



# Convention on the Elimination of All Forms of Discrimination against Women

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**Committee on the Elimination of Discrimination  
against Women**

**Pre-session working group**  
**Forty-eighth session**  
17 January-4 February 2011

**Responses to the list of issues and questions with regard to the  
consideration of the combined second, third and fourth periodic  
reports**

**South Africa\*** \*\*

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\* This document was submitted late due to delayed inputs from other sources.

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## **1. Introduction**

1. This report seeks to provide a set of specific responses to the questions raised by the United Nations Committee on the Elimination of All Forms of Discrimination against Women members in their pre-session working group consideration (CEDAW/C/ZAF/Q/4) of the South African combined second, third and fourth periodic reports to the Committee on the progress made in the implementation of the Convention for the period 1998-2008 (CEDAW/C/ZAF/2-4) for consideration during the forty-eighth session of the Committee to be held from 17 January to 4 February 2011 in Geneva.

2. While the South African periodic report which was submitted in January 2009 highlights some of the achievements as well as major challenges that face the country, there were admittedly a number of gaps in the report. These responses provided within this brief report hopes to address the issues raised by the Committee and in so doing it is hoped that it also closes these gaps.

3. It is acknowledged that the government of South Africa has put in place several legislative measures that address the challenges that the country is faced with. However we also acknowledge that a number of challenges exist in their full implementation. The country is placing more emphasis on implementation and monitoring of these legislative measures and has adopted an outcomes approach with 12 critical outcomes being identified in this regard. These are based on Government's five national priorities.

4. One of the milestones in the country since the submission of the periodic report in 2008 is that South Africa has since established a Ministry for Women, Children and People with Disabilities. A short while thereafter, the Department was proclaimed. The intention is to ensure that the institutional arrangements are adequately resourced and vested with the authority at a political level to drive the mandate for women's empowerment and gender equality.

5. The newly established Ministry for Women, Children and People with Disabilities, will focus on the economic empowerment of women and look at different ways of encouraging women to be income generators. Women owned co-operatives, entrepreneurship; formal and informal trade will receive attention.

6. The Ministry is also placing emphasis on addressing violence against women and girls as an immediate priority through a 365 Day National Plan of Action. The country is challenged by the serious scourge of gender based violence and violence perpetrated on women and girls. However, the Government of South remains fully committed towards addressing this issue as a national priority.

7. The Government, through the Ministry for Women, Children and People with Disabilities will also take initiatives to address critical findings that emerge from the CEDAW report as well as the CEDAW Committee's Recommendations in January 2011.

## **2. Responses to list of issues and questions raised by the Committee (CEDAW/C/ZAF/Q/4) in consideration of the combined second, third and fourth periodic reports of South Africa (CEDAW/C/ZAF/2-4)**

### **2.1 General**

#### **2.1.1 Extent of consultation, participation of NGOs and submission of report to Parliament (Q.1)**

8. The drafting of the combined second, third and fourth periodic reports on the progress made by South Africa in implementing the articles of the Convention has followed the national consultative and reporting processes to the full extent possible.

9. Consultation meetings with the National Gender Machinery were held on 18 and 28 March 2008 respectively. The National Gender Machinery comprises four components: Government, the Commission for Gender Equality, the Parliamentary Committee in National Parliament and Civil Society organizations. The latter comprises women's organizations and NGOs that deal with women's issues/advancing gender equality. This included the men's organizations that focus on advancing gender equality through working with men. Some 20-30 organizations were therefore consulted during this process.

10. During this consultative process, several activities were undertaken. These included a workshop on the compilation of the report and assistance with a framework for submissions of input by government departments and civil society organizations into the report. The report was compiled and the draft report was validated through a consultative session comprising of approximately 15 gender experts and activists in the country. A few key government department gender focal persons and coordinators from provincial levels were also invited to the session. The inputs and recommendations were then incorporated into the report and an initial draft report was presented to the National Parliamentary Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women on 16 May 2008.

11. Given the mandate of the Commission for Gender Equality, the process of compilation of the report was specifically presented to the Commission in March 2008. The rich discussions that emerged from the discussions with the Chairperson and some Commissioners assisted in strengthening the process of reporting. In addition, the draft report was submitted to the Commission for Gender Equality for comments in August 2008.

12. The final draft report was also presented at a Women's Parliament held in the National Parliament in August 2008, wherein the report was discussed. This Women's Parliament comprised women from all over the country. In addition, the draft report was also submitted to the African National Congress Women's League (ANCWL) in September 2008. In fact a presentation on the findings was made to the National Executive Committee of the ANCWL and the discussions that emerged from this process was towards identifying issues for the women's election manifesto for the elections that were to be held in April 2009.

13. The draft report was submitted for debate and discussion at senior management levels in governmental processes. This included a presentation and discussion on the draft report at the Social Cluster Directors-General Meeting held on 06 August 2008. Following the recommendations of the latter meeting, the draft report was officially submitted through a Cabinet Memorandum to the Social Cabinet Committee meeting held on 27<sup>th</sup> August 2008. This meeting comprised the Social Cluster Ministers who were key to the different articles in the Convention. Following the discussions and recommendations that emerged from this meeting, the draft report was resubmitted to all Government departments for validation of statistics, updating of information and finally submitted to Statistics SA for validation of official statistical information. This final draft report was submitted to the Cabinet and was adopted at the Cabinet meeting on 17 September 2008. The Report was then forwarded to the Presidency for the signature of His Excellency, the President of the Republic of South Africa. At this stage, the report was also scrutinized by the legal department in the Presidency.

14. A debate was held in National Parliament in November 2008 on the findings of the report, during the debate on 16 days of Activism on no violence against women. This debate was lead by the former Minister in the Presidency who championed the mandate for women's empowerment and gender equality in the country.

15. The final adopted and endorsed combined second, third and fourth reports were launched during a National Gender Machinery meeting on 14 November 2008 by the former Minister in the Presidency. Comments and discussions on the report were taken on board and a task team was established by the Minister to look into closing the gaps that women's organizations were identifying. This task team included the Chairperson of the Commission for Gender Equality as

well as gender experts, legal experts and some women's organizations. The Task team finalized their editing of the report by December 2009.

16. The report was finalized, published and submitted to the Department of International Relations and Cooperation for submission to the CEDAW Committee in January 2009.

## **2.2 Legal status and visibility of the Convention**

### **2.2.1 Status of Convention in national legal system and examples of court cases using the Convention (Q.2)**

17. The Republic of South Africa is a sovereign, democratic state founded on democratic values, social justice and fundamental human rights. The Constitution is the supreme law of the Republic. Hence any law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

18. In the interpretation of the Bill of Rights, Section 39(1) states that when interpreting the Bill of Rights, a court, tribunal or forum:

- (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
- (b) must consider international law; and
- (c) may consider foreign laws.

19. Some cases that confirmed the place of international law in South African law include the following:

2.2.1.1 *Ex parte Chairperson of the Constitutional Assembly*: In re-certification of the Constitution of the Republic of South Africa, 1996 (4) SA 744 (CC) referred to the place of international law in the final constitution. In *S v Makwanyane and Another par 35 note 46 [1995] CCT 3/94 (SA)* the court used international law as an interpretive tool with regard to construing the Bill of Rights provisions

2.2.1.2 Examples of constitutional court cases in which the constitutional court has utilized the Convention in interpreting the Bill of Rights include:

a) *S v Baloyi 2000 (2) SA 425 (CC)/2000(1) BCLR 86 (CC)*; This is a domestic violence case, and the significance of the judgment lies:

- firstly, in its unequivocal identification of the constitutional obligation resting on the state to deal effectively with domestic violence through enactment of appropriate legislation;
- Secondly, the recognition that domestic violence is a concern from a perspective of gender equality (in addition to violating the right to freedom and security of the person) is an important one;
- Thirdly, Sachs J clearly demonstrated how the constitutional imperatives are amplified by the standards set in international human rights law.

b) In the case of *Bhe and Others v the Magistrate, Khayelitsha and Others; Shibi v Sithole and Others; South African Human Rights Commission and Another v President of the Republic of South Africa 2005 (1) SA 563 (CC); 2005 (1) BCLR 1 (CC)* the court also referred to CEDAW in interpreting the rights contained in the Bill of Rights

2.2.1.3 Law Reform that referred to CEDAW includes:

- The Domestic Violence Act, 1998 (Act 116 of 1998) which refers to CEDAW in the preamble.
- The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007) also refers to CEDAW in its preamble.

2.2.1.4 International law in conflict with the South African Constitution: The South African Constitution provides that South African law, as far as is reasonable, to be interpreted to be consistent with international law. However, it also provides that any law (including international law), or conduct inconsistent with it, is invalid.

**2.2.2 Consideration of a specific Gender Equality Act and definition of discrimination in accordance with Article 1 of the Convention (Q.3)**

20. There is general consensus that the Constitution of the Republic of South Africa and a progressive legislative framework provide both for the protection and promotion of the rights of women and the girl child. The critical objectives of this enabling legislative framework to ensure gender equality include:

- Preventing and prohibiting unfair discrimination and to provide redress in cases of unfair discrimination;
- Facilitating South Africa's compliance with international human rights treaty obligations, with specific reference to CEDAW and the Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- Providing for the eradication of current systemic discrimination which is a legacy of previously legalized discrimination;
- Providing for the promotion of equality, prioritizing the adoption of measures to advance persons disadvantaged by unfair discrimination; and
- Providing for measures aimed at ensuring the eradication of unfair discrimination, hate speech and harassment with special focus on race, gender and disability.

21. Although the Constitution does not clearly define an act of discrimination in accordance with the definition of the Convention, it does in fact make provision for a guarantee of the right to equality, the grounds for discrimination and protection against unfair discrimination on the basis of listed grounds. While Government may have not passed any laws that defines discrimination per the definition contained in the Convention, the Constitution, the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000, the Labour Relations Act of 1995, and the Employment Equity Act of 1998 make provisions for the prohibition of the grounds of discrimination, including that of sex and gender.

22. Despite the fact that the definition of discrimination is not in accordance with the Convention, the Constitutional Court has interpreted the constitutional provisions on equality to give effect to substantive equality. Many of the landmark court decisions on equality have fundamentally advanced *de jure* and *de facto* equality between women and men. Key court decisions in this regard have advanced women's rights and freedoms in areas such as customary and inheritance laws, violence against women, in respect of the protection of motherhood, as well as positive measures aimed at accelerating women's access to land, health care, basic services, and economic opportunities. The Report has highlighted these cases, with particular emphasis on how they have tested existing legislation and constitutional provisions.

23. In fact, the laws that specifically deal with equality in South Africa reflect deliberate endeavours to incorporate the objectives and specific provisions of CEDAW in domestic law. Key instruments in this regard include: The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000); the Recognition of Customary Marriages Act, 1998 (Act 120 of 1998) and the customary law of succession.

24. The provisions of CEDAW and related international instruments have also informed other transformational laws that have been introduced since the last Report. Examples in this regard include laws dealing with positive measures to promote equality, including gender equality.

Relevant laws include: the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and the Broad-based Black Economic Empowerment Act, 2003 (Act 53 of 2003).

25. Government is looking at putting forward a specific Bill for Gender Equality in the near future, which will then look at defining in specifics gender discrimination. It is during this process that the Government will ensure that the definition of discrimination is in accordance with Article 1 of the Convention. Discussions in this regard have been held between the Department for Women, Children and People with Disabilities, the South African Law Reform Commission (SALRC) and the Office of the State Law Advisor. To this end the Department has developed a draft green paper titled “Green Paper towards a Gender Equality Bill”, which seeks to outline the issues that may inform the Bill. This Green Paper will form the basis for public consultations that will be initiated early in 2011.

#### **2.2.3 Popularization of the Optional Protocol to CEDAW (Q.4)**

26. South Africa produced a Resource Book in order support the judiciary, prosecution, administration and members of the legal profession with the necessary information to be able to protect and promote women’s rights. This resource book, titled: “Women’s Human Rights Resource Book” summarizes all international human rights instruments that have the purpose and effect on promoting and protecting women’s rights.

27. The Constitution requires the courts to develop common law in line with the Constitution. International human rights norms have a critical role in influencing the direction in which common law is developed. The Constitution specifically provides for courts to give regard to international laws (s39). This refers to both international treaty laws and customary international laws. If there is no clarity as to whether a principle of international law has been integrated in South African law, there is international precedence that empowers the judiciary to get around the obstacle.

28. The limitation in the use of international human rights law is the lack of - or limited knowledge - about international human rights law and relevance in domestic adjudication and inadequate resources for research and training. The other challenge remains the lack of dissemination of these instruments and that of training of judicial officers to be able to invoke these instruments in their endeavor to enforce and promote human rights. This challenge has therefore necessitated the compilation of the Resource Book on Women’s Human Rights to attempt to close the gap.

29. It is not only in the legislative sphere that international human rights obligations are of importance. The jurisprudence of the courts is also somehow influenced by international developments. The Constitutional Court has provided leadership with regard to giving meaning to the Constitution generally and the Bill of Rights in particular. It has also provided some leadership on transcending the legacy of a positivist law interpretation paradigm within the inherited judiciary. It also plays an important role in ensuring that women’s human rights are translated into practice and real benefits for women. It has set the precedent for members of the judiciary from all other courts to follow.

#### **2.2.4 Ratification of SADC Protocol on Gender and Development (Q.5)**

30. The SADC Protocol on Gender and Development was signed by the SADC Heads of State and Governments in Johannesburg, South Africa on 17 August 2008. South Africa as a member state of SADC adopted this Protocol. Following that process, Cabinet has adopted the need for South Africa to ratify the Protocol as soon as possible and for its full implementation and domestication at the national level. The process of ratification with the South African National Parliament has currently begun. As such, once the ratification by National Parliament is completed, the Protocol will have to be domesticated into the legal framework for the country. The proposed Gender Equality Bill will be main insertion point for provisions of the Protocol

which currently fall outside the legal provisions available in the country. This would include the relationship of the Protocol to UN Security Council Resolutions 1325 and 1880.

31. However the South African Government, upon adoption of the Protocol in August 2008, immediately embarked upon popularizing the provision on “50/50 gender parity target by 2015”. Given that the country was embarking on national elections in early 2009, a multi-party national launch of this campaign was held in collaboration with the Presidency (former Minister in the Presidency) in November 2008 at National Parliament.

## **2.3 Discriminatory laws / provisions**

### **2.3.1 Progress made on preparing a uniform family code to abolish unequal inheritance rights, land rights and polygamy (Q.6)**

#### **(a) Laws of Inheritance**

32. Following the Constitutional Court decision<sup>1</sup> that declared unconstitutional and invalid the African customary rule of male primogeniture which only allowed an oldest male descendant or relative to succeed to the estate of a Black person and also declared unconstitutional and invalid, section 23(7) of the Black Administration Act which unfairly discriminates against women and others with regard to the administration and distribution of black deceased estates, the court proceeded to impose, as an interim measure, the provisions of the Intestate Succession Act on estates previously dealt with under the Black Administration Act. It also made special provision for estates relating to polygamous marriages and that estates previously administered in terms of the Black Administration Act must now be administered by the Master of the High Court in terms of the Administration of Estates Act.

33. Implications of this decision included:

- A major victory for economic rights of black women generally and women married under customary law in particular;
- Black women can now enjoy equal succession rights to those of their white counterparts and to that of men;
- Women in polygamous marriages have valid succession rights with all wives having equal rights;
- All girl and boy children regardless of birth position, have equal succession rights;
- Children born in marriage and those born out of wedlock have equal rights to inherit;
- The law no longer recognizes the concept of “Indlalifa” or universal heir; and
- All deceased estates regardless of race now fall under the authority of the Master of the High Court.

34. This decision led to the reform of the law that regulated the succession and inheritance of black people which discriminated against women and children and resulted in the Reform of Customary Law of Succession and Related Matters Amendment Bill, 2008.

#### **(b) Family laws**

35. Law Reform in South Africa sought to mainstream the protection and promotion of human rights, particularly the rights of women, children and other disadvantaged groups. It also takes into account the diversity of human life in South Africa, including the intersection of gender and socio-

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<sup>1</sup> Bhe and Others v the Magistrate, Khayelitsha and Others; Shibi v Sithole and Others; South African Human Rights Commission and Another v President of the Republic of South Africa,

economic disadvantages, race, culture, rural life, age and other factors that exacerbate disadvantage.

36. Section 7(1)<sup>2</sup> provides that the Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. As already indicated earlier section 2 provides that the Constitution is the supreme law of South Africa and any law or conduct inconsistent therewith is invalid<sup>3</sup>.

37. However, the anomaly is that in the same Constitution in Chapter 12 the recognition and protection of customary laws and institutions thereof is also provided for. This automatically allows for polygamy because it is a customary practice. The Constitution provides that the rights to equality (including gender equality) are non-derogable. In affirming gender equality as one of the fundamental pillars of the Constitution, it provides that, should there be a contradiction between customary law and the Bill of Rights, the latter takes precedence.<sup>4</sup>

38. Law reform in this regard includes the following:

- Reform of Customary Law of Succession and Related Matters Amendment Bill, 2008: The Bill is intended to bring Customary Law of Succession into line with the Constitution, thereby eliminating unfair discrimination. Existing legislation in this regard has already been declared to be unconstitutional by the Constitutional Court. The Bill which, among others, abolishes the customary law rule of male primogeniture and is intended to confirm the Constitutional Court's order. The Bill will contribute to gender equality, allowing more women and children to share directly in the proceeds of deceased estates. The Bill has been approved by the National Assembly and is receiving the attention of the Select Committee on Security and Constitutional Affairs.
- Project 59: Islamic Marriages and Related Matters: The object of this investigation was to determine the extent to which provision can be made in South African law for the recognition of rules of Islamic Law relating to marriage, matrimonial property, succession, guardianship and related aspects of family law and the law of persons. A report with draft legislation was submitted to the Minister of Justice and Constitutional Development in July 2003.

39. Historically, and until the landmark 1999 Supreme Court of Appeal decision in *Amod v Multilateral Motor Vehicle Accidents Fund*, a marriage contracted according to Islamic law was regarded by South African courts as null and void and as being contrary to public policy, with the result that the marriage and its consequences were not legally recognised in any form. The decision in *Amod*, however, recognised a monogamous Islamic marriage for the purposes of support only, and did not deal with other crucial issues such as polygamy and the status of respective spouses, maintenance obligations, proprietary consequences of Islamic marriages, termination, etc.

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<sup>2</sup> The Republic of South Africa Constitution Act No 108 of 1996

<sup>3</sup> The Constitutional Court has reiterated the supremacy of the principle of equality in the face of indigenous law that discriminated against women: *Gumede (born Shange) v President of the Republic of South Africa and Others* (CCT 50/08) [2008] ZA CC 23; 2009 (3) BCLR 243 (CC) (8 December 2008); *Bhe and Others v the Magistrate, Khayelitsha and Others Case* CCT 9/03; *Shibi v Sithole and Others Case* CCT 49/03; *South African Human Rights Commission and Another v President of the Republic of South Africa Case* CCT 50/03

<sup>4</sup> Section 9 of the Bill of Rights explicitly acknowledges the intersectionality of different grounds of discrimination as prohibited. The Equality Act recognizes patriarchy and discrimination on the grounds of sex and gender as being of such a prevalent and serious nature that it specifically singles out these forms of discrimination for special treatment. In addition to outlawing unfair discrimination, the Act contains provisions which encourage both the public and private sectors to create a non-sexist society.

40. Recently, in its decision in *Daniels v Campbell NO and Others*, the Cape of Good Hope Provincial Division of the High Court found that parts of the Intestate Succession Act and the Maintenance of Surviving Spouses Act are unconstitutional in that those Acts, in their definitions of “spouse” and “survivor” respectively, do not specifically provide for a husband or wife married in accordance with Muslim rites. However, legislation giving full recognition to such marriages is absent, with the result that gross inequities and hardships arising from the non-recognition of Islamic marriages still prevail.

41. The Bill draws a clear distinction between an Islamic marriage and a civil marriage. It is only Islamic marriages that would fall within the ambit of the Bill, with provision being made for Muslims who are married by way of a civil marriage, to exercise an option to have the provisions of the Bill apply to them. Provision is also made for the regulation of proprietary consequences, changes to matrimonial property systems (with due regard to existing and vested rights) and the regulation of polygamous marriages. In terms of the draft Bill all existing Islamic marriages would be recognised as valid marriages, for all purposes, upon commencement of the proposed legislation. Parties in an existing marriage are, however, given the option of opting out of the provisions of the Bill, should they so desire. With regard to future marriages concluded after the proposed legislation has come into operation, parties would be allowed to elect at the time of the conclusion of the marriage whether the provisions of the Bill should apply to them. The draft Bill covers both monogamous and polygamous Islamic marriages which, if applicable, may exist alongside a civil marriage (i.e. a marriage registered under the Marriage Act).

42. The draft Bill addresses the registration of Islamic marriages, the dissolution of such marriages through the pronouncement of a Talaq (which, in terms of the proposals, must be confirmed by a court), custody of and access to minor children and maintenance.

43. The proposed draft Bill by Parliament will go a long way in creating legal certainty with regard to Muslim marriages, will give effect to Muslim values and will afford better protection to women in those marriages in accordance with Islamic and constitutional tenets.

– Project 25: Hindu marriages: South African law does not recognise marriages by Hindu rites; therefore all the legal consequences of marriage do not apply to such marriages in South Africa. Couples in a Hindu marriage for example need not use the court if they want to get divorced. Spouses can also not claim any of the legal consequences of divorce, such as maintenance, after the relationship has ended. The aim of this investigation is to look into the recognition of Hindu marriages in order to afford these marriages full legal recognition and the same status as marriages concluded in accordance with civil rites. When the investigation is completed Hindu women will be empowered.

44. Recent case law in this area includes *Suchitra Singh v Ramparsad*, where a Hindu woman who had launched a constitutional challenge aimed at getting her unregistered Hindu marriage recognised in law, so that she could get a divorce, failed.

45. In the Durban High Court in *Saloshinie Govender v Narainsamy Ragavaya* the court made a ruling in favour of the wife in a Hindu marriage in a case challenging South African inheritance law which does not recognise marriage under Hindu rites. The definition of spouse in the Intestate Succession Act 1987 has been extended to apply to Hindu marriages. The judgment brought these marriages into line with the decisions made in other cases. This judgment is instrumental in the development of South African law by dispensing with unfair discrimination against Hindu women married according to Hindu religion.

– The Domestic partnerships Bill: This investigation by the South African Law Reform Commission dealt with the question of the lack of legal recognition and regulation of domestic partnerships i.e. established marriage-like relationships between people of the same- or opposite sex. The investigation resulted in the enactment of the Civil Union Act 17 of 2006 whereby same-sex couples, by entering into a civil union, enjoy the same status accorded to heterosexual couples through marriage.

46. The second leg of the investigation deals with instances where domestic partners are living together, but are not married. The protection of domestic partnerships becomes critical when the partnership ends and the one partner, usually the woman, is left destitute with no automatic remedy available.

47. The proposed Domestic Partnerships Bill inter alia makes provision for the registration of domestic partnerships as well as the regulation of the consequences of the termination of unregistered partnerships through judicial discretion. Partners can approach a court after an unregistered partnership has been terminated by death or separation for a maintenance order, an intestate succession order and a property division order. A court deciding such an application must have regard to all the circumstances of the relationship.

– Project 76: Jewish Divorces: According to the South African law a marriage subsists until it is dissolved by death or divorce. Divorce is the dissolution of a marriage by an order of court. Some religious denominations, namely Roman Catholicism, Islam and Judaism, have tribunals or procedures by which the annulment or dissolution of a marriage may be recognised or granted. These religious annulments or divorces are, however, not recognised by the South African law as equivalent to a civil legal divorce.

48. Even if the marriage was dissolved by a secular court the traditional Orthodox Jewish law requires that a Jewish divorce has to take place to dissolve such a marriage. Married Jewish women who seek a divorce must therefore obtain a civil as well as a Jewish divorce, called a Get. Without a Get, a Jewish woman may not remarry under Jewish law, as she is still considered to be married. A Jewish woman's status is that of a married woman until she receives the Get, and therefore any relationship she has prior to the Get is considered adulterous. Any children from that relationship are considered, by Jewish law, to be illegitimate and may only marry other Jews who are of the same illegitimate status. Furthermore, a woman may not marry the man with whom she has had this adulterous relationship, even after she has obtained a Get. The problem is that a Jewish woman cannot get divorced from her husband unless he consents to granting her a Get.

49. The authority to grant a divorce does not rest with the Jewish ecclesiastical court or Beth Din. The Beth Din functions in a mediatory rather than in a judicial capacity. In 1994 the Commission recommended that a Court be empowered to refuse the granting of a decree of divorce or to make any order it finds just where one of the spouses refuses to cooperate in releasing the other spouse from any marriage bonds existing in terms of rules of religion where it is in the power of the first-mentioned spouse to remove such bonds. The Commission recommended that wide discretionary powers be given to courts in order to achieve just results as far as it is possible. In 1996 the Divorce Act, 1979 (Act No. 70 of 1979), was amended accordingly by the insertion of section 5A.

– Project 94: Family mediation: Over the years the field of family and divorce mediation has been developed in a highly segmented fashion as services in the past were provided along lines of race, culture and income level. Family advocates and the divorce courts utilise mediation, but family advocates have been criticised for not making proper use of mediation procedures, while mediation in the divorce courts is a limited, irregular and an informal part of the settlement process. Social workers in provincial institutions are also involved in this area and court referrals often result in intervention requests. With the development of legislation specifically providing for mediation in family matters women will no longer be trapped in abusive relationships because of the high costs of litigation.

– Recognition of Customary Marriages Act 120 of 1998: This Act recognises customary marriages, including polygamy. It was inspired by the dignity and equality rights entrenched in the Constitution and normative value system it establishes and necessitated by the country's international treaty obligations, which require member state to do away with all laws and practices that discriminate against women.

### (c) Measures to address children's issues

**50. Operation Isondlo** (Operation Child Maintenance): Operation Isondlo is an innovative programme initiated by the Department of Justice and Constitutional Development in 2006 during the 16 Days of Activism on Violence against Women and Children. It had three major projects:

- “Operation Isondlo” a Maintenance Blitz Programme”: The Maintenance files audit was conducted in the whole country on especially Section 31 matters on where subpoenas have been issued and are awaiting trial date; where an order was made and the respondent has not paid, but the complainant has not complained; on inquiries – why they delay to be finalised and to fast-track them; and dormant files – track the applicants and facilitate payment if there were monies paid but not claimed
- Magistrate’s Maintenance Act Implementation Guidelines: Maintenance guidelines for Magistrates were developed in order to ensure consistency and efficiency in addressing maintenance issues.
- “Justice Starts at Home”: A programme that targets Public Servants who do not pay maintenance and to promote the payment of maintenance. This project was aimed at kick-starting the maintenance blitz but focussing on those defaulters that can be targeted easily. There would be an advert in the news papers which requests members of the public who are owed child support by any public servant to report to their Region. Also here, the Regional Heads cooperation is requested.

**(d) Child Maintenance is regulated by the Maintenance Act 99 of 1998**

51. The following figures show the number of enquiries finalized and Orders served for the period 2006/2007:

<i>Issue</i>	<i>Numbers</i>
Enquiries	56 451
Applications for new orders	66 924
Orders by default	5 680
Section 31 finalized	14 952
Number of attachment emolument orders	13 554
Number of warrants of execution	1 350
Attachment of debts	687 442

**Maintenance cases per item 2007/2008**

Region	Enquiries	Orders made by consent	Foreign orders registered or confirmed	Warrants of arrest	Complaints received in terms of section 6		orders made by default
					defaulters	6	
Eastern Cape	12,765	7,059	111	3,387	1,651	1,001	836
Free State	6,809	4,493	25	973	2,009	880	495
Gauteng	25,088	14,684	172	2,052	8,989	15,668	1,251
Kwazulu-Natal	18,822	13,763	523	2,735	9,534	4,804	1,368
Limpopo	7,684	8,737	1	2,323	2,313	961	712
Mpumalanga	7,293	6,375	113	1,416	1,981	956	699
North West	3,188	3,919	7	741	1,101	8,707	625
Northern Cape	3,225	1,859	15	388	540	811	85
Western Cape	26,704	13,720	80	6,729	6,712	1,996	797
Total	111,579	74,608	1,047	20,744	34,831	35,784	6,868

*Region Enquiries***Maintenance cases per item 2008/2009**

Region	Maintenance enquiries received	Maintenance application received	Maintenance orders by default	Section 31 cases finalized	Emolument orders	Warrants of execution	Attachments of debt
Eastern Cape	20 541	16 499	918	1 753	2 252	975	549
Free State	11 610	11 875	537	732	1 551	268	78
Gauteng	21 121	17 374	566	2 444	2 839	515	252
KwaZulu-Natal	30 684	11 396	780	1 224	1 982	135	229
Limpopo	8 927	8 466	331	1 071	1 736	121	55
Mpumalanga	13 055	9 205	576	1 564	2 886	174	60
North West	10 511	8 540	685	399	2 960	222	148
Northern Cape	5 191	3 680	116	738	501	33	3
Western Cape	34 718	22 855	806	4 600	3 039	148	74
Total	156 358	109 890	5 315	14 525	19 746	2 591	1 448

**Maintenance cases per item 2009/10**

Region	New application receive	Enquiries received	Orders by default	Section 31	Emolument attachments orders	Attachments of debt	Warrants of execution
Eastern Cape	22 835	36 103	1 356	2 635	3 137	173	757
Free State	17 738	17 323	1 141	953	1 928	187	440
Gauteng	29 241	45 450	832	3 482	5 617	180	501
KwaZulu-Natal	19 396	67 737	1 434	2 190	3 939	712	297
Limpopo	16 741	22 126	750	2 672	3 628	191	249
Mpumalanga	14 013	17 104	863	2 184	3 458	124	128
North West	48 747	18 872	1 189	706	4 477	211	107
Northern Cape	4 891	7 764	189	979	675	6	55

<i>Region</i>	<i>New application receive</i>	<i>Enquiries received</i>	<i>Orders by default</i>	<i>Section 31</i>	<i>Emolument attachments orders</i>	<i>Attachments of debt</i>	<i>Warrants of execution</i>
Western Cape	27 184	48 364	732	6 061	3 616	132	203
Total	200 786	280 843	8 486	21 862	30 475	1 916	2 737

**Child Adoption and Foster Care Replacement: Cases involving children: 2006/2007**

<i>Province</i>	<i>Adoptions dealt with in terms of section 18</i>	<i>Children found in need of care</i>	<i>Children placed in foster care</i>
Eastern Cape	724	4 441	6 568
Free-State	179	1 437	1 961
Gauteng	886	5 991	6 710
Limpopo	195	2 919	3 174
Mpumalanga	194	1 514	1 518
North West	86	859	1 974
Northern Cape	93	413	502
Western Cape	434	2 250	2 274
Kwazulu-Natal	966	12 952	10 728
Total	3 757	32 776	35 409

**Children's matters in children's courts: 2008/2009 statistics**

<i>Region</i>	<i>Children placed in foster care</i>
Eastern Cape	11 393
Free State	3 493
Gauteng	8 065
KwaZulu-Natal	21 475
Limpopo	6 125
Mpumalanga	4 081
North West	4 760
Northern Cape	1 166
Western Cape	3 678
Total	64 236

**Lower court: Children's matters in children's courts: 2009/10 statistics:**

<i>Region</i>	<i>Adoptions</i>	<i>Adoptions Inter-country adoptions</i>	<i>Children in need of care</i>	<i>Children placed in foster care</i>
Eastern Cape	1 508	60	17 785	21 106
Free State	304	27	4 022	4 435
Gauteng	1 366	167	9 483	10 399
KwaZulu-Natal	1 300	277	31 897	32 258
Limpopo	137	150	8 454	8 716
Mpumalanga	116	8	4 439	5 700
North West	378	100	5 262	6 514

<i>Region</i>	<i>Adoptions</i>	<i>Adoptions Inter-country adoptions</i>	<i>Children in need of care</i>	<i>Children placed in foster care</i>
Northern Cape	103	2	1 170	1 541
Western Cape	641	54	6 107	4 209
Total	5 853	845	88 619	94 878

## 2.4 National machinery for the advancement of women

### 2.4.1 Allocation of resources to the National Gender Machinery and Commission for Gender Equality (Q.7)

52. During the reporting period financial allocations for the Office on the Status of Women in the Presidency amounted to approximately R3 to R3.5 million rand annually. Each government department and provincial offices received their own allocations for the gender mandate. The Commission for Gender Equality received its budgetary allocations from National Parliament through the Department of Justice and Constitutional Development's budget vote. The Commission received approximately R25 to R35 million rand annually.

53. On 10th May 2009, His Excellency President Jacob Zuma announced the new Cabinet for the electoral period 2009 to 2014 and pronounced on the establishment of a Ministry for Women, Children and People with Disabilities. The intention is to emphasise the need for equity and access to development opportunities for the vulnerable groups in society. The establishment of such a Ministry and its concomitant Department is meant to achieve better alignment between the structures, the electoral mandate and the developmental challenges that need to receive immediate attention from Government and the different sectors of society. The creation of this Ministry is heralded as one of the major victories for women in the country in their quest for emancipation, non-discrimination, non-sexism, advancement and development. The budget for the Ministry for 2010/2011 fiscal year was approximately R31million, of which approximately R7million rand was allocated to the Women's Empowerment and Gender Equality branch itself. The budgetary allocation still remains inadequate.

54. In 2009, the Commission for Gender Equality was moved under the budget vote for the Department for Women, Children and People with Disabilities, and was allocated a budget of approximately R52million for 2010/2011 fiscal year.

55. Inadequate human resources have particularly been the concern for the former Office on the Status of Women especially in terms of rank and authority to appropriately drive the programme. However this has now changed with the establishment of the Ministry, where a full organizational structure has been developed, with the creation of three branches. The Department is headed by a Director-General as accounting officer and the women's agenda will now be administered by a Deputy Director-General.

56. Overall, there is now a dedicated Minister to champion women's empowerment and gender equality in the country.

## 2.5 Stereotypes, cultural practices

### 2.5.1 Reversal of stereotyping of women as care-givers (Q.8)

57. Please note the correction of the case on Jordan. The S v Jordaan (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae) 2002 (6) SA 642 (CC); 2002 (11) BCLR 1117 (CC) is a case that dealt with the classification of prostitution as sex work.

58. The case that dealt with the release of female prisoners with children under the age of four is President of South Africa v and Another v Hugo 1997 (4) SA 1 (CC); 1997 (6) BCLR 708 (CC)

59. The reality in South Africa is that most children whose parents are in prison are displaced and not cared for, and some children are in prison with their mothers. There has never been an instance in which a father would be in prison with a child, it is only women. In essence, this reinforces the stereotypic attitude of women's roles as primary care-givers. The court's decision in releasing women who are in prisons on the basis of having children 4 years and under, but declining the application of men on similar grounds can be regarded as "fair discrimination" practice – even though reinforcing the gender role stereotype. This is an unintended consequence of such a judgment, but is lesser of two evils when considering that men imprisoned for sexual offences, gender based violence and rape can cite such instances for release on the basis of having a child less than 4 years. There has been no strong call for reversal by women's organizations in this regard for reasons cited.

#### **2.5.2 Eliminating Harmful practices and gender stereotypes such as Ukuthwala and virginity testing especially in rural areas (Q.9)**

60. South Africa's values and beliefs are determined by the Bill of Rights in the South African Constitution, Act 108 of 1996 which specifically guarantees that children's rights are of paramount importance in every matter concerning the child. Section 28 provides for children's socio-economic rights without any limitation, as well as protection from neglect, abuse and exploitation, and particular provisions for children in detention. Section 29 provides for the right to basic education. They are also guaranteed all other rights in the Bill of Rights, such as the right to equality, security of persons, dignity, and freedom of religion and of thought.

#### **2.5.1 Virginity testing**

61. The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000) and the Child Act, 2005 (Act 38 of 2005) prohibit virginity testing. The provisions on virginity testing (s12) as contained in the Child Act, 2005 states that:

- (1) Every child has the right not to be subjected to social, cultural and religious practices which are detrimental to his or her well-being.
- (2) A child
  - (a) below the minimum age set by law for a valid marriage may not be given out in marriage or engagement; and
  - (b) above that minimum age may not be given out in marriage or engagement without his or her consent.
- (3) Genital mutilation or the circumcision of female children is prohibited.
- (4) Virginity testing of children under the age of 16 is prohibited.
- (5) Virginity testing of children older than 16 may only be performed:
  - if the child has given consent to the testing in the prescribed manner;
  - after proper counselling of the child; and
  - in the manner prescribed.
- (6) The results of a virginity test may not be disclosed without the consent of the child.
- (7) The body of a child who has undergone virginity testing may not be marked.

#### **2.5.6 Ukuthwala**

62. In 2008, the former Minister in the Presidency was made aware of the persistence in the practice of Ukuthwala, abduction and forced and early marriages of young girls. The approach that was adopted was an overarching advocacy strategy, awareness raising, rights education and

awareness of legal measures that can be taken. The strategy also incorporated an investigative element to determine the extent of the problem.

63. Meetings have been held with the traditional leaders, provincial government departments, women, men and children in the affected localities in order to verify the extent of the problem. Awareness raising *Indabas* were held with communities and traditional leadership in the affected localities by members of the Executive including ministers championing gender equality, safety and security, justice, national prosecuting authority, health, education and basic services (local government). A pledge was signed between the former Minister in the Presidency and the King as the leader in the affected locality as well as with other traditional leadership. During these Indabas, the Executive attempted to take a compendium of services to the locality in order to address a number of issues that could be contributing and causal factors in the matter of continuing Ukuthwala practices.

64. A boarding house/hostel for the victims (young girls married / or who were able to escape abduction and forced marriage) existing in the affected locality was visited by several ministers and victims were interviewed by the Ministers to determine the extent of the problem as well as some of the challenges facing these young women and girls, especially in terms of education, health issues and on violence.

65. Pamphlets to raise awareness were developed which outlines the laws that prohibit this practice and its impact on the country. It also provides information with regard to services and responsibilities of the service providers.

66. The South African Law Reform Commission has been requested to investigate and recommend advice on the legislation that will prohibit Ukuthwala, while the South African Police in partnership with traditional leaders address harmful cultural practices that are linked to crime. These are identified in terms of local practices. For example, the practice of fining rape perpetrators in lieu of reporting is explained as encouraging repeat offending. The South African Police Service has utilized existing related crimes to address this issue. These include kidnapping, abduction and sexual offences. In this regard detection, investigations and arrest of perpetrators are conducted.

**The table below indicates statistics of ukuthwala:**

Year	Number of Cases Reported	Number of Cases Finalized	Number of Cases Pending
2008/2009	606	409	197
2009/2010	493	180	313
2010/2011	174	67	107
<b>GRAND TOTAL</b>	<b>1273</b>	<b>656</b>	<b>617</b>

## **2.6 Violence against women**

### **2.6.1 Rationale for the goals in the 365 Days National Action Plan and whether research into high levels of violence against women and girls is envisaged (Q. 10)**

#### **2.6.1.1 The 365 Days National Action Plan**

67. The rationale behind the 365 days Programme of Action is to end all aspects of gender violence through prevention, response and support. The mission of this programme was to devise a comprehensive and concerted plan for ending gender violence with measurable targets and indicators to which South Africans from all walks of life, in all spheres of government and at all levels of society can contribute.

68. The goals of the 365 Days National Action Plan to end gender-based violence includes:

- To mount a sustained prevention and awareness campaign that extends the Sixteen Days of Activism into a year-long campaign; involves women and men across the country; and has a measurable impact on attitudes and behavior;
- To ensure that all relevant legislation is passed, budgeted for, thoroughly canvassed and implemented.
- To reduce cases of rape by seven to ten percent per annum in line with the South African Police Service (SAPS) target.
- To ensure that SAPS crime statistics provide particulars on domestic violence and that there is significant reduction of domestic violence each year.
- To increase conviction rates by 10 percent
- To ensure comprehensive treatment and care for all survivors of gender violence, including the provision of Post Exposure Prophylaxis to reduce the chances of HIV infection; treatment for the possibility of STD's and pregnancy as well as counseling.
- To provide support and empowerment for victims through places of safety, secondary housing and employment opportunities as well as rehabilitation of offenders.
- To ensure coordination and communication among those involved in the implementation of the plan including through the establishment of appropriate institutional mechanisms.
- To set targets and indicators that are regularly monitored, evaluated and reported on.
- To ensure that the plan is widely canvassed and adapted for implementation at all levels: national, provincial and local.

69. The following measures have been put in place since 2007 to achieve the above goals in particular reference to the SAPS activities: The government set a target of reducing contact crime such as murder and rape by 7-10 percent every year, with a major focus on social crime prevention, integrated law enforcement operations, and the reduction of repeat offending. In terms of reducing cases of rape by 7 to 10% per annum and increasing conviction rates by 10% per annum the following statistics from the 2008/2009 and 2009/2010 Annual Report show that such goals have been achieved within the years since the launching of the “365 Days National Action Plan” in 2007:

<i>Crime Category</i>	<i>No of Cases Reported</i>		<i>No of cases to Court</i>		<i>% Detection Rate</i>		<i>% Conviction Rate</i>	
					2009/2010		2009/2010	
	2008/2009	2009/2010	2008/2009		2008/2009		2008/2009	
Sexual Offences	70514	68332	41495	40001	52027 (62.37%)	51182 (66.61%)	11019 (11.53%)	10778 (14.56%)

70. Although the figures above indicate a conviction rate that is above the target, the reported cases indicate a reduction that does not reach the target. Reporting on its own may not be a reliable manner of measuring reductions, since there may be unknown under-reporting during the periods in question.

71. The Victim Friendly Rooms at Police Stations which are places where statements of victims are taken in privacy, continued to be established to ensure that the dignity of victims of sexual offences, domestic violence and child abuse are protected. These rooms also encourage victims to communicate openly and with confidence. To date the SAPS has 864 victim friendly rooms compared to the 1119 police stations in the country. This represents 77.21 % of police stations with such facilities.

72. The passing of the far reaching Child Act, 2005 (Act 38 of 2005) and the Child Justice Act, 2008 (Act 75 of 2008) by National Parliament and significant progress towards the development of legislation to combat trafficking in persons are important milestones.

73. In terms of sensitization of law enforcement agencies and in response to criticisms about the ineffective implementation of the Domestic Violence Act, 1998 (Act 116 of 1998), the Integrated Domestic Violence Learning Programme and a multi-sector training manual have been developed and implemented

74. Public awareness campaigns keep gaining momentum especially during the 16 Days Campaign. All departments engage in highlighting their efforts achieved over the 365 days in the year.

#### **2.6.1.2 Research on violence against women and girls**

75. A study was commissioned by the Government in 2007, which was conducted by the Centre for the Study of Violence and Reconciliation. The report, especially Component 3 titled “A State of Sexual Tyranny: The prevalence, nature and causes of sexual violence in South Africa”, was released to National Parliament on 9<sup>th</sup> November 2010.

76. The report notes that high levels of sexual violence are particularly disturbing aspects of the current epidemic of violence affecting the country. The report looks at the definitions of sexual violence, its prevalence, and reasons for the sexual crimes, and argues that four factors that are likely to have impacted on levels of recorded rape include: increases in the level of rape associated with the emergence of a violent “masculinised” culture among young men caused by entrenched high levels of structural unemployment and marginalization; improvements in police practices and attitudes, shift to service orientation and the strong focus on violence against women related to victim empowerment initiatives and changing awareness among women about sexual violence.

77. This long awaited report on the violent nature of crime in South Africa found that the country’s history of colonization and apartheid created a culture where people see resorting to force as normal. It also lists poverty, a weak criminal justice system, the availability of firearms and poor socialization of the youth as factors that sustain a culture of violence in the country. While not saying that the whole country is inherently violent, the report finds that given the history of South Africa, and given our experience of violence, we have begun to see violence as normative and therefore legitimize its acceptability and use.

#### **2.6.2 Whether administrative or legislative measures are taken to ensure enforcement of restraining or protection orders by courts (Q. 11)**

78. Magisterial Guidelines on the implementation of the Domestic Violence Act were developed to assist and guide magistrates in implementing the Domestic Violence Act in anyway that ensure legal consistency, legal uniformity and protection of victims of domestic violence.

79. The Bill of Rights in the Constitution is justifiable and is critical for the advancement of women and children, as it means that many of the rights that are enshrined in the Constitution may be enforced directly through the courts. We have seen this being successfully implemented in many different cases. In order to evaluate whether the courts promote and protect the rights of women as enshrined in the Bill of Rights, research was conducted to evaluate High Court decisions from 1994 to 2004 on the following themes: violence against women; family law; succession; socio-economic rights; immigration and positive measures and other areas of the law.

80. The Domestic Violence Act, 1998 (Act 116 of 1998) provides for the provision of protection orders in cases of domestic violence. Domestic abuse includes sexual abuse in a domestic relationship. The South African Police Service’s National Instruction on Domestic Violence 7/1999 has been implemented at all police stations in the country and provides for the police force to act in support of the enforcement of protection orders. The police force members

are also trained to ensure the correct implementation of their responsibilities in this regard. A five day training course is presented as part of their basic training and in-service training. The inspection of compliance with the Domestic Violence Act and National Instructions is included in the supervisory responsibilities of SAPS management at station, cluster and provincial level and also in the monitoring and evaluation programme by national divisions including visible policing and the inspectorate. The National Instruction also obligates station management to take steps in correcting non-compliance by members to the extent of taking disciplinary action against such members as required.

81. The Criminal Procedures Act and the Sexual Offences Amendment Act empower the police to arrest and detain persons accused of committing a sexual offence. Constitutionally all accused people cannot be kept in custody for longer than 48 hours prior to the first appearance in court. The courts then order the appropriate place of custody or decide on bail as the merits of the individual case permit.

#### **2.6.3 Sexual offences committed against lesbian women and girls (Q. 12)**

82. The Criminal Law (Sexual Offences and related Matters Amendment Act) 2007 commonly referred to as the Sexual Offences Act has defined rape in a manner that makes no distinction between victims who are male, female or differ due to their sexual orientation. All victims are treated equally. For this reason, no statistics are available as to which victims are lesbian or gay. More information regarding the details of the indicated cases would be required to provide outcomes of police investigation into these cases.

83. The majority of cases relating to sexual offences are investigated by specialized Family Violence Child Protection and Sexual Offences detectives (where available).

84. Awareness campaigns addressing the issue of the so-called “Corrective Rape” and criminal harming of people by reason of their sexual orientation have been conducted in order to make members of the public aware of the negative and undesirable nature of these crimes.

85. In addition the Department of Justice and Constitution Development has a programme that addresses issues relating to lesbians, gays and intersex persons.

### **2.7 Trafficking, exploitation of prostitution**

#### **2.7.1 Trafficking in Persons especially women and girls (Q. 13)**

86. Comprehensive legislation in the form of a Prevention and Combating of Trafficking in Persons Bill has been developed and is currently in National Parliament for consideration. The draft Bill comprises all forms of trafficking in persons and related sanctions. The Bill is intended to give effect to the South African Law Reform Commission's legislative recommendations relating to trafficking in persons, mostly women and children.

87. While the comprehensive legislation is being drafted, National Parliament has passed transitional provisions which criminalise the trafficking of adults and children for sexual purposes in the Criminal Law (Sexual Offences and related matters) Amendment Act 32 of 2007. The specific provisions in Part 6 of the legislation - which came into operation on 16 December 2007 – will be repealed once the Prevention and Combating Trafficking in Persons Act becomes law and makes all forms of trafficking in persons a criminal offence.

88. Further transitional provisions aimed at preventing and responding effectively to child trafficking for all purposes have also been included in the Children's Act 38 of 2005. These legal provisions have not yet come into operation.

89. With regard to the implementation of the Children's Act the following has been implemented:

- Developed the National Instructions No 2 of 2010 which provide policy instructions to members on the implementation of the legislation;
- Developed and implemented training of functional members who provide services and training trainers to cascade training;
- Internally communicated with members including through the police television network found at police stations and salary advice slips;
- Developed networks for service referrals to social workers and Child and Youth Care Centres.

90. With regard to the implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act the South African Police Service has implemented the following:

- Developed the National Instructions No 3 of 2008.
- Developed and implemented two training programmes for functional members. This includes the First Responders Training programme aimed at all members who come into contact with victims. This includes emergency services (10111), crime prevention patrol members, Community Service Centre members (front line services at police stations). The second training programme is aimed at all investigators and is not just specifically targeting specialized investigators.
- Communicated with the public on the implications of the new legislation and services available. This communication was also aimed at sensitizing the public on the need to prevent domestic violence.
- Internally communicated with members including through the police television network found at police stations and salary advice slips.

91. With regard to the implementation of the Domestic Violence Act the following has been implemented:

- Developed the National Instructions No 7 of 1999 which provide policy instructions to members on the implementation of the legislation;
- Developed and implemented training of functional members who provide services to victims;
- Communicated with the public on the implications of the new legislation and services available. This communication was also aimed at sensitizing the public on the need to prevent domestic violence.
- Internally communicated with members including through the police television network found at police stations and salary advice slips.

## **2.7.2 Extent of trafficking, and need for research (Q. 14)**

### **2.7.2.1 Trafficking in Persons Inter-sectoral Task Team ('the Task Team')**

92. It is in this context of legislative development, and the utilisation of existing legislation to deal with a new criminal phenomenon, that South Africa's trafficking in persons strategy was developed by the Task Team, under the leadership of the Sexual Offences and Community Affairs (SOCA) Unit, a directorate within the National Prosecuting Authority (NPA). The Task Team provides technical support to the implementation of the programme and consists of the following role-players: Department of Justice and Constitutional Development, Department of Home Affairs, Department of Labour, South African Police Service (Organised Crime Unit and Ports of Entry Police), Department of Social Development, International Organisation for Migration (IOM), United Nations Office on Drugs and Crime (UNODC) and Molo Songololo, a non-governmental organisation.

#### **2.7.2.2 Strategy to combat trafficking in persons while awaiting enactment of legislation**

93. The strategy was designed by government departments in conjunction with international organisations and a civil society participant, in order to ensure cohesion amongst all sectors and the alignment of individual efforts. It's funding by the European Union Commission (EC) to the amount of Euro 6, 300, 000. 00 will enable the fulfilment of the programme objectives such as making people less vulnerable to being trafficked; rescuing more victims and better protecting them; tracking, disrupting, convicting and rehabilitating perpetrators more successfully; and mainstreaming counter-trafficking into the work of all departments.

94. The 6-pillar strategy<sup>5</sup> developed originally by the Task Team has been converted into the Result Areas.

#### **2.7.2.3 Research**

95. One of the key activities is to conduct research on human trafficking in the South and Southern African context, in order to inform all the other activities performed under this programme. The research tender was awarded to the Human Sciences Research Council (HSRC). The research process has been initiated and it will include other neighbouring countries within SADC.

96. The Tsireledzani Human Trafficking Programme Steering Committee is an interdepartmental team that is led by the National Prosecutions Authority (NPA) to coordinate the implementation of a programme that addresses research, prevention and improving the response of government to human trafficking matters. The committee includes representatives from the police, National Prosecuting Authority, Departments of Justice, Social Development, Education and Health. A representative from the national broadcaster, the South African Broadcasting Cooperation (SABC) is also included in the team. The programme objectives include providing preventative interventions, improving the criminal justice system's response and providing support to victims of trafficking.

#### **2.7.2.4 Training and Capacity Building**

97. A direct Contribution Agreement for the implementation of the *Capacity Building* Result Area was entered into between the European Union Commission (EC) and the International Organisation for Migration (IOM) for a total amount of Euro 1,597,000, 00. The Programme Coordinating Unit – in consultation with the Task Team - have to ensure that the implementation of the capacity building sub-programme is in harmony with the result areas under its direct management.

98. The programme has an outward-looking focus beyond the borders of South Africa, as a means of strengthening cooperation between the various countries in the southern part of the African continent, with a particular emphasis on source countries.

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<sup>5</sup> PILLAR 1 – INFORMATION: 1.1 Development of a Resource Manual, 1.2 Design and Implementation of Public Awareness Campaigns and 1.3 Data Collection; PILLAR 2 – CAPACITY BUILDING AND DEVELOPMENT: 2.1 Development of a Training Manual, 2.2 Sensitisation-training for service providers and 2.3 Influencing curriculum development; PILLAR 3 – VICTIM SUPPORT AND INTEGRATION: 3.1 Integration of victims into existing support system and 3.2 the Development of Procedural flowchart; PILLAR 4 – LEGISLATION AND POLICY DEVELOPMENT: 4.1 Assist and support the legislation development process and 4.2 Contribute to integrated national policy and guidelines; PILLAR 5 – MONITORING AND EVALUATION: 5.1 Develop indicators for priority areas and 5.2 Ensure their successful implementation by role-players and PILLAR 6 – LIAISON AND CONSULTATION: 6.1 Schedule of bilateral discussions with stakeholders to provide feedback and guidance and 6.2 Implement quarterly meetings of the Consultative Forum to share best practices and coordination of activities.

99. To facilitate the integration of the strategy, the Programme Coordinating Unit has commenced a process of consultation and review with the criminal justice cluster on the programme. Briefing sessions have been held for role-players at national and provincial level in the Justice, Crime Prevention and Security Cluster of government on 25 March 2008, the Development Committee Sub-Committee on the 2010 World Cup on 19 March 2008 and the Development Committee on 27 March 2008, as well as the National Joint Operational and Intelligence Structure on 28 March 2008. Progress reports on the implementation of the programme will be submitted to the National Joint Operational and Intelligence structure for inclusion in periodic national reports to Cabinet. Further briefings are planned for the Directors-General Forum and the Offices of the Premiers in the nine provinces during the operational phase.

100. Interactions with the National Prosecuting Authority stakeholders have occurred at different fora, with a briefing on the programme being made to the Organised Crime Nodal Points on 14 May 2008. A special request for the prioritisation of the training of the Organized Crime Nodal Points under the capacity building programme was made.

#### **2.7.3 Measures on trafficking in women and girls under the 365 Days Action Plan and combating exploitation of prostitution of women and girls (Q. 15)**

101. The original report from SAPS did not include decriminalization of prostitution. The SAPS continues to enforce laws against prostitution, as it is required by its mandate to do so

### **2.8 Political participation and participation in public life, temporary special measures (article 4, paragraph 1)**

#### **2.8.1 Quota Systems (Q. 16)**

102. South Africa does not have any quotas provided for within its Constitution or Electoral Act of 1998. However, there are provisions for special temporary measures such as Affirmative Action measures and special targets for representation of women in political activities. However the Electoral Act requires every registered party and candidate to respect the rights of women and to encourage full and equal participation of women in political activities. The Local Government Municipal Structures Act, 1998 (Act 117 of 1998) makes provision for equal representation for women and men in political party lists and ward committees.

103. No other political party, other than the ANC has developed policy on the 50/50 representation of women in all its structures as well as in representation at the political level. However, following the 2009 National Elections, the Congress of the People party (COPE) has ensured that it had 50% women elected into positions of decision-making.

#### **2.8.2 Representation of women in the political and public service level in provinces (Q. 17)**

104. Following the 2009 election, female representation in provincial governments has shown progress. The Free State province has experienced an increase in the representation of women between 2004 and 2009. In Gauteng, the female share increased from 26% to 48%. Overall women currently occupy 42% of seats in provincial legislatures. The number of female premiers (the provincial equivalent of the president) has also increased from four out of nine after the 2004 elections, to the current five out of nine following the 2009 elections.

#### **Representation of women and men in national departments and the 9 provinces and per level as on March 2010**

Province	Management Level	Female	%	Male	%	Grand Total
Eastern cape	04 - Director General	1	33.3	2	66.6	3
	05 - Deputy Director General	10	38.4	16	61.5	26

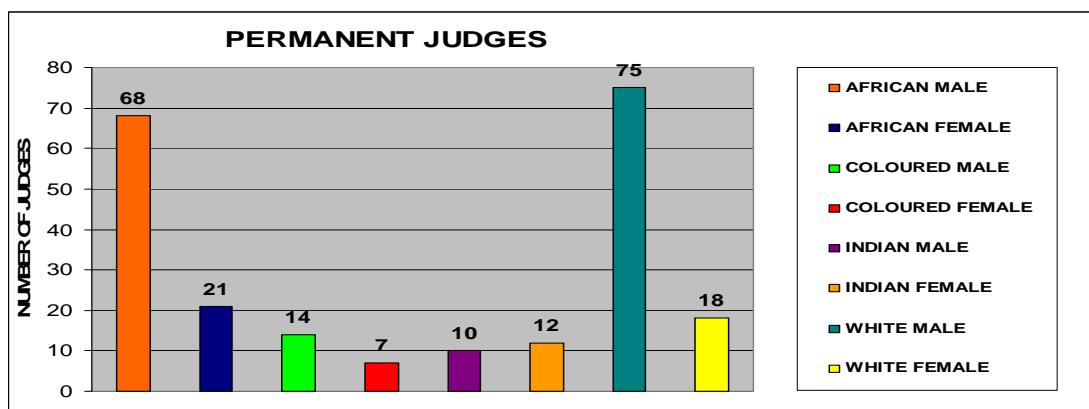
<i>Province</i>	<i>Management Level</i>	<i>Female</i>	<i>%</i>	<i>Male</i>	<i>%</i>	<i>Grand Total</i>
	06 - Chief Director	32	33.6	63	66.3	95
	07 - Director	152	34.3	290	65.6	442
Eastern cape total		195	34.4	371	65.5	566
Free state	04 - Director General	4	20	16	80	20
	05 - Deputy Director General		5	31.2	11	68.7
	06 - Chief Director	22	36.0	39	63.9	61
	07 - Director	61	30.0	142	69.9	203
Free state total		92	30.6	208	69.3	300
Gauteng	04 - Director General	4	23.5	13	76.4	17
	05 - Deputy Director General	18	35.2	33	64.7	51
	06 - Chief Director	60	42.8	80	57.1	140
	07 - Director	199	39.2	308	60.7	507
Gauteng total		281	39.3	434	60.6	715
Kwazulu/natal	04 - Director General	5	41.6	7	58.3	12
	05 - Deputy Director General	11	42.3	15	57.6	26
	06 - Chief Director	40	35.7	72	64.2	112
	07 - Director	134	37.2	226	62.7	360
Kwazulu/natal total		190	37.2	320	62.7	510
Limpopo province	04 - Director General	1	25	3	75	4
	05 - Deputy Director General	12	40	18	60	30
	06 - Chief Director	21	28.7	52	71.2	73
	07 - Director	106	34.6	200	65.3	306
Limpopo province total		140	33.8	273	66.1	413
Mpumalanga	04 - Director General	1	16.6	5	83.4	6
	05 - Deputy Director General	6	42.8	8	57.1	14
	06 - Chief Director	14	33.3	28	42	66.6
	07 - Director	87	37.8	143	230	62.1
Mpumalanga total		108	36.9	185	293	63.0
National departments	04 - Director General	15	24.5	46	75.4	61
	05 - Deputy Director General	86	34.8	161	65.1	247
	06 - Chief Director	357	33.8	698	66.1	1,055
	07 - Director	1,148	38.1	1,862	61.8	3,010
	16 - Justice		0	4	100	4

<i>Province</i>	<i>Management Level</i>	<i>Female</i>	<i>%</i>	<i>Male</i>	<i>%</i>	<i>Grand Total</i>
	18 - Prosecution	3	25	9	75	12
National departments total		1,609	36.6	2,780	63.3	4,389
North west	04 - Director General	2	50	2	50	4
	05 - Deputy Director General	14	0	0	100	14
	06 - Chief Director	21	36.8	36	63.1	57
	07- Director	82	39.8	124	60.1	206
North west total		105	37.3	176	62.6	281
Northern cape	05 - Deputy Director General	2	25	6	75	8
	06 - Chief Director	14	35.8	25	64.1	39
	07 - Director	44	29.9	103	70.0	147
Northern cape total		60	30.9	134	69.0	194
Western cape	04 - Director General	1	20	4	80	5
	05 - Deputy Director General	8	36.3	14	63.6	22
	06 - Chief Director	16	26.6	44	73.3	60
	07 - Director	69	30.9	154	69.9	223
Western cape total		94	30.3	216		69.6
Grand Total		2,874	36.0	5,096		63.9

### 2.8.3 Extending Quotas to increases women's representation and participation (Q. 18)

105. The South African Cabinet has adopted a 50/50 parity target for women in decision making positions at all levels of government and in all entities. However this needs to be extended into the corporate and private sector as well as in civil society in general. The proposed Gender Equality Bill which will be developed in 2011 is touted as the legislative means by which to enforce this measure, including in the Judiciary. In August-September 2010, the President appointed a number of women judges in seats of various Courts.

**Table: Statistics of judges**



106. Today, the percentage of women judges is 26% and males 74%, this is a great achievement taking into consideration that in 1992 there was just one (1) white female judge, until 1993 when two female judges (one black and one white) were appointed to the Constitutional Court.

**Table: Statistics of magistrates**

<i>Race and Gender Breakdown of Magistrates Employed as on 30.09.10</i>									
POST CLASS	African Male	African Female	Indian Male	Indian Female	Coloured Male	Coloured Female	White Male	White Female	Total
Regional Court President	2	1	1	0	1	1	0	1	7
Regional Magistrate	68	39	7	16	10	6	117	32	295
Chief Magistrate	6	4	1	2	0	1	2	1	17
Senior Magistrate	50	10	2	3	3	2	25	19	114
Magistrate	327	196	50	68	63	43	350	194	1291
Grand Total	453	250	61	89	77	53	494	247	1724
Percentages	26%	15%	4%	5%	4%	3%	29%	14%	100%

107. The percentage of women magistrates is about 37%

108. The South African Chapter of the International Association of Women Judges (SAC: IAWJ) is an Association which has women judges and magistrates as members. One of its objectives is to facilitate capacity building for women to be appointed into the judiciary. The South African Women Lawyers Association (SAWLA) is an Association whose membership is constituted by women in the legal profession. One of their objectives is transformation of the judiciary including ensuring that women are appointed into the judiciary.

## 2.9 Education

### 2.9.1 Drop-out and re-enrollment of pregnant girls and elimination of gender-based violence in schools

#### 2.9.1.1 Policy Environment for promoting equal access to education

109. South Africa has one of the most progressive constitutions in the world, including freedom from sex/gender discrimination and violence, legal equality, and protection against unfair discrimination based on gender, sex, and sexual orientation. Central to South Africa's democracy is a commitment to gender equality and the empowerment of women and girls. Education is one of the most significant means to promoting human and national development. It expands the opportunities and life choices for both boys and girls; men and women. It can also have positive effects on changing social attitudes for the better, to embrace greater equality between people.

110. The South African Government is committed to providing equal access to quality education for all South Africans, with a view to eliminating gender disparities in education at all levels. The National Education Policy Act, 1996 provides for redressing the inequalities of the past in educational provision, including the promotion of gender equality. Subsequent education policy and legislation has placed strong emphasis on equity and redress at all levels of the system. The South African Schools Act, 1996, makes schooling compulsory for learners from the beginning of the year they turn 7 years old to the end of the year they turn 15 years old or up to the ninth grade, whichever occurs first. Nine years of compulsory schooling includes all seven years of primary schooling and two of the five years of secondary schooling. The remaining three years of secondary schooling form part of Further Education. Although Further Education is not compulsory, the South African Constitution obliges the State to make it progressively accessible and available.

111. Further to this, the South African Schools Act, 1996 provides for a democratic, non-racist and non-sexist education system. The nature of the non-sexist education system in South Africa makes it possible for both boy and girl children to access basic education, as well as participate in

gateway subjects such as mathematics and science. In addition, the Department of Basic Education has a variety of social protection policies and programmes dedicated at promoting and protecting access to education for vulnerable children; taking into consideration issues that might deter children from coming to school, concentrating, as well as performing well.

#### **2.9.1.2 Dropout Rate: 2006-2009**

##### **National dropout rate by gender, and grade, from 2006 to 2008**

	2006			2007			2008		
	Female	Male	National	Female	Female	National	Female	Female	National
Grade 1	8.9	10.6	9.8	8.5	9.7	9.1	7.5	8.8	8.2
Grade 2	1.8	2.0	1.9	2.6	3.0	2.8	2.4	2.9	2.7
Grade 3	1.4	1.7	1.6	1.8	2.1	1.9	1.2	1.4	1.3
Grade 4	1.3	3.2	2.3	2.0	3.5	2.7	2.2	4.0	3.1
Grade 5	0.6	2.0	1.3	1.7	2.8	2.3	1.8	3.3	2.5
Grade 6	1.3	3.1	2.2	2.5	3.3	2.9	2.3	3.6	2.9
Grade 7	-1.8	-0.8	-1.3	-0.8	0.1	-0.4	0.3	1.1	0.7
Grade 8	4.2	6.8	5.5	3.2	4.5	3.9	8.2	7.8	8.0
Grade 9	-2.6	0.5	-1.1	-6.0	-1.8	-3.9	-0.4	4.0	1.9
Grade 10	9.4	14.3	11.8	10.8	15.8	13.2	13.1	18.9	16.0
Grade 11	16.1	16.9	16.5	19.9	19.8	19.9	21.9	23.4	22.6

*Source: DBE, Annual School Survey; 2006-2008*

#### **2.9.1.3 Reasons for non-attendance**

112. The General Household Survey, 2002-2009, conducted by Statistics South Africa indicates four common reasons why 7-18 year old children did not attend an education institution. These four common reasons as indicated in the table below were:

- (a) No money for fees (28%)
- (b) Education is useless or uninteresting (15%)
- (c) Pregnancy (6%)
- (d) Working (6%)

113. Although “no money for fees” remains the most frequently cited reason why 7 to 18 year old children may not be attending an education institution, the trend over time shows that fewer children are citing this as a reason for not attending an education institution. Table below shows that in 2002, 39% of 7 to 18 year old children not attending an education institution cited “no money for fees” as a reason for not doing so, while in 2009, 28% cited this as reason. The main reason for this decrease could be the implementation of the no-fee school policy in 2007 whereby all Quintile 1 and 2 schools (40% of the poorest schools in the country) were declared as no-fee schools. The trend over time also shows that “education is useless or uninteresting” cited as a reason for not attending an education institution by 7 to 18 year olds has increased between 2002 and 2008, from 13% in 2002 to 15% in 2009.

##### **Reasons of 7 to 18 year old children not attending education institutions: 2002-2009**

	<i>No money for fees</i>	<i>Education is useless or uninteresti- ng</i>	<i>Illness</i>	<i>Pregnancy</i>	<i>Family commitmen- t (child minding, etc.)</i>	<i>He/she is working (at home or job)</i>	<i>School/education institution is too far away</i>	<i>Failed exams</i>
2002	38.8	12.8	8.2	5.2	5.2	5.0	3.4	2.2
2003	39.5	9.4	8.3	5.1	4.9	4.4	4.0	4.1
2004	35.1	11.8	12.1	8.3	4.8	4.6	2.0	5.9
2005	34.4	12.8	9.2	6.2	7.7	6.2	1.8	6.8
2006	35.2	14.2	9.3	6.6	5.7	6.6	1.7	5.8
2007	32.2	15.1	10.0	5.9	7.1	7.5	1.8	4.4
2008	26.0	12.2	12.3	6.4	4.8	8.0	2.0	7.2
2009	27.9	14.8	5.4	6.1	4.9	5.8	0.2	4.1

Source: Statistics South Africa, General Household Survey, 2002-2009

#### 2.9.1.4 Reasons provided by caregivers and Youth for Children being out of school (Ages 7 to 18)

**Table 18: Reasons provided by caregivers for the children in their care being out of school**

Reasons provided by caregivers for their children being out of school	Percent of children affected
A. Lack of income/cost of education: No money for access costs or fees/general financial pressures at home/needed to leave school to work	37.5%
B. Child behaviour linked to socio-economic context: Attitudinal: doesn't want to go to school (17%) /lost interest / mixing with bad company / wanted to be with boys / wanted to drink and do drugs / no respect for his parents / had a fight with the teacher and left / school didn't offer subjects child wanted so left / child was visiting relatives or friends and didn't return to school / child hated being away from home to access schooling so left school	33.6%
C. Pregnancy/taking care of her child	22.0%
D. Academic/learning: Failed a grade and didn't return / had learning difficulties / always behind with schoolwork	14.4%
E. Family context linked to poverty / low income: Death in the family / looking after sick family member / parents worked far away from home – children left unsupervised	13.1%
F. Child health/disability: Disabled/child was sic /injured	12.9%
G. IN-SCHOOL FACTORS: access denied: Denied registration: too old / school was full /late registering and was denied a place / child was expelled	8.4%
H. IN-SCHOOL FACTORS: Disincentives to remaining in school/child experience: Shortage of teachers at school/teased for being older than classmates/bullied at school /felt as if she didn't fit in/ assaulted by the teacher / forced to date the teacher	4.5%
I. LACK OF APPROPRIATE SHOOLING FACILITY: school was too far away from home /no high school in the area/no special needs school in the area	3.4%
J. Other: child 'choice': Child got married/child hated being away from home to access schooling / wanted to be a Sangoma	3.1%
K. Vulnerability in the community: Not safe on way to school /child was assaulted	1.6%

*Source: Social surveys, Barriers to Education Study, 2009*

**Table 19: Reasons provided by youth (aged 16 to 18) for being out of school**

Reasons provided by youth aged 16 to 18 for leaving school	Percent of respondents
A. Pregnant/look after my child: Gave birth and there was no one to take care of my child except myself/due to pregnancy I was tired most of the time unable to do the schoolwork/ parents asked me not to go to school, not in a condition to write final exams because I was going to fail anyway/fell pregnant and was sick so I left school completely didn't enrol the following year/ my mother was working far from home and she told me not to embarrass her by going to school pregnant, I will go to school next year/even teachers are complaining about students who come to school pregnant/	38.3%
B. Could not afford fees/access costs/financial worries: Didn't have anyone to help me financially like school shoes and the rest of the uniform/no money, can't afford to maintain myself/issues of school fees and I wanted to go to college to do architecture and woodwork, but.../trying to make money for the family food/my mother didn't have money for school fees and uniform, my mother drinks beer and didn't attend to my problems and teachers called me horrible names, I tried to talk to my brother but he didn't listen/didn't have school shoes they chased me away, I ended up not going to school, after a month I got the shoes but I had lost interest in school/didn't have lunch and others were laughing so I decided to leave school / I had to work as there was no one to look after the children and she said I must stop going to school and look after the children	13.4%
C. Lost interest in school/decided to leave/temp. absence lead to permanent absence: I wanted to stay at home, I will attend school next year/had no interest in school/didn't even do schoolwork/was late and couldn't wake up on my way to school so I decided not to go to school and to spend the day with my friends/missed classes or don't go to school at all/I can say I did not have interest to go to school/you have a bad record if you're late, my friends weren't going to school so on my way to school I decided to spend the day with them and from there.../wanted to listen to my grandmother when she tried to guide me but I landed up leaving school and stayed somewhere, I dropped out of school and now I'm pregnant/I didn't sleep at home for a while and was scared to come back home, so I went to friends, my mother fetched me, I tried to talk to the class teacher but she wouldn't take me back, so I went to afternoon school, but they were adults there and I couldn't cope so I decided to drop out	11.7%
D. Peer pressure: My friend made me drop out because he didn't like schooling, I missed school/getting involved with boys too much/ friends influenced me and I became naughty.	6.7%
E. Taking drugs	1.7%
F. Smoking/ drinking with friends	1.7%
G. I was thinking about girls and harassing girls	1.7%
H. Involved in crime and as a result ran away from home	1.7%

I. Failed, too old for the class: I felt embarrassed because I failed, I was sure I'd passed grade 10/failed 3 times, I was supposed to attend with very small kids/as much as I wanted to attend I was over-age and the principal asked me to leave/failed 3 times and was condemned to another level because of my age, they said I am not fit to go to school so I decided to leave/teacher was always shouting at me telling me I'm too old for the grade/ failed 3 times and not on good terms with teachers, they threatened me and I was told I would never pass.	9.9%
J. I was ill: I became very sick, thought I would die/got TB/fainted a lot/sick and will not attend next year/chest problems, TB/sick and will attend next year/had mumps on the face, scared kids might laugh or think I was HIV positive so I left school	8.3%
K. Victimised by teacher/bad relationship with teacher: There was a teacher who didn't like me and was always picking on me and forever insulting me/victimised by class teacher who sometimes called the police to school claiming I stole something from her, the principal decided I was a problem child and expelled me. I was not sad because I was not alright there anymore because I missed too many schooldays/I felt right in leaving school because one of our teachers were very rude and hit us a lot, I just stopped going to school completely and hang out with my friends/ teachers and some children used to say bad things to me/	6.7%
L. Emotional worries/family related: Lost my parents and can't concentrate on anything in life/my father passed away and I didn't go to the funeral, that really disturbed me/didn't get on with my uncles wife so I decided to quit school and live with my mother	3.4%
M. Lack of parental support/abusive parents: I was abused by my mother verbally and physically saying I must go back to my dad who I haven't seen for 10 years / I asked my father for money for uniforms, trips, books, school fees and my father would swear & ask why I was asking for money when I wasn't working so I went back home to my mother in Rustenburg and dropped out of school/	3.4%
N. School full and no longer taking children by the time we could afford it	1.7%
O. Don't see a reason why I should continue study because the subject I'm doing won't help my future, next year I will go to another school to do subjects that I want	1.7%
P. Wrongly accused by school of things I didn't do	1.7%
Q. School beat me up for not having proper school uniform, paying school fees and not paying for polish or paraffin	1.7%
R. I was raped	1.7%
S. The main reasons I left was because I was bewitched. Then I started working and got used to the money and it was difficult to go back to school	1.7%

Source: Social surveys, Barriers to Education Study, 2009

114. An analysis of the profile of out of school youths in the 16 to 18 age group reveals that the following groups are particularly vulnerable to being out of school:

- Coloured youth: race (or rather the social and political history designated by race) emerges as significant. Coloured youths of this age are substantially more vulnerable to being out of school than white, Indian or black youths.
- Children on farms appear to be significantly more likely to be out of school than children living in traditional, formal or informal settlements. Anecdotal evidence suggests that this is a problem particularly affecting coloured farming communities in the Western Cape. The Barriers to Education data does point to coloured youths on farms being particularly vulnerable to leaving school in this age group.
- Whilst age-specific enrolment rates and the GPI show a fair degree of gender parity, the reasons pushing youths out of school are certainly gendered. Teenage pregnancy is the most common cause of female youths leaving school before completing Matric. Male youths were more likely to have left school due to a lack of interest or sense of feeling disengaged or alienated from their school education (in the context of a host of other social processes as indicated by the formative research) (Social Surveys, 2009).

#### **2.9.1.5 Addressing Gender Based Violence and other social ills in Public Schools**

115. The Department of Basic Education has initiated several initiatives addressing social ills that affect boy and girl children with regards to their access to schooling. These include learner pregnancy and sexual abuse in schools.

116. According to the South African Schools Act, sexual abuse and Educator to learner sexual relationships are outlawed in the schooling system, and punishable by dismissal of the particular Educator if found guilty. However, Cases of sexual harassment and sexual violence continue to be reported in South African public schools. Evidence shows that girls experience sexual harassment and violence more than boys, but the experiences are not restricted to girls. It must be noted that sexual harassment and sex-related crime is a major social problem in South Africa. However, schools have a particular responsibility to protect young people from social problems. Education must play a dual role in relation to discrimination and gendered or sex based harassment and violence. Firstly, it must prevent such activities from occurring in education institutions. Secondly, it must mobilize the medium of education to develop in students the knowledge, skills and life orientation to ensure that they repudiate discrimination and gendered violence and become advocates against it.

117. The Department is committed to addressing issues of violence and harassment in schools and to creating a safe, caring and enabling environment for learning and teaching, both inside and outside the classroom. In 2001, the department developed '*Opening Our Eyes: Gender-Based Violence in South African Schools - a Manual for Educators*'. This school-based manual is intended to assist teachers, parents and learners in reducing or eliminating such cases of discrimination and violence. The manual is a professional development tool that has been used to train educators, school management teams and school governing bodies to understand the bases for such actions, and to develop strategies and approaches which can assist in managing such unacceptable behaviours.

118. In 2008 the department developed the *Guidelines for the Prevention and Management of Sexual Violence and Harassment in Public Schools (Guidelines)*. The purpose of the *Guidelines* is to assist public schools in maintaining minimum standard procedures to addressing allegations of sexual violence and harassment, and to specifically detail how public schools should treat victims of sexual violence and harassment, and those who have, or are alleged to have, committed such acts. They are also intended to assist victims of sexual violence and harassment with reporting procedures and in seeking intervention. The *Guidelines* have been targeted at school management and governance teams, district officials, to raise awareness of the importance of a framework for

managing these problems in schools. The Department also produced a series of teacher support materials, entitled *Genderations*, which were published in the Teacher newspaper between September 2008 and March 2009. The final three inserts focused specifically on understanding and using the *Guidelines*. In addition, the Directorate conducted support training for three provinces in early 2009. Provincial Departments have conducted, and continue to conduct further training at district levels using these resources. The Guidelines and the *Genderations* have also proven to be a useful framework for advocacy and awareness-raising, and reinforcing the importance of a framework for managing sexual violence in schools. In 2010, the Department has developed a handbook for learners to equip learners with knowledge and understanding of sexual harassment and sexual violence, its implications, ways to protect themselves from perpetrators, and where to report it in the unfortunate event that it happens. The department plans to distribute this as widely as possible to enable the learners to engage with the issue in order to actively act to address sexual abuse in schools. In addition, the Department of Basic Education is in the process of developing guidelines for reporting persons who are unsuitable to work with children in educational institutions, in order to protect learners from the risks of interacting potentially dangerous persons.

119. The Safe Schools programme contains two elements, a preventative / early intervention aspect and a law enforcement aspect. The programme is aimed at encouraging an integrated and multi-disciplinary approach towards learner that mobilises stakeholders to participate in a broad network of services that protect children and make schools safer. In terms of the programme, it is recommended that each school should establish a schools safety team that is multi-disciplinary in nature. The team should be able to plan for the safety of the school and can obtain the assistance of the police in crime threat / crime pattern analysis. On the basis of the analysis, the school safety team can then prioritise activities that they would conduct and monitor on an ongoing basis. In terms of the law enforcement aspects, police attend to crime complaints and may conduct searches at the request and with the approval of the School Governing Body (SGB).

120. The composition of safety teams and SGB includes parents, educators and learners' representatives. Safe School Committees are established and used as a platform to implement programmes and address issues relating to school safety. The Safe School Committee comprises of internal stakeholders of the school for example learners, parents, educators, School Governing Body (SGB) members and the school security personnel. Extra role players include the SAPS, the Metropolitan Police, local ward councillors, social workers and Community Police Forums (CPF's). Roles and responsibilities of each role player in the committee is defined geared at making schools a safe and secure environment conducive for learning.

121. The Ministers for Police and Basic Education have developed Protocols that indicate the nature of collaboration between the two departments. The Protocols are supported by a National Plan of Action that has prioritized 9 000 schools throughout the country for attention in the joint collaboration. The schools were selected on the basis of being those that have demonstrated the highest number of challenges that threaten the safety of the schooling communities. It is also intended that the Department of Basic Education should also utilize the life orientation programme to impart values and skills to learners that build resilience and resistance against crime.

122. The police have a specific training programme for schools-based crime prevention officials designed to enable their interaction with young people on crime prevention initiatives.

123. During the reporting period, the Signposts for Safe Schools was rolled out to police officials working with school communities (Adopt A Cop, Captain Crime Stop officials) as well as educators working with Safe School programmes. The workbook is a resource guide to assist in identifying indicators of social challenges that face learners and provide interventions that have been known to work well in addressing these challenges. Examples include addressing bullying, use of weapons, involvement in gangs, drugs and sexual violence. It also provides life orientation

skills for young people, which includes dealing with stress, the improvement of communication and positive conflict resolution.

124. The workbook was recently replaced by the Hlayiseka Early Warning System as a tool for interventions by schools. Hlayiseka broadly targets the school community in that it provides tools that are targeted at parents, educators and learners to respond effectively to crime and security threats.

#### **2.9.1.6 Additional Information**

##### **2.9.1.6.1 Information on the school infrastructure especially in rural areas**

125. The focus for the 2010-2014 Strategic Plan periods through the Accelerated School Infrastructure Delivery Initiative (ASIDI) is on all schools that do not meet the basic safety norms and standards and those constructed from inappropriate material and are a danger to learners and educators. Those without basic services will be provided with water, sanitation, electricity and fencing. Where an entire school has been built from an inappropriate material especially mud, this school will be replaced with a school to Optimum Functionality (all facilities provided).

126. A four strand strategy has been established for rolling-out ASIDI; the first two of which will involve an engagement with Provincial Education departments to explore how they can reprioritise the targets of their provincial allocations to more effectively;

(i) address the 3627 schools that need to be brought up to basic safety functionality levels by 2014; and

(ii) replace all entire inappropriate structures schools 2014;

The third and fourth strands of ASIDI aim to:

(iii) replace all 395 entire mud schools that are situated in the Eastern Cape province

(iv) to provide core spaces (specialist rooms eg. Administration blocks, laboratories, libraries etc) to schools

**Table1 provides details of ASIDI (to be confirmed as final in January 2011).**

<i>Focus of ASIDI</i>	<i>2011/2012</i>	<i>2012/13</i>	<i>2013/14</i>	<i>TOTAL</i>
Infrastructure schools (Inappropriate Structures minus Mud & reprioritised by PEDs))	22 schools	37 schools	15 schools	74 schools
Inappropriate Structures (Mud) (Conditional Grant)	116 schools	198 schools	81 schools	395 schools
Infrastructure (Below Basic Safety & reprioritised by PEDs)	182 schools	1245 schools	2200schools	3627

##### **2.9.1.6.2 Distance that learners walk to school and measures to assist with transport**

127. The vast majority of learners walk to School. For the majority of these learners (70%) the door to door travel time to reach their destination is 30 minutes or less. However 7% of learners take longer than an hour to reach school. Provincial Education Departments provide scholar transport to learners in order to access schooling. (+12 million learners in schools). The Department of Basic Education developed the National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment gazetted on 11 June 2010, gazette 33283. The policy determines that the location of the school should ensure easy accessibility to

roads, sewage lines and other basic services. Hence the walking distance to and from school- 10km. At present the Departments of Basic Education and Transport are finalising (March 2011) the National Scholar Transport Policy which will assist.

## **2.10 Employment**

### **2.10.1 Remuneration of maternity leave (Q. 20)**

128. There has been no consideration of full remuneration during maternity leave under the Basic Conditions of Employment Act, although there have been discussions at the National Economic and Development Council (NEDLAC) about remuneration during maternity leave. Nothing concrete emerged from those discussions. The Unemployment Insurance Fund does provide for a ‘top-up’ maternity benefit for contributors to the fund.

### **2.10.2 Investigation into domestic workers**

129. Following the investigation conducted in 2001 into the domestic worker sector, the recommendation was that different wages be prescribed for full time and part time domestic workers. A part time domestic worker was defined as an employee who works for the same employer on not more than three days per week or not more than 27 hours per week. A full time worker was defined as a worker who works for longer hours than the above-mentioned. As result, a minimum monthly wage for Area A was pegged at R800 and for Area B a monthly wage of R650.

130. In distinguishing the minimum hourly rate between full time and part time workers, the following approach was adopted, that:

- The rate for full time workers in urban areas (Area A): R4.10 per hour (R800 per month for 45 hour week);
- The rate for part time workers in urban areas: R 4.51 per hour
- The rate for full time workers in rural areas (Area B): R3.33 per hour (R650 per month for 45 hour week);
- The rate for part time workers in rural areas: R3.66 per hour
- It should however be noted that in determining Areas A and B, an average household income recorded for the municipal area concerned in the 1996 census was utilized. The demarcation was based on the following approach:
  - Area A – those municipalities whose household average income was greater than R24, 000 per annum; and
  - Area B – those municipalities whose household average income was between R12, 000 and R24, 000 per annum

131. Generally, Areas A are urban, and Areas B are semi-urban. The wages in area A are the highest as compared to area B.

132. These minimum rates were determined for a period of three years and are reviewed annually. Currently the minimum monthly wage for domestic workers is as follows:

- The rate for full time workers in urban areas (Area A): R7.72 per hour (R1506.35 per month for 45 hour week);
- The rate for part time workers in urban areas: R 9.12 per hour
- The rate for full time workers in rural areas (Area B): R6.44 per hour (R1256.14 per month for 45 hour week); and

- The rate for part time workers in rural areas: R7.60 per hour

133. For the purpose of determining annual wage increases, Consumer Price Index or inflation as reported by Statistics South Africa is utilized.

### 2.10.3 Wage Determinations

134. The setting of minimum wages in the sectoral determinations is not based on gender of employees employed in a specific sector. The South African Basic Conditions of Employment Act, 75 of 1997 stipulate a clear criterion which needs to be complied with when setting minimum wages in a specific sector. Amongst other issues to be considered is the ability of employers to pay the wages; the cost of living; the alleviation of poverty; and the likely impact of the proposed wage on current employment or creation of employment. This therefore means that irrespective of the gender of employees in a specific sector, all employees will be entitled to the same minimum wage.

135. As stipulated above, the Employment Conditions Commission has the responsibility of monitoring progress in ensuring the right to equal remuneration. In sectors where the sectoral determinations are established, the Commission ensures that minimum wages are not determined on the basis of gender but rather on the criterion as spelt out in the Act.

136. In addition, South Africa is signatory to the ILO Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value. Whilst this is the case, in practice, in particular within the corporate sector, wage differentiations still occur as well as the under representation of women in certain occupational sectors.

137. The 10<sup>th</sup> Annual Report of the Commission for Employment Equity: 2009-2010 indicates the following with respect to promotion for all employers:

Occupational Levels	Male				Female				Foreign national		Total
	A	C	I	W	A	C	I	W	Male	Female	
Top management	244	62	87	492	63	37	26	141	26	7	1 185
	20.6			41.5		3.1	2.2	11.9			100.0
	%	5.2%	7.3%	%	5.3%	%	%	%	2.2%	0.6%	%
Senior Management	1 242	394	492	2 508	664	203	261	1 136	100	28	2 028
	17.7			35.7		2.9	3.7	16.2			100.0
	%	5.6%	7.0%	%	9.4%	%	%	%	1.4%	0.4%	%
Professionally qualified, experienced specialists, mid management	2	1			1	1					
	7 497	066	791	7 098	5 360	969	319	4 932	292	113	32 437
	23.1			21.9	16.5	6.1	4.1	15.2			100.0
	%	6.4%	5.5%	%	%	%	%	%	0.9%	0.3%	%
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents	34	7	2	10	22	5	2				
	122	047	958	352	550	833	556	9 303	528	127	95 376
	35.8			10.9	23.6	6.1	2.7				100.0
	%	7.4%	3.1%	%	%	%	%	9.8%	0.6%	0.1%	%
Semi-skilled and discretionary	41	5	1		22	6	1		2		
	148	927	173	2 674	323	323	113	3 850	228	66	86 825
	47.4	6.8%	1.4%	3.1%	25.7	7.3	1.3	4.4%	2.6%	0.1%	100.0

Occupational Levels	Male				Female				Foreign national		Total
	A	C	I	W	A	C	I	W	Male	Female	
	%	%	%	%	%	%	%	%			
decision making											
Unskilled and defined decision making	8 557	522	122	362	4 504	660	49	207	295	33	17 311
	49.4				26.0	9.6	0.3				100.0
	%	8.8%	0.7%	2.1%	%	%	%	1.2%	1.7%	0.2%	%
Total permanent	92	17	6	23	55	16	5	19	3		240
	810	018	623	486	464	025	324	569	469	374	162
	38.6				23.1	6.7	2.2				100.0
	%	7.1%	2.8%	9.8%	%	%	%	8.1%	1.4%	0.2%	%
Temporary employees	3 133	487	71	361	1 323	425	49	275	61	21	6 206
	50.5				21.3	6.8	0.8				100.0
	%	7.8%	1.1%	5.8%	%	%	%	4.4%	1.0%	0.3%	%
Grand Total	95	17	6	23	56	16	5	19	3		246
	943	505	694	847	787	450	373	844	530	395	368

A = African; C = Coloured; I = Indians; W = White

138. The data indicates that discrimination still exists within employment with a slant towards men attaining more promotions than women in general, and with more whites than Africans. White women continue to be advantaged within the employment sector. Even though legislation has guaranteed non-discrimination in the employment sector, and equalisation of pay with work of equal value ensures that women are increasingly earning the same as men, these are not adequately translating into increased contributions towards a truly transformed economic sector.

139. Furthermore, the Employment Equity Act is in the process of being reviewed and amended in order to address certain shortcomings and to strengthen its implementation. The following key areas in the Act are being reviewed for amendment:

- Equal pay for work of equal value: A new section is required in the Act to deal with explicitly unfair discrimination by an employer with regards to the terms and conditions of employment for employees doing the same work, similar work or work of equal value. A differentiation will amount to unfair discrimination unless the employer can show that differences in wages or other conditions of employment is in fact based on fair criteria such as experience, skill, responsibility, etc.

140. The lack of a provision to deal expressly with wage discrimination on the basis of race and gender in the Employment Equity Act has been criticised by the International Labour Organisation. The enactment of a section in the Act will provide an explicit basis for equal pay claims to give effect to the Constitutional protection of equality and achieve compliance with core international labour standards binding on South Africa.

- Enforcement of affirmative action provisions: The enforcement provisions of the Employment Equity Act have to be simplified in order to eliminate unnecessary mandatory steps and mandatory criteria that must be taken into account in assessing compliance. This will promote effective enforcement and prevent the tactical use of reviews as a mechanism for delaying the enforcement process. It will not prevent employers who are aggrieved by decisions from challenging these decisions at an appropriate juncture. The Director-General may apply to the Labour Court to impose a fine on an employer who does not comply.

141. Government released four new Bills in early December 2010 for public comment viz. The Employment Services Bill, Employment Equity Amendment Bill, Basic Conditions of

Employment Amendment Bill and the Labour Relations Amendment Bill. They include measures to ensure job security, to crack down on child labour, force employers to permanently hire staff instead of rolling contracts; enforcing equal pay for equal work; establishing a state employment agency in which every private sector job vacancy and every new employee will be listed; obliging all employment agencies to be registered – and allowing them to be deregistered by the Minister of Labour; and fining companies up to 10% of their annual turnover for non-compliance – and even jailing employers for a minimum of a year for violating some of the rules.

## **2.11 Health**

### **2.11.1 Increasing women's access to adequate and efficient health services, especially for girls (Q. 23)**

142. Primary Health Care approach is the service delivery platform that is based on health promotion and disease prevention. A number of initiatives have been implemented to improve access to health services for women and girls. One of the first initiatives was to remove user fees for children under six and pregnant and lactating women. Later, user fees for people with disabilities were also removed. Primary health care was also made free to all. Other measures included the following:

- Healthy lifestyles programme focuses on promoting the health of young people through messages related to tobacco and alcohol abuse, healthy sexual lifestyles, diet and exercise through popular television programming, health education and empowerment, community radio, school curricula, billboards and posters.
- Health promoting schools initiative and School Health Services are strengthened, with emphasis on the promotion of personal and sexual health and the prevention of intentional and unintentional injuries, including violence, infections, pregnancy and substance abuse.
- Youth Friendly Health Services to increase access to youth to health services.
- Teenage pregnancy prevention strategy has been developed to improve their sexual health and rights through life-skills and reduce the rate of unintended pregnancy, including vulnerability to contracting sexually transmitted infections (including HIV and AIDS) and empower girls and boys to make better life choices through education.
- Integrated management of Childhood diseases (IMCI).The Expanded Programme on Immunization, is currently at over 80%.
- The Integrated Nutrition Programme (INP) A component of this programme is the Primary School Nutrition Programme, which includes school feeding programmes, community nutrition projects, vegetable gardens in schools, and income generation projects.
- HIV counselling and testing (HCT) “know your status “campaign with Prevention of Mother to Child transmission (PMTCT) and antiretroviral therapy (ART) has created a continuum of prevention and care services.
- Management of sexual assaults through clinical forensic medicine (forensic nurses and doctors) and increasing access to health care (psychosocial support, PEP, referral services and collation of medico-legal evidence) for survivors of sexual assaults within health facilities.
- Basic Antenatal Care (BANC) is used as a strategy to ensure quality care during the antenatal period thus improving pregnancy outcomes
- Other programmes include prompt syndromic treatment of sexually transmitted infections (STIs), home based care and support for the infected and affected (including child headed households), social mobilisation and community empowerment, Tuberculosis control and HIV prevention to fight opportunistic diseases.

- Maternal deaths were made notifiable and a National Committee on Confidential Enquiry into Maternal Deaths was established in 1997 to enquire into all notified maternal deaths within health facilities in order to describe the magnitude of maternal deaths, the pattern of the causes of maternal deaths, the avoidable factors, missed opportunities and to identify any substandard care related to these deaths and to make recommendations on ways of reducing the maternal deaths.
- The 2005-2007 Saving Mothers Report (a report of the committee) suggests that a significant proportion of maternal deaths are attributed to non-pregnancy related infections especially HIV/AIDS.
- With respect to prevention of vertical transmission monotherapy (single drug) was initiated in 2004 with dual therapy (two drugs) being introduced in 2008. Whilst the transmission rates have begun to decline with the introduction of dual therapy it was clear that additional efforts were needed to strengthen the programme. In 2010 this programme was strengthened to not only focus on preventing transmission to the baby but also by providing treatment to the mother for her own wellbeing.
- In addition to the PMTCT, it is recognised that women have a right to treatment for HIV for their own health. Pregnant women are now initiated onto lifelong ART at a CD4 count of 350 or less and it continues after delivery. CD4 of 350 or less is in practice from 1 April 2010 as per the Presidential Announcements, for women who need lifelong ART for their own health.
- The Department of Health is actively involved in a multisectoral approach to sexual violence initiative through the Thuthuzela care centre model. This one stop centre has been established nationally within 27 public hospitals in communities where the incidence of rape is particularly high. This specialized service is linked, to the sexual offences courts, police stations and social work offices as part of the South African anti-rape intervention. Also staffed by a committed cadre of prosecutors, social workers, investigating officers, magistrates, health professionals and police. Key activities of the department of Health include managing the medico-legal evidence, psycho-social support and Post Exposure Prophylaxis (PEP) to reduce the risk of exposure to HIV virus as a result of rape and violence, thus preventing secondary victimization to survivors of sexual assault.

### **2.11.2 Goals and targets in the “Reach Every District” strategy (Q. 24)**

143. The Reach Every District (RED) Strategy is aimed at reaching every child with immunization services. In essence, if properly implemented it should improve the quality and access to primary health care services. It is based on principles of: district and local ownership; efficient use of limited resources; and community involvement. The components are: re-establishing outreach services; strengthening supportive supervision; planning and management of resources; increase community involvement; data management and effective use of data.

144. South Africa started with national training of provinces and districts in November 2006. The goal of 50% districts implementing the RED strategy by end of 2007/8 was reached. By end of 2010, provinces reported that all districts have implemented the RED approach. However, due to limited capacity, the National office has not been able to conduct supportive and monitoring measures and to evaluate effective implementation of the strategy.

145. The target of having 70% of districts reach fully immunized coverage (for children below 1 year) of 90% in 70% of districts has not been reached. Currently 60% of districts have fully immunized coverage of more than 80%. The Immunization programme has since 2009 introduced two new vaccines (Pneumococcal Conjugate Vaccine and Rotavirus Vaccine). This put additional strain on the Immunization Programme which affected the fully immunized coverage. As the situation stabilizes and the programme fully integrates the new vaccines, South Africa hopes to pick up again on the trend to increase fully immunized coverage and provide more protection with a wider range of vaccines and increase the total number of children protected from vaccine preventable diseases.

**2.11.3 Implementation of the ten recommendations of the “Report on the Confidential Inquiry into Maternal Deaths” (Q. 25)**

146. The ten recommendations of the fourth report on Confidential Enquiry into Maternal Deaths in South Africa (2005-2007) were arranged into four main areas. These focus areas were also linked to the 8 strategies that have been outlined in the Maternal Child and Women’s Health (MCWH) Strategy 2009-2014. They are:

- Improving health care provider knowledge and skills in providing emergency care and ensuring adequate screening and treatment of the major causes of maternal death.
- Improving quality and coverage of reproductive health services, namely contraceptives and termination of pregnancy services.
- Management provision of staffing and equipment norms, transport and availability of blood for transfusion.
- Community involvement and empowerment regarding maternal, neonatal and reproductive health in general.

147. An implementation plan has been developed at national level and was presented to the National Health Council Technical Team comprising of Heads of Health in all the 9 provinces in South Africa to be included the objectives and activities in Provincial MCWH plans. Responsibilities have been assigned and will be monitored and evaluated on an ongoing basis.

148. The current key health priorities are informed by the National Service Delivery Agreements for the health sector and include the following health outcomes:

- Increasing Life Expectancy.
- Decreasing Maternal and Child mortality
- Combating HIV and AIDS and decreasing the burden of disease from Tuberculosis
- Strengthening Health System Effectiveness

**2.11.4 The goal of 80% of people living with HIV and their families receiving appropriate treatment, care and support services by 2011 (Q. 26)**

149. The HCT Report Presented to National Health Council, as of Oct, 70% client were on Rx. Goal of 80% of people living with HIV receive treatment. A phased approach has been adopted to reach this goal by 2012 and with the necessary budgetary support. Further surveys did include the annual Antenatal Sentinel HIV and Syphilis Prevalence Survey in South Africa. The 2009 results of the Antenatal Sentinel HIV and Syphilis Prevalence Survey show a steady decline in the prevalence in different age groups inclusive of the zero prevalence in Antenatal efforts.

150. In terms of the sex disaggregated data, the HSRC’s (population-based) South African National HIV Prevalence, Incidence, Behaviour and Communication Survey revealed the following findings:

- The prevalence remains disproportionately high for females overall in comparison to males, and it peaks in the 25-29 age group, where in one in three (32.7%), were found to be HIV – positive in 2008. This proportion has remained unchanged, and was at the same level in all three surveys.
- HIV prevalence among females is more than twice as high as that of males in the age groups 20-24, and 25-29. HIV prevalence among males peaks in the 30-34-yearold age group, where a quarter of males (25.8%) were found to be HIV-positive in 2008.
- The 2002, 2005 and 2008 surveys are comparable for the population aged 2+ years and similar prevalence levels were found in all three studies – 11.4% in 2002, 10.8% in 2005 and 10.9% in

2008. HIV prevalence in the total population of South Africa has thus stabilised at a level of around 11%. However, HIV infection levels differ substantially by age and sex and also show a very uneven distribution among the nine provinces.

151. Through the support of implementing partners, the National Department of Health works with the NGO'S, South African National AIDS Council (SANAC) and the nerve centre to broaden and strengthen PMTCT services. There are pockets of best practices models that the department uses to cascade lessons through quality improvement and social mobilization activities in all the districts using NGOs and PEPFAR funded organizations. A partner rationalization process undertaken from April to June 2010 also ensured their distribution of partner support to all districts.

152. On the Presidential mandate on AIDS Day 2009, the Department of Health worked collaboratively with the partners to ensure implementation of the HIV Counseling and Testing (HCT) campaign for pregnant women and expanded treatment care and support. The accelerated efforts included expanding health facilities offering PMTCT, training of Midwives on Nurse Initiated Management of Antiretroviral Therapy (NIMART), which makes lifelong access to ART possible for pregnant women.

153. The World Health Organisation (WHO) guidelines have been adopted to enable the PMTCT programme to achieve 5% Mother to Child Transmission (MTCT) rate as targeted in the NSP 2007-2011. The National MTCT rate is at 7% but there are provinces with less than 5% with some provinces like KZN significantly dropping their positive rate from 20% to 8%

154. Efforts include the following:

1. HCT “know your status” Campaign and TB control
2. PMTCT accelerated plan, ART , prevention, care and support
3. Sexual and Reproductive health services, youth friendly services
4. Healthy lifestyles campaign
5. Social mobilisation campaign
  - Community dialogues and related activities
  - Schools HCT campaign
6. SANAC “Know your epidemic, know your status”. SANAC multidisciplinary action involves a wide range of partners and civil society including the women and children sectors and provides advice on policy issues

155. PMTCT is almost universally available in public primary facilities in South Africa, with the country having achieved the NSP for HIV and AIDS and Sexually Transmitted Infections (STIs) 2007-2011 (NSP) target of 95% coverage in the public sector ante-natal sites in 2008. Civil society however feels sidelined as regards the NSP, with little funding and support allocated to civil society organisations. The PMTCT guidelines were recently revised and adopted to include the introduction of the dual therapy regimen of Nevirapine and AZT (Zidovudine). The Polymerase Chain Reaction (PCR) is a major scientific advance for the diagnosis of HIV and AIDS. The proportion of HIV positive babies in 2009- 2010 is 9.4% which shows a decline from the estimated 15.2% in 2008-2009.

156. Although there are no sex disaggregated statistics, increased access to antiretroviral drugs is a key factor in ensuring long-term health and increased life expectancy. There were wide disparities among persons with HIV infection who had access to antiretroviral drugs in South Africa in the past, but it is evident that the disparities have started to reduce since 2009. There has also been a marked increase in all the provinces from 2005 to 2009 in the proportion of people

with HIV who have access to antiretroviral drugs. In South Africa as a whole, this proportion increased from 13.9% in 2005 to 41.6% in 2009.

#### **2.11.5 Provincial data of HIV positive pregnant women receiving antiretrovirals (Q. 27)**

157. The identified discrepancies amongst the South African Provinces in the percentage of HIV positive pregnant women receiving antiretroviral were associated with previous challenges such as access to treatment based on CD4 counts, poor laboratory tests outcomes including drug stock-out and long waiting lists to access health care and treatment in some provinces and districts.

158. The accelerated and strengthened HIV plan has seen measures such as the Presidential Mandate of World AIDS 2009, the current HCT campaign and improved TB control, the accelerated PMTCT plan, syndromic management of STIs, promotion of maternal and child health, management of sexual assaults and strengthening of health systems effectiveness with capacity-building, quality improvement and appropriate skills training and community involvement, eliminating the said discrepancies. Pregnant women are prioritized and are fast tracked for HIV and AIDS treatment and health care providers are trained for initiating life-long treatment on pregnant women.

#### **2.11.6 Female genital mutilation (Q. 28)**

159. Female Genital Mutilation is not a practice amongst the peoples of South Africa but may be practiced by immigrants into the country or may have already been done on some of those immigrants even before they came to live in South Africa.

160. There are no formal statistics in South Africa on those who have had the procedure, in all its forms, performed on them but we note that the estimated figures of between 10 and 140 million girls and women worldwide have been subjected to the three documented types of the procedure and that 3 million girls and women are at risk of undergoing one of the types every year in Africa hence making it possible that South Africa may have some inhabitants with FGM.

161. South Africa has no policy on Female Genital Mutilation because it is not a public health problem but would not allow it on basic human rights principles. Under the Constitution Act of South Africa it would be considered as a violation of a girl's and a woman's basic reproductive health rights in that it has been documented to cause adverse obstetric outcomes. Women with FGM are significantly more likely than those without FGM to have obstetric outcomes. Risks seem to be greater with more extensive FGM – (*Lancet June 3, 2006; 367: 1835-1841*).

162. To date, there has not been any nationally mandated research conducted to either document the extent of FGM or to assess if there are those who practice FGM due to the aforementioned reasons.

### **2.12 Disadvantaged groups of women, rural women, poverty**

#### **2.12.1 Provincial data on women's ownership of land as well as female beneficiaries of land reform programmes (Q. 29)**

##### **2.12.1.2 Land ownership discrepancies in respect of Provinces: redistribution**

163. Demographics in a particular province, where the numbers of women who approach the Department for application of the land would differ from province to province. Discrepancies could be on account of the availability of land to be redistributed. It should also be noted that land can fall under several jurisdictions – National Government, Provincial government as well as municipalities. It is possible therefore in a particular province that the land that is available fall either within the provincial or local municipality jurisdiction as such the National Department of Rural Development and Land Reform will not be in a position to redistribute such land.

164. Opportunities and obstacles for women's access to land are inextricably tied to a web of traditional social values, attitudes and stereotypes in communities, the traditional institutions that support and enforce these values, and policies, legislation and particular implementation strategies and practices of land reform could be a contributory factor to these discrepancies. In provinces where tradition and culture is predominantly practiced women will not come forward to register their land needs. Important to note is that they themselves have not yet positioned themselves to approach the land matter differently than the way things are done in their communities. Women still upholding the belief system that land is and should be in the hands of the male family member irrespective of age and seniority could find themselves not participating in land and land related matters.

165. Systems and or processes involved in land redistribution have been experienced as length and some beneficiaries especially women might fall out.

#### **2.12.1.2 Land ownership discrepancies in respect of Provinces: restitution**

166. In as far as Restitution is concerned the discrepancies can be attributed to the rights based nature of the programme. The restoration of land rights is based on the actual rights that were dispossessed. During the apartheid era only men could own land rights, formally or informally and this bias is continued even in the restoration process since research finds that it is men who were disposed.

167. While the above is true, the land holding mechanism introduced through the Communal Property Act created an opportunity to break the chain perpetuated by this patriarchal system. The change opportunity created by the Communal Property Association is greater in the predominantly rural areas than in urban areas where ownership is more individualistic. Conversely however, the slow societal transformation and the patriarchal socialization in some of the rural areas accounts for the low participation of women in land issues.

168. Furthermore, the preference of financial compensation as opposed to land restoration in urban restitution settlements reduced the prospects of women ownership of restored land.

#### **2.12.1.2 Land ownership discrepancies in respect of Provinces: effect of the amendment of the Act in 2003**

169. One of the qualification criteria for restitution is being a direct descendant of the originally dispossessed person. Unlike in its original form the amended Act defined a direct descendant of a dispossessed person to include the spouse or partner customary union of such a person. This amendment saw many of the wives and partners of dispossessed men benefiting from the restitution programme. This also extended access and or benefit to women descendants who became equally entitled to share in the rights restored in respect of their ascendants.

170. Further more for women Land Restitution beneficiaries' issues of heritage were paramount in their minds and for them this was empowering. Again there was pride of going back to their ancestral land; and they also saw the opportunity to access and control land as this is regarded as a wealth creating and livelihood-sustaining asset.

### **2.13 Data Base for Integrated Sustainable Rural Development and Free Basic Services Programme**

171. The Department for Corporate Governance has begun working on this process and in line with the 10 medium term strategic framework priorities; this is one of the deliverables. In addition, Government has created a new Department of Monitoring and Evaluation, located in the Presidency with the explicit task of monitoring performance of government with regard to service delivery. This process through a results based management approach is geared at ensuring that the country is able to show positive impact on the lives of people for the better, which warrants that a slew of disaggregated data will be available in 2011 against which progress can be measured. This

has special implications for delivery of basic services and for programmes such as the Integrated Sustainable Rural Development and Free Basic Services programmes.

## **2.14 National Fund for Women**

172. The Government of South Africa through different initiatives has several funds and mechanisms available for women to tap into for entrepreneurial activities. However these funds are fragmented and located within different structures of government and / or financial sectors hence scattered throughout government departments. The different funds need to be pulled together so that women can easily avail themselves to these services, particularly for women in the informal and second economy and to identify challenges faced by women in accessing these funds.

173. Government has also established a National Empowerment Fund as an apex fund to which women can avail opportunities for development.

The newly established Department for Women, Children and People with Disabilities, has identified this issue has one of its priority areas and to date has developed a draft concept documents on a women's fund for consultation in 2011. The Department also intends to coordinate a data base that will make it easy for women to locate where the different existing funds are, as well as how to access these funds.

## **2.15 Older Women and Women with Disabilities**

174. The following programmes and services are available for older persons:

### **2.15.1 Intergenerational Programmes:**

175. The programme is helping in sharing the wisdom of older persons as well as passing the youth issues. The older persons face a challenge of raising their orphaned grandchildren with very little understanding of the issues impacting on the children (youth) as well as the demands of society today. The youth are also looking at older persons as people who have lived in the past and have nothing or little to contribute in society today.

### **2.15.2 Economic Programmes:**

176. Economic development programmes that ensure that older persons are not excluded from the issues of economic development in their communities. These programmes also ensure that the older persons are able to live in the community as long as possible coping with the financial demands.

### **2.15.3 Community Based Programmes**

177. Programmes aimed at promoting quality of life for older persons especially the frail older persons

### **2.15.4 Prevention and Management of Elder Abuse**

178. Abuse of older persons is rife. The management of elder abuse is also differently handled by stakeholders. A protocol for management of abuse has been developed and implemented. The Older Person Act, No 13 of 2006 (Act 13of 2006) provides a definition of an older person in need of care ,Identifies abuse of an older person , defines procedures for managing abuse/violence against an older person, defines procedures for dealing with the perpetrator and emphasizes a need to keep the register of perpetrators of abuse.

### **2.15.5 Promotion of the rights of older persons**

179. Older persons' rights are often violated due to the fact that these have not been published and not known. Operation Dignity is a programme is aimed at restoring respect and dignity to

older persons. The Residential Care /Frail care Services are services to older persons who are unable to live independently.

#### **2.15.6 Funding and monitoring of services**

180. The funding and the management of third parties is a critical for delivering quality services. The NGOs facilitate in rendering services to older persons in the community. The monitoring of these services is critical in order to render quality services.

<i>Province</i>	<i>Number of residential facilities</i>	<i>Number of registered institutional beds</i>	<i>Number of service centres or community based care and support services for mobile, active and generally healthy older persons</i>
Eastern Cape	54	3 276	217
Free State	38	2 256	186
Gauteng	99	11641	110
KwaZulu-Natal	54	1 998	242
Limpopo	8	548	144
Mpumalanga	19	2 158	108
North West	27	1 756	43
Northern Cape	27	1 492	69
Western Cape	136	10 042	158
Total	465	35 167	1 277

#### **2.16 Marriage and family life**

##### **2.16.1 Matrimonial Regimes including the Recognition of Customary Marriages Act and Civil Unions Act**

##### **2.16.2 Measure to provide awareness: Access to Justice Week**

181. Access to Justice Week is a community service initiative of the Department of Justice and Constitutional Development (DoJCD) and the South African Women Lawyers Association (SAWLA). This community service initiative is executed in the form of public education and free legal advice and assistance (including the drafting of wills) provided to the broader public at various community centres and workplaces throughout the country. The initiative also includes presentations on radio, television and at community centres. The emphasis is on interfacing with and addressing the legal needs of all South African's, especially, women, children and all the disadvantaged. Access to Justice Week has been hosted annually by the DoJCD in partnership with SAWLA since the year 2007.

182. This community Service initiative presents an excellent opportunity for us as a Department to promote access to justice particularly to the poor. It is also an opportunity to contribute to the culture of volunteerism which as a nation we have committed ourselves to (**Letsema**)

183. All stakeholders from SAWLA and the DoJCD (Masters Office, Family Advocate, State Law Advisers, Regional Office, Courts, National Prosecuting Authority and the Legal Aid Board) set up advice desks at their place of employment or in the community hall in their area. The Departments of Home Affairs and Social Development are considered a key partner in this project as access to birth certificates and identity documents are critical for ones human rights and livelihood which includes access to grants. Advice is offered to communities on family related legal problems with emphasis on marriage; customary marriages; domestic partnerships; divorce; wills (preparing and printing wills on the spot); succession and administration of estates; domestic

violence; sexual offences; child abuse; child custody and access; victims services; guardianship and fostering; maintenance; credit law; pension funds; contracts; access to courts (Small Claims Court, CCMA, Equality Courts, etc); and HIV and AIDS.

184. Key objectives of Access to Justice Week include the following:

- Empowerment of women and other disadvantaged groups in society through legal literacy and legal advice
- Contribute to a culture of human rights and legal literacy
- Contribute to the elimination of domestic violence and other forms of violence that target women
- Assist members of the public, including parliamentarians with the drafting and updating of wills to eliminate the family dispute and suffering that comes with intestate succession
- Educate society about accessing and avenues for vindicating their rights
- Introduce SAWLA to the public and increase the membership of SAWLA
- Inculcate a culture of community service/volunteerism among SAWLA members

#### **2.16.3 Recognition of Customary Marriages Act**

185. Public education on the Recognition of Customary Marriages Act (the Act) was conducted through the radio talk shows, focusing on members of the public. Further 23 workshops focusing on government officials responsible for implementing the Act and traditional leaders were held. This was also intended to monitor and evaluate the implementation of the Act. The methodology employed in the study also presented an opportunity to generate awareness of the Act among members of the public, traditional leaders and service providers. The medium used sought to maximise access to the communities that are most affected by the Act, especially rural communities.

186. The public education project sought to achieve the following outcomes:

- Increased utilisation of the Act by persons married in terms of customary law in particular those in rural communities, and especially women;
- Easy access and compliance procedures to the Act by persons intending to enter into a Customary Marriage
- Easy access and compliance procedures to the Act by persons intending to enter into a Polygamous Marriage, especially those from the rural communities by developing a pro-forma contract to be attached to the regulations;
- Legislative reform to address problem areas that have been identified during the talk show;
- To publish the findings from the radio talk shows and workshops;
- To build capacity for different stakeholders that have a role to play in the Act, such as traditional leaders, Master of the High Court, Family Court, Divorce Court, Home Affairs personnel and members of the legal profession; and
- Uniformity in the manner in which the Act is implemented.

#### **2.16.4 Victims Charter**

187. Television advert, media print and radio stations have been used to educate the public on the rights provided in the Victims Charter. The Victims Charter and the Minimum Standards have been translated into all languages and Braille. Posters and pamphlets have been developed in order

to ensure that there is maximum public awareness raising. The objectives of public education are the following:

- Educating victims about their rights and responsibilities
- Promoting the education and awareness of service providers in relation to their duties and the legal process
- Promoting attitudinal change in the treatment and understanding of victims and addressing their gender imbalances
- Empowering victims to make informed decisions, and
- Ensuring equal access to services

#### **2.16.5 Justice on the Airwaves**

188. The Department of Justice and Constitutional Development has a radio talk show programme called ‘Justice on the Airwaves’. The programme takes the form of interviews and participation of relevant people on live radio shows, to provide listeners with an opportunity to call with their problems and get assistance. Radio plays a major role in awareness raising on any issue that is of national interest. Radio Stations have a wider and broader listenership throughout the country by people from all walks, including the poor and illiterate.

#### **2.17 Amendment to article 20, paragraph 1**

189. South Africa endorses the amendment to article 20, paragraph 1 of the Convention and acknowledges the Committee’s need for an extended working session annually.

#### **2.18 Additional information**

##### **2.18.1 Project 85: SALRC Reports on Aspects of the Law Relating to AIDS:**

190. The SALRC conducted an investigation into aspects of law relating to AIDS, culminating in reports in 1997, 1998 and 2000. The first report dealt, among other things, with workplace and health-care precautions to prevent HIV transmission. With women being the majority of formal and informal providers of health-care to HIV infected persons, these measures address some of the gender implications envisaged in the AU Solemn Declaration. The second report dealt with the prevention of HIV and AIDS related discrimination, and recommended legislation to govern the prohibition of HIV testing in the workplace. The fourth report finalised in 2000, specifically dealt with the link between gender violence and HIV/AIDS, and recommended compulsory HIV testing of persons arrested in sexual offences cases under certain circumstances. This research informed the provisions in the new Sexual Offences Act below relating to testing of rape perpetrators

##### **2.18.2 Protection from Harassment Bill**

191. The Bill is intended to give effect to the South African Law Reform Commission's legislative recommendations relating to stalking, the victims often being women. The Department is in the process of preparing a Bill.

##### **2.18.3 Project 130: Stalking**

192. The SALRC finalised and published its Report on Stalking in November 2008. The recommendations seek to address stalking that occurs outside the provisions of the Domestic Violence Act and takes into account women's vulnerability to stalking. The report contains legislative proposals in the form of the draft Protection from Harassment Bill. The Bill provides for a specific civil remedy for stalking aimed at interrupting the stalker or harasser's pattern of behaviour before physical harm to the victim occurs. With the exception of domestic violence specific provisions, it mirrors the civil remedy provided for in the Domestic Violence Act, i.e. a

protection order against harassment (as defined in the Bill), coupled with a suspended warrant of arrest.

#### **2.18.4 Project 82: Sentencing**

193. The SALRC investigated a sentencing framework which included policy considerations when dealing with serious crimes such as rape and related offences and published a report on a New Sentencing Framework. The SALRC also prepared report on a Compensation Scheme for Victim of Crime in South Africa. Aspects of these reports address legal aspects of gender violence.

#### **2.18.5 Project 107: Sexual Offences: Adult Prostitution**

194. The SALRC is in the process of developing a discussion paper on adult prostitution. The investigation seeks to review current legislation on adult prostitution with a view to aligning the law with South Africa's international obligations regarding gender violence. The draft discussion document is informed by South Africa's human rights obligations, including the provisions of the AU Solemn Declaration on Gender Equality in Africa, the Protocol on Women's Rights, to the African Charter on Human and People's Rights, the Convention on the Elimination of all forms of Discrimination against Women and the SADC Protocol on Gender and Development. The investigations assesses the gender impact of current South African law which completely criminalises prostitution and related activities, on South Africa's compliance with its international obligations relating to the protection of the rights of vulnerable women, among other considerations.

#### **2.18.6 The Victims' Charter**

195. Approaches to crime control and victim empowerment in South Africa are contextualized within the new constitutional dispensation of the country. Compatible with the Bill of Rights<sup>6</sup> is the desire to have a system of the criminal justice which meets high standards of human rights and due process, by preventing victimization and at the same time ensuring that the innocent are protected. Victims' rights are human rights. In order to ensure that the criminal justice system services are victim centred, the South African Government developed a Victims' Charter that gives substance and content to some of the rights contained in the Bill of Rights for victims of crime, for example the rights in the Bill of Rights that informs the Victims Charter are the following:

- Section 9: Right to Equality
- Section 10: Right to Human dignity
- Section 11: Right to life
- Section 12: Right to Freedom and security of the person
- Section 14: Right to Privacy
- Section 33: Right to Just Administrative justice
- Section 34: Right of Access to Court
- Section 35(3): Right to a Fair trial

196. Section 35(3)(d) of the Constitution of the Republic of South Africa, Act No. 108 of 1996, provides the right of every accused person to have his/her trial begin and conclude without

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<sup>6</sup> Chapter 2 of the Constitution of the Republic of South Africa, Act No. 108 of 1996,

unreasonable delay. Conversely, every victim or witness of the state has the same right to have their case begin and concluded without unreasonable delay to avoid secondary victimization.

197. Section 342A of the Criminal Procedure Act No 51 of 1977 provides mechanisms for the presiding officer to investigate unreasonable delays, to take steps to eliminate the delay and to prevent further delays

198. The Victims Charter is an important instrument for promoting justice for all; it is in compliant with the spirit of the South African Constitution Act No. 108 of 1996, and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985. The Victims' Charter was approved by Cabinet on 1 December 2004. The Victims Charter provides seven rights for victims of crime:

- The right to be treated with fairness and with respect for your dignity and privacy.
- The right to offer information.
- The right to receive information.
- The right to protection.
- The right to assistance.
- The right to compensation
- The right to restitution.

199. These rights are important for victims of gender based violence; they give victims the same rights that the alleged perpetrators have. In order to ensure that victims of crime understand the Victims Charter and know what services to expect when they get to court and to understand the criminal justice system and processes, the Minimum Standards for Services of Victims of Crime were developed.

200. Minimum Standards on Services for Victim of Crime are divided into four parts:

Part I: your rights as a victim of crime

Part II: The processes and responsibilities of the relevant departmental role-players within the criminal justice system

Part III: Minimum standards on services for victims of crime

Part IV: Complaint mechanisms

List of useful addresses

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