

# Gender Responsive Budget Analysis and Assessment Instrument

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

**The Honourable Thabo M. Mbeki**

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

**Department of Justice and  
Constitutional Development**



# Foreword

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

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

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

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

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

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

# Acknowledgments

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

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

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

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

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

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August 2004*

# Contents

## PART ONE

### Gender Responsive Budget Analysis

Key Concepts and Acronyms .....	7
1. Executive Summary .....	12
2. Purpose and Broad Objectives .....	15
3. Background .....	16
4. Methodology .....	22
5. Gender Budget Assessment Guidelines .....	23
6. The Gender Budget Analysis .....	25
7. Findings .....	50
8. Conclusion and Recommendations .....	52
9. References .....	55

## PART TWO

### Assessment Instrument

1. Purpose and Broad Objectives .....	56
2. Background .....	56
3. Methodology .....	58
4. Gender Budget Assessment Guidelines .....	59
5. Gender Budget Assessment Checklist .....	61
6. Annexure .....	70
Annexure A: Do JCD Service Map .....	70
Annexure B: Service Feedback Survey Questionnaire .....	71

# Key Concepts and Acronyms

## Key Concepts

### **Black Economic Empowerment**

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

### **Black Empowerment**

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

### **Disaggregate**

Disaggregate means subdivide into constituent parts.

### **Employment Equity**

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

### **Equality**

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

### **Gender**

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

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

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

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

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## Acronyms

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

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

# PART ONE

## Gender Responsive Budget Analysis

### 1. EXECUTIVE SUMMARY

#### 1.1 Overview

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

#### 1.2 Process

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

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

### Summary of Findings

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

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

### 1.3 Summary of Recommendations

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

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

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

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

## 2. PURPOSE AND BROAD OBJECTIVES

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

### 3. BACKGROUND

#### 3.1 Historical Background

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

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

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

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

#### 3.2 The Policy Context

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

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

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

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

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

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

### 3.3 Profile of the Department

Strategic leadership of the Department is provided by:

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

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

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

These include:

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

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

### 3.4 The Position of Women

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

### 3.5 Mandate

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

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

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

### 3.6 Beneficiary Profile and Social Context

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

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

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

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

#### SELECTED INDICATORS OF INEQUALITY

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

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

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

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

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

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

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

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

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

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

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

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

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

## 4. METHODOLOGY

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

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

## 5. GENDER BUDGET ASSESSMENT GUIDELINES

The Gender budget analysis involved the following processes:

### 5.1 General Principles

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

### 5.2 Expenditure Clusters Reviewed

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

### 5.3 Expenditure Items Examined

Expenditure items that were examined included:

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

### 5.4 Tools of Analysis

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

## 6. THE GENDER BUDGET ANALYSIS

### 6.1 Introduction

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

#### STEP 1

##### The Budget Process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## STEP 2

### General Policy Considerations

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

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

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

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

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

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

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

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

## STEP 3

### Specific Compliance With Gender Policy/Obligations

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

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

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

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

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

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

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

## STEP 4

### Social Context Analysis

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

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

#### 2. What differential needs arise from the above?

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

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

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

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

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

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

## STEP 5

### Women Empowerment Locations

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

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

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

**2. Service delivery matters**

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

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

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

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

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

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

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

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

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

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

### 5. What policy considerations underpin women empowerment interventions?

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

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

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

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

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

## **STEP 6**

### **Pro-Women Allocations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **5. What policy considerations underpin pro-women interventions?**

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

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

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

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

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

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

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

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

## STEP 7

### Equalising Benefits in General Services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(a) Services**

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

**(b) Employment Opportunities and Benefits**

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

**(c) Public Involvement?**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

## STEP 9

### General Considerations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

## 8. CONCLUSION AND RECOMMENDATIONS

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

### 8.1 General Recommendations

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

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

## 8.2 Specific Recommendations

The Department is further advised to take forward the matter of gender responsive budgeting by:

- (a) Investing resources in and implementing a massive communication strategy covering the role and functions of the Department, rights arising from new laws (legislation and Court jurisprudence) and information on how to access such rights;
- (b) Applying targeted budgeting based on periodic needs assessments that clearly reflect the diverse needs of customers, including women from different walks of life;
- (c) Mainstreaming gender considerations into all aspects of the Department's budget and women's priorities needs to be clearly spelt out and integrated into organisational priorities, as reflected in Strategic Plans and Annual Objectives, with implementation monitored and enforced;
- (d) Entrenching a requirement that all budgets and expenditure reports be accompanied by a gender impact statement;
- (e) Allocating a specific sizeable budget towards special programmes aimed at empowering women as justice service users, employees within the justice system, contractors and as professionals in the sector, to equalise access and opportunities between them and men in respect of all relevant aspects of the Department's operations. This should include an integrated response to violence against women, including the girl child;
- (f) Reviewing current budget allocations and the impact on women of programmes or interventions seeking to address women's needs through pro-women service areas such as: Sexual Offences; Domestic Violence; Maintenance; Family Law, including Customary Law;

Administration of Deceased Estates, particularly those affected by Customary Law; Mainstreaming of Human Rights, including Equality; the implementation of Employment Equity and Diversity Management and judicial education, particularly on issues such as mainstreaming human rights, social context awareness and gender;

- (g) Allocating resources towards a gender assessment and reform of the Civil Procedure system, particularly aspects such as process serving and exploration of the use of ADR for consumer issues;
- (h) Reviewing of the divorce system particularly the issue of process serving therein;
- (i) Extending legal aid to all matters, educating service providers about service excellence and involving the public a lot more in the monitoring and evaluation of the legal aid system;
- (j) Investing state resources towards paralegals to expand access to legal advice, particularly in respect of equality and civil matters in Magistrates Courts;
- (k) Increasing the budget and structure of the Gender Directorate and allocating special funding within each Business Unit or Component for programmes aimed at strengthening capacity for mainstreaming gender into all aspects of the department's operations;
- (l) Fast tracking the restructuring of the legal profession to broaden women's access and ensure that entry arrangements are unhampered. The main feature being state provided or supervised smooth entry into the profession without labour market competition, prior to entry in to the profession;
- (m) Allocating significant resources towards special measures to enhance women's involvement at all levels of decision-making within the DoJCD in cooperation with the JSC and MAGCOM;
- (n) Reviewing procurement processes and outcomes relating to distribution of state contracts within the Department and implement special measures to remove barriers preventing equal access to contract opportunities, in order to accelerate the levelling of the playing field;
- (o) Conducting a more elaborate Needs Assessment, nationally, to facilitate gender and targeted budgeting;
- (p) Developing a *Policy and Legal Compliance Map* and use the map to inform the choice of budget priorities;

- (q) Implementing special measures to enhance women's participation at all levels of decision-making regarding the budget and public resource utilisation in the Department; and
- (r) Adhering to a strict balance between a basic needs approach and achievement of global competitiveness in resource allocation and implementation activities.

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## PART TWO

# Gender Responsive Budget Assessment Instrument

### 1. PURPOSE AND BROAD OBJECTIVES

The purpose of the *Gender Budget Assessment Instrument* is to serve as a basis for analysing the budget, expenditure patterns and revenue sources in the DoJCD. The aim is to establish the impact of the budget on women and responsiveness to the differential needs of women and men. This will be followed by the development of *Gender Budgeting Guidelines* to assist decision makers in the DoJCD to review their budgets and expenditure patterns to enhance responsiveness to the circumstances of women.

### 2. BACKGROUND

#### 2.1 Historical Background

The project is a follow-up to a *Gender Mainstreaming* audit of the systems and processes in the DoJCD, which sought to establish the extent to which gender considerations are routinely integrated in all aspects of the Department.

The issue of equitable distribution of government resources between women and men and the use of resources to level the playing field between the two genders emerged as a critical component of effec-

tive *Gender Mainstreaming*. The gender audit exercise broadly established that women and men were not benefiting equally from resources spent in the operations of the Department and that a lot of practical and strategic needs of women were not being responded to in departmental programmes.

This was not surprising because historically the justice system was crafted by and in response to the needs of affluent men of European descent, a fact noted in *Justice Vision 2000* and the *Gender Policy Statement* of the DoJCD.

This exercise seeks to consolidate the *Gender Mainstreaming* exercise by ensuring that not only is *Gender Mainstreamed* practiced within the DoJCD, but that the money trail effectively supports gender transformation within the Department, and the broad sector within which it operates.

### **The Social and Political and Policy Context**

The adoption of constitutional democracy, crystallised in the first non-racial democratic elections in 1994, and the adoption of a new Constitution, saw South Africa embarking on a path of social and economic reconstruction.

The main focus was on redressing the lasting legacy of previously legalised injustice. The promotion of gender equality is a central part of government's quest for a society based on equal enjoyment of all human rights, freedoms and life opportunities. This mission is also part of South Africa's obligations arising from binding instruments such as CEDAW and the *African Charter on Human and People's Rights*. In addition to constitutional and international obligations, the duty of the state to promote equality also arises from various equality laws and transformation policies. These include the *Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)*, *Employment Equity Act (EEA)*, *Preferential Procurement Policy Framework Act (PPPFA)* and the *Broad Based Black Economic Empowerment Act (BBBEA)*.

The DoJCD's obligations regarding the promotion of gender equality includes its ordinary duties as a state entity and its duties as the sponsor of the PEPUDA. *Gender Budgeting* is an integral part of mainstreaming gender, which in turn is part of mainstreaming equality as envisaged in the constitutional vision of an equal society and national policy framework on social transformation. The duty applies to all operations of the Ministry/Department of Constitutional Development.

The Department of Justice and Constitutional Development sees its mandate as being:

*"To give effect to the constitutionally mandated requirement that South Africa has a fair, equitable and accessible system of justice", and to... "provide certain legal services to government".*

The mandate has been translated into five organisational objectives. These are:

- Maintain, improve and streamline a system of courts in which legal proceedings of a criminal, civil and administrative nature are processed efficiently and effectively;
- Investigate certain crimes and prosecute all criminal offenders;
- Provide legal services to government and represent it in legal proceedings;
- Research, draft and promote legislation; and
- Facilitate the delivery of additional services linked to the administration of justice, including services delivered by constitutionally independent institutions.

### 3. METHODOLOGY

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

- Conducting desk research, including preliminary analysis of the DoJCD budget to identify all key services constituting expenditure items, in order to compile a *Service Map*;
- Developing a *Draft Gender Budget Assessment Instrument*;
- Developing a *Service Feedback Questionnaire*;
- Conducting interviews based on the *Service Feedback Questionnaire*, involving 130 randomly selected respondents from both gender and all formal racial categories (African, Coloured, Indian and White). All Respondents were interviewed in courts, bus ranks and shopping malls in Pretoria and Johannesburg;
- Analysing feedback and compiling a gender *Needs Assessment Report*;
- Consolidating the *Draft Gender Budget Assessment Instrument*;
- Applying the *Gender Budget Assessment Instrument* to review the DoJCD Budget and expenditure reports;
- Drafting of Findings; and
- Developing the *Recommendations and Guidelines on Gender Budgeting*.

## 4. GENDER BUDGET ASSESSMENT GUIDELINES

**Gender budget analysis involves:**

### 4.1 General Principles

The general principles include:

- Testing the budget and expenditure for gender impact and implications;
- Identifying resources allocated to, and spent on:
  - Women's programmes;
  - Pro-women programmes; and
  - General programmes and the extent to which women benefited through the spending. This includes inquiring into resources allocated towards equalising women and men's benefit from mainstream services and related budget allocations.
- Measuring budget allocations and expenditure patterns against findings of the *Gender Needs Assessment*, paying attention to women's priorities as identified in the *Gender Needs Assessment*;
- Disaggregating gender in terms of race, disability, socio-economic status and other factors that impact on women's equal enjoyment of all rights, freedoms and related opportunities; and
- Benchmarking Departmental budget and expenditure patterns against government policy pronouncements, international obligations and sectoral best practices on gender.

### 4.2 Expenditure Clusters to be reviewed

The three areas to examine are:

- Consolidated MTEF Budget of the DoJCD;
- Annual Financial Statements and budgets; and
- Expenditure reports of all the major components, including Courts, NPA, Master's Division, Human Resources, Communication, State Contracts, Legislation, ISM and Research, as well as Constitutional Development.

### 4.3 Expenditure items to be examined

These include:

- Allocations for items individually and collectively within each of the above three areas;
- Time spent on gender issues;
- Time spent on matters, including law reform and services, used mostly by women. The findings of the *Gender Needs Assessment* should guide this exercise;
- Extent of human and other resources utilised as outputs on matters benefiting each gender; and
- Overall *per capita* expenditure on women and men.

### 4.4 Tools of Analysis

- Service Usage Statistics (from DoJCD, *Needs Assessment Report*) and other Data Sources;
- National Statistics on women and men's socio-economic profiles;
- Available impact studies; and
- *Gender Budget Analysis Check List*.

## 5. GENDER BUDGET ASSESSMENT CHECKLIST

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
<p><b>STEP 1</b></p> <p><b>The Budget Process</b></p>	<ol style="list-style-type: none"> <li>(1) Is the budget process informed by a needs assessment and planning data?</li> <li>(2) Are these disaggregated by gender and intersectional factors such as race?</li> <li>(3) Who participates in the budget process? What is the gender and race breakdown of such participants?</li> <li>(4) Is the budget informed by policy guidelines and if so, do such guidelines mention the need for <i>Gender Mainstreaming</i>?</li> <li>(5) Is the principle of redirecting resources to previously neglected needs or areas in order to promote equality, incorporated in the budgeting guidelines?</li> <li>(6) Is gender placed within departmental priorities for top sliced budgetary allocations?</li> <li>(7) Is the issue of gender and gender targets among the MTEF strategic priorities?</li> <li>(8) Are all Departmental and Component plans, programmes or activities subjected to a gender audit or analysis before, during and after implementation?</li> <li>(9) Is the achievement of equality part of the criteria for budget (mid-term) review and redirection of resources?</li> </ol>	

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
	<p>(10) What is the extent of implementation of planned gender activities?</p>	
<p><b>STEP 2</b></p> <p><b>General Policy Considerations</b></p>	<p>(1) Are policy and legal compliance critical considerations in Departmental budgeting?</p> <p>(2) Which policies are given priority? Do these include <i>Batho Pele</i> and the White Paper on Transformation of the Public Service?</p> <p>(3) Is compliance with policy and legal frameworks a critical consideration for budget approval?</p> <p>(4) How is policy compliance enforced in the budget process?</p>	
<p><b>STEP 3</b></p> <p><b>Specific Compliance with Gender Policy/Obligations</b></p>	<p>(1) Are the provisions of the Departmental Gender Policy Statement, National Gender Policy Framework and gender equality obligations in regional and international instruments integrated in policy considerations underpinning the budget?</p> <p>(2) What funding (amount and percentage of total budget) has been allocated towards gender programmes aimed at implementing specific provisions of instruments such as CEDAW, BPA, SADC Addendum on VAW&amp;C, PEPUDA, EEA, NGPF and DGPS?</p> <ul style="list-style-type: none"> <li>• In all Units and components?</li> <li>• Through the work of the GFP?</li> </ul>	

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
	<p>(3) What percentage of the budget is allocated towards gender skill, awareness training and education?</p>	
<p><b>STEP 4</b></p> <p><b>Social Context Analysis</b></p>	<p>(1) What is the position of women and men to whom Departmental and or Component services are targeted?</p> <p>(2) What differential needs arise from the above?</p> <p>(3) Have such needs been verified through a needs assessment and are the findings integrated in planning data?</p> <p>(4) What amount and percentage of total budget is allocated towards gender disaggregated customer consultation to ascertain specific circumstances and needs of women and men from different races and backgrounds?</p>	
<p><b>STEP 5</b></p> <p><b>Women's Empowerment Programme Allocations</b></p>	<p>(1) What positive measures or special interventions seeking to advance women to 'level the playing field', have been implemented or planned in respect of:</p> <p>(a) Human resources matters (including Employment Equity, Skills Development and EAP);</p> <p>(b) Service delivery matters in:</p> <ul style="list-style-type: none"> <li>• The courts;</li> <li>• NPA;</li> <li>• Master's;</li> </ul>	

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
	<ul style="list-style-type: none"> <li>• Public Education;</li> <li>• Law reform;</li> <li>• Constitutional Development; and</li> <li>• Other.</li> </ul> <p>(c) Procurement; and</p> <p>(d) Black Economic Empowerment.</p> <p>(2) What amount and percentage of Departmental and or Component budget has been allocated towards each of these?</p> <p>(3) What percentage of the total budget does the total allocation towards women empowerment represent?</p> <p>(4) How does this compare to other empowerment programmes if any?</p> <p>(5) Do these programmes, projects or activities feature high in Departmental and or Component priorities as reflected in Strategic Plans, MTEF and Annual Objectives?</p> <p>(6) What policy considerations underpin women empowerment interventions?</p> <p>(7) What has been the outputs and impact of previous women empowerment interventions?</p> <p>(8) What are the anticipated outputs and outcomes of planned interventions?</p>	

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<p><b>STEP 6</b></p> <p><b>Pro-Women Allocations</b></p>	<p>(1) What services, programmes or activities that are mainly used by women or contribute significantly to the reduction of gender inequality, have been implemented or planned?</p> <p>(2) Do these include:</p> <ul style="list-style-type: none"> <li>(a) Maintenance;</li> <li>(b) Domestic Violence;</li> <li>(c) Sexual Offenses;</li> <li>(d) Victim Empowerment;</li> <li>(e) Family Court;</li> <li>(f) Public Education;</li> <li>(g) Information Desks and Related Services;</li> <li>(h) Customary Marriages and Deceased Estates;</li> <li>(i) Equality Legislation;</li> <li>(j) Employment Equity;</li> <li>(k) Skills Development; and</li> <li>(l) Human Rights.</li> </ul> <p>(3) What amount and percentage of the Departmental and or Component budget has been allocated towards each of these?</p> <p>(4) What percentage of the total budget does the allocation represent?</p> <p>(5) Do these programmes, projects or activities feature highly in Departmental and or Component priorities as reflected in Strategic Plans, MTEF and Annual Objectives?</p> <p>(6) What policy considerations underpin women empowerment interventions?</p> <p>(7) What has been the outputs and impact of previous women empowerment interventions?</p>	

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
	<p>(8) What are the anticipated outputs and outcomes of planned interventions?</p>	
<p><b>STEP 7</b></p> <p><b>Equalising Service Benefits in General Services</b></p>	<p>(1) What is the <i>per capita</i> expenditure on each service offered under the Departmental and or Component with regard to:</p> <ul style="list-style-type: none"> <li>(a) Service Delivery;</li> <li>(b) Human Resources; and</li> <li>(c) Skills Development.</li> </ul> <p>(2) Who (in terms of gender disaggregated by race) currently benefits mostly from each of the key services provided through the budget of the Departmental and or Component, as outlined in the Service Map?</p> <p>(3) What is the <i>per capita</i> expenditure disaggregated by gender and race for:</p> <ul style="list-style-type: none"> <li>(a) Each service; and</li> <li>(b) All services.</li> </ul> <p>(4) Has the gap been narrowing over the years? At what rate?</p> <p>(5) What budgetary measures are being employed to identify and narrow gender and other equality gaps?</p> <p>(6) Is the gap likely to narrow, remain constant or widen if current budgetary trends continue?</p> <p>(7) What programmes are in place and how much has been allocated towards each programme, project or activity that has been implemented or</p>	

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
	<p>planned with a view to reducing gender inequality in:</p> <ul style="list-style-type: none"> <li>(a) Services;</li> <li>(b) Employment opportunities and benefits; and</li> <li>(c) Public involvement?</li> </ul> <p>(8) Has the above been informed by a needs assessment or gender audit?</p> <p>(9) Are the following areas covered in departmental corrective measures? If so, what are the amounts and what budget percentages, outputs and outcomes are involved in respect of:</p> <ul style="list-style-type: none"> <li>(a) Administration of Deceased Estates;</li> <li>(b) Public Education;</li> <li>(c) Civil Procedure;</li> <li>(d) Small Claims;</li> <li>(e) Administrative Justice;</li> <li>(f) Access to information; and</li> <li>(g) Legal Aid.</li> </ul> <p>(10) What policy considerations have informed decisions with regard to mainstreaming gender in general services?</p>	
<p><b>STEP 8</b></p> <p><b>Procurement Equity Measures</b></p>	<ul style="list-style-type: none"> <li>(1) How much and what percentage of its total budget has the Departmental and or Component spent on procurement in the last three years (state and donor funds)?</li> <li>(2) How many contracts and, of what amounts and nature were involved?</li> <li>(3) What is the gender (disaggregated by race) breakdown of each contract</li> </ul>	

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
	<p>awarded by the Departmental and or Component?</p> <p>(4) What is the gender (disaggregated by race) breakdown of the contracts awarded by the Departmental and or Component?</p> <p>(5) What programmes, projects or activities have been implemented or planned to address systemic inequality and promote gender equality in accessing state contracts and public in private partnerships in the Departmental and or Component?</p> <p>(6) What amount has been allocated to each intervention and what outputs and outcomes are involved?</p> <p>(7) What policy considerations and arrangements underpin the above interventions?</p>	
<p><b>STEP 9</b></p> <p><b>General Considerations</b></p>	<p>(1) What status is accorded to gender and the general promotion of equality in Departmental dialogue on the budget?</p> <p>(2) Does the budget incorporate a gender impact statement and if so, are issues that emerged as critical concerns in the <i>Gender Needs Assessment Report</i>, given prominence?</p>	

KEY RESULT AREA	INDICATOR(S)	OBSERVATIONS
	<p>(3) Does gender and related equality issues fair favourably in comparison with other issues in regard to implementation of activities that are planned or budgeted for in MTEF and annual budgets?</p> <p>(4) What are the general gender trends in budgetary behaviour, and what is the likely impact on gender equality in the next five to ten years?</p> <p>(5) What is the role of women at different levels in the budget and expenditure control processes?</p> <p>(6) What is the general level of awareness of the role and power of the budget in addressing systemic gender inequality?</p> <p>(7) What is the extent of leadership commitment to addressing gender imbalances through the budget?</p> <p>(8) What are the key constrains undermining the implementation of gender budgeting?</p>	