

SUBMISSION:
“GENDER POLICY CONSIDERATIONS”
(DEPARTMENT OF JUSTICE)

**Compiled by: The Women and Human Rights Project,
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1. Introduction

The Women and Human Rights Project at the Community Law Centre commends the Department of Justice on its initiatives in promoting gender equality both within Department and more broadly. It further commends the Department on the process it has adopted and more specifically, the consultative way in which it has sought to develop its gender policy which is sure to result in a gender policy that is truly reflective of the needs, dynamics and perspectives within the South African context.

In contributing to this process, this submission will focus on certain broad concerns as regards the Gender Policy as well as certain specific issues that are contained within the document. However, it must be noted at the outset, that this submission does, by no means provide a comprehensive critique of the Gender Policy Document. Instead, it focuses on certain broad issues that are applicable to the entire policy and are considered to be highly problematic and certain specific issues that are within the expertise of the writer.

2. Mainstreaming Gender Issues

Whilst the recognition accorded to gender issues by the Department is laudable, the Gender Policy Document gives rise to certain concerns as to exactly where the policy is located within the broader framework of the Department. The Document notes that the policy "has been formulated using the framework of Justice Vision 2 000 Draft Strategic Plan to allow it to be integrated directly into Department planning." (Para 1.1.) The mention of "integration" immediately gives rise to concerns as to why the gender policy concerns were not, in the first place incorporated into Justice Vision 2000 which would in and of itself ensured an integrated approach to gender issues within the broader framework of departmental planning. Our recommendation in this regard would accordingly call for an integration of these gender issues into the Justice Vision 2000 mainstream, as opposed to having critical policy dealing with gender issues being ghettoized in the form of a separate policy document.

3. Budgetary Considerations

The Gender Policy Document speaks to numerous structures as well as measures that should exist to address issues of gender. Whilst both the suggested structures and measures are laudable, they give rise to some serious concerns regarding their practical implementation. For instance, the Document makes reference to the establishment of a National Women's Justice Programme and a National Women's Leadership Development Programme, but, in no way acknowledges the resources implications of such structures. In terms of proposed measures, it calls for improved facilities at courts for instance, but again fails to link the practical implementation of such measures to the resource constraints that the Department is operating within. The question of resources becomes increasingly pertinent in view of the current budgetary constraints that a state institution created by the Constitution, like the Commission on Gender Equality faces.

It is strongly argued that a policy document that fails to take account of the resource implications cannot be implemented and accordingly stands the danger of placing in jeopardy the integrity of the entire Departmental policy. In short, it is argued that a well-intended policy document that is not linked to the available resources within the Department can be reduced to the status of a mere “wish list” with little or no effect in advancing gender equality within the Department or more broadly. It stands the added problem of creating false hope and expectations amongst members of the public as what they can expect from the Department as regards issues of gender.

4. Interaction Between the Various Bodies Dealing with Gender Equality

Whilst the Gender Policy Document briefly notes that the National Women’s Justice Programme must work closely with the Office on the Status of Women and the Gender Commission, it provides for no concrete mechanisms to clearly delineate the functions of the National Women’s Justice Programme and the National Women’s Leadership Programme in relation to those of the Office on the Status of Women and the Commission for Gender Equality and exactly how each of these bodies work and operate with each other, bar vague references to the fact that they should work together. It is strongly suggested that in order for optimal use of these bodies to be made, the Gender Policy Document should provide for a comprehensive list of the duties, powers and functions envisaged for the bodies that it creates as well as for concrete measures as to how these duties, powers and functions will be carried out in relation to the other existing bodies and to how necessary links between the various bodies will be established. Express reference should further be made to the status of these bodies and whether they will operate as independent bodies or whether the Gender Directorate within the Department will assume responsibility for their overall co-ordination.

For instance, whilst it notes that the National Women’s Justice Programme is to be established within the Gender Directorate of the Department of Justice and that it has certain functions with regard to legal information, advice and representation, (Para 5.3.2.) it fails at any point to expressly note in a comprehensive way, the broader functions, duties and powers of such bodies.

5. Specific Suggestions:

5.1. Guiding Principles of Gender Policy - Para 3.1.

In defining the guiding principles of gender policy, the Document makes reference to the Constitution and, more specifically, the right to equality. However, it fails to make any reference to the constitutional right to freedom from violence from both public and private sources as is enshrined in Section 12 (1)(c) of the Constitution. In view of the prevalence of violence against women in South African society as well as its significant impact on their productivity in the workplace, it is strongly suggested that the Document make express reference to the constitutional right of freedom from violence.

5.2. National Gender Machinery - Para 3.5

As has been noted, although the Document makes reference to the need to establish close links with the Office on the Status of Women and the Commission for Gender Equality, it fails to make any concrete suggestions as to how such links are to be established, exactly who is to play the leading role in facilitating such links, what are the functions of other bodies in relation to the duties, powers and functions being undertaken by these bodies and exactly how these bodies are to work together to complement the work of each other.

5.3. Mission Statement - Para 4.2.

It is strongly suggested that in order to adequately take account of women's lives in South Africa, the actual socio economic circumstances that they are living within as well as measures to address these circumstances should be reflected in the Mission Statement. It is accordingly suggested that the Mission Statement make express reference to ensuring *substantive equality* for men and women.

5.4. Human Resource Development and Management - Para 4.3.

Whilst the goals and strategies suggested are laudable, they give rise to serious problems as regards their actual implementation. Again many of the goals and strategies are not linked to the critical issues of resources and capacity. Furthermore, the strategies suggested fail to reflect concrete measures, that can be implemented so as to ensure the goals outlined can become a reality.

Finally, in some cases there lacks a systematic follow on from the problems identified to the goals and ultimately the strategies adopted. For example, there is a goal to establish child care facilities for staff but, in terms of the strategies, it "must investigate the feasibility of child care facilities for staff". The Document further fails to make reference to exactly who bears the responsibility of fulfilling many of the strategies.

5.5. Women's Leadership Development Programme - Para 4.3.4. C

The section speaks to the need for capacity building and training but, fails to provide any concrete suggestions and to how this can be achieved, bar the initiation of the Women's Leadership Development Programme. It defines the functions of the Programme as "to monitor and evaluate the progress of women in the Department." Creating a programme such as this with functions that are outlined in such a superficial way is considered to be highly problematic. Again issues of funding, who bears the responsibility, exactly who will be involved and what are the expected outcomes are sadly lacking in content. It is strongly suggested that the creation of an additional programme whose functions and powers are defined so vaguely is bound to have little effect in promoting gender equality.

5.6. Establishment and Updating of Information Systems and Technology - Para 4.3.5.

Whilst there is a critical need for updated information systems and technology pertaining to gender, equally important is that its establishment take place in a co-ordinated and systematic way. The Gender Policy Document provides in very abstract terms that NGO's, CBO's, researchers and the private sector will play a role in the collection and co-ordination of such information. It fails however, to provide for exactly who bears the overall responsibility for the co-ordination such information, how such information will be gathered, which are the NGO's and CBO's that will be targeted and other such critical issues. It further takes for granted that NGO's and CBO's have the capacity and resources to participate in this process and fails to provide for alternatives should NGO's and CBO's not have the capacity to do so. Finally, the section seems to operate in a vacuum in the sense that it make no reference to current initiatives with a similar purpose and as such fails to speak of possible collaboration with existing initiatives. In so doing, the Document seems to undermine the problems inherent with the potential duplication of such information.

5.7. Develop Positive Relations with the Community - Para 4.4.1.

The Gender Policy Document speaks to the need for the Department to develop positive relations with the community but, fails to provide for any concrete strategies as to exactly how this can be achieved. Within the section, it goes on to speak of an audit of NGO's and CBO's working in the field of gender and justice, creating a misconception that such an audit is the sole requirement for developing such positive relations. Furthermore, in the compilation of such an audit, it fails to speak of any collaboration with current initiatives. Although there are various similar initiatives being undertaken by NGO's and Networks within the country, the Document makes no provision for collaboration.

The Gender Policy Document further speaks to a pamphlet dealing with the work of the Department and gender issues. Again, it takes for granted that it can do this in partnership with NGO's and that NGO's in fact, have the capacity and resources for such initiatives. It also fails to speak to the issue of capacity and resources for such an initiative. The issues of resources and capacity similarly does not feature in the context of community education which the section also deals with.

5.8. Legal Information, Advice and Representation - Para 5.3.

In outlining the problems associated with these issues, the Gender Policy Document fails to acknowledge the socio economic circumstances of women which often precludes them from gaining access to legal information, advice and representation.

In speaking to strategies to address the problems outlined, the Document recommends support for CBO's. However, in providing such support, it again fails to take account of the resource constraints that the

Department is working within and whether *realistically*, these limited resources would allow for financial support to CBO's. In light of the superficial understanding of the resources available, the Document further create false expectations and hopes from CBO's on the kind of assistance they can realistically expect from the Department.

The Document further speaks to facilitating the establishment of legal services for women in rural communities with no indication of what the available budget for such initiatives is or to how exactly it will, in the short term prioritize the geographical areas for such legal services.

Comments made earlier on as regards an audit of services available are also applicable to the present section.

5.9. Violence Against Women - Para 5.6.1

In dealing with the prevalent issue of violence against women, the Document once more fails to make reference to or to link any of its recommendations to existing initiatives such as the National Crime Prevention Strategy where violence against women has been enlisted as a priority crime. It provides no indication as to what the ramifications of violence against women as a priority crime for the Department are.

The Document goes on to deal with certain substantive issues on violence against women in a fairly *ad hoc* way that creates the false impression that in dealing with violence against women, the issues mentioned within the Gender Policy Document are the only ones that are of any relevance.

5.10 Anti Discrimination Legislation - Para 5.7.2.

The Document provides that research *should* be undertaken regarding the development of anti discrimination legislation. However, in terms of the Constitution, anti discrimination legislation *must* be undertaken and in view of this constitutional obligation, it is strongly suggested that some degree of priority should be accorded to the formulation of such legislation. This process should also try and feed into current research initiatives on the issue that are being undertaken by NGO's.

5.11. Relationship With National Network on Violence Against Women - Para 6.3

The Gender Policy Document provides that the Department of Justice must "help ensure that this body is adequately resourced to fulfill its charter". Again, undertakings of this sort are highly problematic in that they fail to take account of resource constraints within the Department and accordingly create an expectation by the Network that it can expect the resources necessary for it to fulfill its mandate from the Department.

6. Conclusion

In conclusion, it is strongly suggested that in view of the resource constraints that the Department is working within that it adopt a set of priorities that are within the available resources of the Department and as such can be implemented. In so doing, it is further recommended that the available budget inform the priorities as opposed to developing a policy under the false assumption that resources will be made available for its implementation. In outlining a list a priorities, it is finally suggested that concrete strategies and mechanisms to ensure their implementation as well as realistic time frames are thoroughly examined and provided for in such policy after consultation with members of civil society. Finally, it is strongly suggested that the Department engage in collaborative initiatives with relevant Organizations where possible.

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