether the Bill is necessary; and what it will need to address in order to support women’s empowerment and gender equality. A full copy of the survey report is attached separately for the Committee’s information.

Our submission is therefore informed by the feedback from these processes as well as our experience of working in the field of violence against women and girls for over 16 years.

3 CONSULTATION PROCESS

3.1 Our Submission

The WEGE Bill seeks to address and respond to the significant inequality that pervades South Africa, and which despite 20 years of democracy, sees women continue be second class marginalised citizens. The ambit of the Bill is far reaching and attempts to cover a wide range of sectors which promotes women empowerment and gender equality across the four corners of the country. It will have an effect on each and every woman and girl, as well as men, boys and the broader society.

We do acknowledge that there has been a call for submissions from the Committee and that there has also been an additional call for submissions. In addition, the Committee acceded to our request to extend the date for submissions – which we are very grateful for. However, our biggest concern with the process is that we believe that it has not been widely consulted with women across the country, from all spheres of life and geographical areas. This has a significant impact on what is covered in the Bill and how responsive it is to the real practical and strategic needs of women. Our worry is that should the Bill not be widely consulted, it may not respond effectively to the key challenges and will essentially become a “white elephant” which may ultimately do more harm than good.

In the survey we asked participants whether they knew about the Bill. It was encouraging that close to 70% had heard about the Bill. The biggest source of information was NGOs, followed by the media and social media. Only about 4% heard about the legislation from government, which is a concern bearing in mind that these participants are likely to have more access to information than women in rural areas for example.
3.2 **Our Recommendation on the Consultation Process**

Due to the far reaching implications of this legislation, we would like to recommend that a much broader consultation process be embarked upon across the country to effectively engage women and girls on what they believe the Bill should address. This should be a priority. We also believe that it is important to consult different sectors that are likely to be “designated” in terms of the Bill, to understand their views and ensure that the Bill addresses the obstacles that may emerge. The implementation of the Employment Equity (EE) Act has shown that employers find ways to circumvent the legislation because they do not take the transformation imperative seriously. Despite the EE Act being operational since 1998, black women in the workplace have yet to benefit from it.

4 **ADDRESSING WOMEN’S EMPOWERMENT AND GENDER EQUALITY IN SOUTH AFRICA**

This year we celebrate 20 years of democracy in South Africa. This is a remarkable achievement considering our historical circumstances. During these 20 years we have seen extensive work done on transforming the legislative environment to align to our Constitution and human rights based framework. Key pieces of legislation which have sought to respond to gender inequality and the protection of women’s rights include the Domestic Violence Act,
sexual offences legislation and courts, as well as the Employment Equity Act. On the socio-
economic front various pieces of legislation has sought to respond to poverty and the
structural inequality that characterised our country.

However, while the legislative framework has been good, implementation has fallen far short
in many areas especially in addressing and responding to women’s unequal position in society
and the rampant violence against women and girls. This has taught us that changing the
legislative framework is only one part of transforming a society, and if we do not address
sexist and misogynist behaviours and social norms; accountability of implementers and the
provision of resources - We will fail. This should be top of mind when we are dealing with the
WEGE Bill.

There have been various measures put in place to address the seriously disadvantaged
position of women, yet few have succeeded. We are internationally recognised for our
extensive gender machinery which includes the Ministry for Women, Children, Youth and
People with Disabilities, the Commission for Gender Equality and gender focal points in
government. Yet the extent to which these have brought substantive improvement to the
plight of women is questionable. Lack or role clarity, lack of co-operation amongst gender
machinery, and lack of resources has resulted in a disparate system. Instead of an integrated
and responsive machinery we have disparate entities that are proving to be ineffective. Our
concern is that the WEGE Bill may not resolve this.

When we are asked survey participants if they believed that government is responding to
their challenges, they overwhelmingly said “no” (see below). This is very concerning because
it points to the fact that despite a great of initiatives on the part of government to act, these
are not having the desired effect.
The reasons given for this in the survey are as follows:  

<table>
<thead>
<tr>
<th>Govt creates the legal and regulatory environment but implementation of laws is flawed. Responsible implementers are not well versed in the law and as a result are not effective which still leaves women vulnerable.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women and children are still abused everyday.</td>
</tr>
<tr>
<td>My safety and security concerns relate to poverty and inequality as I am victim of crime for the resources that I have acquired.</td>
</tr>
<tr>
<td>Despite having studied very hard to obtain tertiary education, employment opportunities in the Eastern Cape are extremely limited. One has to settle for extremely low salaries compared to others with similar qualifications. This negatively affects one's ability to rent or own a house, send one's children to the best schools, etc.</td>
</tr>
<tr>
<td>I think they are trying. There are a number of avenues I’ve explored but gaining access to the funds I need requires jumping through hoops and hurdles I cannot conquer as yet.</td>
</tr>
<tr>
<td>Reported crime and complaints to police or social workers etc. are not followed up to the end and most government</td>
</tr>
</tbody>
</table>

1 Please note that comments across this document were not edited at all and are the direct comments from survey participants.
officials appear to lack passion and knowledge to assist complainants/victims
if anything, the government is just adding to the gender imbalances and patriarchy in our country
If the GVT were interested in women - there would be a decrease in violence against women and children. The current president is not a good example for men in South Africa.
opportunities are accessible to those who are in the ANC government. information is not shared among all women.
Only focuses once a year on violence against woman
To some extent as there are policies in place that address the above issues. What lack is the monitoring in terms of appropriate implementation.
Too many peoples’ social and economic conditions are not changing
Lack of funding or insufficient funds being provided to NGO’s
What are they gonna do for me as a single parent, and big corporates are the reasons for small businesses failing
lack of improvement or changes
for one, the office that i work at is not conducive for people to work in. e.g. No windows
some of the labour law does not cater for all and when implementing the laws it goes only to a select few

4.1 Our Overall Submission on the Bill

Based on what we have highlighted above, our view is that any legislation seeking to address women’s empowerment and gender equality must fundamentally address structural
inequality pervasive across our country and entrenched in our services, systems and structures. It must focus on the reasons why women continue to be marginalise and discriminated against. It must also interrogate how patriarchy has permeated our psyche, and how this is played out in employment practices, access to economic resources and access to justice. Without this analysis to understand and respond to the underlying, often overlooked causes, the Bill will just be another piece of legislative paper that promises but does not deliver.

In the survey we asked participants, what the biggest challenges are they face as women and girls. These were their responses:
The question then becomes to what extent is the WEGE Bill responding to these concerns? If this question is to be asked to women who are unemployed and in rural areas, it is likely that issues of poverty will be significant. What the information above illustrates is that lack of...
access to economic resources in various forms – housing, employment, low income jobs, single parenting – remain the key denominator for the vast majority of women irrespective of their education, employment and geographic status.

4.1.1 Resourcing the Implementation

If the Bill is to be successfully implemented, it will require extensive financial resources. It is not clear from the current Bill how this will happen. One need only look at legislation such as the Domestic Violence and Sexual Offences Act to understand that a lack of resources can deny women access to justice and services.

4.2 Our Recommendation on the Overall Focus of the Bill

Our survey has shown that the vast majority of participants (96%) believe the Bill is necessary for the following reasons:

| It will enable women to know about their rights |
| South Africa is a patriarchal country and men continue to be regarded as the supreme heads of society. The value of the contributions women make are underestimated and often disregarded. If all are equal in terms of the Constitution, then why is this still the scenario in South Africa? Measurements that are enforceable i.e. Law, is required to give the much needed impetus to move toward true gender equality. |
| Because women are far from equal - our society still wallows gleefully in hateful patriarchy and misogyny. |
| It will assist to hold government accountable and improve the lives of women and girl-children |
| it is necessary, to bring about a more balanced society, but our country lacks in implementation and so all the laws and |
policies in the world is not going to make any difference, until the societies we live in change their attitudes and beliefs about gender.

legislation could with adequate monitoring and structures to implement programmes to address inequities and redress issues of social equity.

It’s going to create better opportunities for women.

To ensure compliance by corporates.

Yes; there are various pieces of legislation that addresses part of what relates to Gender Base violence but not Bill that address this issue in particular for its totality.

There is still a great need to empower women in our patriarchal society which does not address equal rights for women.

To prevent discrimination against women so that people can know their rights and know what is expected of them.

I don’t know the details of the bill.

everyone has rights and responsibilities.

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and we all deserve to be treated with dignity

That being said, our view and the view of many women are that just having the legislation in place is ineffective. Especially in the case of responding to structural and pervasive gender inequality. Survey respondents believe the law should focus on:

| It should focus on the community at large both the victims and the perpetrators |
| create better conditions for women e.g. opening more education opportunities in education |
| Addressing multiple experiences including the intersection of class, race, sexuality etc. with gender |
| Child maintenance cases that are never resolved, fathers get away without paying for years |
| Equal, irrefutable rights to health and education regardless of gender. The abolition of practices that are harmful to the emotional well-being of both males and females and where these are culturally requirements, they should be strictly regulated and monitored. |
| The real protection of women and girls from gender based and domestic violence. In addition to the ending of poverty amongst this demographic |
| Transformation of the gender landscape equitably |
| Equal status of women in workplace and before the law |
| It should focus on holding all stakeholders responsible |
| and look at qualitative change rather |

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<table>
<thead>
<tr>
<th>Common issue</th>
<th>Action</th>
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<tbody>
<tr>
<td>Education on various Human Rights matters, access to Academics and career driven skills training, arts, sports and culture support as well as the support of income generating projects</td>
<td>hire people w best experience for the job</td>
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<tr>
<td>equal pay for equal work</td>
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<tr>
<td>scrap the talk about the traditional leaders’ bill.</td>
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<tr>
<td>put more money into solving the atrocious justice system</td>
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<tr>
<td>getting the education system organised</td>
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<tr>
<td>Economic equality, safety and social security</td>
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<tr>
<td>Women equity</td>
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<tr>
<td>Empowering women in the workplace and in business</td>
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<tr>
<td>Equality in senior management and the work place</td>
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<tr>
<td>Girl Child; Boy Child; Women Empowerment &amp; Gender based violence.</td>
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<tr>
<td>Equality, protection and economic and social advancement of women</td>
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<tr>
<td>This law should focus on the actual operationalising of the policy. It states on what needs to be done but not actually how it should be done.</td>
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<tr>
<td>Skills development for women and sustainability</td>
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<tr>
<td>Cohabitation - it disadvantages a lot of</td>
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</table>

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women when the partners die

Registration of Customary Marriages

Addressing barriers to gender equality; gender-based violence, including violence based on sexual orientation and/or gender identity

Empowering women in the work place. Considering that most homes are headed by single females this bill should give this group more support and enforce where necessary. Better schools for our kids closer to where we live.

Equality in opportunities and salaries.

Once again, addressing employment discrimination and effective access to economic resources are major concerns. Similarly, workshop participants also identified lack of access to economic opportunities and overcoming poverty to be key issues to be addressed.

Overall, we are of the view that the Bill should do more to challenge, interrogate and respond to the system of entrenched patriarchy, and must strive for substantive equality. We are concerned that the current approach by the Bill is ad hoc, and does not respond to the intersectional and multiple forms of discrimination. Significantly, it does not consider the practical and strategic needs of women; and if it is to be effective it must start with understanding and responding to women’s plight on the ground.

We are concerned that with the significant socio-economic priorities facing government and the lack of resources to address these, there may not be sufficient resources to support the implementation of the legislation. Our recommendation is that possible resourcing opportunities and avenues be explored before passing the Act, to ensure that there is an alignment between the two. We would rather have the Act focusing on addressing two or three significant issues which can be resourced, than having a shopping list with no funding to drive it.

5 Our Submission on the Substance of the Bill

Whilst we are concerned with the fundamental approach of the Bill, we do recognise that there are elements of it which are useful and do deal with key challenges that perpetuate gender inequality. These include access to education and training and economic
empowerment. However we do have some serious concerns about certain provisions or lack of it in the Bill itself. These include:

5.1 Definitions

We are concerned that many of the definitions in the Bill are weak, unclear and seem contrary to the promotion of women empowerment and gender equality. These must be addressed if the legislation is to be effective. These include terms like gender mainstreaming, and gender.

5.2 Scope of the Bill

Women’s inequality and disempowerment is underpinned and fuelled by a patriarchal system, structural inequality and the lack of a political and social commitment to addressing sexism and discrimination. While the Bill focuses on addressing some key challenges, our concern is that it does not start with an analysis of the deep seated reasons for gender inequality and as a result does not respond to this. In addition, while the Bill addresses some key concerns such as education, access to economic opportunities, women in rural areas, and women with disabilities, the approach and substance is flawed/weak and will not result in any meaningful difference. As previously mentioned, the Bill also fails to address the wide ambit of sectors/areas which create/perpetuate/drive inequality and disempowerment. Significantly, the Bill does not challenge and respond substantively to addressing religious, cultural and traditional practices that drive and sustain women’s status as second class citizens, and are in fact contrary to our broader human rights principles as a country.

5.3 Role of the Gender Machinery

This Bill may have implications for all gender machinery. Yet there is no clarity on what role different entities will have and how co-operation will work to ensure compliance. Our earlier concerns about the challenges with the gender machinery remain and there is a need to address this. This includes the role and responsibilities of the Ministry for Women, Children, Youth and People with Disabilities.

5.4 Alignment with Other Laws

The Bill makes reference to a broad scope of Acts/legislation which will need to be aligned. However, how this will happen is missing. Has there been an analysis of all the affected pieces of legislation to understand how it relates to this Bill and may affect its implementation? Furthermore, there is little or no analysis of international obligations and how the Bill will ensure compliance with these.
5.5 **Enforcement of the Legislation**

The Bill in its current form uses the language of “may” which concerns us. Experience with legislation that seeks to address inequality has shown that commitment to implementation is weak across the board. If we use the language that gives options, the legislation will be doomed to failure. We suggest that “may” be replaced with “must” to create and support accountability and transformational change.

5.6 **“Designated” Bodies**

The Bill makes reference to the fact that Minister will designate which public and private bodies should comply with the Act. Our concern with this is that this provision is vague, and provides no clarity of what the criteria will be for this designation. Gender inequality is pervasive across all sectors of society, how will we ensure compliance with the Act if this is unclear. What is also unclear is whether this will happen once or from time to time? A key concern for us is that there is no recognition of the role of government as being the driver of social and transformational change, and how government will be held accountable to realise the rights of equality and non-discrimination enshrined in the Constitution. Furthermore, we feel this approach may omit many sectors that play a key role in supporting or entrenching inequality. These include private sector employers, unions, the media and political parties.

5.7 **Penalties**

The previous version of the Bill provided for Offences and Penalties. This has now been removed, which begs the question of how compliance with the legislation will be ensured. If there are no consequences for non-compliance or sexist/misogynist practices, what is the value of this legislation?

6 **Conclusion**

We would like to thank the Committee for providing us with this opportunity to provide input on the WEGE Bill. We believe that this type of legislation is necessary, however, in its current form it is likely to do more harm than good.

6.1 **Overall Recommendation**

Our overall recommendation is that the Bill in its current state should be scrapped, save for some of the good elements. A wide consultation process with women and girls
across the country, in different geographies and sectors, must be the starting point. Other stakeholders must able consulted to understand what the barriers and areas of resistance are. There must also be a substantive analysis of what is in place, and what is working and not working. Then only can work happen on drafting a new piece of legislation. We would like to support the work on the Bill, and will make ourselves available to support its development.

We conclude with the response from the survey participants on how they think South Africa as a country should address women’s empowerment and gender equality:

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<tr>
<th>Through awareness campaign, training and education</th>
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<tr>
<td>bring all stakeholders together</td>
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<tr>
<td>At the individual, social and structural levels in a way that is holistic and respectful of multiple experiences</td>
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<tr>
<td>Have separate courts for women and give attention to women issues</td>
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<td>Enforceable laws and offer incentives to entities demonstrating efforts to becoming more gender sensitive and operating from the gender equality paradigm</td>
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<tr>
<td>to more involved, representative and enforceful</td>
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<tr>
<td>Targeted education. Support for independent organisations and individuals trying to share skills and knowledge. Greater focus on poverty reduction</td>
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<tr>
<td>Education, economic empowerment and</td>
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<table>
<thead>
<tr>
<th>safety &amp; security measures</th>
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</thead>
<tbody>
<tr>
<td>Yes. SA needs it because women are vulnerable and seen as targets. Too often</td>
<td></td>
</tr>
<tr>
<td>We should be talking about equity rather than equality.</td>
<td></td>
</tr>
<tr>
<td>Budgets must be allocated to programmes.</td>
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<tr>
<td>Programmes must be situated where there is power to act and emancipate men and women</td>
<td></td>
</tr>
<tr>
<td>Ensure that facilities, infrastructure and resources to implement the bill are available to local/grassroots government stake-holders/departments and civil society organisations. Training of government officials on the various equality bills must be conducted.</td>
<td></td>
</tr>
<tr>
<td>changing attitudes of individuals from the top and at a grassroots level</td>
<td></td>
</tr>
<tr>
<td>hire people w best experience for the job</td>
<td></td>
</tr>
<tr>
<td>equal pay for equal work</td>
<td></td>
</tr>
<tr>
<td>Remove Zuma as his views on women as participants in any contractual relationship is flawed. no need to have a special dept if the constitutional rights of all women and children are recognised and implemented. stop token gestures and get a better role model for S.A. than Zuma.</td>
<td></td>
</tr>
<tr>
<td>Legislation, education and social security programmes that are public private partnerships.</td>
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<tr>
<td>By ensuring the translation of women equality legislation into the lived experiences of the vast majority of rural women's lives</td>
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<tr>
<td>By engaging women's organisations</td>
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</table>

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Legislature

Through partnership programmes with NGO’s & private sector

By having legislation and support existing and creating programmes that enhance women’s empowerment and gender equality. By having a justice system that supports women better and ensures a solid justice system for all women and gender based violence

Firstly to speak to the beneficiaries themselves.

Skills development and knowledge sharing (education)

By doing regular Public educations, this should be done at conducive times.

The laws are there or are being developed - problem is in the implementation. The police need to be sensitised and trained better and the criminal justice system needs to be more effective and efficient.

Granting more access to women as they tend to be more breadwinners than men.

It starts with more women in Parliament, lots of consultation with affected communities. Empowering women who are raising future leaders seems logical to me if we want to lead Africa.

By involving more women in decision making processes and positions. Allowing all qualified people no matter which gender or creeds

Focused awareness rasping of the challenges and implement programmes to
Board of Directors: Ms. Heather van Niekerk (Chairperson), Ms. Sherry Mclean, Ms. Ayanda Mvimbi, Mr. Desmond Lesejane, Ms. Loveday Penn Kekana, Ms. Shireen Motara (Executive Director)

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