



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

HANDBOOK ON MAINSTREAMING



**INSIGHTS ON MATTERS RELATED TO
WOMEN, CHILDREN, PERSONS WITH
DISABILITIES AND YOUTH**



PARLIAMENT

OF THE REPUBLIC OF SOUTH AFRICA

HANDBOOK ON MAINSTREAMING

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ACRONYMS

ACRWC	African Charter on the Rights and Welfare of the Child
APP	Annual Performance Plan
BPFA	Beijing Declaration and Platform for Action
BRRR	Budget Review and Recommendation Report
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CGE	Commission for Gender Equality
DPME	Department of Planning, Monitoring and Evaluation
GBVF	Gender-Based Violence and Femicide
ICCPR	International Covenant on Civil and Political Rights
INDS	Integrated National Disability Strategy
IYDS	Integrated Youth Development Strategy
MDGs	Millennium Development Goals
MP	Member of Parliament
MPL	Member of the Provincial Legislature
MTBPS	Medium Term Budget Policy Statement
MTEF	Medium Term Expenditure Framework
NA	National Assembly
NDP	National Development Plan
NEPAD	New Partnership for Africa's Development
NCOP	National Council of Provinces
NGPF	National Gender Policy Framework
NSP	National Strategic Plan
NYDA	National Youth Development Agency
NYP	National Youth Policy
OAU	Organisation of African Unity
ORC	Office on the Rights of the Child
OSDP	Office on the Status of Disabled Persons
OSW	Office on the Status of Women
PDO	Parliamentary Democracy Office

SADC	Southern African Development Community
SDGs	Sustainable Development Goals
SDGEA	Solemn Declaration on Gender Equality in Africa
SLI	Sign Language Interpreter
SCOPA	Committee on Public Accounts
SONA	State of the Nation Address
UNCRC	United Nations Convention on the Rights of the Child
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
WPAY	World Programme of Action for Youth to the Year 2000 and Beyond
WPRPD	White Paper on the Rights of Persons with Disabilities

FOREWORD



DR. L. GABRIEL

Division Manager: Knowledge and Information Services

Despite significant progress in the thirty years of democracy in South Africa, the realisation of the aspirations for social, economic and personal freedom, fairness and equality have not reached the majority of South Africans. South Africa remains one of the most unequal societies, with high levels of poverty and unemployment. Arguably still at the periphery of rights-based development and inclusivity; women, youth, children and persons with disabilities are disproportionately affected by these socio-economic conditions. As public representatives Members of Parliament shoulder the responsibility to ensure the progressive realisation of socio-economic rights and freedoms of all South Africans, particularly the most vulnerable sectors of the population.

Mainstreaming gender, children, youth and persons with disabilities is a pivotal transformative approach that recognises the inherent value and dignity of all individuals, regardless of their gender, age, or ability. This inclusive framework seeks to address the systemic inequalities and barriers that have historically marginalised these groups denying them access to equal opportunities, resources and participation. Moreover, it recognises the intersecting identities and diverse needs of these groups, ensuring their equal participation, rights and opportunities.

By placing gender, children, youth and disability at the centre of development agendas, policies, laws and programmes, Members can ensure that the potential for sustainable and equitable progress is unlocked. This requires:

1. **Gender equality:** Challenging harmful gender stereotypes, promoting women's empowerment and addressing the specific needs of girls and women.
2. **Youth empowerment:** Amplifying the voices and aspirations of young people, investing in their education, skills and leadership and creating opportunities for their economic and social growth and well-being.
3. **Child-centred approaches:** Prioritising and protecting children's rights, protection and participation to ensure their healthy growth, education, safety and well-being and providing quality education, healthcare and nurturing environments.
4. **Disability inclusion:** Recognising the rights and contributions of persons with disabilities, removing physical and attitudinal barriers and providing accessible services and opportunities.

Mainstreaming these perspectives fosters:

- Inclusive policies, programmes, governance and decision making
- Equitable resource allocation
- Culturally sensitive and responsive services
- Enhanced social cohesion and community engagement

As we strive for a more just and equitable society, we must commit to:

- Policy reforms and legislative changes
- Develop capacity building and training programmes
- Support community-led initiatives and partnerships
- Evidence-based research and data-driven decision making
- Foster partnerships and collaborations

Applied consistently, this can create a resilient, fair and just South African society where everyone has the opportunity to thrive, contribute and reach their full potential.

This Handbook provides Members of Parliament with a comprehensive reference to the legal frameworks, policies and development imperatives concerning the rights, protection and empowerment of women, youth, children and persons with disabilities. It proposes practical approaches and tools that Members may apply in their lawmaking, exercising oversight over government policies and programmes, public involvement initiatives and in holding the Executive accountable for advancing the inclusive development objectives elaborated in the National Development Plan, African Agenda 2063 and the United Nations Sustainable Development Goals.



MS. R. BEGG

Division Manager: Committees

The late former President, Nelson Rolihlahla Mandela often said, “the world is hungry for actions, not words.” We commence the 7th Parliament and embrace an activist Parliament which is premised on action towards protecting, promoting and fulfilling the rights of South Africans irrespective of age, gender, race, disability, language, religion and culture. Women, children, persons with disabilities and youth constitute most of the population of South Africa. These target groups are adversely affected by inequality, poverty, unemployment and gender-based violence and femicide. Parliamentarians, as duty-bearers, have an obligation to respect, protect, promote, and fulfil human rights of these rights-holders. Moreover, these rights are enshrined in the South African Constitution as well as international laws signed and ratified by the South African government. Understanding

what this role entails is key for each Member of Parliament to effectively carry out their functions. These functions should also be understood within the context of the priorities identified for Government and Parliament.

Inclusive growth and development, poverty alleviation and job creation are among government's key priorities. Given that women, youth, persons with disabilities and children comprise a significant proportion of the population, their inclusion is of paramount importance. The National Development Plan: Vision 2030 (NDP) remains the defining blueprint for South Africa's growth and development. The NDP, along with the United Nations Sustainable Development Goals and the African Agenda 2063, will guide the development of outcomes to advance growth, development and equality.

These policy priorities will directly benefit women, children, persons with disabilities and youth but requires astute oversight. Mainstreaming the rights of women, children and persons with disabilities is imperative to ensure that they are not the periphery of economic growth and development. It is a critical strategy to achieve equality and is a mechanism to ensure that cognisance is taken of the above target groups in policy and programme development, as well as in budget preparation and allocation.

Thus, Parliamentarians have the responsibility to ensure the mainstreaming of gender, children's rights, rights of persons with disabilities and youth. This is done via the legislative process, when conducting oversight, during public participation, and whilst enhancing international participation as well as facilitating co-operative governance.

This Handbook has been developed for all Members of Parliament and serves as an important reference tool. It sets out the key policy and legislative framework that pertain to women, children, persons with disabilities and youth in South Africa. Furthermore, the Handbook examines Parliament's core functions from a gender, child rights, disability rights and youth rights perspective with the aim of assisting Parliamentarians to give effect to their functions as duty-bearers.

DEFINITIONS

Child

A person under the age of 18 years as per the Constitution of South Africa.

Disability

"Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." ¹

Legislature

This includes the National Assembly, the National Council of Provinces and the Provincial Legislatures.

Mainstreaming

Children's Rights

"Mainstreaming children's rights is a strategy that puts those rights at the centre of broad policy decisions, institutional structures and resource allocation. In the context of parliament, it means considering all of parliament's work from the perspective of the child – whether reviewing and approving budgets, shaping and adopting legislation or overseeing government performance. Mainstreaming also entails viewing all issue areas from the perspective of the child, not just those issues overtly relating to children, such as child protection or education." ²

Disability Mainstreaming

The preamble of the United Nations Convention on the Rights of Persons with Disabilities places emphasis on the importance of "mainstreaming disability issues as an integral part of relevant strategies for sustainable development." Hence, the "United Nations promotes the "twin-track approach" for equalizing opportunities for persons with disabilities, which consists of: (a) integrating disability-sensitive measures into the design, implementation, monitoring and evaluation of all policies and programmes and (b) providing disability-specific initiatives to support the empowerment of persons with disabilities." ³

Gender Mainstreaming

The United Nations defines gender mainstreaming as "... the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally, and inequality is not perpetuated. The ultimate goal of mainstreaming is to achieve gender equality." ⁴

¹Preamble of United Nations Convention on the Rights of Persons with Disabilities

²Inter-Parliamentary Union & UNICEF (n.d.) A handbook on child participation in Parliament. France: Courand et Associes

³United Nations (2012) Mainstreaming disability in the development agenda, Report of the Secretary General, Commission for Social Development, Fiftieth session, Follow-up to the World Summit for Social Development and the twenty-fourth special session of the General Assembly: review of relevant United Nations plans and programmes of action pertaining to the situation of social groups. 1-10 February 2012.

⁴United Nations (1997) Report of the Economic and Social Council.

Youth Mainstreaming

Youth mainstreaming is a transformative process that is inclusive and consciously proactive, placing the capabilities and rights of young men and women alongside those of other marginalised community members in development planning. It is transformative because it radically improves young people's wellbeing and rights by translating co-created visions into youth-centric policies and programmes.⁵

Oversight

In the South African context, oversight is a constitutionally mandated function of legislative organs of state to scrutinise and oversee executive action over any organ of state. This entails 'the informal and formal, watchful, strategic and structured scrutiny exercised by legislatures in respect of the implementation of laws, the application of the budget, and the strict observance of statutes and the Constitution. In addition, and most importantly, it entails overseeing the effective management of Government departments by individual members of Cabinet in pursuit of improved service delivery for the achievement of a better quality of life for all citizens.'⁶

Youth

A person between the ages of 14 and 35.⁷

⁵Commonwealth Secretariat (2017). Youth Mainstreaming in Development Planning: Transforming Young Lives.

⁶Parliament of Republic of South Africa (2012) Oversight and accountability model - Asserting Parliament's Oversight Role in Enhancing Democracy, p.7.

⁷National Youth Development Agency Act (No. 54 of 2008)



EXECUTIVE SUMMARY

The Mainstreaming Handbook will assist Members in the National Assembly, the National Council of Provinces and the Provincial Legislatures to effectively undertake their roles as duty-bearers by fulfilling, protecting and promoting the rights of women, children, persons with disabilities and youth during the term of the Seventh Parliament and beyond.

The objectives of this Handbook are to:

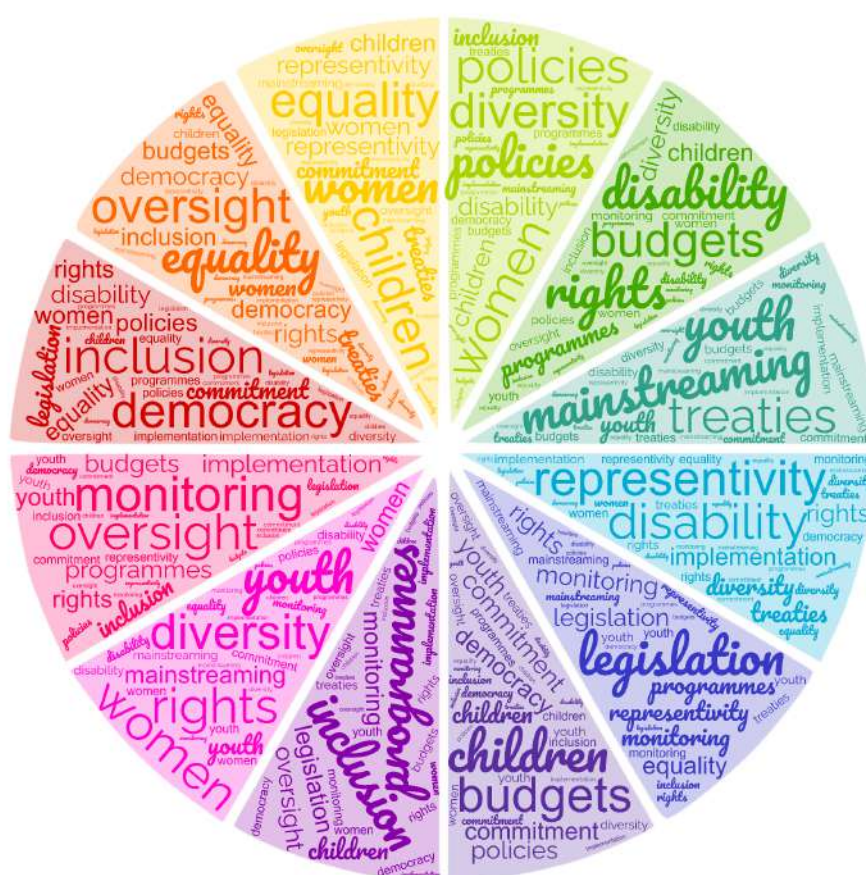
- Highlight the role of Members in promoting the rights of women, children, persons with disabilities and youth.
- Identify key legislation pertaining to women, children, persons with disabilities and youth.
- Identify key international binding instruments pertaining to women, children, persons with disabilities and youth and the role of Members in overseeing the implementation of these.
- Propose mechanisms for conducting effect oversight when considering issues pertaining to women, children, persons with disabilities and youth.
- Articulate the importance of enhancing the public participation of women, children, persons with disabilities and youth in legislative processes.
- Raise awareness on issues of co-operative governance as they pertain to women, children, persons with disabilities and youth.
- Raise awareness about the internal structures and issues within legislatures as they pertain to women, children, persons with disabilities and youth.

The Handbook is divided into four sections:

- **Institutional Structures – Government and Parliament** outlines the institutional arrangements within Government and Parliament to drive and oversee programmes related to women, children, persons with disabilities and youth.
- **Legislative Framework** provides an overview of the Constitutional imperatives, international binding instruments, key legislation as well as national policies that promote the rights of women, children, persons with disabilities and youth.
- **Core functions of Legislatures** outlines the functions of legislatures which include legislation, oversight, public participation, international participation and co-operative governance and identifies opportunities within these core functions to highlight issues related to women, children, persons with disabilities and youth.
- **Internal mechanisms and policies within Legislatures** focuses on the role of the Multi-Party Women's Caucus and key internal policies within legislatures such as family policies, sexual harassment and reasonable accommodation policies.

The Handbook outlines the relevance of a gendered, child, disability and youth rights perspective and why these perspectives must be considered in the fulfilment of the core functions of a legislature including:

- **Legislation:** During the development of legislation and monitoring the implementation thereof.
- **Oversight:** When conducting oversight over the Executive by Committees and during oversight for constituency work. Matters related to women, children, persons with disabilities and youth are not the sole prerogative of Committees focusing on social welfare matters such as health, education, and social security, but fall beyond that scope given the duty-bearer responsibility bestowed on legislatures. Conferral of Committees in this regard is very important. Budgeting is another crucial aspect of oversight. Gender-responsive budgeting, budgeting from a child-rights, disability-rights and youth-rights perspective should be applied to analyses of departmental Votes, during in-year monitoring of quarterly reports and the Budget Review and Recommendations Reports where relevant.
- **International participation:** In the consideration of international and regional instruments for ratification as well as the oversight of the State in terms of its reporting duties. Legislatures have a crucial oversight role in terms of assessing and overseeing the implementation of treaties, conventions etc. This entails assessing the extent to which conventions have been given effect through domestication, as well as monitoring and assessing compliance with reporting obligations.
- **Public participation:** The representation of women, children, persons with disabilities and youth must be ensured in all public participation platforms provided for by the legislatures. Mechanisms and systems need to be in place to ensure that women, children, persons with disabilities and youth are not excluded from public participation platforms and instead are provided with opportunities for meaningful participation. This includes, for example, providing sign language interpreters for deaf persons.
- **Co-operative governance:** When facilitating co-operative governance between the three spheres of Government and ensuring that the rights of women, children, persons with disabilities and youth are being promoted in the process.



1. INTRODUCTION

South Africa has celebrated 30 years of democracy since the historic election date of 27 April 1994. The country has grown since then including in the advancement of human rights and the size of the populace itself. According to Statistics South Africa the population stands at 62.02 million with an unemployment rate of 32.9 percent for Quarter 1 of 2024.⁸ Women, children, persons with disabilities and youth constitute a large proportion of the population in South Africa. According to the 2022 Census, females constitute 51,5 percent of the total population.⁹ Children constitute almost 34 percent (21 million) of South Africa's total population.¹⁰ The disability prevalence is 15,7 percent in the country.¹¹ "The total number of youths (aged 15-34 years) with disabilities was roughly 551 000, and accounts for 2,7% of persons with disabilities in 2022 (3,8 million persons)."¹²

It is thus imperative that the country's laws, policies and programmes respond to the needs of these target groups. This has direct bearing on the work of Members of Parliament and Members of the Provincial Legislatures.

In the 2024 Global Gender Gap Report, the World Economic Forum ranked South Africa 18th overall out of 146 countries on the Gender Gap Index which is an assessment of Economic Participation and Opportunity¹³, Educational Attainment¹⁴, Health and Survival¹⁵ and Political Empowerment. South Africa received its highest ranking i.e. 13th position in relation to the last variable, Political Empowerment.¹⁶ According to the Inter-Parliamentary Union, South Africa is ranked in the 17th position insofar as women's representation in Parliament is concerned.¹⁷

This is a six-place decline from its previous ranking prior to the May 2024 national elections. Notwithstanding this, there has been a marked increase in the number of women in Parliament since the first democratic term in 1994. During the first democratic term, women's representation was at less than 30 percent. While the numbers have fluctuated since then, the number of women in Parliament has consistently been above 40 percent. In the Seventh Parliament, women constitute 43.5 percent of the National Assembly and 44 percent of the National Council of Provinces. Women are the Chairpersons of 18 of the 43 parliamentary committees (42%) and both the positions of Speaker and Deputy Speaker of the National Assembly are occupied by women. Youth Parliamentarians comprise 12.5 percent (50) of the 400 total Members of Parliament following the 2024 elections.

⁸Department: Statistics South Africa, Republic of South Africa (2024) Quarterly Labour Force Survey (QLFS), 1st Quarter 2024

⁹Statistics South Africa (2022) Census 2022. Accessed [https://census.statssa.gov.za/#/]

¹⁰Statistics South Africa (2003 – 2023) General Household Survey 2002 – 2022. Pretoria, Cape Town: Statistics South Africa. Analysis by Katharine Hall, Children's Institute, University of Cape Town.

¹¹Disability data in the 2022 census were collected for persons aged 5 years and above using the Washington Group short set questions. Statistics South Africa (2024) Profiling the socio-economic status and living arrangements of persons with disabilities in South Africa 2011–2022 / Statistics South Africa. Pretoria: Statistics South Africa

¹²National Youth Development Agency (2023) Census 2022 Analysis, October 2023, p. 12. Accessed: [https://www.nyda.gov.za/Portals/0/downloads/CENSUS%202022%20ANALYSIS.pdf]

¹³South Africa was ranked at 96th for Economic Participation and Opportunity.

¹⁴South Africa was ranked 48th for educational attainment

¹⁵South Africa was ranked 29th for health and survival

¹⁶World Economic Forum (2024) Global Gender Gap Report

¹⁷IPU Parline, Women's representation in Parliament as at June 2024. [Each month, the IPU publishes rankings of the percentage of women in national parliaments.] Accessed: [https://data.ipu.org/women-ranking/?date_year=2024&date_month=06]

With respect to children, in 2024, the KidsRights Index¹⁸, (a global measurement tool, emphasising the rights of the child), ranked South Africa as 93rd (out of 194 countries) in the world¹⁹ on its child rights index score. This composite score covers five domains, namely Life; Health; Education; Protection and a Child Rights Environment. Of particular interest is domain 5, which “reveals to what extent countries have operationalized the Convention's general principles and the state of their basic ‘infrastructure’ for making and implementing children's rights policies.”²⁰ Overall South Africa scored in the middle of the range for most domains (Health²¹, Education²², Protection²³ and Child Rights Environment) but in the bottom third for Life.²⁵

However, since the inception of this Index South Africa's performance has declined as its initial ranking in 2013 was 85th out of 165 countries assessed. In 2023 South Africa's overall rating fell to 90th place out of 193 countries. Whilst the drop overall is minimal (from 90th place in 2023 to 93rd place in 2024 in the global ranking system) it still raises concerns about areas of improvement that require attention to give effect to children's rights as the country regressed in each domain.

There is no composite index that adequately describes the status of persons with disabilities globally and locally. The health statistic Disability Adjusted Life Years (DALY)²⁶ merely quantifies the burden of disease from mortality and morbidity and this is purely from a medical model perspective.²⁷ Domains covered by the previous indexes, such education and economic empowerment are particularly important for persons with disabilities in South Africa, given that they experience numerous challenges to a barrier-free society and inclusion in almost all aspects of life. It can be noted that, “South Africa has made important progress in mainstreaming disability. Within the policy environment, there have been major shifts away from viewing disability primarily as a medical, health, or welfare issue through a transition towards a rights-based approach. These shifts are expressed in relevant legislation, policies and programmes that emphasise the roles and responsibilities of various government departments and Civil Society Organisations to create a more inclusive society for persons with disabilities.”²⁸

As reflected in Government's 30 Year Review, progress has been noted for persons with disabilities in terms of access to social assistance and social security; access to education for learners with disabilities; and for the representation of persons with disabilities in occupations and workplaces.²⁹ The provision of social grants have increased significantly to persons with disabilities from 804,249 in 1997 to 1,035,437 in 2023.³⁰ Moreover, “care dependency grants for children with disabilities have seen substantial growth, with the number of recipients increasing from 5,737 in 1997 to 156,982 in 2023.”³¹ With respect to basic education, the number of special schools increased from 295 in 2002 to 489 in 2022 and the number of learners with disabilities in mainstream public schools increased to 121 461 for the same time period.³² The 2022/23 Annual Report of the Commission for Employment Equity indicated that the private sector was doing better compared to Government in terms of the representation of employees with disabilities at Top management level – 1.7 percent versus 1.4 percent.³³ The Report goes on to state, “that the Private Sector (1.3%) is performing much better than Government (0.9%) when it comes to the employment of employees with disabilities in 2022.”³⁴ Furthermore, the Report of the Public Service Commission noted that “As a country, achieving representivity among persons with disabilities is a concern with the overall average of 1%.”³⁵

¹⁸KidsRights Index is a global ranking of how countries world-wide are implementing children's rights. Accessed: [https://www.kidsrights.org/research/kidsrights-index/]

¹⁹The top 3 countries being Luxembourg, Iceland, Greece

²⁰Arts K, Reddy Pichhil A and Dubey U (20204) The KidsRights Index 2024 Report, p.11.

²¹Ranked 114th in the domain Health, which include % of under five-year-olds suffering from underweight, immunization of 1 year old children, % of population using improved sanitation facilities (urban and rural), % of population using improved drinking water sources (urban and rural) as indicators

²²Ranked 87th in the domain Education, which include primary school participation, secondary school participation, primary school enrolment ratios (female as % of male), secondary school enrolment ratios (female as % of male), survival rate to last grade of primary (female as % of male), primary school net attendance ratio (urban and rural) as indicators.

²³Ranked 95th in the domain of Protection, which include child labour, adolescent birth rate and birth registration as indicators

²⁴Ranked 80th in the Enabling Environment for Child Rights domain which include the score based I on the analysis of the Concluding Observations adopted by the UN Committee on the Rights of the Child for a specific country focused on seven selected indicators namely non-discrimination, best interest of the child; respect for the views of the child/child participation; enabling legislation; mobilization of the best available budget; collection and analysis of disaggregated data; and State-civil society cooperation for children's rights.

With respect to youth, the 30 Year Review indicated that, “since 1994, youth unemployment has remained high. The 1996 National Census recorded a youth unemployment rate of 53.2%.”³⁶ The Review states that, “high youth unemployment stems from disengagement with the labour market, and a lack of education and training. Among youths aged 15-24, 34.2% were neither employed nor engaged in education or training, with females constituting the majority of this group.”³⁷

Since the advent of democracy, specific attention has been given to the formulation of a pro-poor Constitution in which the rights of vulnerable groups are assured and protected. The Constitution enshrines the rights of women, children, youth and persons with disabilities as articulated in the Bill of Rights – with specific reference to the right to equality in Section 9 and children’s rights in Section 28. South Africa is also signatory to key international and regional treaties and conventions that underpin the rights of women, children, persons with disabilities and youth. These include, for example, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the African Charter on the Rights and Welfare of the Child (ACRWC), and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). In turn, these conventions and charters have found expression in domestic legislation and policy.

Within this context, legislatures, as duty-bearers, have the responsibility for the promotion, protection and fulfilment of the rights of women, children, persons with disabilities and youth. This role is actioned by the legislature through the legislative process, oversight, public participation, international participation and cooperative governance. Legislatures must ensure the effective mainstreaming of gender, children, disability and youth rights within these core processes.

This Handbook on mainstreaming gender, children, disability and youth rights is directly linked to the module on Oversight and Accountability (Module 4) of the South African Legislative Sector and is similar in form and structure but with a specific focus on women, children, persons with disabilities and youth. The mainstreaming handbook draws on all the key units discussed in Module 4.³⁸

²⁵138th in the world in the domain Life, which include Under 5 mortality, life expectancy at birth and maternal mortality ratio as indicators

²⁶World Health Organisation, Health statistics and information systems (http://www.who.int/healthinfo/global_burden_disease/metrics_daly/en/)

²⁷“One DALY can be thought of as one lost year of “healthy” life. The sum of these DALYs across the population, or the burden of disease, can be thought of as a measurement of the gap between current health status and an ideal health situation where the entire population lives to an advanced age, free of disease and disability.” (World Health Organisation)

²⁸Department of Performance Monitoring and Evaluation (2023) Towards a 30 Year Review of South Africa’s Democracy (1994-2024), Pretoria: Department of Planning, Monitoring and Evaluation, p.120.

²⁹Department of Planning, Monitoring and Evaluation (2023) Towards a 30 Year Review of South Africa’s Democracy (1994-2024), Pretoria: Department of Planning, Monitoring and Evaluation.

³⁰SASSA South Africa’s SOCPEN system, as of 2023 in DPME (2023)

³¹Ibid, p. 121

³²EMIS data for 2022; Comprehensive Audit on Special Schools, 2002 in DPME (2023)

³³Department of Employment and Labour (2023) 23rd Commission for Employment Equity (CEE) Annual Report 2022/2023, Pretoria: Department of Employment and Labour.

³⁴Ibid, p.68

³⁵Public Service Commission (2023) Report on the Performance of National Departments: Adherence to the Constitutional Values and Principles Governing Public Administration, p. 39.

³⁶Department of Planning, Monitoring and Evaluation (2024) 30 Year Review of South Africa’s Democracy (1994-2024) Synthesis Report on implementation and impact of government programmes in South Africa, p. 114.

³⁷Department of Planning, Monitoring and Evaluation (2024) 30 Year Review of South Africa’s Democracy (1994-2024) Synthesis Report on implementation and impact of government programmes in South Africa, p. 53

³⁸Unit 1: Constitutional Mandate for Legislatures; Unit 2: Oversight in Committees – Processes

2. PURPOSE OF A HANDBOOK ON MAINSTREAMING

The purpose of the handbook is to assist Members in the National Assembly (NA), the National Council of Provinces (NCOP) and the Provincial Legislatures to effectively undertake their roles as duty-bearers by fulfilling, protecting and promoting the rights of women, children, persons with disabilities and youth during the term of the Seventh Parliament. This is done by raising awareness of why mainstreaming from a child and disability and youth rights as well as a gendered perspective is integral to the work of Members in legislatures.

The objectives of this handbook are to:

- Highlight the role of Members in promoting the rights of women, children, persons with disabilities and youth.
- Identify key legislation pertaining to women, children, persons with disabilities and youth.
- Identify key international binding instruments pertaining to women, children, persons with disabilities and youth and the role of Members in overseeing the implementation of these.
- Propose mechanisms for conducting effective oversight when taking into account issues pertaining to women, children, persons with disabilities and youth.
- Articulate the importance for enhancing the public participation of women, children, persons with disabilities and youth in legislative processes.
- Raise awareness on issues of co-operative governance as they pertain to women, children, persons with disabilities and youth.
- Raise awareness about the internal structures and issues within legislatures as they pertain to women, children, persons with disabilities and youth.

The Handbook is divided into four sections as outlined below.

- **Institutional structures – Government and Parliament** outlines the institutional arrangements within Government and Parliament to drive and oversee programmes related to women, youth, children and persons with disabilities.
- **Legislative Framework** provides an overview of the Constitutional imperatives, international binding instruments, key legislation as well as national policies that promote the rights of women, youth, children and persons with disabilities.
- **Core functions of Legislatures** outlines the functions of legislatures which include legislation, oversight, public participation, international participation and co-operative governance and identifies opportunities within these core functions to highlight issues related to women youth, children and persons with disabilities.
- **Internal mechanisms and policies within Legislatures** focuses on the role of the Multi-Party Women's Caucus and key internal policies within legislatures such as family policies, sexual harassment and reasonable accommodation policies.

O thloma meliso ya damokana le
basathaba le ba bulatswang tsohle,
le mo go bona puso e thabang
mo thatong ya batho e bile mo go
mongwa le mongwa e saletsweng,
ke go tsekana ke molao.

Monte ncono lizinga tse ntle,
tshakhurut tshaba tse ukhutla
amakhono amunni ngamunya, tse

U nate Afrika Tshicame le
taranano le damokrasit le konano
tshaba vhumo holo ho tshaba sa
shango le qivhusano kha mufu ya
tshinaka.

Monte Xikwadi le ngatshelata
tshaba le ka hira.

Monte Silekati Afrika Morena tshaba
tshaba le hira.

Monte Silekati Afrika God bless
tshaba le hira.

Monte Silekati Afrika God bless
tshaba le hira.

3. INSTITUTIONAL STRUCTURES – GOVERNMENT AND PARLIAMENT

3.1 Government Structures: Women, Children, Persons with Disabilities and Youth

Within the first few years of the advent of democracy, Government implemented institutional arrangements to drive programmes to improve the lives of targeted groups namely women, persons with disabilities, children and youth. National coordinating structures were created in the Presidency and provincial Premiers' offices whilst departments had focal points.³⁹

The Presidency housed a series of institutional arrangements that supported programmes to improve the lives of women, persons with disabilities, children and youth which included:⁴⁰

- Office on the Status of Women (OSW)
- Office of the Status of Disabled Persons (OSDP)
- Office of the Rights of the Child (ORC)
- Youth Desk

The OSW was established in the Presidency during 1997 to steer the national gender programme. The OSW also championed the development of the National Policy Framework for Women Empowerment and Gender Equality that was approved by Cabinet in 2000. Subsequently, similar structures were established in the Premier's offices.⁴¹

The OSDP was established on 1 May 1997 in the then Office of the Deputy President Mbeki, after the transfer of the Reconstruction and Development Programme (RDP) to line function departments. In 1999, Mr. TM Mbeki was elected to the Presidency of the Republic of South Africa and the OSDP was moved to the Presidency. It was established to enable Government to improve the quality of life of disabled persons and to maximize their potential to contribute actively to all aspects of socio-economic activities.⁴²

In 1998, the Office on the Rights of the Child (ORC) was established in the Presidency to provide leadership on the strategic Agenda of Government on Children's Rights and Responsibilities.

In September 2003, the Policy Co-ordination and Advisory Services branch within the Presidency was expanded to accommodate a sixth chief directorate. "The Chief Directorate: Programmes provided professional and administrative oversight to the three programmes in the Presidency, namely the Office on the Rights of the Child, Office on the Status of Disabled Persons and Office on the Status of Women. The central function of this Chief Directorate was to ensure that issues of gender, disability and child rights are mainstreamed throughout Government."⁴³The ORC, OSW, OSDP and the National Youth Commission reported to the then Minister in the Presidency.

³⁹The Presidency (2008) Towards a Fifteen Year Review, Pretoria: GCIS.

⁴⁰Presidency of Republic of South Africa (2009) The Presidency Annual Report 2008-2009.

⁴¹South African Government Communications (n.d.) Women's Month 2015, Accessed: [<https://www.gov.za/news/events/commemorative-events/womens-month-2015>]

⁴²Matsebula, S. (2002) Report to the Joint Monitoring Committee on the Status and Quality of Life of Children, Youth and Persons with Disabilities. History of the Office on the Status of Disabled Persons: OSDP, The Presidency – Office on the Status of Disabled Persons, Accessed: [<https://static.pmg.org.za/docs/2002/appendices/020918history.htm>]

⁴³Presidency of Republic of South Africa (2004) The Presidency Annual Report 2003-2004, p.39

With respect to the National Youth Commission (NYC), the Minister in the Presidency was charged with the administration of the National Youth Commission Act of 1996 (as amended in 2000) and as such acted as the Executive Authority of the NYC. The mission of the NYC was to coordinate, promote and monitor youth development through the implementation of an integrated youth development framework.

In May 2009, the President pronounced on the establishment of a Department of Women, Children and People with Disabilities (DWCPD). The purpose of the DWCPD was to drive the Government's equity, equality and empowerment agenda regarding marginalised groups and historically disadvantaged communities in each of the three sectors, namely women, children and persons with disabilities, through an integrated approach to accelerate the realisation of their human rights.

In May 2014 the President, evolved the structure to a dedicated Ministry for Women in the Presidency as a way of elevating women's issues and interests to lead, coordinate and oversee the transformation agenda on women's socio-economic empowerment, rights and equality through mainstreaming, monitoring and evaluation.⁴⁴ It must be noted that the Children's Programme and Disability Programme was then shifted to the Department of Social Development.

From 1 October 2014, the Directorate: Youth Desk and the National Youth Development Agency (NYDA) was transferred from the Presidency to the Department of Planning, Monitoring and Evaluation (DPME).⁴⁵ Prior to the establishment of the NYDA, the two key state institutions primed with the responsibility of taking forth youth development in the country was the National Youth Commission (NYC) and the Umsobomvu Youth Fund (UYF). The NYC was established in terms of the National Youth Commission Act, (No 19 of 1996) to redress the imbalances of the past and to create a national youth policy aimed at empowering the youth and allowing them to realise their full potential through optimal access to opportunities. The UYF was created by Government in 2001 and was tasked with promoting entrepreneurship, job creation, skills development and skills transfer amongst South Africans between the ages of 18 and 35 years. The UYF was a government-created finance agency established to foster skills development and employment creation amongst young people. Given the challenges experienced by the NYC, its provincial counterparts and the UYF in terms of the overlapping mandates, urban areas dominating in terms of the activities and limited visibility on the ground, particularly by youth in rural areas, consistent calls were made by youth at various political platforms for the dissolution of the old youth machinery (namely the NYC and UYF) and creating a new agency to drive youth development more coherently. This was reflected in a resolution adopted at the 2007 Youth Parliament which stated as follows:

"A proposal emanated from the National Youth Convention to either dissolve or incorporate the Umsobomvu Youth Fund and the National Youth Commission into a centralised national youth development agency, through an Act of Parliament."

Furthermore, according to the African National Congress' Polokwane Resolutions on "Youth Development", it was resolved that a National Youth Development Agency be established to ensure seamless integration, sustainability and responsiveness to the demands and aspirations of South Africa's youth and that this would be achieved through the merger of the National Youth Commission and Umsobomvu Youth Fund to be affected during the course of 2008. In addition, it was also noted that the NYDA be responsible for the implementation of the Integrated Youth Development Strategy as Government policy. As per Section 3 of the NYDA Act (No. 54 of 2008) the Agency is mandated to "initiate design, coordinate, evaluate and monitor all programmes aimed at integrating the youth into the economy and society, guide efforts and facilitate the economic participation and empowerment, and the achievement of education and training."

⁴⁴South African Government Communications (n.d.) Women's Month 2015, Accessed: [\[https://www.gov.za/news/events/commemorative-events/womens-month-2015\]](https://www.gov.za/news/events/commemorative-events/womens-month-2015)

⁴⁵The Presidency of Republic of South Africa (2020) Annual Report 2019/20.

On 29 May 2019 after the 2019 national Government elections, the President announced the appointment of a Minister and Deputy Minister in the Presidency for Women, Youth and Persons with Disabilities. On 26 June 2019, Schedule 1 of the Public Service Act was amended to establish the Department of Women, Youth and Persons with Disabilities. This entailed the reorganisation of the former Department of Women through the transfer of the functions and concomitant resources of persons with disability, and youth development from the Departments of Social Development and Planning, Monitoring and Evaluation, respectively. In 2020/21, the reallocated functions and budgets were fully incorporated into the Department of Women, Youth and Persons with Disabilities.

At that stage, the Department was charged with “taking the lead on socio-economic transformation and implementation of the empowerment and participation of women, youth and persons with disabilities through mainstreaming, advocacy, monitoring and evaluation.”⁴⁶ Subsequently, the mandate was changed to, “regulate the socio-economic transformation and implementation of the empowerment and participation of women, youth and persons with disabilities.”⁴⁷ The Department reverted back to the original mandate as per its Annual Performance Plan 2023/24 as follows, “Lead on socio-economic transformation and implementation of the empowerment and participation of women, youth and persons with disabilities through mainstreaming, advocacy, monitoring and evaluation.”⁴⁸

3.2 Oversight Structures at National Parliament

In the 7th Parliament, the Portfolio Committee on Women, Youth and Persons with Disabilities is tasked with the responsibility to oversee the Department of Women, Youth and Persons with Disabilities, the National Youth Development Agency and the Commission for Gender Equality within the National Assembly. The Portfolio Committee on Social Development oversees the Department of Social Development where the Office on the Rights of the Child is located and funded through Programme 4: Welfare Service Policy Development and Implementation Support specifically the sub-programme focused on Children.

The Select Committee on Social Services within the National Council of Provinces will oversee the Departments of Health, Social Development, Women, Youth Development and Persons with Disabilities, and Statistics South Africa.

⁴⁶Department of Women, Youth and Persons with Disabilities Strategic Plan 2020–2025, pg.10

⁴⁷Department of Women, Youth and Persons with Disabilities (2024) Annual Performance Plan 2024/25, p.159

⁴⁸Department of Women, Youth and Persons with Disabilities (2024) Annual Performance Plan 2024/25, p. 159



4. LEGISLATIVE FRAMEWORK

There are three, inter-dependent categories of rights, namely, civil and political rights; socio-economic; and cultural rights. Civil and political rights are rights that limit physical and legal abuse by governments (and other parties) against persons. These entitle persons to be free from feeling physically threatened and abused by the political system, law or another person. Examples include the right to life, to be registered after birth and the right to vote (except for children).

Cultural rights are rights that are aimed at protecting and promoting the rights of marginalised groups. Socio-economic rights include those relating to healthcare, education, minimum income, social security, nutrition, housing and shelter. These rights are aimed at meeting a person's basic needs.

This section provides a synopsis of the legislative framework in which the rights of women, children, persons with disabilities and youth in South Africa are located.

4.1 Constitutional Imperatives

South Africa is committed to the equality and empowerment of women in all spheres of private and public life and expresses this commitment in its Constitution which in the Bill of Rights, actively makes provision for equality for all, and provides a framework for the pursuing of equality and human rights.⁴⁹

The Constitution asserts, in its founding provisions, that the democratic state is founded on values of human dignity, achievement of equality and advancement of human rights and freedom, non-racism and non-sexism.

The equality clause of the Constitution states that everybody is equal before the law and has the right to equal protection and benefit of the law. It includes provision for positive measures or affirmative action, stating that "legislative and other measures" may be taken to "protect or advance" people who have been disadvantaged. The Constitution also protects against unfair discrimination (direct or indirect) on one or more grounds, including race; gender; sex; pregnancy; marital status; ethnic or social origin; colour; sexual orientation; age; disability; religion; conscience; belief; culture; language and birth.

Furthermore, the South African Constitution contains several socio-economic rights which only apply to children. In terms of section 28(1)(c) every child has the right to basic nutrition, shelter, basic health-care services and social services.⁵⁰ These rights are free of internal limitations in terms of progressive realisation. While socio-economic rights applicable to everyone have internal limitations because the Constitution requires that the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights, no such limitation applies to the socio-economic rights of children.⁵¹ In addition, the Constitution makes provision for children's right to be protected from abuse, neglect and degradation. The Constitution also ensures that no child should work when under-age or do work that would interfere with his or her education or development. Children should be jailed only as a last resort and should not have to share a cell with adults. Moreover, children should not take part in wars and should be protected during times of conflict. Furthermore, Section 28 (2) of the Constitution, which relates to the best interest of the child, reiterates that a child's interests are the most important consideration in any matter concerning the child.

As prescribed by international law, the State has various layers of obligations. In terms of section 7(2) of the Constitution, the State has a duty to respect, protect, promote and fulfil all the rights in the Bill of Rights. The Constitution adds the duty to 'promote' these rights, which is absent from international law.

During the Sixth Parliament, the National Assembly approved a request to amend Section 6 (1) of the Constitution to include South African Sign Language (SASL) as an official language to promote the rights of persons who are deaf and hard of hearing. The National Assembly voted for the Constitution Eighteenth Amendment Bill that amends Section 6 (1) on 2 May 2023. Subsequently, President Cyril Ramaphosa enacted sign language as the 12th official language on 19 July 2023. In so doing, the legislation sought to, firstly, advance the cultural acceptance of SASL; secondly, to ensure the realisation of the rights of persons who are deaf and hard of hearing to equal protection and benefit of the law and human dignity; and thirdly, to promote inclusive and substantive equality and prevent or eliminate unfair discrimination on the ground of disability, as guaranteed by Section 9 of the Constitution.⁵²

4.2 International Instruments

Subsection 4.2 outlines selective international instruments that promote the rights of women, children, persons with disabilities and youth.

In addition to the International Bill of Rights and the core human rights treaties, there are many other universal instruments relating to human rights. The legal status of these instruments varies and can take the form of declarations, principles, guidelines, standard rules and recommendations. None of these instruments have binding legal effect, but such instruments have an undeniable moral force and provide practical guidance to States in their conduct. Covenants, statutes, protocols and conventions are legally-binding for those States that ratify or accede to them.

⁴⁹Chapter 2, Section 9, Constitution of RSA (No. 108 of 1996)

⁵⁰Section 28 of the Constitution of RSA (No. 108 of 1996)

⁵¹Dutschke, M. (2007)

⁵²South Africa Government Communications (2023) President Cyril Ramaphosa enacts sign language as 12th official language, 19 Jul, 19 July 2023. Accessed: [<https://www.gov.za/speeches/president-cyril-ramaphosa-enact-sign-language-12th-official-language>]

The 2030 Agenda for Sustainable Development that was adopted by the United Nations General Assembly on 25 September 2015 is an example of a universal, integrated and transformative agreement. It is comprised of 17 Sustainable Development Goals (SDGs) and 169 associated targets. The SDGs builds on the Millennium Development Goals (MDGs), all of which had a bearing on women, children, persons with disabilities and youth. These SDGs are recognised as an urgent call for action by all countries in a global partnership to end poverty and other deprivations by implementing strategies that improve health and education, reduce inequality, and spur economic growth – all while tackling climate change and working to preserve our oceans and forests.⁵³

At a regional level, a key commitment is the African Agenda 2063. This framework was adopted by the African Union Summit in January 2015. It was developed with the sole purpose of guiding Africa's development in the next fifty years. To this end, the "African Union (AU) is focusing on development on a broad front, be it economic, social, political, scientific as well as cultural." Agenda 2063 is constituted of 7 aspirations, 20 goals, and 39 priority areas, with targets and indicators. Furthermore, the SDGs are all encapsulated in the 20 goals of Agenda 2063. However, the "SDGs scope is confined to social, economic and environmental dimensions" whereas Agenda 2063 "is broader in scope, covering social, economic and sustainability considerations in the broad context, political cultural and other African priorities. Hence by implementing Agenda 2063 Member States will ipso facto be meeting global obligations under the SDGs."⁵⁴

It is beyond the scope of this manual to discuss all the aforementioned binding and non-binding human rights instruments. For the purposes of this publication, a select few have been chosen to provide Members with a brief overview as it relates to the context in which legislatures formulate law, conduct oversight and hold the Executive accountable with respect to women, children, persons with disabilities and youth.

4.2.1 Women

A number of international and regional instruments promoting and protecting the rights of women provides the legal foundation for ending gender discrimination and gender-based rights violations. These instruments call on States to take action against discriminatory practices and strive towards the attainment of gender equality.

International instruments

- **The Beijing Platform for Action (BPFA)**

The Beijing Declaration and Platform for Action represents the culmination of the Fourth World Conference on Women with the aim of advancing the goals of equality, development and peace for all women everywhere and in the interest of humanity. The Conference identified 12 critical areas of concern and went on to identify strategic objectives and plans of action to realise the goal of gender equality and women's empowerment. These are:

- a) The persistent and increasing burden of poverty on women;
- b) Inequalities and inadequacies in and unequal access to education and training;
- c) Inequalities and inadequacies in and unequal access to healthcare and related services;
- d) Violence against women;
- e) The effects of armed and other types of conflict on women, including those living under foreign occupation;
- f) Inequality in economic structures and policies, in all forms of productive activities and in access to resources;
- g) Inequality between men and women in the sharing of power and decision-making at all levels;
- h) Insufficient mechanisms at all levels to promote the advancement of women;

⁵³United Nations: Department of Economic and Social Affairs - Social Development (n.d.) The 17 Goals, Accessed: [<https://sdgs.un.org/goals>]

⁵⁴African Union (n.d.) Agenda 2063- SDGs. Accessed: [<https://au.int/en/ea/statistics/a2063sdgs>]



- i) Lack of respect for and inadequate promotion and protection of the human rights of women;
- j) Stereotyping of women and inequality in women's access to and participation in all communication systems, especially in the media;
- k) Gender inequalities in the management of natural resources and in the safeguarding of the environment; and
- l) Persistent discrimination against and violation of the rights of the girl child.

- **The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)**

CEDAW is essentially a statement of minimum standards that governments need to meet to ensure that there is an end to discrimination and to promote gender equality. By signing and ratifying CEDAW, the South African Government has agreed to adopt and develop mechanisms to help protect the basic rights of women and improve their status by eliminating gender-based discrimination. Specific areas of discrimination against women are identified in CEDAW. A few of these are highlighted below:

- a) Country responsibilities: Countries must eliminate discriminatory laws, policies, and practices in the national legal framework.
- b) Equality: Women are fundamentally equal with men in all spheres of life. Countries must take measures to uphold women's equality in the political, social, economic, and cultural fields.
- c) Temporary special measures: Countries may implement temporary special measures to accelerate women's equality.
- d) Political and public life: Women have an equal right to vote, hold public office, and participate in civil society.
- e) Nationality: Women have equal rights with men to acquire, change, or retain their nationality and that of their children.
- f) Education: Women have equal rights with men in education, including equal access to schools, vocational training, and scholarship opportunities.
- g) Employment: Women have equal rights in employment, including without discrimination on the basis of marital status or maternity.
- h) Health: Women have equal rights to affordable health-care services.
- i) Economic and social life: Women have equal rights to family benefits, financial credit, and participation in recreational activities.
- j) Rural women: Rural women have the right to adequate living conditions, participation in development planning, and access to health-care and education.
- k) Equality before the law: Women and men are equal before the law. Women have the legal right to enter contracts, own property, and choose their place of residence.
- l) Marriage and family: Women have equal rights with men in matters related to marriage and family relations.

- **C190 - Violence and Harassment Convention, 2019 (No. 190)**

International Labour Organisation Convention C190 was adopted in June 2019 and is the first international treaty to recognise the right of everyone to a work environment free from violence and harassment, including gender-based violence and harassment.

The Convention applies to violence and harassment in the work environment occurring in the course of, linked with or arising out of work, namely:

- a) in the workplace, including public and private spaces where they are a place of work;
- b) in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities;
- c) during work-related trips, travel, training, events or social activities;
- d) through work-related communications, including those enabled by information and communication technologies;
- e) in employer-provided accommodation; and
- f) when commuting to and from work.

ILO C190 protects workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working (irrespective of their contractual status), persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer.

In addition, the Convention applies to all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas.

The Convention calls upon Member States to adopt laws, regulations and policies ensuring the right to equality and non-discrimination in employment and occupation, including for women workers, as well as for workers and other persons belonging to one or more vulnerable groups or groups in situations of vulnerability that are disproportionately affected by violence and harassment in the world of work. It also calls specifically for the adoption of laws and regulations to define and prohibit violence and harassment in the world of work, including gender-based violence and harassment.

Among enforcement and remedies, Member States must ensure that victims of gender-based violence and harassment in the world of work have effective access to gender-responsive, safe and effective complaint and dispute resolution mechanisms, support, services and remedies; and also recognise the effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work.

Regional Instruments

- **The Protocol to the African Charter on Human and People's Rights on the Rights of Women**

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (also known as the Maputo Protocol) serves as a supplement to the African Charter and provides for special protocols and agreements in relation to the rights of women. The Protocol requires African governments to eliminate all forms of discrimination and violence against women in Africa and to promote gender equality and the empowerment of women.

The Protocol states amongst others that:

- States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures by:
 - a) including in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensuring its effective application;
 - b) enacting and effectively implementing appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;

- c) integrating a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;
 - d) taking corrective and positive action in those areas where discrimination against women in law and in fact continues to exist; and
 - e) supporting the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.
- States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

• **The SADC Protocol on Gender and Development**

The SADC Protocol encompasses commitments made in all regional, global and continental instruments for achieving gender equality, enhances these instruments by addressing gaps and setting specific measurable targets where they do not already exist, and advances gender equality by ensuring accountability by all SADC Member States. Key provisions include:

- a) The establishment of Constitutional and legal rights to enshrine gender equality.
- b) The equal representation of women in all areas of decision-making.
- c) Equal access to quality education and training for women and men, as well as their retention at all levels of education.
- d) The equal participation of women in economic policy formulation and implementation.
- e) The implementation of measures to combat and eliminate all forms of gender-based violence and trafficking and the provision of comprehensive care services for victims of gender-based violence.
- f) The adoption of policies and programmes that address the physical, emotional and social well-being of women.
- g) The provision of adequate prevention, treatment care and support in relation to HIV and AIDS.
- h) Equal representation of women in conflict resolution and peace building processes.
- i) The mainstreaming of gender in all information, communication and media policies and laws.

In 2018 an amendment to the Protocol came into force. Among the key amendments to the Protocol is the prohibition of any person under the age of 18 to enter into marriage, as well as guardianship/custodial and inheritance rights of widows and widowers. It also calls for the adoption of gender-sensitive curricula, policies and programmes in education and the recognition of women's unpaid care and domestic work.

• **The Solemn Declaration on Gender Equality in Africa (SDGEA)**

The SDGEA recognises that major challenges and obstacles to gender equality remain and require concerted and collective leadership and efforts from all African states. It also raises concerns about the status of women and the negative impact on women of issues such as the high incidence of HIV and AIDS among girls and women, conflict, poverty, harmful traditional practices, high population of refugee women and internally displaced women, violence against women, women's exclusion from politics and decision-making, illiteracy and the limited access of girls to education. The Declaration calls for, amongst others:

- a) The accelerated implementation of gender-specific economic, social, and legal measures aimed at combating the HIV/AIDS pandemic.

- b) Ensuring the full and effective participation and representation of women in peace processes including the prevention, resolution, management of conflicts and post-conflict reconstruction in Africa as stipulated in UN Resolution 1325 (2000).
- c) Reinforcing legal mechanisms that will protect women at the national level and end impunity of crimes committed against women in a manner that will change and positively alter the attitude and behaviour of the African society.
- d) Ensuring the active promotion and protection of all human rights for women and girls including the right to development by raising awareness or by legislation where necessary.
- e) The active promotion and implementation of legislation to guarantee women's land, property and inheritance rights including their rights to housing.
- f) Taking specific measures to ensure the education of girls and literacy of women, especially in the rural areas, to achieve the goal of "Education for All."

4.2.2 Children

The rights of children are legally defined in international human rights treaties, such as the United Nations Convention on the Rights of the Child (UNCRC), regional human rights treaties, such as the African Charter on the Rights and Welfare of the Child (ACRWC) and country-specific legislation. The extent to which international instruments and laws can improve the lives of children across the world is dependent on the extent to which State parties implement them and adopt domestic measures to comply with the relevant obligations.⁵⁵

The human rights instruments that deal specifically with child rights include:

- African Charter on the Rights of the Child (ACRWC)
- Worst Forms of Child Labour Convention
- United Nations Convention on the Rights of the Child (UNCRC)
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

The following key treaties also include specific provisions that impact on children namely;

- International Convention on the Elimination on all Forms of Discrimination Against Women (CEDAW)
- Minimum Age Convention
- International Covenant on Economic, Social and Cultural Rights (ICESC)
- International Covenant on Civil and Political Rights (ICCPR)
- United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

⁵⁵Sloth-Nielsen, J. and Mezmur, B.D. (2007)



The following are key treaties.

International instruments

- **United Nations Convention on the Rights of the Child (UNCRC)**

The UNCRC was acceded to rapidly by most countries across the world.⁵⁶ The preamble sets out the civil, political, economic, social and cultural rights of children.⁵⁷ The Convention also reaffirms the fact that children, because of their vulnerability, require the following:

- a) The need for legal and other protection of the child before and after birth.
- b) The importance of respect for the cultural values of the child's community.
- c) Children need special care and protection. Special emphasis is placed on the primary caring and protective responsibility of the family.
- d) The vital role of international cooperation in securing children's rights.

Regional Instruments

The South African Government has also ratified a number of regional treaties and agreements pertaining to children including the African Charter on the Rights and Welfare of the Child and the African Youth Charter (the latter to be discussed under youth below).

- **Africa Charter on the Rights and Welfare of the Child (ACRWC)**

The ACRWC was drafted to give the UNCRC specific application in the African context since the representation by African countries at the time of the drafting of the UNCRC was deemed inadequate. Hence, the ACRWC was the first regional treaty on the human rights of the child.⁵⁸

The UNCRC and ACRWC are premised more on the rights of the child than the powers of the parent over the child. More emphasis has been placed on continent specific issues in the ACRWC such as inter-country adoptions and child trafficking. Moreover, the ACRWC encompasses the following:

- a) The ACRWC provides that every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with physical and moral needs and under conditions which ensure dignity and promote self-reliance and active participation in the community.
- b) Children shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.
- c) A child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from parents against his or her will, except when a judicial authority determines in accordance with the appropriate law that such separation is in the best interest of the child.

⁵⁶Ibid

⁵⁷Child Rights Information Network, Convention on the Rights of the Child. Accessed: [<http://www.crin.org/docs/resources/treaties/uncrc.asp>].

⁵⁸Sloth-Nielsen, J. and Mezmar, B.D. (2007)

4.2.3 Disability

All the noted instruments have a bearing on persons with disabilities – with a particular focus on either women with disabilities or a child with a disability. The United Nations Convention on the Rights of Persons with Disabilities is the only overarching instrument that specifically outlines the rights of persons with disabilities at a global level. At a regional level, there is the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa.

International Instrument

- **United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and Optional Protocol**

The UNCRPD was one of the fastest treaties ever negotiated at the United Nations. It received its 20th ratification in April 2008. In turn, the latter ratification triggered the entry into force of the Convention and its Optional Protocol 30 days later. The purpose of the UNCRPD is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms of persons with disabilities. Furthermore, the UNCRPD provides for the following:

- a) It recognises persons with disabilities as “rights holders” and “subjects of law” that are able to participate in developing and implementing plans and policies affecting them.⁵⁹
- b) It acknowledges persons with disabilities as capable of making decisions concerning their lives based on their informed consent.
- c) It recognises persons with disabilities as active members of society.
- d) It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.⁶⁰

The Optional Protocol on the UNCRPD provides for a complaint mechanism whereby the Committee on the Rights of Persons with Disabilities can “receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State party of the provisions of the Convention.”⁶¹ In turn, the Protocol stipulates that the State party in turn has within 6 months to submit to the Committee “written explanations or statements clarifying the matter and the remedy, if any that may have been taken by the State.”

Regional Instrument

- **Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities**

The Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa (hereafter the Protocol) was adopted by Heads of State on 29 January 2018, at the Thirtieth Ordinary Session of the Assembly held in Addis Ababa, Ethiopia. The Protocol aims to promote, protect and ensure the full and equal enjoyment of all human and people's rights by all persons with disabilities, and to ensure respect for their inherent dignity. It constitutes an African instrument to advance the rights of persons with disabilities, cognisant of the obligations contained in the United Nations Convention on the Rights of Persons with Disabilities. This Protocol was ratified by South Africa in 2007.

⁵⁹United Nation, enable (2009) Backgrounder: Disability Treaty Closes a Gap in Protecting Human Rights, Accessed: [http://www.un.org/disabilities/default.asp?id=476]

⁶⁰United Nations enable (n.d.) Convention on the Rights of Persons with Disabilities, p.1

⁶¹UN General Assembly (2006) Optional Protocol to the Convention on the Rights of Persons with Disabilities, 13 December 2006, A/RES/61/106.



4.2.4 Youth

In South Africa, youth are affected by various international treaties that cover a range of issues including human rights, education, health, and development. Below are some key international treaties that apply to youth in South Africa:

International Instruments

- **United Nations Convention on the Rights of the Child (UNCRC)**

This treaty outlines the rights of children and young people under the age of 18, including protection from exploitation, access to education, and healthcare. Based on the definition of "youth," young people aged 15-18 years are considered in this treaty.

The UNCRC emphasises the right to education and development for all children, including adolescents. It has influenced policies to ensure that youth in this age group have access to quality education that prepares them for adulthood and equips them with necessary skills.

The UNCRC recognises children's right to participate in decisions affecting them. For youth aged 15-18, this means opportunities to engage in civic activities, express their opinions, and participate in community and governmental processes. The Convention stresses protection from exploitation and harmful practices, such as child labour and trafficking. It encourages governments to enact laws and programmes to safeguard older children and adolescents from these risks.

The UNCRC upholds the right to health and access to healthcare services. For youth aged 15-18, this includes addressing issues like mental health, sexual and reproductive health, substance abuse prevention, and access to information and services related to these areas.

Overall, the UNCRC serves as a framework that guides policies and practices to ensure that youth aged 15-18 years are supported, protected, and empowered as they navigate adolescence and prepare for adulthood. Its principles foster a nurturing environment that respects their evolving capacities and encourages their active participation in society.

- **International Covenant on Economic, Social and Cultural Rights (ICESCR)**

While not specific to youth, the ICESCR covers economic, social, and cultural rights that are relevant to young people, such as the right to education and the right to health. There are several Articles in the ICESCR that impact on the lives of youth.

Article 13 of the ICESCR emphasises the right of everyone to education. This includes access to free and compulsory primary education, as well as progressively free secondary and higher education. For youth, this means governments are obligated to ensure that education is accessible, relevant, and of good quality, facilitating their personal development and preparation for future roles in society.

Article 6 of the ICESCR recognises the right of individuals to work, which includes the right to the opportunity to gain a living by work freely chosen or accepted. This provision underscores the importance of employment opportunities for youth, promoting initiatives that facilitate their entry into the labour market under fair conditions and without discrimination.

Articles 9 and 11 of the ICESCR affirm the rights to social security and an adequate standard of living, respectively. These rights are crucial for youth as they transition into adulthood and face challenges such as unemployment, poverty, and social exclusion. Governments are required to establish social protection systems that ensure youth have access to essential services, benefits, and support.

Article 12 of the ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes access to healthcare services, information, and education necessary to achieve and maintain health. For youth, this right encompasses sexual and reproductive health services, mental health support, and prevention programs for substance abuse and other health risks.

Overall, the ICESCR provides a comprehensive framework for protecting and promoting the economic, social, and cultural rights of youth. It obligates states parties to take steps, both individually and through international cooperation, to progressively realise these rights for all individuals, including youth, ensuring their development, well-being, and active participation in society.

- **International Covenant on Civil and Political Rights (ICCPR)**

The International Covenant on Civil and Political Rights (ICCPR) impacts youth in several significant ways:

The ICCPR ensures that youth enjoy fundamental civil and political rights such as freedom of expression, assembly, and association. These rights are crucial for their participation in society and political processes.

The Covenant provides legal recognition of youth as holders of rights, ensuring that they are treated equally before the law and have access to legal remedies if their rights are violated.

It promotes awareness among youth about their rights and responsibilities, fostering a culture of human rights and civic engagement from a young age.

ICCPR encourages youth participation in decision-making processes at local, national, and international levels. It supports their involvement in shaping policies that affect their lives directly. By upholding principles of non-discrimination and equality, the ICCPR aims to protect vulnerable youth populations from discrimination based on race, ethnicity, religion, gender, or other grounds.

Overall, the ICCPR plays a crucial role in empowering youth, protecting their rights, and promoting their active participation in civil and political life.

- **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

While focusing on women's rights, CEDAW indirectly affects young women by promoting gender equality and combating discrimination.

These treaties and agreements provide a framework for promoting and protecting the rights of young people in South Africa and around the world, ensuring their well-being, development, and opportunities for participation in society.



OPENING A NEW CHAPTER

OVERSIGHT AND ACCOUNTABILITY

RECONSTRUCTION AND DEVELOPMENT

COOPERATIVE GOVERNANCE

Regional instruments

- **African Youth Charter (AYC) ⁶²**

In 1995, the United Nations strengthened its commitment to the youth of the world by adopting the World Programme of Action for Youth to the Year 2000 and Beyond (WPAY) to effectively address the problems of young people and to increase the opportunities for the participation of youth in society.⁶³ The WPAY provided a policy framework and practical guidelines for national governments and regional organisations to improve the situation of youth in countries and regions.⁶⁴

As a signatory State, the South African Government has to ensure that in terms of the development and implementation of a youth policy, attention is paid to the regional obligations that are enforceable under the AYC. These provisions will have a direct impact on the development of the youth policy – a policy that will impact on structures such as the National Youth Development Agency (NYDA). The NYDA initiates, implements, facilitates and monitors youth development interventions and is aimed at reducing youth unemployment and promoting social cohesion. Its mandate of mainstreaming youth issues, should involve interaction with all sectors in order to embody the definition of youth mainstreaming. Parliament is able to monitor and help foster relationships through its oversight function. The AYC provides for the following:

- a) State Parties shall recognise the rights of young people from ethnic, religious and linguistic marginalized groups or youth of indigenous origin, to enjoy their own culture, freely practice their own religion or to use their own language in community with other members of their group.
- b) Amongst its 31 Articles, it provides that State Parties shall take all appropriate steps to eliminate harmful social and cultural practices that affect the welfare and dignity of youth, in particular. This refers to customs and practices that harm the health, life or dignity of the youth; and customs and practices discriminatory to youth on the basis of gender, age or other status.

4.3 Key National Laws and Policies

Subsection 3 provides an overview of the key laws and policies that pertain to and promote the rights of women, children, persons with disabilities and youth.

4.3.1 Women

National Legislation

Although all legislation has implications for women, the following table contains some of the key legislation impacting on the lives of women.

⁶²Children 14–18 years fall within the youth category (14–35 years)

⁶³United Nations System for Action for Youth (n.d.) The World Programme of Action for Youth the Year 2000 and Beyond, Accessed [<http://www.un.org/events/youth98/backinfo/ywpa2000.htm>]

⁶⁴United Nations System for Action for Youth (n.d.) The World Programme of Action for Youth the Year 2000 and Beyond, Accessed [<http://www.un.org/events/youth98/backinfo/ywpa2000.htm>]

Legislation	Overview
Constitution of the Republic of South Africa Act (No.108 of 1996)	The South African Constitution lays the basis for the promotion of gender equity. Sections 9(2) and (3) prohibit discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
Promotion of Equality and Prevention of Unfair Discrimination Act (No. 4 of 2000) (Commonly referred to as PEPUDA)	PEPUDA is the overarching legislation dealing with the promotion of gender equality. It provides the policy framework to address unfair discrimination; harassment and hate speech. The primary purpose of the Act is to promote substantive equality. ⁶⁵
Domestic Violence Act (No. 116 of 1998)	The Domestic Violence Act is the primary legislation aimed at protecting women against violence in the home. It constitutes a substantial broadening of the limited scope of its predecessor, the Prevention of Family Violence Act of 1993. In its Preamble this Act recognises that domestic violence is a serious social evil and an obstacle to achieving gender equality.
Domestic Violence Amendment Act (No.14 of 2021)	The Domestic Violence Amendment Act expanded the definitions of domestic violence and introduced improved mechanisms for the manner in which acts of domestic violence must be dealt with. It also compels adults and certain functionaries to report suspected acts of domestic violence against children, persons with disabilities and the elderly.
Labour Relations Act (No. 66 of 1995)	The Labour Relations Act is the main act that deals with sexual harassment in the workplace. It has a Code of Good Practice on Sexual Harassment that sets out the best ways to deal with complaints about sexual harassment.
Criminal Procedure Second Amendment Act (No. 85 of 1997)	This Act effected further amendments to the bail laws to ensure that persons who are accused of committing serious offences are not released and relates particularly to offences where women and children are the victims.
Criminal Law (Sexual Offences and Related Matters) Amendment Act (No. 32 of 2007)	This Act aims to help intensify South Africa's efforts to fight sexual crimes against all persons and, especially, sexual offences committed against vulnerable groups, including women, children and people who are mentally disabled. One of the significant changes that this legislation brought about is the repeal of the common law offence of rape and its replacement with an expanded statutory offence of rape, applicable to all forms of sexual penetration without consent, irrespective of gender.
Criminal Law (Sexual Offences and Related matters) Amendment Act (No. 13 of 2021)	The Amendment Act adds new offences and extends existing offences. It also extends the categories of persons who are vulnerable and places a duty on anyone who suspects that a sexual offence has been committed against a vulnerable person to report it to the police.
The Protection from Harassment Act (No. 17 of 2011)	The Act makes provision for women who are being stalked or harassed by someone they are not in a domestic relationship with to obtain a protection order against the perpetrator.
The National Health Act (No. 61 of 2003)	Chapter 1 of the Act reaffirms the right of access of pregnant and lactating women and children below the age of six to free health services, provides for categories of vulnerable persons, and those not covered by a medical aid scheme.

⁶⁵This refers to achieving equal outcomes for disadvantaged groups as opposed to privileged and disadvantaged groups being treated the same.

Legislation	Overview
The Choice on Termination of Pregnancy Act (No. 92 of 1996)	The Choice on Termination of Pregnancy Act was widely consulted and was one of the first legislative processes in the history of the South African Parliament to encompass such wide-ranging public debate and participation. This Act repealed the restrictive and inaccessible provisions of the Abortion and Sterilisation Act, (No. 2 of 1975), and promotes reproductive rights and extends freedom of choice by affording every woman the right to choose whether to have an early, safe and legal termination of pregnancy according to her individual beliefs.
The Reform of Customary Law of Succession and Regulation of Related Matters Act (No. 11 of 2009)	The Reform of Customary Law of Succession and Regulation of Related Matters Act acknowledged that widows in customary marriages whose husbands died intestate, as well as children born out of a customary marriage, do not enjoy adequate protection under customary law and that this cannot be reconciled with the provisions of equality and dignity as contained in the Bill of Rights and aims to address these matters in an equitable manner.
The Recognition of Customary Marriages Act (No. 120 of 1998)	The Recognition of Customary Marriages Act came into operation on 15 November 2000 and gives full legal recognition to customary marriages for the first time in the history of South Africa. Prior to the commencement of the Act, customary marriages, (better known as customary unions) did not enjoy the same status as civil marriages concluded in terms of the Marriage Act, (No. 25 of 1961).
Civil Union Act (No. 17 of 2006)	The Act legalises same-sex marriage. It allows two people, regardless of gender, to form either a marriage or a civil partnership. In terms of marriages the Act caters for a specific form of marriage, providing for both opposite and same-sex couples. Both prospective spouses must be at least 18 years of age. Over and above marriage, the Act also provides for persons (irrespective of gender) involved in a monogamous relationship to enter into a civil partnership with each other.
The Employment Equity Act (No. 55 of 1998)	The purpose of the Employment Equity Act is to achieve equity in the workplace, by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination. It also speaks to the implementation of affirmative action measures to redress the disadvantages in employment experienced by designated groups, to ensure their equitable representation in all occupational categories and levels in the workforce. Considering the large numbers of women who are in informal and casual employment there is a need for better implementation and enforcement of the Employment Equity Act.
Preferential Procurement Policy Framework Act (No. 5 of 2000)	The Act provides for procurement contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability.
Prevention and Combating of Trafficking in Persons Act (No. 7 of 2013)	The Act aims "to give effect to the Republic's obligations concerning the trafficking of persons in terms of international agreements; to provide for an offence of trafficking in persons and other offences associated with trafficking in persons; to provide for penalties that may be imposed in respect of offences; to provide for measures to protect and assist victims of trafficking in persons; to provide for the coordinated implementation, application and administration of this Act; to prevent and combat the trafficking in persons within or across the borders of the Republic; and to provide for matters connected therewith."

Additional matters to note:

Recognition of Muslim marriages:⁶⁶ On 28 June 2022, the Constitutional Court of South Africa handed down a judgement recognising the validity of Muslim marriages and protecting the rights of people who marry according to Muslim rites, especially women, and the children born of these unions.

The Constitutional Court found that the Marriage Act 25 of 1961 (Marriage Act) and the Divorce Act 70 of 1979 (Divorce Act) are inconsistent with rights entrenched in the Constitution as they fail to recognise marriages solemnised in terms of Sharia law (Muslim marriages), which have not been registered as civil marriages, as valid marriages, and to regulate the consequences of such recognition.

Policies and Strategies

• South Africa's National Gender Policy Framework (NGPF)

The promotion of women's rights and gender equality finds itself entrenched in South Africa's National Gender Policy Framework (NGPF). This is not a law, but rather a framework which promotes equality and advancement of women. Adopted in 2000, the NGPF highlights the relationship between women, power and decision-making. One of the key principles underpinning the vision and mission of the Framework is that of equality between men and women; this principle is defined as "a situation where men and women have equal conditions for realising their full human rights and potential, and are able equally to contribute to national political, economic, social and cultural development and to benefit from the results."⁶⁷ The main purpose of the Framework is "to establish a clear vision and framework to guide the process of developing laws, policies, procedures and practices that will serve to ensure equal rights and opportunities for women and men in all spheres of Government as well as in the workplace, the community and the family."⁶⁸ The Department of Women, Youth and Persons with Disabilities indicated that it had subsequently reviewed the policy in 2023/24.

• The National Strategic Plan on Gender-based Violence and Femicide (NSPGBVF)

The National Strategic Plan on Gender-Based Violence and Femicide (NSPGBVF) provides a cohesive strategic framework to guide the national response to the GBVF crisis in which South Africa finds itself. The Plan, produced in 2019, aims to provide a multi-sectoral, clear strategic policy and programming framework to ensure a coordinated national response to the crisis of gender-based violence and femicide by the Government of South Africa and the country as a whole. It focuses on responding to gender-based violence and femicide in a comprehensive and strategic manner with a specific focus on violence against ALL women (across age, physical location, disability, sexual orientation, sexual and gender identity, gender expression, nationality and other diversities) and violence against children. Its overall vision is a South Africa free from gender-based violence directed at women, children and LGBTQIA+ persons.

The National Council on Gender-Based Violence and Femicide Act (No. 09 of 2024), enacted in May 2024, aids the implementation of the NSPGBVF through the establishment of a council as a statutory body responsible for providing strategic leadership on the elimination of gender-based violence and femicide in South Africa.

⁶⁶Women's Legal Centre Trust v President of the Republic of South Africa and Others [2022] ZACC 23

⁶⁷Office on the Status of Women (2000) South Africa's National Gender Policy Framework for Women's Empowerment and Gender Equality.

⁶⁸Ibid.

- **Comprehensive National Gender-Based Violence Prevention Strategy**

This Strategy sets out to transform the structural foundation of GBVF across national, provincial and local spheres; and strengthen the national delivery capacity to roll out evidence-based prevention programmes and emerging interventions. In addition, it aims to address harmful social and gender norms, and facilitate social cohesion. It provides a comprehensive, coherent and multi-sectoral strategic framework to guide planning, implementation and monitoring of high impact prevention efforts over the NSPGBVF timeframe: 2020–2030.

4.3.2 Children

This section provides a synopsis of some of the key pieces of legislation that pertain to children followed by an explanation of the overarching policy namely the National Plan of Action for Children.

Legislation

Legislation	Overview
Children's Act (No. 38 of 2005) as amended by Children's Amendment Act (No. 17 of 2022)	The Children's Act was launched as an overarching piece of legislation that enhances the protection of children and specifically gives effect to children's right to social services. This Act outlines that decisions should be made in the best interests of the child, and that each child has a right to participate in decision-making that concerns him or herself. The Act also changed the age of majority from 21 years to 18 years and further obliges Government to ensure substantive equality and equal access to social services for children with disabilities and chronic illnesses. With the current Act, the age of 12 years serves as a threshold for consent, and the child's maturity and ability to understand the risks and benefits of any medical treatment or testing must also be assessed before the child can consent on their own. The Act provides for the following: Early childhood development programmes, partial and foster care services, prevention and early intervention services for vulnerable children, protection services for abused children, support groups for child-headed households and partial and secure care facilities for children and adoption. During the Sixth Parliament, the Act was amended with respect to definitions, children's court jurisdictions, abandoned and orphaned children and children in alternative care.⁶⁹
Child Justice Act (No. 75 of 2008) as amended by Child Justice Amendment Act (No. 28 of 2019)	The Child Justice Act deals specifically with children and youth in conflict with the law and was drafted to bring the legislation in line with the provisions in the Constitution pertaining to children's rights. The former Joint Monitoring Committee on the Improvement of Quality of Life and Status of Children, Youth and Disabled Persons was instrumental, along with many other stakeholders, in shaping the outcome of the Bill by providing written submissions.

⁶⁹Children's Amendment Act (No. 17 of 2022)

Legislation	Overview
	Given the Committee's inputs into the Bill at the time, four out of the five key recommendations made to the Portfolio Committee on Justice and Constitutional Development were incorporated into the legislation. These included the following: • minimum age of criminal responsibility, assessments for all youth and children awaiting trial, reference to the relevant international treaties, the importance of diversion programmes and access to identification documents. During the Sixth Parliament, the Act was amended to increase the minimum age of criminal capacity to 12 years of age (from 10 years) and to further regulate the position of children ages 12–14 years.⁷⁰
Social Assistance Amendment Act (No. 16 of 2020)	The Social Assistance Amendment Act (No. 5 of 2010) came into effect in September 2010. This Act gives effect to social security grants that directly benefit children. The purpose of this Act is to "amend the Social Assistance Act, 2004, so as to enable applicants and beneficiaries to apply to the Agency (South African Social Security Agency) to reconsider its decision; to further regulate appeals against decisions of the Agency; and to effect certain textual corrections; and to provide for matters connected therewith".⁷¹ The Act also deals with matters pertaining to cash grants e.g. disability grants, foster care grants and care dependency grants, all of which affect children and youth who are eligible for obtaining it. Children too have a right to social security, hence the provision of cash grants. During the Sixth Parliament, the Act was amended with respect to new definitions, additional payments linked to social grants, payment of benefits to child-headed households, social relief of distress in the event of a disaster amongst others.⁷²

Policy

• National Plan of Action for Children in South Africa (2019–2024)

The purpose of the National Plan of Action is to provide a framework to monitor progress with the implementation of the UNCRC and the ACRWC. It aims to consolidate international and national priorities for the survival, protection, development and participation of children in the country in a coherent framework. To this end, this Plan provides, within the broader context of the South African Human Rights Framework, a children's rights impetus to national planning, implementation, monitoring and evaluation of national priorities. It is also directly aligned to the following five Government priorities namely, education; health; the fight against crime and corruption; economic growth, decent work and sustainable livelihoods as well as rural development, food security and land reform. Thus, all departments at national, provincial and municipal level have a role to play in the realisation of children's rights, through their legislative frameworks, policies, strategies and programmes.⁷³ The first NPAC was developed and implemented in 1996, followed by the second plan in 2000, the third in 2012 and the fourth in 2019 (which reached its end of term in March 2024).

⁷⁰Child Justice Amendment Act (No. 28 of 2019)

⁷¹Social Assistance Amendment Act (No. 5 of 2010), p.2

⁷²Social Assistance Amendment Act (No. 16 of 2020)

⁷³Department of Women, Children and Persons with Disabilities (2013) National Plan of Action for Children in South Africa (2012–2017)

The “process of reviewing the fourth NPAC (2019-2024) has been concluded whereby all provinces were engaged on the current NPAC and proposals were made towards the review of the current NPAC and the development of the next NPAC. The draft fifth NPAC 2024-2029, as per the pattern set by previous plans will bring government’s commitments relating to children’s rights into a coherent whole and through the outcome-based approach ensures there is delivery against these commitments in an integrated manner. It also builds on the work implemented in the previous plans and take note of the gaps, implementation challenges and lessons learnt.”⁷⁴

At the time of the drafting of this Handbook, the National Office on the Rights of the Child within the Department of Social Development and the Presidency were leading a process for the review of the NPAC.

4.3.3 Disability

All of the aforementioned laws and programmes have bearing on the lives of persons with disabilities. At present South Africa does not have a specific law primarily focused on disability but many of the existing provisions that protect and promote the rights of persons with disabilities are located within existing pieces of legislation. For example, the provision for the disability and care dependency grant falls within the Social Assistance Amendment Act (No. 5 of 2010), and the provision for children with disabilities within the Children’s Act (No. 38 of 2005).

The overarching policy focusing on mainstreaming disability is the White Paper on the Rights of Persons with Disabilities (2015) to be discussed hereafter followed by other key policies that pertain to persons with disabilities. Furthermore, disability has also found expression in the country’s National Development Plan which stipulates that “persons with disabilities must have enhanced access to quality education and employment. Efforts to ensure relevant and accessible skills development programmes for people with disabilities, coupled with equal opportunities for their productive and gainful employment, must be prioritised.”⁷⁵

Currently the country does not have a Disability Act but calls have been made for the development of legislation in this regard by the former Department of Women, Youth and Persons with Disabilities during the 6th Parliament. The South African Law Reform Commission was tasked with the responsibility for developing a discussion paper as part of the process for the development of a Disability Bill that was led by the Department of Women, Youth and Persons with Disabilities.

Policy

- **White Paper on the Rights of Persons with Disabilities**

The White Paper on the Rights of Persons with Disabilities (WPRPD) was approved by Cabinet on the 9 December 2015 and replaces the Integrated National Disability Strategy (INDS). This policy not only updates the INDS of 1997 but also integrates obligations from the UNCPRD and responds to the Continental Plan of Action for the African Decade of Persons with Disabilities.

The vision of the WPRPD is, “South Africa – A free and just society inclusive of all persons with disabilities as equal citizens” which is aligned with the Vision 2030 of the National Development Plan, INDS (1997) and the UNCPRD (1996).

⁷⁴Sebesho, L. (2024) email re Invitation- Consultation on the Draft National Plan of Action for Children (2024-2029) from Mr. L. Sebesho, Directorate: Child Rights Advocacy, National Department of Social Development, 14 June 2024.

⁷⁵National Planning Commission (2011) National Development Plan, Overview, p. 52.

The mission of the WPRPD is “Inclusive and Equitable Socio-Economic Development.” The WPRPD is based on nine strategic pillars namely; Removing Barriers to Access and Participation; Protecting the Rights of Persons at Risk of Compounded Marginalisation; Supporting Sustainable Integrated Community Life; Promoting and Supporting the Empowerment of Children, Women, Youth and Persons with Disabilities; Reducing Economic Vulnerability and Releasing Human Capital; Strengthening the Representative Voice of Persons with Disabilities; Building a Disability Equitable State Machinery; Promoting International Co-operation and Monitoring and Evaluation.

- **Integrated National Disability Strategy (INDS)**

In 1997, the White Paper on mainstreaming disability across all government departments was released. The Integrated Disability Strategy (INDS) was based on the United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities and the South African Disability Rights Charter. The INDS has subsequently been replaced by the WPRPD.

- **Education White Paper 6: Special Needs Education – Building an Inclusive Education and Training System**

This policy was developed in 2001 by the Department of Education. The aim of the policy was to create positive learning conditions for potential learners who were out of school and learners who experienced ‘barriers to learning’ in educational institutions. A key premise of the policy was that out-of-school learners with disabilities (especially those with mild to moderate support needs) can and should be accommodated within public mainstream schools whilst only a few learners with disabilities qualify to be placed into special needs institutions. Furthermore, the Department of Basic Education has gone on to state that “an inclusive system will facilitate the inclusion of vulnerable learners and reduce the barriers to learning, through targeted support structures and mechanisms that will improve the retention of learners in the education system, particularly learners who are prone to dropping out”.⁷⁶ The DBE promotes inclusive education because:

- a) It acknowledges that all children can learn;
- b) It enables education structures, systems and methodologies to meet the needs of all children;
- c) It can contribute to the quality of education for all;
- d) It enables children with disabilities to stay with their families and communities;
- e) It is part of a wider strategy to promote an inclusive society; and
- f) It is consistent with the key principles of the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disability.”⁷⁷

- **Code of Good Practice on the Employment of Persons with Disabilities**

The Department of Labour has developed the “Code of Good Practice on the Employment of People with Disabilities” in terms of Section 54 of the Employment Equity Act (No. 55 of 1998). The Code is a guide for employers and workers to encourage equal opportunities and fair treatment of people with disabilities. It also helps to create awareness of the contributions that people with disabilities can make in the workplace.”⁷⁸

⁷⁶Department of Basic Education (2014) Inclusive Education, p.1. Accessed:

[<http://www.education.gov.za/Programmes/InclusiveEducation/tabid/436/Default.aspx>] (20 May 2014).

⁷⁷Department of Basic Education (2014) Inclusive Education. Accessed: [<http://www.education.gov.za/Programmes/InclusiveEducation/tabid/436/Default.aspx>] (20 May 2014).

⁷⁸Department of Labour (n.d) Pamphlet People with Disabilities in the Workplace

• 2 percent Employment Equity Target

In 1995, the White Paper on the Transformation of the Public Service identified a 2 percent disability equity target for the employment of people with disabilities in the public service, with a deadline of ten years. However, progress in this regard has been dismal. As per the reporting of the Public Service Commission by April 2005, the percentage of employees with disabilities in the Public Service was only 0.15 percent.⁷⁹ Subsequently Government has extended the deadline for this target twice; initially to March 2010 and thereafter to 2014.

During the Sixth Administration, the former Minister in the Presidency responsible for Women, Youth and Persons with Disabilities, Minister Nkosazana Dlamini Zuma, reported at the start of Disability Rights Awareness Month in 2023, that the Department presented to Cabinet the sixth annual progress report on the implementation of the White Paper on the Rights of Persons with Disabilities, which called for a 2 percent increase on the minimum employment equity target to 3 percent for people with disabilities for the 2024/25 financial year. This increase was part of the progressive realisation of the 7 percent minimum employment equity target for people with disabilities by 2030.⁸⁰

4.3.4 Youth

Youth globally, and in South Africa face a multitude of challenges. With the reality of the global economic decline, young people are facing a challenging and uncertain future. Over the past 30 years South Africa's legislative framework considers some of these challenges and finds expression in both domestic and international law.

Legislation

Legislation	Overview
Constitution of the Republic of South Africa Act (No. 108 of 1996) ⁸¹	South Africa is one of the few countries in the world that has a specific section in its Constitution focusing on the rights of children. Section 28 of the Bill of Rights in the Constitution states that "every child has the right to basic nutrition, shelter, health care and social services, as well as the right to be protected from maltreatment, neglect, abuse or degradation". This includes youth aged 15-18 years.
National Youth Development Agency Act (No. 54 of 2008) ⁸²	This Act establishes the National Youth Development Agency (NYDA), which is responsible for promoting youth development through policy formulation, programme implementation, and coordination of youth activities across different sectors. The Act was subsequently amended in the 6th Parliament so as to insert new definitions; to amend the provisions relating to the objects of the Agency; to amend the functions of the Agency; to amend provisions relating to reporting by the Agency; to provide for organs of state to assist the Agency; to provide for the governance responsibilities of the Board; to provide for additional Board members; to provide that a Board member may not be reappointed for more than two terms; to provide additional grounds for disqualification; to provide for filling of vacancy during term; to amend matters pertaining to the meetings of the Board; to amend the funding of the Agency; to authorise the Minister to make regulations; and to provide for matters connected therewith.

⁷⁹Public Service Commission (2008) Assessment on Disability Equity in the Public Service. Public Service Commission, Blackmoon Advertising: Pretoria

⁸⁰South African Government News Agency (2023) SA called to uphold disability rights, Friday Nover 2, 2023. Accessed:

[<https://www.sanews.gov.za/africa-south-africa-world/sa-called-uphold-disability-rights>]

⁸¹Constitution of the Republic of South Africa Act (No. 108 of 1996)

⁸²National Youth Development Agency Act (No. 54 of 2008)

Legislation	Overview
Basic Conditions of Employment Act (No. 75 of 1997) ⁸³	This Act regulates employment conditions, including the protection of young workers. It sets out the minimum age for employment and ensures that young workers are not employed in hazardous conditions.
Skills Development Act (No. 97 of 1998) ⁸⁴	This legislation aims to develop the skills of the South African workforce. It establishes mechanisms for education and training, promotes learnerships, and ensures that young people have access to skills development opportunities.
South African Schools Act (No. 84 of 1996) ⁸⁵	While primarily focused on education, this Act ensures access to education for all children and young people, promoting equality and inclusivity. This Act governs the provision of education in South Africa. It ensures access to basic education for all children and sets out the rights and responsibilities of learners, parents, and educators.
Higher Education Act (No. 101 of 1997) ⁸⁶	Although not solely focused on youth, this act regulates higher education institutions, ensuring access and equity for young people pursuing tertiary education.

Policy

• National Youth Policy (NYP)

The National Youth Policy (NYP) 2020-2030 is a strategic framework aimed at fostering positive youth development in South Africa. Developed by the Department of Women, Youth, and Persons with Disabilities, the policy targets youth at local, provincial, and national levels, addressing both historical injustices and contemporary challenges facing young people.⁸⁷

Key Objectives are:

- Quality Education and Skills Development: Enhancing educational opportunities, vocational training, and second chances for youth who have fallen out of the system.
- Economic Transformation and Job Creation: Promoting entrepreneurship and creating job opportunities to reduce youth unemployment.
- Health and Well-being: Improving physical and mental health services, with a focus on mitigating the impacts of the COVID-19 pandemic.
- Social Cohesion and Nation Building: Encouraging active citizenship and fostering a sense of belonging and national pride among youth.
- Effective Youth Development Machinery: Strengthening institutions and frameworks dedicated to youth development, ensuring they are responsive and efficient.

The policy is supported by an Integrated Youth Development Strategy (IYDS), to ensure the effective implementation of outlined interventions. It also emphasises the importance of collaboration among various stakeholders, including government bodies, civil society, and the private sector.

⁸³Basic Conditions of Employment Act (No. 75 of 1997)

⁸⁴Skills Development Act (No. 97 of 1998)

⁸⁵South African Schools Act (No. 84 of 1996)

⁸⁶Higher Education Act (No. 101 of 1997)

⁸⁷Department of Women, Youth and Persons with Disabilities (2020). National Youth Policy for 2020-2030 (NYP 2030).

- **Integrated Youth Development Strategy (IYDS)**

The Integrated Youth Development Strategy (IYDS) seeks to provide a guide on how the NYP 2030 will be implemented. Its vision is to facilitate youth development with all sectors of society through collaboration in support of youth development across the country.

The objectives of the IYDS framework are to:⁸⁸

- a) Provide a partnership and stakeholder engagement framework, enabling public sector, private sector and civil society engagement
- b) Lobby all government sectors to create a more youth-friendly, supportive regulatory environment
- c) Facilitate programmes aimed at job creation and economic security of youth in government, business, and civil society organisations
- d) Initiate catalytic programmes designed to benefit youth from disadvantaged backgrounds (primarily youth from rural areas and townships, youth with disabilities, and young women) and co-ordinate youth focused programmes across all sectors of government and industries to align resource allocation
- e) Provide a monitoring and evaluation framework and system which will enable co-ordinated nationwide tracking of youth development programmes implemented by public, private and civil society organisations.

⁸⁸National Youth Development Agency (2022). Integrated Youth Development Strategy (IYDS) 2022/25.



5. CORE FUNCTIONS OF LEGISLATURES

5.1 Legislation

5.1.1 Initiation and development

As elected representatives of the people, members of Parliament (MPs) and Members of Provincial Legislatures (MPLs) are the link between the electorate and the Government. This unique position presents Members with an opportunity to be change agents through their representational, oversight and legislative roles. Change can occur through the acquisition and articulation of new information by MPs and MPLs in the course of their representational duties.

The legislatures, comprised of elected representatives, have an obligation to ensure that legislation addresses the concerns and meets the needs of all the people it represents. Members of legislatures therefore have a valuable role to play in the legislative process by promoting discussion and sharing information and knowledge. Through oversight and recommendations for change, laws can also be amended, and new Bills introduced to bring about the desired change for the relevant target groups. It is important that Members adopt an approach that is geared towards continuously examining and amending legislation where necessary to ensure that it remains relevant to the needs of the electorate, and is revised, simplified and improved where necessary. Ensuring adequate platforms for public participation and engagement with relevant target groups is also important in the legislative process.

It is essential that legislatures promote the principles of mainstreaming a gendered, child- rights, disability-rights and youth-rights perspective in all legislation, policies and programmes so that before decisions are taken, an analysis is made of the effects on women, children, persons with disabilities and youth, respectively. Mainstreaming is a process of ensuring that programmes and projects in all institutions reflect the important priority of achieving equal opportunity for all people and acknowledge the existence of inequality. It is a deliberate effort to reverse the level of inequality through the allocation of resources and policies to provide greater benefits to disadvantaged groups. It is therefore important that the needs of these target groups feature prominently in the law and policy making process.

5.1.2 Monitoring implementation

Legislatures have an obligation to ensure equal treatment of all citizens in their provinces, and Parliament carries this responsibility for the country as a whole. Through its oversight function, legislatures have a mandate to demand equal treatment of citizens irrespective of sex, age or disability.

The main responsibilities of legislatures in relation to the monitoring of legislation that is sensitive to the rights of women, children, persons with disabilities and youth include the following:

- Holding accountable the Executive structures that are responsible for improving the lives of women, children, persons with disabilities and youth through monitoring and evaluating the implementation of and overseeing legislation impacting on these groups.
- Influencing, mobilising, monitoring and overseeing that appropriate budgets are allocated for the implementation of legislation, policies and programmes targeted at women, children, persons with disabilities and youth. This includes review and recommendation on the reallocation of resources to implement relevant legislation, policies and programmes that have a direct benefit for marginalised groups including women, children, persons with disabilities and youth.

- Ensuring that these targeted groups are considered and prioritised in all legislation, policies and programmes.
- Insisting on the use of language in legislative drafting that affirms the political leadership's commitment to equality.
- Monitoring the utilisation of allocated resources for the implementation of legislation, policies and programmes, and whether the stated objectives have been achieved.
- Ensuring that the needs of women, children, persons with disabilities and youth are mainstreamed into the core functions of government departments, organs of state, public entities and civil society at large.
- Requesting gender and disability disaggregated statistics to assess the impact of proposed legislation and resource allocation on all groups in society.
- Ensuring compliance with international and regional treaties that have a bearing on women, children, persons with disabilities and youth.
- Creating opportunities for public participation with civil society on key matters pertaining to women, children, persons with disabilities and youth by for example collaborating with civil society groups to collect information on the impact of legislation on the various target groups.
- Encouraging the development of grassroots mechanisms to assist Members of Parliament and Provincial Legislatures with monitoring legislation and ensuring the involvement of people at community level so that legislation is relevant and truly responsive to their needs.
- Regularly reviewing, monitoring and evaluating legislation, policies and programmes which impact on women, children, persons with disabilities and youth.

5.2 Oversight

Oversight can be described as the informal and formal, watchful, strategic and structured scrutiny exercised by legislatures as it relates to:

- the implementation of laws,
- the application of the budget, and
- the strict observance of statutes and the Constitution.

In addition, it entails overseeing the effective management of government departments by individual members of Cabinet in pursuit of improved service delivery for the achievement of a better quality of life for all citizens.⁸⁹

The figure below provides a schematic representation of the oversight cycle that occurs on an annual basis, the details of which are discussed hereafter.

⁸⁹Parliament of South Africa (2009), Oversight and Accountability model

Figure 1: Oversight cycle⁹⁰

Month	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Petitions												
Constituency Work												
Study Tours & Site Visits												
ISD Submissions												
Civil Society submissions												
Strat Plans												
Departmental Briefings												
SONA												
Ministerial speeches												
• media briefing												
• budget speeches												
Ministerial statements												
MTBPS												
Legislation /Policy Assessment of Impact of Legislation												
Youth Parliament												
Women's Parliament												
People's Assembly												
Annual Reports												
BRRR												

In terms of the provisions of the Constitution and the Joint Rules of Parliament, Parliament has the power to conduct oversight over all organs of State, including those at provincial and local government level. Two key structures to consider when conducting oversight are the Department of Performance Monitoring and Evaluation (DPME) and the Auditor-General of South Africa (AG). Both structures can provide Members with resources and information relating to all national government departments regarding performance, budget and progress.

The DPME facilitates the development of plans for the cross-cutting priorities or outcomes of Government and monitors and evaluates the implementation of these plans. The AG has a constitutional mandate. It exists to strengthen democracy by enabling oversight, accountability, and governance in the public sector through auditing, thereby building public confidence. Members can consult both the DPME and AG as means to facilitate their oversight responsibility.

This section focuses on various oversight platforms where Members can address issues and challenges related to women, children and people with disabilities regardless of the committee they find themselves in.

5.2.1 State of the Nation Address (SONA)

The President presents the State of the Nation Address at the beginning of each year where he or she reflects on the past year, highlights the challenges facing the country, and presents a way forward to address these challenges. The SONA is delivered to a joint sitting of Parliament. Members should use the SONA as a foundation for issues to be addressed as they embark on the new financial year. Using the sectoral strategic objectives identified by the President, Members can align and prioritise Committee and constituency work accordingly.

⁹⁰Adapted from Figure 2 oversight cycle on an annual basis as reflected in Parliament's Oversight and Accountability Model, Asserting Parliament's Oversight Role in Enhancing Democracy (2009)

It is suggested that Members actively note how SONA affects the lives of women, children, persons with disabilities and youth. In doing so, SONA should be viewed through a human rights lens – Members should constantly be considering the human rights implications of all statements made throughout the speech.

5.2.2 Budget Process

Through its committees, Parliament plays an important role in the budget process. Since 1994 there have been several budget reforms, including the Medium-Term Expenditure Framework (MTEF), Public Finance Management Act (No. 29. of 1999) (PFMA) and the Municipal Finance Management Act (No. 56 of 2003).

Participation by Members of Parliament in the budget process is significant because the budget is one of the most important economic tools of Government that provides a comprehensive account of the nation's priorities.⁹¹ Since Parliament represents the people of the country, it is therefore responsible for ensuring that the limited available resources best match the needs of the most vulnerable groups, specifically women, children, people with disabilities and youth.

For example, when looking at the budget for the South African Police Services (SAPS), Members should consider asking questions like: "How much of the departmental budget has been allocated and spent on services and programmes to monitor and improve services and support to people with disabilities?", or "How much of the departmental budget has been allocated to support the specialised family violence, child protection and sexual offences services?", or "What resources has the Department allocated in order to implement the Domestic Violence Act?", or "How has the Department given effect to the National Youth Service?". This kind of questioning will allow Members to explore and analyse expenditure in relation to women, children, persons with disabilities and youth.

An important component of the Money Bills Amendment Procedure and Related Matters Act (No. 9 of 2009) is the fiscal framework, which must be scrutinised when Parliament considers whether to amend a money bill. Section 8 of the Act provides for the adoption of the fiscal framework in accordance with stipulated principles. The fiscal framework serves as an important guide to the whole budget process by providing the foundation upon which detailed budget decision-making depends. It is a crucial tool for Members to ensure the realisation of the rights of women, children, and people with disabilities. In assessing the performance of national departments, Committees will, amongst others, assess a department's medium-term estimates of expenditure, strategic priorities and measurable objectives; annual reports; financial statements and the Standing Committee on Public Accounts reports. This performance assessment process results in the Budget Review and Recommendation Report (BRRR).

Committees annually compile and submit a BRRR for tabling in the National Assembly for each department. This process takes place after the adoption of the Appropriation Bill and prior to the adoption of the reports on the Medium-Term Budget Policy Statement (MTBPS).⁹² The BRRR must be submitted to the Minister of Finance and the relevant Cabinet Minister responsible for the vote to which the report applies.⁹³

During the BRRR process, Members can assess whether a department has considered the needs of women, children, people with disabilities and youth for that financial year. This can be done regardless of a department's mandate, to mainstream the rights of these groups. In this way Members can assess how departments have spent their budgets on programmes and initiatives aimed at improving the lives of the most vulnerable communities. It is also a strategic opportunity to assess whether departments have used their budgets to implement legislation aimed at enhancing the lives of women, children, persons with disabilities and youth.

⁹¹Information Services Section, Research Unit (2011)

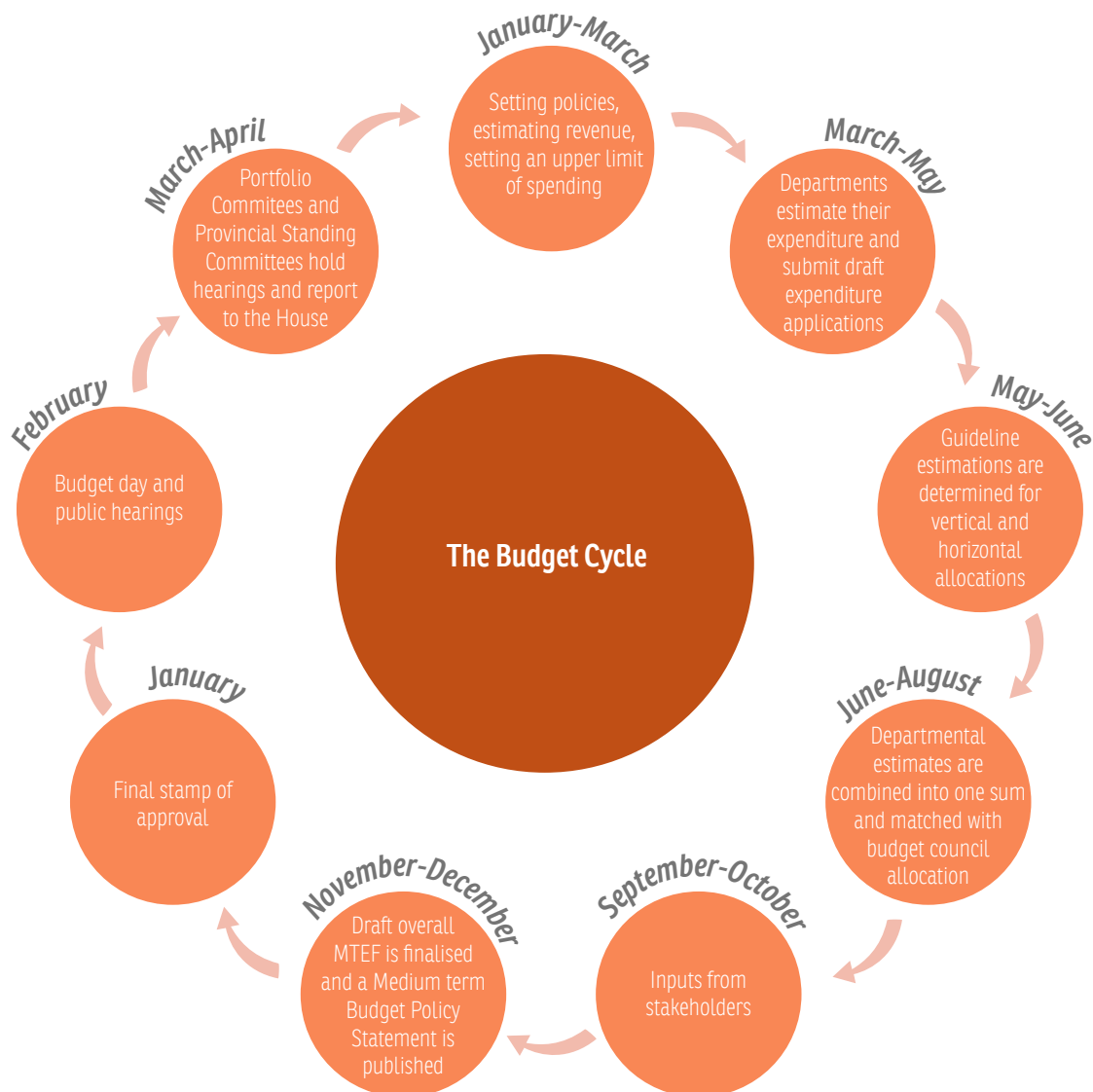
⁹²Information Services Section, Research Unit (2011)

⁹³Ibid.

The BRRR process is also an ideal opportunity for Members to include an assessment of the department's service delivery performance in relation to women, children, people with disabilities and youth within the context of available resources. In drafting the BRRR, Members may refer to departmental annual reports, strategic plans, National Treasury expenditure reports, and the Auditor General's report. The BRRR should include recommendations on the future use of resources. Members may wish to receive feedback on the department's expenditure in relation to its new budget from National Treasury after the completion of the BRRR process.

The diagram below (Figure 2) outlines the month-by-month progress of the budget cycle. The overlapping nature of the budget cycle means that the maintenance of fiscal oversight can be a complex challenge.

Figure 2: Budget cycle



5.2.3 Annual Performance Plans (APP) and Strategic Plans

A strategic plan sets out a department or entity's policy priorities, programmes, and project plans for a five-year period, as approved by its executive authority, within the scope of available resources.⁹⁴ It should cover a period of at least five years, ideally from the first planning cycle following an election, linked to the identified outcomes of the Presidency. When departments present their first draft to committees, Members should use this opportunity to ensure that department's strategic objectives are aligned with mainstreaming issues for women, children, and people with disabilities.

An Annual Performance Plan (APP) sets out what a department intends to do in the upcoming financial year and during the MTEF to implement its strategic plan. The document sets out performance indicators and targets for budget programmes, and sub-programmes where relevant, to facilitate the realisation of institutional goals and objectives set out in the strategic plan.⁹⁵ Scrutinising the APP is important in order to ensure that budgeted programmes and set targets take into account the needs and necessary services aimed at advancing the lives of women, children, persons with disabilities and youth.

5.2.4 Annual reports

Annual reports provide Members with an informed snapshot of the performance of the functions reported on. The consideration of the annual report of the department alone may not give the complete picture of a department's performance, but it allows Members to monitor progress of a given department over the period of a year. Members are able to evaluate whether targets were met and whether budgets allocated were used effectively. When departments present annual reports, Members should scrutinise programmes and evaluate their benefits to vulnerable groups. This can include questioning whether women, children, persons with disabilities and youth received the maximum benefit from a given service or programme; and ensuring that departments present recent and disaggregated data as it relates to these target groups.

5.2.5 Study tours and oversight visits

Parliament's Oversight and Accountability Model (2009) notes that the work of Committees includes study visits that entail physical inspections, conversing with people, assessing the impact of delivery, and developing reports for adoption by Committees which contain recommendations for the Houses to consider. In exercising oversight, Committees often obtain first-hand knowledge from people engaged in the direct implementation of specific programmes and/or who are directly responsible for service delivery.⁹⁶

This is a very important element of Members' oversight responsibilities. Members are able to engage with women, children, people with disabilities and youth and receive first-hand accounts of the challenges they face. When planning for this type of engagement, Members should consider the need for sign language interpreters and where possible make any reading material available in Braille (refer to section 5.3 on Public Participation).

When engaging with children, Members must ensure that all engagement is done with parental or guardian consent and depending on the nature of the issue to be discussed, psycho-social and counselling services should be made available. It is a good idea that Members make use of organisations such as non-governmental organisations (NGOs) and faith-based organisations (FBOs) as they usually provide an array of services to communities and are usually able to provide insight into the challenges faced by community members.

⁹⁴National Treasury (2010), Framework for Strategic Plans and Annual Performance Plans

⁹⁵National Treasury (2010), Framework for Strategic Plans and Annual Performance Plans

⁹⁶Parliament of South Africa (2009), Oversight and Accountability model

Conferral within and between legislatures is important to strengthen oversight. In addition, Members should ensure that issues raised during oversight visits are followed up on and fed back to the relevant structures where relevant.

5.2.6 Conferral

Conferral entails committees working collaboratively in the interests of furthering inter-sectoral issues. For example, when dealing with issues related to domestic violence, it is ideal that this is approached holistically and that there is collaboration between Committees that deal with issues such as health, police, justice, women, children, people with disabilities and youth. Through the process of conferral, Members will be able to address challenges more comprehensively and ensure that all relevant stakeholders are involved in improving the lives of women, children, people with disabilities and youth. Conferral should not be limited to the confines of the committee room. When dealing with issues that affect more than one committee, it is possible for Committees to form clusters during oversight and when dealing with legislation.

5.2.7 Constituency work

A substantial proportion of the electorate is made up of women, youth and people with disabilities. When engaging with issues in constituencies, Members should take cognisance of the needs of these populations. As such, the public consultation sessions should take place in an environment that is child friendly (when engaging with children), take cognisance of issues related to gender sensitivity, and should ensure that the needs of people with disabilities are catered for. An example of this would be to ensure that venues are accessible to people with disabilities.

In the course of their constituency work, issues of concern to the public are brought to the attention of Members of Parliament. These issues, once introduced in Parliament, can be formally channeled through the parliamentary processes (either through questions and answers or regular Committee work) for executive responses.

Where available, the services of the Parliamentary Democracy Offices (PDOs) should be solicited when working in constituencies. The mandate of a PDO is to reach out and serve communities in the provinces, particularly in the rural areas. They also facilitate community involvement and participation in the legislative and other processes of Parliament. This is an important resource for Members and can be a useful tool when engaging with vulnerable groups.

5.2.8 Other ways to exercise oversight

In addition to what has already been discussed, Members can make statements, pose questions and table motions in the House. This can be done several times during the year as a means to raise the profile of issues facing vulnerable groups. In this way, pertinent issues stay on Parliament's agenda and a continuous discourse around these important issues are engaged with throughout the year.

5.3 Public Participation

Public participation in parliamentary processes strengthens the ability of Parliament to be responsive to the needs of the people. It provides opportunities for the public to bring information about issues in the country to the attention of Parliament. Public participation platforms also provide opportunities for Parliament to make the public aware of its work.⁹⁷

⁹⁷Yamamoto, H. (2007) Tools for Parliamentary Oversight. A Comparative Study of 88 Parliaments. Inter-Parliamentary Union: Switzerland.

Ideally, all South Africans should be equally able to access and participate in public hearings, sectoral parliaments, and events such as Taking Parliament to the People. However, some groups face barriers to accessing these spaces, or have specific needs that parliamentarians must be sensitive to when engaging with them. Mainstreaming the issues of women, children, people with disabilities and youth is in line with the Constitution and the democratic values of Parliament.

This section focuses on how Members can best ensure that issues related to women, children, persons with disabilities and youth are raised in public participation fora and are taken forward and institutionalised as part of parliamentary work.

5.3.1. Public participation opportunities

Public participation opportunities include public hearings, sectoral parliaments, petitions and Taking Parliament to the People.

- **Public hearings** are opportunities for the public to come to Parliament and present on a specific issue or piece of legislation. These either happen during Committee work, or during special sittings of one or both Houses of Parliament.
- **Petitions** provide an opportunity in which the public can “exercise their right to participate in Parliament. A petition is a formal request to Parliament for intervention in a matter. It can take the form of either a request for assistance with a specific issue or for the redress of a grievance.”⁹⁸ In 2024, the National Assembly adopted an amendment to the House’s Rules and Guidelines on Petitions. “Previously, public petitions required a Member of Parliament to act as an intermediary between the House and a member of the public. Also, before this amendment, the provision allowing members of the public to submit petitions directly, without Members of Parliament as intermediaries, was exclusive to the National Council of Provinces (NCOP). Now, this significant reform empowers members of the public to directly approach Parliament, fostering a more open, transparent, and responsive legislative body.”⁹⁹ A petition may be single; collective; multiple/group/mass and an associated petition.
- **Sectoral Parliaments** are created to provide opportunities for a selected group (for example youth, women, and children) to participate in parliamentary processes. There have been annual events since 2005.
- **Taking Parliament to the People** is an initiative of the National Council of Provinces (NCOP). The National Council of Provinces, for a week every year, sits at a site away from Cape Town and in partnership with the provincial legislature invites the public to present on and raise challenges in relation to service delivery.¹⁰⁰
- Other opportunities for public participation include **seminars** and **provincial weeks** which allow Parliament to encourage further participation.

5.3.2 Issues to consider when engaging with the public

5.3.2.1 Engage with vulnerable groups in a way that emphasises and protects their dignity and privacy

Members should ensure that the questions that are asked during public participation fora are inclusive and relevant to vulnerable groups such as women, children, people with disabilities and youth and reflect on how broader issues affect these groups. To prepare, Members should request support materials in order to be well-informed of issues prior to the public participation opportunity taking place.

⁹⁸Parliament of the Republic of South Africa (n.d.) Petitions, p. 1.

⁹⁹Parliament of Republic of South Africa (2024) Members of the Public Can Now Directly Petition the National Assembly, Media Statement, Parliament, Friday, 12 April 2024.

¹⁰⁰The National Council of Provinces (date not specified). “About the NCOP.” Accessed, http://www.parliament.gov.za/content/ncop_brochure.pdf.

In addition, where sensitive issues such as violence and abuse, HIV and AIDS, or sexual and reproductive health are being addressed, Members should be aware of the importance at all times of creating an environment that is conducive to working with socially vulnerable groups and engaging on issues that are potentially sensitive in nature. Trained counsellors or social workers should be available to provide debriefing to the public, the Members, and the support staff (researchers, translators etc.) who are part of public participation fora where sensitive or traumatic information is presented.

Another issue that must be considered when children or persons with intellectual disabilities are consulted, is obtaining the consent from their parent or primary care giver. The language that is used when talking to and about vulnerable groups should be respectful of the dignity of the groups concerned and should at all times be aligned with Constitutional values. It is not advisable to take photographs of individuals or organisations working with vulnerable groups without the express permission of those individuals or organisations concerned. Ensuring the dignity of persons during public consultation is important, as such Members should refrain from asking questions on sexual conduct except in those instances where the purpose of the visit is focused on gender-based violence and or sexual abuse. Even in those instances, caution needs to be taken to ensure the dignity and privacy of those victims of gender-based violence and sexual abuse are not violated when disclosing information to Members. If Members are uncertain about any issue, they are encouraged to request preliminary information from support staff prior to public participation opportunities.

5.3.2.2 Access to information

Access to information is critical to ensuring equity in public participation.¹⁰¹ To promote access to information, notice about public participation opportunities should be provided in all official languages, in Braille, and in a child-friendly format. In addition, notices of events should be distributed timeously to allow for representatives to prepare their submissions on the issues being discussed. During proceedings, information should be presented in multiple languages, sign language, Braille and a child-friendly format.

When events are held during the working or school day, this can limit the ability of women, children, persons with disabilities and youth to participate. It is thus important for Members to consider how these groups will be reached. At times, after hours events may need to be held to ensure maximum access.

5.3.2.3 Physical access to spaces for public participation

All events should be physically accessible by women, children, persons with disabilities and youth. Special measures that members should consider include, but are not limited to:

- The provision of childcare/crèche facilities to empower women with young children to attend;
- The provision of ramps and toilet facilities that are accessible to persons with disabilities, the elderly and persons with babies/toddlers;
- The provision of transport for persons with disabilities, children, and those women who are situated far away from the site of the opportunity;
- The provision of intermediaries to assist children or support staff to assist people with intellectual disabilities to present their information;
- The use of appropriate technology to illicit information from groups who are not able to access regular parliamentary spaces including social media and the media; and
- Sign language interpreters to allow deaf persons to participate.

¹⁰¹UNICEF (2012) "Effective public involvement in the oversight processes of Parliaments and Provincial or Regional Legislatures."

5.3.2.4 Diverse representation of vulnerable groups

South Africa is a wonderfully diverse country. In attempting to ensure that all citizens can equally participate in parliamentary processes, efforts should be made to ensure that those who participate are from diverse backgrounds, provinces, different age groups, and varied demographic groups (including both rural and urban areas).

5.3.2.5 Support and networking with existing organisations in the field of interest or within the region of outreach

The easiest way to access and work with women, children, persons with disabilities and youth is to establish and develop relationships with organisations that represent or work with these groups on a daily basis. These organisations are valuable sources of information and can be a connection point between Parliament and the people.

5.3.2.6 Ensure that matters are followed up on after public participation opportunities, and institutionalised into the work of committees and Parliament

One common challenge of public participation opportunities has been the lack of integration with regular committee and parliamentary work. At times, events have been held where vulnerable groups have raised issues, but insufficient follow-up has taken place, or the issues have not been incorporated into regular committee work to allow them to be addressed. Once-off events do not strengthen the ability of Parliament to mainstream the rights of women, children, persons with disabilities and youth.

In the Seventh Parliament, it will be critical to ensure that where issues are raised during public participation, they are later referred to Committees and taken up through their regular programmes.

5.4 International Agreements

This section covers the role of legislatures insofar as the ratification process of international agreements is concerned as well as the oversight responsibility in terms of monitoring compliance.

5.4.1 Ratification process

As per Section 231(1) of the Constitution, the negotiating and signing of all international agreements resides with the Executive. In turn, the role of Parliament entails the approval of the NA and the NCOP by resolution which is required for international treaties to be binding.¹⁰² Treaties of a technical, administrative or executive nature do not require approval but must be tabled within a reasonable timeframe. According to the Rules of Procedure of the National Assembly, approval is first sought prior to the depositing of an instrument for ratification. The Executive then submits a copy of the agreement and an explanatory memorandum to the NA. It is then referred to the relevant Committee for consideration which can in turn consult other Committees if required. The Committee examines and reports on either the approval or rejection of the agreement.

Of importance to note is the conferral of Committees when considering international agreements and how the subject matter may impact on women, children, persons with disabilities and youth. The impact of accepting or rejecting an international agreement should also be viewed in light of whether the rights of women, children, persons with disabilities and youth are being infringed upon or not. To date, Parliament has approved several agreements. Listed below is a table of all the key international treaties that relate to women, children, persons with disabilities and youth that South Africa is a signatory too (the date of ratification is provided in brackets).

¹⁰²Sections 231(2), Constitution (No. 108 of 1996)

5.3.2.4 Diverse representation of vulnerable groups

	TREATY
WOMEN	CEDAW (15 December 1995)
	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (18 October 2005)
	African Charter on Human and People's Rights (9 July 1996) & Protocol on the Rights of Women in Africa (17 December 2004)
	SADC Protocol on Gender and Development (March 2011)
	C190 - Violence and Harassment Convention, 2019 (No. 190) (November 2021)
CHILDREN	ACRWC (7 January 2000)
	UNCRC (16 June 1995)
	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (30 June 2003)
	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (24 September 2009)
	ILO Convention No 138 - Minimum Age Convention, 1973: Convention concerning Minimum Age for Admission to Employment (30 June 2000)
PERSONS WITH DISABILITY	ILO Convention No 182 Worst Forms of Child Labour Convention: Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (7 June 2000)
	United Nations Convention on the Rights of People with Disabilities (30 November 2007) Optional Protocol on the UNCRPD (30 November 2007) Reporting as above for UNCRPD
YOUTH	Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities (29 April 2019)
	African Youth Charter (28 May 2009)
GENERAL	ICCPR (10 December 1998)
	Optional Protocols I and II to the International Covenant on Civil and Political Rights (28 August 2002)
	UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1998)

5.4.2 Monitoring compliance – country reports

An international agreement/treaty becomes part of domestic legislation when enacted into law by way of national legislation.¹⁰³ Customary international law is part of South African law if consistent with the Constitution and an Act of Parliament.¹⁰⁴ Parliament plays a critical role in terms of monitoring compliance of these international agreements. South Africa has committed itself to several treaty obligations that bear relevance to women, children, persons with disabilities and youth. Once an international agreement becomes binding, the State has an obligation to report on the progress insofar as giving effect to the respective convention/treaty/agreement at a country level. Parliament has a vital role to play in overseeing this and in holding the Executive to account for progress made in this regard. It would be imperative for Parliament to hold the Executive to account to ensure that country reports are submitted on time to the respective committees be it at the UN or AU as well as following up on the feedback received.

¹⁰³Section 23 (4), Constitution of the Republic of South Africa (No. 108 of 1996)

¹⁰⁴Section 232, Constitution of the Republic of South Africa (No. 108 of 1996)

Given the mandate of Parliament, through its legislative, budgetary and oversight functions, international human rights laws can be used as a tool to advance rights enshrined in the Constitution. Public hearings are an important platform at which Legislatures can ascertain how effectively, if at all, a treaty has been domesticated or implemented at a country level and in so doing, evaluate the country's measure of compliance. This should ideally be done in conjunction with an examination of the country report.

Key issues on the role of Parliament in the reporting process and in ensuring compliance with reporting obligation include:

- Status of country reports: Determine the status of reporting per department. This forms part of the Committee oversight function by ascertaining why reports are overdue and encouraging Government (through departments) to meet their reporting obligations. Departments should present country reports to Parliament prior to submission at the United Nations and African Union.
- Shadow reports: Raise awareness of the importance of shadow reports¹⁰⁵ in civil society and ensure that Government makes available country reports timeously to enable civil society ample time to develop an alternative report.
- Parliament should follow-up and monitor implementation of recommendations or concluding observations made by the respective Committee (e.g. CEDAW Committee) that received the country report.
- A monitoring mechanism is required to track when country reports are due and when concluding observations have been made in response to country reports.

5.5 Co-operative Governance

South Africa has three inter-dependent, inter-related but distinct spheres of Government (national, provincial and local) as stipulated in the Constitution. Even though each sphere has its own roles and responsibilities, the Constitution maintains that these spheres cannot work independently of each other. Chapter 3 of the Constitution provides for co-operative governance which has been expressed through legislation namely, the Intergovernmental Relations Framework Act (No. 13 of 2005) that provides for the structures and institutions to foster intergovernmental relations.



Gender Focal Points and Disability Desks, as they are mostly commonly referred to as, are located within most national and provincial departments and at a local government level. Their primary responsibility is centred on gender and disability mainstreaming. Most of the Premier's Offices have special programmes and or dedicated structures that tasked with focusing on mainstreaming gender, children's rights, disability and or youth issues.

Legislatures, in terms of their role of facilitating co-operative governance, should ensure that all State structures tasked with the mainstreaming of gender, children and disability rights are held to account. To this end, the aforementioned structures located within the Premier's offices are key stakeholders at a provincial level.

Effective Legislatures need to "be responsive to the preferences of citizens, and must ensure that the development and implementation of policy meets the economic and social challenges that face the country."¹⁰⁶ In strengthening co-operative governance, it is imperative that Legislatures also consider the various public participation platforms that exist and how these provide for opportunities for women, children, persons with disabilities and youth to articulate challenges experienced about the development and or implementation of policy.

¹⁰⁵These are alternative reports compiled by civil society on its view of how the country has fared in giving effect to the respective international agreement.

¹⁰⁶Murray, C. and Nijzinkm L. (2002) Building Representative Democracy, South Africa's Legislatures and the Constitution, Chapter 1, The Constitutional Mandate: Dynamic and Proactive Legislatures. Parliamentary Support Programme, p. 4, University of Cape Town: Cape Town.

In order for Legislatures to be efficient, they are required to work in ways that are timely and cost-effective as well as ensuring that “the two chambers of the national Parliament and the nine provincial legislatures interact in a co-operative manner.”¹⁰⁷ The National Council of Provinces was created to facilitate co-operative governance and participatory democracy. It “not only provides provinces with a forum in which to engage with the national government on matters concerning areas of shared national and provincial legislative powers, but also oversees the programmes and activities of national government relating to provincial and local government matters.”¹⁰⁸ To this end, the importance of conferral within and between legislatures is once again emphasised in order to coordinate the work of all structures when focussing on matters related to women, children, persons with disabilities and youth. The role of Multi-Party Women’s Caucus which is discussed in the next section is also crucial in this regard.

In addition, Parliament plays a major role in facilitating co-operative government by working with the other arms of government in the discharge of certain statutory functions as prescribed in legislation, the appointment of public office bearers and approving instruments such as international agreements.¹⁰⁹ Much of this function concerns the appointment and dismissal of office bearers of Chapter 9 institutions as well as commissions, other boards and councils. A key principle to consider in these appointments is the gender representivity, youth representivity and the representation of persons with disabilities for the filling of these positions.

¹⁰⁷Murray, C. and Nijzink, L. (2002) Building Representative Democracy, South Africa’s Legislatures and the Constitution, Chapter 1, The Constitutional Mandate: Dynamic and Proactive Legislatures. Parliamentary Support Programme, p.4., University of Cape Town: Cape Town.

¹⁰⁸Parliament of the Republic of South Africa, Co-operative Governance

¹⁰⁹Parliament of the Republic of South Africa, Co-operative Government

6. INTERNAL MECHANISMS WITHIN LEGISLATURES

Parliament is an institution to represent ordinary South Africans. It is therefore important to ensure that the interests of all citizens find space in processes and practices of the institution. This is even more important for women, children and persons with disabilities because, at times, the issues affecting these vulnerable groups can be overlooked in the passing of laws and oversight obligations of Committees. Internal structures and policies specifically created to highlight these issues and ensure equitable representation are important.

In creating more gender sensitive parliaments, the Inter-Parliamentary Union recommends that legislatures focus on the following aspects:

- Ensuring women are promoted to key positions of parliamentary leadership;
- Ensuring that legislation and debates (as well as other Parliamentary processes) are equitable to both men and women;
- Encouraging the establishment of dedicated gender mainstreaming infrastructure including gender equity committees and women's caucuses;
- Encouraging the contribution of male parliamentarians to gender equality;
- Initiating policies and procedures that ensure equal access to opportunities including promotion, as well as fair harassment and grievance mechanisms;
- Encouraging equal participation by men and women in political parties;
- Ensuring a parliamentary culture and infrastructure that supports work family balance for both men and women;
- Ensuring that parliaments are gender and disability sensitive not only for Members of Parliament, but for parliamentary staff as well.

Women in parliament

As at 1 January 2024

Proportion of women in parliament

26.9%

Globally, 26.9% of members of parliament are women (as at 1 January 2024)



Women leaders of parliament
As at 1 January 2024, 64 parliamentary chambers are led by women



23.8%
of presiding officers of parliamentary chambers are women



+1.1 points
compared to 1 January 2023

+2.9 points
compared to 1 January 2021

Progress in 2023

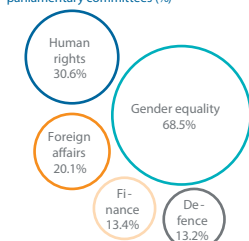
Progress from 1 January 2023 to 1 January 2024

+0.4 points

Progress in recent years
(in percentage points, as at 1 January of each year)

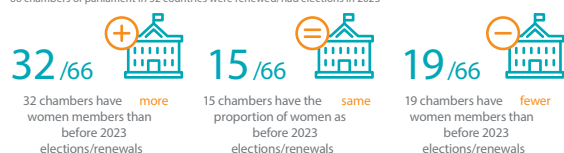


Share of women Chairs of permanent parliamentary committees (%)



Elections in 2023

66 chambers of parliament in 52 countries were renewed/had elections in 2023



Inter-Parliamentary Union
For democracy. For everyone.

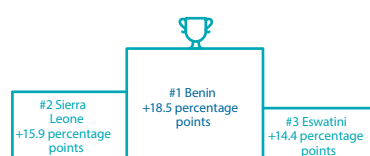
Champions in 2023

Regionally:
The Americas have the highest proportion of women elected to parliament in 2023: 42.5% (elections were held in 9 chambers in 6 countries)



Americas 42.5%

Nationally:
African countries have made the most progress after elections held in 2023 in lower/single chambers:



Quotas work

In chambers where no quota was applied in renewals held in 2023:

23.2%

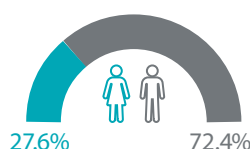
of those elected or appointed to parliament were women

In chambers where some form of quota was applied in renewals held in 2023:

28.8%

of those elected or appointed to parliament were women

Women elected in 2023



Proportion of seats following parliamentary renewals in 2023

Impact of electoral system on women's election in 2023



28.7% of those elected in representation or mixed electoral systems were women
11.6% of those elected in majoritarian or plurality electoral systems were women

The following section highlights the role of the Multi-Party Women's Caucus in spearheading women's issues as well as the need for internal policies that ensure a conducive working environment for women and persons with disabilities.

6.1 Role of the Multi-party Women's Caucus

The Multi-Party Women's Caucus as a joint committee of Parliament comprises all female Members of Parliament in the National Assembly and the National Council of Provinces. Its mandate includes:

- Representing the interests and concerns of women Members of Parliament;
- Promoting the discussion of women's issues in Parliament;
- Making submissions to the relevant committees;
- Introducing a women's perspective and focus in Parliamentary activities, including in the programming of debates;
- Engaging on developmental and empowerment issues with women in political structures outside Parliament and women Members of Parliaments internationally; and considering any other matter within its mandate referred to it by either House.

These mandates speak to the following strategic objectives of Parliament:

- To **strengthen its monitoring function** and establish a strong culture of monitoring Executive action with regards to the promotion of gender equality;
- To **increase public involvement** and participation and build a responsive people's Parliament;
- To **strengthen co-operative governance** and foster improved cooperation and relations;
- To improve and widen the role of Parliament in **international cooperation and participation**.

While the Multi-Party Women's Caucus does not have a direct oversight role over any department, its Members belong to a range of committees. This ensures that when women's priorities are identified, they can be mainstreamed into all committees of Parliament through Members of the Multi-Party Women's Caucus.

Interaction between national, provincial and local Women's Caucuses must be strengthened to ensure that issues affecting ordinary women are taken forward by those with the influence to do so. This has been encouraged through the establishment of Women's Caucuses in provincial legislatures as well as district municipalities. The Multi-Party Women's Caucus at national, provincial and local level, has a key role to play in building capacity within its ranks. This involves identifying specific needs for information and skills and ensuring that they are made available to capacitate women in legislatures. Being knowledgeable on how certain issues affect women in particular ways is critical if female Members of Parliament wish to affect any change. However, this knowledge is not enough. By focusing on stakeholder relations, the Multi-Party Women's Caucus also builds a critical mass of women dedicated to using whatever influence they have to advance the development of those women who need it the most, whether as a Members of Parliament, Provincial Legislature, or at local government level.

Although the establishment of institutional mechanisms to drive issues of targeted groups, is internationally regarded as best practice, there are challenges in their operations. In the South African context, key challenges in these institutions include the lack of adequate budgetary and human resource allocations, as well as unclear mandates resulting in a confusion of roles and responsibilities amongst institutional mechanisms. In addition, for these structures to operate effectively, they also need to be replicated at provincial and local government level, a task which to date has proven problematic as the technical capacity to take the interests of women forward is often lacking within the other spheres of Government. The task of driving these issues is often also relegated to someone without any decision-making and strategic management powers in the organisation.

It is important that an enabling environment is promoted to enhance women's access to and participation in decision-making processes. The political influence or clout of the gender actors in the parliamentary arena is also key to the realisation of gender goals. Members of Parliament have a particularly significant role to play in applying a women's human rights framework and advancing the gender agenda through their oversight function. This means applying a gendered perspective to the monitoring, evaluation and analysis of all parliamentary business, as a collective.

In order to make real changes in the lives of ordinary women, women themselves must be at the forefront of their own development and should champion their own causes. At its core, the Multi-Party Women's Caucus is about women in positions of influence, using that influence to affect relevant change in parliamentary work, for the benefit of women. Thus, the Multi-Party Women's Caucus is essential in forming legitimate, cross-party solidarity, to promote the single, common goal of gender equity.

6.2 Policy: Family Policies, Sexual harassment, Disability (reasonable accommodation)

There are several policies and practices that need to be in place to support the maximum participation of women and persons with disabilities in the workplace. These include policies concerning accessibility in and around the organisation, maternity and paternity leave entitlements, sexual harassment policy and practice, as well as equal employment opportunities for women.

The following section details matters for consideration with regards to the above-mentioned policies.

6.2.1 Family Policies

Family policies generally refer to those policies that provide employees time, job security, and/or financial incentive to lead a more active home and family life, in addition to being fully engaged in the labour market. These policies play a very significant part in allowing women and men to work, while fulfilling their child-care responsibilities. Studies have also found that policies that promote "work-life balance, equal employment opportunities and public child-care" also provide the best outcomes for children and improve their well-being.¹¹⁰

Parental leave refers to the time allowances (paid or unpaid) given to men and/or women in the workplace, for the purposes of child-care and child rearing. The allocation of leave to men and women interacts with other factors such as class and age in significant ways. It is thus of particular significance if parental leave comes with job security and is paid. In a study conducted by the Centre for Economic and Policy Research, policy practices that stood out as significant in promoting gender equality included the following:¹¹¹

- Generous paid leave;
- Non-transferable quotas for leave for each parent;
- Universal Coverage with minor restrictions;
- Sustainable financing structures;
- Scheduling flexibility.

In addition, the provision of child-care in the workplace can eliminate any restrictions or barriers to the participation of women at work. Also, allowing for more flexible working arrangements (flexible hours or working from home) ensures that women's lives are considered when organisations plan their schedules. Enabling and supporting policies are necessary for equitable participation in the labour market, as well as the division of labour in the home.

¹¹⁰Williams, A. (2010)

¹¹¹Ray, R. Gornick, D. & Schmitt, J. (2009)

For men and women to be truly equal, both their private and public lives need to reflect equal access to resources, and equal access to opportunities. Often governments across the world focus on macro factors affecting women's access to the economy such as healthcare and access to education. While this is helpful, creating infrastructure does not guarantee that women have access to it. Allowing women, and men, to manage their private spaces equally is just as important. Child-care responsibilities remain a challenge for working women, diminishing their availability to work, particularly in high earning jobs, and reducing their chances at progressing as fast as their male counterparts. In the absence of conducive policy, the child-care responsibilities of working parents can reinforce stereotypical gender roles, and roll-back the advances that women have made in the last century. In addition, unbalanced child-care policies rob fathers of the opportunity to engage fully in their children's lives. Not only do gender balanced policies provide women with an opportunity to be more active in the labour market, but they also provide men with the opportunity to be more active in-home life.

6.2.2 Sexual Harassment Policies

Given the importance of dealing with the incidence of sexual harassment in any organisation, it is imperative for Parliament to assess the extent of challenges around this issue, and to address these in an expedient manner.

Sexual harassment can have a devastating impact on employee health, confidence and well-being, which can affect job performance negatively. A key consideration in the drafting of a sexual harassment policy is the fact that most victims of sexual harassment remain silent about their experiences, and a comprehensive policy must take this into consideration. Thus, an absence of sexual harassment complaints is not a sign that a problem does not exist, but could be an indicator that there are no adequate systems in place to address incidents of harassment. Some key elements to an effective sexual harassment policy include the following:

- An express commitment to eradicate and prevent sexual harassment and express prohibition of sexual harassment;
- A definition of sexual harassment including both quid-pro-quo and hostile work environment giving examples;
- An explanation of penalties (including termination) the employer will impose for substantiated sexual harassment conduct;
- A detailed outline of the grievance procedure employees should use;
- A clear statement that anyone found guilty of harassment after investigation will be subject to immediate and appropriate disciplinary action
- A clear understanding and strict rules regarding harassment of or by third parties like clients, customers etc.;
- Additional resource or contact persons available for support and consultation;
- An express commitment to keep all sexual harassment complaints and procedures confidential and time bound;
- Provisions for training of employees at all levels; and
- An anti-retaliation policy providing protection against retaliation to complainants, witnesses, Complaints Committee members and other employees involved in prevention and complaints resolution.

6.2.3 Reasonable Accommodation

Policies guaranteeing the reasonable accommodation of staff and Members of Parliament with disabilities are necessary in ensuring their equitable participation and engagement in Parliament. The following facilities may need to be provided for:

- Adjusted accommodation;
- Training by experts in the disability field;
- Assistive devices and technology;
- Transport;
- Furniture;
- Support services.

Parliament has a Draft Policy on Facilities for Members with disabilities (2006) the purpose of which is as follows:¹¹²

"To provide institutional support that is responsive to the needs of Members with disabilities and to ensure that they integrate and participate fully in carrying out their parliamentary duties through the identification and the elimination of the effects of physical, environmental, attitudinal, communication and technological barriers."

While this policy has been in draft form for some years, it provides a good foundation for creating an environment that is sensitive to the needs of persons with disabilities.

¹¹²Policy of Parliament of RSA, Facilities for MPs with special needs

7. CONCLUSION

The Mainstreaming Handbook aims to provide Members of the National Assembly, National Council of Provinces and the Provincial Legislatures with the most pertinent information on matters related to women, children, persons with disabilities and youth as far as the core functions of a legislature is concerned. Legislatures have the responsibility for ensuring that the right to gender equality is given effect to. Similarly, it is crucial to consider how legislatures promote and mainstream children's rights given South Africa's national legislative and policy framework as well as binding international and regional instruments.¹¹³ Moreover, mainstreaming the rights of persons with disabilities prevents exclusion and discrimination on the basis of disability and provides for barrier-free participation. Legislatures as the duty-bearer for the rights of persons with disabilities, therefore, have the responsibility for ensuring that the aforementioned is given effect to. Given the significant challenges faced by youth in the country, in particular, unemployment, it is a key priority area for addressing as outlined by President Ramaphosa in the recent State of the Nation Address. Hence legislatures have a crucial role to play to hold Government to account in this regard but also to ensure that laws developed are responsive to fostering youth development.

The intersectional nature of the rights of women, children, persons with disabilities and youth should also be taken cognisance of along with other factors such as socio-economic status, race and geographic location. Thus women, children, persons with disabilities and youth may experience multiple forms of discrimination and an infringement of their rights. Members have a complex task of examining these rights. As duty-bearers in the ten legislatures in South Africa, Members have the responsibility for ensuring the fulfilment, protection and promotion of the rights of women, children, persons with disabilities and youth. This Handbook provides some insight into how this can be achieved.

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ANNEXURE

Links to international instruments and national legislation

International Instruments

	TREATY
WOMEN	CEDAW (15 December 1995) https://www.ohchr.org/sites/default/files/cedaw.pdf https://www.justice.gov.za/docs/other-docs/1981_CEDAW.pdf
	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (18 October 2005) https://www.ohchr.org/sites/default/files/2021-08/OP_CEDAW_en.pdf
	African Charter on Human and People's Rights (9 July 1996) https://au.int/sites/default/files/treaties/36390-treaty-0011__african_charter_on_human_and_people_s_rights_e.pdf Protocol on the Rights of Women in Africa (17 December 2004) https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf
	SADC Protocol on Gender and Development (March 2011) https://www.sadc.int/sites/default/files/202108/Protocol_on_Gender_and_Development_2008.pdf https://www.sadc.int/sites/default/files/2023-02/EN-REVISED_SADC_PROTOCOL_ON_GENDER_AND_DEVELOPMENT_2016-final.pdf
	C190 - Violence and Harassment Convention, 2019 (No. 190) (November 2021) https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190
CHILDREN	ACRWC (7 January 2000) https://au.int/sites/default/files/documents/30913-doc-acrwc-en.pdf
	UNCRC (16 June 1995) https://www.ohchr.org/sites/default/files/crc.pdf
	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (30 June 2003) https://www.ohchr.org/sites/default/files/crc-sale.pdf
	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (24 September 2009) https://www.ohchr.org/sites/default/files/crc-conflict.pdf

	TREATY
	ILO Convention No 138 - Minimum Age Convention, 1973: Convention concerning Minimum Age for Admission to Employment (30 June 2000) https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138
	ILO Convention No 182 Worst Forms of Child Labour Convention: Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (7 June 2000) https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182
PERSONS WITH DISABILITY	United Nations Convention on the Rights of People with Disabilities (30 November 2007) https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf
	Optional Protocol on the UNCRPD (30 November 2007) Reporting as above for UNCRPD https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf
	Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities (29 April 2019) https://au.int/sites/default/files/treaties/36440-treaty-protocol_to_the_achpr_on_the_rights_of_persons_with_disabilities_in_africa_e.pdf
YOUTH	African Youth Charter (28 May 2009) https://au.int/sites/default/files/treaties/7789-treaty-0033_-_african_youth_charter_e.pdf
GENERAL	ICCPR (10 December 1998) https://www.ohchr.org/sites/default/files/ccpr.pdf
	Optional Protocols I and II to the International Covenant on Civil and Political Rights (28 August 2002) https://www.ohchr.org/sites/default/files/ccpr-one.pdf https://www.ohchr.org/sites/default/files/ccpr-death.pdf
	UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1998) https://www.ohchr.org/sites/default/files/cat.pdf

National Legislation and policies

Legislation	Link
Constitution of the Republic of South Africa Act (No.108 of 1996)	https://www.justice.gov.za/constitution/SACConstitution-web-eng.pdf
Promotion of Equality and Prevention of Unfair Discrimination Act (No. 4 of 2000) (Commonly referred to as PEPUDA)	https://www.justice.gov.za/legislation/acts/2000-004.pdf
Domestic Violence Act (No. 116 of 1998)	https://www.justice.gov.za/legislation/acts/1998-116.pdf

Legislation	Link
Domestic Violence Amendment Act (No.14 of 2021)	https://www.justice.gov.za/legislation/acts/2021-014.pdf
Labour Relations Act (No. 66 of 1995)	https://www.gov.za/sites/default/files/gcis_document/201409/act66-1995labourrelations.pdf
Criminal Procedure Second Amendment Act (No. 85 of 1997)	https://www.justice.gov.za/legislation/acts/1997-085.pdf
Criminal Law (Sexual Offences and Related Matters) Amendment Act, (No. 32 of 2007)	https://www.justice.gov.za/legislation/acts/2007-032.pdf
Criminal Law (Sexual Offences and Related matters) Amendment Act (No. 13 of 2021)	https://www.justice.gov.za/legislation/acts/2021-013.pdf
The Protection from Harassment Act (No. 17 of 2011)	https://www.justice.gov.za/legislation/acts/2011-017.pdf
The National Health Act (Act No. 61 of 2003)	https://www.gov.za/sites/default/files/gcis_document/201409/a61-03.pdf
The Choice on Termination of Pregnancy Act (No. 92 of 1996)	https://www.gov.za/sites/default/files/gcis_document/201409/act92of1996.pdf
The Reform of Customary Law of Succession and Regulation of Related Matters Act (No. 11 of 2009)	https://www.gov.za/sites/default/files/gcis_document/201409/32147433.pdf
The Recognition of Customary Marriages Act (No. 120 of 1998)	https://www.gov.za/sites/default/files/gcis_document/201409/a120-980.pdf
Civil Union Act (No. 17 of 2006)	https://www.gov.za/sites/default/files/gcis_document/201409/a17-061.pdf
The Employment Equity Act (No. 55 of 1998)	https://www.gov.za/sites/default/files/gcis_document/201409/a55-98ocr.pdf
Preferential Procurement Policy Framework Act (No. 5 of 2000)	https://www.gov.za/sites/default/files/gcis_document/201409/a5-000.pdf
Prevention and Combating of Trafficking in Persons Act (No. 7 of 2013)	https://www.gov.za/sites/default/files/gcis_document/201409/36715gon544.pdf
Legislation	Link
South Africa's National Gender Policy Framework (NGPF)	https://www.gov.za/sites/default/files/gcis_document/201409/gender0.pdf
The National Strategic Plan on Gender-based Violence and Femicide	https://www.justice.gov.za/vg/gbv/nsp-gbv-final-doc-04-05.pdf
Comprehensive National GenderBased Violence Prevention Strategy	https://gbvf.org.za/wp-content/uploads/2021/12/3rd-Draft-Comprehensive-National-GBVF-Prevention-Strategy-23-Nov-Final.pdf

Legislation	Link
Children's Act (No. 38 of 2005) as amended by Children's Amendment Act (No. 17 of 2022)	https://www.justice.gov.za/legislation/acts/2005-038%20childrensact.pdf https://www.gov.za/sites/default/files/gcis_document/202301/47828gen1543_1.pdf

Child Justice Act (No. 75 of 2008) as amended by Child Justice Amendment Act (No. 28 of 2019)	https://www.justice.gov.za/legislation/acts/2008-075_childjustice.pdf https://www.justice.gov.za/legislation/acts/2019-028.pdf
Social Assistance Amendment Act (No. 16 of 2020)	https://www.gov.za/sites/default/files/gcis_document/202012/44035gon1414.pdf
Legislation	Link
National Plan of Action for Children in South Africa (2012-2017)	https://www.unicef.org/southafrica/media/1301/file/ZAF-national-plan-of-action-forchildren-in-South-Africa-2012-2017.pdf

Policy	Link
White Paper on the Rights of Persons with Disabilities	https://www.gov.za/sites/default/files/gcis_document/201603/39792gon230.pdf
Integrated National Disability Strategy (INDS)	https://www.gov.za/sites/default/files/gcis_document/201409/disability2.pdf
Education White Paper 6: Special Needs Education – Building an Inclusive Education and Training System	https://www.gov.za/sites/default/files/gcis_document/201409/educ61.pdf
Code of Good Practice on the Employment of People with Disabilities	https://www.gov.za/sites/default/files/gcis_document/201511/39383gon1085.pdf

Legislation	Link
National Youth Development Agency Act (No. 54 of 2008)	https://www.nyda.gov.za/Portals/0/downloads/NYDA%20Act%202008.pdf
Basic Conditions of Employment Act (No. 75 of 1997)	https://www.gov.za/sites/default/files/gcis_document/201409/a75-97.pdf
Skills Development Act (No. 97 of 1998)	https://www.gov.za/sites/default/files/gcis_document/201409/a97-98.pdf
South African Schools Act (No. 84 of 1996)	https://www.gov.za/sites/default/files/gcis_document/201409/act84of1996.pdf
Higher Education Act (No. 101 of 1997)	https://www.gov.za/sites/default/files/gcis_document/201409/a101-97.pdf
Policy	Link
National Youth Policy (NYP)	https://www.gov.za/sites/default/files/gcis_document/202103/nationalyouthpolicy.pdf
Integrated Youth Development Strategy (IYDS)	https://static.pmg.org.za/210602_NYDA_IYDS.pdf https://www.nyda.gov.za/Portals/0/downloads/APPROVED%20IYDS%202022-25.pdf



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