



THE STATE OF THE NATION, GOVERNMENT PRIORITIES AND WOMEN IN SOUTH AFRICA

Decent Work,
Education,
Crime, Health,
Rural Development
and Land Reform.



WOMEN'S LEGAL CENTRE



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Authors: Sanja Bornman, Debbie Budlender, Yaliwe Clarke, Stacey-Leigh Manoek, Christi van der Westhuizen, and Joy Watson with Sara Antunes and Nabihah Iqbal

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Contact Details

Women's Legal Centre
7th Floor, Constitution House 124 Adderley Street
Cape Town
tel: 021 424 5660
fax: 021 424 5206
web: www.wlce.co.za
e-mail: info@wlce.co.za

Graphic Design

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EXECUTIVE SUMMARY

This review of the State of the Nation Address (SONA) for 2013, as delivered by President Jacob Zuma in parliament on 14 February 2013, gauges how government's priorities for the year will affect the social, political and economic status of women. It also measures the advances made with regards to the five priorities the president set in the 2009 SONA, namely: Decent work, education, crime, health and rural development and agrarian reform. It ends with a conclusion stipulating issues of concern that should be watched out for during the course of 2013.

Decent Work

There was no mention of the disproportionate impact of unemployment on women, or details of any measures to improve women's position in the labour market, or any additional approach to create jobs beyond infrastructure development plans. In light of this, one cannot discern any significant commitment from the SONA 2013 which may contribute toward the reduction of female unemployment in the year ahead.

The government's focus on the development of infrastructure is expected to generate jobs in sectors dominated by men and which will therefore have little benefit to women.

The Women's Empowerment and Gender Equality Bill, aimed at making gender equality in the private and public sectors mandatory, overlaps with at least five existing laws, which begs the question why an assessment has not been done about the apparent lack of success of existing enforcement frameworks to ensure gender parity in the workplace. A new law is unlikely to address problems that have not been identified.

The dearth of publically available, sex-disaggregated data relating to jobs makes it impossible to monitor or assess the number of jobs saved or created as a result of government interventions. It is disappointing that the SONA 2013 did not enlighten the public in this regard, and that unemployment and job creation continue to be seen in a general light, and without acknowledgment that women bear the brunt of these phenomena. Failure to recognise that the unemployment of women must be specifically targeted and addressed will result in failure to change the gender discrepancies in the labour market.

Education

The Annual National Assessments (ANAs) have been a useful tool for gauging the efficacy of the education system. On the whole, girls outperformed boys in the 2012 ANAs. It is regrettable that the president failed to make mention of this in his address. SONA 2013 does not report any progress in maths, science and technology, apart from noting it again as an issue that will receive attention. The private sector was called upon to partner with the government through establishing or sponsoring maths and science academies on Saturdays. It is not clear what the vision, objectives or strategy for this initiative is.

SONA 2013 makes no mention of the problem of pervasive violence in South African schools. It also does not identify sexual violence in schools as a cause for concern, notwithstanding that it is estimated that more than 30 percent of girls are raped at school and that an estimated one-third of all documented rape cases and abuse of schoolgirls in South Africa are committed by teachers.

Despite some progress made with addressing acute infrastructural problems in schools in the Eastern Cape, there are still 83 schools without electricity, 97 without sanitation and 53 without access to water. Sanitation is especially important for girls, who not only miss school days due to lack of access to basic provisions when menstruating but are also at risk of sexual attack if toilet facilities are not easily accessible.

Due to prejudice, pregnancy accounts for around eight percent of school drop-outs among teenage girls, another unacceptable and preventable problem that remains unacknowledged in the SONA.

Crime

In 2012, Interpol labelled South Africa the 'rape capital of the world', estimating that a woman is raped every 17 seconds. Sexual violence against women has become 'normalised' in South African society. Research carried out between 2010 and 2012 indicates that 77 percent of women in Limpopo, 51 percent in Gauteng, 45 percent in the Western Cape, and 36 percent in KwaZulu-Natal, have experienced some form of violence (emotional, economic, physical or sexual) in their lifetimes, within and outside intimate relationships.

It is clear that South Africa's progressive legislative framework, including but not limited to the Sexual Offences Act of 2007 and the Domestic Violence Act of 1998, is failing to adequately combat violence against women.

Investigations are botched due to failures in the collection and

adequate utilisation of forensic and other evidence in court. These failures merit an urgent investigation and analysis of service delivery within the criminal justice system.

With reference to the new national council on gender-based violence, the SONA 2013 failed to provide any meaningful details about the mandate, powers and duties of the new structure, as well as how the public will be able to engage with it.

What is lacking is proper implementation of existing laws, policies and frameworks. This demands substantially more resources than have been allocated to date, a pressing matter that the SONA entirely overlooked. SONA 2013 also failed to address the pressing issues of funding for the Thuthuzela Care Centres and victim support services more broadly.

The fact that police specialised units' conviction rates are improving is an indication that concrete advances can be made through the implementation of dedicated services for sexual offences. A task team recommended last year that specialised courts for sexual offences be reintroduced. The justice minister responded with the comment that the public should 'exercise a bit of patience'. The president also made no mention of reintroducing these courts, which stands in stark contrast to the urgency with measures taken against so-called violent protestors.

Health

Gender-disaggregated data and analysis has been meagre in health policymaking. Women and men have different health concerns which gender-blind policies are not fit to address.

The president made much of progress in relation to life expectancy, highlighting that it increased from 56 years in 2009 to 60 years in 2011, but it is unclear how this improvement relates to South Africa's worsening maternal mortality rate. The maternal mortality ratio (Millennium Development Goal Five) worsened to an estimated level of 333 per 100,000 live births in 2009. Decreasing maternal and child mortality is one of four 'strategic outputs' that the healthcare sector must achieve by 2014. It is thus regrettable that the president reported no progress on this score in the SONA 2013.

The government missed a major opportunity to improve public health when it excluded the decriminalisation of sex work from the NSP. The criminalised status of sex work in South Africa subjects sex workers to widespread human rights abuses which includes police violence and unequal access to healthcare, rendering sex workers vulnerable to HIV.

SONA 2013 contains a pledge that the health department would 'accelerate' and 'intensify' the piloting of the national health insurance (NHI) in certain districts. Women have a large stake in the success of the NHI - not only do women account for most of the population, but they bear the brunt of HIV infection and prevalence, and carry the bulk of the responsibility for the promotion and protection of the health of their families. The president failed, however, to provide any indication of outcomes to date at the NHI pilot sites. One would have expected more details regarding the time frames for the implementation, the successes and failures of pilot sites, and efforts to upgrade the public healthcare system beyond the provision of human resources.

Rural Development And Land Reform

According to the latest census figures, women make up 52 percent of the population, and approximately 59 percent of those residing in the 'deep rural' areas are women. Despite this, the president made no mention of women in relation to rural development and land reform.

SONA 2013 refers to Green Paper on Land Reform, gazetted in May 2011 for public input, which also overlooks the position of rural women in South Africa.

Critical concerns of rural communities, and rural women in particular, such as food security, access to land and agrarian reform, were unaddressed in the SONA 2013.

The exclusion of rural women from land reform has been exacerbated by parliament's wave of retrogressive legislation introduced since 2003. This includes the Traditional Leadership and Governance Framework Act of 2003, the Communal Land Rights Act of 2004 (which has subsequently been declared unconstitutional), and the Traditional Courts Bill of 2012. These pieces of legislation serve to 'centralise power to [African] chiefs and bolster their ability to unilaterally define the content of customary law.' Thus, their effect on rural women in South Africa is such that constitutional rights to land reform, as guaranteed in Section 25 of the Constitution, and food security and poverty reduction as guaranteed in Section 27 of the Constitution, are either significantly compromised or entirely overlooked. It is crucial that government revisits its stance on traditional affairs and recasts land reform in gender terms.

The Commission on Gender Equality pointed out last year that 'men constitute 90 percent of land reform beneficiaries, revealing the age-old non-recognition of women's title to land'. Analysis is required to determine the actual number of women beneficiaries in land restitution, the particular impact of land restitution remedies on women, and the participation of women in land holding mechanisms.

In conclusion, this review shows that in all five government priority areas, women carry disproportionately heavy burdens – whether due to historical legacies of gender injustice, current gender inequities or generalised failures in government services. Notably, however, solutions proposed in SONA 2013 disproportionately benefit men. This places a question mark over claims that the current government is concerned with overturning gender inequality in all its permutations – an impression which is strengthened by the lack of gender-disaggregated data.

INTRODUCTION

This review of the State of the Nation Address (SONA) for 2013, as delivered by President Jacob Zuma in parliament on 14 February 2013, gauges how government's priorities for the year will affect the social, political and economic status of women. It also measures the advances made with regards to the five priorities the president set in the 2009 SONA, namely:

DECENT WORK

EDUCATION

CRIME

HEALTH

**RURAL DEVELOPMENT
AND LAND REFORM**

DECENT WORK

Developments in 2012 - what was promised, and what was delivered

In the 2012 SONA address, the president stressed the main obstacle to progress in South Africa as being the 'triple' challenge of poverty, inequality and unemployment. Emphasising economic growth and job creation, he announced the government's prioritisation of investment in infrastructure development during 2012 to address this triple challenge.¹

This commitment was in line with the New Growth Path, which identifies investment in infrastructure as the first job driver.² Five major, geographically focused programmes and social infrastructure projects were thus identified in the SONA 2012.³ These projects were included in the National Infrastructure Plan,⁴ and launched during 2012 with the aim of meeting the infrastructure needs of the economy over the next 20 years. The plan identifies 18 key strategic projects covering more than 150 specific infrastructure interventions countrywide, ranging from rail, roads, ports, irrigation systems and sanitation, to broadband infrastructure.

While development of infrastructure is essential for the country's economic development, it is unlikely to create a large number of jobs for women. As indicated in the presidential

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- 1 Presidency of South Africa (2012), State of the Nation Address [SONA].
 - 2 New Growth Path. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=135748>
 - 3 SONA 2012
 - 4 Presidency of South Africa (2012), The State of South Africa's Infrastructure: Opportunities and Challenges. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=174619>
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infrastructure coordinating commission's (PICC) summary of the National Infrastructure Plan, the development of infrastructure is expected to generate jobs primarily in the construction sector, and to a lesser extent in the manufacturing sector. Particularly construction is dominated by men. Consequently, these massive infrastructure initiatives will not boost job creation for women. The development of infrastructure can be of benefit to women where aimed at the delivery of government services for families, as women still carry the greatest burden when it comes to care-giving. However, most government discussions of the infrastructure plans refer much less to infrastructure with social uses than to other forms of infrastructure.

The SONA 2012 announced the government's intention to introduce the Women's Empowerment and Gender Equality Bill with the aim of making gender equality in the private and public sectors mandatory, and to provide for sanctions in the case of non-compliance.⁵ In September 2012, the minister of women, children and people with disabilities formally introduced the Bill.

While the Bill addresses the need for general oversight and enforcement of gender equality, it cannot be viewed as a panacea for women's unemployment and low earnings when employed. Firstly, the Bill elevates the Ministry to a position of oversight, whereas the Commission for Gender Equality (CGE) is already mandated, in terms of the Constitution, to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality. As a Chapter 9 institution it is independent, subject only to the Constitution and the law.

⁵ Idem.

No organ of state may interfere with Chapter 9 institutions. If the Bill is to be effective, there is a need for clarification and alignment between the roles and responsibilities of the ministry and the CGE.

Secondly, and especially in the context of labour and employment, there is duplication between the Bill and existing legislation in the form of the Promotion of Equality and Prevention of Unfair Discrimination Act, the Employment Equity Act, the Broad-Based Black Economic Empowerment Act and core labour laws such as the Basic Conditions of Employment Act and Labour Relations Act. If the existing legislation has been unsuccessful in bringing about gender parity in the labour market and in the workplace, as the next section shows, it may be preferable to amend and supplement existing legislation and enforcement mechanisms, as opposed to putting in place a wholly new piece of legislation. The state must assess the existing enforcement framework, and ascertain why it has not been successful in ensuring compliance with existing legislation. This assessment should inform the debate on improvement of existing structures or the need to create a new and effective structure, before the Bill becomes law.

Job creation figures through infrastructure development can be gleaned from the Industrial Development Corporation's (IDC) annual report showing the value of funding increasing from R8.7 billion in 2011 to R13.5 billion in 2012. The number of funding approvals increased from 221 to 293. The report estimates that these figures translated into 45 900 jobs created, 48 percent of which were in rural areas. A closer inspection of the allocation of IDC funds reveals, however, that the bulk of the funding went to male-dominated sectors, such as mining,

“...one cannot discern any significant commitment from the SONA 2013 which may contribute toward the reduction of female unemployment in the year ahead..”

manufacturing and agricultural industries, with mining and mineral beneficiation in particular registering an above average number of jobs created or saved.⁶

Consequently, the question is: to what extent have government interventions in the economy created employment opportunities for women in 2012? Statistics South Africa's Quarterly Labour Force Survey (QLFS) provides a good starting point for an analysis. When disaggregating the results by sex, it becomes evident that women continue to bear the brunt of joblessness. Year-on-year, between the fourth quarter of 2011 and the fourth quarter of 2012, the number of unemployed men increased by 5,1 percent while the number of unemployed women increased by seven percent.⁷ Women's unemployment remains higher than men's, and higher than the national average.

Women make up most of the workforce in private households, a sector that experienced job losses between the fourth quarter of 2011 and the same period in 2012.⁸ Meanwhile in sectors where gains were observed, such as agriculture, construction and mining, male presence surpasses female presence.⁹

Overall the QLFS findings are sufficient to conclude that women are being disproportionately affected by unemployment. Women only outnumber men in community and social services and private households. These are low-paying jobs that women have historically been relegated to, in fulfilment of stereotypical

6 Id, p. 30

7 Statistics South Africa, Quarterly Labour Force Survey (Quarter 4), Table E at xiv

8 Id. vii

9 Id, p. 15

notions of femininity. Women are expected to care for others and support so-called male roles. Domestic work, in particular, is an industry prone to unfair labour practices. South Africa has put in place a sectoral determination that provides for minimum wages, caps on working hours, a prescribed number of leave days and termination rules for domestic workers. It is unclear, therefore, why the government has not yet ratified the International Labour Organisation's Domestic Workers Convention of 2011 (No. 189). The convention recognises that domestic work plays an important part in the socio-economic development of society and thus imposes on states a commitment towards the protection of the rights of domestic workers.¹⁰

In order to improve the prospects of reducing inequality, poverty and unemployment in South Africa – the triple challenge to which the president referred to in SONA 2012 – it is imperative that gender equality becomes a governmental priority. In this respect, the incorporation of a gender perspective in public policies and promotion of gender parity in job creation remain much needed. In November 2012 the labour minister introduced a Bill to amend the Employment Equity Act to expressly include the principle of equal pay for work of equal value in section six of the act, which prohibits unfair discrimination and applies to all employers and employees. This is a positive step. However, as already discussed, the legal framework, including the Employment Equity Act, has to date been unsuccessful in guaranteeing equality in the workplace for women. Investigation of this failure is required.

10 International Domestic Workers Network Africa and Global Network Africa Joint Declaration (9 December 2012). Available at: <http://www.lrs.org.za/docs/IDWN%20Africa%20and%20GN%20Africa%20Joint%20Declaration%209%20Dec%202012%20Cape%20Town.pdf>

SONA 2013 and looking ahead

In SONA 2013, the president's stance on job creation was consistent with that of 2012. He reiterated the centrality of sound infrastructure development policy as the solution to the triple challenge of inequality, poverty and unemployment. The president stated that in his last meeting with the business community, its representatives indicated that for the economy to grow three-fold we must 'remove certain obstacles'. There is no detail as to what these obstacles are, whether they include barriers to women accessing decent work opportunities, or gender equity in the labour market.

In terms of progress, the president enumerated a number of infrastructure projects that commenced in the course of 2012, which are likely to benefit men more than women, given that men continue to dominate construction. The address was disappointing, as there was no mention of the disproportionate impact of unemployment on women, or details of any measures to improve women's position in the labour market, or any additional approach to create jobs beyond infrastructure development plans. In light of this, one cannot discern any significant commitment from the SONA 2013 which may contribute toward the reduction of female unemployment in the year ahead.

The only potentially relevant measure to curb women's disproportionate unemployment is the 'clothing support scheme' which, the president stated, provides broad financial support aimed at saving a number of factories and jobs. Women dominate employment in this industry, but compensation for workers

The state's target is to create 11 million jobs by 2030, but there is no indication of how the gender 'gaps', particularly in formal employment, will be closed. Failure to recognise that the unemployment of women must be specifically targeted and addressed will result in continued failure to change the gender discrepancies in the labour market.

in this industry is paltry, with clothing companies frequently refusing to pay their workers the legislated minimum wage.¹¹

The dearth of publically available, sex-disaggregated data relating to jobs makes it impossible to monitor or assess the number of jobs saved or created for women as a result of government interventions. It is disappointing that the SONA 2013 did not enlighten the public in this regard, and that unemployment and job creation continue to be seen in a general light, and without acknowledgment that women bear the brunt of joblessness. The state's target is to create 11 million jobs by 2030, but there is no indication of how the gender 'gaps', particularly in formal employment, will be closed. Failure to recognise that the unemployment of women must be specifically targeted and addressed will result in continued failure to change the gender discrepancies in the labour market.

¹¹ Accessed at: <http://www.fm.co.za/economy/2013/02/04/minimum-wages---how-low-can-you-go> and <http://mg.co.za/article/2012-02-17-clothing-industry-sheds-jobs>

EDUCATION

Development in 2012 - what was promised and what was delivered

Efforts to address economic inequality and women's access to the job market should start with a good quality education. Hence, the adequate resourcing of schools and ensuring good education plays a critical role in giving girls a fair chance in life.

The SONA 2012 reaffirmed education as one of the main priorities of the government and made a number of service delivery commitments. Key amongst these was the improvement of infrastructure in schools that were inadequately resourced and where there was little or no infrastructure. The spending focus of the department of basic education over the medium term expenditure framework has been on infrastructure development in provinces. Expenditure in the department has increased at an average annual rate of 30.2 percent since 2008/09, largely as a result of increases in the education infrastructure conditional grant and the introduction of the school infrastructure backlogs grant. Notwithstanding significant progress made in this regard, much work still needs to be done to fix schools that have no or inappropriate infrastructure, sanitation, water and electricity.

The training of teachers to ensure that they are suitably skilled was also identified as a priority in the SONA 2012. The department of basic education's integrated strategic plan for teacher education and development aims at improving the capacity of teachers in the period from 2011 – 2025. In the 2011/2012 financial year, the department reported that a total of 184,207 teachers participated in teacher development activities, with a focus on underperforming schools. In this period, the depart-

ment had also aimed to establish the National Institute for Curriculum and Professional Development but failed to do so, as the concept document was not approved. Data in respect of teacher training are not disaggregated by gender, making it impossible to determine how many women teachers were trained.

The SONA 2012 outlined government's intention to address the non-delivery of textbooks to schools, specifically in the Eastern Cape. The president promised continued interventions in the Eastern Cape to address the poor culture of learning and teaching in that province. The following progress was made over the course of the past year:

- **Of 49 schools with inappropriate infrastructure, 10 were fixed.**
- **Of 190 schools without electricity, 107 were connected to electricity supply sources.**
- **Of 237 schools without sanitation, 144 were provided with sanitation facilities.**
- **Of 173 schools without water, 102 were given access to water.¹**

The progress suggests it will take another four years to fix even these schools, by which time there will no doubt be other schools requiring attention. While the numbers show some success, they also reveal that there are 83 schools without

¹ Sourced at <http://www.equaleducation.org.za/node/774>

electricity, 97 without sanitation (which is especially important for girls, including from a safety perspective) and 53 without access to water.

Proper infrastructure in schools is important for all children. However, it also has specific gendered implications. In under-resourced areas where there is no proper sanitation in schools, for example, girls are known to stay out of school when menstruating.

Notwithstanding the progress outlined above, the national government's intervention in the Eastern Cape was hampered. A team assisting with the intervention had to be withdrawn as a result of the provincial government's hostile response. Civil society organisations sought legal recourse and an out-of-court settlement was reached. The department agreed to provide teachers for schools in the province. However, there remains a need to monitor the ability of the provincial department to give effect to its mandate. The shortage of teachers remains of concern. Many teachers are employed on a contract, as opposed to a permanent basis.

The SONA 2012 also identified a general lack of competency amongst learners in the areas of maths and science. South Africa has been ranked as the worst performer in the world in these disciplines in a World Economic Forum survey for 2011-2012. In 2011, one in six pupils who wrote the matric examinations got a score of less than 10 percent in maths. Girls have traditionally not been socialised in ways that encourage them to excel in maths and science. As a result, women tend to be under-represented in professions that require these disciplines. Efforts to address poor competency in maths, science and

“The Auditor General found that the department did not achieve 47 percent of its targets during the year under review.”

technology need to have a specific focus on enhancing the skills of girls in this regard. The SONA 2013 does not report any progress in this regard, apart from noting it again as an issue that will receive attention. To this end, the department will establish a national task team. The private sector was called upon to partner with the government through establishing or sponsoring maths and science academies on Saturdays. It is not clear what the vision, objectives or strategy for this initiative is.

The 2012 SONA highlighted that approximately 120,000 children aged between 7 and 15 years of age are not in school. A UNESCO report indicates that in 2010 there were an estimated 679,000 children of both primary and secondary school age out of school in South Africa.² This figure is similar to those contained in a 2011 report produced by UNICEF³ and by the department for women, children and people with disabilities. The reason for the variance in the figures could be that the figure of 120,000 refers only to children at primary school age. Regarding non-attendance, a 2012 report by the Children's Institute asserts that 'overall attendance rates tend to mask the problem of drop-outs among older children', with analysis showing that there is a significant drop in attendance amongst children older than 14.⁴ Statistics indicate that there is no noticeable difference in the drop-out rates between girls and boys.⁵ It is as yet unclear as to what progress has been made in reducing

2 Accessed at: http://www.uis.unesco.org/FactSheets/Documents/FS12_2011_00SC_EN.pdf

3 Accessed at: http://www.unicef.org/southafrica/SAF_resources_factschildrens22.pdf

4 South African Child Gauge 2012, Katharine Hall, Ingrid Woolard, Lori Lake & Charmaine Smith, University of Cape Town, Children's Institute, p.96. Accessed at: http://www.unicef.org/southafrica/SAF_resources_factschildrens22.pdf

5 Ibid.

the number of learners not in school. Bearing in mind that girls are disproportionately socioeconomically disadvantaged active steps should be taken to keep them in school in particular.

Civil society organisations (CSOs) have drawn the government's attention to the pandemic of sexual violence in schools in recent months. Although policies and guidelines on how to deal with problems of sexual offences in schools do exist, implementation remains inadequate, and this has led CSOs such as Section 27 and the Legal Resources Centre to pursue legal cases. Female pupils in South African schools are widely subjected to negative and derogatory attitudes, as demonstrated by views put forward by participants in a parliamentary 'millennium project' workshop in 2012, that girls who have become pregnant (after rape or in other ways) should be excluded from education.⁶ Such opinions hold testament to the notion that sexism pervades the school environment in South Africa, despite the fact that policy does not permit such exclusion. The latest statistics show that pregnancy accounts for around eight percent of drop-outs amongst teenage girls not attending school.⁷

SONA 2013 and looking ahead

The SONA 2013 indicates that the government is satisfied with the progress in early childhood education programmes,

6 'Preventing pupils' pregnant pause', Mail & Guardian, <http://mg.co.za/article/2012-05-23-preventing-pupils-pregnant-pause>

7 South African Child Gauge 2012, Katharine Hall, Ingrid Woolard, Lori Lake & Charmaine Smith, University of Cape Town, Children's Institute, p.96. Accessed at: http://www.unicef.org/southafrica/SAF_resources_factschildrens22.pdf

including Grade R. Similarly, the government is content with its adult education programme, Kha Ri Gude, which has reached more than 2.2 million people between 2008 and 2011. Further achievements noted by the president include the fact that the Grade 12 pass rate is finally improving. The annual national assessments (ANAs) have been a useful tool for gauging the efficacy of the education system. On the whole, girls outperformed boys in the 2012 ANAs.⁸ It is regrettable that the president failed to make mention of this in his address.

The president reported on an improvement in ANA results but acknowledged that more needs to be done in maths, science and technology. Of interest here is the fact that the Treasury's estimates of national expenditure (2012) noted that 'the results from the department's annual national assessments programme for 2011 for grades three and six indicate that learner performance is below what it should be by any measure.'⁹

In terms of the infrastructure development programme, he noted that a total of 98 new schools would replace mud schools by the end of March. Forty of these schools would be built in the Eastern Cape. In addition, construction on two new universities will commence in September 2013 in the Northern Cape and Mpumalanga respectively.

The president noted that in elevating education to its rightful place in society the focus will be on improving the quality

⁸ Report on the Annual National Assessment, Grades 1 to 6 & 9. Available at <http://www.education.gov.za/LinkClick.aspx?fileticket=YyzLT0k5YU%3D&tabid=298>

⁹ National Treasury, 'Estimates of National Expenditure', Vote 15

of learning and teaching and the management of schools. He called for an 'improvement in attitudes, postures and outcomes' where, working with educators, parents and the communities, schools must be turned into centres of excellence. The speech is silent on how this will be accomplished and makes no mention of any of the key issues that have threatened to tear apart the education system in some provinces over the course of the past year. One of the most critical challenges to have emerged was the non-delivery of textbooks to schools in Limpopo, which reached a point of crisis severely affecting learners' access to education. Other provinces affected included North West, Mpumalanga and KwaZulu-Natal.

In the 2011/2012 audit of the department of basic education, the Auditor General (AG) flagged a number of critical areas for action. The AG found that the Department did not achieve 47 percent of its targets during the year under review. In addition to poor performance, the department also under-spent on its budget on the following programmes:

- **Programme Two: Curriculum Policy, Support and Monitoring – under-spent by R96,394 million;**
- **Programme Three: Teachers, Education Human Resources and Institutional Development – under-spent by R43,145 million;**
- **Programme Four: Planning, Information and Assessment – under-spent by R1,017,475 million.**

These amounts are significant and departmental performance in this regard would need to be closely monitored. The under-expenditure calls into question the ability of the department to deliver as far as these programmes are concerned and it would need to work hard to ensure that it reaches its targets.

As regards learning materials, the AG noted that the department had not provided the requisite information to determine the validity of its reported performance in this regard. The information provided by the department in its annual report did not speak to the indicator set which requires that workbooks and textbooks are made available to learners. Instead, the report indicates that some of the learner teacher support materials were delivered to the provinces and provincial districts. It is therefore difficult to establish the actual percentage of textbooks and workbooks that were made available to learners. This problem is exacerbated by the fact that the department does not have proper controls to collect and verify learner numbers at schools. Hence, the department has been unable to estimate the total number of support materials to be printed in the relevant languages for delivery to schools. Given the crisis in Limpopo in 2012, this would need to be addressed as a matter of urgency.

The President stated that the department of education has put in place a national task team to strengthen the implementation of mathematics, science and technology. However, it unclear whether there is any recognition of the need shift discriminatory stereotypes that continue to undermine girls' interests, uptake, and progression in these subjects.

The presence of a gang culture in a school or community has specific gendered dimensions, including the use of rape as gang initiation and consequent effects on girls in contexts where gangs wield significant social power.

The SONA 2013 makes no mention of the problem of pervasive violence in South African schools, despite basic education minister Angie Motshekga saying in a speech on 25 January 2013, that 'we will reflect on the impact of existing programmes for building safer schools and fighting gender-based violence and sexual harassment.'¹⁰ One of the permutations of violence in schools is gangsterism. The presence of a gang culture in a school or community has specific gendered dimensions, including the use of rape as gang initiation and consequent effects on girls in contexts where gangs wield significant social power. The 2013 SONA does not identify sexual violence in schools as a cause for concern, notwithstanding that it is estimated that more than 30 percent of girls are raped at school.¹¹ The policy for addressing sexual violence and harassment in schools is the Guidelines for the Prevention and Management of Sexual Violence and Harassment in Public Schools (2008). Despite this policy, which provides a framework for support to victims and how to engage with perpetrators, there is room for significant improvement in eradicating sexual violence and harassment in schools. In addition, concerted efforts need to be made to focus on creating an awareness of the issue in schools and in focusing on preventative strategies.

¹⁰ <http://www.education.gov.za/Newsroom/Speeches/tabid/298/ctl/Details/mid/2341/ItemID/3581/Default.aspx>

¹¹ "School-based Violence Report: an overview of school-based violence in South Africa", South African Council of Educators, November 2011

CRIME

Development in 2012 - what was promised and what was delivered

It was announced in the SONA 2012 that 'our country witnessed a decline of five percent in the number of reported serious crimes, compared to the previous year'. However, violent crimes against women had in fact increased, rather than decreased, in the said period. Female homicides rose by 5.5 percent and, while the total number of sexual offences dropped, this decrease disguised a hike in the number of rapes reported.

In 2012, Interpol labelled South Africa the 'rape capital of the world', estimating that a woman is raped every 17 seconds.¹ A 2012 report by Human Rights Watch, which challenged recent statistics of the South African Police Service (SAPS),² stated that violence against women, and specifically sexual violence, is on the increase.³ Furthermore, the failure of the criminal justice system to investigate and punish sexual violence has created a culture of impunity for rape.⁴ Patriarchal norms and attitudes, including those that excuse or legitimise the use of force, are

1 SABC, 'South Africa, world's rape capital: Interpol', 19.04.2012. Accessed at: <http://www.sabc.co.za/news/a/a424c0804af19b5e9583fd7db529e2d0/South-Africa,-worlds-rape-capital:-Interpol-20121904>

2 SAPS, Crime Statistics Overview 2011-12 states that there was a 3.7 percent decrease recorded in rapes between 2011 and 2012, but given the stigma, lack of understanding, and low rates of reporting which surround rape in South Africa, this statistic should not be regarded as indicative of any concrete reduction in the level of rapes. http://www.saps.gov.za/statistics/reports/crimestats/2012/downloads/crime_statistics_presentation.pdf

3 Human Right Watch, World Report 2012: South Africa, Accessed at: <http://www.hrw.org/world-report-2012/world-report-2012-south-africa>

4 Ibid.

driving the alarming rates of violence against women in South Africa.⁵

Sexual violence against women has become 'normalised' in South African society. Research carried out between 2010 and 2012 indicates that 77 percent of women in Limpopo, 51 percent in Gauteng, 45 percent in the Western Cape, and 36 percent in KwaZulu- Natal have experienced some form of violence (emotional, economic, physical or sexual) in their lifetimes, both within and outside intimate relationships.⁶

According to SAPS statistics, a total of 66,196 sexual offences were reported for the year 2011/12.⁷ Almost half (48.5 percent) of the victims of these sexual offences were adult women, amounting to 31,299 reported incidents.⁸ Statistics released by the National Prosecuting Authority (NPA) for the same year indicate that out of a total of 66,196 reported sexual offences, only 6,913 were finalised in court, with a conviction rate of only 65 percent. Because the NPA's statistics do not disaggregate sexual offences according to the victim's sex, the number of convictions that apply to offences committed against women is unknown. Low conviction rates are further exacerbated by the general under-reporting of rape, with some estimating that only one out of every 25 rapes is reported to the police.⁹ Reasons

“This lacklustre approach to addressing violence against women is significant when compared with the president’s reaction to so-called ‘violent’ protests.”

for women's reluctance to report rape include self-blame, fear of not being believed, trauma and fear of secondary victimisation in the criminal justice system.¹⁰

31,299 Number of reported sexual offences against adult women (SAPS 2011/2012 statistics):¹¹

6,913 Number of sexual offences against women, children and men (NPA statistics for 2011/12) matters finalised

4,493 Number of convictions as a result of sexual offences against women, children and men that reached a successful conviction (NPA statistics for 2011/12): 65.1 percent¹²

It is clear that South Africa's progressive legislative framework, including but not limited to the Sexual Offences Act of 2007 and the Domestic Violence Act of 1998, is failing to adequately combat violence against women. Detailed national policy guidelines and instructions related to the Sexual Offences Act for police officers, prosecutors and healthcare practitioners are in place. However, despite these measures, service providers'

5 Gender Links, 'South Africa: Multi-pronged approach needed to reduce gender-based violence', 24.11.12, <http://www.genderlinks.org.za/article/multi-pronged-approach-needed-to-reduce-gbv-in-sa-2012-11-25>

6 Id.

7 http://www.saps.gov.za/statistics/reports/crimestats/2012/downloads/crime_statistics_presentation.pdf

8 Id.

9 "The war @ home: Preliminary findings of the Gauteng Gender Violence Prevalence Study", Gender Links and the Medical Research Council, available

at <http://www.genderlinks.org.za/article/the-warhome-findings-of-the-gbv-prevalence-study-in-south-africa-2012-11-25>

10 POWA with the AIDS Legal Network, Criminal Injustice: Violence against Women in South Africa. Shadow Report on Beijing +15. March 2010. Available at: www2.ohchr.org/english/bodies/cedaw/docs/ngos/POWA_Others_SouthAfrica48.pdf

11 SAPS, Crime Statistics Overview, 2011/12 http://www.saps.gov.za/statistics/reports/crimestats/2012/downloads/crime_statistics_presentation.pdf

12 National Prosecuting Authority, Annual Report 2011/12 <http://www.npa.gov.za/UploadedFiles/NPA%20Annual%20Report%202011-12%20Final%20Copy.pdf>

treatment of victims drives them away from the criminal justice system. Investigations are botched due to failures in the collection and utilisation of forensic, and other forms of evidence in court. These failures merit urgent investigation and analysis of service delivery within the criminal justice system and in relation to the current legislative framework.

The criminalisation of sex work in South Africa has neither eradicated nor reduced the number of people involved in the industry. Instead, the illegal status of sex workers creates conditions in which their exploitation and abuse thrive.¹³ In the face of daily human rights violations and due to the criminalised nature of their work, sex workers mostly do not report crimes committed against them. The patterns of violation that sex workers experience are the direct result of their 'criminal' status, which increases their vulnerability to violence.

SONA 2013 and looking ahead

The stand-out comment from the president in relation to violence against women concerned the 'brutal gang rape and murder' of Anene Booysen which, he said, 'brought into sharp focus the need for unity in action to eradicate this scourge'.

These remarks suggest that violence against women requires 'unity in action' only when brutal. Also, for most women in South Africa, given our rape and femicide realities, violence have long been 'in sharp focus'.

The comments could also suggest that where rape is not particularly brutal, it is not deemed part of the scourge to which the president refers. This indirectly reinforces the myth that the rapes which require our attention are those that entail 'brutal' physical violence. Rape myths such as these undermine efforts to eradicate misperceptions about rape, the perpetrators and the everyday conditions under which this crime against women is committed.

Of critical concern too is violence against lesbian and transgender women because

¹³ Manoek, S. 'Stop Harassing Us! Tackle Real Crime!', Women's Legal Centre, Sisonke and the Sex Workers Education and Advocacy Taskforce, August 2012.

of their perceived transgression of gender norms and prescriptions. Lesbian survivors of prejudice-motivated violence are often met with further discrimination when seeking justice from the police services and through the courts. The particular social and economic exclusions that are experienced by lesbians increase their susceptibility to targeted violence, and this requires a focused response within wider strategies to address gender-based violence. In 2011 the department of justice and constitutional development established a national task team to deal with the issue, but to date the task team has not agreed on its terms of reference, and no activities have been carried out by it. Despite this, and notwithstanding a heightened public awareness about the violence and discrimination faced by lesbians and the need for political will to respond to it, the SONA 2013 was silent on this matter.

The National Council on Gender-Based Violence was established in 2012 and comprises government departments and civil society sectors. The president urged the new national council to 'make the campaign of fighting violence against women an everyday campaign'. However, in addition to campaigns - which primarily

focus on awareness-raising activities - what is lacking is proper implementation of existing laws, policies and frameworks. The successful implementation of the current legislative and policy frameworks demand substantially more resources than have been allocated to date, a pressing matter that the 2013 SONA entirely overlooked.

The SONA 2013 failed to provide any meaningful details about the mandate, powers, and duties of the new council, as well as how the public will be able to engage with it. Given that South Africa has a victim empowerment programme (VEP) and associated national policy guidelines, it is worrying that no mention was made of progress with the VEP, or of how the newly established national council is distinct from it and how the two structures interrelate.

Kathleen Dey, director of the Rape Crisis Cape Town Trust, has stated that the new national council 'is not the answer' and that 'no special council, directive or plan can help [as] we need a significant allocation of resources and we need it now.'¹⁴ In the course of 2012, non-profit

¹⁴ Kathleen Dey, personal communication,

organisations that deliver essential services to female victims of sexual and other violence found themselves on the brink of closure due to a lack of funding.

An adequate and large-scale response to violence against women requires sufficient resourcing, particularly for NGOs which are most often the first port of call for survivors, and which provide an essential service on behalf of the state. In the SONA 2012 the president indicated that ongoing support for victims is available through Thuthuzela Care Centres, designed to provide an integrated, one-stop service to victims of sexual and other crimes. The initial funding for these centres was provided by international donors, with the state scheduled to take over the role of core funder in due course. However, there has been no report on progress in rolling out Thuthuzela Care Centres, or the state assuming its role as their funder. The SONA 2013 failed to address the pressing issues of funding, for the centres as well as for victim support services more broadly.

The president failed to acknowledge that our criminal justice system, in its entirety, is not functioning as it should. Only cursory

mention was made of increased staffing for the family violence, child protection and sexual offences units. During the last financial year, the units secured over 363 life sentences, with a conviction rate of 73 percent for crimes against women of 18 years and older, and 70 percent conviction for crimes against children under 18. The fact that under the specialised units conviction rates are improving is an indication that concrete advances can be made through the implementation of specialised and dedicated services for sexual offences. Still, taking into consideration the vast under-reporting of sexual and other violence against women, a reality not mentioned by the president, we should not see these statistics as an unqualified achievement.

The president stated that the Protection from Harassment Act would provide further security for women. However, this act was already passed into law back in 2011, and therefore cannot be said to constitute a new development in addressing violence against women in 2013. Statistics on the implementation of the act have not been made public. Nor is there any indication of how, and indeed if, the offences covered under this act feature in the SAPS statistics on crimes against women. In

fact, implementation of the act has been delayed by the police and the department of justice and constitutional development, who have failed to draw up directives for their officials.

The president also announced that the Prevention and Combating of Trafficking in Persons Bill was passed by the National Assembly in 2012, and is now before the National Council of Provinces. He asserted that, once implemented, the legislation would assist women who are victims of trafficking. However, no detail is provided on how the Bill will achieve this aim, or on the time frame for its promulgation.

The president made no mention of any progress in re-introducing the specialised sexual offences courts that were previously disbanded. In mid-2012, the justice minister appointed a task team to investigate the reintroduction of these courts. Almost half a year later, in December 2012, the team recommended the courts' re-establishment, and yet the minister asked the public to 'exercise a bit of patience'. This lacklustre approach to addressing violence against women is significant when compared with the president's reaction to so-called 'violent' protests, which has raised questions about the government's commitment to freedom

of assembly and speech. In response to the protests, he has instructed the justice, crime prevention and security cluster to put measures in place, with immediate effect, to act upon, investigate and prosecute violent protesters. Also, courts have been allocated to deal with this on a prioritised roll. Similarly, prompt action was taken during the 2010 Soccer World Cup, which saw special courts sitting for longer hours with dedicated staff, in order to hear and finalise criminal matters on an expedited basis. Why the discrepancy in approach to rape, which happens to one in four women, and femicide, which claims a woman's life every eight hours?

Developments in 2012 - what was promised and what was delivered

Of particular concern in the 2012 SONA was the president's reduction of women's health issues to the prevention of mother-to-child transmission (PMTCT) of HIV, when many more women die from AIDS-related causes and South Africa's maternal mortality is worse than many comparable countries. The SONA 2012 contained claims of progress on PMTCT, but in the absence of statistics such claims were unconvincing.

On the issue of non-communicable diseases, the president encouraged South Africans to live healthier lives to reduce the risk of these types of diseases. However, the number of deaths in South Africa resulting from these diseases continues to grow, with more women than men dying of strokes, hypertensive heart diseases and diabetes mellitus.¹

As part of the commitment towards infrastructure development, the dominant topic of SONA 2012, the president announced that projects would be carried out to lay the foundations for the National Health Insurance (NHI) scheme. Specifically, the president stated that the government would refurbish hospitals and nurses' homes. In addition to these, the president also committed to extending access to basic water supply in areas where this was still a challenge. The provision of better health-related water infrastructure is a necessary condition to improve the population's healthcare. Particularly in rural settings, many hospitals and clinics face water scarcity. In 2008,

¹ <http://www.mrc.ac.za/bod/faqdeath.htm>

the United Nations warned that the lack of access to water contributed directly toward higher levels of mortality, especially among children and women.²

Even though women's specific health concerns were strikingly absent from SONA 2012, the health minister raised the issue of maternal and child mortality in his budget vote speech in April 2012.³ A series of interventions were outlined, including the campaign on accelerated reduction of maternal and child mortality (CARMMA), a programme designed by the African Union, which pledges to fully eradicate PMTCT by 2015.⁴ CARMMA is an all-encompassing project that seeks to improve the provision, quality and accessibility of pre-natal care, primary healthcare and treatment of HIV-positive mothers. Although the pilot programme was started in KwaZulu-Natal in May 2012, there is still no available data on how the programme is faring or how much has been allocated for its expansion.

Overall, the government did not make enough effort to incorporate gender into health policy in 2012. It is a cause for great concern that gender-disaggregated data and analysis has been meagre in health policy-making. It is important to bear in mind that women and men have sex-specific health concerns which gender-blind policies are generally not fit to address. The as-

2 Schuster-Wallace, et al. (2008), "Safe Water as the Key to Global Health", report commissioned by United Nations University International Network on Water, Environment and Health (UNU-INWEH) available from: http://www.inweh.unu.edu/documents/SafeWater_Web_version.pdf

3 Minister of Health Budget Vote Speech, 24th April 2012 available from: <http://www.doh.gov.za/show.php?id=3564>

4 South Africa's National Strategic Plan For A Campaign On Accelerated Reduction Of Maternal And Child Mortality In Africa (Carmma): "South Africa care: No woman should die while giving life", available from: <http://www.doh.gov.za/docs/stratdocs/2012/carmma.pdf>

sumption that policies automatically cover everybody will result in ineffective service delivery, which has a devastating impact on women's health.

We cannot allow our health policies to miss the mark in terms of the needs of women. This was clearly demonstrated in a 2012 research report entitled, *Are women at the centre? A critical review of the new NSP response to women's sexual and reproductive rights (NSP refers to National Strategic Plan on HIV, TB and STIs 2012 – 2016)*.⁵ Johanna Kehler, writing for the AIDS Legal Network, concludes that, 'there are a number of concerns with regard to the response to women and HIV, including the conceptualisation of women's realities, risks and needs in the NSP.' This is extremely worrying, as the NSP constitutes South Africa's primary action plan against HIV/AIDS and related diseases – of which women, particularly young women, are most at risk.

"The fact that thousands of women still die during child birth is a reflection of the status of women in South Africa."

Apart from the problem of accessibility of health services, women are faced with inadequate health services. The successive disinvestment in the public health sector throughout the years has resulted in insufficient human resources and an overall dearth of skills.

It should be acknowledged that in 2012, the government completed its NHI Green Paper, which includes steps to increase the quality and capacity of the public health system. However, positive results will depend on how implementation and man-

5 Kehler, J. (2012), "Are women at the centre? A critical review of the new NSP response to women's sexual and reproductive rights", AIDS Legal Network, available from: <http://www.aln.org.za/downloads/NSP%20&%20Women%27s%20SRR.pdf>

agement play out, and there is much public doubt regarding South Africa's readiness to put an NHI into operation. Little has been done to re-assure the public in this regard. Moreover, for the government's efforts to translate into gains for women, the increase in numbers of staff must be accompanied by specialised training on women's health.

Women also experience discrimination and victimisation at the hands of public health service providers. Research indicates that HIV-positive women have been subjected to coerced or forced sterilisation in public healthcare facilities,⁶ and a recent article reporting on the experiences of young women from informal settlements indicates that these women are being discriminated against on the basis of their age, sex and class.⁷ Human Rights Watch has emphasised that the government needs to ensure individual healthcare users have access to easily understood and effective mechanisms to overcome barriers to care.⁸ The absence of accountability will result in women being deterred from seeking healthcare services. The introduction of the NHI's office of health standards compliance⁹ is therefore urgent. If properly managed, the office could be instrumental in the enforcement of women's rights.

Women have a large stake in the success of the NHI - not only do they account for most of the population, but they bear the brunt of HIV infection and prevalence, and still carry the bulk of the responsibility for the promotion and protection of the health of their families.

6 Essack Z. and Strode, A. (2012), "I feel like half a woman all the time": The impacts of coerced and forced sterilisations on HIV-positive women in South Africa", *Agenda*, 26:2, pp.24-34.

7 O'Reilly, M. And Washington, L. (2012), "Young Women From Informal Settlements Report on Their Experiences of Accessing Sexual and Reproductive and other Health Services from Clinics", *Agenda*, 26:2, pp.126- 138.

8 Human Rights Watch (2012), 'South Africa: Chance to Cut Maternal Deaths', available from: <http://www.hrw.org/news/2012/05/04/south-africa-chance-cut-maternal-deaths>

9 Department of Health (2011), *National Health Insurance in South Africa: Public Policy*.

SONA 2013 and looking ahead

Notwithstanding the fact that the president addressed the question of gender-based violence in SONA 2013, he failed to recognise and address the important correlation that exists between this type of violence and women's health. This correlation was recognised in the health department's NHI Green Paper. Accordingly, the strategic framework for the prevention of injury in South Africa lists 'equitable gender relationships and norms' as one of its key objectives. Yet, without further detail on what exactly this involves it is not possible to assess the usefulness of this initiative.

More needs to be done, especially in the context of domestic violence. The Domestic Violence Act still contains no positive duties on healthcare practitioners, regardless of the fact that healthcare facilities constitute an important access point for service delivery to victims of domestic violence. The act ought to be amended or supplemented with regulations that speak specifically to the correlation between violence against women and service provision in a healthcare setting. The responsibilities of healthcare practitioners ought to be set out clearly, in the way that the national guidelines and directives in terms of the Sexual Offences Act places positive duties on police officers, prosecutors and healthcare practitioners.

The president made much of progress in relation to life expectancy, highlighting that it increased from 56 years in 2009 to 60 years in 2011, but it was unclear how this improvement relates to South Africa's worsening maternal mortality rate. Dr Debbie Bradshaw of the Medical Research Council's burden of

disease research unit, which was responsible for the research from which the president quoted, has indicated that the unit is still concerned about South Africa meeting the Millennium Development Goals pertaining to mothers and children's health by 2015.¹⁰ According to the report the maternal mortality ratio (Millennium Development Goal Five) had worsened to an estimated level of 333 per 100,000 live births in 2009. The fact that thousands of women still die during child birth is a reflection of the status of women in South Africa. Decreasing maternal and child mortality is one of four 'strategic outputs' that the healthcare sector must achieve by 2014. The lack of a progress report on this score is thus conspicuous by its absence from the SONA 2013.

The president commended achievements in HIV/AIDS research and malaria treatment research. South Africa accounts for 0.7 percent of the world's population, but is home to 17 percent of the world's people living with HIV. South Africa's rates of TB and HIV infection are amongst the highest in the world,¹¹ whereas the TB and

HIV/AIDS co-infection rate is 73 percent - the highest worldwide.¹² However, the president was silent on progress with the implementation of the National Strategic Plan on HIV, TB and STIs (2012 – 2016).

On this issue, the government missed a major opportunity to improve public health when it excluded the decriminalisation of sex work from the NSP. The criminalised status of sex work in South Africa subjects sex workers to widespread human rights abuses which includes police violence and unequal access to healthcare, rendering sex workers vulnerable to HIV. Additionally, the police use condoms as evidence, a major deterrent to sex workers' use of condoms, subsequently leading to high-risk behaviour amongst a population already recognised as particularly vulnerable to HIV infection. In effect, various governmental reports and policies, including the NSP, identified sex workers and their clients as a key population requiring HIV services. Despite the above, the government shies away from decriminalising sex work, which has

the potential of creating an environment where sex worker-specific HIV programming can thrive. It must be noted further that if the government intends to make a good faith effort to achieve the strategic objective and goals they have committed to both nationally and internationally with regard to the reduction of HIV/AIDS, they must prohibit the confiscation of condoms and its use as evidence by the police.

The SONA 2013 contains a pledge that the health department would 'accelerate' and 'intensify' the piloting of the NHI in certain districts. As part of this process the president declared that from April 2013 the government would contract 600 private medical practitioners to deliver services in 533 clinics in rural and informal settings. The president, however, failed to provide any indication of outcomes to date at the NHI pilot sites. The NHI represents a unique opportunity to reverse the structural deficiencies of the public health sector in general, but also in relation to women. Given the importance of the NHI, one would have expected much more detail regarding the time frames for the implementation, the successes and failures of pilot sites, and efforts to upgrade the public healthcare system beyond the provision of human

resources. Women have a large stake in the success of the NHI - not only do they account for most of the population, but they bear the brunt of HIV infection and prevalence, and still carry the bulk of the responsibility for the promotion and protection of the health of their families.¹³ A focus on women in health policy-making can result in benefits for all South Africans. For this reason, it is critical to incorporating gender analysis at every stage in the process of putting the NHI in place. The health department appears to be taking steps in this regard, but gaps with regard to women's health remain.

10 Medical Research Council media statement, available at <http://www.mrc.ac.za/pressreleases/2012/10press2012.htm>

11 Amollo, R. (2012), "The National Health Insurance Policy: What's in it for Women's Health in South Africa?", Agenda, 26:2, p.111.

12 Amollo, R. (2012), "The National Health Insurance Policy: What's in it for Women's Health in South Africa?", Agenda, 26:2, p.111.

13 Amollo, R. (2012), "The National Health Insurance Policy: What's in it for Women's Health in South Africa?", Agenda, 26:2, p.112.

RURAL DEVELOPMENT AND LAND REFORM

Developments in 2012 - what was promised and what was delivered

SONA 2012 described the project of land distribution as 'slow and tedious', partly due to the failure of the 'willing buyer, willing seller' option. The president reminded his audience of the new government policy framework on land redistribution in the form of the Green Paper on Land Reform.¹ According to the latest census figures, women make up 52 percent of the population, and approximately 59 percent of those residing in the 'deep rural' areas are women.² Despite this, the president made no mention of women in relation to rural development and land reform.

The Green Paper on Land Reform, gazetted in May 2011 for public input, also overlooks the position of rural women in South Africa. The green paper does not propose any mechanism to enable land tenure rights for women in areas controlled by (predominantly male) traditional leaders.³ Furthermore, it fails to address the challenges that rural women face in their everyday lives, such as food security, gender discrimination and compromised livelihoods.

Women in the rural areas live in one of the poorest sections of South Africa's population. Land reform in post-apartheid South Africa has been slow, with less than 10 percent of land

1 SONA 2012.

2 Budlender, D, Affidavit, *Tongoane and Others v. The National Minister for Land Affairs and Others* (11678/2006) [2009] ZAGPPHC 127.

3 Legal Resources Centre media statement, 9 January 2012.

having been redistributed since 1994.⁴ Also, rural poor people are not adequately represented in negotiation and planning processes for land allocation,⁵ further hampered by illiteracy. The disproportionate impact of poverty on women is not taken into account.

The exclusion of rural women from land reform has been exacerbated by parliament's wave of retrogressive legislation introduced since 2003. This includes the Traditional Leadership and Governance Framework Act of 2003, the Communal Land Rights Act of 2004 (which has subsequently been declared unconstitutional), and the Traditional Courts Bill of 2012. These pieces of legislation serve to 'centralise power to [African] chiefs and bolster their ability to unilaterally define the content of customary law.'⁶ Thus, their effect on rural women in South Africa is such that constitutional rights to land reform, as guaranteed in Section 25 of the Constitution, and food security and poverty reduction as guaranteed in Section 27 of the Constitution, are either significantly compromised or entirely overlooked.⁷ It is crucial that government revisits its stance on traditional affairs and recasts land reform in gender terms.

Current reviews and statistics of the department for rural development and land reform, such as those contained in the

4 Thembela Kepe and Danielle Tessaro, 2012. Integrating Food Security with Land Reform: A More Effective Policy for South Africa, CIGI Africa Initiative, Policy Brief, No.4.

5 Ibid.

6 Claassens, A, 2013. 'Recent Changes in Women's Land Rights and Contested Customary Law in South Africa', Journal of Agrarian Change 13(1), January, pp.71-92.

7 Kepe T and Tessaro D, 2012. 'Integrating Food Security with Land Reform', CIGI Africa Initiative, Policy Brief 4, August.

comprehensive rural development plan and the national rural youth service corps, are not disaggregated according to gender. This makes it extremely difficult to measure the effects of rural development and land reform on women. How many jobs have been created for women through infrastructure development? How many women are benefiting from land restitution and reform? How many women are participating in the youth service corps? Answers to such questions require government to recognise rural women as a key population group that faces particular systemic challenges. Until government specifically measures the current position of women in the rural areas (in regard to land ownership, food security, access to resources etc.), it will not be possible to institute appropriate policies and set meaningful targets.

"... critical concerns of rural communities, and rural women in particular, such as food security, access to land and agrarian reform, remained unaddressed in the SONA 2013."

SONA 2013 and looking forward

Although the president named rural development and land reform as priority areas at the start of his speech, the SONA 2013 was remarkably unconvincing in giving substance to either area. This is particularly disappointing in light of 2013 being the 100 year anniversary of the infamous Native Land Act of 1913. On the question of rural development the president mentioned two projects: the expansion of electricity transmission lines and preparatory work for the construction of the Umzimvubu Dam. Both of these initiatives, he claimed, will improve the livelihoods of rural populations.⁸ However, critical concerns of rural

8 When assessing the impact of rural development projects, one should distin-

communities, and rural women in particular, such as food security, access to land and agrarian reform, remained unaddressed in the SONA 2013.

By the same token, on land reform, the president offered only a superficial engagement and his emphasis fell on the land redistribution programme. The SONA 2013 served as a platform for the president to confirm what is already evident: that the government will not meet its 30 percent redistribution target. The original date to achieve this target was 1999, however, due to the slow pace and ineffective management of the redistribution process, the deadline was extended to 2014.⁹ To date only eight percent of white-owned farmland has been transferred to black people. The president stated that government's unconvincing performance in this regard bears relation to a number of the shortcomings identified in the cabinet's mid-term review. Specifically, the implementation of the land redistribution programme has been impaired by the length of claim procedures and the 'willing buyer, willing seller' model. Also, the mid-term review had concluded that post-settlement support has been inadequate in promoting the continued productive use of the land by new landowners.

Although the president's assessment is by and large correct, it is by no means novel. On the contrary, all of these challenges are well known and have been acknowledged by the previous administration and previously by the president. The 'willing buyer, willing seller' model, introduced by the government

guish between ex-homeland and rural farming areas.

9 Jacobs, P., Lahiff, E. And Hall, R, 2003, 'Evaluating Land and Agrarian Reform: Land Redistribution'. Occasional Paper Series 1. Cape Town: Institute of Poverty, Land and Agrarian Studies, University of the Western Cape.

An analysis should be done on why the actual number of women beneficiaries is so low, the particular impact of restitution remedies on women, and the participation of women in land holding mechanisms.

in 1997,¹⁰ has been widely criticised¹¹. A 2007 report by the Centre for Policy Studies noted that the 'willing buyer, willing seller' formula resulted in 'numerous stalemates and problems' most notably 'farmers asking unreasonably high prices per hectare'.¹² Despite the persistence of this problem, the president has waited, almost to the end of his current term, to announce that the 'willing buyer, willing seller' approach would be substituted by the 'just and equitable' principle provided for in the Constitution.

Similarly, on the issue of land restitution, the Centre for Policy Studies report drew attention to the structural flaws in the land claims process. Most notably, as the former homelands were never surveyed, it is extremely difficult to accurately specify the exact site and the size of claimants' land. Additionally, the report makes it clear that infrastructural problems impede easy communication with claimants.¹³ In the past five years however, the government has not attempted to resolve these problems, nor did SONA give any indication that the matter will be acted upon in the future.

The president cautioned against the negative repercussions that the preference for monetary compensation by claimants has on landownership patterns, while not addressing the

10 Lahiff, E, 2011. 'Land Reform and Poverty Reduction in South Africa' in Hebinck, P. and Shackleton, C. (eds.) Reforming Land and Resource Use in South Africa: Impact on Livelihoods. New York: Routledge, p.65

11 Jacobs, P., Lahiff, E. And Hall, R. 2003. 'Evaluating Land and Agrarian Reform: Land Redistribution' Occasional Paper Series 1. Cape Town: Institute of Poverty, Land and Agrarian Studies, University of the Western Cape.

12 Kahn, N, .2007. 'Land and Agrarian Reform in South Africa'. Johannesburg: Centre for Policy Studies, , April, p. 11. Available at: http://www.cps.org.za/cpspercent20pdf/pia20_12.pdf

13 Idem, p. 10.

underlying reasons why claimants opt for financial compensation. Claimants' preference for financial compensation must be understood in relation to government's bureaucratic inefficiency in providing post-settlement support and the long delays in acquiring land. It should be noted that the government's failure to align the restoration of land ownership with technical and financial support means that land ownership carries no financial benefits for claimants, hence the frequent preference for immediate financial compensation.

This preference however, is ultimately detrimental to claimants as land ownership is incomparably more advantageous for the economic wellbeing of the beneficiary and her/his family in the long-term. However, the caveat remains that government support is delivered promptly.¹⁴ Bearing in mind SONA 2013's indication that the restitution claims process will be re-opened, it is hoped that these challenges will be taken into account.

The prospect that these challenges will be taken into account seems unlikely, given that women were not mentioned at any point during the president's remarks on rural development and land reform. This

¹⁴ Ibid, pp.11-13

is cause for great concern because, as the Commission on Gender Equality pointed out last year, 'men constitute 90 percent of land reform beneficiaries, revealing the age-old non-recognition of women's title to land'.¹⁵ An analysis should be done on why the actual number of women beneficiaries is so low, the particular impact of restitution remedies on women, and the participation of women in land holding mechanisms.

The exclusion of women from land restitution is unlikely to be reversed in light of the Traditional Courts Bill. As Dr Aninka Claassens, an expert on land issues, poignantly argued in a recent academic article, the bill 'threatens to reverse the gains achieved by rural women in terms of land rights. It does so by vesting a disproportionate amount of power in the hands of traditional leaders. One such gain [which would be lost] is the acquisition of residential sites by single women in the former homelands'.¹⁶ This discrimination

¹⁵ Commission on Gender Equality (2012), *A Gender Analysis of the State of the Nation Address*. Available at: <http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=25005&tid=56080>

¹⁶ Claassens, A. (2013), 'Recent changes in women's land rights and contested customary law in South Africa', *Journal of Agrarian Change*, Vol 13. No.1 January, p.73

against women is not only contrary to the Constitution but also sets the country on the wrong trajectory in overcoming the president's much vaunted 'triple challenge' of poverty, inequality and unemployment, and its disproportionate effects on rural women.

If passed, this bill will create an environment where the abuses of power by traditional leaders and traditional courts, which is already taking place, will be exacerbated. The multiple testimonies given by rural men and women at national public hearings on the bill in September 2012 attest to the fact that traditional leaders are systematically engaged in practices such as extorting tribal taxes, selling community land for their personal benefit, engaging in corrupt deals, and undermining women's rights.¹⁷

In light of the above it is worrisome that towards the end of his term, the president only offered were a few recycled statements in SONA 2013 about the difficulties plaguing land reform and some vague

comments on what should be achieved. A decisive policy direction on rural development and agrarian reform is lacking. Looking ahead, the way in which government has managed the implementation of land reform represents a bottleneck for further improvements. This bodes ill for the prospects of transforming the racial and gender profile of land ownership in the foreseeable future. Whilst the president maintains his current position in the face of encroachments on rural women's rights, protracted rural poverty will continue to overshadow any effort to overcome South Africa's gendered socio-economic inequality in the years to come.

¹⁷ Claassens, A. (2012), 'The Traditional Courts Bill is a Legal Travesty', *Mail and Guardian*, 28 Sep, available from: <http://mg.co.za/article/2012-09-28-00-the-traditional-courts-bill-is-a-legal-travesty>

CONCLUSION

This review shows that in all five government priority areas, women carry disproportionately heavy burdens – whether due to historical legacies of gender injustice, current gender iniquities or generalised failures in government services. Notably, however, solutions proposed in SONA 2013 disproportionately benefit men. This places a question mark over claims that the current government is concerned with overturning gender inequality in all its permutations. This unfavourable impression is strengthened by the lack of gender-disaggregated data. As noted in our previous reviews of SONA 2011 and SONA 2012, it is impossible for government programmes to target the multiple challenges women face if no gender-specific data is available to inform those initiatives. The repeated emphasis in both SONA 2012 and SONA 2013 on the Women’s Empowerment and Gender Equality Bill does not address this concern. Indeed, it should be noted that this bill specifically addresses the concerns of middleclass women. While these concerns are important, the bill will have little direct effect on the real deprivations that millions of women struggle against on a daily basis in South Africa.

What to watch out for

The following issues should be monitored for improvement in the coming year, in each of the five priority areas.

DECENT WORK

- **Infrastructure development:** Initiatives are required to ensure jobs are created for women.
- **Growth in female-dominated sectors:** Investment needs to be stepped up in sectors with a significant female presence.
- **The Women's Empowerment and Gender Equity Bill:** Consultation on the bill is needed to address overlapping functions between the ministry for women, children and people with disabilities and the Commission on Gender Equality.
- **Departmental budget speeches:** Job creation can only be gauged if gender-disaggregated data is provided.

EDUCATION

- **Quality of education:** Annual National Assessment results are of concern. There is room for improvement in learner performance in all areas, with a particular focus on girls in maths and science.
- **Drop-out rate:** While South Africa has fared relatively well in ensuring good enrolment figures, many children experience a broken journey through school, with many dropping out either temporarily or permanently. Due to prejudice, pregnancy accounts for around eight percent of school drop-outs amongst teenage girls. The patterns and attendant reasons need to be established and addressed.
- **Infrastructure in schools:** The pace at which appropriate infrastructure is set up in under-resourced schools needs to be improved, especially given the avoidable missing of school days by girls due to inadequate sanitation facilities.
- **Resourcing of schools:** This reached crisis proportions in 2012, especially in the provision of basic learning materials.
- **Violence:** Schools remain sites of violence and sexual violence, with both teachers and learners as perpetrators.

- **Minimum norms and standards for infrastructure:** Much work needs to be done in both refining this policy framework and giving effect to it.
- **Monitoring of the department of basic education's delivery on its mandate:** In light of poor performance in this department, its initiatives to remove impediments to delivery should be closely monitored.

CRIME

- **Crime statistics:** Gender-disaggregated data is needed.
- **Specialised sexual offences courts:** The re-introduction of these courts should be urgently attended to.
- **Budgets and strategic plans:** These policy instruments in the justice, crime prevention and security cluster have to adequately incorporate gendered analyses, planning and resourcing.
- **Departmental reports on service delivery obligations to victims of gender-based violence:** The departments of police, justice, social development and health have legislated duties that have to be fulfilled.
- **National Council on Gender-Based Violence:** The strategy, plans and activities of the council should be monitored.
- **Sex workers:** The Law Reform Commission report on (legislation dealing with) 'Adult Prostitution' should be finalised.

HEALTH

- **Health department budget vote:** Greater detail on national women's health priorities is required.
- **National Strategic Plan on HIV, TB and STIs (2012 – 2016):** The progress in implementation of this new plan should be monitored.

- **The Sexual Offences Act:** The implementation of the act's national policy guidelines and national instructions for healthcare practitioners should be scrutinised.
- **Progress at the pilot sites of the National Health Insurance scheme:**
 - OR Tambo district in the Eastern Cape
 - Gert Sibande district in Mpumalanga
 - Vhembe district in Limpopo
 - Pixley ka Seme district in the Northern Cape
 - uMzinyathi and uMgungundlovu districts in Kwa-Zulu Natal
 - Eden district in the Western Cape
 - Dr K Kaunda district in the North West
 - Thabo Mofutsanyane district in the Free State
 - Tshwane district in Gauteng

RURAL DEVELOPMENT AND LAND REFORM

- **Green Paper on Land Reform:** Progress on its implementation and the impact thereof on women are of concern.
- **Traditional Courts Bill:** Engagement is required with the developments surrounding the bill and related draft legislation - such as the **National Traditional Affairs Bill** - and the powers these propose to give to traditional leaders over women in rural areas.
- **Land reform programmes:** Gendered planning is required.
- **Current land policies:** Engagement is necessary with the effects of these policies on women.
- **Statistics:** Data is needed to measure whether and how land reform benefits women.



WOMEN'S LEGAL CENTRE

HEINRICH BÖLL STIFTUNG

The Women's Legal Centre (WLC) is an independent law centre that conducts litigation and advocacy for the advancement of women's human rights. The WLC and the co-authors, with the support of the Heinrich Böll Foundation, release an annual review on the state priorities from a gender perspective.

Women's Legal Centre
7th Floor, Constitution House
124 Adderley Street
Cape Town

tel: 021 424 5660
fax: 021 424 5206
e-mail: info@wlce.co.za
web: www.wlce.co.za



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