

**7 November 2003**

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**United Nations**

**Division for the Advancement of Women (DAW)**

**Expert Group Meeting on**

**“Peace agreements as a means for promoting gender equality and ensuring participation of women – A framework of model provisions”**

**10-13 November 2003**

**Ottawa, Canada**

**Peace Agreements as a Means for Promoting Gender Equality and Ensuring Participation of Women**

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# **PEACE AGREEMENTS AS A MEANS FOR PROMOTING GENDER EQUALITY AND ENSURING PARTICIPATION OF WOMEN - A FRAMEWORK OF MODEL PROVISIONS : THE SOUTH AFRICAN CASE STUDY**

## **INTRODUCTION**

In the preliminary talks about talks initiated by Madiba, while behind bars in the eighties, the need to stop violent confrontation in the country was raised by both sides of the South African conflict. The ANC demanded the cessation of State sponsored political violence as one of its eight demands at that point. The National Party regime raised the ending of the ANC's armed struggle as one of its demands.

In 1989 an important meeting of South African women took place in Harare, Zimbabwe. The participants were from exile communities, from the mass democratic movement organizations inside South Africa and from the Afrikaner community. Some of the participants had lost children and husbands, etc. either in the hands of the South African Defence Force or MK guerillas of the ANC. Videos were shown of the role of the SADF in devastating the peoples of the frontline states, e.g. Mozambique, Botswana, etc.

That experience shattered many illusions especially of the pride with which mothers and wives of the "mighty" South African Defence Force members had regarded the involvement of their loved ones in the war. Different perspectives had been opened up to all sides who saw and heard – first hand – the pain of the havoc caused in one another's families' lives. More importantly, some women who were close relatives – wives, sisters or mothers – of top men in the South African army and government went away with important insights from the Zimbabwe struggle stories, the plight of the people of South Africa's neighbours and the perspectives of fellow South Africans in the ANC in exile and others who had traveled from inside the country. They were going to influence the men in their lives accordingly.

As the country welcomed the unbanning of all political organisations in February 1990, it also witnessed the escalation of political violence in the black communities, especially in KwaZulu Natal and the Transvaal provinces. The violence was so bad that it threatened the efforts at starting political and constitutional negotiations. The approach developed to have church and business people – together with some political and other figures in society – leading a national peace process. This peace process became a separate leg from the talks about talks for purposes of settling the South African conflict. One has to look at the processes and outcomes of both legs to get a fuller understanding of where, when, how and with what effect the issues of women and gender equality arose.

## **POLITICAL DEBATES, DIALOGUE AND ORGANISATION OF A CROSS SECTION OF WOMEN**

The mobilization of women of diverse cultural, socio-economic and political backgrounds around matters of common interest had been – for decades – one of the most important approaches and programmes in the national domain in South Africa. The famous 1956 August

9 demonstration is just one historical illustration around the issues of passes. The Harare meeting and many others continued the tradition of ensuring that women talked to one another about things on which they agreed, regardless of coming from different political parties. Immediately after its re-launch in Durban in August 1991, the ANC Women's League spearheaded discussions nationally towards the launch of the National Women's Coalition. The coalition was to ensure a united voice of women on national matters of priority to them. It also embarked on a country wide campaign – along the lines of the 50's collection of people's demands – to record women's demands. At the same time – internally in the ANC – a robust debate was taking place about the role of women and their involvement at leadership levels in ANC structures and in the national processes in the country.

The most public of the internal ANC debates took place at its Durban December 1991 National Consultative Conference when the quota was proposed for elections of the ANC National Executive Committee. Although the Women's League did not succeed there, the debate left a lasting impression in the minds of delegates, ANC structures and the country as it had brought conference to a standstill for five (5) hours and had received wide media coverage. The debate raged on nationally beyond conference.

Although the ANC is only one among many political formations in the country then and now, its role and place in the history of the struggle for freedom is such that it is important to take note of its positions and activities at certain points. The sheer numbers of its supporters as it had always been regarded as the voice of the masses of South Africans, make it important. Secondly, the evolution of a gendered perspective in the South African struggle for freedom, is largely synonymous with the development of the ANC as the leader among the organizations that have worked as allies over the decades of struggle, i.e. the progressive trade union movement, communist party, UDF and mass democratic movement, etc.

The role and place of the ANC nationally resulted in it having the historical responsibility to also lead on the issue of the “*emancipation of women*” and “*gender equality*”. The need for a National Women's Coalition was processed and spearheaded by the ANC Women's League. Through the Women's League leadership under the then President, Gertrude Shope, and Deputy President, Albertina Sisulu, it was tabled and motivated in the National Executive Committee of the ANC. This, then, made it an ANC position for which all ANC leaders had to take responsibility and promote at other forums.

The need for women's involvement in the negotiations received similar robust treatment in ANC debates. Although two women leaders – Ruth Mompati and Cheryl Carolus – had been in the delegation that met with the NP regime in the first historic Groote Schuur meeting in 1990, subsequently only men continued in the talks about talks for months on end.

And so it was that, to this day, South Africans' memories of the days of the National Peace Process, are that of an all male leadership affair. This is regardless of the actual role of women community leaders and activists on the ground. We saw the women in the violent flashpoints, not only as victims of violence, but heroically intervening, engaging the security forces, helping the injured, being spokespersons of the affected families. We saw Winnie Mandela, repeatedly rushing to the support of attacked people and arguing with the police and the army.

But this was a period when so much was happening at all levels and, with hindsight, women were not sufficiently organized and strategizing about involvement at the leadership levels of the peace process where the deliberations took place that produced the 1991 National Peace Accord

Exiles and former political prisoners had returned and were continuing to stream back. Organisations were redefining their roles, restructuring and finding their feet in the new stunning atmosphere. The very notion of “*talking to the enemy*” at a time when our people were dying everyday and night, had torn us, frustrated and perhaps, in some ways, paralysed sections of the broad liberation front. We must also remember that the country was still under apartheid rule, which had its own complications.

The strategy to pursue the peace process to contain the political violence in order to open up the space for the negotiations process proved effective and yielded – in spite of weaknesses – lasting benefits. The National Peace Accord was signed in September 1991. In December of the same year, the Convention for a Democratic South Africa was launched at the World Trade Centre. This time the women raised their voice about their involvement in the negotiations. Ultimately, after women’s demonstrations and agitation from ANC male negotiators pushing their counterparts at the talks, in 1992, women joined each of the nineteen delegations at the talks. It was into this process and beyond that the far-reaching inputs were made by women, making up for what had been missed in the actual peace process. Later I comment on the products of both processes.

The CODESA structures were initially formed and started working without women. After pressure from a network of women’s bodies a Gender Advisory Committee was formed to scrutinise the documents that had already been produced to ensure strategic inputs in the interest of women in society. Then there was a breakdown in the process and a need to reconstitute the forum.

The talks re-started at the height of the women’s national demonstrations and mobilisation for involvement. A decision was taken that one of the two (2) negotiators in each delegation, had to be a woman. If a party did not have a woman negotiator, then the seat of the second negotiator stayed vacant. They were not allowed to have two (2) males. The same was said for the two (2) advisors. There was more flexibility there as expertise had to be found to give the necessary support to the delegations on specific subjects.

During this phase of the reconstituted Multi-Party Negotiations Process, a multi-party Women’s Caucus was institutionalized until the end of this phase of negotiations and even beyond it. This proved very useful for the women’s course. A number of advantages were immediately evident:

- a) women strategised on how to deal with a range of challenges they found there, including the rather cold or hostile media coverage.
- b) they exchanged notes, advice and support on how to cope with condescending male leaders/colleagues in their respective delegations. They developed better

personal chemistry and even started sharing personal problems like family crises that had developed because they were daily seen on TV sitting next to the same male negotiators. A few family breakups were even experienced during those days. They supported one another through these times.

- c) they strategised and adopted positions on clauses under discussion e.g. culture versus gender equality, traditional leadership versus women's rights, etc.
- d) these strategizing sessions helped women to understand issues and not to speak against one another regardless of their political party positions if they were convinced of the positions that would advance the status of women in society. Sometimes they had problems such as not being allowed by their leaders to speak without their permission or would need to first explain what they wanted to say before being allowed. At the strategising sessions they said "*at least I now understand the correct position. My party won't agree with this position so I'd rather not speak on this than speak in opposition*". Some would make an effort to persuade their parties to the positions favoured by women.
- e) at critical moments the caucus meetings received submissions, inputs and advice from women's groups, researchers and bodies like the Women's National Coalition to inform positions and formulations that were under discussion.
  - this arrangement helped one time when an Ad-hoc structure put together to help resolve a particular sticky point raised by traditional leaders during deliberations on the chapter on Fundamental Rights of the Interim Constitution came up with a backward proposal. The proposed solution was a draft formulation which would have resulted in certain rights being suspended or delayed for some years for African women. Unanimously women from all delegations put down their collective foot and successfully threw out the proposed text.

The practice of women's caucuses was carried into the next phase and today's parliament where we have a multi-party women's caucus. In addition we have a Joint Monitoring Committee on Improvement of Quality of Life and Status of Women. This structure helps parliamentary committees ensure a gender lens in evaluating their work. It also monitors Government's implementation of CEDAW and the African and Beijing Platforms for Action. Women's caucuses have been institutionalised across the legislative sector in each of the Provincial Legislatures of the country. All the Speakers collectively – in their meetings of a Speakers' Forum – monitor the work of transforming the cultures of the institutions to enable them to have an atmosphere conducive to outputs that take the country forward in its quest for a non-sexist society.

It is important for women to create spaces for themselves to reflect on what is best for them. In this – the South African experience has taught us – work inside the various political formations, is important. In addition the ongoing national debates must remain a terrain on which women's preferred positions are continuously aired and pursued to influence the people and mobilize more support.

## **THE EFFECTS OF WOMEN'S PARTICIPATION IN NEGOTIATION**

In spite of initial difficulties women negotiators were confronted with, they soon tackled them with success. After a bit of resistance women were added to important structures of the negotiations e.g. one to the Planning Committee and another to the panel of Chairpersons. The former strategised daily before negotiating Council meetings, prioritized agenda items and decided on the approach to issues.

The panel of Chairpersons took turns in presiding over the actual negotiations. The chairs had to have an insight into possible problem areas, which parties were likely to raise problems and had to skillfully navigate the talks through the bumpy parts which tended to capture the headlines. The country began to see women playing important leadership roles in public. Other women realized that it could be done.

The most important effect of women's involvement to the society generally was that their perspectives were tabled for all to grapple with. This was in the context of debates which would produce alternatives for how the country was to proceed to a better future for all its citizens. South Africans were forced to sit up, notice and engage with what was being tabled or proposed.

- A. ***National Peace Accord:*** A quick look at the document signed in September 1991, the National Peace Accord shows that in Chapters 3 and 4 the word “*gender*” arises in the following context “*the police shall endeavour to protect the people of South Africa. . . regardless of the political belief. . . religion, gender or ethnic origin . . .*”

Under the code of conduct again the police would give effective and friendly service to people “*regardless of . . . gender . . .*”

The document does not reflect a consideration of the specific ways in which women were affected by the violence, how they responded to it or any particular approach that had to be adopted by the process to forms of violence like rapes of women and children. The absence of the voice of women and women's perspectives directly in the document reflects their virtual absence from the levels of the process that produced the accord. As previously said, women were actually involved at other levels and played very important and lasting roles. Many of those women also got involved in the negotiations process e.g. Susan Vos and Faith Gasas from the Inkatha Freedom Party. These women were part of the Women's Coalition and women's caucuses which have led to lasting relationships across political party lines.

- B. ***Transitional Phase:*** The World Trade Centre phase produced transitional institutions for purposes of creating a climate conducive to the country having free and fair elections in as level a playing field as possible. Secondly it produced an interim constitution which would enable us to run the country according to set rules and structures while writing the final constitution. In the interim constitution we spelt out rules to govern that phase of constitution making e.g. two (2) year strict time frame, deadlock-breaking mechanisms and – most importantly – 34

constitutional principles against which the final constitution would be measured by the Constitutional Court.

A Transitional Executive Council was created through a law that we got the apartheid Parliament to pass. Under the TEC there were structures to help focus on specific sensitive areas. One of them, was Subcouncil on the Status of Women<sup>1</sup>. It sat in and influenced discussions and plans of all other TEC structures, e.g. work on security forces, demobilization, preparations for and voter education towards elections etc. This subcouncil also helped the country prepare for the Beijing conference. Work on the international front was the domain of the TEC, not the apartheid structures which remained in place technically. The TEC started operating from the beginning of 1993 until the 1994 elections.

**C. *Interim Constitution:*** In the very first paragraph of the pre-ambule, there is a declaration of intention to “*create a new order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state in which there is equality between men and women . . .*”

The “Equality” clause 8 in the chapter of a limited number of Fundamental Rights incorporated the principle of affirmative action measures. Gender sensitive language was consciously adopted – at least an effort was made – in this constitution e.g. “*on being elected, the President shall vacate his or her seat in the National Assembly*”

A Commission for Gender Equality was provided for for the first time to help the country focus on building capacity to tackle sexism in this society. This was the real start of the set of structures that now constitute the National Machinery on Women. To this day there is still a debate whether this structure should not have been located in the Human Rights Commission which was also created by the interim Constitution.

Lastly, Constitutional Principles 3 and 5 – which bound the future constitution – dictated that the final constitution should prohibit gender discrimination and promote gender equality; also that the legal system had to ensure equality before the law and that had to include “*programmes and activities that have as their object the amelioration of the conditions of . . . those disadvantaged on the grounds of race, colour or gender*”.

With public debates, the work of the TEC especially the Subcouncil on the Status of Women, and the Interim Constitution the country prepared for the 1994 elections with no doubt about the role and place of women. The post-elections parliament retained the two houses which functioned as they would normally. In addition when the two Houses sat together discussing the constitution, they turned into a Constitutional Assembly. Constitution-making continued in a restructured form in a new structure which drew its legitimacy from votes of an electorate drawn from all communities for the first time. Part of the work of the Subcouncil on the Status of

Women in the transitional phase was to launch a campaign to prepare women to freely cast their votes with an understanding of their rights under the new dispensation. Women had to know that no one else, not even their husbands could dictate who they voted for.

## **NEW CONSTITUTION**

Article 1 has the highest protection of 75% for amendment to be considered. The values of “Non-racialism and non-sexism”, “the achievement of equality” are among those listed here as the foundation of our young democracy in the making. This constitution improves and elaborates on the provisions we had in the interim one.

It is important to highlight the Table of Non-Derogable Rights under Article 37 on States of Emergency in the Bill of Rights. Here are listed rights that must never be violated even under a state of emergency, during war or any such crisis when women and children are most victimized.<sup>2</sup>

The Commission on Gender Equality is still listed as one of the Chapter 9 State Institutions Supporting Constitutional Democracy. An Act of Parliament<sup>3</sup> has since been passed detailing its functions and powers in addition to what the constitution provides for i.e. “the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality”.

## **CONCLUSION**

In the Presidency and in the Premiers’ Offices the executive has institutionalised an Office on the Status of Women to help coordinate how the executive arm is delivering to the women of our country within each of their portfolios.

A culture is developing gradually to recognize women as equally capable people able to do any and everything they choose to. The struggles of women, the tireless work by themselves have yielded the space in which more challenges still face this society. Through the machinery we have put in place and our legal framework we continue to try and construct a better society for the next generation of women to step into to continue the work.

**E N D**

## **Notes**

<sup>1</sup> See (Annexure A) relevant attached extracts from the Transitional Executive Council, Act No. 151 of 1993, Sections 8(a)-(g); 19(a)-(j)

- <sup>2</sup> See (Annexure B) the relevant sections listed in The Constitution of the Republic of South Africa, Act No 108 of 1996, Chapter Two: Bill of Rights, Table of Non-Derogable Rights
- <sup>3</sup> See (Annexure C) the Commission on Gender Equality Act No 39 of 1996

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*November 2003*

**Annexure A: relevant attached extracts from the Transitional Executive Council, Act No. 151 of 1993, Sections 8(a)-(g); 19(a)-(j) [to follow]**

**TRANSITIONAL EXECUTIVE COUNCIL ACT  
NO. 151 OF 1993**

[ASSENTED TO 18 OCTOBER, 1993]  
[DATE OF COMMENCEMENT: 26 NOVEMBER, 1993]

*(English text signed by the State President)*

**as amended by**

Constitution Consequential Amendments Act, [No. 201 of 1993](#)

**ACT**

**To establish a Transitional Executive Council with a view to promoting the preparation for and transition to a democratic order in South Africa; and to provide for matters connected therewith.**

## ARRANGEMENT OF SECTIONS

- [1.](#)  
Definitions
- [2.](#)  
Establishment of Transitional Executive Council
- [3.](#)  
Objects of Council
- [4.](#)  
Constitution of Council
- [5.](#)  
Vacation of office, removal from office and filling of vacancies in Council
- [6.](#)  
Conditions of service, remuneration and allowances of members of Council
- [7.](#)  
General powers of Council
- [8.](#)  
Establishment of subcouncils
- [9.](#)  
Constitution of subcouncils
- [10.](#)  
Vacation of office, removal from office and filling of vacancies in subcouncils
- [11.](#)  
Conditions of service, remuneration and allowances of members of subcouncils
- [12.](#)  
General powers of subcouncils
- [13.](#)  
Powers in regard to certain proposed legislation and other actions

[14.](#)

Powers and duties in regard to regional and local government and traditional authorities

[15.](#)

Powers and duties in regard to law and order, stability and security

[16.](#)

Powers and duties in regard to defence

[17.](#)

Powers and duties in regard to finance

[18.](#)

Powers and duties in regard to foreign affairs

[19.](#)

Powers and duties in regard to the status of women

[20.](#)

Powers and duties in regard to intelligence

[21.](#)

Application of Act

[22.](#)

Procurement of information

[23.](#)

Resolution of disputes

[24.](#)

Meetings and office-bearers

[25.](#)

Decisions

[26.](#)

Administrative staff, finance and accountability

[27.](#)

Legal proceedings against Council

[28.](#)

Amendment of Act

[29.](#)

Duration

[30.](#)

State bound

[31.](#)

Short title and commencement

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**8. Establishment of subcouncils.**—(1) There are hereby established the following subcouncils under the control and supervision of the Council:

(a) Subcouncil on Regional and Local Government and Traditional Authorities;

(b) Subcouncil on Law and Order, Stability and Security;

(c) Subcouncil on Defence;

(d) Subcouncil on Finance;

(e) Subcouncil on Foreign Affairs;

(f) Subcouncil on the Status of Women; and

(g) Subcouncil on Intelligence.

(2) (a) Additional subcouncils may be established at the request of the Council by means of an amendment to this Act as contemplated in [section 28](#), if the establishment of such subcouncils is necessary for the Council to perform its functions.

(b) If any dispute between the Council and State President arises as to the necessity of establishing such subcouncils, the matter shall be referred to the Special Electoral Court for determination.

(3) A subcouncil shall—

(a) subject to [sections 3](#) and [7 \(2\)](#) and [\(3\)](#), for the purpose of attaining the objects of the Council have the powers conferred upon it by or under this Act or any other law;

(b) report to the Council in such manner and at such times as may be determined by the Council.

**19. Powers and duties in regard to the status of women.**—The Council shall, for the purpose of attaining its objects, with a view to the full and equal participation of women in the preparation for, the implementation of and the transition to a free and democratic order in South Africa, at national, regional and local levels, have the following powers to be exercised through its Subcouncil on the Status of Women:

(a) To liaise with and advise all participants in the Council, all subcouncils, the Independent Electoral Commission, the Independent Media Commission, the Independent Broadcasting Authority, Governments, relevant departments of State, local governments, traditional authorities and policy-making forums;

(b) to propose amendments to existing or proposed legislation and facilitate the implementation of such legislation;

(c) to request information and make formal and substantive representations regarding any decision or action referred to in [section 13 \(2\) \(a\)](#);

(d) to liaise with all employee and employer organizations, all groups of women (in particular rural women and women under customary unions) and any other relevant organizations and structures;

(e) to investigate any matter affecting the status of women and relating to the objects of the Council, for which purpose it shall have the authority to interview any officer or employee of any participant in the Council or of any regional or local government;

(f) to commission research;

(g) to promote and monitor educational programmes regarding the participation of women in the electoral process;

(h) to ensure that positive, practical steps are taken to enable all women to exercise fully their right to—

(i) vote in all elections and public referendums, be eligible for election to all publicly elected bodies and freely participate in the political, public and electoral processes at all levels in South Africa;

(ii) participate in the formulation and implementation of policy at all levels of government and in the Council;

(iii) equal opportunity in the appointment to, participation in, election to and promotion within all structures at all levels of government; and

(iv) be free from intimidation and harassment;

(i) to make recommendations to all participants in the Council, the other subcouncils, the Independent Electoral Commission, the Independent Media Commission, the Independent Broadcasting Authority, the National Peace Secretariat, policy-making forums, all statutory commissions and all electoral educational programmes on steps to promote the free and equal participation of women in the electoral process; and

(j) to submit proposals to the Subcouncil on Finance and the relevant departments of State in regard to the 1994/95 budget on the allocation of resources for the promotion of the equality of women and their participation at all levels of government, including appropriate programmes and mechanisms.

**Annexure B: the relevant sections listed in The Constitution of the Republic of South Africa, Act No 108 of 1996, Chapter Two: Bill of Rights, Table of Non-Derogable Rights**

**Table of Non-Derogable Rights**

<b>Section Number</b>	<b>Section Title</b>	<b>Extent to which the right is protected</b>
9	Equality	With respect to unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex religion or language
10	Human Dignity	Entirely
11	Life	Entirely
12	Freedom and Security of the person	With respect to subsections (1)(d) and (e) and (2)(c).
13	Slavery, servitude and forced labour	With respect to slavery and servitude
28	Children	With respect to: -subsection (1)(d) and (e); -the rights in subparagraphs (i) and (ii) of subsection (1)(g); and -subsection 1(i) in respect of children of 15 years and younger

35	Arrested, detained and accused persons	<p>With respect to:</p> <ul style="list-style-type: none"> <li>-subsections (1)(a), (b) and (c) and (2)(d);</li> <li>-the rights in paragraphs (a) to (o) of subsection (3), excluding paragraph (d)</li> <li>-subsection (4); and</li> <li>-subsection (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair.</li> </ul>
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**Annexure C: the Commission on Gender Equality Act No. 39 of 1996**

GOVERNMENT GAZETTE  
 Vol 373                      Cape Town, 24 July 1996                      No 17341

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 PRESIDENT'S OFFICE  
 No 1212                      24 July 1996

It is hereby notified that the President has assented to the following Act which is hereby published for general information: -

No. 39, 1996: Commission on Gender Equality Act, 1996

- 
- Act
  - Preamble
  - Definitions
  - Seat of Commission
  - Composition of Commission
  - Vacancies in Commission
  - Meetings of Commission
  - Committees of Commission
  - Staff of Commission
  - Remuneration and allowances of members of Commission
  - Expenditure, finances and accountability
  - Independence
  - Powers and functions of Commission
  - Investigations by Commission
  - Entering and search of premises and attachment and removal of articles
  - Compensation for certain expenses and damage
  - Reports by Commission
  - Approach to President or Parliament

Legal proceedings against Commission  
Offences and penalties  
Short title and commencement

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ACT<

To provide for the composition, powers, functions and functioning of the Commission on Gender Equality; and to provide for matters connected therewith.

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PREAMBLE

WHEREAS section 119 of the Constitution provides for the establishment of a Commission on Gender Equality; the determination of the members of the Commission; the requirements for appointment as members of the Commission;

AND WHEREAS the Constitution provides that the object of the Commission on Gender Equality shall be to promote gender equality and to advise and to make recommendations to Parliament or any other legislature with regard to any laws or proposed legislation which affects gender equality and the status of women;

AND WHEREAS section 120 of the Constitution provides that an Act of Parliament shall provide for the composition, powers, functions and functioning of the Commission on Gender Equality and for all other matters in connection therewith,

BE it therefore enacted by the Parliament of the Republic of South Africa, as follows:-

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Definitions

1. In this Act, unless the context indicates otherwise-
  - i. "Chairperson" means the chairperson of the Commission; (ix)
  - ii. "Commission" means the Commission on Gender Equality established by section 119 of the Constitution; (iii)
  - iii. "committee" means a committee established under section 6; (ii)
  - iv. "investigation" means an investigation contemplated in section 11(1)(e); (v)
  - v. "joint committee" means a joint committee of the Houses of Parliament appointed in accordance with the Standing Orders of Parliament for the purpose of considering a matter contemplated in section 3(2) and (5); (i)
  - vi. "Minister" means the Minister of Justice; (iv)
  - vii. "premises" includes land, any road, building or structure, or any vehicle, conveyance, ship, boat, vessel, aircraft or container; (vi)
  - viii. "Public Service Commission" means the Commission established by section 209(1) of the Constitution. (vii)

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Seat of Commission

2.
  1. The President shall determine the seat of the Commission.
  2. The Commission may establish such offices as may be necessary to enable it to exercise its powers and to perform its duties and functions conferred on or assigned to it by this Act or any other law.

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Composition of Commission

3.
  1. Subject to section 119(2) of the Constitution, the Commission

- shall consist of a chairperson and no fewer than seven and no more than eleven members, who shall-
- a. have a record of commitment to the promotion of gender equality; and
  - b. be persons with applicable knowledge or experience with regard to matters connected with the objects of the Commission.
2. The President shall, whenever it becomes necessary, appoint as a member of the Commission a person-
    - a. proposed by interested parties as contemplated in subsection (3);
    - b. nominated by a joint committee; and
    - c. approved by the National Assembly and the Senate by a resolution adopted by a majority of the total number of members of both Houses at a joint meeting: Provided that if any nomination is not approved as required in paragraph (c), the joint committee shall nominate another person.
  3. Before the members of the Commission are appointed the Minister shall invite interested parties through the media and by notice in the Gazette to propose candidates within 30 days of the publication of the said notice, for consideration by the committee referred to in subsection (2)(b).
  4.
    - a. The members of the Commission may be appointed as full-time or part-time members and shall hold office for such fixed term, not exceeding five years, as the President may determine at the time of each appointment: Provided that the term of office of the full-time members shall not expire simultaneously.
    - b. No fewer than two and no more than seven members shall be appointed on a full-time basis.
  5. The President shall remove any member from office if-
    - a. such removal is requested by a joint committee contemplated in subsection (2)(b); and
    - b. such request is approved by the National Assembly and the Senate by a resolution adopted by a majority of the total number of members of both Houses at a joint meeting.
  6. The President may, in consultation with the Commission, appoint a part-time member as a full-time member for the unexpired portion of that part-time member's term of office.
  7. Any person whose term of office as a member of the Commission has expired, may be reappointed for one additional term.
  8. A member of the Commission may resign from office by submitting at least three months' written notice thereof to Parliament unless Parliament by resolution allows a shorter period in a specific case.
  9.
    - a. A Chairperson of the Commission shall as often as it becomes necessary be appointed by the President and a Deputy Chairperson of the Commission shall as often as it becomes necessary be elected by the members of the Commission from among their number.
    - b. When the Chairperson is not available, the Deputy Chairperson shall perform the functions of the Chairperson.

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Vacancies in Commission

4.
  1. A vacancy in the Commission shall occur-
    - a. when a member's term of office expires;
    - b. when a member dies;

- c. when a member is removed from office in terms of section 3(5); or
  - d. when a member's resignation, submitted in accordance with section 3(8), takes effect.
2. A vacancy in the Commission shall not affect the validity of the proceedings or decisions of the Commission.
  3.
    - a. A vacancy in the Commission shall be filled as soon as practicable in accordance with section 3(2).
    - b. Any vacancy so filled shall be for the unexpired period of the term of office in respect of which the vacancy occurred.

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Meetings of Commission

5.
  1. The meetings of the Commission shall be held at the times and places determined by the Chairperson: Provided that the first meeting shall be held at the time and place determined by the Minister.
  2. If both the Chairperson and Deputy Chairperson are absent from a meeting of the Commission, the members present shall elect one from among their number to preside at that meeting.
  3. The quorum for any meeting of the Commission shall be a majority of the total number of members appointed in terms of section 3(2).
  4. The decision of the majority of the members of the Commission present at a meeting shall be the decision of the Commission, and in the event of an equality of votes concerning any matter, the member presiding shall have a casting vote in addition to his or her deliberative vote.
  5.
    - a. The Commission shall determine its own procedure: Provided that due regard shall be given to the principles of transparency, openness and public participation.
    - b. The Commission shall cause minutes to be kept of its proceedings.
  6. The Commission shall from time to time by notice in the Gazette make known the particulars of the procedure which it has determined in terms of subsection (5).

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Committees of Commission

6.
  1. The Commission may establish one or more committees consisting of one or more members of the Commission designated by the Commission and one or more other persons, if any, whom the Commission may appoint for that purpose and for any period determined by it.
  2. The Commission shall designate a chairperson for every committee and, if necessary, a deputy chairperson.
  3. Subject to the directions of the Commission, a committee-
    - a. may exercise such powers of the Commission as the Commission may confer on it; and
    - b. shall perform such functions of the Commission as the Commission may assign to it.
  4. On completion of the functions assigned to it in terms of subsection (3), a committee shall submit a written report thereon, including recommendations, if any, for consideration by the Commission.
  5. The Commission may at any time dissolve any committee.
  6. The provisions of section 5 shall, with the necessary changes, apply to a meeting of a committee.
  7. The Commission shall not be absolved from responsibility for the

performance of any functions entrusted to any committee in terms of this section.

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Staff of Commission

7. 1. The Commission shall at its first meeting or as soon as practicable thereafter-
  - a. in consultation with the Public Service Commission and the Minister of Finance, appoint a suitably qualified and experienced person or a person seconded in terms of subsection (4) as Chief Executive Officer of the Commission for the purpose of assisting the Commission in the performance of its financial, administrative and clerical functions; and
  - b. be assisted by such staff, seconded in terms of subsection (4) or appointed by the Commission in consultation with the Public Service Commission and the Minister of Finance, as may be necessary to enable the Commission to perform its functions.
2. The persons appointed by the Commission in terms of subsection (1) shall receive such remuneration, allowances and other employment benefits and shall be appointed on such terms and conditions and for such periods, as the Commission may, in consultation with the Public Service Commission and the Minister of Finance, determine.
3.
  - a. A document setting out the remuneration, allowances and other conditions of employment determined by the Commission in terms of subsection (2), shall be tabled in Parliament within 14 days after such determination.
  - b. If Parliament disapproves of any determination such determination shall cease to be of force to the extent to which it is disapproved.
  - c. If a determination ceases to be of force as contemplated in paragraph (b)-
    - i. anything done in terms of such determination up to the date on which such determination ceases to be of force shall be deemed to have been done validly; and
    - ii. any right, privilege, obligation or liability acquired, accrued or incurred up to the said date under and by virtue of such determination, shall lapse upon the said date.
4. The Commission may, in the performance of its functions contemplated in subsection (1)(a), at its request after consultation with the Public Service Commission, be assisted by officers of the public service seconded to the service of the Commission in terms of any law regulating such secondment.
5. The Commission may, in consultation with the Public Service Commission, in the exercise of its powers or the performance of its functions by or under this Act or any other law, for specific projects, enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the work of the Commission, and with the concurrence of the Minister of Finance, determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of such persons.

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Remuneration and allowances of members of Commission

8. 1. The remuneration, allowances and other terms and conditions of office and service benefits of the full-time and part-time

- members of the Commission shall be determined by the President.
2. The remuneration of the members of the Commission shall not be reduced during their term of office.
  3. A part-time member of the Commission may, for any period during which that member, with the approval of the Commission, perform additional duties and functions, be paid such additional remuneration as may be determined by the President.
  4. The provisions of section 7(3) shall apply, with the necessary changes, in respect of the tabling in Parliament of a document setting out the remuneration, allowances and other terms and conditions of office and service benefits of the full-time and part-time members of the Commission.

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Expenditure, finances and accountability

9.
  1. Expenditure incidental to the performance of the functions of the Commission in terms of this Act or any other law shall be defrayed from money appropriated by Parliament in the same manner, with the necessary changes, and subject to the same laws, as in the case of the expenditure of a department of the National Government.
  2. The Chief Executive Officer referred to in section 7(1)(a)-
    - a. shall be responsible for the management of and administrative control over staff appointed in terms of section 7(1)(b) and shall for those purposes be accountable to the Commission;
    - b. shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975)-
      - i. be charged with the responsibility of accounting for money received or paid out for or on account of the Commission;
      - ii. cause the necessary accounting and other related records to be kept; and
    - c. shall perform the functions which the Commission may from time to time assign to him or her in order to achieve the objects of the Commission, and shall for those purposes be accountable to the Commission.
  3. The records referred to in subsection (2)(b)(ii) shall be audited by the Auditor-General .

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Independence

10.
  1.
    - a. The Commission shall be independent.
    - b. A member of the Commission as well as a member of the staff of the Commission shall perform his or her functions in good faith and without fear, favour, bias or prejudice.
  2. No organ of state and no member or employee of an organ of state nor any other person shall interfere with, hinder or obstruct the Commission, any member thereof or a person appointed under section 6(1) or 7(1) or (5) in the performance of its, his or her functions.
  3. All organs of state, including any statutory body or functionary, shall afford the Commission such assistance as may reasonably be required for-
    - a. the protection of its independence and dignity;
    - b. the effective exercise of its powers and performance of its functions.
  4. No person shall conduct an investigation or render assistance with regard thereto in respect of a matter in which he or she has

any pecuniary or any other interest which might preclude him or her from exercising or performing his or her powers and functions in a fair, unbiased and proper manner.

5. If any person fails to disclose an interest contemplated in subsection (4) and conducts or renders assistance with regard to an investigation while having an interest so contemplated in the matter being investigated, the Commission may take such steps as it deems necessary to ensure a fair, unbiased and proper investigation.

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Powers and functions of Commission

11. 1. In order to achieve its object referred to in section 119(3) of the Constitution, the Commission-
  - a. shall monitor and evaluate policies and practices of-
    - i. organs of state at any level;
    - ii. statutory bodies or functionaries;
    - iii. public bodies and authorities; and
    - iv. private businesses, enterprises and institutions, in order to promote gender equality and may make any recommendations that the Commission deems necessary;
  - b. shall develop, conduct or manage-
    - i. information programmes; and
    - ii. education programmes,to foster public understanding of matters pertaining to the promotion of gender equality and the role and activities of the Commission;
  - c. shall evaluate-
    - i. any Act of Parliament;
    - ii. any system of personal and family law or custom;
    - iii. any system of indigenous law, customs or practices; or
    - iv. any other law,in force at the commencement of this Act or any law proposed by Parliament or any other legislature after the commencement of this Act, affecting or likely to affect gender equality or the status of women and make recommendations to Parliament or such other legislature with regard thereto;
  - d. may recommend to Parliament or any other legislature the adoption of new legislation which would promote gender equality and the status of women;
  - e. shall investigate any gender-related issues of its own accord or on receipt of a complaint, and shall endeavour to
    - i. resolve any dispute; or
    - ii. rectify any act or omission,by mediation, conciliation or negotiation: Provided that the Commission may at any stage refer any matter to-
    - A. the Human Rights Commission to deal with it in accordance with the provisions of the Constitution and the law;
    - B. the Public Protector to deal with it in accordance with the provisions of the Constitution and the law; or
    - C. any other authority, whichever is appropriate:
  - f. shall as far as is practicable maintain close liaison with institutions, bodies or authorities with similar objectives to the Commission, in order to foster common policies and

practices and to promote co-operation in relation to the handling of complaints in cases of overlapping jurisdiction or other appropriate instances;

- g. shall liaise and interact with any organisation which actively promotes gender equality and other sectors of civil society to further the object of the Commission;
- h. shall monitor the compliance with international conventions, international covenants and international charters, acceded to or ratified by the Republic, relating to the object of the Commission;
- i. shall prepare and submit reports to Parliament pertaining to any such convention, covenant or charter relating to the object of the Commission;
- j. may conduct research or cause research to be conducted to further the object of the Commission;
- k. may consider such recommendations, suggestions and requests concerning the promotion of gender equality as it may receive from any source.

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#### Investigations by Commission

- 12. 1. The procedure to be followed in conducting an investigation referred to in section 11(1)(e) shall be determined by the Commission with due regard to the circumstances of each case.
- 2. The Commission shall from time to time by notice in the Gazette make known the particulars of the procedure which it has determined in terms of subsection (1).
- 3. a. If it is in the interest of justice or if harm to any person might otherwise ensue,
  - b. the Commission or a member thereof may direct that any person or category of persons shall not be present at the proceedings during the investigation or any part thereof.
  - c. No person shall disclose to any other person the contents of any document in the possession of a member or a member of the staff of the Commission or the record of evidence given before the Commission during an investigation, unless the Commission determines otherwise.
- 4. For the purposes of conducting an investigation referred to in section 11 (1)(e), the Commission may-
  - a. through a member require from any person such particulars and information as may be reasonably necessary;
  - b. require any person by notice in writing under the hand of a member of the Commission, addressed and delivered by a sheriff, to appear before it at a time and place specified in such notice and to produce to it specified articles or documents in the possession or custody or under the control of any such person: Provided that such notice shall contain the reasons why such person's presence is needed and why any such article or document should be produced.
  - c. through a member of the Commission, administer an oath to or take an affirmation from any person referred to in paragraph (b), or any person present at the place referred to in paragraph (b), irrespective of whether or not such person has been required under the said paragraph (b) to appear before it, and question him or her under oath or affirmation.
- 5. Any person questioned under subsection (4) shall, subject to any law governing privilege -

- i. be competent and compelled to answer all questions put to him or her regarding any fact or matter connected with the investigation;
  - ii. be compelled to produce to the Commission any article or document in his or her possession or custody or under his or her control which may be necessary in connection with that investigation.
- 6. Any person appearing before the Commission by virtue of the provisions of subsection (4)(b) and © may be assisted at such examination by an advocate or an attorney, or both, and shall be entitled to peruse such of the documents or records referred to in subsection (4)(b) as are necessary to refresh his or her memory.
- 7. If it appears to the Commission during the course of an investigation that any person is being implicated in the matter being investigated, the Commission shall afford such person an opportunity to be heard in connection therewith by way of the giving of evidence or the making of submissions and such person or his or her legal representative shall be entitled, through the Commission, to question other witnesses, determined by the Commission, who have appeared before the Commission in terms of this section.

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 Entering and search of premises and attachment and removal of articles

13. 1. Any member of the Commission or a police officer authorised thereto by a member of the Commission may, for the purposes of exercising the powers and performing the functions mentioned in section 11, on the authority of a warrant issued in terms of subsection (5), search any person or enter and search any premises on which anything connected with an investigation is or is suspected to be.
2. The entry and search of any person or premises under this section shall be conducted with strict regard to decency and order, including the protection of a person's right to-
- a. respect for his or her dignity;
  - b. freedom and security; and
  - c. his or her personal privacy.
3. A member or police officer contemplated in subsection (1) may, subject to the. Provisions of this section -
- a. inspect and search the person or premises in question, and there make such enquiries as he or she may deem necessary;
  - b. examine any article or document found on the person or premises;
  - c. request information regarding such article or document from the owner or person in control of the premises or from any person in whose possession or control that article or document is, or who may reasonably be expected to have the necessary information;
  - d. make copies of or take extracts from any book or document found on the person or premises;
  - e. attach anything on the person or premises which has a bearing on the investigation;
  - f. if he or she wishes to retain anything contemplated in paragraph (e) for further examination or for safe custody, remove it from the person or premises against the issue of a receipt: Provided that any article that has been so removed, shall be returned as soon as possible after the purpose for

which it was removed has been achieved: Provided further that if there is no person present to receive the receipt when it is issued, it shall be affixed to a prominent place on the premises.

4. Any person from whom information is required in terms of subsection (3)(a) and (c) may be assisted in supplying the information by a legal representative and shall be so informed before being required to give such information.
5.
  - a. A warrant referred to in subsection (1) shall only be issued by a magistrate, or a judge of the Supreme Court, if it appears to such magistrate or judge from information on oath that there are reasonable grounds for believing that any article or document, which has a bearing on the investigation is in the possession or under the control of any person or on any premises within the area of jurisdiction of such magistrate or judge and cannot reasonably be obtained in any other manner.
  - b. A warrant referred to in subsection (1) shall be executed by day.
  - c. A warrant referred to in subsection (1) may be issued on any day and shall be of force until-
    - i. it is executed; or
    - ii. it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or
    - iii. the expire of one month from the day of its issue, whichever may occur first.
  - d. A person executing a warrant under this section shall, at the commencement of such search, hand the person referred to in the warrant or the owner or the person in control of the premises, if such a person is present, a copy of the warrant: Provided that if no such person is present, he or she shall affix a copy of the warrant to the premises at a prominent and visible place.
  - e. A person executing a warrant under this section shall, at the commencement of such execution, identify himself or herself and if that person requires authorisation to execute a warrant under this section, the particulars of such authorisation shall also be furnished.
6.
  - a. A person who may lawfully under this section enter and search any premises may use such force as may be necessary to overcome any resistance against such entry and search of the premises, including the breaking of any door or window of such premises: Provided that such person shall first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter and search such premises.
  - b. The proviso to paragraph (a) shall not apply where the person concerned is on reasonable grounds of the opinion that any article or document which is the subject of the search may be destroyed, disposed of or tampered with if the provisions of the said proviso are complied with.
7. If during the execution of a warrant in terms of subsection (5), a person claims that an article or document found on the person or premises contains privileged information and refuses the inspection or removal of such article or document, the person executing the warrant may request the registrar of the Supreme

Court which has jurisdiction or his or her delegate, to attach and remove that article or document for safe custody until a court of law has made a ruling on the question whether or not the information in question is privileged.

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#### Compensation for certain expenses and daamage

14. 1. Subject to the provisions of subsection (2), the Commission may, with the specific or general concurrence of the Minister of Finance, order that the expenses or a portion of the expenses incurred by any person in the course of or in connection with an investigation by the Commission, be paid from State funds.
  2. Any person appearing before the Commission in terms of section 12(4)(b) who is not in the public service, shall be entitled to receive from moneys appropriated by law for such purpose, as witness fees, an amount equal to the amount which he or she would have received as witness fees had he or she been summoned to attend criminal proceedings in the Supreme Court held at the place mentioned in the written notice in question.
  3. If, in the execution of a warrant in terms of section 13(5), it is necessary to use force to gain entry to premises as contemplated in section 13(6)(a) and the force of such entry causes damage to any lock, door, window, wall or other part of the premises or to anything inside the premises, the Commission may order that such damage be made good from State funds: Provided that no such order shall be made if the person responsible for the premises was present at the time of entry and failed, without just cause, to facilitate the entry.
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#### Reports by Commission

15. 11. The Commission may, subject to the provisions of subsection (3), in the manner it deems fit, make known to any person any finding, point of view or recommendation in respect of a matter investigated by it.
  2. The Commission shall report to the President at least once every year on its activities and the achievement of its objectives, and the President shall cause such report to be tabled promptly in Parliament: Provided that the Commission may at any time submit any other report to the President and Parliament.
  3. The findings of an investigation by the Commission shall, when it deems it fit, be made available to the complainant and any person implicated thereby.
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#### Approach to President or Parliament

16. The Commission may, at any time, approach the President or Parliament with regard to any matter relating to the exercise of its powers or the performance of its functions.
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#### Legal proceedings against Commission

17. 1. The Commission shall be a juristic person.
2. The State Liability Act, 1957 (Act No. 20 of 1957), shall apply with the necessary changes in respect of the Commission, and in such application a reference in that Act to "the Minister of the department concerned" shall be construed as a reference to the Chairperson.
3. No-
  - a. member of the Commission;
  - b. member of the staff of the Commission;

- c. person contemplated in section 7(4); or
  - d. member of any committee who is not a member of the Commission,
- shall be liable in respect of anything reflected in any report, finding, point of view or recommendation made or expressed in good faith and submitted to Parliament or made known in terms of this Act.
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Offences and penalties

18. A person who without just cause-
- a. refuses or fails to comply with a notice under section 12(4)(b) or refuses to take the oath or to make an affirmation at the request of the Commission in terms of section 12(4)(c) or refuses to answer any question put to him or her under section 12(4)(c) or refuses or fails to furnish particulars or information required from him or her under that section;
  - b. after having been sworn or having made an affirmation contemplated in section 12(4)(c), gives false evidence before the Commission on any matter, knowing such evidence to be false or not knowing or believing it to be true;
  - c. wilfully interrupts the proceedings at an investigation or misbehaves in any manner in the place where such investigation is being held;
  - d. defames the Commission or a member of the Commission in his or her capacity as a member;
  - e. in connection with any investigation does anything which, if such investigation were proceedings in a court of law, would have constituted contempt of court;
  - f. anticipates any findings of the Commission regarding an investigation in a manner calculated to influence its proceedings or such findings;
  - g. does anything calculated to influence the Commission improperly in respect of any matter being or to be considered by the Commission;
  - h. contravenes section 10(2);
  - i. acts contrary to the authority of a warrant issued under section 13(5) or, without being authorised thereto under section 13, enters or searches any premises or attaches any article or document or performs any act contemplated in section 13(3),
- shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.
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Short title and commencement

19. This Act shall be called the Commission on Gender Equality Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette.